

ALASKA LEGISLATURE

1000

HOUSE and SENATE FINANCE COMMITTEE FILES, 1993-1994

192

DRUG IMPAIRED DRIVING

RESOLUTION 93-14 (new)

WHEREAS, people who operate motor vehicles while under the influence of alcohol have long been known to cause thousands of crashes, injuries and deaths each year, but only recently has the magnitude of the problems caused by drug (other than alcohol) impaired drivers come to light; and

WHEREAS, a NHTSA report to Congress disclosed a frequency of drug use by fatally injured drivers is between 10-15 percent; and

WHEREAS, many studies have documented this finding, pointing to a national prevalence of drug impaired driving; and

WHEREAS, NHTSA has developed a standardized curriculum for training police officers as Drug Recognition Experts (DRE);

NOW THEREFORE BE IT RESOLVED, that NAGHSR encourages states to adopt legislation which makes it illegal to operate a motor vehicle while impaired by drugs other than alcohol or in combination with alcohol; and

BE IT FURTHER RESOLVED, that states allow the chemical test sample to be analyzed to determine the presence and/or concentration of drugs other than alcohol.

Submitted by: Impaired Driving Commission

**RESOLUTIONS/STATEMENTS
OF SUPPORT**

NATIONAL SAFETY COUNCIL

POLICY STATEMENT

COMMITTEE ON ALCOHOL AND OTHER DRUGS

ENFORCEMENT OF LAWS AIMED AT ALCOHOL-IMPAIRED DRIVING

There is strong scientific consensus suggesting that the public's perception of effective enforcement appears to be a strong deterrent to alcohol impaired driving. In order to enhance the effectiveness of enforcement activities in preventing impaired driving, the National Safety Council recommends that jurisdictions:

Implement new enforcement programs requiring chemical tests of body substance samples for all drivers involved in nighttime crashes.

Consider the use of new technologies such as passive alcohol sensors and motor vehicle ignition interlocks.

Develop and use highly visible and widely publicized enforcement approaches that increase the public's perception of the risk of apprehension.

Passed by the Committee on Alcohol and Other Drugs, November 4, 1992.

RECENT ACTIVITIES OF THE INTERNATIONAL ASSOCIATION FOR
CHEMICAL TESTING

A Report to the National Safety Council Committee on Alcohol and Other
Drugs
October 6, 1993
Chicago, IL

prepared by Patrick Harding, LACT liaison to the CAOD

Mr. Chairman,

The International Association for Chemical Testing continues to grow in membership. In keeping with the pledges of our two organizations to keep each other informed of activities, members of the COAD have been placed on our mailing list to receive the LACT Newsletter. Additionally, the minutes of COAD meetings are summarized and published in the Newsletter for the benefit of LACT members.

The following report is a summary of the some of LACT's recent activities:

RESOLUTIONS

"Mandatory Alcohol/Drug Testing of All Drivers in Fatal and Serious Injury Crashes"

Whereas, alcohol and other drug involvement is a major factor in fatal and serious traffic crashes, and

Whereas, the best method for confirming alcohol and other drug involvement in drivers is to obtain an alcohol/drug test, and

Whereas, currently only 73 percent of fatally injured drivers and 25 percent of surviving drivers in fatal crashes are tested for alcohol in the United States, and

Whereas, drug testing of fatally injured drivers and surviving drivers in fatal and serious injury crashes is not routinely done, and

Whereas, it is important for the scientific community to be able to accurately determine alcohol and other drug involvement in all fatal and serious injury traffic crashes in order to develop and evaluate intervention measures; be it therefore

RESOLVED that the International Association for Chemical Testing urges all jurisdictions to pass and actively implement laws requiring alcohol/drug testing of all drivers involved in fatal and serious injury producing crashes. Such laws, if implemented, would allow year to year tracking of alcohol and other drug involvement in all fatal and serious injury producing crashes in order to evaluate the effectiveness of alcohol/drug countermeasures. Further, such laws would allow and authorize law enforcement agencies to identify alcohol and other drug impaired drivers involved in fatal and serious injury crashes who heretofore have gone undetected.

Adopted March 26, 1993

HB 445
—

Capitol Associates

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May 5, 1994

Senator Drue Pearce
Co-Chair, Senate Finance

Dear Senator Pearce,

Please consider the enclosed information before inserting .08 language in HB 445.

--Statistics from National Highway Traffic Safety Administration on alcohol related fatalities in .08 states.

--Report by the California Department of Motor Vehicles on the .08 experience in California which says .08 doesn't work.

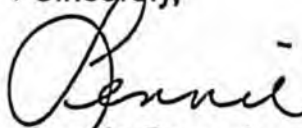
--Summary of the Miller Brewing Company opposition to lowering the BAC.

Of the 18 states considering .08 legislation in the Nation this year, only one state has actually passed and signed into law legislation which lowered their legal BAC from .10 to .08 (Virginia). It is my understanding that .08 legislation failed to win approval in Alabama, Arizona, Georgia, Hawaii, Iowa, Maryland, Mississippi, Nebraska, Oklahoma, Rhode Island, Washington and West Virginia. Washington State not only failed to pass .08 but they also passed a graduated penalty bill, possibly the first state to do so.

It is the position of Miller Brewing Company that the greatest damage is done by those with a BAC level of .15 and above and, therefore, the greatest safety benefits can be gained by reducing drunk driving by these problem drinkers. Legislation should be "offender driven," concentrating on the repeat and substantial risk offenders.

Please call me if you would like additional information or have any questions.

Sincerely,

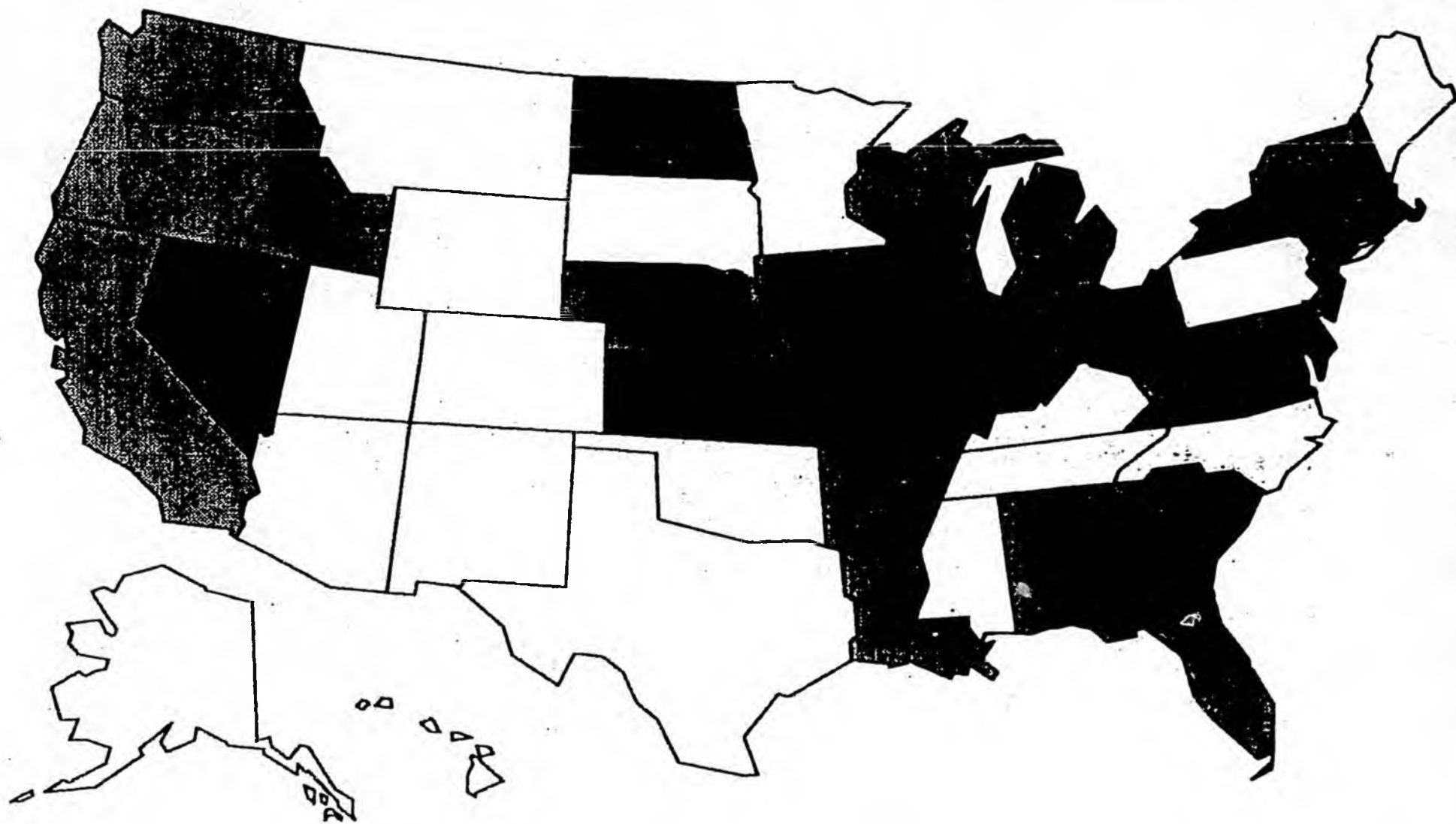

Lennie Gorsuch

**ALCOHOL RELATED FATALITIES *DROPPED*
15% OR MORE IN 32 STATES IN 1992.**

- 90% OF THOSE STATES HAD A BAC OF .10%
- ONLY THREE OF THESE STATES HAD A LEGAL BAC OF .08 AT THAT TIME, CALIFORNIA, OREGON AND VERMONT.
- NINE STATES HAD A 30% OR MORE DECLINE IN ALCOHOL RELATED FATALITIES. *NONE HAD .08 IN 1992.*
- UTAH (WHICH HAS BEEN AT .08 SINCE 1983) REPORTED AN *INCREASE* IN ALCOHOL RELATED FATALITIES.

Source: National Highway Traffic Safety Administration (NHTSA)

Reduction in Alcohol Related Fatalities, by State, 1990-1992



Percent Reduction: 0-14% 15-29% 30% +

Estimate for Mississippi is based on preliminary NHTSA data.

IMPACTING THE DRUNK DRIVING PROBLEM—STYLE VS. SUBSTANCE LOWERING THE BAC TO .08: THE CALIFORNIA EXPERIENCE

Introduction

In 1990, California passed two laws specifically addressing drunk driving. The first law, which lowered the legal Blood Alcohol Content (BAC) from .10 to .08 percent, took effect on January 1, 1990. The second law, Administrative Per Se (APS) allowed immediate revocation of the driver's license for an individual in violation of the BAC standard, went into effect six months later on July 1, 1990.

Between 1990 and 1992 the nation as a whole enjoyed a 20 percent reduction in alcohol related fatalities. The question is not whether California experienced a decline in these fatalities since enactment of .08, but how much of that decline can properly be ascribed to the effect of the lower BAC standard or Administrative Per Se.

To date, only two significant studies have been undertaken to assess the impact of .08 in reducing alcohol related fatalities. The National Highway Traffic Safety Administration (NHTSA) carried out a short-term analysis soon after the enactment of .08 (the study itself was released in August of 1991) and concluded that the law had a significant impact.

Since then, however, the California Department of Motor Vehicles (C-DMV) has conducted its own study and their results are quite different. To quote from that study, "it would be difficult to credit either the .08 law or APS as the reason [for the decline in alcohol related fatalities] ... the majority of decreases are probably attributed to something other than the DUI laws."

Results from an analysis of eight different measures of alcohol related crashes produced conflicting evidence of an effect of .08. This analysis found that:

- lowering the BAC to .08 had no significant impact on nighttime fatal crashes.
- lowering the BAC to .08 had no significant impact on *Had Been Drinking* (HBD) crashes which resulted in either a fatality or injury.
- there was also no effect on *Single Vehicle Nighttime Male-Involved* crashes from the .08 law.
- There was no impact on fatal crashes occurring between 2 a.m. and 3 a.m.

Lowering the BAC to .08% is not an administrative panacea. From 1990 to 1992, only four states had lowered their BAC to .08. One of those states (Utah) actually reported an increase in alcohol related fatalities.

THE EFFECTS OF CALIFORNIA'S .08 BAC LEGISLATION

By Mark Edwards

California's analysis of its experience with lowering the permissible Blood Alcohol Content (BAC) to .08 has been unable to establish clear cut evidence of a reduction in alcohol related crashes for this law to date.

Since .08 took effect only 6 months before California implemented Administrative Per Se (APS), it may *never be possible* to determine if the reductions in alcohol related crashes in the past three years are a result of lowering the BAC to .08, initiating APS, or other factors. As time passes, it will be increasingly difficult to identify just what is contributing to the reduction in alcohol related crashes since implementing .08 and APS, due to continuing changes in safety.

Also, given the short time between the introduction of these two laws, one cannot rule out the possibility that the reductions observed were in anticipation of the implementation of APS and not .08. Similarly, it is not possible to determine if the reductions observed since the introduction of APS are a consequence of the lingering effects of .08.

