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SENATE

FURTHER: FINANCE

4/6/78

Date: 4/24/78

Mr. President:

The Committee on RESOURCES has had SSSB 59
Forest resources and practices

under consideration and (a majority of the committee) (the committee reports it back as follows)

() recommends it do pass () recommends it do not pass

() recommends it do pass with attached amendment(s)

() recommends it be replaced with CS for _____

and _____ () new title () same title

() AND attaches a Letter of Intent () New Fiscal Note

() reports it back without recommendation

() and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Chairman

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

DATE
Form 100
2419

April 10
12 -

1:30 A.M.
Room 126
Capital

SENATE RESOURCES COMMITTEE

Attached in order of appearance are the testimonies of the hearing on Senate Bill 59, held on February 11, 1977.

Testimonies include:

1. Guy Martin - Commissioner, Department of Natural Resources
Jeff Haynes - Assistant Attorney General
2. Robert Rehfeld - Assistant Regional Forester
3. John Borbridge - SEAlaska Corporation *6-512*
4. Mike Leach - Society of American Foresters *6-66190*
5. Warren Weathers - Shee Atika, Incorporated *747-3534*
6. Jim Clark - Alaska Lumber and Pulp Company *Jureau*
7. Robert Loescher - Goldbelt Corporation *6-6244*

SB 59

Wilson
Seal of Alaska
6-7212

Clarence Jackson
HB 40

Command
6-7282
Reville
Bird
6-7484

Chad Jones
Chukchi Natives

M

Walzer

Testimony of Commissioner Guy Martin
Department of Natural Resources and
Jeff Haynes, Assistant Attorney General

February 11, 1977
Hearing on SB 59

COMMISSIONER MARTIN - Madam Chairman, I think that I should stand here with Jeff Haynes the Assistant Attorney General who has done a great bulk of the work on this legislation. This bill, as you know, was introduced in the last Legislature, and I should say at the outset that the bill you have before you has been changed somewhat, but is basically the same bill. We think that it has been improved, and its improvements are a result of further consultation since the last legislative session.

CHAIRMAN POLAND - Commissioner, that bill never reached this committee last year.

COMMISSIONER MARTIN - I understand that Madam Chairman. In any case for those who did see the bill, it is similar, but has been somewhat changed. Those changes can be pointed out to you by Mr. Haynes. I'm going to have to apologize because of the holiday. I guess Commissioners and Legislators are working, but some of the staff in the Department is gone and there are some maps and some other information that I will make available for the committee records and to all members, however, I was unable to get it today without the help of some of the staff.

CHAIRMAN POLAND - I'm sure that we will have at least one, if not more, meetings on the bill before we're through.

COMMISSIONER MARTIN - I think it is the sort of subject that merits that, and it is one that we are very willing to work with, whatever interest exists, to shape into a good piece of legislation. Let me just briefly speak to the policy of the bill before turning it over to Jeff Haynes. Basically, Madam Chairman, I think it sprang from our feeling that many of the western states where there were timber resources, were under diverse ownership ranging from public ownership in State and local governments to private ownership in a broad variety of ownerships, all the way from small individual landowners to quite large corporate landowners, and that the history of forestry and of the forest practices in that area was very mixed. Overall, the trend has shown, and we will supply information that I think can support that fact, that in many cases the management, with all of the diverse owners operating in terms of the forest practices, has been unsuccessful in terms of the long range sustained yields of those forests. It doesn't condemn any individual owner, it simply indicates that when so many people are managing individually owned forest resources in

Testimony of Commissioner Guy Martin
and Assistant Attorney General Jeff Haynes Cont.
February 11, 1977
Hearing on SB 59

different ways and not dealing with it as a unitary matter across ownership lines, there has been damage to the renewable aspect of that resource, and our thought and the policy that we put behind this bill is basically that for some purposes. We think those purposes should be very limited and very reasonable. We should treat the forest resources of Alaska as one large resource subject to a certain group of practices which should help the State to sustain those very important resources over a very long period of time. Now, I would say that among many bills that I've worked on since I've been here, I think very few have had a greater level of consultation, thanks mostly to Mr. Haynes. I think that it can fairly be said that he has made the broadest possible attempt to work with diverse groups to make this bill be fair and make sense. In many cases we've gotten at least reasonably good endorsements from people that we've worked with on the bill. That is not to imply that there is unanimity, that it's either a good idea, or that the bill is good, but it has been very broadly worked on by a number of interests. The philosophy of the bill is to not affect the small owner a great deal, but rather to look at general policies and practices which are important to protect the overall forest resources of the State. Let me at this point end my remarks except to answer other questions, and possibly turn it over to Mr. Haynes to at least walk you through the bill and indicate how we've carried out some of those policy ideas.

CHAIRMAN POLAND - Are there any questions of Mr. Martin before Mr. Haynes starts? If not, thank you Commissioner. Mr. Haynes.

JEFF HAYNES - Thank you, Madam Chairman, Members of the Committee. I'll try to go through and highlight some significant portions of the bill and give you an idea of why we did what we did starting off with Section 0 0, just the findings and purposes section. It recognizes that one of the main purposes of the bill is to maintain a perpetuity of the timber industry in the State and forest products industry. What is really the chief objective here is to maintain an industry which is stable and which recognizes this isn't really a state-wide asset. The administration of the bill would be with the Commissioner of the Department of Natural Resources, and, of course, we've added in some other powers which are fairly typical in State forest practices acts. Things like experimental forests and cooperative forestry programs, extension service programs, and things like that, so that the Department of Natural Resources may assist the private landowner in the perspective of his own timber resources. As the Commissioner mentioned, we do have a section in here on exemptions. This is quite important.

Testimony of Commissioner Guy Martin
and Assistant Attorney General Jeff Haynes Cont.
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There are two exemptions in this section. One is small landowners - landowners of tracts of 160 acres or less. We don't really feel that it is within the objectives of this particular bill to regulate that sort of thing. What we are after are major types of operations. For the same reason, we have exempted non-commercial forest lands which is under municipal or private ownership. I don't have the map here which shows what is commercial and what is non-commercial forest land. We've keyed our definitions to those used by the forest service.

SENATOR HUBER - Could I get a clarification at this point? This would mean then, if somebody owns 300 acres of cleared farm land in an area, which on your map is commercial forest, he would be classified as commercial forest. Is that right?

JEFF HAYNES - Commercial forest is determined by what types and what volume or quantity of trees there are on a particular site. It's cleared land. I don't see why it would be commercial forest.

SENATOR HUBER - You said it goes by map.

MR. HAYNES - It goes by definition. We indicated that there is a map that tends to show generally what would be covered and not covered.

SENATOR HUBER - If you're in an area, and you are obviously on a commercial forest - I'm thinking of a farmer with 300 acres of cleared land and 40 acres of wood lot. He might sell a little wood off it. Is he exempt or not?

MR. HAYNES - We don't intend to cover that type of individual. Madam Chairman, we drew the line at 160 acres, but maybe there is a more reasonable line to draw or a more reasonable definition.

SENATOR HUBER - I was referring to A, but maybe I'll understand it better as you go along.

JEFF HAYNES - I think there's a definition in the back which will help you.

One of the controversies that has sort of taken place over forest practices acts in other states, and I should mention at this point that we could go through and review all of the legislation that is presently on the books in other states and try to see what they have done and why, and how well accepted that was by the public. In that same context we went through and looked at the recommendations of the Society of American

Testimony of Commissioner Guy Martin
and Assistant Attorney General Jeff Haynes Cont.
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Foresters, and those other groups have made about forest practices legislation. One of the things which we have more or less decided to do here was not to put actual forest practices per say in the legislation. This is what California did, but that has not been very well received. So, we have opted instead for a system which basically allows for the development of regulations, and those would be your forest practices. We have set up, instead, some very general standards which would govern setting of those regulations, and that is what you see in section 0 40. Not only that, but we have come up with two different sets of standards, one which applies to all of the forest land which would be subject to this bill, that is subsection B, and then another set of standards which are really quite a bit stricter and have to do with things like multiple use which applies only to public forest lands. In other words, we would be using different standards for private land, and for public land to reflect what, in fact, the public interest is.

Section 0 50 has to do with an administrative plan and report, and basically this is a duty which would be imposed on the Commissioner of Natural Resources to come up with and maintain a plan showing that in fact the basic objectives of this act are being carried out in a report to the legislature at two year intervals.

Section 0 60 is the regulations themselves. These are pretty straightforward in that most of the subject matter headings are taken from other forest practices acts from other states. There is of course a provision in here requiring consultation with all sorts of public and private organizations, and does allow for the establishment of different forest practices in different areas of the state to reflect the fact that there are different varying conditions as well.

Subsection C. One of the things we really did not want to do here was establish a whole new bureaucracy just for dealing with forest management and practices. It is really not necessary. What we are trying to do is more or less fill in the blanks in the existing statutes only to the extent necessary to accomplish the purpose of this goal. We are not trying to duplicate or preempt the statutory authority of other agencies.

I might add that we are also attempting to impose only the most minimal burden on any timber operator who might be subject to the act. This is reflected in subsection E which says we are only supposed to adopt those regulations which are necessary and which do not just merely increase operating costs.

Testimony of Commissioner Guy Martin
and Assistant Attorney General Jeff Haynes Cont.
February 11, 1977
Hearing on SE 59

Maybe the most significant compromise, in terms of approaches, is Section 0 70. This is where you really get down to looking at individual operations. There are two systems that are used now in other states. One is called a notification system. In that instance, the timber operator merely notifies the government that he's going out in the field, and that's all the contact there is. Then he goes out and does it. In other states they have what is called a prior approval system. In this case you have to submit a detailed plan. In some states the plans have to be done by a licensed forester. In states like California, a plan may approach the depth of something like an environmental impact statement, and in that case, there's a very detailed review by the government before the guy can go out and do anything. There are advantages to each of those systems as well as disadvantages. The notification system is very simple, and it's not very expensive to administer, but the problem is that in a state especially as large as Alaska, the government really has no idea what the guy is doing because all he's done is told them that he's going to operate, and the operator has not really much contact with the State, which means he isn't going to get the benefit of any kind of cooperative programs or service assistance programs or something that the State might have. He also is not going to understand very well what the regulations or practices established by the State really mean, so you have a much higher possibility of inadvertant violations. The prior approval system, of course, is very expensive to administer. It does have the benefit of allowing the government to know what exactly the guy is going to do, but in many cases it is extremely onerous on the operator, requires a lot more paperwork, and requires a lot of delays that are really not necessary. What we tried to do is split it up, and take the best out of each of those systems. What we have here is a very very minimal type of review and approval. It is merely a notification to the Commissioner by the operator of a very brief description of what he is going to do. After that, there is a statutory review period by the State, but it is iron-clad. There is a set number of days, and there is no way to go beyond that. The State has to make up its mind within that period of time what it wants. If they feel there is something in that operation that they think they need to look at more closely, they can require something more like a full-scale plan, but only for that aspect of the operation which they find questionable, otherwise, they just let it go. So, we are trying to set this up so that insofar as there is contact between the operator and the State, it is only to the extent necessary to accomplish the purposes of this bill, and not to require the operator to go through a lot of i.a. _____ for no purpose whatsoever. In other words, not a lot of bureaucracy,

Testimony of Commissioner Guy Martin
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and we think we've done that here. We've spent a lot of time writing this section, and we think we have made it as close as possible to what the minimum necessary would really be. Again, there is an iron-clad time review period here, and if the Department of Natural Resources fails to take action within that time review period, they are presumed to approve that operation. So there is no way that the government can drag on a delay and put the operator at a disadvantage.

Again, we have emphasized in this section on operations that the practicalities and economic constraints affecting the operator must be looked at. We have even stated that the paperwork required of the operator must be kept at the minimum necessary, so we've stressed that many times in this legislation.

We have a special section in here, section 0 80, on deployment of chemicals. There is not much of that going on in the State right now, and most of the people we have talked to felt that this was really one type of area which should require specific approval by the State in each instance because of potentiality or abuse in using broadcast chemicals.

Section 0 90 has to do with conversion of forest land - other uses. We can't really prevent that constitutionally, but we did say we set this up so that if somebody is going to convert a forest land to another use, then he has to do so within the time which he would ordinarily be required to regenerate that particular tract. It would probably be about 5 years. In other words, that is to prevent subterfuge, with some guy saying he's going to convert it, and basically all he's doing is just not taking any steps to regenerate it. If he does in fact convert it within that time period then that's good enough.

The section on new investigations and enforcement in the field is pretty straight forward.

The prohibition and penalties section - this is pretty much taken out of the Oregon Act, except that we rewrote it because we felt that the Oregon legislation was very unclear as to what the procedures were. This is a straight administrative penalty system. There are no criminal penalties in this act at all. There is plenty of due process in here for the operator, and also some pretty decent constraints on the State as far as what kind of penalties can be imposed and what factors they have to consider in determining what the penalties are. I could go through that with you, but it's pretty lengthy, and I don't know that you'd want to do that at this time.

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There is a fairly straight-forward provision again on appeals and judicial review, and one on civil action. This is sort of a citizens provision, but it is limited to those duties which are discretionary with the Commissioner. In other words, only those duties under the act which if mandated by law, can be enforced by citizens actions.

Finally, the last part is the definition section. I might point out to Senator Huber that the first definition there is commercial forest land, and that might help explain to you what lands would in fact be covered because that's what we tried to do. That is the same definition used by the Forest Service which means that all their inventory work is valid as far as determining what land would and would not be subject to this act. There are a couple of other definitions in here which are significant.

The definition of multiple use is basically the same as in the Federal Act and the same for sustained yield.

I think that's it. You may have a lot of questions on this. I hate to summarize something that is this significant in ten or fifteen minutes, and I'm sure I've missed some things, but if you've got any questions, I'll try to answer them.

(It was decided that the Committee would wait to ask any questions of Mr. Haynes until after the testimonies of those opposing the bill.)

2
UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

P.O. Box 1628, Juneau, AK 99802

Robert Rehfeld

1510

January 25, 1977

The Honorable Alvin Osterback
Chairman House Resources
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811



Dear Representative Osterback:

This responds to your request for a statement on forestry activities at the State level. The Forest Service strongly supports measures which will strengthen the professional forestry staff and organization of State governments so that professional forestry expertise can better serve the needs of people in the management of forests and related resources. With the imminent acquisition of the full 103.4 million acres of land provided by the Statehood Act and approximately 44 million acres transferring to Native ownership, such measures are timely.

The State forestry staff is already charged with responsibility for protecting State and private lands from fire, insect, and disease attack. A statewide organization able to meet these demands needs the equipment, experienced managers, and training to provide this support. It needs the cooperation of local communities to provide the manpower during periods of extreme fire hazard, and it must be able to react rapidly to minimize delays in meeting these demands. A trained statewide organization can effectively handle such situations.

Our present State forestry organization is beginning the major task of fielding fire protection forces to protect Alaskan life and property with the gradual phase out of the Bureau of Land Management protection contract. Experience in firefighting and organization of a cadre of district personnel capable of leading temporary firefighters is of paramount importance for making the operation function.

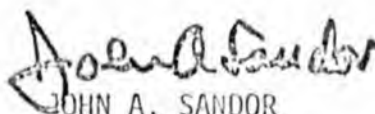
In the area of management, the renewable resources of forest and rangelands include timber production, fish and wildlife habitat, recreational opportunities, wilderness experiences, and watersheds. Minerals management is also related to these resources. The State Forestry organization, working through cooperative Federal-State programs, can provide technical, and in some cases financial, assistance to establish, protect, manage, and use forest and related resources.

The Forest Service works closely with the State Forestry organization of the States and Territories. The National Association of State Foresters is an organization with substantial leadership in promoting sound forest practices on all non-Federal lands. We would encourage the State to examine the opportunities to strengthen its organization to meet the rapidly expanding challenge of its forests. The National Association of State Foresters and individual State organizations have demonstrated the merits of sound forest management practices. A number of States have established forestry practice laws and regulation. Their experience could be very helpful in your efforts.

In summary, we believe Alaska now needs a strong State forestry organization operating at a level of government that reflects the emerging importance of this resource activity. Additionally, a comprehensive State forestry program is needed that focuses not only on State lands but is also designed to provide forestry assistance of all kinds to Alaska's new landowners. Numerous federal grant programs exist requiring some state matching funds that are specifically directed to this purpose. The State Forester needs authority and a mandate to participate in these programs.

Many bush communities, wanting to develop sound management programs for their lands, are now requesting forestry and land management assistance. With a strong forestry organization and program the state can be responsive to their citizens needs. We believe it very important that any forestry legislation considered this session address these concerns.

Sincerely,



JOHN A. SANDOR
Regional Forester

STATEMENT MADE TO ALASKA SENATE - RESOURCES COMMITTEE
FEBRUARY 11, 1977

SENATE BILL 59

"AN ACT RELATED TO FOREST RESOURCES AND PRACTICES AND
PROVIDING FOR AN EFFECTIVE DATE"

MADAME CHAIRMAN, MY NAME IS JOHN BORBRIDGE, JR.; I AM PRESIDENT OF THE SEALASKA CORPORATION THE NATIVE REGIONAL CORPORATION FOR SOUTHEAST ALASKA.

UPON CONVEYANCE OF OUR LANDS, WHICH WILL BE SELECTED FROM WITHIN THE TONGASS NATIONAL FOREST, SEALASKA CORPORATION WILL UNDOUBTEDLY HAVE THE LARGEST COMMERCIAL PRIVATELY OWNED FOREST INVENTORY IN THE STATE OF ALASKA. WITH RECEIPT OF SUCH A SIGNIFICANT RESOURCE COMES THE RESPONSIBILITY FOR WISE USE AND MANAGEMENT WHICH OUR CORPORATION FULLY ACCEPTS AND INTENDS TO IMPLEMENT. THE ALASKA NATIVES HAVE ALWAYS BEEN WISE USERS OF NATURAL RESOURCES AND WE IN SEALASKA FULLY INTEND TO CONTINUE THAT TRADITION.

ADDITIONALLY, IT IS MY OBSERVATION FROM DISCUSSIONS WITH NATIVES FROM OTHER REGIONAL AND FROM MANY VILLAGE CORPORATIONS THAT CONCERN FOR PROPER USE OF NATURAL RESOURCES IS A TRADITION WHICH HAS NOT BEEN LOST.

WITH THIS AS BACKGROUND, WE HAVE REVIEWED SENATE BILL 59 AND WISH TO OFFER COMMENTS TO YOU AND THE MEMBERS OF YOUR COMMITTEE IN ORDER TO ASSIST YOU IN INSURING THAT RESPONSIBLE AND EQUITABLE FOREST REGULATIONS ARE IMPLEMENTED IN A TIMELY FASHION SO AS TO REASSURE THE STATE THAT PRIVATE FOREST LANDS WILL BE WISELY MANAGED.

WHILE WE SUPPORT IMPLEMENTATION OF APPROPRIATE FOREST PRACTICES, WE HAVE SOME VERY SIGNIFICANT RESERVATIONS CONCERNING SENATE BILL 59. OUR RESERVATIONS MOSTLY INVOLVE PRINCIPLES WHICH ARE IMPORTANT TO THE FOREST INDUSTRY IN ALASKA. MY COMMENTS ARE DERIVED FROM DISCUSSIONS WITH FOREST MANAGERS, AND A REVIEW OF THE FOREST PRACTICES ACTS IN CALIFORNIA, OREGON AND WASHINGTON. THEREFORE WE ARE ENDEAVORING TO BRING BEFORE YOU A BROAD BACKGROUND WHICH HAS INCLUDED THE DETAILED EXPLORATION OF PRINCIPLES WHICH ARE IMPORTANT IN A FOREST PRACTICES ACT.

1. OF PRIME IMPORTANCE TO THE FOREST LANDOWNER AND USER IS THAT THERE BE A STRONG DIVISION OF FORESTRY WITHIN THE DEPARTMENT OF NATURAL RESOURCES. SUCH A DIVISION MUST BE AT A SUFFICIENTLY HIGH LEVEL TO ALLOW THE STATE FORESTER TO BE ABLE TO SET POLICY AND MAKE DECISIONS INVOLVING THE ADMINISTRATION OF REGULATIONS AND THE MANAGEMENT OF FOREST LANDS. THEREFORE THE STATE FORESTER WILL BE AN INDIVIDUAL WHO REPORTS

DIRECTLY TO THE COMMISSIONER OF THE DEPARTMENT OF NATURAL RESOURCES AND WILL HAVE A BACKGROUND WHICH INCLUDES A FORMAL EDUCATION AND SIGNIFICANT EXPERIENCE IN FOREST MANAGEMENT. TO DILUTE THE ADMINISTRATION OF FOREST RESOURCES AND PRACTICES IN ANY WAY OTHER THAN JUST DESCRIBED PLACES A SIGNIFICANT BURDEN ON THE FOREST LANDOWNER AND DENIES TO THE CITIZENS OF THE STATE THE TYPE OF RESPONSIBLE IMPLEMENTATION OF FOREST REGULATIONS WHICH EVERYBODY DESERVES.

2. SB 59 IN SEC. 41.17.040(B)(5) PROVIDES THAT THE PRIVATE LANDOWNER MUST MANAGE HIS FOREST RESOURCE IN A MANNER WHICH WILL NOT DETRACT FROM SCENIC AND AESTHETIC QUALITY IN OR ADJACENT TO AREAS WHERE THERE IS OR COULD BE SIGNIFICANT IMPORTANCE TO TOURISM. WE VIEW SUCH A PROVISION WITH A HIGH DEGREE OF CONSTERNATION. THE STANDARD DENIES TO THE RESPONSIBLE FOREST MANAGER THE RIGHT TO IMPLEMENT PROPER SILVICULTURAL PRACTICES TO ENHANCE THE FOREST RESOURCE. ADDITIONALLY, ITS' LACK OF SPECIFICITY PLACES THE DEPARTMENT OF NATURAL RESOURCES AND THE PRIVATE LANDOWNER IN AN UNTENABLE AREA OF INTERPRETATION.

3. IN SOME OTHER STATES, BY USING THE VEHICLE OF A COMMISSION WHICH INCLUDES FOREST LAND USERS AND

OTHER INTERESTED PARTIES, THE STATE FORESTER, THROUGH THE HEARING PROCESS, HAS PROMULGATED AND IMPLEMENTED APPROPRIATE FORESTRY PRACTICES AND REGULATIONS BY REGION, WHICH INCLUDE CONCEPTS AND PRINCIPLES OF LAND MANAGEMENT FOR ALL PARTIES TO FOLLOW. BY ALLOWING THE STATE FORESTER TO DETERMINE WHAT REGULATIONS ARE APPROPRIATE IN EACH REGION, WE PROVIDE FOR DIVISION ADMINISTRATION WHICH MEETS THE NEEDS OF THE CITIZENS OF THE STATE AND PROVIDES FOR AS SIMPLE A BODY OF REGULATIONS AS IS FEASIBLE.

4. IN ADDITION, THROUGH THE PROCESS OF REVIEW AND PROMULGATION, THE STATE FORESTER CAN IMPLEMENT AN EFFICIENT APPLICATION PROCESS WHICH EMBODIES THE PRINCIPLES OF NOTIFICATION. THE STATE FORESTER IS IN A POSITION TO DETERMINE APPROPRIATE PERFORMANCE BONDS BY REGION, PENALTIES AS APPROPRIATE, AND OTHER REGULATORY MATTERS.
5. OF SIGNIFICANT IMPORTANCE TO THE CITIZENS OF THE STATE AND THE FOREST LANDOWNER IS THAT AN EQUITABLE HEARING PROCESS BE IMPLEMENTED WHICH ALLOWS THE REVIEW OF ALLEGED VIOLATIONS BY INDEPENDENT HEARING EXAMINERS WHO ARE QUALIFIED WITHIN THE FORESTRY FIELD. SENATE BILL 59 PROVIDES FOR THE COMMISSIONER TO APPOINT A STATE EMPLOYEE AS HEARING OFFICER AND THE COMMISSIONER DETERMINES THE HEARING PROCEDURES. IF MISUSED,

SUCH A SITUATION COULD LEAD TO HAVING THE ALLEGED VIOLATOR BEING PLACED IN A VERY UNEQUAL SITUATION. WITH APPROPRIATE INPUT FROM INTERESTED PARTIES, THE STATE FORESTER CAN SET EQUITABLE PROCEDURES FOR THE HEARING OF ALLEGED VIOLATIONS AND CAN ASSURE THE ALLEGED VIOLATOR THAT THE STATE IS SYMPATHETIC TO HIS SITUATION AND YET IS PROPERLY DISCHARGING ITS RESPONSIBILITIES TO ALL OF THE CITIZENS IN THE STATE. NATURALLY, SHOULD THE ALLEGED VIOLATOR FEEL THAT THE HEARING PROCESS WAS NOT SUFFICIENTLY FAIR TO HIM, THEN HE WOULD HAVE RECOURSE TO APPEALS AND JUDICIAL REVIEW.

WHILE SEALASKA CORPORATION HAS OTHER CONCERNS ABOUT SOME LINE ITEMS CONTAINED IN SB 59, WE FEEL THAT THE PRINCIPLES WHICH WE HAVE STATED TODAY ARE OF THE TYPE TO ALLOW YOUR COMMITTEE THE OPPORTUNITY TO RECONSTRUCT THIS BILL WHERE APPROPRIATE IN ORDER TO MEET THE CONCERNS OF THE PRIVATE FOREST LAND MANAGER AND THE CITIZENS OF THE STATE.

ALTHOUGH TESTIMONY TODAY IS DIRECTED TOWARD SENATE BILL 59, I URGE THAT YOUR COMMITTEE REVIEW HOUSE BILL 40, WHICH I CONSIDER TO BE A LOGICAL PIECE OF LEGISLATION TO ORGANIZE A STATE FORESTRY ORGANIZATION WITH SUBSEQUENT PROMULGATION OF RESPONSIBLE FOREST PRACTICES.

I THANK YOU, MADAME CHAIRMAN FOR THIS OPPORTUNITY.

COOK INLET CHAPTER
JUNEAU CHAPTER
KETCHIKAN CHAPTER
YUKON RIVER CHAPTER
SITKA CHAPTER

SOCIETY OF AMERICAN FORESTERS

Alaska Section



February 1st 1977

The Honorable Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate
Capitol Building
Juneau, Alaska 99811

Dear Senator Poland:

The Alaska Section of the Society of American Foresters has had a continuing interest in proposed Forest Practices legislation for the State of Alaska. The Alaska Section represents over 200 professional foresters and is a part of a National organization consisting of over 20,000 professional foresters.

The Society of American Foresters does not advocate that States should enact laws which regulate forest practices. This is for each State to decide, based on its needs in terms of environmental protection and forest land productivity which are likely to vary from State to State. Nevertheless, we are concerned that if a Forest Practices Act is enacted in a given State, it be a competent law. To this end, the Society has established "criteria for a competent State Practices Act", a copy of which is enclosed.

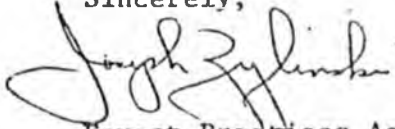
In 1976, we tested S.B. No. 563 against the Society criteria, but unfortunately, only one of our recommendations was incorporated into S.B. No. 59. We have again tested S. B. No. 59 against this same criteria. We sincerely hope that our enclosed analysis and recommendations will be helpful and useful to you and your Committee in developing a competent forest practices act for the State of Alaska.

We recognize the importance of the proposed legislation, especially in view of the fact that more than one-third of the entire State of Alaska or 141,000,000 acres are classified as forest land. Of this amount, 18,650,000 acres are in the coastal western hemlock timber type, with 1,187,000 acres in State ownership and 1,340,000 acres in Native land ownership. The remaining 122,350,000 acres are spruce-hardwood timber types in the Interior, with 27,089,000 acres in State ownership and 16,190,000 acres in Native land ownership.

This means 32.5% or nearly one-third of Alaska's forested lands are now in State and private land ownership. Subsequent State and Native selections will substantially add to this acreage.

Please advise if we can be of additional service. We would be happy to work with you on developing specific language, definitions or other aspects as you consider appropriate.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph Zylinski".

Forest Practices Act Committee, Alaska Section, SAF
Joseph Zylinski, Chairman
Michael S. Leach
Frank Price
Robert Janes

Enclosure

TESTING SENATE BILL 59
AGAINST SOCIETY OF AMERICAN FORESTERS
CRITERIA FOR A COMPETENT STATE
FOREST PRACTICE ACT
PREPARED BY JUNEAU CHAPTER
SOCIETY OF AMERICAN FORESTERS
FEBRUARY 10, 1977

1. "A Forest Practices Act should encourage the application of scientific knowledge and forest management principles in order that society can obtain the largest net sum of benefits from forest lands. Such an Act should reflect full consideration of both its social and private costs and benefits."

Since the Act designates the Commissioner of the Department of Natural Resources as the person responsible to administer the Act, there is no assurance that scientific and forest management principles will be applied. It is recommended that the State Forester play a more prominent role in administering the Act to assure a sound professional approach. He should be specifically named in the Act and his responsibilities clearly defined.

To be really effective a Division of Forestry should be established with the State Forester as Director. The Act then would be administered by this Division.

2. "A Forest Practices Act should insure the productivity of forest lands and protect the environment, including air and water quality."

Review of this Act indicates that this criteria is adequately covered. Although air pollution is not specifically mentioned, it is assumed that air pollution is included in the review by other agencies, i.e. Department of Environmental Conservation.

3. "State-initiated regulation of forest practices is preferable to regulation initiated by federal and local governments. A Forest Practices Act should recognize regional forest variations within a state's boundaries."

Section 41.17.060 (b) provides "the Commissioner may establish regions, districts, or other subdivisions of forest land within the state in which different regulations apply to reflect varying conditions throughout the state."

It appears that this criteria is fully met by S.B. 59.

4. "A Forest Practices Act should be coordinated and in compliance with related regulatory programs in order to minimize jurisdictional conflicts and administrative costs. Such an Act should be consistent with public forestry research, education, technical assistance and financial incentive programs."

This Act does not specifically provide for acknowledgment that compliance with the Act constitutes compliance with State Federal water quality standards, including non-point pollution. This feature should be integrated into the notification system. Review without objection by other state agencies affected should constitute compliance.

Section 41.17.020 (b) provides for the designation and operation of experimental forests; (c) establishing cooperative forestry programs and extension service programs; (d) establishing and maintaining forest tree nurseries.

There is no provision for forestry education or financial incentive programs. These features should be made a part of the cooperative forestry and extension service programs. Funds would have to be made available for the incentive program.

5. "A Forest Practices Act should clearly define the forest land to be covered under the Act as well as any standards and terms applied with respect to forest practices, air and water quality and soil erosion. A Forest Practices Act should use terminology which is generally accepted by the professions concerned."

Section 41.17.030 establishes exemptions to the provisions of the Act. Subsection (b)(1) indicates that a tract less than 160 acres does not fall under the provisions of the Act. While we believe certain operations are so small as to cause little concern to the citizens of the State, we recognize that a timber harvest of 160 acres at the mouth of certain streams or adjacent to certain estuarine areas could have substantial effects on offsite users if timber harvesting is conducted improperly. As with most resource management policies we find it difficult to establish an acreage limit where impacts are a matter of general public concern. However, we believe this is an administrative detail best left to professionals to prescribe on a case to case basis. We would prefer that the Board, along with the State Forester, establish guidelines that are based on a combination of resource factors including, but not limited to, acreage.

The definitions in Section 41.17.950 are a credit to this bill. Definitions specified are close to meeting SAF criteria No. 5. Improvement of some definitions is needed. We would be more than willing to coordinate this section with the various professions involved and recommend appropriate language.

6. "A Forest Practices Act should establish procedures and guidelines for the development and adoption of regulations, but make no attempt to specify the regulations themselves."

We believe the proposed bill generally meets this criteria and have only one suggestion. The suggestion is that Section 41.17.030 provide for procedures (probably a subsection (14) should be added) aimed at establishing regulations for maintaining State water quality standards and protecting the environment of aquatic and offsite fisheries resources commensurate with economic values represented.

7. "A Forest Practices Act should allow a forest landowner latitude in applying professional forestry expertise and forest management principles. Administrative requirements for forest landowners and operators should not be unduly burdensome."

We find the bill reaches far beyond our criteria in this respect and from a number of different aspects. In essence we believe the provisions of the Bill are unduly burdensome and deprive forest landowners of land resource value and operational latitude without any form of compensation for this taking of basic rights. For instance:

1. Subsection 41.17.040 (b) provides equal regulations for State, municipal, and private land. Item (1) under this subsection (p.4) places the burden of proof on the landowner. While this may be appropriate for State or municipal forest lands, it is not appropriate as a basis for depriving a private landowner of economic values that exist on his own land. The burden of proof should be on the administering agency.

2. Item (3) under this subsection (p.4) requires administration of forest land with respect to production levels of timber products to allow reasonable consideration for marketing conditions. We submit that there is little likelihood that State officials will have access to sufficient data on an individual land owners marketing conditions to warrant any regulation on this account. Even if sufficient trend data for forest products operations at large within a district are available to the State, there can be little justification in regulating any individual landowner's harvest plan since that individual's market opportunities simply are not the concern of the State. This is another illustration of the need to consider regulation of private forest land separately from State or municipal lands.

3. Item (5) under this subsection (p.4) requires the maintenance of scenery in or adjacent to areas important to the tourism and recreation industry. Again, such an imposition on a private landowner is questionable while it can be mandated for State or municipal lands.

4. Section 41.17.050 requires that this Act shall be administered so as to protect forest land from "depletion", "overharvesting", "unsatisfactory forest management", etc. In our view such objectives, while perhaps appropriate for public lands, are not entirely applicable to all private lands in Alaska.

This Section also requires that the State conduct periodic inventories of timber on lands subject to the Act. While we agree that the State needs such authority, there is little reason to require it as a State function. The nationwide Forest Survey of the Forest Service has traditionally provided such service to states and to private and other forest landowners as well as to the various federal agencies.

Section 41.17.060 (d) is an improvement over old S.B. No. 563. This approaches a one-stop-shopping service that will benefit the operator and reduce the amount of work and frustration needed to wade through an unfamiliar bureaucratic requirements. This Section needs to be worded in such a manner to imply that approval of the plan also carries with it a certification that it meets with State air and water quality standards and grants all necessary permits, such as: tideland or other land and water use or occupancy.

Section 41.17.070, subsection (b) provides a "notification" procedure as contrasted to a permit process. We endorse this concept as being more efficient and less burdensome on the private landowner. We believe this notification should reflect an operator's "planned" operation rather than a proposal.

It is noted that up to a total of at least 85 days is provided for the State to make up its mind on each timber harvest plan. While this may be appropriate for public land activities, it is unduly burdensome and debilitating with respect to planned activities on private lands.

Under subsection (d) (3) (p.8) any other agency of the State may trigger a 20 day delay in a crucial operation. Again, we emphasize the importance of eliminating unduly burdensome requirements.

Under subsections (c) and (g) the State must ask for comment on each harvesting plan from both State agencies and by the citizenry through newspaper invitation. This is an open invitation to delays in legitimate plans of a private economic entity. We believe the needed agency coordination should be developed with a Forest Practices Board during the promulgation of regulations and any private landowner's plan or actual operation conducted in compliance with these State regulations should not be postponed or denied.

We endorse subsection (i) of this section.

Subsection (j) limits State approval of deviations from approved plans. Approval is contingent upon consultation with other affected State agencies. We believe a strong professional head of the Forestry Agency can provide an appropriate and expeditious decision on such matters without violating valid concerns of other agencies and without delaying a crucial decision to an operator.

Section 41.17.080 adopts the attitude that chemicals are not a bonafide attribute of productive forest management. The burden of proof is put on the landowner to prove no adverse consequences. We believe the State's policy should be the other way around, i.e. any application of chemicals for forestry purposes which is lawful is acceptable unless evidence in the hands of the State Forestry Agency shows otherwise. To do otherwise is to deprive a landowner of the opportunity to profit by modern day forest practices.

8. "Where boards, commissions or advisory bodies are used, their composition should represent the broad public interest with at least a majority of the membership being knowledgeable and experienced in the scientific management of forest resources."

A major weakness of the bill is that it creates weakness in the administering agency. First, there is no recognition that a strong Forestry Agency is needed to achieve competent and beneficial regulation of forest practices. A demonstrably effective arrangement for achieving such a goal is to provide for a professional State Forester to administer the Act and a Forest Practices Board to promulgate those necessary procedures or

regulations which can't be efficiently established through the legislative process. Forest practices in the State of Oregon have been, over the years, notably more advanced than other west coast states and without the forest practice legislative upheavals experienced in sister states. Oregon has long operated under the State Forester-Forest Practices Board approach.

Next is the problem of gaining support for a forest practices act from forest landowners or forestry experienced residents of the State when the Act will be administered by an appointee subject to change with each new State administration. Forestry programs and regulations must have more continuity and stability to be successful.

Our suggestions for solving this dilemma is to establish a board and a State Forester or Director, perhaps along the lines outlined in the EPA model Forest Practices Act. An additional suggestion varying from the EPA model is that a majority of the board members be knowledgeable and experienced in the scientific management of forest resources. Such a board should include at least one member from the Forest Products Industry and one from an Alaskan Native Corporation.

Recognizing that the question of establishing a strong and professional forestry agency is a major philosophical difference between the Administration and the Society, we wish to point out that the Alaska Section of the Society has been a leader, possibly the first, in advocating that it is timely for Alaska to adopt forest practices legislation. We will not support legislation that is not competent in the forest practices field.

9. "The development of forest practice regulations should be accomplished with due consideration of the knowledge and opinions of forest landowners, timber operators, forestry and related professionals and the public, and should take into account regional forest variations and disparities in land ownership patterns. Public hearings are necessary to achieve these purposes.

It appears that SB No. 59 meets this criteria. However, we recommend emphasis on technical assistance and incentive programs rather than on regulation of activities.

10. "Using appropriate State administrative procedures, forest practice regulations should be adopted by a State forestry agency or board with responsibility for interagency coordination. Forest practice regulations should rest upon scientific knowledge and professionally recognized forest management principles. The regulations should be administered and enforced by a single state agency with adequate staffing and forestry expertise."

The bill fails to provide for a state forestry agency or a board with responsibility for interagency coordination. All powers are vested in the Commissioner who may delegate authority to his subordinate employees or units within the Department of Natural Resources to the extent he considers advisable. This does not guarantee that regulations would be

administered and enforced by an entity within the Department with either adequate staffing, forestry expertise, and funding.

The conversion of nearly 150 million acres of federal land to state and private ownership will occur in the near future. This will involve many millions of acres of forest land. It is reasonable to assume that the Commissioner could satisfactorily perform all of the administrative and regulatory functions as described in SB No. 59 without delegation. The very scope of other activities and responsibilities vested within his Department would necessitate delegation.

The Governor, in transmitting essentially this same bill to the previous Legislature, indicated a desire to administer and regulate forest practices on state and private lands within existing structures and personnel resources of the Department to avoid the creation of a new bureaucracy and to keep government regulation at a minimum. We subscribe to that philosophy. However, we contend that the existing structure, personnel, and professional resources of the Department are insufficient to perform satisfactorily the state and private forestry workload presently existent within the State without even considering the 150 million acres moving from federal to State and private status.

While the Governor's motives are admirable, we believe that the imposition of an additional sizable workload upon an existing skeletal capability would be a disservice to the State, its forest and related resources and a derogation of the stated findings and purposes of SB No. 59.

In this regard, we urge the identification of a State Forester established within and heading a Division of Forestry. In addition, funding and professional forestry manpower needed by the State Forester to administer and enforce a Forest Practice Act need to be recognized and provided for in SB No. 59.

11. "A Forest Practices Act should provide for effective administration and enforcement, with adequate provisions for due process, to achieve the objectives and purposes of the Act. Administrative and enforcement procedures should be efficient and expeditious. Provisions should also be included for the use of continuing education, information and training programs to implement regulations adopted under the Act. Forest management operations conducted in accordance with adopted forest practice regulations should be considered to have met the requirements of laws pertaining to soil sedimentation and air and water quality."

Senate Bill No. 59 contains a considerable amount of administrative and regulatory detail. We believe the Bill should provide for these features in broad terms. The development of details should be left to the State Forester who would work with the various publics in a series of scheduled and well-advertised public meetings. Resultant administrative and regulatory details developed within that medium would be substantially more palatable, relevant, and acceptable.

The Bill should provide for the use of continuing education, information,

and training programs designed to implement regulations adopted under the Act. The State Forester should play a key role in this activity.

These features would go a long way toward developing public acceptance of Forest Practices Act.

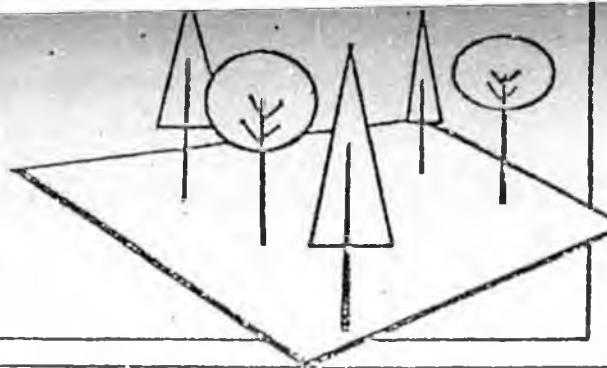
12. "A Forest Practices Act should not preclude the legitimate conversion of forest land to other uses."

Senate Bill No. 59 appears to meet this criteria.

General Comment

Section 41.17.040 (c) (3) states that "...all resources and values are of equal priority;...." This is inconsistent with the definition for multiple use contained in Section 41.17.950. We concur with the definition of multiple use and that consideration in any activity must be given to the relative value of the various resources.

SOCIETY OF AMERICAN FORESTERS



CRITERIA FOR A COMPETENT STATE FOREST PRACTICES ACT*

The Society of American Foresters (SAF) has prepared its "Criteria for a Competent State Forest Practices Act" to aid legislators and other groups considering the development or adoption of legislation to regulate forest practices. The paragraphs below are provided as an introduction and should be read carefully so that the "Criteria" can be considered in its proper perspective.

Controversy over the regulation of forest practices in the United States has reached national proportions in three periods prior to the current debate, namely 1910-1911, 1923-1924 and 1938-1952. The sources of these earlier controversies were widespread public concern over future timber supplies, poor timber harvesting practices and wildfire, and the consequent damage in terms of soil erosion and sedimentation of watercourses.

The present focus on state forest practice legislation is a result of the recent sharp increase in public concern over the quality of life in the United States. This change has caused Federal enactment of several far-reaching environmental laws, many of which apply to water quality, to include the Federal Water Pollution Control Act Amendments of 1972. This law is the basis for the Environmental Protection Agency's development of a "Suggested State Forest Practices Act" in late 1974.

There has been and remains a concomitant concern for the potential and actual productivity of the forest lands in the United States. When some activities related to forest land management are improperly performed, accelerated soil erosion can result in a significant reduction in water quality and the capacity of the land to produce vegetation. In addition to man-caused siltation of watercourses, other forms of water pollution can result. Certainly, occurrences of this kind ought to be discouraged or at least kept within acceptable limits. This can be done through various education, training and financial incentive programs. Activities which diminish a forest's capacity to grow trees can also be discouraged or prevented through regulation by states or other authority. For this purpose regulation might be useful, and in some cases, necessary.

If the forest management activities involving soil disturbance are properly performed, water quality and the potential productivity of forest soil can be maintained. In fact, certain forest management practices can increase tree growth and provide for wildlife habitat and recreational opportunities substantially beyond the natural limitations of many forest lands. These practices ought to be encouraged, and can be through various education and incentive programs. However, the efficacy of legal coercion in the form of regulation of forest practices is questionable so far as encouraging intensive forest management. The bulk of experience indicates that regulation is better employed to enforce minimum performance standards. Expectations to achieve anything more appear unwarranted.

*A statement approved by the Society of American Foresters on March 7, 1975.

The Society of American Foresters does not advocate that states should enact laws which regulate forest practices. This is for each state to decide based on its needs in terms of environmental protection and forest land productivity which are likely to vary from state to state. Nevertheless, SAF is concerned that if a Forest Practices Act is enacted in a given state, it be a competent law. To this end SAF undertook the task of developing its "Criteria for a Competent State Forest Practices Act" set forth below.

There are twelve criteria. In some cases it was found necessary to either expand on a given criterion or to address a current issue. These are the purposes of the short paragraphs which follow some of the criteria.

SAF is prepared to elaborate, where necessary, upon any of the following "Criteria" and to assist in discussions or deliberations regarding the regulation of forest practices.

Criteria for a Competent State Forest Practices Act

1. A Forest Practices Act should encourage the application of scientific knowledge and forest management principles in order that society can obtain the largest net sum of benefits from forest lands. Such an Act should reflect full consideration of both its social and private costs and benefits.
2. A Forest Practices Act should insure the productivity of forest lands and protect the environment, including air and water quality.
3. State-initiated regulation of forest practices is preferable to regulation initiated by federal and local governments. A Forest Practices Act should recognize regional forest variations within a state's boundaries.

One of the principal arguments for state regulation of forest practices is the immense variability of forest types within the boundaries of most states. A regular practice of states which have forest practices acts is to divide the state in two or more forest districts. Subsequently, separate forest practice regulations are developed for each forest district. This procedure is quite defensible.

4. A Forest Practices Act should be coordinated and in compliance with related regulatory programs in order to minimize jurisdictional conflicts and administrative costs. Such an Act should be consistent with public forestry research, education, technical assistance and financial incentive programs.

If a Forest Practices Act becomes law in a state, it would be but one part of a body of laws, regulations and programs relating to forest resources. Efforts to integrate elements of a Forest Practices Act with other existing laws, regulations and programs should be encouraged. Duplications in agency jurisdictions should be minimized.

5. A Forest Practices Act should clearly define the forest land to be covered under the Act as well as any standards and terms applied with respect to forest practices, air and water quality and soil erosion. A Forest Practices Act should use terminology which is generally accepted by the professions concerned.

Because a Forest Practices Act deals directly with scientific phenomena, to clarify the Act's purposes and scope technical terminology should be employed where appropriate, and standards and terms should be operationally defined.

6. A Forest Practices Act should establish procedures and guidelines for the development and adoption of regulations, but make no attempt to specify the regulations themselves.

Forests are inherently heterogeneous. Furthermore, scientific knowledge of forests and forest management techniques is rapidly evolving. Therefore, a Forest Practices Act would be best designed if it prescribed the procedures by which forest practice regulations are developed and implemented rather than specify the regulations themselves.

Where a Forest Practices Act provides for reforestation, specific stocking standards should evolve from the same process used to develop forest practice regulations.

7. A Forest Practices Act should allow a forest landowner latitude in applying professional forestry expertise and forest management principles. Administrative requirements for forest landowners and operators should not be unduly burdensome.

A Forest Practices Act could so encumber a forest landowner with its requirements that he would forego opportunities to sell his timber, and hence, would have little inducement to manage his land for timber production. In such cases, timber supplies will be adversely affected. There will also be a misallocation of resources if, as a result, intensive timber management techniques are applied to lands which are relatively less suited for timber production.

8. Where boards, commissions or advisory bodies are used, their composition should represent the broad public interest with at least a majority of the membership being knowledgeable and experienced in the scientific management of forest resources.

A widely accepted arrangement for developing forest practice regulations is through an appointed board or commission. If this arrangement is employed, at least a majority of the board's members should be selected on the basis of their education, knowledge and experience in the scientific management of forest resources. Together the board members should be broadly representative of the public interest in forest resources, to include the interests of private forest landowners and timber operators.

9. The development of forest practice regulations should be accomplished with due consideration of the knowledge and opinions of forest landowners, timber operators, forestry and related professionals and the public, and should take into account regional forest variations and disparities in land ownership patterns. Public hearings are necessary to achieve these purposes.

10. Using appropriate state administrative procedures, forest practice regulations should be adopted by a state forestry agency or board with responsibility for interagency coordination. Forest practice regulations should rest upon scientific knowledge and professionally recognized forest management principles. The regulations should be administered and enforced by a single state agency with adequate staffing and forestry expertise.

11. A Forest Practices Act should provide for effective administration and enforcement, with adequate provisions for due process, to achieve the objectives and purposes of the Act. Administrative and enforcement procedures should be efficient and expeditious. Provisions should also be included for the use of continuing education, information and training programs to implement regulations adopted under the Act. Forest management operations conducted in accordance with adopted forest practice regulations should be considered to have met the requirements of laws pertaining to soil sedimentation and air and water quality.

Two methods by which an administrative agency may be advised of an intended timber harvesting operation are by a so-called "notification scheme" and by a system requiring state approval prior to the commencement of timber harvesting. Under a notification scheme, the forest landowner, timber owner, or timber operator notifies the administering agency of his intent to harvest and the location of the harvesting site, together with other pertinent information. Under the "prior approval" system, the forest landowner, timber owner or timber operator submits an explicit statement, application or plan stating his intentions and must await approval by the administering state agency. To date there is no evidence which of these schemes ultimately results in a greater degree of environmental protection or more productive forest land. However, the costs of a prior approval system appear to be inherently greater than those of a notification scheme, all other things being equal. Therefore, a notification scheme should be given preferential consideration.

Instruments which have been effective in enforcing forest practice regulations include: (1) informal conferences, (2) notices to comply, (3) "stop work orders," and ultimately, (4) agency authority to take corrective action at the violator's expense where environmental damage has occurred or is imminent. It should be recognized that the effectiveness of these instruments does not preclude the existence or the possible development of other effective means for enforcement.

12. *A Forest Practices Act should not preclude the legitimate conversion of forest land to other uses.*

A Forest Practices Act which would prevent a forest landowner from converting his land to uses other than timber production would severely infringe upon his property rights. Nevertheless, the landowner's legal right to such conversion should not become a means for evading the provisions of a Forest Practices Act.

ABOUT THE SOCIETY

The Society of American Foresters, with over 19,000 members, is the national organization representing all segments of the forestry profession of the United States including public and private practitioners, researchers, administrators, educators, and forestry students.

Objectives of the Society are: To advance the science, technology, education, and practice of professional forestry in America, and to use the knowledge and skills of the profession to benefit society.

Gifford Pinchot and six other pioneer foresters established the Society in 1900.

Members subscribe to a strict code of professional ethics. The Society is the accreditation authority for professional forestry education in the U.S. It publishes the *Journal of Forestry and Forest Science*.

SOCIETY OF AMERICAN FORESTERS



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Testimony of Warren Weathers
Shee Atika Corporation
February 11, 1977
Hearing on SB 59

Madam Chairman, Honorable Committee Members, I would like to apologize for not having anything in writing, but we would like to submit something in writing within the next two weeks which would include a draft of the revision of SB 59.

I am Warren Weathers, I speak on behalf of Shee Atika, Incorporated which is the urban native corporation for the native road to Sitka. We have 1,800 stockholders. I am also a professional forester, with a background of having worked for the U. S. Forest Service, having worked in the State of Oregon as a land manager, as an extension forester in the field of State and Private Forestry, and also, I was extensively involved in the enforcement of the Oregon State Forest Practices Act before the revision and then after the new Forest Practices Act was passed. I have worked in Alaska in the forest industry since 1972 as a professional forester.

Shee Atika has selected 23,040 acres of forest land. Roughly 4,000 acres of this has been logged, and the corporation plans to manage it in such a manner that the 4,000 acres that has been logged will grow trees and produce quality water, and recreation opportunities, etc. Everything will be managed under the multiple use of sustained yield basis.

Our estimates indicate that under intensive sustained yield management, the corporation's timber resources alone will produce an annual cut of roughly twelve million board feet. This is under intensive management. Conservatively, with a multiplier, this would indicate that this annual cut could be expected to produce someplace in the neighborhood of seventeen million dollars annually in new money that would be put into the economy of Southeast Alaska, and this just from our native corporation's timber reserve. The corporation has the policy of managing lands for multiple use of all resources. We are interested in producing fish. Many of our stockholders are fishermen. We are interested in recreation. We are, at the present time, in the process of putting together a hotel in Sitka. We are very interested in tourism, and our stockholders have an historic interest in the wildlife resources. All this in addition to the timber.

Until 1983, our land must be managed under the same set of standards as the Forest Service manages their lands, under the provisions of the Native Claims Settlement Act. It's not 1977 so we have some time, I think, to look at the situation and draft a very well thought out planned bill that would be equitable to the landowners, and achieve the interest that the general public is looking for.

