

SB

7

COMMITTEE REPORT

SENATE

FURTHER: None

1/15/79

Date: 3/13/79

Mr. President:

The Committee on JUDICIARY has had SENATE BILL NO. 7
relating to judicial forfeitures

under consideration and (a majority of the committee) ~~(the committee)~~
reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SB 11 same title
 new title
- and recommends SB 11
- AND attached a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

[Signature]
CHAIRMAN

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 12, 1979

SUBJECT: Substitute for SB 7; Judicial Forfeitures
TO: Senator Bill Sumner
FROM: Richard A. Bradley
Legislative Counsel *B*

In the interests of time, I have not done a sectional analysis of the changes proposed. Rather, some points may be noted:

(1) The material at lines 17 - 23 of your bill, to which no amendment of substance had been proposed, is the area that the substitute proposes to clarify and change.

(2) The existing law on this subject is not altogether clear, and, to that extent, at least, the proposal represents a substantial clarification. Whether it represents an improvement, I leave to your judgment.

(3) Existing law allows ~~that~~ any forfeiture to be handled as part of the case against the defendant when violations of fish and game laws are prosecuted:

(A) The violator may be prosecuted, as under any other criminal law.

(B) The tools and transportation utilized may be forfeited as may the illegally taken fish and game, if a conviction results. Both events occur in the same proceeding. Graybill v. State, 545 P.2d 629 (1976).

In fact, the Supreme Court suggested in Graybill that it saw no need for a separate forfeiture proceeding since the issue decided in the main trial -- guilt or innocence -- was finally determined in that proceeding and could not be relitigated in separate proceedings because of the judicial doctrine of collateral estoppel.

(4) The proposed amendments take the proceedings in (3)(A) and (B) and allow the state to separate them; they also deal explicitly with the prerogatives of "innocent" owners of the property seized.

(5) I have some policy reservations about the provision on page 2 providing that it is "no defense" that the "criminal action. . ." "has resulted in. . . acquittal. . ."

In paragraph (8) below, I raise the question whether in the presence of adequate fines and imprisonments, forfeiture does not constitute an unnecessary remedy for the state's use.

In this paragraph, I suggest that the state should not get a "second chance" against a defendant if he is acquitted in the personal litigation.

And the full logic of this reservation calls into question the entire logic of allowing an independent rem action. Rather, the state should, at most, be allowed to proceed against the tools of the crime in the actual case against the defendant. This kind of policy determination by the committee would require amendment of the proposed substitution. Note that the single action is the present law; separation of the case into two actions is the result of the amendment.

(6) Sec. 190(d) [page 2, lines 8 - 13] allows a civil action for damages. Whether this is viewed as a new authorization or confirmation of an existing authority, I do not know. I do believe that the authority is reasonable.

If allowed, I would suggest that it not be joined with any action for a forfeiture. I think the issues in the civil claim for damages should not be confused with the criminal claims in a forfeiture case. Graybill, supra, recognizes that forfeiture is essentially a criminal complaint.

(7) At this point, I see no other subtleties to these procedures. They seem straightforward and do not seem to merit explanation. Whether you consider them wise policy, I leave to your judgment.

(8) One possibly irrelevant point, I am unaware why prosecutors need these prosecution tools in fish and game [and in drug] cases; either forfeit cars used in rape or bank robbing cases or eliminate the forfeiture proceedings in all cases and rely on fines and imprisonment to do justice. Perhaps the state can advise why it needs these special remedies in these cases.

RAB: jdn

BILL ANALYSIS

ASSIGNMENT DATE 1/12/79

UNASSIGNED _____

DEPARTMENT PUBLIC SAFETY	SPONSOR (PRINCIPAL) SUMNER	BILL NO. SB7
DEPARTMENT POSITION Oppose		
DIVISION DIRECTOR Woldstad	DATE 1/19/79	COMMISSIONER <i>W. J. ...</i>
DATE 1-22-79		
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)		Unknown
(2) OTHER AGENCIES AFFECTED BY BILL		Unknown
(2) a. ORGANIZATIONAL SUPPORT FOR BILL		(2) b. ORGANIZATIONAL OPPOSITION TO BILL
None Known		None Known
(3) PROGRAM EFFECTS OF BILL Program effects could be substantial to the successful enforcement of a number of the Laws and Regulations pertaining to commercial use of resources, particularly in commercial fisheries and guiding. The prohibition dealing with hunting the same day airborne will be effected.		
(4) FISCAL IMPACT: <input checked="" type="checkbox"/> NONE <input type="checkbox"/> FISCAL ANALYSIS ATTACHED		
(5) AMENDMENTS PROPOSED: No amendments proposed.		