The difference in findings for .08 between California's study and that performed by REA is likely due to the fact that California's analysis controlled for the effects of many extraneous factors on its measures of alcohol involved crashes, whereas the REA study did not. As such, REA's findings of a relatively large and significant effect for .08 may be a product of the characteristics of its analytic method and not an effect of .08 per se.

THE FALLACY OF LOWERING THE LEGAL BLOOD ALCOHOL CONTENT LIMIT

BACKGROUND

Alcohol abuse is a major social problem of our day and alcohol abusers who drive are a particularly serious threat. But lowering the legal blood alcohol content limit is a futile and costly way to stop drunk driving.

REASONS

(1) We must concentrate on drivers who are causing the vast majority of the problems.

- Both government and independent studies show that 70 to 80 percent of those convicted of driving while drunk have blood alcohol concentrates of at least .15 percent - way past the official "drunk" mark.
- Half the fatally injured drivers who are legally drunk have a BAC at or above .20 percent - twice the legal limit. A person with a .20 and above has a 200 percent greater likelihood of being involved in a fatality than a nondrinker.
- Thus, the most dangerous drivers drink far in excess of the current legal limit. They are not social drinkers. They drink irresponsibly. Lowering the BAC will have little or no effect on them.

(2) Lowering the BAC is an ineffectual way to stop both high-risk and low-risk drivers.

An August 1992 study by the Survey Center at the University of New Hampshire assessed the effectiveness of five strategies to reduce drunk driving: automatic license revocation, a mandatory jail sentence, mandatory fines, lowering the legal BAC, and increasing the cost of alcohol.

The study found the most effective of the five proposals is automatic license revocation. A mandatory one-week jail sentence and a mandatory \$500 fine were the next two most effective measures. Least effective among the five were increasing the cost of alcohol and lowering the BAC limit.

(3) Enforcing lower limits is costly.

In light of today's scarce dollars, we cannot afford to burden the police, highway patrol, judges, courts, and jails with the results of legislation which deals with a small part of a problem.

We must marshal our resources to address the excessive drinker, the repeat offender. While police are arresting and

testing a driver with a low BAC, others with a .15 and above could slip by. Today we must concentrate on the latter.

(4) Why create a new class of criminals?

The main target of a reduced BAC would be drivers who currently drink and drive within the legal limits and who account for less than 10 percent of all drivers involved in fatal accidents.

The responsible drinker will cut down from two, to one, or no drinks at dinner, while the problem drinker, who is undeterred even by the current legal limit, continues a pattern of drunk driving.

(5) Offenders tend to exhibit antisocial behavior totally unrelated to alcohol.

Many DWI offenders have a history of drug abuse, difficulty in school, and job related problems. They are often poor drivers to begin with and are careless, selfish, and aggressive on the road. Again, reducing the BAC will have no effect on their behavior.

**THE FACTS:
HIGH-BAC DRIVERS
REPEAT OFFENDERS
HOW TO MAKE THEM STOP**

The National Highway Traffic Safety Administration (NHTSA) estimates that half of the fatally injured drivers who are legally drunk have a BAC at or above .20 percent.

Drivers with high BACs (over .15 percent) constitute only about 1 percent of those on the roads on weekend nights, but they represent half the fatalities. *The Hard Core Drinking Driver, H.M. Simpson.*

In 1991, approximately 16,000 people were killed in accidents involving someone with a BAC of .10 percent (the maximum legal limit) or higher.

The average fatally injured drunk driver has had about 15 drinks prior to becoming involved in the crash.

70 to 75 percent of those convicted of drunk driving have BACs of at least .15 percent and many have levels of .20 percent and higher (the maximum legal limit is .10 percent).

The Pre-Trail Services Corp. of the Monroe County, New York Bar Association found in over 300 interviews of multiple drunk driving offenders that over 70 percent were problem drinkers, with an average BAC of .20 percent at time of arrest.

According to the Beverage Retailers Against Drunk Driving (BRADD), 95 percent of all second-offender drunk drivers are alcoholics.

In 1991, 11.4 percent of those drivers involved in fatal crashes were driving with invalid licenses. Of these improperly licensed individuals, 54.9 percent had previous recorded license suspensions or revocations; 20.5 percent had previous DWI convictions; and 19.5 percent had previous recorded crashes.

Drivers with prior DWI convictions within the past three years have 1.4 times the risk of being involved in a fatal crash as do drivers without prior DWI's.

Intoxicated drivers with prior DWI convictions have 4.1 times the risk of being in a fatal crash as do intoxicated drivers without prior DWI's.

Only about 3 percent of all licensed drivers have had a prior DWI arrest within the past three years, yet, over 13 percent of intoxicated drivers in fatal crashes have had at least one prior DWI conviction within three years of their fatal crash.

In 1988, 13.3 percent of the drivers involved in fatal crashes who had a BAC of .10 percent or greater, at the time, had had at least one prior DWI conviction in the previous three years. This

was true for only 6.5 percent of those drivers with a BAC between .01 percent and .09 percent.

With increases in BAC levels, there is a systematic increase in the likelihood of finding a previous DWI conviction -- previous DWI convictions are almost nonexistent among non-drinking drivers; by contrast, nearly 20 percent of fatally injured drivers with BACs of .20 percent or above have a previous DWI conviction.

Since as early as 1982, numerous studies have noted that programs which have a favorable impact on light drinkers can be unsuited to heavier drinkers.

Some 80 percent of all fatally injured drinking drivers in the U.S. have BACs over .10 percent; the average BAC among arrested drivers and drivers killed is about .17 to .18 percent; and the BAC distribution among such groups is remarkably consistent across countries that have radical BAC limits. Such evidence suggests that, at least insofar as the high BAC group of drivers is concerned, the legal BAC limit may be largely irrelevant. *The Hard Core Drinking Driver, H.M. Simpson.*

A policy of lowering the BAC level as determinative of per se intoxication may not be effective in preventing recidivism. *Professor Vincent D. Pisani, Phd.*

License suspensions and revocations provided the greatest potential for both individual reform and general deterrence. *James L. Nichols & H. Laurence Ross.*

On January 1, 1990, the legal BAC limit in California was reduced from .10 percent to .08 percent. According to a study by the National Highway Traffic Safety Administration there was no change in the number of alcohol-related crashes statewide.

In Tennessee, researchers found that brief mandatory jail sentences reduced DWI recidivism rates among first offenders for up to three years.

Two studies conducted in California and North Carolina found fewer subsequent DWI convictions among fully suspended offenders than among drivers referred to treatment or education.

NHTSA believes that a series of increasingly severe sanctions should be levied against convicted drunk drivers who either drive while their license is suspended or are caught again for DWI. *James Fell, National Highway Traffic Safety Administration.*

High-BAC drivers appear to be unaffected by existing BAC limits -- they continue to drive and crash -- indeed, the absolute BAC limit may be largely irrelevant to them. *DUI Recidivism -- Implications for Public Policy and Intervention, Highlights, Professor Vincent D. Pisani, Phd.*

Seven states in the US -- Colorado, Georgia, Idaho, Maryland, Missouri, New York, and Oklahoma -- have what are essentially two-tiered systems for drunk driving law enforcement. In these states, a lower BAC level is treated as a less serious offence and, consequently, lesser penalties are applied.

LOWERING THE BAC SIMPLE ANSWERS TO COMMON QUESTIONS

How serious a problem is drunk driving in America today?

The number of drunk drivers involved in fatal crashes decreased by 23 percent between 1982 and 1992. In terms of fatalities per mile driven, alcohol-related deaths have fallen by 43 percent over the past 10 years. Additionally, the majority of fatal crashes involving drunk drivers today are single vehicle accidents where the victims are the drunk drivers themselves or their passengers. The drivers involved in these accidents largely have BACs of .15 percent or higher.

The progress that has been made in reducing drunk driving accidents is nothing short of remarkable. In 1993 the drunk driving accident decline rate met the target rate set by the government for the year 2000. Many citizen organizations, law enforcement professionals, and industry groups can take credit for this extraordinary improvement in the safety of our roads. However, hard-core drinking drivers -- repeat offenders and those with BACs far in excess of current legal limits -- still exist. The vast majority of fatal crashes in which any alcohol is present involve someone with a BAC level in excess of the current maximum legal limit -- .10 percent. In fact, the average fatally injured drunk driver has had about 15 drinks prior to becoming involved in the crash.

Would lowering the BAC impact drunk driving?

People don't understand what BAC means. BAC is a measure of alcohol concentration in the blood. It may not reflect how a person feels or his or her past experience with alcohol. Most social drinkers do not achieve a BAC of .10 percent. In fact, according to a recent Department of Transportation study most people estimate the number of drinks they can have and still drive legally to be an amount which would result in a BAC of only .06 percent or less.

Less than 10 percent of all fatal crashes involve anyone -- driver, passenger, or pedestrian -- with a BAC of between .01 percent and .09 percent. A .08 percent BAC law would place a tremendous strain on the law enforcement community and criminal justice system while offering very little safety benefit. Police officers already find it difficult to detect and convict drivers with BAC's of .10 percent. Lowering the BAC to .08 percent would practically require police to use roadblocks to apprehend violators. The performance of most drivers at a BAC of .08 percent is not impaired to a degree that is detectable through observing vehicle operation. By forcing law enforcement agents to spend time monitoring the behavior of currently legal drivers (those with BAC's of .08 and .09 percent), less attention would be focused on repeat offenders and those drunk drivers with BACs in excess of .10 percent.

Has the .08 percent BAC limit been a success?

Three of the five states which had reduced their BAC limits to .08 percent by the end of 1991 have experienced less success on solving the problem of drunk driving than the nation as a whole. The other two have barely kept pace with the national decline in drunk driving deaths.

- California reduced its BAC limit to .08 percent in 1990. Accident statistics indicate that in the following year the death rate for persons with BAC's over .15 percent actually increased.
- Oregon reduced its BAC limit to .08 percent in 1983, in 1991 it still had more alcohol related fatalities per vehicle mile than the nation as a whole.
- Maine lowered its BAC limit to .08 percent in 1988 only to have the number of alcohol related fatalities per vehicle mile actually rise between 1989 and 1990.

Why doesn't lowering the BAC limit work?

For a law to act as a deterrent, and that is precisely the purpose of any anti-drunk driving law, drivers must first understand the law. Second, they must perceive the law as serious enough to modify their behavior. The vast majority of drivers have very little idea of what the BAC limit means. Either they cannot make any estimate of how much alcohol they can consume and remain legal, or they underestimate the number of drinks they can consume by about 50 percent.

What does work?

Though the current maximum BAC limit is .10 percent, 75 percent of those convicted of drunk driving have BAC levels over .15 percent. Increased enforcement of existing BAC limits would remove many current drunk drivers from the nation's roads.

Other legislative options also exist. Unlike BAC limits, losing your license is easy to understand. And, according to a national survey prepared by the University of New Hampshire, automatic license revocation is the single most potent method to reduce drunk driving. According to this survey, other effective deterrents include a mandatory one-week jail sentence and a mandatory \$500 fine — both of which were rated more effective deterrents than a reduction in the BAC limit.

National surveys indicate that the most effective means by which to deter drunk driving are those which place a large penalty on violating existing laws. Lowering the BAC limit is not a penalty related measure, as a result it confuses but does not deter most people.

Shouldn't the penalty reflect the crime?

Lowering the BAC limit to .08 percent would make criminals of today's responsible social drinkers. Furthermore, it would treat these newly branded criminals the same as those drunk drivers with multiple offenses and BAC levels far in excess of current legal limits.

GRADUATED PENALTIES FOR DRUNK DRIVING SIMPLE ANSWERS TO COMMON QUESTIONS

Why do we continue to have a drunk driving problem in America?

The progress that has been made in reducing drunk driving accidents is nothing short of remarkable. In 1993, the drunk driving accident decline rate met the target rate set by the government for the year 2000. And, in terms of fatalities per mile driven, alcohol-related deaths nationwide have fallen by 43 percent over the past 10 years. However, hard-core drinking drivers -- repeat offenders and those with BACs far in excess of current legal limits -- still exist. In 1991, approximately 16,000 people were killed in accidents involving someone with a BAC of .10 percent (the legal maximum) or higher. Research shows that it is these high-BAC drivers and repeat offenders who pose the gravest threat on our roads.

Those drunk drivers who present the greatest threat to public safety are the very ones that current regulations fail to reach. The vast majority of fatal crashes in which any alcohol is present, involve someone with a BAC level in excess of the current legal limit:

The average fatally injured drunk driver has had about 15 drinks prior to becoming involved in the crash.

70 to 75 percent of those convicted of drunk driving have BACs of at least .15 percent and many have levels of .20 percent and higher (the maximum legal limit is .10 percent).

In addition to those with high BACs, drivers with prior DWI convictions are over-represented among those involved in fatal crashes:

Drivers with prior DWI convictions within the past three years have 1.4 times the risk of being involved in a fatal crash as do drivers without prior DWI's.