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On some comments on the bill. I think it's dangerous from the standpoint that it places an awful lot of authority on one person, in this case the Commissioner, who is not necessarily a professional forester. Basically he is a politician. I think it would be an improvement to have a strong forestry division with a professional state forester leading it, and having a board in which landowners were heavily represented. In this case of the commercial forest land in the state, roughly over 99% of it is going to be native owned. I think that landowners should be heavily represented and professional land managers and resource managers should be heavily represented on an advisory board that would assist the State Forester in drafting regulations that are going to be implemented under this act, so that it will be something that won't be an unnecessary burden on the landowner and the industry. I think that if you have somebody that's administering it and drafting the regulations that is not familiar with the problems intimately, there's a good chance you are going to have a negative impact on the landowner and on the industry.

One portion of the bill discusses aesthetics. It more or less indicates that somebody from the State is going to evaluate what is aesthetically pleasing, what's pretty and what looks good, etc. as far as forest practices goes on private land. I feel that this would be very difficult to do from the standpoint that what I think is attractive is not necessarily what somebody else thinks is attractive. The evaluation of aesthetics is a value judgement, and you can't tie it down to anything to decide what is good and what's not. You have a tremendous conflict and you wouldn't be treating all the landowners equitably. The State has the power to do this on their own lands anyway, and if the State would like to manage its forest land for aesthetics then they can control what they feel is attractive. That's fine, but I don't think it's fair to try and place this type of thing on the private landowner.

The way SB 59 is drafted, an operator can make application, and it will be up to 80 days before he really gets a response. The way the weather is and operations are in the industry in southeastern Alaska, lots of times things will come up where landowners have to make a change in plans due to the weather, etc., and if it takes him 80 days to make the change, he will have lost the opportunity, and we will have serious economic consequences to the landowner and to the operator. Not only from the operating problems that might come up where he'd need to change his operation, but also to respond to changes in marketing conditions, etc. I think that something more like a maximum of 30 days would be more appropriate.

There is a provision in SB 59 that requires the operator to submit a performance bond prior to getting his operation. I feel that this is an unnecessary burden on an operator from a standpoint that the law provides penalties that is another means of satisfying the problem in case he does break the law and is not in compliance with the act.

Testimony of Warren Weathers Cont.
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I don't think the bond is necessary, and could eliminate a lot of the small operators. Although the bill is drafted, they attempted to draft it with a combination of both the prior approval and notification systems. I think in reality, it's going to end up being enforced as a prior approval type forest practices act, in which case it would be expensive and it would place the burden on the landowner and not on the state. Having worked with the notification system, and the way it worked in Oregon as an operator would submit plans to us essentially the same as those that are listed in SB 59. We would review them. We had a very short period of time. I don't remember exactly what it was now. We would review the plans. As a matter of course, if I had not worked with the landowner before, I'd make a point to go and find him and walk over his operation with him and point out some of the areas where he might have problems. If he had a slope that looked like it might be unstable if you put a road across it, I'd help him with his road location. To try and minimize erosion problems, I'd give him advice as to what areas he could expect to grass seed or something like this to prevent erosion problems. As a matter of course, if there were a fish stream in the area, and I could see that there was potentially some impact on the quality of the water with his operation, I'd call up the Department of Fish and Game and they would send a fisheries biologist out and he would go out with me and we would both talk to the operator, and this was generally before he started his operation, and he was then familiar with what we were going to expect or what his alternatives were. Then he could go ahead and operate. We checked up on him occasionally, and if he broke the law, he paid for it, and the situation was corrected. If the burden was on us to go out and check up on him, and work with him, it wasn't on him to submit plan after plan and wait 80 days before he could start doing anything. I think that as things progress, and the State has worked with one operator and they are familiar with an area the way he operates and all this, there may not be quite as much need to spend that much time with an operator once they did become educated to what you are going to require and they are aware that you are going to go out and check up on them, and they are familiar with the law, under the notification system.

Under the prior approval system, I don't think that would be possible. I would like to read some comments that I jotted down that were given to me by our attorney, Mr. Lanahan, who specializes in forest resources law. He is also a professional forester. Point No. 1 discusses the constitutionality, federal preemption. He said, I have not had the opportunity to any in-depth research on some of these points. As a matter of federal law of the U. S. Constitution is the supreme law of the land, the well established doctrine of constitutional law provides when congress has occupied the field or preempted it by specific legislation, the states do not have the authority to legislate or

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regulate in this same area. Examples of the preemption field are the National Labor Relations Act which governs all matters relating to labor and employee relations and cases affecting inter-state commerce. More perscriptive state laws can only apply to strictly local or intra-state matters. The Native Claims Settlement Act is special federal legislation designed to settle all original claims in Alaska. Many areas of potential regulation of native lands acquired under the Claims Settlement Act have been dealt with by specific provisions of the Act. For example, Section 20A exempts revenues originating from the native fund from all federal, state, and local taxation at the time of receipt by regional and village corporations or individual natives.

Section 20B exempts shares of stock of village or regional corporations received by natives from any form of federal, state or local taxation. Receipt of land or cash is exempt from federal, state or local taxes by Section 20C, and its basis for income tax purposes is for market value at the time of receipt.

Section 20D exempts real property interests from state and local taxation until 1991 unless they are earlier transferred, leased, or developed. Section 20E continues to treat lands distributed to native corporations as public lands for stated reasons as long as the exemption from state and local taxes remain in effect. Specifically, Section 21K requires all lands selected from within the boundaries of a National forest to be managed under principals of state yield and under management practices for the protection and enhancement of environmental quality no less stringent than such management practices on adjacent National forest through 1983. Mr. Lanahan goes on to say, in my opinion this is a specific preemption by Congress in the field of forest practices. Any attempt by the state to impose more stringent restrictions will be regarded as unconstitutional. The second point discussed is denial of equal protection. The 14th Amendment to the U. S. Constitution guarantees all citizens relief from State action that denies them equal protection under the law.

Forest practices legislation that regulates private ownership of commercial forest lands of 160 acres or more probably effects virtually no private ownership other than the native corporation. I speculate that other than native lands, less than one tenth of one percent of all private forest land ownership in the state exceeds a tract of 160 acres. From this, one may infer that proposed forest practices legislation regulating private ownership of tracts of 160 acres or more is discriminatory, and special purpose in scope. If so, equal protection regulation in this instance is being denied by the likes of Senate Bill 59.

Third point - other federal and State constitutional issues. It may be argued that SB 59, because of the lack of standards and regulatory authority of scope may be unconstitutionally vague. I believe serious questions can be raised as to whether or not the State can constitutionally impose a burden of management to protect or enhance adjacent scenic

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recreation, aesthetic, tourism, or other natural values on private land other than as a valid exercise of police power. If not this requirement could result on an unconstitutional taking of private property without compensation.

Section 20C of the bill appears to create a potential for conflict between the Commissioner of Natural Resources and other State or local agencies.

Section 60D may further this proposition. I suspect the intent of the drafter is to insure that there would be only one set of regulations in print that is required for each type of activity, rather than having to go through 3 or 4 agencies. I suggest that these provisions can be reworded to better accomplish that intent.

Section 60C can be reworded to give the Department exclusive authority in the field rather than subordinate to other agencies. The proposed notification system has some advantages over a permit system, however, the time lag and the ability to give qualified approval could create problems. If the operations are going to be conducted on public lands, in all likelihood, contractual provisions containing all the operating restrictions necessary will be used so that the notification system should be a mere formality. In the case of operations on private lands, without more definitive standards of what and when activities will be permitted, we could end up with dual standards. The procedure for notice in hearing of claimed violations is a good one. Mr. Lanahan thinks the exemption of hearings from the provisions of the Administrative Procedures Act and Sections 110J may be unwise unless it is to free the hearings from the requirements of formality.

Section 130 he felt was interesting. The addition of penal provisions for spurious or groundless suits might be added to discourage i.a. _____ from suing the State without good cause.

In recommendations, he said, I would recommend you tax SB 59 or any other similar bill on unconstitutional grounds primarily on the issues of federal preemption under the 14th Amendment "Equal Protection Argument. Bills such as SB 59 may involve reported police power regulation that is so stringent that it causes the unconstitutional taking of property. SB 59, if it were to exclude private land could, with a few changes, be made into a decent bill. You could approach supporting a modified bill with specific exemption of all native lands through 1983, or you could flatly oppose the bill on unconstitutional or other grounds to kill it insofar as it might pertain to private land. If legislation effecting your lands is passed, its constitutionality can be promptly tested in an action instituted for a three judge federal court. i.a. _____ the event of adverse decision from the three judge panel as direct to the United States Supreme Court as a matter of right. I suggest that

Testimony of Warren Weathers Cont.
Shee Atika Corporation
February 11, 1977
Hearing on SB 59

you adopt a forestry board and a state forester approach incorporated with the draft forest practices act that SANTCO has been working on. SANTCO is the Southeast Alaska Native Timber Corporation of which Shee Atika is part of.

The bill that SANTCO is working on, is based on the Oregon Forest Practices Law which is considered to be a model for State laws of this type. Mr. Lanahan felt, lastly, in any event that date of interest should be marshalled to oppose this type of forest practices legislation as it effects native lands. The natives have been and are the original conservationists. We will manage our lands in a fashion that will be environmental for all, including the State of Alaska.

I think that House Bill 40 would be a lot easier to work with, and with a few amendments, it could be a pretty good bill. However, within a matter of a week, we will have a revised draft of Senate Bill 59 that we would like to submit. Thank you.

CHAIRMAN POLAND - Thank you Mr. Weathers. Are there any questions?

SENATOR TILLION - I think he ought to find a better lawyer.

SENATOR MELAND - You say you worked closely with the Oregon Forest Practices Act, does that differ too much from SB 59, or is it more along the lines of 40?

WARREN WEATHERS - It's closer to 40. It's strictly notification.

SENATOR MELAND - Is the man in charge a professional forester?

WARREN WEATHERS - He's a professional forester, but he's appointed by an advisory board, and the advisory board has representatives of conservation minded groups, the industry, landowners, county commissioners, Oregon cattlemen's association and this type of thing. They are the ones that supervise essentially the State Forester, and then the school of forestry chairs the Board. Something similar to that would be, maybe, just an advisory board as far as drafting the regulations. I think the regulations are the most important thing that, as far as the road goes, they be drafted to where they are realistic, and those are the big differences in the State of Oregon's bill.

CHAIRMAN POLAND - Thank you Mr. Weathers.

6.
Alaska Lumber & Pulp Co. Inc.

TESTIMONY ON SB-59

ALP worked last year with the Administration in drafting a Bill similar to SB 59. We have been in touch with the Administration on the proposal this year also. We appreciate the opportunity to provide input in the initial stages of drafting as this contributes to legislation we can live with. We believe that the group primarily effected by this legislation, the Alaska Natives should be the people to whom you listen most in deciding the necessity of this legislation at this time. If there is to be a Forest Practices Act, the Administration Bill SB 59 is a fair, workable, and responsible bill. The major exception to this is § 41.17.040(b)(5) which requires private land owners to maintain their land for scenic and aesthetic purposes. However, this does not change anything for those, like ALP, who operate on National Forest Land.

The key problem we have with this Bill, and the reason we cannot support it at the present time, is its failure to provide for a strong State Forester reporting directly to the Commissioner of Natural Resources. Presently, the State Forester is buried in the Land and Water Division of the Division of Lands. Thus, his expertise must be passed through an intermediate non-forester decision maker before reaching the Commissioner. This creates needless red tape and delay and sets up the possibility that the professional management advice which the Forester should be providing the

Commissioner will become confused or perhaps altered at some point short of the top. There is simply no one available at the present time to advise the legislature on forestry matters. More often than not the situation has resulted in no policy-making whatsoever with respect to forestry - a point which will be developed further on in this testimony. Moreover, since decision effecting the forests are often made in other agencies concerned with forest management, but with a lack of professional forestry expertise - e.g. Fish and Game and Department of Environmental Conservation - it is important that the State Forester be in a position to effectively deal with the decisions of other agencies. Under the present Bill, he will be too far from the field of play both in distance (he will apparently remain in Anchorage) and in position (he will be subject to the Director of Lands.)

The argument is made that a strong State Forester will tend to become an advocate of the industry he regulates. The Governor could fire such a man. The point is that it is the man, not his position as a director, that could allow this to occur. If such a "captured" forester were in Juneau, his "industry" bias could more easily be identified. Therefore, this argument against a strong State Forester is without merit.

It is also urged that a strong State Forester heading a Division which reports directly to the Commissioner would create a new bureaucracy. Since this Bill calls for review of logging plans and inspections of logging practices, it

is obvious that many more personnel will have to be added to the present forestry section and that people familiar with the forests in Southeastern Alaska will have to be added to the present staff. It is our belief that at least as many personnel would be required under present plans as with a Division of Forestry.

This gets us down to the nub of this controversy - should the State Forester report directly to the Commissioner or Natural Resources? Commissioner Martin and others in the Administration have been most generous in affording us time to present our point of view to them. The Commissioner's belief that the Division of Lands should manage all State lands without what he has called "a State Forest Service" is one with which reasonable men could agree. I emphasize this because I think it important to let you know that this Administration has worked hard to educate itself on forestry matters and we have enjoyed a good working relationship with it.

However, we strongly disagree with the Administration position on this issue. It is our belief that in return for authority to regulate forest practices, the State should now be willing to take on the responsibility of setting policies for the State forests and the forest industry within the State. Let me point to three examples of where State forest policy is adrift: (1) For too long policy on forestry issues in the State have been set by State agencies which have no forestry expertise and which often are antagonistic toward the timber industry. The

best example of this is the Alaska Department of Fish and Game which has often used logging as an explanation for the lack of fish. (2) Secondly, there are 22.5 million acres of commercial forest land in the Interior of Alaska capable of supporting up to 36,000 jobs in Alaska which is about to be impacted by (d)(2) legislation. Yet to our knowledge no one in State Government has addressed the simple policy question of whether or not the (d)(2) issue should be approached in such a way as to permit the formation of an Alaskan forest industry in the Interior. Finally, the State is now in the process of continuing its land selections under the Statehood Act. Yet to our knowledge, while forested areas are being selected, no one in State Government has decided whether or not its land selections should be used in part to allow the formation of a forest industry in the areas involved.

Remember this policy vacuum exists under the organizational table Commissioner Martin is asking you to maintain. In point of fact the Division of Lands has not been forestry oriented or forestry concerned. It has not been aggressive in attempting to advance comprehensive Statewide and local forestry plans. Why should you expect it to become so now? Further, it is an open secret that logging on State forest lands is the most poorly planned and administered of any that goes on in Alaska. This is true notwithstanding the fact that by contract provisions the Division of Lands could have required operators to observe forest practices at least as tough as the Forest Service.

The point of all this is that the Division of Lands has poorly handled forestry in the past and allowed other agencies to pre-empt the policy decisions it should have been and should be making. Now the Administration proposes to keep this structure in place in the face of the (d)(2) issue and its own land selections under the Statehood Act. We say the Division of Lands has handled forestry too poorly in the past to be entrusted with the task of making and administering these monumental policy questions now before it and on which it has not yet taken any apparent action. In short, the State Forests and the State forest industry are too important to have their administration regulated by non-professional unconcerned management in the backwater of a bureaucracy with a miserable forestry management track record.

A strong State Forester in Juneau reporting directly to the Commissioner of Natural Resources would not be an instant cure for the problems described. But, responsibility would be fixed upon a Division Director answerable to the Administration and who could answer to you for the Administration. Such an individual, who should be a professional forester, would per force aggressively formulate State forestry policy for consideration by the Administration. Alaskans could then know when the Alaska Department of Fish and Game was overreaching its own policy - making mandate or blaming the lack of fish on the wrong thing. We would then have someone working on a State forestry position with respect to (d)(2) and State land selections. We would then

have someone to answer for poor planning and/or administration of logging on State Forest Lands when it occurs. Under the system we propose land classification could remain with the Division of Lands, and be co-ordinated with the State Forester in the same way the Bureau of Land Management and U.S. Forest Service have done on federal lands.

In conclusion, if a strong State Forester reporting directly to the Commissioner of Natural Resources is added to this Bill, ALP will support it. If we are to have a wise forward looking State policy on forestry what we ask is vital. We ask your assistance in bringing it about.

Testimony of Robert Loescher
February 11, 1977
Hearing on SB 59

Madam Chairman, my name is Bob Loescher. I'm with the Board of Directors of Goldbelt Corporation. The Juneau native corporation has about 2,600 stockholders. We are in the process of finalizing land selections around the Juneau area, and our land selections are turning up quite a bit of timber as a primary resource of those lands.

We are a member of the SANTCO Corporation (The Southeast Alaska Native Timber Corporation), and we understand that there are activities within the corporation that are taking place to take a hard look at this Bill. As you know in this Legislature the only bill is Senate Bill 59, and then there is House Bill 40. In the previous Legislature this process had started, but hadn't gotten very far.

We would like to state for the record that Goldbelt Corporation is in a position to support development of legislation. We would like to see a good forestry bill be developed during this session. We're not necessarily in concurrence with many of the provisions of Senate Bill 59, and we would like to just generalize on a number of areas, and if the procedure would hold true, we would like to advance some specific language and rationale at a later time in the next several weeks to the Senate in hopes that we might be able to influence the direction of this legislation.

We are concerned that the bill is aimed at two areas. The public lands that are going to be selected by the State of Alaska under the Statehood Act in the National Forest, and then in combining private lands simultaneously in the same piece of legislation. We do realize that forestry resources are of interest to the citizenry as a whole, however, our corporation has some specific responsibilities to its stockholders in the management of its assets that we have received under the Alaska Native Claims Settlement Act. We are wondering if in time, we might be more specific in the legislation on how the State's interests and the taxpayers and the other shareowners of our assets of this State, how they reflect and coordinate directly with our management of our lands.

There are areas in this bill under the Administration's bill that provide for direct involvement of the State in the management of our resources. We're quite concerned about that. We feel that we have a fiduciary responsibility to manage our resources directly.

Testimony of Robert Loescher Cont.
February 11, 1977
Hearing on SB 59

We also have a couple other concerns. One is that the bill, as drafted, puts great emphasis on aesthetics, other subjective type values that are not quantifiable and identifiable, and can't be measured, and are very subjective in policy determinations. We're concerned about being affected indirectly or directly by such legislation. We have no problem working to co-manage our lands with other interests or adjacent interests, but we want to have the opportunity to have a direct input into the development of these kinds of land-use policies and planning. We feel that the bill should put emphasis on the fact that it's in the economic interests of the people of the State that there be a viable logging industry, and a viable milling industry, and we feel it important to the taxpayers and to ourselves that this have primary importance in the purpose of the bill. We're quite concerned that there is a lesser value or lesser emphasis in this regard.

We also have a couple other concerns in the bill just generally. We don't agree that the business of enforcing the regulations and how you go about through the hearing procedure and what-not is very close to due process of law. In fact, it overextends due process to the point, we'll be out of business in no time flat if we follow those types of procedures. We can't afford it. We're a small corporation, admittedly, we have 23,000 acres of land, but it abuses the whole concept of due process of law, and we will have some recommendations in that regard.

In other areas, we are concerned about the logging operations on our land. We're concerned that the cost that the Senate or the House when they consider this legislation, they consider the cost to the taxpayers of the State of Alaska, and that they also consider the cost of administration to the private landowners. There are a lot of factors in administration of this bill that are going to be very expensive if enforced. In the operation of harvesting of timber, there's bonding requirements in there that are very costly, and nobody has determined how you are going to go about that. There's requirements that we submit data and develop information for the State Forester, or whoever to review and go through a very lengthy 80 day process in order to get approvals and what-not. There is also a requirement in here that the State of Alaska will inventory lands. Now, we've been in the business for a couple of years now in trying to develop planning for our lands that we are going to be receiving patent to very shortly. Already, we've spent close to a million dollars throughout our region just investigating our lands and what-not, and we have a requirement to inventory and appraise our lands every five years. That costs 30 to 70 thousand dollars to do everytime around. Now, in this bill there's a requirement that lands be inventoried by the Commissioner and the State of Alaska. I'd sure like the State to participate and maybe we can offset some of our costs, but it's a very expensive management operation, and you should be aware of that.

Testimony of Robert Loescher
February 11, 1977
Hearing on SB 59

In conclusion, Madam Chairman, we would like to be a part of any effort that you and your staff to this committee may go into. We'd like to spend time. We have drafted, many times in the last two years, amendments to certain sections of certain bills, but I think we need to sit down and work out philosophy of land management in the purpose section of the legislation and then procedures, and see how they look all together. We're willing to work with any group in order to develop this bill.

Thank you very much.

CHAIRMAN POLAND - Thank you Mr. Loescher. We would be very glad to receive any suggestions, any written comments or amendments, and we will take them into consideration. We would like to request that if possible of all of the witnesses that have said they wish to put in further information, if we could get them in the next ten days it would be a tremendous help.

Is there anyone else who cares to comment on Senate Bill 59? If not, I thank you all very much for all the testimony that's been given here today, and it certainly will be considered with the additional testimony that we are requesting from anyone who has an interest in the bill.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.



Official Business

Alaska State Legislature

Senate

Committee on Resources

KAY POLAND, CHAIRMAN

Pouch V
State Capitol
Juneau, Alaska 99811

SS SB 59 - FORESTRY PRACTICES ACT

AGENDA FOR WEDNESDAY, APRIL 12

- Pro* - 3:00 - CLARENCE KRAMER, ALASKA LUMBER AND PULP
- pro* - ~~3:00~~ *Kay Greenough* - S.E. Al. Cons Society
- pro* - 3:15 - BOB MARTIN, TAKU CHAPTER
ALASKA CONSERVATION SOCIETY
- ~~3:30 - KAREN TILLINGHAST, S.E. ALASKA CONSERVATION SOCIETY~~
- ? - 3:45 - ROBERT LOESCHER, SEALASKA
- Con* - 4:00 - LES ANDERSON, KONCOR
- Con* - 4:15 - SAM DEMMERT, YAK-TAT KWAAN, INC.
- 4:30 - WARREN WEATHERS, SHEE-ATIKA
- Con* - 4:45 - DAVID WOLF, ATTORNY
KONCOR & YAK-TAT KWAAN, INC.



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- 4:00 - LES ANDERSON, KONCOR *Con*
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- 4:30 - WARREN WEATHERS, SHEE-ATIKA *Con*
- 4:45 - DAVID WOLF, ATTORNY *Con*
KONCOR & YAK-TAT KWAAN, INC.

Friday

3002 - *Joseph G. Wilson - Goldbelt*

3815 - *Huna Latem Corp - Con*

James Austin, Jr.



Official Business

Alaska State Legislature

Senate

Committee on Resources

KAY POLAND, CHAIRMAN

14 April 1978

AGENDA

Pouch V
State Capitol
Juneau, Alaska 99811

SSSB 59

FORESTRY PRACTICES ACT

Testimony

JOSEPH G. WILSON, GOLDBELT INC.

JAMES AUSTIN, JR., HUNA TOTEM CORP.

SCR 101

ESTABLISHMENT OF FISH QUOTAS

HB 704

APPROP. DEPT. OF NATURAL RESOURCES,
DIV. OF LAND AND WATER MANAGEMENT



Official Business

Alaska State Legislature

Senate

Committee on Resources

KAY POLAND, CHAIRMAN

14 April 1978

AGENDA

Pouch V
State Capitol
Juneau, Alaska 99811

SSSB 59

FORESTRY PRACTICES ACT

Testimony

JOSEPH G. WILSON, GOLDBELT INC.

Con - unless amended

JAMES AUSTIN, JR., HUNA TOTEM CORP.

Dick Bradley -

moved out

SCR 101

ESTABLISHMENT OF FISH QUOTAS

HB 704

APPROP. DEPT. OF NATURAL RESOURCES,
DIV. OF LAND AND WATER MANAGEMENT

*Wed
19th*

21



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Kay Poland
Chairman
Senate Resources Committee

Kay,

This will be introduced Thursday,
April 6, 1978.

Keith

April 6, 1978

The Honorable John L. Rader
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

Under authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a substitute bill for SB 59 (forest resources and practices), introduced by me during the 1977 legislative session. This sponsor substitute is the result of a considerable amount of further study and numerous meetings involving persons and organizations concerned with forest resources and practices. The following statement of the reasons for this legislation and the section-by-section analysis go into some detail in order to provide evidence of legislative intent.

I. REASONS FOR THE LEGISLATION

The purpose of the legislation is to establish a program for the administration of forest resources in Alaska so that the state may realize, over the long term, the wide variety of products, benefits, and services obtainable from forestland.

It is especially important that this legislation be enacted before use of forest resources in Alaska reaches its greatest intensity. States which have delayed passage of appropriate forest practices Acts until an absolute necessity arose have often experienced a climate of conflict which complicated legislative deliberations and reduced the quality of the legislative product. In addition, some options for approaches to administration and for realization of objectives were already foreclosed. Enactment of an Alaska Forest Resources and Practices Act at this time would permit consideration of potential measures and programs in an atmosphere conducive to

solutions mutually agreeable to all parties. Most important, it will allow conflicts to be resolved in advance, precluding potential disruption of operations in the field.

While a state forest resources program is necessary and desirable, it is not the intention of this legislation to create a massive new bureaucracy which would only result in waste of government funds and manpower. Rather, the approach used is to fill existing gaps in the statutes through enabling legislation which would provide for a thorough forest management program without duplicating or overlapping existing government programs of the Department of Natural Resources or other state agencies. Emphasis is placed on cooperation between these agencies to achieve generally desired objectives.

Development of this transmittal letter reflects my wish to limit the language of the Act to essential matters while providing the intent behind its provisions. I offer the Act and the letter as a package, with the statements of intent in the letter to govern application and interpretation of the Act. The appropriate committees of the legislature are strongly urged to adopt this transmittal letter as the committee report on the bill.

II. SECTION-BY-SECTION ANALYSIS

Section 10. Declaration of Intent.

Section 10 contains a brief statement of the findings of the legislature and the purpose of the legislation. Paragraph (1) recognizes the range and variety of forest resources; that forest products include not only timber but other products obtained from the land and water (including marine areas) influenced by forest ecosystems; that multiple products, benefits, and services are obtained from forest resources; and that forest resources and values often escape quantification.

Paragraph (2) reflects my desire that the various businesses and other activities (whether or not commercial) which are dependent upon forest resources receive the support of the state for their continuation in the government's forest resources program. The term "economic enterprises" is intended to be comprehensive, including not only existing businesses but those industries which may be developed as new forest resources become accessible or economically viable, and recognizing that forest resources present opportunities for small businesses as well as large corporations.

"Activities and pursuits" includes those which are not necessarily revenue-generating, and would encompass subsistence use.

Paragraph (3) declares that the programs and measures provided for in the Act are not only desirable but a basic duty of the state and implement the directives contained in several of the sections of Article VIII, Alaska Constitution. It is especially critical that timber supplies and other renewable resources be maintained and available in perpetuity to protect the longevity and insure the stability of the forest products industry, to insure that enterprises dependent on forest resources continue to make a substantial contribution to the Alaskan economy, to prevent impairment of the capability of the land and water to produce renewable resources, and to make certain that forest land generates the services and benefits, whether commercial or not, which Alaskans have come to expect from it.

Paragraph (4) contains two important concepts. First, much contemporary legislation has relied excessively on regulatory measures to achieve desired goals when this approach may in fact be both onerous and inefficient. Therefore, this Act would direct that regulations, services, and incentives be employed in the combination which is most likely to accomplish the purposes of the Act.

Second, the state has not to date developed a high-profile forestry program emphasizing the expertise of professional foresters, which is inherently necessary if forest resource administration in Alaska is to be successful. As a result, paragraph (4) stresses the importance of forest resource professionals as an essential element to complete the state's multidisciplinary capacity.

Paragraph (5) addresses the need for the state to carry out its responsibilities for control of nonpoint source pollution under the Federal Water Pollution Control Act under the leadership of the Department of Environmental Conservation, which is the lead agency under law for this program. The Environmental Protection Agency has left it to the states to devise their own approaches in this area, but has indicated that the federal government will assume control if a state does not develop an approved program. The Department of Environmental Conservation may legally delegate its authority with respect to this program to the Department of Natural Resources or otherwise use the forestry expertise of DNR with respect to development of the nonpoint source program, and the regulations developed under this chapter could be used in conjunction with this program.

Paragraph (6) recognizes that regulations adopted under the Alaska Coastal Management Act must address forestry matters; to avoid conflicting regulations, it is necessary that those adopted under this Act be used under the Coastal Management Act, superseding any forestry regulations previously adopted under the CZM Act. However, any prior efforts under CZM should be considered in adopting regulations under this Act.

Section 20. Administration.

This section designates the officials responsible for administration of the Act and establishes authority for carrying out desirable forest resources programs.

Subsection (a) reflects the request of numerous interest groups that a division responsible for forestry be created within state government in order to (1) provide recognition for forestry and forest products, as has already been done for many other natural resources, (2) bring the expertise of professional foresters to bear on forest management issues, and (3) establish a contact and focus point in the government for the forest products industry and other users of forest resources. This subsection expresses the governor's power to create a Division of Forest, Land and Water Management with the director to be known as the state forester. It is emphasized that the state forester must be a trained professional with the requisite education and fully experienced with the many issues and subjects inevitable in the administration of the Act.

Subsection (b) provides that the ultimate responsibility for implementing the Act is vested in the commissioner. However, the expertise of forest resource managers cannot be employed unless the forestry expertise housed in the division is fully used. Consequently, it is expected that the commissioner will delegate authority for daily administration of the Act to the state forester, reserving to himself only those matters requiring the attention of a cabinet officer. Moreover, the commissioner and the state government in general should make use of the state forester on other forestry matters even though they may technically be beyond the purview of the Act.

I recognize that it will take some time to develop completely the program envisioned by the legislation. However, by creating the division, naming a state forester, and listing the functions assigned to him, I expect that the program ultimately formulated will exceed the accepted minimums for administration of forest resources. Specifically, I intend

that the commissioner and the state forester employ foresight and innovation rather than being constrained by conventional attitudes so that Alaska's forest management effort enjoys a national reputation for leadership and competence.

Forest managers are expected to calculate timber harvests and rotation ages in a way which insures sustained yield and a steady supply; this has been difficult in the past on state land because the acreage available for timber use has not remained constant. Subsection (c) provides for the opportunity to establish a minimum fixed timber supply base from which to make sustained yield calculations. In addition, the state will ultimately determine that land which it wishes to retain in state ownership for multiple use purposes, some of which will be forested land. While subsection (c) does not mean that all of the state's retained land will be designated as state forests (as opposed to some other category), it does allow for the designation of that land with substantial timber and other resources for retention. Failure to designate state forest land as a state forest does not, of course, remove it from the provisions of this chapter.

The ultimate success of the state's forest management program will depend on the knowledge available to decisionmakers. Numerous subjects and issues invite research and experimentation, and subsection (d) sanctions the designation of special forest units for this purpose. I would anticipate the use of such forests for analysis of exotic stocks; development of genetically superior stocks; evaluation of the effects of land use activities and of methods to reduce adverse impacts; experimentation with advanced harvesting, extraction and transportation techniques and equipment; examination of programs for control of disease, fire, and insect infestation; cooperative projects with other agencies respecting compatible management of multiple resources; and any other activities enhancing or refining forest management efforts. Such forests must be limited to the minimal size necessary for conducting the research or experiment so that ill-considered major projects may not be continued under the guise of scientific investigation.

Reforestation and afforestation must be the highest priority among silvicultural programs, being most directly related to maintenance of perpetual supplies of timber. Within funding capacity, the commissioner is expected to make available planting stock to assist operators in meeting reforestation requirements of the Act, although this does not relieve their duty to observe those requirements. The term "nurseries and

greenhouses" is not intended to be restrictive; all facilities providing planting stock (including containerized greenhouses and other advanced versions) are consistent with this section. "Forest vegetation" was used instead of forest trees since there may be instances where ground cover or other plants will be beneficial in forest management. Subsection (e) also provides that the commissioner may charge for providing planting stock, with any proceeds to go to the general fund.

Subsection (f) authorizes a full range of professional management services and participation in federal assistance programs such as those conducted by the Forest Service under their state and private forestry division. Since there will be many new timber operators and owners in the state in the near future, education and management assistance efforts may provide expertise which would be otherwise unavailable, leading to more efficient operations and better forest practices. Such services must be closely coordinated with regulatory and review requirements, as is discussed later in this analysis.

As discussed earlier, the Department of Environmental Conservation may legally delegate authority to the Department of Natural Resources for development of regulations necessary to implement the forestry portion of the state program for control of nonpoint source pollution under the Federal Water Pollution Control Act, as amended, or to use any other arrangement to take advantage of the forestry expertise of DNR. Subsection (g) formalizes this authorization and directs DNR to seek a cooperative agreement on this subject. However, it also reemphasizes that DEC is the lead agency and that any regulations or cooperative agreements must be approved by the commissioner of environmental conservation before they become effective.

Since maximum contact with forest resource constituencies is critical if the government and the private sector are to understand each other's positions and interests, subsection (h) places a duty on the commissioner to consult with all appropriate parties in the administration of the Act. The commissioner is expected to consult continuously with other state agencies possessing natural resource management responsibilities and to draw fully upon their expertise; this is especially true where DNR has no expertise of its own in a particular subject area. The term "landowners" should be construed to include adjacent landowners with respect to operations which may affect them. Moreover, the commissioner is not limited to entities within the state; federal

agencies, and agencies and institutions of other states and of foreign countries should be contacted to provide the state forester with maximum access to information on new management techniques and other matters. The provision on cooperative agreements and contracts is intended to permit formalization of consultation, management, and other activities where desirable.

With respect to subsection (i), there were a number of requests for creation of an advisory committee or board to assist the state forester. However, establishment of a specific committee or board by statute automatically initiates a useless controversy over the makeup of the entity. Moreover, while a general advisory committee may be important, creation of special committees on particular issues of special importance may also be warranted from time to time. While the bill endorses the advisory committee approach where appropriate, it provides flexibility which is the key to a successful advisory committee system, and thus leaves it to the department to determine the particulars. The commissioner is, nevertheless, directed to establish at least one advisory committee, and it is expected that the commissioner will use the advisory committee system (1) to develop specific approaches to implementing the standards in sec. 40 through the advice of professionals and other interested persons, (2) to formulate the particulars of the exemptions under sec. 30(c), and (3) to carry out consultative duties under subsection (h).

Moreover, advisory committees created must be representative of the various constituencies dependent on or affected by management of forest resources so that a full range of public opinion is received. Advisory committees should meet regularly, and members should be appointed to specified terms long enough to permit them to become familiar with the issues and to make meaningful recommendations. The commissioner should appoint an advisory committee as soon as possible after the effective date of the Act to assist in the development of regulations. The provision on travel and expenses is intended to be used only where advisory committee activities are clearly necessary and of benefit to the state.

While there were several suggestions for a provision mandating the location of the state forester, I believe that access to trained forestry personnel by the public is more directly responsible for the success of a government forestry program. Therefore, subsection (j) speaks to distribution of the department's foresters rather than the location of the state forester.

The introduction to this analysis stressed the importance of avoiding duplication of existing authority in the enactment of forest practices legislation. Subsection (k) fulfills this objective by insuring that the statutory prerogatives of other agencies are retained and that this Act is not viewed as other than supplemental to the overall state regulatory framework for forest resources. The only exceptions are that (1) forestry regulations developed under this chapter shall be used as the forestry segment of the Coastal Management Act program and (2) if authorized by the commissioner of environmental conservation, regulations adopted under this chapter may serve as the forestry portion of the state program for control of nonpoint source pollution.

Subsection (l) is self-explanatory.

Section 30. Applicability.

This section specifies the applicability of the Act to particular land and activities.

Subsection (a) is self-explanatory. The limitation in SB 59 to commercial forest land was removed as it was considered to be illogical and extremely difficult to administer. Municipalities are not prevented from adopting ordinances which embody stricter standards and practices than those promulgated under this Act.

Subsection (b) reflects the fact that state standards adopted under the Federal Water Pollution Control Act may be made applicable to federal lands.

Subsection (c) covers exemptions. The intent of this provision is to limit the applicability of this Act to major commercial operations which genuinely affect the objectives of this chapter relating to the maintenance of a stable and healthy forest products industry and the perpetuation of supplies of renewable resources. Consequently, the commissioner is required to make exemptions by regulation to insure that small landowners who expect to be able to sell or otherwise use their timber will be permitted to do so. Since it is impossible to determine in all cases what is a "small landowner", the commissioner may determine the particulars through exemption regulations. However, any owner of the tracts described is entitled to an exemption unless his tract is being used as a part of a major commercial operation, as where a logging company purchases the timber rights to numerous contiguous tracts in order to conduct a large scale logging program. With respect to tracts larger than 160

acres which are not part of a homestead, farm, or residential or recreational property, the commissioner may exempt them if they are not capable of being managed as a sustained yield forest unit.

Section 40. Regulatory and Administrative Standards.

The best approach to forest practices legislation is to avoid placing specific practices measures in the statute; instead, practices should be developed through the regulatory process, with such regulations and other administrative actions governed by guiding standards contained in the Act. Section 40 contains such standards.

Subsection (a) contains standards applicable to all forest land, regardless of whether in public or private ownership.

Paragraph (1) recognizes the importance of determining the reforestation capacity of land before timber harvesting. The determination is to be made by the government. This standard is not intended to mandate a non-declining yield type of management, but it does reflect the paramount state interest in having all forest land (unless legitimately converted to another use) continue to produce merchantable timber over the long term.

Paragraph (2) dictates that important information relative to any decision should be collected and used, and that it should be current. In some cases, land managers have become lax in keeping abreast of recent developments in their field, and make decisions based more on their status as professionals rather than through true analysis of a situation. This standard is not intended to be an unwarranted obstacle to management activities or to focus the burden of developing data on the operator. It does, however, place a duty on the manager to account for his actions in a convincing way.

Paragraph (3) mandates recognition of the concepts of environmentally sensitive areas and best management practices in conjunction with nonpoint source measures if adopted under this chapter. A number of approaches could be utilized, depending on the objective to be achieved, including standards, quantitative limitations, and zones or management units.

Paragraph (4) identifies two important elements often missing in forest resource management; first, that forest practices requirements often impose real costs on the operator, and should be weighed in terms of the public benefits realized;

and second, that a format for the harvest of trees convenient for government managers may be unrealistic for operators in view of marketing conditions.

Paragraph (5) recognizes the fundamental public trust obligation of the state to insure that the capability of the land to produce renewable resources is not impaired. While a particular species of tree or wildlife may have little relative value now, the future may find it suddenly in great demand. If the land is incapable of producing it to the demand level, an important land management option is lost, to the detriment of the public welfare.

Paragraph (6) reflects that loss of scenic quality may have an impact beyond the boundaries of the land where the activity is taking place. While this standard permits consideration of scenic factors where economically feasible, it is not intended as a prohibition on land-use activities, especially on private land where private landowners are justified in using resources subject to their ownership. It is directed primarily at public land where scenic quality is one of the multiple uses and values deserving recognition in a public land management program. In situations where an area is an important source of tourism and recreation, for example, a landscape architect might be employed in the design of the layout.

Subsection (c) contains those additional standards appropriate for public land.

Paragraph (1) follows similar federal legislation by applying the principles of multiple use and sustained yield to public land. These concepts are so well accepted as desirable objectives that further explanation is unnecessary. Once again, the approach which allows satisfaction of present needs without foreclosing future options is the most desirable.

Paragraph (2) injects another common principle in forest management. Specifically, while multiple use necessarily involves combining compatible uses within a large land area, forest practices and allocations result in assigning priority uses to particular areas. This standard provides that any allocation system should be implemented through analysis of the capability of the land and the resources and values present.

Paragraph (3) does not require that all uses be given equal distribution in the implementation of a multiple-use system.

It does, however, require that the process begin without any preconceptions or prejudices on the part of land managers.

Paragraph (4) recognizes the need to accommodate the concerns and requirements of the many forest resource constituencies.

Section 50. Administrative Plan and Report.

Subsection (a) requires that a plan be developed by the department demonstrating compliance with the Act. Without such a planning process, it would be difficult for the department to direct all of its activities and programs toward meeting uniform goals. Moreover, there would be no guarantee that a long range blueprint (based on a rotation age or similar concept) for forest management would be formulated; this is necessary if undesirable consequences are to be addressed before they become impossible to deal with. It is expected that the plan will concern itself specifically with management issues of interest to the public, such as harvesting methodology, timber management philosophy, and a system for perpetuation of supplies of renewable resources. While the plan will necessarily be revised and augmented over time to reflect new information and management techniques, the first draft should accompany the first report to the legislature required by subsection (b).

Subsection (b) requires a report to the legislature demonstrating accountability with respect to subsection (a).

Subsection (c) directs the preparation of recommendations for financial incentives as part of the threefold approach to achieving the objectives of the Act (regulations, services, and incentives).

Section 60. Regulations.

This section vests authority for regulations governing forest practices. Regulations may be adopted, of course, to implement other portions of the Act as well.

Subsection (a) lists the subject areas for regulations. They are intended to cover appropriate silvicultural and related activities necessary for forest management without encroaching on functions traditionally performed by other agencies. It is expected that a set of at least interim regulations would be developed by early 1979.

There has been a number of requests for a one-stop permit process. The department should not be vested with authority

to actually approve permit applications on behalf of other agencies since that is a matter for their discretion. However, an operator should not have to visit each agency and division which requires a permit. Therefore, this section allows the operator to make all of his permit applications through one place and to be informed of the outcome by the department. Where applicable, the provisions of AS 46.35 should be used to coordinate multiple permit determinations.

Subsections (c) and (d) are self-explanatory.

Section 70. Review and Approval of Operations.

This section is intended to institute a review process which combines the best elements of the notification system and the prior-approval system without incorporating their disadvantages as well.

Subsection (a) is, of course, subject to any exemptions granted under sec. 30(c).

Subsection (b) stresses the importance of the professional management services approach. If there is early and consistent contact between operators and the department with respect to pending operations, the operator will gain maximum benefit from assistance programs, understand applicable regulations so as to avoid inadvertent violations, provide state officials with a full understanding of his interests and needs, and in general facilitate administration of the Act. With full cooperation between operators and the state, review under this section could be rendered largely a formality. Moreover, while the statutory requirements must be met, I recognize that operations may range from a one-time harvest occupying one season to an ongoing harvest program taking place continuously for years. The commissioner is expected to tailor this process to various proposed projects so that unnecessary bureaucratic obstacles are not erected.

The review process in subsections (c) through (i) imposes an ironclad time frame on the length of the government review. There are no exceptions. The notification description should consist of a logging and access plan so that the location of land-use activities is easily discerned. The extended period in subsection (d) is to be authorized only where the complexity of the subject matter makes it physically impossible for a 20-day review, such as for a proposed operation involving many thousands of acres to take place over a number of years. If state agencies possess the manpower to review the operation within 20 days, an extension

should not be authorized. Moreover, an extension should only be for the period necessary to complete the review, and not necessarily for the full additional 20 days. Above all, the commissioner must insure that extensions are not used as an excuse for bureaucratic delay. This extension is not to be employed as an excuse for bureaucratic delay.

Subsection (e)(4) recognizes that there may be instances where a particular phase of an operation requires closer examination; it is emphasized that additional materials required of the operator under this language must be carefully limited to only those matters requiring additional review, and not used as an excuse for the forest managers to force the operator to do their work for them. Once again, if the professional management services approach is fully used, the review process in this section should not become an issue.

With respect to public notice under subsection (h), notice should be given locally as well where there is no newspaper published in the area.

Subsection (i) stresses that site examinations may be used where such would benefit the review process.

Subsection (j) prohibits substantial deviation from approved plans. "Substantial deviation" means a departure significant enough to jeopardize attainment of the objectives of the Act. Close contact between the operator and the department should permit any problems to be resolved in advance of a crisis.

Subsection (k) reflects that there will be some instances where immediate action is necessary, as in the case of salvage of trees, fire hazards, or other situations where a genuine emergency is involved.

The authority for posting of security under subsection (m) is to be used only where necessary. Obtaining bonds and other security devices is often difficult, especially for small operators, and may prevent them from doing business at all. Where security is required, the amount should be geared to the actual danger being protected against, possibly through some type of sliding scale arrangement.

Subsection (n) is self-explanatory. This was not intended to apply to operations which have already been completed.
Section 80. Deployment of Broadcast Chemicals.

Regulation of forest practices must necessarily reflect the state of the art. All consequences cannot be known in advance of operating; with an appropriate margin of error built in, such operations can be conducted successfully even though there are many unknowns regarding particular impacts.

Broadcast chemicals are a special case, however, as they involve the introduction of a foreign substance into the ecosystem. The state, for example, very strictly controls the introduction of exotic wildlife into Alaska because biologists often have little idea as to how a new species will interreact with the existing species composition. Foreign substances pose similar dangers to the forest ecosystem. I believe that forest managers should have a reasonable idea of the effects of using a foreign substance before it is applied on a large scale. While this section leaves to the discretion of the commissioner of environmental conservation the methodology to be used in regulating broadcast chemicals, it may well be advisable to undertake testing of some substances under controlled conditions before permitting commercial application of the substance.

Section 90. Conversion of Forest Land to Other Uses.

The provision in this section is a requirement of due process. However, it is my intent that proposed conversions be closely monitored so that subterfuge is not employed to escape responsibilities for reforestation. Moreover, while continued use as productive forest land cannot be required, it may be permissible to specify minimum revegetation of land for water quality purposes.

Section 100. Inspections, Investigations, and Enforcement.

This section authorizes each agency with statutory responsibilities over forest land to enforce those responsibilities. However, it also directs affected agencies to coordinate their enforcement activities so that operators are not subjected to differing interpretations of the same law or other undesirable or unnecessary procedures; interagency enforcement teams could be used to avoid this problem. Enforcement agents should avoid entering upon private land unless there is good reason to be there.

Section 110. Prohibitions, Penalties, and Enforcement Procedures.

The enforcement procedures in this section are straightforward and need no detailed explanation. Several features of this section should be stressed, however.

First, there are no criminal penalties. An administrative (civil) penalty system is used instead. Fines and penalties imposed are judicially reviewable under sec. 120.

Second, the burden of proof is, of course, on the state. An order resulting from a proceeding may be tailored to the exact nature of the violation so that the punishment is not disproportionate to the violation. A number of factors must be considered in determining a fine so that it reflects the gravity of the violation; it is expected that some type of fine schedule will be developed by the department so that penalties for the same offense are uniform.

Third, any emergency orders are limited to actual emergencies and have a duration of 21 days; therefore, they cannot be used as an excuse for not holding a hearing except in the context of an emergency.

Fourth, the bill establishes a hearing system designed to insure that operators are given a fair opportunity to present their case, and it recognizes that any proceeding instituted against a respondent may visit considerable expense and inconvenience on him. Special provisions are inserted to provide assistance to a respondent and to permit him to select an informal, nonadversary hearing process.

Fifth, the bill provides for a hearing officer who is not a state employee and who is not in any way connected with the preparation of the state's case.

Section 120. Appeals and Judicial Review.

This section is self-explanatory.

Section 130. Civil Action.

This section is self-explanatory. However, in order to discourage frivolous or obstructionist suits, I would hope that judges adjudicating cases brought under this section having no serious merit would impose costs and fees on the plaintiff under Civil Rule 82.

Section 950. Definitions.

While the definitions are self-explanatory, special mention must be made of the definition in paragraph (13). The intent of this definition, as the term is used in the Act, is to insure that consequences recognizable on the basis of the present state of the art of forest resource management are

reflected in management decisions, and that decisions include the establishment of a margin of error where it is understood that the consequences of an action are unknown. It is expected that studies undertaken by the state forester (using experimental forests and/or commercial logging operations) will be used to continually increase the bank of knowledge relating to the impacts of logging and other land use activities, and that the results would be described in the report submitted under § 50.

Partially exempt service.

Section 2 of the bill amends the section of the State Personnel Act listing the positions in the exempt service. It adds the state forester, consistent with the new chapter in sec. 1 of the bill.

Effective Date.

The effective date of the Act is January 1, 1979. However, it is expected that the department will engage in preparatory activities immediately so that full implementation may begin on the effective date.

Sincerely,

Jay S. Hammond
Governor

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 59

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TENTH LEGISLATURE -- SECOND SESSION

5

BILL

6

For an Act entitled: "An Act relating to forest resources and practices;

7

and providing for an effective date."

8

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

9

* Section 1. AS 41 is amended by adding a new chapter to read:

10

CHAPTER 17. FOREST RESOURCES AND PRACTICES.

11

Sec. 41.17.010. DECLARATION OF INTENT. The legislature declares

12

that

13

(1) the forest resources of Alaska are among the most

14

valuable natural resources of the state, and furnish timber and wood

15

products, fish and wildlife, tourism, outdoor recreation and aesthetic

16

enjoyment water, soil, air, minerals, diverse lifestyle opportunities,

17

general health and welfare, and a multitude of other products, benefits,

18

and services, tangible and intangible;

19

(2) economic enterprises and other activities and pursuits

20

derived from forest resources warrant the continuing recognition and

21

support of the state;

22

(3) the state has a fundamental obligation to insure that

23

management of forest resources guarantees perpetual supplies of renew-

24

able resources, provides nonrenewable resources in a manner consistent

25

with that obligation, and serves the needs of all Alaska for the many

26

products, benefits, and services obtained from them;

27

(4) government administration of forest resources should

28

combine professional management services, regulatory measures, and

29

economic incentives in a complementary fashion, and should draw upon

1 the expertise of professional foresters in conjunction with other dis-
2 ciplines;

3 (5) under the leadership of the Department of Environmental
4 Conservation, the state should exercise its full responsibility and
5 authority for control of nonpoint source pollution with respect to the
6 Federal Water Pollution Control Act, as amended;

7 (6) the provisions of this chapter shall be the basis for
8 forest management standards, policies, and guidelines developed under
9 the Alaska Coastal Management Act to the extent permitted by law.

10 Sec. 41.17.020. ADMINISTRATION. (a) The governor may create,
11 within the Department of Natural Resources, a Division of Forest,
12 Land, and Water Management to carry out this chapter and other appro-
13 priate duties designated by the governor. The division shall be
14 headed by a director who shall be the state forester, appointed by the
15 commissioner to the partially exempt service in accordance with law.
16 The state forester shall be a natural resources land manager with
17 generally accepted educational credentials, familiar and experienced
18 with the renewable and nonrenewable resources and values of forest
19 land and the products, benefits, and services obtained from them.

20 (b) The commissioner shall administer this chapter and is
21 authorized and encouraged to delegate responsibilities for carrying
22 out this chapter to the state forester.

23 (c) After planning and classification procedures under AS 38.05
24 have been completed, the governor may create, by administrative order,
25 state forests, to consist of land determined by him to be desirable
26 for retention in state ownership as multiple-use land.

27 (d) The commissioner may designate and operate experimental and
28 research forests on state land consistent with the limitations of AS
29 38.05.300. Laboratories and other facilities may be employed in con-

1 junction with those forests.

2 (e) The commissioner may establish and maintain forest vegeta-
3 tion nurseries and greenhouses for planting stock to be made available,
4 with or without charge, to organizations, institutions, government
5 agencies, individuals, and businesses for reforestation, afforestation,
6 and related purposes.

7 (f) The commissioner is authorized to undertake cooperative
8 forestry programs, extension services and education programs, and to
9 otherwise offer a full range of professional management services to
10 the interested public. When he considers it beneficial, the commis-
11 sioner may participate in federal assistance programs by accepting
12 assistance in whatever form offered.

13 (g) The commissioner may develop proposed regulations under this
14 chapter as part of the state program for control of nonpoint source
15 pollution under the Federal Water Pollution Control Act, as amended,
16 and shall seek to enter into a cooperative agreement with the commis-
17 sioner of environmental conservation for that purpose. However, the
18 Department of Environmental Conservation is the lead agency for water
19 quality and control of nonpoint source pollution under that Act, and
20 the regulations and cooperative agreement are therefore subject to the
21 advance approval of the commissioner of environmental conservation.

22 (h) In the administration of this chapter, the commissioner
23 shall consult with and draw upon the expertise of interested organiza-
24 tions, enterprises, individuals, government agencies, educational
25 institutions, and landowners. The commissioner may enter into coopera-
26 tive agreements and contracts with them to carry out this chapter.

27 (i) The commissioner shall establish, for general or special
28 purposes, one or more representative advisory committees to assist in
29 the administration of this chapter. Members of advisory committees

1 shall be appointed to specified terms, and may be reimbursed for travel
2 and expenses in accordance with law when approved by the commissioner.

