

HB54

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 1, 1991

FURTHER REFERRALS:

Date of Committee Action: 4-24-91

The FINANCE Committee considered:

HB 54

HOUSE BILL NO. 54

DISTRIBUTION OF NATIONAL FOREST RECEIPTS

"An Act relating to the distribution of national forest receipts; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CSHB 54 (FIN) the same title

a new title!

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHE'S NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact CRA

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO PASS</u>	DP	<u>OTHER</u> RECOMMENDATIONS	DNP	NR	AM
<i>Eileen P. Mahan</i>	✓	<i>REC. E. REP.</i>		✓	
<i>Mike Swane</i>		<i>Ronald Johnson</i>		X	
<i>George S. ...</i>	✓	<i>Bob ...</i>		X	
<i>Tom ...</i>	✓				
<i>MARICBYN</i>	X				
<i>A. Ulmer</i>	X				
<i>Thomas</i>	✓				

Mike Swane Eileen P. Mahan
CHAIRMAN'S SIGNATURE

CS FOR HOUSE BILL NO. 54 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MACKIE, Grussendorf, C.Davis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the distribution of national forest receipts; providing for the
2 distribution of national forest receipts to an organized borough in proportion to the
3 percentage of the national forest within the organized borough; establishing an unorganized
4 borough national forest receipts fund with 75 percent of the fund to be utilized for the
5 benefit of public schools in the unorganized borough, and 25 percent of the fund to be
6 utilized for the benefit of public roads in the unorganized borough; authorizing
7 distributions from the fund to a home rule or first class city located within the
8 unorganized borough and within a national forest or within 20 miles of a national forest
9 on the basis of the proportion of the number of children in average daily membership
10 of the city school district compared to the total number of children in average daily
11 membership in city school districts located within the unorganized borough and within a
12 national forest or within 20 miles of a national forest and in regional educational

1 attendance areas that have a school located within the unorganized borough and within
2 a national forest or within 20 miles of a national forest; authorizing distributions from
3 the fund to a home rule city, first class city, or second class city that exercises road
4 powers and to a municipality organized under federal law that exercises road powers, that
5 is located within the unorganized borough and located within a national forest or within
6 20 miles of a national forest, on the basis of the proportion of the number of road miles
7 within municipal boundaries over which the community exercises road powers plus the
8 number of state road miles maintained by the municipality under agreement with the state
9 compared to the total number of road miles maintained by state or local governments
10 within the unorganized borough and within a national forest or within 20 miles of a
11 national forest; authorizing the deposit of the remainder of the fund in the general fund
12 to offset state expenses for education and road maintenance in the unorganized borough;
13 and providing for an effective date."

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

15 * Section 1. FINDINGS AND PURPOSE. (a) Federal law, 16 U.S.C. 500, provides that 25 percent
16 of all money received each fiscal year from each national forest shall be paid to the state in which the
17 national forest is located, to be distributed under state law for the benefit of the public schools and roads
18 of the county or counties in which the national forest is located.

19 (b) The intent of this federal law is to provide funds to support roads and schools of
20 communities affected by national forest activities.

21 (c) Under present state law, communities that are affected by national forest activities, but
22 located within the unorganized borough, do not receive direct payment of national forest income.

23 (d) That portion of national forest income not distributed to organized boroughs under
24 AS 41.15.180(a) should be distributed to communities within the unorganized borough that are situated
25 within a national forest or within 20 miles of a national forest that contribute financially to the provision
26 of education and road maintenance and that presently do not receive funds from national forest receipts.

27 * Sec. 2. AS 41.15.180 is repealed and reenacted to read:

1 Sec. 41.15.180. NATIONAL FOREST INCOME. (a) When the commissioner of
2 community and regional affairs receives national forest income under 16 U.S.C. 500, the
3 commissioner shall immediately pay to each organized borough in which national forest land is
4 located a share of the income from that forest; an organized borough's share of income from a
5 national forest shall be proportional to the area of the national forest located within its
6 boundaries.

7 (b) There is created as a separate account in the general fund the unorganized borough
8 national forest receipts fund. The fund consists of national forest income received by the
9 Department of Community and Regional Affairs under 16 U.S.C. 500 for the percentage of a
10 national forest located within the unorganized borough. Seventy-five percent of the fund shall
11 be allocated for public schools and 25 percent for public roads.

12 (c) From the percentage of the unorganized borough national forest receipts fund
13 allocated to the public schools under (b) of this section, the commissioner shall pay to each home
14 rule or first class city located within the unorganized borough and within a national forest or
15 within 20 miles of a national forest, a share of the income from the public schools allocation of
16 the fund. A home rule or first class city's share shall be calculated as the proportion of the
17 number of children in average daily membership of the city school district compared to the total
18 number of children in average daily membership in city school districts located within the
19 unorganized borough and within the national forest or within 20 miles of the national forest and
20 in regional educational attendance areas that have a school located within the unorganized
21 borough and within the national forest or within 20 miles of the national forest.

22 (d) From the percentage of the unorganized borough national forest receipts fund
23 allocated to public roads under (b) of this section, the commissioner shall pay to each

24 (1) home rule city, first class city, or second class city that exercises road powers,
25 that is located within the unorganized borough and within a national forest or within 20 miles
26 of a national forest, a share of the income from the roads allocation of the fund; a home rule city,
27 first class city, or second class city's share shall be calculated as the proportion of the number
28 of road miles within municipal boundaries over which the community exercises road powers plus
29 the number of state road miles maintained by the municipality under agreement with the state
30 compared to the total number of road miles maintained by state or local governments in the
31 unorganized borough and within the national forest or within 20 miles of the national forest;

1 (2) municipality organized under federal law as a Indian reserve that existed
2 before the enactment of 43 U.S.C. 1618(a) and is continued in existence under that subsection
3 and that has formed a community development corporation under AS 29.60.365, that exercises
4 road powers and that is located within the unorganized borough and within the national forest
5 or within 20 miles of the national forest a share of the income from the roads allocation of the
6 fund; the share due a municipality organized under federal law that exercises road powers shall
7 be calculated as the proportion of the number of road miles within municipal boundaries over
8 which the community exercises road powers plus the number of state road miles maintained by
9 the municipality under agreement with the state compared to the total number of road miles
10 maintained by state or local governments in the unorganized borough and within the national
11 forest or within 20 miles of the national forest; however, the commissioner may pay income from
12 national forest receipts under this paragraph only after the corporation has delivered a written
13 waiver of sovereign immunity from legal action by the state to recover all or a portion of the
14 money distributed under this section.

15 (e) A distribution made under (a) of this section shall be expended for public schools and
16 public roads. A distribution made under (c) of this section shall be expended for public schools.
17 A distribution made under (d) of this section shall be expended for public roads.

18 (f) For the purpose of making distributions from the fund, the commissioner of
19 community and regional affairs shall consult with the commissioner of education, for purposes
20 of determining the number of children in average daily membership in the public schools affected
21 by this section, and the commissioner of transportation and public facilities, to determine the total
22 number of road miles in the unorganized borough affected by this section.

23 (g) An organized borough, home rule city, first class city, or second class city, or a
24 municipality organized under federal law that receives a national forest income payment or
25 distribution under 16 U.S.C. 500 or this section shall annually report and account to the
26 commissioner of community and regional affairs its use of the payment or distribution for the
27 purposes provided in (a) - (e) of this section. The commissioner of community and regional
28 affairs may not distribute national forest income under this section to an entity in the unorganized
29 borough that has previously failed to report and account as required under this subsection.

30 (h) For purposes of this section, if a portion of a home rule city, first class city, or
31 second class city, or municipality organized under federal law in the unorganized borough is

1 located with the national forest or within 20 miles of a national forest or a regional educational
2 attendance area that has a school located within the national forest or within 20 miles of the
3 national forest, the entire home rule city, first class city, or second class city, regional educational
4 attendance area, or municipality organized under federal law is considered to be within the
5 national forest.

6 (i) A payment or distribution made under this section shall be made under an
7 appropriation for the purpose.

8 (j) That portion of the unorganized borough national forest receipts fund remaining in
9 the account unobligated and unexpended on June 30 of a fiscal year shall be deposited into the
10 unrestricted portion of the general fund and shall be used to offset expenses of the general fund
11 for school and road maintenance in the affected areas of the unorganized borough for which
12 direct distribution of funds has not been made.

13 * Sec. 3. This Act takes effect July 1, 1991.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CS HB 54 (FIN)

Revision Date: _____ Department Affected: Community & Regional Affairs
 Title: Mkg distribution of national forest receipts BRU: National Forest Receipts
 Component: National Forest Receipts
 Sponsor: Rep. Mackie
 Requestor: HOUSE FINANCE COMMITTEE COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	6000.0	6000.0	6000.0	6000.0	6000.0	6000.0
MISCELLANEOUS						
TOTAL OPERATING	6000.0	6000.0	6000.0	6000.0	6000.0	6000.0

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER <u>Nat'l Forest Receipts Fund</u>	6000.0	6000.0	6000.0	6000.0	6000.0	6000.0
TOTAL						

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Revenues to the fund from the federal gov't vary year to year based upon 25% of the gross revenue from each national forest. The fiscal note represents continued distribution at the FY 91 level of receipt.

Prepared By: Representative Mike Navarre, Co-Chair Phone: 465-3706
Representative Eileen MacLean, Co-Chair Phone: 465-3722
 Division: HOUSE FINANCE COMMITTEE Date: 4/24/91

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CSHB 54 (Finance)-Prospective distribution

<u>Community</u>	<u>Road Miles</u>	<u>ADM</u>	<u>Road Mile \$</u>	<u>School \$</u>	<u>Total</u>
Home Rule					
Petersburg	12.15	681.20	48.6	795.9	844.5
Wrangell	8.03	508.90	32.1	594.6	626.7
Federal					
Metlakatla	0.00				0.0
1st Class					
Hydaburg	3.17	108.40	12.7	126.6	139.3
Craig	19.00	310.70	76.1	363.0	439.1
Klawock	5.83	201.90	23.3	235.9	259.2
Kake	17.15	178.70	68.7	208.8	277.4
Hoonah	14.00	234.00	56.0	273.4	329.4
Pelican	1.10	48.20	4.4	56.3	60.7
Skagway	11.15	144.75	44.6	169.1	213.7
Yakutat	7.34	150.00	29.4	175.2	204.6
2nd Class					
Thorne Bay	22.70		90.9		90.9
Coffman Cove	2.00		8.0		8.0
Kasaan	2.92		11.7		11.7
Kupreanof	0.00		0.0		0.0
Angoon	5.18		20.7		20.7
Tenakee Springs	0.00		0.0		0.0
Port Alexander	0.00		0.0		0.0
Total Local	131.72	2566.75	527.27	2998.81	3,526.1
State	243.00	1284.90	972.7	1,501.2	2,473.9
Grand Total	374.72	3851.65	1,500.0	4,500.0	6,000.0

REPRESENTATIVE
JERRY MACKIE

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CHAIRMAN,
COMMUNITY & REGIONAL AFFAIRS COMMITTEE

VICE CHAIRMAN,
TRANSPORTATION COMMITTEE

Alaska State Legislature



WHILE IN JUNEAU
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House of Representatives

March 8, 1991

MEMORANDUM

To: All members
House Finance Committee

From: Rep. Mackie

Re: CS HB 54 (CRA), relating to forest receipts.

I would appreciate your favorable consideration of CS HB 54 (CRA). This bill corrects a long standing inequity in the national forest receipts program.

The state receives from the U.S. Department of Agriculture a percentage of the earnings derived from timber harvest activities in the Tongass and Chugach national forests. The purpose of the funds is to alleviate the fiscal impacts on local government services resultant from these activities. Use of the funds is restricted to education and public roads in the "county or counties in which the national forest is situated."