(6) COMMENTS:

(Attached)

6. COMMENTS

Senate Bill 7 is a copy of and reintroduction of Senate Bill No. 523 introduced by the Rules Committee in the Tenth Legislature, second session. Comments that were applicable at that time are still pertinent to the issue and are repeated again in total by various members of Headquarters Staff.

(WOLDSTAD) - The new Section 16.05.197, LIMITATIONS ON CONFISCATION OR FORFEITURE would, for all intents and purposes, eliminate the notion of forfeiture of vessels, aircraft or other motor vehicles used in the commission of crime against resources, plus curtails confiscation to the degree it would be foolhardy to even attempt such action. This legislation is an attempt by the commercial business person or common carrier to protect and shield any operator/owner from responsibility for the acts committed through the use of the vehicular equipment regardless of the operator. The Bill, in effect, destroys the present statutory provisions of Sec. 16.05.190, which has been in existence since 1959.

A common business practice that has been used most frequently is to place ownership of real property and equipment in a neutral name far removed from normal business jeopardy. Any guide or common carrier could place ownership of his aircraft or mobile equipment in the name of a spouse or relative and protect his equipment from both seizure and forfeiture as the state could not then establish that the owner or person legally in charge was a consenting party to unlawful acts or privy to information concerning unlawful acts.

Under present penalty systems, the value of the State resources often exceeds the maximum penalty allowed when resource violators are found guilty of unlawful acts. It is not uncommon for the fruits of an unlawful act in resources to far exceed the maximum penalty if apprehended.

The threat of seizure and possible forfeiture upon completion of legal procedures has caused an effective deterrent to be created. Passage of this Senate Bill would make a mockery of any progress made to this point for the benefit of a commercial operator at the expense of the resources.

(ROBERTS) - This bill would eliminate the deterrent effect that the present law offers. Paragraph (a) - There is no need for this paragraph. If the State does not feel that an operator of a vessel, airboat, riverboat, ATV, or a pilot of an aircraft does not have knowledge that a crime was committed, he will not be prosecuted. If there is reasonable cause for prosecution and a conviction is obtained, it is at the discretion of the court as to whether the court will forfeit the air, land, or water vehicle used in committing the violation. The protection the sponsors of the Bill are seeking is a ready built into the existing law. It is not wise legislating to add additional language to any law that is already clear. Confusion is frequently the result of adding additional language.

Paragraph (b) - The response to this paragraph has to be pretty much the same as above. The court is not going to forfeit property used in committing a crime if that property was stolen from another individual and that individual was the legal owner at the time the property was stolen. Passage of this would make null and void 16.05.195(a)(2). The violator would simply claim he did not know who was using the equipment. "Persons unknown must have been using it without my permission."

6. COMMENTS

(ROBERTS, Cont.)

Paragraph (c) - All guides, commercial fishermen and transporters would have their equipment registered in someone else's name. No longer would the court be able to levy a penalty that would befit the crime of taking game or fish illegally for commercial purposes. If this amendment is passed we would have no alternative but to seek legislation that would make it a felony to violate a law or regulation that covers commercial fishing or guiding.

The net profits from successful violators range from a few thousand dollars to hundreds of thousands of dollars for one individual. By successful violation I mean two things: (1) a violation that is not detected and hence no prosecution, and (2) where/if a prosecution is forthcoming, the penalty is so slight in comparison to the illegal profits that it makes violating worthwhile.

Paragraph (d) - This would automatically reduce the penalty to the violator. The lien holder would receive the forfeited equipment, sell it to cover his interest and the defendant would be relieved of the penalty. It is the obligation of the individual who obtains the loan to pay the lien holder through agreed monthly payments, insurance coverage, etc., or the lien holder could take legal action to obtain the balance due.

If it is solely the desire of the sponsor to protect the lending institutions, then I feel that an amendment to the Commerce laws would be more appropriate. Laws for the protection of our wildlife resources should not be weakened.

