

545

SRES

SB 59

S B

5 9

SENATE

FURTHER: FINANCE

4/6/78

Date: 4/24/78

Mr. President:

The Committee on RESOURCES has had SSSB 59
Forest resources and practices

under consideration and (a majority of the committee) (the committee reports it back as follows)

() recommends it do pass () recommends it do not pass

() recommends it do pass with attached amendment(s)

() recommends it be replaced with CS for _____

and _____ () new title () same title

() AND attaches a Letter of Intent () New Fiscal Note

() reports it back without recommendation

() and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Chairman

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

DATE
Form 100
2419

April 10
12 -

1:30 A.M.
Room 126
Capital

SENATE RESOURCES COMMITTEE

Attached in order of appearance are the testimonies of the hearing on Senate Bill 59, held on February 11, 1977.

Testimonies include:

- ✓ 1. Guy Martin - Commissioner, Department of Natural Resources
Jeff Haynes - Assistant Attorney General
- 2. Robert Rehfeld - Assistant Regional Forester
- ✓ 3. John Borbridge - SEAlaska Corporation *6-512*
- ✓ 4. Mike Leach - Society of American Foresters *6-66190*
- ✓ 5. Warren Weathers - Shee Atika, Incorporated *747-3534*
- 6. Jim Clark - Alaska Lumber and Pulp Company *Jureau*
- ✓ 7. Robert Loescher - Goldbelt Corporation *6-6244*

SB 59

✓ Wilson
Seal of Alaska
6-7212

Clarence Jackson
HB 40

✓ Command
Reynolds
Bird
Parks
6-7484

✓ Church Process
Church Natures

M

Walzer

Testimony of Commissioner Guy Martin
Department of Natural Resources and
Jeff Haynes, Assistant Attorney General

February 11, 1977
Hearing on SB 59

COMMISSIONER MARTIN - Madam Chairman, I think that I should stand here with Jeff Haynes the Assistant Attorney General who has done a great bulk of the work on this legislation. This bill, as you know, was introduced in the last Legislature, and I should say at the outset that the bill you have before you has been changed somewhat, but is basically the same bill. We think that it has been improved, and its improvements are a result of further consultation since the last legislative session.

CHAIRMAN POLAND - Commissioner, that bill never reached this committee last year.

COMMISSIONER MARTIN - I understand that Madam Chairman. In any case for those who did see the bill, it is similar, but has been somewhat changed. Those changes can be pointed out to you by Mr. Haynes. I'm going to have to apologize because of the holiday. I guess Commissioners and Legislators are working, but some of the staff in the Department is gone and there are some maps and some other information that I will make available for the committee records and to all members, however, I was unable to get it today without the help of some of the staff.

CHAIRMAN POLAND - I'm sure that we will have at least one, if not more, meetings on the bill before we're through.

COMMISSIONER MARTIN - I think it is the sort of subject that merits that, and it is one that we are very willing to work with, whatever interest exists, to shape into a good piece of legislation. Let me just briefly speak to the policy of the bill before turning it over to Jeff Haynes. Basically, Madam Chairman, I think it sprang from our feeling that many of the western states where there were timber resources, were under diverse ownership ranging from public ownership in State and local governments to private ownership in a broad variety of ownerships, all the way from small individual landowners to quite large corporate landowners, and that the history of forestry and of the forest practices in that area was very mixed. Overall, the trend has shown, and we will supply information that I think can support that fact, that in many cases the management, with all of the diverse owners operating in terms of the forest practices, has been unsuccessful in terms of the long range sustained yields of those forests. It doesn't condemn any individual owner, it simply indicates that when so many people are managing individually owned forest resources in

Testimony of Commissioner Guy Martin
and Assistant Attorney General Jeff Haynes Cont.
February 11, 1977
Hearing on SB 59

different ways and not dealing with it as a unitary matter across ownership lines, there has been damage to the renewable aspect of that resource, and our thought and the policy that we put behind this bill is basically that for some purposes. We think those purposes should be very limited and very reasonable. We should treat the forest resources of Alaska as one large resource subject to a certain group of practices which should help the State to sustain those very important resources over a very long period of time. Now, I would say that among many bills that I've worked on since I've been here, I think very few have had a greater level of consultation, thanks mostly to Mr. Haynes. I think that it can fairly be said that he has made the broadest possible attempt to work with diverse groups to make this bill be fair and make sense. In many cases we've gotten at least reasonably good endorsements from people that we've worked with on the bill. That is not to imply that there is unanimity, that it's either a good idea, or that the bill is good, but it has been very broadly worked on by a number of interests. The philosophy of the bill is to not affect the small owner a great deal, but rather to look at general policies and practices which are important to protect the overall forest resources of the State. Let me at this point end my remarks except to answer other questions, and possibly turn it over to Mr. Haynes to at least walk you through the bill and indicate how we've carried out some of those policy ideas.

CHAIRMAN POLAND - Are there any questions of Mr. Martin before Mr. Haynes starts? If not, thank you Commissioner. Mr. Haynes.

JEFF HAYNES - Thank you, Madam Chairman, Members of the Committee. I'll try to go through and highlight some significant portions of the bill and give you an idea of why we did what we did starting off with Section 0 0, just the findings and purposes section. It recognizes that one of the main purposes of the bill is to maintain a perpetuity of the timber industry in the State and forest products industry. What is really the chief objective here is to maintain an industry which is stable and which recognizes this isn't really a state-wide asset. The administration of the bill would be with the Commissioner of the Department of Natural Resources, and, of course, we've added in some other powers which are fairly typical in State forest practices acts. Things like experimental forests and cooperative forestry programs, extension service programs, and things like that, so that the Department of Natural Resources may assist the private landowner in the perspective of his own timber resources. As the Commissioner mentioned, we do have a section in here on exemptions. This is quite important.

Testimony of Commissioner Guy Martin
and Assistant Attorney General Jeff Haynes Cont.
February 11, 1977
Hearing on SB 59

There are two exemptions in this section. One is small landowners - landowners of tracts of 160 acres or less. We don't really feel that it is within the objectives of this particular bill to regulate that sort of thing. What we are after are major types of operations. For the same reason, we have exempted non-commercial forest lands which is under municipal or private ownership. I don't have the map here which shows what is commercial and what is non-commercial forest land. We've keyed our definitions to those used by the forest service.

SENATOR HUBER - Could I get a clarification at this point? This would mean then, if somebody owns 300 acres of cleared farm land in an area, which on your map is commercial forest, he would be classified as commercial forest. Is that right?

JEFF HAYNES - Commercial forest is determined by what types and what volume or quantity of trees there are on a particular site. It's cleared land. I don't see why it would be commercial forest.

SENATOR HUBER - You said it goes by map.

MR. HAYNES - It goes by definition. We indicated that there is a map that tends to show generally what would be covered and not covered.

SENATOR HUBER - If you're in an area, and you are obviously on a commercial forest - I'm thinking of a farmer with 300 acres of cleared land and 40 acres of wood lot. He might sell a little wood off it. Is he exempt or not?

MR. HAYNES - We don't intend to cover that type of individual. Madam Chairman, we drew the line at 160 acres, but maybe there is a more reasonable line to draw or a more reasonable definition.

SENATOR HUBER - I was referring to A, but maybe I'll understand it better as you go along.

JEFF HAYNES - I think there's a definition in the back which will help you.

One of the controversies that has sort of taken place over forest practices acts in other states, and I should mention at this point that we could go through and review all of the legislation that is presently on the books in other states and try to see what they have done and why, and how well accepted that was by the public. In that same context we went through and looked at the recommendations of the Society of American

Testimony of Commissioner Guy Martin
and Assistant Attorney General Jeff Haynes Cont.
February 11, 1977
Hearing on SB 59

Foresters, and those other groups have made about forest practices legislation. One of the things which we have more or less decided to do here was not to put actual forest practices per say in the legislation. This is what California did, but that has not been very well received. So, we have opted instead for a system which basically allows for the development of regulations, and those would be your forest practices. We have set up, instead, some very general standards which would govern setting of those regulations, and that is what you see in section 0 40. Not only that, but we have come up with two different sets of standards, one which applies to all of the forest land which would be subject to this bill, that is subsection B, and then another set of standards which are really quite a bit stricter and have to do with things like multiple use which applies only to public forest lands. In other words, we would be using different standards for private land, and for public land to reflect what, in fact, the public interest is.

Section 0 50 has to do with an administrative plan and report, and basically this is a duty which would be imposed on the Commissioner of Natural Resources to come up with and maintain a plan showing that in fact the basic objectives of this act are being carried out in a report to the legislature at two year intervals.

Section 0 60 is the regulations themselves. These are pretty straightforward in that most of the subject matter headings are taken from other forest practices acts from other states. There is of course a provision in here requiring consultation with all sorts of public and private organizations, and does allow for the establishment of different forest practices in different areas of the state to reflect the fact that there are different varying conditions as well.

Subsection C. One of the things we really did not want to do here was establish a whole new bureaucracy just for dealing with forest management and practices. It is really not necessary. What we are trying to do is more or less fill in the blanks in the existing statutes only to the extent necessary to accomplish the purpose of this goal. We are not trying to duplicate or preempt the statutory authority of other agencies.

I might add that we are also attempting to impose only the most minimal burden on any timber operator who might be subject to the act. This is reflected in subsection E which says we are only supposed to adopt those regulations which are necessary and which do not just merely increase operating costs.

Testimony of Commissioner Guy Martin
and Assistant Attorney General Jeff Haynes Cont.
February 11, 1977
Hearing on SE 59

Maybe the most significant compromise, in terms of approaches, is Section 0 70. This is where you really get down to looking at individual operations. There are two systems that are used now in other states. One is called a notification system. In that instance, the timber operator merely notifies the government that he's going out in the field, and that's all the contact there is. Then he goes out and does it. In other states they have what is called a prior approval system. In this case you have to submit a detailed plan. In some states the plans have to be done by a licensed forester. In states like California, a plan may approach the depth of something like an environmental impact statement, and in that case, there's a very detailed review by the government before the guy can go out and do anything. There are advantages to each of those systems as well as disadvantages. The notification system is very simple, and it's not very expensive to administer, but the problem is that in a state especially as large as Alaska, the government really has no idea what the guy is doing because all he's done is told them that he's going to operate, and the operator has not really much contact with the State, which means he isn't going to get the benefit of any kind of cooperative programs or service assistance programs or something that the State might have. He also is not going to understand very well what the regulations or practices established by the State really mean, so you have a much higher possibility of inadvertant violations. The prior approval system, of course, is very expensive to administer. It does have the benefit of allowing the government to know what exactly the guy is going to do, but in many cases it is extremely onerous on the operator, requires a lot more paperwork, and requires a lot of delays that are really not necessary. What we tried to do is split it up, and take the best out of each of those systems. What we have here is a very very minimal type of review and approval. It is merely a notification to the Commissioner by the operator of a very brief description of what he is going to do. After that, there is a statutory review period by the State, but it is iron-clad. There is a set number of days, and there is no way to go beyond that. The State has to make up its mind within that period of time what it wants. If they feel there is something in that operation that they think they need to look at more closely, they can require something more like a full-scale plan, but only for that aspect of the operation which they find questionable, otherwise, they just let it go. So, we are trying to set this up so that insofar as there is contact between the operator and the State, it is only to the extent necessary to accomplish the purposes of this bill, and not to require the operator to go through a lot of i.a. _____ for no purpose whatsoever. In other words, not a lot of bureaucracy,

Testimony of Commissioner Guy Martin
and Assistant Attorney General Jeff Haynes Cont.
February 11, 1977
Hearing on SB 59

and we think we've done that here. We've spent a lot of time writing this section, and we think we have made it as close as possible to what the minimum necessary would really be. Again, there is an iron-clad time review period here, and if the Department of Natural Resources fails to take action within that time review period, they are presumed to approve that operation. So there is no way that the government can drag on a delay and put the operator at a disadvantage.

Again, we have emphasized in this section on operations that the practicalities and economic constraints affecting the operator must be looked at. We have even stated that the paperwork required of the operator must be kept at the minimum necessary, so we've stressed that many times in this legislation.

We have a special section in here, section 0 80, on deployment of chemicals. There is not much of that going on in the State right now, and most of the people we have talked to felt that this was really one type of area which should require specific approval by the State in each instance because of potentiality or abuse in using broadcast chemicals.

Section 0 90 has to do with conversion of forest land - other uses. We can't really prevent that constitutionally, but we did say we set this up so that if somebody is going to convert a forest land to another use, then he has to do so within the time which he would ordinarily be required to regenerate that particular tract. It would probably be about 5 years. In other words, that is to prevent subtrafuge, with some guy saying he's going to convert it, and basically all he's doing is just not taking any steps to regenerate it. If he does in fact convert it within that time period then that's good enough.

The section on new investigations and enforcement in the field is pretty straight forward.

The prohibition and penalties section - this is pretty much taken out of the Oregon Act, except that we rewrote it because we felt that the Oregon legislation was very unclear as to what the procedures were. This is a straight administrative penalty system. There are no criminal penalties in this act at all. There is plenty of due process in here for the operator, and also some pretty decent constraints on the State as far as what kind of penalties can be imposed and what factors they have to consider in determining what the penalties are. I could go through that with you, but it's pretty lengthy, and I don't know that you'd want to do that at this time.

Testimony of Commissioner Guy Martin
and Assistant Attorney General Jeff Haynes Cont.
February 11, 1977
Hearing on SB 59

There is a fairly straight-forward provision again on appeals and judicial review, and one on civil action. This is sort of a citizens provision, but it is limited to those duties which are discretionary with the Commissioner. In other words, only those duties under the act which if mandated by law, can be enforced by citizens actions.

Finally, the last part is the definition section. I might point out to Senator Huber that the first definition there is commercial forest land, and that might help explain to you what lands would in fact be covered because that's what we tried to do. That is the same definition used by the Forest Service which means that all their inventory work is valid as far as determining what land would and would not be subject to this act. There are a couple of other definitions in here which are significant.

The definition of multiple use is basically the same as in the Federal Act and the same for sustained yield.

I think that's it. You may have a lot of questions on this. I hate to summarize something that is this significant in ten or fifteen minutes, and I'm sure I've missed some things, but if you've got any questions, I'll try to answer them.

(It was decided that the Committee would wait to ask any questions of Mr. Haynes until after the testimonies of those opposing the bill.)

2
UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

P.O. Box 1628, Juneau, AK 99802

Robert Rehfeld

1510

January 25, 1977

The Honorable Alvin Osterback
Chairman House Resources
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811



Dear Representative Osterback:

This responds to your request for a statement on forestry activities at the State level. The Forest Service strongly supports measures which will strengthen the professional forestry staff and organization of State governments so that professional forestry expertise can better serve the needs of people in the management of forests and related resources. With the imminent acquisition of the full 103.4 million acres of land provided by the Statehood Act and approximately 44 million acres transferring to Native ownership, such measures are timely.

