

548

SRES

SB 59

Sec. 41.17.110. PROHIBITION, PENALTIES, AND ENFORCEMENT

PROCEDURES. (a) It is unlawful for any person to violate or permit a violation of a provision of this chapter, a regulation adopted under this chapter, or a term or condition of any approval granted under secs. 70 - 90 of this chapter. A person who commits a violation is liable for a civil fine to be assessed by the commissioner not to exceed a total of \$10,000.

(b) If an investigation discloses probable cause to believe a violation has occurred, the commissioner shall serve upon the alleged violator (the "respondent") written notice and a formal complaint which describes the alleged violation and requires the respondent to answer the charges at a hearing not more than 10 days thereafter. Upon request the respondent will be granted an extension not to exceed 60 days. The notice must also describe any damage which has occurred or might occur as a result of the violation. At the hearing, the state must show by a preponderance of the evidence that the respondent has caused or permitted a violation described in (a) of this section.

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

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

(2) the degree of intent or negligence of the respondent in causing or permitting the violation;

(3) the character and number of past violations caused or permitted by the respondent.

(d) omit (4)

(h) Unless otherwise specified, proceedings under this section are not subject to the Administrative Procedure Act (AS 44.62). A hearing under this section must be held before a hearing officer, appointed by the attorney general from among members of a panel of the Alaska Bar Association approved by the Board of Forestry who are knowledgeable and experienced in the subject matter. A person who has assisted in the preparation of the state's case or who is a state employee is ineligible. Hearings are not limited by common law, statutory, or judicial rules of evidence; however, the hearing officer may admit only that evidence which appears to him to be reliable and trustworthy. All hearings must be open to the public. Written or oral testimony may be submitted. A party to a hearing may make written or oral argument, secure the issuance of a subpoena under AS 44.63.430, offer testimony or other evidence, and cross-examine witnesses. The hearing officer shall endeavor, in conducting any hearing, to insure that the respondent understands the proceedings and that the facts supporting the position of each party have been adequately presented. Hearings shall be held as close as practicable to the location of the alleged violation. Testimony given at the hearing must be recorded.

RATIONALE:

In subparagraph (a) the language has been modified to show that a total fine cannot exceed \$10,000.

In subparagraph (b) a sentence has been inserted to allow the respondent an extension of up to 60 days if the respondent requests it in order to adequately prepare for his case. Normally the respondent will want to proceed as fast as possible in order to clear up matters and be able to continue operations in a normal fashion.

Subparagraph (d) (4) has been eliminated because it is felt that it should not be germane to the consideration of a civil fine. What is germane is the character and degree of injury to forest resources, negligence, and the past record of the respondent.

In subparagraph (h), wording is offered which provides that the hearing officer be appointed by the attorney general from among members of a panel of the Alaska Bar Association approved by the Board of Forestry. In this fashion the Board of Forestry has the opportunity to review the background and credentials of members of the Alaska Bar Association to insure that they have some feeling for environmental and land management problems. By such members having a basic understanding of forestry needs and problems, they can more equitably determine any relief which may be necessary.

Sec. 41.17.120. APPEALS AND JUDICIAL REVIEW. (a) An administrative action of the department under this chapter, except actions under sec. 110 and except for adoption of regulations, may be appealed to the commissioner within 30 days after it is taken. The commissioner shall hold a hearing, at which all substantial issues shall be considered, within 15 days after an appeal is filed. The respondent shall however have the right to a 60 day extension upon request. Within 10 days after conclusion of the hearing thereafter, the commissioner shall issue a written decision based upon the evidence, which may be provided to the appellant. The commissioner may delegate his duties, in whole or in part, under this subsection to a hearing officer.

RATIONALE:

In this paragraph is inclusion of wording which allows the respondent an additional 60 day extension upon his request in order to more thoroughly prepare his case for the appeal, since it is obvious that his case was not sufficiently thorough in the original hearing.

Sec. 41.17.130. omit

RATIONALE:

As future land owners we feel that there are sufficient opportunities in other state laws for individuals who are groups to commence civil action without having to provide specific wording in this draft bill. Instead the bill should address itself simply to forest practices.

Sec. 41.17.950. (13)

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

RATIONALE:

The term material impairment is defined in order to have it be consistent with the use of that term in Section 040 REGULATORY AND ADMINISTRATIVE STANDARDS (b) (2) where it has been substituted for the term significant.

SHEE ATIKA, INCORPORATED

P.O. Box 578
Mt. Edgecumbe, Alaska 99835
Phone - (907) 747-3534

April 18, 1978

Dear Senator Poland,

We appreciated the opportunity for our representative, Mr. Warren Weathers, to testify on the sponsor substitute Forest Practices Act before your committee last Wednesday. Our primary concern with the bill relates to its restriction of resource management alternatives on private land. Shee Atika, Inc. endorses the concept of granting the state authority to insure that private forests are managed in a manner which protects the productivity of all related resources. We take issue with the extent of the state's interference with the methods of obtaining that objective. The acts concentration should rest with the objective of insuring that private forest resources remain productive. The state should not be concerned with a landowner's method of compliance, so long as the compliance accomplishes the objective.

Enclosed are copies of Shee Atika, Inc.'s testimony including an article from the March Journal of Forestry relating to Section 208 of the Federal Water Pollution Control Act.

Sincerely



Nelson D. Frank
Chairman of the Board

NDF/nmw

SHEE ATIKA, INCORPORATED

P.O. Box 578
Mt. Edgcombe, Alaska 99835
Phone - (907) 747-3534

Madame Chairman, Senators of the Committee

I am Warren Weathers

I speak in behalf of Shee Atika, the claims act corporation of Sitka, and one of the 12 village corporation's in Southeast who will in aggregate manage some 250,000 acres of forest land. Nelson Frank, Chairman of Shee Atika, regrets that he can not be here today.

I am a professional forester, a graduate of O. S. U. school of Forestry with 6 years in private forestry in Alaska, prior to which I was a forest practices officer for the Oregon State Board of Forestry. I am a member of the Society of American Foresters.

The Board of Directors of Shee Atika has directed me to convey today, their concern relating to the administration's sponsor substitute. Shee Atika, like the other village corporations in southeast, did not participate in drafting this bill. Unfortunately the state did not solicit, or was not receptive to, much land owner input relative to the impact that this bill will have on the private forest land owner. The land owner is the one that will pay for this thing, not the mill owner, the operator, or the federal government.

We would like to see a forest practices act adopted this year. We are more interested however, in seeing that the act adopted accomplishes its purpose without unnecessarily interfering with the right of private citizens to manage their resources and businesses.

It appears that Section 208 of the Federal Water Pollution Control Act as amended might induce the various State agencies to adopt regulations affecting private forest lands, with little land owner, technical forestry and forest products industry input if a forest practices act is not adopted this year. Section 208 does not force us to adopt a permit type act as advocated by the administration and as used currently in California. This case is supported by an article in the March 78 issue of the Journal of Forestry written by Luke Popovitch of the Society of American Foresters.

We feel that the administration's bill is generally acceptable with the following critical exceptions:

The proposed Division should be guided by a seasoned professional forester. This is necessary to insure that administration of a forest practices act have continuity without being subject to automatic adjustments with changes of administration, to insure an appreciation for forest management problems by the administrator, and to insure that modern-technical forestry is properly represented in intragovernment communications.

The administration's bill incorporates the word "notification" in reference to the mechanics of enforcement; in fact it is actually purely a prior approval permit system. We have no objection to the use of this system (the prior approval permit system on public lands. The differences between the two systems were not adequately

or fairly, presented by Mr. Haynes at the March 8 committee work session. The basic difference is that under the prior approval permit system (as used in California and as in this bill) the state may deny (41.17.070 e (3)) the land owner the right to operate on his own land, without the land owner having broken any law or regulation. Furthermore, under this permit system (41.17.070 e(2)) the state will have the power to tell a landowner what, where, how, and when he will be allowed to manage his resource.

Under a notification system, as used in the Oregon Forest Practices Act, and as recommended by ourselves, the landowner still has the responsibility and burden of operating within the law; but, he also has the freedom to formulate his own plans, as best meet his constraints, so long as he complies with the laws and regulations. The notification system is not as Mr. Haynes described it "merely mailing in a postcard." A landowner can be required to submit the very same plans and information which are required under the administration's proposed permit system. Under a notification system you can still require that these plans be submitted, even thirty days in advance of commencing any activity on private land. We would have no objection.

If that is not enough, the state could go farther under a notification system and require a performance bond. We would not like that provision; but, it might be a trade-off just to get a notification system in this bill. We should be careful that a performance bond would be no larger than adequate to both prevent careless or willful infraction and to correct any adverse situation which might result from an infraction of the law or regulation. Frankly, I'm afraid that a bond requirement would get so far out of hand that it would force small operators out of business. A bond is unnecessary against the land-owning operator as you have the land to throw liens on already.

Under a notification system the state could still have the authority to require a pre-operation meeting with the land owner/ operator-to explain potential problem areas and suggest alternatives - before an operation started But the land owner would retain the essential freedom - and flexibility - vital in Alaska - to formulate his own plans.

There is no need to burden the private land-owner with a permit system as proposed in this bill. We can accomplish the objective, and guarantee the practice of modern - scientific forest management, in Alaska, with a notification system.

Section 41.17.070(j) in the administration's draft further provides for major review lasting another 68 days if a land owner discovers that his situation has changed-and that he must amend his plans. This delay would not happen under a notification system. September 30 to December 8 is 68 days. What if: a land owner is faced with a situation where in a land owner's particular part of the state, where the ground normally freezes before the snow flies, in which he would normally log on frozen ground with a low ground pressure PMC to control surface disturbance, but this year the snow comes first. Can he alter his plans and use a cable suspension system before the snow buries his fell and bucked timber. NO. Not unless the snow decides to let up for 68 days so the state can review the situation and process a change in his permit.

What if normally the snow flies first and he had planned to use a cable system, but this year the ground freezes first-so he could meet his production schedule and save some funds,- without disturbing the surface,- by using his PMC. If its going to take

the state 68 days to react, he can forget about taking advantage of the break God gave him this year.

What if: as has happened to myself here in Southeast, he is logging with a helicopter and it crashes. Can he switch over to a skyline for part of the area, to minimize his losses. Not if he has to wait 68 days. He'll have to shut down and lose 2½ months production and probably his whole business. A true notification system, as used in Oregon, is far less expensive to administer than the permit system that the administration is asking for. Considering volume harvested California's permit system is 6.5 times as expensive for that states taxpayers as is Oregon's notification system to its taxpayers. Considering the number of operation notices filed, California's permit system is 27.3 times as expensive to enforce as is Oregon's notification system. It is logical to conclude that these costs would increase by a blanket 25% cost of business factor here in Alaska- plus an additional 25% overall increase for transportation (which is only 7% of Oregon and California's forest practices related budget.) I've noticed that the administration's fiscal note allows only \$4,000 for transportation/year for the entire forest practices enforcement program in the state. This leads me to conclude that they either don't plan to enforce it at all or they plan to do the whole thing without ever getting out on the ground to see what the situation really is. If they plan to enforce this thing properly, especially if we're stuck with a permit system, they'd better allow at least \$12,000/year for each enforcement officer between Ketchikan and Kodiak. On the ground inspection, at least twice, would be virtually mandatory under a permit system. No self respecting forest practices officer is going to stick his neck out and give someone permission to do something without getting on the ground before and after it takes place. This budget will virtually force the state to ask for more time, more information, and to take action under 41.17.070 e(3) to deny the permit. The bill has budgeted for eight new forester positions. I don't believe that the state could enforce this act, run a nursery, a public education effort and conduct a meaningful inventory program with twice that number.

Section 41.17.070 (h) requires publication of a permit application for operations on private land and requires solicitation of public comment. This could destroy a land owners bargaining position in the market as all the buyer, sellers, and competitors in the world would know exactly what his plans are. They'd know what he was going to produce, where, when, and how much. By deduction they could determine relative operating costs, and his margin of profit or loss. This informations should be held in strict confidence.

