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SENATE RESOURCES COMMITTEE
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: *SB 399*

BILL NAME: *Trespassing and posting of land*

SPONSOR(S): *Fuchs*

RELATED BILLS PENDING:

DATE INTRODUCED: *2-1-84*

REFERRALS: *Reserve
Military*

INITIAL RESEARCH:

BILL SUMMARY COMPLETED:

SUMMARY BY LEGAL DIVISION:

SPONSOR CONTACTED FOR
BACKUP MATERIALS:

DEPT. OF LAW SUMMARY:

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS/GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE:

BACKGROUND MATERIAL DISTRIBUTED:

PSA/PRESS RELEASE:

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/COMMITTEE
SUBSTITUTES DRAFTED:

Tanana Chiefs Conference, Inc.
Native Services
Bob Wilkinson
Rights Protection Specialist
320 2nd Avenue
Fairbanks, Alaska 99701
Phone 907/452-8251

burden of posting in rural areas, esp. native allotments. help if fail to post?

*Dick DeFevre, DNR
Trespass Officer*

*Land Managers Assoc, Anch 272-1254
Dan Alex
Fran Zimmerman*

*Hermann 4942
George Jacko
revised 15 O.K.*

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



POUGH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

MINUTES

April 9, 1984
3:05 pm

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Ziegler, Vice Chairman
Senator Eliason
Senator Paul Fischer
Senator Vic Fischer
Senator Mulcahy
Senator Sturgulewski

CALENDAR

SB 379, An Act establishing a fisheries business tax credit.

SB 391, An Act relating to fees for, rules of and collection of fees for sport fishing and hunting licenses and commercial fishing crewmember licenses.

SB 399, An Act relating to trespassing and posting of land.

SCR 44, Relating to management of state construction materials.

SB 379

Senator Mulcahy stated that this bill was heard in Fisheries Subcommittee and reported back to full Committee with all members recommending do pass. He explained that SB 379 was suggested by the Governor's Task Force on Fisheries and has the support of fishermen and processors. It would allow a tax credit of up to 50% for shore based processors and is intended to help the development of a bottomfish industry.

Senator Sturgulewski asked for clarification that local communities would still receive their full share of fisheries taxes.

Norman Staton, Special Assistant to the Commissioner of the Department of Revenue, explained that the tax credit would apply only to the down payment portion of capital expenditures.

SB 391

Senator Mulcahy reviewed the major provisions of the bill and reported that the Subcommittee on Fisheries recommended do pass.

Martin Richard, Division of Public Services, Department of Revenue, answered questions on Section 1 of the bill, which would allow residents of group homes to qualify for 25¢ licenses, and Section 3, which makes falsification of information on license applications a crime of perjury.

SB 399

Sandra Schubert, Aide to Senator Fahrenkamp explained that the Committee Substitute would require that property owners who choose to post their land place notices at each roadway or apparent way of access onto the property, and that the notices contain the name and address of the property owner.

Senator Ziegler moved CSSB 399 from Committee with individual recommendations. There was no objection.

SCR 44

Senator Vic Fischer explained that SCR 44 requests that the Department of Natural Resources inventory and set aside reserves of sand and gravel on a statewide basis, and establish a program of managing sand and gravel resources.

Ned Farquhar, Special Assistant to the Commissioner of Natural Resources, testified that the Department supports the resolution.

Ross G. Schaff, State Geologist, spoke in support of the resolution as it provides a focus to the State Geological Survey to initiate a statewide inventory of sand and gravel resources.

Randall G. Updike, State Geological Survey, reviewed the timeline and methodology for implementing the proposed program.

Senator Vic Fischer moved SCR 45 from Committee with individual recommendations. There was no objection.

The meeting adjourned at 3:50 pm.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate Committee on Resources

MINUTES

March 14, 1984
3:06 pm

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chairman
Senator Ziegler, Vice Chairman
Senator Eliason
Senator Paul Fischer
Senator Vic Fischer
Senator Mulcahy
Senator Sturgulewski

CALENDAR

SB 301, An Act establishing a furbearer management fund; and providing for an effective date.

Presentation by Alaska Water Resources Board.

SB 399, An Act relating to trespassing and posting of land.

SB 301

Senator Sturgulewski moved SB 301 from committee with individual recommendations. There was no objection.

Alaska Water Resources Board

Esther Wunnicke, Commissioner, Department of Natural Resources, introduced members of the Board.

David Vanderbrink, Alaska Water Resources Board, explained that the Board consists of six public representatives and the Commissioners of the Departments of Environmental Conservation and Natural Resources.

Tom Meachum, Water Resources Board, discussed the need for legislation that would outline methods for adjudicating federally reserved water rights.

Peg Tileston, Water Resources Board, informed the Committee of the funding needs of the oil spill contingency fund and of the Water Board itself.

Randy Wanamaker, Water Resources Board, encouraged the State to join the Western States Water Council.

Larry Dutton, Water Policies and Procedures Section, Division of Land and Water Management, Department of Natural Resources clarified that the Western States Water Council is an arm of the Western States Governor's Association and discussed the fees for membership.

Bill Bivins, Federal Energy Management Agency, Dam Safety Division, recommended that the State establish a dam safety program to become eligible for federal funds and to reduce insurance costs.

Esther Wunnicke, Commissioner, explained that DNR has responsibility for dam safety. An inventory funded in FY 84 found at least 10 high hazard dams that need attention.

SB 399

Senator Faiks explained that the bill addresses the problems of unwitting trespassers on unposted land by requiring that land be posted with signs containing specific information signs to have certain information.

Gayle Horetski, Assistant Attorney General, answered questions on the State's liability under existing law.

The meeting adjourned at 4:04 pm.

Tanana Chiefs Conference, Inc.

Doyon Building
201 First Avenue
Fairbanks, Alaska 99701
Phone (907) 452-8251

March 14, 1984

Senator Bettye Fahrenkamp
Chairman, Senate Resources Committee

Dear Senator Fahrenkamp:

It has been brought to my attention that Senate Bill 399 is in front of the Senate Resources Committee. This bill is worded in such a manner that it is counterproductive to present state statutes.

A no action approach to this bill would have been preferred, but since this is not the direction your committee has taken, it is requested that some of the wording be amended.


In Sec. 34.52.010, No Trespassing Notice, it is stated that "...notices shall be posted every 500 feet along the exterior boundaries of property". In rural areas of the State this stipulation would be extremely difficult to comply with. The posting of Native allotments, within the Doyon Region alone, would require a minimum of 41,000 signs. This estimate does not include the posting of other lands such as those belonging to the corporation and private sectors.

Education of the public is necessary, but it could be done more effectively through the media and schools than by posting lands.

If you could assist in this problem, it would be appreciated.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.



