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SRES

SB 59

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1 on it and may enter upon it in conjunction with any operations as
2 necessary to insure compliance with applicable regulations and require-
3 ments and to otherwise enforce the provisions of this chapter. Other
4 state agencies have this same authority to the extent necessary to
5 enforce their own laws and regulations on forest land. Those agencies
6 and the commissioner shall coordinate their actions under this section.

7 Sec. 41.17.110. PROHIBITIONS, PENALTIES, AND ENFORCEMENT PROCE-
8 DURES. (a) It is unlawful for any person to violate or permit a
9 violation of a provision of this chapter, a regulation adopted under
10 this chapter, or a term or condition of any approval granted under
11 secs. 70 - 90 of this chapter. A person who commits a violation is
12 liable for a civil fine to be assessed by the commissioner not to
13 exceed \$10,000.

14 (b) If an investigation discloses probable cause to believe a
15 violation has occurred, the commissioner shall serve upon the alleged
16 violator (the "respondent") written notice and a formal complaint
17 which describes the alleged violation and requires the respondent to
18 answer the charges at a hearing not more than 10 days thereafter. The
19 respondent will be granted a 10-day extension upon request. The
20 notice must also describe any damage which has occurred or might occur
21 as a result of the violation. At the hearing, the state must show by
22 a preponderance of the evidence that the respondent has caused or
23 permitted a violation described in (a) of this section.

24 (c) Within 10 days after the hearing, or upon nonappearance of
25 the respondent, the hearing officer shall enter a final order. The
26 order must be based on the evidence presented at the hearing, and must
27 be accompanied by a written opinion stating the reasons for the
28 decision. The commissioner shall immediately notify the respondent of
29 the order by registered mail. The order may include:

- 1 (1) a directive to stop the violation;
2 (2) the imposition of a civil fine under (a) of this sec-
3 tion, which is payable immediately;
4 (3) a directive to repair damages;
5 (4) a finding that the charges are wholly or partially un-
6 justified; or
7 (5) a combination of the above.

8 (d) In determining the amount of any civil fine imposed, the
9 following must be considered, as appropriate:

- 10 (1) the character and degree of injury to forest resources
11 and values;
12 (2) the degree of intent or negligence of the respondent in
13 causing or permitting the violation;
14 (3) the character and number of past violations caused or
15 permitted by the respondent; and
16 (4) if such information is available, the net economic
17 savings realized by the respondent through the violation described in
18 (a) of this section.

19 (e) If the commissioner finds that a violation described in (a)
20 of this section has occurred and that continuation of the violation or
21 failure to repair damage would likely result in irreversible or irre-
22 trievable damage to the forest resources or values affected, and it
23 would be prejudicial to the welfare of the state to delay action
24 pending a hearing, the commissioner may, without prior hearing, issue
25 a temporary order in addition to the documents required by (b) of this
26 section requiring the respondent to stop the violation or repair
27 damage or both. The order remains in effect for 21 days unless a
28 final order is issued earlier. Proceeding in conjunction with the
29 alleged violation must otherwise be the same.

1 (f) If a person fails to comply with an order issued under (c)
2 or (e) of this section, the attorney general, at the request of the
3 commissioner, may seek an injunction suspending all or part of the
4 operations being conducted by the respondent until he or she complies
5 with the order. If the order directs the respondent to repair damage,
6 the commissioner may proceed with department staff or contractors to
7 repair the damage, and the timber owner, forest landowner, and operator
8 are jointly and severally liable for the cost of the repair after
9 delivery by the commissioner of an itemized statement of expenses
10 incurred. Those expenses constitute a general lien, arising at the
11 time the order is issued, upon the real and personal property of the
12 operator, timber owner, and forest landowner within the state. A lien
13 arising under this subsection is prior and paramount to all other
14 liens and encumbrances except governmental tax liens.

15 (g) All orders issued under this section are enforceable by
16 injunction, attachment, garnishment, or other appropriate remedy.

17 (h) Unless otherwise specified, proceedings under this section
18 are not subject to the Administrative Procedure Act (AS 44.62). A
19 hearing under this section must be held before a hearing officer,
20 appointed by the attorney general from among members of the Alaska Bar
21 Association who are knowledgeable and experienced in the subject
22 matter. A person who has assisted in the preparation of the state's
23 case or who is a state employee is ineligible. Hearings are not
24 limited by common law, statutory, or judicial rules of evidence;
25 however, the hearing officer may admit only that evidence which appears
26 to him to be reliable and trustworthy. All hearings must be open to
27 the public. Written or oral testimony may be submitted. A party to a
28 hearing may make written or oral argument, secure the issuance of a
29 subpoena under AS 44.62.430, offer testimony or other evidence, and

1 cross-examine witnesses. The hearing officer shall endeavor, in
2 conducting any hearing, to insure that the respondent understands the
3 proceedings and that the facts supporting the position of each party
4 have been adequately presented. Hearings shall be held as close as
5 practicable to the location of the alleged violation. Testimony given
6 at the hearing must be recorded.

7 (i) If the respondent notifies the commissioner within five days
8 before the hearing provided for in (h) of this section, the following
9 rules and procedures apply to the hearing:

10 (1) the hearing will be a nonadversary proceeding, with the
11 hearing officer fully and impartially representing the interests of
12 the state and the respondent;

13 (2) the hearing officer will thoroughly investigate the
14 facts and circumstances relating to the alleged violation, including
15 taking testimony from appropriate persons, collecting and examining
16 documents and other evidence, and performing other actions consistent
17 with due process of law;

18 (3) issue a decision in accordance with the applicable
19 procedures of (h) of this section.

20 (j) For purposes of this section, "damage" includes any unsatis-
21 factory condition resulting from an alleged violation, and an order to
22 "repair damage" may direct correction of any unsatisfactory condition.

23 Sec. 41.17.120. APPEALS AND JUDICIAL REVIEW. (a) An administra-
24 tive action of the department under this chapter, except actions under
25 sec. 110 and except for adoption of regulations, may be appealed to
26 the commissioner within 30 days after it is taken. The commissioner
27 shall hold a hearing, at which all substantial issues shall be con-
28 sidered, within 15 days after an appeal is filed. Within 10 days
29 after conclusion of the hearing thereafter, the commissioner shall

1 issue a written decision based upon the evidence, which must be pro-
2 vided to the appellant. The commissioner may delegate his duties, in
3 whole or in part, under this subsection to a hearing officer.

4 (b) A final decision under (a) of this section or a final order
5 under sec. 110 of this chapter, may be appealed to the superior court
6 within 30 days after it is issued. Judicial review must be as provided
7 in AS 44.62.560 and 44.62.570.

8 (c) A temporary order issued under sec. 110 of this chapter may
9 be immediately appealed to the superior court as to its propriety.

10 Sec. 41.17.130. CIVIL ACTION. Any aggrieved person may commence
11 a civil action on his or her own behalf against the commissioner where
12 it is alleged that the commissioner (or his delegate) has failed to
13 perform a duty or has committed an abuse of discretion under this
14 chapter. The superior court has jurisdiction to order the commissioner
15 to take necessary corrective action. No action may be commenced under
16 this section until the plaintiff has completed an appeal under sec.
17 120(a) of this chapter unless the plaintiff can demonstrate that a
18 condition of urgency exists or unless he is alleging a failure to
19 perform a duty. Nothing in this section restricts any right which a
20 person or class of persons may have under statute or common law to any
21 other relief against the commissioner.

22 Sec. 41.17.950. DEFINITIONS. In this chapter, unless the context
23 otherwise requires,

24 (1) "broadcast chemicals" includes pesticides, herbicides,
25 fungicides, fertilizers, poisons, and any other substances

26 (A) used for silvicultural management or related pur-
27 poses;

28 (B) not native to the ecosystem in which they are
29 being applied; and

1 (C) having a foreseeable adverse impact on the welfare
2 of renewable resources, as determined by the commissioner of
3 environmental conservation;

4 (2) "commissioner" means the commissioner of natural
5 resources;

6 (3) "department" means the Department of Natural Resources;

7 (4) "forest land" means land stocked or having been stocked
8 with forest trees of any size and not currently developed for non-
9 forest use, regardless of whether presently available or accessible
10 for commercial purposes, and includes any such land under state,
11 municipal, or private ownership;

12 (5) "forest landowner" means a person who owns forest land;

13 (6) "multiple use" means

14 (A) the management of all the various resources of
15 forest land so that they are used in the combination that will
16 best meet the needs of the citizens of Alaska, making the most
17 judicious use of the land for some or all of these resources or
18 related values, benefits, and services over areas large enough to
19 provide sufficient latitude for periodic adjustments in use to
20 conform to changing needs and conditions;

21 (B) that some land will be used for less than all of
22 the resources; and

23 (C) harmonious and coordinated management of the
24 various resources, each with the other, without significant
25 impairment of the productivity of the land and water, with con-
26 sideration being given to the relative values of the various
27 resources, and not necessarily the combination of uses that will
28 give the greatest dollar return or the greatest unit output;

29 (7) "operations" means timber harvesting or activities

1 associated with timber harvesting or forest development unless exempted
2 under sec. 30 of this chapter;

3 (8) "operator" means a person who is engaged in timber
4 harvesting or activities associated with timber harvesting or forest
5 development himself, or who contracts with others to conduct operations
6 on his behalf, except a person who is engaged in an operation as
7 employee with wages or piecework as his sole compensation;

8 (9) "person" includes a joint venture as well as the
9 entities set out in AS 01.10.060(7);

10 (10) "silviculture" means the art of producing and tending
11 a forest, the application of the knowledge of silvics in the treatment
12 of a forest, and the theory and practice of controlling and managing
13 forest establishment, composition, and growth;

14 (11) "sustained yield" means the achievement and maintenance
15 in perpetuity of a high level annual or regular periodic output of the
16 various renewable resources of forest land and water without signifi-
17 cant impairment of the productivity of the land and water, but does
18 not require that timber be harvested in a non-declining yield basis
19 over a rotation period;

20 (12) "timber owner" means a person who owns timber on
21 forest land or who has the rights to timber, but does not own the land
22 itself; and

23 (13) "significant impairment of the productivity of the
24 land and water" means any activity which may foreseeably result in
25 prolonged or substantial damage to renewable resources or prolonged or
26 substantial reduction of the continuing capability of the land or
27 water to produce renewable resources at their natural or historic
28 levels.

29 * Sec. 2. AS 39.25.120 is amended by adding a new paragraph to read:



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(10) the state forester, in the Department of Natural Resources.

* Sec. 3. This Act takes effect January 1, 1979. However, the commissioner is not precluded from undertaking preparatory activities in the interim.

To John

Date _____ Time _____

WHILE YOU WERE OUT

M Loren Donke

of _____

Phone (3183) or 3460

TELEPHONED	<input checked="" type="checkbox"/>	PLEASE CALL	<input checked="" type="checkbox"/>
CALLED TO SEE YOU	<input type="checkbox"/>	WILL CALL AGAIN	<input type="checkbox"/>
WANTS TO SEE YOU	<input type="checkbox"/>	RUSH	<input type="checkbox"/>

RETURNED YOUR CALL

Message Re SB 59

Operator _____

Alaska Forest Practices Act

The revised bill accompanying this sectional analysis makes substantial changes in the administrative review and fair hearing provisions of SB 59. Other sections of SB 59 remain unaffected. The sole objective of the amendments is to create a mechanism which will operate as a check and balance to the broad authority vested in the Commissioner of the Department of Natural Resources by the administration's version of the forest practices bill.

The governor's version delegates extensive regulatory authority over all commercial forest land to the commissioner. These proposed changes will in no way diminish the department's rule-making functions. However, they will deny the agency the discretion to act as the arbiter of first resort when conflicts arise between the department and those regulated. The likelihood for the abuse of administrative power arises because the department is empowered, subject only to the standards in SB 59, to create an extensive body of law, to investigate and prosecute suspected violators, and to adjudicate disputes. This mixing of legislative, prosecutorial, and judicial roles in one agency creates an unnecessary risk that agency bias will be transmitted into administrative adjudications and that potential violators will not receive a fair hearing before an impartial tribunal or hearing officer.

