

HB

339

HOUSE COMMITTEE REPORT

(11)

Date referred: 4/12/88

FURTHER REFERRALS:

DATE: 4-20-88

The Finance Committee has considered HB 339

"An Act relating to theft of timber products."

RECOMMENDS:

- replace with CS HB 339 (Juo) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 4-12-88
- zero with analysis

SIGNING DO PASS:

Al Adams

Pat Louch

Ray Jarm

Pete Jace

Ed Howell

Mary Boyer

Steve Hines

Mike Davis

SIGNING OTHER RECOMMENDATIONS:

Jay Brown

Al Adams
Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: 4-11-88
 Title: An Act relating to Timber Trespass and Commercial Sale of Firewood
 Sponsor: Davis
 Requestor: House Judiciary
 Agency Affected: Natural Resources
 BRU: Forest Management
 Components: Forest Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: George K. Hollett Phone: 465-2491
 Division: Division of Forestry Date: 4-11-88
 Approved by Commissioner: [Signature] Date: 4-11-88
 Agency: _____

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Original sponsors: Davis and Boyer

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 339 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to timber, defining the crime of
7 trespass by cutting or injuring timber, regulating
8 commercial sales of firewood, and authorizing dispo-
9 sition of state-owned unbranded and abandoned timber
10 to persons for personal, noncommercial use."

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

12 * Section 1. AS 09.45.730 is repealed and reenacted to read:

13 Sec. 09.45.730. TRESPASS BY CUTTING OR INJURING TIMBER. (a) A
14 person who cuts down, injures, or carries off timber without lawful
15 authority is liable for treble the amount of damages that may be
16 assessed in a civil action

17 (1) to the owner of the land for destruction or removal of
18 the timber from the owner's land;

19 (2) to the state for destruction or removal of the timber
20 from state land;

21 (3) to a municipality or village for destruction or removal
22 of the timber from the land of the municipality or village.

23 (b) Notwithstanding (a) of this section, the person who cuts
24 down, injures, or carries off timber without lawful authority is
25 liable for actual damages to the owner of the land specified in (a) of
26 this section if

27 (1) the trespass was unintentional or involuntary;

28 (2) the defendant had probable cause to believe that the
29 land on which the trespass was committed was the defendant's own or

1 that of the person in whose service or by whose direction the act was
2 done; or

3 (3) the timber was taken from unenclosed woodland for the
4 purpose of repairing a public highway or bridge that is constructed on
5 the land or adjoining it.

6 (c) In this section, "timber" means

7 (1) live trees and shrubs; and

8 (2) trees and shrubs grown on the land that are dead from
9 any cause and remain on the land.

10 * Sec. 2. AS 41.15 is amended by adding new sections to article 5 to
11 read:

12 Sec. 41.15.910. COMMERCIAL FIREWOOD SALES. (a) A person may
13 not sell firewood without first obtaining a commercial firewood sales
14 permit from the commissioner.

15 (b) The commissioner shall issue a permit to a person who pro-
16 vides the commissioner with adequate proof of ownership of the fire-
17 wood to be sold. The commissioner may accept as proof of ownership

18 (1) a harvest permit, contract, or other legal instrument
19 issued by the owner of the land from which the firewood was harvested
20 or, if the firewood was harvested from public land, issued by a muni-
21 cipality or a state or federal agency that specifies the

22 (A) date of execution of the legal instrument and the
23 date of its termination, if any;

24 (B) name and address of the permittee or contractor
25 who harvested the firewood;

26 (C) location, by legal description or legal address,
27 where the firewood was harvested; and

28 (D) estimated amount, volume, and species of the
29 firewood harvested from each location;

1 (2) a bill of sale showing title to the firewood that
2 specifies the

3 (A) date of execution of the bill of sale;

4 (B) name and address of the person who sold the fire-
5 wood to the permit applicant;

6 (C) name and address of the permit applicant;

7 (D) amount, volume, and species of the firewood trans-
8 ferred by the bill of sale; and

9 (E) location, by legal description or legal address,
10 from which the firewood was harvested; or

11 (3) a certificate of registration issued as evidence of
12 compliance with AS 45.50.210 - 45.50.325.

