

MINUTES



Alaska State Legislature

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

SENATE

Don Bennett, Chairman
M. "Ed" Dankworth
George Hohman

HOUSE OF REPRESENTATIVES

Oral E. Freeman, Vice-Chairman
M.F. "Mike" Beirne
Charlie Parr

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF FEBRUARY 13, 1980

CHAIRMAN - Let the record reflect Representative Freeman, Representative Beirne, Representative Parr and Senator Bennett as present. This meeting I called really not to address down any specific issue other than the total issue of regulations and to apprise the members of really what I have taken the liberty of and done. I met with Joe Gutherie and requested he explore and draft a bill which in fact will put a little bit more teeth in the committee and a little bit more authority in the committee. Some of the problems that we have under the current statutes basically being that we cannot, as you know, suspend any regulations which have been promulgated during the time the Legislature or -- have been in effect during the time the Legislature has been in session. Consequently, it appears to be there's a lot of regulations that are promulgated the last thirty or forty days of the session and they're not in effect as far as the actual physical effect on the population. We adjourn and then basically we don't have the authority or ability to suspend any of these. Likewise, there are regulations which are promulgated and on the books that just haven't been enforced or aren't enforced. They take a period of time before the effect of them comes down. And here again, these regulations, as all committee members know, we don't have the authority to do anything with. So hopefully we can come up with a correct piece of legislation that the entire committee can support which would allow us to suspend any regulations for a period of time until the Legislature convenes. This will take care of that, I believe. The second thing that hopefully we can do is to have the resolutions prepared by the committee and brought into either second reading or something to where these resolutions don't necessarily get pocketed by various chairmen or in the committee process. This is being explored. I don't even know if it's totally legal. This is kind of the tack that I have asked Mr. Gutherie to check into. I did want to check with the committee and see if you had any additional things or anything that you feel that we should do in order to put a little authority with the committee. As I see it now, we're kind of in a box. We have a responsibility but we don't have any authority to carry it out.

BEIRNE - Now how does that work now? We're -- if the regulations are passed by the department during the time the Legislature is in session...

CHAIRMAN - Then once we adjourn, we can't do a thing about them.

BEIRNE - Okay, how about...

CHAIRMAN - You can only do things about regulations which are promulgated after adjournment and until such time that you're back in session. So basically, from give or take June through January of each year, those are the only regulations that we have any say so over.

BEIRNE - Okay well supposing regulations are passed in the fall and then when we come back in session, we have review power over those regulations.

CHAIRMAN - Yeah, right. But you cannot suspend them during the interim. They're in effect. The population has to abide by them.

BEIRNE - We can't suspend them between sessions? We can suspend them between sessions.

CHAIRMAN - Only those which have been promulgated between that session.

BEIRNE - Between sessions.

CHAIRMAN - Between that session.

BEIRNE - I see.

CHAIRMAN - In other words, if something was promulgated last year or the year before that, we can't touch them in between sessions.

BEIRNE - Right. Okay so once this session is started then we no longer can suspend them.

CHAIRMAN - That's right. You can only hold them suspended for sixty days after the Legislature convenes. After that they automatically go back into effect, which gives us sixty days to get a resolution through.

BEIRNE - But if we haven't acted prior to the first day of the session then we've lost our authority to act, is that correct?

CHAIRMAN - In suspension, yes. As soon as you're back in, the day. Yes, Charlie.

PARR - Mr. Chairman, you know I've been -- I was on this committee the first time it was appointed back in 76 I think it was, I'm not sure. I wasn't on it between the next Legislature, but on it again this time. The most effective I've seen the committee be was I believe it was in 76 or anyway, we had complaints about regulations and we had committee meetings and we invited the commissioners in and I feel that we more or less said well if you don't want this regulation wiped out, you better revise it. And some of them were cooperative. I remember Tony Motley chairing the Commerce Department come in -- he was heading the Department of Commerce and made some changes to the regulations (indisc.) they'd be wiped out. Now I don't know, of course we do have the problem you mentioned awhile ago. You can put in a resolution to wipe out regulations and it gets buried in the committee and I don't know what to do about that, but that's what is seemingly like a more effective thing than actually wiping out the regulations just to make the commissioner willing to make some adjustments.

CHAIRMAN - You're absolutely correct, Charlie. We've done that on several of them. We've held hearings and really not put in a resolution and the various commissioners or directors have said that they were going to amend or they're going into throws of promulgating new regulations and, you know, it has worked in some cases. But my apprehension is that unless we really got some teeth in this committee, it's only going to be a matter of time and the departments and the commissioners are going to realize, some of them such as Department of Natural Resources, they already realize that if they can work a deal anywhere within the legislative thing, they can stop our resolution. I don't know. They just don't -- DNR does not have any fear of this committee doing anything.

BEIRNE - Oh why don't we amend it then?

FREEMAN - I could sit here and dream up a scenario if they wanted to come up with some on these regulations and start -- if they could judge just about the time we were going to adjourn and they started the process where the regulations were promulgated, you know, and then really came into effect within the last two or three weeks of the session, we go home we can't -- the Regulation Review can't knock them down, we can't do anything until we get back. I've been on this committee from its inception. This is, I think, the third chairman I've served under, Kerttula, Ossi and you. And the one thing that worries me and it always has and I've always taken the position that the last thing on earth we can afford to do is to introduce a resolution that will overturn a regulation and then fail. When we do that we're in trouble and soon or later that's going to happen. And you know, they'll bottle on somewhere, they'll get to some guy.

CHAIRMAN - That one on DNR, it's already bottled.

FREEMAN - And when you do that then they wise up to the fact that there is a way around us. I agree, again I would agree that I think about the most effect that we've ever had simply because on those cases where we have overturned the, but most of the effectiveness has been when we called these guys and kind of threatened them, you know. We have a big problem here and we don't want to go the route of overturning it and you know, shape up, consider revising and so forth. In some instances that has worked pretty well, but as far as I'm concerned, I'm willing to certainly back any approach that would give us a little more muscle. If we lose it, we lose it. We're no worse off than we are now. But I've no hesitancy in supporting a change that would give us a little more power.