Intoxicated drivers with prior DWI convictions have 4.1 times the risk of being in a fatal crash as do intoxicated drivers without prior DWI's.

If we really want to make a difference in the battle against drunk driving, we must target the high BAC driver and repeat offender. These individuals have consistently violated existing legal standards and are unlikely to respond to a mere tightening of existing laws.

If current drunk driving deterrent attempts aren't reaching repeat offenders and high-BAC drivers, what will?

Time-tested experience of traffic safety enforcement methods used to deter other kinds of irresponsible driving can be applied to drunk driving as well. In the case of speeding, there is not a state in the nation that does not graduate its penalties depending on the

magnitude of the infraction. In New Mexico, for example, there are 10 separate penalties for speeding violations, all of which take into account the posted speed limit and the degree of violation of that limit.

Studies indicate that this same approach -- the use of stiffer penalties as the level of infraction increases -- would be effective in reaching the most dangerous population of hard-core drunk drivers. The penalties for the problem drinker with a high BAC should be severe enough to act as a real deterrent and should reflect the relative gravity of his or her offense.

How would a system of graduated penalties work for drunk driving?

It is time that the problem drunk driver is assessed as severely as the speeder traveling 90 mph down our nation's highways.

To be effective, legislative solutions to the drunk driving problem must be "culprit" driven. The experience of punishment renders an individual more respectful of the consequences of violating the law and fearful of the reimposition of penalties. Under a system of graduated penalties, the magnitude of the penalty would reflect the degree of infraction in terms of BAC level and multiplicity of offenses. For instance, .20 BAC drivers, even on their first offense, would suffer a more exacting penalty than marginal offenders. These graduated penalties would come in the form of fines, license revocation, and imprisonment.

This kind of solution not only targets for punishment the dangerous product abusers, it also removes the one-size-fits-all penalty scheme that fails to distinguish between one-drink-too-many and the few who cannot control their behavior. The graduated penalty approach has a further beneficial effect in that the severity of punishment assists in deterring the general public from driving at any BAC level.

Has this approach been tried elsewhere?

In the early 1980s, Denmark adopted a five-tiered structure of penalties based on the driver's BAC. A similarly tiered system, which includes both punitive and treatment elements, is employed in Australia.

Seven states in the US -- Colorado, Georgia, Idaho, Maryland, Missouri, New York, and Oklahoma -- have what are essentially two-tiered systems for drunk driving law enforcement. In these states, a lower BAC level is treated as a less serious offense and, consequently, lesser penalties are applied.

Alaska State Legislature

HB 445

Senate Majority Leader
Chair, Judiciary Committee
Vice Chair, Community &
Regional Affairs



State Capitol
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Member, State Affairs Committee
Committee on Committees
Western States Legislative Forestry Task Force
Legislative Council

250 Front Street
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Senator Robin L. Taylor

MEMORANDUM

TO: Senator Drue Pearce, Co-Chair
Senator Steve Frank, Co-Chair
Senate Finance Committee

FROM: Senator Robin L. Taylor *R.L.T.*

DATE: 5/3/94

REF: House Bill 445

The phones in my office have been ringing off the hook with support for the felony drunk driving and other provisions added to House Bill 445 by the Judiciary Committee.

I urge you to keep these provisions in the bill and send it to the House for its concurrence.

This issue has really caught the attention of the public and I would hate to see the Senate be blamed for killing it.



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 Fax (907) 276-1325

May 3, 1994

Senator Robin Taylor
 State of Alaska
 State Capitol, Room 30
 Juneau, AK 99801-1182

FAX: 465-3922

Dear Senator Taylor:

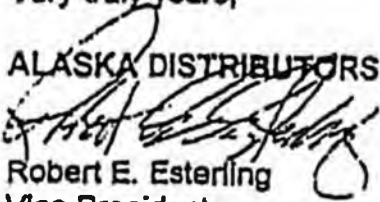
It is my understanding that you are amending House Bill 445 to include a passage that makes a third time DWI conviction an automatic felony punishable by a mandatory year in prison.

As a member of the beverage alcohol industry, I heartily support your amendment and wish you the best of luck. Anyone who has a third DWI is definitely a menace to our community and needs to get help. Perhaps a year in prison would serve as a message to that individual that he or she has a problem which must be corrected. Your amendment will certainly go a long way in that effort.

If there is anything I can do to assist you personally or professionally, please do not hesitate to ask. My office number in Anchorage is (907) 279-3511.

Very truly yours,

ALASKA DISTRIBUTORS CO.


 Robert E. Esterling
 Vice President

REE:dd

5-7-94



Alaska State Senate

Senate Finance Committee

Official Business

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

MEMORANDUM

TO: Senator Steve Frank, Co-Chair
 Senator Drue Pearce, Co-Chair
 Senate Finance Committee

FROM: David Skidmore, Staff Aide

RE: Comparison of Senate CS for HB 445 (Judiciary) and Senate CS
 for HB 445 (Finance) (version "R")

DATE: 6 May 1994

Version "R" differs from the Senate Judiciary CS in the following respects:

1. The provisions which defined an individual's third or subsequent DWI conviction as a felony offense are omitted.
2. References to "commercial motor vehicles" have been included in Sections 2 and 3 at the request of the Departments of Law and Public Safety.
3. A technical change to language has been made in Section 4 at the request of the Departments of Law and Public Safety.
4. The provisions which established a mandatory vehicle forfeiture procedure are removed.
5. The Department of Public Safety--in conjunction with other State entities--is directed in Section 19 to conduct a study and prepare a report on mandatory vehicle forfeiture and application of felony penalties to certain drunk driving offenses.

WORK DRAFT

WORK DRAFT

Not Moved or Adopted

8-GH2019AR
Ford
5/6/94

SENATE CS FOR HOUSE BILL NO. 445(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to operating or driving a motor vehicle, commercial motor
2 vehicle, aircraft, or watercraft; to motor vehicle forfeiture; and providing for an
3 effective date."

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

5 * Section 1. AS 28.15.165(a) is amended to read:

6 (a) A law enforcement officer shall read a notice, and deliver a copy of it, to
7 a person operating a motor vehicle, commercial motor vehicle, or aircraft, if a
8 chemical test administered under AS 28.33.031(a) or AS 28.35.031(a) or (g) produces
9 a result described in AS 28.35.030(a)(2); a chemical test administered under
10 AS 28.33.031(a) produces a result described in AS 28.33.030(a)(2); or the person
11 refuses to submit to a chemical test authorized under AS 28.33.031(a) [AS 28.33.031]
12 or AS 28.35.031(a) or (g) [AS 28.35.032]. The notice must advise that

13 (1) the department intends to revoke the person's driver's license,
14 privilege to drive, or privilege to obtain a license, refuse to issue an original license

1 to the person, or disqualify the person;

2 (2) the person has the right to administrative review of the action taken
3 against the person's license or determination not to issue an original license;

4 (3) if the person has a driver's license or a nonresident privilege to
5 drive, the notice itself is a temporary driver's license that expires seven days after it
6 is delivered to the person, except that if the person was operating a commercial motor
7 vehicle the person will be ordered out of service for 24 hours under AS 28.33.130;

8 (4) revocation of the person's driver's license, privilege to drive, or
9 privilege to obtain a license, a determination not to issue an original license, or a
10 disqualification of the person, takes effect seven days after delivery of the notice to the
11 person unless the person, within seven days, requests an administrative review.

12 * Sec. 2. AS 28.15.165(c) is amended to read:

13 (c) Unless the person has obtained a temporary permit or stay of a
14 departmental action under AS 28.15.166, if the chemical test administered under
15 AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in
16 AS 28.35.030(a)(2) or the person refused to submit to a chemical test authorized
17 under AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032], the
18 department shall revoke the person's license, privilege to drive, or privilege to obtain
19 a license, shall refuse to issue an original license, and, if the chemical test administered
20 under AS 28.33.031(a) produced a result described in AS 28.33.030(a)(2) or the person
21 refused to submit to a chemical test authorized under AS 28.33.031(a)
22 [AS 28.33.031], shall disqualify the person. The department's action takes effect seven
23 days after delivery to the person of the notice required under (a) of this section, and
24 after receipt of a sworn report of a law enforcement officer

25 (1) that a chemical test administered under AS 28.33.031(a) or
26 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2), that a
27 chemical test administered under AS 28.33.031(a) produced a result described in
28 AS 28.33.030(a)(2), or that a person refused to submit to a chemical test authorized
29 under AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032];

30 (2) that notice under (a) of this section was provided to the person; and

31 (3) describing the

1 (A) circumstances surrounding the arrest and the grounds for the
2 officer's belief that the person operated a motor vehicle, commercial motor
3 vehicle, or aircraft while intoxicated in violation of AS 28.33.030 or
4 AS 28.35.030; or

5 (B) grounds for the officer's belief that the person operated
6 a motor vehicle or commercial motor vehicle that was involved in an
7 accident causing death or serious physical injury to another person.

8 * Sec. 3. AS 28.15.166(g) is amended to read:

9 (g) The hearing for review of action by the department under AS 28.15.165
10 shall be limited to the issues of whether the law enforcement [ARRESTING] officer
11 had reasonable grounds to believe that the person was operating a motor vehicle or
12 commercial motor vehicle that was involved in an accident causing death or
13 serious physical injury to another person, or that the person was operating a
14 motor vehicle, commercial motor vehicle, or aircraft while intoxicated in violation of
15 AS 28.33.030 or AS 28.35.030 and whether

16 (1) the person refused to submit to a chemical test authorized under
17 AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032] after being
18 advised that refusal would result in disqualification or the suspension, revocation, or
19 denial of the person's license, privilege to drive, or privilege to obtain a license, and
20 that the refusal is a misdemeanor;

21 (2) the chemical test administered [AUTHORIZED] under
22 AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in
23 AS 28.35.030(a)(2); or

24 (3) the chemical test administered [AUTHORIZED] under
25 AS 28.33.031(a) produced a result described in AS 28.33.030(a)(2).

26 * Sec. 4. AS 28.15.181(a) is amended to read:

27 (a) Conviction of any of the following offenses is grounds for the immediate
28 revocation of a driver's license, privilege to drive, or privilege to obtain a license:

29 (1) manslaughter or negligent homicide resulting from driving a motor
30 vehicle;

31 (2) a felony in the commission of which a motor vehicle is used;

1 (3) failure to stop and give aid as required by law when a motor
2 vehicle accident results in the death or personal injury of another;

3 (4) perjury or making a false affidavit or statement under oath to the
4 department under a law relating to motor vehicles;

5 (5) operating a motor vehicle or aircraft while intoxicated;

6 (6) reckless driving;

7 (7) using a motor vehicle in unlawful flight to avoid arrest by a peace
8 officer;

9 (8) refusal to submit to a chemical test authorized under
10 AS 28.33.031(a)(1), AS 28.35.031(a), or [AS 28.33.031 OR] AS 28.35.032 while
11 under arrest for operating a motor vehicle, commercial motor vehicle, or aircraft while
12 intoxicated, or as authorized under AS 28.33.031(a)(2) or AS 28.35.031(g);

13 (9) driving while license, privilege to drive, or privilege to obtain a
14 license, canceled, suspended, or revoked, or in violation of a limitation.

15 * Sec. 5. AS 28.33.031(a) is amended to read:

16 (a) A person who operates a commercial motor vehicle in this state is
17 considered to have given consent to a chemical test or tests

18 (1) of the person's breath if the person is lawfully arrested for an
19 offense arising out of acts alleged to have been committed when the person was
20 operating the commercial motor vehicle while intoxicated; the [. THE] test or tests
21 may be administered at the direction of a law enforcement officer who has reasonable
22 grounds to believe that the person was operating a commercial motor vehicle while
23 intoxicated in violation of AS 28.33.030 or AS 28.35.030;

24 (2) of the person's breath and blood for the purpose of determining
25 the alcoholic content of the person's breath and blood, and of the person's blood
26 and urine, for the purpose of determining the presence of controlled substances
27 in the person's blood and urine, if the person is involved in a motor vehicle
28 accident that causes death or serious physical injury to another person; the test
29 or tests may be administered at the direction of a law enforcement officer who
30 has reasonable grounds to believe that the person was operating a commercial
31 motor vehicle that was involved in an accident causing death or serious physical

1 injury to another person.