The State forestry staff is already charged with responsibility for protecting State and private lands from fire, insect, and disease attack. A statewide organization able to meet these demands needs the equipment, experienced managers, and training to provide this support. It needs the cooperation of local communities to provide the manpower during periods of extreme fire hazard, and it must be able to react rapidly to minimize delays in meeting these demands. A trained statewide organization can effectively handle such situations.

Our present State forestry organization is beginning the major task of fielding fire protection forces to protect Alaskan life and property with the gradual phase out of the Bureau of Land Management protection contract. Experience in firefighting and organization of a cadre of district personnel capable of leading temporary firefighters is of paramount importance for making the operation function.

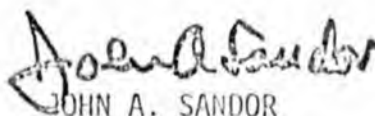
In the area of management, the renewable resources of forest and rangelands include timber production, fish and wildlife habitat, recreational opportunities, wilderness experiences, and watersheds. Minerals management is also related to these resources. The State Forestry organization, working through cooperative Federal-State programs, can provide technical, and in some cases financial, assistance to establish, protect, manage, and use forest and related resources.

The Forest Service works closely with the State Forestry organization of the States and Territories. The National Association of State Foresters is an organization with substantial leadership in promoting sound forest practices on all non-Federal lands. We would encourage the State to examine the opportunities to strengthen its organization to meet the rapidly expanding challenge of its forests. The National Association of State Foresters and individual State organizations have demonstrated the merits of sound forest management practices. A number of States have established forest practice laws and regulation. Their experience could be very helpful in your efforts.

In summary, we believe Alaska now needs a strong State forestry organization operating at a level of government that reflects the emerging importance of this resource activity. Additionally, a comprehensive State forestry program is needed that focuses not only on State lands but is also designed to provide forestry assistance of all kinds to Alaska's new landowners. Numerous federal grant programs exist requiring some state matching funds that are specifically directed to this purpose. The State Forester needs authority and a mandate to participate in these programs.

Many bush communities, wanting to develop sound management programs for their lands, are now requesting forestry and land management assistance. With a strong forestry organization and program the state can be responsive to their citizens needs. We believe it very important that any forestry legislation considered this session address these concerns.

Sincerely,



JOHN A. SANDOR
Regional Forester

STATEMENT MADE TO ALASKA SENATE - RESOURCES COMMITTEE
FEBRUARY 11, 1977

SENATE BILL 59

"AN ACT RELATED TO FOREST RESOURCES AND PRACTICES AND
PROVIDING FOR AN EFFECTIVE DATE"

MADAME CHAIRMAN, MY NAME IS JOHN BORBRIDGE, JR.; I AM PRESIDENT OF THE SEALASKA CORPORATION THE NATIVE REGIONAL CORPORATION FOR SOUTHEAST ALASKA.

UPON CONVEYANCE OF OUR LANDS, WHICH WILL BE SELECTED FROM WITHIN THE TONGASS NATIONAL FOREST, SEALASKA CORPORATION WILL UNDOUBTEDLY HAVE THE LARGEST COMMERCIAL PRIVATELY OWNED FOREST INVENTORY IN THE STATE OF ALASKA. WITH RECEIPT OF SUCH A SIGNIFICANT RESOURCE COMES THE RESPONSIBILITY FOR WISE USE AND MANAGEMENT WHICH OUR CORPORATION FULLY ACCEPTS AND INTENDS TO IMPLEMENT. THE ALASKA NATIVES HAVE ALWAYS BEEN WISE USERS OF NATURAL RESOURCES AND WE IN SEALASKA FULLY INTEND TO CONTINUE THAT TRADITION.

ADDITIONALLY, IT IS MY OBSERVATION FROM DISCUSSIONS WITH NATIVES FROM OTHER REGIONAL AND FROM MANY VILLAGE CORPORATIONS THAT CONCERN FOR PROPER USE OF NATURAL RESOURCES IS A TRADITION WHICH HAS NOT BEEN LOST.

WITH THIS AS BACKGROUND, WE HAVE REVIEWED SENATE BILL 59 AND WISH TO OFFER COMMENTS TO YOU AND THE MEMBERS OF YOUR COMMITTEE IN ORDER TO ASSIST YOU IN INSURING THAT RESPONSIBLE AND EQUITABLE FOREST REGULATIONS ARE IMPLEMENTED IN A TIMELY FASHION SO AS TO REASSURE THE STATE THAT PRIVATE FOREST LANDS WILL BE WISELY MANAGED.

WHILE WE SUPPORT IMPLEMENTATION OF APPROPRIATE FOREST PRACTICES, WE HAVE SOME VERY SIGNIFICANT RESERVATIONS CONCERNING SENATE BILL 59. OUR RESERVATIONS MOSTLY INVOLVE PRINCIPLES WHICH ARE IMPORTANT TO THE FOREST INDUSTRY IN ALASKA. MY COMMENTS ARE DERIVED FROM DISCUSSIONS WITH FOREST MANAGERS, AND A REVIEW OF THE FOREST PRACTICES ACTS IN CALIFORNIA, OREGON AND WASHINGTON. THEREFORE WE ARE ENDEAVORING TO BRING BEFORE YOU A BROAD BACKGROUND WHICH HAS INCLUDED THE DETAILED EXPLORATION OF PRINCIPLES WHICH ARE IMPORTANT IN A FOREST PRACTICES ACT.

1. OF PRIME IMPORTANCE TO THE FOREST LANDOWNER AND USER IS THAT THERE BE A STRONG DIVISION OF FORESTRY WITHIN THE DEPARTMENT OF NATURAL RESOURCES. SUCH A DIVISION MUST BE AT A SUFFICIENTLY HIGH LEVEL TO ALLOW THE STATE FORESTER TO BE ABLE TO SET POLICY AND MAKE DECISIONS INVOLVING THE ADMINISTRATION OF REGULATIONS AND THE MANAGEMENT OF FOREST LANDS. THEREFORE THE STATE FORESTER WILL BE AN INDIVIDUAL WHO REPORTS

DIRECTLY TO THE COMMISSIONER OF THE DEPARTMENT OF NATURAL RESOURCES AND WILL HAVE A BACKGROUND WHICH INCLUDES A FORMAL EDUCATION AND SIGNIFICANT EXPERIENCE IN FOREST MANAGEMENT. TO DILUTE THE ADMINISTRATION OF FOREST RESOURCES AND PRACTICES IN ANY WAY OTHER THAN JUST DESCRIBED PLACES A SIGNIFICANT BURDEN ON THE FOREST LANDOWNER AND DENIES TO THE CITIZENS OF THE STATE THE TYPE OF RESPONSIBLE IMPLEMENTATION OF FOREST REGULATIONS WHICH EVERYBODY DESERVES.

2. SB 59 IN SEC. 41.17.040(B)(5) PROVIDES THAT THE PRIVATE LANDOWNER MUST MANAGE HIS FOREST RESOURCE IN A MANNER WHICH WILL NOT DETRACT FROM SCENIC AND AESTHETIC QUALITY IN OR ADJACENT TO AREAS WHERE THERE IS OR COULD BE SIGNIFICANT IMPORTANCE TO TOURISM. WE VIEW SUCH A PROVISION WITH A HIGH DEGREE OF CONSTERNATION. THE STANDARD DENIES TO THE RESPONSIBLE FOREST MANAGER THE RIGHT TO IMPLEMENT PROPER SILVICULTURAL PRACTICES TO ENHANCE THE FOREST RESOURCE. ADDITIONALLY, ITS' LACK OF SPECIFICITY PLACES THE DEPARTMENT OF NATURAL RESOURCES AND THE PRIVATE LANDOWNER IN AN UNTENABLE AREA OF INTERPRETATION.

3. IN SOME OTHER STATES, BY USING THE VEHICLE OF A COMMISSION WHICH INCLUDES FOREST LAND USERS AND

OTHER INTERESTED PARTIES, THE STATE FORESTER, THROUGH THE HEARING PROCESS, HAS PROMULGATED AND IMPLEMENTED APPROPRIATE FORESTRY PRACTICES AND REGULATIONS BY REGION, WHICH INCLUDE CONCEPTS AND PRINCIPLES OF LAND MANAGEMENT FOR ALL PARTIES TO FOLLOW. BY ALLOWING THE STATE FORESTER TO DETERMINE WHAT REGULATIONS ARE APPROPRIATE IN EACH REGION, WE PROVIDE FOR DIVISION ADMINISTRATION WHICH MEETS THE NEEDS OF THE CITIZENS OF THE STATE AND PROVIDES FOR AS SIMPLE A BODY OF REGULATIONS AS IS FEASIBLE.

4. IN ADDITION, THROUGH THE PROCESS OF REVIEW AND PROMULGATION, THE STATE FORESTER CAN IMPLEMENT AN EFFICIENT APPLICATION PROCESS WHICH EMBODIES THE PRINCIPLES OF NOTIFICATION. THE STATE FORESTER IS IN A POSITION TO DETERMINE APPROPRIATE PERFORMANCE BONDS BY REGION, PENALTIES AS APPROPRIATE, AND OTHER REGULATORY MATTERS.
5. OF SIGNIFICANT IMPORTANCE TO THE CITIZENS OF THE STATE AND THE FOREST LANDOWNER IS THAT AN EQUITABLE HEARING PROCESS BE IMPLEMENTED WHICH ALLOWS THE REVIEW OF ALLEGED VIOLATIONS BY INDEPENDENT HEARING EXAMINERS WHO ARE QUALIFIED WITHIN THE FORESTRY FIELD. SENATE BILL 59 PROVIDES FOR THE COMMISSIONER TO APPOINT A STATE EMPLOYEE AS HEARING OFFICER AND THE COMMISSIONER DETERMINES THE HEARING PROCEDURES. IF MISUSED,

SUCH A SITUATION COULD LEAD TO HAVING THE ALLEGED VIOLATOR BEING PLACED IN A VERY UNEQUAL SITUATION. WITH APPROPRIATE INPUT FROM INTERESTED PARTIES, THE STATE FORESTER CAN SET EQUITABLE PROCEDURES FOR THE HEARING OF ALLEGED VIOLATIONS AND CAN ASSURE THE ALLEGED VIOLATOR THAT THE STATE IS SYMPATHETIC TO HIS SITUATION AND YET IS PROPERLY DISCHARGING ITS RESPONSIBILITIES TO ALL OF THE CITIZENS IN THE STATE. NATURALLY, SHOULD THE ALLEGED VIOLATOR FEEL THAT THE HEARING PROCESS WAS NOT SUFFICIENTLY FAIR TO HIM, THEN HE WOULD HAVE RECOURSE TO APPEALS AND JUDICIAL REVIEW.

WHILE SEALASKA CORPORATION HAS OTHER CONCERNS ABOUT SOME LINE ITEMS CONTAINED IN SB 59, WE FEEL THAT THE PRINCIPLES WHICH WE HAVE STATED TODAY ARE OF THE TYPE TO ALLOW YOUR COMMITTEE THE OPPORTUNITY TO RECONSTRUCT THIS BILL WHERE APPROPRIATE IN ORDER TO MEET THE CONCERNS OF THE PRIVATE FOREST LAND MANAGER AND THE CITIZENS OF THE STATE.

ALTHOUGH TESTIMONY TODAY IS DIRECTED TOWARD SENATE BILL 59, I URGE THAT YOUR COMMITTEE REVIEW HOUSE BILL 40, WHICH I CONSIDER TO BE A LOGICAL PIECE OF LEGISLATION TO ORGANIZE A STATE FORESTRY ORGANIZATION WITH SUBSEQUENT PROMULGATION OF RESPONSIBLE FOREST PRACTICES.

I THANK YOU, MADAME CHAIRMAN FOR THIS OPPORTUNITY.

COOK INLET CHAPTER
JUNEAU CHAPTER
KETCHIKAN CHAPTER
YUKON RIVER CHAPTER
SITKA CHAPTER

SOCIETY OF AMERICAN FORESTERS

Alaska Section



February 1st 1977

The Honorable Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate
Capitol Building
Juneau, Alaska 99811

Dear Senator Poland:

The Alaska Section of the Society of American Foresters has had a continuing interest in proposed Forest Practices legislation for the State of Alaska. The Alaska Section represents over 200 professional foresters and is a part of a National organization consisting of over 20,000 professional foresters.

The Society of American Foresters does not advocate that States should enact laws which regulate forest practices. This is for each State to decide, based on its needs in terms of environmental protection and forest land productivity which are likely to vary from State to State. Nevertheless, we are concerned that if a Forest Practices Act is enacted in a given State, it be a competent law. To this end, the Society has established "criteria for a competent State Practices Act", a copy of which is enclosed.

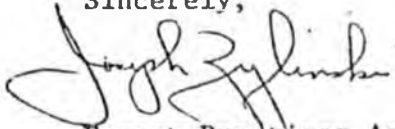
In 1976, we tested S.B. No. 563 against the Society criteria, but unfortunately, only one of our recommendations was incorporated into S.B. No. 59. We have again tested S. B. No. 59 against this same criteria. We sincerely hope that our enclosed analysis and recommendations will be helpful and useful to you and your Committee in developing a competent forest practices act for the State of Alaska.

We recognize the importance of the proposed legislation, especially in view of the fact that more than one-third of the entire State of Alaska or 141,000,000 acres are classified as forest land. Of this amount, 18,650,000 acres are in the coastal western hemlock timber type, with 1,187,000 acres in State ownership and 1,340,000 acres in Native land ownership. The remaining 122,350,000 acres are spruce-hardwood timber types in the Interior, with 27,089,000 acres in State ownership and 16,190,000 acres in Native land ownership.

This means 32.5% or nearly one-third of Alaska's forested lands are now in State and private land ownership. Subsequent State and Native selections will substantially add to this acreage.

Please advise if we can be of additional service. We would be happy to work with you on developing specific language, definitions or other aspects as you consider appropriate.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph Zylinski".

Forest Practices Act Committee, Alaska Section, SAF
Joseph Zylinski, Chairman
Michael S. Leach
Frank Price
Robert Janes

Enclosure

TESTING SENATE BILL 59
AGAINST SOCIETY OF AMERICAN FORESTERS
CRITERIA FOR A COMPETENT STATE
FOREST PRACTICE ACT
PREPARED BY JUNEAU CHAPTER
SOCIETY OF AMERICAN FORESTERS
FEBRUARY 10, 1977

1. "A Forest Practices Act should encourage the application of scientific knowledge and forest management principles in order that society can obtain the largest net sum of benefits from forest lands. Such an Act should reflect full consideration of both its social and private costs and benefits."

Since the Act designates the Commissioner of the Department of Natural Resources as the person responsible to administer the Act, there is no assurance that scientific and forest management principles will be applied. It is recommended that the State Forester play a more prominent role in administering the Act to assure a sound professional approach. He should be specifically named in the Act and his responsibilities clearly defined.

To be really effective a Division of Forestry should be established with the State Forester as Director. The Act then would be administered by this Division.