CHAIRMAN - And then here again, next January, by the time much of what we get done in that area (indisc.) the chairmanship will be over on the house side and hopefully that this thing can be a tool that not only that you can call commissioners or directors in as you say, show them the ways of wisdom, but then on the other hand, if they fail to see the light, that you in fact can do something. Sue, did you have something you wanted to go over...

LOWELL - In your folders there's some topics for discussion. Senator Bennett has been getting letters and telegrams concerning many of the proposed regulations which the departments will be promulgating and I've listed the main regulations and they're included in the backup in your files, the letters and those regulations which are proposed that were commented about in the letters. Regarding forest practices or the new fire season regulations which the Department of Natural Resources has proposed, there's been quite a bit of anxiety about those. We, Senator Bennett has written Commissioner LeResche a letter about this and that's in your folder. Mining was another issue on the regulations which we received several telegrams and letters about in the Fairbanks area especially. And then there was the handtrolling regulations which a couple of people have inquired about and would like to see hearings held and then of course, the HCR 24 which you were just discussing that died in committee in the first session which would give more power to the regulation and review committee as far as natural resources' regulations are concerned. Now these are just a few topics that we have received so far in correspondence since session started.

CHAIRMAN - Are there any other subjects or any other regulations that members of the committee would like to have hearings on?

FREEMAN - Mr. Chairman.

CHAIRMAN - Yes, sir.

FREEMAN - I've been having, as you may or may not have heard, I've been having considerable problems here lately with the Department of Environmental Conservation over their involvement in land disposal

programs and I don't know what the answer is. I don't know whether new legislation or regulations -- I feel something has to be done to this extent and I haven't really made up my mind what the next move is but I'm close to that point. Last year I introduced a bill that went to Community and Regional Affairs. The bill is resting in House Rules right now that would have stopped DEC's power on subdivisions within the boundaries of a municipality and they're using that, you know, as a real hammer and the quarrel that I have with them right now, they have said that the Division of Lands has a land disposal proposal plan and DEC says that and it was a bill that I wanted to go with on lot sewage disposal and they have said -- they have flatly agreed to -- fail to agree and said they will not under any circumstances approve on lot sewage disposal even if the lots were ten acres in size and what I was trying to do was to have them give that approval on lots at least, you know, five acres size and they said they wouldn't do it even if it was ten acres in size and so this has me in a bind with municipal people and the Division of Lands. In this particular case the Division of Lands is not the villain as far as I'm concerned because they said they'll go ahead with the disposal and they don't care what size, you know. Whatever we want, whatever anybody can agree with, they'll go and so you know I think there is something wrong when these guys, you know, I don't know where the hell they got that power where they can go down in my district, you know. Charlie probably remembers when I had problems with them about water supply. We had to overturn one of the regulations, one of them on minimum lot size. You know, these people are a constant thorn in my side.

CHAIRMAN - Are you going to be available next Tuesday night about 7:00?

FREEMAN - Certainly.

CHAIRMAN - Would you like to have hearings on it? We'll notify them and get them in here.

FREEMAN - Well I think what I would suggest, you know, my suggestion what we'd do would be to have somebody really have a long hard look at the regulations and see if there's something -- you know, they may be doing, for all I know, they may be doing something that the statutes allow them to do. It may be something that we've written in the law that says that's a responsibility so I don't really know. The only time I've ever really tangled with them has always been over regulations. The first time they were adamant. They wouldn't back down and so we got a resolution. They simply overturned the regulation. The next time was when Ossi was chairman and we had a long hard talk with them and you know, it was apparent that something had to be done. If they wouldn't do it, we would have to, and they finally backed out on that. What they were -- in that particular case, they were saying I had one area in a little community where

there was I think, nine families had their own water system and they said this was a public utility site...

CHAIRMAN - Twenty-six people...

FREEMAN - And you know they finally decided that that wasn't necessary after all. After we were worrying about it, but I...

CHAIRMAN - Well, I'd be happy to have Rod Kocsis or Joe Gutherie research it and...

FREEMAN - Well I think that that would be the route that I would like to go. To have somebody actually research it and see if they're abusing regulations somewhere. You know, I might find to my embarrassment that they're actually doing something that the statutes are banded to do that. I don't really know, but I'm kind of suspicious.

CHAIRMAN - Yes sir.

PARR - I've got two things that have come up. One of them, I had a constituent write me and this is a guy who is a teamster and of course you know jobs in Fairbanks right now, he was on the "A" list which he is and has been for years, so he has been selling Amway products, I don't know if you're familiar with those or not. In addition he does a little snow plowing when he gets a chance and he does some other odd jobs. So he went and got himself a business license for this Amway thing and they said well you've got to put down your standard industrial code number and it's a thing that all kinds of businesses have numbers and so he looked through his booklet and he put down three numbers and the gal said you can't do that, you can only have one number per license and so he's supposed to buy three different business licenses at \$25.00 a piece to do this, you know. He's just picking up whatever money he can some way or the other, you know. And he wrote me about this and so I -- and he also was wondering why Penny's only had to have one and he had to have three. So I called over to have him talk to people and as a result of the call, I've written the commissioner a letter. I haven't gone any further. I am waiting for the commissioner to reply. I don't really know if this is justified and again, I looked at the statutes myself but I'm not an attorney and maybe the statutes do authorize this determination, but I don't think so, but it would be worthwhile to check out. In fact it did turn out, at least from the information I got, that JC Penny in Fairbanks which is a big retail operation also runs an automobile repair shop on their premise and only had one license. Here is this guy getting stuck with three to do really just pick up things and so maybe the regulation doesn't make any sense on the one SIC number for businesses. The other thing is a personal case and I don't want any preferential treatment, but it sure brought home to me that other people probably have a similar problem. My family and I formed a little partnership and bought a building in Fairbanks, which is under a batement order, we wanted to rebuild it and reconstruct it and lease it out to tourists

(indisc.). It's right in the middle of town. We're trying to build up the center of town. Well we thought we got a tourist loan from the State, but apparently you have to deal with tourists directly yourself, you can't deal through your -- your lessess can't deal with the tourists, right. So we thought well there's a small business loan possibility then we found the regulation is you have to occupy 50 percent of the building. We didn't want to occupy it, we wanted to lease it out. Now I don't want any special treatment from us, but here's a sort of catch 22 situation and these are the Department of Business Loan people, the Department of Commerce. So there's revenue on one hand with their SIC thing with exception to the loans people and I don't know, you know, maybe we should just simply give them the law, it's simply too broad and they have too much authority, I don't know, but they didn't really in either case seem to me to be reasonable -- let's change it back, didn't seem to be necessary regulations.