2 * Sec. 6. AS 28.33.190 is amended to read:

3 Sec. 28.33.190. DEFINITIONS. In this chapter [AS 28.33.100 - 28.33.190],

4 (1) "alcoholic beverage" has the meaning given in AS 04.21.080(b);

5 (2) "commercial motor vehicle" has the meaning given in
6 AS 28.40.100;

7 (3) "controlled substance" means any substance listed as being
8 controlled under AS 11.71 or 21 U.S.C. 812 - 813, or determined under federal
9 regulations to be controlled for purposes of 21 U.S.C. 801 - 813 (Controlled
10 Substances Act);

11 (4) "disqualification" means a withdrawal of the privilege to drive a
12 commercial motor vehicle;

13 (5) "disqualified" means that a person's privilege to drive a commercial
14 motor vehicle has been withdrawn;

15 (6) "drive a commercial motor vehicle" means to affect the movement,
16 attempt to affect the movement, or to be in actual physical control, of a commercial
17 motor vehicle in motion, excluding slight motion incidental to loading, unloading,
18 servicing, or inspecting the vehicle;

19 (7) "employer" means a person who

20 (A) provides compensation to a person who operates a
21 commercial motor vehicle, including wages or other remuneration, whether
22 through an employment relationship or by contract; or

23 (B) acts as an agent of someone who provides compensation to
24 a person who operates a commercial motor vehicle, with authority to allow,
25 require, permit, assign, or authorize the person being compensated to operate
26 a commercial motor vehicle;

27 (8) "hazardous substance" means a substance found by the United
28 States Secretary of Transportation to be hazardous for purposes of 49 U.S.C. 1801 -
29 1813 (Hazardous Materials Transportation Act);

30 (9) "operating a commercial motor vehicle" means

31 (A) to drive a commercial motor vehicle; or

1 (B) whether or not the vehicle is in motion, or is capable of
2 being moved, to be in actual physical control, or to attempt to affect the
3 movement, of a commercial motor vehicle; and

4 (10) "serious traffic violation" means

5 (A) speeding 15 miles per hour or more above the posted limit;

6 (B) reckless or negligent driving, in violation of AS 28.35.040
7 or 28.35.045 or an ordinance with substantially similar elements;

8 (C) violation of a provision of this title, or a regulation adopted
9 under this title, relating to improper lane changes or following too closely, or
10 an ordinance with substantially similar elements; or

11 (D) violation of a law or ordinance relating to traffic control,
12 which was determined by the court by a preponderance of the evidence to have
13 been a factor in causing physical injury to a person.

14 * Sec. 7. AS 28.35.031 is amended by adding a new subsection to read:

15 (g) A person who operates or drives a motor vehicle in this state shall be
16 considered to have given consent to a chemical test or tests of the person's breath and
17 blood for the purpose of determining the alcoholic content of the person's breath and
18 blood and shall be considered to have given consent to a chemical test or tests of the
19 person's blood and urine for the purpose of determining the presence of controlled
20 substances in the person's blood and urine if the person is involved in a motor vehicle
21 accident that causes death or serious physical injury to another person. The test or
22 tests may be administered at the direction of a law enforcement officer who has
23 reasonable grounds to believe that the person was operating or driving a motor vehicle
24 in this state that was involved in an accident causing death or serious physical injury
25 to another person.

26 * Sec. 8. AS 28.35.032(a) is amended to read:

27 (a) If a person under arrest for operating a motor vehicle or aircraft while
28 intoxicated refuses the request of a law enforcement officer to submit to a chemical
29 test authorized under AS 28.33.031(a)(1) [AS 28.33.031(a)] or AS 28.35.031(a), or
30 if a person involved in a motor vehicle accident that causes death or serious
31 physical injury to another person refuses the request of a law enforcement officer

1 to submit to a chemical test authorized under AS 28.33.031(a)(2) or
2 AS 28.35.031(g), after being advised by the officer that the refusal will [, IF THAT
3 PERSON WAS ARRESTED WHILE OPERATING A MOTOR VEHICLE OR
4 AIRCRAFT,] result in the denial or revocation of the driver's license, privilege to
5 drive, or privilege to obtain a license, that the refusal may be used against the person
6 in a civil or criminal action or proceeding arising out of an act alleged to have been
7 committed by the person while operating a motor vehicle or [, AN] aircraft [, OR A
8 WATERCRAFT] while intoxicated, and that the refusal is a crime, a chemical test may
9 not be given, except as provided by AS 28.35.035. If a person under arrest for
10 operating a watercraft while intoxicated refuses the request of a law enforcement
11 officer to submit to a chemical test authorized under AS 28.35.031(a), after being
12 advised by the officer that the refusal may be used against the person in a civil
13 or criminal action or proceeding arising out of an act alleged to have been
14 committed by the person while operating a watercraft while intoxicated, and that
15 the refusal is a crime, a chemical test may not be given, except as provided by
16 AS 28.35.035.

17 * Sec. 9. AS 28.35.032(e) is amended to read:

18 (e) The refusal of a person to submit to a chemical test authorized under
19 AS 28.33.031(a) or AS 28.35.031(a) or (g) [OF BREATH UNDER (a) OF THIS
20 SECTION] is admissible evidence in a civil or criminal action or proceeding arising
21 out of an act alleged to have been committed by the person while operating or driving
22 a motor vehicle or operating an aircraft or watercraft while intoxicated.

23 * Sec. 10. AS 28.35.032(f) is amended to read:

24 (f) Refusal to submit to a [THE] chemical test [OF BREATH] authorized by
25 AS 28.33.031(a) or AS 28.35.031(a) or (g) is a class A misdemeanor.

26 * Sec. 11. AS 28.35.032(j) is amended to read:

27 (j) For purposes of this section, convictions for operating or driving while
28 intoxicated under AS 28.33.030 or AS 28.35.030 and for refusal to submit to a
29 chemical test [OF BREATH] under this section, if arising out of a single transaction
30 and a single arrest, are considered one previous conviction.

31 * Sec. 12. AS 28.35.035(a) is amended to read:

1 (a) If a person is under arrest for an offense arising out of acts alleged to have
2 been committed while the person was operating a motor vehicle, aircraft, or watercraft
3 while intoxicated, and that arrest results from an accident that causes death or physical
4 injury to another person, a chemical test may be administered without the consent of
5 the person arrested to determine the amount of alcohol in that person's breath or blood
6 or to determine the presence of controlled substances in that person's blood and
7 urine.

8 * Sec. 13. AS 28.35.035(b) is amended to read:

9 (b) A person who is unconscious or otherwise in a condition rendering that
10 person incapable of refusal is considered not to have withdrawn the consent provided
11 under AS 28.33.031(a) or AS 28.35.031(a) or (g) and a chemical test may be
12 administered to determine the amount of alcohol in that person's breath or blood or
13 to determine the presence of controlled substances in that person's blood and
14 urine. A person who is unconscious or otherwise incapable of refusal need not be
15 placed under arrest before a chemical test may be administered.

16 * Sec. 14. AS 28.35 is amended by adding a new section to article 2 to read:

17 Sec. 28.35.039. DEFINITION FOR AS 28.35.029 - 28.35.039. In
18 AS 28.35.029 - 28.35.039, "controlled substance" has the meaning given in
19 AS 28.33.190.

20 * Sec. 15. AS 28.40.100(a) is amended by adding a new paragraph to read:

21 (24) "serious physical injury" has the meaning given in
22 AS 11.81.900(b).

23 * Sec. 16. AS 28.35.030(m)(1) is repealed.

24 * Sec. 17. REQUIRED STUDY AND REPORT. (a) The Department of Public Safety,
25 in conjunction with the Department of Law, the Department of Corrections, the Alaska Court
26 System, and the Alaska State Legislature, shall perform a comprehensive review of the
27 following issues by December 31, 1994:

28 (1) the means by which the mandatory forfeiture of vehicles used in the
29 commission of offenses related to driving while intoxicated may be implemented; and

30 (2) the means by which felony penalties may be applied to certain offenses
31 related to driving while intoxicated.

1 (b) The review required under (a) of this section shall consider the fiscal effect on the
2 state, deterrence of convicted and potential offenders, relevant policies of other governing
3 bodies, and potential funding sources. Also, the Department of Public Safety shall present a
4 report to the Nineteenth Alaska State Legislature that summarizes the conclusions of the
5 review described in this section and that recommends specific legislative action.

6 * Sec. 18. APPLICABILITY. The amendments made by this Act apply to offenses that
7 are committed on or after the effective date of this Act, except that references to previous
8 convictions include convictions occurring before, on, or after the effective date of this Act.

9 * Sec. 19. This Act takes effect July 1, 1994.

WALTER J. HICKEL
GOVERNOR



1-B 445
P. O. Box 110001
Juneau, Alaska 99811-CC01
(907) 465-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 4, 1994

*The Honorable Ramona L. Barnes
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Speaker Barnes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to operating or driving a motor vehicle, commercial motor vehicle, aircraft, or watercraft.

Sections 5, 7, 12, and 13 of the bill contain the main objective of the bill. Those sections contain provisions relating to implied consent for, and administration of, chemical tests to detect the presence of drugs in drivers of motor vehicles or commercial vehicles that are involved in accidents that cause death or serious physical injury to another person.

The use of drugs by motor vehicle drivers, both alone and in combination with alcohol, is a major traffic safety concern. The apprehension and successful prosecution of the drug-impaired driver has been and remains a major concern of law enforcement.

The state's implied consent law is contained in existing AS 28.35.031 and, for commercial motor vehicle drivers, in AS 28.33.031. These sections provide that a vehicle driver who is under arrest for driving while intoxicated is considered to have given "consent" to a chemical breath test to determine the amount of alcohol in the person's blood or breath. Existing AS 28.35.032 authorizes law enforcement officers to request that an arrested driver submit to that chemical breath testing.

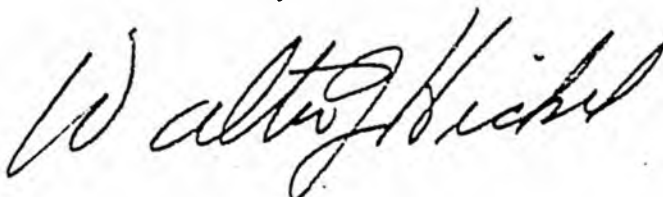
Sections 5 and 7 of the bill amend the implied consent statutes (AS 28.33.031 and AS 28.35.031) to specify that a person who operates a motor vehicle or commercial

The Honorable Ramona Barnes
February 4, 1994
Page 3

combat the significant highway safety problem presented by those drivers who use drugs and then cause fatal or serious injury accidents.

I urge your favorable action on this bill.

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Hickel". The signature is written in dark ink and is positioned above the printed name and title.

Walter J. Hickel
Governor



Alaska State Legislature
Senate

Office of the Secretary

OFFICIAL BUSINESS

P.O. BOX V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

FOR YOUR IMMEDIATE ATTENTION

DATE: 5-3-94

TO SENATE
COMMITTEE: Finance - Kathy

FROM: Office of the Senate Secretary

The attached fiscal note(s) relate to the following bill(s) pending in your Committee.

Please place the fiscal note inside the front cover of the blue or yellow committee folder.

HB 445 am

CSB 279 (JUD)

Call me
JR

Thank you.
[Signature]

SIGNATURE OF PERSON RECEIVING THIS NOTE

JR/s

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

HB 445

WALTER J. HICKEL
GOVERNOR



P. O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 4, 1994

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Juneau, AK 99801-1182*

Dear Speaker Barnes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to operating or driving a motor vehicle, commercial motor vehicle, aircraft, or watercraft.

Sections 5, 7, 12, and 13 of the bill contain the main objective of the bill. Those sections contain provisions relating to implied consent for, and administration of, chemical tests to detect the presence of drugs in drivers of motor vehicles or commercial vehicles that are involved in accidents that cause death or serious physical injury to another person.

The use of drugs by motor vehicle drivers, both alone and in combination with alcohol, is a major traffic safety concern. The apprehension and successful prosecution of the drug-impaired driver has been and remains a major concern of law enforcement.

The state's implied consent law is contained in existing AS 28.35.031 and, for commercial motor vehicle drivers, in AS 28.33.031. These sections provide that a vehicle driver who is under arrest for driving while intoxicated is considered to have given "consent" to a chemical breath test to determine the amount of alcohol in the person's blood or breath. Existing AS 28.35.032 authorizes law enforcement officers to request that an arrested driver submit to that chemical breath testing.

Sections 5 and 7 of the bill amend the implied consent statutes (AS 28.33.031 and AS 28.35.031) to specify that a person who operates a motor vehicle or commercial

The Honorable Ramona Barnes
February 4, 1994
Page 2

motor vehicle in this state is considered to have given consent to submit to a chemical test to determine the presence of both alcohol and drugs if the person is involved in an accident that causes death or serious physical injury to another person, even if the person is not under arrest. A specific definition for "serious physical injury" is provided in sec. 16 of the bill. Driving is a privilege granted by the state that can be conditioned upon consent to reasonable terms, such as consent to the chemical tests enumerated in AS 28.33.031 and AS 28.35.031 as amended by the bill.

Under existing AS 28.35.032(a), a person can refuse to submit to a chemical breath test; existing AS 28.35.032(f) makes the refusal a misdemeanor offense. Section 8 of the bill amends AS 28.35.032(a) to add references to the chemical tests provided for in secs. 5 and 7 of the bill; sec. 10 of the bill amends AS 28.35.032(f) in the same way. Several "housekeeping" amendments to AS 28.35.032(a) are also made by sec. 8 of the bill.

Under AS 28.35.032(a) and 28.35.035, if a person has been notified of the penalties that will result from refusal to submit to a chemical breath test, and the person then refuses to submit, the test may not be given unless the person has been arrested and the arrest resulted from an accident that causes death or physical injury to another person. This bill does not change those provisions other than to add references to the additional chemical tests provided for in secs. 5 and 7 of the bill. See secs. 8, 12, and 13 of the bill.