In current practice, the state allocates only a portion of these funds to organized boroughs within the two national forests. The allocation is based, in accordance to federal law, on the amount of national forest acreage within the borough's boundaries. The remaining portion of funds, associated with the forest acreages in the unorganized borough, is not allocated specifically and lapses into the state general fund. A recent Legislative Budget and Audit Report draws attention to this practice as not complying with federal requirements.

CS HB 54 (CRA) would preserve the intent of the forest receipts program and federal law by providing a rationale for allocating the

unorganized borough portion of funds to the appropriate communities in the Tongass and Chugach. The rationale is a per capita based distribution that would bring the program into full conformity. In this manner the program matches other policies of resource revenue sharing for local impacts such as the raw fish tax revenue sharing and the NPRA programs.

Attachments: Sectional of CS HB 54 (CRA)
 Fiscal history & Example of distribution
 Audit Report
 Legal Opinion
 Revenue sharing research

SECTIONAL FOR CH HB 54 (CRA)

An act relating to the forest receipt program.

Section 1. The intent and provisions of the federal forest receipts revenue sharing program are described. The purpose of this act is to include communities which are in the unorganized borough portion of the national forests to also receive their share of the federal impact funds for education and public roads. .

Section 2. Current law, AS 41.15.180, on the national forest income is replace with a new section with the following elements:

1. The responsibility for the national forest receipts program is changed from the Department of Administration in current law to the Department of Community and Regional Affairs. AS41.15.180(a).

2. Generally, communities in the unorganized borough portion of the national forests qualify if located within 20 miles distance of a national forest.

3. Organized boroughs receive a share of the receipts based on the percent of forest lands within their boundaries as is current practice and required by federal law. AS 41.15.180(a)(1).

4. Home rule and first class cities in the unorganized borough receive a per capita share of the unorganized borough portion. This portion is also based on the percent of forest lands within the unorganized borough. AS 41.15.180(a)(2).

5. Metlakatla receives a per capita share. AS 41.15.180(a)(3).

6. Second class cities receive 75% of their per capita share if they have adopted road powers. AS 41.15.180(a)(4).

7. An unorganized borough national forest receipts fund is created in the department from the remaining funds not distributed under (a)(2) - (a)(4) above. REAAs, unincorporated communities, and second class cities not exercising road powers can apply through DOT/PF for use of these funds. Education use of these funds is limited to capital improvement and repair. AS 41.15.180(b).

8. The commissioner is given guidance for the review and ranking of project applications in 7 above. AS 41.15.180(c).

9. Funds expended under this section can only be used for public roads and education as required by federal law. AS 41.15.180(d).

10. The commissioner shall annually determine the population of communities in the unorganized borough that are eligible for forest receipts. All local governments receiving forest receipts shall report their use to the commissioner. AS 41.15.180(f) and (g).



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: HB 54

APPROVED: 

TITLE: Distribution of National Forest
Receipts

DATE: March 5, 1991

The proposed legislation would direct unassigned forest receipts from the state to organized boroughs and other communities in the Tongass and Chugach Forests.

At the present time, only organized boroughs receive funds. The funds are sent to the boroughs by the Department of Community and Regional Affairs. Allocations are prorated based on the number of acres of forest land within each borough. The funds are to be spent, by federal designation, on education and roads. The state has decided that 25% of the funds are to go to education, and 75% to roads. In 1990, boroughs received approximately \$2.8 million dollars from the program; \$6.2 million dollars went to the state's general fund.

In areas where direct significant impacts of logging activities occur, such as Prince of Wales Island, there is no borough government and therefore no distribution of forest receipts.

HB 54 offers a remedy for fund distribution to communities in timber harvest impact areas that occur outside the organized boroughs.

HB 54 would allocate funds on the basis of community population for communities that are not in boroughs but are in the two forests. Grants would be given to these communities through the Department of Community and Regional Affairs. These grants would be used in compliance with the state's formula of 25% for education and 75% for roads.

For Further Information contact Katy McHugh at 465-3900.

BILL NO: HB 54

DATE: March 5, 1991

The Department of Transportation and Public Facilities proposes that the major timber harvest impacts to roads outside the organized boroughs are to highways used by both the public and the logging industry. Funds allocated to communities in HB 54 for roads may be best used by DOT&PF to reconstruct and maintain highways heavily used by the timber industry. Improving the safety and driveability of those roads would be a significant step toward enhancing safety and community access. A priority system based on technical data would be developed in cooperation with the local communities.

Given the lack of federal funds for reconstruction and the diminishing level of maintenance funds, this source of funding would be a strong asset to the road systems, communities and people most directly affected by timber harvesting activities.

DOT&PF supports the concept of HB 54 and asks consideration of the alternative funding device outlined above.

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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February 5, 1991

POSITION PAPER

RE: House Bill 54

SPONSOR: Representatives Mackie, Grussendorf

Program Effects of Bill

This bill would expand the distribution of National Forest Receipts funds to include Regional Educational Attendance Areas, cities and unorganized communities in the unorganized borough that are within or adjoin a National Forest. Presently, such funding is limited to organized boroughs within a National Forest.

Comments

The Department has several concerns and general comments regarding the bill in its current form. Comments are based on federal fiscal year 1991 fund distributions within the Tongass National Forest using 1990 federal census data.

The bill would create a disparity in funding between organized boroughs and the unorganized borough (UOB), since boroughs currently receive funds according to the amount of National Forest land within their boundaries, while REAAs, cities and unorganized communities in the UOB would receive funds on a per capita basis. Boroughs, which have about 75 percent of the population in the Tongass, receive approximately 25 percent of the funds available for distribution. Cities and unorganized communities, which have about 25 percent of the regional population, would receive approximately 75 percent of the funds, or the amount that currently goes into the state general fund because there are no boroughs to capture the funds at the local level. In per capita terms, the split distribution method (acreage for boroughs/per capita for municipalities and communities) results in funding of approximately \$55 per person for borough residents and approximately \$400 per person for residents in municipalities, unincorporated communities and logging camps in the unorganized borough.

The legal authority of some of the beneficiaries to expend funds for road and education purposes is questionable. REAAs are limited to spending funds only for educational purposes. Second class cities may have road powers but cannot operate their own schools. Unorganized communities neither have municipal powers nor operate schools. The fact that many of these communities are totally surrounded by Federal property further complicates the issue of road maintenance.

General Concerns

There is no definition of the term "community". There are a number of logging camps that may relocate or close as harvest activities are concluded or rotated to new locations. Typically, the camps are privately owned and located on federal land, with the camp owner acting as the service provider for camp residents.

The bill requires that entities in the unorganized borough receiving National Forest Receipt payments split the funds between education (25 percent) and roads (75 percent). However, existing law permits boroughs receiving these funds to use such payments for schools or roads in any ratio the borough assembly determines appropriate. The existing law also states that payments are to be made to local governments, while the bill states that payments made to municipalities in the UOB for schools shall be made to the municipal school district. This conflict should be resolved in the legislation.

Some communities would not be eligible for payments even with the per capita distribution method envisioned in the bill. Klukwan, for example, is neither within nor adjoining the Tongass National Forest. The cities of Haines and Ketchikan are within boroughs that already receive National Forest Receipt payments.

Position Paper - HB 54
February 5, 1991
Page three

Conclusions & Recommendations

If the program is to be expanded, the Department believes that National Forest Receipts payments should be made only to first class and home rule cities in the UOB, since these units typically have road powers and are also school districts. The distribution to first class and home rule cities in the UOB should not exceed the average per capita distribution to qualifying boroughs. Second class cities, if they are included within the distribution, should receive funds for roads only to reflect their lack of education powers. Perhaps they could be funded at a percent of the share that goes to home rule and first class cities. REAA's, which provide for education in second class cities and unincorporated communities, are already 100 percent state funded and should not receive additional entitlements.

The requirement for a 25 percent (schools) - 75 percent (roads) split should be removed, permitting first class cities in the UOB discretion in the use of the funds. Funds should be distributed to municipalities in the unorganized borough through agency grants, to permit some oversight and tracking of the funds. Finally, we would like to see a provision stating that should a borough form it would become the recipient of all National Forest Receipt payments for the region.

Ed. Blatchford

Edgar Blatchford, Commissioner

QUESTIONS AND ANSWERS

On

HB 54, An act relating to the national forest receipts.

By

Representative Jerry Mackie

1. QUESTION. What are the national forest receipts?

ANSWER: They are a portion of federal earnings, primarily from timber harvest operations, in the Tongass and Chugach National Forests that are paid in trust to the state for specified uses. Court decisions have referred to them as impact funds..

2. QUESTION. Are there any requirements on how these funds are to be used?

ANSWER: By federal law, the funds from each forest are to be expended "for the benefit of the public schools and public roads of the county or counties in which such nation forest is located..." Also, when the forest is in more than one county, the distributive share to each shall be proportional to the forest area therein. 16 USCS #500.

3. QUESTION. How does the state administer the national forest receipts?

ANSWER: When the state receives the funds, it disburses ("immediately", AS 41.15.180) the appropriate amount to the Ketchikan, Sitka, Juneau and Haines Boroughs of the Tongass and the Kenai, Anchorage, Mat-Su, and Kodiak Boroughs of the Chugach. The commissioner of administration is responsible for expenditures of the remaining funds, associated with forest acreage of the unorganized areas of the Tongass and Chugach, for education and public roads in those areas; but in practice, this has not been done. These funds co-mingle with general funds, thereby losing their

identity. In effect, they are used for all purposes. (Audit report 02-6000-91, page 88, Division of Legislative Audit).

4. QUESTION. How much money is involved?

ANSWER: It has fluctuated throughout the years, dependent primarily on timber prices and harvest volumes. The total receipts for the Tongass last year was \$9,000,000, the most it's ever been. Four years ago it was zero. In the Chugach, it has always been less than \$150,000. The unorganized borough portions of the two forests are 69% and 71% respectively.

5. QUESTION. But a borough is akin to a county. Why must the state acknowledge that the unorganized borough be similarly treated?

ANSWER: The intent and purpose of the federal law is to directly pay local governments for impacts incurred from national forest commercial activities. Is the unorganized borough a borough? Yes. See Article X, para 3 and 6, Constitution of Alaska.

6. QUESTION. Doesn't the state already provide for education and local public roads in the unorganized portions of the Tongass and Chugach through the education foundation formula and revenue sharing programs?

ANSWER: Certainly, as with all local governments of the state. But the federal funds are impact funds specifically directed to the forest areas, so the boroughs of Ketchikan, Sitka, Juneau, Haines, Kenai, Anchorage, Mat-Su, and Kodiak receive extra measure in accordance with federal law.

The state's own policy of sharing raw fish taxes (earnings) with the communities where the processing took place is instructive. Up to 50% of these resource harvest revenues are returned to the local governments as impact funds whether in the organized or unorganized regions of the state. Last year this was a disbursement of almost \$15,000,000.

7. QUESTION. Does CS HB 54 (CRA) provide a disincentive to borough formation in the Tongass and Chugach?

ANSWER: To date, denial of the forest receipts certainly has not stimulated borough formations. On the contrary, three of the

newest boroughs have been formed in areas already receiving substantial sums of fish tax revenue sharing. The incentives for borough formation in recent times must also be viewed in terms of what the local citizens perceive as protection from revenue loss or other government incursions.

8. QUESTION. Why should the unorganized borough portion of the forest receipts be distributed on a per capita basis?

ANSWER: Federal law gives full discretion on how receipts are expended on education and public roads within a "county". The per capita basis is a relatively simple and fair rationale for disbursement to a diverse collection of communities. In this manner, the communities most directly affected by timber harvest activities in the past, but subsiding now, have a share of the future receipts.