FREEMAN - Surely you know by no, Mr. Chairman, you know by no stretch of imagination the Legislature ever intended that the guy should have to have three business licenses, no way, right.

PARR - Well, I don't think so. I can see maybe the JC Penny thing where you've actually got two full size businesses and since one's an automobile repair business, you know garage, that's one thing. The other is a retail operation selling shirts. Maybe that's intended, I don't know, but I don't think they intended for a guy who is just picking up a little money doing some, you know, selling Amway products and a little money plowing snow in the middle of the winter, you know to have to go through several different licenses.

CHAIRMAN - Well that's something we should look into. That's not right. There's too many people who are trying to make a living that their endeavors are for more than one straight out venture.

PARR - I have written the commissioner on that one and I can give you the correspondence, Mr. Chairman. You can have it if you'd like and see what kind of answer you can come back with.

CHAIRMAN - Okay these are several -- are most people available in the evening (indisc.) we might have to hold some hearings on several (indisc.) regardless of -- we'll do the research and pull it together.

PARR - Mr. Chairman, Wednesday night the Judiciary Committee meets, every Wednesday night at 7:30 so that night I'm not available, but Tuesday night would be a good night to meet because we have something at 9:00 anyway.

CHAIRMAN - Okay, if it meets with the members' approval and we can get the quorum well then let's set one up for Tuesday night and by that time we'll have the research and the first one shouldn't take very long. Oral, you're from the saltwater

area, what's been your input or what have you in reference to handtrolling? I've had complaints from Senator Ray and all kinds of people.

FREEMAN - I suppose, Mr. Chairman, whatever the outcome, you should have some hearings and it's going to be a doozy when you have it because you've got...

BEIRNE - Is that one you can't handtroll from a sportsboat or something?

FREEMAN - They're going to limit the number of handtrollers and do it by regulation.

CHAIRMAN - But they were stopping people around Juneau, evidently from the complaints I've had that people who had charter services and they were taking parties out to sportfish on a charter, if they had a handtroll license, they couldn't use the same boat to take a charter and you know, whiplashed back and forth. And I've talked to some people (indisc.) and I'm sure Oral knows more about it than I do, but between the purse seiners, the longliners and the gillnetters and the whole bit, that probably the handtrollers are probably the least effective harvest, probably the least of the salmon. On the other hand, I guess they're not that well representative of the fishing industry also.

FREEMAN - I'm a man who has strong feelings about the handtrolling bit on account when I first came to this country, I was a handtroller and I did do some handtrolling and you're right in one respect that they're trying to freeze them out and I've always objected to that because I've always considered the handtrolling to be the poorman's entry into the fisheries. That's a hard way to go but if a guy has got enough guts and ambition to start small and then work his way up, you know. I've always felt that he should be able to do that. Besides that I've (indisc.) feelings when we had limited entry, when we voted on it in the first place. Because of the handtrolling, I have real strong feelings about it and I was assured, I can remember by Mr. Gardiner and Mr. Tillion and numerous others that was pushing real hard for limited entry, that they were not interested in handtrollers. They don't catch enough fish to amount, don't worry about handtrollers, they're no count. But just a few years go by and now we're getting into limited entry for handtrolling and they're going to freeze the rest of them out you see and these guys will be wheelin' and dealin' and selling their -- and when you talk to handtrollers, you can divide it right quick, if a guy has enough time involved that he thinks he is going to get a permit, he wants limited entry and if he's the guy that's just getting started and is afraid he's not going to get one, he don't want limited entry. It's very easy to spot and I've had some real lively discussions with people and I am personally -- I know it, I'm against limited entry for handtrolling.

CHAIRMAN - How about if we schedule and I don't have the date -- how about if we schedule hearings on the first Tuesday in March, about three weeks off, at 7:00 p.m., probably in the Butrovich Room and we'll get out all the necessary notifications and what have you and hold it on handtrolling. We've got a couple letters (indisc.) from people from distant points that want to come and testify so I think it's only appropriate...

FREEMAN - I would make a suggestion, Mr. Chairman, that when you get into this handtrolling bit that if there's anyway that you can, that you get some publicity out to Ketchikan, Petersburg, Wrangell areas so that these guys...

LOWELL - Was there any in the Cordova area?

FREEMAN - I don't really know. There may be, but I suspect that most of your handtrollers are Southeast.

CHAIRMAN - We'll put it out in the newspapers and the whole bit and all the legislative affairs offices. Maybe see if we can't get any public service announcements over any of the local radio stations in Southeastern especially.

PARR - Mr. Chairman, do I understand that you're talking next meeting of the committee is going to be the first Tuesday in March or is that just the handtrolling -- you intend to have one prior to that?

CHAIRMAN - Before that and I want to give lead time. We've got several people who are going to come from distances...

FREEMAN - Live out in the boonies where...

CHAIRMAN - The first Tuesday of March, 7:00 p.m. in the Butrovich Room on handtrolling. Now the -- any of these other regulations, we'll have one of the attorneys do the research on the DEC and we'll come up and then we'll probably schedule hearings sooner than the March hearings on that. Get DEC and then (indisc.) see if in fact they can't cooperate if there's an opening for it. Charlie, do you have information on the business licenses?

PARR - I'll give you the correspondence I have and so forth and statute reference and AAC reference and...

CHAIRMAN - Yeah, if we could get copies on it and then we can set one up maybe in about two weeks on that. See if we can't get them in and talk about it. It appears to be completely...

BEIRNE - What's that?

CHAIRMAN - On business licenses, small business of having two or three different licenses. They may well have to get them in and then go after the loans people and anybody else to see if they're all talking the same game. On the fire regulations, I've written a letter to LeResche as Sue says. We're kind of in a box in that they haven't been promulgated yet, but that's the one that will require that if you've got a cat or piece of equipment working out in the woods and when you shut down, the operator will have to sit there for two hours after the shut down of the machine to insure that some sort of a fire doesn't start. And likewise with anybody with a chainsaw cutting wood and they have to have a Co2 extinguisher with them and they really just have gotten totally overzealous based on the Delta fire.

