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# CURRENT STATUTES COVERING

§ 11.45.010  
**COMPUTER** (Effective January 1, 1980)

CRIMINAL LAW

§ 11.45.055  
**CRIME**

Secs. 11.45.010 — 11.45.055.

Repealed by § 21 ch 166 SLA 1978, effective January 1, 1980.

**Cross references.** — As to riot, disorderly conduct, and related offenses, see AS 11.61.100 et seq. As to forfeiture of gambling devices or records, see AS 11.66.270.

**Editor's note.** — The repealed chapter derived from §§ 4-2-1, 65-10-1 — 65-10-3, ACLA 1949; § 1, ch. 87, SLA 1965; § 1, ch.

173, SLA 1968; §§ 1, 2, ch. 225, SLA 1970; § 2, ch. 207, SLA 1972; § 1, ch. 44, SLA 1973; § 1, ch. 63, SLA 1973.

**Legislative history reports.** — For report on ch. 173, SLA 1968 (HB 397 am 3), see 1968 House Journal, p. 76. For report on ch. 44, SLA 1973 (CSHB 290), see 1973 Senate Journal Supplement No. 13, p. 2.

## Chapter 46. Offenses Against Property.

### Article

1. Theft and Related Offenses (§§ 11.46.100 — 11.46.290)
2. Burglary and Criminal Trespass (§§ 11.46.300 — 11.46.350)
3. Arson, Criminal Mischief, and Related Offenses (§§ 11.46.400 — 11.46.490)
4. Forgery and Related Offenses (§§ 11.46.500 — 11.46.580)
5. Business and Commercial Offenses (§§ 11.46.600 — 11.46.730)
6. General Provisions (§§ 11.46.980 — 11.46.990)

**Effective date of chapter.** — Section 25, ch. 166, SLA 1978, provides: "This Act takes effect January 1, 1980."

**Editor's note.** — Section 23, ch. 166, SLA 1978, effective January 1, 1980, provides in subsection (a) that, except as otherwise provided, this chapter governs the construction of any offense committed on or after January 1, 1980, as well as the construction and application of any defense to a prosecution for an offense.

Section 23 of ch. 166, in subsection (f), provides that this chapter does not apply to

or govern the construction of and punishment for any offense committed before January 1, 1980, or the construction or application of any defense to a prosecution for the offense, and that an offense shall be construed and punished according to the law existing at the time of the commission of the offense in the same manner as if this chapter had not become law.

**Legislative history report.** — For report on ch. 166, SLA 1978 (HB 661), see 1978 Senate Journal Supplement No. 47.

### Article 1. Theft and Related Offenses.

- Section**
- 100. Theft defined
  - 110. Consolidation of theft offenses:
    - Pleading and proof
  - 120. Theft in the first degree
  - 130. Theft in the second degree
  - 140. Theft in the third degree
  - 150. Theft in the fourth degree
  - 160. Theft of lost or mislaid property
  - 180. Theft by deception
  - 190. Theft by receiving
  - 200. Theft of services

- Section**
- 210. Theft by failure to make required disposition of funds received or held
  - 220. Concealment of merchandise
  - 230. Reasonable detention as defense
  - 260. Removal of identification marks
  - 270. Unlawful possession
  - 280. Issuing a bad check
  - 285. Fraudulent use of a credit card
  - 290. Obtaining a credit card by fraudulent means

W. AMENDMENTS THRU 1980

(Effective January 1, 1980)

**Sec. 11.46.100. Theft defined.** A person commits theft if

(1) with intent to deprive another of property or to appropriate property of another to himself or a third person, he obtains the property of another;

(2) he commits theft of lost or mislaid property under § 160 of this chapter;

(3) he commits theft by deception under § 180 of this chapter;

(4) he commits theft by receiving under § 190 of this chapter;

(5) he commits theft of services under § 200 of this chapter; or

(6) he commits theft by failure to make required disposition of funds received or held under § 210 of this chapter. (§ 4 ch 166 SLA 1978)

**Editor's note.** — The cases cited in the note below were decided under former AS 11.20.140.

The "property of another" phrase in larceny statutes ordinarily refers to possession, not title, because the gravamen of the offense is the interference with another's possession of property. *Pulakis v. State*, Sup. Ct. Op. No. 649 (File No. 1108), 476 P.2d 474 (1970).

**Proof of ownership not required.** — The state need not prove, as an essential element of the crime of larceny, ownership of the property allegedly stolen. *Pulakis v. State*, Sup. Ct. Op. No. 649 (File No. 1108), 476 P.2d 474 (1970).

**Definition of "goods" under former larceny statute.** — Natural gas was included within the meaning of the word "goods." *Selman v. State*, Sup. Ct. Op. No. 302 (File No. 527), 406 P.2d 181 (1965), overruled on other grounds in *Whitton v. State*, Sup. Ct. Op. No. 661 (File No. 1153), 479 P.2d 302 (1970).

Electricity is included within the meaning of the word "goods." *Selman v. State*, Sup. Ct. Op. No. 302 (File No. 527), 406 P.2d 181 (1965), overruled on other grounds in *Whitton v. State*, Sup. Ct. Op. No. (File No. 1153), 479 P.2d 302 (1970).

Electricity can be the subject of larceny. *Selman v. State*, Sup. Ct. Op. No. 302 (File No. 527), 406 P.2d 181 (1965), overruled on other grounds in *Whitton v. State*, Sup. Ct. Op. No. (File No. 1153), 479 P.2d 302 (1970).

Former section required felonious intent on which to base a conviction. *Bowlby v. Daniels*, 17 Alas. 768 (1958).

Property stolen need not be for use of thief. — Nothing on the face of the former larceny section stated that the stolen property had to have been stolen for the use of the thief. *Perkins v. United States*, 16 Alas. 471, 237 F.2d 857 (9th Cir. 1956).

The wrongful taking of property of another constituted larceny although not

shown to be conversion for the use of the thief. *Perkins v. United States*, 16 Alas. 471, 237 F.2d 857 (9th Cir. 1956).

**Larceny of electricity and diversion of electricity not the same.** — A count charging larceny of electricity under the former larceny section was not a duplication of a charge contained in a count of unauthorized use or diversion of electricity under AS 42.20.030. *Selman v. State*, Sup. Ct. Op. No. 302 (File No. 527), 406 P.2d 181 (1965), overruled on other grounds in *Whitton v. State*, Sup. Ct. Op. No. 661 (File No. 1153), 479 P.2d 302 (1970).

**As the former required proof of intent.** — Where a count charged larceny of electricity, the state was obligated to prove a taking of electric current with the intent to permanently deprive the owner thereof. *Selman v. State*, Sup. Ct. Op. No. 302 (File No. 527), 406 P.2d 181 (1965), overruled on other grounds in *Whitton v. State*, Sup. Ct. Op. No. (File No. 1153), 479 P.2d 302 (1970).

**Larceny of salmon from fish trap.** — In a prosecution for larceny of salmon from a fish trap the question of whether there was ownership in the fish depended upon proofs at the trial since the fish when reduced to possession were subject to ownership. *Klemm v. United States*, 22 F.2d 977 (9th Cir. 1927).

**Sufficiency of evidence.** — The prosecution's evidence, which sufficiently established that the ring in question was taken without the consent of its possessor, was sufficient under Alaska's larceny statutes. *Pulakis v. State*, Sup. Ct. Op. No. 649 (File No. 1108), 476 P.2d 474 (1970).

For cases construing former AS 11.20.150, relating to larceny in building or vessel, see *Widermyre v. State*, Sup. Ct. Op. No. 122 (File No. 243), 377 P.2d 536 (1963); *Mahle v. State*, Sup. Ct. Op. No. 218 (File No. 433), 392 P.2d 19 (1964); *Stewart v. State*, Sup. Ct. Op. No. 457 (File No. 826), 438 P.2d 387 (1968); *Sidney v. State*, Sup.

Ct. Op. No. 607 (F. (1970); *Pulakis v. State*, Sup. Ct. Op. No. 1108), 476 P.2d 474 (1970); *Wortham v. State*, Sup. Ct. Op. No. 2452, 527 P.2d 11 (1974); *Sup. Ct. Op. No. P.2d 1016* (1977).  
Am. Jur., ALR 32 Am. Jur., Lar Jur., Public Offi Jur., Receiving S Intent to conv use or to the use of larceny, 12 A.

**Sec. 11.46.**

(a) Each instance constitutes the

(b) An act committed for the commission of a particular violation

(c) Proof of intent defined in § 11.46.100 based upon § 11.46.100

**Editor's note.** note below was 11.20.140.

**Sufficiency of indictment** under this section was held in *matter it stated clearly enough to prepare for trial in case of a future offense. Prejudicially controlling United States, (9th Cir. 1958)*

An indictment under the former section must be found that the accused, or by failing within the *Stapleton v. U.S.* 415 (9th Cir. 1961)

Where indictment with intent of the owner of the property is implicit in

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reasonable doubt, that the property found in possession of the accused was, in truth and in fact, the identical property which was stolen. A bare assertion that property in the hands of accused was similar property or property that looked like it, was not sufficient to establish such property as the stolen property. *Karn v. United States*, 11 Alas. 225, 158 F.2d 568 (9th Cir. 1946).

Requirements as to circumstantial evidence. — Where prosecution relied entirely upon circumstantial evidence for a conviction under the former larceny section, under such circumstances the evidence must not only be consistent with guilt, but inconsistent with every reasonable hypothesis of innocence. The evidence should be required to point so surely and unerringly to the guilt of the accused as to exclude every reasonable

hypothesis but that of guilt. *Karn v. United States*, 11 Alas. 225, 158 F.2d 568 (9th Cir. 1946).

In a prosecution under the former larceny section the evidence, while circumstantial, was clearly adequate and measured up to the standards which the court of appeals has laid down in such cases. *Yoho v. United States*, 14 Alas. 174, 202 F.2d 241 (9th Cir. 1953).

Prosecution could waive felony and prosecute for misdemeanor. — If on trial a misdemeanor (e.g., larceny) turned out to be a felony (e.g., robbery), then the prosecution could in such cases waive the felony, and prosecute only for the constituent misdemeanor, supposing the misdemeanor be proved. *Perkins v. United States*, 16 Alas. 471, 237 F.2d 857 (9th Cir. 1956).

**Sec. 11.46.120. Theft in the first degree.** (a) A person commits the crime of theft in the first degree if he commits theft as defined in § 100 of this chapter and the value of the property or services is \$25,000 or more.

(b) Theft in the first degree is a class B felony. (§ 4 ch 166 SLA 1978)

**Sec. 11.46.130. Theft in the second degree.** (a) A person commits the crime of theft in the second degree if he commits theft as defined in § 100 of this chapter and

(1) the value of the property or services is \$500 or more but less than \$25,000;

(2) the property is a firearm or explosive; or

(3) the property is taken from the person of another.

(b) Theft in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

**Sec. 11.46.140. Theft in the third degree.** (a) A person commits the crime of theft in the third degree if he commits theft as defined in § 100 of this chapter and

(1) the value of the property or services is \$50 or more but less than \$500; or

(2) the property is a credit card.

(b) Theft in the third degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

**Sec. 11.46.150. Theft in the fourth degree.** (a) A person commits the crime of theft in the fourth degree if he commits theft as defined in § 100 of this chapter and the value of the property or services is less than \$50.

(b) Theft in the fourth degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

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**Sec. 11.46.160. Theft of lost or mislaid property.** (a) A person commits theft of lost or mislaid property if he obtains property of another knowing that the property was lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient and he fails to take reasonable measures to restore the property to the owner with intent to deprive the owner of the property.

(b) As used in this section "reasonable measures" includes notifying the identified owner or a peace officer. (§ 4 ch 166 SLA 1978)

For cases construing former AS 11.20.260, see *State v. Campbell*, Sup. Ct. Op. No. 1149 (File No. 2294), 536 P.2d 105 (1975).

ALR reference. — Lost property as subject of larceny, 36 ALR 373.

**Sec. 11.46.180. Theft by deception.** (a) A person commits theft by deception if, with intent to deprive another of property or to appropriate property of another to himself or a third person, he obtains the property of another by deception.

(b) In a prosecution based on theft by deception, if the state seeks to prove that the defendant used deception by promising performance which he did not intend to perform or knew would not be performed, that intent or knowledge may not be established solely by or inferred solely from the fact that the promise was not performed.

(c) As used in this section, "deception" has the meaning ascribed to it in AS 11.81.900 but does not include falsity as to matters having no pecuniary significance or "puffing" by statements unlikely to deceive reasonable persons in the group addressed. (§ 4 ch 166 SLA 1978)

For cases construing former AS 11.20.360, relating to obtaining money or property by false pretenses, see *Griggs v. United States*, 168 F. 572 (9th Cir. 1908); *United States v. Pearce*, 7 Alas. 246 (1924); *Tempe v. United States*, 14 Alas. 587, 211 F.2d 73 (9th Cir.), cert. denied, 347 U.S. 1013, 74 S. Ct. 866, 98 L. Ed. 1136 (1954); *Bonney v. United States*, 17 Alas. 542, 254 F.2d 392 (9th Cir. 1958).