We agree with Senator Meland's concern regarding the administration provision 41.17.070(b) governing private land that states "allowance be made for scenic and asthetic quality in or adjacent to areas of substantial importance to the tourism industry." This provision will undoubtedly foster many lawsuits as people disagree on such items as:

1. What constitutes "allowance"
2. What is "scenic and asthetic quality"
3. What constitutes "substantial importance"

Mr. Haynes suggested that this passage merely authorizes the state to compensate land owners for the economic impact of state restrictions under this section. Perhaps then

the act should mention the state's authority to compensate a land owner for voluntarily curtailing planned activities which conflict with the state's vision of "scenic quality." We further suggest that the implication that a land owner may be prevented from managing his resource (when the state finds a potential conflict with their interpretation of "scenic value") be deleted from the bill.

Section 41.17.020 (i) which requires an advisory committee is a good start. We feel that this committee should have substantial land owner representation as long as the act has jurisdiction over private lands. For purposes of adopting regulations governing forest management practices on private land the committee should draft the regulations. Oregon's act requires 2/3 land owner representation on their committee.

Sound forest management with consideration for, and enhancement of all the resources of the forest ecosystem can be a highly profitable enterprise. Although it may be beneficial to encourage the practice of modern forestry on small woodlots, a 4 or 5 million dollar economic incentive program is not really required to promote proper management for the bulk of Alaska's future private forests.

We endorse the concept of mandatory standards for reforestation and conversion to non-forest use. These standards must be carefully set for the various conditions and ecosystems found in the state. Southeast does not share the same problems as Afognak, the Matanuska Valley, or Elim and visa versa. Standards that apply to Southeast do not necessarily apply to other forested areas of the state. These regulations must not be hastily drafted, or drafted just to say we have a regulation. Forestry in most areas of the state, is relatively new. A lot more work needs to be done.

The Alaska Native Claims Settlement Act requires that our corporations follow management practices no less stringent than those used on adjacent national forest lands until December 18, 1983. There shouldn't be any rush to pass this act as it relates to private land just to get federal approval for state control under Section 208. Because 208 applies to federal land via the state forest practices act, you could delete private land from the bill and it would still apply to our (essentially the) private forests until the end of 1983 anyway.

If we can't have a good bill this year perhaps all reference to private lands should be deleted with the intent of considering an amendment later to control operations on private land in the same spirit as Oregon's act.

MARK G. COPELAND*
DAVID WOLF

ADMITTED IN OREGON

LAW OFFICES OF
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March 29, 1978

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J. DAVID BENNETT
CHARLES A. GOLFORD
DAVID W. HARPER
GORDON H. KEANE
THOMAS M. LANDYE
DIARMUID F. O'SCANNLAIN
DONALD H. PEARLMAN

FANDALL L. DUNN
ROBERT B. HOPKINS
RICHARD L. SADLER

Kay Poland
Resource Committee of the Senate
Room 120
Capitol Building
Juneau, Alaska

Dear Mrs. Poland:

Thank you for the telephone call from Sharon Stoops, your secretary, informing us of the hearing on the Sponsor Substitute to S.B. 59 on April 10 and 12. Also I appreciate the fact that she is not only going to send me a copy of the Sponsor Substitute to S.B. 59, but is also sending a copy directly to Les Anderson of Koncor and Sam Demmert, President, Yak-Tat Kwaan, Inc. I gathered when I talked to her on March 29 that the Sponsor Substitute has not yet been published and this is the reason we could not obtain a copy in Anchorage, but that it should be printed later this week and will be sent from Juneau.

Sincerely yours,

KEANE, HARPER, PEARLMAN & COPELAND

David
DAVID WOLF

DW/ps

cc: Les Anderson, Koncor
Sam Demmert, Yak-Tat Kwaan

AMENDMENTS REQUESTED

- #1. Retain original language from Sponsor Substitute regarding creation of a Division with responsibility for forestry and establishment of the position of State Forester.

Justification: Fragmenting surface land management responsibilities, as would occur under the language of the Work Draft Paper, will result in duplication of effort, conflict between divisions, and risk separating forestry matters from the mainstream of land management decisionmaking.

If a separate division of forestry is to be created, its responsibilities should be left up to the commissioner so that unnecessary administrative problems and legal difficulties with implementation of AS 38.05 can be avoided.

- #2. Add new paragraph (10) to §040(c) to read:

"(10) nominees of the state forester have three seats."

Justification: There is no way of anticipating all of the interest groups or points of view which might warrant representation on the Board of Forestry. At least three seats should be at the discretion of the state forester so that some flexibility over membership is retained.

- #3. Add new paragraph (4) to §060(b) to read:

"(4) to the fullest extent practicable, harvested forest land shall be reforested (naturally or artificially) so as to result in a sustained yield of merchantable timber from that land."

Justification: While the timing and extent of reforestation should be handled by regulation, there should be policy direction in the bill that reforestation take place. Constituencies such as mill workers and forest products support industries are dependent for their jobs upon continued supplies of timber. Since much reforestation in Alaska will be natural and major landowners have stated their intent to reforest anyway, this provision would impose no hardship.

- #4. Move §060(c) back into §060(b).

Justification: Everyone understands that there will be some temporary damage resulting from logging. However, some direction should be given to avoid permanent damage to the ability of the land to produce renewable resources. If the latter

AMENDMENTS REQUESTED (continued)

happens, the interests and income of fishermen and others who depend upon forest resources are impaired and the impacts of activities on private land extend beyond the boundaries of that land. Language nearly identical to this is included in the Federal Multiple Use/Sustained Yield Act.

ALASKA BOARDS OF FISHERIES AND GAME

JOINT RESOLUTION #

April 7, 1978

WHEREAS, the Senate Resources Committee is currently considering the Sponsor Substitute for Senate Bill 59, an Act relating to forest resources and practices;

WHEREAS, fish and wildlife and their habitat are among the renewable forest resources of Alaska, and are therefore of major concern to the Joint Boards of Fisheries and Game;

WHEREAS, the Sponsor Substitute for Senate Bill 59 appears to the Boards to establish a professional forest management program which will protect fish and wildlife resources and their habitat while providing benefits and services resulting from use and development of timber resources;

BE IT RESOLVED, that the Joint Boards of Fisheries and Game urge that the Senate Resources Committee take favorable action on the Sponsor Substitute for Senate Bill 59.

Adopted unanimously (12-0) this 7th day of April, 1978.

Nick Sabo
Chairman, Board of Fisheries

Samuel H. Hays
Chairman, Board of Game

S Gordon Jensen
Chairman, Joint Boards of Fisheries and Game



KONCOR

FOREST RESOURCE MANAGEMENT

File
P.O. Box 2212
Juneau, Alaska 99615
Phone (907) 486-3985

February 17, 1978

Honorable Jay S. Hammond, Governor
State of Alaska
Pouch A
Juneau, Ak 99811

Dear Governor Hammond:

It has come to my attention through conversations with both State Division of Land and U. S. Forest Service personnel that the State's nursery facility at Palmer may be dying a slow death due to lack of funding. If this is indeed true, it is extremely disappointing to me personally and a grave management concern to KONCOR.

KONCOR is the managing entity for several village corporation's forest land selections in the Koniag region. During the course of calendar year 1977 KONCOR sought and received removal of the U.S.F.S. Perenosa timber sale from lands under our management jurisdiction on Afognak Island. Prior to removal of the timber sale from KONCOR lands, approximately 600 acres of timber were harvested under the Forest Service's operational plan.

Pursuant to agreement with the USES KONCOR presently is removing timber harvested approximately two (2) years ago.

Both the USES and KONCOR have been relying on the Palmer facility to raise the seedlings necessary for these lands to be reforested.

KONCOR's management objectives also call for additional acreage to be harvested in the years to come. We must either enter into our own nursery program or purchase the stock from outside sources. The state facility certainly could provide KONCOR, as well as other land owners throughout the state, with regeneration stock.

I urge you to look into this critical matter and seriously consider funding the Palmer facility so it can produce planting stock on a production basis.

Alaska Loggers Association, Inc.



111 STEDMAN, SUITE 200
KETCHIKAN, ALASKA 99901
Phone 907-225-6114

April 10, 1978

Honorable Kay Poland
Senate Resource Committee
Pouch "V"
State Capitol Building
Juneau, AK 99811

Dear Senator Poland:

Enclosed is a copy of the Alaska Loggers Association Resolution 78-1, which supports the proposed State Forest Practices Act, and urges its speedy enactment into law. This resolution was passed by the ALA Directors and its members at the annual spring membership meeting in Juneau, March 19, 1978.

Sincerely,


Donald A. Bell
General Manager
ALASKA LOGGERS ASSOCIATION

DAB/mjh
Enclosure:

RESOLUTION

78-1

OF THE ALASKA LOGGERS ASSOCIATION

IN SUPPORT OF S. B. 59

CREATING AN ALASKA STATE FOREST PRACTICES ACT

WHEREAS, the proposed State Forest Practices Act combines professional management services, regulatory measures, and economic incentives in complementary fashion and draws upon the expertise of a professional forester in conjunction with other disciplines, and

WHEREAS, passage of this proposed State Forest Practices Act will assure strong recognition of the role of the forest industry in Alaska's economy within the State government, and

WHEREAS, there exists a need for a strong State forester at a sufficiently high policy making position within State Government to assure that legitimate forestry concerns are integrated with, not dominated by, concerns regarding related forest values, and

WHEREAS, it is essential that the State's Division of Forestry have a high level of forestry expertise (as well as expertise in related disciplines), good morale, and a sense of purpose and importance within State Government, and

WHEREAS, the proposed State Forest Practices Act requires the minimum possible, regulation, paper work, procedure and delay; and

WHEREAS, the proposed State Forest Practices Act assures that regulations promulgated by the State under the Alaska Coastal Zone Management Act, and Section 208 of the Federal Water Pollution Control Act will be integrated with the Forest Practice regulations into one set of regulations; and

WHEREAS, the proposed State Forest Practices Act provides for the creation of new State forests; and

WHEREAS, the proposed State Forest Practices Act recognizes the legitimate right of private forest land owners to utilize their land in the manner they deem best, and limits that right only to the extent its exercise would substantially impact upon the rights of others, and

WHEREAS, it is the intention of the proposed State Forest Practices Act to foster policies which will nurture and enhance the forest industry in its operations on State and private lands; and

WHEREAS, the proposed State Forest Practices Act provides for creation of an Advisory Board made up of knowledgeable foresters which would participate in the formulation of regulations under the act; and

WHEREAS, the proposed State Forest Practices Act creates a fair and equitable system for hearings when a breach of the regulations promulgated thereunder has been alleged, and

WHEREAS, Commissioner of Natural Resources, Bob LeResche, has directed a process of concensus and reasons in the development of the proposed State Forest Practices Act, which policy has been skillfully implemented through the persistent efforts and expertise of Jeoff Haynes of the Department of Law;


NOW THEREFORE, the Alaska Loggers Association hereby:

1) Supports the proposed State Forest Practices Act,

S.B. 59 and urges its speedy enactment into law; and

- 2) Commends both Commissioner LeResche and Assistant Attorney General Haynes for their leadership, persistence, patience and reason in developing this bill.

Adopted this 19th day of March 1978



Mike Valentine, President
ALASKA LOGGERS ASSOCIATION

- cc. Governor Hammond, President of the Senate, Speaker of the House, Members of the House and Senate Resource Committees.

MARK G. COPELAND
DAVID WOLF

*ALSO ADMITTED IN OREGON

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KEANE, HARPER, PEARLMAN AND COPELAND

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March 10, 1978

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ROBERT B. HOPKINS
RICHARD L. SADLER

Kay Poland, Chairman
Resources Committee
of the Senate
Room 120
Capitol Building
Juneau, Alaska

Dear Mrs. Poland:

Thank you very much for taking the time to discuss with me the status of S.B. 59 last month. I gather that the Resources Committee will not be considering this bill until the administration has completed development of its proposed sponsor substitute and submits it to the committee. When anything new happens with this bill, I would appreciate receiving the information so that Yak-Tat Kwaan, Inc. and Koncor may submit information concerning the bill to the committee for its consideration. Thank you again for your time.