Bob Wilkinson
Rights Protection Specialist

/crm

MAR 14 1984

Alaska State Legislature

OFFICIAL BUSINESS

CHAIRMAN
RULES COMMITTEE



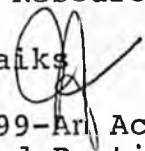
JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

MEMORANDUM

DATE: February 15, 1984

TO: Senator Bettye Fahrenkamp
Chair, Senate Resources Committee

FROM: Senator Jan Faiks 

SUBJECT: Senate Bill 399- An Act Relating to
Trespassing and Posting of Land

Senate Bill 399 has been referred to the Senate Resources Committee. I would very much appreciate a hearing for this legislation as soon as your committee schedule allows.

During the interim, a young constituent came to see me. He is a hiker and backpacker and generally enjoys the out-of-doors. Many times in trying to reach state land, he found he had to cross private land that was marked no trespassing. It was difficult for him to determine the boundaries of the private land and even more difficult for him to ascertain who the owner was.

I began to look into this to determine how other states require private land to be posted. In many cases, the owner, lessee, or person lawfully in possession of real property was required to conform to certain guidelines governing the posting of private land if they desired to prevent trespass to their property. The language in this bill closely parallels New Mexico's statutes.

The Department of Natural Resources tells me they already have the authority to enforce regulations prohibiting the private posting of state land. Therefore, I did not address that topic in this bill.

If you or your staff have any questions, please give me a call. I have quite a lot of information from other states that you are welcome to look through and share with your committee members.

Thank you. I look forward to working on this legislation with the Resources Committee.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
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Senate

Committee on Resources

MINUTES

March 14, 1984
3:06 pm

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chairman
Senator Ziegler, Vice Chairman
Senator Eliason
Senator Paul Fischer
Senator Vic Fischer
Senator Mulcahy
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SB 399

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Gayle Horetski, Assistant Attorney General, answered questions on the State's liability under existing law.

The meeting adjourned at 4:04 pm.

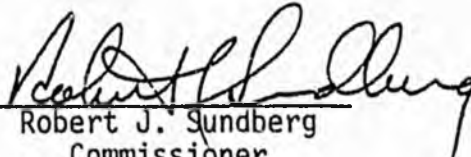
DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSSB 399

Support

This legislation delineates more clearly the requirements of posting lands against trespass. It would appear to make it easier to enforce trespass of open lands as intent could more readily be proven.

When land is properly posted and a person enters such land for the purpose of acting indifferent to the posting restriction, the act more clearly defines the intention to trespass.


Robert J. Sundberg
Commissioner

30-12-10. Interception of privileged or unauthorized communications.

Determination of whether evidence subject to public inspection. — Any determination of whether items of evidence are properly subject to public inspection and copying must necessarily consider the likeli-

hood of injury to parties not involved in the particular case at bar. State ex rel. Bingham v. Brennan, 98 N.M. 109, 645 P.2d 982 (1982).

New Mexico

30-12-11. Right of privacy; damages.

"Any person who intercepts" construed. — The meaning of "any person who intercepts" includes persons who have participated in the steps necessary to effectuate an unauthorized interception of communications which results in the violation of an individual's privacy. *Templin v. Mountain Bell Tel. Co.*, 97 N.M. 699, 643 P.2d 263 (Ct. App. 1982).

Civil action permitted whether or not conviction achieved. — The civil cause of action provided for in this section may be pursued regardless of whether the defendant has been convicted under 30-12-1 NMSA 1978. *Templin v. Mountain Bell Tel. Co.*, 97 N.M. 699, 643 P.2d 263 (Ct. App. 1982).

Corporations as well as individuals may be liable in damages if they participate in setting up

unauthorized interceptions of a customer's telephone communications. *Templin v. Mountain Bell Tel. Co.*, 97 N.M. 699, 643 P.2d 263 (Ct. App. 1982).

Duty of telephone company. — A telephone company has a duty to obtain the valid consent of a customer before placing an extension of the customer's phone in another person's residence. *Templin v. Mountain Bell Tel. Co.*, 97 N.M. 699, 643 P.2d 263 (Ct. App. 1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Application to extension telephones of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 USCS §§ 2510 et seq.), pertaining to interception of wire communications, 58 A.L.R. Fed. 594.

ARTICLE 14

Trespass

Sec.

30-14-1. Criminal trespass.

30-14-1.1. Types of trespass; injury to realty; civil damages.

30-14-5. Repealed.

30-14-6. No trespassing notice; sign contents; posting;

Sec.

requirement; prescribing a penalty for wrongful posting of public lands.

30-14-7. Repealed.

30-14-8. Breaking and entering.

30-14-1. Criminal trespass.

A. Criminal trespass consists of unlawfully entering or remaining upon the lands of another knowing that such consent to enter or remain is denied or withdrawn by the owner or occupant thereof.

B. Criminal trespass also consists of unlawfully entering or remaining upon lands owned, operated or controlled by the state or any of its political subdivisions knowing that consent to enter or remain is denied or withdrawn by the custodian thereof.

C. Any person who enters upon the lands of another without prior permission and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features, is guilty of a misdemeanor.

D. Whoever commits criminal trespass is guilty of a misdemeanor.

History: 1953 Comp., § 40A-1-1, enacted by Laws 1963, ch. 303, § 14-1; 1975, ch. 52, § 1; 1979, ch. 186, § 1; 1981, ch. 34, § 1; 1983, ch. 27, § 2.

The 1979 amendment added Subsection C, redesignated former Subsection C as Subsection D, deleted "petty" preceding "misdemeanor" near the end of Subsection D and made other minor changes.

The 1981 amendment deleted "and with malicious intent" preceding "entering or remaining" near the beginning of Subsections A and B and inserted "petty" preceding "misdemeanor" near the end of Subsections C and D.

The 1983 amendment deleted "petty" preceding "misdemeanor" in Subsections C and D.

Effective dates. — Laws 1981, ch. 34, contains no effective date provision, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

Laws 1983, ch. 27, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

When one commits burglary of dwelling house one commits criminal trespass based on that entry. *State v. Ruiz*, 94 N.M. 771, 617 P.2d 160 (Ct. App. 1980).

By unlawfully entering lands of another. — The only "act" involved in criminal trespass, as a lesser offense included within burglary of a dwelling house, is entry upon the lands of another, which requires a "malicious intent." *State v. Ruiz*, 94 N.M. 771, 617 P.2d 160 (Ct. App. 1980).

Unlawful entry is entry not authorized by law, without excuse or justification. *State v. Ruiz*, 94 N.M. 771, 617 P.2d 160 (Ct. App. 1980).

"Lands," in Subsection A, includes buildings and fixtures and is synonymous with real property.

