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STATE OF ALASKA
THE LEGISLATURE

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POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Judiciary:

3-10-88

3-24-88

4-5-88

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
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 13, 1988

SUBJECT: Draft SSHB 339
TO: Representative Mike Davis
FROM: Jack Chenoweth
Legislative Counsel

Enclosed is a draft Sponsor Substitute for House Bill 339, based on notes and suggestions by Assistant Attorney General John McDonagh. His drafting model and summary were most helpful.

The bill draft shifts the focus from "theft of timber" to the narrower topic--the key problem, according to McDonagh--of unauthorized harvest of timber and commercial sale of it as firewood. This draft reflects Mr. McDonagh's recommendation that "[t]he commercial sale phase offers the best opportunity for effective curative legislation."

Please note the following changes from the draft suggested by Mr. McDonagh.

Mr. McDonagh suggested locating the new provision in article 1 of AS 41.15, a subdivision that emphasizes protection of forested lands chiefly against forest fires. Since this matter is somewhat unrelated to that, but does address a serious problem, I have chosen to locate the new material in that portion of AS 41.15 that collects "miscellaneous provisions."

In the suggested AS 41.15.025(a), Mr. McDonagh excepted "a federal, state, or local government entity" from the definition of "a person." These terms are already excluded. See AS 01.10.060(8). It is not necessary to do so again.

I have "loosened" the proof of ownership requirement slightly. In Mr. McDonagh's draft, proof of ownership could be shown by provision of either the "legal instrument" or the "bill of sale." I have used substantially the same lan-

Representative Mike Davis
Page 2
February 13, 1988

guage, but suggest that the commissioner could, by authority of regulation, accept other documentation that the commissioner reasonably believes would reflect a legal acquisition of the firewood.

I have deleted the material in the proposed AS 41.15.025(b)(1)(E) and (b)(2)(F) of Mr. McDonagh's draft. Again, the commissioner may establish other "proofs of ownership" under authority to adopt regulations. What I thought was unnecessary in his suggestion was the giving of permission to the commissioner to require "any other information . . . necessary to establish adequate proof of ownership" in the context of a "legal instrument" or "bill of sale." Since most wood sellers will likely try to fulfill one of those two requirements, those two approaches should be specific as to their requirements as a matter of statute; the commissioner should not be allowed to add to them on a case-by-case basis.

The second part of Mr. McDonagh's AS 41.15.025(c) is unnecessary. The statute he cites [AS 41.15.950] specifies persons who may enforce the provision of AS 41.15.

The second part of Mr. McDonagh's AS 41.15.025(d) is, to my mind, unnecessary. The statutory provisions will take effect. The statute does not require the commissioner to adopt regulations to give the statute effect, but permits the commissioner to do so to carry out its provisions.

I have separated out the civil and criminal penalties into their own respective sections. I have not included language suggested by Mr. McDonagh in his proposed AS 41.15.025(g) authorizing injunctive relief, as other authority of law (AS 09.40.230) would be applicable.

If this memorandum or the bill draft prompt questions, please contact me. Since Marilyn Heiman authorized my working with Mr. McDonagh and he was good enough to provide me copies of his work product, I have taken the liberty of sharing a copy of this draft and these comments with him.

JC:mkr
b2/087

Enclosure

cc: John A. McDonagh
Assistant Attorney General
Fairbanks

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
7 trespass by cutting or injuring timber, regulating
8 commercial sales of firewood, and authorizing disposition
9 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)
14 person who cuts down, injures, or carries off timber without lawful
15 authority is liable for treble the amount of damages that may
16 assessed in a civil action

17 (1) to the owner of the land for destruction or removal
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
25 liable for actual damages to the owner of the land specified in (a)
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

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

3 (3) the timber was taken from unenclosed woodland for th
4 purpose of repairing a public highway or bridge that is constructed o
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 fro
9 any cause and remain on the land.