Am. Jur., ALR and C.J.S. references. — 22 Am. Jur., False Pretenses, § 1 et seq.; 23 Am. Jur., Fraud and Deceit, §§ 23 to 110; 24 Am. Jur., Fraudulent Conveyances, § 1 et seq.

Obtaining money for goods not intended to be delivered as false pretenses, 17 ALR 199.

Appropriation of property after obtaining possession by fraud as larceny, 26 ALR 381.

Larceny by appropriation of property, possession of which was obtained by impersonating owner thereof, 26 ALR 389.

Purchase of property on credit without intent to pay for it as larceny, 35 ALR 1336.

Criminal offense of obtaining money under false pretenses predicated upon receipt or claim of benefits under insurance policy, 135 ALR 1157.

Criminal charge predicated upon fraudulent obtaining of check, note, etc., or signature thereon, from a person executing the same, 141 ALR 210.

Use of fictitious or assumed name, 49 ALR2d 852.

37 C.J.S., Fraud, § 154; 37 C.J.S., Fraudulent Conveyances, § 469.

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(2) as soon as reasonably practical after the entry, use, or occupancy, the person contacts the owner of the premises, the owner's agent or, if the owner is unknown, the nearest state or local police agency, and makes a report of the time of the entry, use, or occupancy and any damage to the premises or personal property, unless notice waiving necessity of the report is posted on the premises by the owner or the owner's agent. (§ 4 ch 166 SLA 1978)

**Sec. 11.46.350. Definition.** (a) As used in §§ 300 — 350 of this chapter, unless the context requires otherwise, "enter or remain unlawfully" means to

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so; or

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

(1) notice against trespass is personally communicated to him by the owner of the land or some other authorized person; or

(2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances. (§ 4 ch 166 SLA 1978)

**Article 3. Arson, Criminal Mischief, and Related Offenses.**

Section	Section
400. Arson in the first degree	— 482. Criminal mischief in the second degree
410. Arson in the second degree	— 484. Criminal mischief in the third degree
430. Criminally negligent burning	— 486. Criminal mischief in the fourth degree
450. Failure to control or report a dangerous fire	488. Littering
— 480. Criminal mischief in the first degree	490. Definitions

**Sec. 11.46.400. Arson in the first degree.** (a) A person commits the crime of arson in the first degree if he intentionally damages any property by starting a fire or causing an explosion and by that act recklessly places another person in danger of serious physical injury.

(b) Arson in the first degree is a class A felony. (§ 4 ch 166 SLA 1978)

For cases construing former first degree arson statute, see *Salinas v. United States*, 277 F.2d 914 (9th Cir. 1960); *Rank v. State*, Sup. Ct. Op. No. 92 (File No. 167), 373 P.2d 734 (1962), overruled on another point in *Shafer v. State*, Sup. Ct. Op. No. 563 (File No. 1034), 456 P.2d 466 (1969).

For case construing former second degree arson statute, see *Tarney v. State*, Sup. Ct. Op. No. 911 (File No. 1486), 512 P.2d 923 (1973).

Am. Jur., ALR and C.J.S. references. — 4 Am. Jur., Arson, § 1 et seq.

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Burning as element of offense, 1 ALR 1163.

Evidence of other offenses in prosecution for arson, 3 ALR 1544; 27 ALR 358; 63 ALR 605.

Criminal responsibility of one cooperating in offense of arson which he is incapable of committing personally, 5 ALR 783; 74 ALR 1111; 131 ALR 1323.

Ownership of property as affecting criminal liability for burning thereof, 17 ALR 1168.

Intent as essential element of crime of burning property to defraud insurer, 17 ALR 1180.

Vacancy or nonoccupancy of building as affecting its character as "dwelling" as regards arson, 44 ALR2d 1466.

6 C.J.S. Arson, §§ 1 to 5, 12.

**Sec. 11.46.410. Arson in the second degree.** (a) A person commits the crime of arson in the second degree if he intentionally damages a building by starting a fire or causing an explosion.

(b) In a prosecution under this section, it is an affirmative defense

(1) that no person other than the defendant had a possessory, proprietary, or security interest in the building or that all persons having such an interest consented to the defendant's conduct; and

(2) that the sole intent of the defendant was to damage or destroy the building for a lawful purpose.

(c) Arson in the second degree is a class B felony. (§ 4 ch 166 SLA 1978)

Cross reference. — See note to AS 11.46.400.

C.J.S. reference. — 6 C.J.S., Arson, §§ 1 to 5, 12.

**Sec. 11.46.430. Criminally negligent burning.** (a) A person commits the crime of criminally negligent burning if with criminal negligence he damages property of another by fire or explosion.

(b) Criminally negligent burning is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

**Sec. 11.46.450. Failure to control or report a dangerous fire.** (a) A person commits the crime of failure to control or report a dangerous fire if he knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measures to put out or control the fire, when he can do so without substantial risk to himself, or to give a prompt fire alarm if

(1) he knows that he is under an official, contractual, or other legal duty to prevent or combat the fire; or

(2) the fire was started by him, with his consent, or on property in his custody or control.

(b) Failure to control or report a dangerous fire is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

**Sec. 11.46.480. Criminal mischief in the first degree.** (a) A person commits the crime of criminal mischief in the first degree if, having no right to do so or any reasonable ground to believe he has such a right,

(1) with a service deals with or tamper with substantial

(2) with dangerous exceeding facility.

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(1) with intent to cause a substantial interruption or impairment of a service rendered to the public by a utility or by an organization which deals with emergencies involving danger to life or property, he damages or tampers with property of that utility or organization and causes substantial interruption or impairment of service to the public;

(2) with intent to damage property of another by the use of widely dangerous means, he damages property of another in an amount exceeding \$100,000 by the use of widely dangerous means; or

(3) he intentionally damages an oil or gas pipeline or supporting facility.

(b) Criminal mischief in the first degree is a class B felony. (§ 4 ch 166 SLA 1978)

Cross reference. — As to liability for destruction of property by minors, see AS 34.50.020. Am. Jur. reference. — 34 Am. Jur., Malicious Mischief, § 1 et seq.

**Sec. 11.46.482. Criminal mischief in the second degree.** (a) A person commits the crime of criminal mischief in the second degree if, having no right to do so or any reasonable ground to believe he has such a right,

(1) with intent to damage property of another, he damages property of another in an amount of \$500 or more;

(2) he tampers with an oil or gas pipeline or supporting facility or an airplane or helicopter with reckless disregard for the risk of harm to or loss of the property;

(3) he recklessly creates a risk of damage in an amount exceeding \$100,000 to property of another by the use of widely dangerous means; or

(4) he drives, tows away, or takes the propelled vehicle of another and damages the vehicle in an amount of \$500 or more or causes the owner to incur reasonable expenses of \$500 or more as a result of the loss of use of the vehicle.

(b) Criminal mischief in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

Cross reference. — As to liability for destruction of property by minors, see AS 34.50.020. Am. Jur. reference. — 34 Am. Jur., Malicious Mischief, § 1 et seq.

**Sec. 11.46.484. Criminal mischief in the third degree.** (a) A person commits the crime of criminal mischief in the third degree if, having no right to do so or any reasonable ground to believe he has such a right.

(1) with intent to damage property of another, he damages property of another in an amount of \$50 or more but less than \$500;

(2) he drives, tows away, or takes the propelled vehicle of another; or

(3) having custody of a propelled vehicle under a written agreement with the owner of the vehicle by which he has agreed to return the

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vehicle to the owner at a specified time, he knowingly retains or withholds possession of the vehicle without the consent of the owner for so long a period beyond the time specified as to render the retention or possession of the vehicle an unreasonable deviation from the agreement.

(b) Criminal mischief in the third degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

**Cross reference.** — As to liability for destruction of property by minors, see AS 34.50.020. **Am. Jur. reference.** — 34 Am. Jur., Malicious Mischief, § 1 et seq.

**Sec. 11.46.486. Criminal mischief in the fourth degree.** (a) A person commits the crime of criminal mischief in the fourth degree if, having no right to do so or any reasonable ground to believe he has such a right,

(1) with reckless disregard for the risk of harm to or loss of the property or with intent to cause substantial inconvenience to another, he tampers with property of another;

(2) with intent to damage property of another, he damages property of another in an amount less than \$50; or

(3) he rides in a propelled vehicle knowing it has been stolen or that it is being used in violation of § 482(a)(4) or 484(a)(2) of this chapter.

(b) Criminal mischief in the fourth degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

**Cross reference.** — As to liability for destruction of property by minors, see AS 34.50.020. **Am. Jur. reference.** — 34 Am. Jur., Malicious Mischief, § 1 et seq.

**Sec. 11.46.488. Littering.** (a) A person commits the offense of littering if without permission he places or throws litter on any public or private property or in any public or private waters and does not immediately remove it.

(b) As used in this section, "litter" means any rubbish, refuse, or debris of whatever kind or description, whether or not it is of value.

(c) Littering is a violation. (§ 4 ch 166 SLA 1978)

**Cross reference.** — As to posting of law against littering, see AS 19.17.010.

**Sec. 11.46.490. Definitions.** AS used in §§ 400—490 of this chapter, unless the context requires otherwise,

(1) "oil or gas pipeline or supporting facilities" means real property or tangible personal property used in the exploration for, production or refining of, or pipeline transportation of oil, gas, or gas liquids, except for property used solely in the retail distribution of oil or gas;

(2) "tamper" means to interfere with something improperly, meddle with it, or make unwarranted alterations to its existing condition;

**Sec. 11.46.320. Criminal trespass in the first degree.** (a) A person commits the crime of criminal trespass in the first degree if he enters or remains unlawfully

- (1) on land with intent to commit a crime on the land; or
- (2) in a dwelling.

(b) Criminal trespass in the first degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978; am § 12 ch 102 SLA 1980)

**Effect of amendment.** — The 1980 amendment, effective June 21, 1980, substituted "land" for "real property" at the beginning of paragraph (1) in subsection (a), and substituted "the land" for "that real property" near the end of paragraph (1) in subsection (a).

**Legislative history report.** — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

**Article 3. Arson, Criminal Mischief, and Related Offenses.**

**Section**

- 482. Criminal mischief in the second degree
- 484. Criminal mischief in the third degree
- 488. [Repealed]

**Sec. 11.46.400. Arson in the first degree.**

For cases construing former first degree arson statute, etc.

In accord with original. See *Stunbaugh v. State*, Sup. Ct. Op. No. 1919 (File No. 3937), 599 P.2d 166 (1979).

For case construing former second degree arson statute, etc.

In accord with original. See *Jacynth v. State*, Sup. Ct. Op. No. 1829 (File No. 3507), 593 P.2d 263 (1979).

**Sec. 11.46.480. Criminal mischief in the first degree.**

Stated in *Wertz v. State*, Sup. Ct. Op. No. 2069 (File No. 4683), 611 P.2d 8 (1980).

**Sec. 11.46.481. Criminal mischief in the second degree.** (a) A person commits the crime of criminal mischief in the second degree if, having no right to do so or any reasonable ground to believe he has such a right,

- (1) with intent to damage property of another, he damages property of another in an amount of \$500 or more;
  - (2) he tampers with an oil or gas pipeline or supporting facility or an airplane or helicopter with reckless disregard for the risk of harm to or loss of the property;
  - (3) he recklessly creates a risk of damage in an amount exceeding \$100,000 to property of another by the use of widely dangerous means;
- or

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(4) he drives, tows away, or takes the propelled vehicle of another and the vehicle or any other property of another is damaged or the owner incurs reasonable expenses as a result of the loss of use of the vehicle in a total amount of \$500 or more.

(b) Criminal mischief in the second degree is a class C felony. (§ 4 ch 166 SLA 1978; am § 13 ch 102 SLA 1980)

**Effect of amendment.** — The 1980 amendment, effective June 21, 1980, rewrote paragraph (4) in subsection (a).

**Legislative history report.** — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 4, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

For case construing former AS 11.20.520, making malicious destruction

of property a crime, see *Hensel v. State*, Sup. Ct. Op. No. 1983 (File No. 2432), 604 P.2d 222 (1979).

For case construing former AS 11.20.525, making stealing, removing or damaging parts of an aircraft a crime, see *Catlett v. State*, Sup. Ct. Op. No. 1752 (File No. 3213), 585 P.2d 553 (1978).

Stated in *Wertz v. State*, Sup. Ct. Op. No. 2069 (File No. 4683), 611 P.2d 8 (1980).