State v. Ruiz, 94 N.M. 771, 617 P.2d 160 (Ct. App. 1980).

Damage to property not required to show malicious intent. — While damage to property would be evidence of malicious intent, such is not required inasmuch as malicious intent may be established by evidence of an intent to vex or annoy or do a wrongful

act. State v. Ruiz, 94 N.M. 771, 617 P.2d 160 (Ct. App. 1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. Liability of private citizen, calling on police for assistance after disturbance or trespass, for false arrest by officer, 98 A.L.R.3d 542.

30-14-1.1. Types of trespass; injury to realty; civil damages.

A. Any person who enters and remains on the lands of another after having been requested to leave is guilty of a misdemeanor.

~~B. Any person who enters upon the lands of another when such lands are posted against trespass at every roadway or apparent way of access is guilty of a misdemeanor.~~

~~C. Any person who drives a vehicle upon the lands of another except through a roadway or other apparent way of access, when such lands are fenced in any manner, is guilty of a misdemeanor.~~

D. In the event any person enters upon the lands of another without prior permission and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features, he shall be liable to the owner, lessee or person in lawful possession for damages in an amount equal to double the amount of the appraised value of the damage of the property injured or destroyed.

History: 1978 Comp., § 30-14-1.1, enacted by Laws 1979, ch. 186, § 2; 1983, ch. 27, § 3.

The 1983 amendment deleted "petty" preceding "misdemeanor" in Subsections A to C.

Effective dates. — Laws 1983, ch. 27, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

30-14-5. Repealed.

Repeals. — Laws 1979, ch. 186, § 4, repeals 30-14-5 NMSA 1978, relating to the short title of the Property Posting Act.

~~30-14-6. No trespassing notice; sign contents; posting; requirement; prescribing a penalty for wrongful posting of public lands.~~

~~A. The owner, lessee or person lawfully in possession of real property in New Mexico, except property owned by the state or federal government, desiring to prevent trespass or entry onto the real property shall post notices parallel to and along the exterior boundaries of the property to be posted, at each roadway or other way of access in conspicuous places, and if the property is not fenced, such notices shall be posted every five hundred feet along the exterior boundaries of such land.~~

~~B. The notices posted shall prohibit all persons from trespassing or entering upon the property, without permission of the owner, lessee, person in lawful possession or his agent.~~

~~The notices shall:~~

~~(1) be printed legibly in English;~~

~~(2) be at least one hundred forty-four square inches in size;~~

~~(3) contain the name and address of the person under whose authority the property is posted or the name and address of the person who is authorized to grant permission to enter the property;~~

~~(4) be placed at each roadway or apparent way of access onto the property, in addition to the posting of the boundaries; and~~

~~(5) where applicable, state any specific prohibition, that the posting is directed against, such as "no trespassing," "no hunting," "no fishing," "no digging" or any other specific prohibition.~~

~~C. Any person who posts public lands contrary to state or federal law or regulation is guilty of a petty misdemeanor.~~

History: 1953 Comp., § 40A-14-7, enacted by Laws 1969, ch. 105, § 2; 1979, ch. 186, § 3.

The 1979 amendment substituted "requirement" for "requirements" and added "prescribing a penalty for wrongful posting of public lands" in the catchline, deleted "at conspicuous places, at a distance apart of not more than" from the end of Subsection A and former Paragraphs (1) and (2) thereunder, substituted

the present provisions following "property to be posted," substituted "be at least one hundred forty-four square inches in size" for "be at least one foot high by two feet long" in Subsection B(2) and added Subsection C.

Repealing clauses. — Laws 1979, ch. 186, § 4, repeals 30-14-5 and 30-14-7 NMSA 1978.

30-14-7. Repealed.

Repeals. — Laws 1979, ch. 186, § 4, repeals 30-14-7 NMSA 1978, relating to penalties for trespassing and double damages for injury to realty.

30-14-8. Breaking and entering.

A. Breaking and entering consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, where entry is obtained by fraud or deception, or by the breaking or dismantling of any part of the vehicle, watercraft, aircraft, dwelling or other structure, or by the breaking or dismantling of any device used to secure the vehicle, watercraft, aircraft, dwelling or other structure.

B. Whoever commits breaking and entering is guilty of a fourth degree felony.

History: Laws 1981, ch. 34, § 2.

Effective dates. — Laws 1981, ch. 34, contains no effective date provision, but was enacted at the session

which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

ARTICLE 15

Property Damage

Sec.

30-15-5. Damaging caves or caverns unlawful.

30-15-6. Penalty.

30-15-1. Criminal damage to property.

Am. Jur. 2d, A.L.R. and C.J.S. references.

Liability for damage to automobile left in parking lot or garage. 13 A.L.R.4th 442.

30-15-4. Desecration of a church.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity and construction of statute or ordinance

prohibiting desecration of church, 90 A.L.R.3d 1119.

30-15-5. Damaging caves or caverns unlawful.

It shall be unlawful for any person, without prior permission of the federal, state or private land owner, to willfully or knowingly break, break off, crack, carve upon, write or otherwise mark upon, or in any manner destroy, mutilate, injure, detach, remove, displace, mar or harm any natural material found in any cave or cavern, such as stalactites, stalagmites, helictites, anthodites, gypsum flowers or needles, flowstone, draperies, columns, tufa dams, clay or mud formations or concretions, or other similar crystalline mineral formations or otherwise; to kill, harm or in any manner or degree disturb any plant or animal life found therein; to otherwise disturb or alter the natural conditions of such cave or cavern through the disposal therein of any solid or liquid materials such as refuse, food, containers or fuel of any nature, whether or not malice is intended; to disturb, excavate,

Alaska State Legislature



REPRESENTATIVE

ROBERT H. "BOB" BETTISWORTH

P.O. BOX 80288
COLLEGE, ALASKA 99708

POUCH V
JUNEAU, ALASKA 99811

October 13, 1983

Senator Jan Faiks
Pouch V, Capitol Building
Juneau, Alaska 99811

Dear Senator Faiks,

In reference to your letter of September 26th, none of my constituents have expressed any problems with regard to encountering "No Trespassing" signs on public lands owned by the State of Alaska. Apparently Representative Ringstad hasn't heard any such complaints either.

Your effort to determine what other states are doing to identify who or what agency is posting the land certainly should be pursued. The public would be better served with some requirement in place to place a burden on the poster to identify themselves. I find no problem with implementing such a plan once we have been instructed by other jurisdictions as to the ways and means of doing so without making mistakes. The suggestion about providing information on public easements or rights of way may be somewhat more difficult to do.

Please let me know what you find out on these issues: they are of great interest to me.

Sincerely,

A handwritten signature in cursive script that reads "Rob Bettisworth".