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

12 Sec. 41.15.910. COMMERCIAL FIREWOOD SALES. (a) A person ma
13 not sell firewood without first obtaining a commercial firewood sale
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 instrumen
19 issued by the owner of the land from which the firewood was harveste
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 th
23 date of its termination, if any;

24 (B) name and address of the permittee or contracto
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 th
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
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)

1 person who knowingly sells firewood in violation of AS 41.15.910
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
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. 41.15.925. INJUNCTIONS. (a) The superior court has jurisdic-
11 tion to enjoin a violation of AS 41.15.910 - 41.15.930, a regula-
12 tion 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 resources;
20

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
CSHB 339(Jud) -4-

1 director of the division of lands; or

2 (2) recovered, without a permit, by any person for per-
3 sonal, noncommercial use.

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Original sponsors: Davis and Boyer

1 IN THE HOUSE

2 CS FOR 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 trespass by cutting or injuring
7 timber and regulating commercial sales of firewood."

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

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

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

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

16 (2) to the state for destruction or removal of the timber
17 from state land;

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

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

24 (1) the trespass was unintentional or involuntary;

25 (2) the defendant had probable cause to believe that the
26 land on which the trespass was committed was the defendant's own or
27 that of the person in whose service or by whose direction the act was
28 done; or

29 (3) the timber was taken from unenclosed woodland for the

1 purpose of repairing a public highway or bridge that is constructed on
2 the land or adjoining it.

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

4 (1) live trees and shrubs; and

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

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

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

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

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

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

21 (B) name and address of the permittee or contractor
22 who harvested the firewood;

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

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

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

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

1 (B) name and address of the person who sold the fire
2 wood to the permit applicant;

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

4 (D) amount, volume, and species of the firewood trans
5 ferred by the bill of sale; and

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

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

10 (c) The commissioner may include in the permit the terms and
11 conditions that the commissioner believes to be necessary to carry out
12 this section.

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

14 (e) The commissioner may adopt regulations to implement and
15 enforce this section.

16 Sec. 41.15.914. CIVIL PENALTY FOR SALES WITHOUT PERMIT. In
17 addition to damages under AS 09.45.730, a person who sells firewood in
18 violation of AS 41.15.910, who violates a term or condition of the
19 permit issued under AS 41.15.910, or who violates a regulation adopted
20 under AS 41.15.910 is liable to the state in a civil action for

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

24 (2) the ^{treble the retail} ~~gross profits~~ realized by the person from the sale
25 of firewood made in violation of AS 41.15.910, the permit, or the
26 regulations.

27 Sec. 41.15.918. CRIMINAL PENALTY FOR SALES WITHOUT PERMIT. A
28 person who knowingly sells firewood in violation of AS 41.15.910 or
29 who knowingly violates a term or condition of the permit issued under

In a proceeding under

1 AS 41.15.910 or a regulation adopted under AS 41.15.910 is guilty of a
2 ~~class B misdemeanor~~ ^{violation}.

3 Sec. 41.15.922. AFFIRMATIVE DEFENSE. It is an affirmative
4 defense to a proceeding under AS 41.15.918 that the defendant in the
5 criminal proceeding shows, by a preponderance of the evidence, that
6 the commercial firewood was harvested from the property of the defen-
7 dant [or from the property of another with the permission of the prop-
8 erty owner.]

9 Sec. 41.15.926. INJUNCTIONS. (a) The superior court has juris-
10 diction to enjoin a violation of AS 41.15.910 - 41.15.930, a regu-
11 lation adopted under AS 41.15.910 - 41.15.930, or a permit, or a term
12 or condition of a permit issued under AS 41.15.910 - 41.15.930.

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

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

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

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

23 (3) "permit" means a commercial firewood sales permit
24 authorized by AS 41.15.910.
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5-1526L
Chenoweth
2/25/88

Original sponsors: Davis and Boyer

1 IN THE HOUSE

2 CS FOR 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 regulating commercial sales of firewood."

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

8 * Section '1. AS 41.15 is amended by adding new sections to article 5 to
9 read:

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

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

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

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

22 (B) name and address of the permittee or contractor
23 who harvested the firewood;

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

26 (D) estimated amount, volume, and species of the
27 firewood harvested from each location; or

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

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

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

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

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

7 (E) location, by legal description or legal address,
8 from which the firewood was harvested.