2. "A Forest Practices Act should insure the productivity of forest lands and protect the environment, including air and water quality."

Review of this Act indicates that this criteria is adequately covered. Although air pollution is not specifically mentioned, it is assumed that air pollution is included in the review by other agencies, i.e. Department of Environmental Conservation.

3. "State-initiated regulation of forest practices is preferable to regulation initiated by federal and local governments. A Forest Practices Act should recognize regional forest variations within a state's boundaries."

Section 41.17.060 (b) provides "the Commissioner may establish regions, districts, or other subdivisions of forest land within the state in which different regulations apply to reflect varying conditions throughout the state."

It appears that this criteria is fully met by S.B. 59.

4. "A Forest Practices Act should be coordinated and in compliance with related regulatory programs in order to minimize jurisdictional conflicts and administrative costs. Such an Act should be consistent with public forestry research, education, technical assistance and financial incentive programs."

This Act does not specifically provide for acknowledgment that compliance with the Act constitutes compliance with State Federal water quality standards, including non-point pollution. This feature should be integrated into the notification system. Review without objection by other state agencies affected should constitute compliance.

Section 41.17.020 (b) provides for the designation and operation of experimental forests; (c) establishing cooperative forestry programs and extension service programs; (d) establishing and maintaining forest tree nurseries.

There is no provision for forestry education or financial incentive programs. These features should be made a part of the cooperative forestry and extension service programs. Funds would have to be made available for the incentive program.

5. "A Forest Practices Act should clearly define the forest land to be covered under the Act as well as any standards and terms applied with respect to forest practices, air and water quality and soil erosion. A Forest Practices Act should use terminology which is generally accepted by the professions concerned."

Section 41.17.030 establishes exemptions to the provisions of the Act. Subsection (b)(1) indicates that a tract less than 160 acres does not fall under the provisions of the Act. While we believe certain operations are so small as to cause little concern to the citizens of the State, we recognize that a timber harvest of 160 acres at the mouth of certain streams or adjacent to certain estuarine areas could have substantial effects on offsite users if timber harvesting is conducted improperly. As with most resource management policies we find it difficult to establish an acreage limit where impacts are a matter of general public concern. However, we believe this is an administrative detail best left to professionals to prescribe on a case to case basis. We would prefer that the Board, along with the State Forester, establish guidelines that are based on a combination of resource factors including, but not limited to, acreage.

The definitions in Section 41.17.950 are a credit to this bill. Definitions specified are close to meeting SAF criteria No. 5. Improvement of some definitions is needed. We would be more than willing to coordinate this section with the various professions involved and recommend appropriate language.

6. "A Forest Practices Act should establish procedures and guidelines for the development and adoption of regulations, but make no attempt to specify the regulations themselves."

We believe the proposed bill generally meets this criteria and have only one suggestion. The suggestion is that Section 41.17.030 provide for procedures (probably a subsection (14) should be added) aimed at establishing regulations for maintaining State water quality standards and protecting the environment of aquatic and offsite fisheries resources commensurate with economic values represented.

7. "A Forest Practices Act should allow a forest landowner latitude in applying professional forestry expertise and forest management principles. Administrative requirements for forest landowners and operators should not be unduly burdensome."

We find the bill reaches far beyond our criteria in this respect and from a number of different aspects. In essence we believe the provisions of the Bill are unduly burdensome and deprive forest landowners of land resource value and operational latitude without any form of compensation for this taking of basic rights. For instance:

1. Subsection 41.17.040 (b) provides equal regulations for State, municipal, and private land. Item (1) under this subsection (p.4) places the burden of proof on the landowner. While this may be appropriate for State or municipal forest lands, it is not appropriate as a basis for depriving a private landowner of economic values that exist on his own land. The burden of proof should be on the administering agency.

2. Item (3) under this subsection (p.4) requires administration of forest land with respect to production levels of timber products to allow reasonable consideration for marketing conditions. We submit that there is little likelihood that State officials will have access to sufficient data on an individual land owners marketing conditions to warrant any regulation on this account. Even if sufficient trend data for forest products operations at large within a district are available to the State, there can be little justification in regulating any individual landowner's harvest plan since that individual's market opportunities simply are not the concern of the State. This is another illustration of the need to consider regulation of private forest land separately from State or municipal lands.

3. Item (5) under this subsection (p.4) requires the maintenance of scenery in or adjacent to areas important to the tourism and recreation industry. Again, such an imposition on a private landowner is questionable while it can be mandated for State or municipal lands.

4. Section 41.17.050 requires that this Act shall be administered so as to protect forest land from "depletion", "overharvesting", "unsatisfactory forest management", etc. In our view such objectives, while perhaps appropriate for public lands, are not entirely applicable to all private lands in Alaska.

This Section also requires that the State conduct periodic inventories of timber on lands subject to the Act. While we agree that the State needs such authority, there is little reason to require it as a State function. The nationwide Forest Survey of the Forest Service has traditionally provided such service to states and to private and other forest landowners as well as to the various federal agencies.

Section 41.17.060 (d) is an improvement over old S.B. No. 563. This approaches a one-stop-shopping service that will benefit the operator and reduce the amount of work and frustration needed to wade through an unfamiliar bureaucratic requirements. This Section needs to be worded in such a manner to imply that approval of the plan also carries with it a certification that it meets with State air and water quality standards and grants all necessary permits, such as: tideland or other land and water use or occupancy.

Section 41.17.070, subsection (b) provides a "notification" procedure as contrasted to a permit process. We endorse this concept as being more efficient and less burdensome on the private landowner. We believe this notification should reflect an operator's "planned" operation rather than a proposal.

It is noted that up to a total of at least 85 days is provided for the State to make up its mind on each timber harvest plan. While this may be appropriate for public land activities, it is unduly burdensome and debilitating with respect to planned activities on private lands.

Under subsection (d) (3) (p.8) any other agency of the State may trigger a 20 day delay in a crucial operation. Again, we emphasize the importance of eliminating unduly burdensome requirements.

Under subsections (c) and (g) the State must ask for comment on each harvesting plan from both State agencies and by the citizenry through newspaper invitation. This is an open invitation to delays in legitimate plans of a private economic entity. We believe the needed agency coordination should be developed with a Forest Practices Board during the promulgation of regulations and any private landowner's plan or actual operation conducted in compliance with these State regulations should not be postponed or denied.

We endorse subsection (i) of this section.

Subsection (j) limits State approval of deviations from approved plans. Approval is contingent upon consultation with other affected State agencies. We believe a strong professional head of the Forestry Agency can provide an appropriate and expeditious decision on such matters without violating valid concerns of other agencies and without delaying a crucial decision to an operator.

Section 41.17.080 adopts the attitude that chemicals are not a bonafide attribute of productive forest management. The burden of proof is put on the landowner to prove no adverse consequences. We believe the State's policy should be the other way around, i.e. any application of chemicals for forestry purposes which is lawful is acceptable unless evidence in the hands of the State Forestry Agency shows otherwise. To do otherwise is to deprive a landowner of the opportunity to profit by modern day forest practices.

8. "Where boards, commissions or advisory bodies are used, their composition should represent the broad public interest with at least a majority of the membership being knowledgeable and experienced in the scientific management of forest resources."

A major weakness of the bill is that it creates weakness in the administering agency. First, there is no recognition that a strong Forestry Agency is needed to achieve competent and beneficial regulation of forest practices. A demonstrably effective arrangement for achieving such a goal is to provide for a professional State Forester to administer the Act and a Forest Practices Board to promulgate those necessary procedures or

regulations which can't be efficiently established through the legislative process. Forest practices in the State of Oregon have been, over the years, notably more advanced than other west coast states and without the forest practice legislative upheavals experienced in sister states. Oregon has long operated under the State Forester-Forest Practices Board approach.

Next is the problem of gaining support for a forest practices act from forest landowners or forestry experienced residents of the State when the Act will be administered by an appointee subject to change with each new State administration. Forestry programs and regulations must have more continuity and stability to be successful.

Our suggestions for solving this dilemma is to establish a board and a State Forester or Director, perhaps along the lines outlined in the EPA model Forest Practices Act. An additional suggestion varying from the EPA model is that a majority of the board members be knowledgeable and experienced in the scientific management of forest resources. Such a board should include at least one member from the Forest Products Industry and one from an Alaskan Native Corporation.

Recognizing that the question of establishing a strong and professional forestry agency is a major philosophical difference between the Administration and the Society, we wish to point out that the Alaska Section of the Society has been a leader, possibly the first, in advocating that it is timely for Alaska to adopt forest practices legislation. We will not support legislation that is not competent in the forest practices field.

9. "The development of forest practice regulations should be accomplished with due consideration of the knowledge and opinions of forest landowners, timber operators, forestry and related professionals and the public, and should take into account regional forest variations and disparities in land ownership patterns. Public hearings are necessary to achieve these purposes.

It appears that SB No. 59 meets this criteria. However, we recommend emphasis on technical assistance and incentive programs rather than on regulation of activities.

10. "Using appropriate State administrative procedures, forest practice regulations should be adopted by a State forestry agency or board with responsibility for interagency coordination. Forest practice regulations should rest upon scientific knowledge and professionally recognized forest management principles. The regulations should be administered and enforced by a single state agency with adequate staffing and forestry expertise."

The bill fails to provide for a state forestry agency or a board with responsibility for interagency coordination. All powers are vested in the Commissioner who may delegate authority to his subordinate employees or units within the Department of Natural Resources to the extent he considers advisable. This does not guarantee that regulations would be

administered and enforced by an entity within the Department with either adequate staffing, forestry expertise, and funding.

The conversion of nearly 150 million acres of federal land to state and private ownership will occur in the near future. This will involve many millions of acres of forest land. It is reasonable to assume that the Commissioner could satisfactorily perform all of the administrative and regulatory functions as described in SB No. 59 without delegation. The very scope of other activities and responsibilities vested within his Department would necessitate delegation.

The Governor, in transmitting essentially this same bill to the previous Legislature, indicated a desire to administer and regulate forest practices on state and private lands within existing structures and personnel resources of the Department to avoid the creation of a new bureaucracy and to keep government regulation at a minimum. We subscribe to that philosophy. However, we contend that the existing structure, personnel, and professional resources of the Department are insufficient to perform satisfactorily the state and private forestry workload presently existent within the State without even considering the 150 million acres moving from federal to State and private status.

While the Governor's motives are admirable, we believe that the imposition of an additional sizable workload upon an existing skeletal capability would be a disservice to the State, its forest and related resources and a derogation of the stated findings and purposes of SB No. 59.

In this regard, we urge the identification of a State Forester established within and heading a Division of Forestry. In addition, funding and professional forestry manpower needed by the State Forester to administer and enforce a Forest Practice Act need to be recognized and provided for in SB No. 59.

11. "A Forest Practices Act should provide for effective administration and enforcement, with adequate provisions for due process, to achieve the objectives and purposes of the Act. Administrative and enforcement procedures should be efficient and expeditious. Provisions should also be included for the use of continuing education, information and training programs to implement regulations adopted under the Act. Forest management operations conducted in accordance with adopted forest practice regulations should be considered to have met the requirements of laws pertaining to soil sedimentation and air and water quality."

Senate Bill No. 59 contains a considerable amount of administrative and regulatory detail. We believe the Bill should provide for these features in broad terms. The development of details should be left to the State Forester who would work with the various publics in a series of scheduled and well-advertised public meetings. Resultant administrative and regulatory details developed within that medium would be substantially more palatable, relevant, and acceptable.

The Bill should provide for the use of continuing education, information,

and training programs designed to implement regulations adopted under the Act. The State Forester should play a key role in this activity.

These features would go a long way toward developing public acceptance of Forest Practices Act.

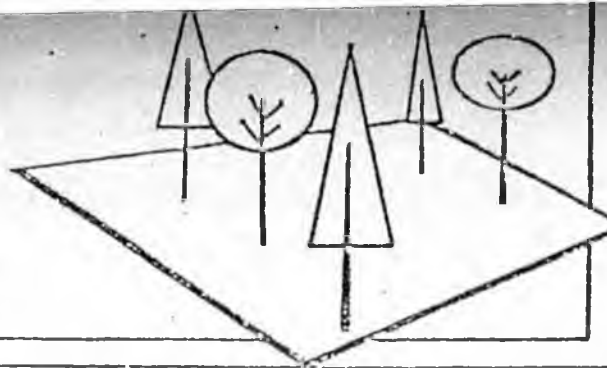
12. "A Forest Practices Act should not preclude the legitimate conversion of forest land to other uses."

Senate Bill No. 59 appears to meet this criteria.

General Comment

Section 41.17.040 (c) (3) states that "...all resources and values are of equal priority;...." This is inconsistent with the definition for multiple use contained in Section 41.17.950. We concur with the definition of multiple use and that consideration in any activity must be given to the relative value of the various resources.

SOCIETY OF AMERICAN FORESTERS



CRITERIA FOR A COMPETENT STATE FOREST PRACTICES ACT*

The Society of American Foresters (SAF) has prepared its "Criteria for a Competent State Forest Practices Act" to aid legislators and other groups considering the development or adoption of legislation to regulate forest practices. The paragraphs below are provided as an introduction and should be read carefully so that the "Criteria" can be considered in its proper perspective.

Controversy over the regulation of forest practices in the United States has reached national proportions in three periods prior to the current debate, namely 1910-1911, 1923-1924 and 1938-1952. The sources of these earlier controversies were widespread public concern over future timber supplies, poor timber harvesting practices and wildfire, and the consequent damage in terms of soil erosion and sedimentation of watercourses.

The present focus on state forest practice legislation is a result of the recent sharp increase in public concern over the quality of life in the United States. This change has caused Federal enactment of several far-reaching environmental laws, many of which apply to water quality, to include the Federal Water Pollution Control Act Amendments of 1972. This law is the basis for the Environmental Protection Agency's development of a "Suggested State Forest Practices Act" in late 1974.

There has been and remains a concomitant concern for the potential and actual productivity of the forest lands in the United States. When some activities related to forest land management are improperly performed, accelerated soil erosion can result in a significant reduction in water quality and the capacity of the land to produce vegetation. In addition to man-caused siltation of watercourses, other forms of water pollution can result. Certainly, occurrences of this kind ought to be discouraged or at least kept within acceptable limits. This can be done through various education, training and financial incentive programs. Activities which diminish a forest's capacity to grow trees can also be discouraged or prevented through regulation by states or other authority. For this purpose regulation might be useful, and in some cases, necessary.

If the forest management activities involving soil disturbance are properly performed, water quality and the potential productivity of forest soil can be maintained. In fact, certain forest management practices can increase tree growth and provide for wildlife habitat and recreational opportunities substantially beyond the natural limitations of many forest lands. These practices ought to be encouraged, and can be through various education and incentive programs. However, the efficacy of legal coercion in the form of regulation of forest practices is questionable so far as encouraging intensive forest management. The bulk of experience indicates that regulation is better employed to enforce minimum performance standards. Expectations to achieve anything more appear unwarranted.