Sincerely yours,

KEANE, HARPER, PEARLMAN & COPELAND

David
DAVID WOLF

DW/ps

cc: Sam Dermett, Yak-Tat Kwaan, Inc.
Les Anderson, Koncor

send copy -

*Call
Art Peterson*

6-1820

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March 29, 1978

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Kay Poland
Resource Committee of the Senate
Room 120
Capitol Building
Juneau, Alaska

Dear Mrs. Poland:

Thank you for the telephone call from Sharon Stoops, your secretary, informing us of the hearing on the Sponsor Substitute to S.B. 59 on April 10 and 12. Also I appreciate the fact that she is not only going to send me a copy of the Sponsor Substitute to S.B. 59, but is also sending a copy directly to Les Anderson of Koncor and Sam Demmert, President, Yak-Tat Kwaan, Inc. I gathered when I talked to her on March 29 that the Sponsor Substitute has not yet been published and this is the reason we could not obtain a copy in Anchorage, but that it should be printed later this week and will be sent from Juneau.

Sincerely yours,

KEANE, HARPER, PEARLMAN & COPELAND

David
DAVID WOLF

DW/ps

cc: Les Anderson, Koncor
Sam Demmert, Yak-Tat Kwaan

P. P.

Honorable Senator Poland and
Committee Members;

My name is Gene Sundberg;

I am the Vice President in charge
of Lands for Koniag, Inc, the
Native Regional Corporation from
Kodiak. I would like to thank
you for the opportunity to submit
comments to you on Senate Bill
59.

~~to~~
We certainly agree that our
forest resources, for many
different reasons, is valuable
in our region, as well as to

all of Alaska; and that the resource should be prudently managed. We also agree that the State is in need of a strong and wise forest practices guideline.

We cannot, however, concur with the acceptance of the present Senate Bill 59 with respect to its present language, and, with this in mind, would like to share with you, the following impressions and interpretations of various sections of this Bill.

In Section 41.17.010 paragraph (2) on page 1 refers to healthy industries. It seems an unnecessary adjective and implies that the State appreciate benefits from only large corporate structures with lots of money. It would leave a small private industry or business as feeling unhealthy.

On the same page on paragraph (4) for reasons of clarity and better understanding, we recommend that it be ~~was~~ rewritten to read

as follows; "Prudent management of forest land and water resources furnish Timber, minerals, fish and Wildlife, tourism and recreation." Period. Present language duplicates the benefits derived from the above listed categories.

Also, for the sake of clarity on paragraph (5) on page 1 we recommend that the paragraph end with a period following management resources. The rest of that particular sentence serves only as a descriptive phrase

which would be covered under
the words "prudent and responsible
forest management measures."

In Section 41.17.040 (b)(5) on
page 4, we feel that if a
renewable resource is harvested
in an ecologically compatible
manner within the harvest unit
and adjacent area, tourism
should not take precedence
over the harvest of that
resource. As an example
an adjacent land owner, for
possibly myriad cause could dictate how

his neighbors land would
be utilized; and perhaps
prevent his neighbors full
enjoyment of multiple uses
of the land and resources.

The harvest of ~~state~~ resources.

~~We feel that~~ If a renewable resource is harvested in an ecologically compatible manner, ~~that~~

In reference to Section 41.17.110
page 11,

(c) ~~established~~, we recommend that the hearing officer be a state employee experienced in the practices of silviculture. As stated in the present ~~bill~~ ^{bill} the hearing officer, who will be designated by the Commissioner, need be ~~only~~ an employee of the State. Our feeling is that the Commissioner must be compelled by ~~the~~ Law

to give ^{alleged violator} the ~~offended party~~
the benefit of ^{an hearing} ~~the~~ officer
~~hearing the case, the~~ ~~D~~ with
knowledge and expertise in
the field of forestry. Without
that knowledge we feel that
a hearing officer ^{without qualifications} cannot
~~properly~~ render a proper
judgement.

Under Section 41.17.950
entitled "Definitions" on page
16 (1) the phrase "and not
withdrawn from timber
utilization" is completely
~~unclear in my own mind.~~
~~and needs clarification~~ as
to its meaning, and needs
to be clarified.

Finally, As a matter of interest to
this committee, and not a part
of this bill is the fact that
Korvay, Inc does approve of
the concept of H.B. 40 which
would create a Division of
forestry within the Department of
Natural Resources.

KONIAG

Madame Chairman, in closing
may I state that in our Koniag
Region there lies many hundreds
of thousands of acres of timberland
and that we are cognizant of
the fact that, unless proper forest
practices are invoked on our lands,
we may lose what we are trying
to save for the future generations.

~~to be~~

Again Thank you for the opportunity
to state our views and I hope
that other knowledgeable persons
in our region send in more
testimony. Thank You

February 22, 1977

Jay S. Hammond, Governor
Pouch A
Juneau, AK 99811

Dear Governor Hammond:

The Ad Hoc Committee on land policies and procedures has met on a weekly schedule since late October. We have addressed many problems dealing with the administration of the state's land patrimony. Many of these problems need resolution through the legislative process. Accordingly we are submitting these following recommendations as an interim report of the Committee, in the hope that the legislature may act during its current session.

Recommendation #1

The committee recommends that the State adopt a system of level payments in place of declining payments in its sales contracts. The system of level payments is in common use in the business world, and the payment figures are easily set forth in a contract. The disadvantage of the present method is that interest must be recalculated every year and the payments decrease each year. From both the State's and the buyers' viewpoints, the level payment method would be preferred. The State would receive slightly more in interest payments over the contract terms and the buyer would not have to make as high initial payments.

Section 2 & 3 of the attached draft bill would accomplish this.

Recommendation #2

The committee recommends that the State charge a market rate of interest in its sales contracts. The interest rate, at present 6%, is below market levels and may have contributed to inflated prices at state land sales. By setting interest rates at market levels, the State would help prevent inflated land prices and at the same time return more income to the State. To provide for a market rate of interest in sales contracts, no change in AS 38.05.065 would be required. The addition of a statement of market rate in this statute would be desirable, however.

Section 3 of the attached draft bill would accomplish this.

Recommendation #3

The Committee recommends that all sales contracts over \$400.00 per year have the option of paying in quarterly installments instead of annual installments. It is the committee's belief that this would ease the financial strain on the buyer and yet not add significantly to the State's administrative costs.

Section 3 of the attached draft bill would accomplish this.

February 22, 1977

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Section 3 of the attached draft bill would accomplish this.

Recommendation #3

The Committee recommends that all sales contracts over \$100.00 per year have the option of paying in quarterly installments instead of annual installments. It is the committee's belief that this would ease the financial strain on the buyer and yet not add significantly to the State's administrative costs.

Section 3 of the attached draft bill would accomplish this.

Recommendation #4

The committee recommends that the Director be given the authority to set the payment period from one to twenty years. This type of flexibility would allow the State and buyers greater market possibilities.

Section 3 of the attached draft bill would accomplish this.

Recommendation #5

The committee believes that the word "primarily" may imply special consideration to some lessees. In order to treat all lessees fairly and equitably the committee recommends that the word primarily be stricken. Deleting "primarily" would clarify the basis for reappraisal. This recommendation is also made by the hearing panel on the Alaska Industrial Subdivision leasing protest.

Section 8 of the attached bill will accomplish this.

Recommendation #6

Since public notice is covered in AS 38.05.345 the change to "appraisal" for AS 38.05.310 is warranted by its present content. The committee recommends that land may be appraised 120 days in advance of a sale or lease. The change from 90 to 120 days would be desirable in that minimum bid information could be given to the public well in advance of the actual sale or lease auction.

Section 10 of the attached draft bill will accomplish this.

Recommendation #7

The committee recommends that land offered over the counter be reviewed at 90 to 120 day intervals to determine if an increase in value has occurred. This review is desired so that parcels are not undervalued by progressive changes in the market.

Section 10 of the attached draft bill would accomplish this.

Recommendation #8

The committee recommends that in Title 38.05 of the statutes the terms "fair market value" be used in place of "fair appraised market value" and "market value." The meaning is meant to be the same in all cases. The committee would like to see one standard term used to avoid confusion and misunderstanding.

Sections 4, 5, 7, & 13 of the attached draft bill would accomplish this.

Recommendation #9

The duration of a lease and the economic life of substantial improvements, such as stores or factories may not coincide. In order to see that state leased land is used in a rational economically productive manner the committee recommends that lessees of long-term leases be given a renewal option for up to fifteen years. This type of option would grant the lessee more flexibility in maximizing

his investment returns, especially during the final years of his lease. It would also increase the lessee's planning possibilities for use of the leased ground. This action would also soften the impact of termination of the lease. Specifically, this would permit a lessee to work substantial repairs to a building when the remaining term of the lease would not otherwise justify it.

Section 6 of the attached draft bill would accomplish this.

Recommendation #10

In order to provide a uniform 55 year limit for all long-term leases the committee recommends deletion of the 99 year provision found in 38.05.070(c) for school lands.

Section 6 of the attached bill would accomplish this.

Recommendation #11

The committee believes that state trust lands (school, mental health, and university) are now and have been managed at a low intensity. These lands may be returning only a fraction of their potential value that could be realized by a small full time management staff. The Division manages, these lands at no charge to the various trust funds and receives no reimbursement for its services. Therefore, it has traditionally placed low priority on management of these lands. This committee recommends that the State Legislature authorize each trust board the authority to freely contract with any agency or private firm for the management of its lands for revenue production in accordance with the state's land act.

Section 1 of the attached draft bill would accomplish this.

Recommendation #12

To provide the lessee insurance against a land boom or unexpected increase the committee recommends that rental increases at the five-year reappraisal periods not exceed 100% of the prior existing annual rental rate. This action would increase the predictability of the lessee's payments. The stability thus created would add significant borrowing power for the lessee to finance improvements on the leased ground. Mr. Mack of this committee does not concur and believes that 100% is too high a ceiling.

Section 3 of the attached draft bill would accomplish this.

Recommendation #13

The Division of Lands has had many protests from private parties over the past few years leading the committee to believe that a board of appeals is highly desirable and needed, at this time. At present there exists no arbitration board or board of appeals to handle appeals allowed by Division of Lands regulations. The creation of a board of appeals would effect a responsive mechanism for solving most problem cases arising out of Division of Lands transactions that affect private parties. The board of appeals would be faster and less costly to private parties than legal recourse, which would still be available. The board is structured to maintain adequate expertise while attempting to eliminate bias in favor of the

Division of Lands. The appeal board would substitute for the Commissioner in the present appeal process.

Section 14 of the attached draft bill would accomplish this.

Recommendation #14

The current procedures for informing the public of state lands transactions are covered in AS 38.05.305 and AS 38.05.345. The two procedures do not mesh in a clear manner. The committee recommends that the procedures be clarified in a manner that will be flexible enough to inform the public fully and yet not require multiple advertising for minor negotiated transactions.

Section 11 of the attached draft will accomplish this.

Recommendation #15

To implement the new lease provisions recommended by this committee new lease forms for various types of leases will be required. It is the committee's recommendation that the Division draft new lease forms to comply with the statutes adopted, and that the new forms be reviewed by this committee.

Recommendation #16

At present many lessees are suffering hardship due to rent increases of several hundred percent. To provide for this relief and as a curative for such future increases the statutory provisions found in section nine are recommended. Provision for optional conversion of present leases to ones that will place a ceiling of 100% on rental increases every five years will largely prevent future hardship cases and resolve satisfactorily the present cases. With a rent ceiling lease rental increases will be more predictable resulting in more financial stability for the lessee. Mr. Hack does not concur with the limitation of 100%.

Section 8 & 9 of the attached draft bill will accomplish the above recommendations.