13 (c) The commissioner may include in the permit the terms and
14 conditions that the commissioner believes to be necessary to carry out
15 this section.

16 (d) A permit is valid for one year.

17 (e) The commissioner may adopt regulations to implement and
18 enforce this section.

19 Sec. 41.15.915. CIVIL PENALTY FOR SALES WITHOUT PERMIT. In
20 addition to damages under AS 09.45.730, a person who sells firewood in
21 violation of AS 41.15.910, who violates a term or condition of the
22 permit issued under AS 41.15.910, or who violates a regulation adopted
23 under AS 41.15.910 is liable to the state in a civil action for

24 (1) the reasonable costs incurred by the state in the
25 detection, investigation, and attempted correction of the violation,
26 including reasonable court costs and attorney's fees; and

27 (2) three times the retail value of the firewood that is
28 sold in violation of AS 41.15.910, the permit, or the regulations.

29 Sec. 41.15.920. SALES WITHOUT PERMIT MADE A VIOLATION. (a) A

1 person who knowingly sells firewood in violation of AS 41.15.910 or
2 who knowingly violates a term or condition of the permit issued under
3 AS 41.15.910 or a regulation adopted under AS 41.15.910 is guilty of a
4 violation.

5 (b) If, in a proceeding under this section, the defendant shows,
6 by a preponderance of the evidence, that the commercial firewood was
7 harvested from the property of the defendant or from the property of
8 another with the permission of the property owner, the court may not
9 impose a fine.

10 Sec. 41.15.915. INJUNCTIONS. (a) The superior court has juris-
11 diction to enjoin a violation of AS 41.15.910 - 41.15.930, a regu-
12 lation adopted under AS 41.15.910 - 41.15.930, or a permit, or a term
13 or condition of a permit issued under AS 41.15.910 - 41.15.930.

14 (b) In an action brought under this section, temporary or pre-
15 liminary relief may be obtained upon a showing of an imminent threat
16 of continued violation and probable success on the merits, without the
17 necessity of demonstrating irreparable physical harm.

18 Sec. 41.15.930. DEFINITIONS. In AS 41.15.910 - 41.15.930

19 (1) "commissioner" means the commissioner of natural re-
20 sources;

21 (2) "firewood" means natural logs or portions of natural
22 logs suitable for use as a solid fuel, with processing of the logs
23 limited to cutting to length and splitting;

24 (3) "permit" means a commercial firewood sales permit
25 authorized by AS 41.15.910.

26 * Sec. 3. AS 45.50.235(b) is amended to read:

27 (b) Timber property that [WHICH] becomes state property under
28 the provisions of (a) of this section may be

29 (1) sold under terms and conditions established by the

1 director of the division of lands; or
2 (2) recovered, without a permit, by any person for per-
3 sonal, noncommercial use.



Alaska State Legislature

Representative Mike Davis

District 19

P.O. Box V
Juneau, Alaska 99811
(907) 456-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8161

MEMORANDUM

To: House Judiciary Committee

From: Rep. Mike Davis *Mike Davis*

Re: HB 339

Date: March 10, 1988

I introduced HB 339 in response to a serious problem faced by commercial firewood sellers in the Interior. Some people in the Interior are trespassing and stealing timber off private or state land and then selling the timber as firewood. These people compete with the legitimate lumber and firewood sales companies.

The existing statutes and regulations do not provide adequate authority to deal with the problem. The only way the Department can prove that a person has illegally taken timber is by catching the person in the act, which is very time consuming and resource intensive.

The approach of the original bill was to include theft of timber into the theft statutes and to criminalize transportation of timber products on a highway or waterway without proof of ownership. This approach provided a broader solution than was necessary.

The Committee Substitute changes the approach of the original bill by requiring that persons who sell firewood must first obtain a permit from the Department of Natural Resources.

Although, legislative solutions could be directed at the harvest phase, the transportation phase or the commercial sale phase, the sale phase offers the best opportunity for addressing the problem. It is easily identifiable and enforceable.

SECTIONAL ANALYSIS FOR HB 339

Sec. 41.15.910 Commercial Firewood Sales

Requires that a person who wishes to sell firewood must first obtain a commercial firewood sales permit from the Department of Natural Resources. In order to obtain a permit a person must provide proof of ownership. This section gives the Commissioner the authority to adopt regulations to enforce the bill.