LOWELL - There is a summary of them.

PARR - It might be one of the things the committee could do to be useful would be to get some of these before they are promulgated and you know, at least maybe they won't have to go into effect and then have to be repealed.

CHAIRMAN - Yeah, well I've sent a letter to LeResche and then Sackett followed up, unsolicited he followed up with a letter, but basically the thing that they're requiring is you have to have a tank truck out there with a power pump and trailer, just on and on. It just changes the whole lifestyle of anybody that's out in the bush and basically people just can't comply and what happens is that if there is a fire and they're out of compliance with any of these things, then they're held responsible for the fire because of noncompliance. Like I say, I've already sent a letter to LeResche and hopefully these won't be promulgated but we're just going to have to watch, but I had heard that they felt that it would be May before these would be promulgated and that's what furthered my apprehension that we would adjourn out and the committee wouldn't have teeth to do anything about them. I've also had complaining about mining regulations, lack of adequate notice to miners and that a lot of the mining items which should be mining regulations that DNR is putting them into other agencies and even over to DEC and they're not being cross-referenced. They try to stay on top of the mining regulations but that doesn't -- even though they comply with those, there are other regulations that they're out of compliance with if they mine and that's one that I'll send a letter over to LeResche on first and we may have to bring up again. Did anyone else have anything they wanted to cover? I don't want to hold you fellows up. Okay, I thank you very much and I have to apologize for my side of the fence not showing up, but we'll try to have them on Tuesday evening.

ADMINISTRATIVE REGULATION REVIEW COMMITTEE
27 February 1979 -- 4:00 p.m.

Members Present: Bennett, Hohman, Freeman, Beirne
Members Excused: Dankworth, Parr

General Overview of ARRC

Joe Guthrie, Legislative Affairs Agency, has been the counsel for the committee since its formation several years ago. Mr. Guthrie gave a short overview of the ARRC, the main function of which is to hold hearings and make recommendations regarding the annulment of regulations. He was concerned with the fact that in the past the ARRC has not taken an active role in reviewing regulations. They only reacted when a specific complaint was brought before them either by their own constituents or by the Speaker of the House or President of the Senate. Another problem with the ARRC is that the staff for the committee really doesn't know what the legislators' interests are and, consequently, they tend to do what they want to do.

One of the major problems brought out was that the legislator doesn't have enough time to review regulations along with all his other duties and committee assignments. To review all regulations would be a full time job for an attorney, due to the volume of regulations filed each year.

Another problem is the interpretation of legislative intent. A lawyer can't weigh the regulations on legislative intent; he can only see if they're legally correct. The ideal solution would be to define legislative intent well enough so as to allow a staff person to understand it well enough to pick out regulations to be reviewed by the ARRC.

Committee Assignments

Senator Hohman: Titles 2, 3, 10, 14
Representative Freeman: Titles 13, 17, 19
Senator Dankworth: Titles 9, 12, 15, 20
Representative Beirne: Titles 5, 11
Representative Parr: Titles 4, 6, 7
Senator Bennett: Titles 8, 16, 18

General Comments

Senator Bennett made clear that the ARRC is not to be a punitive committee, but one insuring that government is responsive to the needs of the people. The committee's effectiveness lies in the fact that the ARRC can make recommendations to annul regulations. The suspension power can be used during the interim; however, it should be used only in dire circumstances because you want to be able to kill the regulation and see it die.

Art Peterson, Assistant Attorney General, brought up the Superior Court Ruling of Kelly vs. Hammon³, which states that a committee can't exercise the legislative function. He suggested that the ARRC not rely too heavily on the suspension power because of this ruling, for if suspension is viewed as a legislative function, it becomes a question as to whether a committee can execute that power.

Senator Bennett announced that the ARRC would hold a public hearing on land regulations somewhere around March 16, a Saturday.

Lani Martyak, A.A.

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ADMINISTRATIVE REGULATION REVIEW COMMITTEE
TELECONFERENCED PUBLIC HEARING ON 11 AAC 55. LAND PLANNING & CLASSIFICATION
17 March 1979 -- 1:30 p.m.

Members Present: Bennett, Dankworth, Hohman, Freeman, Beirne, Parr

Chairman Bennett called the meeting to order promptly at 1:30 p.m. and laid out the ground rules for the public hearing. The ARRC would proceed alphabetically through the teleconferencing stations, hearing testimony from two people at each station, and each person had approximately five minutes to testify before the committee.

The following is a summarized review of the testimony taken during the teleconferenced hearings in the order in which it was received:

Paul Glavinovich -- Alaska Miners Association -- Anchorage

Mr. Glavinovich testified against the present land planning and classification regulations on behalf of the Alaska Miners Association. The regulations don't reflect procedures for inventory, planning, and classification of state lands as set out in the Alaska Statute, which passed in June 1978. The current regulations don't reflect the requirements for inventorying state land, nor do they adopt the true levels of land use planning required by the act. Rather than first looking at each of the regions of the state as a whole and delineating the areas of settlement, impact, and areas which should be retained in public ownership, and then using those regional plans as a basis for more detailed planning, the Division's regulations began with detailed planning. There are 19 separate land classifications, all very specific and only six of which are open to locatable minerals.

Mr. Glavinovich told of a meeting with the Division's planning personnel last spring at which the Alaska Miners Association expressed concern that some of the more restrictive classifications could be used to close state lands to mineral entry and they leave out the maximum acreage that should be established for the more restrictive classifications. These suggestions were not heeded and, recently, 380,000 acres in the Tok-Big Delta area were classified public recreation, closed to mineral entry. Another objection that surfaced during this meeting was that the State Division of Mines and Energy Management and the Division of Geological and Geophysical Surveys were not included in the list of state agencies to be consulted in the preparation of a state land use plan. Mr. Glavinovich brought out the fact that the Haines-Skagway land classifications were totally unacceptable to groups of citizens in the Haines-Skagway area, yet the final draft of the classifications is currently being considered and it doesn't incorporate any of the Haines' recommendations.