**Sec. 11.46.484. Criminal mischief in the third degree.** (a) A person commits the crime of criminal mischief in the third degree if, having no right to do so or any reasonable ground to believe he has such a right

(1) with intent to damage property of another, he damages property of another in an amount of \$50 or more but less than \$500;

(2) he drives, tows away, or takes the propelled vehicle of another;

(3) having custody of a propelled vehicle under a written agreement with the owner of the vehicle by which he has agreed to return the vehicle to the owner at a specified time, he knowingly retains or withholds possession of the vehicle without the consent of the owner for so long a period beyond the time specified as to render the retention or possession of the vehicle an unreasonable deviation from the agreement; or

(4) he tampers with a fire protection device in a building, which is a public place.

(b) Criminal mischief in the third degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978; am § 1 ch 18 SLA 1979)

**Effect of amendment.** — The 1979 amendment added paragraph (4) to subsection (a).

For case construing former AS 11.20.521, making stealing, removing or damaging parts of an aircraft a crime, see *Catlett v. State*, Sup. Ct. Op. No. 1752 (File No. 3213), 585 P.2d 553 (1978).

For case construing former AS 28.35.010, prohibiting driving a vehicle without owner's consent, see *State v. G.L.P.*, Sup. Ct. Op. No. 1786 (File No. 2978), 590 P.2d 65 (1979); *Bell v. State*, Sup. Ct. Op. No. 1885 (File No. 3612), 598 P.2d 908 (1979).

(Effective January 1, 1980)

(3) "utility" means an enterprise, whether publicly or privately owned or operated, which provides gas, electric, steam, water, sewer, or communications service, and any common carrier;

(4) "widely dangerous means" means any difficult-to-confine substance, force, or other means capable of causing widespread damage, including fire, explosion, avalanche, poison, radioactive material, bacteria, collapse of a building, or flood. (§ 4 ch 166 SLA 1978)

**Article 4. Forgery and Related Offense.**

<p><b>Section</b>                  - 500. Forgery in the first degree                  505. Forgery in the second degree                  - 510. Forgery in the third degree                  520. Criminal possession of a forgery device                  530. Criminal simulation</p>	<p><b>Section</b>                  540. Obtaining a signature by deception                  550. Offering a false instrument for recording                  570. Criminal impersonation                  - 580. Definitions</p>
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**Sec. 11.46.500. Forgery in the first degree.** (a) A person commits the crime of forgery in the first degree if he violates § 510 of this chapter and the written instrument is or purports to be

(1) part of an issue of money, securities, postage, revenue stamps, or other valuable instruments issued by a government or governmental agency; or

(2) part of an issue of stock, bonds, or other instruments representing interests in or claims against an organization or its property.

(b) Forgery in the first degree is a class B felony. (§ 4 ch. 166 SLA 1978)

For cases construing former law relating to forgery and counterfeiting, see notes AS 11.46.505 and AS 11.46.510.

**Sec. 11.46.505. Forgery in the second degree.** (a) A person commits the crime of forgery in the second degree if he violates § 510 of this chapter and the instrument is or purports to be

(1) a deed, will, codicil, contract, assignment, negotiable or other commercial instrument, or other document which does or may evidence, create, transfer, alter, terminate, or otherwise affect a legal right, interest, obligation, or status; or

(2) a public record.

(b) Forgery in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

**Editor's note.** — The cases cited in the note below were decided under former AS 11.25.010 and 11.25.020.

As to forgery generally, see note to AS 11.46.510.

Where defendant presented two checks for payment and was guilty of obtaining money by false pretenses and forgery, even though the separate counts for each check represented two distinct acts (the

forgery of the endorsement and the presentation of the check for payment), the conduct as to each check constitutes one transaction with a single intent to defraud; therefore, duplicate sentencing is illegal. *Black v. State*, Sup. Ct. Op. No. 1506 (File No. 3327), 569 P.2d 804 (1977).

**Evidence showing probable cause.** — For evidence showing probable cause for the belief that person using credit card was guilty of forgery or uttering a forged instrument, see *McCoy v. State*, Sup. Ct. Op. No. 750 (File No. 1316), 491 P.2d 127 (1971).

**Testimony supported inference that defendant lacked authority to sign and cash check.** — See *Martin v. State*, Sup. Ct. Op. No. 991 (File No. 1820), 517 P.2d 1399 (1974).

**Sentence of 18 months for attempting to pass forged check with intent to defraud held not excessive.** — See *Perrin v. State*, Sup. Ct. Op. No. 1213 (File No. 2572), 543 P.2d 413 (1975).

**Sentence held excessive.** — Where defendant was guilty of obtaining money

by false pretenses and forgery based on the presentation of two checks, the sentence of 15 years is excessive. The judge was clearly mistaken in imposing such a lengthy sentence. *Black v. State*, Sup. Ct. Op. No. 1506 (File No. 3327), 569 P.2d 804 (1977).

**For cases construing former statute relating to forgery of record or certificate and uttering forged instrument,** see *Brandon v. United States*, 13 Alas. 372, 190 F.2d 175 (9th Cir. 1951); *Ing. v. United States*, 278 F.2d 362 (9th Cir. 1960); *Chambers v. State*, Sup. Ct. Op. No. 237 (File No. 416), 394 P.2d 778 (1964); *McCoy v. State*, Sup. Ct. Op. No. 750 (File No. 1316), 491 P.2d 127 (1971).

**Am. Jur., ALR and C.J.S. references.** — 14 Am. Jur., Counterfeiting, § 1 et seq.; 23 Am. Jur., Forgery, § 1 et seq.

Altering receipt, etc., 25 ALR 1058.

Filling in blanks, 87 ALR 1169.

Altering written instrument to conform to actual intention, 93 ALR 864.

Bar of limitations, 137 ALR 293.

20 C.J.S., Counterfeiting, §§ 4 to 12. 37 C.J.S., Forgery, §§ 1 to 42.

**Sec. 11.46.510. Forgery in the third degree.** (a) A person commits the crime of forgery in the third degree if, with intent to defraud, he

- (1) falsely makes, completes, or alters a written instrument;
- (2) knowingly possesses a forged instrument; or
- (3) knowingly utters a forged instrument.

(b) Forgery in the third degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

**Editor's note.** — *Morrison v. State*, Sup. Ct. Op. No. 609 (File No. 1139), 469 P.2d 125 (1970), cited below, was decided under former AS 11.25.020.

**Sufficiency of evidence.** — Evidence was sufficient to sustain defendant's conviction of the crime of forgery. *Morrison v. State*, Sup. Ct. Op. No. 609 (File No. 1139), 469 P.2d 125 (1970).

**Common law.** — Forgery, at the common law, is the false making or materially altering, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability. *Morrison v. State*, Sup. Ct. Op. No. 609 (File No. 1139), 469 P.2d 125 (1970).

**What constitutes forgery.** — The signing of a fictitious name to an instrument with fraudulent intent constitutes forgery. *Morrison v. State*, Sup. Ct. Op. No. 609 (File No. 1139), 469 P.2d 125 (1970).

The crime of forgery can be committed by signing an instrument in a fictitious or assumed name with intent to defraud, even though the statute under which the prosecution is brought makes no specific reference to the use of a fictitious or assumed name. *Morrison v. State*, Sup. Ct. Op. No. 609 (File No. 1139), 469 P.2d 125 (1970).

The signing of a fictitious name, with fraudulent intent, is as much a forgery as if the name used was that of an existing person. The public mischief, i.e., the legal tendency to defraud, is equally great in either event. *Morrison v. State*, Sup. Ct. Op. No. 609 (File No. 1139), 469 P.2d 125 (1970).

The essential elements of forgery are (1) false making of some instrument in writing; (2) a fraudulent intent; (3) an instrument apparently capable of effecting a fraud. *Morrison v. State*, Sup. Ct. Op. No. 609 (File No. 1139), 469 P.2d 125 (1970).

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to defraud, he causes another to sign or execute a written instrument by deception.

(b) Obtaining a signature by deception is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

**ALR reference.** — Procuring signature by fraud, 14 ALR 316.

**Sec. 11.46.550. Offering a false instrument for recording.** (a) A person commits the crime of offering a false instrument for recording if, knowing that a written instrument relating to or affecting property or directly affecting a contractual relationship contains a false statement of false information, and with intent to defraud, he presents or offers it to a public office or a public servant intending that it be registered, filed, or recorded or become a part of the records of that public office or public servant.

(b) Offering a false instrument for recording is a class C felony. (§ 4 ch 166 SLA 1978)

**Proof of forgery by showing instruments presented for recording.** — The state proved the uttering or publishing of forged instruments by showing that they were presented to the recording office with a representation that they were genuine. *Chambers v. State*, Sup. Ct. Op. No. 237

(File No. 416), 394 P.2d 778 (1964), cert. denied, 379 U.S. 971, 85 S. Ct. 669, 13 L. Ed. 2d 563 (1965), overruled on other grounds in *Whitton v. State*, Sup. Ct. Op. No. 661 (File No. 1153), 479 P.2d 302 (1970), decided under provisions of § 65-6-1 ACLA 1949.

**Sec. 11.46.570. Criminal impersonation.** (a) A person commits the crime of criminal impersonation if he

(1) assumes a false identity and does an act in his assumed character with intent to defraud; or

(2) pretends to be a representative of some person or organization and does an act in his pretended capacity with intent to defraud.

(b) Criminal impersonation is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

**Cross reference.** — As to impersonating a public servant, see AS 11.56.830.

**ALR reference.** — Use of fictitious or assumed name, 9 ALR 407.

**Sec. 11.46.580. Definitions.** (a) In §§ 500 — 580 of this chapter, unless the context requires otherwise.

(1) to "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;

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(2) to "falsely complete" a written instrument means to transform, by adding, inserting, or changing matter, an incomplete written instrument into a complete one without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;

(3) to "falsely make" a written instrument means to make or draw a complete or incomplete written instrument which purports to be an authentic creation of its ostensible maker, but which is not, either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing of the instrument.

(b) In §§ 500 — 580 of this chapter,

(1) "forged instrument" means a written instrument which has been falsely made, completed, or altered;

(2) "utter" means to issue, deliver, publish, circulate, disseminate, transfer, or tender a written instrument or other object to another;

(3) "written instrument" means a paper, document, instrument, electronic recording, or article containing written or printed matter or the equivalent, whether complete or incomplete, used for the purpose of reciting, embodying, conveying, or recording information or constituting a symbol or evidence of value, right, privilege, or identification, which is capable of being used to the advantage or disadvantage of some person. (§ 4 ch 166 SLA 1978)

#### Article 5. Business and Commercial Offenses.

##### Section

600. Scheme to defraud  
620. Misapplication of property  
630. Falsifying business records  
660. Commercial bribe receiving  
670. Commercial bribery

##### Section

710. Deceptive business practices  
720. Misrepresentation of use of a propelled vehicle  
730. Defrauding creditors

**Sec. 11.46.600. Scheme to defraud.** (a) A person commits the crime of scheme to defraud if he

(1) engages in conduct constituting a scheme

(A) to defraud five or more persons;

(B) to obtain property or services from five or more persons by false or fraudulent pretense, representation, or promise; or

(C) to obtain \$10,000 or more from one or more persons; and

(2) obtains property or services in accordance with the scheme.

(b) Scheme to defraud is a class B felony. (§ 4 ch 166 SLA 1978)

**Sec. 11.46.620. Misapplication of property.** (a) A person commits the crime of misapplication of property if he knowingly misapplies property that has been entrusted to him as a fiduciary or that is property of the government or a financial institution.

**Sec. 11.81.630. Intoxication as a defense.**

## DECISIONS UNDER PRIOR LAW

**Intoxication considered as to specific intent.** — Under former AS 11.70.030, intoxication could be considered as to intent only when the intent required was so-called specific intent. *Kimoktoak v. State*, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978).

**And where purpose or motive was criminal element.** — Former AS 11.70.030 permitted a jury to consider intoxication where purpose or motive was an element of the crime charged. *Kimoktoak v. State*, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978).

**Knowledge.** — Where one is charged with failure to render assistance under AS 28.35.060, and where there is evidence of intoxication, the jury may consider the fact that the accused was intoxicated in

determining whether he had the requisite knowledge. *Kimoktoak v. State*, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978).

**State of mind created, etc.**

The concept of voluntariness in intoxication-as-defense statute is separate from an insanity defense which contemplates relief from criminal responsibility for lack of substantial capacity. The compulsion to drink which results from chronic alcoholism should not be a question of "voluntariness" under the intoxication-as-defense statute, but it should be considered in determining whether an insanity defense is applicable. *O'Leary v. State*, Sup. Ct. Op. No. 2003 (File No. 3466), P.2d (1979).