*A statement approved by the Society of American Foresters on March 7, 1975.

The Society of American Foresters does not advocate that states should enact laws which regulate forest practices. This is for each state to decide based on its needs in terms of environmental protection and forest land productivity which are likely to vary from state to state. Nevertheless, SAF is concerned that if a Forest Practices Act is enacted in a given state, it be a competent law. To this end SAF undertook the task of developing its "Criteria for a Competent State Forest Practices Act" set forth below.

There are twelve criteria. In some cases it was found necessary to either expand on a given criterion or to address a current issue. These are the purposes of the short paragraphs which follow some of the criteria.

SAF is prepared to elaborate, where necessary, upon any of the following "Criteria" and to assist in discussions or deliberations regarding the regulation of forest practices.

Criteria for a Competent State Forest Practices Act

1. A Forest Practices Act should encourage the application of scientific knowledge and forest management principles in order that society can obtain the largest net sum of benefits from forest lands. Such an Act should reflect full consideration of both its social and private costs and benefits.
2. A Forest Practices Act should insure the productivity of forest lands and protect the environment, including air and water quality.
3. State-initiated regulation of forest practices is preferable to regulation initiated by federal and local governments. A Forest Practices Act should recognize regional forest variations within a state's boundaries.

One of the principal arguments for state regulation of forest practices is the immense variability of forest types within the boundaries of most states. A regular practice of states which have forest practices acts is to divide the state in two or more forest districts. Subsequently, separate forest practice regulations are developed for each forest district. This procedure is quite defensible.

4. A Forest Practices Act should be coordinated and in compliance with related regulatory programs in order to minimize jurisdictional conflicts and administrative costs. Such an Act should be consistent with public forestry research, education, technical assistance and financial incentive programs.

If a Forest Practices Act becomes law in a state, it would be but one part of a body of laws, regulations and programs relating to forest resources. Efforts to integrate elements of a Forest Practices Act with other existing laws, regulations and programs should be encouraged. Duplications in agency jurisdictions should be minimized.

5. A Forest Practices Act should clearly define the forest land to be covered under the Act as well as any standards and terms applied with respect to forest practices, air and water quality and soil erosion. A Forest Practices Act should use terminology which is generally accepted by the professions concerned.

Because a Forest Practices Act deals directly with scientific phenomena, to clarify the Act's purposes and scope technical terminology should be employed where appropriate, and standards and terms should be operationally defined.

6. A Forest Practices Act should establish procedures and guidelines for the development and adoption of regulations, but make no attempt to specify the regulations themselves.

Forests are inherently heterogeneous. Furthermore, scientific knowledge of forests and forest management techniques is rapidly evolving. Therefore, a Forest Practices Act would be best designed if it prescribed the procedures by which forest practice regulations are developed and implemented rather than specify the regulations themselves.

Where a Forest Practices Act provides for reforestation, specific stocking standards should evolve from the same process used to develop forest practice regulations.

7. A Forest Practices Act should allow a forest landowner latitude in applying professional forestry expertise and forest management principles. Administrative requirements for forest landowners and operators should not be unduly burdensome.

A Forest Practices Act could so encumber a forest landowner with its requirements that he would forego opportunities to sell his timber, and hence, would have little inducement to manage his land for timber production. In such cases, timber supplies will be adversely affected. There will also be a misallocation of resources if, as a result, intensive timber management techniques are applied to lands which are relatively less suited for timber production.

8. Where boards, commissions or advisory bodies are used, their composition should represent the broad public interest with at least a majority of the membership being knowledgeable and experienced in the scientific management of forest resources.

A widely accepted arrangement for developing forest practice regulations is through an appointed board or commission. If this arrangement is employed, at least a majority of the board's members should be selected on the basis of their education, knowledge and experience in the scientific management of forest resources. Together the board members should be broadly representative of the public interest in forest resources, to include the interests of private forest landowners and timber operators.

9. The development of forest practice regulations should be accomplished with due consideration of the knowledge and opinions of forest landowners, timber operators, forestry and related professionals and the public, and should take into account regional forest variations and disparities in land ownership patterns. Public hearings are necessary to achieve these purposes.

10. Using appropriate state administrative procedures, forest practice regulations should be adopted by a state forestry agency or board with responsibility for interagency coordination. Forest practice regulations should rest upon scientific knowledge and professionally recognized forest management principles. The regulations should be administered and enforced by a single state agency with adequate staffing and forestry expertise.

11. A Forest Practices Act should provide for effective administration and enforcement, with adequate provisions for due process, to achieve the objectives and purposes of the Act. Administrative and enforcement procedures should be efficient and expeditious. Provisions should also be included for the use of continuing education, information and training programs to implement regulations adopted under the Act. Forest management operations conducted in accordance with adopted forest practice regulations should be considered to have met the requirements of laws pertaining to soil sedimentation and air and water quality.

Two methods by which an administrative agency may be advised of an intended timber harvesting operation are by a so-called "notification scheme" and by a system requiring state approval prior to the commencement of timber harvesting. Under a notification scheme, the forest landowner, timber owner, or timber operator notifies the administering agency of his intent to harvest and the location of the harvesting site, together with other pertinent information. Under the "prior approval" system, the forest landowner, timber owner or timber operator submits an explicit statement, application or plan stating his intentions and must await approval by the administering state agency. To date there is no evidence which of these schemes ultimately results in a greater degree of environmental protection or more productive forest land. However, the costs of a prior approval system appear to be inherently greater than those of a notification scheme, all other things being equal. Therefore, a notification scheme should be given preferential consideration.

Instruments which have been effective in enforcing forest practice regulations include: (1) informal conferences, (2) notices to comply, (3) "stop work orders," and ultimately, (4) agency authority to take corrective action at the violator's expense where environmental damage has occurred or is imminent. It should be recognized that the effectiveness of these instruments does not preclude the existence or the possible development of other effective means for enforcement.

12. *A Forest Practices Act should not preclude the legitimate conversion of forest land to other uses.*

A Forest Practices Act which would prevent a forest landowner from converting his land to uses other than timber production would severely infringe upon his property rights. Nevertheless, the landowner's legal right to such conversion should not become a means for evading the provisions of a Forest Practices Act.

ABOUT THE SOCIETY

The Society of American Foresters, with over 19,000 members, is the national organization representing all segments of the forestry profession of the United States including public and private practitioners, researchers, administrators, educators, and forestry students.

Objectives of the Society are: To advance the science, technology, education, and practice of professional forestry in America, and to use the knowledge and skills of the profession to benefit society.

Gifford Pinchot and six other pioneer foresters established the Society in 1900.

Members subscribe to a strict code of professional ethics. The Society is the accreditation authority for professional forestry education in the U.S. It publishes the *Journal of Forestry and Forest Science*.

SOCIETY OF AMERICAN FORESTERS



1010 SIXTEENTH ST., N.W.
WASHINGTON, D. C. 20036

Testimony of Warren Weathers
Shee Atika Corporation
February 11, 1977
Hearing on SB 59

Madam Chairman, Honorable Committee Members, I would like to apologize for not having anything in writing, but we would like to submit something in writing within the next two weeks which would include a draft of the revision of SB 59.

I am Warren Weathers, I speak on behalf of Shee Atika, Incorporated which is the urban native corporation for the native road to Sitka. We have 1,800 stockholders. I am also a professional forester, with a background of having worked for the U. S. Forest Service, having worked in the State of Oregon as a land manager, as an extension forester in the field of State and Private Forestry, and also, I was extensively involved in the enforcement of the Oregon State Forest Practices Act before the revision and then after the new Forest Practices Act was passed. I have worked in Alaska in the forest industry since 1972 as a professional forester.

Shee Atika has selected 23,040 acres of forest land. Roughly 4,000 acres of this has been logged, and the corporation plans to manage it in such a manner that the 4,000 acres that has been logged will grow trees and produce quality water, and recreation opportunities, etc. Everything will be managed under the multiple use of sustained yield basis.

Our estimates indicate that under intensive sustained yield management, the corporation's timber resources alone will produce an annual cut of roughly twelve million board feet. This is under intensive management. Conservatively, with a multiplier, this would indicate that this annual cut could be expected to produce someplace in the neighborhood of seventeen million dollars annually in new money that would be put into the economy of Southeast Alaska, and this just from our native corporation's timber reserve. The corporation has the policy of managing lands for multiple use of all resources. We are interested in producing fish. Many of our stockholders are fishermen. We are interested in recreation. We are, at the present time, in the process of putting together a hotel in Sitka. We are very interested in tourism, and our stockholders have an historic interest in the wildlife resources. All this in addition to the timber.

Until 1983, our land must be managed under the same set of standards as the Forest Service manages their lands, under the provisions of the Native Claims Settlement Act. It's not 1977 so we have some time, I think, to look at the situation and draft a very well thought out planned bill that would be equitable to the landowners, and achieve the interest that the general public is looking for.

Testimony of Warren Weathers Cont.
Shee Atika Corporation
February 11, 1977
Hearing on SB 59

On some comments on the bill. I think it's dangerous from the standpoint that it places an awful lot of authority on one person, in this case the Commissioner, who is not necessarily a professional forester. Basically he is a politician. I think it would be an improvement to have a strong forestry division with a professional state forester leading it, and having a board in which landowners were heavily represented. In this case of the commercial forest land in the state, roughly over 99% of it is going to be native owned. I think that landowners should be heavily represented and professional land managers and resource managers should be heavily represented on an advisory board that would assist the State Forester in drafting regulations that are going to be implemented under this act, so that it will be something that won't be an unnecessary burden on the landowner and the industry. I think that if you have somebody that's administering it and drafting the regulations that is not familiar with the problems intimately, there's a good chance you are going to have a negative impact on the landowner and on the industry.

One portion of the bill discusses aesthetics. It more or less indicates that somebody from the State is going to evaluate what is aesthetically pleasing, what's pretty and what looks good, etc. as far as forest practices goes on private land. I feel that this would be very difficult to do from the standpoint that what I think is attractive is not necessarily what somebody else thinks is attractive. The evaluation of aesthetics is a value judgement, and you can't tie it down to anything to decide what is good and what's not. You have a tremendous conflict and you wouldn't be treating all the landowners equitably. The State has the power to do this on their own lands anyway, and if the State would like to manage its forest land for aesthetics then they can control what they feel is attractive. That's fine, but I don't think it's fair to try and place this type of thing on the private landowner.

The way SB 59 is drafted, an operator can make application, and it will be up to 80 days before he really gets a response. The way the weather is and operations are in the industry in southeastern Alaska, lots of times things will come up where landowners have to make a change in plans due to the weather, etc., and if it takes him 80 days to make the change, he will have lost the opportunity, and we will have serious economic consequences to the landowner and to the operator. Not only from the operating problems that might come up where he'd need to change his operation, but also to respond to changes in marketing conditions, etc. I think that something more like a maximum of 30 days would be more appropriate.

There is a provision in SB 59 that requires the operator to submit a performance bond prior to getting his operation. I feel that this is an unnecessary burden on an operator from a standpoint that the law provides penalties that is another means of satisfying the problem in case he does break the law and is not in compliance with the act.

Testimony of Warren Weathers Cont.
Shee Atika Corporation
February 11, 1977
Hearing on SB 59

I don't think the bond is necessary, and could eliminate a lot of the small operators. Although the bill is drafted, they attempted to draft it with a combination of both the prior approval and notification systems. I think in reality, it's going to end up being enforced as a prior approval type forest practices act, in which case it would be expensive and it would place the burden on the landowner and not on the state. Having worked with the notification system, and the way it worked in Oregon as an operator would submit plans to us essentially the same as those that are listed in SB 59. We would review them. We had a very short period of time. I don't remember exactly what it was now. We would review the plans. As a matter of course, if I had not worked with the landowner before, I'd make a point to go and find him and walk over his operation with him and point out some of the areas where he might have problems. If he had a slope that looked like it might be unstable if you put a road across it, I'd help him with his road location. To try and minimize erosion problems, I'd give him advice as to what areas he could expect to grass seed or something like this to prevent erosion problems. As a matter of course, if there were a fish stream in the area, and I could see that there was potentially some impact on the quality of the water with his operation, I'd call up the Department of Fish and Game and they would send a fisheries biologist out and he would go out with me and we would both talk to the operator, and this was generally before he started his operation, and he was then familiar with what we were going to expect or what his alternatives were. Then he could go ahead and operate. We checked up on him occasionally, and if he broke the law, he paid for it, and the situation was corrected. If the burden was on us to go out and check up on him, and work with him, it wasn't on him to submit plan after plan and wait 80 days before he could start doing anything. I think that as things progress, and the State has worked with one operator and they are familiar with an area the way he operates and all this, there may not be quite as much need to spend that much time with an operator once they did become educated to what you are going to require and they are aware that you are going to go out and check up on them, and they are familiar with the law, under the notification system.

Under the prior approval system, I don't think that would be possible. I would like to read some comments that I jotted down that were given to me by our attorney, Mr. Lanahan, who specializes in forest resources law. He is also a professional forester. Point No. 1 discusses the constitutionality, federal preemption. He said, I have not had the opportunity to any in-depth research on some of these points. As a matter of federal law of the U. S. Constitution is the supreme law of the land, the well established doctrine of constitutional law provides when congress has occupied the field or preempted it by specific legislation, the states do not have the authority to legislate or

Testimony of Warren Weathers Cont.
Shee Atika Corporation
February 11, 1977
Hearing on SB 59

regulate in this same area. Examples of the preemption field are the National Labor Relations Act which governs all matters relating to labor and employee relations and cases affecting inter-state commerce. More perscriptive state laws can only apply to strictly local or intra-state matters. The Native Claims Settlement Act is special federal legislation designed to settle all original claims in Alaska. Many areas of potential regulation of native lands acquired under the Claims Settlement Act have been dealt with by specific provisions of the Act. For example, Section 20A exempts revenues originating from the native fund from all federal, state, and local taxation at the time of receipt by regional and village corporations or individual natives.

Section 20B exempts shares of stock of village or regional corporations received by natives from any form of federal, state or local taxation. Receipt of land or cash is exempt from federal, state or local taxes by Section 20C, and its basis for income tax purposes is for market value at the time of receipt.

Section 20D exempts real property interests from state and local taxation until 1991 unless they are earlier transferred, leased, or developed. Section 20E continues to treat lands distributed to native corporations as public lands for stated reasons as long as the exemption from state and local taxes remain in effect. Specifically, Section 21K requires all lands selected from within the boundaries of a National forest to be managed under principals of state yield and under management practices for the protection and enhancement of environmental quality no less stringent than such management practices on adjacent National forest through 1983. Mr. Lanahan goes on to say, in my opinion this is a specific preemption by Congress in the field of forest practices. Any attempt by the state to impose more stringent restrictions will be regarded as unconstitutional. The second point discussed is denial of equal protection. The 14th Amendment to the U. S. Constitution guarantees all citizens relief from State action that denies them equal protection under the law.