Sections 1 - 4, 9, 11, and 14 of the bill make additional conforming amendments to statutes in AS 28 to refer to the chemical tests provided for in secs. 5 and 7 of the bill. The amendment to AS 28.33.190 in sec. 6 of the bill is generally to provide a definition for "controlled substance" in AS 28.33. That term is used in AS 28.33.031(a) as that statute is amended by sec. 5 of the bill. Additionally, the amendment to AS 28.33.190 will provide other needed definitions for AS 28.33.010 - 28.33.031. The existing language of AS 28.33.190 unnecessarily excludes those sections.

The amendments made by secs. 15 and 17 of the bill are to provide a definition of "controlled substance" for AS 28.35.029 - 28.35.039. The existing definition, which is specific to only AS 28.35.030, is repealed and is replaced by the same definition located in a general definition section for AS 28.35.029 - 28.35.039.

In my State of the State address on January 12, 1993, I identified "alcoholism, along with the abuse of other drugs," as "Alaska's number one health problem." I reiterated my commitment to dealing with this issue in my State of the State address this year, as well. This proposed legislation gives police and prosecutors the tools they need to

The Honorable Ramona Barnes
February 4, 1994
Page 3

combat the significant highway safety problem presented by those drivers who use drugs and then cause fatal or serious injury accidents.

I urge your favorable action on this bill.

Sincerely,

A handwritten signature in cursive script, reading "Walter J. Hickel". The signature is written in dark ink and is positioned above the printed name and title.

Walter J. Hickel
Governor



Alaska State Legislature
Senate

Office of the Secretary

OFFICIAL BUSINESS

P.O. BOX V
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JUNEAU, ALASKA 99811

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DATE: 5-3-94

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COMMITTEE: Finance - Kathy

FROM: Office of the Senate Secretary

The attached fiscal note(s) relate to the following bill(s) pending in your Committee.

Please place the fiscal note inside the front cover of the blue or yellow committee folder.

HB 445 am

CSB 279 (JUD)

Call me
JR

Thank you.

SIGNATURE OF PERSON RECEIVING THIS NOTE

JR/s

HB

447

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)
Date Referred: March 14, 1994

FURTHER REFERRALS:

Date of Committee Action: 4/14/94

The FINANCE Committee considered:

HB 447

HOUSE BILL NO. 447

ESTABLISH AFOGNAK ISLAND STATE PARK

"An Act establishing the Afognak Island State Park."

RECOMMENDATIONS:
 be replaced with CS HB 447 (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

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note DNR

zero fiscal note(s) DOR, 2/4/94
DPS 2/4/94

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Cileen P. Maclean</i>	<input checked="" type="checkbox"/>	<i>Larry Martin</i>		<input checked="" type="checkbox"/>	
<i>Ronald J. Larson</i>	<input checked="" type="checkbox"/>				
<i>Mark Hanky</i>	<input checked="" type="checkbox"/>				
<i>Sean R. Farrell</i>	<input checked="" type="checkbox"/>				
<i>Ben Grossman</i>	<input checked="" type="checkbox"/>				
<i>Mike Navarre</i>					
<i>Jay Brown</i>	<input checked="" type="checkbox"/>				
<i>Richard [Signature]</i>	<input checked="" type="checkbox"/>				
<i>Richard [Signature]</i>	<input checked="" type="checkbox"/>				

E. P. Maclean
 CHAIRMAN'S SIGNATURE *Ronald J. Larson*

FISCAL NOTE

REQUEST:

Revision Date:

Dept: Natural Resources

Title: Establish Afognak Island

State Park

BRU: Parks & Recreation Mgt.

Sponsor: Governor

Components: Park Management

Requestor: House Finance Committee

No: 452

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUNDING: (THOUSANDS OF DOLLARS)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

ESTIMATE OF ANY CURRENT YEAR (FY 94) COST \$ _____

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Rep. Ron Larson, Co-Chair
Rep. Eileen MacLean, Co-Chair *EPM*
 Division: House Finance Committee
 Approved By: _____
 Agency: _____

465-3878

Phone: 465-4833

Date: 4/13/94

FISCAL NOTE

No. 2
 Bill Version HB 447
 (H) Publish Date: 2/4/94

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

Revision Date: January 7, 1994
 Title: "An Act establishing the Afognak Island State Park."
 Sponsor: Rules Committee/Request of the Governor
 Requestor: Governor's Office/OMB

Department Affected: Department of Law
 BRU: Legal Services
 Component: Operations
 COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
 Please see the attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: January 7, 1994
 Approved by Commissioner: Bruce M. Botelho, Acting Attorney General
 Agency: Department of Law Date: January 7, 1994

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS CONTINUATION:

This bill would establish the Afognak Island State Park by incorporating the approximately 41,549 acres at Seal Bay and Tonki Cape for inclusion in the state park system. Monies for the purchase of these lands were provided by the Exxon Valdez Trustee Council and the subsequent expenditure to execute the purchase was approved by the Legislative Budget and Audit Committee on November 23, 1993. Any subsequent activities would require little, if any, involvement by the Department of Law and there should not be a fiscal impact for the department.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

No. 1
Bill Version: HB 447
(H) Publish Date: 2/4/94

Revision Date: _____ Dept. Affected: Public Safety
Title: "An Act establishing the Afognak BRU: Fish & Wildlife Protection
Island State Park" Component: Enforcement & ISU
Sponsor: Rules
Requestor: Governor COMPONENT SERIAL NO. 490

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact upon the Division of Fish & Wildlife Protection is anticipated.

Prepared By: Capt. Ted Ruddell Phone: 269-5589
Division: Fish & Wildlife Protection Date: 01/06/94
Approved by Commissioner: *Richard L. Burton* Date: 01/06/94
Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

No. 4

Bill Version: CSHB 447 (RES)

(H) Publish Date: 3/14/94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: 2/24/94 Department Affected: Natural Resources
 Title: Establish Afognak Island State Park BRU: Parks and Recreation Management
 Components: Park Management
 Sponsor: Governor
 Requestor: Governor Component Serial No. 452

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	12.0	12.0	12.0	12.0	12.0	12.0
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	17.0	17.0	17.0	17.0	17.0	17.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE fund source:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	17.0	17.0	17.0	17.0	17.0	17.0
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other						
TOTAL	17.0	17.0	17.0	17.0	17.0	17.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) Impact: 5 None

ANALYSIS: (Attach a separate page if necessary)

The legislation will add 41,000 acres to the State Park System. This remote unit will be passively managed - permanent staff will make occasional visits based on need. Volunteers in Parks (VIPs) will provide seasonal monitoring of public use of area and development of a resource inventory. This information will be used by the permanent staff to develop a master plan for Afognak Island State Park.

Prepared by: Neil C. Johannsen Phone: 762-2600
 Division: Parks and Outdoor Recreation Date: 2/24/94
 Approved by Commissioner: Harry A. Noon Date: _____
 Agency: Department of Natural Resources

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FISCAL NOTE

REQUEST:

Revision Date:
Title: Establish Afognak Island
State Park
Sponsor: Governor
Requestor: House Finance Committee

Dept: Natural Resources
BRU: Parks & Recreation Mgt.
Components: Park Management
No: 452

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUNDING: (THOUSANDS OF DOLLARS)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

ESTIMATE OF ANY CURRENT YEAR (FY 94) COST \$ _____

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Rep. Ron Larson, Co-Chair *RL* 465-3878
Rep. Eileen MacLean, Co-Chair *EPM* Phone: 465-4833
 Division: House Finance Committee Date: 4/13/94
 Approved By: _____
 Agency: _____

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

February 22, 1994

The Honorable Bill Williams
Chairman
House Resources Committee
Room 128
State Capitol
Juneau, Alaska 99801-1182

Re: House Bill 447

Dear Representative Williams:

House Bill 447, An Act Establishing the Afognak Island State Park, has been assigned to the House Resources Committee. I urge you to schedule this bill for a prompt hearing.

The purpose of House Bill 447 is to create the Afognak Island State Park thus assuring that management of lands at Seal Bay and Tonki Cape on Afognak Island will rest with the State of Alaska rather than the United States. The acquisition of these lands was undertaken with funds from the EXXON VALDEZ oil spill civil settlement pursuant to a resolution of the Trustee Council adopted in August 1993. The Trustee Council resolution provided that these lands would be conveyed to the State only if the State designates them as a state park within one year of purchase. The purchase of these lands was completed November 23, 1993. Under the terms of the purchase agreement, if these lands are not designated a state park prior to November 23, 1994, in effect this legislative session, they will be conveyed to the federal government for inclusion in a federal conservation unit such as a national wildlife refuge or national park.

The lands are valuable habitat for harlequin ducks, black oystercatchers, river otters, and bald eagles. The lands contain eight documented anadromous streams. Sea otters are common in the near shore waters and there are numerous harbor seal haul outs along the shoreline. All of these species were injured by the oil spill.

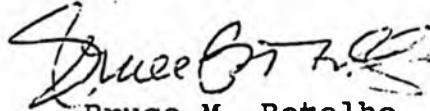
These lands have traditionally been used for hunting, boating, fishing, and related activities. House Bill 447 guarantees the rights of Alaskans to continue to be able to use these lands for these kinds of activities. The bill specifically protects sport and subsistence hunting and fishing, personal use fishing, trapping, recreational activities, and commercial fishing

The Honorable Bill Williams, Chairman
House Resources Committee

February 22, 1994
Page 2

in the park and, by placing management in the hands of Alaskans,
helps to assure that these protective measures are implemented
fairly and sensibly.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bruce M. Botelho". The signature is stylized and cursive.

Bruce M. Botelho
Attorney General

BMB:CT:tg

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FAX: (907) 465-3886

April 8, 1994

James B. Ayers
Executive Director
Exxon Valdez Oil Spill Trustee Council
709 West Ninth Street, Room 461
Juneau, Alaska 99802-1668

Re: Seal Bay/Afognak Island State Park

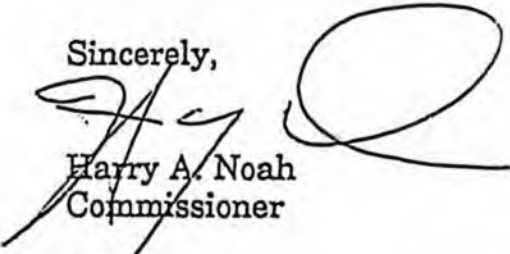
Dear Mr. Ayers:

The State of Alaska would like the land and water around Seal Bay, currently held by the Nature Conservancy, to become Afognak Island State Park. The Department of Natural Resources' Division of Parks and Outdoor Recreation has attached a \$17,000 fiscal note on both CSHB 447 (RES) and CSSB 280 (JUD). These fiscal notes request general funds for the management costs associated with the addition of these 41,000 acres to the State Park System. We believe this to be a modest request that reflects our intent to passively manage this remote unit. Permanent seasonal staff will only make occasional visits. Volunteers in Parks (VIPS) will provide seasonal monitoring of public use of the area and develop a resource inventory for use by staff in forming a master plan for the park.

While the Department would like to see these monies appropriated, the financial problems facing Alaska make it questionable whether general funds can be made available for this purpose. In light of this, I believe it would be appropriate for the Exxon Valdez Oil Spill Trustees to seriously consider providing the necessary funds to manage and protect the area until such time as the state can identify monies for that purpose. Therefore, I would like to request your serious consideration of \$17,000 for operation of Afognak Island State Park for FY 95.

Your support for this request will be greatly appreciated. Thank you.

Sincerely,



Harry A. Noah
Commissioner

HAN/sf

DEPARTMENT OF FISH AND GAME POSITION PAPER

BILL NO: Senate Bill 280 / HB 447

SPONSOR: Senate Rules

DIVISION: Habitat and Restoration

DEPARTMENT POSITION:

The Department of Fish and Game supports passage of Senate Bill 280 creating the Afognak Island State Park. This bill will enhance public access to and use of valuable fish and wildlife resources on Afognak Island and will help to maintain the habitat needed to restore resources and services injured by the Exxon Valdez oil spill (EVOS).

The uplands contained in the proposed park were acquired by the EVOS Trustee Council to restore injured resources and services including pink salmon, Dolly Varden, herring, harbor seals, river otters, harlequin ducks, marbled murrelets, bald eagles, black oystercatchers, pigeon guillemot, and sea otters. Moreover, the lands and waters included in the proposed park support additional valuable fish and wildlife resources including elk, deer, brown bear, fox, and coho salmon. The proposed park is important for recreational and commercial fishing, hunting, trapping, and wildlife viewing and has a high potential to support increased public uses in the future.

Designation of the lands as a unit of state park system will ensure that the land and its resources will be managed in the long term interests of the state. Pursuant to the purchase agreement adopted by the EVOS Trustee Council, a failure to legislatively protect the lands in 1994 will result in transfer of the title to the Federal government. Federal management would likely precipitate more restrictive access provisions and federal management of fish and wildlife on this land.