By contrast, the proposed substitute adopts the philosophy of explicit and complete separation of powers. The ^{agency} may not, as in SB 59, act as the trier of fact and law in its own case. To accomplish this end, an independent and quasi-judicial tribunal would be established to hear and decide all departmental complaints. This mechanism is not without precedent and is conceptually akin to the independent administrative review provided under the 1973 Forest Practices Act of California. At the federal level, this form of external separation of powers was utilized early on by the drafters of the Taft-Hartley Act, where two separate authorities were created, one for investigating and prosecuting, and the other for judging.

Hearing Officers

SB 59: Hearing officers are selected from those qualified employees of the state. The bill nowhere defines or limits the class of hearing officers. Conceivably, an officer could be designated by the commissioner from among the employees of the Department of Natural Resources.

Revision: Hearing officers would be selected by the governor from outside of the department and must be attorneys and Alaska residents. Presumably, hearing officers would be ^{appointed} as under the provisions of AS 44.62, upon recommendations submitted by the attorney general.

Forest Practices Tribunal

SB 59: Most of the jurisdiction given to the commissioner under the administration version is transferred to the tribunal or hearing officer by the revision.

Revision: It is anticipated that there may be insufficient enforcement activity requiring hearings to justify a full-time tribunal and staff, at least in the initial years after enactment. Therefore, the revision provides that hearing officer appointments may be made on a case-by-case basis.

Administrative due process rights of the alleged violator are expanded: Besides the procedural rights listed in sections 110 and 120 of SB 59, the accused is given the right to a speedy hearing, a hearing in the judicial district where the alleged violation occurred, at least 7 days notice of the hearing, and the right to a 14 day continuance of the hearing date.

Summary action by the Commissioner

As in SB 59, the commissioner would retain the power to issue temporary orders, without notice or hearing to the accused. Unlike the current bill, the revision would limit the absolute duration of these temporary orders to 21 days. Within three weeks, the commissioner would be required to hold a hearing on the topic covered by the temporary order. Under both versions, the alleged violator would retain the right to an immediate appeal to the superior court from the issuance of a temporary order.

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A BILL

For an Act entitled: "An Act relating to forest resources and practices;
and providing for an effective date."

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

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

CHAPTER 17. FOREST RESOURCES AND PRACTICES.

ARTICLE I. ADMINISTRATION

Sec. 41.17.010. FINDINGS AND PURPOSE. (a) The legislature

finds that

(1) the forest land and water resources of Alaska are among
the most valuable natural resources of the state;

(2) healthy industries and businesses derived from the
products, benefits, and services obtained from forest land and water
resources are of prime importance to the state;

(3) the public interest demands that productive state,
municipal, and private forest land be administered consistent with
sound and refined principles of natural resource management;

(4) the forest land and water resources furnish timber and
numerous wood products derived from timber, fish and wildlife, tourism,
outdoor recreation and aesthetic enjoyment, water, minerals, soil,
air, diverse lifestyle opportunities, general health and welfare, and
a multitude of other valuable products, benefits, and services;

(5) it is the policy of the state to formulate prudent and
responsible forest management measures calculated to serve the needs
of all Alaskans for the many products, benefits, and services obtained
from forest land and water resources;

1 (6) imprudent forest management would preclude receiving
2 all of the products, benefits, and services obtained from forest land
3 and water resources, upon which the economy and welfare of Alaska
4 depend and will continue to depend in the future; and

5 (7) failure to implement wise forest management measures
6 designed to guarantee perpetual supplies of renewable resources and to
7 make available nonrenewable resources in a compatible manner would be
8 a grave disservice to the people of Alaska.

9 (b) It is the purpose of this chapter to insure that timber
10 harvesting will continue to contribute substantially to Alaska's
11 economy; to protect the longevity of Alaska's forest products industry
12 by implementing effective forest management practices and maintaining
13 over the long term Alaska's supply of timber; to prevent significant
14 impairment of the ability of the land and water to produce renewable
15 resources; and to create and maintain a system for the administration,
16 regulation, and use of productive state, municipal, and private forest
17 land so as to guarantee continuous and perpetual supplies of the
18 various products, benefits, and services obtained from it.

19 Sec. 41.17.030 ADMINISTRATION. (a) The commissioner shall
20 administer this chapter, except where otherwise specified. The com-
21 missioner may delegate his authority under this chapter to subordinate
22 employees or units within the department to the extent he considers
23 advisable.

24 (b) The commissioner may designate and operate experimental
25 forests on land owned by the state, except that those forests must be
26 limited to the size necessary to conduct the requisite experiments.

27 (c) The commissioner may undertake cooperative forestry programs
28 and extension service programs.

29 (d) The commissioner may establish and maintain forest tree

30 → Sec. 41.17.020. PROHIBITIONS. It is unlawful for any person
to violate a provision of this chapter, a regulation adopted under
this chapter, or a term or condition of any approval granted by
the commissioner under secs. 90 - 110 of this chapter.

1 seedling nurseries and greenhouses and similar facilities to provide
2 planting stock for reforestation purposes. He may make forest tree
3 seedlings available to organizations, agencies, and individuals for
4 reforestation and afforestation projects.

5 (e) The commissioner may perform any other acts reasonably
6 necessary to carry out his duties under this chapter.

7 Sec. 41.17.040 EXEMPTIONS. (a) Noncommercial forest land
8 under municipal or private ownership is not subject to the provisions
9 of this chapter.

10 (b) Any small parcel or tract of forest land is exempt from the
11 provisions of this chapter if the commissioner determines that the
12 parcel or tract is:

- 13 (1) 160 acres or less in size;
14 (2) owned entirely by one person or group of persons;
15 (3) not to be utilized as part of a timber harvesting or
16 forest development plan or agreement of any kind involving other
17 parcels or tracts of forest land; and

18 (4) not appurtenant to other parcels or tracts of forest
19 land either owned by the same person or groups of persons or in which
20 that person or group of persons has any property interest.

21 (c) As used in this section only, "person" includes the state or
22 a municipality.

23 (d) The commissioner may adopt regulations, in accordance with
24 the Administrative Procedure Act (AS 44.62), necessary to implement
25 this section.

26 Sec. 41.17.050 REGULATORY AND ADMINISTRATIVE STANDARDS. (a)
27 All regulations, administrative actions, and other activities and
28 duties undertaken pursuant to this chapter must be in full accordance
29 with the standards set out in this section.

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

3 (1) timber harvesting is not permitted in an area unless
4 relevant data and information indicate that there will be no reforesta-
5 tion problems leading to the inability of that area to produce a
6 sustained yield of merchantable timber;

7 (2) to the extent practicable, all relevant data and infor-
8 mation shall be used in making decisions relative to the adminis-
9 tration of forest land;

10 (3) where consistent with the other provisions of this
11 section, administration of forest land with respect to production
12 levels of timber and timber products shall allow reasonable consi-
13 deration for changes in marketing conditions;

14 (4) there shall be no significant impairment of the produc-
15 tivity of the land and water with respect to renewable resources; and

16 (5) scenic and aesthetic quality shall be maintained in or
17 adjacent to areas of significant importance to the tourism and recrea-
18 tion industry.

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

21 (1) forest land shall be administered for the multiple use
22 of the renewable and nonrenewable resources and for the sustained
23 yield of the renewable resources of the land in the manner which best
24 provides the present needs and preserves the future options of the
25 people of Alaska;

26 (2) any system of allocating key values to particular units
27 within a contiguous area of land shall reflect in reasonable propor-
28 tion the various resources and values present in that area;

29 (3) determinations of multiple use patterns to be established

1 within any area shall begin with the assumption that all resources and
2 values are of equal priority; and

3 (4) to the extent its capacity permits, forest land shall
4 be administered so as to provide for the continuation of businesses,
5 industries, activities, and lifestyles which are dependent upon or
6 derived from forest land and water resources.

7 Sec. 41.17.060. ADMINISTRATIVE PLAN AND REPORT. (a) In addition
8 to the requirements of sec. 50 of this chapter, the commissioner shall
9 develop and continually maintain a plan for the administration of this
10 chapter insuring that the sustained yield of merchantable high-quality
11 timber from forest land subject to this chapter will be maintained or
12 increased, and that forest land will be protected from depletion or
13 degradation caused by overharvesting, unsatisfactory forest management,
14 failure to recognize areas incapable of prompt reforestation or adequate
15 stocking, or other factors. The commissioner shall conduct periodic
16 inventories of timber on forest land subject to this chapter to assist
17 in meeting the requirements of this section.

18 (b) On June 30, 1979, and at two-year intervals after that date,
19 the commissioner shall submit a detailed report to the legislature
20 reviewing the administration of this chapter over the preceding two
21 years, demonstrating compliance with (a) of this section, and describing
22 how the plan will affect the long-term stability of the timber industry.

23 Sec. 41.17.070. REGULATIONS. (a) The commissioner may adopt
24 regulations in accordance with the Administrative Procedure Act (AS
25 44.62) governing operations on forest land with respect to the follow-
26 ing:

27 (1) timber harvesting and management and directly related
28 activities;

29 (2) disposal of slash and debris;

- 1 (3) reforestation and stocking;
- 2 (4) precommercial thinning and similar activities;
- 3 (5) control of soil erosion and waste;
- 4 (6) logging road and bridge and trail construction and
- 5 maintenance;
- 6 (7) fire prevention and control;
- 7 (8) fertilization;
- 8 (9) salvage of trees and brush control;
- 9 (10) protection of forest land from damage by insects,
- 10 pests, noxious weeds, and diseases;
- 11 (11) flood control;
- 12 (12) protection of scenic, recreational, aesthetic, and
- 13 other natural values, consistent with sec. 55(4)(5) of this chapter;
- 14 (13) general administrative requirements and procedures.

15 (b) The commissioner shall consult with interested state and
16 federal agencies, private individuals, and organizations in conjunc-
17 tion with the adoption of regulations under this section. The commis-
18 sioner may establish regions, districts, or other subdivisions of
19 forest land within the state in which different regulations apply in
20 order to reflect varying conditions throughout the state, or for other
21 purposes.

22 (c) The authority vested in the commissioner by (a) of this
23 section may not be employed by the commissioner in a manner that would
24 result in duplicating or pre-empting the statutory authority of other
25 state agencies to adopt regulations governing resources, values, or
26 activities on forest land.

27 (d) An operator may apply through the commissioner or his
28 designee for any permit required by any other state agency to operate
29 on forest land. The commissioner shall transmit any permit application

1 to the appropriate state agency, and shall notify the operator of the
2 action taken by that agency on the permit application.

3 (e) The commissioner shall adopt only those regulations which
4 are necessary to accomplish the purposes of this chapter. The commis-
5 sioner shall avoid adoption of regulations which merely increase
6 operating costs and do not yield significant benefits.

7 Sec. 41.17.050. REVIEW AND APPROVAL OF OPERATIONS. (a) Opera-
8 tions on forest land shall be reviewed and approved under this section
9 for consistency with the policies and provisions of this chapter and
10 regulations adopted under sec. 70(a) of this chapter. However, the
11 commissioner may adopt regulations under the Administrative Procedure
12 Act (AS 44.62) exempting certain operations from review and approval
13 under this section if they are of minimal concern with respect to the
14 policies and provisions of this chapter.

15 (b) Before operating on forest land, the operator shall first
16 give formal notification to the commissioner. Notification must
17 consist of filing a notification certificate together with a United
18 States Geological Survey map of the largest available scale showing
19 the locations of all proposed activities. The operator shall also
20 submit a brief description of the proposed operation on a form provided
21 by the commissioner.

22 (c) Within five days after receipt of formal notification, the
23 commissioner shall distribute copies of the certificate, map, and
24 description to all state agencies whose areas of responsibility could
25 be significantly affected by the proposed operation for their review.
26 Those agencies shall complete their review and submit their recommen-
27 dations to the commissioner within 25 days after receipt of that
28 material. The commissioner may extend the review period for up to an
29 additional 20 days upon a showing by an affected state agency that the

1 proposed operation is exceedingly complex and not susceptible to
2 adequate review within 25 days.