9. QUESTION: Are there liabilities for the state in the way the program is administered now?

ANSWER: Any time the state receives federal funds or assets dedicated to specific purposes, it is obligated to adhere to those purposes. In part, that is the difficulty currently faced in the mental health lands dispute. More to the point is the state's previous experience in administering National Petroleum Reserve-Alaska federal impact funds for local communities. In a Superior Court decision in the NPR-A case (brought by three municipalities), the state was found at fault and the special nature and purpose of the federal funds sustained.

PAYMENT TO STATE OF ALASKA FROM NATIONAL FOREST RECEIPTS

FEDERAL FISCAL YEARS 1959 TO 1990

FEDERAL FISCAL YEAR	CHUGACH NF	TONGASS NF	TOTAL PAYMENT
1959	\$ 8,255.	\$ 150,038.	\$ 158,263.
1960	8,466.	189,655.	198,131.
1961	10,425.	202,006.	212,431.
1962	10,455.	161,137.	171,592.
1963	4,842.	208,332.	213,174.
1964	5,476.	231,512.	236,988.
1965	4,656.	212,576.	217,232.
1966	7,323.	276,162.	283,485.
1967	5,044.	399,923.	404,967.
1968	7,435.	510,123.	517,558.
1969	17,678.	557,097.	574,775.
1970	23,283.	1,057,638.	1,080,921.
1971	20,993.	1,031,200.	1,052,193.
1972	30,806.	851,337.	882,143.
1973	47,692.	926,223.	973,915.
1974	44,811.	643,322.	688,133.
1975	31,630.	1,014,448.	1,046,078.
1976	31,849.	437,689.	469,538.
1977	90,066.	2,465,222.	2,555,288.
1978	139,820.	2,970,500.	3,110,320.
1979	112,596.	3,461,103.	3,573,699.
1980	21,957.	6,506,123.	6,523,080.
1981	23,208.	3,751,986.	3,775,194.
1982	24,681.	5,405,691.	5,430,372.
1983	33,589.	1,341,479.	1,341,479.
1984	36,299.	1,015,797.	1,052,096.
1985	37,154.	52,308.	89,462.
1986	53,719.	491,810.	545,529.
1987	0.	0.	0.
1988	101,989.	308,167.	410,156.
1989	60,241.	5,045,783.	5,106,024.
1990	54,558.	9,002,560.	9,057,119.

This table of payments to the State of Alaska from National Forest receipts indicates the final payments derived from the National Forests in Alaska for the period requested (16 U.S.C. 500 as amended by P.L. 94-588).

PAYMENTS TO STATES FROM NATIONAL FOREST RECEIPTS
 FISCAL YEAR 1990
 OCT 1, 1989 THRU SEP 30, 1990
 *---NATIONAL FOREST SUMMARY---

NATIONAL FOREST *-----*	STATE *---*	BOROUGHES *-----*	FY-90 ACRES *---*	TOTAL PAYMENT *-----*
CHUGACH	ALASKA	Anchorage	274,290	\$ 2,633.80
		Kenai Penin.	1,139,903	10,945.63
		Kodiak Is.	214,824	2,062.79
		Matanuska-Su	43,386	416.60
		Unorganized	4,009,473	38,499.95
NATIONAL FOREST TOTAL:			5,681,876*	\$ 54,558.77*
TONGASS	ALASKA	Haines	918,000	\$ 493,478.14
		Juneau	1,654,000	889,383.22
		Ktn. Gateway	748,337	402,242.91
		Sitka	1,814,934	975,555.59
		Unorganized	11,612,499	6,241,900.96
NATIONAL FOREST TOTAL:			16,748,460*	\$9,002,560.82*
REGION TOTAL:			22,430,336**	\$9,057,119.59**
Actual Interim Payment Made Effective 10/1/90				\$ 6,521,913.20
Final Payment Made 12/7/90				2,535,206.39
Total State of Alaska Payment				\$ 9,057,119.59
				=====

into Gov. Fund

into Gov. Fund

CHUGACH FOREST RECEIPTS

CS HB 54 (CRA), UNORGANIZED BOROUGH DISTRIBUTION

COMMUNITIES	POPULATION	% POP.	\$40,000
Home Rule			
Cordova	2619	33.65	\$13,462
Valdez	4635	59.56	\$23,824
2nd Class (75%)			
Whittier	299	3.84	\$1,153
Unincorporated			
Chenega	76	} → 2.94	\$1,561
Eyak	50		
Tatitlek	103		
TOTAL	7782	100.00	\$40,000

TONGASS FOREST RECEIPTS

CS HB 54 (CRA), UNORGANIZED BOROUGH DISTRIBUTION

COMMUNITIES	POPULATION	% POPULATION	\$2,000,000
Home Rule			
Petersburg	3,576	20.75	\$414,970
Wrangell	2,630	15.26	\$305,193
Federal			
Metlakatla	1,386	8.04	\$160,836
1st Class			
Hydaburg	457	2.65	\$53,032
Craig	1,535	8.91	\$178,126
Klawock	897	5.20	\$104,091
Kake	682	3.96	\$79,141
Hoonah	894	5.19	\$103,742
Pelican	290	1.68	\$33,652
Skagway	718	4.17	\$83,313
Yakutat	527	3.06	\$61,155
2nd Class (75%)			
Thorne Bay	614	3.56	\$71,250
Coffman Cove	180	1.04	\$20,888
Kasaan	80	0.46	\$9,283
Kupreanof	52	0.30	\$6,034
Angoon	685	3.97	\$79,489
Tenakee Sp.	108	0.63	\$12,533
Port Alexander	119	0.69	\$13,809
SUB TOTAL	15,430	89.53	\$1,790,543

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

January 14, 1991

SUBJECT: Distribution of National Forest Receipts in the Unorganized Borough (Work Order No. 17LS-0427)

TO: Representative-elect Jerry Mackie
Attn: Dave Gray

FROM: Gerald P. Luckhaupt *JER*
Legislative Counsel

You requested an opinion as to whether current AS 41.15.180(c) comports with the federal law regulating how national forest receipts are distributed to local governments. A copy of the federal law, 16 U.S.C. § 500 is attached.

The federal law refers to counties. In Alaska, of course, we don't have counties but boroughs. We must assume that a federal court would interpret the federal reference to counties to mean boroughs in Alaska. We must also assume that the unorganized borough would be found to be comparable to a county. Keeping these assumptions in mind, AS 41.15.180 provides:

The commissioner shall deposit income from national forest land outside of organized boroughs in the general fund of the state, 25 percent to be used for public schools and 75 percent for roads.

If this statute means that the income from national forest lands outside of boroughs shall be used for public schools and roads in the unorganized borough, then it comports with the requirements of the federal legislation. While the subsection could have been drafted more clearly, for example including the words "in the unorganized borough" after roads and before the period, by reading the entire statute together, and comparing these receipts with the distributions made to organized boroughs, it might be possible to argue that expenditure of the money in the unorganized borough is required by implication. That, however, really ought to be specifically stated, since the federal law requires receipts from national forests to be spent in the county where the receipts were generated.

Even if the statute is found to comply with federal law, AS 41.15.180(c) does not provide any direction as to how these funds are to be distributed by the commissioner

Representative-elect. Jerry Mackie

January 14, 1991

Page 2

of administration in the unorganized borough. AS 41.15.180(a) provides for distribution between organized boroughs, but no direction is provided for distribution within the unorganized borough. As a result it appears the commissioner has unfettered discretion to distribute these funds among schools and road projects within the unorganized borough as he sees fit. While the federal statute merely requires the receipts to be used for the stated purposes in the county, and it does not require that the receipts be used in any particular place or area of the county, see, e.g., Trinity Independent School District v. Walker County, 287 S.W.2d 717(Texas App. 1956), arguably, as a matter of policy some direction as to distribution should be included in the statute.

GPL:mi

91-008.mai

Enclosure

extension thereof, shall be disposed of as is provided by existing law for the disposition of receipts from national forests."

The words of this section reading, "except as provided in sections 500 and 501 of this title" are intended to relate this section to the apparent exceptions contained in later law.

Amendments:

1928, Act May 29, 1928, deleted a provision which required the Secretary of Agriculture to make an annual report to Congress of the amounts refunded under this section.

CROSS REFERENCES

Deposit of proceeds from sale of timber on lands added to Siskiyou National Forest, 16 USCS § 487.

Refunding accounts, 31 USCS § 725q(b)(9)(18).

Trust funds, 31 USCS § 725s(13).

This section referred to in 16 USCS §§ 508b, 527.

INTERPRETIVE NOTES AND DECISIONS

Jurisdiction of Secretary as to refunds is exclusive only as to disputed questions of fact, and his decision upon question of law is reviewable by

Court of Claims. *Utah Power & Light Co. v United States* (1929) 67 Ct Cl 602.

§ 500. Payment and evaluation of receipts to State for schools and roads; moneys received; projections of revenues and estimated payments

On and after May 23, 1908, twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State in which such national forest is situated, to be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: *Provided*, That when any national forest is in more than one State or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber. Beginning October 1, 1976, the term "moneys received" shall include all collections under the Act of June 9, 1930, and all amounts earned or allowed any purchaser of national forest timber and other forest products within such State as purchaser credits, for the construction of roads on the National Forest Transportation System within such national forests or parts thereof in connection with any Forest Service timber sales contract. The Secretary of Agriculture shall, from time to time as he goes through his process of developing the budget revenue estimates, make available to the States his current projections of revenues and payments

ATION

NATIONAL FORESTS

16 USCS § 500

estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes.

(May 23, 1903, c. 192, 35 Stat. 260; Mar. 1, 1911, c. 186, § 13, 36 Stat. 963; June 30, 1914, c. 131, 38 Stat. 441; Sept. 21, 1944, c. 412, title II, § 212, 58 Stat. 737; Apr. 24, 1950, c. 97, § 17(b), 64 Stat. 87; Oct. 22, 1976, P. L. 94-583, § 16, 90 Stat. 2961.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The Act of June 9, 1930, referred to in text, is Act June 9, 1930, ch. 416, 46 Stat. 527, popularly known as the Knutson-Vandenberg Act, which is classified to 16 USCS 576, 576a, and 576b.

The Act of May 23, 1908, referred to in text, is Act May 23, 1908, ch. 192, 35 Stat. 251. A portion of that Act appearing at 35 Stat. 260 is classified to this section.

Explanatory notes:

This section appears in the language of the compilers of the 1976 Edition of the United States Code. For status of the United States Code as evidence of the law, see 1 USCS §§ 112 and 204 and notes thereunder.

"National forest" was substituted for "forest reserve" the first, third and fourth time appearing, and for "reserve" the second time appearing, and "forest" was substituted for "reserve", on authority of Act Mar. 4, 1907, c. 2907, 34 Stat. 1269, which provided that forest reserves shall hereafter be known as national forests.