Rob Bettisworth, Representative
District 20A, Fairbanks

RHB/rob

OFFICER

CHAIRMAN
RULES COMMITTEE

ALASKA 99811

Senate

October 20, 1983

Dan Boots
4031 East 67th
Anchorage, Alaska 99507


Dear Dan:

Attached is Commissioner Wunnicke's reply to the concerns you raised over illegal posting of "No Trespassing" signs. She agrees you have a valid problem and has directed Tom Hawkins, head of the Land and Water Management division, to look into possible solutions.

In the meantime, the October 17th Anchorage Times began an in-depth look at illegal trespassers as well as those who claim they own state land but don't really have title. It certainly appears DNR is aware of the problem and is making a concerted effort to find a long-term solution (I enclosed a copy of the article in case you may not have seen it). If you would like to talk further with Mr. Hawkins about your concerns and experiences, his office is in Anchorage at 555 Cordova Street and the office number is 276-2653.

I'll be back in touch as soon as I hear further from DNR.

Sincerely,


Jan Faiks
Senator

JF:cf
enclosure

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE: 465-2400

October 11, 1983

The Honorable Jan Faiks
Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Faiks:

Thank you for your September 29 letter. I agree that the problem outlined is a valid one.

First, let me say that any specific cases of illegal posting of State lands could and should be reported to the Division of Land and Water Management. I have given a copy of your letter to Tom Hawkins, Director of that division, although he would need more information to pursue Mr. Boots' complaint.

On the general issue, I've asked Mr. Hawkins to look into the New Jersey approach, as well as any other ideas his staff may have to deal with access. I understand Michigan has implemented an innovative scheme whereby landowners volunteer to provide both information and access for sportsmen, and they are listed in a directory put together by Fish and Game. That program might have some applicability in Alaska.

I appreciate your bringing this matter to our attention. We will get back to you with more specific information and recommendations as soon as possible.

Sincerely,



Esther C. Wunnicke
Commissioner

cc: Tom Hawkins

MONDAY
MIDDAY

The Anchorage Times

56 pages

69th year

MONDAY EVENING, OCTOBER 17, 1983

25¢

State launches hot pursuit of squatters

by Jeff Bertner
and Pat O'Brien
Times Writers

In a major policy shift, several state agencies have joined both forces and funds to evict trespassers from state-owned lands.

The \$100,000 project to root out private users of public lands has just gotten under way, but already the state is tangling with a number of squatters, bogus miners and other trespassers who refuse to budge.

Alaska's 78 million acres of land unwillingly hosts an estimated 2,500 trespassers, according to early estimates by state officials working on the

First of three parts

project. They are preparing a report to the legislature which catalogues trespass on state lands.

Thomas J. H. Adams said his state Division of Land and Water Management have identified "three flavors of trespass:" those who go onto state land to take resources such as gravel or timber; people, companies or local governments causing damage to state land; and the squatters — those who find a patch of state land to their liking and simply build a cabin, usually for weekend or hunting-season use.

Finding the most blatant offenders to evict from state land is part of the project, and the state is using some of its trespass project money for a lawyer.

"Setting the biggest precedent" is the state's goal in choosing which cases to pursue first, said James Barnett, deputy commissioner of natural resources. "The point we want to make is that you don't win from trespassing on state lands."

People often obtain use of the land legally — by getting a mining claim, for example — but then move in, using the claim as a cover for unauthorized homesteading, Barnett said.

Phony miners will be ferreted out and ejected,

Barnett said. Otherwise, "you'll have the whole Anchorage community out there staking claims on their favorite fishing holes."

A lot of people already have private cabins at their favorite public fishing hole, or duck hunting spot, or gold panning creek.

Some of the long-time trespassers have been known to state officials for a quite a while. Only now, with this trespass project, has the state embarked on a singular effort aimed at uprooting them.

A lot of Alaskans would like a piece of wilderness to call home, and for those with initiative,

See Trespassers, page A-18

President
is now a
candidate

Associated Press

Washington — President Reagan, still refusing to say whether he will run for re-election, became a presidential candidate today "in the eyes of the law" and his campaign chairman said he was "a solid favorite" to win.

The president signed two letters at his desk in the Oval Office. One authorized Sen. Paul Laxalt, R-Nev., to establish a campaign committee. A second informed the Federal Election Commission that he was "hereby authorizing this committee as my principal campaign committee."

While Reagan refused to say whether he will seek a second term, his senior aides and advisers have said they have no doubts.

Gruening firm
was not among
original finalistsby David Shoup
Times Writer

The Anchorage architectural firm that designed the troubled Gruening Junior High School was not among the five finalists originally selected for the multi-million-dollar project.

The firm — Lane, Knorr and Plurkett — was one of two companies added to the list of finalists after the original five were chosen.

The man who was in charge of the selection process, Robert H. Taylor, said late last week that the decision to include the additional two firms was made by

District ups insurance

— See story, page A-10

tendant John B. Peper.

Peper said Sunday night he does not remember making such a decision.

Taylor, now a private engineer in Anchorage, was the school district's facilities coordinator in late 1980 when the selection committee picked five architectural firms from 34 bidders competing for the design contract for the school in Eagle River.

Taylor said the committee's former school district superintendent

See Design, page A-18



FULFILLING HIS VOW

About a year ago, when the Rev. William Tabb took over the Heyworth, Ill., Church of God, he had 11 people show up for services. He vowed then that when there were 75 people in church, he would eat his Sunday dinner

of the roof of the church. Last week there were 77. So, Sunday afternoon, Tabb was served his home-made fried chicken dinner, complete with chocolate cream pie, at a table mounted over a peak of the church roof.

insure against design defects

sign contracts to carry \$10 million dollars of "errors and omissions" insurance or else would authorize the district to insure itself for \$10 million for each project. Now, the district requires architects to carry \$1 million of the insurance. Freeman said the proposed increase is "a safeguard; it's another precaution." And he said it's a direct result of the controversy surrounding the Gruening High School project.

Construction of the \$20 million Eagle River school is behind schedule and the project is the subject of a court battle. If the school district loses the court fight, it could be hit with a judgment of more than \$10 million. Freeman said the cost of requiring the higher level of insurance would be significant, but he said the move is prudent in light of the district's exposure to risk as a result of Gruening. He said if the school board ap-

proves the proposal, it would mean an additional insurance cost of \$77,000 for the Mears Junior High School project, which also is under construction. Mears, near Anchorage's Campbell Lake, carries an estimated total cost of \$30 million and a scheduled completion date of July 1983. Freeman said it's too late for the district to bolster its protection on the Gruening project.