**Article 6. Definitions.**

## Section

## 900. Definitions

**Sec. 11.81.900. Definitions.**

(b) As used in this title, unless otherwise specified or unless the context requires otherwise,

(1) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

(2) "benefit" means a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary;

(3) "building", in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a separate building;

(4) "cannabis" has the meaning ascribed to it in AS 17.12.150;

(5) "conduct" means an act or omission and its accompanying mental state;

(6) "controlled substance" means

(A) a narcotic drug as defined in AS 17.10.230; or

(31) "misdemeanor" means a crime for which a sentence of imprisonment for a term of more than one year may not be imposed;

(32) "nondeadly force" means force other than deadly force;

(33) "offense" means conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation;

(34) "official detention" means custody, arrest, surrender in lieu of arrest, or confinement under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release;

(35) "official proceeding" means a proceeding heard before a legislative, judicial, administrative, or other governmental body or official authorized to hear evidence under oath;

(36) "omission" means a failure to perform an act for which a duty of performance is imposed by law;

(37) "organization" means a legal entity, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, society, union, club, church, or any other group of persons organized for any purpose;

(38) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders;

(39) "person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality;

(40) "physical injury" means a physical pain or an impairment of physical condition;

(41) "possess" means having physical possession or the exercise of dominion or control over property;

(42) "premises" means real property and any building;

(43) "propelled vehicle" means a device upon which or by which a person or property is or may be transported, and which is self-propelled, including automobiles, vessels, airplanes, motorcycles, snow machines, all-terrain vehicles, sailboats, and construction equipment;

(44) "property" means an article, substance, or thing of value, including money, tangible and intangible personal property, real property, a credit card, choses-in-action, and evidence of debt or of contract, a commodity of public utility such as gas, electricity, steam, or water constitutes property but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment is considered a rendition of a service rather than a sale or delivery of property;

(45) "public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence:

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(46) "public record" means a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card or other document of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by any agency, municipality, or any body subject to the open meeting provision of AS 44.62.310, as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the state or municipality or because of the informational value in it; it also includes staff manuals and instructions to staff that affect the public;

(47) "public servant" means each of the following, whether compensated or not, but does not include jurors or witnesses:

(A) an officer or employee of the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state, including legislators, members of the judiciary, and peace officers;

(B) a person who participates as an advisor, consultant, or assistant at the request or direction of the state, a municipality or other political subdivision of the state, or a governmental instrumentality;

(C) a person who serves as a member of the board or commission created by statute or by legislative, judicial, or administrative action by the state, a municipality or other political subdivision of the state, or a governmental instrumentality;

(D) a person nominated, elected, appointed, employed, or designated to act in a capacity defined in (A) — (C) of this paragraph, but who does not occupy the position;

(48) a "renunciation" is not "voluntary and complete" if it is substantially motivated, in whole or in part, by

(A) a belief that circumstances exist which increase the probability of detection of apprehension of the defendant or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or

(B) a decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective;

(49) "serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of a body member or organ, or physical injury which unlawfully terminates a pregnancy;

(50) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and the supplying of equipment for use;

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PROPOSED AMENDMENT TO PROPOSED CSHB 428

Page 1, ls. 12-15.

Sec. 09.50.450. CONDITIONS PRECEDENT TO MAINTENANCE OF LITIGATION. (a) A person may not file an action seeking to review state action on a license or permit for the construction or operation of a facility, or a disposal of interest in state land, unless the person

Page 1, l. 26.

license or permit for the construction or operation of a facility, or a disposal of an interest in state land, whether or

Page 2, ls. 2-3.

require a person seeking to review state action on a license or permit for the construction or operation of a facility, or a disposal of an interest in state land, to furnish security in the

Insert new Sec. 09.50.510 (1), and renumber existing subsections:

(1) "facility" means any onshore or offshore structure, improvement or land use, including the exploration for or extraction of minerals, and the harvesting of timber or other natural resources;

Page 3, ls. 17-18

tion, or conditioning of a state license or permit for the construction or operation of a facility, and the disposal of an interest in state land.

1 PROPOSED JUDICIARY CS  
2 HOUSE BILL NO. 428  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 TWELFTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to litigation involving state  
7 actions; and amending Rules 602 and 603 of the Rules  
8 of Appellate Procedure."

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

10 \* Section 1. AS 09.50 is amended by adding new sections to read:

11 ARTICLE 7. LITIGATION INVOLVING STATE ACTION.

12 Sec. 09.50.450. CONDITIONS PRECEDENT TO MAINTENANCE OF LITIGA-  
13 TION. (a) A person may not file an action seeking to review state  
14 action on a license, permit or disposal of an interest in state land  
15 unless the person

16 (1) has raised and supported the issues presented to the  
17 agency charged with the responsibility for the state action at each  
18 available opportunity, and has requested the state agency to undertake  
19 the alternative action sought;

20 (2) demonstrates that the state action will cause non-  
21 speculative personal injury in fact to that person and that  
22 substantial likelihood of the injury exists; and

23 (3) files a timely notice of appeal of the state action  
24 under Rule of Appellate Procedure 602. An action for declaratory or  
25 injunctive relief is not available to review state action on a  
26 license, permit or disposal of an interest in state land, whether or  
27 not the person was a party to the administrative proceeding.

28 (b) The requirements of (a) of this section are jurisdictional.

29 Sec. 09.50.460. MOTION FOR SECURITY. (a) Upon motion, and

1 except as provided in Rule of Appellate Procedure 209, the court shall  
2 require a person seeking to review state action on a license, permit  
3 or disposal of an interest in state land to furnish security in the  
4 amount determined under AS 09.50.470, unless the person demonstrates a  
5 substantial likelihood of prevailing on the appeal. Security under  
6 this subsection shall be in lieu of the bond required by Rules of  
7 Appellate Procedure 602(c) and 603(a).

8 (b) A motion under this section shall be made within 30 days of  
9 the service on the state of the notice of appeal served under Rule of  
10 Appellate Procedure 602.

11 (c) Within 30 days after an order of a court granting interven-  
12 tion by the proposed permittee, licensee or recipient as an appellee  
13 in an appeal of state action, the intervenor may bring a motion under  
14 this section.

15 (d) For good cause the court may extend the 30-day period under  
16 (b) or (c) of this section for not more than 30 additional days.

17 (e) If security required under this section is not furnished  
18 within a reasonable time as determined by the court, the appeal shall  
19 be dismissed.

20 Sec. 09.50.470. AMOUNT OF SECURITY. (a) The court shall set  
21 the amount of security requested by AS 09.50.460 taking into account

22 (1) damages which the moving party will sustain if delays  
23 occasioned by the appeal cause a breach of a contract or agreement  
24 entered into in good faith before the appeal was filed;

25 (2) extra costs which may be incurred by the moving party  
26 through inflation due to delay caused by pendency of the appeal; and

27 (3) other costs and damages which the moving party can show  
28 may occur as the result of the appeal, which shall include the costs  
29 of the appeal and attorney's fees.

1 (b) The amount of security set by the court may be changed from  
2 time to time in the discretion of the court, upon a motion showing  
3 that the security is excessive or inadequate. If a person fails to  
4 furnish additional security required by the court within a reasonable  
5 time as determined by the court, the appeal shall be dismissed.

6 Sec. 09.50.480. DISPOSITION OF SECURITY. When the appeal is  
7 terminated, the court shall dispose of the security furnished under  
8 AS 09.50.460 in accordance with the outcome of the appeal.

9 Sec. 09.50.500. STAY OF PROCEEDINGS. A motion for security made  
10 under AS 09.50.460 has the effect of staying proceedings in the appeal  
11 until the motion is disposed of.

12 Sec. 09.50.510. DEFINITIONS. In AS 09.50.450 - 09.50.520

13 (1) "state" includes a state department or agency in the  
14 executive branch, and a state board or commission;

15 (2) "state action" means an act done by or a decision made  
16 by the state, including the granting, denial, suspension, qualifica-  
17 tion, or conditioning of a state license or permit, and the disposal  
18 of an interest in state land.

19 \* Sec. 2. Section 1 of this Act has the effect of amending Rules 602  
20 and 603 of the Rules of Appellate Procedure by changing the procedures on  
21 certain appeals and bonds on appeal.

Original sponsor: Metcalfe

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 428 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to litigation involving state actions;  
7 and amending Rules 602 and 603 of the Rules of Appellate  
8 Procedure."

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

10 \* Section 1. AS 09.50 is amended by adding new sections to read:

11 ARTICLE 7. LITIGATION INVOLVING STATE ACTION.

12 Sec. 09.50.450. CONDITIONS PRECEDENT TO MAINTENANCE OF LITIGATION.

13 (a) A person may not file an action seeking to review state action on a  
14 license or permit for the construction or operation of a facility or a  
15 disposal of an interest in state land unless the person

16 (1) has raised and supported the issues presented to the  
17 agency charged with the responsibility for the state action at each  
18 available opportunity, and has requested the state agency to undertake  
19 the alternative action sought;

20 (2) demonstrates that the state action will cause nonspecula-  
21 tive injury in fact to that person and that substantial likelihood of  
22 the injury exists; and

23 (3) files a timely notice of appeal of the state action under  
24 Rule 602, Rules of Appellate Procedure.

25 (b) An action for declaratory or injunctive relief is not available  
26 to review state action on a license or permit for the construction or  
27 operation of a facility, or a disposal of an interest in state land,  
28 whether or not the person who seeks review was a party to a previous  
29 administrative proceeding on the license, permit or disposal.

1 (c) The requirements of (a) and (b) of this section are juris-  
2 dictional.

3 Sec. 09.50.460. MOTION FOR SECURITY. (a) Upon motion the court  
4 shall require a person seeking to review state action on a license or  
5 permit for the construction or operation of a facility, or a disposal of  
6 an interest in state land to furnish security in the amount determined  
7 under AS 09.50.470, unless the person demonstrates a substantial likeli-  
8 hood of prevailing on the appeal. Security under this subsection is in  
9 place of the bond required by Rules 602(c) and 603(a), Rules of Appellate  
10 Procedure.

11 (b) A motion under this section shall be made within 30 days of  
12 the service on the state of the notice of appeal served under Rule 602,  
13 Rules of Appellate Procedure.

14 (c) Within 30 days after an order of a court granting intervention  
15 by the proposed permittee, licensee, or recipient as an appellee in an  
16 appeal of state action, the intervenor may bring a motion under this  
17 section.

18 (d) For good cause the court may extend the 30-day period under  
19 (b) or (c) of this section for not more than 30 additional days.

20 (e) If security required under this section is not furnished  
21 within a reasonable time as determined by the court, the appeal shall be  
22 dismissed.

23 Sec. 09.50.470. AMOUNT OF SECURITY. (a) The court shall set the  
24 amount of security requested by AS 09.50.460 taking into account

25 (1) damages that the moving party will sustain if delays  
26 occasioned by the appeal cause a breach of a contract or agreement  
27 entered into in good faith before the appeal was filed;

28 (2) extra costs that may be incurred by the moving party  
29 through inflation due to delay caused by pendency of the appeal; and

1 (3) other costs and damages that the moving party can show  
2 may occur as the result of the appeal, which shall include the costs of  
3 the appeal and attorney fees.

4 (b) The amount of security set by the court may be changed from  
5 time to time in the discretion of the court, upon a motion showing that  
6 the security is excessive or inadequate. If a person fails to furnish  
7 additional security required by the court within a reasonable time as  
8 determined by the court, the appeal shall be dismissed.

9 Sec. 09.50.480. DISPOSTION OF SECURITY. When the appeal is termi-  
10 nated, the court shall dispose of the security furnished under AS 09.50.-  
11 460 in accordance with the outcome of the appeal.

12 Sec. 09.50.500. STAY OF PROCEEDINGS. A motion for security made  
13 under AS 09.50.460 has the effect of staying proceedings in the appeal  
14 until the motion is disposed of.

15 Sec. 09.50.510. DEFINITIONS. In AS 09.50.450 - 09.50.510

16 (1) "facility" means any onshore or offshore structure,  
17 improvement, or land use, including the exploration for or extraction of  
18 minerals, and the harvesting of timber or other natural resources;

19 (2) "state" includes a state department or agency in the  
20 executive branch, and a state board or commission;

21 (3) "state action" means an act done by or a decision made by  
22 the state, including the granting, denial, suspension, qualification, or  
23 conditioning of a state license or permit for the construction or opera-  
24 tion of a facility, and the disposal of an interest in state land.

25 \* Sec. 2. Section 1 of this Act has the effect of amending Rules 602 and  
26 603, Rules of Appellate Procedure, by changing the procedures on certain  
27 appeals and bords on appeal.

Alaska State Legislature



House of Representatives

RAY METCALFE

POUCH V  
JUNEAU, ALASKA 99811

P.O. BOX 4-2766  
ANCHORAGE, ALASKA 99509

19 January 1982

Honorable Ramona Barnes  
Alaska State Legislature  
Pouch V  
State Capitol  
Juneau, Alaska 99811

Re: HB 428

Dear Ramona:

I am proposing legislation to curb the abuse of our legal system by those who consistently bring frivolous and often unfounded environmental suits merely for the purpose of burdening and/or destroying our State's industry. Most of these suits stem from activity on or around State lands or resources: roads that cross public lands, mining or timber-cutting rights on public lands, and numerous other areas.

