559 SRES SB 511 - SCR 56

STATE
of ALASKA

MEMORANDUM

ALASKA POWER AUTHORITY

TO: H. Phillip Hubbard
Commissioner
Department of Commerce &
Economic Development

DATE: 7 March, 1978

FROM: Eric P. Yould
Executive Director
Alaska Power Authority

SUBJECT: S.B. 511

On the surface, Senate Bill 511 appears to be aimed at abolishing the Alaska Power Authority and assimilating its statutory function into the Division of Energy and Power Development under the Department of Commerce and Economic Development. The desirability of such an action can only be determined by the Administration and the Legislature, however, there are some points which should be considered in evaluating the institutional manner in which the State chooses to solve its energy problems.

First, as S.B. 511 is written, there is doubt about the ability of the Division of Energy and Power Development to actually fulfill the functions of the Power Authority. This is a technical matter, however, which can certainly be resolved by any scribe. The salient remissions and ambiguities of S.B. 511 add their effect are briefly pointed out in the attached letter from Wohlforth & Flint, bond counsel for the Power Authority. In short, the Division of Energy and Power Development, here-inafter called the Division, could neither provide for long term project financing nor for front end community loans for feasibility studies. Without these abilities, the Division would be quite ineffectual in providing for energy development. Moral support would certainly not get the job done. Realizing, however, that these technical matters can be overcome the real issue entails the selection of the optimum administrative means of providing for lower cost power development.

Under the present division of responsibility, the Division provides for conservation, research, alternative energy inventories, and regional planning. The Power Authority is responsible for project development by financing or a combination of financing, developing , owning and operating power projects. Division of these responsibilities provides a healthy checks and balances. Since the Power Authority is a facilitating agency, moreover, one with a singular purpose, it is best suited to "getting the job done". With its financial and legal advisors and its pres efforts to develop a professional staff consisting of engineers and economists, it is gaining the nucleus needed for its statutory mandate. Absorption into the Division could only dilute the Authority's ability to function efficiently.

STATE
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ALASKA POWER AUTHORITY

TO: H. Phillip Hubbard
Commissioner
Department of Commerce &
Economic Development

DATE : 7 March, 1978

FROM: Eric P. Yould
Executive Director
Alaska Power Authority

SUBJECT: S.B. 511 (continued)

The Power Authority has been established to operate as a public Corporation of the State of Alaska. Its status as such has made it quite palatable to the various utilities and communities that need assistance in power development. The power generation industry in Alaska is actually looking to the Authority as an entity that can provide coordination and development neededtoo preclude the energy problems which loom ahead. I would question the ability of an energy agency conglomerate, hamstrung by its bureaucratic shroud, to fulfill the same function. Since its corporate nature will require the Power Authority to remain fiscally solvent (or default in the face of the financial market) it will be forced into the role of prudent planning and development. Its State agency counterpart, with its access to the general fund, may not be similarly inclined.

There is also a philosophical question to be resolved. Should the State actually assume the posture of providing electricity for its citizens? Or should this best remain in the hands of the local entities and a State corporation? State government is already growing at an alarming rate. If Susitna and other large power projects such as a Southeastern intertie or an A.V.E.C. intertie are developed, the agency that owns, operates and markets the energy from these projects will obviously require a sizable staff. Maintenance of such a staff under State government could only serve to further bloat our public sector and its attendant tax requirement and lobbying power.

Finally, one should compare the relative merits by which policy would be established under the two philosophies of power development administration. On the one hand, the Division policy would be established solely by the Director, with final concurrance from the Executive and Legislature. Under the Authority concept, policy matters are established by a board of directors which must be viewed as a non-partisan decision making entity from throughout the State. The perspective to be gained from such a diversification is invaluable. The present Board of the Power Authority consists of a Native Corporation Director, a banker, a business executive, a previous federal energy administrator, and a State Commissioner.

Given the opportunity to operate as envisioned in its enacting legislation, the Alaska Power Authority, in concert with the policies of the Division of Energy and Power Development and the Legislative and Executive branches, will provide a significant contribution to the social well being of the people of Alaska. While certainly well intended, S.B. 511 would not appear capable of providing the same level of service.

Attachment: Memo from Wohlforth & Flint
EPY/maf

I. REQUEST
Bill/Resolution No. SB 511-An Act creating the Division of Energy and
Title Power Development
Requested by _____ Date 02/16/78

II. FISCAL DETAIL
Agency Affected Commerce & Economic Development
Program Category Affected Development
Budget Request Unit(s) Affected Energy & Power Development

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES			220.0			
200 TRAVEL			25.0			
300 CONTRACTUAL			295.0			
400 COMMODITIES			3.5			
500 EQUIPMENT			4.5			
600 LAND & STRUCTURES			-0-			
700 GRANTS, CLAIMS, ETC.			-0-			
TOTAL			548.0			

FUNDING (Thousands of Dollars)

GENERAL FUND			548.0			
FEDERAL FUNDS			-0-			
OTHER (Specify)			-0-			

POSITIONS

FULL TIME			6			
PART TIME			-0-			
TEMPORARY			-0-			

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 2-28-78 PREPARED BY Clarissa M. Dunbar
AGENCY Division of Energy & Power Development
PHONE 272-0527

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33 001 (Rev. 10/76)

A. Assumptions

1. Beginning in FY 79, it will be necessary for the division to thoroughly evaluate all aspects of the proposed Upper Susitna Dam Project, as well as address the question of potential funding, construction and operation of smaller proposed power projects.

2. These activities would be part of ongoing multi-year programs, which will extend many years into the future.

B. Program Summary

1. Positions

	Title	Range	Monthly Salary	Yearly Salary
a.	Administrator of Power Projects	24	$3,085.00	$37,020.00
b.	Deputy - Engineering & Construction	23	$2,867.00	$37,020.00
c.	Deputy - Finance & Marketing	23	$2,867.00	$34,404.00
d.	Civil Engineer	22	$2,661.00	$31,932.00
e.	Secretary I	12	$1,293.00	$15,516.00
f.	Clerk Typist III	08	$1,005.00	$12,060.00
				$165,336.00
			Cost of Living Increase (6%	9,920.00
				$175,256.00
			Benefits (25.5%)	44,690.00
				$219,946.00

2. Other Expenditures

a. Travel - $25,000.00

Extensive travel will be required by division staff, both within the State and to Lower 48 financial centers.

b. Contractual - $295,000.00

Approximately $250,000 will be earmarked for contractual services for feasibility studies of proposed projects, and to begin a thorough analysis of all aspects of the Upper Susitna Project over and above the present work being conducted by the Corps of Engineers.

c. Equipment - $4,500.00 and Commodities - $3,500.00

This will primarily cover additional office equipment and supplies required to accommodate the additional staff.

ALASKA POWER AUTHORITY

033 WEST4th - SUITE 31 - ANCHORAGE ALASKA 99501

March 30, 1978

The Honorable Kay Poland
Alaska State Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

Attached per your request is our legal review of S.B. 511 which would eliminate the Alaska Power Authority and assimilate its functions into the Division of Energy and Power Development.

As I indicated at your committee meeting on March 22, 1978, I am somewhat reluctant to make my views known in that testimony from an agency which is being considered for abolishment might be considered biased. However, since your committee appears interested in my opinions, I am most happy to provide you with my thoughts.

First, as S.B. 511 is written, there is doubt about the ability of the Division of Energy and Power Development to actually fulfill the functions of the Power Authority. This is a technical matter, however, which can certainly be resolved by any scribe. In short, the Division of Energy and Power Development, here-in-after called the Division, could neither provide for long term project financing nor for front end community loans for feasibility studies. Without these abilities, the Division would be quite ineffectual in providing for energy development. Moral support would certainly not get the job done. Realizing, however, that these technical matters can be overcome, the real issue entails the selection of the optimum administrative means of providing for lower cost power development.

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The Power Authority has been established to operate as a Corpo-

ration (public) of the State of Alaska. Its status as such has made it quite palatable to the vaious utilities and communities that need assistance in power development. The power generation industry in Alaska is actually looking to the Authority as an entity that can provide coordination and development needed to preclude the energy problems which loom ahead. I would question the ability of an energy agency conglomerate, hamstrung by its bureaucratic shroud, to fulfill the same function. Since its corporate nature will require the Power Authority to remain fiscally solvent (or default in the face of the financial market) it will be forced into the role of prudent planning and development. Its state counterpart, with its access to the general fund, may not be similarly inclined.

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Sincerely,

Eric P. Yould
Executive Director

EPY/mgf
Attach:

SB

527

COMMITTEE REPORT

SENATE

1/19/75

Mr. President: Date 5/12/76

The Committee on RESOURCES has had SB 527
relating to the efficient administration of fish and game
under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR SB527 AND THAT
CS FOR SB 527 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____
COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

R. Talbot
_____ Chairman

ANALYSIS OF CHANGES IN CS FOR SB 527
BY
JOHN FARLEIGH, ADMINISTRATIVE ASSISTANT
SENATE RESOURCES COMMITTEE

SECTION 3: This change is in section 3, paragraph (13), line 25, after "reduce" remove the words "predation or". This is to prevent the commissioner to initiate a wolf control program without board approval but to still allow him to conduct stickleback control, for example, without board consent.

SECTION 4: This section is redrafted to actually tighten up the emergency order powers of the commissioner. The amended language on page 2, lines 8 and 9, defines the circumstances required and since an emergency order is not subject to the Administrative Procedure Act, lines 17 through 27, would establish a due process for the department to go through to implement an emergency order.

SECTION 10: This section was rewritten so as not to appear to put the department above regulation by the boards, but to allow them to perform their duties without special exemptions from board regulations.

SECTION 21: Paragraph (C) was eliminated from this section which would have given the commissioner the power to promulgate regulations without a delegation by the board in the event that he could not contact a quorum of board members.

SECTION 35: (In the original bill) This section was removed in it's entirety, mainly due to the strong objections of the United Fishermen of Alaska.

SECTION 38: This change is self-explanatory. Under the present language, the appropriate board must address each and every case at a board meeting, but under the proposed language, the board may address the issue once and set the policy accordingly.

SECTION 39: In this repealer section a typographical error (16.35.080 is changed to 16.35.180) is corrected and 16.05.210 is eliminated so that it remains unlawful for a department employee or a hunter employed by the department to receive a bounty.

SB 321

Farleigh

The Honorable Chancy Croft
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

In accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to the efficient administration of Title 16 of the Alaska Statutes and the responsibilities regarding conservation and management of fish and game. Some of the changes proposed are purely technical and non-substantive in nature; others are more than that, so this is somewhat more than just a "housekeeping" bill. On the other hand, the substantive changes which do appear are not intended to implement anything resembling major changes in policy; rather, they are aimed at maximizing the efficiency of State government in managing fish and game resources so that the citizens of Alaska may obtain the greatest return for programs and activities funded by their taxes.