9 (c) The commissioner may include in the permit the terms and
10 conditions that the commissioner believes to be necessary to carry out
11 this section.

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

13 (e) The commissioner may adopt regulations to implement and
14 enforce this section.

15 Sec. 41.15.915. CIVIL PENALTY FOR SALES WITHOUT PERMIT. A
16 person who sells firewood without a valid commercial firewood sales
17 permit under AS 41.15.910 who fails to comply with a term or condition
18 of the permit or who fails to comply with a regulation adopted under
19 AS 41.15.910 is liable to the state in a civil action for

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

23 (2) the gross profits realized by the person from the sale
24 of firewood made in violation of AS 41.15.910, the permit, or the
25 regulations.

26 Sec. 41.15.920. CRIMINAL PENALTY. A person who knowingly sells
27 firewood without a valid commercial firewood sales permit or who
28 knowingly violates a term or condition of the permit or a regulation
29 adopted under AS 41.15.910 is guilty of a class B misdemeanor.

1 Sec. 41.15.925. INJUNCTIONS. (a) The superior court has juris-
 2 diction to enjoin a violation of AS 41.15.910 - 41.15.930, a regu-
 3 lation adopted under AS 41.15.910 - 41.15.930, or a permit, or a term
 4 or condition of a permit issued under AS 41.15.910 - 41.15.930.

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

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

10 (1) "commissioner" means the commissioner of natural re-
 11 sources;

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

15 (3) "permit" means a commercial firewood sales permit
 16 authorized by AS 41.15.910.

A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: CSHB 339()

Page 4, line 8, after "owner":

Insert ", or that the firewood bears the defendant's log brand"

Page 4, following line 22:

Insert a new paragraph to read:

"(3) "log brand" means the mark or designation issued under AS 45.50.210 - 45.50.325 used to identify ownership of timber property;"

Renumber subsequent paragraph accordingly.

and is not clearly
 am § 1 ch 191
 8 SLA 1975)

right to the ex-
 five years from
 by application
 prescribed fee.
 ms. (§ 2 ch 51
 3 SLA 1975)

each piece of tim-
 ber, lake, river,
 use of rafting or
 at least one end

in whose name
 that person; and
 the time public
 30 days from the
 from the date of
 45.50.237, it is
 lawful transporter

end of the water

of the state.
 AS 1953; am § 2
 , 7 ch 232 SLA

department. The
 the possession
 the adrift in the
 the shoreland
 in the water
 within 15 days
 , indicating the
 the area of recov-
 t may require.

Unless the time for recovery is extended under AS 45.50.237, the rightful transporter or owner of timber property has 90 days from the date the loss is reported to recover the timber property. After 90 days from the date of reporting or upon the expiration of any extension granted under AS 45.50.237, the timber property is considered to be abandoned, no notice is required to be published under AS 45.50.234, and the timber property is presumed to be the property of the state. (§ 2 ch 232 SLA 1976)

Sec. 45.50.234. Publication of notice of intent to claim abandoned property. Except as provided in AS 45.50.232, the department shall publish notice of its intent to claim abandoned timber property under AS 45.50.210 — 45.50.325 for not less than 30 days from the date that first notice is published under this section. Notice shall be published once a week for at least three consecutive weeks in a newspaper of general circulation nearest the area where the timber property is located and, if feasible, posted in a centrally located public place within or in close proximity to the area where the timber property is located. (§ 2 ch 232 SLA 1976)

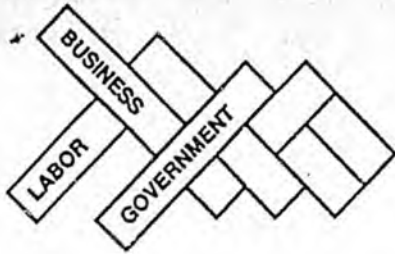
Sec. 45.50.235. Ownership of unbranded and abandoned timber property. (a) Timber property which is unbranded or on which a brand is not distinguishable and which is located in a coastal water, lake, river, creek or other waterway of the state or on state owned coastline is presumed to be the property of the state. Timber property which is abandoned property as defined in AS 45.50.230(a)(2) is presumed to be the property of the state 90 days after the period of reporting as required in AS 45.50.232 unless an extension has been granted, or 30 days after the period of notice has expired as provided under AS 45.50.234.