3 (d) Upon expiration of the review period, the commissioner
4 shall, within 15 days:

5 (1) grant unconditional approval of the proposed operation,
6 if appropriate;

7 (2) grant conditional approval, including the terms and
8 conditions he considers necessary to insure consistency with the poli-
9 cies and provisions of this chapter and regulations adopted under this
10 chapter, based on his or other agencies' recommendations; or

11 (3) upon his own recommendation or that of another agency,
12 require the submission of additional plans or descriptions from the
13 operator for part or all of the proposed operation, but only to the
14 extent necessary for proper assessment of the operation.

15 (e) If action is taken under (d)(3) of this section, the com-
16 missioner and affected agencies requesting additional plans or descrip-
17 tions have an additional 20-day review-and-recommendation period, at
18 which time the commissioner shall take action under (d)(1) or (d)(2)
19 of this section. The commissioner shall disapprove a proposed opera-
20 tion only if he considers it impossible to take action under (d)(2) of
21 this section.

22 (f) If the commissioner takes no action under (d) or (e) of this
23 section within the time specified in this section, he is presumed to
24 have taken action under (d)(1) of this section.

25 (g) At the time formal notification is given by the operator,
26 the operator shall provide copies of documents submitted to the
27 commissioner to the timber owner or forest landowner or both, if
28 different from the operator. Upon receipt of any formal notification,
29 the commissioner shall publish a brief description of the proposed

1 action in one newspaper of general circulation within the state and
2 invite and consider public comment during the statutory review-and-
3 recommendation period.

4 (h) If recommendations of another state agency submitted during
5 the statutory review-and-recommendation period are not accepted by the
6 commissioner, he shall provide the agency with a written statement of
7 the reasons for the rejection.

8 (i) In reviewing proposed operations under this section, the
9 commissioner and affected state agencies shall consider the practi-
10 calities and economic constraints affecting the operator. In addition,
11 the commissioner shall insure that the information and paperwork
12 required of the operator under this section shall be kept to the
13 minimum necessary to accomplish the purposes of his chapter.

14 (j) The operator may not materially deviate from plans approved
15 or terms and conditions imposed by the commissioner under this section
16 without prior written approval from the commissioner, who shall grant
17 that approval only after full consultation with other affected state
18 agencies.

19 (k) No action taken by the commissioner under (d) of this section
20 is an authorization to violate applicable laws or regulations.

21 (l) The commissioner may require any operator to post a perfor-
22 mance bond in an amount he considers advisable to insure that all or
23 part of the proposed operations or terms and conditions imposed by the
24 commissioner will be carried out and that damage to resources is not
25 incurred, or, if incurred, will be remedied. The commissioner may
26 require a written report from the operator at the conclusion of
27 operations.

28 Sec. 41.17.010. DEPLOYMENT OF CHEMICALS. (a) Herbicides,
29 pesticides, fungicides, rodenticides, insecticides, fertilizers, and

1 other similar chemicals may not be deployed on forest land unless (1)
2 the deployment is in accordance with applicable state laws and regula-
3 tions, and (2) prior written approval from the commissioner is obtained.

4 (b) The commissioner may not grant approval under (a) of this
5 section unless he, in consultation with affected agencies, finds that
6 (1) deployment is a matter of strict necessity or is not likely to
7 result in significant adverse consequences, and (2) that the deployment
8 would be consistent with the policies and provisions of this chapter.
9 The commissioner may impose conditions on deployment in granting
10 written approval, and shall require the posting of a performance bond
11 by the operator before the deployment of chemicals. Each individual
12 usage of chemicals must be specifically approved by the commissioner.
13 The commissioner shall require a full report from the operator upon
14 completion of chemical deployment. No operator may materially deviate
15 from operations approved by the commissioner without the prior written
16 consent of the commissioner.

17 Sec. 41.17.100. CONVERSION OF FOREST LAND TO OTHER USES. A
18 person owning forest land which he intends to convert to other uses
19 following timber harvesting shall state that intention to the commis-
20 sioner in conjunction with the formal notification. Reforestation
21 requirements applicable under regulations adopted under this chapter
22 do not apply if the land is in fact so converted, except that the
23 conversion must be completed during the time set by regulation for
24 minimum reforestation of the land. If the commissioner finds at any
25 time that the forest landowner or other responsible party has failed
26 to conform to the intent to convert as stated at the time of notifi-
27 cation, the commissioner shall revoke approval of the operation and
28 require full compliance with reforestation regulations and requirements.

29 Sec. 41.17.110. INSPECTIONS, INVESTIGATIONS, AND ENFORCEMENT.

The commissioner or his designee may inspect and investigate forest land and enter upon it before, during, and after operations as necessary to insure compliance with applicable regulations and requirements and to otherwise enforce the provisions of this chapter. Other state agencies have this same authority to the extent necessary to enforce their own laws and regulations on forest land.

Sec. 41.17.120. ENFORCEMENT PROCEDURES. (a) If an investigation discloses that there is reasonable cause to believe a violation has occurred, the commissioner, in the event there is no permanent staff for the tribunal, shall issue and serve upon all parties, by timely means, written notice of a hearing. The notice shall advise all parties of the subject of the hearing, the time and place where it will be held, and the rights of the parties, as named in secs. 170, 200 - 220 of this chapter. In addition, the commissioner shall issue and serve upon the respondent a written complaint which specifies the nature and extent of the alleged violation and any damage which has occurred or will foreseeably occur as a direct consequence of the violation. Notices and complaints will also be furnished to the tribunal or hearing officer.

(b) The notice and complaint shall issue not less than seven days before the hearing.

(c) The state shall have the burden of proving its case by establishing substantial evidence of the violation on the hearing record.

(d) In the event there is a permanent staff for the tribunal, the commissioner shall file hearing notices and complaints with the tribunal, which shall then serve all parties to the hearing.

Sec. 41.17.130. TEMPORARY ORDERS. (a) If the commissioner finds, after investigation, that a violation of this chapter has occurred and determines that continuation of the violation or failure to repair damage would likely result in irreversible or irreparable

damage to the forest resources or values affected, and it appears to be prejudicial to the interests of the people of the state to delay action until opportunity for a hearing can be provided, the commissioner may issue a temporary order in addition to the notice of violation and complaint required in sec. 120 of this chapter. The temporary order remains in effect, subject to the terms of sec. 200 of this chapter, until a final order is issued by the tribunal.

(b) The temporary order may direct the respondent to stop the violation or to repair the damage, or both.

(c) If a person fails to comply with an order issued under (a) of this section, the attorney general, at the request of the commissioner, may seek, pending a final order by the tribunal, an injunction in the superior court. If a person fails to comply with an order issued under (a) of this section directing a person to repair damages, the commissioner may also proceed either with department staff or by contract to repair the damage. The commissioner shall keep a complete account of direct expenditures incurred, and upon completion of the work shall prepare an itemized statement of them and shall deliver a copy to the operator, timber owner, and forest landowner, who are jointly and severally liable for those expenditures. Those expenditures constitute a general lien upon the real and personal property of the operator, timber owner, and forest landowner within the state.

(d) The commissioner may issue a temporary order without earlier notice and affording respondent a hearing. However, a temporary order shall remain in effect the lesser of 21 days or until the date of a final order made by a tribunal, except as extended by the excluded period in sec. 200 (b) of this chapter. Whenever possible, the commissioner shall notify the respondent of the temporary order and informally confer with him to resolve the alleged violation at the earliest possible date. The commissioner may adopt regulations to administer this section.

Sec. 41.17.140. CIVIL ACTION. Any person may commence a civil action on his own behalf against the commissioner upon a showing of injury to himself and others similarly situated where a failure of the commissioner to perform any act or duty under this chapter which is not discretionary with the commissioner is alleged. The superior court has jurisdiction to order the commissioner to perform the act or duty. No action may be commenced under this section sooner than 30 days after the plaintiff has given notice of the proposed action to the commissioner, unless the plaintiff can demonstrate that an emergency exists. Nothing in this section restricts any right which a person or class of persons may have under statute or common law to any other relief against the commissioner.

ARTICLE 2. FOREST PRACTICES TRIBUNAL.

Sec. 41.17.150. ESTABLISHMENT OF FOREST PRACTICES TRIBUNAL. There is established the Forest Practices Tribunal as an independent and quasi-judicial agency of the state.

Sec. 41.17.160. JURISDICTION. (a) The tribunal has original jurisdiction to hear all complaints issued under sec. 120 of this chapter.

(b) The tribunal has jurisdiction as follows:

(1) to impose a civil fine not to exceed \$7,500, and an additional civil fine not to exceed \$1,000 for each day a violation of this chapter continues;

(2) to issue subpoenas and subpoenas duces tecum in accordance with the procedures in AS 44.62.430;

(3) to respond to contemptuous behavior by any party or witness to a hearing in the manner provided in AS 44.62.590;

(4) to enjoin violations of this chapter and the regulation promulgated under its authority, to attach and garnish property, and to impose such equitable remedies as may necessary in the interests of justice; and

(5) to assume continuing jurisdiction over a matter and to supervise compliance with its orders.

Sec. 41.17.170. WHERE THE HEARINGS ARE TO BE HELD. (a) Hearings shall be held in the judicial district where the alleged violation was committed or in Juneau, upon agreement of all the parties.

the capital

(b) The tribunal may change the place of hearing to promote convenience to the parties and witnesses, to advance the ends of justice, and to prevent unnecessary expense and hardship to the defendant.
respondent

Sec. 41.17.180. HEARING OFFICERS. (a) Hearings under secs. 150 - 220 of this chapter shall be held before a hearing officer appointed by the governor. ^{of hearing officers} ~~The~~ Appointments to the tribunal shall be made either on a case-by-case or permanent basis, except that a person who has participated in the investigation or preparation of the state's case may not serve as a hearing officer or otherwise participate in the hearing. The hearing officer may only be removed for misfeasance or malfeasance in the performance of official duties.

(b) The hearing officer ^{may} must be an attorney and resident of the State of Alaska and not be an employee of the department.

(c) Hearing officer is a partially exempt position as provided in AS 39.25.120.

Sec. 41.17.190. ENFORCEMENT PROCEDURES. In the event the tribunal has a permanent staff, it shall proceed under sec. 120 of this chapter. In the event the tribunal has no permanent staff, the commissioner, as provided in sec. 120 of this chapter, shall serve notices and complaints upon the parties.

Sec. 41.17.200. SPEEDY HEARING. (a) A respondent shall receive a hearing:

(1) within 30 days after mailing of a written notice and complaint; or

(2) within 21 days after the imposition of a temporary order by the commissioner.

(b) The respondent may request one extension of the hearing date not to exceed 14 days.

(c) The time for hearing shall begin running without demand by the respondent. If the hearing does not begin within the period named in (a) of this section, ~~or~~ as extended in (b) of this section, the tribunal, upon request by the respondent, shall dismiss the complaint with prejudice. Such discharge bars all further administrative review on the transaction from which the complaint arose.

Sec. 41.17.210. HEARINGS. (a) Hearings under this chapter are not subject to the Administrative Procedure Act (AS 44.62), except as otherwise named in this section. Until a permanent staff is appointed for the tribunal, the Department of Law shall establish such regulations as are consistent with this section to insure

the expeditious and impartial handling of complaints. When the tribunal acquires a permanent staff, it may establish its own rules of conduct consistent with the simplified procedures in this section.

(b)

All hearings shall be open to the public, and any person may submit written statements to the hearing officer in connection with the subject of the hearing. In addition, the hearing officer may permit any person to offer oral testimony. All issues pertaining to the alleged violation shall be examined and considered at the hearing. Any party to a hearing may be represented by counsel, may make oral or written argument, secure the issuance of a subpoena under AS 44.62.430, offer testimony or other evidence, cross-examine witnesses, or take any combination of these actions. All testimony given at the hearing shall be recorded stenographically or electronically.