Recommendation #17

The committee recommends that the Legislature apply the provisions found in Title 38 to those in Title 3 and Title 19. The rationale would be to make land laws uniform between the Division of Aviation, Department of Highways and Division of Lands.

Recommendation #18

To comply with new statutes the committee recommends a major overhaul of Division of Lands regulations. The committee has found many of the regulations now in effect to be outdated and superseded by statutes.

Recommendation #19

The committee recommends that the State be given more flexibility to resolve contract of sale violations. This is necessary to prevent foreclosure as the

only remedy for minor contract violations.

Section 3 of the attached bill will accomplish this.

The committee wishes to note that in the course of public testimony it was apparent that Division of Aviation lessees had significant problems with their current leases. This subject was not within the scope of the committees deliberations and, therefore, not addressed.

The committee wishes to emphasize that this is an interim report and will be followed by additional recommendations not necessarily involving legislative actions.



THEODORE G. SMITH

Co-chairman

Committee Members:

Hugh Gellert, Co-chairman
William Mack
John Norman
Lidia Selkregg
Jamie Love
Carl Marrs
Clark Gruening
Mike Colletta
Herb Lang
David McCabe

IN THE

BY RULES COMMITTEE BY REQUEST
OF THE GOVERNOR

BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to state lands and providing for
an effective date."

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

* Section 1. AS 38.05.030 is amended by adding a new subsection to read:

Section 38.05.030 (f) Notwithstanding the provisions of (a) and (e)
above and 38.05.035 (a)(13), the trustees of state trust lands may manage or
contract with any agency, public or private, for the management of trust
lands pursuant to the provisions of this chapter. Costs of such management
shall be borne by the respective trusts.

* Section 2. AS 38.05.055 is amended to read:

Section 38.05.055. SALE PROCEDURES. Except as provided in Section
315(d) of this chapter, the sale shall be made at public auction to the
highest qualified bidder as determined by the director. An aggrieved bidder
may appeal to the commissioner within five days after the sale for a review
of the director's determination. The sale shall be conducted by the director
or his representative, and at the time of sale the successful bidder shall
deposit an amount determined by the director but not less than 5% (EQUAL TO
ONE-TENTH) of the purchase price. The director or his representative shall
immediately issue a receipt containing a description of the land or property
purchased, the price bid, and the terms of sale, which receipt shall be
acknowledged in writing by the bidder. A contract of sale on a form approved
by the attorney general shall be signed by the purchaser and, after approval of
the commissioner, the contract shall also be signed by the director on
behalf of the state.

* Section 3. AS 38.05.065 is amended to read:

Section 38.05.065. TERMS OF CONTRACT OF SALE. The contract of sale
shall require the remainder of the purchase price to be paid over a period

of not more than 20 years, which shall be set for each sale by the director.
Installment payments plus interest will be set on the level payment basis
over the payment period. The interest rate charged on installment payments
shall be the prevailing rate on similar land transactions at the time the contract
is signed, as determined by the director, but in no case shall it be below
5% per year or above the current usury rate as set by AS 45.45.010(b) and (d).
(IN ANNUAL INSTALLMENTS OF NOT LESS THAN 10 PER CENT OF THE PURCHASE PRICE,
WITH INTEREST AT THE RATE OF NOT LESS THAN FIVE PER CENT A YEAR.) The
director, with the consent of the commissioner, may also impose conditions,
limitations, and terms which he considers necessary and proper to protect
the interest of the state. Violations of any provision of this chapter or
the terms of the contract of sale subject the purchaser to appropriate
administrative and legal action, including but not limited to specific
performance, foreclosure, ejectment, or other legal remedies in accordance
with applicable state law. (LEGAL ACTION, INCLUDING A FORECLOSURE ACTION
IN ACCORDANCE WITH APPLICABLE STATE LAW.)

* Section 4. AS 38.05.067(b) is amended to read:

Section 38.05.067(b). The director shall not sell the lands under this
section at less than their fair (APPRAISED) market value. The director shall
make regulations necessary to ensure that lands sold under this section are
for bona fide residential use and not for speculation.

* Section 5. AS 38.05.068(a) is amended to read:

Section 38.05.068(a). FOREST SERVICE PERMITTEES' SALES PREFERENCE.
Before offering to the public any land which is subject to a valid existing
United States Forest Service permit in effect in a state-selected area at
the time the area was patented to the state, or which is subject to a lease
issued under Section 87 of this chapter, the director shall offer the land
for sale to the permittee or his successor in title, if he can be found, at
not less than its fair (APPRAISED) market value before offering to the
general public.

* Section 6. AS 38.05.070(c) is amended to read:

Section 38.05.070(c). A lease may be issued for a period of up to 55
years, if it appears to be in the best interest of the state and if the
commissioner approves. A lease for a period in excess of 25 years shall grant
the lessee an option entitling him to extend the term of the lease for up to
3 consecutive five year periods in addition to the original term. If the Commissioner
determines that the land or a part of it which is the subject of a grazing

lease is not being used for the purpose issued, the lease may be declared void. (HOWEVER, A NONRENEWABLE LEASE FOR SCHOOL LANDS MAY BE ISSUED FOR A PERIOD NOT TO EXCEED 99 YEARS.)

* Section 7. AS 38.05.087(a) is amended to read:

Section 38.05.087(a). FOREST SERVICE PERMITTEES' LEASING PREFERENCE. Before offering to the public any land for lease which is subject to a valid existing United States Forest Service permit in effect in a state-selected area at the time the area was patented to the state, the director shall offer the land for leasing to the permittee at not less than its fair (APPRAISED) market value before offering it to the general public.

* Section 8. AS 38.05.105 is amended to read:

Section 38.05.105. Each lease shall stipulate that the annual rental payment is subject to adjustment at five year intervals and shall be based (PRIMARILY) on a reappraised annual rental value. Any increase due to reappraisal may not exceed 100% of the annual rental for the preceding 5 year period. However, if the director of the division of lands determines that residential development is the best use for the land, the reappraisal period may be lengthened or the readjustment waived in accordance with regulations adopted by the commissioner. Before a waiver of rental readjustment is issued, the land shall have a current reappraisal. A waiver is valid only if residential development actually occurs, and only if it is necessary for obtaining primary long-term financing. The regulations adopted under this section shall ensure that the state receives a fair return from the land.

* Section 9. AS 38.05 is amended by adding a new paragraph to read:

Section 38.05.106. CONVERSION OF LEASES. (a) Any person holding a valid lease as lessee of lands from the State under provisions of AS 38.05.070 - .105, or as an approved assignee of such lessee under the terms of such lease, may, at his option, convert his lease so as to obtain certain benefits, enumerated in subparagraph (b) below, which were not available to him at the date his lease was originally entered, if the lessee at the time of conversion makes all payments due under the conversion rate and is not in violation of any other lease provision.

(b) Those lease benefits which shall be made available to a lessee qualifying under subsection (a) of this section shall be all of those lease provisions authorized or made applicable by this act to new leases entered into by the State after the effective date of such statutes.

(c) The effective annual rental value at conversion shall be based on the most recent reappraisal provided that such reappraisal was within 2 years of the effective date of this act. In all other cases, the conversion shall be based on the next reappraisal.

(d) Any conversion as to trust lands shall be effective only if approved by the appropriate board of trustees.

(e) Applications for conversion must be made within 3 years of the effective date of this act.

* Section 10. AS 38.05.310 is amended to read:

Section 38.05.310 (NOTICE AND) APPRAISAL. (a) No land may be sold or leased, or a renewal lease issued (WITHOUT PUBLIC NOTICE) except in the case of an oil or gas or mineral lease, unless it has been appraised within 120 (90) days before the date of (FIXED FOR THE) sale or lease. (WHEN LAND IS OFFERED AT PUBLIC SALE BUT IS NOT SOLD AND IS AVAILABLE) For over the counter sale (AT THE PRIVATE SALE, NO) an (RE)appraisal is required unless the director finds (CONSIDERS) that a change in value of the lands has not (MAY HAVE) occurred. A grazing lease may be granted to a lessee of federal grazing lands without prior appraisal, if his federal lease was cancelled to allow the state to select the lands under lease. No land may be sold or leased for less than fair (THE APPROVED, APPRAISED) market value, except as provided in .315 and .320 of this chapter and .75 - .85 of this chapter. No land or interest in land may be sold, leased, or otherwise disposed of without public notice.

(b) When land is offered at public sale but is not sold, it may be available for sale over the counter. The director shall review the list

of lands available on a quarterly basis and shall certify that there has been no change in value since the last reappraisal. If an increase in value occurs in any parcel, the director shall withdraw that parcel from sale over the counter.

* Section 11. AS 38.05.345(a) is amended to read:

Section 38.05.345(a). Public notice of an auction sale (LEASE OR OTHER DISPOSAL) of land or interest in it shall be substantially as follows.

* Section 12. AS 38.05.345(e) is amended by adding a new subparagraph to read:

Section 38.05.345(e) Public notice of an action other than as specified in paragraph (a) above shall conform to the requirements of AS 38.05.305 and this paragraph. Such notice shall, when given pursuant to AS 38.05.305(c), be published at least once in a newspaper of general circulation in the vicinity in which the land affected by the proposed activities is located.

* Section 13. AS 38.05.365 is amended by adding a new subparagraph to read:

Section 38.05.365. "Market Value" or "Fair Market Value" means the highest prices, estimated in terms of money, which the property would bring if exposed for a sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used.

* Section 14. AS 38.05 is amended by adding a new paragraph to read:

Section 38.05.380. STATE BOARD OF LAND APPEALS. (a) The State Board of Land Appeals shall consist of five members, one of whom shall be the Commissioner of Natural Resources or his designated representative. The other members of the board shall be appointed by the governor from the general public, with due regard for the desirability of prior legal, natural resource or real estate training and experience as criteria for selection of public members. All board members are subject to confirmation by a majority of the members of the legislature in joint session.

(b) The director of the division of lands shall provide administrative support for the board.

(c) The governor shall appoint the public members of the board for terms of three years each, except that the initial terms of one of the members first appointed under this chapter shall be for one year and one member for two years. The public members are entitled to compensation

in the amount of \$53.00 per day for each day or portion of a day spent in actual meeting or on authorized official business incident to their duties, and to all other transportation and per diem expenses as provided by law.

(d) Jurisdiction of the board shall extend to all matters arising under the Alaska Land Act (AS 38.05) and the Water Act (AS 46.15) from which an appeal may be taken under statute or regulation to the commissioner from a decision of the director, division of lands. The board in all appeals filed after the effective date of this chapter, shall have the appellate authority formally vested in the commissioner by provisions of the Alaska Land Act. An appeal from a decision of the board, if taken, shall be to the Superior Court.

of a quorum shall be able to render a decision. The board shall adopt regulations governing its procedures, and may adopt other regulations which may be necessary or convenient in carrying out the purposes of this chapter.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

P. O. Box 1628, Juneau, Alaska 99811

1510

April 24, 1978



Honorable Kay Poland
Alaska State Senate
Pouch Y
Juneau, Alaska 99811

Dear Senator Poland:

I have been following with a great deal of both personal and professional interest, the development of State forest practices legislation. I have been impressed with your concern to assure that the legislation provides the environmental protection necessary, and at the same time protects the rights of private landowners. The issues involved in forest practices on private land are indeed more complex than on public land.

Section 41.17.060 on regulatory and administrative standards, is of particular interest to us. This section authorizes the implementation of specific regulatory forest practices on the ground, and through membership on the Board of Forestry, we look forward to participating in the development of those regulations.

The policy of the Forest Service nationally, has been to encourage and support sound State forest practices legislation. Our previous testimony before your Committee attests to this.

An additional consideration in Alaska is the requirement in the Alaska Native Claims Settlement Act that lands selected by the Native corporations be managed under certain specified practices. Sub-section K, Section 22, states that:

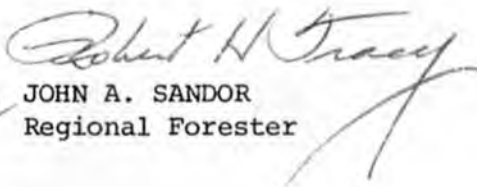
"Any patents to lands under this Act which are located within the boundaries of a National Forest shall contain such conditions as the Secretary deems necessary to assure that such lands are managed under the principle of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent National Forest lands for a period of twelve years."