3 (j) The commissioner shall locate department personnel with
4 forestry expertise throughout the state to facilitate public access to
5 professional management services and other forest resources programs.

6 (k) Notwithstanding any other provision of this chapter, the
7 commissioner may not employ the authority vested by this chapter so as
8 to duplicate or preempt the statutory authority of other state agencies
9 to adopt regulations or undertake other administrative actions govern-
10 ing resources, values, or activities on forest land except for (1)
11 regulations under the Coastal Management Act; and (2) if authorized by
12 the commissioner of environmental conservation, regulations relating
13 to control of nonpoint source pollution.

14 (l) The commissioner may take other actions necessary and proper
15 for the administration of this chapter, including the adoption of
16 regulations under the Administrative Procedure Act (AS 44.62).

17 Sec. 41.17.030. APPLICABILITY. (a) Unless otherwise specified,
18 this chapter applies to forest land under state, municipal, or private
19 ownership.

20 (b) The provisions of this chapter applicable to state land are
21 applicable to forest land under federal ownership to the extent per-
22 mitted by law.

23 (c) The commissioner shall exempt from the provisions of this
24 chapter

25 (1) minor, small scale, or incidental operations of little
26 significance with respect to the purposes of this chapter; and

27 (2) operations on private homesteads, farms, residential or
28 recreational property, and on all private tracts of 160 acres or less
29 under single ownership, unless those operations are part of a major

1 commercial logging network encompassing other tracts of land.

2 Sec. 41.17.040. REGULATORY AND ADMINISTRATIVE STANDARDS. (a)

3 All regulations, administrative actions, and other activities and
4 duties undertaken under this chapter must be in full accordance with
5 the standards set out in this section.

6 (b) With respect to state, municipal, and private forest land,
7 the following standards apply:

8 (1) timber harvesting is limited to areas where data and
9 information demonstrate that natural or artificial reforestation
10 techniques will result in the production of a sustained yield of
11 merchantable timber from that area;

12 (2) to the maximum extent possible, all applicable data and
13 information of applicable disciplines must be updated and used in
14 making decisions relative to the management of forest resources;

15 (3) environmentally sensitive areas and best management
16 practices must be recognized in the implementation of any nonpoint
17 source pollution control measures authorized under this chapter;

18 (4) where not inconsistent with the other provisions of
19 this section, administration of forest land must consider marketing
20 conditions and other economic constraints affecting the operator;

21 (5) there shall be no significant impairment of the produc-
22 tivity of the land and water with respect to renewable resources; and

23 (6) where economically practicable, allowance may be made
24 for scenic and aesthetic quality in or adjacent to areas of substantial
25 importance to the tourism and recreation industry.

26 (c) With respect to state and municipal forest land only, the
27 following standards also apply:

28 (1) forest land must be administered for the multiple use
29 of the renewable and nonrenewable resources and for the sustained

1 yield of the renewable resources of the land in the manner which best
2 provides for the present needs and preserves the future options of the
3 people of Alaska;

4 (2) any system of allocating predominant uses or values to
5 particular units within a contiguous area of land must reflect in
6 reasonable proportion the various resources and values present in that
7 area;

8 (3) determinations of multiple-use patterns to be recognized
9 within any area must begin with the assumption that all resources and
10 values are of equal priority; and

11 (4) to the extent its capacity permits, forest land must be
12 administered so as to provide for the continuation of businesses,
13 activities, and lifestyles which are dependent upon or derived from
14 forest resources.

15 Sec. 41.17.050. ADMINISTRATIVE PLAN AND REPORT. (a) The com-
16 missioner shall develop and continually maintain a long range plan for
17 the administration of this chapter which demonstrates that the provi-
18 sions of sec. 10 are being recognized and that the standards of sec.
19 40 are being met. The commissioner shall maintain a current inventory
20 or assessment of timber on forest land to assist in meeting the require-
21 ments of this section.

22 (b) On June 30, 1980, and at two-year intervals after that date,
23 the commissioner shall submit a detailed report to the legislature
24 reviewing the administration of this chapter over the preceding two
25 years, demonstrating compliance with (a) of this section, and describing
26 how the plan will affect the welfare of the forest products industry
27 and other activities and pursuits derived from or affected by forest
28 resources.

29 (c) As a part of the report to be submitted on June 30, 1980,

1 under (b) of this section, the commissioner shall, after consultation
2 with interested constituencies,

3 (1) review the structure and operations of the division of
4 forest, land, and water management;

5 (2) describe the degree to which the division has established
6 a high-profile forestry program utilizing the expertise of professional
7 foresters;

8 (3) describe the responsiveness of the division to the
9 interest of forest resources constituencies; and

10 (4) make recommendations to the legislature respecting the
11 legal authority of the Department of Natural Resources relating to
12 forestry, the qualifications of the director of the division, and the
13 location of the division within the department.

14 (d) On January 1, 1981, the commissioner, after consultation
15 with the commissioner of revenue, shall transmit to the legislature
16 recommendations for legislation establishing economic incentives which
17 would further the purposes of this chapter.

18 Sec. 41.17.060. REGULATIONS. (a) The commissioner may adopt
19 regulations in accordance with the Administrative Procedure Act (AS
20 44.62) governing operations on forest land with respect to the follow-
21 ing:

22 (1) harvesting, removal, and use of timber and tree pro-
23 ducts and related management activities;

24 (2) reforestation, afforestation, revegetation, stocking,
25 prescribed burning, fertilization, thinning, and other silvicultural
26 activities;

27 (3) brush, slash, and debris, and salvage of trees;

28 (4) soil erosion and wasting;

29 (5) fire and flood hazards;

1 (6) general administrative requirements and procedures;
2 (7) prevention and control of disease and insect infesta-
3 tion;

4 (8) with respect to the items in this subsection, identi-
5 fication of areas or circumstances warranting prohibitions or special
6 limitations on land-use activities.

7 (b) An operator may apply through the commissioner for permits
8 required by other state agencies to operate on forest land, which
9 applications may be forwarded to the commissioner of environmental
10 conservation for procedures in accordance with AS 46.35. The commis-
11 sioner shall notify the operator of the action taken. Where practi-
12 cable and desirable, the commissioner may enter into cooperative
13 agreements with federal agencies authorizing the department to serve
14 as a collection point for federal permit applications.

15 (c) The commissioner may establish regions, districts, or other
16 subdivisions of forest land within the state in which different
17 regulations apply to reflect varying conditions within the state, or
18 to facilitate administration.

19 (d) The commissioner shall adopt only those regulations necessary
20 to accomplish the purposes of this chapter, and shall avoid those
21 which increase operating costs without yielding significant benefits.

22 Sec. 41.17.070. REVIEW AND APPROVAL OF OPERATIONS. (a) Opera-
23 tions on forest land must be reviewed and approved under this section
24 for consistency with the policies and provisions of this chapter and
25 regulations adopted under this chapter.

26 (b) The commissioner shall make full use of professional manage-
27 ment services and other educational and assistance programs of the
28 department to encourage early contact between operators and the state
29 and to minimize reliance on this section as a principal means of

1 achieving the purposes of this chapter.

2 (c) Before operating on forest land, an operator shall give
3 notification to the commissioner consisting of

4 (1) a brief written description of the proposed operation;

5 (2) a USGS map of the largest available scale showing the
6 location of all proposed activities;

7 (3) proposed measures for soil conservation and reforesta-
8 tion; and

9 (4) evidence that the landowner and timber owner (if dif-
10 ferent from the operator) have approved the proposed operation.

11 (d) Within five days after receipt, the commissioner shall
12 distribute the notification materials to affected state agencies. The
13 agencies shall make their recommendations within 20 days after receiv-
14 ing the materials. The commissioner may extend the review period up
15 to an additional 20 days only if the subject matter is highly and
16 unusually complex.

17 (e) Within 10 days after expiration of the review period, the
18 commissioner shall, as appropriate:

19 (1) grant unconditional approval of the proposed operation;

20 (2) grant conditional approval, imposing necessary terms
21 and conditions based on the recommendations of the department or
22 another agency;

23 (3) disapprove the proposed operation, but only if he
24 considers it impossible to take other action under this subsection; or

25 (4) upon the recommendation of the department or another
26 agency, require the submission of additional plans or descriptions
27 from the operator, but only to the extent necessary for proper assess-
28 ment of the proposed operation; however, any action by the commissioner
29 under this paragraph must be taken within three days after expiration

1 of the review period.

2 (f) If action is taken under (e)(4) of this section, the commis-
3 sioner and affected agencies have an additional 20-day review period,
4 after which time action must be taken under (e)(1), (2), or (3). If
5 the commissioner takes no action under (e) of this section within the
6 statutory time limit, he is presumed to have taken action under (e)(1).
7 Action taken by the commissioner under (e) of this section must be
8 accompanied by a written justification.

9 (g) If recommendations of another state agency are rejected, the
10 commissioner shall provide the agency with a written statement of the
11 reasons for that action.

12 (h) Upon receipt of any notification, the commissioner shall
13 provide copies to the timber owner and landowner, if different from
14 the operator, and within five days shall publish the brief description
15 received in a newspaper of general circulation, with an invitation for
16 public comment. Recommendations received from the public must be
17 considered.

18 (i) Information and paperwork required of the operator under
19 this section must be limited to that necessary to accomplish the
20 purposes of this section. Site examinations, including an interdis-
21 ciplinary review, may be undertaken by the commissioner.

22 (j) An operator may not substantially deviate from plans approved
23 under this section unless approved in writing by the commissioner
24 after full consultation with affected agencies.

25 (k) The commissioner may limit the review and approval process
26 under this section to 10 days where such action is immediately neces-
27 sary for the preservation of the public peace, health, safety or
28 general welfare, and is undertaken in concert with affected agencies.

29 (l) No action taken by the commissioner under this section is an

1 authorization for an operator to violate applicable laws or regulations.

2 (m) The commissioner may require an operator to post security
3 with respect to an operation, and to submit written reports.

4 (n) Operations which begin before the effective date of this Act
5 have one year to comply with this chapter.

6 Sec. 41.17.080. DEPLOYMENT OF BROADCAST CHEMICALS. The commis-
7 sioner of environmental conservation, in consultation with the commis-
8 sioner, shall formulate necessary plans and measures to insure that
9 application of broadcast chemicals and other substances foreign to the
10 Alaska forest ecosystem do not lead to results contrary to the objec-
11 tives and provisions of this chapter and other applicable laws and
12 regulations relating to renewable resources. Regulations adopted by
13 the commissioner of environmental conservation may include requirements
14 for advance testing, posting of security, written reports, and other
15 matters.

16 Sec. 41.17.090. CONVERSION OF FOREST LAND TO OTHER USES. An
17 intention to convert forest land to other uses after timber harvesting
18 must be stated in the notification submitted under sec. 70 of this
19 chapter. In that event, reforestation requirements adopted under this
20 chapter do not apply, except that conversion must be completed during
21 the time set by regulation for minimum reforestation of the land, and
22 other requirements for revegetation may be imposed to the extent
23 permitted by law. If the commissioner finds at any time that the
24 responsible party has failed to conform to the intent to convert as
25 stated in the notification, the commissioner shall revoke approval of
26 the conversion and require full compliance with reforestation require-
27 ments.

28 Sec. 41.17.100. INSPECTIONS, INVESTIGATIONS, AND ENFORCEMENT.
29 The commissioner may inspect and investigate forest land and activities

1 on it and may enter upon it in conjunction with any operations as
2 necessary to insure compliance with applicable regulations and require-
3 ments and to otherwise enforce the provisions of this chapter. Other
4 state agencies have this same authority to the extent necessary to
5 enforce their own laws and regulations on forest land. Those agencies
6 and the commissioner shall coordinate their actions under this section.

7 Sec. 41.17.110. PROHIBITIONS, PENALTIES, AND ENFORCEMENT PROCE-
8 DURES. (a) It is unlawful for any person to violate or permit a
9 violation of a provision of this chapter, a regulation adopted under
10 this chapter, or a term or condition of any approval granted under
11 secs. 70 - 90 of this chapter. A person who commits a violation is
12 liable for a civil fine to be assessed by the commissioner not to
13 exceed \$10,000.

14 (b) If an investigation discloses probable cause to believe a
15 violation has occurred, the commissioner shall serve upon the alleged
16 violator (the "respondent") written notice and a formal complaint
17 which describes the alleged violation and requires the respondent to
18 answer the charges at a hearing not more than 10 days thereafter. The
19 respondent will be granted a 10-day extension upon request. The
20 notice must also describe any damage which has occurred or might occur
21 as a result of the violation. At the hearing, the state must show by
22 a preponderance of the evidence that the respondent has caused or
23 permitted a violation described in (a) of this section.

24 (c) Within 10 days after the hearing, or upon nonappearance of
25 the respondent, the hearing officer shall enter a final order. The
26 order must be based on the evidence presented at the hearing, and must
27 be accompanied by a written opinion stating the reasons for the
28 decision. The commissioner shall immediately notify the respondent of
29 the order by registered mail. The order may include:

- 1 (1) a directive to stop the violation;
2 (2) the imposition of a civil fine under (a) of this sec-
3 tion, which is payable immediately;
4 (3) a directive to repair damages;
5 (4) a finding that the charges are wholly or partially un-
6 justified; or
7 (5) a combination of the above.

8 (d) In determining the amount of any civil fine imposed, the
9 following must be considered, as appropriate:

- 10 (1) the character and degree of injury to forest resources
11 and values;
12 (2) the degree of intent or negligence of the respondent in
13 causing or permitting the violation;
14 (3) the character and number of past violations caused or
15 permitted by the respondent; and
16 (4) if such information is available, the net economic
17 savings realized by the respondent through the violation described in
18 (a) of this section.

19 (e) If the commissioner finds that a violation described in (a)
20 of this section has occurred and that continuation of the violation or
21 failure to repair damage would likely result in irreversible or irre-
22 trievable damage to the forest resources or values affected, and it
23 would be prejudicial to the welfare of the state to delay action
24 pending a hearing, the commissioner may, without prior hearing, issue
25 a temporary order in addition to the documents required by (b) of this
26 section requiring the respondent to stop the violation or repair
27 damage or both. The order remains in effect for 21 days unless a
28 final order is issued earlier. Proceeding in conjunction with the
29 alleged violation must otherwise be the same.

1 (f) If a person fails to comply with an order issued under (c)
2 or (e) of this section, the attorney general, at the request of the
3 commissioner, may seek an injunction suspending all or part of the
4 operations being conducted by the respondent until he or she complies
5 with the order. If the order directs the respondent to repair damage,
6 the commissioner may proceed with department staff or contractors to
7 repair the damage, and the timber owner, forest landowner, and operator
8 are jointly and severally liable for the cost of the repair after
9 delivery by the commissioner of an itemized statement of expenses
10 incurred. Those expenses constitute a general lien, arising at the
11 time the order is issued, upon the real and personal property of the
12 operator, timber owner, and forest landowner within the state. A lien
13 arising under this subsection is prior and paramount to all other
14 liens and encumbrances except governmental tax liens.

15 (g) All orders issued under this section are enforceable by
16 injunction, attachment, garnishment, or other appropriate remedy.

17 (h) Unless otherwise specified, proceedings under this section
18 are not subject to the Administrative Procedure Act (AS 44.62). A
19 hearing under this section must be held before a hearing officer,
20 appointed by the attorney general from among members of the Alaska Bar
21 Association who are knowledgeable and experienced in the subject
22 matter. A person who has assisted in the preparation of the state's
23 case or who is a state employee is ineligible. Hearings are not
24 limited by common law, statutory, or judicial rules of evidence;
25 however, the hearing officer may admit only that evidence which appears
26 to him to be reliable and trustworthy. All hearings must be open to
27 the public. Written or oral testimony may be submitted. A party to a
28 hearing may make written or oral argument, secure the issuance of a
29 subpoena under AS 44.62.430, offer testimony or other evidence, and

1 cross-examine witnesses. The hearing officer shall endeavor, in
2 conducting any hearing, to insure that the respondent understands the
3 proceedings and that the facts supporting the position of each party
4 have been adequately presented. Hearings shall be held as close as
5 practicable to the location of the alleged violation. Testimony given
6 at the hearing must be recorded.

7 (i) If the respondent notifies the commissioner within five days
8 before the hearing provided for in (h) of this section, the following
9 rules and procedures apply to the hearing:

10 (1) the hearing will be a nonadversary proceeding, with the
11 hearing officer fully and impartially representing the interests of
12 the state and the respondent;

13 (2) the hearing officer will thoroughly investigate the
14 facts and circumstances relating to the alleged violation, including
15 taking testimony from appropriate persons, collecting and examining
16 documents and other evidence, and performing other actions consistent
17 with due process of law;

18 (3) issue a decision in accordance with the applicable
19 procedures of (h) of this section.

20 (j) For purposes of this section, "damage" includes any unsatis-
21 factory condition resulting from an alleged violation, and an order to
22 "repair damage" may direct correction of any unsatisfactory condition.

23 Sec. 41.17.120. APPEALS AND JUDICIAL REVIEW. (a) An administra-
24 tive action of the department under this chapter, except actions under
25 sec. 110 and except for adoption of regulations, may be appealed to
26 the commissioner within 30 days after it is taken. The commissioner
27 shall hold a hearing, at which all substantial issues shall be con-
28 sidered, within 15 days after an appeal is filed. Within 10 days
29 after conclusion of the hearing thereafter, the commissioner shall

1 issue a written decision based upon the evidence, which must be pro-
2 vided to the appellant. The commissioner may delegate his duties, in
3 whole or in part, under this subsection to a hearing officer.

4 (b) A final decision under (a) of this section or a final order
5 under sec. 110 of this chapter, may be appealed to the superior court
6 within 30 days after it is issued. Judicial review must be as provided
7 in AS 44.62.560 and 44.62.570.

8 (c) A temporary order issued under sec. 110 of this chapter may
9 be immediately appealed to the superior court as to its propriety.

10 Sec. 41.17.130. CIVIL ACTION. Any aggrieved person may commence
11 a civil action on his or her own behalf against the commissioner where
12 it is alleged that the commissioner (or his delegate) has failed to
13 perform a duty or has committed an abuse of discretion under this
14 chapter. The superior court has jurisdiction to order the commissioner
15 to take necessary corrective action. No action may be commenced under
16 this section until the plaintiff has completed an appeal under sec.
17 120(a) of this chapter unless the plaintiff can demonstrate that a
18 condition of urgency exists or unless he is alleging a failure to
19 perform a duty. Nothing in this section restricts any right which a
20 person or class of persons may have under statute or common law to any
21 other relief against the commissioner.

22 Sec. 41.17.950. DEFINITIONS. In this chapter, unless the context
23 otherwise requires,

24 (1) "broadcast chemicals" includes pesticides, herbicides,
25 fungicides, fertilizers, poisons, and any other substances

26 (A) used for silvicultural management or related pur-
27 poses;

28 (B) not native to the ecosystem in which they are
29 being applied; and

1 (C) having a foreseeable adverse impact on the welfare
2 of renewable resources, as determined by the commissioner of
3 environmental conservation;

4 (2) "commissioner" means the commissioner of natural
5 resources;

6 (3) "department" means the Department of Natural Resources;

7 (4) "forest land" means land stocked or having been stocked
8 with forest trees of any size and not currently developed for non-
9 forest use, regardless of whether presently available or accessible
10 for commercial purposes, and includes any such land under state,
11 municipal, or private ownership;

12 (5) "forest landowner" means a person who owns forest land;

13 (6) "multiple use" means

14 (A) the management of all the various resources of
15 forest land so that they are used in the combination that will
16 best meet the needs of the citizens of Alaska, making the most
17 judicious use of the land for some or all of these resources or
18 related values, benefits, and services over areas large enough to
19 provide sufficient latitude for periodic adjustments in use to
20 conform to changing needs and conditions;

21 (B) that some land will be used for less than all of
22 the resources; and

23 (C) harmonious and coordinated management of the
24 various resources, each with the other, without significant
25 impairment of the productivity of the land and water, with con-
26 sideration being given to the relative values of the various
27 resources, and not necessarily the combination of uses that will
28 give the greatest dollar return or the greatest unit output;

29 (7) "operations" means timber harvesting or activities

1 associated with timber harvesting or forest development unless exempted
2 under sec. 30 of this chapter;

3 (8) "operator" means a person who is engaged in timber
4 harvesting or activities associated with timber harvesting or forest
5 development himself, or who contracts with others to conduct operations
6 on his behalf, except a person who is engaged in an operation as
7 employee with wages or piecework as his sole compensation;

8 (9) "person" includes a joint venture as well as the
9 entities set out in AS 01.10.060(7);

10 (10) "silviculture" means the art of producing and tending
11 a forest, the application of the knowledge of silvics in the treatment
12 of a forest, and the theory and practice of controlling and managing
13 forest establishment, composition, and growth;

14 (11) "sustained yield" means the achievement and maintenance
15 in perpetuity of a high level annual or regular periodic output of the
16 various renewable resources of forest land and water without signifi-
17 cant impairment of the productivity of the land and water, but does
18 not require that timber be harvested in a non-declining yield basis
19 over a rotation period;

20 (12) "timber owner" means a person who owns timber on
21 forest land or who has the rights to timber, but does not own the land
22 itself; and

23 (13) "significant impairment of the productivity of the
24 land and water" means any activity which may foreseeably result in
25 prolonged or substantial damage to renewable resources or prolonged or
26 substantial reduction of the continuing capability of the land or
27 water to produce renewable resources at their natural or historic
28 levels.

29 * Sec. 2. AS 39.25.120 is amended by adding a new paragraph to read:



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(10) the state forester, in the Department of Natural Resources.

* Sec. 3. This Act takes effect January 1, 1979. However, the commissioner is not precluded from undertaking preparatory activities in the interim.

To John

Date _____ Time _____

WHILE YOU WERE OUT

M Loren Donke

of _____

Phone (3183) or 3460

TELEPHONED	<input checked="" type="checkbox"/>	PLEASE CALL	<input checked="" type="checkbox"/>
CALLED TO SEE YOU	<input type="checkbox"/>	WILL CALL AGAIN	<input type="checkbox"/>
WANTS TO SEE YOU	<input type="checkbox"/>	RUSH	<input type="checkbox"/>

RETURNED YOUR CALL

Message Re SB 59

Operator _____

Alaska Forest Practices Act

The revised bill accompanying this sectional analysis makes substantial changes in the administrative review and fair hearing provisions of SB 59. Other sections of SB 59 remain unaffected. The sole objective of the amendments is to create a mechanism which will operate as a check and balance to the broad authority vested in the Commissioner of the Department of Natural Resources by the administration's version of the forest practices bill.

The governor's version delegates extensive regulatory authority over all commercial forest land to the commissioner. These proposed changes will in no way diminish the department's rule-making functions. However, they will deny the agency the discretion to act as the arbiter of first resort when conflicts arise between the department and those regulated. The likelihood for the abuse of administrative power arises because the department is empowered, subject only to the standards in SB 59, to create an extensive body of law, to investigate and prosecute suspected violators, and to adjudicate disputes. This mixing of legislative, prosecutorial, and judicial roles in one agency creates an unnecessary risk that agency bias will be transmitted into administrative adjudications and that potential violators will not receive a fair hearing before an impartial tribunal or hearing officer.

By contrast, the proposed substitute adopts the philosophy of explicit and complete separation of powers. The ^{agency} may not, as in SB 59, act as the trier of fact and law in its own case. To accomplish this end, an independent and quasi-judicial tribunal would be established to hear and decide all departmental complaints. This mechanism is not without precedent and is conceptually akin to the independent administrative review provided under the 1973 Forest Practices Act of California. At the federal level, this form of external separation of powers was utilized early on by the drafters of the Taft-Hartley Act, where two separate authorities were created, one for investigating and prosecuting, and the other for judging.

Hearing Officers

SB 59: Hearing officers are selected from those qualified employees of the state. The bill nowhere defines or limits the class of hearing officers. Conceivably, an officer could be designated by the commissioner from among the employees of the Department of Natural Resources.

Revision: Hearing officers would be selected by the governor from outside of the department and must be attorneys and Alaska residents. Presumably, hearing officers would be ^{appointed} as under the provisions of AS 44.62, upon recommendations submitted by the attorney general.

Forest Practices Tribunal

SB 59: Most of the jurisdiction given to the commissioner under the administration version is transferred to the tribunal or hearing officer by the revision.

Revision: It is anticipated that there may be insufficient enforcement activity requiring hearings to justify a full-time tribunal and staff, at least in the initial years after enactment. Therefore, the revision provides that hearing officer appointments may be made on a case-by-case basis.

Administrative due process rights of the alleged violator are expanded: Besides the procedural rights listed in sections 110 and 120 of SB 59, the accused is given the right to a speedy hearing, a hearing in the judicial district where the alleged violation occurred, at least 7 days notice of the hearing, and the right to a 14 day continuance of the hearing date.

Summary action by the Commissioner

As in SB 59, the commissioner would retain the power to issue temporary orders, without notice or hearing to the accused. Unlike the current bill, the revision would limit the absolute duration of these temporary orders to 21 days. Within three weeks, the commissioner would be required to hold a hearing on the topic covered by the temporary order. Under both versions, the alleged violator would retain the right to an immediate appeal to the superior court from the issuance of a temporary order.

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A BILL

For an Act entitled: "An Act relating to forest resources and practices;
and providing for an effective date."

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

* Section 1. AS 41 is amended by adding a new chapter to read:

CHAPTER 17. FOREST RESOURCES AND PRACTICES.

ARTICLE I. ADMINISTRATION

Sec. 41.17.010. FINDINGS AND PURPOSE. (a) The legislature

finds that

(1) the forest land and water resources of Alaska are among
the most valuable natural resources of the state;

(2) healthy industries and businesses derived from the
products, benefits, and services obtained from forest land and water
resources are of prime importance to the state;

(3) the public interest demands that productive state,
municipal, and private forest land be administered consistent with
sound and refined principles of natural resource management;

(4) the forest land and water resources furnish timber and
numerous wood products derived from timber, fish and wildlife, tourism,
outdoor recreation and aesthetic enjoyment, water, minerals, soil,
air, diverse lifestyle opportunities, general health and welfare, and
a multitude of other valuable products, benefits, and services;

(5) it is the policy of the state to formulate prudent and
responsible forest management measures calculated to serve the needs
of all Alaskans for the many products, benefits, and services obtained
from forest land and water resources;

1 (6) imprudent forest management would preclude receiving
2 all of the products, benefits, and services obtained from forest land
3 and water resources, upon which the economy and welfare of Alaska
4 depend and will continue to depend in the future; and

5 (7) failure to implement wise forest management measures
6 designed to guarantee perpetual supplies of renewable resources and to
7 make available nonrenewable resources in a compatible manner would be
8 a grave disservice to the people of Alaska.

9 (b) It is the purpose of this chapter to insure that timber
10 harvesting will continue to contribute substantially to Alaska's
11 economy; to protect the longevity of Alaska's forest products industry
12 by implementing effective forest management practices and maintaining
13 over the long term Alaska's supply of timber; to prevent significant
14 impairment of the ability of the land and water to produce renewable
15 resources; and to create and maintain a system for the administration,
16 regulation, and use of productive state, municipal, and private forest
17 land so as to guarantee continuous and perpetual supplies of the
18 various products, benefits, and services obtained from it.

19 Sec. 41.17.030 ADMINISTRATION. (a) The commissioner shall
20 administer this chapter, except where otherwise specified. The com-
21 missioner may delegate his authority under this chapter to subordinate
22 employees or units within the department to the extent he considers
23 advisable.

24 (b) The commissioner may designate and operate experimental
25 forests on land owned by the state, except that those forests must be
26 limited to the size necessary to conduct the requisite experiments.

27 (c) The commissioner may undertake cooperative forestry programs
28 and extension service programs.

29 (d) The commissioner may establish and maintain forest tree

30 → Sec. 41.17.020. PROHIBITIONS. It is unlawful for any person
to violate a provision of this chapter, a regulation adopted under
this chapter, or a term or condition of any approval granted by
the commissioner under secs. 90 - 110 of this chapter.

1 seedling nurseries and greenhouses and similar facilities to provide
2 planting stock for reforestation purposes. He may make forest tree
3 seedlings available to organizations, agencies, and individuals for
4 reforestation and afforestation projects.

5 (e) The commissioner may perform any other acts reasonably
6 necessary to carry out his duties under this chapter.

7 Sec. 41.17.040 EXEMPTIONS. (a) Noncommercial forest land
8 under municipal or private ownership is not subject to the provisions
9 of this chapter.

10 (b) Any small parcel or tract of forest land is exempt from the
11 provisions of this chapter if the commissioner determines that the
12 parcel or tract is:

- 13 (1) 160 acres or less in size;
14 (2) owned entirely by one person or group of persons;
15 (3) not to be utilized as part of a timber harvesting or
16 forest development plan or agreement of any kind involving other
17 parcels or tracts of forest land; and

18 (4) not appurtenant to other parcels or tracts of forest
19 land either owned by the same person or groups of persons or in which
20 that person or group of persons has any property interest.

21 (c) As used in this section only, "person" includes the state or
22 a municipality.

23 (d) The commissioner may adopt regulations, in accordance with
24 the Administrative Procedure Act (AS 44.62), necessary to implement
25 this section.

26 Sec. 41.17.050 REGULATORY AND ADMINISTRATIVE STANDARDS. (a)
27 All regulations, administrative actions, and other activities and
28 duties undertaken pursuant to this chapter must be in full accordance
29 with the standards set out in this section.

1 (b) With respect to state, municipal, and private forest land,
2 the following standards apply:

3 (1) timber harvesting is not permitted in an area unless
4 relevant data and information indicate that there will be no reforesta-
5 tion problems leading to the inability of that area to produce a
6 sustained yield of merchantable timber;

7 (2) to the extent practicable, all relevant data and infor-
8 mation shall be used in making decisions relative to the adminis-
9 tration of forest land;

10 (3) where consistent with the other provisions of this
11 section, administration of forest land with respect to production
12 levels of timber and timber products shall allow reasonable consi-
13 deration for changes in marketing conditions;

14 (4) there shall be no significant impairment of the produc-
15 tivity of the land and water with respect to renewable resources; and

16 (5) scenic and aesthetic quality shall be maintained in or
17 adjacent to areas of significant importance to the tourism and recrea-
18 tion industry.

19 (c) With respect to state and municipal forest land only, the
20 following standards also apply:

21 (1) forest land shall be administered for the multiple use
22 of the renewable and nonrenewable resources and for the sustained
23 yield of the renewable resources of the land in the manner which best
24 provides the present needs and preserves the future options of the
25 people of Alaska;

26 (2) any system of allocating key values to particular units
27 within a contiguous area of land shall reflect in reasonable propor-
28 tion the various resources and values present in that area;

29 (3) determinations of multiple use patterns to be established

1 within any area shall begin with the assumption that all resources and
2 values are of equal priority; and

3 (4) to the extent its capacity permits, forest land shall
4 be administered so as to provide for the continuation of businesses,
5 industries, activities, and lifestyles which are dependent upon or
6 derived from forest land and water resources.

7 Sec. 41.17.060. ADMINISTRATIVE PLAN AND REPORT. (a) In addition
8 to the requirements of sec. 50 of this chapter, the commissioner shall
9 develop and continually maintain a plan for the administration of this
10 chapter insuring that the sustained yield of merchantable high-quality
11 timber from forest land subject to this chapter will be maintained or
12 increased, and that forest land will be protected from depletion or
13 degradation caused by overharvesting, unsatisfactory forest management,
14 failure to recognize areas incapable of prompt reforestation or adequate
15 stocking, or other factors. The commissioner shall conduct periodic
16 inventories of timber on forest land subject to this chapter to assist
17 in meeting the requirements of this section.

18 (b) On June 30, 1979, and at two-year intervals after that date,
19 the commissioner shall submit a detailed report to the legislature
20 reviewing the administration of this chapter over the preceding two
21 years, demonstrating compliance with (a) of this section, and describing
22 how the plan will affect the long-term stability of the timber industry.

23 Sec. 41.17.070. REGULATIONS. (a) The commissioner may adopt
24 regulations in accordance with the Administrative Procedure Act (AS
25 44.62) governing operations on forest land with respect to the follow-
26 ing:

27 (1) timber harvesting and management and directly related
28 activities;

29 (2) disposal of slash and debris;

- 1 (3) reforestation and stocking;
- 2 (4) precommercial thinning and similar activities;
- 3 (5) control of soil erosion and waste;
- 4 (6) logging road and bridge and trail construction and
- 5 maintenance;
- 6 (7) fire prevention and control;
- 7 (8) fertilization;
- 8 (9) salvage of trees and brush control;
- 9 (10) protection of forest land from damage by insects,
- 10 pests, noxious weeds, and diseases;
- 11 (11) flood control;
- 12 (12) protection of scenic, recreational, aesthetic, and
- 13 other natural values, consistent with sec. 55(4)(5) of this chapter;
- 14 (13) general administrative requirements and procedures.

15 (b) The commissioner shall consult with interested state and
16 federal agencies, private individuals, and organizations in conjunc-
17 tion with the adoption of regulations under this section. The commis-
18 sioner may establish regions, districts, or other subdivisions of
19 forest land within the state in which different regulations apply in
20 order to reflect varying conditions throughout the state, or for other
21 purposes.

22 (c) The authority vested in the commissioner by (a) of this
23 section may not be employed by the commissioner in a manner that would
24 result in duplicating or pre-empting the statutory authority of other
25 state agencies to adopt regulations governing resources, values, or
26 activities on forest land.

27 (d) An operator may apply through the commissioner or his
28 designee for any permit required by any other state agency to operate
29 on forest land. The commissioner shall transmit any permit application

1 to the appropriate state agency, and shall notify the operator of the
2 action taken by that agency on the permit application.

3 (e) The commissioner shall adopt only those regulations which
4 are necessary to accomplish the purposes of this chapter. The commis-
5 sioner shall avoid adoption of regulations which merely increase
6 operating costs and do not yield significant benefits.

7 Sec. 41.17.050. REVIEW AND APPROVAL OF OPERATIONS. (a) Opera-
8 tions on forest land shall be reviewed and approved under this section
9 for consistency with the policies and provisions of this chapter and
10 regulations adopted under sec. 70(a) of this chapter. However, the
11 commissioner may adopt regulations under the Administrative Procedure
12 Act (AS 44.62) exempting certain operations from review and approval
13 under this section if they are of minimal concern with respect to the
14 policies and provisions of this chapter.

15 (b) Before operating on forest land, the operator shall first
16 give formal notification to the commissioner. Notification must
17 consist of filing a notification certificate together with a United
18 States Geological Survey map of the largest available scale showing
19 the locations of all proposed activities. The operator shall also
20 submit a brief description of the proposed operation on a form provided
21 by the commissioner.

22 (c) Within five days after receipt of formal notification, the
23 commissioner shall distribute copies of the certificate, map, and
24 description to all state agencies whose areas of responsibility could
25 be significantly affected by the proposed operation for their review.
26 Those agencies shall complete their review and submit their recommen-
27 dations to the commissioner within 25 days after receipt of that
28 material. The commissioner may extend the review period for up to an
29 additional 20 days upon a showing by an affected state agency that the

1 proposed operation is exceedingly complex and not susceptible to
2 adequate review within 25 days.

3 (d) Upon expiration of the review period, the commissioner
4 shall, within 15 days:

5 (1) grant unconditional approval of the proposed operation,
6 if appropriate;

7 (2) grant conditional approval, including the terms and
8 conditions he considers necessary to insure consistency with the poli-
9 cies and provisions of this chapter and regulations adopted under this
10 chapter, based on his or other agencies' recommendations; or

11 (3) upon his own recommendation or that of another agency,
12 require the submission of additional plans or descriptions from the
13 operator for part or all of the proposed operation, but only to the
14 extent necessary for proper assessment of the operation.

15 (e) If action is taken under (d)(3) of this section, the com-
16 missioner and affected agencies requesting additional plans or descrip-
17 tions have an additional 20-day review-and-recommendation period, at
18 which time the commissioner shall take action under (d)(1) or (d)(2)
19 of this section. The commissioner shall disapprove a proposed opera-
20 tion only if he considers it impossible to take action under (d)(2) of
21 this section.

22 (f) If the commissioner takes no action under (d) or (e) of this
23 section within the time specified in this section, he is presumed to
24 have taken action under (d)(1) of this section.

25 (g) At the time formal notification is given by the operator,
26 the operator shall provide copies of documents submitted to the
27 commissioner to the timber owner or forest landowner or both, if
28 different from the operator. Upon receipt of any formal notification,
29 the commissioner shall publish a brief description of the proposed

1 action in one newspaper of general circulation within the state and
2 invite and consider public comment during the statutory review-and-
3 recommendation period.

4 (h) If recommendations of another state agency submitted during
5 the statutory review-and-recommendation period are not accepted by the
6 commissioner, he shall provide the agency with a written statement of
7 the reasons for the rejection.

8 (i) In reviewing proposed operations under this section, the
9 commissioner and affected state agencies shall consider the practi-
10 calities and economic constraints affecting the operator. In addition,
11 the commissioner shall insure that the information and paperwork
12 required of the operator under this section shall be kept to the
13 minimum necessary to accomplish the purposes of his chapter.

14 (j) The operator may not materially deviate from plans approved
15 or terms and conditions imposed by the commissioner under this section
16 without prior written approval from the commissioner, who shall grant
17 that approval only after full consultation with other affected state
18 agencies.

19 (k) No action taken by the commissioner under (d) of this section
20 is an authorization to violate applicable laws or regulations.

21 (l) The commissioner may require any operator to post a perfor-
22 mance bond in an amount he considers advisable to insure that all or
23 part of the proposed operations or terms and conditions imposed by the
24 commissioner will be carried out and that damage to resources is not
25 incurred, or, if incurred, will be remedied. The commissioner may
26 require a written report from the operator at the conclusion of
27 operations.

28 Sec. 41.17.010. DEPLOYMENT OF CHEMICALS. (a) Herbicides,
29 pesticides, fungicides, rodenticides, insecticides, fertilizers, and

1 other similar chemicals may not be deployed on forest land unless (1)
2 the deployment is in accordance with applicable state laws and regula-
3 tions, and (2) prior written approval from the commissioner is obtained.

4 (b) The commissioner may not grant approval under (a) of this
5 section unless he, in consultation with affected agencies, finds that
6 (1) deployment is a matter of strict necessity or is not likely to
7 result in significant adverse consequences, and (2) that the deployment
8 would be consistent with the policies and provisions of this chapter.
9 The commissioner may impose conditions on deployment in granting
10 written approval, and shall require the posting of a performance bond
11 by the operator before the deployment of chemicals. Each individual
12 usage of chemicals must be specifically approved by the commissioner.
13 The commissioner shall require a full report from the operator upon
14 completion of chemical deployment. No operator may materially deviate
15 from operations approved by the commissioner without the prior written
16 consent of the commissioner.

17 Sec. 41.17.100. CONVERSION OF FOREST LAND TO OTHER USES. A
18 person owning forest land which he intends to convert to other uses
19 following timber harvesting shall state that intention to the commis-
20 sioner in conjunction with the formal notification. Reforestation
21 requirements applicable under regulations adopted under this chapter
22 do not apply if the land is in fact so converted, except that the
23 conversion must be completed during the time set by regulation for
24 minimum reforestation of the land. If the commissioner finds at any
25 time that the forest landowner or other responsible party has failed
26 to conform to the intent to convert as stated at the time of notifi-
27 cation, the commissioner shall revoke approval of the operation and
28 require full compliance with reforestation regulations and requirements.

29 Sec. 41.17.110. INSPECTIONS, INVESTIGATIONS, AND ENFORCEMENT.

The commissioner or his designee may inspect and investigate forest land and enter upon it before, during, and after operations as necessary to insure compliance with applicable regulations and requirements and to otherwise enforce the provisions of this chapter. Other state agencies have this same authority to the extent necessary to enforce their own laws and regulations on forest land.

Sec. 41.17.120. ENFORCEMENT PROCEDURES. (a) If an investigation discloses that there is reasonable cause to believe a violation has occurred, the commissioner, in the event there is no permanent staff for the tribunal, shall issue and serve upon all parties, by timely means, written notice of a hearing. The notice shall advise all parties of the subject of the hearing, the time and place where it will be held, and the rights of the parties, as named in secs. 170, 200 - 220 of this chapter. In addition, the commissioner shall issue and serve upon the respondent a written complaint which specifies the nature and extent of the alleged violation and any damage which has occurred or will foreseeably occur as a direct consequence of the violation. Notices and complaints will also be furnished to the tribunal or hearing officer.

(b) The notice and complaint shall issue not less than seven days before the hearing.

(c) The state shall have the burden of proving its case by establishing substantial evidence of the violation on the hearing record.

(d) In the event there is a permanent staff for the tribunal, the commissioner shall file hearing notices and complaints with the tribunal, which shall then serve all parties to the hearing.

Sec. 41.17.130. TEMPORARY ORDERS. (a) If the commissioner finds, after investigation, that a violation of this chapter has occurred and determines that continuation of the violation or failure to repair damage would likely result in irreversible or irreparable

damage to the forest resources or values affected, and it appears to be prejudicial to the interests of the people of the state to delay action until opportunity for a hearing can be provided, the commissioner may issue a temporary order in addition to the notice of violation and complaint required in sec. 120 of this chapter. The temporary order remains in effect, subject to the terms of sec. 200 of this chapter, until a final order is issued by the tribunal.

(b) The temporary order may direct the respondent to stop the violation or to repair the damage, or both.

(c) If a person fails to comply with an order issued under (a) of this section, the attorney general, at the request of the commissioner, may seek, pending a final order by the tribunal, an injunction in the superior court. If a person fails to comply with an order issued under (a) of this section directing a person to repair damages, the commissioner may also proceed either with department staff or by contract to repair the damage. The commissioner shall keep a complete account of direct expenditures incurred, and upon completion of the work shall prepare an itemized statement of them and shall deliver a copy to the operator, timber owner, and forest landowner, who are jointly and severally liable for those expenditures. Those expenditures constitute a general lien upon the real and personal property of the operator, timber owner, and forest landowner within the state.

(d) The commissioner may issue a temporary order without earlier notice and affording respondent a hearing. However, a temporary order shall remain in effect the lesser of 21 days or until the date of a final order made by a tribunal, except as extended by the excluded period in sec. 200 (b) of this chapter. Whenever possible, the commissioner shall notify the respondent of the temporary order and informally confer with him to resolve the alleged violation at the earliest possible date. The commissioner may adopt regulations to administer this section.

Sec. 41.17.140. CIVIL ACTION. Any person may commence a civil action on his own behalf against the commissioner upon a showing of injury to himself and others similarly situated where a failure of the commissioner to perform any act or duty under this chapter which is not discretionary with the commissioner is alleged. The superior court has jurisdiction to order the commissioner to perform the act or duty. No action may be commenced under this section sooner than 30 days after the plaintiff has given notice of the proposed action to the commissioner, unless the plaintiff can demonstrate that an emergency exists. Nothing in this section restricts any right which a person or class of persons may have under statute or common law to any other relief against the commissioner.

ARTICLE 2. FOREST PRACTICES TRIBUNAL.

Sec. 41.17.150. ESTABLISHMENT OF FOREST PRACTICES TRIBUNAL. There is established the Forest Practices Tribunal as an independent and quasi-judicial agency of the state.

Sec. 41.17.160. JURISDICTION. (a) The tribunal has original jurisdiction to hear all complaints issued under sec. 120 of this chapter.

(b) The tribunal has jurisdiction as follows:

(1) to impose a civil fine not to exceed \$7,500, and an additional civil fine not to exceed \$1,000 for each day a violation of this chapter continues;

(2) to issue subpoenas and subpoenas duces tecum in accordance with the procedures in AS 44.62.430;

(3) to respond to contemptuous behavior by any party or witness to a hearing in the manner provided in AS 44.62.590;

(4) to enjoin violations of this chapter and the regulation promulgated under its authority, to attach and garnish property, and to impose such equitable remedies as may necessary in the interests of justice; and

(5) to assume continuing jurisdiction over a matter and to supervise compliance with its orders.

Sec. 41.17.170. WHERE THE HEARINGS ARE TO BE HELD. (a) Hearings shall be held in the judicial district where the alleged violation was committed or in Juneau, upon agreement of all the parties.

the capital

(b) The tribunal may change the place of hearing to promote convenience to the parties and witnesses, to advance the ends of justice, and to prevent unnecessary expense and hardship to the defendant.
respondent

Sec. 41.17.180. HEARING OFFICERS. (a) Hearings under secs. 150 - 220 of this chapter shall be held before a hearing officer appointed by the governor. ^{of hearing officers} ~~The~~ Appointments to the tribunal shall be made either on a case-by-case or permanent basis, except that a person who has participated in the investigation or preparation of the state's case may not serve as a hearing officer or otherwise participate in the hearing. The hearing officer may only be removed for misfeasance or malfeasance in the performance of official duties.

(b) The hearing officer ^{may} must be an attorney and resident of the State of Alaska and not be an employee of the department.

(c) Hearing officer is a partially exempt position as provided in AS 39.25.120.

Sec. 41.17.190. ENFORCEMENT PROCEDURES. In the event the tribunal has a permanent staff, it shall proceed under sec. 120 of this chapter. In the event the tribunal has no permanent staff, the commissioner, as provided in sec. 120 of this chapter, shall serve notices and complaints upon the parties.

Sec. 41.17.200. SPEEDY HEARING. (a) A respondent shall receive a hearing:

(1) within 30 days after mailing of a written notice and complaint; or

(2) within 21 days after the imposition of a temporary order by the commissioner.

(b) The respondent may request one extension of the hearing date not to exceed 14 days.

(c) The time for hearing shall begin running without demand by the respondent. If the hearing does not begin within the period named in (a) of this section, ~~or~~ as extended in (b) of this section, the tribunal, upon request by the respondent, shall dismiss the complaint with prejudice. Such discharge bars all further administrative review on the transaction from which the complaint arose.

Sec. 41.17.210. HEARINGS. (a) Hearings under this chapter are not subject to the Administrative Procedure Act (AS 44.62), except as otherwise named in this section. Until a permanent staff is appointed for the tribunal, the Department of Law shall establish such regulations as are consistent with this section to insure

the expeditious and impartial handling of complaints. When the tribunal acquires a permanent staff, it may establish its own rules of conduct consistent with the simplified procedures in this section.

(b)

All hearings shall be open to the public, and any person may submit written statements to the hearing officer in connection with the subject of the hearing. In addition, the hearing officer may permit any person to offer oral testimony. All issues pertaining to the alleged violation shall be examined and considered at the hearing. Any party to a hearing may be represented by counsel, may make oral or written argument, secure the issuance of a subpoena under AS 44.62.430, offer testimony or other evidence, cross-examine witnesses, or take any combination of these actions. All testimony given at the hearing shall be recorded stenographically or electronically.

(c)

Hearings conducted under this section are not limited by common law or statutory rules of evidence; however, the hearing officer may admit only that evidence which appears to him to be reliable and trustworthy. Hearsay evidence which is inadmissible in a judicial proceeding may not be admitted in a hearing under this section unless:

(1) the commissioner provides the ^{respondent} ~~person-charged~~ with the name and address of the declarant and the substance of his accusation or testimony along with the service of the complaint or, if the evidence is not known at that time, then at a reasonable time before the hearing; and

(2) the hearsay evidence is of a type normally relied upon by reasonable men in the conduct of serious business affairs.

(d) Within 10 days after the close of the hearing, or upon the non-appearance of the respondent on the day set for the hearing, the hearing officer shall issue and enter a final order. The order shall be based on the evidence presented at the hearing. In all matters the hearing officer shall file and publish a written opinion, stating the findings of fact and law which led to the decision. The tribunal shall immediately notify the respondent of the order by registered mail.

(e) In determining the amount of any civil fine imposed, the following factors shall be considered, as appropriate:

(1) the character and degree of injury to forest resources and values;

(2) the degree of intent, negligence, or inattention of the violator in causing or permitting the violation;

(3) the character and number of past violations caused or permitted by the violator; and

(4) to the extent such information is available, the net economic savings realized by the violator through noncompliance with (a) of this section.

Sec. 41.17.220. APPEALS AND JUDICIAL REVIEW. (a) An action of the commissioner taken under this chapter may be appealed to the tribunal within 30 days after the action is taken.

(b) A final order issued by a tribunal may be appealed to the superior court within 30 days after entry of the order. Appeals may be had in the manner provided in AS 44.62.560 and AS 44.62.570.

(c) A temporary order issued by the commissioner under sec. 130 of this chapter may be appealed immediately to the superior court.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 41.17.950. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "commercial forest land" means forest land producing or capable of producing crops of industrial wood and not withdrawn from timber utilization; areas qualifying as commercial forest land are those which have the capability of producing in excess of 20 cubic feet per acre per year of industrial wood under management;

(2) "commissioner" means the commissioner of natural resources;

(3) "cooperative forestry programs" and "extension service programs" mean programs that will provide technical assistance designed to further the policies and provisions of this chapter to persons engaged in timber harvesting or activities associated with timber harvesting or forest development and to other individuals, organizations, and agencies concerned with forest resource management;

(4) "department" means the Department of Natural Resources;

(5) "forest land" means land at least 16.7 per cent stocked by forest trees of any size, or formerly having such tree cover and not currently developed for nonforest use, regardless of whether presently available or accessible for commercial purposes, and includes any such land under state, municipal, or private ownership;

(6) "forest landowner" means a person who owns forest land;

(7) "multiple use" means (A) the management of all the various resources of forest land so that they are used in the combination that will best meet the needs of the Alaskan people, making the most judicious use of the land for some or all of these resources or related values, benefits, and services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; (B) that some land will be used for less than all of the resources; and (C) harmonious and coordinated management of the various resources, each with the other, without significant impairment of the productivity of the land and water, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output;

(8) "noncommercial forest land" means unproductive forest land incapable of yielding crops of industrial wood because of adverse site conditions (capable of producing no more than 20 cubic feet per acre per year) and productive forest land withdrawn from commercial timber use through statute or administrative regulation;

(9) "notification certificate" means a document prescribed by the commissioner and constituting an intent to operate on forest land, which must be signed and sworn to by the operator;

(10) "operations" means timber harvesting or activities associated with timber harvesting or forest development;

(11) "person" includes a joint venture as well as the entities set out in AS 01.10.060(7);

(12) "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of forest land and water without significant impairment of the productivity of the land and water;

(13) "timber operator" or "operator" means a person who is engaged in timber harvesting or activities associated with timber harvesting or forest development himself, or who contracts with others to conduct such harvesting or activities or development on his behalf, except a person who is engaged in timber harvesting or associated

activities or forest development as an employee with wages as his sole compensation;

(14) "timber owner" means a person who owns timber on forest land or who has the rights to timber, but does not own the land itself;

(15) "tribunal" means Forest Practices Tribunal; and

(16) "without significant impairment of the productivity of the land and water" means that operations which may foreseeably result in prolonged or indeterminate damage to renewable resources or prolonged or indefinite reduction of the continuing capability of the land or water to produce renewable resources at their optimum level are prohibited.

* Sec. 2. This Act takes effect July 1, 1977.

AMENDMENTS TO WORK DRAFT 4-21-78
 for CS for Sponsor Substitute for SB 59
 Proposed by Koncor and Yak-Tat K'aaan, Inc.

Page	Line	Section		Amendment
2	1-2	§010(5)	delete	"under the leadership of the Department of Environmental Conservation"

Reason: The leadership of the Department of Environmental Conservation has been created by an Executive Order of the Governor. By placing it specifically in this Act, the legislature will foreclose a new Governor from changing that Executive Order.

3	11	§020(h)	delete	"may"
			substitute	"shall"
	14-19	§020(h)	delete	"the commissioner" on Line 14 and all of lines 15-19 and
			substitute	"the head of the designated lead state agency, if other than the commissioner, under the Federal Water Pollution Control Act to implement such regulations."

Reason: Same as for §010(5) above.

4	4-6	§020(k)(2)	delete	"if authorized by the Commissioner of environmental conservation"
			substitute	"in accordance with subsection (h) of this section"

Reason: Same as for §010(5) above.

Page	Line	Section		Amendment
4	9	§020(1)	add	"and under 040(f) of this Chapter" after (AS 44.62)

Reason: This merely coordinates two sections of the Act. 040(f) requires the Board of Forestry to review and comment on the proposed regulations which is an additional requirement to those in the Administrative Procedure Act.