Trespassers evicted

Continued from page A-1

tools, a few dollars and an adventurous spirit, there has always been room in Alaska to head into the backwoods and build a home. Their makeshift shelters — nothing more than a bare-bones shack with a roof to keep dry — have been upgraded over the years. Tent frames have turned into cabins which in turn have sprawled into miniature resorts. Commercial hunting and fishing guides have established base camps without putting out a cent for the land. And others, under mining laws, filed claims and set up house without ever digging for a nugget. At one location, trespassers became so numerous that a virtual community was staked out — illegally and, from the looks of it, permanently — on state land in the shadow of Mount McKinley. Officials joked that the burgeoning trespass community would soon be entitled to a public school under state laws, said Margaret Hayes, southcentral land manager. Instead of getting a school, they've gotten eviction notices — as have scores of other trespassers. Most trespassers remain firmly in place through the years. But times have changed and so has state policy. For the first time, bureaucrats are calling settlers on publicly owned lands by their true legal name — trespassers. Once this project identifies the trespassers, Hawkins said, they will be "asked to leave. Or the land may be offered for sale. In other cases, the person's occupancy may be legitimate, but he will be charged for the materials" he has used. Ironically, many trespassers are being discovered in the process of cataloging state lands for disposal to the public. As state officials work to identify which real estate to put into private hands in future land disposal programs, they are finding people who have already appropriated the land for themselves. Come spring, the state will initiate a homesteading program which will make it easy for nearly anyone to get a piece of Alaska, Hayes said.

you up on a 160-acre homestead. What we can't do is set you up on waterfront or high amenity land." To get state land, would-be owners have to pay the fair market value or meet homesteading requirements, which don't amount to much more than building a cabin, surveying the land and living on it for 25 of the next 60 months. Those who have found it easier and cheaper to bypass the rules and simply move onto the land soon will find that maybe they should have followed the rules. At least that's what state officials hope the trespass project accomplishes. The state must show people that they really can get state land through legitimate legal means and that it's not difficult or expensive, Barnett said. The idea is to discourage trespassers by encouraging people to go through a state land disposal program, he said. Although many trespassers have been discovered by state lands officials preparing the ostensibly vacant land for private ownership, Hayes said the state learns about trespass cases most frequently from "squealers." Land owners report the trespassers, Hayes said. They complain. "I paid for mine. Why should they get it free?" It is difficult to identify owners of many of the unauthorized cabins. But in some of the most blatant cases, trespasser will actually put up their own "No Trespassing" signs on state land, Hayes said. Those are the ones who usually have taken up permanent residence, and those are the ones who are being targeted for eviction. **NEXT: The trespasser**

American charged with espionage

San Francisco — An American was arrested and charged with stealing national defense secrets and selling them to a Polish spy for relay to the Soviet Union, government officials disclosed today. James Durward Harper IV, of Mountain View was charged with stealing secrets from May 1979 to the present. He is accused of stealing 220,000, according to a report filed by the FBI last Saturday.

OFFICIAL BUSINESS
CHAIRMAN
RULES COMMITTEE

FAIKS
JUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Sk.

September 26, 1983

Dan Boots
4031 East 67th
Anchorage, Alaska 99507

Dear Dan:

Thanks so much for coming by the office to talk about possible "No Trespassing" signs on public lands. Based on your personal experiences, your concerns certainly seem valid.

As I mentioned, I have asked the Legislature's Legal Counsel to review the issue, as well as the Department of Natural Resources. The Senate's Research agency is gathering information from other states to learn how they handle the issue. I'll send you what each of these agencies are able to offer.

DNR is also still working on the fact sheet about the Homestead Program. I'll send you one as soon as I receive it.

If in the meantime you've thought of any other way of dealing with the problem, let me know. Otherwise I'll be back in touch as soon as I have some further information.

Sincerely,


Jan Faiks
Senator

JF:cf

4031 E. 67th
99507 U

HW - 349-3201
WK - 563-8102

New York - research "No Trespassing"
signs illegal require a legible name
New Jersey + phone #
or pattern #
or description
people posting signs who do not of
own lands. Told + not accurate access
public

identity the public right away to
state owned lands behind

Coal leases - people lease sub-surface
do not own surface.

Houston area has numerous "No Trespassing"
signs

can require
name
legal
description

1. get legal analyses from land
2. get analysis from DNR
3. contact Revenue agency to see what
other states require on No Trespassing
4. possibility to draft a bill to solve
the problem.
5. ask other Substate legislator

Wanted fact sheet needed

Cheryl
Cheryl
Cheryl
Cheryl
Cheryl

OFFICIAL -

CHAIRMAN
RULES COMMITTEE

POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

September 29, 1983

Billy G. Berrier, Director
Division of Legal Services
Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99811

Dear Mr. *Berrier*:

A constituent has shared with me what appears to be a valid concern. I would appreciate Legal Services' expertise in evaluating our alternatives.

Dan Boots has experienced "No Trespassing" signs posted on state land. He believes people who do not own the land are posting these signs in order to keep others out. He hunts and camps and wants to observe the privacy of those who really do own land, but too often has been chased off from a campsite by the land's "owner", only to find out later that the land was in-fact state land. This is especially the case near Houston.

Mr. Boots indicated New Jersey requires a legible name be printed on all posted "No Trespassing" signs, as well as a telephone number. He believes this might help, or a requirement that a legal description of the private property be posted with the sign. He also suggests that owners, when appropriate, be required to provide information about any public right-of-ways that may exist on private land in order to get to any state-owned land adjacent to the private land.

Could such posting requirements be put into the statutes? I would appreciate an evaluation of the suggestions, as well as any suggestions Legal Services may have as to a course of action. For your information, I have also asked the Department of Natural Resources to review Mr. Boots' concerns.

Thank you for the anticipated help. Please forward your reply to my Anchorage office at 1024 West Sixth Avenue, 99501.

Sincerely,


Jan Faiks
Senator

OFFICIAL

CHAIRMAN
RULES COMMITTEE

FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

September 29, 1983

Commissioner Esther Wunnicke
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Commissioner Wunnicke:

A constituent has shared with me what appears to be a valid concern. I would appreciate your expertise in evaluating any solutions.

Dan Boots has experienced "No Trespassing" signs posted on state land. He believes people who do not own the land are posting these signs in order to keep others out. He hunts and camps and wants to observe the privacy of those who really do own land, but too often has been chased off from a campsite by the land's "owner", only to find out later that the land was in-fact state land. This is especially the case near Houston.

Mr. Boots indicated New Jersey requires a legible name be printed on all posted "No Trespassing" signs, as well as a telephone number. He believes this might help, or a requirement that a legal description of the private property be posted with the sign. He also suggests that owners, when appropriate, be required to provide information about any public right-of-ways that may exist on private land in order to get to any state-owned land adjacent to the private land.