The job that now faces us is to develop standards and guidelines to meet the intent stated by Congress. We expect the State Forest Practices

Act now under development by your Committee will significantly aid in meeting Congressional requirements.

The work you and your Committee have done in bringing the various interests together on Statewide forest practices issues is of great value. I might suggest a meeting with ourselves, you and some of the other interests, as a way toward developing a practical approach in complying with the forest practices provision of ANCSA. I would welcome your counsel on this.

Sincerely,

for 
JOHN A. SANDOR
Regional Forester

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

P. O. Box 1628, Juneau, Alaska

April 10, 1978

TESTIMONY FOR THE SENATE RESOURCE COMMITTEE
SENATE BILL NO. 59, SPONSOR SUBSTITUTE



MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS MARVIN C. MEIER, U. S. FOREST SERVICE, AND I AM TESTIFYING TODAY FOR REGIONAL FORESTER, JOHN. A. SANDOR.

WE ARE PLEASED TO HAVE THIS OPPORTUNITY TO SHARE OUR THOUGHTS ON THE PROPOSED FOREST PRACTICES ACT, SPONSOR SUBSTITUTE FOR SENATE BILL No. 59. WE HAVE A KEEN INTEREST IN THE DEVELOPMENT OF A STRONG STATE FORESTRY PROGRAM BECAUSE WE FIRMLY BELIEVE THAT ALASKANS WILL PROFIT IN MANY WAYS FROM THE DEVELOPMENT OF SUCH A PROGRAM. THE BILL UNDER CONSIDERATION WILL BE HELPFUL IN ACHIEVING THIS OBJECTIVE. IT IS THE RESULT OF A COOPERATIVE EFFORT OF LEGISLATIVE, EXECUTIVE, AND PROFESSTIONAL FORESTRY EXPERTISE.

MADAM CHAIRMAN, YOUR PERSONAL LEADERSHIP AND THE EFFORTS OF THIS COMMITTEE HAVE BEEN EFFECTIVE IN IMPROVING THE PROPOSED FOREST PRACTICES ACT THAT HAS EVOLVED THESE PAST THREE YEARS. IT HAS BEEN A PLEASURE FOR THE FOREST SERVICE TO WORK WITH THE STATE, YOUR COMMITTEE, AND OTHERS IN THIS EFFORT.

ALTHOUGH WE WILL NOT DISCUSS THE BILL IN GREAT DETAIL, THERE ARE SOME POINTS ON WHICH WE DO WISH TO COMMENT. FIRST, THE BILL WILL STRENGTHEN THE STATE FORESTRY AGENCY AND THE ROLE OF THE

STATE FORESTER. IN THIS GREAT STATE WITH THE VAST ACREAGE OF FORESTS AND RELATED RENEWABLE RESOURCES, THE APPLICATION OF SOUND FOREST PRACTICES MUST BE ASSURED. THE MANAGEMENT OF THE STATE'S FOREST RESOURCES IS EXTREMELY IMPORTANT FOR TIMBER, FISHERIES AND WILDLIFE, RECREATION, WATER, AND OTHER USES. THE FULL VALUE OF FOREST RESOURCE MANAGEMENT WILL BE REALIZED ONLY IF THE STATE CONTINUES TO HAVE COMPETENT, PROFESSIONAL PERSONNEL IN THE POLICY MAKING POSITIONS DIRECTING THE PROTECTION AND MANAGEMENT OF THESE RESOURCES. THE EXPERIENCE IN MOST WESTERN STATES CLEARLY ILLUSTRATES THIS.

THE BILL PROVIDES FOR THE DEVELOPMENT OF INCENTIVES AS A WAY OF ACHIEVING GOOD FOREST MANAGEMENT. SEVERAL OF THE LOWER 48 STATES HAVE ESTABLISHED, OR ARE WORKING TOWARD THE ESTABLISHMENT OF, INCENTIVE PROGRAMS. THEIR EXPERIENCE WILL BE HELPFUL TO ALASKA. THE INCENTIVES NEED TO BE THOUGHT OF IN BROAD TERMS AS INCENTIVES TO ALL FOREST RESOURCES AND OVERALL FOREST LAND MANAGEMENT, NOT JUST TIMBER MANAGEMENT. THE SECTION ON INCENTIVES AND COOPERATIVE FOREST MANAGEMENT WILL ENCOURAGE AND ASSIST PRIVATE FOREST LANDOWNERS TO USE THEIR LAND AND RESOURCES TO THEIR OWN BENEFIT, AND IN WAYS IN WHICH SOCIETY AS A WHOLE DOES NOT SUFFER.

THE BILL'S SECTION ON REGULATORY PROCEDURES WILL ALSO HELP PROTECT ALASKA'S RESOURCES. THIS PART OF THE PROGRAM IS IMPORTANT TO ASSURE THAT FOREST-RELATED RESOURCES ARE WISELY MANAGED FOR COMMODITY AS WELL AS ENVIRONMENTAL GOALS.

THE BILL PROVIDES FOR THE STATE'S CONTINUED PARTICIPATION AND INVOLVEMENT IN THE FEDERAL COOPERATIVE FORESTRY PROGRAMS. THESE PROGRAMS HAVE PROVEN THEMSELVES VALUABLE TO MOST OTHER STATES. THIS WILL WILL HELP ASSURE THE CONTINUATION AND EXPANSION OF ALASKA'S PARTICIPATION IN THESE PROGRAMS. IN FISCAL YEAR 1978, THE FOREST SERVICE WILL PROVIDE OVER \$700,000 FOR COOPERATIVE PROGRAM FUNDING, WHICH IS A 40 PERCENT INCREASE OVER FISCAL YEAR 1977. WE CANNOT PROMISE THIS KIND OF INCREASE EACH YEAR, HOWEVER, THE U. S. DEPARTMENT OF AGRICULTURE DOES RECOGNIZE THE IMPORTANCE OF A STRONG COOPERATIVE FORESTRY PROGRAM HERE AND NOW. THE FOREST SERVICE IS COMMITTED TO SUPPORTING AND AND CONTINUING SUCH A PROGRAM.

THE BILL AUTHORIZES DESIGNATION OF STATE FORESTS FOR RETENTION AS MULTIPLE-USE LANDS AND AUTHORIZES THE ESTABLISHMENT OF STATE TREE NURSERIES. SUCH AUTHORITIES ARE SOUND, AND AGAIN ARE PROVEN IN THE EXPERIENCE OF OTHER STATES. THERE ARE FOREST REGENERATION NEEDS NOW, AND THESE NEEDS ARE LIKELY TO INCREASE AS MORE TIMBER IS HARVESTED. TO THE EXTENT THAT PRIVATE NURSERIES ARE NOT ABLE TO PROVIDE THE STOCK THAT IS NEEDED AT AN AFFORDABLE PRICE, WE ADVOCATE STATE SUPPORTED NURSERIES. THEY WOULD RESULT IN BETTER LAND UTILIZATION, THEREBY REDUCING THE AMOUNT OF LAND IMPACTED BY A GIVEN TIMBER HARVEST LEVEL. ALSO, A STATE SUPPORTED NURSERY COULD LEAD TO DEVELOPMENT OF IMPROVED PLANTING STOCK.

AGAIN, IT HAS BEEN A PLEASURE WORKING WITH VARIOUS STATE PERSONNEL AND WITH YOUR COMMITTEE IN THE DEVELOPMENT OF THIS PROPOSED LEGISLATION. THE ENACTMENT AND IMPLEMENTATION OF THE PROPOSED BILL SHOULD HELP ASSURE THE SOUND MANAGEMENT OF ALASKA'S FORESTS AND RELATED RENEWABLE RESOURCES.

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

SOCIETY OF AMERICAN FORESTERS

Alaska Section

April 10, 1978



TESTIMONY FOR THE SENATE RESOURCES COMMITTEE
SENATE BILL NO. 59, SPONSOR SUBSTITUTE

MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE;

MY NAME IS BOB JANES AND I AM APPEARING TODAY FOR THE ALASKA SECTION OF THE SOCIETY OF AMERICAN FORESTERS.

WE WELCOME THIS OPPORTUNITY TO GIVE TESTIMONY IN FAVOR OF THE CURRENT SPONSOR SUBSTITUTE FOR SENATE BILL No. 59. THE ALASKA SECTION REPRESENTS OVER 200 PROFESSIONAL FORESTERS THROUGHOUT THE STATE OF ALASKA, AND IS PART OF A NATIONAL ORGANIZATION OF MORE THAN 20,000 SUCH MEMBERS. DURING THE PAST THREE YEARS, WE HAVE BEEN ACTIVE IN HELPING TO FORMULATE LEGISLATION FOR A SOUND STATE FOREST PRACTICES ACT IN ALASKA. A YEAR AGO, WE MADE AN IN-DEPTH ANALYSIS OF SENATE BILL No. 59, BY TESTING IT AGAINST OUR SOCIETY OF AMERICAN FORESTERS RECOMMENDED NATIONAL CRITERIA FOR A COMPETENT STATE FOREST PRACTICES ACT. WE ARE HAPPY TO SEE THAT SUGGESTIONS AS A RESULT OF THAT EFFORT HAVE BEEN INCORPORATED INTO THE SPONSOR SUBSTITUTE BEFORE YOU TODAY.

ONE OF OUR PRIMARY CONCERNS A YEAR AGO, WAS THE NEED FOR THE STATE FORESTER TO PLAY A MORE PROMINENT AND AUTHORITATIVE ROLE IN ADMINISTERING THE ACT IN A SOUND AND PROFESSIONAL MANNER. SINCE THE DIRECTOR OF THE DIVISION OF FOREST, LAND, AND WATER

MANAGEMENT WILL BE THE STATE FORESTER, AND SINCE THIS PERSON MUST HAVE PROFESSIONAL NATURAL RESOURCES LAND MANAGEMENT CREDENTIALS, IT APPEARS THE ORGANIZATIONAL STRUCTURE NOW PROVIDES FOR OVERCOMING THAT PARTICULAR PROBLEM. WITH PROPER DELEGATED AUTHORITY EXTENDED BY THE COMMISSIONER, THE STATE FORESTER SHOULD BE ABLE TO OPERATE IN A LEADERSHIP ROLE IN THE MANNER WE ENVISION IS NECESSARY. WE MUST EMPHASIZE, HOWEVER, THE IMPORTANCE OF DELEGATING SIGNIFICANT AUTHORITIES TO THE STATE FORESTER. OTHERWISE, A PROGRESSIVE STATE FORESTRY AWARENESS IN ALASKA COULD AGAIN BACKSLIDE, AND OBSTRUCT SOUND PROTECTION, MANAGEMENT AND UTILIZATION OF THE ABUNDANCE OF NATURAL RESOURCES THIS GREAT STATE HAS.