7	2-3	§060(b)(2)	delete	"best management practices"
			substitute	"economical forest management practices"

Reason: Best management practices is a term of art used in the Federal Water Pollution Act and if used here will bring with it all future Federal Regulations developed under this phrase without the State being able to reanalyze the federal regulations.

7	5-6	§060(b)(3)	delete	"where not inconsistent with other provisions of this section,"
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Reason: This phrase makes marketing conditions and economic constraints secondary to environmentally sensitive areas and management practices when they should be at least equal.

7	7	§060(b)(3)	insert	"forest landowner, timber owner or" before "operator"
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Reason: The marketing conditions and economic constraints should include those on the forest landowner and timber owner, not just the operator.

Page	Line	Section		Amendment
9	8	§080 (a)	insert	"and 040(f) of this Chapter" after (AS 44.62)

Reason: This merely coordinates two sections of the Act. 040(f) requires the Board of Forestry to review and comment on the proposed regulations which is an additional requirement to those in the Administrative Procedure Act.

9	12	§080 (a) (2)	delete	"stocking"
9	12		insert	"and" before "prescribed burning"
9	13		delete	"thinning, and other silvicultural activities"

Reason: This section might be interpreted that the regulations may impose affirmative duties on the landowner such as to reforest or revegetate. If this is so, then the State should not however be able to require thinning for example. There is no reason for the State to be able to insist that a landowner spend money on operations when the landowner is willing to leave the land in a natural condition. Also stocking refers to the number of trees per acre and creates the same problem as the term "thinning". Also the phrase "other silvicultural activities" means everything without limit to the items listed and therefore should be deleted.

9	17	§080 (a) (6)	delete	
9	18	§080 (a) (7)	change	(7) to (6)

Reason: This phrase does not make sense unless it is intended to regulate the internal administrative requirements and procedures of private forest landowners, timber owners and operators. Section 020(1) allows the commissioner to develop the internal administrative requirements and procedures of the division of forestry.

9 19-21 §080 (a); (8) delete

Reason: This subsection allows the State to develop regulations about scenic, aesthetic or any other land use activity it may wish on private lands. If the purpose is to allow for regional variations within the State, then subsection 080(c) takes care of this problem.

10 8-11 §090 (a) delete

Reason: This subsection is unnecessary and extra to this section in general. It is essentially only a statement of existing law that operations subject to this Act must comply with it. On the other hand, if this subsection is left in, then insert "on municipal and state forest lands" after the "and" and before "approved" on Line 9. This will make clear that permit approval is not required on private forest lands. This ties into the proposed amendment for subsection 090(e) below.

11 4 §090 (e) insert "for state and municipal forest lands" after "shall" and before "as"

Reason: This will eliminate the requirement for advance approval under this Act for an operation on private forest lands. Private forest lands will still be subject to the regulations, advance notification, enforcement and other provisions of this Act, but will not have to obtain additional permits because of this Act. This will not change any provisions of existing statutes which require permits on private lands.

11 29 §090 (h) insert "for state and municipal forest lands" after "days" and before "shall"

Reason: This will eliminate the requirement to publish in the newspapers for operations on private lands.

Page	Line	Section		Amendment
12	3	§090 (h)	Add	"Recommendations from the public with respect to private forest lands may or may not be considered in the discretion of the commissioner."

Reason: As the bill is now written, this section will lead to litigation over whether recommendations from the public were considered. It will also lead to lawsuits over how much consideration is necessary to meet the requirements of Act. Meanwhile, operations will be stalled while the courts consider whether the commissioner considered every public recommendation no matter how silly. It will be like the litigation over environmental impact statements. At least private lands should be exempt from these costly delays of endless litigation.

12	17	§090 (m)	insert	"With respect to State and municipal forest lands" at the beginning of the sentence.
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Reason: Security bonds are an added cost which should not be imposed on private landowners. If an operation violates the regulations, enforcement fines or court injunctions should be enough.

12	20	§090 (o)	insert	a new subsection (o) as follows: "The times requirements of this section and the presumption of unconditional approval for failure to act within the time requirements of this section shall apply to processing all permits required by any state agency under any statute or regulation for any operation on private forest land."
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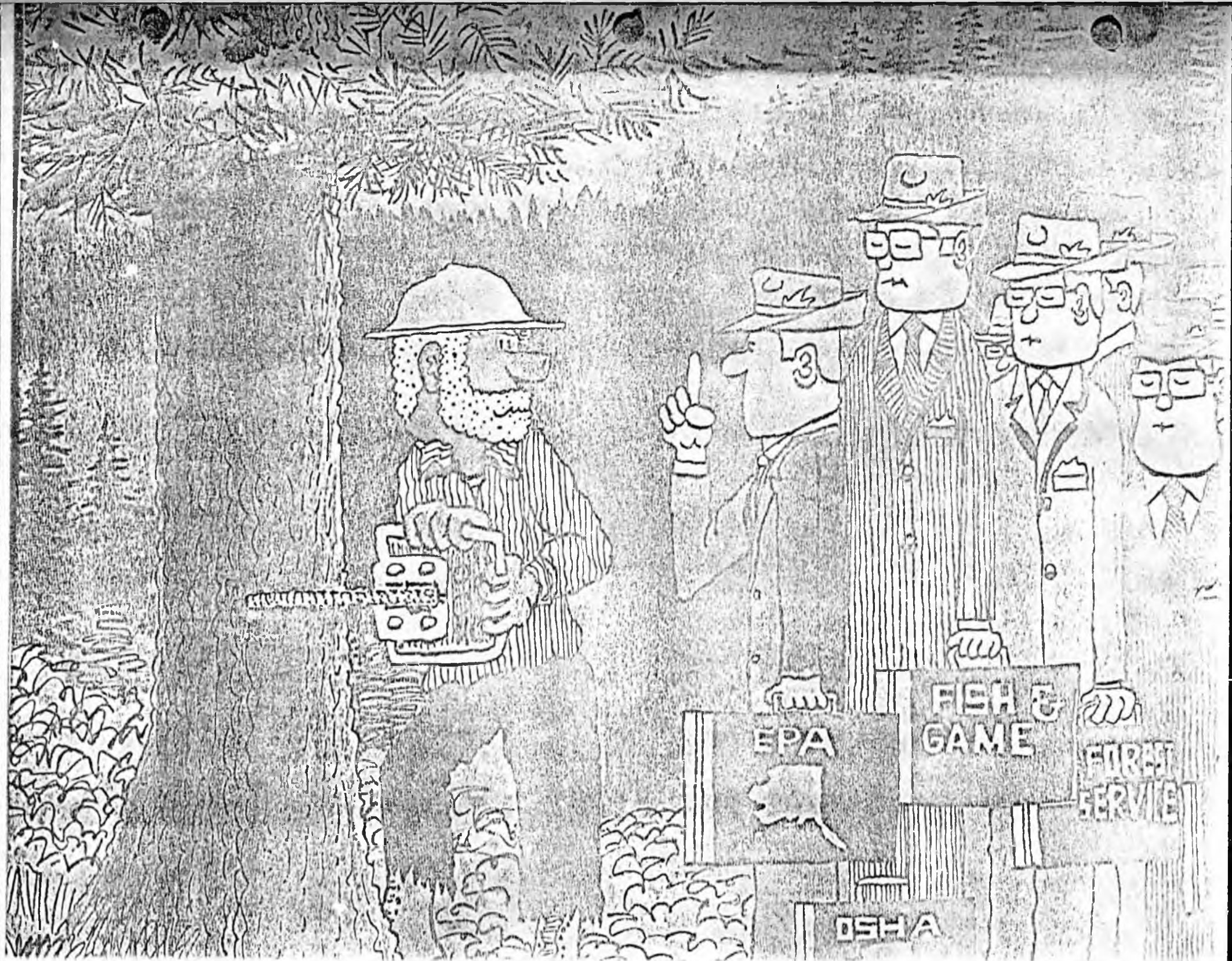
Reason: This new subsection makes it clear that the procedures and time limits of this Act apply to all permits on private forest lands. If the amendment to §090(e) is accepted, then this amendment will only refer to permits on private forest lands required by statutes other than this Act.

Page	Line	Section	Amendment
16-17	29-2	§130(j)	delete

Reason: This subsection defines the terms "damage" and "repair damage" in subsections 130(b) (e) and (f) to include any unsatisfactory condition or the correction of any unsatisfactory condition. This is an attempt to expand the common understanding of the term "damage" so that it can mean almost anything.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.



SENATE AND HOUSE RESOURECE COMMITTEES:

MY NAME IS CLARENCE JACKSON. I WOULD LIKE TO OFFER THE FOLLOWING COMMENTS AS CHAIRMAN OF THE BOARD OF DIRECTORS OF SANTCO (SOUTHEAST ALASKA NATIVE TIMBER CORPORATION). SANTCO IS ONE OF THE LARGEST PRIVATE COMMERCIAL FOREST LANDOWNER IN THE STATE AND REPRESENTS 10 VILLAGE AND URBAN NATIVE CORPORATIONS OWNING 230,400 ACRES IN SOUTHEAST ALASKA. OUR MEMBERS INCLUDE NATIVE CORPORATIONS FROM CRAIG, HOONAH, HYDABURG, JUNEAU, KAKE, KASAAN, KLAWOCK, SAXMAN, SITKA, AND YAKUTAT.

SENATE BILL 59 WOULD GOVERN OPERATIONS ON PRIVATELY OWNED COMMERCIAL FOREST LAND IN ALASKA AND WILL SIGNIFICANTLY IMPACT OUR CONTROL OVER OUR OWN FEE SIMPLE RESOURCES. SANTCO WOULD LIKE TO SUGGEST CHANGES TO SENATE BILL 59 FOR YOUR CONSIDERATION. THESE SUGGESTIONS MAINLY ADDRESS STATE CONTROL OVER OPERATIONS ON PRIVATE FOREST LANDS AND WOULD GENERALLY NOT BE APPLICABLE TO STATE OR MUNICIPAL FORESTS.

AFTER A YEAR LONG STUDY OF FOREST PRACTICES ACTS IN OREGON, WASHINGTON, AND CALIFORNIA AND CONSULTATION WITH VARIOUS CHAPTERS OF THE SOCIETY OF AMERICAN FORESTERS, AND ATTORNEYS SPECIALIZING IN FOREST LAW, WE CAN SEE A FOREST PRACTICES ACT WHICH COMBINES THE INTENT OF HOUSE BILL 40 AND SENATE BILL 59 AND WHICH PERMITS THE STATE TO GOVERN OPERATIONS ON PRIVATE FOREST LANDS TO INSURE A HEALTHY STATE ECONOMY, TO PROTECT THE PUBLIC INTEREST IN SANTCO'S RESOURCES, AND TO

PROTECT SANTCO'S INTEREST IN ITS OWN RESOURCES.

OUR CONCEPT OF A FOREST PRACTICES ACT WOULD:

1. GIVE US AS LANDOWNERS A SIGNIFICANT VOICE IN THE MANAGEMENT OF OUR LANDS AND INSURE THAT ALL INTEREST GROUPS HAVE INPUT INTO REGULATION OF OPERATIONS ON PRIVATE FOREST LAND. WE WOULD PROVIDE FOR THE GOVERNOR TO APPOINT A BOARD OF FORESTRY WITHIN THE DEPARTMENT OF NATURAL RESOURCES TO ASSIST HIM AND THE COMMISSIONER WITH THE ADMINISTRATION OF A DIVISION OF FORESTRY.

2. BE LESS EXPENSIVE FOR BOTH THE STATE TO ADMINISTER AND THE LANDOWNER TO COMPLY WITH; BUT, THE PENALTIES FOR VIOLATION OF STATE LAWS OR REGULATIONS', AND THE ENFORCEMENT PROVISIONS WOULD BE EQUALLY SEVERE. AS LANDOWNERS WE WILL NOT TOLERATE MISMANAGEMENT OF OUR RESOURCES. WE HAVE A DOUBLE RESPONSIBILITY AS CITIZENS AND STOCKHOLDERS TO SUPPORT A STABLE ECONOMY, A HEALTHY FOREST, AND CLEAN WATERS THROUGH THE WELL PLANNED SUSTAINED YIELD AND MULTIPLE USE MANAGEMENT OF SANTCO FOREST LANDS. THE EXPENSIVE PROVISIONS OF SENATE BILL 59 SHOULD BE AMENDED TO MAKE THE BILL CLEARLY A NOTIFICATION BILL. A NOTIFICATION BILL IS DESIGNED TO EDUCATE THE LANDOWNER AND OPERATER ABOUT THE LAW AND PROPER FOREST MANAGEMENT; BUT, THE BURDEN WOULD LIE WITH THE STATE THROUGH ENFORCEMENT.

A LANDOWNER SHOULD BE ABLE TO MANAGE HIS LANDS; BUT RISK STATE SUSPENSION OF HIS OPERATIONS AND POSSIBLE ENCUMBRANCE OF HIS LANDS, AND PENALTIES IF HE BREAKS THE LAW OR REGULATIONS DRAFTED UNDER THE LAW.

3. WOULD REMOVE THE IMPLICATION THAT A LANDOWNER COULD HAVE HIS RESOURCES TAKEN WITHOUT COMPENSATION; BUT, IT WOULD ALSO PROVIDE A VEHICLE TO ASSURE THE STATE THAT OPERATIONS ON PRIVATE FOREST LAND WILL PROTECT THE RESOURCE WITHOUT LOCKING IT UP.

WE ARE GRATEFUL FOR THE OPPORTUNITY TO PRESENT OUR VIEW OF A PRACTICAL SOLUTION TO THE PROBLEM. SANTCO WANTS TO DO ITS PART TOO, TO INSURE THAT PRIVATE FOREST LANDS ARE CAREFULLY MANAGED FOR THE BEST INTEREST OF BOTH THE STATE AND OURSELVES AS A MAJOR FOREST LANDOWNER.

PRELIMINARY DRAFT

FORESTRY CODE FOR ALASKA

Patterned on Senate Bill 563-1976

and S.B.59-1977 and H.B.40-1977

1. Eliminates prelogging permit system.
2. Establishes a Forestry Division.
3. Provides for regulations to be approved by a Board representing all of Alaska with majority of the members representing commercial forest landowners, professional resource managers, industry and labor with knowledge of forest management problems.

House Bill No. _____

SENATE BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to forest resources and practices; and providing for an effective date." BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. AS 41 is amended by adding a new chapter to read:

CHAPTER 17. FOREST RESOURCES AND PRACTICES.

Sec. 41.17.010. FINDINGS AND PURPOSE. (a) The legislature finds that

(1) the forest land and water resources of Alaska are among the most valuable natural resources of the state;

(2) healthy stable communities, industries and businesses derived from the products, benefits and services obtained from forest land and water resources are of prime importance to the state;

(3) the public interest demands that productive state, municipal and private forest land be administered consistent with sound and refined principles of natural resource management;

(4) the forest land and water resources furnish economic stability, timber and numerous wood products derived from timber, fish and wildlife, employment opportunity, tourism, outdoor recreation and aesthetic enjoyment, water, minerals, soil, air, general health and welfare and a multitude of other valuable products, benefits, and services;

(5) it is the policy of the state to formulate prudent and responsible forest management measures calculated to serve the needs of all Alaskans for the long term economic benefits to its inhabitants and communities and for the many products, benefits and services obtained from forest land and water resources;

(6) imprudent forest management would preclude receiving all of the products, benefits and services obtained from forest land and water resources, upon which the economy and welfare of Alaska depend and will continue to depend in the future; and

(7) failure to implement wise forest management measures designed to guarantee perpetual supplies of renewable resources and to make available nonrenewable resources in a compatible manner would be a grave disservice to the people of Alaska.

(b) It is the purpose of this chapter to insure that timber harvesting will continue to contribute substantially to Alaska's economy; to protect the longevity of Alaska's forest products industry by implementing effective forest management practices and maintaining over the long term Alaska's supply of timber; to prevent degradation of renewable resources; and to create and maintain a system for the administration, regulation and use of productive state, municipal, and private forest land so as to guarantee continuous and perpetual supplies of the various products, benefits and services obtained from it.

Sec. 41.17.020 STATE FORESTRY DIVISION

(a) To administrate its forestry code, there is hereby created a state forestry division within the Department of Natural Resources consisting of the State Forester and his deputy, assistants and employees, acting under the direction of the State Board of Forestry.

(b) Selection of members of the Board: Confirmation

(1) The voting members, of the Board shall consist of the Commissioner of Natural Resources and 12 members appointed as provided in sub-paragraph (d) below. The Board shall elect one member as its chairman. The chairman shall have such power and duties as are provided by the rules of the Board. The composition of the Board shall fairly represent the interests of all the people of Alaska. The term of office of a voting member of the Board other than the Commissioner is four years.

(c) If a vacancy occurs before the end of the term, the Governor shall appoint an individual to complete the unexpired term in the same manner and under the same requirements as provided in sub-paragraph (d) below, as in the case of the member whose term was not completed.

(d) Selection of members of Board, Confirmation.

Three (3) voting members shall be chosen from persons actively and principally engaged in an administrative or production capacity in the production of logs or manufacture of forest products. Two (2) members of this group shall be appointed

from Southeastern Alaska, and one (1) member shall be appointed from other timbered areas of Alaska.

Three(3) voting members shall be appointed from persons recommended by associations representing private commercial forest landowners of Alaska.

One(1) voting member shall be appointed from candidates recommended by the Alaska Loggers Association, Alaska Visitors Association or the Chamber of Commerce.

One(1) voting member shall be appointed from persons recommended by organized lumber industry unions.

One(1) voting member shall be appointed from persons recommended by the Alaska Wildlife Federation.

One(1) voting member shall be appointed from candidates recommended by the United Fishermen of Alaska.

Two(2) voting members shall be non-aligned Alaskan residents.

The Regional Forester of the U. S. Forest Service and the State Director of the U. S. Bureau of Land Management or their designated representatives shall be non-voting members of the board and shall serve in an advisory capacity.

(e) General duties of Board, compensation and expenses, meetings and rules.

(1) The Board shall supervise all matters of forest policy and management under the jurisdiction of this state and approve claims for expenses incurred under the statutes administered by the Board except as otherwise provided by law.

(2) The members of the Board are entitled to per diem

compensation at the rate of \$_____ per day and repayment of expenses.

(3) The Board shall meet on the first Wednesday after the first Monday in January, March, June and September, at places designated by the chairman of the Board or the State Forester. The Board may meet at other times and places in this state on the call of the chairman or the State Forester. A majority of the voting members of the Board constitutes a quorum to do business.

(4) The Board shall promulgate rules governing the transaction of its business and shall approve or reject rules proposed for promulgation by the Forester establishing general rules respecting operations on forest lands as provided in sub-paragraph (h).

(f) State Forester; deputy and assistants; compensation.

(1) The Governor shall appoint a State Forester, who must be a professional forester familiar with Alaskan conditions, from four (4) candidates recommended by the Board. The forester shall be the chief executive officer of the division. The forester shall act as secretary of the Board.

(2) With the approval of the Board and subject to applicable provisions of the State Law, the State Forester may appoint a Deputy State Forester, assistant state forester

and other employees of the division. During the State Forester's absence or disability, all of his authority shall be exercised by the Deputy State Forester or by the assistant whom the State Forester or the Board, by written order filed with the Lieutenant Governor, has designated as Acting State Forester.

(3) Unless otherwise provided by law, the Board shall fix the compensation of the State Forester. In addition to their salaries, the forester and his deputy and assistants shall be reimbursed, subject to the limitations otherwise provided by law, for their actual and necessary travel and other expenses incurred in the performance of their duties.

(g) Fidelity Bonds.

(1) Before entering upon the duties of his office, the Forester shall furnish a fidelity bond in favor of the State of Alaska in the penal sum of \$100,000 issued by one or more corporate sureties authorized to do business in the State of Alaska, conditioned upon the faithful and honest handling and disposition of the moneys in the State Forestry Department Account and any other moneys in the hands of the Forester.

(2) The premium for the bond shall be paid from the appropriation of the division.

(3) Except as provided in sub-section (1) of this section, the Board may require a fidelity bond, with one or more

corporate sureties authorized to do business in this state, of any officer or employee of the division. . The Board shall fix the amount of the bond which otherwise is subject to subsections (1) and (2) of this section.

(h) General duties of the State Forester.

The Forester, under the general supervision of the Board, shall:

(1) In compliance with A.S. 44.62 and the specific approval of the Board, promulgate rules consistent with the law for the enforcement of the state forest laws relating directly to the protection of forest land and the conservation of forest resources.

(2) Direct the improvement and protection of forest land owned by the State of Alaska.

(3) Collect data relative to forest conditions.

(4) Take action authorized by law to prevent and extinguish forest, brush and grass fires.

(5) Enforce all laws pertaining to forest land and prosecute violations of such laws.

(6) Cooperate with landowners, political subdivisions, private associations and agencies and others in forest protection.

(7) Advise on and encourage reforestation.

(8) Publish such information on forestry as he determines to be in the public interest.

(9) Prepare biennially a report to the Governor and the

Legislative Assembly on the performance of the functions of the division, including the progress and condition of state forest work, containing recommendations for improving methods of forest protection, management and reproduction.

(10) Enter into contracts and cooperative agreements pertaining to experiments and research in forestry.

(11) Sell, exchange or otherwise dispose of any real property heretofore or hereafter acquired by the division for administrative purposes and no longer needed.

(12) Sell timber for harvesting from State owned timber lands.

(i) State Forester to cooperate with other agencies and persons; payment of expenses; contracts for supervision; deposit for costs.

(1) Under the direction of the Board, the forester:

(a) Shall, upon request and whenever he deems that it is in the public interest, assist and cooperate with any federal or state department or any institution, political subdivision or person owning or controlling forest land within this state, in the preparation of plans for their protection, management, replacement or extension. Unless otherwise provided by law, the parties obtaining such assistance shall pay the necessary costs of travel, subsistence and other field expenses incurred by the forester or his assistants

in the preparation and execution of these plans.

(b) May enter into contracts with the applicants under which he will supervise the execution of the plans. However, the costs of carrying out the plans shall be paid by the applicants.

(2) In carrying out this section the forester may require the applicant to deposit in one or more installments the moneys needed to cover the cost of preparing and executing the plans. These deposits shall be placed in the State Treasury, credited to the State Forestry Division Account and used exclusively for the purposes of this section.

Sec. 41.17.030. EXEMPTIONS.

(a) Noncommercial forest land under municipal or private ownership is not subject to the provisions of this chapter.

(b) Any small parcel or tract of forest land is exempt from the provisions of this chapter if the forester determines that the parcel or tract is all of the following:

(1) 160 acres or less in size;

(2) owned entirely by one person or group of persons;

(3) not to be utilized as part of a timber harvesting or forest development plan or agreement of any kind involving other parcels or tracts of forest land; and

(4) not appurtenant to other parcels or tracts of forest land either owned by the same person or groups of persons or in which that person or group of persons has any property interest.

(c) Any commercial forest land parcel owned by a Native village, urban, regional or group corporation organized pursuant to the Alaska Native Claims Settlement Act, 43 USC, Sec. 1601 ETSEQ, P.L. 92-203, 85 Statute 688 as amended and which is subject to 43USC, Sec. 1622 (k)(2) shall not be subject to the provisions of this chapter until December 18, 1983.

(d) As used in this section only, "person" includes the state or a municipality; or corporation.

(3) The Forester may adopt regulations, in accordance with Board approval and the Administrative Procedure Act (AS 44.62), necessary to implement this section.

Sec.41.17.040. REGULATORY AND ADMINISTRATIVE STANDARDS

(a) All regulations, administrative actions, and other activities and duties undertaken pursuant to this chapter must be in full accordance with the standards set out in this section.

(b) Standards applicable to all land.

With respect to state, municipal, and private forest land, the following standards apply:

(a) It is of the first importance to the people of Alaska that the economic long term well being of the forest land owner and those industries dependant on forest resources, and the long term productivity of forest lands and waters are recognized as the primary objectives towards which the Division shall establish standards regulating the management of forest resources.

(2) to the extent practicable, all relevant data and information shall be used in making decisions relative to the administration of forest land;

(3) where consistent with other provisions of this section, administration of forest lands with respect to production levels of timber and timber products shall allow reasonable consideration for changes in market conditions;

(4) there shall be no significant impairment of the productivity of the land and water with respect to renewable resources unless removed from timber production.

Standards applicable to State and Municipal Land.

(c) With respect to state and municipal forest land only, the following standards also apply:

(1) forest land shall be administered for the economic multiple use of the renewable and nonrenewable resources and for the sustained yield of the renewable resources of the land in the manner which best provides the present needs and preserves the future value to the people of Alaska;

(2) determinations of multiple use patterns to be established within any area shall begin with the assumption that all resources and values are of importance; and

(3) to the extent its capacity permits, forest land shall be administered so as to provide for the continuation of businesses, stable industries, activities, and life styles which are dependent upon or derived from forest land and water resources.

(4) scenic and aesthetic quality shall be maintained in or adjacent to areas of major importance to the tourism or recreation industry.

Sec. 41.17.050 ADMINISTRATIVE PLAN AND REPORT

(a) The division of Forestry shall develop and continually maintain a plan for the administration of this chapter insuring that the sustained yield of merchantable high-quality timber from State owned forest land subject to this chapter will be maintained or increased, and that forest land will be protected from unsatisfactory forest management. The Forester shall conduct periodic inventories of timber on state forest land subject to this chapter to assist in meeting the requirements of this section.

Sec. 41.17.060. REGULATION

(a) The Board of Forestry may adopt regulations in accordance with the Administrative Procedure Act (AS 44,62) governing operations on forest land with respect to the following:

- (1) timber harvesting and management and directly related activities;
- (2) disposal of slash and debris;
- (3) reforestation and stocking;
- (4) precommercial thinning and similar activities;
- (5) control of soil erosion and waste;
- (6) logging road and bridge and trail construction and maintenance;
- (7) fire prevention and control;
- (8) fertilization;
- (9) salvage of trees and brush control;
- (10) protection of forest land from damage by insects, pests, noxious weeds and diseases;
- (11) flood control;
- (12) protection of scenic, recreational, aesthetic and other natural values, where consistent with Sec. 40 (c) (4) of this chapter.
- (13) general administrative requirements.

(b) The Board shall consult with interested state and federal agencies, private individuals and organizations in conjunction with the adoption of regulations under this section. The Board may establish regions, districts, or other subdivisions.

of forest land within the state in which different regulations apply in order to reflect varying conditions throughout the state, or for other purposes, and may appoint advisory committees within established regions.

Sec. 41.17.070. REVIEW AND APPROVAL OF OPERATIONS

(a) Operations on forest land shall be inspected and reviewed under this section for consistency with the policies and provisions of this chapter and regulations adopted under Sec. 60(a) of this chapter. However, the Board may adopt regulations under the Administrative Procedure Act (AS 44.62) exempting certain operations from administration under this section if they are of minimal concern with respect to the policies and provisions of this chapter.

(b) Before operating on forest land, the operator shall first give formal notification to the Forester. Notification must consist of filing a notification certificate together with a United States Geological Survey map of the largest available scale showing the locations of all proposed activities. The operator shall also submit a brief description of the proposed operation on a form provided by the Forester.

(c) In reviewing proposed operations under this section, the Forester and affected state agencies shall consider the practicalities and economic constraints affecting the operator. In addition, the forester shall insure that the information and paperwork required of the operator under this section shall be kept to the minimum necessary to accomplish the purposes of this chapter.

(d) The operator may not materially deviate from plans, terms, and conditions stated in the operation plan filed with the notification certificate under this section

without the prior written approval from the forester, who shall grant that approval only after full consultation with other affected state agencies.

(e) No action taken by the forester under (d) of this section is an authorization to violate applicable laws or regulations.

Sec. 41.17.080. DEPLOYMENT OF CHEMICALS

(a) Herbicides, pesticides, fungicides, rodenticides, insecticides, fertilizers and other similar chemicals may not be deployed on forest land unless (1) the deployment is in accordance with applicable state laws and regulations and (2) prior written approval from the Forester is obtained.

(b) The Forester may not grant approval under (a) of this section unless he, in consultation with affected agencies, finds that (1) deployment is reasonable or is not likely to result in significant adverse consequences and (2) that the deployment would be consistent with the policies and provisions of this chapter. The Forester may impose conditions on deployment in granting written approval, and shall require the posting of a performance bond by the operator before the deployment of chemicals. Each individual usage of chemicals must be specifically approved by the Forester. The Forester shall require a full report from the operator upon completion of chemical deployment. No operator may materially deviate from operations approved by the Forester without the prior written consent of the Forester.

(c) The Forester must act upon any application within thirty(30) days. If the application is denied, the full reasons therefor must be stated in writing. A denial shall be appealable directly to the Superior Court.

Sec. 41.17, 100. INSPECTIONS, INVESTIGATIONS, AND ENFORCEMENT

The Forester or his designee may inspect and investigate forest land and enter upon it before, during and after operations as necessary to insure compliance with applicable regulations and requirements and to otherwise enforce the provisions of this chapter. Other state agencies have this same authority to the extent necessary to enforce their own laws and regulations on forest land.

Sec. 41.17.110, PROHIBITIONS, PENALTIES, AND ENFORCEMENT PROCEDURES.

(a) It is unlawful for any person to violate the provisions of this chapter or any regulations adopted under this chapter. A person who violates this subsection is liable for a civil fine to be assessed by the Forester with Board approval not to exceed \$7,500, and an additional civil fine not to exceed \$1,000 for each day the violations continue.

(b) If an investigation discloses that there is probable cause to believe a violation has occurred, the Forester shall issue and serve upon the alleged violator written notice, with a formal complaint which specifies the nature and extent of the alleged violation and requires the alleged violator to answer the charges of the formal complaint at a hearing not more than 14 days after the date of notice (unless the alleged violator requests an extension, which may be no more than an additional 14 days). The notice shall also specify the nature of the violation and any damage or unsatisfactory condition which has occurred or might occur as a result of the violation. At the hearing, the state has the burden of proof to establish that the person charged has caused or permitted a violation described in (a) of this section.

(c) A hearing under (b) of this section shall be held before a qualified hearing officer designated by the Forester from among the employees of the State of Alaska, except that a person who

has participated in the investigation or preparation of the state's case may not serve as a hearing officer or otherwise participate in the decision. All hearing shall be open to the public, and any person may submit written statements to the hearing officer in connection with the subject of the hearing. In addition, the hearing officer may permit any person to offer oral testimony. All issues pertaining to the alleged violation shall be examined and considered at the hearing. Any party to a hearing may be represented by counsel, may make oral or written argument, secure the issuance of a subpoena under AS 44.62.430, offer testimony or other evidence, cross-examine witnesses, or take any combination of these actions. All testimony given before the hearing shall be recorded stenographically or electronically.

(d) Within 10 days after the close of the hearing, or upon the non-appearance of the alleged violator on the day specified for the hearing, the hearing officer shall issue and enter a recommended order. The order shall be based on the evidence presented at the hearing. In all matters, the hearing officer shall file and publish a written opinion and order stating the facts and reasons leading to the decision. The Forester shall immediately notify the violator of the recommended order by registered mail.

(3) The recommended order of the hearing officer under (d) of this section may include:

(1) a directive to stop the violation;

(2) the imposition of a civil fine under (a) of this section which is payable immediately;

(3) a directive to repair damage or correct an unsatisfactory condition; or

(4) any combination of the above.

(f) In determining the amount of any civil fine imposed, the following factors shall be considered where practicable:

(1) the character and degree of injury to forest resources and values;

(2) the degree of intent, negligence or inattention of the violator in causing or permitting the violation;

(3) the character and number of past violations caused or permitted by the violator; and

(4) to the extent such information is available, the net economic savings realized by the violator through noncompliance with (a) of this section.

(g) If the Forester finds, after investigation, that a violation of (a) of this section has occurred and determines that continuation of the violation or failure to repair damage or correct an unsatisfactory condition would likely result in irreversible or irreparable damage to the forest resources or values affected, and it appears to be prejudicial to the interest of the people of the state to delay action until opportunity for hearing can be provided, the Forester may, without prior hearing issue a temporary order in addition to the notice of violation a complaint required in (b) of this section. The order may direct

the violator to stop the violation or to repair damage or correct an unsatisfactory condition, or both. The order remains in effect until a final order is issued. Proceedings in conjunction with the violation shall otherwise be the same as for violations where no temporary order has issued, except that the hearing shall be held at the earliest possible date convenient to the alleged violator.

(h) If a person fails to comply with a final order issued under (d) or (g) of this section, the attorney general, at the request of the Forester, may seek an injunction to suspend the violative operations being conducted by that person until the order is complied with. In addition, if a person fails to comply with a final order issued under (d) or (g) of this section directing the person to repair damage or correct an unsatisfactory condition, the Forester may proceed either with division staff or by contract to repair the damage or correct the unsatisfactory condition. The Forester shall keep a complete account of direct expenditures incurred and upon completion of the work shall prepare an itemized statement of them and shall deliver a copy to the operator, timber owner and forest landowner, who are jointly and severally liable for those expenditures. Those expenditures constitute a general lien upon the real and personal property of the operator, timber owner and forest landowner within the state.

(i) All final orders issued under this section are enforceable by injunction, attachment, garnishment or other appropriate remedy.

(j) The administration of this section, including the conduct of hearings, shall be conducted according to regulations adopted by the Board. Except as otherwise specified in this section, proceedings under this section are not subject to the Administrative Procedure Act (AS 44.62). Hearings conducted under this section are not limited by common law or statutory rules of evidence; however, the hearing officer may admit only that evidence which appears to him to be reliable and trustworthy. Hearsay evidence which is inadmissible in a judicial proceeding may not be admitted in a hearing under this section unless:

(1) the Forester provides the person charged with the name and address of the declarant and the substance of his accusation or testimony along with the service of the complaint, or, if the evidence is not known at that time, then at a reasonable time before the hearing; and

(2) the hearsay evidence is of a type normally relied upon by reasonable men in the conduct of serious business affairs.

(k) The recommended order shall not become the final order of the Forester until review and approval by the Forester.

Sec. 41.17.120 APPEALS AND JUDICIAL REVIEW.

(a) An action of the Forester taken under this chapter may be appealed to the Board within 30 days after the action is taken. The Board shall hold a hearing within 15 days after the appeal is filed, at which all substantial issues pertaining to the action shall be examined and considered. Within 10 days after the hearing closes, the Board shall issue a decision in writing, a copy of which shall be provided to the appellant.

(b) A final order issued under (a) of this section or under Sec. 120 of this chapter may be appealed to the Superior Court within 30 days after the entry of the order. Judicial review shall be as provided in AS 44.62.560 and 44.62.570.

(c) A temporary order issued under Sec. 110 of this chapter may be immediately appealed to the Superior Court as to the propriety of the temporary order.

Sec. 41.17.950. DEFINITIONS.

In this chapter, unless the context requires otherwise:

(1) "Commercial Forest Land" means forest land producing or capable of producing crops of industrial wood and not withdrawn from timber utilization; areas qualifying as commercial forest land are those which have the capability of producing in excess of 20 cubic feet per acre per year of industrial wood under management;

(2) "Forester" means the Forester or the Division of Forestry;

(3) "Cooperative Forestry Programs" and "extension service programs" mean programs that will provide technical assistance designed to further the policies and provisions of this chapter to persons engaged in timber harvesting or activities associated with timber harvesting or forest development and to other individuals, organizations and agencies concerned with forest resource management;

(4) "Division" means the Division of Forestry;

(5) "Forest Land" means land at least 16.7 percent stocked by forest trees of any size, or formerly having such tree cover and not currently developed for nonforest use, regardless of whether presently available or accessible for commercial purposes, and includes any such land under state, municipal or private ownership;

(6) "Forest Landowner" means a person who owns forest land;

(7) "Multiple Use" means (a) the management of all the

various resources of publically owned forest land so that they are used in the combination that will best meet the needs of the owner and the Alaskan people, making the most judicious use of the land for some or all of these resources or related values, benefits and services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; (b) that some land will be used for less than all of the resources; and (c) harmonious and coordinated management of the various resources, each with the other, without significant impairment of the productivity of the land and water, with consideration being given to the relative values of the various resources, and not necessarily the combinations of uses that will give the greatest dollar return or the greatest unit output;

(8) "Noncommercial Forest Land" means unproductive forest land incapable of yielding crops of industrial wood because of adverse site conditions (capable of producing no more than 20 cubic feet per acre per year) and productive forest land withdrawn from commercial timber use through statute or administrative regulation.

(9) "Notification Certificate" means a document prescribed by the Forester and constituting an intent to operate on forest land, which must be signed and sworn to by the operator.

10) "Operations" means timber harvesting or activities associated with timber harvesting or forest development;

(11) "Person" includes a joint venture or corporation as well as the entities set out in AS 01.10.060 (7);

(12) "Sustained Yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of forest land and water without significant impairment of the productivity of the land and water;

(13) "Timber Operator" or "Operator" means a person who is engaged in timber harvesting or activities associated with timber harvesting or forest development himself, or who contracts with others to conduct such harvesting or activities or development in his behalf, except a person who is engaged in timber harvesting or associated activities or forest development as an employee with wages as his sole compensation;

(14) "Timber Owner" means a person who owns timber on forest land or who has the rights to timber, but does not own the land itself.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

STATEMENT OF JOHN BORBRIDGE, JR.
PRESIDENT OF SEALASKA CORPORATION
ON SPONSOR SUBSTITUTE SENATE BILL 59
ALASKA FOREST PRACTICES ACT

BEFORE

SENATE RESOURCES COMMITTEE
STATE OF ALASKA

APRIL 12, 1978

MADAME CHAIRMAN AND MEMBERS OF THE SENATE RESOURCES COMMITTEE, FOR THE RECORD MY NAME IS JOHN BORBRIDGE, JR. I AM PRESIDENT OF SEALASKA CORPORATION, THE REGIONAL CORPORATION ORGANIZED UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT BY THE NATIVES OF SOUTHEAST ALASKA. TODAY ACCOMPANYING ME FROM SEALASKA EXECUTIVE STAFF BEFORE THIS HEARING, IS MR. ROBERT W. LOESCHER , DIRECTOR OF NATURAL RESOURCES AND MR. PETER HUBERTH, MANAGER OF OUR FOREST PRODUCTS DIVISION.

BY THE END OF 1978 OR EARLY SPRING 1979 PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT SEALASKA CORPORATION SHOULD HAVE PATENT TO AS MUCH AS 250,000 ACRES OF LAND IN SOUTHEASTERN ALASKA. AMONG THE RESOURCE VALUES OF THE LAND WHICH INCLUDES RECREATIONAL RESOURCES, FISH AND WILDLIFE RESOURCES, MINERALS, WATER RESOURCES AND OTHER REAL ESTATE POTENTIALS, IS THE FOREST RESOURCE.

SEALASKA IS MOVING TO IMPLEMENT THE FIRST YEAR OF ITS FIVE-YEAR FOREST PRODUCTS PLAN. EFFORTS TO STAFF UP, PREPARE THE ENGINEERING FOR ROAD CONSTRUCTION AND PLANS TO HARVEST OUR FIRST TREES IN THE SPRING OF 1980, ARE UNDERWAY. AS THE CORPORATION PROCEEDS, IN THIS TOTAL EFFORT, THE CONCEPTS OF SUSTAINED YIELD MANAGEMENT AND RESPECT FOR OTHER ENVIRONMENTAL VALUES WILL GUIDE THESE DEVELOPMENTS. AS THE LARGEST PRIVATE LANDOWNER IN SOUTHEASTERN ALASKA IT IS OUR INTENT TO MOVE AHEAD IN THE FOREST PRODUCTS INDUSTRY AS CAREFULLY AND PRUDENTLY AS POSSIBLE IN ORDER TO

DEVELOP THE LONG-TERM BENEFITS OF THIS RESOURCE.

ALSO, BY THE END OF 1978 IT SHOULD BE RECOGNIZED THAT PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, AN ADDITIONAL 276,480 ACRES OF FORESTED LAND WILL BE PATENTED TO TWELVE (12) VILLAGE AND URBAN CORPORATIONS LOCATED AT SAXMAN, HYDABURG, CRAIG, KLAWOCK, KASAAN, KLUKWAN, KAKE, ANGOON, HOONAH, YAKUTAT, JUNEAU AND SITKA. SEALASKA DOES NOT REPRESENT THE VIEWS OF THESE CORPORATIONS; HOWEVER, IT IS OUR UNDERSTANDING THAT THESE CORPORATIONS ARE PROGRESSING WITH THE MANAGEMENT AND DEVELOPMENT OF THEIR FOREST RESOURCES AND GENERALLY SHARE SIMILAR CONCERNS AS OUR CORPORATION ABOUT THE FORMULATION BY THE LEGISLATURE OF A STATE FOREST PRACTICES ACT. A NUMBER OF THE CORPORATIONS ARE REPRESENTED HERE TODAY. MADAME CHAIRMAN, I URGE YOU AND YOUR COMMITTEE TO GIVE FULL WEIGHT OF CONSIDERATION TO THE TESTIMONY GIVEN BY OUR RESPECTIVE CORPORATIONS REPRESENTED HERE TODAY. IT GOES WITHOUT SAYING THAT THIS SINGULAR PIECE OF LEGISLATION WILL HAVE VITAL IMPACT ON OVER A HALF A MILLION ACRES OF TIMBERED LAND, PRIVATELY OWNED BY THE NATIVES OF SOUTHEASTERN ALASKA.

SINCE THE LAST SESSION, SEALASKA CORPORATION HAS PARTICIPATED IN TRYING TO ARRIVE AT A COMPROMISE DRAFT OF SB 59 WHICH WE FELT WOULD REPRESENT THE INTERESTS OF THE PRIVATE LANDOWNER. IN THIS

EFFORT, WORKING WITH INDUSTRY, ENVIRONMENTAL GROUPS, STATE AND FEDERAL AGENCY REPRESENTATIVES, UNIONS AND OTHERS, HAS TRULY ESTABLISHED OUR UNDERSTANDING OF OTHER VIEWS ABOUT THIS VERY IMPORTANT MATTER. WITH CERTAIN BASIC EXCEPTIONS, WE FEEL THAT ASSISTANT ATTORNEY GENERAL HAYNES AND MEMBERS OF THE INFORMAL COMMITTEE DID AN EXCELLENT JOB OF REDRAFTING SB 59.

AS PRIVATE LANDOWNERS, CONCERNED WITH THE NEED FOR CONTINUITY OF STATE IMPLEMENTATION OF FOREST PRACTICES WE FEEL THAT STANDARDS FOR PRIVATE LANDOWNERS AND PROMULGATION OF REGULATIONS MUST BE KEPT ABOVE POLITICS AS MUCH AS POSSIBLE. HOW TO ARRIVE AT PROTECTION OF PROPERTY RIGHTS AND PROMULGATE PRACTICAL REGULATIONS WILL BE THE MAJOR THRUST OF OUR TESTIMONY.

THE STANDARDS CONTAINED IN THE ACT MUST INCLUDE THE FACT THAT MAN IS A PART OF THE ENVIRONMENT AND THAT HIS ECONOMIC WELL-BEING IS OF PRIMARY CONSIDERATION FOR THE BENEFIT OF THE ECONOMY AND ALL THE CITIZENS OF THE STATE OF ALASKA.

IN THE DELIBERATION RELATED TO THIS LEGISLATION, IT IS IMPORTANT TO EMPHASIZE THE ECONOMIC ENVIRONMENT IN WHICH THE ALASKA FOREST PRODUCTS INDUSTRY MUST FUNCTION. OUR PRODUCTS PROVIDE RELATIVELY MARGINAL RETURNS COMPARED TO OREGON OR WASHINGTON. OUR TIMBER HARVESTING COSTS ON PUBLIC LANDS ARE 50 - 100% HIGHER THAN

THE LOWER 48. OUR SELLING PRICES ARE NO GREATER AND IN MOST INSTANCES ARE LESS THAN IN THE CONTINENTAL UNITED STATES. THEREFORE, IN MARKET DOWNTURNS, THE ALASKA PRODUCERS TEND TO BE THE FIRST TO SHUT DOWN. CONVERSELY IN RISING MARKETS WE TEND TO BE THE LAST TO DERIVE MAXIMUM BENEFITS. THE STUMPAGE OWNER IN OUR CASE THE PRIVATE LANDOWNER, IS THE INDIVIDUAL MOST AFFECTED BY THE MARKET CYCLES.

A FOREST PRACTICES ACT MUST ACCOUNT FOR THE ALASKA POSITION IN THE MARKET. THEREFORE, OUR SUGGESTED AMENDMENTS AND TESTIMONY ARE CONCERNED WITH ECONOMICS AND RESPONSIBLE MANAGEMENT OF PUBLIC AND PRIVATE FOREST LANDS.

SEALASKA CORPORATION AGREES THAT THE PRINCIPALS WHICH MIGHT BE UNDERTAKEN IN THE MANAGEMENT OF STATE TIMBER WOULD DIFFER FROM PRIVATE PRACTICES. HOWEVER, IT IS IMPORTANT THAT THE STATE NOT GIVE AWAY ITS' TIMBER ASSETS OR MANAGE THEM IN A MANNER WHEREBY THE ECONOMIC RETURN TO THE STATE IS DIMINISHED, THEREBY CREATING AN ADDITIONAL FINANCIAL BURDEN TO THE TAXPAYERS. THE MANAGEMENT OF RENEWABLE RESOURCES, WHETHER ON STATE OR MUNICIPAL OWNERSHIP, WHEN DESIGNATED FOR MULTIPLE-USE MANAGEMENT, SHOULD BE MANAGED SO AS TO PROVIDE A BROADENED INDUSTRIAL BASE, ENHANCED EMPLOYMENT AND ECONOMIC STABILIZATION, AND SATISFACTORY REVENUES TO HELP

FUND STATE OPERATIONS. INCREASING THE ECONOMIC BASE OF THE FOREST PRODUCTS INDUSTRY NOT ONLY PROVIDES FOR OPPORTUNITIES TO MANAGE FOREST LANDS IN A MORE RESPONSIBLE FASHION, BUT INTRODUCES OPPORTUNITIES FOR COMPETITION IN THE MARKET PLACE. THERE IS LITTLE OR NO MARKET PLACE COMPETITION AT THE PRESENT TIME IN ALASKA.

BECAUSE OF THE IMPORTANCE OF THE FOREST PRODUCTS INDUSTRY TO THE STATE OF ALASKA, SEALASKA CORPORATION BELIEVES THAT THIS ACT SHOULD PROVIDE FOR A BODY OF LAW, NOT THE OPPORTUNITY FOR A GUBERNATORIAL APPOINTEE OR SIMILAR INDIVIDUAL TO PROMULGATE REGULATIONS WHICH REFLECT NEITHER THE VIEWS OF COMMUNITY NOR WHICH REPRESENT THE BASIC NEEDS OF THE FOREST PRODUCTS INDUSTRY. THEREFORE, WE STRONGLY SUPPORT A LEGISLATIVE STRUCTURE WHICH WILL PROVIDE FOR A STATE BOARD OF FORESTRY, THE MEMBERS OF WHICH WILL ADEQUATELY REPRESENT THE FOREST INDUSTRY. ALSO MEMBERSHIP SHOULD REFLECT THE DIVERSITY OF OPINIONS REPRESENTED WITHIN THE STATE. THE STATE BOARD OF FORESTRY WOULD UNDERTAKE THE DRAFTING AND APPROVAL OF REGULATIONS TO INSURE THAT ALL INTERESTS ARE PROTECTED AND ESPECIALLY THAT THE FOREST PRODUCTS INDUSTRY WILL BE A SIGNIFICANT ECONOMIC CONTRIBUTOR TO THE STATE OF ALASKA.

JUST AS OTHER BOARDS IN THE STATE HAVE PROFESSIONAL MEMBERS FROM THE APPROPRIATE INTERESTED DISCIPLINE IT IS IMPORTANT THAT THIS BOARD HAVE A VERY STRONG REPRESENTATION OF PROFESSIONAL REPRESENTA-

TIVES FROM THE FOREST PRODUCTS INDUSTRY TO INSURE THAT FORESTRY NEEDS ARE PROPERLY MET.

IT IS IMPORTANT TO UNDERSTAND THAT THE AMENDMENTS WHICH WE OFFER PROVIDE FOR THE IMPLEMENTATION OF THE SUGGESTED STRUCTURE, MAKE A DISTINCTION BETWEEN THE BOARD OF FORESTRY AND OTHER BOARDS THAT HAVE BEEN ESTABLISHED PREVIOUSLY. IT IS ENVISIONED THAT THIS BOARD WILL HAVE A PRIMARY DUTY OF DETERMINING THE REGULATIONS WHICH WILL BE THE GUIDELINES FOR THE STATE FORESTER'S ADMINISTRATION. IN ADDITION, THE BOARD WILL GENERALLY REVIEW THE ACTIVITIES OF THE DIVISION OF FORESTRY AND OFFER SUGGESTIONS TO THE STATE FORESTER TO ASSIST HIM IN MORE EFFICIENTLY OPERATING HIS DIVISION.

WE HAVE REVIEWED THE REPRESENTATION ON OTHER BOARDS OF FORESTRY IN OTHER STATES SPECIFICALLY OREGON AND CALIFORNIA. IN OREGON A MAJORITY OF THE MEMBERS OF THE BOARD ARE FROM INDUSTRY AND IT HAS BEEN PROVEN OVER THE YEARS THAT THIS BOARD HAS OPERATED EFFICIENTLY AND HAS INSURED THAT PROPER AND RESPONSIBLE LAND MANAGEMENT PRACTICES ARE ENFORCED. HOWEVER, IN CALIFORNIA THE BOARD HAS BEEN SO SUBSTANTIALLY MODIFIED THAT THERE IS ONLY ONE FORESTER LEFT AND HIS TERM IS DUE TO EXPIRE. THE RESULT IS PANDOMONIUM WITHIN THE FOREST PRODUCTS INDUSTRY WITHIN THAT STATE.

THEREFORE, SEALASKA CORPORATION STRONGLY ENDORSES A BOARD OF FORESTRY WHICH WILL NOT ONLY INSURE A HIGH DEGREE OF PROFESSIONALISM, IN TERMS OF THE PROMULGATION OF REGULATIONS, BUT WILL ALSO REFLECT OTHER DIVERSE INTERESTS. IT IS RECOMMENDED THAT SUCH A BOARD INCLUDE REPRESENTATIVES OF THE FISHING INDUSTRY, THE FOREST PRODUCTS INDUSTRY, ENVIRONMENTALISTS, LABOR, BUT THAT IT INCLUDE A PREDOMINANT NUMBER OF REPRESENTATIVES OF LANDOWNERS AND PROFESSIONAL FORESTERS WHO WILL INSURE THE PROMULGATION OF REGULATIONS WHICH WILL MEET THE VARYING NEEDS, INCLUDING ECONOMIC, OF THE REGIONS IN ALASKA. DUE TO STAGGERED TERMS WHICH CAN BE SET, THESE PEOPLE WILL NOT BE DISPLACED BY THE VIEWS OF ANY INDIVIDUAL GOVERNOR, BUT WILL PROVIDE FOR THE NECESSARY CONTINUITY WHICH IS ESSENTIAL TO FOSTERING A VIGOROUS FOREST INDUSTRY. IN ADDITION, THE SOURCES FROM WHICH THESE APPOINTEES ARE DRAWN, AS SET BY THE STATUTE, WILL INSURE THE REFLECTION OF A BREADTH OF VIEWS NECESSARY TO ASSIST IN MEETING THE NEEDS OF THE STATE.

THE ACT CONTINUALLY SPEAKS OF BEST MANAGEMENT PRACTICES. SEALASKA CORPORATION AGREES WITH THE IDEA OF BEST MANAGEMENT PRACTICES AS LONG AS THEY MEET ECONOMIC DICTATES AND FEASIBILITY. IN ALASKA, BEST MANAGEMENT PRACTICES HAVE NOT YET BEEN DRAFTED. THE BOARD OF FORESTRY AS ENVISIONED WILL BE IN AN EXCELLENT POSITION TO ASSURE THAT BEST MANAGEMENT PRACTICES WILL BE PRACTICAL.