Since this bill concerns itself with the administration of fish and game generally, it necessarily pertains to the operations of the Boards of Fisheries and Game as well as to the Department. Therefore, it was considered highly important to obtain the views of the respective boards on this proposed legislation before its submission to the legislature. At their first joint session, in December, 1975, the boards spent nearly four hours reviewing and discussing its provisions with the assistance of the Departments of Law and Fish and Game. They then voted 13-0 to endorse these proposals.

This bill is necessary because: Considering the frequency with which AS 16 is amended and the interrelationship of provisions throughout that title, it is inevitable that some inconsistencies, oversights, and ambiguities will accumulate. Periodic revision of the fish and game laws to rectify these problems is desirable to facilitate administration by the executive branch, to avoid litigations over interpretation matters, and to reduce the likelihood of confusion with regard to future amendments by the legislature. Ambiguities, anachronisms, or inconsistencies in AS 16 may serve as the basis for lawsuits which otherwise would never be

filed. They may lead to board meetings which need not have been called, or meetings and lengthy deliberations by fish and game officials which would otherwise be unnecessary. In all of these cases, the State must spend a great deal of money for matters leading to no benefit for fish and game management. We would estimate that, based on the experience of the past year and the various lawsuits, meetings, and procedures which have taken place because of problems in Title 16, the State would save the taxpayers up to $100,000 per year if this bill were enacted.

Members of the executive branch who administer the laws daily and must interpret legislative directives in the context of particular situations become intimately familiar with the actual language employed. Consequently, they are in an excellent position to recommend changes which either improve the manner in which a legislative concept is to be implemented, or more accurately carry out the original legislative intent.

Problems of this nature in a complicated set of resource management laws are unavoidable. However, we believe that the necessary amendments must be implemented as soon as possible, and we offer the following to aid in your deliberations:

Section-By-Section Analysis of the Bill

Section 1. This updates existing language to reflect reorganizations of federal agencies and departments.

Section 2. This is the first of a number of instances in the bill where the word "chapter" is changed to "title" to allow applicability of a provision to the entire title. This is done only where it is evident that the particular section should so apply because of its general nature. In this case, the power of the Commissioner to collect and disseminate information should be present with respect to any duty vested in him since it is a necessary general function of a resource management agency.

Section 3. Adds to the powers and duties of the Commissioner the ability to perform research. This is already understood and has been implied from other powers, but it is so basic that it should be specifically mentioned.

This section also adds to the powers and duties of the Commissioner regarding fish and game diseases. This power already exists with regard to private nonprofit salmon hatcheries. The respective boards have this power under AS 16.05.251 and 255, but since this is an administrative ?

rather than a rulemaking function, it is properly housed in the Department.

Section 3 also pertains to powers of the Commissioner regarding cooperative agreements. The Commissioner already has these capabilities in a number of specific instances in Title 16, but the public interest of the State dictates that this power should be general since it is a routine administrative function. Inclusion of this section also permits a redraft of AS 16.05.251 and 255 (powers of the boards) separating administrative and rulemaking functions regarding cooperative agreements, the latter function being retained by the boards.

Finally, Section 3 adds the equivalent of a necessary and proper clause to the powers of the Commissioner regarding the general responsibilities vested in AS 16.05.020.

Section 4. This section would accomplish several changes in the emergency powers of the Commissioner. Only one of these, however, is a substantive addition to his authority.

Pressures from competing users of fish and game resources in Alaska is steadily increasing, leading to the need for more refined management techniques which respond as quickly as possible to changes in conditions. This necessarily reduces the margin of error available to fish and game managers. It is virtually impossible for the boards to assess with complete accuracy anticipated resource availability at board meetings, which are usually far in advance of season openings. The ability of the Commissioner to be able to open or close seasons or weekly periods on fish or game by emergency order is an important administrative tool, and it is often used to implement board policy or intent where unexpected changes in conditions require changes to regulations. In many cases, however, season closure may be an unnecessarily harsh measure to protect a resource; necessary safeguards may involve only a reduction of harvest levels of bag limits. Concurrently, while greater than anticipated resource numbers may not justify a season opening if this is the only avenue available, opening of a season might be satisfactory if bag limits or quotas could be reduced at the same time. Therefore, it would seem to be of benefit to the public if the power to change quotas, bag limits, or harvest levels were added to the emergency powers of the Commissioner.

From a strictly legal standpoint, there is some question as to the validity of sec. 60 in the context of due process because of the absence of (1) standards for when emergency orders may be issued and (2) the procedure to be followed in

promulgating the orders. Several additions are made to insure that adequate notice is given to interested persons so that any due process questions are eliminated. This process is also made applicable to Commissioner's announcements.

Finally, the boards frequently include in the text of their regulations that a particular season or weekly period will open or close by emergency order. As a legal safeguard, a sentence is added to sec. 60 specifically authorizing this procedure.

Section 5. AS 16.05.065 permits the Department to extend registration or licensing deadlines for particular individuals upon a showing of "excusable neglect". Since Departmental policy and decisions of courts have resulted in the evolution of a customary definition of this rather ambiguous term, it is advisable to incorporate this definition into the statutes.

Section 6. This section has been redrafted to more accurately reflect the types of actions which should be admitted as evidence of rulemaking activities in courts of law.

Section 7. This section is self-explanatory. It would permit disbursements to be made without the delay normally caused by seasonal fluctuations in receipts accruing to the Fish and Game Fund.

Section 8. "Chapter" is changed to "title" so that uniform enforcement procedures may apply to all of Title 16. In addition, the requirement that offenders be brought before a magistrate immediately is dropped, removing an unnecessary burden on protection officers.

Section 9. "Chapter" is changed to "title" for the same reason expressed regarding section 8.

Section 10. Some confusion has developed as to exactly what the respective powers and relationships are between the boards and the Department. In section 241, the legislature has recognized that the boards are entities of rulemaking and that the Departmental responsibilities are administrative. The relationship is therefore very similar to the distinctions between a legislative and executive branch. It is important to note that section 241 specifies that the boards "do not have administrative, budgeting or fiscal powers". (Emphasis added.) Since the legislature has organized the boards and the Department with this division in mind, it is highly important that this division be preserved in all of the statutes within Title 16; otherwise, it becomes very difficult to determine who is supposed to make the rules and who is supposed to carry them out.

That this distinction is not always clear became evident in a case litigated in 1975 entitled Cordano v. Brooks, in which a Departmental wolf control program in Game Management Subunit 20A was challenged. Imprecise language in the statutes (which was carried over into the split-board law) relating to the powers of the Board of Fish and Game caused the court to determine that the board had to adopt a regulation allowing department employees to engage in predator control. This result was not in keeping with the board/department relationship established by the legislature, since it declared that not only must the Department carry out regulations of the board, but it must also observe those regulations as though they were private persons even when performing official duties. This directive, if applied universally, would prohibit the Department from engaging in any research involving harvesting of resources unless the season were open and appropriate methods and means, bag limits, size restrictions, closed waters, gear restrictions, and quotas, etc., were observed by Departmental employees which is obviously contrary to legislative intent. Therefore, section 241 is amended to indicate that regulations of the boards apply to the public, and not to Departmental employees engaged in activities already authorized by statute.

In succeeding sections of this bill, various sections of Title 16 are rewritten to insure that board functions are limited to rulemaking and Departmental functions are restricted to administration.

Section 11. No specific authorizations exist for harvest levels, sex, and size limitations, even though regulations of this nature are and have been promulgated. Although authority can be implied from other board powers, it should be made express as a legal safeguard.

Section 12. The board does not engage in biological research, which is an administrative function. Consequently, this paragraph is rewritten to more accurately reflect the nature of board regulations in this area. In addition, a reference to the economy or general welfare as justification for regulations is added to expressly support regulations which constitute allocations among users and are not strictly for conservation (e.g., subsistence regulations, regulations pertaining to types of gear or particular methods and means). Note that this language parallels that under the powers of the Commissioner in AS 16.05.020(2).

Section 13. The board does not adopt regulations regarding investigation of predators, which is an administrative

function. It does, however, establish methods and means and harvest levels for the taking of predators through regulation. This paragraph is redrafted to reflect this fact.

Section 14. Entering into cooperative agreements does not necessitate the promulgation of regulations by the board. However, if such a cooperative agreement necessitates assent to the applicability of federal regulations, this is tantamount to a regulation-making function, since it governs the terms under which fish or game will be taken by the public. Therefore, this aspect of cooperative agreements should involve action by the board.

Section 15. Three additions are made to the powers of the board.

Paragraph (13) would authorize the board to adopt regulations limiting utilization and disposition of fish where necessary for protection of the resource. For example, the board could prohibit the use of salmon for bait if this were causing undesirable harvesting pressures on salmon and it was decided that bait utilization was not a high-value use.

Paragraph (14) would allow limiting routes of access or modes of transportation into an area to facilitate conservation and management. The primary purpose of this amendment is to assist the Board of Game with regard to hunting practices in particular areas (e.g., subsistence areas). However, it was felt that an identical section should be added under powers of the Board of Fisheries so that the powers of the respective boards would remain as identical as possible. Both (13) and (14) can probably be implied from existing board authorizations, but specific mention is desirable as a legal safeguard.

Paragraph (15) would formalize a procedure whereby the board decides it to be in the public interest for a regulatory action to be taken by the Commissioner. Usually this occurs where the board does not have sufficient information at its meeting to adopt a specific date for season opening or closure, and provides that it shall be done by emergency order. Again, this is primarily to insure that there is express legal authority for what is already a customary practice.

Section 16. Same justification as for Section 11.

Section 17. Same justification as for Section 13.

Section 18. Same justification as for Section 12.

Section 19. Same justification as for Section 14.

Section 20. Same justification as for Section 15.

Section 21. The Board of Fish and Game customarily met only twice a year. If the Boards of Fisheries and Game follow past practice, the former will meet twice and the latter once per year. During the interim periods, the boards are not in session and their members are scattered throughout the State, often out of contact with each other. Consequently, when a need suddenly arises for regulatory action in order to protect the fish or game resources of Alaska, delegations of the authority of the boards to the Commissioner become a highly important statutory capability. Consequently, Section 21 would make several amendments to AS 16.05.270 in order to clarify procedures for delegations and facilitate the delegation process where a board wishes to transmit its authority to the Commissioner.

Although AS 16.05.251 and 255 recite the basic powers of the Boards of Fisheries and Game, there are a number of other sections in Title 16 where regulatory powers are assigned to a board without specific authorization for delegation. From the standpoint of governmental efficiency, the boards should have the option to delegate their authority for any of their responsibilities if they so desire, especially since convening boards is expensive and may involve only a routine matter out of proportion to the expense. Therefore, subsection (a) would permit them to do so rather than limiting delegations to the powers included in secs. 251 and 255.