Mr. Galvinovich also pointed out an article that appeared recently in the Anchorage Times, which showed the new state proposal for classification in the Kenai area-- approximately 81,000 acres in fish and game critical habitat areas; 17,000 acres in parks, recreation, and scenic classifications; only 3,000 acres for agricultural use; and 1,300 acres for logging use. In the Statehood Act Alaska was granted a large land base upon which to base its economy. If these lands are not going to be available to economic development, then the intent of that act is being violated. The Alaska Miners Association feels that the approach taken in the regulations is not what was envisioned by the Legislature when they adopted HB 720 last year.

Jon Maloney -- New Homesteaders -- Anchorage

Mr. Maloney pointed out the dangers of two of these classifications--greenbelt and

forest land. The greenbelt classification definition opens up the whole state. It not only covers the transportation routes, as intended, but it also covers the prominent physical features of the land, which includes the mountains and the open spaces between. He compared the Division's use of classifications to the restrictions imposed by President Carter under the Antiquities Act.

Regarding forest land classifications, Mr. Maloney recommended that a minimum requirement of 15,000 board feet per acre be put on it to prevent the Division from classifying stick land just to get it away from the public.

Mr. Maloney also stated that he had attended a land disposal meeting in Wasilla, and the people there were upset because they have to purchase 40, 50, or 60 acre lots, most of which is underwater and unuseable.

William Wood -- Fairbanks Industrial Development Corporation -- Fairbanks

Dr. Wood stated that it seemed to him that the concern of the regulations' proposers was a totally restrictive one. There are no provisions for assimilating the wide use of land for human persons. There is no consideration of the social and economic costs to all people for idle land.

Dr. Wood suggested that in Section 11 AAC 55.030 a period be placed after the words "general public." The drafters of this proposal seem to give preference to certain groups that are named, and since you can't name them all, why name any?

He also suggested that the last phrase in 11 AAC 55.040, which reads, "the provisions of the more restrictive will govern," should be changed to "the wisest and best use should govern."

In closing, Dr. Wood stated that the management goals of the lands of Alaska should be people goals--to provide food, fuel, fiber, tools, recreation, and spiritual fulfillment.

Helen Warner -- Circle Mining and Recording District -- Fairbanks

Most of Ms. Warner's testimony is not decipherable on the tape; however, she did express her concerns about the regulations. She stated that the majority of the Circle Mining District which was not included in the Yukon Flats Monument has been selected by the state. Since the area is industrial, residential, and recreational, water users will be required to meet existing water standards throughout the area and this is not a realistic attainment goal to the very well established and traditional placer mining industry in that area.

Stephen Reeve -- Department of Natural Resources -- Juneau

Mr. Reeve, the Chief of Planning and Classification for DNR, was concerned about the misconception that the Department is not getting a good land disposal program going. The present state land classification program, as revised recently, is a reasonable tool being administered by reasonable people and the goal is to assist in the reasonable use of state lands. All state land classifications provide for multiple use of state lands--there is no land that is withdrawn. Only the Legislature itself can withdraw land, and they have set aside some four million acres for the various parks and wildlife refuges that are located throughout the state on state land.

The classification system was first adopted in 1959; however, last year the department was mandated by the Legislature to adopt new regulations for land classification. The major change in the classification system from the previous one is that classification now has to be based on land use plans, which consider all the things, like resources, topography, water availability, etc. The second major change is that now there's more opportunity for public review of state land classifications. There are 19 categories, eight of which are in a disposal category. He mentioned that, at the present time, they're classifying some 120,000 acres of land in the open-to-entry and homesite categories in order to accommodate the land disposal program for this year.

The DNR has been classifying land for about 20 years; however, very little land, not over several thousand acres, has been classified in any category since the last election. The classifications closest to having been through the mill at this point are: approximately 400,000 acres classified for the gas pipeline corridor, around 600,000 acres for various municipalities in the implementation of the Land Entitlement Act, and roughly 200,000 acres in the Fairbanks area.

Mr. Reeve was asked what would happen if the Division's power to classify land was just taken away. He felt that there would be no structure or framework for deciding how to best use state land. It was also brought out by a committee member that land classified homesite and open-to-entry always seemed to be at the bottom of the list. Mr. Reeve replied that he was talking about the land disposal program, not the classification program, and explained that, when it comes to land disposal, classification is merely a rubber stamp for land.

The Department doesn't have a 640 acre statutory limitation for classification of land; therefore, classifications over the years have exceeded 640 acres. The only limitation they do have forbids them from classifying over 3,200 acres in any municipality without their approval. The municipalities can and have dropped classifications of land in organized boroughs.

It was brought out during the testimony that the main obstacle seemed to be a difference in philosophy in regard to the best use of state land.

Douglas Terhune -- Self -- Anchorage

Mr. Terhune's concern was that, no matter what kind of regulations are finally approved, the kind of land disposal program we get is determined by those administering the program. He felt that the Division of Land has an extremely poor track record in this regard and that these regulations would continue to be abused by the Department. He suggested that a major turnover of the personnel in the DNR be undertaken because of the major difference in their philosophy and that of the majority of Alaskan citizens. Another suggestion made was that key officials who administer state land programs be elected, not appointed.

Chuck Hawley -- Alaska Miners Association -- Anchorage

Mr. Hawley commented on the 640 acre limitation that has been the subject of controversy throughout the hearing. Mr. Hawley seemed to feel that this law was not repealed last year and that the DNR, in their classifying position, is removing land from multiple use in excess of 640 acres.

Mr. Hawley made clear that members of his organization believe strongly in private ownership; however, land for mineral use should remain in state ownership so that it's available under the mineral disposal system. There are currently two mineral disposal systems: locatable and leasehold. The main problem with the current regulations is that leasehold mineral disposal requires more knowledge of the mineral base than the Division possesses to decide whether it's appropriate to remove other leasehold systems.

It was pointed out that the DNR had drafted these regulations before the legislative mandate was passed out of the Legislature and they didn't really look at the legislation before they adopted the regulations.

There has been some positive working relationship with the Planning and Classification Section in the Haines area; however, the fundamental disagreement is whether the bulk of those lands should be classified as resource management or resource assessment. Resource management classification requires leasehold system for mineral development and resource assessment doesn't. There is no current state leasehold system in place for hard mineral development; therefore, they can't endorse a mineral leasehold system.