Amendments:

1914. Act June 30, 1914, changed the per centum to be paid to each State from five to twenty-five.

1944. Act Sept. 21, 1944, added sentence relating to stumpage value of the timber.

1950. Act Apr. 24, 1950, deleted second proviso relating to limitation paid county.

1976. Act Oct. 22, 1976, added provision that beginning Oct. 1, 1976, the term "moneys received" would include all collections under the Act of June 9, 1930, and all amounts earned or allowed any purchaser of national forest timber and other forest products within such State as purchaser credits, for the construction of roads on the National Forest Transportation System within such national forests or parts thereof in connection with any Forest Service timber sales contract, and that the Secretary of Agriculture shall, from time to time as he goes through his process of developing the budget revenue estimates, make available to the States his current projections of revenues and payments estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes.

relating to the subject matter of AS 41.15.010 — 41.15.170, the escape of a fire is presumptive evidence of negligence by the person responsible for starting the fire and unless rebutted is sufficient to sustain the recovery. (§ 12 ch 138 SLA 1961)

Sec. 41.15.170. Definitions. In AS 41.15.010 — 41.15.170

(1) *[Repealed, § 43 ch 85 SLA 1988.]*

(2) "damages" includes costs incurred in suppressing, controlling or extinguishing a fire;

(3) "forested land" includes all land on which grass, brush, timber and other natural vegetative material grows;

(4) "forest fire" includes the uncontrolled burning of grass, brush, timber and other natural vegetative material. (§ 1 ch 138 SLA 1961; am § 3 ch 179 SLA 1970; am § 43 ch 85 SLA 1988)

Revisor's notes. — In 1983 this section was reorganized to place the terms defined in alphabetical order.

Effect of amendments. — The 1988 amendment repealed former paragraph (1), which defined "commissioner."

Article 2. Forest Reserve Fund.

Section

180. National forest income

Collateral references. — 52 Am. Jur. 2d, Logs and Timber, § 65.

Sec. 41.15.180. National forest income. (a) When the commissioner of administration receives national forest income under 16 U.S.C. 500, the commissioner shall immediately pay to every organized borough in which national forest land is located a share of the income from that forest. A borough's share of income from a national forest shall be proportional to the area of the national forest located within its boundaries. The payments shall be made under an appropriation made for that purpose.

(b) The national forest income paid to an organized borough under this section shall be expended for public schools or roads.

(c) The commissioner shall deposit income from national forest land outside of organized boroughs in the general fund of the state, 25 percent to be used for public schools and 75 percent for roads. (§ 47-5-1 ACLA 1949; am § 1 ch 106 SLA 1965; am § 1 ch 32 SLA 1969)

REPRESENTATIVE
JERRY MACKIE

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Alaska State Legislature



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House of Representatives

March 8, 1991

MEMORANDUM

To: All committee members
House Finance Committee

From: Rep. Mackie *JRM*

Re: Research of natural resource generated revenue sharing similar to the forest receipts program, HB 54.

At a Community & Regional Affairs committee hearing on HB 54, relating to the forest receipts program, there was a request for information on any other revenue sharing programs that are similar. In particular, the request was for programs that distributed revenues derived from natural resource development or use back to the communities or areas where the development or use occurred.

In addition to the forest receipts program, there are three other examples of particular interest. They are the state's raw fish tax refund to local governments, National Wildlife Refuge System refunds, and the National Petroleum Reserve Alaska (NPR-A) exploration refund.

In the first case, 50% of state revenues collected from taxation of fish processors and transporters in a local government area are refunded to the local governments in both the organized and unorganized boroughs. There are no limitations on the governmental use of these funds. (See attachment 1).

The National Wildlife Refuge System operates in much the same way as the forest receipts program. 25 % of the net federal receipts from a particular refuge are returned to the "counties" on a per

House Finance Committee Members

Page 2

March 8, 1991

acreage allocation. There are no limitations on the governmental use of these funds. However, county is defined. (See Attachment 2).

50% of federal revenues recieved from oil exploration of NPR-A were returned to the state to mitigate the effects of potential oil and gas development in the reserve. The state was to give priority to those government subdivisions most directly and severely impacted. (See attachment 3).

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March 12, 1991

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ADMITTED IN WASHINGTON, DC**
AND ALASKA

ALL OTHERS ADMITTED
IN ALASKA

The Honorable Eileen MacLean, Co-Chairman
The Honorable Mike Navarre, Co-Chairman
House Finance Committee
Alaska Legislature
Capitol Building
Juneau, Alaska 99801

Re: National Forest Receipts Distribution:
CS HB 54 (C&RA)

Dear Representatives MacLean and Navarre:

This letter is provided by the City of Craig, Alaska. The City of Craig supports enactment of CS HB 54 (C&RA).

Alaska statutes, AS 41.15.180, need to be amended so as to remedy the existing situation under which Federal funds intended for municipalities impacted by national forest activities have not actually been reaching those municipalities that are located within the unorganized borough.

Federal law, 16 USC 500 enacted in 1908, provides that 25% of all money the Federal Government receives each fiscal year from each national forest shall be paid to the state or territory in which the national forest is located, to be distributed for the benefit of the public schools and public roads of the county or counties in which each such national forest is located. Obviously Congress could not have meant the distribution to be strictly limited to counties as such, as there were no such entities (or even their equivalents by other names) in the territories.

Under present State law, the State has been distributing about 30% of these national forest receipts monies to the organized boroughs which have national forest lands within their boundaries,

The Honorable Eileen MacLean, Co-Chairman
The Honorable Mike Navarre, Co-Chairman
March 12, 1991
Page 2

for school and road related use. This is correct, and no modification of the existing State statute is recommended which would change that.

The State, however, has been basically pocketing the other 70% of the national forest receipts without even accounting for how or where the money is spent. This other 70%, arising from forest acreage within the unorganized borough, was intended by Congress to be used (for public schools and public roads) to alleviate the impact upon communities within or near the forest that generated the income. The State statute, as presently written, does not result in use of the funds as intended by Congress.

There are significant forest related impacts upon communities in the Tongass National Forest which presently receive none of these funds. Tom Briggs, the City Administrator of Craig, has provided the enclosed testimony showing how the City of Craig has been impacted by forestry activities (partly on nearby Federal forest lands), without any financial assistance from national forest receipts to help alleviate the increasing demands upon the City.

It cannot be too strongly emphasized that these national forest receipts are not State monies, and that the State should be acting as a trustee to administer the distribution of national forest receipts in accordance with the intention of Congress in enacting the Federal statute. Some court decisions interpreting the statute have even characterized these funds as a "trust" to be administered by the states. Furthermore there have been a number of court decisions making it clear that Congress intended these national forest receipt funds to be distributed to communities where there are impacts from the forestry activities in the forest which generated the funds. Please refer to the attached opinion letter dated February 26, 1991.

Therefore it would be fallacious to think of corrective legislation (such as CS HB 54 (C&RA)) as "removing" these funds from the State's general fund; in fact national forest receipts never should have been going into the general fund without accounting and management to assure they would be expended for roads and schools in the national forests which generated the funds. Also refer to Audit Report No. 02-6000-91 (for fiscal year ended June 30, 1989), Alaska Division of Legislative Audit, pages 88 - 89.

When the State is entrusted with federal assets to be used for a particular purpose, the State is obliged to carry out the intent

The Honorable Eileen MacLean, Co-Chairman
The Honorable Mike Navarre, Co-Chairman
March 12, 1991
Page 3

of Congress on how those assets are expended or managed. The present situation with the national forest receipts generated from lands within the unorganized borough bears a certain resemblance to the mental health lands dispute with which the State has been so long entangled, and also a certain similarity to the State's previous experience in administering National Petroleum Reserve - Alaska (NPR-A) Federal impact funds for local communities. In the NPR-A case, (brought by three municipalities), the State was found at fault and the special nature and purpose of the Federal funds sustained. City of Barrow v. State of Alaska, 1JU-85-2634 Civ., Superior Court Summary Order, dated March 18, 1986. Presumably the Legislature will, however, remedy the national forest receipts distribution problem during the current session.

The Prince of Wales Community Advisory Council includes the communities of Craig, Hollis, Kasaan, Klawock, Hydaburg, Coffman Cove, Thorne Bay, and Whale Pass. The Council has adopted a resolution urging amendment of the State statute so as to require national forest receipts generated within the unorganized borough to be distributed to communities within that borough, as the Federal statute intended. A copy of that resolution is attached.

The City of Craig was pleased to note that supporters of CS HB 54 (C&RA) before the House C&RA Committee included the Office of the Governor, and the Office of the Commissioner for Community and Regional Affairs. The Alaska Municipal League also expressed its support for CS HB 54 (C&RA), based in part upon AML's 1991 policy statement on national forest receipts shared revenue.

The City of Craig respectfully urges the Finance Committee to act upon CS HB 54 (C&RA) favorably, we appreciate the Committee's consideration of our views on this subject.

Sincerely,



D. Elizabeth Cuadra
Craig City Attorney

DEC/k11.311
Enclosures: See next page

The Honorable Eileen MacLean, Co-Chairman
The Honorable Mike Navarre, Co-Chairman
March 12, 1991
Page 4

Tom Briggs' Testimony for House Finance Committee
Copy of February 26, 1991 letter to Repr. Mackie w/statute
Copy of February 7, 1991 letter from Prince of Wales Comm.
Advisory Council (with resolution)

TESTIMONY FOR THE
HOUSE FINANCE COMMITTEE

Subject: CS HB 54 (C&RA), Distribution of National Forest
Receipts to Impacted Communities in the Unorganized
Borough

My name is Tom Briggs, and I am the City Administrator for Craig, Alaska, a first-class city of 1,535 persons located on Prince of Wales Island, approximately 60 air miles west of Ketchikan.

We thank you for the opportunity to comment on this bill that is so important to so many communities in Southeast Alaska.

The National Forest Receipts Program was enacted by Congress in 1908 in recognition and acknowledgement of the effect management of the national forests has on communities within these national forests. The federal law creating the program, 16 USC 500, states:

On and after May 23, 1908, twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State or Territory in which such national forest is situated to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated:

Clearly, it is the intent of this federal statute that federal activities within the national forests are recognized as having impact on the roads and schools within these same forests. The federal government also recognizes it has a moral if not legal obligation to provide assistance to the local governments affected by these activities. Numerous courts, interpreting 16 USC 500, have held that Congress intended these funds as impact aid (to alleviate the impacts of forestry-related activities on communities) and not as payments in lieu of taxes.

Within the last eleven years, revenues generated by federal activities within the Tongass National Forest have totaled almost \$132,000,000. The federal government, in accordance with 16 USC 500, has paid almost \$33,000,000 over these eleven years to the State of Alaska for distribution to communities within the Tongass National Forest. Again, the purpose of the distribution is "for the benefit of the public schools and public roads " within the national forest. The State has in fact distributed only 31% of these revenue rebates, or just over \$10,000,000, to organized boroughs in the Tongass National Forest. The balance of almost \$23,000,000 has been retained by the State in the General Fund to be used for general purposes. The reason given for not distri-

buting the rest of this money is that the revenue was generated in the Unorganized Borough and the State statute, AS 41.15.180, does not allow the money to be distributed to impacted communities.

Those of us in the Unorganized Borough have heard this before. Every time inquiries are made as to why revenues collected to mitigate impact on communities affected by resource extraction, whether it be timber or fish, are not being spent in our communities, we are told that since we are in the Unorganized Borough, we are not entitled to receive any of these revenues, even though the resource is extracted from our forest or our fish-management area. Because we are located in the Unorganized Borough, an area comprising nearly 70% of the Tongass National Forest alone, we are treated as though we have no legitimate claim to the resources of our area. Whenever we question why we don't receive our share, we are told by the executive agencies that before we can receive these impact monies, we must form into an organized borough and add another level of government.

Both the State Constitution and State statutes provide for the existence of Unorganized Boroughs. In fact, the State Legislature is empowered by the Constitution to administer the Unorganized Borough in place of an Assembly. State statute, AS 29.05.031, enables an area that shares particular things in common to incorporate as a borough, but by no means does either the Constitution or this statute require borough incorporation. I emphasize the fact that the Constitution and statutes are enabling and require the area to petition with 15 percent of the registered voters as signators in the affirmative. Communities in the Unorganized Borough area of the Tongass National Forest have never expressed an interest in organizing.