(b) Timber property which becomes state property under the provisions of this section may be sold under terms and conditions established by the director of the division of lands. (§ 4 ch 168 SLA 1970; am § 3 ch 68 SLA 1975; am § 3 ch 232 SLA 1976; am § 5 ch 73 SLA 1978)

Sec. 45.50.237. Extension of period for recovery of timber property. The department shall extend the 90-day period for recovery of timber property after reporting specified in AS 45.50.232 if a good faith effort to salvage the timber property is being made by the person requesting the extension. Extensions shall be granted for limited periods only but may be continued until salvage is completed, and guidelines shall be established specifying what constitutes a good faith effort for purposes of extension under regulations adopted by the de-

ADD AT THE END OF 45.50.235 (b) BETWEEN "LANDS" AND THE PERIOD:

or may be recovered, without a permit, by any person for personal, non-
commercial use.



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

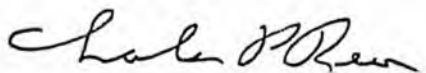
WHEREAS, interest is now being expressed in the development of that timber industry; and

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



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.



Alaska State Legislature

Representative Mike Davis

P.O. Box V
Juneau, Alaska 99811
(907) 465-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708

MEMORANDUM

TO: HOUSE MEMBERS

FROM: REP. DAVIS *Mike*

RE: THEFT OF TIMBER

DATE: JANUARY 9, 1988

I have prefiled HB 339 to respond to the problem of theft of timber in our forests. HB 339 amends title 11 to include the theft of timber in the definition of theft.

Our state and private land is being subjected to timber theft. Without adequate statutory authority, the Department of Natural Resources is unable to prevent or prosecute those who steal timber.

An increasing amount of lumber companies are concerned that their business is being undercut by persons who steal timber from state or private land and sell it as fire wood.

Increased penalties will help to prevent this problem in the future and protect Alaskan businesses and our forests from the theft of timber.

If you are interested in co-sponsoring HB 339 or have any questions regarding this issue please let me know.

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.

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

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

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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 \$5,000 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."

#B 339

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

January 28, 1988

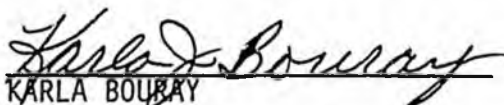
The Honorable John Sund
Pouch V
Juneau, Alaska 99811

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.

DATE: April 5, 1988

The Judiciary Committee has considered HB 339

"An Act relating to theft of timber products."

RECOMMENDS:

- replace with CS HB 339 (Jud) 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 _____
- zero with analysis

SIGNING DO PASS:

[Signature]

Franklin

Sam G. G.

SIGNING OTHER RECOMMENDATIONS:

[Signature]

Franklin Taylor (NOTES)
Sam G. G. (NOTES)

[Signature]

 Chairman's signature

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

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.

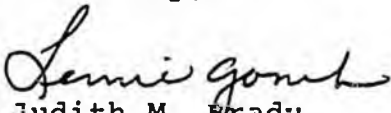
Position: The Department of Natural Resources supports HB 339 with changes as proposed by the Attorney General's Office.

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

MEMORANDUM

State of Alaska

TO: The Honorable Judith M. Brady.
Commissioner
Department of Natural Resources

DATE: February 12, 1988

FILE NO:

TELEPHONE NO:

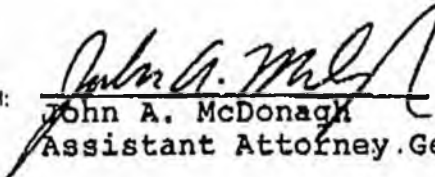
452-1568

THRU:

SUBJECT:

HB 339

FROM:


John A. McDonagh
Assistant Attorney General

Your February 5, 1988 memorandum requests the Department of Law to review HB 339 entitled "An act relating to theft of timber products." We have discussed the bill with your office staff, the Division of Forestry, the District Attorney's Office, and Representative Davis' office. Based upon those discussions and upon our own reading of HB 339, we offer the following comments.