How can this problem be addressed? Will the department consider such posting requirements? Please let me know what you think can be done. Please forward your reply to my Anchorage office at 1024 West Sixth Avenue, 99501.

Sincerely,



Jay Faiks
Senator

OFFICIAL

CHAIRMAN
RULES COMMITTEE

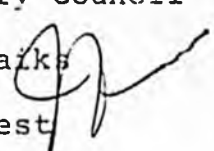
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

September 26, 1983

MEMORANDUM

TO: Pete Jeans
Senate Advisory Council

FROM: Senator Jan Falks 

SUBJECT: Research Request

A constituent has shared with me what appears to be a valid concern. I would appreciate the Senate Advisory Council's assistance in researching how other states handle the problem.

Dan Boots has experienced "No Trespassing" signs posted on state land. He believes people who do not own the land are posting these signs in order to keep others out. He hunts and camps and wants to observe the privacy of those who really do own land, but too often has been chased off from a campsite by the land's "owner", only to find out later that the land was in-fact state land. This is especially the case near Houston.

Mr. Boots indicated New Jersey requires a legible name be printed on all posted "No Trespassing" signs, as well as a telephone number. He believes this might help, or a requirement that a legal description of the private property be posted with the sign. He also suggests that owners, when appropriate, be required to provide information about any public right-of-ways that may exist on private land in order to get to any state-owned land adjacent to the private land.

I have requested Legal Services and the Department of Natural Services to analyze Mr. Boots' concern and make recommendations on how best to proceed. In the meantime, I would also like to learn what type of posting requirements other states have. Would you please provide me with such information?

Thank you. Please forward the results of your research to my Anchorage office at 1024 West Sixth, 99501.

cc: Senator Jalmar Kerttula

SB 399 - AN ACT RELATING TO TRESPASSING AND POSTING OF LAND

Sponsor: Fiaks by request

SB 399 adds a new chapter to Title 34, Property, which provides private (real) property owners with guidelines for posting trespassing signs to be recognized by law. The new chapter also includes a subsection which makes one guilty of a class B misdemeanor for knowingly posting trespassing signs on public property.

This chapter is an adaptation to the real property trespassing laws of New Mexico and New Hampshire.

Division of Lands, DNR, is authorized by statute to investigate and enforce the laws regarding the trespassing of state land. Additionally, they have a trespassing officer for investigation and enforcement of the laws. There are, however, no Alaska laws either addressing trespassing on private land or what the correct procedures are for posting. The intent of this legislation is to legally recognize the trespass of private property and to provide the real property owner with the correct procedures for posting.

January 23, 1984

MEMORANDUM

TO: Richard Bradley
FROM: Senator Jan Faiks
SUBJECT: No Trespassing Signs

I have decided to proceed with legislation regarding the use of no trespass signs. Will you please draft it with myself as the sponsor and show it by request.

After reviewing statutes from several states, I would like to proceed along the lines of language enacted by New Mexico and New Hampshire. New Mexico states that a property owner desiring to prevent trespass or entry onto real property shall post notices parallel to and along exterior boundaries of the property to be posted, at each roadway or other way of access in conspicuous places, and if the property is not fenced, such notices shall be posted every 500 feet along the exterior boundaries. The notices shall be printed legibly in English, be at least 144 square inches, contain the name and address of the person under whose authority the property is posted, and state any specific prohibition.

According to the Department of Natural Resources, they already have the authority, and even a trespass officer, to handle the complaints they receive about no trespassing signs improperly posted on state lands.

If you have any questions, please give me a call.

Alaska State Legislature

Advisory Council Members

Senator Kerttula, Chairman
Senator Bennett
Senator Fahrenkamp
Senator Vic Fischer



Pouch V
State Capitol
Juneau, Alaska 99811
Phone: (907) 465-3114

SENATE ADVISORY COUNCIL

MEMORANDUM

TO: Senator Faiks
Alaska State Legislature

FROM: Bill Hall *WH*
Senior Advisor

DATE: November 18, 1983

RE: Research Request/Posting

In regard to your request for information on posting requirements in other states, Pete Jeans requested that I prepare an analysis of the responses that we have received to date for your consideration. Included with this analysis I am also enclosing for your information all of the relevant material that we have received to date.

As of this date we have received responses from nineteen states. Their posting requirements vary from none as in Georgia to extensive as in Idaho and New Mexico where even access to caves and caverns is governed by state statutes. Keeping in mind that the requirement for posting is an extension of statutes governing trespass, a composite profile of those elements addressed in part or in total by each of the states that responded includes the following.

1. Purpose. The purposes for posting appear to fall into two general categories. One is the general requirement for providing one means of notice for enforcement of basic trespass laws which appear to be designed in part as an expression of the rights of property owners to limit access to their lands.

The second purpose is much more specific and addresses itself to specific types of lands and specific types of activities. Examples of types of lands addressed include private lands, public lands, cultivated lands, enclosed lands, caves and caverns. Examples of types of specific activities include fishing, hunting, trapping, gathering of plants, wood cutting, removal of top soil and trash dumping.

2. Persons Authorized To Post. All of the states specifically define who has the right to post land (ie owners, renters, agents, etc.) and some have statutes specifically prohibiting persons from posting land to which they have no rights.
3. Signs. The purpose of posting is to give notice to the public as to the ownership of lands and activities (including access) that are prohibited or permitted on said lands. The more common means of posting is through the use of signs. However, some state's statutes contain the implication or statement that certain lands are considered to be posted if they are cultivated or enclosed. Other states consider painted fence posts to be acceptable signs of posting. For those states that utilize written signs, the following requirements are usually defined in the legislation.
 - a. size of sign
 - b. size of lettering
 - c. color of sign & lettering
 - d. use of the English language
 - e. location & spacing of signs
 - f. maintenance of signs
 - g. name, address & telephone number of person posting sign
 - h. date of posting
 - i. prohibitions & penalties for defacing & destroying signs
4. Publication of Posting Requirements. One state, Vermont, requires that a notice of posting be filed at the town clerks office in which the land is located. Another state requires that the posting requirements and related trespass laws be printed in the pamphlets containing hunting and fishing regulations.
5. Jurisdictions. Most states define their authority to regulate trespass and posting activities by statute and assign that area of responsibility to various departments for implementation (usually departments responsible for natural resources or fish and game). However, one state leaves that authority to its local municipalities.

It would appear from the foregoing and from the problem identified by your constituent that you might wish to consider a solution that would include the following:

1. Requirement for sign.
2. Definition of size and design of sign.
3. Location and spacing requirements
4. Maintenance of sign.

Senator Faiks
Memorandum
Page 3

5. Inclusion of posting person's name, address & telephone number.
6. Date of posting.
7. Penalties for unauthorized posting.
8. Publication of trespass laws and posting requirements in hunting and fishing regulation booklets.