In addition, there is a significant legal question as to whether a board must meet in one geographical location in order to accomplish a delegation. It is presumed that the intent of the legislature was otherwise; if the board is able to so meet, there is no purpose in making a delegation, since the board may act on its own. Therefore, subsection (a) would also formalize the procedure often utilized in the past whereby a delegation may be accomplished through a mail or telephone poll of the members by the Commissioner. This is particularly important where there is not time to convene a board meeting (which usually requires at least 30 days advance notice) before action must be taken.

During the course of a year, members of the Department invariably run across ambiguities or inconsistencies in the fish and game regulations which were not discovered at board meetings. Often, they arise where criminal prosecutions are dismissed because a court considers a regulation to be defective. Subsection (b) would establish a standing delegation of the authority from the boards to the Commissioner to make minor technical corrections to regulations. Since such changes do not alter the substance of a regulation, there would not seem to be any need to go to the expense of contacting all of the members of a board for what is necessarily a routine action. The requirement that the intent of the board be retained precludes abuse.

Many members of the boards hold occupations (e.g., fishermen, guides, etc.) which require them to be in remote areas of the State and out of contact for lengthy periods of time. If a situation arises where regulatory action is necessary and a quorum of board members cannot be contacted, the State is essentially out of the regulatory business for that period of time. This could be highly damaging to the welfare of Alaska's fish and game resources if, for example, an entire set of regulations were invalidated by a court for constitutional or procedural defects. Therefore, subsection (c) would allow the Commissioner to take necessary regulatory action under these conditions if, and only if, he is unable to contact a quorum of board members within the time available to act. Moreover, the Commissioner would not be permitted to change the policy of the board as represented by its regulations unless to do otherwise would be patently impossible.

Subsection (d) is self-explanatory.

It is very important to note that this section would not increase the powers of the Commissioner relative to those of the boards. Rather, it would insure that the regulatory policies of the boards could be carried out in response to changing conditions even when the boards were not formally in session by allowing the Commissioner to act as the agent of the boards. As in the case of Hjelle v. Brooks, where a 1974 challenge by nonresident shellfish fishermen to State regulations succeeded in invalidating the board's management system and necessitating their redrafting when the board was not in session, a delegation of authority may result in the savings of tens of thousands of dollars and the continued full protection of the welfare and interests of the citizens of Alaska.

Section 22. This section makes a minor change in AS 16.-05.290 to allow board members to receive expenses and per diem for attending functions which are not strictly meetings or conferences, such as inspections of facilities.

Section 23. This section constitutes a grammatical improvement for AS 16.05.330(b).

Section 24. Section 24 would require the Department to issue identification cards to persons who are exempt from license requirements, and require them to have the cards in their possession while hunting, fishing, or trapping. Otherwise, there is little, if any, deterrent to falsifying applications for exemptions and enforcement is impossible.

Section 25. An oversight in Title 16 results in there being no requirement that vessel licenses must be in the possession of the licensee, which is required for other licenses. Seciton 25 would require actual possession.

Section 26. AS 16.05.680 does not prohibit employing a fisherman or purchasing fish from a fisherman who does not possess the proper licenses except for commercial licenses. This addition would prohibit purchases from fishermen who do not possess all licenses required by Title 16.

Section 27. This section reflects changes in commercial shellfish regulations. The Bering Sea and Western Aleutians are now expressly designated as registration areas.

Section 28. A misunderstanding arose during this past season regarding the burden of proof statute. Under the existing law, the burden of proof is on the holder of the fish and game only after ten days beyond a season closure (three days for crab). However, while this section does allocate the burden of proof, it does not make possession legal even when the burden of proof is on the State (during the first ten days following closure (three days for crab)). Subsection (b) would clarify this point.

Section 29. The existing law regarding confidential reports on fish products does not permit release to the Department of Public Safety. Considering that Department's enforcement responsibilities, such release should be permitted.

A serious defect in the present law concerns the fact that, while the Department of Fish and Game may not release confidential reports to the public without a court order, there is no restriction on such release by the Department of

Revenue and the Commercial Fisheries Entry Commission, which may receive the records from ADF&G. Therefore, this section has been redrafted so that the reports may be exchanged among the four named agencies, but may not be released elsewhere without a court order.

Section 30. This section updates existing law to reflect reorganizations of federal agencies.

Section 31. During the last legislature, a law was adopted prohibiting the waste of salmon. During the deliberations on the bill, however, what was apparently an innocent editorial change resulted in the introduction of an ambiguity in the law which may well nullify its effectiveness. Section 31 would utilize the language employed in the original bill but clear up the ambiguity.

Section 32. The basic prohibition contained in Title 16 is that it is unlawful to possess fish and game unless permitted by statute or a regulation of the boards. This prohibition is contained in AS 16.05.920(a). However, an apparent oversight has limited this prohibition to Chapter 05 only. Therefore, the word "chapter" is changed to "title".

Section 33. AS 16.05.940 is intended to be the basic definitions section for Title 16. However, these definitions apply technically only to Chapter 05, as a result of an apparent oversight. Therefore, Section 33 would change "chapter" to "title".

Section 33 would also change the definition of "resident". There have been many questions by persons who were unsure as to whether or not they were entitled to resident status. In addition, there are considerable loopholes present which allow persons who leave the State or never become bona fide residents to obtain resident licenses.

First, the words "the preceding" are added before "12 consecutive months". Without this, any person who has at any time resided in the State for 12 consecutive months meets the qualification contained in this phrase.

Second, under the new language residents would be required to maintain "their permanent and principal place of abode" in the State to qualify for residency. This would eliminate as a resident the type of person who brings a few belongings to Alaska and shares an apartment in order to avoid non-resident tax fees, but in actuality lives elsewhere. The new language would permit an Alaska resident to have an

additional house in another state (such as a winter home) provided the principal residence and abode was still in Alaska. However, a person who took all his belongings and left the State for eight months out of the year would not be entitled to resident status, even if he owned a home in Alaska. Many cases would have to be judged on their circumstances, but a determination would be possible which reflects the actual situation.

Third, the reference to voting residency is eliminated. It is not an accurate indicator of residence, and such a requirement may be unconstitutional because it requires persons to register in order to enjoy residency privileges, and it disqualifies from residency any person under 18 years of age.

Similar changes are made regarding military personnel and aliens.

Paragraph (6) of the definitions is amended to specify that "fish" includes parts of the fish. This would have applicability, for example, to fish for which the parts are sold individually, such as salmon roe.

Section 34. During the Bristol Bay price dispute last year, the department's role in setting up mediation was hampered by the need to actually certify that 1/3 of the registered fishermen were involved in a price dispute. Given the information available, this is not always possible. Consequently, this section is amended to make the burden on the Department a practical one.

Section 35. This section would make two changes in the private nonprofit salmon hatchery law. First, there should be some limit on the expenditures made from surplus hatchery funds, since "other fisheries activities" includes anything remotely related to fish. Therefore, such expenditures would have to be approved by the Department.

Second, the directive of the last sentence in sec. 450 is not always possible, since salmon sold by hatcheries may not be in a condition comparable to salmon sold commercially through normal channels. Therefore, this requirement would apply only to the extent possible to insure practicality and still prevent abuse.

Section 36-38. Although the legislature has established game refuges, sanctuaries, and critical habitats, required notification for developmental activities, and provided for restrictions in the form of board regulations, there do not

exist any penalties for violating these directives. Therefore, these sections would establish violations as misdemeanors and provide for penalties.

Section 39. Presently, this section requires consent in writing from the board for deployment of poisons. Written consent is an administrative rather than regulation-making function, and belongs with the Department. The amendment would so provide. Additional changes are made so that the restrictions more accurately reflect the objectives of a prohibition of this nature.

Section 40. This section would repeal several existing sections.

AS 16.05.280 provides that members of a board may be removed by the Governor for cause. However, AS 39.05.060 states that members of the boards serve at the pleasure of the Governor. This conflict was not resolved by the legislature in the split board act. However, AS 39.05.060 was amended by that law and the language stipulating that members serve at the Governor's pleasure was not changed, which would seem to indicate the legislature's preference for that approach. Therefore, AS 16.05.280 would be repealed to remove the inconsistency.

AS 16.05.450(c) was intended in the first place to apply to salmon net gear only, although it does not say so. With the advent of limited entry, there does not appear to be any purpose in retaining it, since it is an inconvenience to fishermen.

AS 16.15 is an anachronism, since the laboratory in question no longer exists.

AS 16.35.010-080 pertain in part to bounties which are no longer paid. The bounties on seals are in conflict with the Marine Mammal Protection Act of 1972. Moreover, AS 16.-05.255 provides that the Board of Game may establish bounties through the promulgation of regulations. Therefore, these sections should be repealed. Also within these sections are provisions regarding employment of trappers and hunters for predator control which are archaic and should be repealed.

Repeal of the sections pertaining to bounties should also result in repeal of AS 16.05.210, which makes a reference to special hunters of the Department.

Sincerely,

Jay S. Hammond
Governor

SB

537

1. Addition of the "fourth factor".

Sec. 46.03.758 - Civil Penalties for Discharges of Oil.

Subsection (d) should be amended to read, in part:

> "(d) The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. In order to provide a meaningful incentive for the safe handling of oil, as referred to in paragraph (a) (2), the schedule shall also vary according to the past operating records of the persons liable for the discharge, as far as such operating records reflect the frequency and severity of previous spills for which such persons were liable. The schedule shall also..."

3/31/78

not adopted

March 30, 1978

ALASKA LEGISLATION - 1978
S.B. 557
CIL SPILL PENALTIES

This bill, which amends H.B. 137, Chapter 129 of the 1977 Session, should be further amended as follows:

1. Section 46.03.758(a)(2) is amended to read:

> "~~the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however,~~ in light of the magnitude of harm which may be caused by oil discharges, and the vital importance of commercial, sport and subsistence fishing, tourism, and Alaska's natural abundance and beauty to the economic future of the state, and its quality of life, it is the judgment of the legislature that substantial civil penalties should be imposed for the discharge of oil, in order to provide a meaningful incentive for the safe handling of oil and to insure that the public does not bear substantial losses from oil pollution for which, ~~because of its subtle, long-term or unquantifiable nature,~~ compensation would not otherwise be received; ~~and~~ however, it is not the intent of this section to impose a civil penalty for discharge of oil where there is no demonstrable damage to the environment; and"

This amendment is the most important of the four. It deletes the reference to unquantifiable damage, a thoroughly illogical concept which no one has ever been able to explain, and it adds language to require a demonstration that environmental damage has occurred before penalties under this law can be imposed.

The existing law, which does not require evidence of environmental damage before imposing penalties, must be considered punitive. Yet, subsection (a)(3) states this should not be the case.* Thus, this amendment would render the penalty remedial rather than punitive.