Forest practices legislation that regulates private ownership of commercial forest lands of 160 acres or more probably effects virtually no private ownership other than the native corporation. I speculate that other than native lands, less than one tenth of one percent of all private forest land ownership in the state exceeds a tract of 160 acres. From this, one may infer that proposed forest practices legislation regulating private ownership of tracts of 160 acres or more is discriminatory, and special purpose in scope. If so, equal protection regulation in this instance is being denied by the likes of Senate Bill 59.

Third point - other federal and State constitutional issues. It may be argued that SB 59, because of the lack of standards and regulatory authority of scope may be unconstitutionally vague. I believe serious questions can be raised as to whether or not the State can constitutionally impose a burden of management to protect or enhance adjacent scenic

Testimony of Warren Weathers Cont.
Shee Atika Corporation
February 11, 1977
Hearing on SB 59

recreation, aesthetic, tourism, or other natural values on private land other than as a valid exercise of police power. If not this requirement could result on an unconstitutional taking of private property without compensation.

Section 20C of the bill appears to create a potential for conflict between the Commissioner of Natural Resources and other State or local agencies.

Section 60D may further this proposition. I suspect the intent of the drafter is to insure that there would be only one set of regulations in print that is required for each type of activity, rather than having to go through 3 or 4 agencies. I suggest that these provisions can be reworded to better accomplish that intent.

Section 60C can be reworded to give the Department exclusive authority in the field rather than subordinate to other agencies. The proposed notification system has some advantages over a permit system, however, the time lag and the ability to give qualified approval could create problems. If the operations are going to be conducted on public lands, in all likelihood, contractual provisions containing all the operating restrictions necessary will be used so that the notification system should be a mere formality. In the case of operations on private lands, without more definitive standards of what and when activities will be permitted, we could end up with dual standards. The procedure for notice in hearing of claimed violations is a good one. Mr. Lanahan thinks the exemption of hearings from the provisions of the Administrative Procedures Act and Sections 110J may be unwise unless it is to free the hearings from the requirements of formality.

Section 130 he felt was interesting. The addition of penal provisions for spurious or groundless suits might be added to discourage i.a. _____ from suing the State without good cause.

In recommendations, he said, I would recommend you tax SB 59 or any other similar bill on unconstitutional grounds primarily on the issues of federal preemption under the 14th Amendment "Equal Protection Argument. Bills such as SB 59 may involve reported police power regulation that is so stringent that it causes the unconstitutional taking of property. SB 59, if it were to exclude private land could, with a few changes, be made into a decent bill. You could approach supporting a modified bill with specific exemption of all native lands through 1983, or you could flatly oppose the bill on unconstitutional or other grounds to kill it insofar as it might pertain to private land. If legislation effecting your lands is passed, its constitutionality can be promptly tested in an action instituted for a three judge federal court. i.a. _____ the event of adverse decision from the three judge panel as direct to the United States Supreme Court as a matter of right. I suggest that

Testimony of Warren Weathers Cont.
Shee Atika Corporation
February 11, 1977
Hearing on SB 59

you adopt a forestry board and a state forester approach incorporated with the draft forest practices act that SANTCO has been working on. SANTCO is the Southeast Alaska Native Timber Corporation of which Shee Atika is part of.

The bill that SANTCO is working on, is based on the Oregon Forest Practices Law which is considered to be a model for State laws of this type. Mr. Lanahan felt, lastly, in any event that date of interest should be marshalled to oppose this type of forest practices legislation as it effects native lands. The natives have been and are the original conservationists. We will manage our lands in a fashion that will be environmental for all, including the State of Alaska.

I think that House Bill 40 would be a lot easier to work with, and with a few amendments, it could be a pretty good bill. However, within a matter of a week, we will have a revised draft of Senate Bill 59 that we would like to submit. Thank you.

CHAIRMAN POLAND - Thank you Mr. Weathers. Are there any questions?

SENATOR TILLION - I think he ought to find a better lawyer.

SENATOR MELAND - You say you worked closely with the Oregon Forest Practices Act, does that differ too much from SB 59, or is it more along the lines of 40?

WARREN WEATHERS - It's closer to 40. It's strictly notification.

SENATOR MELAND - Is the man in charge a professional forester?

WARREN WEATHERS - He's a professional forester, but he's appointed by an advisory board, and the advisory board has representatives of conservation minded groups, the industry, landowners, county commissioners, Oregon cattlemen's association and this type of thing. They are the ones that supervise essentially the State Forester, and then the school of forestry chairs the Board. Something similar to that would be, maybe, just an advisory board as far as drafting the regulations. I think the regulations are the most important thing that, as far as the road goes, they be drafted to where they are realistic, and those are the big differences in the State of Oregon's bill.

CHAIRMAN POLAND - Thank you Mr. Weathers.

Alaska Lumber & Pulp Co. Inc.

TESTIMONY ON SB-59

ALP worked last year with the Administration in drafting a Bill similar to SB 59. We have been in touch with the Administration on the proposal this year also. We appreciate the opportunity to provide input in the initial stages of drafting as this contributes to legislation we can live with. We believe that the group primarily effected by this legislation, the Alaska Natives should be the people to whom you listen most in deciding the necessity of this legislation at this time. If there is to be a Forest Practices Act, the Administration Bill SB 59 is a fair, workable, and responsible bill. The major exception to this is § 41.17.040(b)(5) which requires private land owners to maintain their land for scenic and aesthetic purposes. However, this does not change anything for those, like ALP, who operate on National Forest Land.

The key problem we have with this Bill, and the reason we cannot support it at the present time, is its failure to provide for a strong State Forester reporting directly to the Commissioner of Natural Resources. Presently, the State Forester is buried in the Land and Water Division of the Division of Lands. Thus, his expertise must be passed through an intermediate non-forester decision maker before reaching the Commissioner. This creates needless red tape and delay and sets up the possibility that the professional management advice which the Forester should be providing the

Commissioner will become confused or perhaps altered at some point short of the top. There is simply no one available at the present time to advise the legislature on forestry matters. More often than not the situation has resulted in no policy-making whatsoever with respect to forestry - a point which will be developed further on in this testimony. Moreover, since decision effecting the forests are often made in other agencies concerned with forest management, but with a lack of professional forestry expertise - e.g. Fish and Game and Department of Environmental Conservation - it is important that the State Forester be in a position to effectively deal with the decisions of other agencies. Under the present Bill, he will be too far from the field of play both in distance (he will apparently remain in Anchorage) and in position (he will be subject to the Director of Lands.)

The argument is made that a strong State Forester will tend to become an advocate of the industry he regulates. The Governor could fire such a man. The point is that it is the man, not his position as a director, that could allow this to occur. If such a "captured" forester were in Juneau, his "industry" bias could more easily be identified. Therefore, this argument against a strong State Forester is without merit.

It is also urged that a strong State Forester heading a Division which reports directly to the Commissioner would create a new bureaucracy. Since this Bill calls for review of logging plans and inspections of logging practices, it

is obvious that many more personnel will have to be added to the present forestry section and that people familiar with the forests in Southeastern Alaska will have to be added to the present staff. It is our belief that at least as many personnel would be required under present plans as with a Division of Forestry.

This gets us down to the nub of this controversy - should the State Forester report directly to the Commissioner or Natural Resources? Commissioner Martin and others in the Administration have been most generous in affording us time to present our point of view to them. The Commissioner's belief that the Division of Lands should manage all State lands without what he has called "a State Forest Service" is one with which reasonable men could agree. I emphasize this because I think it important to let you know that this Administration has worked hard to educate itself on forestry matters and we have enjoyed a good working relationship with it.

However, we strongly disagree with the Administration position on this issue. It is our belief that in return for authority to regulate forest practices, the State should now be willing to take on the responsibility of setting policies for the State forests and the forest industry within the State. Let me point to three examples of where State forest policy is adrift: (1) For too long policy on forestry issues in the State have been set by State agencies which have no forestry expertise and which often are antagonistic toward the timber industry. The

best example of this is the Alaska Department of Fish and Game which has often used logging as an explanation for the lack of fish. (2) Secondly, there are 22.5 million acres of commercial forest land in the Interior of Alaska capable of supporting up to 36,000 jobs in Alaska which is about to be impacted by (d)(2) legislation. Yet to our knowledge no one in State Government has addressed the simple policy question of whether or not the (d)(2) issue should be approached in such a way as to permit the formation of an Alaskan forest industry in the Interior. Finally, the State is now in the process of continuing its land selections under the Statehood Act. Yet to our knowledge, while forested areas are being selected, no one in State Government has decided whether or not its land selections should be used in part to allow the formation of a forest industry in the areas involved.

Remember this policy vacuum exists under the organizational table Commissioner Martin is asking you to maintain. In point of fact the Division of Lands has not been forestry oriented or forestry concerned. It has not been aggressive in attempting to advance comprehensive Statewide and local forestry plans. Why should you expect it to become so now? Further, it is an open secret that logging on State forest lands is the most poorly planned and administered of any that goes on in Alaska. This is true notwithstanding the fact that by contract provisions the Division of Lands could have required operators to observe forest practices at least as tough as the Forest Service.

The point of all this is that the Division of Lands has poorly handled forestry in the past and allowed other agencies to pre-empt the policy decisions it should have been and should be making. Now the Administration proposes to keep this structure in place in the face of the (d)(2) issue and its own land selections under the Statehood Act. We say the Division of Lands has handled forestry too poorly in the past to be entrusted with the task of making and administering these monumental policy questions now before it and on which it has not yet taken any apparent action. In short, the State Forests and the State forest industry are too important to have their administration regulated by non-professional unconcerned management in the backwater of a bureaucracy with a miserable forestry management track record.

A strong State Forester in Juneau reporting directly to the Commissioner of Natural Resources would not be an instant cure for the problems described. But, responsibility would be fixed upon a Division Director answerable to the Administration and who could answer to you for the Administration. Such an individual, who should be a professional forester, would per force aggressively formulate State forestry policy for consideration by the Administration. Alaskans could then know when the Alaska Department of Fish and Game was overreaching its own policy - making mandate or blaming the lack of fish on the wrong thing. We would then have someone working on a State forestry position with respect to (d)(2) and State land selections. We would then

have someone to answer for poor planning and/or administration of logging on State Forest Lands when it occurs. Under the system we propose land classification could remain with the Division of Lands, and be co-ordinated with the State Forester in the same way the Bureau of Land Management and U.S. Forest Service have done on federal lands.

In conclusion, if a strong State Forester reporting directly to the Commissioner of Natural Resources is added to this Bill, ALP will support it. If we are to have a wise forward looking State policy on forestry what we ask is vital. We ask your assistance in bringing it about.

Testimony of Robert Loescher
February 11, 1977
Hearing on SB 59

Madam Chairman, my name is Bob Loescher. I'm with the Board of Directors of Goldbelt Corporation. The Juneau native corporation has about 2,600 stockholders. We are in the process of finalizing land selections around the Juneau area, and our land selections are turning up quite a bit of timber as a primary resource of those lands.

We are a member of the SANTCO Corporation (The Southeast Alaska Native Timber Corporation), and we understand that there are activities within the corporation that are taking place to take a hard look at this Bill. As you know in this Legislature the only bill is Senate Bill 59, and then there is House Bill 40. In the previous Legislature this process had started, but hadn't gotten very far.

We would like to state for the record that Goldbelt Corporation is in a position to support development of legislation. We would like to see a good forestry bill be developed during this session. We're not necessarily in concurrence with many of the provisions of Senate Bill 59, and we would like to just generalize on a number of areas, and if the procedure would hold true, we would like to advance some specific language and rationale at a later time in the next several weeks to the Senate in hopes that we might be able to influence the direction of this legislation.

We are concerned that the bill is aimed at two areas. The public lands that are going to be selected by the State of Alaska under the Statehood Act in the National Forest, and then in combining private lands simultaneously in the same piece of legislation. We do realize that forestry resources are of interest to the citizenry as a whole, however, our corporation has some specific responsibilities to its stockholders in the management of its assets that we have received under the Alaska Native Claims Settlement Act. We are wondering if in time, we might be more specific in the legislation on how the State's interests and the taxpayers and the other shareowners of our assets of this State, how they reflect and coordinate directly with our management of our lands.

There are areas in this bill under the Administration's bill that provide for direct involvement of the State in the management of our resources. We're quite concerned about that. We feel that we have a fiduciary responsibility to manage our resources directly.

Testimony of Robert Loescher Cont.
February 11, 1977
Hearing on SB 59

We also have a couple other concerns. One is that the bill, as drafted, puts great emphasis on aesthetics, other subjective type values that are not quantifiable and identifiable, and can't be measured, and are very subjective in policy determinations. We're concerned about being affected indirectly or directly by such legislation. We have no problem working to co-manage our lands with other interests or adjacent interests, but we want to have the opportunity to have a direct input into the development of these kinds of land-use policies and planning. We feel that the bill should put emphasis on the fact that it's in the economic interests of the people of the State that there be a viable logging industry, and a viable milling industry, and we feel it important to the taxpayers and to ourselves that this have primary importance in the purpose of the bill. We're quite concerned that there is a lesser value or lesser emphasis in this regard.

We also have a couple other concerns in the bill just generally. We don't agree that the business of enforcing the regulations and how you go about through the hearing procedure and what-not is very close to due process of law. In fact, it overextends due process to the point, we'll be out of business in no time flat if we follow those types of procedures. We can't afford it. We're a small corporation, admittedly, we have 23,000 acres of land, but it abuses the whole concept of due process of law, and we will have some recommendations in that regard.

In other areas, we are concerned about the logging operations on our land. We're concerned that the cost that the Senate or the House when they consider this legislation, they consider the cost to the taxpayers of the State of Alaska, and that they also consider the cost of administration to the private landowners. There are a lot of factors in administration of this bill that are going to be very expensive if enforced. In the operation of harvesting of timber, there's bonding requirements in there that are very costly, and nobody has determined how you are going to go about that. There's requirements that we submit data and develop information for the State Forester, or whoever to review and go through a very lengthy 80 day process in order to get approvals and what-not. There is also a requirement in here that the State of Alaska will inventory lands. Now, we've been in the business for a couple of years now in trying to develop planning for our lands that we are going to be receiving patent to very shortly. Already, we've spent close to a million dollars throughout our region just investigating our lands and what-not, and we have a requirement to inventory and appraise our lands every five years. That costs 30 to 70 thousand dollars to do everytime around. Now, in this bill there's a requirement that lands be inventoried by the Commissioner and the State of Alaska. I'd sure like the State to participate and maybe we can offset some of our costs, but it's a very expensive management operation, and you should be aware of that.

Testimony of Robert Loescher
February 11, 1977
Hearing on SB 59

In conclusion, Madam Chairman, we would like to be a part of any effort that you and your staff to this committee may go into. We'd like to spend time. We have drafted, many times in the last two years, amendments to certain sections of certain bills, but I think we need to sit down and work out philosophy of land management in the purpose section of the legislation and then procedures, and see how they look all together. We're willing to work with any group in order to develop this bill.