ANOTHER OF OUR MAJOR CONCERNS IN THE PAST WAS THE EFFECT THIS LEGISLATION WOULD HAVE ON PRIVATE LANDOWNERS. CRITERIA #7 OF OUR NATIONAL GUIDELINES STATES "A FOREST PRACTICES ACT SHOULD ALLOW A FOREST LANDOWNER LATITUDE IN APPLYING PROFESSIONAL FORESTRY EXPERTISE AND FOREST MANAGEMENT PRINCIPLES. ADMINISTRATIVE REQUIREMENTS FOR FOREST LANDOWNERS AND OPERATORS SHOULD NOT BE UNDULY BURDENED." IN PREVIOUS INPUT, WE EXPRESSED THOUGHTS ABOUT THE APPARENT INAPPROPRIATE INVASION OF RIGHTS AGAINST PRIVATE LANDOWNERS BECAUSE OF UNDULY RESTRICTIVE REGULATORY PRACTICES. FOR EXAMPLE, THERE WAS A PROVISION IN PREVIOUS PROPOSED LEGISLATION THAT READ "TIMBER HARVESTING IS NOT PERMITTED IN AN AREA UNLESS RELEVANT DATA AND INFORMATION INDICATE THAT THERE WILL BE NO REFORESTATION PROBLEMS LEADING TO THE INABILITY OF THAT AREA TO PRODUCE A SUSTAINED YIELD OF MERCHANTABLE TIMBER." WE COMMENTED THAT WHILE THIS MAY BE APPROPRIATE FOR STATE OR MUNICIPAL FOREST LANDS, IT

WAS NOT APPROPRIATE AS A BASIS FOR DEPRIVING A PRIVATE LANDOWNER OF ECONOMIC VALUES THAT EXISTED ON HIS OWN LAND. THE CORRESPONDING REGULATORY STANDARD IN THE CURRENT SPONSOR SUBSTITUTE, SEC. 41.17.040 (B) (1), NOW READS "TIMBER HARVESTING IS LIMITED TO AREAS WHERE DATA AND INFORMATION DEMONSTRATE THAT NATURAL OR ARTIFICIAL REFORESTATION TECHNIQUES WILL RESULT IN THE PRODUCTION OF A SUSTAINED YIELD OF MERCHANTABLE TIMBER FROM THAT AREA." DURING THE OPERATOR NOTIFICATION PROCESS WITH THE COMMISSIONER, THIS REQUIRED DETERMINATION SHOULD BE EASILY RESOLVED. ANOTHER OVERLY RESTRICTIVE PROVISION IN THE SAME SECTION OF THE PREVIOUSLY PROPOSED LEGISLATION READ, "SCENIC AND AESTHETIC QUALITY SHALL BE MAINTAINED IN OR ADJACENT TO AREAS OF SIGNIFICANT IMPORTANCE TO THE TOURISM AND RECREATION INDUSTRY." THE CORRESPONDING REGULATORY STANDARD NOW READS "WHERE ECONOMICALLY PRACTICABLE, ALLOWANCE MAY BE MADE FOR SCENIC AND AESTHETIC QUALITY IN OR ADJACENT TO AREAS OF SUBSTANTIAL IMPORTANCE TO THE TOURISM AND RECREATION INDUSTRY." IN ESSENCE, THESE TYPES OF UNDULY RESTRICTIVE MEASURES HAVE BEEN ELIMINATED AND WE BELIEVE PRIVATE LANDOWNERS ARE NOW GIVEN FAIR CONSIDERATION IN THE SPONSOR SUBSTITUTE BILL. IN ADDITION, SECTION 41.17.070 HAS BEEN SUBSTANTIALLY IMPROVED REGARDING REVIEW AND APPROVAL OF OPERATIONS. EVERY EFFORT WILL BE MADE TO LIMIT THE REVIEW AND APPROVAL PERIOD TO A MAXIMUM OF 20 DAYS. WITH THESE EXAMPLES, IT IS DEMONSTRATED THAT UNDULY BURDENSOME REQUIREMENTS HAVE BEEN STREAMLINED OVER THE PREVIOUS BILL.

PROPOSED LEGISLATION FOR AN ALASKA FOREST PRACTICES ACT STARTED IN THE SECOND SESSION OF THE NINTH LEGISLATURE. IT CONTINUED IN THE FIRST SESSION OF THE TENTH LEGISLATURE, AND IS NOW IN ITS THIRD YEAR. TO HELP ASSURE SOUND PROFESSIONAL MANAGEMENT OF ALASKA'S

FOREST LAND RESOURCES AT THE EARLIEST POSSIBLE TIME, WE URGE
YOUR COMMITTEE TO AGGRESSIVELY STRIVE FOR ADOPTION OF THIS SPONSOR
SUBSTITUTE FOR SENATE BILL No. 59, DURING THIS SECOND SESSION OF
THE TENTH LEGISLATURE.

THANK YOU FOR LISTENING TO US TODAY.

A handwritten signature in cursive script, appearing to read "R.C. Jones", is written in the upper right quadrant of the page.

SHEE ATIKA, INCORPORATED

P.O. Box 578
Mt. Edgecumbe, Alaska 99835
Phone - (907) 747-3534

March 23, 1978

Senator Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99801

Dear Senator Poland

The Board of Directors of Shee Atika, Inc. have directed me to convey their concerns to the Senate Resource Committee relating to the administration's proposed forest practices act.

We would very much like to see a forest practices act adopted this year. We are equally interested; however, in seeing that a practical and fair forest practices act is adopted. Several points were noted by our Directors during their attendance at the Senate Resource Committee work session, held March 8th, at which Mr. Jeff Haynes presented the administration's draft bill. Shee Atika, Inc. would like to express the following concerns relating to those points:

1. We need a forest practices act this year.
 - A. It appears that operations and activities on privately owned forest lands will be regulated through other authority, with less concern or emphasis on private forest management, if an act is not adopted this year.
 - B. Section 208 of the Federal Water Pollution Control Act essentially mandates the State to adopt an act, BUT we can adopt a practical act to satisfy the Section 208 requirements. Sec. 208 does not require us to adopt a "California" type act which is both difficult expensive to administer and unfair to the private land owner.
2. We feel that the administration's draft bill is generally acceptable with the following critical exceptions:
 - A. Forestry on private and state or municipal land should be administered from a level comparable to atleast the Division status within state government. Forest resources deserve attention and status equal to Commercial Fisheries, Sport Fisheries etc. if not equivilant to Fish and Game and Environmental Conservation.
 - B. The Forestry branch should be led by a professional forester. This is necessary to insure that a administration of a forest practices act have continuity without being subject to a possible political reward system, to insure appreciation for forest management problems by the administrator, to insure communication between the forest land owner and the administrator, and to insure that in inter division or inter department relationships modern technical forestry is represented and understood.

March 23, 1978

Senator Kay Poland
Chairman Senate Resources Committee

Page 2

- C. Alaska's forest practices act should incorporate a notification system for activities on private lands, not a permit system as in the administration draft. We have no objection to the "prior approval permit" system on public lands. At the Resources committee meeting Mr. Haynes did not adequately discuss the differences between these two systems. The basic difference is that a permit system (as proposed in the administration's draft) requires the state's permission before a land owner can conduct activities on private lands; while, a notification system requires that a land owner inform the state prior to any activity on private land and that the land owner obey state law and regulation. Mr. Haynes reported that a notification system was nothing more than requiring a land owner to "mail a postcard" to the state when he or she was planning to conduct a forestry operation on his or her land. This is absolutely untrue. The administration probably has proposed a prior approval "permit" system because it wants the state to have a reasonable amount of influence on forest practices on private lands. That objective is reasonable and very acceptable for us as a land owner. That same objective can be accomplished; however, by tailoring a notification system in the proposed forest practices act. The notification system works very well in Oregon and it will work well in Alaska. We don't need to burden the private land owners and the state with the inherent problems of a California type prior approval "permit" system to accomplish the objective of insuring that privately owned forest resources are properly managed. We would suggest that the "permit" system in the administration's draft be replaced by a "notification" system which required 30 days prior notification by an operator or owner including filing of operation plans which identify what activity (s) is/are planned, what equipment will be used, where roads will be located, where streams are located, how the area be reforested etc. The plans should include location of the affected area on a USGS 1" mile topographic map with road & bridge locations, activity boundaries, streams, campsites, land fills, log storage areas, fuel storage areas, rock pits, water source, sewage disposal system, and landings identified and located. This is the same information that would be required by the administration's draft. We suggest that in lieu of a "permit" system the act should authorize the state to require a pre-operation meeting with the operator or land owner. This would give the state an opportunity to explain any concerns and advise the land owner/operator of the probable consequence of an activity. The need for a pre-operation meeting should be left to the discretion of the reviewing officer. We would advocate and endorse very stiff penalties (as in the administration's bill) to insure compliance with state law and regulation under a true "notification" system. We would not be adverse to posting a reasonable bond prior to any operation on our lands. If the state considers adopting the performance bond concept; however, it would be desirable to include some means of exempting small landowners and operators and guaranteeing that the bond amount would be no larger than that required to both encourage compliance and cover the expense of correcting a possible adverse situation created by an illegal activity.

March 23, 1978

Senator Kay Poland
Chairman, Senate Resources Committee

Page 3

A true notification system (as used in Oregon) is far less expensive to administer than a permit system which requires state consent as suggested by the administration. Considering volume harvested California's permit system is 6.5 times as expensive for that state's taxpayers when compared to Oregon's notification system. Considering the number of operation notices filed California's permit system is 27.3 times as expensive as a notification act. It is logical to conclude that these costs would increase by a blanket 25% cost of business factor and 25% allowance for increased transportation expense in Alaska. Transportation represents only 7% of Oregon and California's forest practices connected budget while it would probably approach 33% of the forest practices budget in Alaska. The transportation allowance would tend to be much higher under a "permit" system as a "permit" system has an inherent characteristic which encourages state enforcement personnel to make several visits to each operation prior, during and following the activity. Fixed administrative expenses will also be much higher in Alaska due to the relatively fewer number of operations here and smaller annual yield when compared with Oregon and California.

D. We agree with Senator Meland's concern regarding the administration's provision 41,17.040 b (6) that "allowance be made for scenic and aesthetic quality in or adjacent to areas of substantial importance to the tourism industry." This provision will undoubtedly foster many law suits as people disagree on such items as:

1. What constitutes "allowance"?
2. What is "scenic and aesthetic quality"?
3. What constitutes "substantial importance"?

Mr. Haynes indicated that this section intended to authorize the state to use an incentive program to compensate land owners for the economic impact of state restrictions under this section. If this is the intent, we suggest that the act should mention the state's authority to compensate a land owner for voluntarily curtailing any activity related to "scenic quality" which the state finds objectionable. We further suggest that the implication that a land owner can be prevented from managing his resources (if the state feels the activity would conflict with "scenic value") be stricken.

We would like to express the following views on other points discussed in the committee session March 8.

1. We endorse that portion of the administrations bill which sets mandatory standards for reforestation and conversion to non-forest uses. These are reasonable standards which we plan to meet and surpass.

March 23, 1978

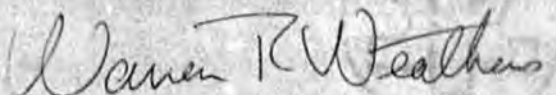
Senator Kay Poland
Chairman, Senate Resources Committee

Page 4

2. We concur with Senator Sumner's concern about who has the burden (landowner or state ?) under Section 41.17.040 b(1) of the administration's bill which states "timber harvesting is limited to areas where data and information indicate an absence of reforestation problems which would preclude that area from producing a sustained yield of merchantable timber". This problem could easily be corrected, and the objective retained, by modifying the passage to read "timber harvesting may be limited in areas where data and information indicate that it would produce unsolvable reforestation problems which would preclude that area from producing a sustained yield of merchantable timber."

Thank you for your consideration. We were pleased to note the committee's expression of concern for the rights of the private landowner at the March 8 meeting.

Sincerely



Warren R. Weathers
Executive Director Shee Atika, Inc.

WRW/nmw

Testimony of Robert E. LeResche, Commissioner
Department of Natural Resources
on the
Sponsor Substitute for Senate Bill 59

Senate Resources Committee
April 10, 1978

Thank you for the opportunity to testify before the Committee on the Sponsor Substitute for Senate Bill 59, an Act relating to forest resources and practices.

As you know, a forest practices act has been in the works for more than three years. We consider it an extremely high priority. Only if we enact such legislation before logging reaches its greatest intensity are we in a position to (1) head off user groups conflicts before they occur, (2) establish forest practices and other ground rules before equipment is moved into the field, (3) provide the highest level of professional assistance to logging operators, and (4) fully realize the benefits of a healthy forest products industry while insuring perpetual supplies of renewable forest resources. Accommodating the many constituencies which depend upon forest resources will be difficult and complex, and we must start now. Most states have waited too long to adopt forest practices legislation, and have suffered for it. We should not repeat that mistake. By acting now, the establishment of a high profile professional forestry program will permit Alaska to occupy a position of national leadership in forest management.