The enclosed legislation would require that anyone wishing to bring such action would first be required to show that they were somehow being directly affected by the activity the suit action would delay.

In the absence of being able to demonstrate direct effect, the party bringing the suit would be required to post bond or other security in an amount sufficient to cover the damages and losses that may be suffered by others as the result of actions brought.

I have enclosed comments which were made by others when I introduced similar legislation during the last legislature for your review.

As you can see, there is considerable sentiment for this legislation. The scheduling of a hearing on this bill would be greatly appreciated.

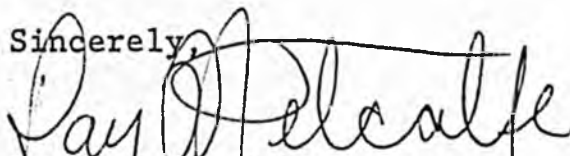
Rep. Ramona Barnes

- 2 -

19 January 1982

Please arrange for approximately two weeks' advance notice to enable me to notify all those who wish to provide testimony on this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ray H. Metcalfe". The signature is written in dark ink and is positioned above the typed name and title.

Ray H. Metcalfe  
Chairman, State Affairs Committee

RHM/emc  
Enclosures



# SIERRA CLUB LEGAL DEFENSE FUND, INC.

Juneau, Alaska  
Ansel Adams

419 6th Street Suite 321 Juneau, Alaska 99801 (907) 586-2751

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Juneau, AK 99801  
(907) 586-2751

December 15, 1980

Editor  
Juneau Empire  
235 2nd Street  
Juneau, Alaska 99801

Editor:

In your story on Haines in Friday's paper you report Mr. Schnabel saying that his workers have been laid off and his mill closed because of economic conditions in Asia and the SEACC lawsuit. This is as ludicrous as it is untrue. The lawsuit to protect the eagles has had absolutely no effect on Mr. Schnabel's mill. Indeed, even the casual observer could tell from the outset that the case had only the slightest chance of being won. It was a valiant effort to protect the eagles (with relatively minor changes in Schnabel's contract), but it was a long shot from the very beginning. Schnabel is merely looking for a scapegoat. The citizens of Haines who want to diversify their economy and attract tourists should be wary of Schnabel and others of his ilk.

*Durwood J. Zaelke*  
Durwood J. Zaelke

(Ed. Note: Mr. Zaelke recently took over the Sierra Club Legal Defense Fund office in Juneau. Prior to that he served as a Special Litigation Attorney in the Justice Department in Washington, D.C., where he headed the Love Canal investigation of Hooker Chemical Co., as well as the Justice Department investigation of the Three Mile Island accident.)

DJZ/lw  
cc: Mr. Schnabel

# Schnabel Lumber Company



P.O. Box 595

Haines, Alaska 99827

Tel. (907) 766-2511

December 22, 1980

Editor

Alaska Juneau Empire

235 2nd Avenue

Juneau, Alaska 99801

Dear Editor:

I am dismayed as I read Mr. Zaelke's letter in your paper portraying me as a liar and that, "the citizens of Haines who wish to diversify the Haines economy should be wary of me and others of my ilk." - as if I am a leper or criminal. I have and will continue to push for a diversified economy as I owned a 40 unit Apartment-Motel complex in Haines for over 20 years. My name was the second on a petition to establish the present Eagle Sanctuary - a petition I helped formulate. I spent hundreds of hours of my time and thousands of dollars of my money in pushing for the establishment of the ferry system - all these things aimed at broadening the economic base in Haines, especially in tourism.

Contrary to what Mr. Zaelke writes, the SEAC Lawsuit has had a devastating effect on the Schnabel Mill. No one wants to work for a company with an uncertain future. We need qualified people of proven expertise and we cannot woo them away from their present employers as long as the SEAC group has the right to appeal. The \$3,600,000 funding for the 5,000 KVA wood waste electrical generating plant cannot be obtained until the litigation is settled. (See enclosure). The export lumber market requires a high quality product. The Haines forest is a low quality second growth stand that will not meet the export grade requirements. Therefore, to meet the market requirements and to provide the additional log volumes needed to run a full shift on a year round basis, it is necessary to purchase USFS timber sales. Due to the lawsuit we have been unable to purchase any USFS timber because bonding companies have refused to bond any sale until the litigation is settled. (See enclosure).

In December of 1979 we were awarded the USFS Broken Key sale on Tuxecan Island. We searched all markets, domestic and foreign for a timber sale bond. In August of 1980 the Forest Service notified us the contract would have to be cancelled for failure to provide the bond. We currently hold the award on the Gilbert Bay timber sale but are unable to obtain a bond due to the litigation. Should we fail we are subject to our bid deposit of \$55,000.00 being forfeited. Mr. Zaelke says, "This is ludicrous as it is untrue." My position is documented while Mr. Zaelke's is a pipe dream. As an attorney he is a disgrace to his profession. Mr. Zaelke's statement, "Even the casual observer could tell from the outset that the case had only the slightest chance of being won," leads me to believe it is nothing more than the usual ENVIRONMENTAL nuisance suit designed to harass, to disrupt and delay at any cost and in any community no matter how small.

Editor  
Alaska Juneau Empire  
December 22, 1980  
Page 2

Mr. Zaelke's arrival on the Alaskan scene, pen in hand, ready to slash at anyone who is a productive citizen, especially those trying to preserve our free enterprize system as well as the individual freedom such as Mr. Zaelke enjoys, leads me to question his motivation towards and loyalty to the principals upon which this country is founded.

Mr. Zaelke states that the lawsuit seeks, "relatively minor changes in Schnabel's contract." The Post Trail Briefs spells out the issue, "the State decision to fix the annual volume at 10.2 million feet was arbitrary, capricious, and an abuse of discretion." The allowable cut was improperly calculated. The rotation age on old growth volume and second growth volume has no rationale. These charges were not minor - they sought to cancel the entire contract.

Article 4 Sec. 8 of the State Constitution provides for, "Fish, Forest, wildlife and grasslands shall be utilized, developed, and maintained on the sustained yield principal, subject to preference among beneficial users." The people of Haines voted a sales tax to provide funding to defend their rights to this resource. That action speaks for itself as a preference.

The value of Mr. Zaelke's letter may be that it will help awaken people to the unreasonableness of the ENVIRONMENTALIST position. Mr. Zaelke does not consider people as a national resource. Mr. Zaelke advertizes irresponsibility. It may help do away, legislatively, the use of Intervenor funding and it may help lead to laws being formulated that require bonding for such suits that when taken to court, will protect the defendant and allow the defendant to be reimbursed for the costs and losses inflicted upon him and the affected community.

Yours truly,

John J. Schnabel  
President

S/j

Enclosures



CORROON & BLACK/DAWSON & CO., INC.

2011 - Second Avenue  
P.O. Box C-34201  
Seattle, Washington 98124  
206-583-2300 Telex: 32-0215

October 21, 1980

Mr. John Schnabel  
Schnabel Lumber Company  
Post Office Box 595  
Haines, Alaska 99827.

Re: U.S. Forest Service Timber Sale 02-519

Dear John:

We have carefully reviewed the information submitted on October 16 in regard to the bond required.

John, I am sorry to advise that due to the current litigation, we cannot provide the bond required.

The bonding companies have advised that any bond requests will be denied until the issue before the court is settled.

We are confident that when the legal issue is settled, we will be able to provide you with the bonds you need and, in our opinion, deserve.

Sincerely,

Durand R. Eaton

lm

RECEIVED  
SCHNABEL LBR. C.

OCT 21 1980

HAINES, ALASKA

Original sponsor: Rules Committee

Offered: 5/23/80  
Referred: Finance

IN THE HOUSE

BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 1022

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act granting authority to the Alaska Renewable Resources Corporation to exceed investment limits by investing \$3,600,000 in Schnabel Lumber Company; and providing for an effective date."

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

\* Section 1. It is the intent of the legislature that this bill fulfill the requirement of AS 37.12.080(b)(1).

\* Sec. 2. The legislature finds that the Alaska Renewable Resources Corporation has had applications for an investment of \$3,600,000 in Schnabel Lumber Company, an Alaska corporation, for a waste wood high temperature boiler system. AS 37.12.080(b) states that no financial assistance of more than \$1,500,000 may be provided to a single project or applicant unless the legislature has approved the investment by concurrent resolution. The legislature further finds that approval of the investment may be in the public interest. Notwithstanding the provisions of AS 37.12.080(b) requiring approval by concurrent resolution, the investment in the amount of \$3,600,000 is approved for a waste wood high temperature boiler system and the corporation is authorized to make the proposed investment in Schnabel Lumber Company, an Alaska corporation, subject to the following conditions:

(1) that all proceeds of the financial assistance are deposited into a separate account for the exclusive expenditure on the waste wood high temperature boiler system and not for other purposes;

(2) that an agreement is concluded and signed guaranteeing the purchase of the electricity to be generated;

~~(3) that current litigation is resolved in a manner that does not~~

~~anger the investments.~~

(4) that Schnabel Lumber Company meets all other requirements of Alaska Renewable Resources Corporation;

(5) that the Alaska Renewable Resources Corporation completes its review and approves the investment.

Sec. 3. This Act takes effect immediately in accordance with AS 01.10.

(c).

*SEAC prop*  
*under present contract, to a point that the mill will close as*  
*an annual cut of less than 2 million ft will remain.*

## CHILKAT VALLEY LAND PROTECTION PROPOSAL

The Southeast Alaska Conservation Council feels that the entire Chilkat Valley contains particularly significant, valuable, and unique natural resources and that the Valley's ecosystems should be maintained in its natural state as much as possible. SEACC proposes that certain State-owned lands in the Chilkat Valley be traded to the federal government in return for other federal lands of equal value being traded to the State.

The SEACC proposal calls for protection of lands in a Southwest Unit, which includes the State lands bounded on the north by the Klehini River and on the east by the Chilkat River, and a Northern Extension Unit, which includes State lands in a corridor along the Chilkat River upstream of its confluence with the Klehini River.

The Southwest Unit stretches over 30 miles from the northern boundary of Tongass National Forest to the Canadian border on the Haines highway. It includes some of the most stunning mountain scenery in Alaska, moose, bear, and mountain goat habitat, prime wilderness and recreation lands, hundreds of miles of important anadromous fish spawning and rearing streams, and the principal areas used by the Chilkat eagle gathering. The Haines highway forms the northern boundary, but otherwise this unit is virtually roadless.

The Northern Extension extends along the main stem of the Chilkat River north of the Haines Highway bridge. This area is part of the USFWS 1971 proposed Chilkat National Bald Eagle Refuge Proposal. For the most part, the boundary follows the 500 foot contour elevation up the Chilkat and Tahini Rivers to the Canadian border. This unit protects mostly river-bottom lands including important salmon spawning and eagle nesting habitat. Additionally, winter moose and mountain goat range would be protected. Included in the area is important waterfowl nesting habitat and the southernmost nesting grounds of the trumpeter swan. These lands have a high recreational potential for hunting, fishing, berry picking, skiing, etc. A great deal of logging has already occurred in this section of the Chilkat and more is anticipated. The Northern Extension is expected to act as a buffer to help maintain water quality and productivity in the main stem of the Chilkat.

spruce-hemlock commercial forest lands classified "Forest Lands"

within the proposal.

	Southwest-Unit	Northern Unit	Total
Patented, T.A.'d & Selected State Lands (includes some private)	148,000	23,000	171,000
Spruce-Hemlock classified "Forest" (includes approx. 5,000 acres which have already been	33,676	estimated under 2,000	35,000. (est.)

171000 ACRES - IT'S FOR THE BIRDS!

Like Mr. Folta who advised his children to turn their rat collection loose in the local fairgrounds, LCC turned SEACC and the Sierra Club loose in Haines, Alaska, to nibble at the Forest Industry, and all three of these groups are now out of control. We have watched the erosion of our forest base through the land classification process and the accommodations made during the timber sale contract negotiations. SEACC and LCC, dedicated to obstructionism have since succeeded in holding up implementation of the contract through the intimidating process of the courts.

On a recent trip to Juneau I asked Mr. Steinberg how could he justify asking for the entire Chilkat Valley? He answered by asking me why we needed such a large mill? I explained the problem centered around the volume of logs needed to produce sufficient power from wood waste to replace the present dependence of the community on diesel fuel for electrical generation. I pointed out that the activities of SEACC, SIERRA, LCC et al. in continually expanding demands for more land withdrawals and neulous complaints to the U.S.C.G. Corps of Engineers, F & G, etc. were not conservationist in nature but were truly obstructionist tactics. I also reminded him that if his tactics were successful it would only result in the closure of the mill forcing people to move out of Haines. He shrugged his shoulders and made no comment. I left Mr. Steinberg's office after 30 minutes of discussion with the impression that I could have used my time as effectively talking into an empty tin can.