2. Section 46.03.758(b)(1) is amended to read:

> "Subject to subsection (a)(2) and to ~~(3)~~ (2) of this subsection, the penalties for the following categories of receiving environments may not exceed"

Making the penalties subject to subsection (a)(2) is a precaution to ensure that penalties will not be imposed unless it is demonstrated that environmental damage occurred.

*46.03.758 (a)(3) "in order to provide an incentive which is effective, but not punitive."

The change from (3) to (2) is a technical change. There is no (3) in subsection (b).

3. Section 46.03.758(d) is amended to read:

> "The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. The schedule shall also vary according to the sensitivity and productivity of the receiving environment. And, the schedule shall take into account seasonal changes. Variations under this subsection may be by subcategories of receiving environments, specific receiving environments, or both. The maximum penalties established in (b) of this section shall apply to discharges in the most sensitive and productive of receiving environments within each category of receiving environment, and the penalty shall decrease for less productive or less sensitive receiving environments."

This is consistent with past arguments that seasonality is an important factor in determining potential enviromental damage. Also, it reinforces our first amendment. "Less" is added before "sensitive" in the interest of good construction.

4. Section 46.03.758(g) is amended to read:

> "Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. ~~In determining whether mitigating circumstances exist, the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply.~~ Only when no such mitigating circumstances exist shall the schedule of full penalties apply."

The language deleted describes the body of scientific knowledge pertaining to oil spills as "very limited." This is simply not true. The scientific community, academicians, government, and industry have produced volumes of data on the fate and effects of oil spills (an abbreviated bibliography is attached), and their work is continuing. Therefore, the deleted sentence cannot be justified.

WORK SHEET

FOR

AS 46.03.758/ TITLE 18 CHAPTER 75 ARTICLE 5

POTENTIAL LOSS TO OPERATORS-

1. LOSS #1

GIVEN: 5000 GALLON SPILL IN FRESHWATER CRITICAL ENVIRONMENT (SALMON SPAWNING STREAM).

PRODUCT SPILLED- HOUSE HEATING FUEL

CHARACTERISTICS	FACTORS
HIGHLY TOXIC	1.00
HIGH DEGRADABILITY	.25
HIGH DISBURSIBILITY	.15
	1.40/3=.466

FRESHWATER CRITICAL = $10.00/GAL.

COMPUTATION :=

MAXIMUM STANDARD PENALTY

.466 @ 10 @ 5000 = $23,300

WITH GROSS NEGLIGENCE

$23,000 @ 5 = 116,500

2. LOSS # 2

GIVEN: 2000 GALLON SPILL IN MARINE CRITICAL ENVIRONMENT (WITHIN ONE MILE OF A SALMON SPAWNING STREAM).

PRODUCT SPILLED: MARINE DIESEL

CHARACTERISTICS:	FACTOR
HIGHLY TOXIC	1.00
HIGH DEGRADABILITY	.25
HIGH DISBURSABILITY	.15
	1.40/3=.466

MARINE CRITICAL = $ 2.50/GAL.

COMPUTATION:

MAXIMUM STANDARD PENALTY

.466 @ 2.50 @ 2000 = $2,330

WITH GROSS NEGLIGENCE

2,330 @ 5 = 11,650

Alaska Trucking Association, Inc.

3443 Minnesota Drive
Anchorage, Alaska 99503
(907) 276-1149

TESTIMONY
CONCERNING
CIVIL PENALTIES FOR DISCHARGE OF OIL

FOR THE RECORD, I AM BEN BENEDIKTSSON, MANAGING DIRECTOR OF THE ALASKA TRUCKING ASSOCIATION. MY ASSOCIATION IS MADE UP OF SOME 600 MEMBER FIRMS WHO EMPLOY 17,000 EMPLOYEES DELIVERING VIRTURALLY ALL OF YOUR FOOD, HOUSEHOLD NECESSITIES, AND FUEL.

WE ARE VERY CONCERNED WITH THE ENTIRE SUBJECT OF OIL SPILLS. VERY FEW OF MY MEMBERS ARE PURE CARRIERS IN THE SENSE THAT A YELLOW FREIGHT OR CONSOLIDATED FREIGHTWAY EXISTS IN THE LOWER 48. ALMOST ALL OF MY MEMBER CARRIERS ARE INVOLVED IN A VARIETY OF TYPES OF AUTHORITIES. FOR EXAMPLE, MY TYPICAL MEMBER WILL HAVE AUTHORITY TO MOVE GENERAL COMMODITIES, HOUSEHOLD GOODS, AND FUEL. A LARGER NUMBER OF RELATIVELY SMALL CARRIERS ARE INVOLVED IN FUEL DELIVERIES THAN IS THE CASE IN THE TYPICAL LOWER 48 AREA.

THE HANDLING OF FUEL BY TRUCK IS AN ABSOLUTE NECESSITY TO THE SURVIVAL OF MOST OF THE COMMUNITIES AND CITIES IN ALASKA. WITHOUT THE REQUISITE TANK TRUCKER DELIVERING YOUR HOME HEATING OIL, MANY OF MY MEMBERS AND YOUR CONSTITUENTS COULD NOT SURVIVE.

THE SUBJECT OF THIS HEARING IS SB 557, CONCERNING MANDATORY OIL SPILL PENALTIES. IN THE LAST HALF SESSION, THE LEGISLATURE PASSED HB 137 WHICH, WHILE APPARENTLY BASED ON GOOD INTENTION, WAS BAD

LAW. THE APPARENT INTENT WAS TWO FOLD - (1) TO PROVIDE AN INCENTIVE TO ENSURE SAFER HANDLING OF LARGE QUANTITIES OF OIL AND (2) TO PLACE DOLLARS INTO THE GENERAL FUND TO OFFSET ENVIRONMENTAL REPAIR COSTS, FOR DAMAGE RESULTING FROM LARGE SCALE OIL SPILLS. UNFORTUNATELY, WHAT HAS HAPPENED AS A RESULT OF THE PASSAGE OF AS 46.03.758 IS THAT THE SMALL OIL CARRIER IS PLACED IN A POSITION IN WHICH HE CAN BE SERVED WITH AN ARBITRARY FINE FOR AN OIL SPILL, REGARDLESS OF ACTUAL ENVIRONMENTAL DAMAGE. THAT FINE CAN BE VERY SIGNIFICANT AND, IN FACT, PROBABLY WOULD PUT A LARGE MAJORITY OF MY MEMBERS OUT OF BUSINESS IF THE FULL PENALTIES WERE TO BE ENFORCED IN A RELATIVELY SMALL SPILL.

ATTACHED ARE WORK SHEETS FOR POTENTIAL OIL SPILLS IN TWO TYPICAL CASES OF TRUCK ACCIDENTS.

SB 557 WAS PROPOSED TO ELIMINATE THE SMALL OIL SPILL FROM PENALTIES AGAINST WHICH THE OPERATOR CANNOT EVEN BE INSURED. THERE IS A COMPANION BILL (HB 912) PRESENTLY BEING PROCESSED THROUGH THE HOUSE WHICH PROPOSES ESSENTIALLY THE SAME SOLUTION TO THE CIVIL PENALTY PROBLEM AS SB 557. IT IS OUR RECOMMENDATION THAT THE TWO BILLS BE COMBINED. WE THINK THAT THE RATIONALE AND THE GALLONAGE FIGURE SUPPLIED BY HB 912 WOULD PROVIDE THE PROTECTION NECESSARY TO CARRY OUT THE INTENT OF THE ORIGINAL LEGISLATION. OUR TANK TRUCKER NOW RUNNING THE HIGHWAYS CARRY A MAXIMUM LOAD OF ABOUT 11,500 GALLONS

OF PETROLEUM PRODUCTS. SINCE THE TREND HAS BEEN TOWARD LARGER EQUIPMENT WE SUGGESTED THAT A FACTOR OF 12,500 GALLONS BE USED TO EFFECT THE LOWER LIMIT OF CIVIL PENALTIES. THIS WOULD PROVIDE PROTECTION NECESSARY FOR THE NEXT SEVERAL YEARS. IN EARLIER HEARINGS OF HB 912 THE 12,500 GALLON FIGURE WAS REDUCED TO 12,000. THAT IS FINE BY US. IT HAS ESSENTIALLY THE SAME AFFECT AS THE 12,500 FIGURE.

THE ATA SUGGESTS AS AN AMENDMENT THAT THE TEXT OF HB 912 BE ADOPTED AS SB 557. THIS WILL HAVE THE AFFECT OF ESTABLISHING THE LIMITATION NECESSARY TO PROTECT THE SMALL FUEL CARRIER AND ALSO PROVIDING A MUCH BETTER STATEMENT OF LEGISLATIVE INTENT THAN IS IN SB 557. IT WILL ALSO HAVE THE AFFECT OF MAKING PASSAGE OF THIS LEGISLATION MUCH EASIER.

ON BEHALF OF MY ASSOCIATION, I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO BE HEARD.

WORK SHEET

FOR

AS 46.03.758/ TITLE 18 CHAPTER 75 ARTICLE 5

POTENTIAL LOSS TO OPERATORS-

1. LOSS #1

GIVEN: 5000 GALLON SPILL IN FRESHWATER CRITICAL ENVIRONMENT (SALMON SPAWNING STREAM).

PRODUCT SPILLED- HOUSE HEATING FUEL

CHARACTERISTICS	FACTORS
HIGHLY TOXIC	1.00
HIGH DEGRADABILITY	.25
HIGH DISBURSIBILITY	.15
	1.40/3=.466

FRESHWATER CRITICAL = $10.00/GAL.

COMPUTATION :-

MAXIMUM STANDARD PENALTY

.466 @ 10 @ 5000 = $23,300

WITH GROSS NEGLIGENCE

$23,000 @ 5 = 116,500

2. LOSS # 2

GIVEN: 2000 GALLON SPILL IN MARINE CRITICAL ENVIRONMENT (WITHIN ONE MILE OF A SALMON SPAWNING STREAM).

PRODUCT SPILLED: MARINE DIESEL

CHARACTERISTICS:	FACTOR
HIGHLY TOXIC	1.00
HIGH DEGRADABILITY	.25
HIGH DISBURSABILITY	.15
	1.40/3=.466

MARINE CRITICAL = $ 2.50/GAL.

COMPUTATION:

MAXIMUM STANDARD PENALTY

.466 @ 2.50 @ 2000 = $2,330

WITH GROSS NEGLIGENCE

2,330 @ 5 = 11,650

SB
562

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

4/12/78

Date: 4/24

Mr. President:

The Committee on RESOURCES has had SB 562 Alaska land policy

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

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

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

(X) recommends it be replaced with CS for [illegible]

and [illegible] ( ) new title (X) same title

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

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

R. Palmer

Chairman

S 60 (rev. 6/77)

FSLUPC
April, 1978

LAND POLICY BILL

Suggested Amendments

A. Page 6, line 6, suggested substitution for section .040.

AVAILABILITY OF MENTAL HEALTH LAND, SCHOOL LAND, AND UNIVERSITY LAND. Under the purposes of this chapter, mental health land, school land, and university land may be made available for private use in accordance with statutes governing such lands. In their capacity as trustee for such lands, the Mental Health Board, the Board of Education, and the Board of Regants of the University of Alaska shall, within 120 days from the date of this act, define goals and objectives for the management and disposition of lands under their trusteeship. In accordance with these goals and objectives and in consultation with the municipalities in which such lands are located, the director shall prepare an annual program for sale or lease offerings of selected mental health lands, school lands, and university lands. This program shall accompany the annual land availability programs submitted to the Legislature in accordance with section .020 of this chapter.