It is always interesting to me to notice that the honest fisherman, guide, common carrier, citizen is not the one to seek changes to penalty laws. It is always those whose intent it is to violate the law. The honest operator has nothing to fear.

(NUTGRASS) - There have been many incidences where vessels have been found in closed waters to commercial fishing. Location, pictures and officer observations established the illegal act; however, due to circumstances beyond the officers' control, personal contact with the unidentified perpetrators was not possible. Therefore, only the vessel found in the illegal act was positively identified. The State had no legal recourse until it was recognized and State Legislature enacted a statute that provides the State with the tool of in Rem action against an item found in the commission of an illegal act.

We are looking at a diminishing resource, the value which is incalculable. The fleets are modern and highly mobile and efficient in their ability and method of taking fishery resources of this State.

The issue here is not only economical protection for persons who would loan money or lease equipment to individuals who through their business endeavors take fish and game resources of this State, contrary to State statutes and regulations.

The State has an invested interest and responsibility to manage and protect her fish and game resources. Section 197 is not in the best interest of the State's resources or the people of this State or any state in the U. S.. Each day articles are found in newspapers reporting the 200 mile limit and the government's increasing patrol vehicles to Alaska for the protection of the fishery resources. It makes little sense that the fishery resources are protected from 3 miles to 200 miles, and yet inside 3 miles little or no concern is shown.

6. COMMENTS

(NUTGRASS, Cont.)

This Bill shows no concern for the resources of this State and is directed towards a special interest group more concerned with their economical protection, which in turn provides protection for those and the equipment to commit illegal acts, and the State has no redress.

The same equipment could repeatedly be found in violation and because of the State's inability to establish the owner's knowledge of the illegal acts could not take legal action against the equipment nor prevent the equipment in the present or future from decimating the State's valuable resources.

In regards to an illegal guide operation, the aircraft that would be used for taking game illegally could never be forfeited under Section 197 because the guide, to insure his aircraft, would not fly it or have his name on the registration as owner.

(SHARP) - The proposed amendments to A.S. 16.05.190 and the addition of Section No. 2, 16.05.197(a)(b)(c)(d) relating to prohibiting confiscation or forfeitures in certain instances of vessels, aircraft or motor vehicles used in violation of fish and game laws or regulations is almost totally unacceptable for purposes of effective fish and game law enforcement.

1. The opportunity to confiscate or forfeit equipment apprehended in violations of fish and game laws or regulations, whether a common carrier or private person, is a powerful deterrent in violating these laws. In most cases, the only deterrent. To prove that the owner or person legally in charge of the equipment consented or had knowledge that the equipment was to be used in violation of the laws or regulations is unrealistic to expect. In every case, the owner or person in charge of the equipment would undoubtedly deny knowledge that the equipment was to be used illegally. Any reasonable person would do the same since if he admitted he knew that it was to be used illegally it could or would lead to the confiscation or forfeiture of the equipment. Proving prior knowledge would be almost impossible. The person operating that equipment must be the responsible person. If a vessel, aircraft or motor vehicle is used without the owner's consent to knowledge and is confiscated or forfeited the person who used that equipment in violation of laws or regulations should be civilly liable to the owner, not the State. This also applies to Sections (a), (c) and (d).

A comment on Section (d). If I were to use my car in violation of laws or regulations and a bank is the lienholder, my car should be subject to confiscation and forfeiture by the State. If it is forfeited to the State, I still owe the lienholder the full amount I owe. They are not the loser, I am. That makes me think twice before I use the equipment in violation of the law. A strong preventative force.

Under Section (b) of 16.05.197, it is the only section I agree with. If the vessel, aircraft or vehicle is stolen or otherwise unlawfully in possession of someone who is apprehended violating the law while using that equipment, the owner or lienholder should not be penalized. However, where it can be shown that the person who unlawfully possessed and used that equipment in violation of the law is financially able to make restitution to the lawful owner, the equipment should be subject to forfeiture, and the court in ruling make that person liable for payment to the owner for the full value of that equipment.

6. COMMENTS

(TETZLAFF) - Strongly object to the amendment of 16.05.190 in House Bill 7. Particularly if what they're saying is any and all vessels owned by canneries, used by another and caught in a violation would not be subject to forfeiture. Or any and all vehicles and/or equipment leased, rented or borrowed and used by another would not be subject to forfeiture. We would be losing too much and gaining nothing.