(c)

Hearings conducted under this section are not limited by common law or statutory rules of evidence; however, the hearing officer may admit only that evidence which appears to him to be reliable and trustworthy. Hearsay evidence which is inadmissible in a judicial proceeding may not be admitted in a hearing under this section unless:

(1) the commissioner provides the ^{respondent} ~~person-charged~~ with the name and address of the declarant and the substance of his accusation or testimony along with the service of the complaint or, if the evidence is not known at that time, then at a reasonable time before the hearing; and

(2) the hearsay evidence is of a type normally relied upon by reasonable men in the conduct of serious business affairs.

(d) Within 10 days after the close of the hearing, or upon the non-appearance of the respondent on the day set for the hearing, the hearing officer shall issue and enter a final order. The order shall be based on the evidence presented at the hearing. In all matters the hearing officer shall file and publish a written opinion, stating the findings of fact and law which led to the decision. The tribunal shall immediately notify the respondent of the order by registered mail.

(e) In determining the amount of any civil fine imposed, the following factors shall be considered, as appropriate:

(1) the character and degree of injury to forest resources and values;

(2) the degree of intent, negligence, or inattention of the violator in causing or permitting the violation;

(3) the character and number of past violations caused or permitted by the violator; and

(4) to the extent such information is available, the net economic savings realized by the violator through noncompliance with (a) of this section.

Sec. 41.17.220. APPEALS AND JUDICIAL REVIEW. (a) An action of the commissioner taken under this chapter may be appealed to the tribunal within 30 days after the action is taken.

(b) A final order issued by a tribunal may be appealed to the superior court within 30 days after entry of the order. Appeals may be had in the manner provided in AS 44.62.560 and AS 44.62.570.

(c) A temporary order issued by the commissioner under sec. 130 of this chapter may be appealed immediately to the superior court.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 41.17.950. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "commercial forest land" means forest land producing or capable of producing crops of industrial wood and not withdrawn from timber utilization; areas qualifying as commercial forest land are those which have the capability of producing in excess of 20 cubic feet per acre per year of industrial wood under management;

(2) "commissioner" means the commissioner of natural resources;

(3) "cooperative forestry programs" and "extension service programs" mean programs that will provide technical assistance designed to further the policies and provisions of this chapter to persons engaged in timber harvesting or activities associated with timber harvesting or forest development and to other individuals, organizations, and agencies concerned with forest resource management;

(4) "department" means the Department of Natural Resources;

(5) "forest land" means land at least 16.7 per cent stocked by forest trees of any size, or formerly having such tree cover and not currently developed for nonforest use, regardless of whether presently available or accessible for commercial purposes, and includes any such land under state, municipal, or private ownership;

(6) "forest landowner" means a person who owns forest land;

(7) "multiple use" means (A) the management of all the various resources of forest land so that they are used in the combination that will best meet the needs of the Alaskan people, making the most judicious use of the land for some or all of these resources or related values, benefits, and services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; (B) that some land will be used for less than all of the resources; and (C) harmonious and coordinated management of the various resources, each with the other, without significant impairment of the productivity of the land and water, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output;

(8) "noncommercial forest land" means unproductive forest land incapable of yielding crops of industrial wood because of adverse site conditions (capable of producing no more than 20 cubic feet per acre per year) and productive forest land withdrawn from commercial timber use through statute or administrative regulation;

(9) "notification certificate" means a document prescribed by the commissioner and constituting an intent to operate on forest land, which must be signed and sworn to by the operator;

(10) "operations" means timber harvesting or activities associated with timber harvesting or forest development;

(11) "person" includes a joint venture as well as the entities set out in AS 01.10.060(7);

(12) "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of forest land and water without significant impairment of the productivity of the land and water;

(13) "timber operator" or "operator" means a person who is engaged in timber harvesting or activities associated with timber harvesting or forest development himself, or who contracts with others to conduct such harvesting or activities or development on his behalf, except a person who is engaged in timber harvesting or associated

activities or forest development as an employee with wages as his sole compensation;

(14) "timber owner" means a person who owns timber on forest land or who has the rights to timber, but does not own the land itself;

(15) "tribunal" means Forest Practices Tribunal; and

(16) "without significant impairment of the productivity of the land and water" means that operations which may foreseeably result in prolonged or indeterminate damage to renewable resources or prolonged or indefinite reduction of the continuing capability of the land or water to produce renewable resources at their optimum level are prohibited.

* Sec. 2. This Act takes effect July 1, 1977.

AMENDMENTS TO WORK DRAFT 4-21-78
for CS for Sponsor Substitute for SB 59
Proposed by Koncor and Yak-Tat K'aaan, Inc.

Page	Line	Section		Amendment
2	1-2	§010(5)	delete	"under the leadership of the Department of Environmental Conservation"

Reason: The leadership of the Department of Environmental Conservation has been created by an Executive Order of the Governor. By placing it specifically in this Act, the legislature will foreclose a new Governor from changing that Executive Order.

3	11	§020(h)	delete	"may"
			substitute	"shall"
	14-19	§020(h)	delete	"the commissioner" on Line 14 and all of lines 15-19 and
			substitute	"the head of the designated lead state agency, if other than the commissioner, under the Federal Water Pollution Control Act to implement such regulations."

Reason: Same as for §010(5) above.

4	4-6	§020(k)(2)	delete	"if authorized by the Commissioner of environmental conservation"
			substitute	"in accordance with subsection (h) of this section"

Reason: Same as for §010(5) above.

Page	Line	Section		Amendment
4	9	§020(1)	add	"and under 040(f) of this Chapter" after (AS 44.62)

Reason: This merely coordinates two sections of the Act. 040(f) requires the Board of Forestry to review and comment on the proposed regulations which is an additional requirement to those in the Administrative Procedure Act.

7	2-3	§060(b)(2)	delete	"best management practices"
			substitute	"economical forest management practices"

Reason: Best management practices is a term of art used in the Federal Water Pollution Act and if used here will bring with it all future Federal Regulations developed under this phrase without the State being able to reanalyze the federal regulations.

7	5-6	§060(b)(3)	delete	"where not inconsistent with other provisions of this section,"
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Reason: This phrase makes marketing conditions and economic constraints secondary to environmentally sensitive areas and management practices when they should be at least equal.

7	7	§060(b)(3)	insert	"forest landowner, timber owner or" before "operator"
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Reason: The marketing conditions and economic constraints should include those on the forest landowner and timber owner, not just the operator.

Page	Line	Section		Amendment
9	8	§080 (a)	insert	"and 040(f) of this Chapter" after (AS 44.62)

Reason: This merely coordinates two sections of the Act. 040(f) requires the Board of Forestry to review and comment on the proposed regulations which is an additional requirement to those in the Administrative Procedure Act.

9	12	§080 (a) (2)	delete	"stocking"
9	12		insert	"and" before "prescribed burning"
9	13		delete	"thinning, and other silvicultural activities"

Reason: This section might be interpreted that the regulations may impose affirmative duties on the landowner such as to reforest or revegetate. If this is so, then the State should not however be able to require thinning for example. There is no reason for the State to be able to insist that a landowner spend money on operations when the landowner is willing to leave the land in a natural condition. Also stocking refers to the number of trees per acre and creates the same problem as the term "thinning". Also the phrase "other silvicultural activities" means everything without limit to the items listed and therefore should be deleted.

9	17	§080 (a) (6)	delete	
9	18	§080 (a) (7)	change	(7) to (6)

Reason: This phrase does not make sense unless it is intended to regulate the internal administrative requirements and procedures of private forest landowners, timber owners and operators. Section 020(1) allows the commissioner to develop the internal administrative requirements and procedures of the division of forestry.

9 19-21 §080 (a); (8) delete

Reason: This subsection allows the State to develop regulations about scenic, aesthetic or any other land use activity it may wish on private lands. If the purpose is to allow for regional variations within the State, then subsection 080(c) takes care of this problem.

10 8-11 §090 (a) delete

Reason: This subsection is unnecessary and extra to this section in general. It is essentially only a statement of existing law that operations subject to this Act must comply with it. On the other hand, if this subsection is left in, then insert "on municipal and state forest lands" after the "and" and before "approved" on Line 9. This will make clear that permit approval is not required on private forest lands. This ties into the proposed amendment for subsection 090(e) below.

11 4 §090 (e) insert "for state and municipal forest lands" after "shall" and before "as"

Reason: This will eliminate the requirement for advance approval under this Act for an operation on private forest lands. Private forest lands will still be subject to the regulations, advance notification, enforcement and other provisions of this Act, but will not have to obtain additional permits because of this Act. This will not change any provisions of existing statutes which require permits on private lands.

11 29 §090 (h) insert "for state and municipal forest lands" after "days" and before "shall"

Reason: This will eliminate the requirement to publish in the newspapers for operations on private lands.

Page	Line	Section		Amendment
12	3	§090 (h)	Add	"Recommendations from the public with respect to private forest lands may or may not be considered in the discretion of the commissioner."

Reason: As the bill is now written, this section will lead to litigation over whether recommendations from the public were considered. It will also lead to lawsuits over how much consideration is necessary to meet the requirements of Act. Meanwhile, operations will be stalled while the courts consider whether the commissioner considered every public recommendation no matter how silly. It will be like the litigation over environmental impact statements. At least private lands should be exempt from these costly delays of endless litigation.

12	17	§090 (m)	insert	"With respect to State and municipal forest lands" at the beginning of the sentence.
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Reason: Security bonds are an added cost which should not be imposed on private landowners. If an operation violates the regulations, enforcement fines or court injunctions should be enough.

12	20	§090 (o)	insert	a new subsection (o) as follows: "The times requirements of this section and the presumption of unconditional approval for failure to act within the time requirements of this section shall apply to processing all permits required by any state agency under any statute or regulation for any operation on private forest land."
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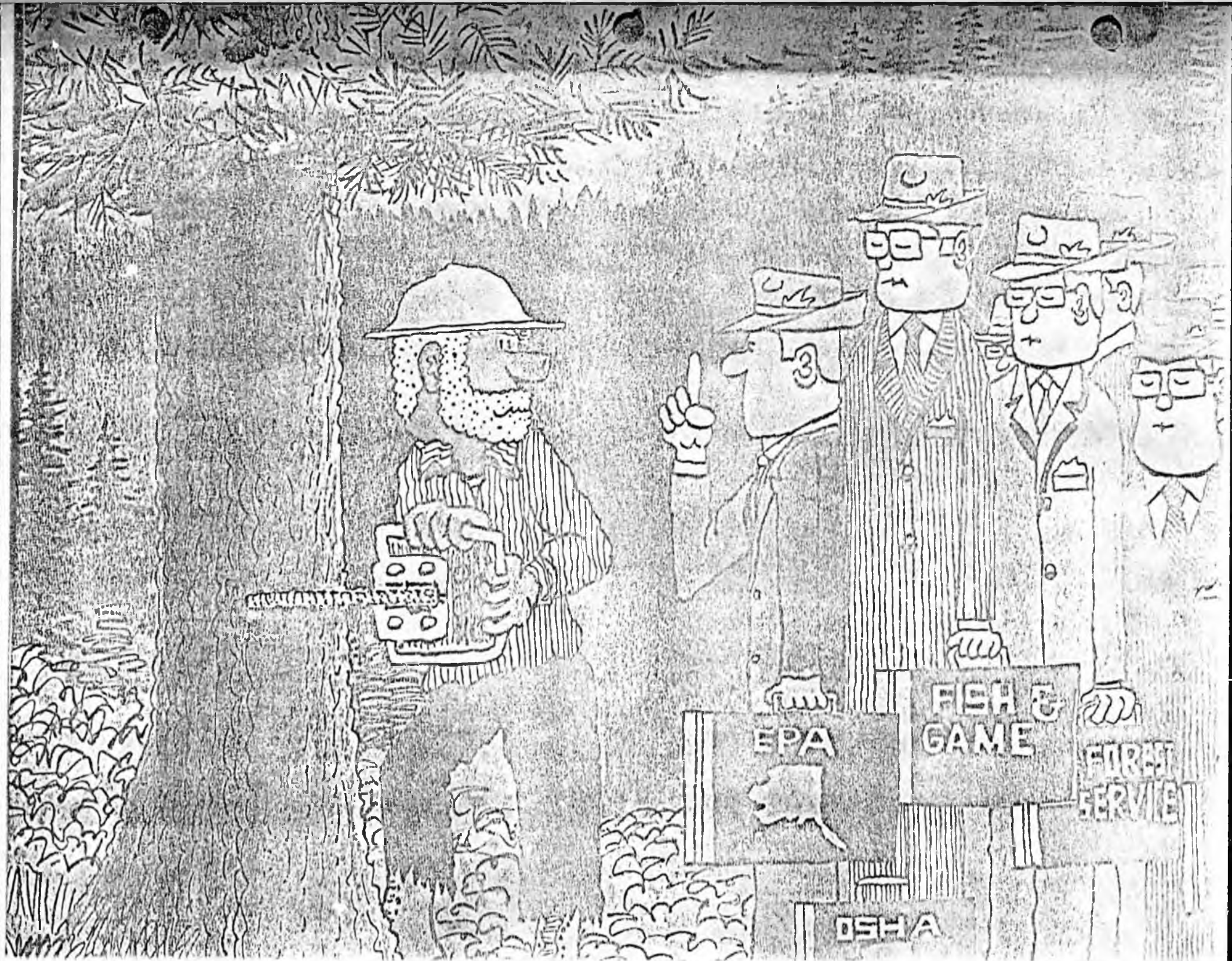
Reason: This new subsection makes it clear that the procedures and time limits of this Act apply to all permits on private forest lands. If the amendment to §090(e) is accepted, then this amendment will only refer to permits on private forest lands required by statutes other than this Act.