These obstructionists, to camouflage their intent to paralyze the forest industry, and to create an acceptable image as a defender of the environment, have chosen the eagle in this case as a vehicle to propel themselves into a national issue and the national scene. The Bald eagle in Haines has become as sacred to America as Motherhood. SEACC, the SIERRA CLUB and LCC are giving the impression that they are willing to risk their lives to protect it.

I have been cutting logs 41 years in the Chilkat Valley. Twelve thousand acres of a one hundred twenty seven thousand acre forest have been harvested. During this time the eagle has flourished and his numbers increased. To SEACC and those they represent, including LCC, this has become a self-serving issue and the needs of the people in the Chilkat Valley are of little importance.

*John J. Schmitt*

**BOROUGH**

I am going to preface my statements with a direct quote from the book by Arthur Hailey, "Overload":

In a letter to the Governor Mayor of Haines, Dave C. the following comments: Chilkat Valley and support land exchange and eagle

"Despite the many efforts of appropriate agencies of organizations in our country the federal agencies do not contribute in meaningful ways. We are very disappointed to accomplish thorough research assuring that logging will do no damage to public resources, eagles. Furthermore, the disciplinary resource in the Skagway Area Land Use Plan clear-cut logging is all we understand that the Government \$25,000 for the Haines/Chilkat plan their own eagle study apparently intended eagle study can only be cooperate meaningfully already underway, and certain development in public resources - even national significance -

"All this leaves us little concerned citizens here more involved in the government do whatever that many national interests eagles are fully protected and the Justice and Interior the growing problem on helping all that they

What is really aggravating is that the Haines public Resource Study Corp. has Audubon eagle study for the Haines/Klukwan Croighead, went on field group, exchanged reports submitted our eagle re

In addition, the State field monitoring the member of that team for trips to the field which includes a soil etc.

There is no longer any what he represents!

D-2 amendment

Amendment on refuge 3

SEC. 1325(a) Within one year after the date of the enactment of this Act, the Secretary and the State shall effect an exchange of lands within the Tetlin National Wildlife Refuge. In this exchange, the State shall relinquish all claims (including land selections filed under Section 6(b) of the Alaska Statehood Act) for up to forty-six thousand and eighty acres of lands selected by the State prior to November 14, 1978, within the refuge for an equivalent acreage of Federal lands north of the Alcan Highway within the Tetlin National Wildlife Refuge, which shall be conveyed to the State as though conveyed under the Statehood Act. Such lands relinquished by the State shall become part of the Tetlin National Wildlife Refuge. This exchange shall become effective upon the execution of all documents necessary to accomplish the exchange.

(b) If the State or any landowner offers to relinquish any lands which the State or such landowner owns within the area generally depicted on the map entitled "Chilkat River Bald Eagle Study Area" dated April 1980, or which the State has selected within such area under the Alaska Statehood Act, the Secretary may accept such relinquishment if such lands are of sufficient size to enable the Secretary to manage effectively the lands and bald eagles within them. In exchange for the relinquished lands, the Secretary (or the Secretary of Agriculture, as appropriate) shall convey to the State or landowner, subject to valid existing rights, such lands as the appropriate Secretary and the State or landowner shall agree to from among public lands not contained in conservation system units.

*Review this  
1/7/80*

of as many as 5,500 bald eagles in the Chilkat River Valley is a unique national resource.

(2) Within three years after the date of enactment of this Act, and after consultation with the Governor of the State, the City and Borough of Haines, the Village of Klukwan, and interested persons, the Secretary shall report to Congress on the bald eagles in the area generally depicted on the map entitled "Chilkat River Bald Eagle Study Area," dated April, 1980. The report shall identify and assess the population, habitat and other ecological requirements, and educational, scientific, and economic value of the bald eagles; and the effects of human activities on the bald eagles.

On page 408, line 12, delete everything through page 415, line 16, and renumber subsequent titles accordingly.

On page 415, line 18, delete everything through page 416, line 16, and renumber subsequent sections accordingly.

On page 417, line 19, change the period to a comma and strike the remainder of that line through line 22 and add the following:

"Provided further, that the expertise of the U.S. Fish and Wildlife Service shall be utilized in development of the Forest Plan which includes the management of the Copper River-Bering River Area and any subsequent revisions of that plan. Such plan or its revision shall be coordinated with the U.S. Fish and Wildlife Service flyway and management plans and programs for the wildlife species using this area. Activities and uses shall be permitted in a manner

# RADICAL ENVIRONMENTALISM . . . WHOSE IDEA IS IT?

Suppose for a moment that it was 1968 and you were an Arab nation who had begun to realize the wealth and power that would be yours if you managed your oil reserves properly. Suddenly an announcement is made from Alaska that a giant oil field has been discovered.

This would certainly reduce your leverage in your anticipated manipulation of world oil supplies and prices. You must find a way to stop that Alaskan oil from reaching the marketplace. You notice that certain groups in the United States are also against building the necessary pipeline.

Their reasons are straightforward: They want to protect the caribou, moose and tundra and are against the "unsightliness" inherent in any man-made object. Their concerns are not im-

portant to you but what is important is that they have the same goals as you do: Stop the Pipeline! Since they are not political groups, financial contributions can be made without anyone worrying about the source of the money, but to be safe, you "launder" the money.

As the treasuries of the environmental groups swell, they gain more power and influence and are unwittingly doing a very effective job of delaying. If not stopping pipeline construction for you. You take advantage of the delay by raising your oil prices several times. The few petrodollars contributed to the environmental groups turned out to be an excellent investment.

A wild scenario? Yes. Did it really happen? Probably. Foreign powers are able to accomplish their goals in the United States simply by selecting special

interest groups whose goals are essentially the same and carefully providing financing via well "laundered" money. Any group that is well financed and endowed with evangelistic zeal can make a real impact in the United States today.

The people of the Soviet Union have a great deal of faith in the ability of Siberia to provide the raw materials necessary to their industrial growth and military effort.

Time and time again it has been decreed to go and find special commodities needed by the U.S.S.R. to achieve an important goal. Time and time again Siberia has provided. The U.S.S.R. realizes that Siberia is of tremendous importance to their goal of becoming the supreme power in the world.

Continued next page

## RADICAL ENVIRONMENTALISM

Continued from page 14

Alaska is the "Siberia" of the United States. Extremely well endowed with mineral and energy resources, Alaska can provide for the United States just as Siberia provides for the U.S.S.R. To a Russian, Alaska must be of critical importance to the U.S. . . .

Thus, Alaska is of strategic importance to the U.S.S.R. If the United States could be stopped or delayed significantly in its utilization of Alaska as a source of energy and strategic minerals, it would be an important factor in any future confrontation.

Certain groups are working to get as much of Alaska withdrawn from exploration and development as is possible. Their reasons are simple and straightforward: they want to preserve this land in its present wilderness condition. The net result however is the same as

desired by the U.S.S.R.

Again, carefully laundered money is poured into treasuries of the environmental organizations. Politicians are elected with the help of the environmental groups. Lobbying by environmental groups in Washington, D.C. on the Alaska "d-2" lands issue is well-financed and very effective. After all, any issue supported so well financially must be the "will of the people."

Another wild scenario? Yes. Is it happening? No one knows for sure but it's time for a thorough investigation into the sources of the financing supporting the radical environmentalists and for a re-evaluation of the wisdom of locking up energy and mineral resources needed by our nation.

THE ALASKA MINER  
WELCOMES  
LETTERS TO THE EDITOR

Editorial



Remarks by C.R. Lewis

*"He that would know what shall be must consider what hath been."*

*Ancient Proverb*

Pipe fabricated to order using the latest equipment and newest techniques.

**C.R. LEWIS CO. INC.**

1600 Post Road 276-3624

# Schnabel Lumber Company

P.O. Box 595

Haines, Alaska 99827

Tel. (907) 766-2511



December 29, 1980

The Honorable Ray Metcalfe  
P. O. Box 4-2766  
Anchorage, Alaska 99509

Dear Sir:

I appreciate your efforts to minimize nuisance suits which currently afflict the nation and particularly at this moment Haines.

Mr. Zaelke's letter expresses what we have been saying all along. These charges are not valid, have little chance of being won and only serve to delay and destroy. Please continue your efforts for sanity in these matters.

Yours sincerely,

John J. Schnabel  
President

S/j

Enc.

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
Tongass National Forest  
Federal Building  
Ketchikan, Alaska 99901  
907-225-3101

RECEIVED  
SCHNABEL LBR. C.

APR 13 1981

HAINES, ALASKA

2450

MAR 31 1981



Mr. John Schnabel, President  
Schnabel Lumber Company  
P.O. Box 595  
Haines, Alaska 99827

CERTIFIED MAIL NO. 0306039

Dear Mr. Schnabel:

Reference is made to our letter to you dated August 13, 1980.

Subsequent to that letter, we have taken the following steps to determine what, if any, damages may be due the Government as a result of Schnabel Lumber Company's repudiation of contract.

On August 14, 1980 the sale was offered to the other two bidders at the high bid rate. This offer was ultimately rejected by both parties.

The original sale was appraised again and advertised on January 10, 1981, with a scheduled bid opening February 12, 1981. Ketchikan Pulp Company was the sole high bidder, submitting the minimum acceptable bid of \$508,348.60.

Schnabel Lumber Company has thus subjected the Government to an apparent monetary loss, the difference between the two high bids.

\$2,894,000.40	Schnabel Lumber Company Bid 12-27-79
- 508,348.60	Ketchikan Pulp Company Bid 2-12-81
<u>\$2,385,651.80</u>	Apparent loss to the United States.

Please advise if you know of any reasons why the Forest Service should not proceed to collect damages due the United States.

J. S. WATSON  
Forest Supervisor

# Schnabel Lumber Company



P.O. Box 595

Heines, Alaska 99827

Tel. (907) 766-2511

April 13, 1981

The Honorable Ray H. Metcalfe  
Pouch V  
Juneau, Alaska 99811

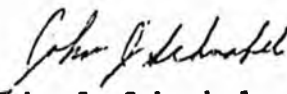
Dear Ray:

I support H.B. 428. Because of the lawsuit brought against us by the Southeast Alaska Conservation Council, we have been unable to get U.S.F.S. timber sale bonding and have been billed \$2,385,000 as damages by the U.S.F.S. for the difference of our bid and the bid of a subsequent purchaser.

These suits also cause delay, instability and loss of profit and employees. May you succeed in your efforts to gain us relief.

Yours sincerely,

SCHNABEL LUMBER COMPANY

  
John J. Schnabel  
President

S/j

Enc. - Letter - CB/D - 10/21/80  
USFS - 3/31/81

cc: The Honorable Jim Duncan, Mike Miller, Bill Ray, Bob Ziegler, Oral Freeman,  
Ernie Haugen

APR 21 1981



**Louisiana-Pacific Corporation**

Ketchikan Division

Post Office Box 6600  
Ketchikan, Alaska 99901, U.S.A.  
Telephone: 907-225-2151  
Telex: 099-55-251  
Answer back: KAYPULCO K: T

April 16, 1981

Representative Terry Gardiner  
Alaska House of Representatives  
Pouch V  
Juneau, Alaska 99811

Dear Terry:

We are in receipt of House Bill 428 introduced by Representative Ray Metcalf relating to litigation involving state actions; and amending Rules 6 and 65 of the Rules of Civil Procedure.

We support this legislation and feel such action is long overdue. It should act as a real incentive for many groups to resolve their differences by negotiation or administrative procedures without expensive and time consuming litigation. We see the legislation as being fair to both defendants and plaintiffs by requiring any early assessment of the differences and likely damages.

An outstanding example of the need for this type of litigation is the Southeastern Alaska Conservation Council vs. State, Schnabel, City of Haines and Haines Borough. This lawsuit has caused the people of Haines and Schnabel Lumber Company untold harm. The City, through depressing their economy and high legal costs, and Schnabel by precluding his operating the timber sale in question, his inability to qualify for a State loan, his inability to obtain bonding for a Forest Service timber sale and his legal fees in defending against the litigation.

Even now, with a favorable ruling granting attorney fees and a charge against the plaintiffs of taking a "frivolous suit with little chance of success", the harmful effects continue because SEACC has appealed the decision.



**Louisiana-Pacific Corporation**

Representative Terry Gardiner

Page 2

April 16, 1981

We request your support in obtaining legislation that would stop these abuses of our court system.

Sincerely,

*D. L. Finney*  
D. L. Finney, Manager  
Forestry & Government Affairs

hr

cc: Representative Ray Metcalf ✓  
Mr. John Schnabel

APR 21 1981



**Louisiana-Pacific Corporation**

Ketchikan Division

Post Office Box 6600  
Ketchikan, Alaska 99901, U.S.A.  
Telephone: 907-225-2151  
Telex: 099-55-251  
Answer Back: KAYPUI CO KFT

April 16, 1981

Representative Oral Freeman  
Alaska House of Representatives  
Pouch V  
Juneau, Alaska 99811

Dear Oral:

We are in receipt of House Bill 428 introduced by Representative Ray Metcalf relating to litigation involving state actions; and amending Rules 6 and 65 of the Rules of Civil Procedure.

