

SB

419

FISCAL NOTE

REQUEST:

Revision Date: 4/14/88  
Title: "An Act relating to the theft of timber products"  
Sponsor: Senator Coghill  
Requestor: Senate Judiciary

Agency Affected: Public Safety  
BRU: Alaska State Troopers  
Components: \_\_\_\_\_

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-

CAPITAL		-0-	-0-	-0-	-0-	-0-
---------	--	-----	-----	-----	-----	-----

REVENUE		-0-	-0-	-0-	-0-	-0-
---------	--	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated as a result of this legislation.

Prepared by: Diana Page, Administrative Assistant I Phone: 465-4322  
Division: Commissioner's Office Date: 4/14/88

Approved by Commissioner: Arthur English Date: 4/14/88  
Agency: Public Safety

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Original sponsor: Coghill

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 419 (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 AS 09.45.730 is repealed and reenacted to read: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. 41.15.925. 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.  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

Senator John B. (Jack) Coghill  
Alaska State Legislature



Box V  
Juneau, Alaska 99811  
(907) 465-4797

Box 55028  
North Pole, Alaska 99705  
(907) 488-0867

MEMORANDUM

TO: Senate Judiciary Committee Members  
FROM: Senator Jack Coghill  
DATE: April 14, 1988  
RE: SB 419 Theft of Timber  
CS SB 419 (Resources) Timber Theft and Trespass

---

Theft of timber and firewood and timber trespass, with subsequent sale of the wood to consumers, is a serious problem in timber producing areas of the state. Persons entering public or private land without a permit for cutting timber frequently take logs or firewood for their own use or sale. This theft of timber or trespass often includes cutting logs or firewood from storage areas of high value timber that has been cut, graded and stored while waiting transportation to a processing facility by the legal owner. On a state timber sale, for example, the state gets paid for the volume of wood hauled to the mill. If the wood is stolen in the woods and not delivered to the mill, the state receives no revenue.

The downturn in the state's economy has dramatically increased the theft of timber and trespass. However, statutes have not been enforceable by the DNR, Div. of Forestry, or the State Troopers. The late Senator Don Bennett and a Task Force started to address this serious problem several years ago. Current legal revisions with enforceable penalty clauses are now in this bill, so that illegal operations will first be discouraged, and persistent illegal operations can be heavily penalized.

Your support of CS SB419 (Resources) will greatly benefit the legal timber industry, private land owners, and the state-owned timber in Alaska.

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: SB 419  
PUBLISH DATE: \_\_\_\_\_

*REC'D  
3/1/88*

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to the theft of timber products."  
Sponsor: Senator Coghill  
Requestor: Senate Judiciary

Agency Affected: Public Safety  
FRU: Alaska State Troopers  
Components: \_\_\_\_\_

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	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated as a result of this legislation.

Prepared by: Diana Page, Administrative Assistant Phone: 2/29/88  
Division: Commissioner's Office Date: \_\_\_\_\_

Approved by Commissioner: [Signature] Date: 2-29-88  
Agency: Public Safety

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

# 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 Jay Kerttula  
Chairman, Senate Judiciary Committee  
P.O. Box V  
Juneau, Alaska 99811

MAR 10 1988

Dear Senator Kerttula:

Subject: SB 419, an act relating to theft of timber products.

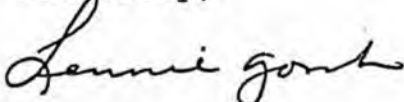
Position: The Department of Natural Resources supports SB 419 with changes as proposed by the Attorney General's Office.

Background: SB 419 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,



Judith M. Brady  
for Commissioner

cc: Committee Members  
Bill Sponsors  
Bob Evans  
Rod Swope

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act relating to theft of  
timber products  
Sponsor: Coghili  
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: 2-20-88

Approved by Commissioner: *James G. ...* Date: 2-9-88  
Agency: Natural Resources

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

MEMORANDUM

February 29, 1988

SUBJECT: Draft CSSB 419 (Judiciary)

TO: Senator Jay Kerttula  
Chairman  
Senator Judiciary Committee

FROM: Jack Chenoweth  
Legislative Counsel

Enclosed is a draft Committee Substitute for Senate Bill 419, based on notes and suggestions provided by Beth Kerttula.

The bill draft shifts the focus from "theft of timber" to the narrower topic of unauthorized harvest of timber and commercial sale of it as firewood, and reflects the recommendation that "[t]he commercial sale phase offers the best opportunity for effective curative legislation."

Please note the following changes from the notes and suggestions that were provided.

The notes 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), the notes 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 the notes provided by Ms. Kerttula, proof of ownership could be shown by provision of either the "legal instrument" or the "bill of sale." I have used

Senator Jay Kerttula  
Page 2  
February 29, 1988

substantially the same language, 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 the notes. Again, the commissioner may establish other "proofs of ownership" under authority to adopt regulations. What I thought was unnecessary in this 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 proposed AS 41.15.025(c) is unnecessary. The statute cited [AS 41.15.950] specifies persons who may enforce the provision of AS 41.15.

The second part of proposed 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.

If this memorandum or the bill draft prompt questions, please contact me.

Enclosure

JBC:bb  
wkb3/049

5-1886B

Chenoweth  
2/29/88

Original sponsor: Coghill

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 419 (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 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.

# MEMORANDUM

State of Alaska

Department of Law

RECEIVED 2/29/88  
ELK

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

DATE: February 12, 1988

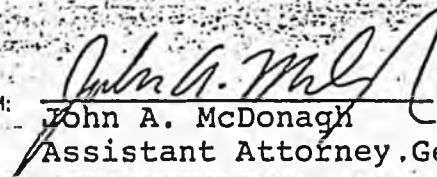
FILE NO:

TELEPHONE NO: 452-1568

THRU:

SUBJECT: HB 339

FROM:

  
John A. McDonagh  
Assistant Attorney General

DEPARTMENT OF  
NATURAL RESOURCES

FEB 16 1988

COMMISSIONER  
JUNE

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."<sup>1</sup> 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.

---

<sup>1</sup> Subsection (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

(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

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

⊗