The City of Craig today, as I've said above, is a community of 1,535 residents. Ten years ago, the population was only 500. Craig is the third fastest growing city in Alaska, and Prince of Wales Island is the second fastest growing area in Alaska. The growth is primarily the result of logging activities on the Island. The Island is covered entirely by the Tongass National Forest and all of the Island is in the Unorganized Borough. The impact of logging for the last eleven years has been tremendous on Craig and the entire Island community. All of the logging has taken place in old-growth forests. It is estimated that logging at the present rate can continue for almost another decade, but will decrease dramatically after the year 2000. The effect of the logging activity, however, is considerable now and will continue to be felt for years to come.

Evidence of impact can be seen in the fact that the budgeted expenditures per student in the Craig School District are the lowest in the State of Alaska. This is the result of inordinate growth in school populations attributable to logging activities without commensurate increases of revenues to mitigate the logging impact. Further impact is evident by the fact that City roads are unpaved, narrow, are at sub-standard grades resulting in high-tide storm washouts, and are badly in need of utility and sub-surface upgrades. Because of the inordinate logging-related growth, the City sewer system has been declared overloaded by DEC and consequently been classified as sub-standard, preventing approval of any new, much-needed subdivisions. The only road work performed in the City of Craig, or for that matter, on the entire Island, has been done with federal highway funds through joint DOT/Federal efforts. Requests to the State made by the City or School District of Craig for funds to assist us in mitigating the impact of the logging related growth are invariably denied on the basis that no funds are available. Nothing could be further from the truth, because the State has, as I've said above, received over \$22,000,000 from the federal government for roads and schools support in the Unorganized Borough of the Tongass National Forest.

This bill, CS HB 54 (C&RA), is desperately needed by all of the communities in the Unorganized Borough of the Tongass from Yakutat to Hydaburg. Without it, the many communities of the Unorganized Borough of Southeast Alaska will continue to be unable to provide the essential services of adequate roads and schools mandated by federal and State law. The quality of life in these communities will continue to be affected if revenues generated by resource utilization continue to be withheld. We therefore urge the committee to support this bill in its entirety. Thank you, for considering these comments.

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ROYAL ARCH GUNNISON (1873-1918)
R E ROBERTSON (1885-1961)
M E. MONAGLE (1902-1985)

F O. EASTAUGH (RETIRED)

JAMES F. CLARK
PAUL M. HOFFMAN
D. ELIZABETH CUADRA*
MARY A. NORDALE
ROBERT P. BLASCO
ELIZABETH A. ZIEGLER

ADMITTED IN WASHINGTON, D.C.**
AND ALASKA

ALL OTHERS ADMITTED
IN ALASKA

February 26, 1991

The Honorable Jerry Mackie, Chairman
House Community & Regional Affairs Committee
Alaska Legislature
Capitol Building
Juneau, Alaska 99801

RE: HB 54: Distribution of National Forest Receipts

Dear Representative Mackie:

This is to provide you with certain information concerning the intent of Congress in enacting the federal statute (including amendments) which is codified at 16 USC 500. You and the committee members are already familiar with that statute, but the full text of 16 USC 500 is attached for convenient reference.

For our purposes, the key portion of the statute reads as follows:

"On and after May 23, 1908, twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State or Territory in which such national forest is situated, to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: ..." [emphasis added]

Several court decisions made it clear that Congress intended these national forest receipts funds to be a special grant, related to the impacts which forestry activities have upon the local

The Honorable Jerry Mackie, Chairman
February 26, 1991
Page 2

communities, to provide them with a special assistance fund for road and school purposes; the same court decisions have made it clear that these monies are not to be construed as "payments in lieu of taxes" (PILT) funds. The concept behind PILT funds is that federal property is not subject to taxation by state or local governments, and that therefore (under certain other federal statutes) the federal government pays PILT funds. A familiar example would be where the non-taxable land of a military base is located within a municipality.

The question of whether Congress intended national forest receipts to be impact funds or PILT funds has arisen in several different contexts, but most frequently as part of the question whether the state or local government has been preempted by the federal statute from applying some form of state or local taxation. If the national forest receipts monies were PILT funds, then the state and local governments would be federally preempted from taxation, but if instead they are impact funds, then there is no federal preemption.

For example, an appellate court in Louisiana held that national forest receipts funds under 16 USC 500 are not payments in lieu of taxes (PILT), and that therefore a state severance tax on the activity of gravel mining could lawfully be enforced, where gravel was being mined from a national forest. Bartlett v. Collector of Revenue, 285 So.2d 246 (La. App. 1973). The Louisiana appellate court cited several other court decisions and relied especially upon Georgia Pacific Corporation v. County of Mendocino, 340 F.Supp. 1041 (N.D. Cal. 1973), aff'd 515 F.2d 285 (9th Cir. 1974), in which a federal district court had held that payments made under 16 USC 500 are not payments in lieu of taxes. Instead, the national forest receipts were intended to be a public grant for the purposes of roads and schools where the forests are located. In the Georgia Pacific case, the federal courts upheld the legality of a property tax on the possessory interest in standing timber (taxed to the purchaser of the timber) in national forests involving the counties of Mendocino, Siskiyou and Tehama in Northern California.

The Idaho Supreme Court has held that national forest receipts under 16 USC 500 are not payments in lieu of taxes, and that therefore it is not unlawful for a personal property tax to be applicable to logs harvested from forest service lands. Tree Farmers, Inc. v. Goeckner, 385 P 2d. 649 (Idaho 1963). The Idaho Supreme Court held that, instead of being a payment in lieu of taxes, the national forest receipts money was in the nature of an assistance grant with a special purpose.

The Honorable Jerry Mackie, Chairman
February 26, 1991
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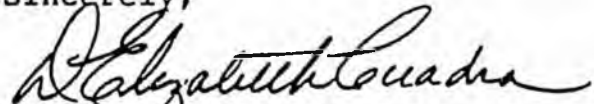
A California appellate court held that the federal statute, 16 USC 500, was not intended to provide money in lieu of local taxes (payments in lieu of taxes), and went on to uphold an interpretation of the state's distribution statute (apportioning these funds to school districts "lying within or adjacent to" national forests), where the interpretation had extended monies to certain school districts that were not immediately adjacent to national forest boundaries but were financially impacted by forestry activities going on within the national forest. That is, the state statute had made eligibility for funds dependent upon both geography and financial impact combined. Anderson Union High School District v. Schreder, 128 Cal. Rptr. 529 (Cal. App. 1976).

These courts have looked to the Congressional intent behind the federal statute, 16 USC 500, in reaching their decisions. The implication of these decisions is that a state statutory distribution scheme for national forest receipts which views the monies as impact funds and sets up some rational criteria for eligibility (as CS HB 54 does), will be far more in line with what Congress intended (and thus more lawful) than Alaska's present handling of national forest receipts generated from forest lands within the unorganized borough.

A further implication which arguably flows from these judicial interpretations of 16 USC 500 is that these funds are in addition to any funds available for roads and schools from other sources, and should not be used to replace or substitute for those other funds, nor be imbedded in a "priority system" that is applied to other funds and based on other considerations.

On behalf of the City of Craig, let me add that the City does support the Committee Substitute for HB 54, and urges your committee to pass it out (with "do pass" recommendations) without delay. The existing inequitable situation needs to be remedied during the current legislative session.

Sincerely,



D. Elizabeth Cuadra
Craig City Attorney

DEC\k11.226
Enclosures: 16 USC 500

of the national forests, shall be covered into the Treasury and shall constitute a special fund, which is appropriated and made available until expended, as the Secretary of Agriculture may direct, for the payment of the expenses of said investigations, protection, or improvements by the Forest Service, and for refunds to the contributors of amounts heretofore or hereafter paid in by them in excess of their share of the cost of said investigations, protection, or improvements.

(June 30, 1914, c. 131, 38 Stat. 430; May 29, 1928, c. 901, § 1(99), 45 Stat. 993.)

Historical Note

1928 Amendment. Act May 29, 1928 de- reports be made to Congress of moneys re-
leted provision which required that annual ceived as contributions for cooperative work.

Cross References

Classification as trust funds, appropriation and disbursement of funds appearing on books of government as "Cooperative work, Forest Service", see section 1321 of Title 31, Money and Finance.

Contributions received toward reforestation or for administration or protection of lands within forests to be covered into Treasury and constitute special fund which may be appropriated for purposes for which contributed, see section 572 of this title.

Code of Federal Regulations

Administration of forest development transportation system, see 36 CFR 212.1 et seq.

§ 499. Disposal of money received by or on account of Forest Service; refund of excess and moneys erroneously collected; receipts from permits

All money received by or on account of the Forest Service for timber, or from any other source of national-forest revenue, including moneys received from sale of products from or for the use of lands in national forests created under section 471(b) of this title, and moneys received on account of permits for hunting, fishing, or camping on lands acquired under authority of sections 513 to 517 and 521 of this title, shall be covered into the Treasury of the United States as a miscellaneous receipt, and except as provided in sections 500 and 501 of this title, there is appropriated and made available, as the Secretary of Agriculture may direct, out of any funds in the Treasury not otherwise appropriated, so much as may be necessary to make refunds to depositors of money heretofore or hereafter deposited by them to secure the purchase price on the sale of any products or for the use of any land or resources of the national forests in excess of amounts found actually due from them to the United States and also so much as may be necessary to refund or pay over to the rightful claimants such sums as may be found by the Secretary of Agriculture to have been erroneously collected for the use of any lands, or for timber or other resources sold from lands located within, but not a part of, the national forests, or for alleged illegal acts done upon such lands, which acts are subsequently found to have been proper and legal.

(Mar. 4, 1907, c. 2907, 34 Stat. 1270; Mar. 4, 1911, c. 238, 36 Stat. 1253; Mar. 4, 1917, c. 179, 39 Stat. 1149; June 7, 1924, c. 348, § 9, 43 Stat. 655; May 29, 1928, c. 901, § 1(97), 45 Stat. 993.)

Historical Note

References in Text. Section 471(b) of this title, referred to in text, was repealed by section 704(a) of Pub.L. 94-579, Title VII, Oct. 21, 1976, 90 Stat. 2792. For further details, see Codification note below.

Codification. Section is a combination provision the basis for which is Act Mar. 4, 1907, which superseded previous provisions relating to the disposal of money received from sale of products or use of any land or resources of the forest reserves, contained in Act Feb. 1, 1905, c. 288, § 5, 33 Stat. 628.

Act Mar. 4, 1911 is the source of the last portion of the section beginning with the words, "and also so much as may be necessary," etc. That Act provides that as much of the former Act "which provides for refunds by the Secretary of Agriculture to depositors of moneys to secure the purchase price of timber or the use of lands or resources of the national forests such sums as may be found to be in excess of the amounts found actually due the United States, be, and is hereby, amended hereafter to appropriate and to include so much;".

The words of this section reading, "including moneys received from sale of products from or use of lands in national forests created under section 471(b) of this title" were derived from the fourth sentence of section 9 of Act of June 7, 1924, which reads as follows: "All receipts from the sale of products from or for the use of lands in such national

forests shall be covered into the Treasury as miscellaneous receipts, forest reserve fund, and shall be disposed of in like manner as the receipts from other national forests as provided by existing law." Section 471(b) of this title, referred to in text, was based on the first and fifth sentences of section 9 of the 1924 Act, and was repealed by section 704(a) of Pub.L. 94-579. Section 505 of this title is based on the second and third sentences of section 9 of the 1924 Act.

The words "and moneys received on account of permits for hunting, fishing, or camping on lands acquired under authority of sections 513 to 517 and 521 of this title," are from a provision of Act Mar. 4, 1917, which reads, "Hereafter, all moneys received on account of permits for hunting, fishing, or camping, on lands acquired under authority of said Act [Act Mar. 1, 1911, c. 186, 36 Stat. 961] or any Amendment or extension thereof, shall be disposed of as is provided by existing law for the disposition of receipts from national forests."