Background.

HB 339 attempts to address a serious problem faced by the Division of Forestry and many commercial firewood sellers in northern Alaska. The problem involves the unauthorized harvest of timber from state, borough, and private lands, and the commercial sale of that timber as firewood. Commercial firewood sellers who purchase timber from the state, the borough, and private landowners complain that they are being driven out of business by sellers who harvest firewood timber without the permission of, or payment to, the rightful landowner. The Division of Forestry informs us that it has received numerous such complaints from legitimate commercial firewood sellers.

The existing statutes and regulations provide inadequate authority to deal with this problem. At present, the Division of Forestry must prove that the firewood seller unlawfully obtained the timber from state land. Generally, this requires a division employee to catch the seller "in the act" of unlawfully harvesting the timber. The present laws do not regulate the sale of unlawfully harvested firewood, nor do the laws give the division authority to address the problems posed by unauthorized firewood harvests from non-state lands. All of the persons with whom we have discussed this problem believe it is serious and requires corrective legislation.

Analysis.

The present version of HB 339 presents several problems. Section 2 of the bill creates a new crime called "theft of timber products." This crime occurs when a person "with intent to deprive another person of property.... transports on a public highway or water of the state timber products ... without proof of ownership of the timber products." Section 1 of the bill amends the theft definition statute, AS 11.46.100, to include "theft of timber products" within the theft definition.

The first problem concerns the bill's application of the "theft" concept. The act of transporting timber products on a highway without proof of ownership does not constitute theft under traditional common law and statutory principles. The District Attorney's Office has questioned the wisdom of broadening the AS 11.46.100 theft definition beyond its traditional scope through the addition of this new offense. Stated more simply, the Department of Law is somewhat concerned that "theft of timber products", as defined in the bill, is not really "theft" as understood by courts, juries, law enforcement officers, and the public.

A second problem concerns the bill's broad coverage. The bill criminalizes transportation of "timber products" on a highway or waterway without proof of ownership. The bill does not separately define "timber products", but states that these products include "deciduous or coniferous trees, sawlogs, poles, cedar products, pulp logs, fuelwood, or other timber products."¹ An extremely wide variety of wood products could be construed as "timber products" under the bill. It therefore appears that the bill's prohibition goes far beyond what is reasonably necessary to address the problem of commercial sales of unlawfully harvested firewood.

Finally, the bill presents potential problems with enforcement and public perception. The Division of Forestry informs us that the bill would be enforced primarily through highway stops and spot checks of persons transporting "timber products." Once stopped, the person would have to produce "proof of ownership" of the timber products. Given the traditional Alaska notions of personal liberty, such an enforcement scheme may well prove unpopular and difficult to implement.

¹Subsection (b) sets forth defenses to prosecution that somewhat limit the bill's application. However, these defenses
(Footnote Continued)

Recommendation.

All of the persons with whom we have discussed this bill agree that legislation is needed to address the problems posed by the commercial sale of unlawfully harvested firewood. In theory, curative legislation could be directed at any of three distinct phases of the problem: the harvest phase; the transportation phase; or the commercial sale phase.

Because firewood may be unlawfully harvested from a variety of state, borough, and private lands, and because it is often impossible to catch a person "in the act" of harvesting firewood from these lands, we suggest that legislation should not focus on the harvest phase. Because of the potential enforcement and public perception problems discussed above, legislation directed at the transportation phase seems unacceptable. Also, it may be difficult to determine whether wood products in transit are intended for resale as commercial firewood.