B. Page 7, line 11, substitute for last sentence.

The requirements of this section do not apply to land made available through a cabin permit system, material sales, or short-term leases; provided, however, that for short-term leases a municipality may require compliance with local subdivision ordinances.

C. Page 9, line 27, added sentence to paragraph (e).

The classification process must include notice and review requirements of existing statutes.

D. Page 10, line 5, added sentence to paragraph (g).

Where a local zoning ordinance or other land use regulation is in effect, the provisions of AS 35.30.020 and AS 35.30.030 shall apply.

FSLUPC
April, 1978

SECTION BY SECTION ANALYSIS
LAND POLICY BILL
HOUSE BILL NO. 904/SENATE BILL NO. 562

Sec. .005. This section sets forth basic intent and purpose regarding state-owned lands. Paragraphs (a) through (e) are purposely worded in the form of general policy directives rather than in the form of specific binding legal requirements. The last sentence in (b), lines 13-16, page 2, needs some explanation. Such a statement is necessary if lands classified for open space purposes are to qualify as the matching share for federal funds under the Land and Water Conservation Program.

Sec. .010. Under this statement, the basic orientation of State land disposal is towards the needs of individuals and other parties who will actually use the land. The Commission recommended this policy after finding that state land sales in the late 1960's and 1970's had primarily benefited land companies and wealthy individuals who could afford large tract purchases, rather than individuals who were looking for cabin or house sites. To change this orientation, land should be made available in individually sized parcels.

This section also includes a directive that state land availability programs concentrate in areas where public services already exist or can be extended, or where a viable economic base could be developed. This policy would not prohibit remote land disposal but, rather, direct that in such areas disposal would be mainly for recreation cabin sites with seasonal road or water access. Another method of fulfilling this directive might be through a rural cabin permit system, meeting the needs of people who want real isolation with several miles of separation between sites.

Sec. .015. This section lists the various reasons for retaining some state lands in public ownership, and is generally self-explanatory.

Sec. .020. This paragraph is identical to the first paragraph of the Governor's land credit proposal. An annual determination of acreage to be available for private use gives the legislature the flexibility to respond to changes in circumstances over the years. An annual determination is consistent with the basic thrust of the policy bill which is to make lands available where they are most needed and with consideration of local supply and demand factors. We would note that, in terms of meeting people's needs, it is not the gross acreage of land that is important but, rather, location, access, and tract size.

Sec. .025. This section is simply additional direction to base the land availability programs on an assessment of the differing needs for land of different types in various parts of the state, and to tailor state land programs accordingly.

Sec. .030. This section summarizes the variety of land availability programs within existing statutes and regulations and adds, in lines 25, 26, and 27, authority for a cabin permit system to be used in isolated locations on state-owned lands. To enable private use of remote isolated lands, the state must have a program which does not require land survey. In isolated locations a survey can cost as much as $4,000, often exceeding the market value of the land. A permit system which, unlike a conveyance program, would not entail land survey.

Sec. .035. The fair market value criterion set forth in (1) is self-explanatory. Besides the reasons included in the paragraph, the Commission recommends this approach because grant programs tend to invite public abuse, and are very difficult to administer in a fair and evenhanded manner. It should be noted that most of the participants at the Alaska Public Forum favored a market value approach to state land disposal. However, item (1) allows the use of less than fair market value programs as authorized by statute or administrative regulation and thus would enable the continuation of the homesite, homestead, and open-to-entry programs.

Paragraph (2) is self-explanatory.

Paragraph (3) spells out specific and detailed criteria for the choice of areas where lease programs would be used. This is an important addition to the state's body of land law. In the past lease programs have ofte.. been used where sale programs would have been more suitable.

Paragraph (4) gives direction for the use of cabin permitting in isolated, remote areas.

Paragraph (5) refers to the director's existing statutory authority to grant conditional title in special situations such as agricultural areas where the state wishes to ensure agricultural development, or in areas where the state may wish to preserve scenic easements, while making the land available for private uses compatible with this purpose.

Sec. .040. This section is self-explanatory. As a result of our discussion with the Community and Regional Affairs Committee, we are proposing a substitute paragraph (A in the list of suggested amendments) that would establish a more aggressive program for trust land availability.

Sec. .045. Under this section, the state would set survey control markers so that individual private surveys, tied to these markers, would mesh and not overlap. In the western states where areas were surveyed separately by private citizens, without an overlying set of control points, there were serious problems with overlapping and contradictory surveys. As a result, citizens were saddled with title problems, unusable property, etc. Through this section, we hope to avoid or minimize such problems in Alaska.

Sec. .050. This section requires the state to provide adequate access to private use areas. Lines 18 through 20 gives direction for the integration of state road development programs with land availability programs in appropriate locations. If state land is actually to be made available for individual use, it is important to strengthen the state's role in development of local access roads associated with state land use programs.

Sec. .055. Self-explanatory.

Sec. .060. A regular, updated inventory of the land suitability should be the foundation of the state's land management program. The state already has a good start in this direction through the land selection inventory.

Paragraph (b) of this section directs the division to reassess holdings of other state agencies, such as the Division of Aviation, to see if the land amount is excessive or inadequate in relation to current needs and alternative uses of the property. Such a program is especially important in small communities where excessive agency holdings occasionally preempt lands that are vitally needed for other community uses.

Sec. .065. Paragraphs (a) and (b) provide guidelines and standards for the development of land use plans for state lands.

Paragraph (c) directs the commissioner to prepare regional land use plans for all of the state-owned land. These would be of simple "first-cut" plans separating areas of settlement and settlement impact from areas of public use and ownership.

Paragraph (d) provides a formal method of identifying the official plan so that the public and the administration knows which document to rely on, and makes the important requirement that land classification be based on the official plan.

Paragraph (e) is self-explanatory.

Paragraph (f) establishes a needed tie between transportation planning and general land planning.

Paragraph (g) requires state planning to be consistent with local governmental planning.

Sec. .070. This section adds a state multiple use management system to the existing state park and trail systems. Lands may be designated to this new system, the "State Public Reserve System" by proclamation of the governor. The legislature retains its existing power to approve any designation of land to a system closed to multiple purpose use for an area of over 640 acres.

Paragraph (4) gives the state the option of designating rivers or portions of rivers to be managed by the state under the guidelines of the National Wild and Scenic Rivers System. Such authority may be desirable in some areas where segments of a river are owned by the federal and state governments. If a whole river-trip area can be managed under one set of guidelines, overall recreation benefits may be increased.

Sec. 900. This section includes a requirement that the director adopt, within 120 days, a comprehensive revision of the regulations affecting planning, classification, management, and disposal of state land surface. The administration has long recognized the need for this overall rewrite, and work on a revision is in process.

*Sec. 3. The repealed section 38.05.300 deals with classification and with the authority of the legislature to approve single-use designation for more than 640 acres. This bill spells out the classification and planning process more completely, and section 38.05.300 should be deleted to avoid confusion. The legislature's control over single-use designation of more than 640 acres is included in section .070(c) of this bill (page 8, lines 8-10).

TESTIMONY

REGARDING LAND POLICY BILL

PRESENTED BY

JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA

APRIL, 1978

The Commission wants to speak in support of Senate Bill 562 establishing an Alaskan land policy. We have been studying State land policy for several years and participated with the Administration in preparing this bill. As we reviewed the existing statutes governing the State's public domain and studied the State's land programs as they have operated over the past 15 years, we found that Alaska has very little statutory guidance to govern the Administration's decisions about disposal or retention of State lands. The existing constitutional and statutory requirement that State lands be managed for "maximum use and benefit consistent with the public interest" gives us an excellent basic goal, but is not specific enough to guide the administrator who is deciding where and how much State lands to make available for private use. As evidence of this statutory lack, we have seen the State's land program shift from large tract disposal practices in the late 1960's and early 1970's to the minimal disposal of recent years.

Members of the Legislature have recognized this problem, and, last year, Senator Poland requested the Commission to study the subject and prepare recommendations to this Legislature. We presented initial recommendations to members of the Senate and House Resources Committees this

January. The land policy bill represents a refinement of those sections of the Commission's recommendations dealing with policy matters.

The land policy bill before you accomplishes these purposes through three articles:

(1) Article 1 covers policy for public and private use. Essentially, this section makes it clear that the State's overall land policy is to provide lands for both private and public use purposes and to allocate suitable lands for each purpose. Special emphasis is placed on maintaining a balance of public and private lands near communities so that natural areas are easily reached by all people, and not just those who can afford to travel long distances. Two parallel subsections set forth the public purpose in making lands available for private use and the public purpose in retaining State lands in public ownership for recreation, mining, resource development, and other purposes. The policy statement recognizes the essential role of local governments in the process of arriving at decisions about State lands.

(2) Article 2 provides guidelines to the Administration for making land available for private use. The first section on timing and amount is identical to the first section of the land credit bill which Governor Hammond introduced. This section mandates that the Administration make a quantity of State

lands available on an annual basis for private use purposes. A minimum of 50,000 acres is set for the first year, no more than 10% of which may be leased land. Thereafter, the amount is set annually by the Legislature. The basic orientation of this section is towards making land available for direct, individual use in locations and in parcel sizes that best meet differing needs in different areas as determined through an inventory process.

The bill sets forth a State policy for making land available at fair market value, particularly in close-in locations with high real estate values; but the criteria provide room for use of homesiting and open-to-entry in appropriate locations. To prevent misuse of leasing, as has occurred in past years, the bill lists the types of special circumstances where leasing would be an appropriate method of making land available. Provision is also made for recreation cabin permitting in isolated locations on State lands. A section on availability of trust lands is included, and standards for surveying and subdivision as well as for adequate access are set forth. On page 7 there is a strong provision requiring State subdivisions to conform with local platting authority.

(3) Article 3 covers inventory planning and classification. This section draws from existing scattered and partial statutory direction for land inventory, planning and classification to

establish in one statute a clear, simple and unified program for analyzing the value and use potential of State lands. All lands must be inventoried and their appropriate use designated. As part of this process, the advise of local governments must be obtained.

The section establishes a new State management system for multiple use lands, called the "State Public Reserve System." There is also a new section on wild and scenic rivers giving the State the option of designated selected rivers in State ownership as part of the National Wild and Scenic Rivers System to be managed by the State in accordance with national guidelines. The Legislature retains its existing authority to approve any designation of more than 640 acres which would close the land to multiple use.