In regard to posting requirements for public right-of-ways across private lands that provide access to public lands, none of the states that responded had such requirements. This appears to be due in part to the limited amount of public land in many states particularly those on the east coast.

If we can be of any further assistance to you in preparing your response to this problem, please do not hesitate to contact us.

BH;lal

STATES RESPONDING TO REQUEST FOR POSTING LAWS
as of 11/17/83

1. Wisconsin
2. Minnesota
3. Vermont
4. Idaho
5. Georgia
6. Indiana
7. South Dakota
8. Oregon
9. Utah
10. New Mexico
11. Kansas
12. Iowa
13. Delaware
14. Maryland
15. New Hampshire
16. Illinois
17. West Virginia
18. Ohio
19. New Jersey

Sec. 11.46.310. Burglary in the second degree. (a) A person commits the crime of burglary in the second degree if the person enters or remains unlawfully in a building with intent to commit a crime in the building.

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

NOTES TO DECISIONS

For cases construing former law, see notes to AS 11.46.300, analysis line II.

Applied in *McManners v. State*, Ct. App. Op. No. 123 (File No. 6065), 650 P.2d 414 (1982); *Linn v. State*, Ct. App. Op. No. 210 (File Nos. 6163, 6188), 658 P.2d 150 (1983).

Quoted in *Kirby v. State*, Ct. App. Op. No. 117 (File No. 5738), 649 P.2d 963 (1982).

Cited in *Ozenna v. State*, Sup. Ct. Op. No. 2209 (File No. 4748), 619 P.2d 477 (1980); *Zurfluh v. State*, Sup. Ct. Op. No. 2238 (File No. 4697), 620 P.2d 690 (1980); *Kanipe v. State*, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); *Nix v. State*, Ct. App. Op. No. 008 (File No. 4879), 624 P.2d 825 (1981); *Koteles v. State*, Ct. App. Op. No. 232 (File No. 6782), 660 P.2d 1159 (1983).

Sec. 11.46.320. Criminal trespass in the first degree. (a) A person commits the crime of criminal trespass in the first degree if the person 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 amendments. — The 1980 amendment 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).

Collateral references. — 35 Am. Jur. 2d, *Forcible Entry and Detainer*, §§ 58 — 61; 52 Am. Jur. 2d, *Malicious Mischief*, § 1 et seq.; 75 Am. Jur. 2d, *Trespass*, §§ 86 — 94.

36 C.J.S. *Forcible Entry and Detainer*, § 1 et seq.; 54 C.J.S. *Malicious Mischief*, § 1 et seq.; 87 C.J.S. *Trespass* §§ 140 — 165.

Forcible detainer or trespass, where entry was peaceful, 49 ALR 597.

Right to use force to obtain possession of real property to which one is entitled, 141 ALR 273.

Validity, construction, and application of statutes or ordinances penalizing one who enters or remains in dwelling after having been forbidden to do so, 146 ALR 656.

Injunction against repeated or continuing trespasses on real property, 60 ALR2d 310.

Uninvited entry into another's living quarters as invasion of privacy, 56 ALR3d 434.

Sec. 11.46.330. Criminal trespass in the second degree. (a) A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully

- (1) in or upon premises; or
- (2) in a propelled vehicle.

contact Roland Shanks 270-287

✓ Bob Wilkinson 4528251

DNR

✓ Hermann's office

Public Safety

7100 ✓ Horvatski 3428

Faiks

MEMORANDUM

TO: Jan
FROM: Sandy
DATE: March 29, 1984
RE: Senate Bill 399-No Trespassing

We need some direction from you on exactly what it is you want to do with the no trespass bill.

Current law provides that if a person enters upon land of another without the intent to commit a crime, and the land is apparently unused and neither fenced or otherwise enclosed, that person is privileged to do so unless notice against trespass is personally communicated to that person by the owner of the land or notice is posted in a conspicuous ~~location~~.

The original bill added a section to Title 34 Property saying that a property owner desiring to prohibit trespass must post the signs every 500 feet if the property is not fenced; if the property is fenced signs must be posted at each roadway or other way of access. Another section provided the description of what must be on each sign.

The proposed Resources CS puts the provisions into Title 11 under the Trespass section. It adds to the current law only by saying that those who do choose to post must include certain things on their signs.

The native corporations oppose even the CS since they estimate it will cost them \$8 for each sign by the time they include the cost of the sign and the labor involved in putting them up.

Perhaps we could just say the notices shall be posted at each roadway or apparent access onto the property, rather than requiring it every 500 feet. That way if the property was not posted or fenced, one could not be guilty of trespassing. If the land were posted, one would know the proper person to contact. Does this accomplish what you want to do?

1
Does not seem worth
it but AOK w me -
not a hurry

STATE OF ALASKA
THE LEGISLATURE

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


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

November 10, 1983

SUBJECT: Use of "No Trespassing" signs
(Work Order No. 13-1538)

TO: Senator Jan Faiks

FROM: Richard A. Bradley 
Legislative Counsel

You have sought our comments on a possible solution to the problems resulting from the posting with no trespassing signs of public land as private land.

My initial (albeit jaded) reaction is that no one should expect a law to resolve conduct that is inherently and necessarily lawless. The posting of trespass signs on property not owned by the person posting it is by anyone's definition "lawless".

Having said that, I agree that the legislature could well enact a law that provided that unless a name and address or telephone number were appended to the no trespassing sign, it could be disregarded by users of the property. I suspect that a legal description requirement would provide information so technical as to be essentially devoid of meaning or utility.

On the other hand, as a private landowner myself of waterfront property, I doubt that it is or should be my responsibility to alert others to those accesses to public property (such as the beach). I agree that it is a reasonable goal of government to acquire or reserve access to public property and even to publicize that access.

Or approaching your question from a different direction, it may be contradictory to require owners to alert the public "about any public right-of-ways that may exist on private

Senator Jan Faiks

Page 2

November 10, 1983

land". A lawyer might make the point that a "public right-of-way" may exist on "private land" but the practical reality is that the right-of-way is "public use land". That right of way might be marked by municipal or state officials as a street (if it is used as one) but the problem raised by "section line rights-of-way" may be too difficult to handle in the bill you may be considering.

I agree that the legislature could, if it wished, require owners of property to identify section line rights-of-way that cross their land; the Department of Natural Resources could also undertake the marking of that land, particularly when it is a reasonable access to other state land.

If I may be of further assistance, please advise.

RAB:ojb
J1/025

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate Committee on Resources

TO: Senate Resources Committee Members
FROM: Senate Resources Committee Staff
RE: March 14 hearing
DATE: March 13, 1984

On Wednesday, March 14 at 3:00 pm in the Beltz Room, the Senate Resources Committee will receive a formal presentation by the Alaska Water Resources Board.

