

SB

332

SENATE AMENDMENT

By SENATE Judiciary Committee

To: AMEND SENATE BILL No. SB 332

To: _____ HOUSE BILL No. _____

PAGE: 1

LINE: 11 + 12

line 11 delete [five] insert TWO

line 12 delete [Alignment]

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

January 23, 1980

The Honorable Robert H. Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 332
Our file J-66-416-80

Dear Senator Ziegler:

Guy VanDoren of your office requested that we review Senate Bill 332. This bill would make it a class-A misdemeanor to hunt "in the area within five miles on either side of the trans-Alaska pipeline alignment." Except as noted below, we do not believe the bill presents any major problems.

One question we have concerns the word "alignment." We assume this refers to the pipeline itself. If that is the case, it would appear that the word "alignment" in the bill is unnecessary. If it means something else, that should be described more explicitly.

A second question is whether the bill (if enacted) would provide the amount of procedural protection afforded by the due process clause of the federal and state constitutions. In Wacek v. State, 530 P.2d 751 (Alaska 1975), a conviction for discharging a firearm in a public park in violation of AS 11.55.050(a) and 11 AAC 12 190 was reversed. The court stated:

The burden placed upon the defendant in this case to locate the boundaries of a park which has no signs marking its boundaries, which is shown on no published map, and the existence of which is mentioned in no Fish and Game regulation issued to hunters is unreasonable given the relative ease with which some corrective measure might be taken. 2/

2/ We do not hold, as suggested by the state in its brief, that it will now be necessary "to post signs at every 10 feet along the boundaries

Hon. R. H. Ziegler, Sr.
Re: SB 332

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Page 2

of its state parks." We only hold that the application of AS 11.55.050 to appellant, given all the facts stipulated, placed an unreasonable burden upon him to locate the boundaries of the park.

530 P.2d at 753 (emphasis supplied by Alaska Supreme Court; citations omitted). While similar arguments might be made in a case arising under this bill if no additional steps are taken, it would seem that additional steps could be taken (e.g., indicating the area in which hunting is prohibited on published maps, mentioning the prohibition in regulations issued by the Department of Fish & Game to hunters, posting signs at various locations providing access to the area, etc.) and there would be no constitutional defect.

Beyond these two points, we do not believe the bill presents any legal difficulties. Some may question the reasonableness of imposing such a prohibition within five miles on either side of the pipeline. However, this appears to be a policy decision appropriate for the legislature. Since section 2 of the bill states that the purpose of the proposed act "is to prevent damage to the trans-Alaska oil pipeline," it does not seem unreasonable for the legislature to determine that prohibiting hunting within five miles of the pipeline would reduce to a negligible level the possibility of inadvertent damage to the pipeline from such activity.

Under the mens rea provisions of the new Criminal Code, AS 11.81.600 et seq., it would appear that an offense under the bill would have to be committed "recklessly" with respect to the circumstance of being within 5 miles of the pipeline. AS 11.81.610(b)(2). The legislature may wish to consider designating such an offense one of strict liability under AS 11.81.600(b)(1)(B), or (through a letter of intent or committee report) indicating an intent to dispense with the culpable mental state requirement. See AS 11.81.600(b)(2).


Hon. R. H. Ziegler, Sr.
Re: SB 332

January 23, 1980
Page 3

We hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 

G. Thomas Koester
Assistant Attorney General

GTK:dln

cc: Senator John C. Sackett

S.D. 332

AREAS CLOSED TO HUNTING

of Indian Creek and Falls Creek are closed to the taking of Dall sheep. The department shall retain the authority to set limited seasons, by permit only, and in consultation with the Division of Parks, to adjust severe imbalances in game animal populations;

(14) the Westchester Lagoon waterfowl nesting and observation area: all lands and waters on Chester Creek between Arctic Boulevard and Turnagain Arm are closed to hunting and trapping and to the use of motorized vehicles off designated roadways and travel routes;

(15) Otter Island (one of the Pribilof Islands—Unit 10) administered by the U.S. Department of Commerce National Marine Fisheries Service, is closed to all hunting;

(16) the Moose River closed area (Sterling—Unit 15A): on and within 1/4 mile of the Moose River between the Kenai National Moose Range boundary and the Sterling Highway is closed to the taking of waterfowl.