In summary, much of what is included in the land policy bill are generally accepted principles of good land management. The bill acknowledges the public desire to acquire State land for private use and mandates an active program in this direction. However, it does so in a responsible manner without sacrificing the many other valid uses of State land. We feel that adoption of this bill will clarify the State's position as a land manager, and will help in establishing this fact at a national level.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 904 and SB 562

Title Alaska Land Policy

Requested by _____ Date 3/30/78

II. FISCAL DETAIL

Agency Affected Natural Resources

Program Category Affected NRMEC

Budget Request Unit(s) Affected Land & Water Management; Cadastral Engineer; Management and Administration (Lands); District Operations (Lands)

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES		1,866				
200 TRAVEL		98				
300 CONTRACTUAL		2,919				
400 COMMODITIES		56				
500 EQUIPMENT		87				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		5,008				

FUNDING (Thousands of Dollars)

GENERAL FUND		5,008				
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		69				
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Detailed analysis and breakdown not yet completed. Will be completed and submitted on April 3, 1978. (See attached sheet for general breakdown)

N.B.

This fiscal note must be read in conjunction with the fiscal note for HB 905 (Land Disposal Act) since $4,579,631 in costs are identical in both bills (i.e. each bill mandates disposal of the same 50,000 acres). The additional cost of this bill, if HB 905 passes, is only $426,233.

Present municipal subdivision laws generally require actual construction of road access before sale of parcels under 40 acres in size. Unless the State is released from such requirements, the additional fiscal impact could be quite severe.

IV. DATE 3/30/78 PREPARED BY Douglas Mutter DJM

AGENCY DNR, Planning & Research Section

PHONE 274-8542

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/77)

50,000 acres disposal

COST SUMMARY
LAND POLICY ACT

DNR/ADL Section	Personal Services	Travel	Contractual	Commodity	Equipment	Totals
Planning/Classification	(9) $ 262,554	$17,300	$ 74,764	$ 3,100	$ 3,900	$ 361,618
Survey/Records	(15) 426,610	30,000	2,055,760	35,000	40,000	2,587,370
Land & Water Management	(27) 734,761	30,000	530,000	8,100	27,000	1,330,061
Administration	(8) 162,188	2,874	126,440	3,040	6,040	300,582
TOTALS	(59)$1,586,113	$80,174	$ 2,786,964	$49,240	$76,940	$4,579,631

Land inventory/assessment

Agency	Personal Services	Travel	Contractual	Commodity	Equipment	Totals
DNR	(10) $ 279,873	$17,200	$ 131,960	$ 6,200	$10,200	$ 428,233
Grand Totals	(69) $1,856,986	$97,374	$ 2,918,924	$55,440	$87,140	$5,007,864

Land Policy Act

(Front-end)

Minus

reimbursable survey costs (contractual only)	$1,815,760
fair market value for land (average $500 per acre)	25,000,000
Net Profit (long term)	$21,807,896

March 28, 1978

Preliminary

Estimated State Implementation Costs

Alaska Land Policy Act -- HB904, S8562

This preliminary statement analyzes the costs of implementing (1) the 50,000 acre minimum per year disposal directive and (2) the administration of the land inventory, assessment, coordination, etc. efforts. This is basically a first year cost analysis because Section 38.04.020 of the bill provides for an annual program as part of the administration's budget (at the 50,000 acre minimum level an estimated 5 percent inflationary factor could be added for each succeeding year).

1. 50,000 acre disposal TOTAL COST = $4,579,631/TOTAL PERSONNEL = 59 full time

The following acreages from the state's three principal disposal programs are assumed to comprise the first year's offerings (costs do not include provision of roads or services at sites):

Program	No. Sites	Acres/Site	Total Acres
Homesite	1,000	5	5,000
Open-to-entry	1,000	5	5,000
Agriculture and	500	20	10,000
general sales	250	40	10,000
	50	160	8,000
	25	320	8,000
	7	640	4,480
TOTALS	2,830 sites		50,480 acres

The following activities are assumed for any disposal program: (1) site identification and evaluation, (2) public information and community coordination, (3) subdivision and layout, (4) survey and records, (5) appraisal, (6) disposal and accounting, (7) administration, and (8) follow-up monitoring.

A. Estimated costs for (1) site identification and evaluation, (2) public information and community coordination, and (3) subdivision layout: $361,618/ 9 full time.

Personal Services (including 26% benefits)

Title	No. Positions	Grade	Amount
Planning Supervisor	1	21	$ 39,282
Land Mgmt. Officer III	4	18	124,659
Public Info. Officer II	1	17	29,242
Cartographer III	1	16	27,186
Planning Assistant	1	15	25,220
Clerk Typist IV	1	9	16,965
TOTAL	9	TOTAL	$262,554

Travel

per diem	$ 7,200
transportation	10,100
TOTAL	$17,300

Contractual

Media	$ 2,500
Community Land Market Analyses	30,000
Advertising	800
Communication	2,200
Printing	5,000
Equipment Rental	600
Aerial Photography	22,000
Space*	11,664
TOTAL	$74,764

Commodities

Cartographic supplies	$2,300
Other supplies	800
TOTAL	$3,100

Equipment

six desks @ 350 each	$2,100
seven chairs @ 140 each	1,000
one drafting table	700
one drafting chair	100
TOTAL	$3,900

*Space (includes janatorial, electric, telephone, and is included in totals as a contractual). Standard Formula: 80 ft.^{2}/person X $1.35/ft.^{2}/mo. X 12 = cost/year

B. Estimated costs for (4) survey and records: $2,587,370/15 full time

Personal Services (including 26% benefits)

Title	No. Positions	Grade	Amount
Cadastral Surveyor (Dist. offices)	3	20	$109,362
Cadastral Surveyor	1	20	43,848
Cartographer (Dist. offices)	3	15	75,660
Cartographer	1	15	30,240
Surveyor	1	19	33,914
Surveyor	2	16	54,372
Drafting Technician	1	14	23,451
Land Mgmt. Technician	1	12	20,533
Drafting Technician	1	11	19,278
Typist	1	8	15,952
TOTAL	15 (includes a surveyor & cartographer in each district)	TOTAL	$426,610

Travel

per diem (200 man-days @ $50/day)	$10,000
travel	18,000
miscellaneous transportation	2,000
TOTAL	$30,000

Contractual

Professional Services

- $600/5 acre tract for survey for 2,000 tracts = $1,200,000
- $25/acre for agricultural lands for survey 20 acre tract or smaller for 500 tracts = $250,000

- $12/acre for agricultural lands survey for tracts larger than 20 acres for 332 tracts = $365,760

Space	$ 40,000
Data processing/records	200,000
TOTAL	$2,055,760

Commodities - TOTAL $35,000 (supplies, survey monuments, scientific/professional supplies, etc.)

Equipment - Office (chairs, desks)	$20,000
Field	20,000
TOTAL	$40,000

C. Estimated costs for (5) appraisal, (6) disposal and accounting, and (8) follow-up monitoring: $1,330,061/27 full time.

Personal Services

Title	No. Positions	Grade	Amount
LAND SECTION			
Land Management Officer III	1	18	$ 32,464
Land Management Officer II	3	16	84,939
Land Management Officer I	1	14	24,725
Clerk/Typist III	1	8	16,315
SUB-TOTAL	6 For 12 months each		$158,443
WATER SECTION			
Land Management Officer III	1	18	$32,464
Land Management Officer II	1	16	28,313
SUB-TOTAL	2 For 12 months each		$60,777
FORESTRY SECTION			
Forester III	1	18	$ 32,464
Forester I	3	14	74,175
Clerk/Typist III	1	8	16,315
SUB-TOTAL	5 For 12 months each		$122,954
NORTHCENTRAL DISTRICT OFFICE			
Land Management Officer II	3	16	$ 90,090
Land Management Officer I	1	14	28,313
Clerk/Typist III	1	8	22,500
SUB-TOTAL	5 For 12 months each		$140,903

Title	No. Positions	Grade	Amount
SOUTHCENTRAL DISTRICT OFFICE			
Land Management Officer III	2	18	$ 64,928
Land Management Officer II	2	16	56,626
Land Management Officer I	1	14	24,725
Clerk/Typist III	1	8	16,315
SUB-TOTAL	6 For 12 months each		$162,594
SOUTHEAST DISTRICT OFFICE			
Land Management Officer III	1	18	$32,464
Land Management Officer II	2	14	56,626
SUB-TOTAL	3 For 12 months each		$89,090
TOTALS	27		$734,761

Travel

Land Section	$ 2,000
Water Section	3,000
Forestry Section	2,000
Northcentral	10,000
Southcentral	10,000
Southeast	3,000
TOTAL	$30,000

Contractual

Land Section	$ 30,000
Water Section	50,000
Forestry Section	15,000
Northcentral	175,000
Southcentral	175,000
Southeast	150,000
Space Rental	35,000
TOTAL	$530,000

Note: includes air charter, review appraisals, appraisals, forms, printing, advertising, communications, equipment rental, studies, computer terminal use, etc.

Commodities

Land Section	$1,800
Water Section	600
Forestry Section	1,500
Northcentral	1,500
Southcentral	1,800
Southeast	900
TOTAL	$8,100

Equipment

Land Section	$ 6,000
Water Section	2,000
Forestry Section	5,000
Northcentral	5,000
Southcentral	6,000
Southeast	3,000
TOTAL	$27,000

Note: includes tables, chairs, desks, calculators, typewriters, filing cabinets, etc.

D. Estimated costs for (7) administration: $300,582/8 full time.

Personal Services (including 26% benefits)

Title	No. Positions	Grade	Amount
Clerk Typist	4	8	$ 65,800
Upgrade WPC Supervisor			3,024
Personnel Technician I	1	12	21,181
Accounting Clerk II	2	8	37,969
Accountant III Upgrade			6,000
Supply Officer I	1	16	28,214
TOTAL	8		$162,188

Travel

Transportation	$1,578
Per diem	1,296
TOTAL	$2,874

Contractual

Computer programming	$ 58,000
Computer time	25,000
Space	8,640
State vehicle	4,800
Office equipment lease	30,000
TOTAL	$126,440

Commodities - TOTAL $3,040

Equipment

8 desks @ 350 each	$2,800
8 filing cabinets @ 175 each	1,400
3 calculators @ 240 each	720
8 chairs @ 140 each	1,120
TOTAL	$6,040

2. State land inventory/assessment TOTAL COST = $428,233/TOTAL PERSONNEL = 10 full tim

Personal Services (including 26% benefits)

Title	No. Positions	Grade	Amount
Principal Planner	1	21	$ 39,282
Systems Analyst	1	20	36,454
Senior Planner	1	19	33,914
Land Mgmt. Officer III	1	18	31,480
Publications Specialist II	1	16	27,186
Assistant Planner	1	15	25,220
Clerk Typist IV	2	9	33,930
Research Analyst	1	16	27,186
Cartographer II	1	15	25,221
TOTAL	10		$279,873

Travel

per diem	$ 7,100
transportation	10,100
TOTAL	$17,200

Contractual

Land inventory, socio-economic analysis, air photos, field survey, printing, media, etc.	$119,000
Space	12,960
TOTAL	$131,960

Commodities - TOTAL $6,200

Equipment - TOTAL $10,200

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 274-2525

GEORGE M. SULLIVAN, MAYOR

OFFICE OF THE MAYOR

April 17, 1978

The Honorable Kay Polland
Alaska State Senator
Pouch V
Juneau, Alaska 99811

Dear Senator Polland:

Senate Bill No. 562 will come before the Natural Resource Committee on Monday, April 17, 1978. There are three sections of this Bill which may adversely affect the Municipality of Anchorage. We would like to share our concerns with you regarding these sections before the Bill is heard by your committee.