Sec. 41.15.915 Civil/Criminal Penalties

Sets up civil and criminal penalties for persons who sell firewood without a valid permit.

Sec. 41.15.925 Injunctions

Allows the Court to provide injunctive relief by requiring that an act be discontinued if it can be shown that it poses an imminent threat of continued violation and probable success. It is not necessary to prove that the act is causing irreparable physical harm.

Sec. 41.15.930 Definitions

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1798
PHONE: (907) 485-2400

OFFICE OF THE COMMISSIONER

March 7, 1988

The Honorable John Sund
Chairman, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

Subject: HB 339, an act relating to theft of timber products.

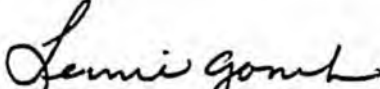
Position: The Department of Natural Resources supports HB 339 with changes as proposed by the Attorney General's Office.

Background: HB 339 attempts to address a problem faced by the Division of Forestry and many commercial firewood dealers in Northern Alaska. This problem involves the unauthorized harvest of timber from state lands. The existing statutes provide inadequate authority to deal with this problem. At present, the Division of Forestry must prove that the firewood seller unlawfully obtained timber from state land, which is difficult to do once timber has been removed from the harvest site. The department, the sponsor of the house version of this bill (which is identical to the senate version), and private timber operators have recently worked with the office of the Attorney General in Fairbanks to craft language that will more effectively get at the problem. This language has been provided to the sponsors and committee staff, as well as an analysis by John McDonagh, Assistant Attorney General.

Recommendation: The department supports the concept of the bill as originally written but prefers the changes drafted by the office of the Attorney General as a more effective way to address the problem.

We look forward to working with the committee and staff through the progress of this legislation.

Sincerely,


for Judith M. Brady
Commissioner

cc: Committee Members
Bill Sponsors
Bob Evans
Rod Swope

STATE OF ALASKA • DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF BUSINESS DEVELOPMENT • (907)465-2094

Notes on House Bill 339 - "an Act relating to the theft of timber products"

By - F. A. Seymour, Senior Marketing Specialist January 22, 1988

The need for this legislation rest in the basic problem of not being able to identify a log or processed wood in relationship to its point of origin once the logs are removed from the harvest area.

Persons entering public or private land with (or without) a permit for taking wood from a general area can, and unfortunately do on numerous occasions, take wood in firewood or log form from cutting units that have been sold to commercial harvesting companies. This theft frequently includes cutting firewood and or short logs from high value timber decks that have been cut, graded and stored awaiting transport to a processing facility by the legal owner of the wood. The remote nature of the product location, multiple adjacent cutting units, wide variable in individual log values that are not apparent to firewood or casual log users, and related timber harvesting and transportaion activity all contribute to the problem that this legislation will address.

As the industry grows in the interior Alaska more and more trucks will be on the highways and byways and it is reasonable and necessary that once a quantity of logs or related simi processed wood product is removed from the harvest area the carrier be held responsible for having in their possession sufficient documentation to clearly identify the harvest area from which it came, the owner, authorized contractor or transport company, the estimated volume and the species of the wood.

Once this legislation becomes law it will be possible when suspected timber theft is occurring for law enforcement officers to investigate and detain apparent violators for possible prosecution.

**STATE OF ALASKA • DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF BUSINESS DEVELOPMENT • (907)463-2094**

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Monday, January 25, 1988, The Anchorage Times

City/State

B

Timber rustling suspect charged by state

FAIRBANKS (AP) — A two-month undercover investigation has resulted in a Fairbanks man being charged with stealing wood and trespassing on state land.

Gary Burke, 33, faces up to a year in jail and a \$3,000 fine following the investigation by the Department of Natural resources.

"Existing laws require us to observe people harvesting the wood and selling it," said Don Fuller, area forester. "To do

that, we had to go undercover.

"We followed people into the woods to watch them cut trees illegally, then we followed them into town to observe them selling it," Fuller said Friday. "In some cases, we purchased wood from the unlicensed vendors."

Fuller blames "timber rustlers" for depleting timber in some areas intended for public use, for stealing wood from private land, for leaving gaping holes and large stumps in areas that were

to be re-forested, and for undermining the business of legal commercial operators, who must abide by strict regulations.

