

HB

339



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: Senate Judiciary Committee

From: Rep. Mike Davis *mk*

Re: HB 339

Date: April 28, 1988

I introduced HB 339 in response to a serious problem faced by commercial firewood sellers in the Interior. There have been a number of cases involving persons who trespass and steal timber off private or state land and then sell 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 has proven to be very time consuming and resource intensive.

HB 339 requires that persons who sell firewood must first obtain a firewood sales 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 simplest and most effective way to address the problem.

SECTIONAL ANALYSIS FOR HB 339

Section 1 TRESPASS BY CUTTING OR INJURING TIMBER

Amends the existing trespass statutes in AS 09.45.730 to provide that treble damages be assessed against persons who trespass and cut timber on state or municipal lands.

Section 2 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 explains what may be used as proof of ownership and gives the Commissioner the authority to adopt regulations to enforce the bill.

Sec. 41.15.915 Civil Penalties

Creates a civil penalty for persons who knowingly sell firewood without a valid permit. The civil penalty includes damages and costs incurred by the state in the correction of the violation and treble the retail value of the firewood.

Sec. 41.15.920 Sales without permit made a violation

(a) Creates a violation for persons who knowingly sell firewood without a valid permit.

(b) Creates an affirmative defense if the defendant can prove that the firewood was harvested from the defendants own property or from the property of a person from which permission to harvest firewood was received.

Sec. 41.15.925 Injunctions

(a) Allows the Court to issue an injunction to prevent a person from selling firewood without a permit.

(b) Allows the issuance of a temporary or preliminary injunction upon a showing of continued threat of violation without demonstrating that irreparable physical harm will result if such an injunction is not issued.

Sec. 41.15.930 Definitions

Section 3.

Amends 42.50.235(b) to allow persons to recover beach logs and use them for personal or noncommercial use.

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.

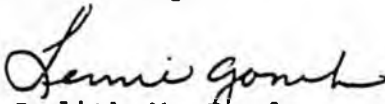
Position: The Department of Natural Resources supports HB 339 with changes as proposed by the Attorney General's Office.

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

FISCAL NOTE

REQUEST:

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

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:

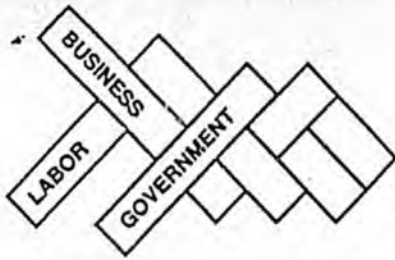
FULL-TIME						
PART-TIME						
TEMPORARY						

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)



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 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.

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."

3/30 News Miner
*Firewood area
closed down*

The Big Bend public firewood area at 25.5 Mile Chena Hot Springs Road is closed because too many white spruce trees have been cut down there, according to Division of Forestry officials.

A few people have permits to cut down white spruce for log homes there, but many more trees have been taken illegally, said Don Fuller, Fairbanks Area Forester.

"It is an expensive load of wood when the trees are worth \$300-\$400 a piece if they are ridge pole quality," Fuller said.

Forestry officials opened the area to public cutting last month to thin out mature birch tree stands there. They'd hoped to preserve the white spruce for seed trees to help the natural regeneration of the area, Fuller said.

A week before it closed, forestry officials posted signs warning people that the area would be shut down unless they stopped cutting white spruce.

"There is a good supply of birch out there," Fuller said. "It is beyond me why these individuals are cutting green spruce for firewood."