Proposed section 38.04.045 (b) deals with the survey and subdivision of State land to be conveyed to private ownership. This section mandates compliance with local planning and platting ordinances. However, this section exempts from these ordinances land made available through mineral sales or a cabin permit system.

We object to the exemption provision for two reasons. First, it would be detrimental to the Municipality's planning program because under it large segments of land within the Municipality would not be subject to our planning and platting ordinances. If certain segments of land are not subject to the Municipality's planning and platting ordinances, then the ordinances become ineffective because they are designed to regulate all the land within the Municipality.

Second, the exemption provision conflicts with the policy contained in A.S. 09.55.275 which requires that any agency of the State must comply with local platting regulations in the same manner as private land owners when the State seeks to acquire property. This policy logically applies to the converse, i.e. when the State seeks to dispose of property. Providing for a partial exemption when the State seeks to dispose of property appears to serve no purpose. For the foregoing reasons, we suggest that the exemption provision be deleted.

Proposed section 38.04.065 deals with State Land Use Planning and Classification. Subsection (g) requires that State land use plans be consistent with local plans only to the extent that the Commissioner determines the local plan to be consistent with State interests.

We object to this subsection because it seems to conflict with A.S. 35.10.020 entitled "Consultation with Municipal Planning and Zoning Commissions". This section requires the State to comply with all local planning and zoning ordinances in the same manner as private land owners unless a State agency can "clearly demonstrate an overriding State interest". When a State agency makes such a showing, a specific waiver must be granted by the Governor.

We suggest that subsection (g) be made consistent with the language in A.S. 35.10.020 by amending the latter to require State land use plans to be consistent with Municipal plans unless a gubernatorial waiver is granted upon a "clear showing of an overriding State interest".

Proposed Section 38.04.065 would involve the State in regional land use planning in areas which now have local planning. The Municipality of Anchorage has actively engaged in a land use planning program and intends to maintain this effort. Until the degree of State involvement in local land use management is clarified, we cannot support this proposed section.

Sincerely,

George M. Sullivan
Mayor

Michael J. Meehan
Director of Planning

/sw

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 274-2525

GEORGE M. SULLIVAN.
MAYOR

OFFICE OF THE MAYOR

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Alaska State Senator
Pouch V
Juneau, Alaska 99811

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Sincerely,

George M. Sullivan
Mayor

Michael J. Meehan
Director of Planning

/sw

SCR

23

COMMITTEE REPORT

SENATE

**Finance

3/1/77

4/6/77 Date

Mr. President:

The Committee on Resources has had SCR 25
construction of oil refineries in Alaska
under consideration. A majority of the members of the Committee

/7 recommends it do pass

/7 recommends it do not pass

/7 recommends it do pass with attached amendment(s)

/7 recommends it be replaced with CS for SCR 25 and that
CS for SCR 25 do pass

/7 (and) recommends it be referred to the _____
committee

/7 reports it back without recommendation

/7 AND attaches a report of its intent

/7 (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

Kilian

Colletta DeVaul

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____
Chairman

S 60

AGO 785684

Alaska State Legislature

SENATOR
MIKE COLLETTA
P. O. BOX 3188
ANCHORAGE, ALASKA 99501

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

Senate

Minority Leader

HEALTH & SOCIAL SERVICES
COMMERCE
STATE AFFAIRS

MEMO

TO: Senator Poland

FROM: Senator Colletta DATE: March 3

I would like to request that SCR 25 relating to Alaska'a royalty oil and its in-state refining, receive priority treatment in committee. It is my expressed opinion that this method will best maintain Alaska's control of its royalty oil. The opinion is based on several legal decisions of the Federal Energy Administration concerning the Mandatory Petroleum Allocation Regulations as it relates to state government. The statement has been made that Alaska's taking of its royalty oil in value would preclude its taking the oil in kind at a future date because the state would become party to supplier/ purchaser relationships as controlled by Mandatory Petroleum Allocation Regulation 10 C.F.R. part 21. In order to not lose control of our royalty oil and its profits, I suggest that we take royalty oil in kind and negotiate for its in-state refining.

Thanks for your consideration.

SCR

55

COMMITTEE REPORT

SENATE

4/22/77

5/6/77 Date

Mr. President:

The Committee on RESOURCES has had SCR 55 approving disposal to Golden Valley Electric Assoc. of royalty oil taken in-kind under consideration. A majority of the members of the Committee

- [ ] recommends it do pass
- [ ] recommends it do not pass
- [X] recommends it do pass with attached amendment(s)
- [ ] recommends it be replaced with CS for _____ and that CS for _____ do pass
- [ ] (and) recommends it be referred to the _____ committee
- [ ] reports it back without recommendation
- [ ] AND attaches a report of its intent
- [ ] (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____
Chairman

S 60

AGO 7856 86

A M E N D M E N T

Offered in the SENATE By Resources Committee

To: _____ SENATE BILL NO. SCR 55

_____ HOUSE BILL NO. _____

AMENDMENT: Page 1 Line 14

Delete "fields in the Cook Inlet area" and insert the following in its place:

"the Prudhoe Bay oil field"

AGO 785687

SCR

56

COMMITTEE REPORT

SENATE

4/22/77

5/9/77 Date

Mr. President:

The Committee on RESOURCES has had SCR 56
Approving disposal to Alaska Pipeline Co. of royalty gas taken in-kind
under consideration. A majority of the members of the Committee

- [X] recommends it do pass
- [ ] recommends it do not pass
- [ ] recommends it do pass with attached amendment(s)
- [ ] recommends it be replaced with CS for _____ and that CS for _____ do pass
- [ ] (and) recommends it be referred to the _____ committee
- [ ] reports it back without recommendation
- [ ] AND attaches a report of its intent
- [ ] (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____
Chairman

S 60

AGO 7856 88

MEMORANDUM April 27, 1977

SUBJECT: Policy Considerations in North Cook Inlet Royalty Gas Sale (W.O. #4105, Supplemental)

TO: The Honorable John Rader

FROM: Gregg K. Erickson
Director of Research

Summary

As you requested, we have provided you, in the form of Ms. Kallab's memorandum of April 26, a review of the history and issues raised by the proposed North Cook Inlet royalty gas sale. After review of Ms. Kallab's findings (in which we concur), we believe that approval of this contract will tend to create far-reaching precedents with respect to the terms and conditions under which the state may make royalty gas available for in-state use, both elsewhere in the Cook Inlet field and in the northern part of the state. In addition, we believe that a brief technical analysis of the charges established by Phillips for transportation of the state's royalty gas is in order.

Precedents That Would Be Established By The Proposed Sale

As a matter of public policy, there will be no regulatory review of the transportation costs charged against royalty gas. In general, it makes no economic or technical sense to have a multiplicity of oil or gas pipelines running from point A to point B. Because of the fact that the efficiency of pipeline transportation increases very rapidly as one goes from smaller to larger pipelines, it minimizes the real economic costs of transportation to have a single line of the largest possible diameter. The owner of such a line has a monopoly, but it is a "natural monopoly" in the same sense that an electrical distribution or telephone system is a natural monopoly, i.e., to have more than one system would simply raise costs to the consumer. In the absence of regulatory restraint, however, the natural monopolist will have every incentive to charge "what the market will bear". Ratification of the current proposal may establish an important precedent with respect to the means by which

charges are assessed against gas taken in kind for in-state use elsewhere in Alaska. We may reasonably expect to see many other situations in the future where industrial facilities are served by private carrier lines similar to the Phillips line in Cook Inlet. Use of these lines may be the only reasonable way for the state to bring its royalty gas to local markets. Ratification of the current contract would tend to establish the precedent that the owners of these lines should be permitted to charge for the transportation of the state's royalty gas on the basis of what the market will bear rather than on the basis of the cost to them of providing the transportation service.

Whenever the state takes its royalty gas (or oil) it will be obligated to bear the cost of increasing production by the amount necessary to maintain the original flow level. In the instant case, these costs are the 10¢ per Mcf which would be charged by Phillips to cover their costs of additional compression facilities.

The legislature (and the Alaska Public Utilities Commission) will acquiesce in an arrangement which proposes the construction of a $4 million gas transmission facility which is, by any standard of technical and economic efficiency, totally unnecessary. Because of the lack of regulatory jurisdiction or the unwillingness of Alaska Pipeline Company (APC) and the Alaska Public Utilities Commission (APUC) to pursue regulatory solutions which may be available under existing law, APC has not been able to negotiate an exchange agreement with Union-Marathon (U-M) which would, as Ms. Kallab's memorandum points out, make the $4 million "royalty gas line" unnecessary. Although the negotiation of such an agreement would not appear to increase costs to U-M by one iota (they may even reduce them) there are commercial advantages to U-M in refusing to negotiate, since blocking such an agreement limits the alternative supply options of Alaska Pipeline Company and thus enhances the value of U-M's gas reserves in the Kenai field. Of course, Phillips has its own reasons for not wishing to enter into such an agreement; i.e., to retain the royalty gas share.

By ratifying this agreement the legislature (and the APUC) encourage the cross subsidization of one group of rate payers by another group. The commission has, as noted in Ms. Kallab's memorandum, stated that the higher costs of royalty gas shall be allocated proportionately among all rate payers served by Alaska Pipeline Company. Until and unless the proposed royalty gas line is built (or an exchange agreement is developed) this will result in those rate payers located in the North Kenai Road Service Area (who consume the relatively high cost gas) being subsidized by the rate payers elsewhere in APC's system. If, as expected, the wellhead price of gas in Cook Inlet rises, it will almost certainly result in the Bernice Lake power plant paying less for its gas than Alaska Pipeline Company is paying for it. Apart from the questions of

fairness involved, this is certainly an invitation to a rate-payer action in which it would be asserted that the rates charged by APC are noncompensatory and thus not "just and reasonable" as required under existing law.