5 AAC 81.260. INTERIOR-ARCTIC ALASKA (UNITS 17-26). The following areas are closed areas:

(1) the Birch Lake closed area (near Fairbanks—Unit 20): on and within 1/2 mile of Birch Lake (closed to the taking of big game only);

(2) the Harding Lake closed area (near Fairbanks—Unit 20): on and within 1/2 mile of Harding Lake (closed to the taking of big game only);

(3) the Lost Lake closed area (near Fairbanks—Unit 20): on and within 1/2 mile of Lost Lake (closed to the taking of big game only);

(4) Repealed.

(5) the Healy-Lignite closed area (near Healy—Unit 20C): beginning at the confluence of Lignite Creek and the Nenana River, thence upstream along Lignite Creek to its confluence with Sanderson Creek, thence in a straight line southerly to the confluence of Healy Creek and Coal Creek, thence in a straight line southerly to Dora Peak (63°49'N and 148°42'W), thence in a straight line westerly to the confluence of Healy Creek and Moody Creek, thence downstream along Healy Creek to the Nenana River, thence downstream along the Nenana River to the point of beginning, is closed to all hunting;

(6) the Prudhoe Bay closed area (near Prudhoe Bay—Unit 26): beginning at a point 70°22'N latitude and 148°00'W longitude, thence south approximately 14 miles to a point at 70°10'N and 148°00'W, thence west approximately 15 miles to a point at 70°10'N and 148°40'W, thence north approximately two miles to a point at 70°12'N and 148°40'W, thence west approximately eight miles to a point at 70°12'N and 148°56'W, thence north approximately two miles to a point at 70°15'N and 148°56'W, thence west approximately 12 miles to a point at 70°15'N and 149°28'W, thence north approximately 12 miles to a point at 70°26'N and 149°28'W, thence east approximately 14 miles to a point at 70°26'N and 148°52'W, thence south for approximately two miles to a point at 70°24'N and 148°52'W, thence east for approximately 16 miles to a point at 70°24'N and 148°11'W, thence south for approximately two miles to a point at 70°22'N and 148°11'W, thence east approximately six miles to the point of beginning at 70°22'N and 148°00'W, is closed to the taking of big game only;

(7) Sledge Island (Unit 22) and the waters within one mile of it are closed to walrus hunting;

(8) the trans-Alaska pipeline corridor closed area (north of the Yukon River—Units 24, 25 and 26): the area within a strip five miles on both sides of the trans-Alaska pipeline alignment from the Yukon River to Prudhoe Bay is closed to the taking of big game only.

Existing Regulation

STATE GAME REFUGES

5 AAC 81.270. APPLICATIONS for State Game Refuges otherwise provided in sects. 280-300 of this chapter are continuously closed.

5 AAC 81.280. SOUTHEASTERN ALASKA STATE GAME REFUGE (FORRESTER ISLAND AND ADJACENT ROCKS): all lands and waters taken for commercial purposes are closed to the discretion of the commissioner.

(b) The Hazy Island State Game Refuge: all lands and waters taken for commercial purposes are closed to the discretion of the commissioner.

(c) The St. Lazaria Islands State Game Refuge: all lands and waters of the Lazaria Islands at the entrance of the Bristol Bay are closed to the discretion of the commissioner.

(d) The Mendenhall Wetlands State Game Refuge: the area described as the Mendenhall Wetlands is closed to trapping and hunting, during established seasons. The use of other motorized vehicles (except snow machines) in the Mendenhall Wetlands State Game Refuge is prohibited.

5 AAC 81.290. SOUTHCENTRAL ALASKA STATE GAME REFUGE (KODIAK ISLAND AND ADJACENT ISLANDS): all lands and waters are closed to the Kodiak National Wildlife Refuge.