Page	Line	Section	Amendment
16-17	29-2	§130(j)	delete

Reason: This subsection defines the terms "damage" and "repair damage" in subsections 130(b) (e) and (f) to include any unsatisfactory condition or the correction of any unsatisfactory condition. This is an attempt to expand the common understanding of the term "damage" so that it can mean almost anything.

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

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



SENATE AND HOUSE RESOURECE COMMITTEES:

MY NAME IS CLARENCE JACKSON. I WOULD LIKE TO OFFER THE FOLLOWING COMMENTS AS CHAIRMAN OF THE BOARD OF DIRECTORS OF SANTCO (SOUTHEAST ALASKA NATIVE TIMBER CORPORATION). SANTCO IS ONE OF THE LARGEST PRIVATE COMMERCIAL FOREST LANDOWNER IN THE STATE AND REPRESENTS 10 VILLAGE AND URBAN NATIVE CORPORATIONS OWNING 230,400 ACRES IN SOUTHEAST ALASKA. OUR MEMBERS INCLUDE NATIVE CORPORATIONS FROM CRAIG, HOONAH, HYDABURG, JUNEAU, KAKE, KASAAN, KLAWOCK, SAXMAN, SITKA, AND YAKUTAT.

SENATE BILL 59 WOULD GOVERN OPERATIONS ON PRIVATELY OWNED COMMERCIAL FOREST LAND IN ALASKA AND WILL SIGNIFICANTLY IMPACT OUR CONTROL OVER OUR OWN FEE SIMPLE RESOURCES. SANTCO WOULD LIKE TO SUGGEST CHANGES TO SENATE BILL 59 FOR YOUR CONSIDERATION. THESE SUGGESTIONS MAINLY ADDRESS STATE CONTROL OVER OPERATIONS ON PRIVATE FOREST LANDS AND WOULD GENERALLY NOT BE APPLICABLE TO STATE OR MUNICIPAL FORESTS.

AFTER A YEAR LONG STUDY OF FOREST PRACTICES ACTS IN OREGON, WASHINGTON, AND CALIFORNIA AND CONSULTATION WITH VARIOUS CHAPTERS OF THE SOCIETY OF AMERICAN FORESTERS, AND ATTORNEYS SPECIALIZING IN FOREST LAW, WE CAN SEE A FOREST PRACTICES ACT WHICH COMBINES THE INTENT OF HOUSE BILL 40 AND SENATE BILL 59 AND WHICH PERMITS THE STATE TO GOVERN OPERATIONS ON PRIVATE FOREST LANDS TO INSURE A HEALTHY STATE ECONOMY, TO PROTECT THE PUBLIC INTEREST IN SANTCO'S RESOURCES, AND TO

PROTECT SANTCO'S INTEREST IN ITS OWN RESOURCES.

OUR CONCEPT OF A FOREST PRACTICES ACT WOULD:

1. GIVE US AS LANDOWNERS A SIGNIFICANT VOICE IN THE MANAGEMENT OF OUR LANDS AND INSURE THAT ALL INTEREST GROUPS HAVE INPUT INTO REGULATION OF OPERATIONS ON PRIVATE FOREST LAND. WE WOULD PROVIDE FOR THE GOVERNOR TO APPOINT A BOARD OF FORESTRY WITHIN THE DEPARTMENT OF NATURAL RESOURCES TO ASSIST HIM AND THE COMMISSIONER WITH THE ADMINISTRATION OF A DIVISION OF FORESTRY.

2. BE LESS EXPENSIVE FOR BOTH THE STATE TO ADMINISTER AND THE LANDOWNER TO COMPLY WITH; BUT, THE PENALTIES FOR VIOLATION OF STATE LAWS OR REGULATIONS', AND THE ENFORCEMENT PROVISIONS WOULD BE EQUALLY SEVERE. AS LANDOWNERS WE WILL NOT TOLERATE MISMANAGEMENT OF OUR RESOURCES. WE HAVE A DOUBLE RESPONSIBILITY AS CITIZENS AND STOCKHOLDERS TO SUPPORT A STABLE ECONOMY, A HEALTHY FOREST, AND CLEAN WATERS THROUGH THE WELL PLANNED SUSTAINED YIELD AND MULTIPLE USE MANAGEMENT OF SANTCO FOREST LANDS. THE EXPENSIVE PROVISIONS OF SENATE BILL 59 SHOULD BE AMENDED TO MAKE THE BILL CLEARLY A NOTIFICATION BILL. A NOTIFICATION BILL IS DESIGNED TO EDUCATE THE LANDOWNER AND OPERATER ABOUT THE LAW AND PROPER FOREST MANAGEMENT; BUT, THE BURDEN WOULD LIE WITH THE STATE THROUGH ENFORCEMENT.

A LANDOWNER SHOULD BE ABLE TO MANAGE HIS LANDS; BUT RISK STATE SUSPENSION OF HIS OPERATIONS AND POSSIBLE ENCUMBRANCE OF HIS LANDS, AND PENALTIES IF HE BREAKS THE LAW OR REGULATIONS DRAFTED UNDER THE LAW.

3. WOULD REMOVE THE IMPLICATION THAT A LANDOWNER COULD HAVE HIS RESOURCES TAKEN WITHOUT COMPENSATION; BUT, IT WOULD ALSO PROVIDE A VEHICLE TO ASSURE THE STATE THAT OPERATIONS ON PRIVATE FOREST LAND WILL PROTECT THE RESOURCE WITHOUT LOCKING IT UP.

WE ARE GRATEFUL FOR THE OPPORTUNITY TO PRESENT OUR VIEW OF A PRACTICAL SOLUTION TO THE PROBLEM. SANTCO WANTS TO DO ITS PART TOO, TO INSURE THAT PRIVATE FOREST LANDS ARE CAREFULLY MANAGED FOR THE BEST INTEREST OF BOTH THE STATE AND OURSELVES AS A MAJOR FOREST LANDOWNER.

PRELIMINARY DRAFT

FORESTRY CODE FOR ALASKA

Patterned on Senate Bill 563-1976

and S.B.59-1977 and H.B.40-1977

1. Eliminates prelogging permit system.
2. Establishes a Forestry Division.
3. Provides for regulations to be approved by a Board representing all of Alaska with majority of the members representing commercial forest landowners, professional resource managers, industry and labor with knowledge of forest management problems.

House Bill No. _____

SENATE BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to forest resources and practices; and providing for an effective date." BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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

CHAPTER 17. FOREST RESOURCES AND PRACTICES.

Sec. 41.17.010. FINDINGS AND PURPOSE. (a) The legislature finds that

(1) the forest land and water resources of Alaska are among the most valuable natural resources of the state;

(2) healthy stable communities, industries and businesses derived from the products, benefits and services obtained from forest land and water resources are of prime importance to the state;

(3) the public interest demands that productive state, municipal and private forest land be administered consistent with sound and refined principles of natural resource management;

(4) the forest land and water resources furnish economic stability, timber and numerous wood products derived from timber, fish and wildlife, employment opportunity, tourism, outdoor recreation and aesthetic enjoyment, water, minerals, soil, air, general health and welfare and a multitude of other valuable products, benefits, and services;

(5) it is the policy of the state to formulate prudent and responsible forest management measures calculated to serve the needs of all Alaskans for the long term economic benefits to its inhabitants and communities and for the many products, benefits and services obtained from forest land and water resources;

(6) imprudent forest management would preclude receiving all of the products, benefits and services obtained from forest land and water resources, upon which the economy and welfare of Alaska depend and will continue to depend in the future; and

(7) failure to implement wise forest management measures designed to guarantee perpetual supplies of renewable resources and to make available nonrenewable resources in a compatible manner would be a grave disservice to the people of Alaska.

(b) It is the purpose of this chapter to insure that timber harvesting will continue to contribute substantially to Alaska's economy; to protect the longevity of Alaska's forest products industry by implementing effective forest management practices and maintaining over the long term Alaska's supply of timber; to prevent degradation of renewable resources; and to create and maintain a system for the administration, regulation and use of productive state, municipal, and private forest land so as to guarantee continuous and perpetual supplies of the various products, benefits and services obtained from it.

Sec. 41.17.020 STATE FORESTRY DIVISION

(a) To administrate its forestry code, there is hereby created a state forestry division within the Department of Natural Resources consisting of the State Forester and his deputy, assistants and employees, acting under the direction of the State Board of Forestry.

(b) Selection of members of the Board: Confirmation

(1) The voting members, of the Board shall consist of the Commissioner of Natural Resources and 12 members appointed as provided in sub-paragraph (d) below. The Board shall elect one member as its chairman. The chairman shall have such power and duties as are provided by the rules of the Board. The composition of the Board shall fairly represent the interests of all the people of Alaska. The term of office of a voting member of the Board other than the Commissioner is four years.

(c) If a vacancy occurs before the end of the term, the Governor shall appoint an individual to complete the unexpired term in the same manner and under the same requirements as provided in sub-paragraph (d) below, as in the case of the member whose term was not completed.

(d) Selection of members of Board, Confirmation.

Three (3) voting members shall be chosen from persons actively and principally engaged in an administrative or production capacity in the production of logs or manufacture of forest products. Two (2) members of this group shall be appointed

from Southeastern Alaska, and one (1) member shall be appointed from other timbered areas of Alaska.

Three(3) voting members shall be appointed from persons recommended by associations representing private commercial forest landowners of Alaska.

One(1) voting member shall be appointed from candidates recommended by the Alaska Loggers Association, Alaska Visitors Association or the Chamber of Commerce.

One(1) voting member shall be appointed from persons recommended by organized lumber industry unions.

One(1) voting member shall be appointed from persons recommended by the Alaska Wildlife Federation.

One(1) voting member shall be appointed from candidates recommended by the United Fishermen of Alaska.

Two(2) voting members shall be non-aligned Alaskan residents.

The Regional Forester of the U. S. Forest Service and the State Director of the U. S. Bureau of Land Management or their designated representatives shall be non-voting members of the board and shall serve in an advisory capacity.

(e) General duties of Board, compensation and expenses, meetings and rules.

(1) The Board shall supervise all matters of forest policy and management under the jurisdiction of this state and approve claims for expenses incurred under the statutes administered by the Board except as otherwise provided by law.

(2) The members of the Board are entitled to per diem

compensation at the rate of \$_____ per day and repayment of expenses.

(3) The Board shall meet on the first Wednesday after the first Monday in January, March, June and September, at places designated by the chairman of the Board or the State Forester. The Board may meet at other times and places in this state on the call of the chairman or the State Forester. A majority of the voting members of the Board constitutes a quorum to do business.