COMMISSIONER'S SIGNATURE

Carl Z. Rasmussen

DATE 2/25/94

TEL. 807-225-8114 FAX 807-225-6820
Mar 08, 1994 11:10 AM 007 1.01

Alaska Forest Association, Inc.



111 STEDMAN SUITE 200
KETCHIKAN, ALASKA 99901-8699
Phone 907-225-8114
FAX 907-225-6820

**STATEMENT OF SUPPORT OF HB447 & SB280
CREATION OF AFOGNAK ISLAND STATE PARK
BY THE
ALASKA FOREST ASSOCIATION**

MARCH 11, 1994

The Alaska Forest Association is an association of over 350 members concerned about timber supply. It is the mission of AFA to promote a significant and stable timber supply regardless of ownership. It is this mission which brings AFA before you today.

AFA is in support of SB280 and HB447 with the technical amendments proposed by Koncor Forest Products. We believe it is very important the State of Alaska obtain title to this land rather than the federal government. Past events have shown that the federal government is far less responsive or willing to be responsive to the needs of Alaskans.

This legislation is important to the timber supply issue because access must be provided to adjacent ownerships if they are to contribute to the overall timber supply situation. AFA supports the recognition of the rights of adjacent landowners.

Access across the proposed state park is vital for management of adjacent lands. Not only is it important for reaching the timber, but also access to deep water ports for shipping. These needs will be better addressed by state rather than the federal government.

AFA urges passage of these important bills with the proposed amendments.

WALTER J. HICKEL
GOVERNOR



P O Box 110001
Juneau, Alaska 99811-0001
907) 465-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 4, 1994

The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

HB 447

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill creating the Afognak Island State Park.

On August 23, 1993, the Exxon Valdez Oil Spill Trustee Council (council) adopted a resolution approving, for restoration purposes, acquisition of approximately 41,549 acres of land in Alaska on the northeast corner of Afognak Island, including Seal Bay and Tonki Cape. Although the federal government initially expressed a desire to include this property within the Kodiak National Wildlife Refuge, portions of which are located nearby, the state trustees on the council persuaded the council as a whole that this property has a more logical connection with Shuyak State Park, located on an island immediately to the north of the Seal Bay property. Thus, the resolution adopted by the council provided the state the first opportunity to acquire title to this irreplaceable Alaska property. The resolution further provided that, to fulfill the council's restoration obligations, the property was to be included in a state park and commercial timber harvest was not to be permitted. The resolution specifically allowed limited commercial use as well as sport, personal use, and subsistence hunting and fishing, trapping, and recreational uses, insofar as they are permitted under law or regulations of the Board of Fisheries or Board of Game. Only if the state was unwilling or unable to establish a state park was the federal government to take title to this property.

Based on the council's resolution, the state entered into a purchase agreement on November 4, 1993 with the Seal Bay Timber Company, owner of the property, and The Nature Conservancy. The agreement provided for title to the property to first go to The Nature Conservancy to hold until the state has an opportunity to establish a park to accept the property.

Under AS 37.07.080(h) and AS 37.14.450, the Legislative Budget and Audit Committee approved the expenditure of EXXON VALDEZ civil trust money for the purchase at its November 5, 1993 meeting. The purchase was completed on November 23, 1993 when title to the property passed to The Nature Conservancy.

The Honorable Rick Halford
February 4, 1994
Page 2

In accordance with the purchase agreement, The Nature Conservancy will convey the property to the state for placement in a state park if the park is created by November 23, 1994, one year from the date of purchase. Otherwise, the property must be conveyed to the federal government for placement in a federal conservation unit. The purpose of this bill is to create that required state park.

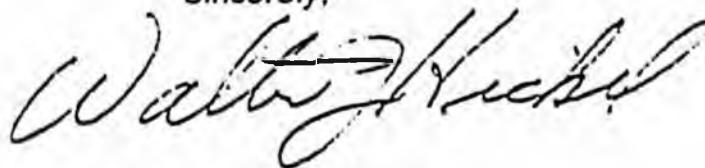
The acquisition and protection of this land in a state park has widespread and nearly unanimous public support. Expressions of support for the acquisition have come from such diverse groups as the Kodiak Island Borough mayor and assembly, City of Kodiak, Kodiak Chamber of Commerce, various commercial fishing groups, local tour operators, and environmental organizations.

Seal Bay has historically supported high value wilderness-based recreation such as hunting, boating, and fishing. The area has high scenic value and excellent wildlife viewing. It contains important habitat for several species of wildlife for which significant injury resulting from the oil spill has been documented, including marbled murrelets, harlequin ducks, black oyster catchers, and river otters. Harbor seal haulouts and intertidal and subtidal biota are all found in substantial numbers along the shoreline. Concentrations of sea otters exist in this area. Anadromous streams and bald eagle nests are found on this property. Protection of this property will aid recovery of these injured resources and services.

The proposed park would include all lands acquired from Seal Bay Timber Company as well as tidelands. Submerged lands would not be included except those lying within lagoons on the property. The Department of Fish and Game would be responsible for the management of fish and game resources in the park, consistent with the principle of sustained yield. Sport and subsistence hunting and fishing, personal use fishing, trapping, recreational activities, and commercial fishing would be permitted in the park. These are the purposes for which Alaskans have traditionally used these lands. By creating a state park for this property, we will ensure that future generations will be able to continue to use and enjoy this magnificent part of our state.

I urge your prompt consideration and passage of this bill.

Sincerely,



Walter J. Hickel
Governor

HOUSE COMMITTEE REPORT

3/14/94

Finance

(9)
Date Referred: February 4, 1994

FURTHER REFERRALS:

Date of Committee Action: 3/11/94

The RESOURCES Committee considered:

HB 447

HOUSE BILL NO. 447

ESTABLISH AFOGNAK ISLAND STATE PARK

"An Act establishing the Afognak Island State Park."

RECOMMENDATIONS:
 be replaced with CS HB 447 (RES) 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

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal impact DNR fiscal note(s) _____
 zero fiscal note _____ (2) zero fiscal note(s) P.S.; Law 2/4/94

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Bill Hudson</i> Hudson	✓				
<i>John Carney</i> Carney	✓				
<i>Jeanette James</i> James	✓				
<i>Frank Finkelshteyn</i> Finkelshteyn					
<i>Tom Davies</i> Davies	✓				
<i>John Mulder</i> Mulder	✓				
<i>Neil Bundy</i> Bundy	✓				
<i>W.R. Williams</i> Williams	✓				
<i>Joseph Green</i> Green	✓				
	(9)				

W.R. Williams Williams
 CHAIRMAN'S SIGNATURE

HB

447

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/19/94

FURTHER:

DATE TURNED INTO OFFICE: 5-8-94

Finance Committee considered CS FOR HOUSE BILL NO. 447(FIN)

"An Act establishing the Afognak Island State Park."

and recommends:

- replace with 5 CS CS HB 447 (FINANCE)
- or adopt previous CS ()
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

- adopts Senate Finance Letter of Intent
- further referral to the

- do pass
- do not pass
- no recommendation
- individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DPS	1/6/94	0	
DOLAW	1/7/94	0	
HRC/DNR	4/13/94	0	

Appropriation No Fiscal Note

DO PASS:

Steve Thayer

OTHER RECOMMENDATIONS:

Bob Thayer - Do Not Pass

1. True Pearce - 10 Pass
Co-Chair: Signature/Recommendation

2. Tim Kelly - No Rec
John - NO REC
Co-Chair: Signature/Recommendation

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

No. 1
Bill Version: HB 447
(H) Publish Date: 2/4/94

Revision Date: _____ Dept. Affected: Public Safety
Title: "An Act establishing the Afognak
Island State Park" BRU: Fish & Wildlife Protection
Sponsor: Rules Component: Enforcement & ISU
Requestor: Governor COMPONENT SERIAL NO. 490

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

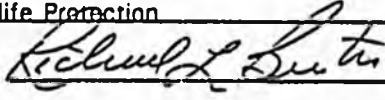
Estimate of current year (FY 94) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact upon the Division of Fish & Wildlife Protection is anticipated.

Prepared By: Capt. Ted Ruddell Phone: 269-5589
Division: Fish & Wildlife Protection Date: 01/06/94
Approved by Commissioner:  Date: 01/06/94
Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

No. 2
 Bill Version HB 447
 (H) Publish Date: 2/4/94

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

Revision Date: January 7, 1994
 Title: "An Act establishing the Afognak Island State Park."
 Sponsor: Rules Committee/Request of the Governor
 Requestor: Governor's Office/OMB

Department Affected: Department of Law
 BRU: Legal Services
 Component: Operations
 COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
 Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: January 7, 1994
 Approved by Commissioner: Bruce M. Botelho, Acting Attorney General
 Agency: Department of Law Date: January 7, 1994

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FISCAL NOTE

REQUEST:

Revision Date:

Dept: Natural Resources

Title: Establish Afognak Island

State Park

BRU: Parks & Recreation Mgt.

Sponsor: Governor

Components: Park Management

Requestor: House Finance Committee

No: 452

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUNDING: (THOUSANDS OF DOLLARS)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

ESTIMATE OF ANY CURRENT YEAR (FY 94) COST \$ _____

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS. (Attach a separate page if necessary)

Rep. Ron Larson ^{RL} Co-Chair 465-3878
 Prepared By: Rep. Eileen MacLean, Co-Chair ^{EPM} Phone: 465-4833
 Division: House Finance Committee Date: 4/13/94
 Approved By: _____
 Agency: _____

COMMITTEE COPY

FISCAL NOTE

No. 2
 Bill Version HB 447
 (H) Publish Date: 2/4/94

STATE OF ALASKA
 1994 LEGISLATIVE SESSION

Revision Date: January 7, 1994
 Title: "An Act establishing the Afognak Island State Park."
 Sponsor: Rules Committee/Request of the Governor
 Requestor: Governor's Office/OMB

Department Affected: Department of Law
 BRU: Legal Services
 Component: Operations
 COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
 Please see the attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: January 7, 1994
 Approved by Commissioner: Bruce M. Botelho, Acting Attorney General
 Agency: Department of Law Date: January 7, 1994

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COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS CONTINUATION:

This bill would establish the Afognak Island State Park by incorporating the approximately 41,549 acres at Seal Bay and Tonki Cape for inclusion in the state park system. Monies for the purchase of these lands were provided by the Exxon Valdez Trustee Council and the subsequent expenditure to execute the purchase was approved by the Legislative Budget and Audit Committee on November 23, 1993. Any subsequent activities would require little, if any, involvement by the Department of Law and there should not be a fiscal impact for the department.

FISCAL NOTE

REQUEST:

Revision Date: Dept: Natural Resources

Title: Establish Afognak Island
State Park

BRU: Parks & Recreation Mgt.

Sponsor: Governor

Components: Park Management

Requestor: House Finance Committee

No: 452

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUNDING: (THOUSANDS OF DOLLARS)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

ESTIMATE OF ANY CURRENT YEAR (FY 94) COST \$

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

A2

Rep. Ron Larson, Co-Chair 465-3878
 Prepared By: Rep. Eileen MacLean, Co-Chair *EPM* Phone: 465-4833
 Division: House Finance Committee Date: 4/13/94
 Approved By: _____
 Agency: _____

COMMITTEE COPY

Letter of Intent

CSHB 447 (FIN)

Sen Reagin signed
ADOPTED

It is the intent of the legislature that Afognak Island State Park be managed from the Division of Parks and Outdoor Recreation office located in Kodiak.

It is the intent of the legislature that sources of funding other than state general funds be sought for the management of Afognak Island State Park. It is also the intent of the legislature that at least five public use cabins be built within Afognak Island State Park. A primary source of funds to be sought for these purposes is moneys managed by the Exxon Valdez Trustees Council.

Submitted by Sen Zhanf

Amend #2
P. 4
29

8-GH2025VJ

503 CS FOR HOUSE BILL NO. 447(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/15/94
Referred: Rules

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Afognak Island State Park."

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

3 * Section 1. AS 41.21 is amended by adding new sections to read:

4 Sec. 41.21.185. PURPOSE OF AS 41.21.185 - 41.21.189. (a) The purpose
5 of AS 41.21.185 - 41.21.189 is to establish, subject to valid existing rights including
6 those rights created by the Afognak Island Road Use Agreement executed on July 24,
7 1991, and as amended from time to time, the state-owned or acquired land and water
8 described in AS 41.21.186 as the Afognak Island State Park. The primary purposes
9 of establishing the Afognak Island State Park are to protect the area's recreational and
10 scenic resources; to protect the area's fish and wildlife habitat; to preserve and enhance
11 the continued use of the area for sport and subsistence hunting and fishing, personal
12 use fishing, trapping, recreational activities, and commercial fishing; and to restore and
13 enhance resources and services injured by the Exxon Valdez oil spill.

14 (b) Under the provisions of AS 38.05.300, state land, water, or land and water

1 containing more than 640 acres may be closed to multiple purpose use only by act of
2 the legislature. Because the area described in AS 41.21.186 exceeds 640 acres,
3 AS 41.21.185 - 41.21.189 are intended to close the described land and water to
4 multiple purpose use in conformity with AS 38.05.300 and to dedicate them as a
5 special purpose site in accordance with art. VIII, sec. 7, Constitution of the State of
6 Alaska.