During the hearings held by this Committee last year, it was evident that there was opposition to a number of provisions of the Administration Bill. Consequently, you asked that we work with affected interest groups in an attempt to come up with legislation which would respond to and reconcile the many points of view in

this controversial area.

In the interim period, we have tried to negotiate solutions to the problems with the bill with the Forest Service, state government entities, professional foresters, the forest products industry, native corporations, conservation groups, fishermen, and others. Of course, virtually everyone in Alaska has some stake in the management of Alaska's forests, and it was impossible to talk with all of them. Nevertheless, we did work continuously with those who evidenced a desire to participate in the revision of S.B. 59. Indeed, I cannot think of many pieces of legislation which have undergone the scrutiny, discussion, and reworking which has taken place on S.B. 59. At this point, the bill belongs as much to those participants as it does to us, and we believe the Sponsor Substitute is about as close as we can come to consensus legislation. It is certainly superior to the original S.B. 59, and we are indebted to those who have worked with us for the numerous improvements made and to this Committee for providing the forum to do so. We expect that the bill will receive considerable support from a number of different interest groups.

The Committee will note that we have submitted a rather lengthy transmittal letter along with the Sponsor Substitute. This letter contains the many statements of intent requested by persons and organizations who worked on the bill. The bill and the letter should be considered a package representing our efforts over the past year. As a result, we urge in the strongest terms that, if the bill is passed out favorably by this Committee, the transmittal letter be adopted as the Committee Report on the legislation.

The specifics of the legislation were reviewed with you at the working session of the Committee several weeks ago. Consequently, I will reserve going into that level of detail until responding to your questions when the testimony is completed. I would like to underscore, however, that the bill-

- (1) establishes a visible professional forestry program in the Department of Natural Resources;
- (2) adopts a threefold approach to forest management to include assistance by professional foresters and economic incentives as well as regulations;
- (3) mandates thorough consultation with public and private entities through advisory committees and other mechanisms;
- (4) exempts from regulation small landowners who may wish to sell their timber but are not really in the forest products business;
- (5) allows for coordination of forestry regulations under this Act, the Coastal Management Act, and the Federal Water Pollution Control Act to avoid duplication and insure that appropriate disciplines are involved;
- (6) establishes general policies for forest management, separated into those appropriate for public and for private land, and covering such matters as reforestation, providing for the needs of all constituencies, avoiding unwarranted economic burdens on operators, and insuring retention of the productive capacity of forest land with respect to renewable resources;
- (7) authorizes regulations but precludes duplication of the programs of other agencies;
- (8) limits government oversight of operations to a restricted and closely controlled review process;
- (9) requires a report to the legislature showing that DNR has complied with and carried out the legislation;
- (10) leaves development of specific standards to a regulatory process involving

all interest groups;

- (11) permits genuine conversion of forest land to other uses; and
- (12) employs an administrative penalty system rather than criminal sanctions, with special safeguards to avoid undue burdens on an operator charged with a violation.

In addition, two matters warrant special mention. First, there has been an obvious desire on the part of industry to obtain a high level forestry program, and therefore considerable discussion on the locus of a forestry division and the state forester. After a meeting in my office with representatives of various interest groups, we have redrafted certain parts of the bill to incorporate what we believe should be an acceptable compromise. Section 020 no longer requires that the Division of Forest, Land, and Water Management be in the Division of Lands, and Section 050(c) requires us to report to the Legislature in two years on the operations of the Division and, in consultation with interested parties, to develop recommendations regarding the qualifications of the state forester and the location of the Division as well as the legal authorities of the Department relating to forestry. *2 year trial period*

Second, several suggestions for changes were made by Committee members at the working session. As a result, we have (1) clarified and made more express the exemption for small landowners in §030, (2) added a definition of "silviculture" in §950, (3) deleted the provision in §110(a) that each day of a violation constitutes a separate offense, (4) added to the definition of "sustained yield" in §950 to clarify reforestation requirements, and (5) and added language to the transmittal letter to deter unwarranted intrusions on private land by state officials.

In concluding, I would stress again the importance of gaining passage of the Sponsor Substitute this year before many new operations get under way. If the bill is enacted, it is our intention to create the Division of Forest, Land, and Water Management immediately and to name an advisory committee with representation of all forest resources constituencies to work with us in the implementation of our forestry program. ^{ASAP.}

At this point, I would ask that you hear from the persons who have indicated a desire to testify, since they will be able to speak to many of the issues which you are undoubtedly concerned about. Along with other members of the Administration, I will be available during the course of the hearings to answer questions on the bill and to provide any other assistance. Again, I appreciate the opportunity to testify, and I thank the Committee for the interest it has already shown in this bill.

* * * * *

February 17, 1977

The Honorable Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate
Pouch V - Capitol Building
Juneau, AK 99811

Dear Senator Poland:

Senate Bill 59

Sealaska very much appreciates having had the opportunity on Friday, February 11, 1977, to make a statement about the concept of a strong State Forester and forest practices in general.

In response to your request in which you asked for specific comments about Senate Bill 59, we have the following to offer. Naturally these comments are in addition to those in our statement which emphasized having a strong State Forester reporting to the Commissioner of Natural Resources, the onerous aesthetics standard and the hearing process inequities.

1. While philosophically, we agree with the concern of the Department of Natural Resources that private forest landowners should contribute to a sustained yield production on a State-wide basis, we feel that the individual forest landowner should have the latitude to respond to economic conditions and his financial needs to substantially vary his harvest practices from a sustained yield concept. The smaller private landowner who may have even up to a township of forest resource, is not in the

position to annually or periodically harvest his timber due to the uneconomic situation posed by having a small logging operation working continuously on his lands. Even in southeast Alaska, where a village may own over 20,000 acres of commercial forest resource, there probably would be only six separate times during a forest rotation in which a commercial logger could be brought in to operate on such lands. This is because a large amount of volume must be moved fairly rapidly in order to underwrite the very high costs of moving to a new operation and setting up the social and industrial infrastructure necessary for its support.

2. Sec. 41.17.040(b)(1) deals with reforestation. From the standpoint of the Forest Manager, there are always reforestation problems whether they involve understocking or overstocking of commercial species. Therefore, it is felt that this paragraph is too restrictive and denies to the Forest Manager the opportunity to undertake managed cultural measures to assure reforestation even in problem areas.
3. Sec. 41.17.050(a) on lines 12 and 13 indicates that forest land will be protected from depletion or degradation caused by over-harvesting, unsatisfactory forest management, etc. Over-harvesting is very difficult to define and from the standpoint of some people, unsatisfactory harvesting exists whenever a small clearcut is made. These terms are very general and could better be handled through the regulatory process where there would be a body of testimony in the record from qualified Forest Managers in the major regions of the State.
4. Sec. 41.17.060(b) line 15 indicates that the Commissioner shall consult with various interested parties within the State concerning the adoption of regulations under this section. It is important that the Commissioner, or preferably the State Forester, not only consult but very carefully weigh and evaluate statements made by those who will be responsible for forest-land management within the State in order to formulate regulations which are equitable and encourage good silvicultural practice.

5. Sec. 41.17.070(b) line 15-16 indicates that formal notification shall be given prior to undertaking a forest practice. This and subsequent subsections deal with the notification process. We agree with the testimony given by others that although the process is meant to be notification it in reality will probably be an application process with time limits on it. It is felt that a reaction time on the part of the Department of Natural Resources of even 60 days is excessive for many types of forest management practices including harvesting of timber. Among other factors, storms seasonal aspects of timber harvesting and silvicultural practices require that a landowner react very quickly to new conditions as they occur. Should a need arise in late summer, the delay of 60 days could constitute the delay of one year; and the delay of one year could have wiped out the opportunity to take advantage of a new market situation or opportunity to protect the resource. We would encourage a process embodying notification, especially since there will be regulations guiding the forest manager in the direction of wise resource use.
6. Sec. 41.17.070(j) line 14 indicates that an operator may not materially deviate from plans approved or terms in conditions imposed...We are concerned because this paragraph is very broadly written and could deny the operator his economic opportunity to market products. If there already is a body of regulations dealing with silvicultural and harvesting practices, it would seem that the operator could deviate from plans assuming that he adhered to the regulations promulgated.
7. Sec. 41.17.080(a) deals with the deployment of chemicals and herbicides. It requires that (1) deployment be in accordance with applicable State laws and regulations and (2) prior written approval from the Commissioner be obtained. If adherence is being made to all applicable State laws and regulations, why is it necessary for the operator to obtain approval from the Commissioner? We submit that this constitutes wasteful duplication and promotes needless delay.

8. Sec. 41.17.110 line 13 deals with the size of fines to be levied for civil violations. It is felt that a fine of up to \$1,000 for each day of violation is totally excessive and that regulatory guidelines concerning fines should be promulgated so that fines really fit the alleged violations and the value of the material harvested or affected.
9. Sec. 41.17.110(b) deals with investigations and hearings. It is felt that any hearings which take place should be as local as possible to the operator's area of work in order to reduce the cost to the individual. In many instances, having onsite hearings would allow the hearing examiner to fully evaluate the alleged violation. Additionally, it should be unnecessary for the defendant to have to have an attorney at the hearing; i.e., the procedures at the hearing should be such to allow an individual operator to fully present his case without harassment on the part of an attorney for the State. This requires an empathetic and knowledgeable hearing officer who will insure that all matters relevant to the case are brought to the attention of the hearing officer. Additionally, the hearing officer should have a forestry background in order to be able to understand both sides of any testimony.
10. Sec. 41.17.110(d) and (e) deal with the alleged violation and violator. The tone of these paragraphs is such that the alleged violator is presumed to be guilty prior to even presenting his case at the hearing in that the paragraphs refer to the violator. In (e) the orders of the hearing officer include four items of remedy and do not even discuss the appropriate steps to be taken by the hearing officer should there be an acquittal or not guilty verdict.
11. Sec. 41.17.110(g) continues the presumption of guilt. It might better be worded "if the Commissioner finds, after investigation, that there is an alleged violation of (a) ..." and a continuing wording which will show a more objective stance on the part of the State.

February 17, 1977

12. It is felt that in Sec. 41.17.110 or another appropriate section that some procedure should allow the operator to immediately take the necessary steps to rectify an alleged violation after it is identified by a State official. By doing so, the State and the operator would incur much less cost than if they had to go through the full hearing process.

The phraseology throughout 41.17.110 implicitly promotes the atmosphere that forest operators are "bad" and, therefore, must prove their innocence instead of the State having to prove that an alleged violation did occur.

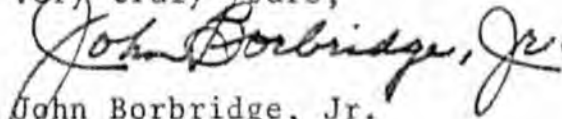
13. Sec. 41.17.950(5) dealing with "forest land" refers to a stocking statistic of 16.7 percent as meeting the requirements for forest land. This figure alone is meaningless unless there is a reference to an authority which more fully describes its meaning. Therefore, we cannot offer further comment to this particular statistic.

This constitutes our major comments concerning individual line items in Senate Bill 59, should your committee elect to pursue a bill structured similarly to it. However, I wish to emphasize that we suggest the Senate Resources Committee carefully look at House Bill 40 as the guide to a logical piece of legislation to organize a State forestry organization with subsequent promulgation of responsible forest practices.

I would be very to discuss this further with you or the Committee if this is desired. With respect to further discussions on the Bill, I will be pleased to offer the services of Peter M. Huberth, General Manager - Forest Products Division, for further clarification should you or any members of your committee have questions. Mr. Huberth has over 20 years in the industry - mostly in a large variety of forest management activities on the west costs of California, Oregon and Washington.

I thank you, Madame Chairman for this opportunity.