The commercial sale phase offers the best opportunity for effective curative legislation. The sale phase is easily identifiable: Most commercial firewood sellers advertise in a prominent manner. The sale phase is also the convergence point for firewood unlawfully harvested from the various land categories. Finally, if legislation is directed at the sale phase, one can tailor the legislation to focus solely upon the sellers of commercial firewood. Properly tailored legislation can avoid the overbreadth problems, the enforcement problems, and the public perception problems discussed above.

At your office's request, we have prepared a suggested outline of legislation directed at the sale phase. A copy is attached. At Larry Ostrosky's suggestion, we have sent copies of this memorandum and the outline to legislative drafter Jack Chenoweth and to Representative Davis' office. If you have any questions or if we may be of further assistance, please do not hesitate to contact me.

JAM/mjf
Attachment
cc: Jack Chenoweth
Representative Mike Davis

(Footnote Continued)
are narrow in scope and, as defenses, must be raised by the accused after he is charged with the crime.

DRAFT

IN THE HOUSE

BY: _____

HOUSE BILL NO. _____

IN THE LEGISLATURE FOR THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of commercial firewood sales."

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

* Section 1. AS 41.15 is amended by adding a new section to read:

Sec. 41.15.025. COMMERCIAL FIREWOOD SALES.

(a) A person, other than a federal, state, or local government entity, who intends to sell firewood must first obtain a commercial firewood sales permit from the Commissioner.

(b) Upon request, the Commissioner may issue a commercial firewood sales permit to a person who provides the Commissioner with adequate proof of ownership of the firewood to be sold. As used in this section, "proof of ownership" includes one or more of the following:

(1) A permit, contract, or other legal instrument issued by the owner of the land from which the firewood was harvested that specifies

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

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

DRAFT

DRAFT

(C) each location, by legal description or legal address, from which the firewood was harvested;

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

(E) any other information the Commissioner deems necessary to establish adequate proof of ownership.

(2) A bill of sale showing ownership of the firewood that specifies

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

(B) the name and address of the person who sold the firewood to the commercial firewood sale permit applicant;

(C) the name and address of the commercial firewood sale permit applicant;

(D) the amount, volume, and species of the firewood transferred by the bill of sale;

(E) the location, by legal description or legal address, of the property from which the firewood was harvested.

(F) any other information the Commissioner deems necessary to establish adequate proof of ownership.

(c) Sales of firewood without a commercial firewood sales permit are prohibited. The Commissioner and the

DRAFT

DRAFT

persons designated in AS 41.15.950(a) shall have authority to enforce this section.

(d) The Commissioner may adopt regulations to implement and enforce this section. However, adoption of regulations is not a prerequisite to implementation and enforcement of the requirements set forth in this section.

(e) The Commissioner may include in a commercial firewood sales permit the terms and conditions the Commissioner deems necessary to carry out this section. The duration of a commercial firewood sales permit shall not exceed one year.

(f) A person who sells firewood without a valid commercial firewood sales permit, or who fails to comply with the permit's terms, or who fails to comply with a regulation adopted under this section, shall be liable to the state in a civil action for

(1) the reasonable costs incurred by the state in the detection, investigation, and attempted correction of the violation, including but not limited to reasonable court costs and attorney's fees; and

(2) the gross profits realized by the violator from the sale of firewood made in violation of this section, the permit, or the regulations;

DRAFT

DRAFT

(g) The superior court has jurisdiction to enjoin a violation of this section, a permit issued under this section, or a regulation adopted under this section. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of imminent threat of continued violation and probable success on the merits, without the necessity of demonstrating physical irreparable harm.

(h) A person who knowingly sells firewood without a valid commercial firewood sales permit, or who knowingly violates a permit term or a regulation adopted under this section, is guilty of a class B misdemeanor.

*Section 2. AS 41.15.170 is amended by adding a new paragraph to read:

(5) "firewood" means natural logs or portions thereof suitable for use as a solid fuel with processing limited to cutting to length and splitting.

DRAFT

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to theft of timber products
Sponsor: Geahill DAVIS
Requestor: _____

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: Forestry Date: 2-29-88
Approved by Commissioner: [Signature] Date: 3-8-88
Agency: Natural Resources

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