IT IS FELT THAT THE PROPOSED SPONSOR SUBSTITUTE BILL WILL FOSTER LITIGATION DUE TO STANDARDS THAT ARE TOO BROAD AS WRITTEN, AND SOME STANDARDS DO NOT PROVIDE SUFFICIENTLY CLEAR GUIDELINES FOR THE DRAFTING OF THE REGULATIONS. THE RESTATED STANDARDS THAT WE SHALL SUBMIT AND THE SYSTEM OF USING THE BOARD OF FORESTRY TO DRAFT THE REGULATIONS WILL ACCOMPLISH A VERY SUBSTANTIAL STEP IN INSURING THAT THERE WILL BE THE NECESSARY SPECIFICITY, THEREBY REDUCING OPPORTUNITIES FOR LITIGATION, ENHANCING THE OPPORTUNITIES FOR THE FIELD PRACTITIONERS TO UNDERSTAND AND ACCEPT THE REGULATIONS PROMULGATED BY THE BOARD.

SEALASKA STRONGLY ENDORSES THE ORGANIZATION WITHIN THE DEPARTMENT OF NATURAL RESOURCES WHICH PROVIDES FOR A DIVISION OF FORESTRY WITH A STATE FORESTER REPORTING TO THE COMMISSIONER. A STRONG STATE FORESTER, ABLE TO PARTICIPATE AT A LEVEL RELATIVELY EQUAL TO OTHER RESOURCES AND ADMINISTERING MOST REGULATIONS APPLYING TO FOREST LANDS, WILL ENHANCE OPPORTUNITIES FOR A HEALTHY FOREST PRODUCTS INDUSTRY.

SEALASKA SUPPORTS THE APPROACH WHEREBY BASIC UNDERLINING STATUTORY LANGUAGE INCORPORATED IN THIS LEGISLATION MAKE CLEAR THAT THE CONCEPT OF ONE DIVISION WITHIN THE ADMINISTRATION ENFORCING

FOREST PRACTICE REGULATIONS, COASTAL MANAGEMENT ACT REGULATIONS AND OTHER REGULATIONS WHICH LOGICALLY COULD BE INCLUDED, WORK TOGETHER TO RESULT IN A STRONG FORESTRY DIVISION WITH A HIGH PROFESSIONAL PROFILE. EXPERIENCE AND OBSERVATION AS TO EVENTS WHICH ARE OCCURRING IN OTHER STATES INDICATE THAT IT IS VERY DIFFICULT FOR THE FOREST LAND MANAGER TO FOLLOW VARIOUS STATE PROMULGATED REGULATIONS IN A RESPONSIBLE FASHION WHEN HE MUST LOOK TO MANY AGENCIES AND A CHANGING SITUATION IN TERMS OF THE PROMULGATION OF SUCH REGULATIONS. THE ADMINISTRATION OF FOREST LAND IS SUBSTANTIALLY SIMPLIFIED WHEN THE LAND MANAGER KNOWS THAT THERE IS A PRIMARY STATE AGENCY TO WHOM HE CAN TURN FOR ASSISTANCE AND INTERPRETATION OF THE MANY REGULATIONS WHICH AFFECT LAND AND FOREST MANAGEMENT IN THE STATE OF ALASKA.

ONE OF THE GENERAL AREAS WHICH STILL VERY MUCH CONCERNS SEALASKA CORPORATION IS THE EFFECT OF THE ALASKA COASTAL MANAGEMENT ACT WITH RESPECT TO FOREST OPERATIONS. THE ALASKA COASTAL MANAGEMENT ACT ALLOWS, EVEN MANDATES, LOCAL CONTROL OF COASTAL PLANNING WHICH WE BASICALLY SUPPORT. HOWEVER, THE ACT ALSO RECOGNIZES SOME USE WILL BE OF SUCH IMPORTANCE THAT LOCAL GOVERNMENTS MUST NOT BE ALLOWED TO THWART SUCH USES. FOR INSTANCE, SECTION 46.35.040 (4) REQUIRES THE ALASKA COASTAL POLICY COUNCIL TO "...INITIATE A PROCESS FOR IDENTIFYING AND MANAGING USES OF STATE CONCERN..."

SECTION 46.35.210 THEN DEFINES USES OF STATE CONCERN GENERALLY AS USES OF GREATER THAN LOCAL CONCERN AND FURTHER SPECIFICALLY STATES THAT ENERGY RELATED DEVELOPMENT, INCLUDING BUT NOT LIMITED TO SITING OF MAJOR ENERGY FACILITIES OR LARGE SCALE INDUSTRIAL OR COMMERCIAL DEVELOPMENT ARE USES OF STATE CONCERN.

WE BELIEVE, AS STATED PREVIOUSLY THAT TIMBER MANAGEMENT INCLUDING HARVESTING IS EQUALLY A USE OF STATE CONCERN AND SHOULD BE SO DESIGNATED BY THE LEGISLATURE. WE THEREFORE RESPECTFULLY SUGGEST AND REQUEST AN AMENDMENT TO THE ALASKA COASTAL MANAGEMENT ACT BE INCLUDED IN THE LEGISLATION ESTABLISHING AN ALASKA FOREST PRACTICES ACT WHICH WOULD ADD TO THE DEFINITION OF "USE OF STATE CONCERN" THE MANAGEMENT, INCLUDING HARVEST, OF THE STATES TIMBER RESOURCES WHETHER ON PUBLIC OR PRIVATE LAND. SUCH A DEFINITION WOULD MINIMIZE IF NOT COMPLETELY PREVENT A SITUATION WHEREIN LOCAL PLANNING AND ZONING UNDER THE ALASKA COASTAL MANAGEMENT ACT WOULD CONFLICT WITH TIMBER ACTIVITIES AS REQUIRED OR ALLOWED UNDER THE ALASKA FOREST PRACTICES ACT.

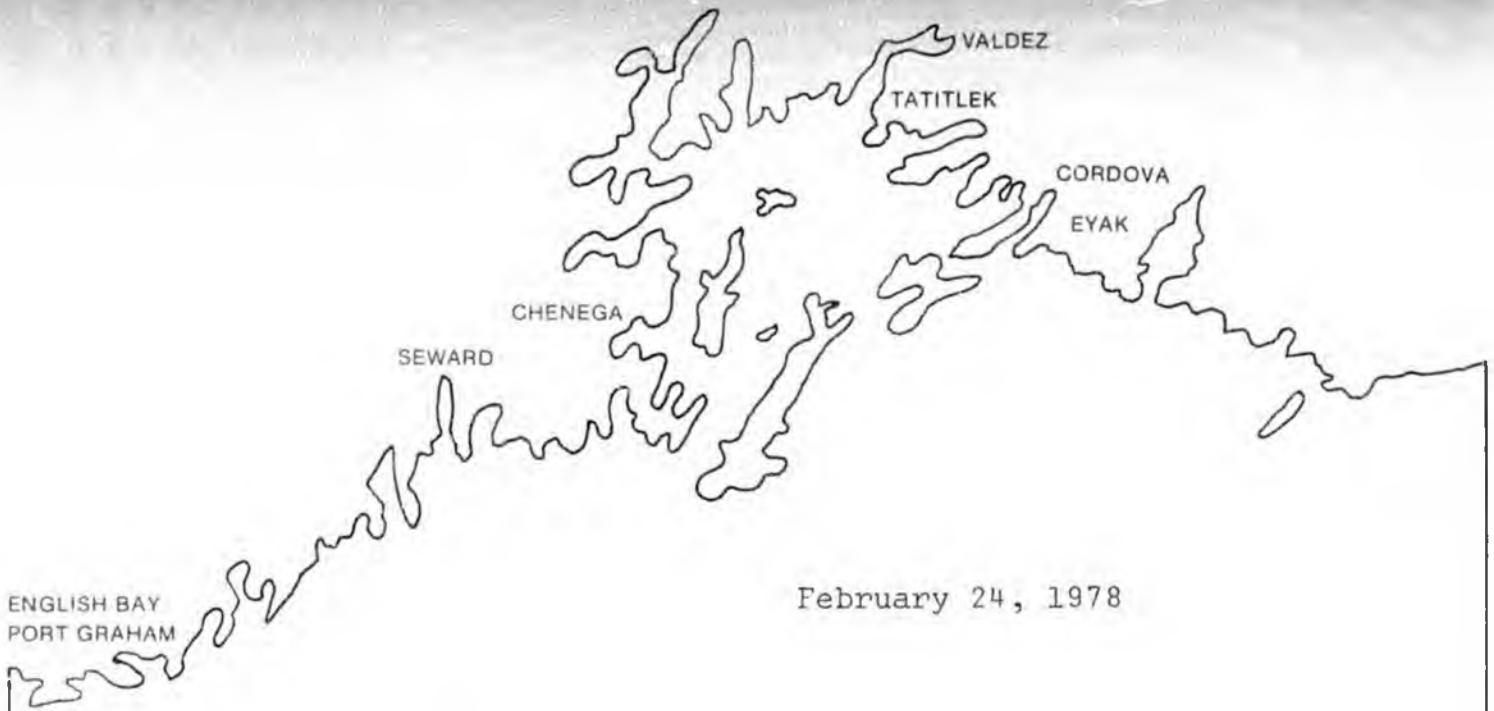
THERE ARE SOME SMALL AMENDMENTS THAT WE ARE INCLUDING WHICH CLEAN UP SOME OF THE LANGUAGE OF THE DRAFT AS SUBMITTED. IN ALL CASES WE HAVE TRIED TO INCREASE THE SPECIFICITY OF CERTAIN SECTIONS TO PROVIDE FOR GREATER CLARITY.

THE DRAFT AS DRAWN, IN AT LEAST ONE INSTANCE, COULD PROBABLY BE CONSIDERED UNCONSTITUTIONAL BECAUSE IT PROVIDES FOR A TAKING OF PRIVATE PROPERTY WITHOUT COMPENSATION. ONE EXAMPLE IS POTENTIAL FOR PROHIBITION OF CUTTING OF PRIVATE TIMBER IF IT AFFECTS THE SCENIC AND AESTHETIC QUALITIES IN CERTAIN AREAS. WE SUGGEST THE ELIMINATION OF THE SUBPARAGRAPH IN QUESTION.

AS HAS BEEN INDICATED BY SOME OF THE SENATORS AT THIS TABLE, IT IS FELT THAT THE PRIVATE LANDOWNER HAS THE FULL RESPONSIBILITY AND RIGHT FOR DETERMINING HOW HE WILL INTERPRET SUSTAINED YIELD MANAGEMENT. WE ENDORSE THIS PRINCIPAL AND HAVE MODIFIED THE WORDING TO ALLOW FOR APPROPRIATE FLEXIBILITY.

MADAME CHAIRMAN, WE THANK YOU FOR THE OPPORTUNITY TO APPEAR AND TESTIFY BEFORE YOU TODAY. AT THIS TIME, I WOULD LIKE TO HAVE PETER HUBERTH INTRODUCE AND EXPLAIN EACH OF THE SUGGESTED MODIFICATIONS WHICH SEALASKA CORPORATION WISHES TO OFFER.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.



February 24, 1978

Kay Poland, Chairman
Senate Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Ms. Poland,

We are extremely concerned with the movement of SB 59, HB 40, and any other state forest practices legislation which may be introduced during this session of the Legislature.

Therefore, could you please notify us when you schedule these bills for hearing or debate before your committee.

Thank you very much.

Sincerely,

A handwritten signature in cursive script that reads 'Carl A. Propes, Jr.'.

Carl A. Propes, Jr.,
Land Mgr.

Will do

11 MARCH, 1977

TESTIMONY BY CHUGACH NATIVES, INC., ON SENATE BILL 59 -
"AN ACT RELATING TO FOREST MANAGEMENT AND PRACTICES",
BEFORE THE SENATE RESOURCES COMMITTEE IN JUNEAU

GOOD AFTERNOON LADIES AND GENTLEMEN. MY NAME IS CARL PROPES,
LAND MANAGER FOR CHUGACH NATIVES, INC., AND TODAY I AM
SPEAKING ON BEHALF OF CECIL BARNES, PRESIDENT OF CHUGACH
NATIVES, INC.

MY INTRODUCTORY REMARKS CONSIST OF TWO APOLOGIES. FIRST, I
HAVE NO COPIES OF THIS TESTIMONY TO DISTRIBUTE TO THE
COMMITTEE, FOR IT WAS ONLY PREPARED AFTER WE ARRIVED IN
JUNEAU THIS WEEK. I WILL BE GLAD TO FORWARD SEVERAL COPIES
OF THE FINAL DRAFT OF MY REMARKS TO YOU DURING THE COURSE
OF NEXT WEEK, HOWEVER. SECONDLY, I MUST APOLOGIZE FOR NOT
BEING ABLE TO SPEAK TO YOU THIS AFTERNOON AS A FORESTER, FOR
THAT IS NOT WHERE MY TRAINING LIES. HOWEVER, WHAT I WILL
ATTEMPT TO DO IS ACQUAINT YOU WITH HOW A LAND MANAGER FOR A
PRIVATE CORPORATION, A CORPORATION DEEPLY AND INHERENTLY
INVOLVED WITH FOREST MANAGEMENT, VIEWS SENATE BILL 59.

FIRST, I WANT TO IMPRESS UPON YOU HOW DEEPLY CHUGACH NATIVES,
INC., IS COMMITTED TO SOUND FOREST MANAGEMENT AND PRACTICES.
THE FORESTS OF SOUTHCENTRAL ALASKA HAVE BEEN THE ANCESTRAL
HOME OF THE CHUGACH PEOPLE EVER SINCE THE GREAT NORTH AMERICAN
ICE SHEETS RECEDED. FROM PREHISTORY TO THE PRESENT WE HAVE
INHABITED WHAT IN THE EARLY TWENTIETH CENTURY CAME TO BE

CALLED THE CHUGACH NATIONAL FOREST. TODAY, AS A CORPORATION REPRESENTING THESE FOREST-DWELLING PEOPLE AS SHAREHOLDERS, CHUGACH NATIVES, INC., IS NO LESS CONCERNED ABOUT THE FUTURE OF ALASKA'S FOREST LANDS.

THE SECOND POINT THAT WE MUST EMPHASIZE IS THAT OUR FOREST ENVIRONMENT HAS MADE US INTO WHAT YOU MIGHT CALL "NATURAL ENVIRONMENTALISTS". BY LIVING IN THE FOREST AND SUBSISTING FROM ITS ABUNDANT RESOURCES, WE HAVE LEARNED FIRST HAND OF BOTH ITS PRODUCTIVITY AND ITS FRAGILITY. MOREOVER, THE LOCATION OF CHUGACH'S LAND SELECTIONS WILL DICTATE THAT THEY BE MANAGED IN CLOSE COORDINATION WITH ENVIRONMENTAL CONCERNS. OUR VAST SELECTIONS IN THE BREMNER RIVER AREA FALL WITHIN THE RECENTLY PROPOSED (d)(2) WRANGELL NATIONAL PARK, SUGGESTING THE POSSIBILITY OF EXTENSIVE LAND EXCHANGES AND COOPERATIVE MANAGEMENT AGREEMENTS. SECONDLY, LANDS IN EXCESS OF ONE HUNDRED THOUSAND ACRES ON THE EASTERN SHORES OF ICY BAY WILL SOON BE CONVEYED TO CHUGACH NATIVES' OWNERSHIP. IN TURN, THE CONGRESS HAS SPECIFICALLY REQUIRED THAT CHUGACH, IN ITS LAND MANAGEMENT PROGRAM AT ICY BAY, REFRAIN FROM TAKING ANY UNREASONABLE OR ARBITRARY ACTIONS FOR THE PRIMARY PURPOSE, AND WITH THE EFFECT, OF IMPAIRING OR CURTAILING ANY TRADITIONAL SUBSISTENCE USES IN THAT VICINITY BY NATIVES ENROLLED TO YAKUTAT.

I WOULD NEXT LIKE TO EXPLAIN TO THE COMMITTEE THAT SECTION 22(k)(2) OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971

ALREADY REQUIRES THAT CHUGACH UPHOLD MANY OF THOSE SAME FOREST STANDARDS AND PRACTICES THAT SENATE BILL 59 WOULD SEEK TO RE-IMPOSE ON US. SECTION 22(k)(2) READS:

Any patents to lands under this Act which are located within the boundaries of a national forest shall contain such conditions as the Secretary deems necessary to assure that such lands are managed under the principle of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands for a period of twelve years.

IN SUM, WE FEEL THAT THE FOREST SERVICE HAS SPELLED OUT ITS OWN STANDARDS AND REQUIREMENTS IN THE CHUGACH NATIONAL FOREST LAND USE PLAN, FOR INSTANCE, IN THE FOREST AND RANGELAND RENEWABLE RESOURCES PLANNING ACT OF 1974, AND IN THE ENVIRONMENTAL IMPACT STATEMENTS WHICH IT PREPARES FOR EACH OF ITS TIMBER SALE AREAS. AND, IN SHORT, THESE GUIDELINES SHOULD ALSO SUFFICE FOR THE ADJACENT PRIVATE FOREST MANAGERS. ANY ADDITIONAL RESTRICTIONS ENACTED BY THE STATE OF ALASKA, SUCH AS THOSE INCLUDED IN SENATE BILL 59, COULD SERVE LITTLE PURPOSE OTHER THAN TO COMPLICATE AND CONFUSE THE ISSUE.

IN CONCLUSION, CHUGACH NATIVES, INC., WOULD LIKE TO REFER THE COMMITTEE TO A BRIEF CLAUSE IN SECTION 2(b) OF THE CLAIMS ACT. THIS DECLARATION OF POLICY BY THE CONGRESS READS:

...the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property. (emphasis added)

OVER THE YEARS THIS CLAUSE HAS BEEN IGNORED, ABRIDGED, DISTORTED, AND RARELY, IF EVER, HONORED. CHUGACH NATIVES, INC.,

WOULD THEREFORE LIKE TO URGE THAT THIS COMMITTEE, IN ITS DELIBERATION ON FOREST POLICY AND PRACTICES LEGISLATION, TAKE THE INITIATIVE AND REVERSE THIS SAD TREND OF IGNORING THE NATIVE VOICE.

AT THIS TIME I WOULD LIKE TO ADDRESS OUR SPECIFIC OBJECTIONS TO SENATE BILL 59. IT SHOULD BE UNDERSTOOD BY THE COMMITTEE, HOWEVER, THAT FOR THOSE REASONS OUTLINED PREVIOUSLY, CHUGACH NATIVES, INC., OPPOSES THE PASSAGE OF ANY FOREST PRACTICES LEGISLATION BY THE STATE AT THIS TIME. HOWEVER, WE ALSO RECOGNIZE THAT BY DIRECTING OUR COMMENTS TO SPECIFIC AREAS OF THE LEGISLATION CURRENTLY BEFORE THE COMMITTEE, WE CAN ALSO BE OF SERVICE.

FIRST, I THINK THAT THE TENOR OF THE BILL'S PURPOSES SECTION IS ITSELF SUBVERTED BY THE SUBSEQUENT PAGES OF EXTREME REGULATORY AUTHORITY GIVEN TO THE ADMINISTRATOR OF THIS CHAPTER. SEVERAL OF THE RESULTS WHICH SENATE BILL 59 PURPORTS TO ATTAIN ARE: (1) "TO INSURE THAT TIMBER HARVESTING WILL CONTINUE TO CONTRIBUTE SUBSTANTIALLY TO ALASKA'S ECONOMY"; AND (2) "TO PROTECT THE LONGEVITY OF ALASKA'S FOREST PRODUCTS INDUSTRY BY IMPLEMENTING EFFECTIVE FOREST MANAGEMENT PRACTICES AND MAINTAINING OVER THE LONG TERM ALASKA'S SUPPLY OF TIMBER..." UNFORTUNATELY, IT IS OUR OPINION THAT MANY, IF NOT MOST, OF THE REQUIREMENTS WHICH FOLLOW WOULD ONLY SERVE TO FORESTALL AND IMPEDE THE ACHIEVEMENT OF THESE NOBLE GOALS.

SECONDLY, WE SUPPORT THE CONCEPT OF HOUSE BILL 40, WHICH WOULD CREATE A DIVISION OF FORESTRY WITHIN THE DEPARTMENT OF NATURAL RESOURCES, UNDER THE DIRECTION OF A CHIEF FORESTER. WE STRONGLY FEEL THAT SUCH A CHIEF FORESTER SHOULD BE NAMED AS THE ADMINISTRATOR OF ANY FOREST PRACTICES LEGISLATION, RATHER THAN ADOPT THE ALTERNATIVE POSTURE, NOW INCLUDED IN SENATE BILL 59, OF DELEGATING EVEN MORE AUTHORITY TO THE ALREADY POLLUTED POST OF THE COMMISSIONER OF NATURAL RESOURCES.

THIRDLY, WE AGREE WITH THE FINDING OF SENATE BILL 59 THAT THE "FAILURE TO IMPLEMENT WISE FOREST MANAGEMENT MEASURES DESIGNED TO GUARENTEE PERPETUAL SUPPLIES OF RENEWABLE RESOURCES IN A COMPATIBLE MANNER WOULD BE A GRAVE DISSERVICE TO THE PEOPLE OF ALASKA." AND, CHUGACH NATIVES, INC., INTENDS TO DO EVERYTHING IN ITS POWER TO ENSURE WISE MANAGEMENT IN CONCERT WITH THE STEADY PRODUCTION OF TIMBER PRODUCTS FROM ITS FOREST LANDS. HOWEVER, IN OUR REGION OF ALASKA, AND TO VARIOUS DEGREES ELSEWHERE IN THE STATE, THE CURRENT LACK OF ADEQUATE REFORESTATION MATERIALS CONTRIBUTES TO A LAGGING REFORESTATION PROGRAM. THEREFORE, WE WOULD LIKE TO SEE A STATE DIVISION OF FORESTRY MANDATED TO ESTABLISH AND MAINTAIN TREE SEEDLING NURSERIES AND GREENHOUSES, AN ACTION WHICH THE COMMISSIONER IS ONLY GIVEN THE DISCRETIONARY POWER TO DO UNDER THIS BILL.

FOURTHLY, WE FEEL THAT THE REQUIREMENT OF ITEM #4 IN SECTION .040 OF SENATE BILL 59, THAT "THERE SHALL BE NO SIGNIFICANT IMPAIRMENT OF THE PRODUCTIVITY OF THE LAND AND WATER WITH

RESPECT TO RENEWABLE RESOURCES..." , ONLY DUPLICATES EXISTING REGULATIONS, AND, AS SUCH, IS EXCESSIVE AND UNNECESSARY. ALSO, ITEM #5 IN THIS SECTION, WHICH SEEKS TO MAINTAIN THE SCENIC AND AESTHETIC QUALITY OF LANDS ADJACENT TO AREAS OF SIGNIFICANT IMPORTANCE TO THE TOURISM AND RECREATION INDUSTRIES, COULD BE INTERPRETED TO EFFECTIVELY PROHIBIT TIMBER DEVELOPMENT IN THE PRINCE WILLIAM SOUND AREA, FOR INSTANCE. WE BELIEVE THAT SUCH BROAD DISCRETIONARY POWERS SHOULD NEVER BE PLACED IN THE HANDS OF A SINGLE ADMINISTRATOR. THEREFORE, IN AN ATTEMPT TO NARROW THE LATITUDE AFFORDED THE ADMINISTRATOR IN THIS SECTION, WE WOULD RECOMMEND THAT THE FOLLOWING TWO PHRASES BE DEFINED IN SECTION .950 OF THIS BILL: "SCENIC AND AESTHETIC QUALITY" AND "AREAS OF SIGNIFICANT IMPORTANCE TO THE TOURISM AND RECREATION INDUSTRY".

FIFTHLY, WE BELIEVE THAT THE PREPARATION OF A TIMBER MANAGEMENT PLAN IS INDEED A LAUDABLE ACHIEVEMENT, AND AS A PRIVATE FOREST-LAND OWNER WE INTEND TO DO JUST THAT. ANY PLAN PREPARED BY THE STATE, HOWEVER, AS WOULD BE REQUIRED BY SECTION .050 OF SENATE BILL 59, MUST ONLY BE MADE TO APPLY TO STATE AND MUNICIPAL LANDS, NOT PRIVATE LANDS. YOU MAY BE ASSURED THAT ALL RESPONSIBLE PRIVATE LAND-OWNERS, SUCH AS CHUGACH NATIVES, INC., AND OTHER NATIVE CORPORATIONS, UNDERSTAND THAT THE "SUSTAINED YIELD OF MERCHANTABLE HIGH QUALITY TIMBER FROM FOREST LAND" IS THE ONLY MANAGEMENT GOAL THAT CAN ASSURE MAXIMUM LONG-RANGE BENEFITS TO THE CORPORATIONS AND THEIR SHAREHOLDERS. IN ALL CANDOR, WE HAVE NO REASON TO BELIEVE THAT

THE DEPARTMENT OF NATURAL RESOURCES - IN SPITE OF ALL THE GOOD FAITH IT CAN MUSTER - WILL HAVE MORE EXPERTISE, MORE INTEREST IN PRIVATE FORESTS, MORE TIME TO DEVELOP SOUND FOREST MANAGEMENT PLANNING, OR MORE INCENTIVE TO DO SO, THAN THE PRIVATE CORPORATIONS THEMSELVES. AND FRANKLY, WE ARE CONCERNED ABOUT THE DELETERIOUS EFFECTS WHICH WOULD RESULT UPON OUR FORESTS IF PLANNING WERE LEFT TO THE INITIATIVE OF A REMOTE BUREAUCRACY.

SIXTHLY, IN REFERRING TO SECTION .060 OF THIS BILL, WHERE THE GUIDELINES FOR THOSE REGULATIONS WHICH THE ADMINISTRATOR MAY ADOPT ARE DRAWN, WE WOULD HAVE TO OBJECT TO ANY WHICH SEEK TO REGULATE THOSE ASPECTS OF TIMBER HARVESTING ON PRIVATE LANDS WHICH HAVE NO SIGNIFICANT ENVIRONMENTAL EFFECT ON THE ADJACENT PUBLIC DOMAIN. THAT IS, IT WOULD BE EXCESSIVE FOR THE ADMINISTRATOR OF THIS ACT TO IMPOSE REGULATIONS REQUIRING US TO COMPLY WITH CERTAIN PROCEDURES WHICH IT IS IN OUR BEST ECONOMIC INTERESTS TO COMPLY WITH ANYWAY.

SEVENTH, WHILE SECTION .110 ON "PROHIBITIONS, PENALTIES AND ENFORCEMENT PROCEDURES" IS GENERALLY UNACCEPTABLE, TWO OF THE MOST OBJECTIONABLE PROVISIONS THEREIN ARE: (1) THAT THE ADMINISTRATOR IS ALLOWED TO STOP ALL TIMBER OPERATIONS IMMEDIATELY IN AN EMERGENCY SITUATION - A POWER THAT WE FEEL SHOULD REST ONLY WITH THE ATTORNEY GENERAL'S OFFICE; AND (2) THAT THESE PROCEEDINGS ARE NOT SUBJECT TO THE ADMINISTRATIVE PROCEDURES ACT. NO DOUBT THIS SECOND POINT WAS INCLUDED

IN THE BILL IN ORDER TO SANCTION HEARING OFFICERS APPOINTED BY THE COMMISSIONER OF NATURAL RESOURCES WHO MIGHT OTHERWISE BE DISQUALIFIED UNDER THE ADMINISTRATIVE PROCEDURES ACT ON THE GROUNDS THAT THEY ARE NOT "UNBIASED AND IMPARTIAL".

EIGHTH, ONE OF CHUGACH'S MOST GRIEVOUS COMPLAINTS ABOUT SENATE BILL 59 CONCERNS SECTION .120, WHICH ESTABLISHES THE COMMISSIONER OF NATURAL RESOURCES, THE ADMINISTRATOR OF THIS ACT, AS THE OFFICER WHO WOULD ALSO RECEIVE AND HEAR APPEALS, MANY OF WHICH WOULD STEM FROM THE COMMISSIONER'S OWN ACTIONS. CERTAINLY THIS COMMITTEE CAN DEVISE A MORE EQUITABLE APPEAL PROCEDURE THAN THIS.

NINTH, AND LASTLY, CHUGACH NATIVES, INC., FINDS FAULT WITH THE DEFINITIONS OF "COMMERCIAL AND NON-COMMERCIAL FOREST LAND" IN SECTION .950 OF SENATE BILL 59. WHEN ALL LANDS "CAPABLE OF PRODUCING CROPS OF INDUSTRIAL WOOD" ARE CONSIDERED TO BE "COMMERCIAL FOREST LAND", THIS INFERS THAT THEY WILL BE MANAGED ACCORDING TO PRINCIPLES AND PRACTICES SIMILAR TO THOSE MENTIONED IN THIS BILL. THEREFORE, SIMPLY BY BEING "CAPABLE" OF TIMBER PRODUCTION, THIS BECOMES THE HIGHEST AND BEST USE FOR MANY LANDS THAT WOULD PROBABLY BE BETTER SUITED TO OTHER USES.

IN CONCLUSION, I WOULD LIKE TO REITERATE OUR EARLIER PLEA THAT THE PRIVATE FOREST OWNER BE INVOLVED IN THE FORMULATION AND DRAFTING OF ANY STATE FOREST POLICY AND PRACTICES LEGISLATION. LET'S MAKE SUCH LEGISLATION A MODEL FOR INCORPORATING

THE OPINIONS OF INDIVIDUALS ENGAGED IN FOREST MANAGEMENT IN ALL SECTORS OF SOCIETY. THIS IS THE BEST MEANS FOR ASSURING THAT THE LAW WHICH RESULTS FROM YOUR DELIBERATIONS WILL NOT EXCESSIVELY BURDEN THE PRIVATE OWNER, NOR EXERCISE TOO LENIENT A CONTROL OVER OUR COMMON ENVIRONMENT.

AS AN AFTERTHOUGHT, I MIGHT REMARK THAT I WAS RATHER SURPRISED TO NOTE THAT SENATE BILL 59 CONTAINS NO PROVISION FOR ANY KIND OF FORESTRY COMMISSION, COUNCIL OR BOARD. HOWEVER, WE BELIEVE THAT THE COMMITTEE SHOULD CONTEMPLATE WHAT THE NEED IS AND WHAT THE EFFECTS WOULD BE OF CREATING SUCH AN AD HOC ADVISORY BOARD, COMPOSED OF PRIVATE, AS WELL AS STATE AND FEDERAL FOREST OWNERS AND MANAGERS, TO EVALUATE AND RECOMMEND THE POLICIES AND PROCEDURES WHICH ANY FUTURE STATE FOREST PRACTICES LEGISLATION SHOULD CONTAIN.

WE THANK YOU, MADAM CHAIRMAN AND COMMITTEE MEMBERS, FOR AFFORDING CHUGACH NATIVES, INC., THE OPPORTUNITY TO TESTIFY THIS AFTERNOON ON SENATE BILL 59.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Sponsor Substitute for Senate Bill No. 59
 Title An Act Relating to Forest Resources and Practices
 Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Natural Resources
 Program Category Affected Division of Land and Water Management
 Budget Request Unit(s) Affected Protection and Management

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES		186.3	241.6	349.0	367.0	380.0
200 TRAVEL		35.0	35.0	31.0	30.0	33.0
300 CONTRACTUAL		120.0	100.0	122.0	4072.0	4055.0
400 COMMODITIES		4.0	3.0	3.0	3.0	3.1
500 EQUIPMENT		24.0	2.0	20.0	5.0	2.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		369.3	381.6	525.0	1477.0	4473.1

FUNDING (Thousands of Dollars)

GENERAL FUND		369.3	351.6	490.0	4417.0	4408.1
FEDERAL FUNDS			30.0	35.0	60.0	65.0
OTHER (Specify)						

POSITIONS

FULL TIME		8	8	12	12	12
PART TIME		3	3	3	3	3
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

A. Assumptions:

1. Under *Sec. 3. the Act takes effect January 1, 1979. However, as the Commissioner is not precluded from undertaking preparatory activities in the interim, it is assumed that one forester in the state office and one forester in each of the three regional offices of Fairbanks, Anchorage and Juneau will provide the necessary personnel to develop regulations and give public access to forestry expertise throughout the state (Sec. 41.17.020 (j)). These foresters would start July 1, 1978. Thereafter, dependent on the degree of forest practice activity it may be assumed that a forester should be made available to each area. Possible centers for these areas are: Delta, Willow, Soldotna, Glennallen and Haines.

2. It is assumed that other activities as inventory and advisory committee work would start after January 1, 1979.

IV. DATE 4/7/78 PREPARED BY *Henry R. Kellomaki*
 AGENCY Division of Land and Water Management
 PHONE 279-5577

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

3. Section 41.17.050 of this Bill provides that the Commissioner shall maintain a current inventory or assessment of timber on forest land to assist in meeting the requirements of the Act. It is assumed that an inventory will be done on 8,000,000 acres of state and municipal lands and an equal amount of private lands will be assessed. To be of value this should be repeated every ten years. Experience shows that one man month is required to complete an inventory on one township (23,040 acres). Therefore, six persons are needed to complete the work each year. This allows for three two-man crews during the five month summer field period and three men for winter mapping and photo work.

4. Section 41.17.020 provides for advisory committees to be reimbursed for travel and expenses while giving assistance in the administration of this chapter. It is assumed that these committees will meet more often during the first period of the fiscal note as a result of development of regulation and public hearing meetings.

5. Section 41.17.020 provides that the Commissioner may establish and maintain forest tree nurseries and greenhouses for reforestation purposes. It is assumed that an agronomist and one forest technician will be needed in the program. A future expansion of forest nursery facilities will be sought using capital improvement funds.

6. Section 41.17.050(d) It is expected that after January 1, 1981 recommendations transmitted to the legislature establishing economic incentives would amount to four to five million dollars.

7. Section 41.17.030(b) Amendments to the Federal Water Act may make applicable the provisions of the Act to forest land under federal ownership. It is assumed that the workload would increase dramatically in the southeastern area if this becomes fact.

B. Program Summary:

Personal Services: \$186,300

New Positions

Forester III	1 for 12 mos.	\$32,500
Forester III	1 for mos.	16,200
Forester II	3 for 12 mos.	84,900
Forester II	1 for 6 mos.	14,100
Forester Tech II	3 for 3 mos.	15,500
Forester Tech I	1 for 3 mos.	4,500
Drafting Tech II	1 for 6 mos.	10,200
Inventory Overtime		8,400

Travel: \$ 35,000

Forest Practice Committee	\$ 7,000
Inventory	24,000
Forest Practice	4,000

Contractual: \$120,000

Helicopter	\$ 30,000
Vehicle Milegage	6,000
Aerial Photography	75,000
Printing and Advertising	5,000
Office Rent	4,000

Commodities: \$ 4,000

Equipment: \$ 24,000

Office equipment	\$ 4,000
Vehicles	20,000

\$369,300

SHEE ATIKA, INCORPORATED

P.O. Box 578
Mt. Edgecumbe, Alaska 99835
Phone - (907) 747-3534

February 18, 1977

Senator Kay Poland
Senate Resources Committee
Pouch V
Juneau, Alaska 99801

SB 59

Sir,

Shee Atika, Inc., as owner of 23,040 acres of commercial forest land in Southeast Alaska would like to submit the following summary position on SB59 in behalf of our 1,850 stockholders.

1. SB59 will judge and establish resource management standards based on political criteria by placing all authority in the Commissioner of Natural Resources. We feel the authority to administer the standards should be delegated to a strong state forester who answers to a board of professionals, land owners, labor, industry and other parties. The board would draft the regulations.

2. We feel that aesthetics are an improper subject for regulations affecting land management on private forest lands.

3. We feel that the Forest Practices Act should incorporate a notification system in lieu of the proposed prior approval system. The burden thus would be on the state, not the landowner and the Act would be much less expensive to enforce.

4. We feel that notification should not be required any earlier than a maximum of 30 days prior to commencement of operations.

5. We feel that requirement of a performance bond prior to operation on private land is unnecessary as the law provides severe penalties for violation of the law and regulations. The performance bond would prevent many small operators from being able to continue in business.

6. We would like to request a delay in hearings on SB59 until May 1st to allow SANTCO (the largest private commercial forest landowner in Alaska) adequate time to complete its recommendations.

Sincerely,

Nelson Frank

Nelson Frank,
President & Chairman,
Shee Atika, Inc.

wrw/tab

Alaska State Legislature

SENATOR
KAY POLAND
DISTRICT L
P.O. BOX 45
KODIAK, ALASKA 99619



Senate

KODIAK-ALEUTIAN
DISTRICT

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

March 3, 1977

Mr. Nelson Frank
President & Chairman
Shee Atika, Inc.
P. O. Box 578
Mt. Edgecumbe, Alaska 99835

Dear Mr. Frank:

Thank you for your letter and critique on SB 59, Forest Practices Act. Your letter will be made part of our record and your suggestions will be considered by the Resources Committee.

I note your request that we delay hearings on this bill until May 1; this would be the equivalent of abandoning any hope for action this year. We have scheduled our next hearing on SB 59 for Friday, March 11, at 3:00 p.m., in Senate Resources Committee Room 126; I hope that SANTICO will be able to make some recommendations at that time. I feel sure that we will have additional hearings, but cannot make a commitment as to when they will be at this time.

Again, thank you for your comments, and I will look forward to hearing from you.

Sincerely,

Kay Poland
State Senator
Kodiak-Aleutian District

KP:ss

SHEE ATIKA, INCORPORATED

P.O. Box 578
Mt. Edgecumbe, Alaska 99835
Phone - (907) 747-3534

February 24, 1978

Senator Kay Poland
Chairman, Senate Natural Resources Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99801

Dear Senator Poland,

We have researched the cost of administration and enforcement of "prior approval" forest practices acts such as that used in California and such as the act (SB 59) proposed by the Governor and the cost of administrating and enforcing a "notification" type forest practices act such as the act adopted in Oregon and the act proposed by the Southeast Alaska Native Timber Corporation. It is interesting to note that a "prior approval" act (SB 59) is 6.5 times as expensive as a "notification" act (proposed by SANTCO), considering volume harvested, and 27.3 times as expensive when one considers the number of operation notices filed.

COST BENEFIT COMPARISON OF PRIOR APPROVAL AND NOTIFICATION SYSTEMS FOR STATE FOREST PRACTICES ACTS

	Prior Approval System California	Notification System Oregon
Operations or Notices filed/year	1,371	8,100
MBF Harvested/year	2,700,000	3,778,000
Annual Budget	\$2,400,000	\$515,000
Administration and Enforcement Cost		
\$/operation notice filed	\$1,750.55	\$64.07
\$/MBF harvested	\$.89/MBF	\$.14/MBF

Oregon and California allow approximately 7% of their respective budgets for transportation and 33% for administrative overhead. The cost of administration and enforcement in Alaska should reasonably be expected to be 58% higher than the cost in California or Oregon. This conclusion is reached by increasing transportation expense to an estimated 33% of the total budget as it would apply to Alaska and further compounding the entire revised budget by an additional 25% estimated cost of operating differential.

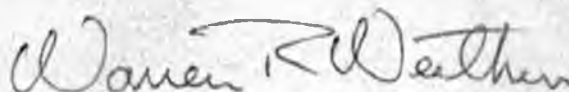
We agree that Alaska should have a Forest Practices Act. The questions to be considered are:

Senator Kay Poland
February 24, 1978

1. What type of Forest Practice Act do we really need ?
2. How badly do we need the particular form of Forest Practices Act proposed ?
3. What type of Forest Practice Act can the people of Alaska and our fragile economy afford and justify ?

Please keep us informed of the committee's progress on the subject.

Sincerely,



Warren R. Weathers
Executive Director

WRW/nw

Alaska State Legislature

SENATOR
KAY POLAND
DISTRICT L
P.O. BOX 45
KODIAK, ALASKA 99615



Senate

KODIAK-ALEUTIAN
DISTRICT

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99801

March 1, 1978

Warren R. Weathers
Executive Director
Shee Atika, Inc.
Box 578
Mt. Edgecumbe, Alaska 99835

Dear Warren:

I have received your letter of February 24 regarding Senate Bill 59, the Forest Practices Act. It will be included in the record of testimony on the bill.

A revised version of the bill is currently being prepared by the Administration. I hope to reopen hearings on the latest draft sometime during March. You will be notified as soon as hearing dates have been scheduled.

Sincerely,

A handwritten signature in cursive script that reads "Kay Poland".

Kay Poland
State Senator
Kodiak-Aleutian District

KP:ts

TESTIMONY OF CLARENCE KRAMER
FOR ALASKA LUMBER AND PULP CO., INC
BEFORE THE SENATE NATURAL RESOURCES COMMITTEE ON
S. B. 59

My name is Clarence Kramer. I am the President of Alaska Lumber & Pulp Co., Inc. I am here today to testify in support of Senate Bill 59 and urge its prompt passage by the legislature.

At the outset let me commend those who have participated in this process of drafting this bill for what has been three trying years. Anyone who reviews its various drafts can see that it is the work product of many people. It achieves an effective compromise and consensus of what will be required to protect our forests and our industry. It is of value to all the citizens of the State and is indeed in the public interest that this legislation has been brought before you prior to the time that there was a crisis in our forests requiring adoption of such a bill under emergency conditions.

More than any person, Madame Chairman, you deserve credit for this Bill. You forced the Administration to seek concensus so that the private landowner, public land user, interested citizens, and the regulatory area of government would all be served rather than hindered by a Forest Practices Act. At times when progress was stalled, it was your prodding

that got the parties back on track. In short, you have done a tremendous job on this Bill, which is in the highest tradition of Alaskan Legislative Service.

I thought it would be useful to go through this bill and explain the various points that we see as beneficial to both the wood industry and public interest:

1. Section 41.17.010(2). In this section of legislative intent, the importance of the forest industry to the State is recognized and the support of the State in maintaining the forest industry is promised. We expect to be self-sustaining and pay our own way in this State as we always have. However, we desire to do this in concert with the State and this Section promises that kind of relationship.

2. Section 41.17.010(4). This section of the declaration of intent indicates the tripartite approach of the legislation. Namely, the bill recognizes the need for professional management services and economic incentives along with regulatory measures. Thus a balanced approach which we hope will be fully implemented in the regulations.

3. Section 41.17.010(5) &(6). These sections of the declaration of intent recognize that regulations to be promulgated under both the Coastal Zone Management Act and Section 208 of the Federal Water Pollution Control Act of 1972 must be coordinated with the Forest Practices Act. This will give us one comprehensive set of regulations for operators. What we do not want is three sets of regulations under three different management agencies within the State.

One of the major incentives for our support of this bill is the fact that it promises that Section 208 and the Coastal Zone Management Act Regulations regarding forestry will be coordinated under the Forest Practices Act. Madame Chairman, I can assure you that we will be asking for legislative oversight if this promise is not carried out.

4. Section 41.17.020(a). This section provides for the creation of a Division of Forest, Land, and Water Management within the Department of Natural Resources. This section has been one of the key stumbling blocks to reaching an agreement on a Forest Practices Act. The industry has been concerned for years over the Fish and Game Department's control of forestry affairs. To the extent that the State of Alaska has had a policy with respect to its forests and forest industry, it has been created by the Alaska Department of Fish and Game. Since the Alaska Department of Fish and Game is headed by a Commissioner, the political power of the Department vis a vis the political power of anyone within the State Government regarding forestry has always been one sided. One of the major things we had hoped to accomplish by this bill was the assurance that fishery values receive equal consideration with timber values on our forests. We had hoped to do this by placing the Division of Forestry directly under the Commissioner so that it would have the same importance as the Division of Lands.

There appears however to be problems associated with creating a separate Division of Forestry which reports directly to the Commissioner. First of all, the land management authority of the Department of Natural Resources resides

with the Division of Lands. The authority of that Division is spelled out in Title 38 of the Alaska Statutes. It is going to be necessary in the near future for the legislature to extensively revise this anachronistic and archaic statute. Commissioner LeResche has promised to take a look at this problem over the next two year period to see what changes should be made in Title 38. He has also assured us that he will make certain the concerns of the forest industry receive equal consideration with concerns for other resources in the top levels of the Government. Accordingly, we will bow to his wishes for the time being that the Division of Forestry be within the Division of Lands. The Bill leaves open to the Commissioner the option of moving the Division of Forestry if the proposed arrangement is unsuccessful.

We would like to compliment Commissioner LeResche for the active interest he has taken in responding to our concerns regarding this problem. His recognition of the importance of the forest industry and that it has a rightful place in the forest is in marked contrast to the previous Commissioner. The very struggle on this issue which has taken place over the last three years has sensitized the Department of Natural Resources to our concerns. We are satisfied that they will be considered.

As we understand the inner-workings of 41.17.020(a) and 41.17.050(c), the Commissioner can move the Division of Forestry outside the Division of Lands at any point he deems appropriate. After a two year period he will review the administrative arrangement in his report to the legislature. The legislature will then have an opportunity to review his

report and determine whether it would be appropriate to move the Division of Forestry outside the Division of Lands at that time. At the very least, we hope that Title 38 will have been revised at that time, so that if the legislature deems it appropriate to move the Division of Forestry there is no stumbling block to prevent it from happening.

5. Section 41.17.020(g) coordinates the activities of the Department of Environmental Conservation and the Department of Natural Resources with respect to Section 208 regulations regarding forestry. Under the Federal regulations and by act of the Governor, the Department of Environmental Conservation is the lead agency for Section 208 regulation within the State. This means that DEC is not subject to legislative direction but rather receives its authority from the Federal Government. This is why the Section is written to require the Commissioner to "seek to enter into a cooperative agreement with the Commissioner of Environmental Conservation". This is why it provides that DEC has to approve the agreement. We have received assurances from Mr. Reinwand that the Department of Environmental Conservation intends to be reasonable and fair in assuring that this section of the Act is carried out.

6 Section 41.17.020(i) provides for the creation of advisory committees to assist in the administration of this chapter. We believe it to be essential that this advisory committee be developed early on so that it can assist in the

creation of the regulations under this Act. We believe further that private land holding interests should be heavily represented on this Board.

7. Section 41.17.040(b)(1) should be changed as has been suggested by the Administration. As it stands now it requires the production of a sustained yield of merchantable timber from private forest land. Sustained yield is defined in this statute in the same way it is in the Multiple Use-Sustained Yield Act of 1960. The Federal Government has determined that Sustained Yield means non-declining yield. While the continued production of merchantable timber is obviously something that needs to be considered on private land a notion that the private land owners' must manage their timber on a non-declining basis is something that the State should not dictate. Obviously, sustained yield management is appropriate for State and Municipal forest land.

8. Section 41.17.040(c)(4) requires that forest lands must be administered to provide for the continuation of forest-related business. This again is a recognition important to us of the importance of the forest industry in the Alaskan economy. We expect to rely heavily on this section in the preparation of regulations.

9. Section 41.17.050 is what may be termed a mini State Forest and Rangeland Renewable Resources Planning Act. As I am sure this Committee is aware, this latter Act is a Federal Act passed in 1974 to require advanced planning for

the use of Forest Resources on public land. In recent days we have seen a sorry example of the way it was supposed to be administered when the Carter Administration came out with a recommendation for wilderness in the Tongass National Forest prior to the time that the Tongass Land Use Management Plan was completed. Nevertheless the idea of that bill is good and the fact that we would do many of the same things on State lands which are required by that Bill will be most valuable.

10. Section 41.17.060(b) sets up a single stop permit requirement within the Department of Natural Resources to be coordinated with the Act that this Committee sponsored and passed last year, Madame Chairman.

11. Section 41.17.060(d) is another important section to us. It provides that the Commissioner shall adopt only regulations necessary to accomplish the purpose of the Chapter and will avoid regulations which increase operating costs without yielding significant benefits. It remains to be seen whether or not this can be done. However, this is the first time I have seen this stated as a goal in State legislation. Hopefully when the regulations are being formulated, this Section of the Bill will be remembered.

12. Section 41.17.070 sets up the procedures for granting permits. As I am sure you are aware, this is a modified notification procedure. I believe it is valuable to have a procedure designed to limit paperwork and which sets a proscribed time for agency action. Too often in the past agencies have failed to act in a timely way, and thus

caused delay in a number of projects. This has occurred most frequently with respect to our industry where we have applied for Corps of Engineer Permits' which require concurrence by State agencies. Now State agencies will no longer be able to withhold such consideration until it is convenient for them to act.

13. Section 41.17.110 is another compromise in the Bill. Frankly, we had wanted a Section which set up an independent office of hearing examiner which would have the right to use both an informal and formal procedure. What has been prepared here is a reasonable compromise which allows for persons uninvolved with the Department of Natural Resources to act as hearing examiner and also allows an operator to proceed informally when there is a complaint against him. That is, he may elect to go forward without the necessity of having a lawyer, realizing that he will not be opposed by a lawyer or a representative from the agency on the other side.

Thank you very much Madame Chairwoman for all of your hard work in assuring that there was an equitable resolution of this issue. As you can see from the foregoing the forest industry has been given much incentive to support this bill. Without your participation we doubt that this would have occurred in the extent it did. We would also like to compliment Commissioner LeResche for his insight and understanding of the issues and willingness to spend time and energy in achieving a fair bill. He too urged compromise

on all parties and was willing to take strong and decisive action when needed. Had he been Commissioner of Natural Resources when this bill originally came up for consideration I am sure it would have been whipped into shape far more quickly than it was. Finally, Geoff Haynes, from the Department of Law, deserves commendation for his hard work and persistence on this bill. I am sure that there were many times when Geoff felt frustrated by the seeming lack of progress in getting this bill moving. He has done an admirable job in seeking a reasonable solution.

I would be glad to answer any questions.



Alaska Conservation Society

Incorporated in 1960

P.O. Box 86192

College Branch, Fairbanks, Alaska 99708

SSSB 59 Forestry Practices Act

A state forestry practices act is needed to set criteria and standards under which state, municipal and private commercially forested lands are to be managed.

Obviously, the main purposes of the act are to deal with management of commercial timber for in-state needs as well as export. But, receiving equal and balanced consideration should be other uses of our forests. Also, emphasis should be on cooperative management between federal, state municipal, and private forest landholders. Special consideration should be given to coordination and cooperation with federal agencies in the development of national forest management plans and with the Joint Federal State Land Use Planning Commission or its successor. Regulations should encompass strong environmental safeguards and the ability by the state to shut down damaging activities should they occur. Reforestation must be practiced to insure perpetuation of our state forest ecosystems.

Inventories must be carried out to establish what forest resources are in the state. A comprehensive management plan, long term, for state forest lands should be developed to allow the timber industry to know the conditions of leasing state forest lands and allowing them to be able to plan. Such an act is needed to provide a clear basis from which to operate and make forestry management decisions. Economic incentives should be tempered with fair taxation policies on timber and timber growing land.

SSSB 59 incorporates these ideas and others. Much work has been done between industry, native and conservation groups to arrive at a forestry

practices act acceptable to all. ACS appreciates the opportunity for input into this important piece of legislation and supports the concepts embodied in this bill.

The amendments we have to offer are as follows:

1. .040, pg. 5, line 23-25, delete current (6) and add new (6) to read:
"(6) scenic and aesthetic quality shall be maintained in or adjacent to areas of significant importance to tourism, recreation, and wilderness areas."
2. .060, pg. 8, line 7, add "(9) protection of scenic, recreation, aesthetic, wilderness and other national values."
3. .110, pg. 12, line 13, change "\$10,000" to "\$100,000" or restore sentence after \$10,000 to read "Each day constitutes a separate offence."



GOLDBELT, INCORPORATED

130 SEWARD STREET, SUITE 302 • JUNEAU ALASKA 99801 • (907) 586-6244

TESTIMONY OF JOSEPH G. WILSON
ON BEHALF OF GOLDBELT, INCORPORATED ON
PROPOSED SPONSOR SUBSTITUTE
SENATE BILL NO. 59
IN THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE - SECOND SESSION
A BILL RELATING TO FOREST RESOURCES AND PRACTICES

MADAME CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS JOSEPH G. WILSON. I AM THE PRESIDENT AND CHAIRMAN OF THE BOARD OF DIRECTORS OF GOLDBELT, INCORPORATED, THE ALASKA NATIVE CLAIMS CORPORATION ORGANIZED BY THE JUNEAU NATIVES FOR THE PURPOSE OF SELECTING LAND PURSUANT TO SECTION 14 H (3) OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971. GOLDBELT HAS 2,700 SHAREHOLDERS, EACH OF WHOM IS A DULY ENROLLED ALASKA NATIVE. GOLDBELT WILL OWN THE SURFACE ESTATE OF 23,040 ACRES OF LAND IN NORTHERN SOUTHEAST ALASKA THAT WILL HAVE SUBSTANTIAL TIMBER VALUE.

GOLDBELTS CONCERN WITH PROPOSED SPONSOR SUBSTITUTE SENATE BILL NO. 59 LIES IN ITS IMPACT ON OUR RIGHT AS PRIVATE LAND OWNERS TO MANAGE OUR FOREST LANDS.