The words of this section reading, "except as provided in sections 500 and 501 of this title" are intended to relate this section to the apparent exceptions contained in later law.

1928 Amendment. Act May 29, 1928 deleted provision which required the Secretary of Agriculture to make an annual report to Congress of the amounts refunded under this section.

Cross References

Conservation programs on military reservations, inapplicability to forest lands administered pursuant to this section, see section 670c of this title.
Deposit in "Oregon and California land-grant fund" of proceeds of sale of timber added to Sitkiyou National Forest, see section 487 of this title.
Payments from account for refund of moneys erroneously received and covered and authorization of appropriation of sums necessary, see section 1322 of Title 31, Money and Finance.

Notes of Decisions

1. Scope of review
The discretion of the Secretary of Agriculture in making refunds under this section is absolute only on questions of fact; his rulings on questions of law are reviewable in the court of claims (now Claims Court). *Utah Power & Light Co. v. U. S.*, 1929, 67 Ct.Cl. 602.

§ 500. Payment and evaluation of receipts to State or Territory for schools and roads; moneys received; projections of revenues and estimated payments

On and after May 23, 1908, twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of

such year, by the Secretary of the Treasury to the State or Territory in which such national forest is situated, to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: *Provided*, That when any national forest is in more than one State or Territory or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber. Beginning October 1, 1976, the term "moneys received" shall include all collections under the Act of June 9, 1930, and all amounts earned or allowed any purchaser of national forest timber and other forest products within such State as purchaser credits, for the construction of roads on the National Forest Transportation System within such national forests or parts thereof in connection with any Forest Service timber sales contract. The Secretary of Agriculture shall, from time to time as he goes through his process of developing the budget revenue estimates, make available to the States his current projections of revenues and payments estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes.

May 23, 1908, c. 192, 35 Stat. 260; Mar. 1, 1911, c. 186, § 13, 36 Stat. 963; June 30, 1914, c. 131, 38 Stat. 441; Sept. 21, 1941, c. 412, Title II, § 212, 58 Stat. 737; Apr. 24, 1950, c. 97, § 17(h), 64 Stat. 87; Oct. 22, 1976, Pub.L. 94-588, § 16, 90 Stat. 2961.)

Historical Note

References in Text. The Act of June 9, 1930, referred to in text, is Act June 9, 1930, c. 416, 46 Stat. 327, as amended, popularly known as the Knutson-Vandenberg Act, which is classified generally to sections 576, 576a, and 576b of this title. For complete classification of this Act to the Code, see Short Title note set out under section 576 of this title and Tables volume.

The Act of May 23, 1908, referred to in text, is Act May 23, 1908, c. 192, 35 Stat. 251, as amended. A portion of that Act appearing at 35 Stat. 260 is classified to this section. For complete classification of this Act to the Code, see Tables volume.

Codification. "National forest" was substituted for "forest reserve" the first, third and fourth time appearing, and for "reserve" the second time appearing, and "forest" was substituted for "reserve", an authority of Act Mar. 4, 1907, c. 2907, 34 Stat. 1269, which provided that forest reserves shall hereafter be known as national forests.

Section is a combination of Acts May 23, 1908, as amended, and Mar. 1, 1911, as amended.

1976 Amendment. Pub.L. 94-588 added provision that beginning Oct. 1, 1976, the term "moneys received" would include all collections under the Act of June 9, 1930, and all amounts earned or allowed any purchaser of national forest timber and other forest products within such State as purchaser credits, for the construction of roads on the National Forest Transportation System within such national forests or parts thereof in connection with any Forest Service timber sales contract, and that the Secretary of Agriculture shall, from time to time as he goes through his process of developing the budget revenue estimates, make available to the States his current projections of revenues and payments estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes.

1950 Amendment. Act Apr. 24, 1950 deleted second proviso relating to limitation paid county.

1944 Amendment. Act Sept. 21, 1944 added sentence relating to stumpage value of the timber.

1914 Amendment. Act June 30, 1914 changed the per centum to be paid to each State from five to twenty-five.

Savings Provisions. Provisions of Federal Land Policy and Management Act of 1976, Pub.L. 94-579, Oct. 21, 1976, 90 Stat. 2743, not to be construed as affecting the distribution of livestock grazing revenues to local governments under this section, see section 701(j) of Pub.L. 94-579, set out as a note under section 1701 of Title 43, Public Lands.

Similar Provisions. Provisions similar to this section were contained in the following prior appropriation Acts:

June 28, 1944, c. 296, § 1, 58 Stat. 444.

July 12, 1943, c. 215, § 1, 57 Stat. 412.

July 22, 1942, c. 516, § 1, 56 Stat. 680.

July 1, 1941, c. 267, § 1, 55 Stat. 423.

Legislative History. For legislative history and purpose of Act Apr. 24, 1950, see 1950 U.S. Code Cong. Service, p. 2155. See, also, Pub.L. 94-588, 1976 U.S. Code Cong. and A. News, p. 6662.

Cross References

- Income received for schools and roads under this section—
 Apportioned with respect to Olympic National Park, see section 253 of this title.
 Expenditure of funds for benefit of Pendleton and Grant Counties, West Virginia, see section 460p-2 of this title.
 Inapplicability to national-forest lands added to or extended in public lands in northern Minnesota, see sections 577g and 577g-1 of this title.
 Residue removal credit in pilot wood utilization projects considered as, see section 168j of this title.
 Unaffected by establishment of North Cascades National Park, see section 90d of this title.
 Notification by Secretary of Agriculture of intention to issue regulations, see section 580k of this title.
 Reduction of payment for entitlement land by amounts received under this section, see section 6903 of Title 31, Money and Finance.
 Reforestation Trust Fund, distribution of funds for use in state forestry programs, see section 1606a of this title.

Code of Federal Regulations

Nondiscrimination in federally-assisted programs of Department of Agriculture, see 7 CFR 15.1 et seq.

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3, 18. U.S. v. Griffin, D.C.Va. 1932, 58 F.2d 674

2. Construction

This section should be interpreted and construed, if possible, primarily from its own language. Trinity Independent School Dist. v. Walker County, Tex. Civ. App. 1936, 287 S.W.2d 717, ref. n.r.c.

3. Construction with other laws

Provisions of this section that, in sales of forest products from national forest, amounts made available for schools and roads of state shall be based upon stumpage value of the timber, was intended to preclude government from having to base percentage payments to states from sale of certain forest products upon receipts representing a return of production costs and to further limit base to which percentage would be applied and does not

1. Constitutionality

This section is constitutional as being authorized by U.S.C.A. Const. Art. 1, § 8, cls.



217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325, Fax (907) 463-5480

March 13, 1991

MEMORANDUM

TO: Representative Eileen MacLean, Co-Chair
Representative Mike Navarre, Co-Chair
Members, House Finance Committee

FROM: Scott A. Burgess, Executive Director

SUBJECT: HB 54 - Distribution of National Forest Receipts

On behalf of the 126 municipal members of the Alaska Municipal League, I urge your support of the Community and Regional Affairs Committee Substitute for HB 54, which would allow for a distribution of National Forest Receipts for the support of roads and schools of communities affected by national forest activities.

National Forest Receipts are revenue earned from activity on the national forests. Federal law provides that each year 25 percent of the gross revenue from each forest shall be returned to the state in which it is located. The states, in turn, are to distribute the funds under state law for the benefit of the public schools and roads of the county or counties in which the national forest is located.

Under the provisions of AS 41.15.180, Alaska's revenue from the National Forest Receipts program is distributed to organized boroughs that contain national forest land, based on the proportion of the forest located within each borough. The balance goes to the state for the provision of education and roads in the unorganized borough. Since 1965, the state statute has specified that 25 percent of those funds should be used for public education and 75 percent for roads.

Municipalities located within the unorganized borough in the national forest are affected by the presence of the national forest and provide public services to their residents, who include federal employees, logging company employees, and others whose employment supports the timber industry. Among those services are education and roads. At the present time, however, these municipalities receive no tax revenue from the national forest land.

Since the federal legislation was written long before Alaskan statehood and written to apply to states that were completely organized into counties, no provision was made in federal law to provide revenues to support local public services in national forests to other levels of local government, i.e., cities. However, state law can be changed to allow distribution of these funds in a different way, and this is what HB 54 is intended to do.

The League's 1991 Policy Statement (p. 19) includes the following statement:

National Forest Receipts Shared Revenue: The League supports the full funding and distribution of National Forest Receipts to municipalities within the national forests. The League urges the Congress or the Legislature to amend the law to require distribution of the funds currently deposited in the State's general fund for the area in the unorganized borough within national forests, on a per capita basis, to incorporated cities located in the national forests in the unorganized borough for school and road purposes."

On this basis, then, the League supports the concept of CS HB 54 (CRA). The League does, however, wish to raise a few specific questions about the proposed legislation that you may wish to consider:

1. The legislation amends portions of AS Title 41. Since the bill would authorize the Commissioner of the Department of Community and Regional Affairs to distribute the forest receipts to organized municipalities and administer the unorganized borough national forest receipts fund, it may be that these sections more properly belong in Title 29.
2. CS HB 54 (CRA) refers to a "second class city that has adopted road powers" (page 2, line 27). Since all second class cities have the authority to exercise road powers and do not need to "adopt" them, we would suggest that the phrase "has adopted road powers" be replaced with the phrase "exercises road powers." A parallel change would be called for on page 3, line 13.
3. Lines 13-17 on page 3 authorize the transfer of grant funds to second class cities that have not "adopted" road powers or to unincorporated communities for "use of the distribution by the Department of Transportation and Public Facilities for public roads to benefit the second class city or unincorporated community." We would suggest rewording this section to clarify that the transfer of funds should be made directly to the Department of Transportation for the benefit of the communities who applied for the funds.

In summary, then, the Alaska Municipal League supports CS HB 54 (CRA). It would provide a remedy to an inequitable situation faced by cities located within the unincorporated borough that are affected by the activity in national forests in Alaska. These cities provide essential services, including roads and, in many cases, schools (for which a local contribution is required by state law) to their residents, who include federal employees, logging company employees, and others whose employment is related to the timber industry. At the present time, however, these municipalities do not receive a fair share, directly, of the federal funds that result from timber harvesting in the forests, funds that federal law directs are to be used for the benefit of public schools and roads in areas where the forest is located.

ALASKA FOREST ASSOCIATION
TESTIMONY BEFORE THE
HOUSE FINANCE COMMITTEE
MARCH 13, 1991

Subject: House Bill 54 - Distribution of National Forest Receipts

My name is Thyes Shaub. I am Government Affairs Director for the Alaska Forest Association. The Alaska Forest Association represents the joining together of the former Alaska Loggers Association and the former Alaska Forest Alliance. AFA now has 128 regular member companies and 185 associate member companies.

I'm here today to express our support for House Bill 54.

Federal law requires that 25% of the gross receipts from National Forest timber sales be distributed to the state for the benefit of public schools and public roads of the county in which the national forest is situated. If there is more than one county, the share is to be distributed proportional to the acreage of the national forest contained within each county.

In Alaska, distributions have been made to the organized boroughs based on national forest acres within the borough boundaries. This has accounted for approximately one third of the timber receipts received by the State of Alaska. This bill doesn't change that. Their share of receipts from the Chugach and Tongass National Forest will remain the same.

The problem has been that there has been no mechanism for distributing the balance of the funds to the communities within the national forests which are not contained in organized boroughs. HB 54 provides a mechanism to fully comply with the federal law in distributing these funds to the unorganized borough communities for schools and roads.