If adopted, I'm sure we would see all vessels or vehicles would soon be owned by others - at least on paper - taking the teeth right out of the forfeiture statute. One would think that with the demand on our fish and wildlife resources of today, and the serious condition/populations, nwe would have law makers tightening up on our statutes and regulations, not relaxing them.

AS A RESULT OF A TRIAL HELD IN KODIAK ON 1-17-79 BEFORE SUPERIOR COURT JUDGE ROY MADSEN, GEORGE L. GATTER AND WILLIAM FIORENTINO WERE FOUND GUILTY OF COMMERCIAL SALMON FISHING IN CLOSED WATERS. THE TRIAL WAS HELD AS A RESULT OF THE P/V SHARA LEE BEING SIGHTED AND SEIZED BY OFFICERS OF THE P/V VIGILANT IN JULY, 1978. AT THE TIME OF THE SEIZURE, THE SHARA LEE WAS FISHING 3 1/4 MILES INSIDE THE CLOSURE MARKERS ON THE KVICHAK RIVER IN BRISTOL BAY. DURING THE TRIAL, THE DEFENDANTS CLAIMED THEY HAD FALLEN ASLEEP AND JUDGE MADSEN WARNED THAT THE LAW IMPOSES A HIGH STANDARD OF CARE ON FISHERMEN TO COMPLY WITH COMMERCIAL FISH REGULATIONS.

CONTINUED ON NEXT PAGE...

SP17/RLR

SP17 0241 08.28 01/20/79 JP01 0039 08.14 01/22/79

PRESS RELEASE

PAGE 2

JANUARY 20, 1979

E DETACHMENT CONTINUED...

JUDGE MADSEN, IN SENTENCING GATTER AND FIORENTINO, STATED THIS WAS ONE OF THE WORST CASES TO COME BEFORE HIS COURT IN THE LAST THREE YEARS.

GEORGE GATTER'S COMMERCIAL SALMON FISHING PRIVILEGES WERE REVOKED FOR ONE YEAR AND HE WAS ALSO GIVEN A ONE YEAR SUSPENDED TAIL SENTENCE, FINE WITH \$5,000 SUSPENDED AND PUT ON PROBATION FOR FIVE YEARS.

STATE.

WILLIAM FIORENTINO, THE CREWMAN, WAS GIVEN A 30 DAY SUSPENDED TAIL SENTENCE, A \$5,000 FINE WITH \$2,500 SUSPENDED AND ONE YEARS PROBATION.

MADSEN ALSO STATED "

ARE NOT

CONTINUED ON NEXT PAGE...

SP17/RLR

STATE OF ALASKA

WAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

February 5, 1979

The Honorable Robert H. Zeigler, Sr.
Chairman Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: SB 7 (Judicial Forfeitures)

Dear Senator Zeigler:

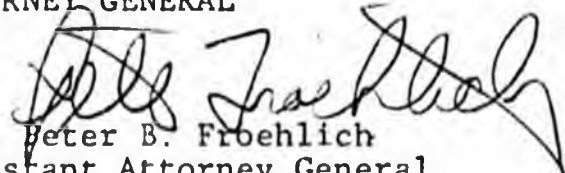
As I mentioned in my January 31, 1979 letter to you and as we discussed on that day, I have enclosed a proposed committee substitute for this bill. It appears to protect an innocent lienholder when equipment is forfeited while retaining forfeiture as a valuable deterrent remedy.

Assistant Attorneys General John Gissberg and Liza Fussner of Anchorage, who drafted the proposed substitute, will be in Juneau from noon February 6 until evening February 8 to testify and explain the proposal at any hearing scheduled during that time. As an alternative, they will also be in Juneau February 14 through 16. They have asked me to again relay their request to appear before the committee.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By:


Peter B. Froehlich
Assistant Attorney General

PBF:ams

Enclosure

cc: Senator Sumner

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

February 8, 1979

The Honorable Robert H. Zeigler, Sr.
Chairman Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: SB 7 (Judicial Forfeitures)

Dear Senator Zeigler:

After a meeting yesterday with Senator Sumner, we have made several relatively minor changes to the proposed committee substitute for this bill which I gave you last week. A copy of the resulting 2nd draft is attached.