GOLDBELT HAS REVIEWED SEALASKA'S AMENDMENTS TO THE PROPOSED SPONSOR SUBSTITUTE SENATE BILL 59, ALASKA FOREST PRACTICES ACT AND CONSIDER THESE TO BE THE MINIMUM REQUIREMENTS FOR THE PROTECTION OF PRIVATE PROPERTY INTERESTS.

THE AMENDMENT'S FOCUS ON 1.) A BOARD OF FORESTRY IS ESTABLISHED WITH BROAD REPRESENTATION FROM INDUSTRY, PROPERTY OWNERS, AND OTHER INTEREST GROUPS. AN IMPORTANT CONSIDERATION OF THE BOARD IS THAT THEIR RESPONSIBILITY WILL BE TO DIRECTLY PARTICIPATE IN THE FORMULATION OF DRAFT REGULATIONS PERTAINING TO THE

MANAGEMENT AND USE OF FOREST RESOURCES. 2.) THE ORGANIZATION FOR A DIVISION OF FORESTRY LED BY A STATE FORESTER WITH SUFFICIENT FORESTRY EDUCATIONAL BACKGROUND. 3.) THE AMENDMENTS ADDRESS THE STANDARDS OF REGULATIONS WITH EMPHASIS ON THE ECONOMIC ENVIRONMENT OF THE INDUSTRY AND RECOGNITION THAT MAN IS AN ESSENTIAL FEATURE IN MANAGING THE FOREST AND RELATED RESOURCES.

GOLDBELT CONSIDERS THESE TO BE THE BASIC MINIMUM REQUIREMENTS FOR THE PROTECTION OF PRIVATE LAND OWNERSHIP INTERESTS. WITHOUT THESE AMENDMENTS, GOLDBELT, INCORPORATED WOULD BE OPPOSED TO THE PASSAGE OF THIS LEGISLATION DURING THIS SESSION.

MADAME CHAIRMAN, WE THANK YOU FOR THE OPPORTUNITY TO TESTIFY.

COOK INLET CHAPTER
JUNEAU CHAPTER
KETCHIKAN CHAPTER
YUKON RIVER CHAPTER
SITKA CHAPTER
STIKINE CHAPTER

SOCIETY OF AMERICAN FORESTERS

Alaska Section

April 10, 1978



TESTIMONY FOR THE SENATE RESOURCES COMMITTEE
SENATE BILL NO. 59, SPONSOR SUBSTITUTE

MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE;

MY NAME IS BOB JANES AND I AM APPEARING TODAY FOR THE ALASKA SECTION OF THE SOCIETY OF AMERICAN FORESTERS.

WE WELCOME THIS OPPORTUNITY TO GIVE TESTIMONY IN FAVOR OF THE CURRENT SPONSOR SUBSTITUTE FOR SENATE BILL NO. 59. THE ALASKA SECTION REPRESENTS OVER 200 PROFESSIONAL FORESTERS THROUGHOUT THE STATE OF ALASKA, AND IS PART OF A NATIONAL ORGANIZATION OF MORE THAN 20,000 SUCH MEMBERS. DURING THE PAST THREE YEARS, WE HAVE BEEN ACTIVE IN HELPING TO FORMULATE LEGISLATION FOR A SOUND STATE FOREST PRACTICES ACT IN ALASKA. A YEAR AGO, WE MADE AN IN-DEPTH ANALYSIS OF SENATE BILL NO. 59, BY TESTING IT AGAINST OUR SOCIETY OF AMERICAN FORESTERS RECOMMENDED NATIONAL CRITERIA FOR A COMPETENT STATE FOREST PRACTICES ACT. WE ARE HAPPY TO SEE THAT SUGGESTIONS AS A RESULT OF THAT EFFORT HAVE BEEN INCORPORATED INTO THE SPONSOR SUBSTITUTE BEFORE YOU TODAY.

ONE OF OUR PRIMARY CONCERNS A YEAR AGO, WAS THE NEED FOR THE STATE FORESTER TO PLAY A MORE PROMINENT AND AUTHORITATIVE ROLE IN ADMINISTERING THE ACT IN A SOUND AND PROFESSIONAL MANNER. SINCE THE DIRECTOR OF THE DIVISION OF FOREST, LAND, AND WATER

MANAGEMENT WILL BE THE STATE FORESTER, AND SINCE THIS PERSON MUST HAVE PROFESSIONAL NATURAL RESOURCES LAND MANAGEMENT CREDENTIALS, IT APPEARS THE ORGANIZATIONAL STRUCTURE NOW PROVIDES FOR OVERCOMING THAT PARTICULAR PROBLEM. WITH PROPER DELEGATED AUTHORITY EXTENDED BY THE COMMISSIONER, THE STATE FORESTER SHOULD BE ABLE TO OPERATE IN A LEADERSHIP ROLE IN THE MANNER WE ENVISION IS NECESSARY. WE MUST EMPHASIZE, HOWEVER, THE IMPORTANCE OF DELEGATING SIGNIFICANT AUTHORITIES TO THE STATE FORESTER. OTHERWISE, A PROGRESSIVE STATE FORESTRY AWARENESS IN ALASKA COULD AGAIN BACKSLIDE, AND OBSTRUCT SOUND PROTECTION, MANAGEMENT AND UTILIZATION OF THE ABUNDANCE OF NATURAL RESOURCES THIS GREAT STATE HAS.

ANOTHER OF OUR MAJOR CONCERNS IN THE PAST WAS THE EFFECT THIS LEGISLATION WOULD HAVE ON PRIVATE LANDOWNERS. CRITERIA #7 OF OUR NATIONAL GUIDELINES STATES "A FOREST PRACTICES ACT SHOULD ALLOW A FOREST LANDOWNER LATITUDE IN APPLYING PROFESSIONAL FORESTRY EXPERTISE AND FOREST MANAGEMENT PRINCIPLES. ADMINISTRATIVE REQUIREMENTS FOR FOREST LANDOWNERS AND OPERATORS SHOULD NOT BE UNDULY BURDENED." IN PREVIOUS INPUT, WE EXPRESSED THOUGHTS ABOUT THE APPARENT INAPPROPRIATE INVASION OF RIGHTS AGAINST PRIVATE LANDOWNERS BECAUSE OF UNDULY RESTRICTIVE REGULATORY PRACTICES. FOR EXAMPLE, THERE WAS A PROVISION IN PREVIOUS PROPOSED LEGISLATION THAT READ "TIMBER HARVESTING IS NOT PERMITTED IN AN AREA UNLESS RELEVANT DATA AND INFORMATION INDICATE THAT THERE WILL BE NO REFORESTATION PROBLEMS LEADING TO THE INABILITY OF THAT AREA TO PRODUCE A SUSTAINED YIELD OF MERCHANTABLE TIMBER." WE COMMENTED THAT WHILE THIS MAY BE APPROPRIATE FOR STATE OR MUNICIPAL FOREST LANDS, IT

WAS NOT APPROPRIATE AS A BASIS FOR DEPRIVING A PRIVATE LANDOWNER OF ECONOMIC VALUES THAT EXISTED ON HIS OWN LAND. THE CORRESPONDING REGULATORY STANDARD IN THE CURRENT SPONSOR SUBSTITUTE, SEC. 41.17.040 (B) (1), NOW READS "TIMBER HARVESTING IS LIMITED TO AREAS WHERE DATA AND INFORMATION DEMONSTRATE THAT NATURAL OR ARTIFICIAL REFORESTATION TECHNIQUES WILL RESULT IN THE PRODUCTION OF A SUSTAINED YIELD OF MERCHANTABLE TIMBER FROM THAT AREA." DURING THE OPERATOR NOTIFICATION PROCESS WITH THE COMMISSIONER, THIS REQUIRED DETERMINATION SHOULD BE EASILY RESOLVED. ANOTHER OVERLY RESTRICTIVE PROVISION IN THE SAME SECTION OF THE PREVIOUSLY PROPOSED LEGISLATION READ, "SCENIC AND AESTHETIC QUALITY SHALL BE MAINTAINED IN OR ADJACENT TO AREAS OF SIGNIFICANT IMPORTANCE TO THE TOURISM AND RECREATION INDUSTRY." THE CORRESPONDING REGULATORY STANDARD NOW READS "WHERE ECONOMICALLY PRACTICABLE, ALLOWANCE MAY BE MADE FOR SCENIC AND AESTHETIC QUALITY IN OR ADJACENT TO AREAS OF SUBSTANTIAL IMPORTANCE TO THE TOURISM AND RECREATION INDUSTRY." IN ESSENCE, THESE TYPES OF UNDULY RESTRICTIVE MEASURES HAVE BEEN ELIMINATED AND WE BELIEVE PRIVATE LANDOWNERS ARE NOW GIVEN FAIR CONSIDERATION IN THE SPONSOR SUBSTITUTE BILL. IN ADDITION, SECTION 41.17.070 HAS BEEN SUBSTANTIALLY IMPROVED REGARDING REVIEW AND APPROVAL OF OPERATIONS. EVERY EFFORT WILL BE MADE TO LIMIT THE REVIEW AND APPROVAL PERIOD TO A MAXIMUM OF 20 DAYS. WITH THESE EXAMPLES, IT IS DEMONSTRATED THAT UNDULY BURDENSOME REQUIREMENTS HAVE BEEN STREAMLINED OVER THE PREVIOUS BILL.

PROPOSED LEGISLATION FOR AN ALASKA FOREST PRACTICES ACT STARTED IN THE SECOND SESSION OF THE NINTH LEGISLATURE. IT CONTINUED IN THE FIRST SESSION OF THE TENTH LEGISLATURE, AND IS NOW IN ITS THIRD YEAR. TO HELP ASSURE SOUND PROFESSIONAL MANAGEMENT OF ALASKA'S

FOREST LAND RESOURCES AT THE EARLIEST POSSIBLE TIME, WE URGE
YOUR COMMITTEE TO AGGRESSIVELY STRIVE FOR ADOPTION OF THIS SPONSOR
SUBSTITUTE FOR SENATE BILL No. 59, DURING THIS SECOND SESSION OF
THE TENTH LEGISLATURE.

THANK YOU FOR LISTENING TO US TODAY.

A handwritten signature in cursive script, appearing to read "R.C. Jones", written in dark ink on the right side of the page.

May 4, 1977

The Honorable Kay Poland
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Poland:

It is our understanding that the likelihood of a Forest Practices Bill or a bill reorganizing a portion of the department of Natural Resources, in order to more efficiently implement forest practices will not be enacted by the legislature during this session. Since Sealaska has been very interested in organization modifications to the Department of Natural Resources in order to provide an environment which will assure the responsible implementation of forest practices, we would like to assist in the pursuit of drafting appropriate legislation to ensure enactment in next year's session.

Since you have been so responsive and helpful regarding such legislation, I would like to offer the services of Sealaska Corporation in assisting you in any way possible toward the drafting of a bill which will meet the needs of the private forest landowner in the State and yet assure all of the citizens that this very important renewable resource is being properly managed for future generations. Therefore, when your summer or fall schedule permits, I would be very glad to make our personnel available in order to have a bill drafted prior to next year's session and to which you could give your full support.

I will be waiting for your reply.

Sincerely,

John Borbridge, Jr.
President

Alaska State Legislature



Senate

SENATOR
KAY POLAND
DISTRICT L
P.O. BOX 45
KODIAK, ALASKA 99615

KODIAK-ALEUTIAN
DISTRICT

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

John Borbridge, Jr.
President
SEAlaska Corporation
811 West 12th Street
Juneau, Alaska 99801

May 31, 1977

Dear Mr. Borbridge:

I was very pleased to receive your letter offering the services of SEAlaska Corporation, for assistance in drafting a forestry practices bill for the next session. I feel that it is timely for such a bill, and I was not satisfied with the bill submitted by the administration this year. I would like to take advantage of your kind offer, and I will be contacting you this summer or fall as to a time which will be mutually agreeable.

Sincerely,

A handwritten signature in cursive script that reads "Kay Poland".

Kay Poland
State Senator
Kodiak-Aleutian District

KP:ss

SHEE ATIKA, INCORPORATED

P.O. Box 578
Mt. Edgecumbe, Alaska 99835
Phone - (907) 747-3534

February 18, 1977

Senator Kay Poland
Senate Resources Committee
Pouch V
Juneau, Alaska 99801

SB 59

Sir,

Shee Atika, Inc., as owner of 23,040 acres of commercial forest land in Southeast Alaska would like to submit the following summary position on SB59 in behalf of our 1,850 stockholders.

1. SB59 will judge and establish resource management standards based on political criteria by placing all authority in the Commissioner of Natural Resources. We feel the authority to administer the standards should be delegated to a strong state forester who answers to a board of professionals, land owners, labor, industry and other parties. The board would draft the regulations.
2. We feel that aesthetics are an improper subject for regulations affecting land management on private forest lands.
3. We feel that the Forest Practices Act should incorporate a notification system in lieu of the proposed prior approval system. The burden thus would be on the state, not the landowner and the Act would be much less expensive to enforce.
4. We feel that notification should not be required any earlier than a maximum of 30 days prior to commencement of operations.
5. We feel that requirement of a performance bond prior to operation on private land is unnecessary as the law provides severe penalties for violation of the law and regulations. The performance bond would prevent many small operators from being able to continue in business.
6. We would like to request a delay in hearings on SB59 until May 1st to allow SANTCO (the largest private commercial forest landowner in Alaska) adequate time to complete its recommendations.

Sincerely,

Nelson Frank

Nelson Frank,
President & Chairman,
Shee Atika, Inc.

wrw/tab

Alaska State Legislature



Senate

SENATOR
KAY POLAND
DISTRICT L
P.O. BOX 45
KODIAK, ALASKA 99615

KODIAK-ALEUTIAN
DISTRICT

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

March 3, 1977

Mr. Nelson Frank
President & Chairman
Shee Atika, Inc.
P. O. Box 578
Mt. Edgecumbe, Alaska 99835

Dear Mr. Frank:

Thank you for your letter and critique on SB 59, Forest Practices Act. Your letter will be made part of our record and your suggestions will be considered by the Resources Committee.

I note your request that we delay hearings on this bill until May 1; this would be the equivalent of abandoning any hope for action this year. We have scheduled our next hearing on SB 59 for Friday, March 11, at 3:00 p.m., in Senate Resources Committee Room 126; I hope that SANICO will be able to make some recommendations at that time. I feel sure that we will have additional hearings, but cannot make a commitment as to when they will be at this time.

Again, thank you for your comments, and I will look forward to hearing from you.

Sincerely,

Kay Poland
State Senator
Kodiak-Aleutian District

KP:ss

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

P.O. Box 1628, Juneau, AK 99802

1510

January 25, 1977



The Honorable Alvin Osterback
Chairman House Resources
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Osterback:

This responds to your request for a statement on forestry activities at the State level. The Forest Service strongly supports measures which will strengthen the professional forestry staff and organization of State governments so that professional forestry expertise can better serve the needs of people in the management of forests and related resources. With the imminent acquisition of the full 103.4 million acres of land provided by the Statehood Act and approximately 44 million acres transferring to Native ownership, such measures are timely.

The State forestry staff is already charged with responsibility for protecting State and private lands from fire, insect, and disease attack. A statewide organization able to meet these demands needs the equipment, experienced managers, and training to provide this support. It needs the cooperation of local communities to provide the manpower during periods of extreme fire hazard, and it must be able to react rapidly to minimize delays in meeting these demands. A trained statewide organization can effectively handle such situations.

Our present State forestry organization is beginning the major task of fielding fire protection forces to protect Alaskan life and property with the gradual phase out of the Bureau of Land Management protection contract. Experience in firefighting and organization of a cadre of district personnel capable of leading temporary firefighters is of paramount importance for making the operation function.

In the area of management, the renewable resources of forest and rangelands include timber production, fish and wildlife habitat, recreational opportunities, wilderness experiences, and watersheds. Minerals management is also related to these resources. The State Forestry organization, working through cooperative Federal-State programs, can provide technical, and in some cases financial, assistance to establish, protect, manage, and use forest and related resources.

The Forest Service works closely with the State Forestry organization of the States and Territories. The National Association of State Foresters is an organization with substantial leadership in promoting sound forest practices on all non-Federal lands. We would encourage the State to examine the opportunities to strengthen its organization to meet the rapidly expanding challenge of its forests. The National Association of State Foresters and individual State organizations have demonstrated the merits of sound forest management practices. A number of States have established forest practice laws and regulation. Their experience could be very helpful in your efforts.

In summary, we believe Alaska now needs a strong State forestry organization operating at a level of government that reflects the emerging importance of this resource activity. Additionally, a comprehensive State forestry program is needed that focuses not only on State lands but is also designed to provide forestry assistance of all kinds to Alaska's new landowners. Numerous federal grant programs exist requiring some state matching funds that are specifically directed to this purpose. The State Forester needs authority and a mandate to participate in these programs.

Many bush communities, wanting to develop sound management programs for their lands, are now requesting forestry and land management assistance. With a strong forestry organization and program the state can be responsive to their citizens needs. We believe it very important that any forestry legislation considered this session address these concerns.

Sincerely,


JOHN A. SANDOR
Regional Forester

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

P.O. Box 1628, Juneau, AK 99802

March 3, 1977
1510



Honorable Kathryn Poland
Chairman, Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Poland:

As you requested, here are our comments on S.B. 59, "An Act Relating to Forest Resources and Practices." We have a longstanding interest in this type of legislation and are pleased to share with you our thoughts on this important proposal.

Senate Bill 59 would provide authority to the State Commissioners of Natural Resources to establish experimental forests on State lands to conduct cooperative forestry and extension service programs, to conduct surveys of forest resources, to establish forest tree seed nurseries and to distribute seedlings, to promulgate regulations governing silvicultural practices on all forest lands, and to coordinate the application and issuance of various permits required to harvest timber. Senate Bill 59 would also establish in statute the concept of multiple-use, sustained-yield management as the guiding management principle for Alaska's forest lands.

The State of Alaska is emerging as a State with both national and international natural resource significance. Alaska contains nearly 141 million acres of forest land. At present, approximately 35 percent of these forested lands are identified through selection for State and private ownership. By the time the State completes its land selection, this figure is expected to significantly increase.

This substantial increase in State and private forest lands over the next few years suggests the need for a program to assure that forest resources are protected by application of sound silvicultural and other forest management practices. We would hope that any legislation enacted by the State would encourage and assist the landowners in applying these practices.

Landowners should be encouraged to carefully plan the management of their forest lands recognizing not only timber production but also fish and wildlife values, recreational opportunities, range and watershed protection. There is also a need to provide proper protection against fire, insects, and disease.

The experience of other States has shown that a strong State forestry organization coupled with a forest practices act emphasizing application of sound management practices are not only desirable, but also effective in getting private landowners to practice good forestry.

Senate Bill 59 stresses regulation of forest practices conducted within the State of Alaska, particularly regulation of the timber owner and operator. We believe the Committee should also bear in mind that the availability of professional management services and incentives are also important in achieving an effective State forestry program. Experience in other States has shown that a balance among regulations, incentives and services to the landowner will result in widespread application of sound forestry practices. This balance will also foster a climate of greater cooperation between landowners and the State than regulation alone. Also, rather than establishing prescriptive standards in statute, we would recommend that a forest practices act establish a process by which "best management practices" on a site specific basis can be established. Additionally, we would recommend that the act be compatible with Federal guidelines covering State water quality control standards. Inclusion of these features coupled with the provision that the forestry organization coordinate all necessary forest management permits and regulations will do much to alleviate the private landowner's fear of overregulation and inconsistent and confusing government requirements.

Throughout the country, the various States have developed programs that provide assistance to landowners to help them accomplish these ends through their respective forestry organizations. Several Federal assistance programs are channelled through the States to complement their efforts. For example, to assist the State of Alaska in conducting its current forestry program, the Forest Service will disburse over a half million dollars during fiscal year 1977 through its cooperative assistance programs. This includes funds for forest fire control, forest management, forest tree production, forest resource planning on private lands, and rural community fire protection. In addition, we expect continuation of an emergency employment program for forestry related projects. We would recommend that any forestry legislation permit the continuance and expansion of the State of Alaska's participation in these Federal programs. In this regard, the Committee may wish to revise the definition of "cooperative forestry programs" as contained in Sec. 41.17.950 of S.B. 59. That definition limits the Commissioner to technical assistance which might be construed as a limitation on the State's participation in Federal financial assistance programs.


The Forest Service has continuously supported the need for a strong State forestry organization and a comprehensive State forestry program. These thoughts were recently set forth in a letter to Representative Alvin Osterback, Chairman of the House Resources Committee, in regard to H.B. 40. Because of that bill's relationship to S.B. 59, I am enclosing a copy for your committee's information. We believe the concerns expressed in this letter are equally important to the success of this legislation.

Also enclosed is a copy of our State and Private Forestry Mission Statement with an insert showing the Goals for Alaska which will give you some idea of the priorities we see emerging in the near future. In response to the Alaska's new landowners, this statement attempts to identify the kinds of programs that are essential at this time.

We recognize that Alaska must develop forest practices legislation or guidelines that best suits its needs and this proposal is a good start toward meeting that objective. We would also encourage the Committee to invite the National Association of State Foresters to review and comment upon S.B. 59. The Association can bring to the Committee's attention the experiences and results of various legislative approaches in other States.

We appreciate this opportunity to comment on S.B. 59.

Sincerely,


JOHN A. SANDOR
Regional Forester

Enclosures

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

P.O. Box 1628, Juneau, AK 99802

1510

January 25, 1977



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Chairman House Resources
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

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Sincerely,


JOHN A. SANDOR
Regional Forester

Administration

Area Planning

Environmental Improvement

Flood Prevention and Related
Watershed Management

Forest Fire Management

Forest Insect and Disease
Management

Forest Management

Genetics

Harvesting, Transporting, and
Marketing of Forest Products

Multipurpose Forest Management

Nursery Management

Pesticide Use Management

Primary Processing of Forest
Products

Resource Planning

Rural Development

Secondary Processing and
Wood in Use

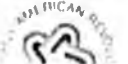


MISSION FOR THE FUTURE

Statement of Goals
and Policy Guides



STATE AND
PRIVATE FORESTRY



TO MAINTAIN AND ENHANCE THE ENVIRONMENT



Policy To protect forests and related resources from erosion,
Guides fire, destructive insects, diseases, and air and water pollutants by providing leadership and technical and financial aid to Federal, State, and private owners and managers.

Encourage and practice the judicious use of environmentally acceptable pesticides to reduce potential adverse effects on the environment, and consult agencies at all levels of government in their use.

Provide "outdoor classroom" training (including demonstration forests) to State and private forest managers in resource management methods.

Sustain national leadership in programs that involve the use of trees and vegetation to reduce noise and heat and adverse effects on the well-being of people living in cities and urban communities.

Orient citizens on the interplay of environmental factors to assist them to understand and appreciate the Nation's natural resources.

Cooperate with State agencies, universities, and school systems, and assist them in environmental education efforts by training education specialists to function at the local level.

The Nation's forest lands—State, Federal, private—are vital to America's economy and environment. They have performed a historic, and now a contemporary, role in providing forest products and services—utilitarian as well as esthetic.

To sustain the flow of goods and services, State and Private Forestry, meeting the challenge in partnership with the National Forest System and Research, exemplifies a cooperative - administrative - technical-professional partnership with State and private forest landowners and managers.

TO EFFICIENTLY PLAN USES OF LAND AND WATER RESOURCES



Policy Meet the Nation's needs for forest-based products and
Guides services by providing national leadership and most efficient planning and use of land and water resources associated with forest and forest-range lands.

Utilize water and related land-use planning programs as vehicles to coordinate activities on National Forest, other Federal lands, and State and private forestlands.

Use cooperative watershed programs, which involve numerous private organizations, to maintain extensive coordination with other Federal and State and county organizations.

Provide technical assistance to solve specific forest-resource development problems by use of data and analyses, cost-sharing for critical areas, special equipment for watershed protection, and action programs to supplement ongoing cooperative programs.

Assist small cities, towns, villages, and farm communities throughout rural America by creating job opportunities and an improved social and physical environment.

Utilize forest resources to develop manpower programs for youth as well as the elderly, and disadvantaged persons in rural areas.

Create satisfying jobs for rural people by providing technical assistance to forest-resource enterprises.

Implement the findings of research, and enhance opportunities for rural citizens to enjoy adequate housing and outdoor recreation and the use of abundant clear water for domestic as well as industrial purposes.

Improve the forest and related environment of rural America by preserving and restoring its natural beauty.

Adapt and extend the management and development of State and private forestlands and resources, and include technical and financial aid, to assist rural minorities.

Initiate emergency aid—including financial aid if necessary—and coordinate action with cooperators, to mitigate damage to forests caused by catastrophes.

TO APPLY RESEARCH



Policy Gather, synthesize, and disseminate forestry related
Guides research findings from Federal, State, and private sources by means of seminars, symposia, workshops, and publications media, to all cooperators.

Identify research needs of State and private forestlands and forest industries, and refer such needs to forestry research organizations.

Utilize the most modern methods of computer sampling techniques to expedite forest inventories.

Assign professionally trained and experienced personnel from the National Forest System, State and Private Forestry, Research, Extension, and land grant universities to assist public and private planners, forest managers, and forest-product processors.

TO MEET FUTURE DEMANDS FOR FOREST RESOURCES



Policy Help meet increasing demands for quality goods and
Guides services by providing technical assistance—through
the State Forestry organization—to aid primary owners of State and
private forest and related lands in contributing greater supplies

Augment planning, management, and protection of such lands by
providing technical and financial assistance.

Expedite meeting output goals and supplying national needs by
strengthening cooperating organizations with professional aid

TO EXTEND AVAILABLE SUPPLIES AND SERVICES



Policy Recover and utilize waste by improving sawmill tech-
Guides niques, analyzing harvesting operations, discovering
uses for disaster-killed and damaged timber, preventing insect and
disease losses during storage, emphasizing proper log classifica-
tion and grading, and instructing processors to recognize the most
valuable use for residues.

Apply multiple-use principles toward the extension of existing
supplies of forest resources, especially from privately owned
forest lands, by calling for a concerted national effort to meet
national needs.

Improve and implement procedures to reduce losses to all re-
sources by increasing the technical capabilities for earlier detec-
tion, evaluation, and suppression of insect or disease outbreaks.

Provide training to States, as well as technical and financial aid,
through continuously updated fire prevention and protection pro-
grams designed to help reduce losses of products and services
from State and privately owned forest lands.

Provide Federal excess personal property, such as trucks, tractors,
and pumps, so that State and local governments can strengthen
fire protection services.

Assist State Foresters in their efforts to organize, train, and equip
local fire-fighting forces to prevent or reduce losses to human life,
forests, crops, pastures, and structures from fire.

The Key



Cooperation is the key—cooperative forestry programs are the means—in achieving the mission of State and Private Forestry.

Cooperation puts it all together; the discussions, the plans, the coordination, the goals, the guiding principles, the programs, as well as the action.

Cooperation with:

Federal, State, and local agencies; private forest owners; processors of forest products; community leaders; and keymen in organizations. The principal coordinating partner is the State forestry organization in each State and territory.

Cooperative forestry programs that:

Assist the protection and management of 631 million acres of forest and associated watershed lands.

Seek to increase job opportunities and incomes of rural people.

Develop multiple-use management to obtain maximum potential of forest and related resources.

Improve harvesting, processing, and marketing of forest products.

Transmit and implement research information into practical applications.

Improve fire prevention and control.

Reduce losses from forest insects and diseases by improved detection, evaluations, and suppression methods.

Ensure proper use of environmentally acceptable pesticides in the forest environment.

Cooperation with State and private forest owners achieves more than protection, management, and utilization—it means people cooperating, people helping. The underlying mission of State and Private Forestry is to help society—rural societies and urban societies—to use and enjoy the resources of forest lands, utilization as well as aesthetic.

Our Principal Goals



Policymaking is a dynamic process that is subject to continuing evaluation. Priorities accorded to goals are often superseded as we respond to the pressing needs of our dynamic society.

These State and Private Forestry goals indicate their general character only. They are not listed by priority:

TO MEET FUTURE DEMANDS FOR FOREST RESOURCES

TO EXTEND AVAILABLE SUPPLIES AND SERVICES

*TO EFFICIENTLY PLAN USES OF LAND
AND WATER RESOURCES*

TO APPLY RESEARCH

TO MAINTAIN AND ENHANCE THE ENVIRONMENT

The following pages describe policies that are used as guides toward meeting these goals.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

Washington, D. C. 20250



Together we face challenges presented by the ever-growing needs of our society. Changing economic conditions and environmental impacts provide new responsibilities and opportunities to agencies and organizations concerned with natural resources. To help you understand how our State and Private Forestry efforts contribute to the overall natural resource effort, we are distributing a Mission Statement for State and Private Forestry. The foundation for this statement is "Framework for the Future," which defines the Forest Service mission.

Teamwork has been effective in meeting past challenges, and we need to seek opportunities to meet continuing and emerging challenges. I believe a part of the total effort is to help others know more about the State and Private Forestry responsibilities and activities. The cooperative efforts of many Federal, State, and local agencies and groups help the numerous S&PF activities contribute to the overall natural resources effort.

It is my hope that you will find this Mission Statement a useful reference.

Sincerely,

JOHN R. MCGUIRE
Chief



The cover symbolizes State and Private Forestry as a cooperative effort of representatives from the Forest Service, other Federal and State agencies, and private groups and individuals.

With the rapidly changing pattern of land ownership in Alaska there has emerged a whole new spectrum of opportunity and responsibility for forest land management. The following State and Private Forestry "Goals for Alaska" focus on the many challenges that lie ahead.

GOALS FOR ALASKA

1. TO MEET FUTURE DEMANDS FOR FOREST RESOURCES

Program Emphasis for Alaska

- a. Work with the State Forester in developing a State tree nursery and improved seed sources
- b. Conduct a sawmill improvement program
- c. Provide technical assistance to industry and landowners
- d. Work with the State Forester to promote a Forestry Incentives Program (FIP) on Native village and regional corporation lands
- e. Promote Rural Conservation and Development projects (RC&D) through working with landowners and the Soil Conservation Service
- f. Followup on the "Organization Management for Managers" training session conducted May 25-28, 1976 for the State Forester's organization, Alaska Division of Lands, and BLM personnel
- g. Assist State Forester with organizational evaluations as requested
- h. Extend advisory management services to Native village and regional corporations and other private landowners as opportunities allow

2. TO EXTEND AVAILABLE SUPPLIES AND SERVICES

Program Emphasis for Alaska

- a. Provide technical assistance to industry and landowners
- b. Provide timber inventory assistance to Ahtna, Bristol Bay, Doyon, and Koniag Regional Corporations
- c. Conduct sawmill improvement training in northcentral and south-central Alaska
- d. Work with Cooperative Extension Service in providing training in log cabin construction

- e. Participate with Institute of Northern Forestry in an administrative study to determine the rate of deterioration of beetle-killed white spruce in southcentral Alaska
 - f. Work with the Seward Skills Center in providing training in small sawmill operations and logging techniques; also Ahtna and Shageluk
 - g. Continue wood preservation study at the Juneau Small Boat Harbor
 - h. Assist the State Forester in developing a State-wide fire plan
 - i. Continue excess property acquisitions for State Forester
 - j. Accelerate the Rural Community Fire Protection (RCFP) program under the Rural Development Act of 1972
 - k. Assist the State Forester in implementing operational plans for his new air unit
 - l. Assist in making fire prevention contacts with schools, local landowners, and organizations
 - m. Assist the State Forester in development of cooperative fire protection agreements with communities and Native corporations
 - n. Emphasize the need for adequate fire protection at all forestry workshops
3. TO EFFICIENTLY PLAN USES OF LAND AND WATER RESOURCES

Program Emphasis for Alaska

- a. Coordinate land use planning for proposed new National Forests with similar efforts on adjacent State and private lands
- b. Provide advisory land use planning assistance to Native village and regional corporations

- c. Participate in the Cooperative Copper River-Wrangells Regional Study with the APT, CES, Univ of Alaska, LUPC, State Department of Natural Resources, other Federal agencies, and Native corporations
- d. Implement an Area Planning and Development (AP&D) unit--emphasis on the Alaska Water Study, coastal zone, and outer continental shelf
- e. Continue Forest Service representation on the Alaska Rural Development Council
- f. Conduct forestry workshops and other field training programs for Native village and regional corporations
- g. Assist the Seward Skills Center in providing forestry training for the disadvantaged
- h. Coordinate with Native leaders and State agencies in identifying and implementing programs to train resource managers needed for Native lands
- i. Work with the State Forester in administration of Job Opportunities Program, under Title X of the Public Works and Economic Development Act of 1975 (Federal grant of \$431,000 in FY 76)

4. TO APPLY RESEARCH

Program Emphasis for Alaska

- a. Participate with Institute of Northern Forestry in a growth and yield study of white spruce in the Cook Inlet area
- b. Continue to work with Cooperative Extension Service and the State Forester in producing and circulating the Alaska Forest Products Newsletter
- c. Participate with Institute of Northern Forestry and Forestry Sciences Laboratory in producing an annotated bibliography of research results in Alaska

- d. Extend information on research to new landowners at every opportunity
- e. Participate with Institute of Northern Forestry on fire management research in the interior
- f. Participate with Institute of Northern Forestry in producing a joint research publication that discusses management of white spruce in Alaska and how to handle spruce beetle problems
- g. Participate with Forest Products Laboratory, Pacific Northwest Experiment Station, and the Fairbanks Industrial Corporation in a cooperative investigation for the feasibility of manufacturing particleboard in Alaska (also pertains to Activity #2 - To Extend Available Supplies and Services)

5. TO MAINTAIN AND ENHANCE THE ENVIRONMENT

Program Emphasis for Alaska

a. Insect and Disease Management and Pesticide Use Coordination

- (1) Aerial and ground detection surveys of insect and disease conditions on all forested lands in Alaska
- (2) Biological, economic, and environmental evaluations of forest insect and disease outbreaks detected. Emphasis on spruce beetle (Cook Inlet), spear-marked black moth, dwarfmistletoe, southeastern defoliating insects, and disease problems in white spruce-birch forests
- (3) Production and release of insect and disease condition reports, evaluation reports, and publications
- (4) Salvage of bark beetle-caused losses in white spruce (coordinated with Western Forest Issues Study)
- (5) Coordinate through Pesticide Use Coordinating Committee, pesticide use on National Forests. Update herbicide environmental impact statement and monitor implementation.

- (6) Maintain cooperative relationship with State Department of Environmental Conservation on pesticide use and training
 - (7) Train forest managers, owners, and workers in insect and disease detection and management
 - (8) Train Forest Service handlers of pesticides
- b. Conduct environmental education forestry workshops for Native village and regional corporations.
 - c. Develop a meaningful awareness for endangered species protection
 - d. Work with State agencies and landowners in control of non-point pollution
 - e. Assist in development of a sound State Forest Practices Act for Alaska

MADAME CHAIRMAN, HONORABLE COMMITTEE MEMBERS, MY NAME IS CLARENCE JACKSON, SR.; I SPEAK IN BEHALF OF SANTCO (SOUTHEAST ALASKA NATIVE TIMBER CORPORATION). SANTCO REPRESENTS ONE OF THE LARGEST PRIVATE COMMERCIAL FOREST LANDOWNERS IN THE STATE; REPRESENTING 10 VILLAGE AND URBAN NATIVE CORPORATIONS OWNING 230,400 ACRES IN SOUTHEAST ALASKA. OUR MEMBERS INCLUDE NATIVE CORPORATIONS FROM CRAIG, HOONAH, HYDABURG, JUNEAU, KAKE, KASAAN, KLAWOCK, SAXMAN, SITKA AND YAKUTAT.

OUR CONCERN WITH SENATE BILL 59 LIES IN ITS IMPACT ON OUR RIGHT AS LANDOWNERS TO MANAGE SANTCO'S FOREST LANDS.

WE WOULD RATHER SEE A STRONG PROFESSIONAL FORESTER LEADING A DIVISION OF FORESTRY AS IN HOUSE BILL 40. WE FEEL THIS IS NECESSARY TO INSURE THAT ALL RESOURCES AND OUR ECONOMIC INTEREST ARE PROTECTED IN THE REGULATIONS TO BE DRAFTED. THIS WOULD FURTHER INSURE THAT MOST OF OUR DEALINGS WOULD BE WITH ONE DIVISION WHO WOULD IN TURN COORDINATE WITH OTHER DIVISIONS WITHIN THE DEPARTMENT.

UNDER SENATE BILL 59 A 159 ACRE PARCEL COULD BE LOGGED WITHOUT QUALIFYING, CONCEIVABLE, AS COMMERCIAL FOREST LAND. WE DON'T FEEL THAT THIS WAS THE INTENT. SANTCO WOULD SUGGEST THAT ANY TRACT MUST MEET ALL LISTED CRITERIA TO BE CONSIDERED EXEMPT FROM A FOREST PRACTICES ACT.

THERE ARE SEVERAL PASSAGES WHICH APPEAR EITHER MEANINGLESS OR AT BEST EXTREMELY DIFFICULT TO COMPREHEND OR INTERPRET, SUCH AS SEC. 14.17.04 (c)(2) RELATING TO STATE AND MUNICIPAL FORESTS. THE STATE ALREADY HAS THE POWER TO MANAGE ITS LAND AND TO CONSIDER ALL RESOURCE VALUES IN THE PROCESS. THIS SECTION WOULD APPEAR TO BE UNNECESSARY. TERMS SUCH AS "KEY VALUES" ARE UNDEFINED.

SEC. 41.17.060 (6) DUPLICATES THE APPARENT OBJECTIVE OF PARAGRAPH (5) AND SHOULD BE DELETED. THE ONLY JUSTIFIABLE REASON FOR THE STATE TO BE CONCERNED ABOUT ROAD AND BRIDGE CONSTRUCTION ON PRIVATE LANDS WOULD BE TO PREVENT EROSION OR PROTECT STREAMS. BOTH OF THESE AREAS ARE ALREADY COVERED IN THE BILL.

SENATE BILL 59 PROPOSES IN SEC. 41.17.060 PARAGRAPH (12) TO REGULATE OPERATIONS WHICH EFFECT AESTHETIC VALUES ON OUR LANDS. WE FEEL THAT ANY EVALUATION OF AESTHETICS COULD ONLY BE A VALUE JUDGEMENT BY THE INDIVIDUAL REVIEWING THE SPECIFIC OPERATION. CONTROL OF AESTHETICS ON PUBLIC LANDS IS AN ACCEPTED FUNCTION OF THE STATE; HOWEVER, IT SEEMS INAPPROPRIATE THAT THE STATE SHOULD RESTRICT OPERATIONS ON PRIVATE LANDS, WHICH MAY OTHERWISE BE COMMENDABLE, SOLELY BECAUSE THEY DO NOT HAPPEN TO FIND THE OPERATION ATTRACTIVE.

WE DON'T FEEL A FOREST PRACTICES ACT CAN SUCCESSFULLY INCORPORATE A COMPROMISE OF TWO OPPOSING CONCEPTS SUCH AS A NOTIFICATION

SYSTEM AND A PRIOR APPROVAL SYSTEM. ANY COMPROMISE WOULD AUTOMATICALLY BE ENFORCED AS A PRIOR APPROVAL SYSTEM AND WOULD BE VERY EXPENSIVE TO ADMINISTER. WE WOULD SUGGEST INSTEAD A MANDATORY 30 DAY PRIOR NOTIFICATION. SENATE BILL 59 COULD DELAY AN OPERATION UP TO 85 DAYS WHICH POTENTIALLY COULD CAUSE AN OPERATOR TO LOSE AN ENTIRE SEASON AND COST HIM A FORTUNE WHILE EQUIPMENT, MANPOWER AND SUPPLIES SAT IDLE WAITING FOR THE STATE TO COMPLETE ITS LENGTHY REVIEW, EXTENSION, REVIEW, EXTENSION PROCESS. THE OPERATOR WOULD BE INCAPABLE OF RESPONDING TO WEATHER CONDITIONS OR MARKET.

WE FEEL THAT THE STATE SHOULD WORK WITH AND SHOULD EDUCATE THE LANDOWNER AND OPERATOR IN A POSITIVE VEIN AS UNDER THE NOTIFICATION SYSTEM. IF AN OPERATOR THEN BREAKS THE LAW HE SHOULD BE SUBJECT TO PENALTY, IMMEDIATE SUSPENSION OF HIS OPERATION IF DETERMINED NECESSARY BY THE STATE, AND SHOULD BE SUBJECT TO THE EXPENSE OF CORRECTING THE RESULT OF HIS VIOLATION. THE 30 DAY MANDATORY PRIOR NOTIFICATION PERIOD WOULD ALLOW ADEQUATE TIME FOR THE STATE TO COMMENT ON AN OPERATION PLAN. THE STATE SHOULD ASSIST A LANDOWNER WITH THE PROPER SUBMISSION OF HIS PLAN AND SHOULD BE IN THE VICINITY OF THE OPERATION WHEN A QUESTIONABLE PORTION OF THE OPERATION IS INITIATED. UNDER THE RISK OF HEAVY PENALTY AND THE WATCHFUL EYE OF THE STATE, VIOLATIONS WOULD BE MINIMAL.

I APPRECIATE THIS OPPORTUNITY TO TESTIFY ON THIS MATTER WHICH COULD NEEDLESSLY RESTRICT SOUND RESOURCE MANAGEMENT PRACTICES, IF IT WERE ADOPTED AS INTRODUCED, IT COULD ALSO INCREASE BOTH THE TAX BURDEN FOR US AS CITIZENS AND EXPENSES FOR US AS LANDOWNERS.

IN CLOSING, OUR CONCERN IS TO PROTECT THE LAND AND THE ENVIRONMENT AS WELL AS JOBS FOR PEOPLE IN ALASKA. WE FEEL THAT EVERYTHING WE DO CAN AND WILL HELP THE ECONOMY IN SOUTHEASTERN ALASKA. I'M SURE THAT IF GIVEN AN OPPORTUNITY TO SIT DOWN TOGETHER, JOINING FORCES AS CONCERNED ALASKAN'S THAT WE CAN SUCCEED IN PRESERVING ALASKA AS WELL AS MIXIMIZING OUR RESOURCES FOR ALL ALASKANS.

I THANK YOU, MADAME CHAIRMAN FOR THIS OPPORTUNITY.

Sec. 41.17.020. ADMINISTRATION (a) The governor shall create, within the Department of Natural Resources, a Division of Forestry to carry out this chapter and other appropriate duties designated by the governor. The division shall be headed by a director who shall be the state forester, appointed by the commissioner to the partially exempt service in accordance with law. The state forester shall be a natural resources land manager with generally accepted forestry educational credentials, production experience, familiar and experienced with the renewable and nonrenewable resources and values of forest land and the products, benefits, and services obtained from them.

RATIONALE:

Because of the importance of the need for a Division of Forestry, we suggest the following modifications to this paragraph:

1. It is felt that the governor shall be required by the legislature to create a Division of Forestry within the Department of Natural Resources. We feel that this division should report directly to the commissioner in order to be at an appropriate level to speak for the needs of the forest products industry throughout the State of Alaska.

2. We strongly feel that a state forester should have some forest industry production experience as part as his background and we would include not only harvesting, but saw milling and/or pulp mill operations, because most any individual who has been associated with the manufacturing end has some familiarity with the need of obtaining forest products in a

manner to sustain existing industry. In addition, we feel that the educational credentials should include a forestry education.

Sec. 41.17.020.

(g) The commissioner may develop proposed regulations under this chapter as part of the state program for control of nonpoint source pollution under the Federal Water Pollution Control Act, as amended, and shall seek to enter into a cooperative agreement with the commissioner of environmental conservation for that purpose.

RATIONALE:

We suggest the deletion of the last sentence in the draft legislation to strengthen the management of the Forestry Division in dealing with the Federal Water Pollution Control Act as amended. It is felt that the division needs to attain the necessary level of expertise in order for division personnel to regulate and understand how various laws and regulations interrelate when applied to forest management activities.

Sec. 41.17.020.

(i) There shall be established a State Board of Forestry consisting of twelve members appointed by the governor. The board shall elect its own chairman.

The State Board of Forestry shall consist of twelve members as follows:

- (1) The dean of the school of engineering, University of Alaska;
- (2) The nominee of the U.S. Regional Forester, United States Forest Service;
- (3) The nominee of the Alaska Federatio. of Natives;
- (4) Four members one each nominated by Chugach Natives, Inc., Doyon Limited, Koniag, Inc., and Sealaska Corporation;
- (5) The nominee of the Alaska Loggers' Association;
- (6) The nominee of the Alaska Coalition or appropriate environmental group;
- (7) The nominee of the Alaska Coastal Management Council;
- (8) The nominee of unions engaged in processing forest products;
- (9) The nominee of the United Fishermen's Association.

The term of office of a voting member of the board is four years. If a vacancy occurs before the end of a term, the governor shall appoint an individual to complete the unexpired term in the same manner and from the same class provided.

Duties of the board shall include the drafting of regulations provided for by this act.

RATIONALE:

The major concern of Sealaska Corporation is to insure that there is a properly constituted body with a reasonable degree of autonomy, with terms which will tend to overlap administrations which will bring a high level of forest management expertise; and which then provide a strong input from private land owners, timber owners or their authorized representatives to insure the citizens of the State of Alaska will benefit through fostering a healthy and vigorous forest products industry which in turn will provide wages for state citizens, some tax income for the State of Alaska and dividends for forest product company shareholders.

Therefore, we suggest a State Board of Forestry which will have the primary duties of drafting forestry regulations provided by this act.

We offer for your consideration a Board of Forestry consisting of twelve members which includes seven members from land owners, the Alaska Loggers' Association, and from labor unions associated with the forest products industry. In addition we included members of interested citizen constituencies who tend to be representative of users of public forest lands. Finally, we include the Dean of the School of Engineering, presently Charles Behlke, who can provide an interface between education and industry, and who by education tends to have an understanding of industry requirements and how education can fill those requirements.

Sec. 41.17.040. REGULATORY AND ADMINISTRATIVE STANDARDS.

(a) All regulations, administrative actions, and other activities and duties undertaken under this chapter must be in full accordance with the standards set out in this section.

(b) With respect to private forest land, the following standards apply:

(1) The privately owned commercially forested areas of the State shall be managed to meet the rights and economic needs of the land and timber owners. Provisions may include regulations encouraging a sustained yield basis, so as to enhance the economic stability for an area and its citizens, to provide employment opportunities, to provide economically sound timber-based industries, and to provide a source of revenue for communities and state.

(2) There shall be no material impairment of the productive capacity of the land to produce a sustained yield of merchantable timber within the total land ownership of any individual owner or affiliated owners whose land is managed collectively.

(3) To the extent reasonably practical, all applicable data and information shall be constantly updated and used in making timber management decisions.

(4) Environmentally sensitive areas and the best practical management practices shall be recognized in the implementation of non point source pollution control measures.

(c) With respect to state and municipal forest land only, the following standards also apply:

(1) forest land must be administered for the multiple use of the renewable and nonrenewable resources and for the sustained yield of the renewable resources of the land in the manner which best provides for the present needs and preserves the future options of the people of Alaska:

(2) any system of allocating predominant uses or values to particular units within a contiguous area of land must reflect in reasonable proportion the various resources and values present in that area;

(3) in the determination of multiple use patterns to be recognized within any area, the State Forester shall recognize that the economic well being of the citizens of the State is of primary importance and that the disposition and use of State-owned assets must be conducted in a manner so as to return the full value to all of the citizens of the State;

(4) to the extent its capacity permits, forest land must be administered so as to provide for the continuation of businesses, activities, and lifestyles which are dependent upon or derived from forest resources;

(5) to the maximum extent possible, all applicable data and information of applicable disciplines must be updated and used in making decisions relative to the management of forest resources;

(6) environmentally sensitive areas and best management practices must be recognized in the implementation

of any nonpoint source pollution control measures authorized under this chapter;

(7) there shall be no significant impairment of the productivity of the land and water with respect to renewable resources.

RATIONALE:

Of primary importance is that the standards for the management of private forest land versus the management of municipal and state forest land be clearly differentiated in order for the Board of Forestry to draft regulations which are appropriate for the classes of ownership. Under subsection (b) dealing with private forest land (1) directly addresses the requirement that a regulatory climate be provided which will allow for responsible development of a forest products base and yet protect the rights of the individual land owner. Without this provision, there is always the danger that other regulations may be drafted which will substantially reduce economic viability and preclude the forest land owner from participating in a profitable forest products venture.

As land owners, Sealaska Corporation strongly subscribes to a concern of all citizens of the State that there be no material impairment of the productive capacity of the land, to utilize applicable data and information in making management decisions, and to pay particular attention to best practical management practices in implementing management decisions so as to protect the water sources of the State from pollution.

In subsection (c) Sealaska Corporation strongly recommends the inclusion of some of the existing sections plus those

sections from section (b) which would be appropriate. In addition in the draft bill paragraph (3) has been deleted and we have substituted a paragraph which is addressed to the obligation of the state and municipal governments to recognize the economic well being of the citizens by managing forest lands which have been set aside for multiple use in a manner to return the full value of stumpage, etc. to all the citizens of the State and thereby reducing the financial burden to those citizens in the form of direct taxes.

Sec. 41.17.050. ADMINISTRATIVE PLAN & REPORT (c)

(1) review the structure and operations of the division of forestry;

(3) describe the responsiveness of the division to the interest of forest resources constituencies.

(4) omit

RATIONALE:

Subsection one cleans up wording to refer just to the division of forestry. It is felt that subsections two and three are both appropriate to this act, however in keeping with the amendments already offered it is recommended that subsection four be eliminated since the act prescribes legal authority, qualifications of the director of the division and location of the division within the department. With our amendments the division would report directly to the commissioner and the director would have certain qualifications including education and professional background. Also there is nothing to preclude the commissioner at a later date from making recommendations to the legislature concerning problems with Title 38 in order to meet the desires of the legislature and administration.

Sec. 41.17.060. REGULATIONS. (a) The commissioner may adopt regulations with the approval of the State Board of Forestry in accordance with the Administrative Procedure Act (AS 44.62) governing operations on forest land with respect to the following:

- (1) harvesting;
- (2) reforestation, revegetation, stocking, prescribed burning, fertilization, thinning, and other silvicultural activities;
- (8) omit

RATIONALE:

As mentioned in this committee on Monday, April 10, 1978 it is very difficult to define removal and use of timber and tree products and related management activities. It is recommended that harvesting be addressed as is necessary by the Board of Forestry how the landowner, operator or timber owner removes and disposes of the products is strictly up to that person.

In subparagraph 2 " aforestation " has been eliminated because it addresses itself to the foresting of lands which have not supported forests for a long time, if ever. It is felt that aforestation simply is not germane to the act.

It is recommended that subparagraph 8 be omitted from this draft bill because of the broad nature and all encompassing aspects of this subparagraph.

It is language such as this which provides significant opportunities for litigation in order to provide for future interpretation. Therefore, it is felt that it is unnecessary.

Sec. 41.17.070.

(f) If action is taken under (e)(4) of this section, the commissioner and affected agencies have an additional 20-day review period, after which time action must be taken under (e)(1), (2), or (3). If the commissioner or any other affected agency takes no action under (e) of this section within the statutory time limit, they are presumed to have taken action under (e)(1). Action taken by the commissioner under (e)(2)-(4) of this section must be accompanied by a written justification.

(m) omit

RATIONALE:

While the act in its draft form seemingly requires that the Commissioner of Natural Resources forward the permit to other state agencies for their review and further requires the commissioner to provide an answer to the applicant within a specified time limit, it does not seem to put enough emphasis on insuring that other state agencies must either respond or by their lack of response show that they approve the permit. We suggest language which is inclusive not only for the commissioner but other affected agencies thereby if they take no action that approval is automatic.

Subparagraph (m) is suggested for omission because many small corporations who own land, individual land owners, and operators are not able to post security for operations on private lands. Therefore, there is the distinct possibility that some individuals could be forced out of business or precluded from entering into the forest products business.

Sec. 41.17.090. CONVERSION OF FOREST LAND TO OTHER USES.

An intention to convert forest land to other uses after timber harvesting must be stated in the notification submitted under sec. 70 of this chapter. In that event, reforestation requirements adopted under this chapter do not apply, except that conversion must be completed during the time set by regulation for minimum reforestation of the land, other than land held for other commercial purposes. Other requirements for revegetation may be imposed to the extent permitted by law and consistent with the intended use. If the commissioner finds at any time that the responsible party has failed to conform to the intent to convert as stated in the notification, the commissioner shall revoke approval of the conversion and require full compliance with reforestation requirements.