Thank you very much.

CHAIRMAN POLAND - Thank you Mr. Loescher. We would be very glad to receive any suggestions, any written comments or amendments, and we will take them into consideration. We would like to request that if possible of all of the witnesses that have said they wish to put in further information, if we could get them in the next ten days it would be a tremendous help.

Is there anyone else who cares to comment on Senate Bill 59? If not, I thank you all very much for all the testimony that's been given here today, and it certainly will be considered with the additional testimony that we are requesting from anyone who has an interest in the bill.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.



Official Business

Alaska State Legislature

Senate

Committee on Resources

KAY POLAND, CHAIRMAN

Pouch V
State Capitol
Juneau, Alaska 99811

SS SB 59 - FORESTRY PRACTICES ACT

AGENDA FOR WEDNESDAY, APRIL 12

- Pro* - 3:00 - CLARENCE KRAMER, ALASKA LUMBER AND PULP
- pro* - ~~3:15~~ *Kay Greenough* - S.E. Al. Cons. Society
- pro* - 3:15 - BOB MARTIN, TAKU CHAPTER
ALASKA CONSERVATION SOCIETY
- ~~3:30 - KAREN TILLINGHAST, S.E. ALASKA CONSERVATION SOCIETY~~
- ? - 3:45 - ROBERT LOESCHER, SEALASKA
- Con* - 4:00 - LES ANDERSON, KONCOR
- Con* - 4:15 - SAM DEMMERT, YAK-TAT KWAAN, INC.
- 4:30 - WARREN WEATHERS, SHEE-ATIKA
- Con* - 4:45 - DAVID WOLF, ATTORNY
KONCOR & YAK-TAT KWAAN, INC.



Official Business

Alaska State Legislature

Senate

Committee on Resources

KAY POLAND, CHAIRMAN

Pouch V
State Capitol
Juneau, Alaska 99811

SS SB 59 - FORESTRY PRACTICES ACT

AGENDA FOR WEDNESDAY, APRIL 12

- 3:00 - CLARENCE KRAMER, ALASKA LUMBER AND PULP *pro*
- 3:15 - BOB MARTIN, TAKU CHAPTER
ALASKA CONSERVATION SOCIETY *pro*
- 3:30 - *Kay Greenough pro*
KAREN TILLINGHAST, S.E. ALASKA CONSERVATION SOCIETY
- 3:45 - ROBERT LOESCHER, SEALASKA - *Con*
- 4:00 - LES ANDERSON, KONCOR *Con*
- 4:15 - SAM DEMMERT, YAK-TAT KWAAN, INC. *Con*
- 4:30 - WARREN WEATHERS, SHEE-ATIKA *Con*
- 4:45 - DAVID WOLF, ATTORNY *Con*
KONCOR & YAK-TAT KWAAN, INC.

Friday
 3002 - *Joseph G. Wilson - Goldbelt*
 3815 - *Huna Latem Corp - Con*
James Austin, Jr.



Official Business

Alaska State Legislature

Senate

Committee on Resources

KAY POLAND, CHAIRMAN

14 April 1978

AGENDA

Pouch V
State Capitol
Juneau, Alaska 99811

SSSB 59

FORESTRY PRACTICES ACT

Testimony

JOSEPH G. WILSON, GOLDBELT INC.

JAMES AUSTIN, JR., HUNA TOTEM CORP.

SCR 101

ESTABLISHMENT OF FISH QUOTAS

HB 704

APPROP. DEPT. OF NATURAL RESOURCES,
DIV. OF LAND AND WATER MANAGEMENT



Official Business

Alaska State Legislature

Senate

Committee on Resources

KAY POLAND, CHAIRMAN

14 April 1978

AGENDA

Pouch V
State Capitol
Juneau, Alaska 99811

SSSB 59

FORESTRY PRACTICES ACT

Testimony

JOSEPH G. WILSON, GOLDBELT INC.

Con - unless amended

JAMES AUSTIN, JR., HUNA TOTEM CORP.

Dick Bradley -

moved out

SCR 101

ESTABLISHMENT OF FISH QUOTAS

HB 704

APPROP. DEPT. OF NATURAL RESOURCES,
DIV. OF LAND AND WATER MANAGEMENT

*Wed
19th*

21



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Kay Poland
Chairman
Senate Resources Committee

Kay,

This will be introduced Thursday,
April 6, 1978.

Keith

April 6, 1978

The Honorable John L. Rader
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

Under authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a substitute bill for SB 59 (forest resources and practices), introduced by me during the 1977 legislative session. This sponsor substitute is the result of a considerable amount of further study and numerous meetings involving persons and organizations concerned with forest resources and practices. The following statement of the reasons for this legislation and the section-by-section analysis go into some detail in order to provide evidence of legislative intent.

I. REASONS FOR THE LEGISLATION

The purpose of the legislation is to establish a program for the administration of forest resources in Alaska so that the state may realize, over the long term, the wide variety of products, benefits, and services obtainable from forestland.

It is especially important that this legislation be enacted before use of forest resources in Alaska reaches its greatest intensity. States which have delayed passage of appropriate forest practices Acts until an absolute necessity arose have often experienced a climate of conflict which complicated legislative deliberations and reduced the quality of the legislative product. In addition, some options for approaches to administration and for realization of objectives were already foreclosed. Enactment of an Alaska Forest Resources and Practices Act at this time would permit consideration of potential measures and programs in an atmosphere conducive to

solutions mutually agreeable to all parties. Most important, it will allow conflicts to be resolved in advance, precluding potential disruption of operations in the field.

While a state forest resources program is necessary and desirable, it is not the intention of this legislation to create a massive new bureaucracy which would only result in waste of government funds and manpower. Rather, the approach used is to fill existing gaps in the statutes through enabling legislation which would provide for a thorough forest management program without duplicating or overlapping existing government programs of the Department of Natural Resources or other state agencies. Emphasis is placed on cooperation between these agencies to achieve generally desired objectives.

Development of this transmittal letter reflects my wish to limit the language of the Act to essential matters while providing the intent behind its provisions. I offer the Act and the letter as a package, with the statements of intent in the letter to govern application and interpretation of the Act. The appropriate committees of the legislature are strongly urged to adopt this transmittal letter as the committee report on the bill.

II. SECTION-BY-SECTION ANALYSIS

Section 10. Declaration of Intent.

Section 10 contains a brief statement of the findings of the legislature and the purpose of the legislation. Paragraph (1) recognizes the range and variety of forest resources; that forest products include not only timber but other products obtained from the land and water (including marine areas) influenced by forest ecosystems; that multiple products, benefits, and services are obtained from forest resources; and that forest resources and values often escape quantification.

Paragraph (2) reflects my desire that the various businesses and other activities (whether or not commercial) which are dependent upon forest resources receive the support of the state for their continuation in the government's forest resources program. The term "economic enterprises" is intended to be comprehensive, including not only existing businesses but those industries which may be developed as new forest resources become accessible or economically viable, and recognizing that forest resources present opportunities for small businesses as well as large corporations.

"Activities and pursuits" includes those which are not necessarily revenue-generating, and would encompass subsistence use.

Paragraph (3) declares that the programs and measures provided for in the Act are not only desirable but a basic duty of the state and implement the directives contained in several of the sections of Article VIII, Alaska Constitution. It is especially critical that timber supplies and other renewable resources be maintained and available in perpetuity to protect the longevity and insure the stability of the forest products industry, to insure that enterprises dependent on forest resources continue to make a substantial contribution to the Alaskan economy, to prevent impairment of the capability of the land and water to produce renewable resources, and to make certain that forest land generates the services and benefits, whether commercial or not, which Alaskans have come to expect from it.

Paragraph (4) contains two important concepts. First, much contemporary legislation has relied excessively on regulatory measures to achieve desired goals when this approach may in fact be both onerous and inefficient. Therefore, this Act would direct that regulations, services, and incentives be employed in the combination which is most likely to accomplish the purposes of the Act.

Second, the state has not to date developed a high-profile forestry program emphasizing the expertise of professional foresters, which is inherently necessary if forest resource administration in Alaska is to be successful. As a result, paragraph (4) stresses the importance of forest resource professionals as an essential element to complete the state's multidisciplinary capacity.

Paragraph (5) addresses the need for the state to carry out its responsibilities for control of nonpoint source pollution under the Federal Water Pollution Control Act under the leadership of the Department of Environmental Conservation, which is the lead agency under law for this program. The Environmental Protection Agency has left it to the states to devise their own approaches in this area, but has indicated that the federal government will assume control if a state does not develop an approved program. The Department of Environmental Conservation may legally delegate its authority with respect to this program to the Department of Natural Resources or otherwise use the forestry expertise of DNR with respect to development of the nonpoint source program, and the regulations developed under this chapter could be used in conjunction with this program.

Paragraph (6) recognizes that regulations adopted under the Alaska Coastal Management Act must address forestry matters; to avoid conflicting regulations, it is necessary that those adopted under this Act be used under the Coastal Management Act, superseding any forestry regulations previously adopted under the CZM Act. However, any prior efforts under CZM should be considered in adopting regulations under this Act.

Section 20. Administration.

This section designates the officials responsible for administration of the Act and establishes authority for carrying out desirable forest resources programs.

Subsection (a) reflects the request of numerous interest groups that a division responsible for forestry be created within state government in order to (1) provide recognition for forestry and forest products, as has already been done for many other natural resources, (2) bring the expertise of professional foresters to bear on forest management issues, and (3) establish a contact and focus point in the government for the forest products industry and other users of forest resources. This subsection expresses the governor's power to create a Division of Forest, Land and Water Management with the director to be known as the state forester. It is emphasized that the state forester must be a trained professional with the requisite education and fully experienced with the many issues and subjects inevitable in the administration of the Act.

Subsection (b) provides that the ultimate responsibility for implementing the Act is vested in the commissioner. However, the expertise of forest resource managers cannot be employed unless the forestry expertise housed in the division is fully used. Consequently, it is expected that the commissioner will delegate authority for daily administration of the Act to the state forester, reserving to himself only those matters requiring the attention of a cabinet officer. Moreover, the commissioner and the state government in general should make use of the state forester on other forestry matters even though they may technically be beyond the purview of the Act.

I recognize that it will take some time to develop completely the program envisioned by the legislation. However, by creating the division, naming a state forester, and listing the functions assigned to him, I expect that the program ultimately formulated will exceed the accepted minimums for administration of forest resources. Specifically, I intend

that the commissioner and the state forester employ foresight and innovation rather than being constrained by conventional attitudes so that Alaska's forest management effort enjoys a national reputation for leadership and competence.

Forest managers are expected to calculate timber harvests and rotation ages in a way which insures sustained yield and a steady supply; this has been difficult in the past on state land because the acreage available for timber use has not remained constant. Subsection (c) provides for the opportunity to establish a minimum fixed timber supply base from which to make sustained yield calculations. In addition, the state will ultimately determine that land which it wishes to retain in state ownership for multiple use purposes, some of which will be forested land. While subsection (c) does not mean that all of the state's retained land will be designated as state forests (as opposed to some other category), it does allow for the designation of that land with substantial timber and other resources for retention. Failure to designate state forest land as a state forest does not, of course, remove it from the provisions of this chapter.

The ultimate success of the state's forest management program will depend on the knowledge available to decisionmakers. Numerous subjects and issues invite research and experimentation, and subsection (d) sanctions the designation of special forest units for this purpose. I would anticipate the use of such forests for analysis of exotic stocks; development of genetically superior stocks; evaluation of the effects of land use activities and of methods to reduce adverse impacts; experimentation with advanced harvesting, extraction and transportation techniques and equipment; examination of programs for control of disease, fire, and insect infestation; cooperative projects with other agencies respecting compatible management of multiple resources; and any other activities enhancing or refining forest management efforts. Such forests must be limited to the minimal size necessary for conducting the research or experiment so that ill-considered major projects may not be continued under the guise of scientific investigation.

Reforestation and afforestation must be the highest priority among silvicultural programs, being most directly related to maintenance of perpetual supplies of timber. Within funding capacity, the commissioner is expected to make available planting stock to assist operators in meeting reforestation requirements of the Act, although this does not relieve their duty to observe those requirements. The term "nurseries and

greenhouses" is not intended to be restrictive; all facilities providing planting stock (including containerized greenhouses and other advanced versions) are consistent with this section. "Forest vegetation" was used instead of forest trees since there may be instances where ground cover or other plants will be beneficial in forest management. Subsection (e) also provides that the commissioner may charge for providing planting stock, with any proceeds to go to the general fund.

Subsection (f) authorizes a full range of professional management services and participation in federal assistance programs such as those conducted by the Forest Service under their state and private forestry division. Since there will be many new timber operators and owners in the state in the near future, education and management assistance efforts may provide expertise which would be otherwise unavailable, leading to more efficient operations and better forest practices. Such services must be closely coordinated with regulatory and review requirements, as is discussed later in this analysis.

As discussed earlier, the Department of Environmental Conservation may legally delegate authority to the Department of Natural Resources for development of regulations necessary to implement the forestry portion of the state program for control of nonpoint source pollution under the Federal Water Pollution Control Act, as amended, or to use any other arrangement to take advantage of the forestry expertise of DNR. Subsection (g) formalizes this authorization and directs DNR to seek a cooperative agreement on this subject. However, it also reemphasizes that DEC is the lead agency and that any regulations or cooperative agreements must be approved by the commissioner of environmental conservation before they become effective.

Since maximum contact with forest resource constituencies is critical if the government and the private sector are to understand each other's positions and interests, subsection (h) places a duty on the commissioner to consult with all appropriate parties in the administration of the Act. The commissioner is expected to consult continuously with other state agencies possessing natural resource management responsibilities and to draw fully upon their expertise; this is especially true where DNR has no expertise of its own in a particular subject area. The term "landowners" should be construed to include adjacent landowners with respect to operations which may affect them. Moreover, the commissioner is not limited to entities within the state; federal

agencies, and agencies and institutions of other states and of foreign countries should be contacted to provide the state forester with maximum access to information on new management techniques and other matters. The provision on cooperative agreements and contracts is intended to permit formalization of consultation, management, and other activities where desirable.

With respect to subsection (i), there were a number of requests for creation of an advisory committee or board to assist the state forester. However, establishment of a specific committee or board by statute automatically initiates a useless controversy over the makeup of the entity. Moreover, while a general advisory committee may be important, creation of special committees on particular issues of special importance may also be warranted from time to time. While the bill endorses the advisory committee approach where appropriate, it provides flexibility which is the key to a successful advisory committee system, and thus leaves it to the department to determine the particulars. The commissioner is, nevertheless, directed to establish at least one advisory committee, and it is expected that the commissioner will use the advisory committee system (1) to develop specific approaches to implementing the standards in sec. 40 through the advice of professionals and other interested persons, (2) to formulate the particulars of the exemptions under sec. 30(c), and (3) to carry out consultative duties under subsection (h).