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*Louisiana-Pacific Corporation*

Representative Oral Freeman

Page 2

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Sincerely,

  
D. L. Finney, Manager  
Forestry & Government Affairs

hr

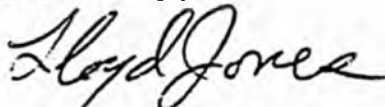
cc: Representative Ray Metcalf  
Mr. John Schnabel

The Honorable Ray Metcalfe -2-

April 21, 1981

Thank you for your concerns on a very serious problem.

Sincerely,



Lloyd Jones  
Administrative Forester

je  
Enclosure

cc: Senator Robert Ziegler  
Representative Oral Freeman  
Representative Terry Gardiner  
Mr. Jim Clark

APR 17 1981

21



**Louisiana-Pacific Corporation**

Ketchikan Division

Post Office Box 6600

Ketchikan, Alaska 99901, U.S.A.

Telephone: 907-225-2151

Telex: 099-55-251

Answer back: KAYPULCO KET

April 16, 1981

Senator Robert Ziegler  
Alaska Senate  
Pouch V  
Juneau, Alaska 99811

Dear Bob:

We are in receipt of House Bill 428 introduced by Representative Ray Metcalf relating to litigation involving state actions; and amending Rules 6 and 65 of the Rules of Civil Procedure.

We support this legislation and feel such action is long overdue. It should act as a real incentive for many groups to resolve their differences by negotiation or administrative procedures without expensive and time consuming litigation. We see the legislation as being fair to both defendants and plaintiffs by requiring any early assessment of the differences and likely damages.

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Even now, with a favorable ruling granting attorney fees and a charge against the plaintiffs of taking a "frivolous suit with little chance of success", the harmful effects continue because SEACC has appealed the decision.



**Louisiana-Pacific Corporation**

Senator Robert Ziegler

-2-

April 16, 1981

We request your support in obtaining legislation that would stop these abuses of our court system.

Sincerely,

*D. L. Finney*  
D. L. Finney, Manager  
Forestry & Government Affairs

hr

cc: Representative Ray Metcalf  
Mr. John Schnabel



# AFOGNAK LOGGING, Inc.

P.O.Box 682

Kodiak, Alaska 99615

(907) 486 - 3344

April 21, 1981

The Honorable Ray Metcalfe  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Reference: House Bill No. 632

Dear Mr. Metcalfe:

Hurray! for your legislation to, as you say, "curb the abuses of the legal system," in regards to environmental suits.

We, at Afognak Logging, as well as many other corporations in Alaska have been forced to spend many thousands of dollars to defend ourselves from frivolous suits brought by self-esteemed world saving environmentalists, some of whom admit that it is only a delaying action.

In our United States, every man may have his day in court if he wishes. All I would ask, is that a bond be put up or a means for proper reimbursement if that suit proves to be a sham and costs the defendent unjustly.

Sincerely,

Albert Schafer  
President and  
General Manager

cc: Senator Bob Mulcahy  
Representative Fred Zharolff

APR 20 1981



~~April 16, 1981~~

The Honorable Ray H. Metcalfe  
Alaska State Legislature  
Pouch V  
State Capitol  
Juneau, Alaska 99811

Re: House Bill 632

Dear Mr. Metcalfe:

*Sent HB 428 + back of  
letters*

In response to your letter of April 15, 1981 concerning your proposed legislation in the form of House Bill 632, Soderberg Logging and Construction Co. strongly supports the Bill and your efforts in this endeavor.

It has become increasingly apparent that industries in this State as well as nationwide have been exhausted and severely damaged by frivolous and unfounded environmental suits. As a member of Alaska's Timber Industry for the past 20 years we have seen this industry especially burdened in this manner. Most often to the detriment of an entire community. SEACC vs. State of Alaska, Schnabel Lumber Co, et al in Haines for instance.

We believe this proposed Bill is perfectly fair to potential plaintiffs, and, with the listed provisions, they should have no reason to react at an extremely late date claiming they were unaware of impending state action.

The Bill's provisions requiring plaintiffs to post security with the court would encourage many groups to attempt to resolve matters through negotiations and administrative agency processes, thereby negating the need for litigation. Also the factors by which the court should decide the amount of security to be posted are very appropriate.

We encourage you to pursue H.B. 632. We will support it in every way possible.

Very truly yours,

*Virgil Soderberg*  
Virgil Soderberg  
President

cc: The Honorable Ernie Haugan  
The Honorable Jim Duncan

APR 28 1981



**ALASKA LUMBER & PULP CO., INC.**

P.O. BOX 1050 • SITKA, ALASKA 99835 • (907) 747-2265

April 20, 1981

The Honorable Ray Metcalfe  
House of Representatives  
State of Alaska  
Pouch V  
Juneau, Alaska 99811

Dear Representative Metcalfe:

Thank you for your letter to me of March 31, 1981, regarding the several bills that you are proposing to introduce in the Legislature. I have asked our attorney, Jim Clark, to review this package and to contact you at the earliest opportunity. In the meantime, we stand by Jim's letter to you of February 14, 1980, regarding House Bill 632.

Thank you very much for giving me a chance to respond. We certainly appreciate the opportunity to work with you.

Yours very truly,

ALASKA LUMBER & PULP CO., INC.

*Kiyoshi Nagumo*  
Kiyoshi Nagumo  
President

KN:es

# Spring Valley, Inc.

P.O. BOX 1138  
WRANGELL, ALASKA 99929  
(907) 874-3233

April 28, 1981

The Honorable Ray H. Metcalfe  
Alaska State Legislature  
Pouch V  
State Capital  
Juneau, Alaska 99811

Re: House Bill No. 428

Dear Mr. Metcalfe:

Our company supports you wholeheartedly in you sponsoring of Bill No. 428. This is a step in the right direction in creating a smoother government operation. We do need to be able to withstand criticism at times, but opponents of a measure should be able to realize their responsibilities to others, also.

When there is a realistic avenue to take for solving an issue, before it becomes a full-fledged problem, that is the right approach. Creating more problems only costs more time and money, in the long run. If the persons or groups involved in this is proved to be wrong, they should be the ones to cover the loss. This seems only realistic.

It is good to know we can work towards cutting the paperwork, and possibly, saving money in this day of progress.

Yours truly,

Spring Valley, Inc.



David C. Oliver  
General Manager

DCO:vo

cc: The Honorable Ernie Haugan

Alaska Loggers Association, Inc.



APR 29 1981

111 STEDMAN, SUITE 200  
KETCHIKAN, ALASKA 99901  
Phone 907-225-8114

April 26, 1981

Honorable Ray Metcalfe  
Alaska State Representative  
Pouch V State Capitol Building  
Juneau, Alaska 99811

Dear Representative Metcalfe:

Thank you for mailing me your letter of April 15 and the copy of the House Bill No. 428. This is an excellent bit of legislation and you are to be congratulated by the industry for being the sponsor.

We feel the security clause of the proposed legislation will be a big step in decreasing nuisance suits that are primarily filed to harrass industry.

ALA Directors are being mailed a copy of the bill and asked to contact their legislators for its support.

Sincerely,

Donald A. Bell  
General Manager  
ALASKA LOGGERS ASSOCIATION

DAB/mjh  
cc: ALA Directors with enclosures



**Louisiana-Pacific Corporation**

Ketchikan Division

Post Office Box 6600  
Ketchikan, Alaska 99901, U.S.A.  
Telephone: 907-225-2151  
Telex: 099-55-251  
Answer back: KAYPULCO KET

*Jardner*

April 21, 1981

The Honorable Ray Metcalfe  
House of Representatives  
State of Alaska  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Metcalfe:

We concur with your efforts to put controls on agencies attempting to exceed their powers involving the writing and implementation of regulations. All regulations and amendments to regulations should be "absolutely necessary to carry out the purpose of the statute." They should also be accompanied by an evaluation that explains the costs involved for the benefits received.

We support the amendment of Section 1, AS 44.62.030 and Section 2, AS 44.62.300 in H.B. 339. We also support H.B. 340, especially Section 1, Findings.

We cite habitat regulations proposed by the Alaska Fish & Game Boards and the Department of Fish and Game as an example of superfluous regulations. They exceed the authority of Title 16 and will be costly to enforce. Enclosed you will find a response to these regulations by Jim Clark on behalf of the Alaska Loggers Association.

We caution the use of a citizens' committee for regulatory review. If the legislative and judicial systems would follow through, there would be no need for such a committee.

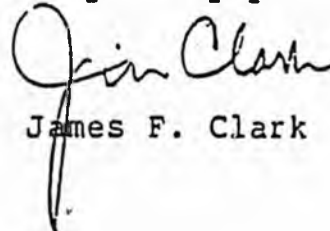
The Honorable Ray H. Metcalfe  
February 14, 1980  
Page Two

listed by which the court should decide the amount of security to be posted are very appropriate. Clearly, whoever drafted H. B. 632 has been a close observer of what has been going on in some Alaskan cases recently.

On the other hand, the bill is perfectly fair to plaintiffs who, as they should, come forward to negotiate at the earliest possible time and voice their concerns before the agencies, as some of the more sophisticated plaintiffs have already learned to do. The provision for state agency notice to the public prior to issuance of state contracts above a certain magnitude or granting of a state license or permit for a project above a certain value is warranted as a safeguard that potential plaintiffs have no reason to complain they were unaware of the impending state action. This provision should be retained.

In short, we agree with H. B. 632, thank you for introducing it, and we will support it.

Very truly yours,



James F. Clark

JFC:DEC:es  
cc: J. A. Rynearson

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 29, 1980

SUBJECT: Litigation involving state action  
(Work Order No. 7697)

TO: Representative Ray H. Metcalfe

FROM: Billy G. Berrier *BGB*  
Director  
Division of Legal Services

This is, as you have noticed, a highly technical procedural bill. Any non-technical synopsis will of necessity be broad brush.

Essentially, the bill is directed toward preliminary proceeding when an action is brought in court to prevent action on a decision made by the state or an agency.

It requires that notice be given of a proposal by the state to award a contract in the amount of \$100,000 or more or to grant a permit where expenditures under the permit will be \$100,000 or more. If these notices are already given, no new requirements are imposed. (Sec. 09.50.510)

If a person wishes to go to court to enjoin action, he must have

- (1) raised the issue with the state agency which has responsibility for the action complained of and requested the agency to take the requested action
- (2) show that he has a real interest in the action complained of by showing there is substantial likelihood of a specific, personal injury if the action is carried out

and he must show specifically what his efforts to get the state agency to meet his demands have been. (Sec. 09.50.450)

January 29, 1980

If the grounds alleged in support of the action sought have been raised with the agency and found to be without merit or were not raised before the agency, the state may ask the court for an order requiring security to be posted (sec. 09.-50.460); the motion shall be heard by the court (sec. 09.50.-460) and the amount of security may include damages for actual or prospective breach of contract, extra costs from inflation caused by delay and other costs or damages, including costs of litigation (sec. 09.50.480). The state or an intervenor (another person who has an interest in the contract who has become a party to the suit such as a company to whom a contract was awarded) may request that the security be furnished.

When the action is terminated, the defendant may have access to the security as the court determines.

In the broadest summary:

(1) The state must give notice of its actions where \$100,000 or more is involved.

(2) A person must have an interest in the action that could create a personal and specific injury to him in order to bring suit.

(3) The person bringing suit must have presented his objections and proposed alternative to the agency making the decision and must show that he has done so.

(4) On motion of a party, security for damages, including inflation increases and costs of suit may be required from a party who did not present his claim to the state agency or who was ruled against by the state agency.

(5) The security may be used to pay damages caused by the suit.

I realize this broad brush summary omits significant conditions. It does not, for instance, deal with the time periods or the burdens of proof. Please let us know if a more detailed technical analysis is required.

BGB:jdn

# CITY OF HAINES

TELEPHONE (907) 766-2231 - POST OFFICE BOX 576 - HAINES, ALASKA 99827

February 8, 1980

The Honorable Charles H. Parr  
Chairman, House Judiciary Committee  
Pouch V  
Juneau, Alaska 99811 (Mail Stop 3100)

Re: House Bill No. 632  
"An Act Relating to the litigation Involving Action by the State..."

Dear Representative Parr:

Having gained the first-hand experience and frustrations from intervening in the ongoing litigation "Southeast Alaska Conservation Council vs. State of Alaska, et al", the City of Haines STRONGLY supports the passage of HB 632. The subject litigation concerns a challenge to the validity of a contract for a long-term timber sale negotiated between the Alaska Department of Natural Resources and the Haines-based Schnabel Lumber Company.