RATIONALE:

For those who wish to convert forest lands for other purposes, it is felt that they should have every right to do so and not be burdened with a reforestation clause which might require reforesting after a certain period of time because a land had not been converted. Then there is always the possibility that in another five years the land is actually cleared and converted for other purposes such as agriculture or commercial development. The economic loss to the original land owner can be very significant. Therefore, this paragraph is modified to allow for such a situation.

Sec. 41.17.110. PROHIBITION, PENALTIES, AND ENFORCEMENT

PROCEDURES. (a) It is unlawful for any person to violate or permit a violation of a provision of this chapter, a regulation adopted under this chapter, or a term or condition of any approval granted under secs. 70 - 90 of this chapter. A person who commits a violation is liable for a civil fine to be assessed by the commissioner not to exceed a total of \$10,000.

(b) If an investigation discloses probable cause to believe a violation has occurred, the commissioner shall serve upon the alleged violator (the "respondent") written notice and a formal complaint which describes the alleged violation and requires the respondent to answer the charges at a hearing not more than 10 days thereafter. Upon request the respondent will be granted an extension not to exceed 60 days. The notice must also describe any damage which has occurred or might occur as a result of the violation. At the hearing, the state must show by a preponderance of the evidence that the respondent has caused or permitted a violation described in (a) of this section.

(d) In determining the amount of any civil fine imposed, the following must be considered, as appropriate:

(1) the character and degree of injury to forest resources and values;

(2) the degree of intent or negligence of the respondent in causing or permitting the violation;

(3) the character and number of past violations caused or permitted by the respondent.

(d) omit (4)

(h) Unless otherwise specified, proceedings under this section are not subject to the Administrative Procedure Act (AS 44.62). A hearing under this section must be held before a hearing officer, appointed by the attorney general from among members of a panel of the Alaska Bar Association approved by the Board of Forestry who are knowledgeable and experienced in the subject matter. A person who has assisted in the preparation of the state's case or who is a state employee is ineligible. Hearings are not limited by common law, statutory, or judicial rules of evidence; however, the hearing officer may admit only that evidence which appears to him to be reliable and trustworthy. All hearings must be open to the public. Written or oral testimony may be submitted. A party to a hearing may make written or oral argument, secure the issuance of a subpoena under AS 44.63.430, offer testimony or other evidence, and cross-examine witnesses. The hearing officer shall endeavor, in conducting any hearing, to insure that the respondent understands the proceedings and that the facts supporting the position of each party have been adequately presented. Hearings shall be held as close as practicable to the location of the alleged violation. Testimony given at the hearing must be recorded.

RATIONALE:

In subparagraph (a) the language has been modified to show that a total fine cannot exceed \$10,000.

In subparagraph (b) a sentence has been inserted to allow the respondent an extension of up to 60 days if the respondent requests it in order to adequately prepare for his case. Normally the respondent will want to proceed as fast as possible in order to clear up matters and be able to continue operations in a normal fashion.

Subparagraph (d) (4) has been eliminated because it is felt that it should not be germane to the consideration of a civil fine. What is germane is the character and degree of injury to forest resources, negligence, and the past record of the respondent.

In subparagraph (h), wording is offered which provides that the hearing officer be appointed by the attorney general from among members of a panel of the Alaska Bar Association approved by the Board of Forestry. In this fashion the Board of Forestry has the opportunity to review the background and credentials of members of the Alaska Bar Association to insure that they have some feeling for environmental and land management problems. By such members having a basic understanding of forestry needs and problems, they can more equitably determine any relief which may be necessary.

Sec. 41.17.120. APPEALS AND JUDICIAL REVIEW. (a) An administrative action of the department under this chapter, except actions under sec. 110 and except for adoption of regulations, may be appealed to the commissioner within 30 days after it is taken. The commissioner shall hold a hearing, at which all substantial issues shall be considered, within 15 days after an appeal is filed. The respondent shall however have the right to a 60 day extension upon request. Within 10 days after conclusion of the hearing thereafter, the commissioner shall issue a written decision based upon the evidence, which may be provided to the appellant. The commissioner may delegate his duties, in whole or in part, under this subsection to a hearing officer.

RATIONALE:

In this paragraph is inclusion of wording which allows the respondent an additional 60 day extension upon his request in order to more thoroughly prepare his case for the appeal, since it is obvious that his case was not sufficiently thorough in the original hearing.

Sec. 41.17.130. omit

RATIONALE:

As future land owners we feel that there are sufficient opportunities in other state laws for individuals who are groups to commence civil action without having to provide specific wording in this draft bill. Instead the bill should address itself simply to forest practices.

Sec. 41.17.950. (13)

(13) "Material impairment of the productivity of the land and water" means any activity which may foreseeably result in prolonged or substantial damage to renewable resources or prolonged or substantial reduction of the continuing capability of the land or water to produce renewable resources at their natural or historic levels.

RATIONALE:

The term material impairment is defined in order to have it be consistent with the use of that term in Section 040 REGULATORY AND ADMINISTRATIVE STANDARDS (b) (2) where it has been substituted for the term significant.

SHEE ATIKA, INCORPORATED

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April 18, 1978

Dear Senator Poland,

We appreciated the opportunity for our representative, Mr. Warren Weathers, to testify on the sponsor substitute Forest Practices Act before your committee last Wednesday. Our primary concern with the bill relates to its restriction of resource management alternatives on private land. Shee Atika, Inc. endorses the concept of granting the state authority to insure that private forests are managed in a manner which protects the productivity of all related resources. We take issue with the extent of the state's interference with the methods of obtaining that objective. The acts concentration should rest with the objective of insuring that private forest resources remain productive. The state should not be concerned with a landowner's method of compliance, so long as the compliance accomplishes the objective.

Enclosed are copies of Shee Atika, Inc.'s testimony including an article from the March Journal of Forestry relating to Section 208 of the Federal Water Pollution Control Act.

Sincerely



Nelson D. Frank
Chairman of the Board

NDF/nmw

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Madame Chairman, Senators of the Committee

I am Warren Weathers

I speak in behalf of Shee Atika, the claims act corporation of Sitka, and one of the 12 village corporation's in Southeast who will in aggregate manage some 250,000 acres of forest land. Nelson Frank, Chairman of Shee Atika, regrets that he can not be here today.

I am a professional forester, a graduate of O. S. U. school of Forestry with 6 years in private forestry in Alaska, prior to which I was a forest practices officer for the Oregon State Board of Forestry. I am a member of the Society of American Foresters.

The Board of Directors of Shee Atika has directed me to convey today, their concern relating to the administration's sponsor substitute. Shee Atika, like the other village corporations in southeast, did not participate in drafting this bill. Unfortunately the state did not solicit, or was not receptive to, much land owner input relative to the impact that this bill will have on the private forest land owner. The land owner is the one that will pay for this thing, not the mill owner, the operator, or the federal government.

We would like to see a forest practices act adopted this year. We are more interested however, in seeing that the act adopted accomplishes its purpose without unnecessarily interfering with the right of private citizens to manage their resources and businesses.

It appears that Section 208 of the Federal Water Pollution Control Act as amended might induce the various State agencies to adopt regulations affecting private forest lands, with little land owner, technical forestry and forest products industry input if a forest practices act is not adopted this year. Section 208 does not force us to adopt a permit type act as advocated by the administration and as used currently in California. This case is supported by an article in the March 78 issue of the Journal of Forestry written by Luke Popovitch of the Society of American Foresters.

We feel that the administration's bill is generally acceptable with the following critical exceptions:

The proposed Division should be guided by a seasoned professional forester. This is necessary to insure that administration of a forest practices act have continuity without being subject to automatic adjustments with changes of administration, to insure an appreciation for forest management problems by the administrator, and to insure that modern-technical forestry is properly represented in intragovernment communications.

The administration's bill incorporates the word "notification" in reference to the mechanics of enforcement; in fact it is actually purely a prior approval permit system. We have no objection to the use of this system (the prior approval permit system on public lands. The differences between the two systems were not adequately

or fairly, presented by Mr. Haynes at the March 8 committee work session. The basic difference is that under the prior approval permit system (as used in California and as in this bill) the state may deny (41.17.070 e (3)) the land owner the right to operate on his own land, without the land owner having broken any law or regulation. Furthermore, under this permit system (41.17.070 e(2)) the state will have the power to tell a landowner what, where, how, and when he will be allowed to manage his resource.

Under a notification system, as used in the Oregon Forest Practices Act, and as recommended by ourselves, the landowner still has the responsibility and burden of operating within the law; but, he also has the freedom to formulate his own plans, as best meet his constraints, so long as he complies with the laws and regulations. The notification system is not as Mr. Haynes described it "merely mailing in a postcard." A landowner can be required to submit the very same plans and information which are required under the administration's proposed permit system. Under a notification system you can still require that these plans be submitted, even thirty days in advance of commencing any activity on private land. We would have no objection.

If that is not enough, the state could go farther under a notification system and require a performance bond. We would not like that provision; but, it might be a trade-off just to get a notification system in this bill. We should be careful that a performance bond would be no larger than adequate to both prevent careless or willful infraction and to correct any adverse situation which might result from an infraction of the law or regulation. Frankly, I'm afraid that a bond requirement would get so far out of hand that it would force small operators out of business. A bond is unnecessary against the land-owning operator as you have the land to throw liens on already.

Under a notification system the state could still have the authority to require a pre-operation meeting with the land owner/ operator to explain potential problem areas and suggest alternatives - before an operation started But the land owner would retain the essential freedom - and flexibility - vital in Alaska - to formulate his own plans.

There is no need to burden the private land-owner with a permit system as proposed in this bill. We can accomplish the objective, and guarantee the practice of modern - scientific forest management, in Alaska, with a notification system.

Section 41.17.070(j) in the administration's draft further provides for major review lasting another 68 days if a land owner discovers that his situation has changed - and that he must amend his plans. This delay would not happen under a notification system. September 30 to December 8 is 68 days. What if: a land owner is faced with a situation where in a land owner's particular part of the state, where the ground normally freezes before the snow flies, in which he would normally log on frozen ground with a low ground pressure FMC to control surface disturbance, but this year the snow comes first. Can he alter his plans and use a cable suspension system before the snow buries his fell and bucked timber. NO. Not unless the snow decides to let up for 68 days so the state can review the situation and process a change in his permit.

What if normally the snow flies first and he had planned to use a cable system, but this year the ground freezes first - so he could meet his production schedule and save some funds, - without disturbing the surface, - by using his FMC. If its going to take

the state 68 days to react, he can forget about taking advantage of the break God gave him this year.

What if: as has happened to myself here in Southeast, he is logging with a helicopter and it crashes. Can he switch over to a skyline for part of the area, to minimize his losses. Not if he has to wait 68 days. He'll have to shut down and lose 2½ months production and probably his whole business. A true notification system, as used in Oregon, is far less expensive to administer than the permit system that the administration is asking for. Considering volume harvested California's permit system is 6.5 times as expensive for that states taxpayers as is Oregon's notification system to its taxpayers. Considering the number of operation notices filed, California's permit system is 27.3 times as expensive to enforce as is Oregon's notification system. It is logical to conclude that these costs would increase by a blanket 25% cost of business factor here in Alaska- plus an additional 25% overall increase for transportation (which is only 7% of Oregon and California's forest practices related budget.) I've noticed that the administration's fiscal note allows only \$4,000 for transportation/year for the entire forest practices enforcement program in the state. This leads me to conclude that they either don't plan to enforce it at all or they plan to do the whole thing without ever getting out on the ground to see what the situation really is. If they plan to enforce this thing properly, especially if we're stuck with a permit system, they'd better allow at least \$12,000/year for each enforcement officer between Ketchikan and Kodiak. On the ground inspection, at least twice, would be virtually mandatory under a permit system. No self respecting forest practices officer is going to stick his neck out and give someone permission to do something without getting on the ground before and after it takes place. This budget will virtually force the state to ask for more time, more information, and to take action under 41.17.070 e(3) to deny the permit. The bill has budgeted for eight new forester positions. I don't believe that the state could enforce this act, run a nursery, a public education effort and conduct a meaningful inventory program with twice that number.

Section 41.17.070 (h) requires publication of a permit application for operations on private land and requires solicitation of public comment. This could destroy a land owners bargaining position in the market as all the buyer, sellers, and competitors in the world would know exactly what his plans are. They'd know what he was going to produce, where, when, and how much. By deduction they could determine relative operating costs, and his margin of profit or loss. This informations should be held in strict confidence.

We agree with Senator Meland's concern regarding the administration provision 41.17.070(b) governing private land that states "allowance be made for scenic and asthetic quality in or adjacent to areas of substantial importance to the tourism industry." This provision will undoubtedly foster many lawsuits as people disagree on such items as:

1. What constitutes "allowance"
2. What is "scenic and asthetic quality"
3. What constitutes "substantial importance"

Mr. Haynes suggested that this passage merely authorizes the state to compensate land owners for the economic impact of state restrictions under this section. Perhaps then

the act should mention the state's authority to compensate a land owner for voluntarily curtailing planned activities which conflict with the state's vision of "scenic quality." We further suggest that the implication that a land owner may be prevented from managing his resource (when the state finds a potential conflict with their interpretation of "scenic value") be deleted from the bill.

Section 41.17.020 (i) which requires an advisory committee is a good start. We feel that this committee should have substantial land owner representation as long as the act has jurisdiction over private lands. For purposes of adopting regulations governing forest management practices on private land the committee should draft the regulations. Oregon's act requires 2/3 land owner representation on their committee.

Sound forest management with consideration for, and enhancement of all the resources of the forest ecosystem can be a highly profitable enterprise. Although it may be beneficial to encourage the practice of modern forestry on small woodlots, a 4 or 5 million dollar economic incentive program is not really required to promote proper management for the bulk of Alaska's future private forests.

We endorse the concept of mandatory standards for reforestation and conversion to non-forest use. These standards must be carefully set for the various conditions and ecosystems found in the state. Southeast does not share the same problems as Afognak, the Matanuska Valley, or Elim and visa versa. Standards that apply to Southeast do not necessarily apply to other forested areas of the state. These regulations must not be hastily drafted, or drafted just to say we have a regulation. Forestry in most areas of the state, is relatively new. A lot more work needs to be done.

The Alaska Native Claims Settlement Act requires that our corporations follow management practices no less stringent than those used on adjacent national forest lands until December 18, 1983. There shouldn't be any rush to pass this act as it relates to private land just to get federal approval for state control under Section 208. Because 208 applies to federal land via the state forest practices act, you could delete private land from the bill and it would still apply to our (essentially the) private forests until the end of 1983 anyway.

If we can't have a good bill this year perhaps all reference to private lands should be deleted with the intent of considering an amendment later to control operations on private land in the same spirit as Oregon's act.

MARK G. COPELAND*
DAVID WOLF

ADMITTED IN OREGON

LAW OFFICES OF
KEANE, HARPER, PEARLMAN AND COPELAND

909 WEST 9TH AVENUE
SUITE 140
ANCHORAGE, ALASKA 99501

TELEPHONE (907) 276-5152

March 29, 1978

OREGON OFFICE
3500 FIRST NATIONAL TOWER
PORTLAND, OREGON 97201
TELEPHONE (503) 224-4100

J. DAVID BENNETT
CHARLES A. GOLFORD
DAVID W. HARPER
GORDON H. KEANE
THOMAS M. LANDYE
DIARMUID F. O'SCANNLAIN
DONALD H. PEARLMAN

FANDALL L. DUNN
ROBERT B. HOPKINS
RICHARD L. SADLER

Kay Poland
Resource Committee of the Senate
Room 120
Capitol Building
Juneau, Alaska

Dear Mrs. Poland:

Thank you for the telephone call from Sharon Stoops, your secretary, informing us of the hearing on the Sponsor Substitute to S.B. 59 on April 10 and 12. Also I appreciate the fact that she is not only going to send me a copy of the Sponsor Substitute to S.B. 59, but is also sending a copy directly to Les Anderson of Koncor and Sam Demmert, President, Yak-Tat Kwaan, Inc. I gathered when I talked to her on March 29 that the Sponsor Substitute has not yet been published and this is the reason we could not obtain a copy in Anchorage, but that it should be printed later this week and will be sent from Juneau.

Sincerely yours,

KEANE, HARPER, PEARLMAN & COPELAND

David
DAVID WOLF

DW/ps

cc: Les Anderson, Koncor
Sam Demmert, Yak-Tat Kwaan

AMENDMENTS REQUESTED

- #1. Retain original language from Sponsor Substitute regarding creation of a Division with responsibility for forestry and establishment of the position of State Forester.

Justification: Fragmenting surface land management responsibilities, as would occur under the language of the Work Draft Paper, will result in duplication of effort, conflict between divisions, and risk separating forestry matters from the mainstream of land management decisionmaking.

If a separate division of forestry is to be created, its responsibilities should be left up to the commissioner so that unnecessary administrative problems and legal difficulties with implementation of AS 38.05 can be avoided.

- #2. Add new paragraph (10) to §040(c) to read:

"(10) nominees of the state forester have three seats."

Justification: There is no way of anticipating all of the interest groups or points of view which might warrant representation on the Board of Forestry. At least three seats should be at the discretion of the state forester so that some flexibility over membership is retained.

- #3. Add new paragraph (4) to §060(b) to read:

"(4) to the fullest extent practicable, harvested forest land shall be reforested (naturally or artificially) so as to result in a sustained yield of merchantable timber from that land."

Justification: While the timing and extent of reforestation should be handled by regulation, there should be policy direction in the bill that reforestation take place. Constituencies such as mill workers and forest products support industries are dependent for their jobs upon continued supplies of timber. Since much reforestation in Alaska will be natural and major landowners have stated their intent to reforest anyway, this provision would impose no hardship.

- #4. Move §060(c) back into §060(b).

Justification: Everyone understands that there will be some temporary damage resulting from logging. However, some direction should be given to avoid permanent damage to the ability of the land to produce renewable resources. If the latter

AMENDMENTS REQUESTED (continued)

happens, the interests and income of fishermen and others who depend upon forest resources are impaired and the impacts of activities on private land extend beyond the boundaries of that land. Language nearly identical to this is included in the Federal Multiple Use/Sustained Yield Act.

ALASKA BOARDS OF FISHERIES AND GAME

JOINT RESOLUTION #

April 7, 1978

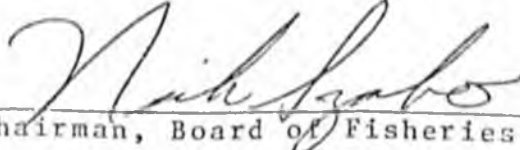
WHEREAS, the Senate Resources Committee is currently considering the Sponsor Substitute for Senate Bill 59, an Act relating to forest resources and practices;

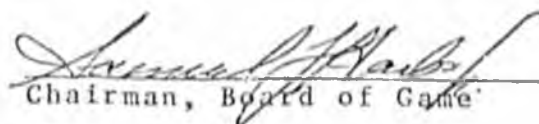
WHEREAS, fish and wildlife and their habitat are among the renewable forest resources of Alaska, and are therefore of major concern to the Joint Boards of Fisheries and Game;

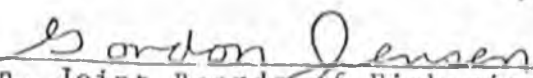
WHEREAS, the Sponsor Substitute for Senate Bill 59 appears to the Boards to establish a professional forest management program which will protect fish and wildlife resources and their habitat while providing benefits and services resulting from use and development of timber resources;

BE IT RESOLVED, that the Joint Boards of Fisheries and Game urge that the Senate Resources Committee take favorable action on the Sponsor Substitute for Senate Bill 59.

Adopted unanimously (12-0) this 7th day of April, 1978.


Chairman, Board of Fisheries


Chairman, Board of Game


Chairman, Joint Boards of Fisheries and Game



KONCOR

FOREST RESOURCE MANAGEMENT

File
P.O. Box 2212
Juneau, Alaska 99615
Phone (907) 486-3985

February 17, 1978

Honorable Jay S. Hammond, Governor
State of Alaska
Pouch A
Juneau, Ak 99811

Dear Governor Hammond:

It has come to my attention through conversations with both State Division of Land and U. S. Forest Service personnel that the State's nursery facility at Palmer may be dying a slow death due to lack of funding. If this is indeed true, it is extremely disappointing to me personally and a grave management concern to KONCOR.

KONCOR is the managing entity for several village corporation's forest land selections in the Koniag region. During the course of calendar year 1977 KONCOR sought and received removal of the U.S.F.S. Perenosa timber sale from lands under our management jurisdiction on Afognak Island. Prior to removal of the timber sale from KONCOR lands, approximately 600 acres of timber were harvested under the Forest Service's operational plan.

Pursuant to agreement with the USES KONCOR presently is removing timber harvested approximately two (2) years ago.

Both the USES and KONCOR have been relying on the Palmer facility to raise the seedlings necessary for these lands to be reforested.

KONCOR's management objectives also call for additional acreage to be harvested in the years to come. We must either enter into our own nursery program or purchase the stock from outside sources. The state facility certainly could provide KONCOR, as well as other land owners throughout the state, with regeneration stock.

I urge you to look into this critical matter and seriously consider funding the Palmer facility so it can produce planting stock on a production basis.

Alaska Loggers Association, Inc.



111 STEDMAN, SUITE 200
KETCHIKAN, ALASKA 99901
Phone 907-225-6114

April 10, 1978

Honorable Kay Poland
Senate Resource Committee
Pouch "V"
State Capitol Building
Juneau, AK 99811

Dear Senator Poland:

Enclosed is a copy of the Alaska Loggers Association Resolution 78-1, which supports the proposed State Forest Practices Act, and urges its speedy enactment into law. This resolution was passed by the ALA Directors and its members at the annual spring membership meeting in Juneau, March 19, 1978.

Sincerely,


Donald A. Bell
General Manager
ALASKA LOGGERS ASSOCIATION

DAB/mjh
Enclosure:

RESOLUTION

78-1

OF THE ALASKA LOGGERS ASSOCIATION

IN SUPPORT OF S. B. 59

CREATING AN ALASKA STATE FOREST PRACTICES ACT

WHEREAS, the proposed State Forest Practices Act combines professional management services, regulatory measures, and economic incentives in complementary fashion and draws upon the expertise of a professional forester in conjunction with other disciplines, and

WHEREAS, passage of this proposed State Forest Practices Act will assure strong recognition of the role of the forest industry in Alaska's economy within the State government, and

WHEREAS, there exists a need for a strong State forester at a sufficiently high policy making position within State Government to assure that legitimate forestry concerns are integrated with, not dominated by, concerns regarding related forest values, and

WHEREAS, it is essential that the State's Division of Forestry have a high level of forestry expertise (as well as expertise in related disciplines), good morale, and a sense of purpose and importance within State Government, and

WHEREAS, the proposed State Forest Practices Act requires the minimum possible, regulation, paper work, procedure and delay; and

WHEREAS, the proposed State Forest Practices Act assures that regulations promulgated by the State under the Alaska Coastal Zone Management Act, and Section 208 of the Federal Water Pollution Control Act will be integrated with the Forest Practice regulations into one set of regulations; and

WHEREAS, the proposed State Forest Practices Act provides for the creation of new State forests; and

WHEREAS, the proposed State Forest Practices Act recognizes the legitimate right of private forest land owners to utilize their land in the manner they deem best, and limits that right only to the extent its exercise would substantially impact upon the rights of others, and

WHEREAS, it is the intention of the proposed State Forest Practices Act to foster policies which will nurture and enhance the forest industry in its operations on State and private lands; and

WHEREAS, the proposed State Forest Practices Act provides for creation of an Advisory Board made up of knowledgeable foresters which would participate in the formulation of regulations under the act; and

WHEREAS, the proposed State Forest Practices Act creates a fair and equitable system for hearings when a breach of the regulations promulgated thereunder has been alleged, and

WHEREAS, Commissioner of Natural Resources, Bob LeResche, has directed a process of concensus and reasons in the development of the proposed State Forest Practices Act, which policy has been skillfully implemented through the persistent efforts and expertise of Jeoff Haynes of the Department of Law;


NOW THEREFORE, the Alaska Loggers Association hereby:

1) Supports the proposed State Forest Practices Act,

S.B. 59 and urges its speedy enactment into law; and

- 2) Commends both Commissioner LeResche and Assistant Attorney General Haynes for their leadership, persistence, patience and reason in developing this bill.

Adopted this 19th day of March 1978



Mike Valentine, President
ALASKA LOGGERS ASSOCIATION

- cc. Governor Hammond, President of the Senate, Speaker of the House, Members of the House and Senate Resource Committees.

MARK G. COPELAND
DAVID WOLF

*ALSO ADMITTED IN OREGON

LAW OFFICES OF
KEANE, HARPER, PEARLMAN AND COPELAND

909 WEST 9TH AVENUE
SUITE 140
ANCHORAGE, ALASKA 99501

TELEPHONE (907) 276-5152

March 10, 1978

OREGON OFFICE
3500 FIRST NATIONAL TOWER
PORTLAND, OREGON 97201
TELEPHONE (503) 224-4100

J. DAVID BENNETT
CHARLES A. GOLFORD
DAVID W. HARPER
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DIARMUID F. O'SCANNLAIN
DONALD H. PEARLMAN

RANDALL L. DUNN
ROBERT B. HOPKINS
RICHARD L. SADLER

Kay Poland, Chairman
Resources Committee
of the Senate
Room 120
Capitol Building
Juneau, Alaska

Dear Mrs. Poland:

Thank you very much for taking the time to discuss with me the status of S.B. 59 last month. I gather that the Resources Committee will not be considering this bill until the administration has completed development of its proposed sponsor substitute and submits it to the committee. When anything new happens with this bill, I would appreciate receiving the information so that Yak-Tat Kwaan, Inc. and Koncor may submit information concerning the bill to the committee for its consideration. Thank you again for your time.

Sincerely yours,

KEANE, HARPER, PEARLMAN & COPELAND

David
DAVID WOLF

DW/ps

cc: Sam Dermett, Yak-Tat Kwaan, Inc.
Les Anderson, Koncor

send copy -

*Call
Art Peterson*

6-1820

MARK G. COPELAND
DAVID WOLF

*ALSO ADMITTED IN OREGON

LAW OFFICES OF
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909 WEST 9TH AVENUE
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March 29, 1978

OREGON OFFICE

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Kay Poland
Resource Committee of the Senate
Room 120
Capitol Building
Juneau, Alaska

Dear Mrs. Poland:

Thank you for the telephone call from Sharon Stoops, your secretary, informing us of the hearing on the Sponsor Substitute to S.B. 59 on April 10 and 12. Also I appreciate the fact that she is not only going to send me a copy of the Sponsor Substitute to S.B. 59, but is also sending a copy directly to Les Anderson of Koncor and Sam Demmert, President, Yak-Tat Kwaan, Inc. I gathered when I talked to her on March 29 that the Sponsor Substitute has not yet been published and this is the reason we could not obtain a copy in Anchorage, but that it should be printed later this week and will be sent from Juneau.

Sincerely yours,

KEANE, HARPER, PEARLMAN & COPELAND

David
DAVID WOLF

DW/ps

cc: Les Anderson, Koncor
Sam Demmert, Yak-Tat Kwaan

P. p

Honorable Senator Poland and
Committee Members;

My name is Gene Sundberg;

I am the Vice President in charge
of Lands for Koniag, Inc, the
Native Regional Corporation from
Kodiak. I would like to thank
you for the opportunity to submit
comments to you on Senate Bill
59.

~~to~~
We certainly agree that our
forest resources, for many
different reasons, is valuable
in our region, as well as to

all of Alaska; and that the resource should be prudently managed. We also agree that the State is in need of a strong and wise forest practices guideline.

We cannot, however, concur with the acceptance of the present Senate Bill 59 with respect to its present language, and, with this in mind, would like to share with you, the following impressions and interpretations of various sections of this Bill.

In Section 41.17.010 paragraph (2) on page 1 refers to healthy industries. It seems an unnecessary adjective and implies that the State appreciate benefits from only large corporate structures with lots of money. It would leave a small private industry or business as feeling unhealthy.

On the same page on paragraph (4) for reasons of clarity and better understanding, we recommend that it be ~~was~~ rewritten to read

as follows; "Prudent management of forest land and water resources furnish Timber, minerals, fish and Wildlife, tourism and recreation." Period. Present language duplicates the benefits derived from the above listed categories.

Also, for the sake of clarity on paragraph (5) on page 1 we recommend that the paragraph end with a period following management resources. The rest of that particular sentence serves only as a descriptive phrase

which would be covered under
the words "prudent and responsible
forest management measures."

In Section 41.17.040 (b)(5) on
page 4, we feel that if a
renewable resource is harvested
in an ecologically compatible
manner within the harvest unit
and adjacent area, tourism
should not take precedence
over the harvest of that
resource. As an example
an adjacent land owner, for
possibly myriad cause could dictate how

his neighbors land would
be utilized; and perhaps
prevent his neighbors full
enjoyment of multiple uses
of the land and resources.

The harvest of ~~state~~ resources.

~~we feel that~~ If a renewable resource is harvested in an ecologically compatible manner, ~~that~~

In reference to Section 41.17.110
page 11,

(c) ~~established~~, we recommend that the hearing officer be a state employee experienced in the practices of silviculture. As stated in the present ~~bill~~ ^{bill} the hearing officer, who will be designated by the Commissioner, need be ~~only~~ an employee of the State. Our feeling is that the Commissioner must be compelled by ~~the~~ Law

to give ^{alleged violator} the ~~offended party~~
the benefit of ^{an hearing} ~~the~~ officer
~~hearing the case, the~~ ~~D~~ with
knowledge and expertise in
the field of forestry. Without
that knowledge we feel that
a hearing officer ^{without qualifications} cannot
~~properly~~ render a proper
judgement.

Under Section 41.17.950
entitled "Definitions" on page
16 (1) the phrase "and not
withdrawn from timber
utilization" is completely
~~unclear in my own mind.~~
~~and needs clarification~~ as
to its meaning, and needs
to be clarified.

Finally, As a matter of interest to
this committee, and not a part
of this bill is the fact that
Korvax, Inc does approve of
the concept of H.B. 40 which
would create a Division of
forestry within the Department of
Natural Resources.

KONIAG

Madame Chairman, in closing
may I state that in our Koniag
Region there lies many hundreds
of thousands of acres of timberland
and that we are cognizant of
the fact that, unless proper forest
practices are invoked on our lands,
we may lose what we are trying
to save for the future generations.

~~to be~~

Again Thank you for the opportunity
to state our views and I hope
that other knowledgeable persons
in our region send in more
testimony. Thank You

February 22, 1977

Jay S. Hammond, Governor
Pouch A
Juneau, AK 99811

Dear Governor Hammond:

The Ad Hoc Committee on land policies and procedures has met on a weekly schedule since late October. We have addressed many problems dealing with the administration of the state's land patrimony. Many of these problems need resolution through the legislative process. Accordingly we are submitting these following recommendations as an interim report of the Committee, in the hope that the legislature may act during its current session.

Recommendation #1

The committee recommends that the State adopt a system of level payments in place of declining payments in its sales contracts. The system of level payments is in common use in the business world, and the payment figures are easily set forth in a contract. The disadvantage of the present method is that interest must be recalculated every year and the payments decrease each year. From both the State's and the buyers' viewpoints, the level payment method would be preferred. The State would receive slightly more in interest payments over the contract terms and the buyer would not have to make as high initial payments.

Section 2 & 3 of the attached draft bill would accomplish this.

Recommendation #2

The committee recommends that the State charge a market rate of interest in its sales contracts. The interest rate, at present 6%, is below market levels and may have contributed to inflated prices at state land sales. By setting interest rates at market levels, the State would help prevent inflated land prices and at the same time return more income to the State. To provide for a market rate of interest in sales contracts, no change in AS 38.05.065 would be required. The addition of a statement of market rate in this statute would be desirable, however.

Section 3 of the attached draft bill would accomplish this.

Recommendation #3

The Committee recommends that all sales contracts over \$400.00 per year have the option of paying in quarterly installments instead of annual installments. It is the committee's belief that this would ease the financial strain on the buyer and yet not add significantly to the State's administrative costs.

Section 3 of the attached draft bill would accomplish this.

February 22, 1977

Jay S. Hammond, Governor
Pouch A
Juneau, AK 99811

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Section 3 of the attached draft bill would accomplish this.

Recommendation #3

The Committee recommends that all sales contracts over \$100.00 per year have the option of paying in quarterly installments instead of annual installments. It is the committee's belief that this would ease the financial strain on the buyer and yet not add significantly to the State's administrative costs.

Section 3 of the attached draft bill would accomplish this.

Recommendation #4

The committee recommends that the Director be given the authority to set the payment period from one to twenty years. This type of flexibility would allow the State and buyers greater market possibilities.

Section 3 of the attached draft bill would accomplish this.

Recommendation #5

The committee believes that the word "primarily" may imply special consideration to some lessees. In order to treat all lessees fairly and equitably the committee recommends that the word primarily be stricken. Deleting "primarily" would clarify the basis for reappraisal. This recommendation is also made by the hearing panel on the Alaska Industrial Subdivision leasing protest.

Section 8 of the attached bill will accomplish this.

Recommendation #6

Since public notice is covered in AS 38.05.345 the change to "appraisal" for AS 38.05.310 is warranted by its present content. The committee recommends that land may be appraised 120 days in advance of a sale or lease. The change from 90 to 120 days would be desirable in that minimum bid information could be given to the public well in advance of the actual sale or lease auction.

Section 10 of the attached draft bill will accomplish this.

Recommendation #7

The committee recommends that land offered over the counter be reviewed at 90 to 120 day intervals to determine if an increase in value has occurred. This review is desired so that parcels are not undervalued by progressive changes in the market.

Section 10 of the attached draft bill would accomplish this.

Recommendation #8

The committee recommends that in Title 38.05 of the statutes the terms "fair market value" be used in place of "fair appraised market value" and "market value." The meaning is meant to be the same in all cases. The committee would like to see one standard term used to avoid confusion and misunderstanding.

Sections 4, 5, 7, & 13 of the attached draft bill would accomplish this.

Recommendation #9

The duration of a lease and the economic life of substantial improvements, such as stores or factories may not coincide. In order to see that state leased land is used in a rational economically productive manner the committee recommends that lessees of long-term leases be given a renewal option for up to fifteen years. This type of option would grant the lessee more flexibility in maximizing

his investment returns, especially during the final years of his lease. It would also increase the lessee's planning possibilities for use of the leased ground. This action would also soften the impact of termination of the lease. Specifically, this would permit a lessee to work substantial repairs to a building when the remaining term of the lease would not otherwise justify it.

Section 6 of the attached draft bill would accomplish this.

Recommendation #10

In order to provide a uniform 55 year limit for all long-term leases the committee recommends deletion of the 99 year provision found in 38.05.070(c) for school lands.

Section 6 of the attached bill would accomplish this.

Recommendation #11

The committee believes that state trust lands (school, mental health, and university) are now and have been managed at a low intensity. These lands may be returning only a fraction of their potential value that could be realized by a small full time management staff. The Division manages, these lands at no charge to the various trust funds and receives no reimbursement for its services. Therefore, it has traditionally placed low priority on management of these lands. This committee recommends that the State Legislature authorize each trust board the authority to freely contract with any agency or private firm for the management of its lands for revenue production in accordance with the state's land act.

Section 1 of the attached draft bill would accomplish this.

Recommendation #12

To provide the lessee insurance against a land boom or unexpected increase the committee recommends that rental increases at the five-year reappraisal periods not exceed 100% of the prior existing annual rental rate. This action would increase the predictability of the lessees payments. The stability thus created would add significant borrowing power for the lessee to finance improvements on the leased ground. Mr. Mack of this committee does not concur and believes that 100% is too high a ceiling.

Section 3 of the attached draft bill would accomplish this.

Recommendation #13

The Division of Lands has had many protests from private parties over the past few years leading the committee to believe that a board of appeals is highly desirable and needed, at this time. At present there exists no arbitration board or board of appeals to handle appeals allowed by Division of Lands regulations. The creation of a board of appeals would effect a responsive mechanism for solving most problem cases arising out of Division of Lands transactions that affect private parties. The board of appeals would be faster and less costly to private parties than legal recourse, which would still be available. The board is structured to maintain adequate expertise while attempting to eliminate bias in favor of the

Division of Lands. The appeal board would substitute for the Commissioner in the present appeal process.

Section 14 of the attached draft bill would accomplish this.

Recommendation #14

The current procedures for informing the public of state lands transactions are covered in AS 38.05.305 and AS 38.05.345. The two procedures do not mesh in a clear manner. The committee recommends that the procedures be clarified in a manner that will be flexible enough to inform the public fully and yet not require multiple advertising for minor negotiated transactions.

Section 11 of the attached draft will accomplish this.

Recommendation #15

To implement the new lease provisions recommended by this committee new lease forms for various types of leases will be required. It is the committee's recommendation that the Division draft new lease forms to comply with the statutes adopted, and that the new forms be reviewed by this committee.

Recommendation #16

At present many lessees are suffering hardship due to rent increases of several hundred percent. To provide for this relief and as a curative for such future increases the statutory provisions found in section nine are recommended. Provision for optional conversion of present leases to ones that will place a ceiling of 100% on rental increases every five years will largely prevent future hardship cases and resolve satisfactorily the present cases. With a rent ceiling lease rental increases will be more predictable resulting in more financial stability for the lessee. Mr. Hack does not concur with the limitation of 100%.

Section 8 & 9 of the attached draft bill will accomplish the above recommendations.

Recommendation #17

The committee recommends that the Legislature apply the provisions found in Title 38 to those in Title 3 and Title 19. The rationale would be to make land laws uniform between the Division of Aviation, Department of Highways and Division of Lands.

Recommendation #18

To comply with new statutes the committee recommends a major overhaul of Division of Lands regulations. The committee has found many of the regulations now in effect to be outdated and superseded by statutes.

Recommendation #19

The committee recommends that the State be given more flexibility to resolve contract of sale violations. This is necessary to prevent foreclosure as the

only remedy for minor contract violations.

Section 3 of the attached bill will accomplish this.

The committee wishes to note that in the course of public testimony it was apparent that Division of Aviation lessees had significant problems with their current leases. This subject was not within the scope of the committees deliberations and, therefore, not addressed.

The committee wishes to emphasize that this is an interim report and will be followed by additional recommendations not necessarily involving legislative actions.



THEODORE G. SMITH

Co-chairman

Committee Members:

Hugh Gellert, Co-chairman
William Mack
John Norman
Lidia Selkregg
Jamie Love
Carl Marrs
Clark Gruening
Mike Colletta
Herb Lang
David McCabe

IN THE

BY RULES COMMITTEE BY REQUEST
OF THE GOVERNOR

BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to state lands and providing for
an effective date."

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

* Section 1. AS 38.05.030 is amended by adding a new subsection to read:

Section 38.05.030 (f) Notwithstanding the provisions of (a) and (e)
above and 38.05.035 (a)(13), the trustees of state trust lands may manage or
contract with any agency, public or private, for the management of trust
lands pursuant to the provisions of this chapter. Costs of such management
shall be borne by the respective trusts.

* Section 2. AS 38.05.055 is amended to read:

Section 38.05.055. SALE PROCEDURES. Except as provided in Section
315(d) of this chapter, the sale shall be made at public auction to the
highest qualified bidder as determined by the director. An aggrieved bidder
may appeal to the commissioner within five days after the sale for a review
of the director's determination. The sale shall be conducted by the director
or his representative, and at the time of sale the successful bidder shall
deposit an amount determined by the director but not less than 5% (EQUAL TO
ONE-TENTH) of the purchase price. The director or his representative shall
immediately issue a receipt containing a description of the land or property
purchased, the price bid, and the terms of sale, which receipt shall be
acknowledged in writing by the bidder. A contract of sale on a form approved
by the attorney general shall be signed by the purchaser and, after approval of
the commissioner, the contract shall also be signed by the director on
behalf of the state.

* Section 3. AS 38.05.065 is amended to read:

Section 38.05.065. TERMS OF CONTRACT OF SALE. The contract of sale
shall require the remainder of the purchase price to be paid over a period

of not more than 20 years, which shall be set for each sale by the director.
Installment payments plus interest will be set on the level payment basis
over the payment period. The interest rate charged on installment payments
shall be the prevailing rate on similar land transactions at the time the contract
is signed, as determined by the director, but in no case shall it be below
5% per year or above the current usury rate as set by AS 45.45.010(b) and (d).
(IN ANNUAL INSTALLMENTS OF NOT LESS THAN 10 PER CENT OF THE PURCHASE PRICE,
WITH INTEREST AT THE RATE OF NOT LESS THAN FIVE PER CENT A YEAR.) The
director, with the consent of the commissioner, may also impose conditions,
limitations, and terms which he considers necessary and proper to protect
the interest of the state. Violations of any provision of this chapter or
the terms of the contract of sale subject the purchaser to appropriate
administrative and legal action, including but not limited to specific
performance, foreclosure, ejectment, or other legal remedies in accordance
with applicable state law. (LEGAL ACTION, INCLUDING A FORECLOSURE ACTION
IN ACCORDANCE WITH APPLICABLE STATE LAW.)

* Section 4. AS 38.05.067(b) is amended to read:

Section 38.05.067(b). The director shall not sell the lands under this
section at less than their fair (APPRAISED) market value. The director shall
make regulations necessary to ensure that lands sold under this section are
for bona fide residential use and not for speculation.

* Section 5. AS 38.05.068(a) is amended to read:

Section 38.05.068(a). FOREST SERVICE PERMITTEES' SALES PREFERENCE.
Before offering to the public any land which is subject to a valid existing
United States Forest Service permit in effect in a state-selected area at
the time the area was patented to the state, or which is subject to a lease
issued under Section 87 of this chapter, the director shall offer the land
for sale to the permittee or his successor in title, if he can be found, at
not less than its fair (APPRAISED) market value before offering to the
general public.

* Section 6. AS 38.05.070(c) is amended to read:

Section 38.05.070(c). A lease may be issued for a period of up to 55
years, if it appears to be in the best interest of the state and if the
commissioner approves. A lease for a period in excess of 25 years shall grant
the lessee an option entitling him to extend the term of the lease for up to
3 consecutive five year periods in addition to the original term. If the Commissioner
determines that the land or a part of it which is the subject of a grazing

lease is not being used for the purpose issued, the lease may be declared void. (HOWEVER, A NONRENEWABLE LEASE FOR SCHOOL LANDS MAY BE ISSUED FOR A PERIOD NOT TO EXCEED 99 YEARS.)

* Section 7. AS 38.05.087(a) is amended to read:

Section 38.05.087(a). FOREST SERVICE PERMITTEES' LEASING PREFERENCE. Before offering to the public any land for lease which is subject to a valid existing United States Forest Service permit in effect in a state-selected area at the time the area was patented to the state, the director shall offer the land for leasing to the permittee at not less than its fair (APPRAISED) market value before offering it to the general public.

* Section 8. AS 38.05.105 is amended to read:

Section 38.05.105. Each lease shall stipulate that the annual rental payment is subject to adjustment at five year intervals and shall be based (PRIMARILY) on a reappraised annual rental value. Any increase due to reappraisal may not exceed 100% of the annual rental for the preceding 5 year period. However, if the director of the division of lands determines that residential development is the best use for the land, the reappraisal period may be lengthened or the readjustment waived in accordance with regulations adopted by the commissioner. Before a waiver of rental readjustment is issued, the land shall have a current reappraisal. A waiver is valid only if residential development actually occurs, and only if it is necessary for obtaining primary long-term financing. The regulations adopted under this section shall ensure that the state receives a fair return from the land.

* Section 9. AS 38.05 is amended by adding a new paragraph to read:

Section 38.05.106. CONVERSION OF LEASES. (a) Any person holding a valid lease as lessee of lands from the State under provisions of AS 38.05.070 - .105, or as an approved assignee of such lessee under the terms of such lease, may, at his option, convert his lease so as to obtain certain benefits, enumerated in subparagraph (b) below, which were not available to him at the date his lease was originally entered, if the lessee at the time of conversion makes all payments due under the conversion rate and is not in violation of any other lease provision.

(b) Those lease benefits which shall be made available to a lessee qualifying under subsection (a) of this section shall be all of those lease provisions authorized or made applicable by this act to new leases entered into by the State after the effective date of such statutes.

(c) The effective annual rental value at conversion shall be based on the most recent reappraisal provided that such reappraisal was within 2 years of the effective date of this act. In all other cases, the conversion shall be based on the next reappraisal.

(d) Any conversion as to trust lands shall be effective only if approved by the appropriate board of trustees.

(e) Applications for conversion must be made within 3 years of the effective date of this act.

* Section 10. AS 38.05.310 is amended to read:

Section 38.05.310 (NOTICE AND) APPRAISAL. (a) No land may be sold or leased, or a renewal lease issued (WITHOUT PUBLIC NOTICE) except in the case of an oil or gas or mineral lease, unless it has been appraised within 120 (90) days before the date of (FIXED FOR THE) sale or lease. (WHEN LAND IS OFFERED AT PUBLIC SALE BUT IS NOT SOLD AND IS AVAILABLE) For over the counter sale (AT THE PRIVATE SALE, NO) an (RE)appraisal is required unless the director finds (CONSIDERS) that a change in value of the lands has not (MAY HAVE) occurred. A grazing lease may be granted to a lessee of federal grazing lands without prior appraisal, if his federal lease was cancelled to allow the state to select the lands under lease. No land may be sold or leased for less than fair (THE APPROVED, APPRAISED) market value, except as provided in .315 and .320 of this chapter and .75 - .85 of this chapter. No land or interest in land may be sold, leased, or otherwise disposed of without public notice.

(b) When land is offered at public sale but is not sold, it may be available for sale over the counter. The director shall review the list

of lands available on a quarterly basis and shall certify that there has been no change in value since the last reappraisal. If an increase in value occurs in any parcel, the director shall withdraw that parcel from sale over the counter.

* Section 11. AS 38.05.345(a) is amended to read:

Section 38.05.345(a). Public notice of an auction sale (LEASE OR OTHER DISPOSAL) of land or interest in it shall be substantially as follows.

* Section 12. AS 38.05.345(e) is amended by adding a new subparagraph to read:

Section 38.05.345(e) Public notice of an action other than as specified in paragraph (a) above shall conform to the requirements of AS 38.05.305 and this paragraph. Such notice shall, when given pursuant to AS 38.05.305(c), be published at least once in a newspaper of general circulation in the vicinity in which the land affected by the proposed activities is located.

* Section 13. AS 38.05.365 is amended by adding a new subparagraph to read:

Section 38.05.365. "Market Value" or "Fair Market Value" means the highest prices, estimated in terms of money, which the property would bring if exposed for a sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used.

* Section 14. AS 38.05 is amended by adding a new paragraph to read:

Section 38.05.380. STATE BOARD OF LAND APPEALS. (a) The State Board of Land Appeals shall consist of five members, one of whom shall be the Commissioner of Natural Resources or his designated representative. The other members of the board shall be appointed by the governor from the general public, with due regard for the desirability of prior legal, natural resource or real estate training and experience as criteria for selection of public members. All board members are subject to confirmation by a majority of the members of the legislature in joint session.

(b) The director of the division of lands shall provide administrative support for the board.

(c) The governor shall appoint the public members of the board for terms of three years each, except that the initial terms of one of the members first appointed under this chapter shall be for one year and one member for two years. The public members are entitled to compensation

in the amount of \$53.00 per day for each day or portion of a day spent in actual meeting or on authorized official business incident to their duties, and to all other transportation and per diem expenses as provided by law.

(d) Jurisdiction of the board shall extend to all matters arising under the Alaska Land Act (AS 38.05) and the Water Act (AS 46.15) from which an appeal may be taken under statute or regulation to the commissioner from a decision of the director, division of lands. The board in all appeals filed after the effective date of this chapter, shall have the appellate authority formally vested in the commissioner by provisions of the Alaska Land Act. An appeal from a decision of the board, if taken, shall be to the Superior Court.

of a quorum shall be able to render a decision. The board shall adopt regulations governing its procedures, and may adopt other regulations which may be necessary or convenient in carrying out the purposes of this chapter.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

P. O. Box 1628, Juneau, Alaska 99811

1510

April 24, 1978



Honorable Kay Poland
Alaska State Senate
Pouch Y
Juneau, Alaska 99811

Dear Senator Poland:

I have been following with a great deal of both personal and professional interest, the development of State forest practices legislation. I have been impressed with your concern to assure that the legislation provides the environmental protection necessary, and at the same time protects the rights of private landowners. The issues involved in forest practices on private land are indeed more complex than on public land.

Section 41.17.060 on regulatory and administrative standards, is of particular interest to us. This section authorizes the implementation of specific regulatory forest practices on the ground, and through membership on the Board of Forestry, we look forward to participating in the development of those regulations.

The policy of the Forest Service nationally, has been to encourage and support sound State forest practices legislation. Our previous testimony before your Committee attests to this.

An additional consideration in Alaska is the requirement in the Alaska Native Claims Settlement Act that lands selected by the Native corporations be managed under certain specified practices. Sub-section K, Section 22, states that:

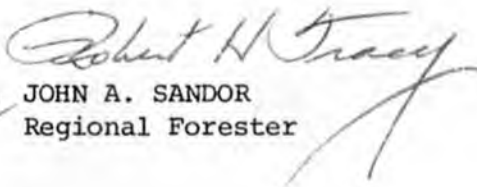
"Any patents to lands under this Act which are located within the boundaries of a National Forest shall contain such conditions as the Secretary deems necessary to assure that such lands are managed under the principle of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent National Forest lands for a period of twelve years."

The job that now faces us is to develop standards and guidelines to meet the intent stated by Congress. We expect the State Forest Practices

Act now under development by your Committee will significantly aid in meeting Congressional requirements.

The work you and your Committee have done in bringing the various interests together on Statewide forest practices issues is of great value. I might suggest a meeting with ourselves, you and some of the other interests, as a way toward developing a practical approach in complying with the forest practices provision of ANCSA. I would welcome your counsel on this.

Sincerely,

for 
JOHN A. SANDOR
Regional Forester

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

P. O. Box 1628, Juneau, Alaska

April 10, 1978

TESTIMONY FOR THE SENATE RESOURCE COMMITTEE
SENATE BILL NO. 59, SPONSOR SUBSTITUTE



MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS MARVIN C. MEIER, U. S. FOREST SERVICE, AND I AM
TESTIFYING TODAY FOR REGIONAL FORESTER, JOHN. A. SANDOR.

WE ARE PLEASED TO HAVE THIS OPPORTUNITY TO SHARE OUR THOUGHTS
ON THE PROPOSED FOREST PRACTICES ACT, SPONSOR SUBSTITUTE FOR
SENATE BILL No. 59. WE HAVE A KEEN INTEREST IN THE DEVELOPMENT
OF A STRONG STATE FORESTRY PROGRAM BECAUSE WE FIRMLY BELIEVE
THAT ALASKANS WILL PROFIT IN MANY WAYS FROM THE DEVELOPMENT OF
SUCH A PROGRAM. THE BILL UNDER CONSIDERATION WILL BE HELPFUL
IN ACHIEVING THIS OBJECTIVE. IT IS THE RESULT OF A COOPERATIVE
EFFORT OF LEGISLATIVE, EXECUTIVE, AND PROFESSTIONAL FORESTRY
EXPERTISE.

MADAM CHAIRMAN, YOUR PERSONAL LEADERSHIP AND THE EFFORTS OF
THIS COMMITTEE HAVE BEEN EFFECTIVE IN IMPROVING THE PROPOSED
FOREST PRACTICES ACT THAT HAS EVOLVED THESE PAST THREE YEARS.
IT HAS BEEN A PLEASURE FOR THE FOREST SERVICE TO WORK WITH THE
STATE, YOUR COMMITTEE, AND OTHERS IN THIS EFFORT.