Moreover, advisory committees created must be representative of the various constituencies dependent on or affected by management of forest resources so that a full range of public opinion is received. Advisory committees should meet regularly, and members should be appointed to specified terms long enough to permit them to become familiar with the issues and to make meaningful recommendations. The commissioner should appoint an advisory committee as soon as possible after the effective date of the Act to assist in the development of regulations. The provision on travel and expenses is intended to be used only where advisory committee activities are clearly necessary and of benefit to the state.

While there were several suggestions for a provision mandating the location of the state forester, I believe that access to trained forestry personnel by the public is more directly responsible for the success of a government forestry program. Therefore, subsection (j) speaks to distribution of the department's foresters rather than the location of the state forester.

The introduction to this analysis stressed the importance of avoiding duplication of existing authority in the enactment of forest practices legislation. Subsection (k) fulfills this objective by insuring that the statutory prerogatives of other agencies are retained and that this Act is not viewed as other than supplemental to the overall state regulatory framework for forest resources. The only exceptions are that (1) forestry regulations developed under this chapter shall be used as the forestry segment of the Coastal Management Act program and (2) if authorized by the commissioner of environmental conservation, regulations adopted under this chapter may serve as the forestry portion of the state program for control of nonpoint source pollution.

Subsection (l) is self-explanatory.

Section 30. Applicability.

This section specifies the applicability of the Act to particular land and activities.

Subsection (a) is self-explanatory. The limitation in SB 59 to commercial forest land was removed as it was considered to be illogical and extremely difficult to administer. Municipalities are not prevented from adopting ordinances which embody stricter standards and practices than those promulgated under this Act.

Subsection (b) reflects the fact that state standards adopted under the Federal Water Pollution Control Act may be made applicable to federal lands.

Subsection (c) covers exemptions. The intent of this provision is to limit the applicability of this Act to major commercial operations which genuinely affect the objectives of this chapter relating to the maintenance of a stable and healthy forest products industry and the perpetuation of supplies of renewable resources. Consequently, the commissioner is required to make exemptions by regulation to insure that small landowners who expect to be able to sell or otherwise use their timber will be permitted to do so. Since it is impossible to determine in all cases what is a "small landowner", the commissioner may determine the particulars through exemption regulations. However, any owner of the tracts described is entitled to an exemption unless his tract is being used as a part of a major commercial operation, as where a logging company purchases the timber rights to numerous contiguous tracts in order to conduct a large scale logging program. With respect to tracts larger than 160

acres which are not part of a homestead, farm, or residential or recreational property, the commissioner may exempt them if they are not capable of being managed as a sustained yield forest unit.

Section 40. Regulatory and Administrative Standards.

The best approach to forest practices legislation is to avoid placing specific practices measures in the statute; instead, practices should be developed through the regulatory process, with such regulations and other administrative actions governed by guiding standards contained in the Act. Section 40 contains such standards.

Subsection (a) contains standards applicable to all forest land, regardless of whether in public or private ownership.

Paragraph (1) recognizes the importance of determining the reforestation capacity of land before timber harvesting. The determination is to be made by the government. This standard is not intended to mandate a non-declining yield type of management, but it does reflect the paramount state interest in having all forest land (unless legitimately converted to another use) continue to produce merchantable timber over the long term.

Paragraph (2) dictates that important information relative to any decision should be collected and used, and that it should be current. In some cases, land managers have become lax in keeping abreast of recent developments in their field, and make decisions based more on their status as professionals rather than through true analysis of a situation. This standard is not intended to be an unwarranted obstacle to management activities or to focus the burden of developing data on the operator. It does, however, place a duty on the manager to account for his actions in a convincing way.

Paragraph (3) mandates recognition of the concepts of environmentally sensitive areas and best management practices in conjunction with nonpoint source measures if adopted under this chapter. A number of approaches could be utilized, depending on the objective to be achieved, including standards, quantitative limitations, and zones or management units.

Paragraph (4) identifies two important elements often missing in forest resource management; first, that forest practices requirements often impose real costs on the operator, and should be weighed in terms of the public benefits realized;

and second, that a format for the harvest of trees convenient for government managers may be unrealistic for operators in view of marketing conditions.

Paragraph (5) recognizes the fundamental public trust obligation of the state to insure that the capability of the land to produce renewable resources is not impaired. While a particular species of tree or wildlife may have little relative value now, the future may find it suddenly in great demand. If the land is incapable of producing it to the demand level, an important land management option is lost, to the detriment of the public welfare.

Paragraph (6) reflects that loss of scenic quality may have an impact beyond the boundaries of the land where the activity is taking place. While this standard permits consideration of scenic factors where economically feasible, it is not intended as a prohibition on land-use activities, especially on private land where private landowners are justified in using resources subject to their ownership. It is directed primarily at public land where scenic quality is one of the multiple uses and values deserving recognition in a public land management program. In situations where an area is an important source of tourism and recreation, for example, a landscape architect might be employed in the design of the layout.

Subsection (c) contains those additional standards appropriate for public land.

Paragraph (1) follows similar federal legislation by applying the principles of multiple use and sustained yield to public land. These concepts are so well accepted as desirable objectives that further explanation is unnecessary. Once again, the approach which allows satisfaction of present needs without foreclosing future options is the most desirable.

Paragraph (2) injects another common principle in forest management. Specifically, while multiple use necessarily involves combining compatible uses within a large land area, forest practices and allocations result in assigning priority uses to particular areas. This standard provides that any allocation system should be implemented through analysis of the capability of the land and the resources and values present.

Paragraph (3) does not require that all uses be given equal distribution in the implementation of a multiple-use system.

It does, however, require that the process begin without any preconceptions or prejudices on the part of land managers.

Paragraph (4) recognizes the need to accommodate the concerns and requirements of the many forest resource constituencies.

Section 50. Administrative Plan and Report.

Subsection (a) requires that a plan be developed by the department demonstrating compliance with the Act. Without such a planning process, it would be difficult for the department to direct all of its activities and programs toward meeting uniform goals. Moreover, there would be no guarantee that a long range blueprint (based on a rotation age or similar concept) for forest management would be formulated; this is necessary if undesirable consequences are to be addressed before they become impossible to deal with. It is expected that the plan will concern itself specifically with management issues of interest to the public, such as harvesting methodology, timber management philosophy, and a system for perpetuation of supplies of renewable resources. While the plan will necessarily be revised and augmented over time to reflect new information and management techniques, the first draft should accompany the first report to the legislature required by subsection (b).

Subsection (b) requires a report to the legislature demonstrating accountability with respect to subsection (a).

Subsection (c) directs the preparation of recommendations for financial incentives as part of the threefold approach to achieving the objectives of the Act (regulations, services, and incentives).

Section 60. Regulations.

This section vests authority for regulations governing forest practices. Regulations may be adopted, of course, to implement other portions of the Act as well.

Subsection (a) lists the subject areas for regulations. They are intended to cover appropriate silvicultural and related activities necessary for forest management without encroaching on functions traditionally performed by other agencies. It is expected that a set of at least interim regulations would be developed by early 1979.

There has been a number of requests for a one-stop permit process. The department should not be vested with authority

to actually approve permit applications on behalf of other agencies since that is a matter for their discretion. However, an operator should not have to visit each agency and division which requires a permit. Therefore, this section allows the operator to make all of his permit applications through one place and to be informed of the outcome by the department. Where applicable, the provisions of AS 46.35 should be used to coordinate multiple permit determinations.

Subsections (c) and (d) are self-explanatory.

Section 70. Review and Approval of Operations.

This section is intended to institute a review process which combines the best elements of the notification system and the prior-approval system without incorporating their disadvantages as well.

Subsection (a) is, of course, subject to any exemptions granted under sec. 30(c).

Subsection (b) stresses the importance of the professional management services approach. If there is early and consistent contact between operators and the department with respect to pending operations, the operator will gain maximum benefit from assistance programs, understand applicable regulations so as to avoid inadvertent violations, provide state officials with a full understanding of his interests and needs, and in general facilitate administration of the Act. With full cooperation between operators and the state, review under this section could be rendered largely a formality. Moreover, while the statutory requirements must be met, I recognize that operations may range from a one-time harvest occupying one season to an ongoing harvest program taking place continuously for years. The commissioner is expected to tailor this process to various proposed projects so that unnecessary bureaucratic obstacles are not erected.

The review process in subsections (c) through (i) imposes an ironclad time frame on the length of the government review. There are no exceptions. The notification description should consist of a logging and access plan so that the location of land-use activities is easily discerned. The extended period in subsection (d) is to be authorized only where the complexity of the subject matter makes it physically impossible for a 20-day review, such as for a proposed operation involving many thousands of acres to take place over a number of years. If state agencies possess the manpower to review the operation within 20 days, an extension

should not be authorized. Moreover, an extension should only be for the period necessary to complete the review, and not necessarily for the full additional 20 days. Above all, the commissioner must insure that extensions are not used as an excuse for bureaucratic delay. This extension is not to be employed as an excuse for bureaucratic delay.

Subsection (e)(4) recognizes that there may be instances where a particular phase of an operation requires closer examination; it is emphasized that additional materials required of the operator under this language must be carefully limited to only those matters requiring additional review, and not used as an excuse for the forest managers to force the operator to do their work for them. Once again, if the professional management services approach is fully used, the review process in this section should not become an issue.

With respect to public notice under subsection (h), notice should be given locally as well where there is no newspaper published in the area.

Subsection (i) stresses that site examinations may be used where such would benefit the review process.

Subsection (j) prohibits substantial deviation from approved plans. "Substantial deviation" means a departure significant enough to jeopardize attainment of the objectives of the Act. Close contact between the operator and the department should permit any problems to be resolved in advance of a crisis.

Subsection (k) reflects that there will be some instances where immediate action is necessary, as in the case of salvage of trees, fire hazards, or other situations where a genuine emergency is involved.

The authority for posting of security under subsection (m) is to be used only where necessary. Obtaining bonds and other security devices is often difficult, especially for small operators, and may prevent them from doing business at all. Where security is required, the amount should be geared to the actual danger being protected against, possibly through some type of sliding scale arrangement.

Subsection (n) is self-explanatory. This was not intended to apply to operations which have already been completed.
Section 80. Deployment of Broadcast Chemicals.

Regulation of forest practices must necessarily reflect the state of the art. All consequences cannot be known in advance of operating; with an appropriate margin of error built in, such operations can be conducted successfully even though there are many unknowns regarding particular impacts.

Broadcast chemicals are a special case, however, as they involve the introduction of a foreign substance into the ecosystem. The state, for example, very strictly controls the introduction of exotic wildlife into Alaska because biologists often have little idea as to how a new species will interreact with the existing species composition. Foreign substances pose similar dangers to the forest ecosystem. I believe that forest managers should have a reasonable idea of the effects of using a foreign substance before it is applied on a large scale. While this section leaves to the discretion of the commissioner of environmental conservation the methodology to be used in regulating broadcast chemicals, it may well be advisable to undertake testing of some substances under controlled conditions before permitting commercial application of the substance.

Section 90. Conversion of Forest Land to Other Uses.

The provision in this section is a requirement of due process. However, it is my intent that proposed conversions be closely monitored so that subterfuge is not employed to escape responsibilities for reforestation. Moreover, while continued use as productive forest land cannot be required, it may be permissible to specify minimum revegetation of land for water quality purposes.

Section 100. Inspections, Investigations, and Enforcement.

This section authorizes each agency with statutory responsibilities over forest land to enforce those responsibilities. However, it also directs affected agencies to coordinate their enforcement activities so that operators are not subjected to differing interpretations of the same law or other undesirable or unnecessary procedures; interagency enforcement teams could be used to avoid this problem. Enforcement agents should avoid entering upon private land unless there is good reason to be there.

Section 110. Prohibitions, Penalties, and Enforcement Procedures.

The enforcement procedures in this section are straightforward and need no detailed explanation. Several features of this section should be stressed, however.

First, there are no criminal penalties. An administrative (civil) penalty system is used instead. Fines and penalties imposed are judicially reviewable under sec. 120.

Second, the burden of proof is, of course, on the state. An order resulting from a proceeding may be tailored to the exact nature of the violation so that the punishment is not disproportionate to the violation. A number of factors must be considered in determining a fine so that it reflects the gravity of the violation; it is expected that some type of fine schedule will be developed by the department so that penalties for the same offense are uniform.

Third, any emergency orders are limited to actual emergencies and have a duration of 21 days; therefore, they cannot be used as an excuse for not holding a hearing except in the context of an emergency.

Fourth, the bill establishes a hearing system designed to insure that operators are given a fair opportunity to present their case, and it recognizes that any proceeding instituted against a respondent may visit considerable expense and inconvenience on him. Special provisions are inserted to provide assistance to a respondent and to permit him to select an informal, nonadversary hearing process.

Fifth, the bill provides for a hearing officer who is not a state employee and who is not in any way connected with the preparation of the state's case.

Section 120. Appeals and Judicial Review.

This section is self-explanatory.

Section 130. Civil Action.

This section is self-explanatory. However, in order to discourage frivolous or obstructionist suits, I would hope that judges adjudicating cases brought under this section having no serious merit would impose costs and fees on the plaintiff under Civil Rule 82.

Section 950. Definitions.

While the definitions are self-explanatory, special mention must be made of the definition in paragraph (13). The intent of this definition, as the term is used in the Act, is to insure that consequences recognizable on the basis of the present state of the art of forest resource management are

reflected in management decisions, and that decisions include the establishment of a margin of error where it is understood that the consequences of an action are unknown. It is expected that studies undertaken by the state forester (using experimental forests and/or commercial logging operations) will be used to continually increase the bank of knowledge relating to the impacts of logging and other land use activities, and that the results would be described in the report submitted under § 50.

Partially exempt service.

Section 2 of the bill amends the section of the State Personnel Act listing the positions in the exempt service. It adds the state forester, consistent with the new chapter in sec. 1 of the bill.

Effective Date.

The effective date of the Act is January 1, 1979. However, it is expected that the department will engage in preparatory activities immediately so that full implementation may begin on the effective date.

Sincerely,

Jay S. Hammond
Governor

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 59

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TENTH LEGISLATURE -- SECOND SESSION

5

BILL

6

For an Act entitled: "An Act relating to forest resources and practices;

7

and providing for an effective date."

8

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

9

* Section 1. AS 41 is amended by adding a new chapter to read:

10

CHAPTER 17. FOREST RESOURCES AND PRACTICES.