(b) The Semidi Islands State Game Refuge: The Semidi Island group is closed to all hunting.

(c) The McNeil River State Game Refuge: McNeil River, Mikfik Creek and adjacent waters from Akjemguiga Cove on the north side to the head of Kamishak Bay, in lower Bristol Bay, are closed to all hunting. Access to McNeil River is by permit only.

(d) The Tuxedni Island State Game Refuge: Egg and other small islands in Tuxedni Bay are closed to all hunting.

(e) The Aleutian Islands State Game Refuge: all lands and waters of the Aleutian Islands are closed to hunting with the following exceptions:

(1) Umnak, Atka, Unalaska and Agassiz Islands are open to hunting;

(2) Shemya, Attu, and Agassiz Islands are open to ptarmigan hunting;

(3) Adak Island is open to all hunting;

(4) all of the Aleutian Islands except the islands listed in (1) through (3) are closed to all hunting.

(f) The Bogoslof Islands State Game Refuge: The Bogoslof Islands are closed to all hunting.

(g) The Kenai State Game Refuge: all lands and waters corresponding to the Kenai National Moose Range are closed to all hunting.

(h) The Potter Point State Game Refuge: all lands and waters south of the Kenai National Moose Range which extends from Campbell Bay to the head of the Kenai River are closed to all hunting and trapping and to the taking of waterfowl, with the following exceptions:

(1) that portion of the Kenai National Moose Range which extends from Campbell Bay to the head of the Kenai River is open to all hunting and trapping and to the taking of waterfowl.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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JUNEAU, ALASKA 99811

January 23, 1980

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Alaska State Senate
Pouch V
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Re: SB 332
Our file J-66-416-80

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One question we have concerns the word "alignment." We assume this refers to the pipeline itself. If that is the case, it would appear that the word "alignment" in the bill is unnecessary. If it means something else, that should be described more explicitly.

A second question is whether the bill (if enacted) would provide the amount of procedural protection afforded by the due process clause of the federal and state constitutions. In Wacek v. State, 530 P.2d 751 (Alaska 1975), a conviction for discharging a firearm in a public park in violation of AS 11.55.050(a) and 11 AAC 12.190 was reversed. The court stated:

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*The Committee
Paraphrase of intent
by*

of its state parks." We only hold that the application of AS 11.55.050 to appellant, given all the facts stipulated, placed an unreasonable burden upon him to locate the boundaries of the park.

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Beyond these two points, we do not believe the bill presents any legal difficulties. Some may question the reasonableness of imposing such a prohibition within five miles on either side of the pipeline. However, this appears to be a policy decision appropriate for the legislature. Since section 2 of the bill states that the purpose of the proposed act "is to prevent damage to the trans-Alaska oil pipeline," it does not seem unreasonable for the legislature to determine that prohibiting hunting within five miles of the pipeline would reduce to a negligible level the possibility of inadvertent damage to the pipeline from such activity.

Under the mens rea provisions of the new Criminal Code, AS 11.81.600 et seq., it would appear that an offense under the bill would have to be committed "recklessly" with respect to the circumstance of being within 5 miles of the pipeline. AS 11.81.610(b)(2). The legislature may wish to consider designating such an offense one of strict liability under AS 11.81.600(b)(1)(B), or (through a letter of intent or committee report) indicating an intent to dispense with the culpable mental state requirement. See AS 11.81.600(b)(2).

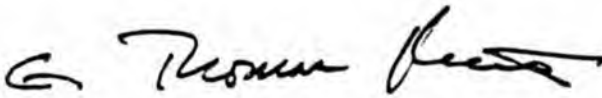
Hon. R. H. Ziegler, Sr.
Re: SB 332

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Page 3

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Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Senator John C. Sackett.