ALTHOUGH WE WILL NOT DISCUSS THE BILL IN GREAT DETAIL, THERE
ARE SOME POINTS ON WHICH WE DO WISH TO COMMENT. FIRST, THE BILL
WILL STRENGTHEN THE STATE FORESTRY AGENCY AND THE ROLE OF THE

STATE FORESTER. IN THIS GREAT STATE WITH THE VAST ACREAGE OF FORESTS AND RELATED RENEWABLE RESOURCES, THE APPLICATION OF SOUND FOREST PRACTICES MUST BE ASSURED. THE MANAGEMENT OF THE STATE'S FOREST RESOURCES IS EXTREMELY IMPORTANT FOR TIMBER, FISHERIES AND WILDLIFE, RECREATION, WATER, AND OTHER USES. THE FULL VALUE OF FOREST RESOURCE MANAGEMENT WILL BE REALIZED ONLY IF THE STATE CONTINUES TO HAVE COMPETENT, PROFESSIONAL PERSONNEL IN THE POLICY MAKING POSITIONS DIRECTING THE PROTECTION AND MANAGEMENT OF THESE RESOURCES. THE EXPERIENCE IN MOST WESTERN STATES CLEARLY ILLUSTRATES THIS.

THE BILL PROVIDES FOR THE DEVELOPMENT OF INCENTIVES AS A WAY OF ACHIEVING GOOD FOREST MANAGEMENT. SEVERAL OF THE LOWER 48 STATES HAVE ESTABLISHED, OR ARE WORKING TOWARD THE ESTABLISHMENT OF, INCENTIVE PROGRAMS. THEIR EXPERIENCE WILL BE HELPFUL TO ALASKA. THE INCENTIVES NEED TO BE THOUGHT OF IN BROAD TERMS AS INCENTIVES TO ALL FOREST RESOURCES AND OVERALL FOREST LAND MANAGEMENT, NOT JUST TIMBER MANAGEMENT. THE SECTION ON INCENTIVES AND COOPERATIVE FOREST MANAGEMENT WILL ENCOURAGE AND ASSIST PRIVATE FOREST LANDOWNERS TO USE THEIR LAND AND RESOURCES TO THEIR OWN BENEFIT, AND IN WAYS IN WHICH SOCIETY AS A WHOLE DOES NOT SUFFER.

THE BILL'S SECTION ON REGULATORY PROCEDURES WILL ALSO HELP PROTECT ALASKA'S RESOURCES. THIS PART OF THE PROGRAM IS IMPORTANT TO ASSURE THAT FOREST-RELATED RESOURCES ARE WISELY MANAGED FOR COMMODITY AS WELL AS ENVIRONMENTAL GOALS.

THE BILL PROVIDES FOR THE STATE'S CONTINUED PARTICIPATION AND INVOLVEMENT IN THE FEDERAL COOPERATIVE FORESTRY PROGRAMS. THESE PROGRAMS HAVE PROVEN THEMSELVES VALUABLE TO MOST OTHER STATES. THIS WILL WILL HELP ASSURE THE CONTINUATION AND EXPANSION OF ALASKA'S PARTICIPATION IN THESE PROGRAMS. IN FISCAL YEAR 1978, THE FOREST SERVICE WILL PROVIDE OVER \$700,000 FOR COOPERATIVE PROGRAM FUNDING, WHICH IS A 40 PERCENT INCREASE OVER FISCAL YEAR 1977. WE CANNOT PROMISE THIS KIND OF INCREASE EACH YEAR, HOWEVER, THE U. S. DEPARTMENT OF AGRICULTURE DOES RECOGNIZE THE IMPORTANCE OF A STRONG COOPERATIVE FORESTRY PROGRAM HERE AND NOW. THE FOREST SERVICE IS COMMITTED TO SUPPORTING AND AND CONTINUING SUCH A PROGRAM.

THE BILL AUTHORIZES DESIGNATION OF STATE FORESTS FOR RETENTION AS MULTIPLE-USE LANDS AND AUTHORIZES THE ESTABLISHMENT OF STATE TREE NURSERIES. SUCH AUTHORITIES ARE SOUND, AND AGAIN ARE PROVEN IN THE EXPERIENCE OF OTHER STATES. THERE ARE FOREST REGENERATION NEEDS NOW, AND THESE NEEDS ARE LIKELY TO INCREASE AS MORE TIMBER IS HARVESTED. TO THE EXTENT THAT PRIVATE NURSERIES ARE NOT ABLE TO PROVIDE THE STOCK THAT IS NEEDED AT AN AFFORDABLE PRICE, WE ADVOCATE STATE SUPPORTED NURSERIES. THEY WOULD RESULT IN BETTER LAND UTILIZATION, THEREBY REDUCING THE AMOUNT OF LAND IMPACTED BY A GIVEN TIMBER HARVEST LEVEL. ALSO, A STATE SUPPORTED NURSERY COULD LEAD TO DEVELOPMENT OF IMPROVED PLANTING STOCK.

AGAIN, IT HAS BEEN A PLEASURE WORKING WITH VARIOUS STATE PERSONNEL AND WITH YOUR COMMITTEE IN THE DEVELOPMENT OF THIS PROPOSED LEGISLATION. THE ENACTMENT AND IMPLEMENTATION OF THE PROPOSED BILL SHOULD HELP ASSURE THE SOUND MANAGEMENT OF ALASKA'S FORESTS AND RELATED RENEWABLE RESOURCES.

COOK INLET CHAPTER
JUNEAU CHAPTER
KETCHIKAN CHAPTER
YUKON RIVER CHAPTER
SITKA CHAPTER
STIKINE CHAPTER

SOCIETY OF AMERICAN FORESTERS

Alaska Section

April 10, 1978



TESTIMONY FOR THE SENATE RESOURCES COMMITTEE
SENATE BILL NO. 59, SPONSOR SUBSTITUTE

MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE;

MY NAME IS BOB JANES AND I AM APPEARING TODAY FOR THE ALASKA SECTION OF THE SOCIETY OF AMERICAN FORESTERS.

WE WELCOME THIS OPPORTUNITY TO GIVE TESTIMONY IN FAVOR OF THE CURRENT SPONSOR SUBSTITUTE FOR SENATE BILL No. 59. THE ALASKA SECTION REPRESENTS OVER 200 PROFESSIONAL FORESTERS THROUGHOUT THE STATE OF ALASKA, AND IS PART OF A NATIONAL ORGANIZATION OF MORE THAN 20,000 SUCH MEMBERS. DURING THE PAST THREE YEARS, WE HAVE BEEN ACTIVE IN HELPING TO FORMULATE LEGISLATION FOR A SOUND STATE FOREST PRACTICES ACT IN ALASKA. A YEAR AGO, WE MADE AN IN-DEPTH ANALYSIS OF SENATE BILL No. 59, BY TESTING IT AGAINST OUR SOCIETY OF AMERICAN FORESTERS RECOMMENDED NATIONAL CRITERIA FOR A COMPETENT STATE FOREST PRACTICES ACT. WE ARE HAPPY TO SEE THAT SUGGESTIONS AS A RESULT OF THAT EFFORT HAVE BEEN INCORPORATED INTO THE SPONSOR SUBSTITUTE BEFORE YOU TODAY.

ONE OF OUR PRIMARY CONCERNS A YEAR AGO, WAS THE NEED FOR THE STATE FORESTER TO PLAY A MORE PROMINENT AND AUTHORITATIVE ROLE IN ADMINISTERING THE ACT IN A SOUND AND PROFESSIONAL MANNER. SINCE THE DIRECTOR OF THE DIVISION OF FOREST, LAND, AND WATER

MANAGEMENT WILL BE THE STATE FORESTER, AND SINCE THIS PERSON MUST HAVE PROFESSIONAL NATURAL RESOURCES LAND MANAGEMENT CREDENTIALS, IT APPEARS THE ORGANIZATIONAL STRUCTURE NOW PROVIDES FOR OVERCOMING THAT PARTICULAR PROBLEM. WITH PROPER DELEGATED AUTHORITY EXTENDED BY THE COMMISSIONER, THE STATE FORESTER SHOULD BE ABLE TO OPERATE IN A LEADERSHIP ROLE IN THE MANNER WE ENVISION IS NECESSARY. WE MUST EMPHASIZE, HOWEVER, THE IMPORTANCE OF DELEGATING SIGNIFICANT AUTHORITIES TO THE STATE FORESTER. OTHERWISE, A PROGRESSIVE STATE FORESTRY AWARENESS IN ALASKA COULD AGAIN BACKSLIDE, AND OBSTRUCT SOUND PROTECTION, MANAGEMENT AND UTILIZATION OF THE ABUNDANCE OF NATURAL RESOURCES THIS GREAT STATE HAS.

ANOTHER OF OUR MAJOR CONCERNS IN THE PAST WAS THE EFFECT THIS LEGISLATION WOULD HAVE ON PRIVATE LANDOWNERS. CRITERIA #7 OF OUR NATIONAL GUIDELINES STATES "A FOREST PRACTICES ACT SHOULD ALLOW A FOREST LANDOWNER LATITUDE IN APPLYING PROFESSIONAL FORESTRY EXPERTISE AND FOREST MANAGEMENT PRINCIPLES. ADMINISTRATIVE REQUIREMENTS FOR FOREST LANDOWNERS AND OPERATORS SHOULD NOT BE UNDULY BURDENED." IN PREVIOUS INPUT, WE EXPRESSED THOUGHTS ABOUT THE APPARENT INAPPROPRIATE INVASION OF RIGHTS AGAINST PRIVATE LANDOWNERS BECAUSE OF UNDULY RESTRICTIVE REGULATORY PRACTICES. FOR EXAMPLE, THERE WAS A PROVISION IN PREVIOUS PROPOSED LEGISLATION THAT READ "TIMBER HARVESTING IS NOT PERMITTED IN AN AREA UNLESS RELEVANT DATA AND INFORMATION INDICATE THAT THERE WILL BE NO REFORESTATION PROBLEMS LEADING TO THE INABILITY OF THAT AREA TO PRODUCE A SUSTAINED YIELD OF MERCHANTABLE TIMBER." WE COMMENTED THAT WHILE THIS MAY BE APPROPRIATE FOR STATE OR MUNICIPAL FOREST LANDS, IT

WAS NOT APPROPRIATE AS A BASIS FOR DEPRIVING A PRIVATE LANDOWNER OF ECONOMIC VALUES THAT EXISTED ON HIS OWN LAND. THE CORRESPONDING REGULATORY STANDARD IN THE CURRENT SPONSOR SUBSTITUTE, SEC. 41.17.040 (B) (1), NOW READS "TIMBER HARVESTING IS LIMITED TO AREAS WHERE DATA AND INFORMATION DEMONSTRATE THAT NATURAL OR ARTIFICIAL REFORESTATION TECHNIQUES WILL RESULT IN THE PRODUCTION OF A SUSTAINED YIELD OF MERCHANTABLE TIMBER FROM THAT AREA." DURING THE OPERATOR NOTIFICATION PROCESS WITH THE COMMISSIONER, THIS REQUIRED DETERMINATION SHOULD BE EASILY RESOLVED. ANOTHER OVERLY RESTRICTIVE PROVISION IN THE SAME SECTION OF THE PREVIOUSLY PROPOSED LEGISLATION READ, "SCENIC AND AESTHETIC QUALITY SHALL BE MAINTAINED IN OR ADJACENT TO AREAS OF SIGNIFICANT IMPORTANCE TO THE TOURISM AND RECREATION INDUSTRY." THE CORRESPONDING REGULATORY STANDARD NOW READS "WHERE ECONOMICALLY PRACTICABLE, ALLOWANCE MAY BE MADE FOR SCENIC AND AESTHETIC QUALITY IN OR ADJACENT TO AREAS OF SUBSTANTIAL IMPORTANCE TO THE TOURISM AND RECREATION INDUSTRY." IN ESSENCE, THESE TYPES OF UNDULY RESTRICTIVE MEASURES HAVE BEEN ELIMINATED AND WE BELIEVE PRIVATE LANDOWNERS ARE NOW GIVEN FAIR CONSIDERATION IN THE SPONSOR SUBSTITUTE BILL. IN ADDITION, SECTION 41.17.070 HAS BEEN SUBSTANTIALLY IMPROVED REGARDING REVIEW AND APPROVAL OF OPERATIONS. EVERY EFFORT WILL BE MADE TO LIMIT THE REVIEW AND APPROVAL PERIOD TO A MAXIMUM OF 20 DAYS. WITH THESE EXAMPLES, IT IS DEMONSTRATED THAT UNDULY BURDENSOME REQUIREMENTS HAVE BEEN STREAMLINED OVER THE PREVIOUS BILL.

PROPOSED LEGISLATION FOR AN ALASKA FOREST PRACTICES ACT STARTED IN THE SECOND SESSION OF THE NINTH LEGISLATURE. IT CONTINUED IN THE FIRST SESSION OF THE TENTH LEGISLATURE, AND IS NOW IN ITS THIRD YEAR. TO HELP ASSURE SOUND PROFESSIONAL MANAGEMENT OF ALASKA'S

FOREST LAND RESOURCES AT THE EARLIEST POSSIBLE TIME, WE URGE
YOUR COMMITTEE TO AGGRESSIVELY STRIVE FOR ADOPTION OF THIS SPONSOR
SUBSTITUTE FOR SENATE BILL No. 59, DURING THIS SECOND SESSION OF
THE TENTH LEGISLATURE.

THANK YOU FOR LISTENING TO US TODAY.

A handwritten signature in cursive script, appearing to read "R.C. Jones", is written in the upper right quadrant of the page.

SHEE ATIKA, INCORPORATED

P.O. Box 578
Mt. Edgecumbe, Alaska 99835
Phone - (907) 747-3534

March 23, 1978

Senator Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99801

Dear Senator Poland

The Board of Directors of Shee Atika, Inc. have directed me to convey their concerns to the Senate Resource Committee relating to the administration's proposed forest practices act.

We would very much like to see a forest practices act adopted this year. We are equally interested; however, in seeing that a practical and fair forest practices act is adopted. Several points were noted by our Directors during their attendance at the Senate Resource Committee work session, held March 8th, at which Mr. Jeff Haynes presented the administration's draft bill. Shee Atika, Inc. would like to express the following concerns relating to those points:

1. We need a forest practices act this year.
 - A. It appears that operations and activities on privately owned forest lands will be regulated through other authority, with less concern or emphasis on private forest management, if an act is not adopted this year.
 - B. Section 208 of the Federal Water Pollution Control Act essentially mandates the State to adopt an act, BUT we can adopt a practical act to satisfy the Section 208 requirements. Sec. 208 does not require us to adopt a "California" type act which is both difficult expensive to administer and unfair to the private land owner.
2. We feel that the administration's draft bill is generally acceptable with the following critical exceptions:
 - A. Forestry on private and state or municipal land should be administered from a level comparable to atleast the Division status within state government. Forest resources deserve attention and status equal to Commercial Fisheries, Sport Fisheries etc. if not equivilant to Fish and Game and Environmental Conservation.
 - B. The Forestry branch should be led by a professional forester. This is necessary to insure that a administration of a forest practices act have continuity without being subject to a possible political reward system, to insure appreciation for forest management problems by the administrator, to insure communication between the forest land owner and the administrator, and to insure that in inter division or inter department relationships modern technical forestry is represented and understood.

March 23, 1978

Senator Kay Poland
Chairman Senate Resources Committee

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- C. Alaska's forest practices act should incorporate a notification system for activities on private lands, not a permit system as in the administration draft. We have no objection to the "prior approval permit" system on public lands. At the Resources committee meeting Mr. Haynes did not adequately discuss the differences between these two systems. The basic difference is that a permit system (as proposed in the administration's draft) requires the state's permission before a land owner can conduct activities on private lands; while, a notification system requires that a land owner inform the state prior to any activity on private land and that the land owner obey state law and regulation. Mr. Haynes reported that a notification system was nothing more than requiring a land owner to "mail a postcard" to the state when he or she was planning to conduct a forestry operation on his or her land. This is absolutely untrue. The administration probably has proposed a prior approval "permit" system because it wants the state to have a reasonable amount of influence on forest practices on private lands. That objective is reasonable and very acceptable for us as a land owner. That same objective can be accomplished; however, by tailoring a notification system in the proposed forest practices act. The notification system works very well in Oregon and it will work well in Alaska. We don't need to burden the private land owners and the state with the inherent problems of a California type prior approval "permit" system to accomplish the objective of insuring that privately owned forest resources are properly managed. We would suggest that the "permit" system in the administration's draft be replaced by a "notification" system which required 30 days prior notification by an operator or owner including filing of operation plans which identify what activity (s) is/are planned, what equipment will be used, where roads will be located, where streams are located, how the area be reforested etc. The plans should include location of the affected area on a USGS 1" mile topographic map with road & bridge locations, activity boundaries, streams, campsites, land fills, log storage areas, fuel storage areas, rock pits, water source, sewage disposal system, and landings identified and located. This is the same information that would be required by the administration's draft. We suggest that in lieu of a "permit" system the act should authorize the state to require a pre-operation meeting with the operator or land owner. This would give the state an opportunity to explain any concerns and advise the land owner/operator of the probable consequence of an activity. The need for a pre-operation meeting should be left to the discretion of the reviewing officer. We would advocate and endorse very stiff penalties (as in the administration's bill) to insure compliance with state law and regulation under a true "notification" system. We would not be adverse to posting a reasonable bond prior to any operation on our lands. If the state considers adopting the performance bond concept; however, it would be desirable to include some means of exempting small landowners and operators and guaranteeing that the bond amount would be no larger than that required to both encourage compliance and cover the expense of correcting a possible adverse situation created by an illegal activity.

March 23, 1978

Senator Kay Poland
Chairman, Senate Resources Committee

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A true notification system (as used in Oregon) is far less expensive to administer than a permit system which requires state consent as suggested by the administration. Considering volume harvested California's permit system is 6.5 times as expensive for that state's taxpayers when compared to Oregon's notification system. Considering the number of operation "notices" filed California's permit system is 27.3 times as expensive as a notification act. It is logical to conclude that these costs would increase by a blanket 25% cost of business factor and 25% allowance for increased transportation expense in Alaska. Transportation represents only 7% of Oregon and California's forest practices connected budget while it would probably approach 33% of the forest practices budget in Alaska. The transportation allowance would tend to be much higher under a "permit" system as a "permit" system has an inherent characteristic which encourages state enforcement personnel to make several visits to each operation prior, during and following the activity. Fixed administrative expenses will also be much higher in Alaska due to the relatively fewer number of operations here and smaller annual yield when compared with Oregon and California.

D. We agree with Senator Meland's concern regarding the administration's provision 41,17.040 b (6) that "allowance be made for scenic and aesthetic quality in or adjacent to areas of substantial importance to the tourism industry." This provision will undoubtedly foster many law suits as people disagree on such items as:

1. What constitutes "allowance"?
2. What is "scenic and aesthetic quality"?
3. What constitutes "substantial importance"?

Mr. Haynes indicated that this section intended to authorize the state to use an incentive program to compensate land owners for the economic impact of state restrictions under this section. If this is the intent, we suggest that the act should mention the state's authority to compensate a land owner for voluntarily curtailing any activity related to "scenic quality" which the state finds objectionable. We further suggest that the implication that a land owner can be prevented from managing his resources (if the state feels the activity would conflict with "scenic value") be stricken.

We would like to express the following views on other points discussed in the committee session March 8.

1. We endorse that portion of the administration's bill which sets mandatory standards for reforestation and conversion to non-forest uses. These are reasonable standards which we plan to meet and surpass.

March 23, 1978

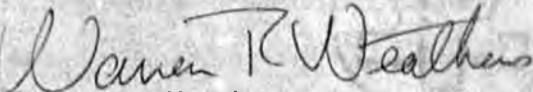
Senator Kay Poland
Chairman, Senate Resources Committee

Page 4

2. We concur with Senator Sumner's concern about who has the burden (landowner or state ?) under Section 41.17.040 b(1) of the administration's bill which states "timber harvesting is limited to areas where data and information indicate an absence of reforestation problems which would preclude that area from producing a sustained yield of merchantable timber". This problem could easily be corrected, and the objective retained, by modifying the passage to read "timber harvesting may be limited in areas where data and information indicate that it would produce unsolvable reforestation problems which would preclude that area from producing a sustained yield of merchantable timber."

Thank you for your consideration. We were pleased to note the committee's expression of concern for the rights of the private landowner at the March 8 meeting.

Sincerely



Warren R. Weathers
Executive Director Shee Atika, Inc.

WRW/nmw

Testimony of Robert E. LeResche, Commissioner
Department of Natural Resources
on the
Sponsor Substitute for Senate Bill 59

Senate Resources Committee
April 10, 1978

Thank you for the opportunity to testify before the Committee on the Sponsor Substitute for Senate Bill 59, an Act relating to forest resources and practices.

As you know, a forest practices act has been in the works for more than three years. We consider it an extremely high priority. Only if we enact such legislation before logging reaches its greatest intensity are we in a position to (1) head off user groups conflicts before they occur, (2) establish forest practices and other ground rules before equipment is moved into the field, (3) provide the highest level of professional assistance to logging operators, and (4) fully realize the benefits of a healthy forest products industry while insuring perpetual supplies of renewable forest resources. Accommodating the many constituencies which depend upon forest resources will be difficult and complex, and we must start now. Most states have waited too long to adopt forest practices legislation, and have suffered for it. We should not repeat that mistake. By acting now, the establishment of a high profile professional forestry program will permit Alaska to occupy a position of national leadership in forest management.

During the hearings held by this Committee last year, it was evident that there was opposition to a number of provisions of the Administration Bill. Consequently, you asked that we work with affected interest groups in an attempt to come up with legislation which would respond to and reconcile the many points of view in

this controversial area.

In the interim period, we have tried to negotiate solutions to the problems with the bill with the Forest Service, state government entities, professional foresters, the forest products industry, native corporations, conservation groups, fishermen, and others. Of course, virtually everyone in Alaska has some stake in the management of Alaska's forests, and it was impossible to talk with all of them. Nevertheless, we did work continuously with those who evidenced a desire to participate in the revision of S.B. 59. Indeed, I cannot think of many pieces of legislation which have undergone the scrutiny, discussion, and reworking which has taken place on S.B. 59. At this point, the bill belongs as much to those participants as it does to us, and we believe the Sponsor Substitute is about as close as we can come to consensus legislation. It is certainly superior to the original S.B. 59, and we are indebted to those who have worked with us for the numerous improvements made and to this Committee for providing the forum to do so. We expect that the bill will receive considerable support from a number of different interest groups.

The Committee will note that we have submitted a rather lengthy transmittal letter along with the Sponsor Substitute. This letter contains the many statements of intent requested by persons and organizations who worked on the bill. The bill and the letter should be considered a package representing our efforts over the past year. As a result, we urge in the strongest terms that, if the bill is passed out favorably by this Committee, the transmittal letter be adopted as the Committee Report on the legislation.

The specifics of the legislation were reviewed with you at the working session of the Committee several weeks ago. Consequently, I will reserve going into that level of detail until responding to your questions when the testimony is completed. I would like to underscore, however, that the bill-

- (1) establishes a visible professional forestry program in the Department of Natural Resources;
- (2) adopts a threefold approach to forest management to include assistance by professional foresters and economic incentives as well as regulations;
- (3) mandates thorough consultation with public and private entities through advisory committees and other mechanisms;
- (4) exempts from regulation small landowners who may wish to sell their timber but are not really in the forest products business;
- (5) allows for coordination of forestry regulations under this Act, the Coastal Management Act, and the Federal Water Pollution Control Act to avoid duplication and insure that appropriate disciplines are involved;
- (6) establishes general policies for forest management, separated into those appropriate for public and for private land, and covering such matters as reforestation, providing for the needs of all constituencies, avoiding unwarranted economic burdens on operators, and insuring retention of the productive capacity of forest land with respect to renewable resources;
- (7) authorizes regulations but precludes duplication of the programs of other agencies;
- (8) limits government oversight of operations to a restricted and closely controlled review process;
- (9) requires a report to the legislature showing that DNR has complied with and carried out the legislation;
- (10) leaves development of specific standards to a regulatory process involving

all interest groups;

- (11) permits genuine conversion of forest land to other uses; and
- (12) employs an administrative penalty system rather than criminal sanctions, with special safeguards to avoid undue burdens on an operator charged with a violation.

In addition, two matters warrant special mention. First, there has been an obvious desire on the part of industry to obtain a high level forestry program, and therefore considerable discussion on the locus of a forestry division and the state forester. After a meeting in my office with representatives of various interest groups, we have redrafted certain parts of the bill to incorporate what we believe should be an acceptable compromise. Section 020 no longer requires that the Division of Forest, Land, and Water Management be in the Division of Lands, and Section 050(c) requires us to report to the Legislature in two years on the operations of the Division and, in consultation with interested parties, to develop recommendations regarding the qualifications of the state forester and the location of the Division as well as the legal authorities of the Department relating to forestry. *2 year trial period*

Second, several suggestions for changes were made by Committee members at the working session. As a result, we have (1) clarified and made more express the exemption for small landowners in §030, (2) added a definition of "silviculture" in §950, (3) deleted the provision in §110(a) that each day of a violation constitutes a separate offense, (4) added to the definition of "sustained yield" in §950 to clarify reforestation requirements, and (5) and added language to the transmittal letter to deter unwarranted intrusions on private land by state officials.

In concluding, I would stress again the importance of gaining passage of the Sponsor Substitute this year before many new operations get under way. If the bill is enacted, it is our intention to create the Division of Forest, Land, and Water Management immediately and to name an advisory committee with representation of all forest resources constituencies to work with us in the implementation of our forestry program. ^{ASAP.}

At this point, I would ask that you hear from the persons who have indicated a desire to testify, since they will be able to speak to many of the issues which you are undoubtedly concerned about. Along with other members of the Administration, I will be available during the course of the hearings to answer questions on the bill and to provide any other assistance. Again, I appreciate the opportunity to testify, and I thank the Committee for the interest it has already shown in this bill.

* * * * *

February 17, 1977

The Honorable Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate
Pouch V - Capitol Building
Juneau, AK 99811

Dear Senator Poland:

Senate Bill 59

Sealaska very much appreciates having had the opportunity on Friday, February 11, 1977, to make a statement about the concept of a strong State Forester and forest practices in general.

In response to your request in which you asked for specific comments about Senate Bill 59, we have the following to offer. Naturally these comments are in addition to those in our statement which emphasized having a strong State Forester reporting to the Commissioner of Natural Resources, the onerous aesthetics standard and the hearing process inequities.

1. While philosophically, we agree with the concern of the Department of Natural Resources that private forest landowners should contribute to a sustained yield production on a State-wide basis, we feel that the individual forest landowner should have the latitude to respond to economic conditions and his financial needs to substantially vary his harvest practices from a sustained yield concept. The smaller private landowner who may have even up to a township of forest resource, is not in the

position to annually or periodically harvest his timber due to the uneconomic situation posed by having a small logging operation working continuously on his lands. Even in southeast Alaska, where a village may own over 20,000 acres of commercial forest resource, there probably would be only six separate times during a forest rotation in which a commercial logger could be brought in to operate on such lands. This is because a large amount of volume must be moved fairly rapidly in order to underwrite the very high costs of moving to a new operation and setting up the social and industrial infrastructure necessary for its support.

2. Sec. 41.17.040(b)(1) deals with reforestation. From the standpoint of the Forest Manager, there are always reforestation problems whether they involve understocking or overstocking of commercial species. Therefore, it is felt that this paragraph is too restrictive and denies to the Forest Manager the opportunity to undertake managed cultural measures to assure reforestation even in problem areas.
3. Sec. 41.17.050(a) on lines 12 and 13 indicates that forest land will be protected from depletion or degradation caused by over-harvesting, unsatisfactory forest management, etc. Over-harvesting is very difficult to define and from the standpoint of some people, unsatisfactory harvesting exists whenever a small clearcut is made. These terms are very general and could better be handled through the regulatory process where there would be a body of testimony in the record from qualified Forest Managers in the major regions of the State.
4. Sec. 41.17.060(b) line 15 indicates that the Commissioner shall consult with various interested parties within the State concerning the adoption of regulations under this section. It is important that the Commissioner, or preferably the State Forester, not only consult but very carefully weigh and evaluate statements made by those who will be responsible for forest-land management within the State in order to formulate regulations which are equitable and encourage good silvicultural practice.

5. Sec. 41.17.070(b) line 15-16 indicates that formal notification shall be given prior to undertaking a forest practice. This and subsequent subsections deal with the notification process. We agree with the testimony given by others that although the process is meant to be notification it in reality will probably be an application process with time limits on it. It is felt that a reaction time on the part of the Department of Natural Resources of even 60 days is excessive for many types of forest management practices including harvesting of timber. Among other factors, storms seasonal aspects of timber harvesting and silvicultural practices require that a landowner react very quickly to new conditions as they occur. Should a need arise in late summer, the delay of 60 days could constitute the delay of one year; and the delay of one year could have wiped out the opportunity to take advantage of a new market situation or opportunity to protect the resource. We would encourage a process embodying notification, especially since there will be regulations guiding the forest manager in the direction of wise resource use.
6. Sec. 41.17.070(j) line 14 indicates that an operator may not materially deviate from plans approved or terms in conditions imposed...We are concerned because this paragraph is very broadly written and could deny the operator his economic opportunity to market products. If there already is a body of regulations dealing with silvicultural and harvesting practices, it would seem that the operator could deviate from plans assuming that he adhered to the regulations promulgated.
7. Sec. 41.17.080(a) deals with the deployment of chemicals and herbicides. It requires that (1) deployment be in accordance with applicable State laws and regulations and (2) prior written approval from the Commissioner be obtained. If adherence is being made to all applicable State laws and regulations, why is it necessary for the operator to obtain approval from the Commissioner? We submit that this constitutes wasteful duplication and promotes needless delay.

8. Sec. 41.17.110 line 13 deals with the size of fines to be levied for civil violations. It is felt that a fine of up to \$1,000 for each day of violation is totally excessive and that regulatory guidelines concerning fines should be promulgated so that fines really fit the alleged violations and the value of the material harvested or affected.
9. Sec. 41.17.110(b) deals with investigations and hearings. It is felt that any hearings which take place should be as local as possible to the operator's area of work in order to reduce the cost to the individual. In many instances, having onsite hearings would allow the hearing examiner to fully evaluate the alleged violation. Additionally, it should be unnecessary for the defendant to have to have an attorney at the hearing; i.e., the procedures at the hearing should be such to allow an individual operator to fully present his case without harassment on the part of an attorney for the State. This requires an empathetic and knowledgeable hearing officer who will insure that all matters relevant to the case are brought to the attention of the hearing officer. Additionally, the hearing officer should have a forestry background in order to be able to understand both sides of any testimony.
10. Sec. 41.17.110(d) and (e) deal with the alleged violation and violator. The tone of these paragraphs is such that the alleged violator is presumed to be guilty prior to even presenting his case at the hearing in that the paragraphs refer to the violator. In (e) the orders of the hearing officer include four items of remedy and do not even discuss the appropriate steps to be taken by the hearing officer should there be an acquittal or not guilty verdict.
11. Sec. 41.17.110(g) continues the presumption of guilt. It might better be worded "if the Commissioner finds, after investigation, that there is an alleged violation of (a) ..." and a continuing wording which will show a more objective stance on the part of the State.

February 17, 1977

12. It is felt that in Sec. 41.17.110 or another appropriate section that some procedure should allow the operator to immediately take the necessary steps to rectify an alleged violation after it is identified by a State official. By doing so, the State and the operator would incur much less cost than if they had to go through the full hearing process.

The phraseology throughout 41.17.110 implicitly promotes the atmosphere that forest operators are "bad" and, therefore, must prove their innocence instead of the State having to prove that an alleged violation did occur.

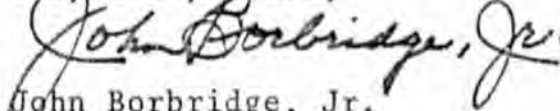
13. Sec. 41.17.950(5) dealing with "forest land" refers to a stocking statistic of 16.7 percent as meeting the requirements for forest land. This figure alone is meaningless unless there is a reference to an authority which more fully describes its meaning. Therefore, we cannot offer further comment to this particular statistic.

This constitutes our major comments concerning individual line items in Senate Bill 59, should your committee elect to pursue a bill structured similarly to it. However, I wish to emphasize that we suggest the Senate Resources Committee carefully look at House Bill 40 as the guide to a logical piece of legislation to organize a State forestry organization with subsequent promulgation of responsible forest practices.

I would be very to discuss this further with you or the Committee if this is desired. With respect to further discussions on the Bill, I will be pleased to offer the services of Peter M. Huberth, General Manager - Forest Products Division, for further clarification should you or any members of your committee have questions. Mr. Huberth has over 20 years in the industry - mostly in a large variety of forest management activities on the west costs of California, Oregon and Washington.

I thank you, Madame Chairman for this opportunity.

Very truly yours,


John Borbridge, Jr.
President



KONCOR

FOREST RESOURCE MANAGEMENT

P.O. Box 2217
Kodiak, Alaska 99615
Phone (907) 486 3985

The following is KONCOR FOREST RESOURCE MANAGEMENT COMPANY'S testimony with respect to the Sponsor Substitute for Senate Bill No. 59:

Sec. 41. 17. 010 Declaration of Intent

(3) ". . . State has a fundamental obligation to insure that management of forest resources guarantees perpetual supplies of renewable resources. . ."

The State's obligation is to State lands. As indicated by the process of receiving a state tideland lease permit, State involvement with the private enterprise sector often hinders rather than helps productivity and most assuredly has, in times past, created many costly time delays.

Sec. 41. 17. 020 Administration

(a) " The Governor may create . . . a Division of Forest, Land, and Water Management to carry out this chapter . . ."

This subsection of the Act is one of the key issues that must be focussed on. To enact a Forest Practice Act prior to having an organized, professional staff of forestry personnel is a clear case of the tail "wagging the dog".

It is unrealistic for this session of the legislature to consider passage of a Forest Practice Act until (1) the State land selections are properly identified, (2) an inventory of state forest resource is performed as to provide meaningful

management data, (3) a state forest nursery is properly funded and functioning on a production basis to meet the regeneration needs identified in this bill.

There are tremendous resource data requirements that must be met before an effective forest practice act can be realistically considered. To strive for a completed Act simply because other states function under some form of forest practice is not sufficient reason for the legislature to consider passage. The Alaska Forest Practice Act should meet and identify Alaska's unique resource needs ---- what is done in Washington, Oregon or California only provides this legislature with a format of drafting a bill, Alaska is unique and our forest practices should reflect our field situations!!

Page seven (7) of the Draft Transmittal Letter to Accompany Proposed Sponsor Substitute of SB-59 states that ". . . *the drafters intend that the commissioner and the state forester employ foresight and innovation rather than being constrained by conventional attitudes so that Alaska's forest management effort enjoys a national reputation for leadership and competence.*" To enact a comprehensive Practice Act before basic management organizational structure is instituted smacks in the face of the drafters concern for innovation and foresight!

(C) ". . . , *the governor may create, by administrative order, state forest, . . . for retention in State ownership as multiple-use land.*"

Here again is an example of why it is premature for the legislature to consider passing a state forest practice act. Until the state knows what commercial forest lands will be of management concern to the D.N.R. and until professionals have identified the management needs, established goals and objectives to properly fulfill their role as stewards to the Alaska public, SB-59, or any other forest practice bill should not be considered.

(e) " The Commissioner may establish and maintain forest vegetation nurseries. . . "

First of all the text should not contain the word "may" but should contain "shall".

Page 9 of the accompanying Draft Transmittal Letter states that "*Reforestation . . . must be the highest priority among silvicultural programs.*" This, to KONCOR, is indeed interesting. Our immediate needs for Sitka spruce planting stock exceeds three hundred thousand (300,000) seedlings annually. KONCOR was pleased when we were told by the state that the nursery facility at Palmer would be able to provide our stocking needs as well as the U.S. Forest Service requirements for regeneration of Afognak Island harvesting units.

The fact of the matter is that as we entered 1978 KONCOR found that the nursery facility at Palmer for all intents and purposes had closed their doors. Not only was this facility "dying on the vine" due to lack of funding, the Governor in meeting with State and Private personel of the U.S.F.S. indicated that he had no working knowledge of the nursery situation.

Thanks to the efforts of Senator Poland, a modest amount of funding was provided the Palmer facility in March of this year enabling the operation to "exist".

It is KONCOR's management objectives to regenerate harvested lands as soon as possible. Artificial regeneration by planting nursery grown stock is the only feasible way to combat the vegetative competition factor the professional forester deals with in south-central Alaska. The present administration's attitude about a production nursery operation has been disappointing, to say the least, to KONCOR and other forest management personnel throughout Alaska.

KONCOR has no reason to believe that the State's attitude will change and, until the State does "practice that which is preached" in this draft of a Forest Practice Act --- you as committee members should not allow this bill to go any further.

(h) The term "landowners" is construed to include adjacent landowners with respect to operations which may affect them.

(page 11 -- Draft Transmittal Letter)

This is ridiculous ! You either are or are not the land owner! Any party who does not own land is no more than an interested citizen. Let's not open up the opportunity for an individual who has a special interest to assume he has management authority over another entities private land.

(i) " *The Commissioner shall establish . . . one or more representative advisory committees . . .*"

This should be done, however, prior to passing a forest

Practice Act. Organizationally, the Division of Forest, Land, and Water must be operational and then the advisory committee working with the Department personnel should be charged with drafting a realistic State Forest Practice Act after the needed resource data is attained.

Sec. 41.17.030 Applicability

(a) *" . . . this chapter applies to forest lands under the state, municipal, or private ownership."*

The Draft Transmittal Letter is to provide evidence of legislative intent and fails to comment on this subsection. It is clear that the intent of this bill is to manage State owned lands. All language aims toward State organizational structure. Private land referances should be removed. There are ample regulations through Federal, State, and municipal authorities to insure proper safeguards of forest operations on private land. For the State to dictate additional regulatory requirements on the private land owner is to further complicate a already combersome bureaucratic process placing an additional and unnecessary economic burden on private land.

Sec. 41.17.040 Regulatory and Administrative Standards

(a) *All regulations. . ."*

The Transmittal Letter (page 15) states *" The best approach to forest practice legislation is to avoid placing specific practice measures in the statute; instead, practices should be developed through the regulatory process. . ."*

With respect to drafting regulations no mention is made of a public hearing process. This is critical --- public

input must be acquired to produce meaningful regulations and, such regulations must reflect the practices necessary to properly manage forest lands in specific locals. Ecologically Alaska is just too large to have "blanket" regulations imposed on its forest lands.

(b) The reference to "private land" should be removed.

(1) *"timber harvesting is limited to areas where data and information demonstrate that natural or artificial reforestation techniques will result in the production of a sustained yield of merchantable timber from that area;"*

This sounds good but is not realistic at today's standards. Alaska in practicality, is in the same state of a rosebud starting to bloom. The beauty of the resource potential is amazing to any land manager but, quite frankly, the informational bank on Alaskan resources (particularly timber) is insufficient to make such a statement.

Even in areas, where a greater degree of forest management has occurred (ie: U.S.F.S - Afognak Island) data on regeneration capabilities of the land is more or less the "best guess" of a few professionals.

September 1977 a Symposium on North America Forest was held at the University of Alaska, Fairbanks in which forestry experts from around the world gathered to exchange information. Review of the findings of that symposium will show that Alaska is just starting to seriously consider intensive forest management. Alaska has not and can not develop regeneration data

sufficient to live up to the language of this subsection for years to come.

Fortunately, private forest land acquired by Alaskan natives under A.N.C.S.A. is being managed for sustained-yield and thus will be generating valuable resource data. This subsection again points out that consideration of a State Forest Practice Act is premature.

(2) This subsection and the language of the Transmittal Letter again point to the fact that the State is on a "data search" --- Until proper resource information is obtained by the State, this bill should not be considered.

(3) *"environmentally sensitive areas and best management practices must be recognized. . ."*

What is best management? Forestry is as much an art as it is an applied science, ---- to legislate "best management" is to hamstring the innovative professional forester.

(4) *"where not inconsistent with the other provisions of this section, administration of forest land must consider marketing conditions and other economic constraints affecting the operator;"*

This subsection again points out why the reference to "private land" should be removed from this bill. It is presumptuous for the State to involve itself with the market or economic constraints on the private landowner/operator. The free enterprise system will control itself on this matter. For the State to legislate regulations with respect to marketing on private lands is socialistic.

(b) " where economically practicable, allowance may be made for scenic and aesthetic quality in or adjacent to areas of substantial importance to the tourism and recreation industry."

The legislative intent is clearly identified in the Transmittal Letter (page 17) where it states " it is not intended as a prohibition on land-use activities, especially on private land where private landowners are justified in using resources subject to their ownership. It is directed primarily at public land . . ."

This subsection should be removed from any reference to private land --- the legislative intent is clear! The clause can and should be moved to the following subsection (c) " with respect to state and municipal lands only. . . "

Sec. 41.17.050 Administrative Plan and Report

(a) " . . . The Commissioner shall maintain a current inventory or assessment of timber on forest land to assist in meeting the requirements of this section.

Does the State have a realistic inventory of timber on forest lands? If not, this bill should not be considered until such basic work is completed.

(b) " On June 30, 1980, and at two-year intervals after that date, the commissioner shall submit a detailed report to the legislature reviewing the administration of this chapter over the preceding two years, demonstrating compliance with (a) of this section, and describing how the

plan will affect the welfare of the forest products industry and other activities and pursuits derived from or affected by forest resources."

The idea of a detailed report by the Commissioner to be submitted to the legislature is a sound one, however, such a report should only be on the progress of the organizational structure of the Division of Forest, Land and Water and on the acquisition of the data needed to then consider legislation on a State Forest Practice bill as identified by (c) 1-4. Until the administration can "prove up" on having a functioning forestry department --- no consideration on this bill should be granted.

Sec. 41.17.060 Regulations

(a) "*(1) harvesting, removal, and use of timber and tree products and related management activities;*"

This clause points again to the fact that private land should not be included in the language of this bill. What right does the State have in dictating the "use of timber and tree products"? Such language clearly oversteps the State's authority.

(2) "*reforestation, afforestation, revegetation, stocking, prescribed burning, fertilization, thinning, and other silvicultural activities;*"

Again, until the state faces up to it's economic responsibility to develop a functioning production nursery operation to meet reforestation needs, it is indeed premature to draft regulatory powers for such silvicultural activities.

(b) " An operator may apply through the commissioner for permits required by other state agencies to operate on forest land, . . . The commissioner shall notify the operator of the action taken. . . ."

The thought of an operator having to acquire a permit to operate on State land may have merit. It is, however, unfair and a show of excessive power, for the state administration to require the private land owner to acquire such operational permits. Besides placing an undue economic burden on the landowner/operator through time delay, it is contrary to all the basic principles that the American people have come to enjoy by holding private land.

If you need to be convinced on the time delays such a system would place on the land owner --- review the track record of the D.N.R. over the past five years on how long it takes an operator to acquire a State tideland permit.

Sec. 41.17.070 Review and Approval of Operations

C (3) " proposed measures for soil conservation and reforestation;"

How can the operator honestly make an attempt at regeneration when no facility exists to provide planting stock? Are we to assume natural regeneration is acceptable? In many areas of the state natural regeneration will not produce the desired stocking rate and would significantly increase the rotation age.

(d) " Within five days after receipt, the commissioner shall distribute the notification materials to affected

state agencies. The agencies shall make their recommendations within 20 days after receiving the materials. The commissioner may extend the review period up to an additional 20 days only if the subject matter is highly and unusually complex.

(e) Within 10 days after expiration of the review period, the commissioner shall, as appropriate:"

It is realistic to assume that seventy (70) days will be required to acquire an operational permit in light of subsections (3), (4) and (f).

" upon the recommendation of the department or another agency, require the submission of additional plans or descriptions from the operator, . . . "

" If action is taken under (e) (4) of this section, the commissioner and affected agencies have an additional 20 day review period . . . "

Such an open door for costly time delays is blatantly unfair to an operator --- at least an operator who expects to stay in business. At the minimum, this language should not be applicable to the private landowner/operator.

Although it can be well argued that an operator should plan his activities out far enough in advance so that two months is not a critical time period --- in reality, that is not a fair argument. As evidenced by our own operations, one may have well thought out plans that for a variety of reasons must be changed right before a specific organizational activity is undertaken. In such a case, we could be faced with a situation of "stop work" until the proper permits were obtained.

The permit clauses of this bill are totally unnecessary. When a realistic forest practice act is drafted, the provisions of such a well organized bill can include the proper safeguards and eliminate the need for any permit process.

(h) " Upon receipt of any notification, the commissioner shall provide copies to the timber owner and landowner, if different from the operator, and within five days shall publish the brief description received in a newspaper of general circulation, with an invitation for public comment. Recommendations received from the public must be considered."

It is clear that inviting public comment on notification relates only to public lands! This bill must exclude any reference to private land --- What logic could there possibly be in seeking public comment on a private operation? This is ridiculous!

(j) " An operator may not substantially deviate from plans approved under this section unless approved in writing by the commissioner after full consultation with affected agencies."

This is also insulting to the professional practice of forestry. The environment in which the trained forester must work is not Static! As mentioned before, forestry is also an art, one can not simply set out a series of planned efforts and expect an uninterrupted schedule --- the wind blows hard and a salvage sale is needed; a stream course changes after heavy rains and thus one must change his stream crossing; rabbits nibble off the freshly planted

seedlings and thus regeneration schedules fall apart. Flexibility in forestry is not only necessary, it is the by-word. This subsection would require going through the ill-conceived permit process all over again. This is totally unacceptable !!

(m) " *The commissioner may require an operator to post security with respect to an operation, and to submit written reports.*

This is an unfair burden to place on the operator. If the state administration is doing their job properly, they should be in the field making examinations. A report is no better than the interpretation of the author and, of course, such a report would be biased.

(n) " *Operations which begin before the effective date of this Act have one year to comply with this chapter.*"

No operation should be required to comply with a forest practice not in effect at the time the operation was started! Budget planning and cash flows are predicated on the situations and standards of the day. To try and force retroactive compliance is self defeating to the principle laid out in the legislative intent of the Transmittal Letter where it states " . . . to protect the longevity and insure the stability of the forest products industry. . ." (page 4)

In summary, KONCOR FOREST RESOURCE MANAGEMENT COMPANY is opposed to the Sponser Substitute of Senate Bill No. 59.

The concept of having an innovative and competent forest practice act is indeed valid, but, this draft is not the answer to the complex task set out before the legislature.

The State should organize it's Department of Forest, Land and Water under the D.N.R., properly funded so as to generate the much needed data necessary to set realistic goals and objectives for forest practices. A state forest nursery and/or nurseries must be developed for meeting the regeneration needs of timber harvesting operations throughout the state. When these tasks are completed, it will be more opportune to consider legislation to direct forest practices.

Thank you.

Sincerely,

KONCOR FOREST RESOURCE MANAGEMENT COMPANY



Leslie M. Anderson
General Manager

LMA:eg

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

DNR 4
JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU 99811

November 5, 1976

MEMORANDUM

TO: The Honorable Jay S. Hammond
Governor

FROM: Avrum M. Gross *b-1 AMG*
Attorney General

RE: Attached bill on forest resources
and practices
Our File No. J-77-001-77

Attached is a bill (a slightly revised version of last legislature's SB 563) which has been requested and reviewed by numerous agencies, although the lead agency is the Department of Natural Resources. A few relatively minor modifications of last year's bill have been worked out with Alaska Lumber and Pulp Company and the Alaska Loggers Association.

We have spent considerable time soliciting the comments of interested organizations on this subject, and made numerous changes to reflect their recommendations before introduction of the bill last year. We will continue to work with these organizations up to and during the upcoming session to obtain consensus on this legislation if possible.

A draft transmittal letter to the legislature, explaining the bill, is attached.

AMG:md:JH

D R A F T

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill which relates to state forest resources and practices. This bill has been extensively reviewed by various state agencies and interested organizations, including representatives of the forest products industry; it contains provisions responding to concerns expressed by them.

In addition to Alaska's incomparable mineral wealth, the forest land and water resources of Alaska are among the most valuable natural resources of the state. This land not only holds timber resources which are vital to the economic well-being of the state and the numerous businesses and activities dependent on timber, but the land is also important as the habitat for fish and wildlife, as collection areas for our water resources, and as places for people to fish, hunt, or simply find peace with themselves.

The purpose of this bill is to provide, with a minimum of new bureaucracy, the essentials necessary to foster the longevity of Alaska's forest products industries while concurrently benefiting from all other forest values along the way. This can be done only through adopting some controls over forest practices, but the controls in the bill have intentionally been kept to a minimum.

The focus of the bill throughout is to create new authority only where gaps exist in present authority, and specifically to avoid the creation of a new bureaucracy to deal with forest practices. Furthermore, the authority to be exercised over private forest land, which is treated distinctly from state forest land, emphasizes only a few basic objectives. Our intention is, above all, to keep government regulation at the basic minimum necessary to do the job.

Instead of creating a new entity to deal with forest practices, responsibility is housed in the Department of Natural Resources which, with its experience in land administration, is the most logical choice. The commissioner would administer the Act, with full powers of delegation to existing structures and personnel resources within the department. This will provide for implementation of the Act with a minimum of disruption and expense and without significant inconvenience to the affected public.

Not all timber harvest activities in the state are subject to regulation. Certain activities are exempted. For example, with regard to private and municipal forest land, only commercial forest land, as defined by the Act, is covered. In addition, unconnected small tracts of 160 acres or less under single ownership are excluded from the provisions of the bill to avoid regulation of activities which have minimal impact. The commissioner

also may exempt certain types of operations of forest land from regulation regardless of where they occur, if unnecessary to achieve the objectives of the legislation.

Fostering a continuous supply of timber is another objective, and, here, no complex or restrictive system of allowable cuts or production limits is imposed. Rather, the commissioner is simply charged with reporting to the legislature at two-year intervals on his administration of the Act; his report must demonstrate his plan for insuring a long-term sustained yield of timber.

As to utilization of timber in a manner compatible with other resource values, this bill does not copy the approach used in several other states of incorporating highly detailed forest practice restrictions and codes. Instead, the commissioner is authorized to adopt regulations governing forest practices with respect to subject matter areas that are common in forest practices legislation. He is guided by certain regulatory and administrative standards which are flexible enough to encourage practicality without sacrificing the objectives of the legislation. Most important, these guiding standards distinguish private forest land (which may not be available for general public use) from state and municipal forest land (which will normally be open to the public), and designate the objectives that are appropriate for each. For example, forest administration on public forest

land must be based on the principle of multiple use of all of the resources and values, and encourages recognition of all resources and values. On the other hand, since private forest land owners may elect to concentrate on particular uses and exclude others, their land is not subject to the multiple use directive.

Timber harvesting will be taking place across the state. Some of this harvesting will be covered by the policies of the bill and the regulations issued under it. Consequently, there must be some means of assuring that those regulations are complied with and that the objectives of the bill are reached. Two different systems have been used in other states. The notification system merely requires a timber harvester to notify the state that he intends to operate on forest land; no advance approval is necessary. The advantage of the notification system is that it is simple and administratively inexpensive (at least the process itself is). The disadvantages are that the government may be largely unaware of what is happening in particular projects and violations may escape notice. In addition, the timber harvester has little or no contact with the administrative authority, leading to the likelihood of misunderstandings and a large number of inadvertent violations. Other states use varying degrees of a prior-approval system. In some cases, highly detailed plans approaching impact-statement detail are required; in addition, they may have to be prepared by a licensed forester. The benefits of this system

include a much greater familiarity with operations taking place around the state, the opportunity to identify undesirable aspects of operations before any damage occurs, and the chance to work out differences with the operator before the project is initiated. On the negative side, the prior-approval system can be highly expensive, onerous to the operator, and may lead to extensive delays.

This bill uses neither system exclusively; rather, it incorporates the positive and eliminates the negative aspects of each. Before operating, the timber harvester must submit a brief description of the proposed project. It is to be reviewed during a relatively brief time by the commissioner (with input from affected agencies) for consistency with the applicable policies and regulations, and approved or conditioned to insure that consistency. Only if substantial problems appear would more detailed plans be required, and these would apply only to the particular problem area rather than to the entire project. To protect against bureaucratic footdragging, there is a statutory maximum time which the commissioner may use for review and approval, and there are no exceptions. There is also a statutory directive that paperwork be kept to a minimum to prevent inconvenience to the operator. This approach will require only that amount of information and participation from the operator necessary to provide the commissioner with familiarity as to the nature of forest development operations and to identify in advance serious problems.

Finally, in the event of a violation, the bill uses an administrative fine system (with full due process guarantees) rather than criminal penalties. Criteria are set out for establishing the amount of the fine. Judicial review of the administrative fine is provided.

I am convinced that this bill is well suited to Alaska and will greatly benefit the natural resources and general well-being of the state. I urge your favorable consideration.

Sincerely,

Jay S. Hammond
Governor