Merrill Palmer -- Haines Coalition -- Juneau

Mr. Palmer spoke on the problems that the city of Haines is having with the DNR. Haines wants to have a timber sale, but they can't do so until after the land is classified. Classification has been going on in that area since 1972 with no conclusive results. The Haines Coalition was formed and devised their own plan and gave it to the state for incorporation into their plan. The plan that was drafted by the Division of Lands was totally unacceptable to the majority of the people in Haines-- they felt the plan did not fit into the philosophy of multiple use concepts.

Mr. Palmer feels that Haines is being put into a blackmail situation, where if they don't agree to the classifications set by the DNR, they won't have their much needed timber sale. The Haines plan represents the philosophy of the majority of the people from Haines and DNR isn't using it. It seems that DNR is more concerned about the scenic value of the land rather than people's livelihoods.

The only group in Haines that supported DNR's proposed classifications was the local conservation group, composed of about 15 members. Mr. Palmer brought out the fact that the Haines Coalition is now working with the conservation group and working with them better than with the state.

Allen Cronk -- Fairbanks North Star Borough -- Fairbanks

Mr. Cronk, the Land Management Officer for the FNSB, testified in favor of the classifications. The classifications do meet the needs of the Borough in the selection of municipal lands. Mr. Cronk stated that classifications are needed in the Fairbanks area for municipal land selection and said that the current classifications have been well thought out and well coordinated with local input. They tend to protect needed or desired values, only in our best interests. The FNSB will support the current classifications as long as local input is sought and given due consideration.

Ernest Wolff -- Self -- Fairbanks

Dr. Wolff feels that undue restriction is being put on the use of land. You don't plan for anything except the people and you don't need to accept this plan. State land is supposed to be for the people; however, it's getting to the point that we'll only have .3% of private land that we'll be restricted to. The land should be gotten out to the people in private ownership. Dr. Wolff feels that people can do their own classification.

Dr. John Morris -- Self -- Juneau

Dr. Morris brought out the fact that in Section 11 AAC 55.020(b) the key words are, "No disposal...until...classified..." The question is who will do the classifying. The people who own land will classify it. An inventory should be known before any classifications are made, and individuals should make it. The multiple use concept is essential for research, but before you dispose of land, you should still know what's there. Private ownership of land and resources is essential to human life and growth. Priorities of land use values are, from greatest to least, habitation, land, food production land, renewable resource land, transportation system land, energy resource land, mineral resource land, wildlife and fisheries resource land, then recreational land and wilderness land.

The people who inhabit the land should decide, not the people who visit the land. He suggested leaving out all classifications except ones having to do with habitation, agriculture, renewable resource, transportation systems, energy, and minerals. We're already surrounded by state parks and wildlife refuges.

Private ownership is more important than how that land is used. The way the DNR is treating the people of Haines is identical to the way the federal government is currently treating Alaska as a state.

Phil Holdsworth -- Self -- Juneau

Mr. Holdsworth, who was the Commissioner of Natural Resources during the first nine years of statehood, testified that he felt that DNR didn't really realize what the impact would be when they adopted these regulations. The problem is the organization itself--the Division of Lands should be directly responsible through the people who manage this land and dispose of it. The planners don't seem to be using any input from other agencies or the public.

Mr. Holdsworth also brought up the Haines classifications and mentioned that he had attended a meeting of the Haines Coalition and the Division of Lands. It seemed that the Division was acting on behalf of the conservation society, about 17 people, rather than the 510 people who signed the Haines Plan. This is a difference in philosophy.

Mr. Holdsworth also spoke of the mineral closing order in the Fairbanks area. He had gone to the Deputy Commissioner of Natural Resources and asked why this withdrawal was being made and wasn't it in violation of the statute saying that no area more than 640 acres could be closed to multiple use. The DNR stated that closing land to mineral entry did not violate multiple use, because the land could be used for two or three other uses other than mineral use. The law originally stated that land could not be closed to three specific things, and one of them was mineral entry, if it exceeded so many acres in size.

Resource management cuts off land to location of minerals. The Division of Lands wants to classify most of the land in the Haines area under this resource management classification. You must have a good data base before closing land to mineral entry. Mr. Holdsworth feels that the Haines Plan is a very sound plan.

Kirk McGee -- Cook Inlet Region, Inc. -- Anchorage

Mr. McGee, who is a land planner for Cook Inlet Region, Inc., testified that he has found the present land classification system very well adapted. They allow for the state's interest to be addressed, as well as public review and involvement.

Harold Galliett -- Self -- Anchorage

Mr. Galliett asked that the ARRC set aside these regulations indefinitely. He stated that they were arbitrary, autocratic, and undemocratic. In the past 25 years, he has observed an increasing lockup of our futures, prospects, lands, and rights.

Resource assessment classification seems to be just another lockup. Others seem to have been designed to frustrate the will of the people which has been expressed. We do need some action, but these regulations are not the answer. We need to give more protection to the individual.

Roudolph Vetter -- Self -- Fairbanks

Mr. Vetter first read testimony for Mark Ringstad, in which Mr. Ringstad stated that he wanted no more regulations, that they're not necessary. Environmentalists are advocating a leasing system for mining and trying to kill the mining industry. Mr. Ringstad supports the 1872 Mining Law and opposes the leasing system.

Mr. Vetter then expressed his own concerns about the regulations. He felt that all of the regulations should be removed at this time. Economics will prevail. Part of the unemployment problem in the state is due to the regulations against development. We don't need classification--we do need title, fee simple development of lands without restrictive legislation. How can mineral lands be determined if classified? What will the criteria be? The removal of classification would result in natural economic selection and this will be the end result, regardless of any regulations. We need private ownership of land, not leasing.

Mr. Vetter suggested that we remove classification entirely, or at least in regard to mineral and petroleum development.

Charles Parr -- Self -- Fairbanks

Mr. Parr stated that he made a chart enumerating the disposals which are authorized under these regulations and he will send that chart to the Committee. DNR originally said that there were 8 disposal classifications, but Mr. Parr was only able to count six. Mr. Parr stated that he didn't really know if legislative intent had been met by the promulgation of these regulations and he questioned 11 AAC 55.020(b)(3), stating that this regulation didn't state when land had to be appraised. In 11 AAC 55.030(a), it states that, "The regional or area land use plan will determine... the location, size, and timing of disposals to private ownership..." Isn't this a legislative prerogative, not an administrative one? In 11 AAC 55.030(c) it states

that, "Management guidelines are part of the classification order, and all uses or disposals to private ownership must be consistent with them." Mr. Parr questioned whether, once land transfers into private ownership, it's subject to the zoning or planning functions of that municipality or perhaps the individual. With these regulations, the only mineral lands available for disposal are those acquired by escheat or foreclosure.