(4) The Board shall promulgate rules governing the transaction of its business and shall approve or reject rules proposed for promulgation by the Forester establishing general rules respecting operations on forest lands as provided in sub-paragraph (h).

(f) State Forester; deputy and assistants; compensation.

(1) The Governor shall appoint a State Forester, who must be a professional forester familiar with Alaskan conditions, from four (4) candidates recommended by the Board. The forester shall be the chief executive officer of the division. The forester shall act as secretary of the Board.

(2) With the approval of the Board and subject to applicable provisions of the State Law, the State Forester may appoint a Deputy State Forester, assistant state forester

and other employees of the division. During the State Forester's absence or disability, all of his authority shall be exercised by the Deputy State Forester or by the assistant whom the State Forester or the Board, by written order filed with the Lieutenant Governor, has designated as Acting State Forester.

(3) Unless otherwise provided by law, the Board shall fix the compensation of the State Forester. In addition to their salaries, the forester and his deputy and assistants shall be reimbursed, subject to the limitations otherwise provided by law, for their actual and necessary travel and other expenses incurred in the performance of their duties.

(g) Fidelity Bonds.

(1) Before entering upon the duties of his office, the Forester shall furnish a fidelity bond in favor of the State of Alaska in the penal sum of \$100,000 issued by one or more corporate sureties authorized to do business in the State of Alaska, conditioned upon the faithful and honest handling and disposition of the moneys in the State Forestry Department Account and any other moneys in the hands of the Forester.

(2) The premium for the bond shall be paid from the appropriation of the division.

(3) Except as provided in sub-section (1) of this section, the Board may require a fidelity bond, with one or more

corporate sureties authorized to do business in this state, of any officer or employee of the division. . The Board shall fix the amount of the bond which otherwise is subject to subsections (1) and (2) of this section.

(h) General duties of the State Forester.

The Forester, under the general supervision of the Board, shall:

(1) In compliance with A.S. 44.62 and the specific approval of the Board, promulgate rules consistent with the law for the enforcement of the state forest laws relating directly to the protection of forest land and the conservation of forest resources.

(2) Direct the improvement and protection of forest land owned by the State of Alaska.

(3) Collect data relative to forest conditions.

(4) Take action authorized by law to prevent and extinguish forest, brush and grass fires.

(5) Enforce all laws pertaining to forest land and prosecute violations of such laws.

(6) Cooperate with landowners, political subdivisions, private associations and agencies and others in forest protection.

(7) Advise on and encourage reforestation.

(8) Publish such information on forestry as he determines to be in the public interest.

(9) Prepare biennially a report to the Governor and the

Legislative Assembly on the performance of the functions of the division, including the progress and condition of state forest work, containing recommendations for improving methods of forest protection, management and reproduction.

(10) Enter into contracts and cooperative agreements pertaining to experiments and research in forestry.

(11) Sell, exchange or otherwise dispose of any real property heretofore or hereafter acquired by the division for administrative purposes and no longer needed.

(12) Sell timber for harvesting from State owned timber lands.

(i) State Forester to cooperate with other agencies and persons; payment of expenses; contracts for supervision; deposit for costs.

(1) Under the direction of the Board, the forester:

(a) Shall, upon request and whenever he deems that it is in the public interest, assist and cooperate with any federal or state department or any institution, political subdivision or person owning or controlling forest land within this state, in the preparation of plans for their protection, management, replacement or extension. Unless otherwise provided by law, the parties obtaining such assistance shall pay the necessary costs of travel, subsistence and other field expenses incurred by the forester or his assistants

in the preparation and execution of these plans.

(b) May enter into contracts with the applicants under which he will supervise the execution of the plans. However, the costs of carrying out the plans shall be paid by the applicants.

(2) In carrying out this section the forester may require the applicant to deposit in one or more installments the moneys needed to cover the cost of preparing and executing the plans. These deposits shall be placed in the State Treasury, credited to the State Forestry Division Account and used exclusively for the purposes of this section.

Sec. 41.17.030. EXEMPTIONS.

(a) Noncommercial forest land under municipal or private ownership is not subject to the provisions of this chapter.

(b) Any small parcel or tract of forest land is exempt from the provisions of this chapter if the forester determines that the parcel or tract is all of the following:

(1) 160 acres or less in size;

(2) owned entirely by one person or group of persons;

(3) not to be utilized as part of a timber harvesting or forest development plan or agreement of any kind involving other parcels or tracts of forest land; and

(4) not appurtenant to other parcels or tracts of forest land either owned by the same person or groups of persons or in which that person or group of persons has any property interest.

(c) Any commercial forest land parcel owned by a Native village, urban, regional or group corporation organized pursuant to the Alaska Native Claims Settlement Act, 43 USC, Sec. 1601 ETSEQ, P.L. 92-203, 85 Statute 688 as amended and which is subject to 43USC, Sec. 1622 (k)(2) shall not be subject to the provisions of this chapter until December 18, 1983.

(d) As used in this section only, "person" includes the state or a municipality; or corporation.

(3) The Forester may adopt regulations, in accordance with Board approval and the Administrative Procedure Act (AS 44.62), necessary to implement this section.

Sec.41.17.040. REGULATORY AND ADMINISTRATIVE STANDARDS

(a) All regulations, administrative actions, and other activities and duties undertaken pursuant to this chapter must be in full accordance with the standards set out in this section.

(b) Standards applicable to all land.

With respect to state, municipal, and private forest land, the following standards apply:

(a) It is of the first importance to the people of Alaska that the economic long term well being of the forest land owner and those industries dependant on forest resources, and the long term productivity of forest lands and waters are recognized as the primary objectives towards which the Division shall establish standards regulating the management of forest resources.

(2) to the extent practicable, all relevant data and information shall be used in making decisions relative to the administration of forest land;

(3) where consistent with other provisions of this section, administration of forest lands with respect to production levels of timber and timber products shall allow reasonable consideration for changes in market conditions;

(4) there shall be no significant impairment of the productivity of the land and water with respect to renewable resources unless removed from timber production.

Standards applicable to State and Municipal Land.

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

(1) forest land shall be administered for the economic multiple use of the renewable and nonrenewable resources and for the sustained yield of the renewable resources of the land in the manner which best provides the present needs and preserves the future value to the people of Alaska;

(2) determinations of multiple use patterns to be established within any area shall begin with the assumption that all resources and values are of importance; and

(3) to the extent its capacity permits, forest land shall be administered so as to provide for the continuation of businesses, stable industries, activities, and life styles which are dependent upon or derived from forest land and water resources.

(4) scenic and aesthetic quality shall be maintained in or adjacent to areas of major importance to the tourism or recreation industry.

Sec. 41.17.050 ADMINISTRATIVE PLAN AND REPORT

(a) The division of Forestry shall develop and continually maintain a plan for the administration of this chapter insuring that the sustained yield of merchantable high-quality timber from State owned forest land subject to this chapter will be maintained or increased, and that forest land will be protected from unsatisfactory forest management. The Forester shall conduct periodic inventories of timber on state forest land subject to this chapter to assist in meeting the requirements of this section.

Sec. 41.17.060. REGULATION

(a) The Board of Forestry may adopt regulations in accordance with the Administrative Procedure Act (AS 44,62) governing operations on forest land with respect to the following:

- (1) timber harvesting and management and directly related activities;
- (2) disposal of slash and debris;
- (3) reforestation and stocking;
- (4) precommercial thinning and similar activities;
- (5) control of soil erosion and waste;
- (6) logging road and bridge and trail construction and maintenance;
- (7) fire prevention and control;
- (8) fertilization;
- (9) salvage of trees and brush control;
- (10) protection of forest land from damage by insects, pests, noxious weeds and diseases;
- (11) flood control;
- (12) protection of scenic, recreational, aesthetic and other natural values, where consistent with Sec. 40 (c) (4) of this chapter.
- (13) general administrative requirements.

(b) The Board shall consult with interested state and federal agencies, private individuals and organizations in conjunction with the adoption of regulations under this section. The Board may establish regions, districts, or other subdivisions.

of forest land within the state in which different regulations apply in order to reflect varying conditions throughout the state, or for other purposes, and may appoint advisory committees within established regions.

Sec. 41.17.070. REVIEW AND APPROVAL OF OPERATIONS

(a) Operations on forest land shall be inspected and reviewed under this section for consistency with the policies and provisions of this chapter and regulations adopted under Sec. 60(a) of this chapter. However, the Board may adopt regulations under the Administrative Procedure Act (AS 44.62) exempting certain operations from administration under this section if they are of minimal concern with respect to the policies and provisions of this chapter.

(b) Before operating on forest land, the operator shall first give formal notification to the Forester. Notification must consist of filing a notification certificate together with a United States Geological Survey map of the largest available scale showing the locations of all proposed activities. The operator shall also submit a brief description of the proposed operation on a form provided by the Forester.

(c) In reviewing proposed operations under this section, the Forester and affected state agencies shall consider the practicalities and economic constraints affecting the operator. In addition, the forester shall insure that the information and paperwork required of the operator under this section shall be kept to the minimum necessary to accomplish the purposes of this chapter.

(d) The operator may not materially deviate from plans, terms, and conditions stated in the operation plan filed with the notification certificate under this section

without the prior written approval from the forester, who shall grant that approval only after full consultation with other affected state agencies.

(e) No action taken by the forester under (d) of this section is an authorization to violate applicable laws or regulations.

Sec. 41.17.080. DEPLOYMENT OF CHEMICALS

(a) Herbicides, pesticides, fungicides, rodenticides, insecticides, fertilizers and other similar chemicals may not be deployed on forest land unless (1) the deployment is in accordance with applicable state laws and regulations and (2) prior written approval from the Forester is obtained.

(b) The Forester may not grant approval under (a) of this section unless he, in consultation with affected agencies, finds that (1) deployment is reasonable or is not likely to result in significant adverse consequences and (2) that the deployment would be consistent with the policies and provisions of this chapter. The Forester may impose conditions on deployment in granting written approval, and shall require the posting of a performance bond by the operator before the deployment of chemicals. Each individual usage of chemicals must be specifically approved by the Forester. The Forester shall require a full report from the operator upon completion of chemical deployment. No operator may materially deviate from operations approved by the Forester without the prior written consent of the Forester.

(c) The Forester must act upon any application within thirty(30) days. If the application is denied, the full reasons therefor must be stated in writing. A denial shall be appealable directly to the Superior Court.

Sec. 41.17, 100. INSPECTIONS, INVESTIGATIONS, AND ENFORCEMENT

The Forester or his designee may inspect and investigate forest land and enter upon it before, during and after operations as necessary to insure compliance with applicable regulations and requirements and to otherwise enforce the provisions of this chapter. Other state agencies have this same authority to the extent necessary to enforce their own laws and regulations on forest land.

Sec. 41.17.110, PROHIBITIONS, PENALTIES, AND ENFORCEMENT PROCEDURES.

(a) It is unlawful for any person to violate the provisions of this chapter or any regulations adopted under this chapter. A person who violates this subsection is liable for a civil fine to be assessed by the Forester with Board approval not to exceed \$7,500, and an additional civil fine not to exceed \$1,000 for each day the violations continue.

(b) If an investigation discloses that there is probable cause to believe a violation has occurred, the Forester shall issue and serve upon the alleged violator written notice, with a formal complaint which specifies the nature and extent of the alleged violation and requires the alleged violator to answer the charges of the formal complaint at a hearing not more than 14 days after the date of notice (unless the alleged violator requests an extension, which may be no more than an additional 14 days). The notice shall also specify the nature of the violation and any damage or unsatisfactory condition which has occurred or might occur as a result of the violation. At the hearing, the state has the burden of proof to establish that the person charged has caused or permitted a violation described in (a) of this section.