BILL ANALYSIS

ASSIGNMENT DATE _____

UNASSIGNED _____

| | | |
|--|---------------------------------------|--|
| DEPARTMENT Public Safety | SPONSOR (PRINCIPAL) Sackett | BILL NO. SB 332 |
| DEPARTMENT POSITION Neutral | | |
| DIVISION DIRECTOR Col. Fred Woldstad | DATE 1/22/80 | COMMISSIONER <i>f</i> William R. Nix |
| DATE 1/22/80 | | |
| GOVERNOR'S OFFICE USE | | |
| <input type="checkbox"/> POSITION NOTED <input type="checkbox"/> POSITION APPROVED <input type="checkbox"/> POSITION DISAPPROVED | | |
| BY: _____ DATE: _____ | | |
| SUMMARY | | |
| (1) RELATED BILLS (SIMILAR OR CONFLICTING) | | |
| (2) OTHER AGENCIES AFFECTED BY BILL Dept. of Fish & Game, Board of Game | | |
| (2) a. ORGANIZATIONAL SUPPORT FOR BILL | | (2) b. ORGANIZATIONAL OPPOSITION TO BILL |
| Unk. | | Unk. |
| (3) PROGRAM EFFECTS OF BILL | | |
| No adverse effect on the division's programs. | | |
| (4) FISCAL IMPACT: <input checked="" type="checkbox"/> NONE <input type="checkbox"/> FISCAL ANALYSIS ATTACHED | | |
| (5) AMENDMENTS PROPOSED: | | |

(6) COMMENTS:

The div .on enforced a similar law during the pipeline construction era and does not foresee any problem with this bill.

S.D. 332

AREAS CLOSED TO HUNTING

of Indian Creek and Falls Creek are closed to the taking of Dall sheep. The department shall retain the authority to set limited seasons, by permit only, and in consultation with the Division of Parks, to adjust severe imbalances in game animal populations:

(14) the Westchester Lagoon waterfowl nesting and observation area: all lands and waters on Chester Creek between Arctic Boulevard and Turnagain Arm are closed to hunting and trapping and to the use of motorized vehicles off designated roadways and travel routes;

(15) Otter Island (one of the Pribilof Islands—Unit 10) administered by the U.S. Department of Commerce National Marine Fisheries Service, is closed to all hunting;

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Existing Regulation

STATE GAME RE

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5 AAC 81.280. SOUTHEASTERN Forrester Island State Game Refuge: Forrester Island and adjacent rocks taken for commercial purposes under the discretion of the commissioner.

(b) The Hazy Island State Game Refuge: Islands in Southeastern Alaska are taken for commercial purposes under the discretion of the commissioner.

(c) The St. Lazaria Islands State Game Refuge: Lazaria Islands at the entrance of St. Lazaria Bay.

(d) The Mendenhall Wetland State Game Refuge: area described as the Mendenhall Wetland, closed to trapping and hunting, during established seasons. The use of other motorized vehicles (except snowmobiles) on the Mendenhall Wetland State Game Refuge is prohibited.

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(g) The Kenai State Game Refuge: corresponding to the Kenai National Moose Range hunting;

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STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

January 23, 1980

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Pouch V
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of its state parks." We only hold that the application of AS 11.55.050 to appellant, given all the facts stipulated, placed an unreasonable burden upon him to locate the boundaries of the park.

*The Commission
Party letter of intent*

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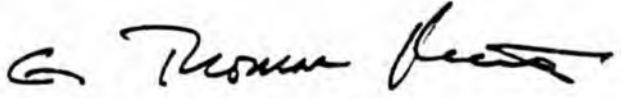
Hon. R. H. Ziegler, Sr.
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Page 3

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Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
G. Thomas Koester
Assistant Attorney General