The changes are in proposed AS 16.05.197(a) wherein "\$10,000" is changed to "\$5,000" and "15 days" and "10 days" are changed to "20 days" and in a new proposed AS 16.05.197(c) concerning the option of quick sale of a seized item.

I understand that a hearing on this bill is scheduled for Thursday, February 15 and I have so notified Don Roberts, and Assistant Attorneys General John Gissberg and Liza Fussner who will be coming from Anchorage to testify. Please let me know if the hearing day is changed or if I may be of any further assistance.

Thanks for your cooperation.

Sincerely,

AVIUM M. GROSS
ATTORNEY GENERAL

By: 
Peter B. Froehlich
Assistant Attorney General

PBF:ams

cc: Senator Sumner

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

January 31, 1979

The Honorable Robert H. Zeigler, Sr.
Chairman Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 7 (Judicial Forfeitures)

Dear Senator Zeigler:

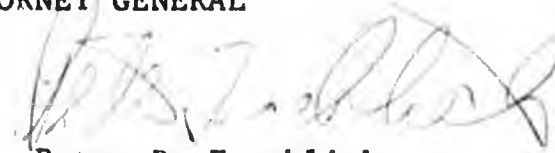
I learned yesterday that the proposed committee substitute for this bill, which is being drafted in the Anchorage Attorney General's Office at your request, is now only in rough draft form. Assistant Attorneys General John Gissberg and Liza Fussner, who are preparing the draft proposal, will be in Juneau February 6 thru 8 with a complete finished draft. One or both of them would like to testify before your committee at that time to explain the draft. If that is not possible, they will also be available February 14 thru 16.

Both of these attorneys, who have handled several forfeiture cases, are confident that innocent lienholders can be protected while still preserving the important deterrent effect of the forfeiture remedy.

Please contact me at 465-3684 regarding scheduling of another hearing on SB 7 or if I can offer any further assistance.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
Peter B. Froehlich
Assistant Attorney General

cc: John Gissberg

PBF:d1m

SENATE BILL 7....Senator Sumner...Relating to Judicial Forfeitures.

This bill attempts to protect an innocent party, a common carrier, or a lienholder from losing a motor vehicle, vessel or aircraft through judicial forfeiture, if that person has no knowledge of the violation committed.

The current law allows forfeiture of the vessel, motor vehicle, or aircraft regardless of whether the person who committed the violation owned the equipment or not.

Current law makes it difficult to obtain a loan on an aircraft since the lienholder may lose the aircraft if the purchaser commits a violation serious enough to cause forfeiture.

SECTIONAL ANALYSIS

Section 1. Amends AS 16.05.190, to include the new section, 16.05.197, and removes the archaic use of the word "rule".

Section 2. Adds a new section entitled "Limitations on confiscation or forfeiture."

- (a) Establishes that no vehicle, vessel or aircraft used as a common carrier may be confiscated and forfeited unless the owner or person legally in charge of the vessel, aircraft or other motor vehicle, was at the time of the illegal act, a consenting party or privy to it.
- (b) disallows forfeiture if the vehicle, vessel or aircraft was unlawfully in possession of the person committing the illegal act.
- (c) prohibits forfeiture unless the owner was a consulting party to the illegal act or privy to it.
- (d) Allows a person holding a lien, mortgage, or conditional sales contract on a vessel, vehicle, or aircraft to appear before the court in the proceeding for forfeiture to petition for remittance or mitigation of the forfeiture, and directs the court to remit or mitigate the forfeiture if the petitioner has interest in the vessel, aircraft or vehicle and had no knowledge that it would be used in or in aid of a violation of Title 16, or regulations adopted under Title 16.

SUGGESTIONS

1. In order to accomplish the intent of the bill, perhaps all forfeiture of vessels, aircraft, or motor vehicles should be eliminated, and penalties, both jail sentences and fines, should be strengthened. If a crime, no matter how serious, is committed with an automobile, the courts do not confiscate the automobile.
2. Language in Section (b) may need to be a little clearer.
3. Line 21, Page 2. You may want to change the word "shall" to "may".

PERSONS WHO SHOULD TESTIFY

1. Sponsor: Senator Sumner
2. Someone from the Dept. of Public Safety, Fish and Game enforcement Div.