Very truly yours,


John Borbridge, Jr.
President



KONCOR

FOREST RESOURCE MANAGEMENT

P.O. Box 2217
Kodiak, Alaska 99615
Phone (907) 486 3985

The following is KONCOR FOREST RESOURCE MANAGEMENT COMPANY'S testimony with respect to the Sponsor Substitute for Senate Bill No. 59:

Sec. 41. 17. 010 Declaration of Intent

(3) ". . . State has a fundamental obligation to insure that management of forest resources guarantees perpetual supplies of renewable resources. . ."

The State's obligation is to State lands. As indicated by the process of receiving a state tideland lease permit, State involvement with the private enterprise sector often hinders rather than helps productivity and most assuredly has, in times past, created many costly time delays.

Sec. 41. 17. 020 Administration

(a) " The Governor may create . . . a Division of Forest, Land, and Water Management to carry out this chapter . . ."

This subsection of the Act is one of the key issues that must be focussed on. To enact a Forest Practice Act prior to having an organized, professional staff of forestry personnel is a clear case of the tail "wagging the dog".

It is unrealistic for this session of the legislature to consider passage of a Forest Practice Act until (1) the State land selections are properly identified, (2) an inventory of state forest resource is performed as to provide meaningful

management data, (3) a state forest nursery is properly funded and functioning on a production basis to meet the regeneration needs identified in this bill.

There are tremendous resource data requirements that must be met before an effective forest practice act can be realistically considered. To strive for a completed Act simply because other states function under some form of forest practice is not sufficient reason for the legislature to consider passage. The Alaska Forest Practice Act should meet and identify Alaska's unique resource needs ---- what is done in Washington, Oregon or California only provides this legislature with a format of drafting a bill, Alaska is unique and our forest practices should reflect our field situations!!

Page seven (7) of the Draft Transmittal Letter to Accompany Proposed Sponsor Substitute of SB-59 states that ". . . *the drafters intend that the commissioner and the state forester employ foresight and innovation rather than being constrained by conventional attitudes so that Alaska's forest management effort enjoys a national reputation for leadership and competence.*" To enact a comprehensive Practice Act before basic management organizational structure is instituted smacks in the face of the drafters concern for innovation and foresight!

(C) ". . . , *the governor may create, by administrative order, state forest, . . . for retention in State ownership as multiple-use land.*"

Here again is an example of why it is premature for the legislature to consider passing a state forest practice act. Until the state knows what commercial forest lands will be of management concern to the D.N.R. and until professionals have identified the management needs, established goals and objectives to properly fulfill their role as stewards to the Alaska public, SB-59, or any other forest practice bill should not be considered.

(e) " The Commissioner may establish and maintain forest vegetation nurseries. . . "

First of all the text should not contain the word "may" but should contain "shall".

Page 9 of the accompanying Draft Transmittal Letter states that "*Reforestation . . . must be the highest priority among silvicultural programs.*" This, to KONCOR, is indeed interesting. Our immediate needs for Sitka spruce planting stock exceeds three hundred thousand (300,000) seedlings annually. KONCOR was pleased when we were told by the state that the nursery facility at Palmer would be able to provide our stocking needs as well as the U.S. Forest Service requirements for regeneration of Afognak Island harvesting units.

The fact of the matter is that as we entered 1978 KONCOR found that the nursery facility at Palmer for all intents and purposes had closed their doors. Not only was this facility "dying on the vine" due to lack of funding, the Governor in meeting with State and Private personel of the U.S.F.S. indicated that he had no working knowledge of the nursery situation.

Thanks to the efforts of Senator Poland, a modest amount of funding was provided the Palmer facility in March of this year enabling the operation to "exist".

It is KONCOR's management objectives to regenerate harvested lands as soon as possible. Artificial regeneration by planting nursery grown stock is the only feasible way to combat the vegetative competition factor the professional forester deals with in south-central Alaska. The present administration's attitude about a production nursery operation has been disappointing, to say the least, to KONCOR and other forest management personnel throughout Alaska.

KONCOR has no reason to believe that the State's attitude will change and, until the State does "practice that which is preached" in this draft of a Forest Practice Act --- you as committee members should not allow this bill to go any further.

(h) The term "landowners" is construed to include adjacent landowners with respect to operations which may affect them.
(page 11 -- Draft Transmittal Letter)

This is ridiculous ! You either are or are not the land owner! Any party who does not own land is no more than an interested citizen. Let's not open up the opportunity for an individual who has a special interest to assume he has management authority over another entities private land.

(i) " *The Commissioner shall establish . . . one or more representative advisory committees . . .*"

This should be done, however, prior to passing a forest

Practice Act. Organizationally, the Division of Forest, Land, and Water must be operational and then the advisory committee working with the Department personnel should be charged with drafting a realistic State Forest Practice Act after the needed resource data is attained.

Sec. 41.17.030 Applicability

(a) *" . . . this chapter applies to forest lands under the state, municipal, or private ownership."*

The Draft Transmittal Letter is to provide evidence of legislative intent and fails to comment on this subsection. It is clear that the intent of this bill is to manage State owned lands. All language aims toward State organizational structure. Private land referances should be removed. There are ample regulations through Federal, State, and municipal authorities to insure proper safeguards of forest operations on private land. For the State to dictate additional regulatory requirements on the private land owner is to further complicate a already combersome bureaucratic process placing an additional and unnecessary economic burden on private land.

Sec. 41.17.040 Regulatory and Administrative Standards

(a) *All regulations. . ."*

The Transmittal Letter (page 15) states *" The best approach to forest practice legislation is to avoid placing specific practice measures in the statute; instead, practices should be developed through the regulatory process. . ."*

With respect to drafting regulations no mention is made of a public hearing process. This is critical --- public

input must be acquired to produce meaningful regulations and, such regulations must reflect the practices necessary to properly manage forest lands in specific locals. Ecologically Alaska is just too large to have "blanket" regulations imposed on its forest lands.

(b) The reference to "private land" should be removed.

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

This sounds good but is not realistic at today's standards. Alaska in practicality, is in the same state of a rosebud starting to bloom. The beauty of the resource potential is amazing to any land manager but, quite frankly, the informational bank on Alaskan resources (particularly timber) is insufficient to make such a statement.

Even in areas, where a greater degree of forest management has occurred (ie: U.S.F.S - Afognak Island) data on regeneration capabilities of the land is more or less the "best guess" of a few professionals.

September 1977 a Symposium on North America Forest was held at the University of Alaska, Fairbanks in which forestry experts from around the world gathered to exchange information. Review of the findings of that symposium will show that Alaska is just starting to seriously consider intensive forest management. Alaska has not and can not develop regeneration data

sufficient to live up to the language of this subsection for years to come.

Fortunately, private forest land acquired by Alaskan natives under A.N.C.S.A. is being managed for sustained-yield and thus will be generating valuable resource data. This subsection again points out that consideration of a State Forest Practice Act is premature.

(2) This subsection and the language of the Transmittal Letter again point to the fact that the State is on a "data search" --- Until proper resource information is obtained by the State, this bill should not be considered.

(3) *"environmentally sensitive areas and best management practices must be recognized. . ."*

What is best management? Forestry is as much an art as it is an applied science, ---- to legislate "best management" is to hamstring the innovative professional forester.

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

This subsection again points out why the reference to "private land" should be removed from this bill. It is presumptuous for the State to involve itself with the market or economic constraints on the private landowner/operator. The free enterprise system will control itself on this matter. For the State to legislate regulations with respect to marketing on private lands is socialistic.

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

The legislative intent is clearly identified in the Transmittal Letter (page 17) where it states " it is not intended as a prohibition on land-use activities, especially on private land where private landowners are justified in using resources subject to their ownership. It is directed primarily at public land . . ."

This subsection should be removed from any reference to private land --- the legislative intent is clear! The clause can and should be moved to the following subsection (c) " with respect to state and municipal lands only. . . "

Sec. 41.17.050 Administrative Plan and Report

(a) " . . . The Commissioner shall maintain a current inventory or assessment of timber on forest land to assist in meeting the requirements of this section.

Does the State have a realistic inventory of timber on forest lands? If not, this bill should not be considered until such basic work is completed.

(b) " On June 30, 1980, and at two-year intervals after that date, the commissioner shall submit a detailed report to the legislature reviewing the administration of this chapter over the preceding two years, demonstrating compliance with (a) of this section, and describing how the

plan will affect the welfare of the forest products industry and other activities and pursuits derived from or affected by forest resources."

The idea of a detailed report by the Commissioner to be submitted to the legislature is a sound one, however, such a report should only be on the progress of the organizational structure of the Division of Forest, Land and Water and on the acquisition of the data needed to then consider legislation on a State Forest Practice bill as identified by (c) 1-4. Until the administration can "prove up" on having a functioning forestry department --- no consideration on this bill should be granted.

Sec. 41.17.060 Regulations

(a) "*(1) harvesting, removal, and use of timber and tree products and related management activities;*"

This clause points again to the fact that private land should not be included in the language of this bill. What right does the State have in dictating the "use of timber and tree products"? Such language clearly oversteps the State's authority.

(2) "*reforestation, afforestation, revegetation, stocking, prescribed burning, fertilization, thinning, and other silvicultural activities;*"

Again, until the state faces up to it's economic responsibility to develop a functioning production nursery operation to meet reforestation needs, it is indeed premature to draft regulatory powers for such silvicultural activities.

(b) " An operator may apply through the commissioner for permits required by other state agencies to operate on forest land, . . . The commissioner shall notify the operator of the action taken. . . ."

The thought of an operator having to acquire a permit to operate on State land may have merit. It is, however, unfair and a show of excessive power, for the state administration to require the private land owner to acquire such operational permits. Besides placing an undue economic burden on the landowner/operator through time delay, it is contrary to all the basic principles that the American people have come to enjoy by holding private land.

If you need to be convinced on the time delays such a system would place on the land owner --- review the track record of the D.N.R. over the past five years on how long it takes an operator to acquire a State tideland permit.

Sec. 41.17.070 Review and Approval of Operations

C (3) " proposed measures for soil conservation and reforestation;"

How can the operator honestly make an attempt at regeneration when no facility exists to provide planting stock? Are we to assume natural regeneration is acceptable? In many areas of the state natural regeneration will not produce the desired stocking rate and would significantly increase the rotation age.

(d) " Within five days after receipt, the commissioner shall distribute the notification materials to affected

state agencies. The agencies shall make their recommendations within 20 days after receiving the materials. The commissioner may extend the review period up to an additional 20 days only if the subject matter is highly and unusually complex.

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

It is realistic to assume that seventy (70) days will be required to acquire an operational permit in light of subsections (3), (4) and (f).

" upon the recommendation of the department or another agency, require the submission of additional plans or descriptions from the operator, . . . "

" If action is taken under (e) (4) of this section, the commissioner and affected agencies have an additional 20 day review period . . . "

Such an open door for costly time delays is blatantly unfair to an operator --- at least an operator who expects to stay in business. At the minimum, this language should not be applicable to the private landowner/operator.

Although it can be well argued that an operator should plan his activities out far enough in advance so that two months is not a critical time period --- in reality, that is not a fair argument. As evidenced by our own operations, one may have well thought out plans that for a variety of reasons must be changed right before a specific organizational activity is undertaken. In such a case, we could be faced with a situation of "stop work" until the proper permits were obtained.

The permit clauses of this bill are totally unnecessary. When a realistic forest practice act is drafted, the provisions of such a well organized bill can include the proper safeguards and eliminate the need for any permit process.

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

It is clear that inviting public comment on notification relates only to public lands! This bill must exclude any reference to private land --- What logic could there possibly be in seeking public comment on a private operation? This is ridiculous!

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

This is also insulting to the professional practice of forestry. The environment in which the trained forester must work is not Static! As mentioned before, forestry is also an art, one can not simply set out a series of planned efforts and expect an uninterrupted schedule --- the wind blows hard and a salvage sale is needed; a stream course changes after heavy rains and thus one must change his stream crossing; rabbits nibble off the freshly planted