Richard Spitler -- Self -- Juneau

Mr. Spitler testified as a private citizen; however, he does work for DNR as a land management officer for the Southeastern District. His job deals with land disposal and he feels that classification is helpful to him as a guideline in making his decisions as to what is the best use of the land. He agreed with previous testimony that the problem was a question of philosophy.

Leo Mark Anthony -- Self -- Anchorage

Mr. Anthony stated that state lands should be multiple use lands and these regulations are not providing for that concept. 11 AAC 55.020(b)(1) should read "mineral location and leasing are permitted on all unoccupied land" rather than the way it reads now. Classification is being used as a sort of a mini-Antiquities Act by the DNR. The present mining laws are good and shouldn't be changed by regulations promulgated by the DNR. Only 17% of all Alaskan land, both state and federal, is now open to mineral location. Under 11 AAC 55.040(c), the word "leasing" should be changed to "location." Under 11 AAC 55.040(e), you should strike out "...subject to any restrictions in each specific classification: resource management and wildlife habitat." Under 11 AAC 55.040(f), you should strike out "greenbelt."

Mr. Anthony opposed land being put in the resource assessment category because the DNR lacks the capability for proper mineral resource assessment. Land should not be retained in an assessment category pending the education of the DNR. Land should be open to multiple use, which would then provide knowledge about the land.

Lands subject to mineral leases should have a 20 year lease period, not the 5 or 10 years mentioned under the resource management classification.

Mr. Anthony is opposed to the wildlife habitat land classification because the Department of Fish & Game can use other laws to protect habitat. The commissioner's power to withdraw, withhold, and classify lands should be limited to a maximum limit per year which is set by the Legislature.

Gary Thurlow -- Self -- Anchorage

Mr. Thurlow pointed out the fact that you can have good regulations and poor regulations. Poor regulations can be implemented in a very good manner and good regulations could be implemented in a very poor manner. Classification regulations can serve a very useful purpose for Alaskan land. We need to pay close attention to how the regulations are used. Although residential and homesite use for lands is a very high priority, it is not always the best use for all the land in Alaska. It is necessary for the mining industry that prospectors be allowed to move around freely over the land. Another area of importance is the need for corridors so people can move around the state. Agricultural land must be made available to the people in order to have

agriculture as a part of our economy. A good use for greenbelt land would be to give protection to the banks of rivers.

Jim Johnson -- Self -- Fairbanks

Mr. Johnson made extensive comments back in July, when these regulations were still just in the proposed stage. At that time, Mr. Johnson urged DNR to scrap the entire project and proceed with the business of producing a land use plan for Alaska. If the plan that DNR draws up is rational, it should have no problem getting the support of the people. Classification itself is really an issue of control of individuals and such control has no place in a bureaucracy. The Legislature should regain this control before implementing any new actions under these classifications.

Helen Nienhueser -- Division of Lands -- Nome

Ms. Nienhueser believes that Merrill Palmer had overstated the differences between the recommendations made by the DNR and the Haines Plan. The Haines Coalition does represent the view of the majority of the citizens of the Haines area and, therefore, most of the suggestions of the Haines Coalition have been incorporated into the draft plan. Ms. Nienhueser stated that the state has heard from many citizens who do not believe in the Haines Plan and they're trying to compromise between the two groups. The state plans to wait until they receive the draft from the efforts of the Haines Coalition and the conservation group before going any further.

Most of the land in the Haines area will be classified as forest land to provide a base for the timber industry. The area classified as scenic areas will amount to not cutting 5% of the trees in the Haines area.

As far as the classification regulations are concerned, the Division, when drafting the regulations, did work closely with the Mining Division of the state. A lot of the language in the regulations only repeats the language in the statutes, in order to make the legislative intent clear.

It was brought out in the questioning that the DNR was the one who proposed that the Legislature adopt the original statute which allowed for the land planning and classification.

Bertha Midyett -- Self -- Anchorage

Ms. Midyett was upset that the people from the Division of Lands were testifying in their own defense and taking the time away from the public. She was also upset about the fact that many of the people in state government are appointed and don't really have the proper background and qualifications for the particular jobs. A committee should be set up to investigate the quality of our land, instead of the quantity. The classifications should just be thrown out and we should start all over again.

Lani Martyak, A.A.

Members Present: Bennett, Dankworth, Farr, Beirne

11 AAC 55. Land Planning & Classification

Billy Berrier, Legislative Affairs Agency, was asked what effect the annulment of these regulations would have on the municipal land grant program. Mr. Berrier pointed out that AS 29.18.201 states that land doesn't have to be classified and, therefore, annulment of these regulations would not have any effect on the municipal land selections; however, he wanted to check into it further to find the basis for this feeling. Mr. Berrier also pointed out that AS 38.04, the basis for these regulations, has a very strange definition of multiple use; but in no place does it set up the consequences of what would happen if you didn't go through with the classification.

Phil Holdsworth, a consulting engineer, testified that it is necessary and proper to classify land with public participation before the land can be properly managed in the public interest. As brought out in the hearings on 17 March, the problem seems to be with the philosophy of their use. The removal of these regulations would be a real delaying action in the land disposal program.

As a solution to the problem, Mr. Holdsworth suggested that we go back to the original language in the Alaska Land Act of 1959, Section 38.05.300 (the classification of land), which stated:

"No state land, water, or land and water areas shall, except by act of the state legislature, be: (1) withdrawn from settlement, location, sale or entry; (2) reserved for special use; or (3) restricted from operation of the mining and mineral leasing provisions of this chapter, if the area involved in withdrawal, reservation, or restriction exceeds in the aggregate 640 acres."

This spells out multiple purpose use and would be more of a safeguard in classifying large areas of land and closing the land to some particular use. The way it is now DNR can classify over 640 acres without legislative approval because the definition of multiple use states that multiple use is land open to two or more uses.