7 (c) The legislature recognizes the rights of the owners of the private land that
8 adjoins the Afognak Island State Park established in AS 41.21.185 - 41.21.189. The
9 status of the land as a park will not impair the uses to which private land that adjoins
10 the park may be put in the future.

11 Sec. 41.21.186. AFOGNAK ISLAND STATE PARK ESTABLISHED. The
12 upland, shoreland, tideland, land underlying tidally influenced inland water, and water
13 overlying this land, including both the surface and subsurface estate, owned or
14 acquired by the state within the following described parcels are established as the
15 Afognak Island State Park:

16 (1) Township 21 South, Range 16 West, Seward Meridian according
17 to the United States of America, Department of the Interior, Bureau of Land
18 Management plat accepted December 6, 1989, and filed December 22, 1989

19 Section 19: Lots 1 - 3

20 Sections 30 - 31: (fractional) all;

21 (2) Township 22 South, Range 16 West, Seward Meridian according
22 to the United States of America, Department of the Interior, Bureau of Land
23 Management plat accepted December 6, 1989, and filed December 22, 1989

24 Section 6: (fractional) all

25 Section 7: Lots 1 - 2

26 Sections 18 - 19: (fractional) all

27 Section 31: (fractional) all;

28 (3) Township 20 South, Range 17 West, Seward Meridian according
29 to the United States of America, Department of the Interior, Bureau of Land
30 Management plat accepted December 6, 1989, and filed December 22, 1989

31 Section 32: (fractional) all;

1 (4) Township 21 South, Range 17 West, Seward Meridian according
2 to the United States of America, Department of the Interior, Bureau of Land
3 Management plat accepted December 6, 1989, and filed December 22, 1989

4 Sections 6 - 8: (fractional) all

5 Section 13: (fractional) all

6 Section 17: (fractional) all

7 Section 18: all

8 Sections 19 - 20: (fractional) all

9 Sections 23 - 24: (fractional) all

10 Section 25: all

11 Section 26: (fractional) all

12 Sections 29 - 31: (fractional) all

13 Sections 33 - 35: (fractional) all

14 Section 36: all;

15 (5) Township 22 South, Range 17 West, Seward Meridian according
16 to the United States of America, Department of the Interior, Bureau of Land
17 Management plat accepted December 6, 1989, and filed December 22, 1989

18 Section 1: all

19 Sections 2 - 5: (fractional) all

20 Sections 8 - 9: (fractional) all

21 Section 11: all

22 Section 12: (fractional) all

23 Sections 13 - 14: all

24 Section 17: (fractional) all

25 Sections 19 - 20: (fractional) all

26 Section 23: all

27 Sections 24 - 25: (fractional) all

28 Sections 26 - 29: all

29 Sections 30 - 31: (fractional) all

30 Sections 32 - 35: all

31 Section 36: (fractional) all;

1 (6) All of Township 23 South, Range 17 West, Seward Meridian
2 according to the United States of America, Department of the Interior, Bureau of Land
3 Management plat accepted December 6, 1989, and filed December 22, 1989; and the
4 supplemental plat for Section 3 accepted April 11, 1990, and filed April 19, 1990, and
5 the supplemental plat for Section 19 accepted November 9, 1990, and filed
6 November 23, 1990;

7 (7) Township 21 South, Range 18 West, Seward Meridian according
8 to the United States of America, Department of the Interior, Bureau of Land
9 Management plat accepted December 6, 1989, and filed December 22, 1989

10 Section 1: Lots 1 - 3

11 Sections 11 - 12: (fractional) all

12 Section 13: all

13 Section 14: (fractional) all

14 Section 15: Lots 1 and 2

15 Section 16: Lots 1 and 2

16 Section 17: Lot 1, excepting the property described as follows:

17 Commencing at the monument set for the northwest corner of Section 6,
18 Township 21, South, Range 18 West, Seward Meridian, proceed South a
19 distance of 10,560 feet along the westerly boundaries of Sections 6 and 7;
20 thence proceed East along the section line common to sections 7 and 18 a
21 distance of 4999 feet, more or less, to the protracted section corner common
22 to sections 7, 8, 17, and 18, said corner being the True Point of Beginning;
23 thence continuing East a distance of 1320 feet along the north boundary of
24 Lot 1 of section 17; thence South a distance of 2640 feet; thence West a
25 distance of 1320 feet, more or less, to the westerly boundary of Lot 1 of
26 section 17; thence North a distance of 2640 feet, more or less, along the
27 westerly boundary of said Lot 1 of section 17 to the True Point of Beginning;
28 The foregoing exception having an area of 80 acres, more or less

29 Section 17: Lot 2: all

30 Sections 20 - 22: (fractional) all

31 Sections 23 - 29: all

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Sections 31 - 36: all;

(8) Township 22 South, Range 18 West, Seward Meridian according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted December 6, 1989, and filed December 22, 1989

Section 36: Lot 2;

(9) Township 23 South, Range 18 West, Seward Meridian according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted December 6, 1989, and filed December 22, 1989

Section 1: Lot 1

Section 12: Lot 1

Section 13: Lots 1, 2, and 3

Sections 24 - 25: (fractional) all;

(10) Township 21 South, Range 19 West, Seward Meridian according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted December 6, 1989, and filed December 22, 1989

Sections 35 - 36: all

All of plat no. 93-40 within portions of Sections 26, 27, and 34, as filed in the Kodiak Recording District October 19, 1993;

(11) All of Alaska Tideland Survey No. 1474.

Sec. 41.21.187. DESIGNATION OF MANAGEMENT RESPONSIBILITY.

(a) The state land and water described in AS 41.21.186 is assigned to the department as a unit of the state park system for control, maintenance, and development consistent with the purposes and provisions of AS 41.21.185 - 41.21.189.

(b) The Department of Fish and Game is responsible for the management of fish and game resources in the Afognak Island State Park, consistent with the sustained yield principle and the purposes and provisions of this chapter. The Board of Fisheries, the Board of Game, and the commissioner of fish and game are responsible for adopting regulations governing uses of fish and game in accordance with AS 16. The fish and game habitat and breeding areas shall be managed to ensure that the fish and game resources of the park and habitat are maintained or enhanced.

(c) The Department of Natural Resources shall consult with the Department

1 of Fish and Game before adoption of regulations governing public use of the Afognak
2 Island State Park.

3 (d) The Board of Fisheries, the Board of Game, and the commissioner of fish
4 and game shall consult with the Department of Natural Resources before adoption of
5 regulations governing fish and game use in the Afognak Island State Park.

6 (e) Regulations under this section shall be adopted under AS 44.62
7 (Administrative Procedure Act).

8 (f) The Department of Public Safety and the Department of Fish and Game
9 shall have necessary access to the Afognak Island State Park for fish and game
10 management, research, and enforcement purposes.

11 Sec. 41.21.188. INCOMPATIBLE USES. (a) The commissioner may
12 designate by regulation incompatible uses within the land and water of the Afognak
13 Island State Park.

14 (b) Lawful use of a weapon in the Afognak Island State Park shall be allowed
15 except in areas that may be closed for purposes of public safety by regulation by the
16 commissioner.

17 (c) The regulations governing public use of the Afognak Island State Park
18 must provide reasonable access for lawful sport and subsistence hunting and fishing,
19 personal use fishing, trapping, recreational uses, and commercial fishing. Except to
20 protect public safety, the commissioner may not restrict the exercise of sport or
21 subsistence hunting or fishing, personal use fishing, trapping, or commercial fishing
22 permitted under law or under a regulation of the Board of Fisheries or the Board of
23 Game within the Afognak Island State Park.

24 (d) The commissioner may not designate as an incompatible use a use
25 permitted by the Afognak Island Road Use Agreement executed on July 24, 1991, as
26 amended.

27 Sec. 41.21.189. ADDITIONS TO PARK. Land and water outside of the
28 boundaries established under AS 41.21.186 may be added to the Afognak Island State
29 Park only by an act of the legislature. The commissioner ^{OF D.N.R.} may ^{not} acquire land and water
30 within the boundaries of the Afognak Island State Park ~~except~~ by eminent domain.

5/8/94
Jerry.
L.
said.
Commissioner
is defined
in title 41
to apply
to Commissioner.
HB0447c of D.N.R.
It is not necessary
to identify him as such
here.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

May 9, 1994

SUBJECT: Afognak Island State Park - SCS CSHB 447(FIN)
(Work Order No. 8-GH2025\K)

TO: Senator Drue Pearce
Attn: Billy Miles

FROM: Jerry Luckhaupt *GPL:lmb*
Legislative Counsel

Enclosed is the Finance Senate Committee Substitute you requested. Please be advised that the change made by the Finance Committee, on page 6, lines 29 - 30 of the version that passed the House, has substantively altered the bill by removing the explicit grant of authority to the commissioner of natural resources to acquire land and water within the boundaries of the park by means other than eminent domain. The current language on page 6, lines 29 - 30 of the Finance Senate Committee Substitute merely provides a prohibition on acquiring land within the park by eminent domain without an explicit accompanying grant of authority to acquire land within the park by other means.

GPL:lmb
94-157.lmb

Enclosure

SENATE FINANCE COMMITTEE REPORT

DATE: 4/19/94

FURTHER:

DATE TURNED INTO OFFICE: 5-8-94

Finance Committee considered CS FOR HOUSE BILI. NO. 447(FIN)

"An Act establishing the Afognak Island State Park."

and recommends:

replace with 5 CS CS HB 447 (FINANCE)
 or adopt previous _____ CS _____ (_____)
 attaches amendment(s)

same title
 new title
 technical title change (HB only)

adopts Senate Finance Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DPS	1/6/94	0	
DORAW	1/7/94	0	
HFC/DNR	4/13/94	0	

Appropriation No Fiscal Note

DO PASS:

Steve Pugh

OTHER RECOMMENDATIONS:

Best that do NOT pass
[Signature]

1. True Peace - 10/2/94
 Co-Chair: Signature/Recommendation

2. Tom Kelly - No Rec
[Signature] NO REC
 Co-Chair: Signature/Recommendation

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS AND OUTDOOR RECREATION

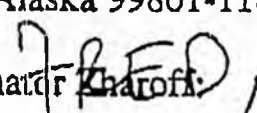
WALTER J. HICKEL, GOVERNOR

3601 C STREET, SUITE 1200
ANCHORAGE, ALASKA 99503
PHONE: (907) 762-2800

MAILING ADDRESS:
P.O. BOX 107001
ANCHORAGE, A SKA 99510-7001

March 24, 1994

The Honorable Fred Zharoff
Alaska State Senate
State Capitol
Juneau, Alaska 99801-1182


Dear Senator ~~Zharoff~~, 

Thank you for the call on March 23rd regarding the proposed Afognak Island State Park, CSSB 280. We appreciate your retaining lands in the bill which were selected in the 1970's for recreation purposes.

Per your request, this letter is to state our intent to manage the park from our offices in Kodiak, and to utilize Exxon Criminal Funds appropriated to the Division of Parks and Outdoor Recreation to construct at least 5 public use cabins. These cabins, including their locations, will be the subject of public meetings in Kodiak, if the park is established.

I appreciate your continuing support for the state park system.

Sincerely,


Neil C. Johannsen
Director

cc: Craig Tillery
Jerry Gallagher
Dave Stephens
Claire Holland

APR 25 1994

HB 447

Kachemak Bay State Park CAB

David Stutzer, Chair

P.O. Box 2296

Homer, AK 99603

Senate Finance Committee Members

Alaska State Legislature

State Capitol (MS 3100)

Juneau, AK 99801-1182

Dear Committee Members,

At our regular monthly meeting on April 14, 1994, the Kachemak Bay State Park Citizen Advisory Board voted unanimously to oppose amendments to SB 280 / HB 447 that would result in the repeal of any existing State Park units. We support the establishment of Afognak Island State Park, which will greatly benefit the public, the local economy and help restore resources and recreational opportunities lost or damaged as a result of the Exxon Valdez oil spill.

We feel that the repeal of any State Parks, State Marine Parks or State Recreation Areas or portions thereof, is wholly unacceptable. The citizens of Alaska and visitors to the state need and greatly value State Parks for their opportunities for recreation, solitude and magnificent scenery. State parks also offer substantial economic benefits in the tourism industry and provide opportunities for long term, sustainable jobs.

Please oppose any changes to SB280 / HB 447 which would degrade our state by repealing existing State Parks.

Sincerely,



David Stutzer, Chair

Copies: Rep. Gail Phillips
Rep. Mike Navarre
Rep. Gary Davis
Sen. Judith Salo
Sen. Suzanne Little
Neil Johannsen, Director DPOR

5-8-94
p. 6
29
insert
8-GH2025V
~~insert~~
amend
remove
"except"

CS FOR HOUSE BILL NO. 447(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/15/94
Referred: Rules

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Afognak Island State Park."