GTK:d1m

cc: Senator John C. Sackett

BILL ANALYSIS

ASSIGNMENT DATE _____

UNASSIGNED _____

| | | |
|--|---------------------------------------|--|
| DEPARTMENT Public Safety | SPONSOR (PRINCIPAL) Sackett | BILL NO. SB 332 |
| DEPARTMENT POSITION Neutral | | |
| DIVISION DIRECTOR Col. Fred Woldstad | DATE 1/22/80 | COMMISSIONER William R. Nix |
| DATE 1/22/80 | | |
| GOVERNOR'S OFFICE USE | | |
| <input type="checkbox"/> POSITION NOTED <input type="checkbox"/> POSITION APPROVED <input type="checkbox"/> POSITION DISAPPROVED | | |
| BY: _____ DATE: _____ | | |
| SUMMARY | | |
| (1) RELATED BILLS (SIMILAR OR CONFLICTING) | | |
| (2) OTHER AGENCIES AFFECTED BY BILL | | |
| Dept. of Fish & Game, Board of Game | | |
| (2) a. ORGANIZATIONAL SUPPORT FOR BILL | | (2) b. ORGANIZATIONAL OPPOSITION TO BILL |
| Unk. | | Unk. |
| (3) PROGRAM EFFECTS OF BILL | | |
| No adverse effect on the division's programs. | | |
| (4) FISCAL IMPACT: <input checked="" type="checkbox"/> NONE <input type="checkbox"/> FISCAL ANALYSIS ATTACHED | | |
| (5) AMENDMENTS PROPOSED: | | |

(6) COMMENTS:

The division enforced a similar law during the pipeline construction era and does not foresee any problem with this bill.

STATE OF ALASKA
Inter-Department Route Slip

TO:
MAIL STATION NUMBER _____

DEPARTMENT _____

ATTENTION _____

- | | |
|--|--|
| <input type="checkbox"/> Approval | <input type="checkbox"/> Note & Return |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Initial & Return |
| <input type="checkbox"/> Comment | <input type="checkbox"/> Return As Requested |
| <input type="checkbox"/> Contact Me | <input type="checkbox"/> Return For Approval |
| <input type="checkbox"/> Prepare Reply | <input type="checkbox"/> Necessary Action |
| <input type="checkbox"/> For Your File | <input type="checkbox"/> Your Information |

Remarks:

*(Jud.)
Sen. Ziegler
107 pag.*

FROM:
MAIL STATION NUMBER 1200

DEPARTMENT Pub. Safety

BY _____ DATE 3-11-80

BILL ANALYSIS

ASSIGNMENT DATE _____

UNASSIGNED _____

| | | |
|--|---------------------------------------|---|
| DEPARTMENT Public Safety | SPONSOR (PRINCIPAL) Sackett | BILL NO. CSSB 332 |
| DEPARTMENT POSITION Support | | |
| DIVISION DIRECTOR Col. Fred Woldstad | DATE 3/10/80 | COMMISSIONER William R. Nix <i>by Nix</i> |
| | | DATE 3/10/80 |
| GOVERNOR'S OFFICE USE | | |
| <input type="checkbox"/> POSITION NOTED <input type="checkbox"/> POSITION APPROVED <input type="checkbox"/> POSITION DISAPPROVED | | |
| BY: _____ DATE: _____ | | |
| SUMMARY | | |
| (1) RELATED BILLS (SIMILAR OR CONFLICTING) | | |
| (2) OTHER AGENCIES AFFECTED BY BILL | | |
| (2) a. ORGANIZATIONAL SUPPORT FOR BILL | | (2) b. ORGANIZATIONAL OPPOSITION TO BILL |
| (3) PROGRAM EFFECTS OF BILL | | |
| (4) FISCAL IMPACT: <input type="checkbox"/> NONE <input type="checkbox"/> FISCAL ANALYSIS ATTACHED | | |
| (5) AMENDMENTS PROPOSED: | | |

(6) COMMENTS:

The committee substitute limits the hunting closure to the corridor north of the Yukon river, which is desirable from an enforcement view.

It is recommended that Sec. 16.05.785(b) be amended to remove the hyphenated word "class-A" from the sentence, as there are no class-A misdemeanors in the Fish and Game statutes. Such wording could cause grounds for argument that there is no proper penalty.

Reviewing Title 16, the addition of 785 to Chapter 5 will require an amendment in a penalty section to provide a penalty for violation of 785.