The Alaska Water Resources Board was created by Article 3 of AS 46.15, the Water Use Act of 1966. The Board serves as an advisory group to the Governor on all matters relating to the use and appropriation of water in the State of Alaska. Further information on the Board's duties and accomplishments is attached.

Following the Board's presentation, the following bill will be heard:

CSSB 399 AN ACT RELATING TO TRESPASSING AND POSTING OF LAND.

Under current statute (AS 11.46.350) a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land which is not fenced, is privileged to do so unless notice against trespass is personally communicated or notice is posted. To aid persons in obtaining permission to crossposted land, CSSB 399 would require that notices be posted every 500 feet along the exterior boundaries of the property and at each roadway onto the property, and contain the name and address of the person who is authorized to grant permission to enter the property.

SB 301 (FURBEARER MANAGEMENT) is scheduled for Committee action Wednesday. Attached is a memo from Legal addressing the bill's Constitutionality.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

MEMORANDUM

TO: Senate Resources Committee Members
FROM: Senate Resources Committee Staff
RE: Committee Meeting, April 9, 1984
DATE: April 5, 1984

On Monday, April 9th at 3:00 pm in the Beltz Room, the Senate Resources Committee will hear the following bills:

SB 399, An Act relating to trespassing and posting of land.

SB 399 was heard by the Resources Committee on March 14. As originally written, the bill would have required that "no trespassing" signs be posted every 500 feet along the exterior boundaries of private property. Testimony presented at the hearing indicated that this stipulation would be extremely difficult to comply with in rural areas.

A Committee Substitute has been prepared in consultation with the Land Manager's Association, the Tanana Chiefs Conference, and the bill sponsor. CSSB 399 (Resources) would aid persons in obtaining permission to cross posted land by requiring that property owners who choose to post their land place notices at each roadway or apparent way of access onto the property, and that the notices contain the name and address of the property owner.

SCR 44, Relating to management of state construction materials.

SCR 44 requests that the Department of Natural Resources inventory and set aside reserves of sand and gravel on a statewide basis, and establish a program of managing sand and gravel resources. At this time, the state has minimal awareness of the location and worth of these resources, yet they are a critical commodity for development and a valuable natural resource. With the exception of inventories conducted by the Department of Transportation for transportation facilities there is no statewide resource inventory for sand and gravel.

Sec. 11.46.310. Burglary in the second degree. (a) A person commits the crime of burglary in the second degree if the person enters or remains unlawfully in a building with intent to commit a crime in the building.

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

NOTES TO DECISIONS

For cases construing former law, see notes to AS 11.46.300, analysis line II.

Applied in *McManners v. State*, Ct. App. Op. No. 123 (File No. 6065), 650 P.2d 414 (1982); *Linn v. State*, Ct. App. Op. No. 210 (File Nos. 6163, 6188), 658 P.2d 150 (1983).

Quoted in *Kirby v. State*, Ct. App. Op. No. 117 (File No. 5738), 649 P.2d 963 (1982).

Cited in *Ozenna v. State*, Sup. Ct. Op. No. 2209 (File No. 4748), 619 P.2d 477 (1980); *Zurfluh v. State*, Sup. Ct. Op. No. 2238 (File No. 4697), 620 P.2d 690 (1980); *Kanipe v. State*, Sup. Ct. Op. No. 2242 (File No. 4993), 620 P.2d 678 (1980); *Nix v. State*, Ct. App. Op. No. 008 (File No. 4879), 624 P.2d 825 (1981); *Koteles v. State*, Ct. App. Op. No. 232 (File No. 6782), 660 P.2d 1199 (1983).

Sec. 11.46.320. Criminal trespass in the first degree. (a) A person commits the crime of criminal trespass in the first degree if the person 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 amendments. — The 1980 amendment 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).

Collateral references. — 35 Am. Jur. 2d, *Forcible Entry and Detainer*, §§ 58 — 61; 52 Am. Jur. 2d, *Malicious Mischief*, § 1 et seq.; 75 Am. Jur. 2d, *Trespass*, §§ 86 — 94.

36 C.J.S. *Forcible Entry and Detainer*, § 1 et seq.; 54 C.J.S. *Malicious Mischief*, § 1 et seq.; 87 C.J.S. *Trespass* §§ 140 — 165.

Forcible detainer or trespass, where entry was peaceable, 49 ALR 597.

Right to use force to obtain possession of real property to which one is entitled, 141 ALR 273.

Validity, construction, and application of statutes or ordinances penalizing one who enters or remains in dwelling after having been forbidden to do so, 146 ALR 655.

Injunction against repeated or continuing trespasses on real property, 60 ALR2d 319.

Uninvited entry into another's living quarters as invasion of privacy, 56 ALR3d 434.

Sec. 11.46.330. Criminal trespass in the second degree. (a) A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully

- (1) in or upon premises; or
- (2) in a propelled vehicle.

(a) A person who enters premises to commit a crime in

§ 4 ch 166 SLA

State, Sup. Ct. Op. No. 18, 619 P.2d 477; State, Sup. Ct. Op. No. 9, P.2d 690 (1980); State, Ct. Op. No. 2242, 678 (1980); Nix v. State, Ct. Op. No. 28 (File No. 4879), 678 (1980); Nix v. State, Ct. Op. No. 6782, 660 P.2d 678 (1983).

(a) A person who enters premises to commit a crime in the second degree if the

or

misdemeanor.

possession of premises if the person is entitled, 141

and application of law penalizing one who enters premises after being notified to do so, 146 ALR

repeated or continued entry on real property, 60

another's living quarters, 56 ALR3d

degree. (a) A person who enters premises to commit a crime in the second degree if

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

Cross references. — For provisions authorizing arrest without warrant in certain cases where the police officer has reasonable cause to believe that the person has committed a crime under this section, see AS 12.25.030(b).

NOTES TO DECISIONS

Cited in *Moxie v. State*, Ct. App. Op. No. 246 (File No. 7192), 662 P.2d 990 (1983).

Sec. 11.46.340. Defense: emergency use of premises. In a prosecution under AS 11.46.300, 11.46.310, 11.46.320, or 11.46.330(a)(1), it is an affirmative defense that

(1) the entry, use, or occupancy of premises or use of personal property on the premises is for an emergency in the case of immediate and dire need; and

(2) as soon as a 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 AS 11.46.300 — 11.46.350, 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;

(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; or

(3) enter or remain upon premises or in a propelled vehicle in violation of a provision in an order issued under AS 25.35.010(b) or 25.35.020.

(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 that person 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; am § 9 ch 61 SLA 1982)