(c) A hearing under (b) of this section shall be held before a qualified hearing officer designated by the Forester from among the employees of the State of Alaska, except that a person who

has participated in the investigation or preparation of the state's case may not serve as a hearing officer or otherwise participate in the decision. All hearing shall be open to the public, and any person may submit written statements to the hearing officer in connection with the subject of the hearing. In addition, the hearing officer may permit any person to offer oral testimony. All issues pertaining to the alleged violation shall be examined and considered at the hearing. Any party to a hearing may be represented by counsel, may make oral or written argument, secure the issuance of a subpoena under AS 44.62.430, offer testimony or other evidence, cross-examine witnesses, or take any combination of these actions. All testimony given before the hearing shall be recorded stenographically or electronically.

(d) Within 10 days after the close of the hearing, or upon the non-appearance of the alleged violator on the day specified for the hearing, the hearing officer shall issue and enter a recommended order. The order shall be based on the evidence presented at the hearing. In all matters, the hearing officer shall file and publish a written opinion and order stating the facts and reasons leading to the decision. The Forester shall immediately notify the violator of the recommended order by registered mail.

(3) The recommended order of the hearing officer under (d) of this section may include:

(1) a directive to stop the violation;

(2) the imposition of a civil fine under (a) of this section which is payable immediately;

(3) a directive to repair damage or correct an unsatisfactory condition; or

(4) any combination of the above.

(f) In determining the amount of any civil fine imposed, the following factors shall be considered where practicable:

(1) the character and degree of injury to forest resources and values;

(2) the degree of intent, negligence or inattention of the violator in causing or permitting the violation;

(3) the character and number of past violations caused or permitted by the violator; and

(4) to the extent such information is available, the net economic savings realized by the violator through noncompliance with (a) of this section.

(g) If the Forester finds, after investigation, that a violation of (a) of this section has occurred and determines that continuation of the violation or failure to repair damage or correct an unsatisfactory condition would likely result in irreversible or irreparable damage to the forest resources or values affected, and it appears to be prejudicial to the interest of the people of the state to delay action until opportunity for hearing can be provided, the Forester may, without prior hearing issue a temporary order in addition to the notice of violation a complaint required in (b) of this section. The order may direct

the violator to stop the violation or to repair damage or correct an unsatisfactory condition, or both. The order remains in effect until a final order is issued. Proceedings in conjunction with the violation shall otherwise be the same as for violations where no temporary order has issued, except that the hearing shall be held at the earliest possible date convenient to the alleged violator.

(h) If a person fails to comply with a final order issued under (d) or (g) of this section, the attorney general, at the request of the Forester, may seek an injunction to suspend the violative operations being conducted by that person until the order is complied with. In addition, if a person fails to comply with a final order issued under (d) or (g) of this section directing the person to repair damage or correct an unsatisfactory condition, the Forester may proceed either with division staff or by contract to repair the damage or correct the unsatisfactory condition. The Forester shall keep a complete account of direct expenditures incurred and upon completion of the work shall prepare an itemized statement of them and shall deliver a copy to the operator, timber owner and forest landowner, who are jointly and severally liable for those expenditures. Those expenditures constitute a general lien upon the real and personal property of the operator, timber owner and forest landowner within the state.

(i) All final orders issued under this section are enforceable by injunction, attachment, garnishment or other appropriate remedy.

(j) The administration of this section, including the conduct of hearings, shall be conducted according to regulations adopted by the Board. Except as otherwise specified in this section, proceedings under this section are not subject to the Administrative Procedure Act (AS 44.62). Hearings conducted under this section are not limited by common law or statutory rules of evidence; however, the hearing officer may admit only that evidence which appears to him to be reliable and trustworthy. Hearsay evidence which is inadmissible in a judicial proceeding may not be admitted in a hearing under this section unless:

(1) the Forester provides the person charged with the name and address of the declarant and the substance of his accusation or testimony along with the service of the complaint, or, if the evidence is not known at that time, then at a reasonable time before the hearing; and

(2) the hearsay evidence is of a type normally relied upon by reasonable men in the conduct of serious business affairs.

(k) The recommended order shall not become the final order of the Forester until review and approval by the Forester.

Sec. 41.17.120 APPEALS AND JUDICIAL REVIEW.

(a) An action of the Forester taken under this chapter may be appealed to the Board within 30 days after the action is taken. The Board shall hold a hearing within 15 days after the appeal is filed, at which all substantial issues pertaining to the action shall be examined and considered. Within 10 days after the hearing closes, the Board shall issue a decision in writing, a copy of which shall be provided to the appellant.

(b) A final order issued under (a) of this section or under Sec. 120 of this chapter may be appealed to the Superior Court within 30 days after the entry of the order. Judicial review shall be as provided in AS 44.62.560 and 44.62.570.

(c) A temporary order issued under Sec. 110 of this chapter may be immediately appealed to the Superior Court as to the propriety of the temporary order.

Sec. 41.17.950. DEFINITIONS.

In this chapter, unless the context requires otherwise:

(1) "Commercial Forest Land" means forest land producing or capable of producing crops of industrial wood and not withdrawn from timber utilization; areas qualifying as commercial forest land are those which have the capability of producing in excess of 20 cubic feet per acre per year of industrial wood under management;

(2) "Forester" means the Forester or the Division of Forestry;

(3) "Cooperative Forestry Programs" and "extension service programs" mean programs that will provide technical assistance designed to further the policies and provisions of this chapter to persons engaged in timber harvesting or activities associated with timber harvesting or forest development and to other individuals, organizations and agencies concerned with forest resource management;

(4) "Division" means the Division of Forestry;

(5) "Forest Land" means land at least 16.7 percent stocked by forest trees of any size, or formerly having such tree cover and not currently developed for nonforest use, regardless of whether presently available or accessible for commercial purposes, and includes any such land under state, municipal or private ownership;

(6) "Forest Landowner" means a person who owns forest land;

(7) "Multiple Use" means (a) the management of all the

various resources of publically owned forest land so that they are used in the combination that will best meet the needs of the owner and the Alaskan people, making the most judicious use of the land for some or all of these resources or related values, benefits and services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; (b) that some land will be used for less than all of the resources; and (c) harmonious and coordinated management of the various resources, each with the other, without significant impairment of the productivity of the land and water, with consideration being given to the relative values of the various resources, and not necessarily the combinations of uses that will give the greatest dollar return or the greatest unit output;

(8) "Noncommercial Forest Land" means unproductive forest land incapable of yielding crops of industrial wood because of adverse site conditions (capable of producing no more than 20 cubic feet per acre per year) and productive forest land withdrawn from commercial timber use through statute or administrative regulation.

(9) "Notification Certificate" means a document prescribed by the Forester and constituting an intent to operate on forest land, which must be signed and sworn to by the operator.

10) "Operations" means timber harvesting or activities associated with timber harvesting or forest development;

(11) "Person" includes a joint venture or corporation as well as the entities set out in AS 01.10.060 (7);

(12) "Sustained Yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of forest land and water without significant impairment of the productivity of the land and water;

(13) "Timber Operator" or "Operator" means a person who is engaged in timber harvesting or activities associated with timber harvesting or forest development himself, or who contracts with others to conduct such harvesting or activities or development in his behalf, except a person who is engaged in timber harvesting or associated activities or forest development as an employee with wages as his sole compensation;

(14) "Timber Owner" means a person who owns timber on forest land or who has the rights to timber, but does not own the land itself.

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

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

STATEMENT OF JOHN BORBRIDGE, JR.
PRESIDENT OF SEALASKA CORPORATION
ON SPONSOR SUBSTITUTE SENATE BILL 59
ALASKA FOREST PRACTICES ACT

BEFORE

SENATE RESOURCES COMMITTEE
STATE OF ALASKA

APRIL 12, 1978

MADAME CHAIRMAN AND MEMBERS OF THE SENATE RESOURCES COMMITTEE, FOR THE RECORD MY NAME IS JOHN BORBRIDGE, JR. I AM PRESIDENT OF SEALASKA CORPORATION, THE REGIONAL CORPORATION ORGANIZED UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT BY THE NATIVES OF SOUTHEAST ALASKA. TODAY ACCOMPANYING ME FROM SEALASKA EXECUTIVE STAFF BEFORE THIS HEARING, IS MR. ROBERT W. LOESCHER , DIRECTOR OF NATURAL RESOURCES AND MR. PETER HUBERTH, MANAGER OF OUR FOREST PRODUCTS DIVISION.

BY THE END OF 1978 OR EARLY SPRING 1979 PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT SEALASKA CORPORATION SHOULD HAVE PATENT TO AS MUCH AS 250,000 ACRES OF LAND IN SOUTHEASTERN ALASKA. AMONG THE RESOURCE VALUES OF THE LAND WHICH INCLUDES RECREATIONAL RESOURCES, FISH AND WILDLIFE RESOURCES, MINERALS, WATER RESOURCES AND OTHER REAL ESTATE POTENTIALS, IS THE FOREST RESOURCE.

SEALASKA IS MOVING TO IMPLEMENT THE FIRST YEAR OF ITS FIVE-YEAR FOREST PRODUCTS PLAN. EFFORTS TO STAFF UP, PREPARE THE ENGINEERING FOR ROAD CONSTRUCTION AND PLANS TO HARVEST OUR FIRST TREES IN THE SPRING OF 1980, ARE UNDERWAY. AS THE CORPORATION PROCEEDS, IN THIS TOTAL EFFORT, THE CONCEPTS OF SUSTAINED YIELD MANAGEMENT AND RESPECT FOR OTHER ENVIRONMENTAL VALUES WILL GUIDE THESE DEVELOPMENTS. AS THE LARGEST PRIVATE LANDOWNER IN SOUTHEASTERN ALASKA IT IS OUR INTENT TO MOVE AHEAD IN THE FOREST PRODUCTS INDUSTRY AS CAREFULLY AND PRUDENTLY AS POSSIBLE IN ORDER TO

DEVELOP THE LONG-TERM BENEFITS OF THIS RESOURCE.

ALSO, BY THE END OF 1978 IT SHOULD BE RECOGNIZED THAT PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, AN ADDITIONAL 276,480 ACRES OF FORESTED LAND WILL BE PATENTED TO TWELVE (12) VILLAGE AND URBAN CORPORATIONS LOCATED AT SAXMAN, HYDABURG, CRAIG, KLAWOCK, KASAAN, KLUKWAN, KAKE, ANGOON, HOONAH, YAKUTAT, JUNEAU AND SITKA. SEALASKA DOES NOT REPRESENT THE VIEWS OF THESE CORPORATIONS; HOWEVER, IT IS OUR UNDERSTANDING THAT THESE CORPORATIONS ARE PROGRESSING WITH THE MANAGEMENT AND DEVELOPMENT OF THEIR FOREST RESOURCES AND GENERALLY SHARE SIMILAR CONCERNS AS OUR CORPORATION ABOUT THE FORMULATION BY THE LEGISLATURE OF A STATE FOREST PRACTICES ACT. A NUMBER OF THE CORPORATIONS ARE REPRESENTED HERE TODAY. MADAME CHAIRMAN, I URGE YOU AND YOUR COMMITTEE TO GIVE FULL WEIGHT OF CONSIDERATION TO THE TESTIMONY GIVEN BY OUR RESPECTIVE CORPORATIONS REPRESENTED HERE TODAY. IT GOES WITHOUT SAYING THAT THIS SINGULAR PIECE OF LEGISLATION WILL HAVE VITAL IMPACT ON OVER A HALF A MILLION ACRES OF TIMBERED LAND, PRIVATELY OWNED BY THE NATIVES OF SOUTHEASTERN ALASKA.

SINCE THE LAST SESSION, SEALASKA CORPORATION HAS PARTICIPATED IN TRYING TO ARRIVE AT A COMPROMISE DRAFT OF SB 59 WHICH WE FELT WOULD REPRESENT THE INTERESTS OF THE PRIVATE LANDOWNER. IN THIS

EFFORT, WORKING WITH INDUSTRY, ENVIRONMENTAL GROUPS, STATE AND FEDERAL AGENCY REPRESENTATIVES, UNIONS AND OTHERS, HAS TRULY ESTABLISHED OUR UNDERSTANDING OF OTHER VIEWS ABOUT THIS VERY IMPORTANT MATTER. WITH CERTAIN BASIC EXCEPTIONS, WE FEEL THAT ASSISTANT ATTORNEY GENERAL HAYNES AND MEMBERS OF THE INFORMAL COMMITTEE DID AN EXCELLENT JOB OF REDRAFTING SB 59.