11

Sec. 41.17.010. DECLARATION OF INTENT. The legislature declares

12

that

13

(1) the forest resources of Alaska are among the most

14

valuable natural resources of the state, and furnish timber and wood

15

products, fish and wildlife, tourism, outdoor recreation and aesthetic

16

enjoyment water, soil, air, minerals, diverse lifestyle opportunities,

17

general health and welfare, and a multitude of other products, benefits,

18

and services, tangible and intangible;

19

(2) economic enterprises and other activities and pursuits

20

derived from forest resources warrant the continuing recognition and

21

support of the state;

22

(3) the state has a fundamental obligation to insure that

23

management of forest resources guarantees perpetual supplies of renew-

24

able resources, provides nonrenewable resources in a manner consistent

25

with that obligation, and serves the needs of all Alaska for the many

26

products, benefits, and services obtained from them;

27

(4) government administration of forest resources should

28

combine professional management services, regulatory measures, and

29

economic incentives in a complementary fashion, and should draw upon

1 the expertise of professional foresters in conjunction with other dis-
2 ciplines;

3 (5) under the leadership of the Department of Environmental
4 Conservation, the state should exercise its full responsibility and
5 authority for control of nonpoint source pollution with respect to the
6 Federal Water Pollution Control Act, as amended;

7 (6) the provisions of this chapter shall be the basis for
8 forest management standards, policies, and guidelines developed under
9 the Alaska Coastal Management Act to the extent permitted by law.

10 Sec. 41.17.020. ADMINISTRATION. (a) The governor may create,
11 within the Department of Natural Resources, a Division of Forest,
12 Land, and Water Management to carry out this chapter and other appro-
13 priate duties designated by the governor. The division shall be
14 headed by a director who shall be the state forester, appointed by the
15 commissioner to the partially exempt service in accordance with law.
16 The state forester shall be a natural resources land manager with
17 generally accepted educational credentials, familiar and experienced
18 with the renewable and nonrenewable resources and values of forest
19 land and the products, benefits, and services obtained from them.

20 (b) The commissioner shall administer this chapter and is
21 authorized and encouraged to delegate responsibilities for carrying
22 out this chapter to the state forester.

23 (c) After planning and classification procedures under AS 38.05
24 have been completed, the governor may create, by administrative order,
25 state forests, to consist of land determined by him to be desirable
26 for retention in state ownership as multiple-use land.

27 (d) The commissioner may designate and operate experimental and
28 research forests on state land consistent with the limitations of AS
29 38.05.300. Laboratories and other facilities may be employed in con-

1 junction with those forests.

2 (e) The commissioner may establish and maintain forest vegeta-
3 tion nurseries and greenhouses for planting stock to be made available,
4 with or without charge, to organizations, institutions, government
5 agencies, individuals, and businesses for reforestation, afforestation,
6 and related purposes.

7 (f) The commissioner is authorized to undertake cooperative
8 forestry programs, extension services and education programs, and to
9 otherwise offer a full range of professional management services to
10 the interested public. When he considers it beneficial, the commis-
11 sioner may participate in federal assistance programs by accepting
12 assistance in whatever form offered.

13 (g) The commissioner may develop proposed regulations under this
14 chapter as part of the state program for control of nonpoint source
15 pollution under the Federal Water Pollution Control Act, as amended,
16 and shall seek to enter into a cooperative agreement with the commis-
17 sioner of environmental conservation for that purpose. However, the
18 Department of Environmental Conservation is the lead agency for water
19 quality and control of nonpoint source pollution under that Act, and
20 the regulations and cooperative agreement are therefore subject to the
21 advance approval of the commissioner of environmental conservation.

22 (h) In the administration of this chapter, the commissioner
23 shall consult with and draw upon the expertise of interested organiza-
24 tions, enterprises, individuals, government agencies, educational
25 institutions, and landowners. The commissioner may enter into coopera-
26 tive agreements and contracts with them to carry out this chapter.

27 (i) The commissioner shall establish, for general or special
28 purposes, one or more representative advisory committees to assist in
29 the administration of this chapter. Members of advisory committees

1 shall be appointed to specified terms, and may be reimbursed for travel
2 and expenses in accordance with law when approved by the commissioner.

3 (j) The commissioner shall locate department personnel with
4 forestry expertise throughout the state to facilitate public access to
5 professional management services and other forest resources programs.

6 (k) Notwithstanding any other provision of this chapter, the
7 commissioner may not employ the authority vested by this chapter so as
8 to duplicate or preempt the statutory authority of other state agencies
9 to adopt regulations or undertake other administrative actions govern-
10 ing resources, values, or activities on forest land except for (1)
11 regulations under the Coastal Management Act; and (2) if authorized by
12 the commissioner of environmental conservation, regulations relating
13 to control of nonpoint source pollution.

14 (l) The commissioner may take other actions necessary and proper
15 for the administration of this chapter, including the adoption of
16 regulations under the Administrative Procedure Act (AS 44.62).

17 Sec. 41.17.030. APPLICABILITY. (a) Unless otherwise specified,
18 this chapter applies to forest land under state, municipal, or private
19 ownership.

20 (b) The provisions of this chapter applicable to state land are
21 applicable to forest land under federal ownership to the extent per-
22 mitted by law.

23 (c) The commissioner shall exempt from the provisions of this
24 chapter

25 (1) minor, small scale, or incidental operations of little
26 significance with respect to the purposes of this chapter; and

27 (2) operations on private homesteads, farms, residential or
28 recreational property, and on all private tracts of 160 acres or less
29 under single ownership, unless those operations are part of a major

1 commercial logging network encompassing other tracts of land.

2 Sec. 41.17.040. REGULATORY AND ADMINISTRATIVE STANDARDS. (a)

3 All regulations, administrative actions, and other activities and
4 duties undertaken under this chapter must be in full accordance with
5 the standards set out in this section.

6 (b) With respect to state, municipal, and private forest land,
7 the following standards apply:

8 (1) timber harvesting is limited to areas where data and
9 information demonstrate that natural or artificial reforestation
10 techniques will result in the production of a sustained yield of
11 merchantable timber from that area;

12 (2) to the maximum extent possible, all applicable data and
13 information of applicable disciplines must be updated and used in
14 making decisions relative to the management of forest resources;

15 (3) environmentally sensitive areas and best management
16 practices must be recognized in the implementation of any nonpoint
17 source pollution control measures authorized under this chapter;

18 (4) where not inconsistent with the other provisions of
19 this section, administration of forest land must consider marketing
20 conditions and other economic constraints affecting the operator;

21 (5) there shall be no significant impairment of the produc-
22 tivity of the land and water with respect to renewable resources; and

23 (6) where economically practicable, allowance may be made
24 for scenic and aesthetic quality in or adjacent to areas of substantial
25 importance to the tourism and recreation industry.

26 (c) With respect to state and municipal forest land only, the
27 following standards also apply:

28 (1) forest land must be administered for the multiple use
29 of the renewable and nonrenewable resources and for the sustained

1 yield of the renewable resources of the land in the manner which best
2 provides for the present needs and preserves the future options of the
3 people of Alaska;

4 (2) any system of allocating predominant uses or values to
5 particular units within a contiguous area of land must reflect in
6 reasonable proportion the various resources and values present in that
7 area;

8 (3) determinations of multiple-use patterns to be recognized
9 within any area must begin with the assumption that all resources and
10 values are of equal priority; and

11 (4) to the extent its capacity permits, forest land must be
12 administered so as to provide for the continuation of businesses,
13 activities, and lifestyles which are dependent upon or derived from
14 forest resources.

15 Sec. 41.17.050. ADMINISTRATIVE PLAN AND REPORT. (a) The com-
16 missioner shall develop and continually maintain a long range plan for
17 the administration of this chapter which demonstrates that the provi-
18 sions of sec. 10 are being recognized and that the standards of sec.
19 40 are being met. The commissioner shall maintain a current inventory
20 or assessment of timber on forest land to assist in meeting the require-
21 ments of this section.

22 (b) On June 30, 1980, and at two-year intervals after that date,
23 the commissioner shall submit a detailed report to the legislature
24 reviewing the administration of this chapter over the preceding two
25 years, demonstrating compliance with (a) of this section, and describing
26 how the plan will affect the welfare of the forest products industry
27 and other activities and pursuits derived from or affected by forest
28 resources.

29 (c) As a part of the report to be submitted on June 30, 1980,

1 under (b) of this section, the commissioner shall, after consultation
2 with interested constituencies,

3 (1) review the structure and operations of the division of
4 forest, land, and water management;

5 (2) describe the degree to which the division has established
6 a high-profile forestry program utilizing the expertise of professional
7 foresters;

8 (3) describe the responsiveness of the division to the
9 interest of forest resources constituencies; and

10 (4) make recommendations to the legislature respecting the
11 legal authority of the Department of Natural Resources relating to
12 forestry, the qualifications of the director of the division, and the
13 location of the division within the department.

14 (d) On January 1, 1981, the commissioner, after consultation
15 with the commissioner of revenue, shall transmit to the legislature
16 recommendations for legislation establishing economic incentives which
17 would further the purposes of this chapter.

18 Sec. 41.17.060. REGULATIONS. (a) The commissioner may adopt
19 regulations in accordance with the Administrative Procedure Act (AS
20 44.62) governing operations on forest land with respect to the follow-
21 ing:

22 (1) harvesting, removal, and use of timber and tree pro-
23 ducts and related management activities;

24 (2) reforestation, afforestation, revegetation, stocking,
25 prescribed burning, fertilization, thinning, and other silvicultural
26 activities;

27 (3) brush, slash, and debris, and salvage of trees;

28 (4) soil erosion and wasting;

29 (5) fire and flood hazards;

1 (6) general administrative requirements and procedures;
2 (7) prevention and control of disease and insect infesta-
3 tion;

4 (8) with respect to the items in this subsection, identi-
5 fication of areas or circumstances warranting prohibitions or special
6 limitations on land-use activities.

7 (b) An operator may apply through the commissioner for permits
8 required by other state agencies to operate on forest land, which
9 applications may be forwarded to the commissioner of environmental
10 conservation for procedures in accordance with AS 46.35. The commis-
11 sioner shall notify the operator of the action taken. Where practi-
12 cable and desirable, the commissioner may enter into cooperative
13 agreements with federal agencies authorizing the department to serve
14 as a collection point for federal permit applications.

15 (c) The commissioner may establish regions, districts, or other
16 subdivisions of forest land within the state in which different
17 regulations apply to reflect varying conditions within the state, or
18 to facilitate administration.

19 (d) The commissioner shall adopt only those regulations necessary
20 to accomplish the purposes of this chapter, and shall avoid those
21 which increase operating costs without yielding significant benefits.

22 Sec. 41.17.070. REVIEW AND APPROVAL OF OPERATIONS. (a) Opera-
23 tions on forest land must be reviewed and approved under this section
24 for consistency with the policies and provisions of this chapter and
25 regulations adopted under this chapter.

26 (b) The commissioner shall make full use of professional manage-
27 ment services and other educational and assistance programs of the
28 department to encourage early contact between operators and the state
29 and to minimize reliance on this section as a principal means of

1 achieving the purposes of this chapter.

2 (c) Before operating on forest land, an operator shall give
3 notification to the commissioner consisting of

4 (1) a brief written description of the proposed operation;

5 (2) a USGS map of the largest available scale showing the
6 location of all proposed activities;

7 (3) proposed measures for soil conservation and reforesta-
8 tion; and

9 (4) evidence that the landowner and timber owner (if dif-
10 ferent from the operator) have approved the proposed operation.

11 (d) Within five days after receipt, the commissioner shall
12 distribute the notification materials to affected state agencies. The
13 agencies shall make their recommendations within 20 days after receiv-
14 ing the materials. The commissioner may extend the review period up
15 to an additional 20 days only if the subject matter is highly and
16 unusually complex.

17 (e) Within 10 days after expiration of the review period, the
18 commissioner shall, as appropriate:

19 (1) grant unconditional approval of the proposed operation;

20 (2) grant conditional approval, imposing necessary terms
21 and conditions based on the recommendations of the department or
22 another agency;

23 (3) disapprove the proposed operation, but only if he
24 considers it impossible to take other action under this subsection; or

25 (4) upon the recommendation of the department or another
26 agency, require the submission of additional plans or descriptions
27 from the operator, but only to the extent necessary for proper assess-
28 ment of the proposed operation; however, any action by the commissioner
29 under this paragraph must be taken within three days after expiration

1 of the review period.

2 (f) If action is taken under (e)(4) of this section, the commis-
3 sioner and affected agencies have an additional 20-day review period,
4 after which time action must be taken under (e)(1), (2), or (3). If
5 the commissioner takes no action under (e) of this section within the
6 statutory time limit, he is presumed to have taken action under (e)(1).
7 Action taken by the commissioner under (e) of this section must be
8 accompanied by a written justification.

9 (g) If recommendations of another state agency are rejected, the
10 commissioner shall provide the agency with a written statement of the
11 reasons for that action.

12 (h) Upon receipt of any notification, the commissioner shall
13 provide copies to the timber owner and landowner, if different from
14 the operator, and within five days shall publish the brief description
15 received in a newspaper of general circulation, with an invitation for
16 public comment. Recommendations received from the public must be
17 considered.

18 (i) Information and paperwork required of the operator under
19 this section must be limited to that necessary to accomplish the
20 purposes of this section. Site examinations, including an interdis-
21 ciplinary review, may be undertaken by the commissioner.

22 (j) An operator may not substantially deviate from plans approved
23 under this section unless approved in writing by the commissioner
24 after full consultation with affected agencies.

25 (k) The commissioner may limit the review and approval process
26 under this section to 10 days where such action is immediately neces-
27 sary for the preservation of the public peace, health, safety or
28 general welfare, and is undertaken in concert with affected agencies.

29 (l) No action taken by the commissioner under this section is an

1 authorization for an operator to violate applicable laws or regulations.

2 (m) The commissioner may require an operator to post security
3 with respect to an operation, and to submit written reports.

4 (n) Operations which begin before the effective date of this Act
5 have one year to comply with this chapter.

6 Sec. 41.17.080. DEPLOYMENT OF BROADCAST CHEMICALS. The commis-
7 sioner of environmental conservation, in consultation with the commis-
8 sioner, shall formulate necessary plans and measures to insure that
9 application of broadcast chemicals and other substances foreign to the
10 Alaska forest ecosystem do not lead to results contrary to the objec-
11 tives and provisions of this chapter and other applicable laws and
12 regulations relating to renewable resources. Regulations adopted by
13 the commissioner of environmental conservation may include requirements
14 for advance testing, posting of security, written reports, and other
15 matters.

16 Sec. 41.17.090. CONVERSION OF FOREST LAND TO OTHER USES. An
17 intention to convert forest land to other uses after timber harvesting
18 must be stated in the notification submitted under sec. 70 of this
19 chapter. In that event, reforestation requirements adopted under this
20 chapter do not apply, except that conversion must be completed during
21 the time set by regulation for minimum reforestation of the land, and
22 other requirements for revegetation may be imposed to the extent
23 permitted by law. If the commissioner finds at any time that the
24 responsible party has failed to conform to the intent to convert as
25 stated in the notification, the commissioner shall revoke approval of
26 the conversion and require full compliance with reforestation require-
27 ments.

28 Sec. 41.17.100. INSPECTIONS, INVESTIGATIONS, AND ENFORCEMENT.
29 The commissioner may inspect and investigate forest land and activities