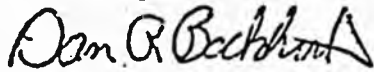
The negotiated contract is recognized by the defendants (State, Schnabel, City of Haines and Haines Borough) as having been lawfully entered into pursuant to AS. 39.05.118 and to be most reasonable from an environmental standpoint. Yet, the action has been challenged by the Southeast Alaska Conservation Council. Defense of the action, particularly on the part of Schnabel and the Haines local governments, has had significant adverse consequences on an already sorely depressed economy. Legal costs incurred to date in the subject litigation by the City in its intervenor defendant status are well in excess of \$30,000. The Haines Borough, also an intervenor defendant, will be holding a special election on March 4, 1980, in an attempt to obtain voter ratification of a recently enacted ordinance doubling the Haines Borough sales tax levy. The increased tax is being sought in order to meet anticipated future legal expenses of the Haines Borough in the subject litigation.

February 8, 1980

Schnabel Lumber Company, of course, has also incurred tremendous legal fees in this action. More significantly, the challenge to the contract brought by the Southeast Alaska Conservation Council has, up until just recently, tied up any efforts on the part of Schnabel Lumber Company to begin operations under the terms of the contract.

The City of Haines considers it vital to the interests of our community and to the State as a whole that all litigants be held accountable for the consequences of their legal actions. House Bill 632 is a major step in that direction. The Mayor and Council of the City of Haines urge your support of the Bill.

Sincerely,



Dan R. Bockhorst  
City Administrator

DRB:tce

cc: The Honorable Bill Ray  
The Honorable Jim Duncan  
The Honorable Ray Metcalfe  
The Honorable Mike Miller  
The Honorable Pappy Moss

OF COUNSEL  
M E MONAGLE

# ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW  
POST OFFICE BOX 1211  
JUNEAU ALASKA 99802

ROBERT B. BAKER  
LEROY J. BARRER  
L. G. BERRY  
C. R. RICH  
WM. RONALD HULEN

R. E. ROBERTSON (1885-1961)  
F. C. EASTAUGH  
J. B. BRADLEY  
WILLIAM G. RUDDY  
L. B. JACOBSON  
MICHAEL T. THOMAS  
JAMES F. CLARK  
PAUL M. HOFFMAN  
J. P. TANGEN  
DEBORAH A. VOLBROOK  
D. ELIZABETH CUADRA  
HAROLD E. SNOW, JR.  
PAMELA L. FINLEY

ANCHORAGE OFFICE  
601 WEST FIFTH SUITE 810  
ALASKA MUTUAL BANK BLDG.  
POST OFFICE BOX 679  
ANCHORAGE ALASKA 99510  
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200 NBA BUILDING  
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JUNEAU ALASKA 99802  
PHONE (907) 586-3345  
CABLE ROMEA  
TELEX 090-45-376

February 14, 1980

The Honorable Ray H. Metcalfe  
Alaska State Legislature  
Pouch V  
State Capitol  
Juneau, Alaska

Re: House Bill 632

Dear Mr. Metcalfe:

On behalf of our client, Alaska Lumber & Pulp Co., Inc., we thank you for sponsoring House Bill 632 and hereby register our support for it.

During this law firm's experiences representing corporations, large and small, and particularly in representing Alaska Lumber & Pulp Co., Inc., we have frequently been in the position of seeking a state license or permit, or defending our client against plaintiffs seeking an injunction against state action where the main burden of the injunction would fall upon our clients. We and our clients have learned, after much litigation and expense, that plaintiffs do not always seek to achieve their ends by early negotiation and by exhausting their administrative remedies, but sometimes wait until a matter has gone so far that nothing remains to them but litigation preceded by a request for injunctive relief. This is expensive and counter-productive for all concerned.

We expect enactment of H. B. 632 would provide the necessary motivation to many groups to resolve many matters by negotiation and by administrative agency processes, without the need for litigation. We especially support the provisions requiring plaintiffs to post security with the court if the plaintiffs have failed to raise the same grounds in negotiations with the license or permit applicant and/or in proceedings before the state agency. The factors

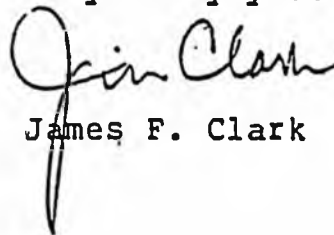
The Honorable Ray H. Metcalfe  
February 14, 1980  
Page Two

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On the other hand, the bill is perfectly fair to plaintiffs who, as they should, come forward to negotiate at the earliest possible time and voice their concerns before the agencies, as some of the more sophisticated plaintiffs have already learned to do. The provision for state agency notice to the public prior to issuance of state contracts above a certain magnitude or granting of a state license or permit for a project above a certain value is warranted as a safeguard that potential plaintiffs have no reason to complain they were unaware of the impending state action. This provision should be retained.

In short, we agree with H. B. 632, thank you for introducing it, and we will support it.

Very truly yours,



James F. Clark

JFC:DEC:es  
cc: J. A. Ryneerson

OF COUNSEL  
M E MONAGLE

# ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

R E ROBERTSON (11885-11881)  
F C EASTAUGH  
J B BRADLEY  
WILLIAM G RUDDY  
L B JACOBSON  
MICHAEL T THOMAS  
JAMES F CLARK  
RAUL M MOFFMAN  
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D ELIZABETH CUADRA  
HAROLD E SNOW, JR.  
PAMELA L FINLEY

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW  
POST OFFICE BOX 1211  
JUNEAU ALASKA 99802

ROBERT B BAKER  
LEROY J BARKER  
L G BERRY  
C R RICH  
WM RONALD HULEN

## ANCHORAGE OFFICE

801 WEST FIFTH SUITE 510  
ALASKA MUTUAL BANK BLDG.  
POST OFFICE BOX 679  
ANCHORAGE ALASKA 99510  
PHONE (907) 277-6693  
CABLE ROMEA  
TELEX 090-26-486

## JUNEAU OFFICE

200 NBA BUILDING  
POST OFFICE BOX 1211  
JUNEAU ALASKA 99802  
PHONE (907) 586-3340  
CABLE ROMEA  
TELEX 099-45-376

February 14, 1980

The Honorable Ray H. Metcalfe  
Alaska State Legislature  
Pouch V  
State Capitol  
Juneau, Alaska

Re: House Bill 632

Dear Mr. Metcalfe:

On behalf of our client, Alaska Lumber & Pulp Co., Inc., we thank you for sponsoring House Bill 632 and hereby register our support for it.

During this law firm's experiences representing corporations, large and small, and particularly in representing Alaska Lumber & Pulp Co., Inc., we have frequently been in the position of seeking a state license or permit, or defending our client against plaintiffs seeking an injunction against state action where the main burden of the injunction would fall upon our clients. We and our clients have learned, after much litigation and expense, that plaintiffs do not always seek to achieve their ends by early negotiation and by exhausting their administrative remedies, but sometimes wait until a matter has gone so far that nothing remains to them but litigation preceded by a request for injunctive relief. This is expensive and counter-productive for all concerned.

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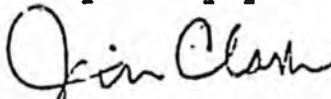
The Honorable Ray H. Metcalfe  
February 14, 1980  
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In short, we agree with H. B. 632, thank you for introducing it, and we will support it.

Very truly yours,

  
James F. Clark

JFC:DEC:es  
cc: J. A. Rynearson



## Dukes Up

Dear Sirs:  
We really can not let the New Year begin without calling to your attention a long list of shocking misstatements which are of concern to the City and the people of Haines.

When Durwood Zealke, the new Sierra Club hired gun, blew into the capital last month the first thing he did was to label as "untrue" the economic crisis faced by the people of Haines, and Schnabel Lumber Company, whose futures are linked by geography as well as economy.

Fresh from "back east," and breathing fire from his wars against industries along Love Canal and the Susquehanna River at Three Mile Island, Durwood roared into town belching forth a spew of "party line" with reckless disregard for truth. Before we can convince him we are not killing people or eagles, the Zealke zeal may kill us.

It is a fact that the SEACC

lawsuit had a devastating effect on the Schnabel Lumber Company and scores of Haines workers in the timber industry — all taking its toll on other business interests in the area, with correspondent effect on tax-based income to the government.

I have seen the correspondence from bonding firms refusing to provide Schnabel necessary bonds until the SEACC case (and now the appeal) is settled. The Tuxesan Island award to Schnabel in December 1970, was later cancelled for want of a bond — due to SEACC. The present award to Schnabel of the Gilbert Bay timber sale stands a real chance of being lost for lack of a bond, again — due to SEACC. The Schnabel bid deposit of \$55,000 will be lost too. Durwood is right when he calls that "ludicrous;" and, flat-out wrong when he calls it "untrue," as he did in the Empire.

The crippling reality of "nuisance litigation" such as

the SEACC Suit is that it is designed to harass, disrupt, and delay. Meanwhile, an entire city — a borough full of people — are dealt a stunning economic blow, a real below-the-belt kind of cheap shot that holds us hostage to wrong-headed self-interest groups like SEACC.

It is a travesty that the people of Haines have had to tax themselves, and Schnabel Lumber Company has had to go into debt, fending-off a well-healed "Pine Tree Patrol" of Sierra Clubbers skipping through the woods protecting unicorns from scapegoats.

We suggest it is high time outfits like the Sierra Club be held to account for the damage and devastation they cause. If they had to pay for the jobs lost, the economic opportunity lost, the wages never paid, the school clothes never bought, the college educations never begun, the home mortgages defaulted because of their short sighted, ill-conceived play-time projects, we believe

they'd more accurately assess the results of their meddlesome tactics.

To suggest that "the lawsuit to protect the eagles has had no effect on Mr. Schnabel's mill," is, well, let's just call it — inaccurate. The lawsuit challenged the scope of the allowable cut, not endangerment of our eagles. The logging contract has no effect on the Eagle Sanctuary. SEACC claims to have asked for only "minor amendments" to the State-Schnabel contract, but when they finished slashing away sections here and there, two-thirds of the contract area was gone. SEACC asked to have the entire contract voided.

Durwood is too new to know that Schnabel not only helped to formulate, but was a first signer upon, the petition to establish the existing Bald Eagle Critical Habitat and Sanctuary, and that Haines is at this time participating in an expensive and elaborate study to learn more about our ever-growing eagle population.

Durwood needs to learn that Schnabel has been at the front of the line in economic diversification ever since he came to Haines — years ago — from the beginning of the ferry system and through every diversification campaign right up to the present push. He has designed a 5000-kva wastewood electrical generating plant to help Alaskans reduce dependence upon non-renewable resources and to lower the cost of energy to local people — but SEACC has put the kibosh on that too!

Schnabel has tried to market our low-grade timber by operating his plant part of the time with U.S. Forest Service timber which, together with the Haines cut might provide one shift of work, the Haines wood going into the chipper. But SEACC put the quietus on that, to boot! Still worse is the fact that our skilled work force is leaving Haines to seek jobs that they can count on — wouldn't anybody? Nothing short of a miracle could coax them back now. We rather

suspect that is about what SEACC had in mind.

Again, Durwood is too new to know; but, Haines fights back when its back is to the wall.

Dukes up, Durwood!

Jon D. Halliw  
May

## Sea Snails

Dear Sirs:

I'm a Hungarian sea-snail (P. sobranchna) receiver. It in Hungary is an unusual thing because here haven't see it. It's very difficult to me. For in Hungary have only 2-3 people whose profession is sea snail collecting.

I was happy, but I haven't from your country no one perfect, good sea-snail species.

If you have eventually to send me any species from Alaska coast, I'll be very happy.

Thank's for your kindness.

Yours very sincerely,

Gabor Tompa

Strobl A.u.7.H.ep.II./204.

1087 Budapest  
Hungary

Alaska Lands, The Timber

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 428

Title "An Act relating to litigation involving state actions; and amending

Requested by Rep. Barnes, House Judiciary Committee Date 2/2/82

Rules 6 and 65 of the Rules of Civil Procedure."

II. FISCAL DETAIL

Agency Affected Department of Law

Program Category Affected General Government

BRU, Program, Or Subprogram(s) Affected Legal Services

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This bill provides that persons seeking to enjoin state action or appealing state action on a license or permit must first exhaust administrative remedies before an action against the state may be filed. The bill further provides that, under certain circumstances, a person bringing an action may be required to furnish security. Because these circumstances only arise in cases where the state is a defendant, the department's operations will not be impacted financially.

*Richard I. Pegues*

IV. DATE February 3, 1982

PREPARED BY

Richard I. Pegues, Director, Admin. Svcs.

AGENCY Department of Law

PHONE 465-3672

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 428  
Title An Act Relating to Litigation Involving State Actions  
Requested by House Judiciary Committee Date 2/9/82

II. FISCAL DETAIL

Agency Affected Alaska Court System  
Program Category Affected Administration of Justice  
BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_  
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE 2/11/82 PREPARED BY Richard P. Barrier *Richard P. Barrier*  
AGENCY Alaska Court System  
Original: Legislative Finance PHONE 264-0545  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)  
33-001 (Rev. 12/81)