Some of the nine cutters under investigation have sold more than 200 cords of wood this year, Fuller said.

"I don't want to hold this as a hammer over the public head, but if these illegal practices don't stop . . . we may have to close down public wood cutting areas."

Unless they own land, most commercial operators must contract with the state to cut trees from a specific plot. There are about 20 commercial operators in Fairbanks, Fuller said.

Operators are bound by law to post promissory bonds, pay the state \$5 per cord of wood sold, abide by environmental standards and clean up and replant plots, Fuller said.

"Frankly, I'm being asked by some legal woodcutters why they

should not revert to stealing wood too if we are not going to do anything about the theft going on at this point," Fuller said.

Fuller said some illegal woodcutters have cheated customers.

"We intend to file fraud charges against one guy," Fuller said. "We bought a cord from him and donated it to Santa's Clearinghouse. Not only did the guy not deliver a full cord, the wood was rotten."

ALASKA INTERIOR WOODCUTTER'S ASSOCIATION
5180 Aeronca
Fairbanks, Alaska 99709

January 28, 1988

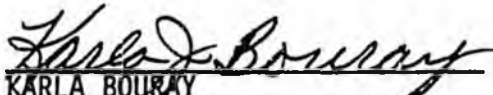
The Honorable John Sund
Pouch V
Juneau, Alaska 99811

Dear Representative Sund:

The Alaska Interior Woodcutter's Association recently passed two resolutions, 88-1 Timber Trespass Legislation and 88-2 Reforestation Fund (attached). Both issues are very critical to the health and future of the wood industry in Alaska.

The Alaska Interior Woodcutter's Association urgently requests your support for H.B. 339 introduced by Davis and Boyer and the subsequent development of regulations by the Department of Natural Resources (DNR) to make enforcement effective.

The Alaska Interior Woodcutter's Association is dismayed that reforestation funding was cut by the Governor's office from DNR's proposed capitol improvement projects. Additionally, the mechanism established in AS 41.17.310 for funding the reforestation fund is not being followed. Instead of a continuing fund in which a portion of timber sale revenues are deposited and annually approved by the legislature, the current budget process puts reforestation projects in competition with other capitol improvement projects. When put in this playing field, reforestation loses because planting seedlings doesn't seem as important as new buildings or equipment.


KARLA BOURAY
Acting Secretary, A.I.W.A.

ALASKA INTERIOR WOODCUTTER'S ASSOCIATION
5180 Aeronca
Fairbanks, Alaska 99709

RESOLUTION 88-1
Title: Timber Trespass Legislation, H.B. 339

WHEREAS the Interior Woodcutter's Association was organized to represent all segments of the wood products industry of Interior Alaska.

WHEREAS the wood products industry employs over 200 people in the wood industry and sells products with a market value of over six million dollars.

WHEREAS timber trespass and theft have become an overwhelming problem on state, borough, university, and private lands.

WHEREAS timber theft denies large amounts of revenue to the state for timber resources stolen.

WHEREAS timber thieves largely steal in Personal Use Woodcutting Areas taking the easily accessible wood and leaving harder-to-get wood for legitimate Personal Use Firewood cutters.

WHEREAS the timber thieves bear no responsibility for clean-up and proper utilization of timber resources and seriously hurt legitimate commercial operators who have to bear such costs.

WHEREAS current legislation puts the burden of proof on the Division of Forestry whose limited budget and manpower make enforcement of such statutes nearly impractical.

WHEREAS current legislation would require a "man behind every tree" to enforce.

THEREFORE, be it resolved that:

The Alaska Interior Woodcutter's Association fully endorses the passage of H.B. 339 relating to timber theft and proof of ownership.

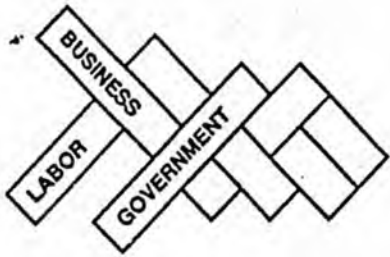
Further be resolved that the Alaska Interior Woodcutter's Association requests the State of Alaska, Department of Natural Resources, to promulgate regulations to make enforcement of legislation practical

Recommendation: PASS

Adoption: PASS X NO PASS

Distribution: Legislative Distribution
Governor
FNSB, W. Helms
United Fairbanks
DNR Commissioner
State Forester

Karla Bouray 1/25/88
KARLA BOURAY (Date)
Acting Secretary, A.I.W.A.