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

3 * Section 1. AS 41.21 is amended by adding new sections to read:

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5 of AS 41.21.185 - 41.21.189 is to establish, subject to valid existing rights including
6 those rights created by the Afognak Island Road Use Agreement executed on July 24,
7 1991, and as amended from time to time, the state-owned or acquired land and water
8 described in AS 41.21.186 as the Afognak Island State Park. The primary purposes
9 of establishing the Afognak Island State Park are to protect the area's recreational and
10 scenic resources; to protect the area's fish and wildlife habitat; to preserve and enhance
11 the continued use of the area for sport and subsistence hunting and fishing, personal
12 use fishing, trapping, recreational activities, and commercial fishing; and to restore and
13 enhance resources and services injured by the Exxon Valdez oil spill.

14 (b) Under the provisions of AS 38.05.300, state land, water, or land and water

1 containing more than 640 acres may be closed to multiple purpose use only by act of
2 the legislature. Because the area described in AS 41.21.186 exceeds 640 acres,
3 AS 41.21.185 - 41.21.189 are intended to close the described land and water to
4 multiple purpose use in conformity with AS 38.05.300 and to dedicate them as a
5 special purpose site in accordance with art. VIII, sec. 7, Constitution of the State of
6 Alaska.

7 (c) The legislature recognizes the rights of the owners of the private land that
8 adjoins the Afognak Island State Park established in AS 41.21.185 - 41.21.189. The
9 status of the land as a park will not impair the uses to which private land that adjoins
10 the park may be put in the future.

11 Sec. 41.21.186. AFOGNAK ISLAND STATE PARK ESTABLISHED. The
12 upland, shoreland, tideland, land underlying tidally influenced inland water, and water
13 overlying this land, including both the surface and subsurface estate, owned or
14 acquired by the state within the following described parcels are established as the
15 Afognak Island State Park:

16 (1) Township 21 South, Range 16 West, Seward Meridian according
17 to the United States of America, Department of the Interior, Bureau of Land
18 Management plat accepted December 6, 1989, and filed December 22, 1989

19 Section 19: Lots 1 - 3

20 Sections 30 - 31: (fractional) all;

21 (2) Township 22 South, Range 16 West, Seward Meridian according
22 to the United States of America, Department of the Interior, Bureau of Land
23 Management plat accepted December 6, 1989, and filed December 22, 1989

24 Section 6: (fractional) all

25 Section 7: Lots 1 - 2

26 Sections 18 - 19: (fractional) all

27 Section 31: (fractional) all;

28 (3) Township 20 South, Range 17 West, Seward Meridian according
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30 Management plat accepted December 6, 1989, and filed December 22, 1989

31 Section 32: (fractional) all;

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3 Management plat accepted December 6, 1989, and filed December 22, 1989

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5 Section 13: (fractional) all

6 Section 17: (fractional) all

7 Section 18: all

8 Sections 19 - 20: (fractional) all

9 Sections 23 - 24: (fractional) all

10 Section 25: all

11 Section 26: (fractional) all

12 Sections 29 - 31: (fractional) all

13 Sections 33 - 35: (fractional) all

14 Section 36: all;

15 (5) Township 22 South, Range 17 West, Seward Meridian according
16 to the United States of America, Department of the Interior, Bureau of Land
17 Management plat accepted December 6, 1989, and filed December 22, 1989

18 Section 1: all

19 Sections 2 - 5: (fractional) all

20 Sections 8 - 9: (fractional) all

21 Section 11: all

22 Section 12: (fractional) all

23 Sections 13 - 14: all

24 Section 17: (fractional) all

25 Sections 19 - 20: (fractional) all

26 Section 23: all

27 Sections 24 - 25: (fractional) all

28 Sections 26 - 29: all

29 Sections 30 - 31: (fractional) all

30 Sections 32 - 35: all

31 Section 36: (fractional) all;

1 (6) All of Township 23 South, Range 17 West, Seward Meridian
2 according to the United States of America, Department of the Interior, Bureau of Land
3 Management plat accepted December 6, 1989, and filed December 22, 1989; and the
4 supplemental plat for Section 3 accepted April 11, 1990, and filed April 19, 1990, and
5 the supplemental plat for Section 19 accepted November 9, 1990, and filed
6 November 23, 1990;

7 (7) Township 21 South, Range 18 West, Seward Meridian according
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9 Management plat accepted December 6, 1989, and filed December 22, 1989

10 Section 1: Lots 1 - 3

11 Sections 11 - 12: (fractional) all

12 Section 13: all

13 Section 14: (fractional) all

14 Section 15: Lots 1 and 2

15 Section 16: Lots 1 and 2

16 Section 17: Lot 1, excepting the property described as follows:

17 Commencing at the monument set for the northwest corner of Section 6,
18 Township 21, South, Range 18 West, Seward Meridian, proceed South a
19 distance of 10,560 feet along the westerly boundaries of Sections 6 and 7;
20 thence proceed East along the section line common to sections 7 and 18 a
21 distance of 4999 feet, more or less, to the protracted section corner common
22 to sections 7, 8, 17, and 18, said corner being the True Point of Beginning;
23 thence continuing East a distance of 1320 feet along the north boundary of
24 Lot 1 of section 17; thence South a distance of 2640 feet; thence West a
25 distance of 1320 feet, more or less, to the westerly boundary of Lot 1 of
26 section 17; thence North a distance of 2640 feet, more or less, along the
27 westerly boundary of said Lot 1 of section 17 to the True Point of Beginning;
28 The foregoing exception having an area of 80 acres, more or less

29 Section 17: Lot 2: all

30 Sections 20 - 22: (fractional) all

31 Sections 23 - 29: all

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Sections 31 - 36: all;

(8) Township 22 South, Range 18 West, Seward Meridian according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted December 6, 1989, and filed December 22, 1989

Section 36: Lot 2;

(9) Township 23 South, Range 18 West, Seward Meridian according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted December 6, 1989, and filed December 22, 1989

Section 1: Lot 1

Section 12: Lot 1

Section 13: Lots 1, 2, and 3

Sections 24 - 25: (fractional) all;

(10) Township 21 South, Range 19 West, Seward Meridian according to the United States of America, Department of the Interior, Bureau of Land Management plat accepted December 6, 1989, and filed December 22, 1989

Sections 35 - 36: all

All of plat no. 93-40 within portions of Sections 26, 27, and 34, as filed in the Kodiak Recording District October 19, 1993;

(11) All of Alaska Tideland Survey No. 1474.

Sec. 41.21.187. DESIGNATION OF MANAGEMENT RESPONSIBILITY.

(a) The state land and water described in AS 41.21.186 is assigned to the department as a unit of the state park system for control, maintenance, and development consistent with the purposes and provisions of AS 41.21.185 - 41.21.189.

(b) The Department of Fish and Game is responsible for the management of fish and game resources in the Afognak Island State Park, consistent with the sustained yield principle and the purposes and provisions of this chapter. The Board of Fisheries, the Board of Game, and the commissioner of fish and game are responsible for adopting regulations governing uses of fish and game in accordance with AS 16. The fish and game habitat and breeding areas shall be managed to ensure that the fish and game resources of the park and habitat are maintained or enhanced.

(c) The Department of Natural Resources shall consult with the Department

1 of Fish and Game before adoption of regulations governing public use of the Afognak
2 Island State Park.

3 (d) The Board of Fisheries, the Board of Game, and the commissioner of fish
4 and game shall consult with the Department of Natural Resources before adoption of
5 regulations governing fish and game use in the Afognak Island State Park.

6 (e) Regulations under this section shall be adopted under AS 44.62
7 (Administrative Procedure Act).

8 (f) The Department of Public Safety and the Department of Fish and Game
9 shall have necessary access to the Afognak Island State Park for fish and game
10 management, research, and enforcement purposes.

11 Sec. 41.21.188. INCOMPATIBLE USES. (a) The commissioner may
12 designate by regulation incompatible uses within the land and water of the Afognak
13 Island State Park.

14 (b) Lawful use of a weapon in the Afognak Island State Park shall be allowed
15 except in areas that may be closed for purposes of public safety by regulation by the
16 commissioner.

17 (c) The regulations governing public use of the Afognak Island State Park
18 must provide reasonable access for lawful sport and subsistence hunting and fishing,
19 personal use fishing, trapping, recreational uses, and commercial fishing. Except to
20 protect public safety, the commissioner may not restrict the exercise of sport or
21 subsistence hunting or fishing, personal use fishing, trapping, or commercial fishing
22 permitted under law or under a regulation of the Board of Fisheries or the Board of
23 Game within the Afognak Island State Park.

24 (d) The commissioner may not designate as an incompatible use a use
25 permitted by the Afognak Island Road Use Agreement executed on July 24, 1991, as
26 amended.

27 Sec. 41.21.189. ADDITIONS TO PARK. Land and water outside of the
28 boundaries established under AS 41.21.186 may be added to the Afognak Island State
29 Park only by an act of the legislature. The commissioner may ^{DN} ~~acquire~~ acquire land and water
30 within the boundaries of the Afognak Island State Park ~~except~~ by eminent domain.

*Amended #1
FAILED*

*Amended #2
ADOPTED*

HB 447

WALTER J. HICKEL
GOVERNOR



P. O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 4, 1994

The Honorable Ramona L. Barnes
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Barnes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill creating the Afognak Island State Park.

On August 23, 1993, the Exxon Valdez Oil Spill Trustee Council (council) adopted a resolution approving, for restoration purposes, acquisition of approximately 41,549 acres of land in Alaska on the northeast corner of Afognak Island, including Seal Bay and Tonki Cape. Although the federal government initially expressed a desire to include this property within the Kodiak National Wildlife Refuge, portions of which are located nearby, the state trustees on the council persuaded the council as a whole that this property has a more logical connection with Shuyak State Park, located on an island immediately to the north of the Seal Bay property. Thus, the resolution adopted by the council provided the state the first opportunity to acquire title to this invaluable Alaska property. The resolution further provided that, to fulfill the council's restoration obligations, the property was to be included in a state park and commercial timber harvest was not to be permitted. The resolution specifically allowed limited commercial use as well as sport, personal use, and subsistence hunting and fishing, trapping, and recreational uses, insofar as they are permitted under law or regulations of the Board of Fisheries or Board of Game. Only if the state was unwilling or unable to establish a state park was the federal government to take title to this property.

Based on the council's resolution, the state entered into a purchase agreement on November 4, 1993 with the Seal Bay Timber Company, owner of the property, and The Nature Conservancy. The agreement provided for title to the property to first go to The Nature Conservancy to hold until the state has an opportunity to establish a park to accept the property.

Under AS 37.07.080(h) and AS 37.14.450, the Legislative Budget and Audit Committee approved the expenditure of EXXON VALDEZ civil trust money for the purchase at its November 5, 1993 meeting. The purchase was completed on November 23, 1993 when title to the property passed to The Nature Conservancy.

The Honorable Ramona Barnes
February 4, 1994
Page 2

In accordance with the purchase agreement, The Nature Conservancy will convey the property to the state for placement in a state park if the park is created by November 23, 1994, one year from the date of purchase. Otherwise, the property must be conveyed to the federal government for placement in a federal conservation unit. The purpose of this bill is to create that required state park.

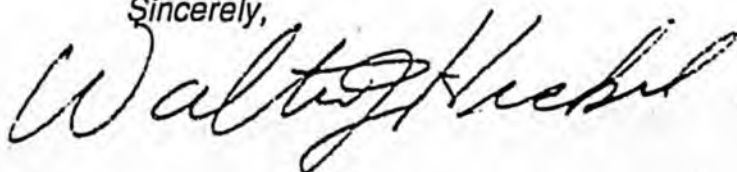
The acquisition and protection of this land in a state park has widespread and nearly unanimous public support. Expressions of support for the acquisition have come from such diverse groups as the Kodiak Island Borough mayor and assembly, City of Kodiak, Kodiak Chamber of Commerce, various commercial fishing groups, local tour operators, and environmental organizations.

Seal Bay has historically supported high value wilderness-based recreation such as hunting, boating, and fishing. The area has high scenic value and excellent wildlife viewing. It contains important habitat for several species of wildlife for which significant injury resulting from the oil spill has been documented, including marbled murrelets, harlequin ducks, black oyster catchers, and river otters. Harbor seal haulouts and intertidal and subtidal biota are all found in substantial numbers along the shoreline. Concentrations of sea otters exist in this area. Anadromous streams and bald eagle nests are found on this property. Protection of this property will aid recovery of these injured resources and services.

The proposed park would include all lands acquired from Seal Bay Timber Company as well as tidelands. Submerged lands would not be included except those lying within lagoons on the property. The Department of Fish and Game would be responsible for the management of fish and game resources in the park, consistent with the principle of sustained yield. Sport and subsistence hunting and fishing, personal use fishing, trapping, recreational activities, and commercial fishing would be permitted in the park. These are the purposes for which Alaskans have traditionally used these lands. By creating a state park for this property, we will ensure that future generations will be able to continue to use and enjoy this magnificent part of our state.

I urge your prompt consideration and passage of this bill.

Sincerely,



Walter J. Hickel
Governor