In the past, approximately two-thirds of the timber receipts have simply gone into the general fund with no accounting for how or where the money is spent. It is important to understand that these national forest receipts are not state monies and that the State's role is to act as a trustee to administer the distribution of the monies as intended by Congress in enacting the federal law.

There have been a number of court cases in other states that have made it clear that these funds are to be distributed to communities where there are impacts from forestry related activities. The State of Alaska has not been distributing these funds to the affected communities as Congress intended. House bill 54 remedies that.

The Alaska Forest Association asks that you support this bill.

Thank you.

March 15, 1991

Mr. Mike Navarre
Co-Chairman of the House Finance Committee
Alaska Legislature
State Capital Building
Juneau, Alaska 99801

Subject: Support for House Bill No. 54

Dear Mr. Navarre;

We, the Mayor and City Council of the City of Kasan, would like to take this opportunity to re-affirm our support for House Bill No. 54, "An act relating to the distribution of national forest receipts."

We feel that the passage of this bill is long overdue, and would do much to improve the economic base of the entire Prince of Wales Island region.

Please distribute this letter along the proper channels, so as to make known our support.

Thank You,

Robert R. Young Sr.

Robert R. Young, Sr.
Mayor
City of Kasan

RRY;kw

Alaska Forest Association, Inc.



GOVERNMENT AFFAIRS OFFICE:
217 SECOND STREET, SUITE 206
JUNEAU, ALASKA 99801
Phone 907-463-3175
FAX 907-463-5515

MAIN OFFICE:
111 STEDMAN, SUITE 200
KETCHIKAN, ALASKA 99901-6599
Phone 907-225-6114
FAX 907-225-5920

February 11, 1991

Representative Jerry Mackie
Chair, Community and Regional Affairs
Standing Committee
P. O. Box V
Juneau, Alaska 99811

RE: House Bill No. 54: An Act relating to the distribution of national forest receipts.

Dear Representative Mackie:

The Alaska Forest Association would like to express its support for House Bill No. 54. House Bill No. 54 will not only bring the State of Alaska into full compliance with the spirit and intent of 16 USC § 500, it will provide for a more equitable distribution of funds for the communities in the Chugach and Tongass National Forests.

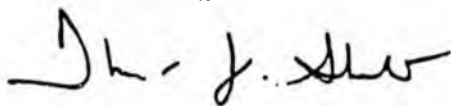
16 USC § 500 states that national forest receipts are "to be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated" Many of the communities located within national forest areas but outside the boundaries of organized boroughs have only shared in the benefits of national forest receipts through general fund disbursements. The unorganized boroughs and communities which are located within national forest areas have been unable to obtain a fair share of the receipts, despite the fact that most of these areas have public schools and public roads. While larger organized communities such as Juneau and Kodiak have received the benefits of this law, other communities, such as Thorne Bay and Craig, have not. These communities indeed have public schools and roads which could benefit from an appropriate share of the receipts.

Page 2
February 11, 1991
House Bill No. 54

Federal law mandates the distribution of national forest receipts to be based on proportional acreage when more than one "State or county" is involved. Furthermore, the law specifically empowers the State legislature to disburse these funds once the federal mandate regarding proportional acreage has been accomplished.

House Bill No. 54 is an appropriate way for the State of Alaska to bridge the gap between AS 41.14.180 and 16 USC § 500. We would like to reiterate our support for House Bill No. 54.

Sincerely,



Thyes J. Shaub
Government Affairs Director

TJS:leth
cc: AFA Board of Directors
AFA Legislative Committee

PRINCE OF WALES
COMMUNITY ADVISORY COUNCIL

Chairpersons:
Ginny L. Tierney, Thorne Bay
Vice Chairpersons:
Aeron Isaac, Klawock
Secretary/Treasurer:
Charity Fechter, Craig

P.O. Box 23
Craig, AK 99821

Telephone: (907) 828-3380
(907) 826-3275
FAX Number: (907) 828-3374

February 7, 1991

Representative Jerry Mackie
P.O. Box V
Juneau, AK 99811

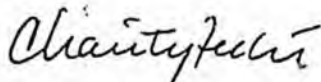
SUBJECT: Receipts from National Forest Lands

Dear Representative Mackie:

Enclosed is a copy of Prince of Wales Community Advisory Council (POWCAC) Resolution 90-7. This resolution strongly urges a legislative amendment to and gubernatorial support of a change in the way forest receipts are distributed. Specifically, it encourages amending AS 41.14.180 to include the distribution of national forest income generated within the unorganized borough to communities within this borough to be used for roads and schools in accordance with the intent of 16 USC 500.

This resolution was passed unanimously by the POWCAC. The member communities of Craig, Hollis, Kasaan, Klawock, and Thorne Bay have endorsed it. If you have any questions about this resolution or the Council, please call me at 826-3275, or Ginny Tierney (Chairman) at 828-3380.

Sincerely,



Charity Fechter
Secretary Treasurer

Enclosure

cc: Council Members
Sen. Eliason
Rep. MacLean, House Finance
Rep. Navarre, House Finance
Sen. Kerttulla, Senate Finance
Sen. Pourchot, Senate Finance
Gov. Hickel

RESOLUTION 90-7

A JOINT RESOLUTION BY AND BETWEEN THE PRINCE OF WALES COMMUNITY ADVISORY COUNCIL MEMBERS LISTED BELOW URGING THE ALASKA STATE LEGISLATURE AND THE GOVERNOR OF THE STATE OF ALASKA TO DISTRIBUTE INCOME FROM NATIONAL FOREST LANDS IN THE UNORGANIZED BOROUGH TO MUNICIPALITIES AND COMMUNITY ASSOCIATIONS IN THE UNORGANIZED BOROUGH TO USE FOR ROADS AND SCHOOLS.

WHEREAS, federal law 16 USC 500 provides that 25% of all moneys received from each national forest shall be distributed to the State legislature to be spent for the benefit of the roads and schools in such national forest; and

WHEREAS, the intent of this federal law is to provide funds to support roads and schools of communities within the affected national forest, thereby mitigating any associated impact; and

WHEREAS, 70% of the Tongass National Forest is contained within the Unorganized Borough of the State of Alaska and thereby a majority of forest income for the Tongass is generated within the Unorganized Borough; and

WHEREAS, the Legislature for the State of Alaska is the governing body of the unorganized borough and is responsible for providing regional services to the unorganized borough to include the distribution of federal funds according to federal intent; and

WHEREAS, AS 41.15.180 limits the distribution of national forest income to organized boroughs only;

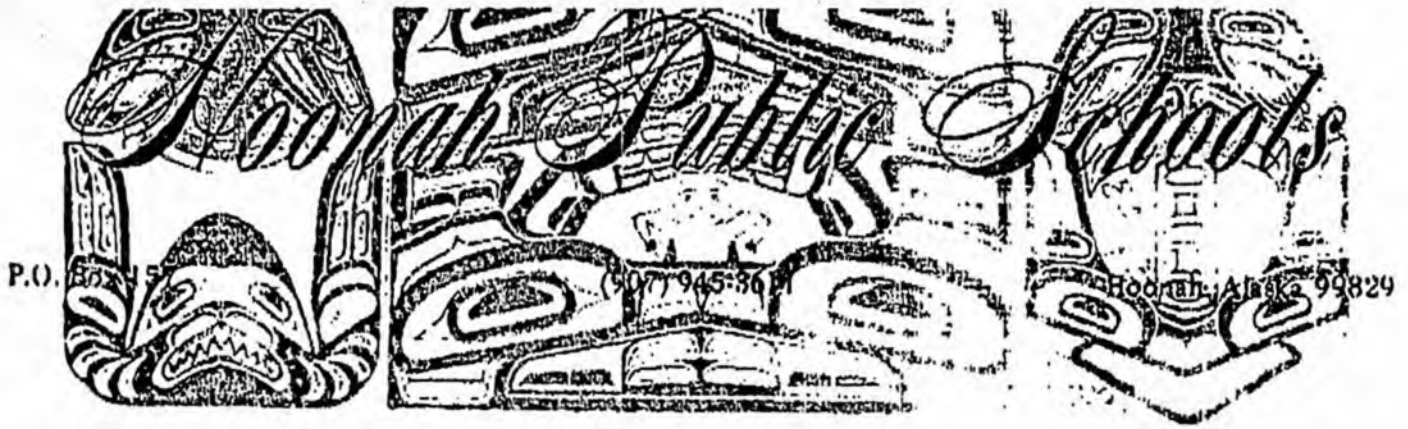
BE IT THEREFORE RESOLVED that the Prince of Wales Community Advisory Council strongly urges the Alaska legislature to amend, and the Governor of the State of Alaska to support the amendment of, AS 41.15.180 to include the distribution of national forest income generated within the unorganized borough to communities within this borough to be used for roads and schools in accordance with the intent of 16 USC 500.

PASSED AND APPROVED ON Oct. 16, 1990.

PRINCE OF WALES COMMUNITY
ADVISORY COUNCIL

BY Annij D. Swinney

ATTEST: Charity Fetter
SECRETARY



February 6, 1991

Representative Jerry Mackie
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Representative Mackie:


Weather prevents my personal testimony today on H.B. 54.

I wish to underline our previous contacts with you relative to Hoonah School's financial need. We have already made substantial cuts in all program areas this year.

We believe that the original concept of stumpage fees was that the monies generated should accrue to the communities affected and that the terminology of "boroughs" unintentionally left out such city districts as Hoonah. In addition, our need is emphasized because we provide services to students of logging families who live outside the City.

We strongly support H.B. 54 with its original language: that the receipts are dedicated to roads or schools without the mandated percentage allotment.

Yours truly,


L. Sydney Wright
Superintendent

LSW/db

c: Bob Pinard, City Clerk

**LOGGERS LEGAL DEFENSE FUND
P.O. BOX 389
HOONAH, AK 99829
(907)945-3627
(907)945-3258**

FEBRUARY 6, 1991

**REP. JERRY MACKIE
P.O. BOX B
JUNEAU, AK 99811**

DEAR REP. MACKIE:

THE LOGGERS LEGAL DEFENSE FUND IS A NON-PROFIT CORPORATION WHOSE PURPOSE IS TO PROTECT, DEFEND AND PROMOTE THE RIGHT TO WORK, LIFESTYLE AND ECONOMIC INTERESTS OF TIMBER INDUSTRY WORKERS AND RELATED OCCUPATIONS IN ALASKA.

TO DATE, THE L.L.D.F. HAS 1,600 MEMBERS AND SUPPORTERS WHO SPAN THE ENTIRE SPECTRUM OF TIMBER INDUSTRY LABOR WORKERS IN ALASKA.

THE L.L.D.F. LENDS ITS FULL SUPPORT AND BACKING TO HB 54. WE WOULD LIKE TO SEE THE COMMUNITIES LOCATED WITHIN UNORGANIZED BOROUGHES RECEIVE FUNDS FROM NATIONAL FOREST RECEIPTS. WE BELIEVE THIS ACTION WOULD ALLEVIATE SOME OF THE ECONOMIC STRESS FELT IN RURAL COMMUNITIES DUE TO AN OVERALL DECLINE IN THE TIMBER INDUSTRY. A LARGE PERCENTAGE OF OUR MEMBERSHIP LIVING IN COMMUNITIES SITUATED IN A NATIONAL FOREST WOULD DIRECTLY BENEFIT FROM PASSAGE OF THIS BILL INTO LAW.

PLEASE CONTACT THE L.L.D.F IF WE CAN BE OF FURTHER HELP IN PROMOTING AND SUPPORTING HB 54.