AS PRIVATE LANDOWNERS, CONCERNED WITH THE NEED FOR CONTINUITY OF STATE IMPLEMENTATION OF FOREST PRACTICES WE FEEL THAT STANDARDS FOR PRIVATE LANDOWNERS AND PROMULGATION OF REGULATIONS MUST BE KEPT ABOVE POLITICS AS MUCH AS POSSIBLE. HOW TO ARRIVE AT PROTECTION OF PROPERTY RIGHTS AND PROMULGATE PRACTICAL REGULATIONS WILL BE THE MAJOR THRUST OF OUR TESTIMONY.

THE STANDARDS CONTAINED IN THE ACT MUST INCLUDE THE FACT THAT MAN IS A PART OF THE ENVIRONMENT AND THAT HIS ECONOMIC WELL-BEING IS OF PRIMARY CONSIDERATION FOR THE BENEFIT OF THE ECONOMY AND ALL THE CITIZENS OF THE STATE OF ALASKA.

IN THE DELIBERATION RELATED TO THIS LEGISLATION, IT IS IMPORTANT TO EMPHASIZE THE ECONOMIC ENVIRONMENT IN WHICH THE ALASKA FOREST PRODUCTS INDUSTRY MUST FUNCTION. OUR PRODUCTS PROVIDE RELATIVELY MARGINAL RETURNS COMPARED TO OREGON OR WASHINGTON. OUR TIMBER HARVESTING COSTS ON PUBLIC LANDS ARE 50 - 100% HIGHER THAN

THE LOWER 48. OUR SELLING PRICES ARE NO GREATER AND IN MOST INSTANCES ARE LESS THAN IN THE CONTINENTAL UNITED STATES. THEREFORE, IN MARKET DOWNTURNS, THE ALASKA PRODUCERS TEND TO BE THE FIRST TO SHUT DOWN. CONVERSELY IN RISING MARKETS WE TEND TO BE THE LAST TO DERIVE MAXIMUM BENEFITS. THE STUMPAGE OWNER IN OUR CASE THE PRIVATE LANDOWNER, IS THE INDIVIDUAL MOST AFFECTED BY THE MARKET CYCLES.

A FOREST PRACTICES ACT MUST ACCOUNT FOR THE ALASKA POSITION IN THE MARKET. THEREFORE, OUR SUGGESTED AMENDMENTS AND TESTIMONY ARE CONCERNED WITH ECONOMICS AND RESPONSIBLE MANAGEMENT OF PUBLIC AND PRIVATE FOREST LANDS.

SEALASKA CORPORATION AGREES THAT THE PRINCIPALS WHICH MIGHT BE UNDERTAKEN IN THE MANAGEMENT OF STATE TIMBER WOULD DIFFER FROM PRIVATE PRACTICES. HOWEVER, IT IS IMPORTANT THAT THE STATE NOT GIVE AWAY ITS' TIMBER ASSETS OR MANAGE THEM IN A MANNER WHEREBY THE ECONOMIC RETURN TO THE STATE IS DIMINISHED, THEREBY CREATING AN ADDITIONAL FINANCIAL BURDEN TO THE TAXPAYERS. THE MANAGEMENT OF RENEWABLE RESOURCES, WHETHER ON STATE OR MUNICIPAL OWNERSHIP, WHEN DESIGNATED FOR MULTIPLE-USE MANAGEMENT, SHOULD BE MANAGED SO AS TO PROVIDE A BROADENED INDUSTRIAL BASE, ENHANCED EMPLOYMENT AND ECONOMIC STABILIZATION, AND SATISFACTORY REVENUES TO HELP

FUND STATE OPERATIONS. INCREASING THE ECONOMIC BASE OF THE FOREST PRODUCTS INDUSTRY NOT ONLY PROVIDES FOR OPPORTUNITIES TO MANAGE FOREST LANDS IN A MORE RESPONSIBLE FASHION, BUT INTRODUCES OPPORTUNITIES FOR COMPETITION IN THE MARKET PLACE. THERE IS LITTLE OR NO MARKET PLACE COMPETITION AT THE PRESENT TIME IN ALASKA.

BECAUSE OF THE IMPORTANCE OF THE FOREST PRODUCTS INDUSTRY TO THE STATE OF ALASKA, SEALASKA CORPORATION BELIEVES THAT THIS ACT SHOULD PROVIDE FOR A BODY OF LAW, NOT THE OPPORTUNITY FOR A GUBERNATORIAL APPOINTEE OR SIMILAR INDIVIDUAL TO PROMULGATE REGULATIONS WHICH REFLECT NEITHER THE VIEWS OF COMMUNITY NOR WHICH REPRESENT THE BASIC NEEDS OF THE FOREST PRODUCTS INDUSTRY. THEREFORE, WE STRONGLY SUPPORT A LEGISLATIVE STRUCTURE WHICH WILL PROVIDE FOR A STATE BOARD OF FORESTRY, THE MEMBERS OF WHICH WILL ADEQUATELY REPRESENT THE FOREST INDUSTRY. ALSO MEMBERSHIP SHOULD REFLECT THE DIVERSITY OF OPINIONS REPRESENTED WITHIN THE STATE. THE STATE BOARD OF FORESTRY WOULD UNDERTAKE THE DRAFTING AND APPROVAL OF REGULATIONS TO INSURE THAT ALL INTERESTS ARE PROTECTED AND ESPECIALLY THAT THE FOREST PRODUCTS INDUSTRY WILL BE A SIGNIFICANT ECONOMIC CONTRIBUTOR TO THE STATE OF ALASKA.

JUST AS OTHER BOARDS IN THE STATE HAVE PROFESSIONAL MEMBERS FROM THE APPROPRIATE INTERESTED DISCIPLINE IT IS IMPORTANT THAT THIS BOARD HAVE A VERY STRONG REPRESENTATION OF PROFESSIONAL REPRESENTA-

TIVES FROM THE FOREST PRODUCTS INDUSTRY TO INSURE THAT FORESTRY NEEDS ARE PROPERLY MET.

IT IS IMPORTANT TO UNDERSTAND THAT THE AMENDMENTS WHICH WE OFFER PROVIDE FOR THE IMPLEMENTATION OF THE SUGGESTED STRUCTURE, MAKE A DISTINCTION BETWEEN THE BOARD OF FORESTRY AND OTHER BOARDS THAT HAVE BEEN ESTABLISHED PREVIOUSLY. IT IS ENVISIONED THAT THIS BOARD WILL HAVE A PRIMARY DUTY OF DETERMINING THE REGULATIONS WHICH WILL BE THE GUIDELINES FOR THE STATE FORESTER'S ADMINISTRATION. IN ADDITION, THE BOARD WILL GENERALLY REVIEW THE ACTIVITIES OF THE DIVISION OF FORESTRY AND OFFER SUGGESTIONS TO THE STATE FORESTER TO ASSIST HIM IN MORE EFFICIENTLY OPERATING HIS DIVISION.

WE HAVE REVIEWED THE REPRESENTATION ON OTHER BOARDS OF FORESTRY IN OTHER STATES SPECIFICALLY OREGON AND CALIFORNIA. IN OREGON A MAJORITY OF THE MEMBERS OF THE BOARD ARE FROM INDUSTRY AND IT HAS BEEN PROVEN OVER THE YEARS THAT THIS BOARD HAS OPERATED EFFICIENTLY AND HAS INSURED THAT PROPER AND RESPONSIBLE LAND MANAGEMENT PRACTICES ARE ENFORCED. HOWEVER, IN CALIFORNIA THE BOARD HAS BEEN SO SUBSTANTIALLY MODIFIED THAT THERE IS ONLY ONE FORESTER LEFT AND HIS TERM IS DUE TO EXPIRE. THE RESULT IS PANDOMONIUM WITHIN THE FOREST PRODUCTS INDUSTRY WITHIN THAT STATE.

THEREFORE, SEALASKA CORPORATION STRONGLY ENDORSES A BOARD OF FORESTRY WHICH WILL NOT ONLY INSURE A HIGH DEGREE OF PROFESSIONALISM, IN TERMS OF THE PROMULGATION OF REGULATIONS, BUT WILL ALSO REFLECT OTHER DIVERSE INTERESTS. IT IS RECOMMENDED THAT SUCH A BOARD INCLUDE REPRESENTATIVES OF THE FISHING INDUSTRY, THE FOREST PRODUCTS INDUSTRY, ENVIRONMENTALISTS, LABOR, BUT THAT IT INCLUDE A PREDOMINANT NUMBER OF REPRESENTATIVES OF LANDOWNERS AND PROFESSIONAL FORESTERS WHO WILL INSURE THE PROMULGATION OF REGULATIONS WHICH WILL MEET THE VARYING NEEDS, INCLUDING ECONOMIC, OF THE REGIONS IN ALASKA. DUE TO STAGGERED TERMS WHICH CAN BE SET, THESE PEOPLE WILL NOT BE DISPLACED BY THE VIEWS OF ANY INDIVIDUAL GOVERNOR, BUT WILL PROVIDE FOR THE NECESSARY CONTINUITY WHICH IS ESSENTIAL TO FOSTERING A VIGOROUS FOREST INDUSTRY. IN ADDITION, THE SOURCES FROM WHICH THESE APPOINTEES ARE DRAWN, AS SET BY THE STATUTE, WILL INSURE THE REFLECTION OF A BREADTH OF VIEWS NECESSARY TO ASSIST IN MEETING THE NEEDS OF THE STATE.

THE ACT CONTINUALLY SPEAKS OF BEST MANAGEMENT PRACTICES. SEALASKA CORPORATION AGREES WITH THE IDEA OF BEST MANAGEMENT PRACTICES AS LONG AS THEY MEET ECONOMIC DICTATES AND FEASIBILITY. IN ALASKA, BEST MANAGEMENT PRACTICES HAVE NOT YET BEEN DRAFTED. THE BOARD OF FORESTRY AS ENVISIONED WILL BE IN AN EXCELLENT POSITION TO ASSURE THAT BEST MANAGEMENT PRACTICES WILL BE PRACTICAL.

IT IS FELT THAT THE PROPOSED SPONSOR SUBSTITUTE BILL WILL FOSTER LITIGATION DUE TO STANDARDS THAT ARE TOO BROAD AS WRITTEN, AND SOME STANDARDS DO NOT PROVIDE SUFFICIENTLY CLEAR GUIDELINES FOR THE DRAFTING OF THE REGULATIONS. THE RESTATED STANDARDS THAT WE SHALL SUBMIT AND THE SYSTEM OF USING THE BOARD OF FORESTRY TO DRAFT THE REGULATIONS WILL ACCOMPLISH A VERY SUBSTANTIAL STEP IN INSURING THAT THERE WILL BE THE NECESSARY SPECIFICITY, THEREBY REDUCING OPPORTUNITIES FOR LITIGATION, ENHANCING THE OPPORTUNITIES FOR THE FIELD PRACTITIONERS TO UNDERSTAND AND ACCEPT THE REGULATIONS PROMULGATED BY THE BOARD.

SEALASKA STRONGLY ENDORSES THE ORGANIZATION WITHIN THE DEPARTMENT OF NATURAL RESOURCES WHICH PROVIDES FOR A DIVISION OF FORESTRY WITH A STATE FORESTER REPORTING TO THE COMMISSIONER. A STRONG STATE FORESTER, ABLE TO PARTICIPATE AT A LEVEL RELATIVELY EQUAL TO OTHER RESOURCES AND ADMINISTERING MOST REGULATIONS APPLYING TO FOREST LANDS, WILL ENHANCE OPPORTUNITIES FOR A HEALTHY FOREST PRODUCTS INDUSTRY.

SEALASKA SUPPORTS THE APPROACH WHEREBY BASIC UNDERLINING STATUTORY LANGUAGE INCORPORATED IN THIS LEGISLATION MAKE CLEAR THAT THE CONCEPT OF ONE DIVISION WITHIN THE ADMINISTRATION ENFORCING