Pat Conheady and Steve Reeve testified on behalf of DNR that the classifications are not withdrawals and are subject to change. They are just used to decide what uses should be where and they are the only way to determine, with public input, how state land should be managed. They explained how classifications can be changed; however, there is no time frame and the suggestion was made to incorporate a maximum time frame, probably about 60 days, into the regulations. It was also suggested that temporary permits be given to individuals rather than make them wait for years for DNR to make a firm mandate. Right now people are just held in abeyance.

Steve Reeve proposed the following three improvements to the classification program and asked that the Committee consider them instead of voiding the regulations:

1. A public information program is needed to get out the information that this classification program isn't like the federal government system-- the classifications are temporary and can be changed.
2. Anytime there is a classification, DNR would get together with the legisla-

tors from the district in which the land was being classified and review the classifications with them prior to any set classification.

3. Allow DNR to come back before the Committee next January with a list of improvements or changes in the regulations or statutes after having had a year and a half of experience in land planning and classification.

Mr. Reeve stated that he could not go along with Mr. Holdsworth's suggestion of changing the language in the statutes because limiting classification to 640 acres without legislative approval would not allow DNR to cover the protection of renewable and non-renewable resources, since they usually occur in larger than 640 acre plots.

During the questioning it was brought out that right now the people who do the classifying don't answer to any elected officials. It seems that there needs to be some sort of mechanism of elected officials and of public hearing, so why not set up a Classification Review Board made up of legislators who would meet once a year or so to review classifications and provide an opportunity for the public to change classifications.

No action was taken on these regulations pending a legal opinion from Billy Berrier, Legislative Affairs Agency.

Lani Martyak, A.A.

Members Present: Bennett, Dankworth, Parr, Beirne

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No action was taken on these regulations pending a legal opinion from Billy Berrier, Legislative Affairs Agency.

Lani Martyak, A.A.

ADMINISTRATIVE REGULATION REVIEW COMMITTEE
10 April 1979 -- 5:00 p.m.

Members Present: Bennett, Hohman, Dankworth, Beirne, Parr

11 AAC 55. Land Planning and Classification

Chairman Bennett called the meeting to order and asked the question: "Should the Administrative Regulation Review Committee recommend annulment of 11 AAC 55. Land Planning and Classification?"

The vote was taken by a show of hands with the following result:

Yeas: 5 Bennett, Hohman, Dankworth Beirne, Parr
Nays: 0
Absent: 1 Freeman

A resolution recommending annulment of 11 AAC 55 will be drafted tomorrow.

Lani Martyak, A.A.

ADMINISTRATIVE REGULATION REVIEW COMMITTEE
26 April 1979 -- 4:15 p.m.

Members Present: Bennett, Freeman, Beirne, Parr

18 AAC 72.060 -- Plan Review .
18 AAC 72.065 -- Subdivision Plan Review

Jon Scribner and Deming Cowles testified on behalf of the Department of Environmental Conservation that these regulations were not holding up the land disposal program, as stated by Commissioner LeResche in his letter to Senator Sumner dated 9 April 1979. In dealing with potential wastewater problems it's not the size of the parcel that matters so much as the land itself; however, the smaller the parcel, the more serious the potential problem (i.e., less than one acre).

A review is required whenever a parcel of land is broken up into more than five parcels, for then it is defined as a subdivision. It normally takes about three days to have the review completed by DEC.

Senator Bennett stated that some assurance is needed that these regulations will not hold up land disposal and asked the representatives from DEC to get with DNR to discuss the matter and get back to the committee with their findings.

Lani Martyak, A.A.

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

8 August 1979 -- 8:15 a.m.

Members Present: Bennett, Dankworth, Hohman

21 AAC 05.010(b) -- Complaints

Dale Cheek, Director of the Wage and Hour Division of the Department of Labor, testified that he didn't feel that this regulation should be used against an individual. In his estimation, anonymous complaints carried no value and only left the door open for harrassment type complaints. He also felt that the ombudsman should only pass along those anonymous complaints that he had investigated to the affected agency or individual--the ombudsman shouldn't pass along all anonymous complaints that he had not personally looked into and found some merit to the complaint. Mr. Cheek felt that it would be okay for the ombudsman to bring to the attention of the department, not any one individual, a function they are failing to perform brought out by an anonymous complaint. The ombudsman should not zero in on any one individual.

Ed Sharp of the Alaska Public Employees Association testified that APEA didn't have any intention to thwart the efforts of the ombudsman or his staff, but they felt that this regulation was not in the best interests of their employees because it does allow anonymous complaints against individuals, only because the statutes allow the ombudsman to construe an individual as an agency. This regulation refers to agencies only, but because the ombudsman can refer to individuals as agencies, he is allowed to take anonymous complaints against them. The real source of the problem is the definition of "affected agency." APEA feels that it's okay for the ombudsman to notify the affected individual of an anonymous complaint against him, if, and only if, the complaint doesn't go anywhere else, i.e., his supervisor or a commissioner, as that would create an atmosphere of distrust and animosity between an employee and supervisor.

Paddy Moriarty of the Ombudsman's Office testified that she felt this regulation limited the ombudsman's jurisdiction, rather than extended it. They only investigate anonymous complaints on the ombudsman's motion, whereas other states investigate all anonymous complaints. All they are doing is passing along this information to the agency involved and leave any investigating up to the agency involved. It was brought out that oftentimes the ombudsman's office will get an anonymous complaint from a person who has to deal with a particular agency and is dependent on that agency and is having real problems with it, so the ombudsman is acting as a pass through. Ms. Moriarty mentioned that anonymous complaints were being passed on as unsubstantiated allegations and they were being passed along not only to the affected agency, but also to the individual involved.

During the testimony, it was brought out that a certain amount of authenticity is passed along when the complaint comes from the ombudsman office or any state agency. Once a rumor comes from an official agency, it is perceived differently and given more credence than if an anonymous caller called the supervisor directly.

Joe Guthrie, Legislative Affairs Agency, testified that this regulation was inconsistent with the statutes. The statutes indicate that a preliminary evaluation must be made when complaints come in, that complaints that have merit must be investigated. Therefore, the ombudsman is passing along information that he has already decided isn't worth his time investigating.

Lani Martyak, A.A.