SINCERELY,

June Christle

JUNE CHRISTLE, EXEC. DIRECTOR

State of Alaska
Department of Commerce and Economic Development
Division of Banking, Securities and Corporations

CERTIFICATE
OF
INCORPORATION
Nonprofit Corporation

The undersigned, as Commissioner of Commerce and Economic Development of the State of Alaska, hereby certifies that duplicate originals of the Articles of Incorporation of

LOGGERS' LEGAL DEFENSE FUND, A NONPROFIT CORPORATION.

have been received in this office and are found to conform to law.

ACCORDINGLY, the undersigned, as such Commissioner of Commerce and Economic Development, and by virtue of the authority vested in him by law, hereby issues the Certificate of Incorporation and attaches hereto a duplicate original of the Articles of Incorporation.



IN TESTIMONY WHEREOF, I execute this certificate
and affix the Great Seal of the State of Alaska on
DECEMBER 14, 1990.

A handwritten signature in cursive script, appearing to read "Jane Angvik".

JANE ANGVIK

COMMISSIONER OF COMMERCE
AND ECONOMIC DEVELOPMENT

**LOGGERS LEGAL DEFENSE FUND
P.O. BOX 389
HOONAH, AK 99829
(907)945-3627**

MANY OF YOU MAY HAVE ALREADY HEARD OF OUR ORGANIZATION, THE L.L.D.F., THROUGH THE VARIOUS MEDIA SOURCES IN SE ALASKA. WE HAVE BEEN ANXIOUSLY WAITING FOR THE NEW YEAR TO GREET OUR STANDING AS A LEGAL NON-PROFIT CORPORATION. WE CAN NOW BEGIN MEETING OUR GOALS AND OBJECTIVES.

ENCLOSED YOU WILL FIND A SAMPLE OF THE TYPE OF LITERATURE WE ARE DISBURSING TO ALL TIMBER INDUSTRY RELATED WORKERS, VENDORS AND SUPPLIERS. ALL OF THESE GROUPS STAND TO LOSE ECONOMICALLY IF A DECLINE IN THE TIMBER INDUSTRY IS ALLOWED. WE HAVE LET ENVIRONMENTAL GROUPS DICTATE AND MANIPULATE OUR LEGAL SYSTEM TOO LONG. THE L.L.D.F. OFFERS A NEW RESOURCE WHICH HAS SO FAR BEEN UNTAPPED IN THESE BATTLES--THE TIMBER WORKERS.

OUR ORGANIZATION IS DEPENDENT UPON LARGE NUMBERS AND FUNDING TO CARRY OUR VOICES INTO THE LEGAL SYSTEM THAT IS OVERRUN WITH CASES CONCERNING USE OF OUR RENEWABLE RESOURCES. WE ARE ASKING FOR YOUR FINANCIAL CONTRIBUTION AND YOUR NAME FOR SUPPORT TO HELP SECURE THE FUTURE OF THE TIMBER INDUSTRY IN THE PACIFIC NORTHWEST.

WE WILL BE SENDING OUT A NEWSLETTER PERIODICALLY TO KEEP YOU INFORMED OF THE ORGANIZATIONS PROGRESS. UNTIL THEN, FEEL FREE TO CALL OUR OFFICE WITH QUESTIONS, COMMENTS, OR ANY LAWSUIT WHICH WE COULD HELP WITH.

THANK YOU FOR YOUR CONSIDERATION OF THE L.L.D.F.!

SINCERELY,

June Christle

JUNE CHRISTLE, EXEC. DIRECTOR
L.L.D.F.

LOGGERS LEGAL DEFENSE FUND
P.O. BOX 389
HOONAH ALASKA 99829

WE ARE A GROUP OF PEOPLE BROUGHT TOGETHER TO PROMOTE AND DEFEND OUR WAY OF LIFE. OUR EXISTENCE IS BEING THREATENED BY THE RADICAL ACTIONS OF NATIONALLY ORGANIZED ENVIRONMENTAL GROUPS. THE ACTIONS OF THESE GROUPS ARE DESTROYING THE RIGHTS OF WORKERS IN ALL LABOR FIELDS TO WORK AND EARN A LIVING.

THE LOGGERS LEGAL DEFENSE FUND, INC. IS A NON-PROFIT GRASSROOTS ORGANIZATION IN SE ALASKA WHOSE PURPOSE IS TO REPRESENT EVERY LABOR WORKERS JOB BEING SUFFOCATED BY IRRESPONSIBLE ENVIRONMENTAL ACTIONS. THE PREJUDICE PROMOTED BY THESE ACTIONS CURRENTLY ATTACKS ALL LOGGING JOBS CREATING A TARNISHED IMAGE BEFORE THE PUBLIC -- "TREE AND FOREST KILLERS." WHILE LOGGING IS UNDER DIRECT ORGANIZED ENVIRONMENTAL ASSAULT MANY OTHER LABOR OCCUPATIONS ARE FALLING IN LINE FOR THE SLAUGHTER: MINERS AS RAPING THE EARTH; CONSTRUCTION WORKERS AS DESTROYING ALL WETLANDS; FISHERMEN AS MURDERING THE SEAS.

IT IS TIME TO STAND TOGETHER AGAINST THESE FALSE IMAGES AND SHOW OUR NATION WHO WE ARE -- THE LABOR WORKING PEOPLE OF OUR COUNTRY!

TEAR HERE

WE NEED YOUR SUPPORT.
PLEASE SIGN AND SEND YOUR NAME, ADDRESS, TELEPHONE NUMBER.
DONATIONS ARE NEEDED AND ACCEPTED.

PRINT NAME: _____ PHONE: _____
ADDRESS: _____ ZIP _____
DONATION: _____
SIGNATURE _____

SEND TO: LOGGERS LEGAL DEFENSE FUND, INC.
P.O. BOX 389
HOONAH AK 99829

DIFFERENT
COMPANY'S
LETTERHEAD

THE ALASKAN TIMBER INDUSTRY HAS RECENTLY BEEN PLAGUED BY LEGAL AND LEGISLATIVE ACTIONS CREATED BY ENVIRONMENTAL GROUPS AND PRESSURED GOVERNMENTAL AGENCIES. THESE ACTIONS HAVE ALREADY CREATED EXTREME SOCIOECONOMIC HAVOC IN THE OREGON/WASHINGTON TIMBER INDUSTRY. THE SAME TYPE OF ACTIONS AND TACTICS ARE NOW THREATENING LOGGING IN SE ALASKA. THE FALLOUT FROM THE BOMBARDED PACIFIC NORTHWEST TIMBER INDUSTRY WILL ALSO LEAVE A COVER OF DUST ON ALL OF THE INDUSTRY'S VENDORS AND SUPPLIERS. THE RIPPLING EFFECTS WILL CONTINUE TO BE FELT THROUGHOUT THE ENTIRE ECONOMIC COMMUNITY IN THE PACIFIC NORTHWEST AREA.

LOGGERS LEGAL DEFENSE FUND WAS FORMED TO PROMOTE AND DEFEND THE WORKING LOGGER FROM THE IRRESPONSIBLE ACTIONS OF ENVIRONMENTAL GROUPS. THE GRASSROOTS ORGANIZATION IS DEPENDENT UPON GAINING SUPPORT FROM ALL AFFILIATED PARTIES WHO HAVE A CLAIM IN THIS CAUSE. THE OBJECTIVE OF THE LLDf IS TO PROVIDE A LEGAL AND FINANCIAL PLATFORM FROM WHICH TIMBER INDUSTRY WORKERS CAN FIGHT FOR THEIR RIGHT TO WORK.

AS EACH TIMBER DOLLAR IS LOST DUE TO THE DISEASE OF BUREAUCRATIC CANCER ENTANGLING THE INDUSTRY, EACH VENDOR AND SUPPLIER STANDS TO LOSE A PERCENTAGE OF EACH DOLLAR. THE SITUATION HAS REACHED A PROPORTION OF SUBSTANTIAL CONSEQUENCES REQUIRING THE IMMEDIATE ATTENTION OF THOSE CONCERNED.

THE LLDf ASKS FOR YOUR SUPPORT AND CONTRIBUTIONS. YOUR PARTICIPATION WILL PROVIDE YOUR ECONOMIC INTERESTS WITH AN AVENUE TO INSURE FUTURE BUSINESS RELATIONS WITH AN UNENCUMBERED TIMBER INDUSTRY.

CONTRIBUTIONS: LOGGERS LEGAL DEFENSE FUND
P.O. BOX 389
HOONAH, AK 99829
(907)945-3626

CITY of HOONAH

P.O. Box 360
Hoonah, Alaska 99829
(907) 945-3683

February 06, 1991

Representative Mackie
House of Representative
State of Alaska

Re: House Bill No. 54

The City of Hoonah wishes to go on record strongly supporting HOUSE BILL NO. 54 introduced by Representatives Mackie, Grussendorf January 22, 1991.

For years the City of Hoonah has been denied monies received by the State from National Forest Service Receipts redistributed to the organized Boroughs within the State of Alaska. Yet the bulk of the logging has been done within the Unorganized Borough. Last year alone there was \$12.5 million dollars worth of lumber taken out of our area by Whitestone Logging. I'm sure you can see how many trees were cut to obtain that figure. Yet very little cutting is done within the organized borough of whom this money is paid. I understand the borough of Haines received better than \$300,000 based on one small timber cut.

The language of the existing law "for the benefit of county or counties within the National Forest is located" was determined to be organized boroughs within the State of Alaska. In our mind this is totally unfair to those cities and communities within the unorganized borough. I'm not sure as to whether there could not be some legal challenge to the word "Unorganized Borough"

We would also like to be on record supporting the original language of this law which states "will be used for Public Roads or Schools". We wish to reserve the ability to determine as to how these monies are best needed. The City and school go through periods of economic instability which at the present time has created a large deficit in both the City and School. Like everyone else we are unable to keep up with State cuts every year. This gap between our operating expenses and revenues received gets larger every year and is expected to get worse under the present administration. These monies will definitely help our economic stability.

There are some questions I did have regarding this bill which I'm sure will be addressed by the committees. These are:

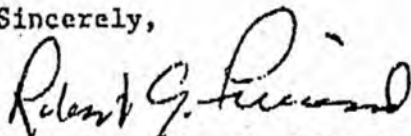
Representative Mackie
Page 2

1. If distributed on a per capita basis, does this include individuals living out side of a district such as individual dwellings, logging camps communities who still utilize the services of a City or community.

2. How does this bill affect second class cities who school system is supported by the State of Alaska as opposed to a First Class City which supports it own school system.

I'm sure we will have other questions as this bill advances. We will be watching it closely and intend to vigorously support this bill.

Sincerely,



Robert G. Pinard, City Treasurer
for Albert W. Dick, Mayor and the
Hoonah City Council.



WRANGELL

**PUBLIC SCHOOLS
DISTRICT OFFICE**

P.O. BOX 2319

WRANGELL, ALASKA 99929

Telephone (907) 874-2347

LINWOOD LAUGHY, Superintendent

GATEWAY TO THE STIKINE

RESOLUTION

91-3

WHEREAS, the Federal government recognizes that the existence of Federal Forest lands near a community creates an economic impact on that community's schools and roads, and

WHEREAS, the Federal government provides funds from Federal timber receipts to compensate for this impact, and

WHEREAS, the State of Alaska distributes portions of these funds to impacted school districts within Alaska's boroughs, and

WHEREAS, the State of Alaska does not now distribute these funds to impacted communities in the unorganized borough,

BE IT RESOLVED that the Wrangell School Board urges the Seventeenth Legislature to distribute Federal Timber Trust receipts received by the State of Alaska to school districts in the unorganized borough in a manner in keeping with Federal intent.

WRANGELL SCHOOL BOARD

William J Mesomer
Board President

01/18/91
Date

Vicki Foster
Secretary/Treasurer

2/5/91
Date