UNIFIED FAIRBANKS

**A RESOLUTION IN SUPPORT OF
HOUSE BILL #339**

AN ACT RELATING TO THEFT OF TIMBER PRODUCTS

WHEREAS, the Interior of Alaska has the largest timber reserves in the state of Alaska; and

WHEREAS, the marketing of this timber resource is a top priority of the timber industry; and

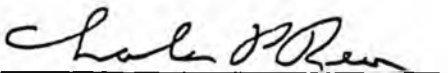
WHEREAS, interest is now being expressed in the development of that timber industry; and

WHEREAS, it is necessary to protect the timber resources to allow for their full development by licensed and regulated operators;

NOW THEREFORE be it resolved that Unified Fairbanks encourages the Legislature to pass House Bill #339 for the benefit of protecting that resource.

This resolution was passed by Unified Fairbanks on February 3, 1988.

UNIFIED FAIRBANKS


Charles P. Rees, President

PC:bill339

1 IN THE HOUSE

BY DAVIS AND BOYER

2

HOUSE BILL NO. 339

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to theft of timber products."

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

8 * Section 1. AS 11.46.100 is amended to read:

9 Sec. 11.46.100. THEFT DEFINED. A person commits theft if

10 (1) with intent to deprive another of property or to appro-
11 priate property of another to oneself or a third person, the person
12 obtains the property of another;

13 (2) the person commits theft of lost or mislaid property
14 under AS 11.46.160;

15 (3) the person commits theft by deception under AS 11.46.-
16 180;

17 (4) the person commits theft by receiving under AS 11.46.-
18 190;

19 (5) the person commits theft of services under AS 11.46.-
20 200;

21 (6) the person commits theft by failure to make required
22 disposition of funds received or held under AS 11.46.210;

23 (7) the person commits theft of timber products under
24 AS 11.46.215.

25 * Sec. 2. AS 11.46 is amended by adding a new section to read:

26 Sec. 11.46.215. THEFT OF TIMBER PRODUCTS. (a) A person commits
27 theft of timber products if, with intent to deprive another person of
28 property or to appropriate property of another to oneself or a third
29 person, the person transports on a public highway or water of the

1 state timber products, including deciduous or coniferous trees, saw-
2 logs, poles, cedar products, pulp logs, fuelwood, or other timber
3 products without proof of ownership of the timber products. In this
4 section, "proof of ownership" includes one or more of the following:

5 (1) a permit, contract, or other legal instrument issued by
6 the landowner or a state or federal agency that specifies the

7 (A) date of execution of the legal instrument and the
8 date of its termination, if any;

9 (B) name and address of the permittee or contractor;

10 (C) locale or area by legal description where the
11 timber products were harvested;

12 (D) estimated amount, volume, species, and class of
13 timber products authorized to be cut and removed;

14 (E) name of the purchaser of the timber products if it
15 is different from the permittee or contractor;

16 (2) a bill of sale showing title to the timber products
17 that specifies the

18 (A) date of execution of the bill of sale;

19 (B) name and address of the seller or donor of the
20 timber products;

21 (C) name and address of the purchaser or donee of the
22 timber products;

23 (D) number or volume and species and class of the
24 timber products sold or transferred by the bill of sale;

25 (E) property location by legal description, mile post,
26 or legal address from which the timber products were cut and
27 removed.

28 (b) It is a defense to a prosecution under (a) of this section
29 that the transportation of timber products

- 1 (1) involved sawdust or bark;
- 2 (2) was done by the owner or the agent of the owner of the
3 land from which the timber products were taken;
- 4 (3) involved not more than two coniferous trees cut for
5 personal use with limbs attached, if neither tree exceeds 10 feet in
6 height and if neither trunk exceeds 14 inches in circumference at its
7 thickest part; or
- 8 (4) involved trees in the course of their transplantation
9 with their roots intact.