Technical Considerations With Respect to the Proposed Rates

As Ms. Kallab has pointed out, Phillips has asserted that the 5.5¢/Mcf deduction used in calculating the wellhead value of natural gas for royalty and severance tax purposes is "not appropriate" for the calculation of transportation charges against royalty gas taken in kind. We are not aware of any rationalization of this statement. It seems fairly clear, however, that the difference between this figure and the 20¢/Mcf (escalating at 6%) which they propose to charge is greater than can be justified by any rationale we can conceive. It is possible that neither figure represents a fair and reasonable transportation cost, but it is impossible that both can simultaneously be "fair and reasonable" in the context of the purposes for which they are being used.

We do not assert that we can establish or even estimate what would be a "fair and reasonable" charge for transporting the royalty gas ashore, but we do concur with the sentiments expressed by Dr. Dave Knudson, petroleum economist with the Department of Revenue, who (writing as a private citizen) states that he can find "no justification that a pipeline costing $10 to $12 million perhaps nine years ago (which is most probably highly depreciated) should have a cost of service of 10¢ per Mcf". Mr. Knudson's letter, dated April 6, 1977, is a part of the royalty board's official file on this matter, and a copy of it is attached for your convenience. Although we believe fair and reasonable charges in this instance can only be determined by an appropriate regulatory proceeding, we do categorically assert that the calculations contained in "Table I" do not conform to any of the possible rate-making methodologies that are used by regulatory commissions in the United States.

GKE:jm
Attachment

?
Re: AK Pipe

Mr. Donald Wold, Executive Director
Oil and Gas Royalty Advisory Board
Department of Natural Resources
State of Alaska
Juneau, AK 99801

April 6, 1977

subject: the proposed contract between State of Alaska and Phillips Petroleum Company for North Cook Inlet royalty gas

Dear Don:

After reading the draft contract attached to this letter, I am required to inform you that I believe this contract to be severely prejudicial to the natural gas consumers served by Alaskan Pipeline Company.

Specifically, I am troubled by Article 9.1, Article 9.2, and Article 11.1. These articles establish a basic cost of service, an escalation factor to be applied to this basic cost of service, a provision for higher costs of service due to compressor costs, and an exemption of this natural gas transmission system from Alaska Public Service Commission control.

I have seen no justification that a pipeline costing 10 to 12 million dollars perhaps 9 years ago (which is most probably highly depreciated) should have a cost of service of 10¢ per Mcf. Regarding the rate of escalation to be applied to the basic rate (i.e., 6 per cent per annum), I would like to point out that in all cost of service projections which I have made show declining transportation charges through time even given a general inflation rate of 6 per cent. I am unaware that future compression costs for State of Alaska royalty gas separate from net working interest gas will require payment on the basis of 10¢ per Mcf and inflated each year thereafter at 6 per cent. In short, the underlying economics of the above mentioned contract should be worked out prior to signing the contract. This is especially so given the fact that contract Article 11.1 frees Phillips from Alaska Public Service Commission supervision.

The delay required by this staff work should not be lengthy.

Sincerely,

David L.T. Knudson

David L.T. Knudson
7510 Chad
Anchorage, AK 99502

AGO 785692

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

April 26, 1977

SUBJECT: North Cook Inlet Royalty Gas Sale (W.O. 4105)

TO: The Honorable John Rader

FROM: Elke Kallab
Research Analyst

This is in response to your request to look into matters relating to the proposed sale of state royalty gas from the North Cook Inlet gas field to Alaska Pipeline Company. You were particularly concerned with the gathering and compression charges Phillips Petroleum Company, the operator of the North Cook Inlet gas field, is planning to assess Alaska Pipeline Company for producing and transporting the royalty gas to Alaska Pipeline Company, and the question of whether Phillips Petroleum Company would come under the jurisdiction of the Alaska Public Utilities Commission or the Alaska Pipeline Commission as a result of transporting gas for Alaska Pipeline Company.

Summary

It would appear from the available records and all the information we have obtained that the added gathering and compression charges, negotiated between Phillips Petroleum Company and Alaska Pipeline Company will be allowed to be flowed through by virtue of Order No. 3, Docket U-75-68 issued by the Alaska Public Utilities Commission December 17, 1975, unless the APUC can be convinced to reopen the case in order to determine if the added charges are "reasonable and just". Furthermore, th Attorney General's office has issued legal opinions which exempt Phillips Petroleum Company from Alaska Public Utilities Commission or Alaska Pipeline Commission jurisdiction, since contracts, which have been submitted to the Legislature for approval, propose that Phillips Petroleum Company transport the royalty gas from the platform to a delivery point onshore for the State with Alaska Pipeline Company taking delivery onshore from the State and reimbursing the State for any costs incurred.

However, we believe sufficient grounds exist to question some of the propositions or assumptions which have been put forward to advance the argument that the royalty gas sale as presently proposed is in the best interests of the State and the public.

We submit the following information to provide you with an abbreviated history of what has transpired to date regarding the sale of royalty gas from the North Cook Inlet gas field to Alaska Pipeline Company, as well as to discuss in some detail the various issues which are involved in this matter.

After you have had an opportunity to read this memorandum, we would appreciate receiving your comments and instructions as to how you wish us to proceed. We would be happy to expand on any point or matter, or answer any questions you may have.

EK:mo
Enclosures

ATTACHMENT TO MEMORANDUM OF APRIL 26, 1977
CONCERNING NORTH COOK INLET ROYALTY GAS SALE

Background

In August of 1975 Alaska Pipeline Company (APC) first approached the State to purchase the State's royalty gas from the North Cook Inlet gas field. APC needs additional supplies of gas to assure continued service for its North Kenai Road customers, which includes the Bernice Lake power plant as the main customer, and some 285 other small customers. These customers are presently being supplied by gas APC has contracted for with Union-Marathon (U-M) from the Kenai gas field.* The original contract was for ten years, expiring April 30, 1977, for a total of 10 Bcf of gas. Due to unexpected heavy usage, APC used up its committed supply in August 1976. The contract has been extended by U-M using "Anchorage" reserves from a second contract APC has with Union-Marathon for gas from the Kenai field.

In addition to the immediate need to replace the exhausted gas supply on the North Kenai Road, APC also needs to build up its diminishing dedicated gas reserves, particularly in the Anchorage area. (The need for added dedicated reserves was apparently the major consideration for allowing flow through of higher priced royalty gas in APUC's Order No. 3, according to former Commissioner Richard D. Edwards, who heard the case.)

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* *A map showing location of the gas fields, pipelines and other pertinent information relating to this memorandum is enclosed for ready reference.*

The North Cook Inlet royalty gas for which APC made an offer is now being used by Phillips Petroleum Company, the producer/operator of the North Cook Inlet gas field, to meet 70 percent of its contractual requirements with Tokyo Gas and Tokyo Electric.

APC offered to pay the State the same price as the State is receiving from Phillips for royalty gas taken in value by the State from the North Cook Inlet field. At the time APC assumed this price to be 45¢/Mcf at the wellhead and 5.55¢/Mcf for transportation from the platform to Phillips' Kenai LNG plant. However, as discussions continued, it became quite clear that Phillips did not accept the 5.55¢/Mcf figure as an appropriate transportation cost. They indicated that the 5.55¢/Mcf charge was ". . . worked out and used as a deduction for computing wellhead value of the gas for purposes of paying royalty and taxes . . ." and that it was not the appropriate place differential for the kind of arrangement APC was contemplating.[1] As a result APC and Phillips entered into negotiations to arrive at a mutually agreeable charge for gathering and added compression costs. By negotiation the charges were agreed to be 10¢/Mcf for dehydration and delivery of the royalty gas to shore, and a 10¢/Mcf charge for added compression facilities required to deliver the State's royalty gas in-kind, to be increased by mutual agreement as further compression facilities were needed to maintain production. Table I and II, enclosed, were supplied by Phillips Petroleum Company at the request of the Alaska Royalty Oil and Gas

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1 *Letter from Phillips Petroleum Company to Alaska Gas and Service Company, dated January 9, 1976.*

Development Advisory Board to "justify" the added gathering and compression charges.

The royalty gas which APC hopes to buy from the State is more expensive than gas APC receives and has under contract from other sources. APC expected that the Alaska Public Utilities Commission (APUC) would allow them to flow through the added costs entailed in purchasing the royalty gas, which then were thought to be 50.45¢/Mcf at the Kenai LNG plant gate, and also that the APUC would allow APC to "commingle" the higher priced royalty gas with lower priced gas APC purchases from other suppliers. (Apparently "commingling" is used by the parties involved to mean what is usually referred to as "rolled in" or average cost pricing).

The APUC did in fact permit the commingling of the higher priced royalty gas with lower priced gas available to APC in their Order No. 3, Docket U-75-68 issued December 17, 1975. The order provides that the differing costs would be averaged on a monthly basis to insure a "proper" price to consumers, since the North Cook Inlet royalty gas is available only as produced by Phillips in meeting their own needs, and thus a predictable and fixed daily volume cannot be assured. The APUC estimated that the commingling of royalty gas with lower priced gas would increase the costs to customers between 2¢-5¢/Mcf per month.

In addition, the APUC allowed APC to flow through the costs of royalty gas purchases from the North Cook Inlet gas field. In doing so they did

not mention any cost figures on which the flow through provision was allowed.

(The royalty clause in the commission's December 1975 order states that it was imperative for APC to build up its reserves. However, it also provided that if the royalty clause was not used to reflect an average cost of gas on or before August 1, 1976, the APUC would commence an investigation to determine the reasons for the non-use and to determine whether the royalty clause should be deleted from APC's tariff. APC did provide the APUC with information why they could not take delivery of the North Cook Inlet royalty gas. There is no indication that the APUC took any action as a result of this.)[2]

APC also proposed to build a "royalty" pipeline from the onshore delivery point to its Anchorage line, a distance of approximately 30 miles and at a cost of approximately $4,000,000, to absorb the excess gas over and above that required to meet the North Kenai Road demands, thereby hoping to reduce the rate at which the reserves dedicated to Anchorage in the Kenai field would decline. However, APC stressed that an "exchange" of gas using Union-Marathon's transmission line from the Kenai gas field to the North Kenai Road would be preferable to a literal transfer of excess North Cook Inlet royalty gas since such an "exchange" would reduce the need to construct the "royalty" line. Such an "exchange" agreement has not been worked out between the parties which would be affected.

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2 *Letter from Alaska Gas and Service Company to Alaska Public Utilities Commission, dated September 29, 1976.*

Around December of 1975, Homer Electric Association (HEA) too made application for the North Cook Inlet royalty gas to provide electricity on the Kenai Peninsula. Much of the available royalty gas from the North Cook Inlet gas field would be used to supply the Bernice Lake power plant on the North Kenai Road, which HEA hopes to acquire from Chugach Electric Association, and which is now being supplied by APC with gas from the Kenai gas field. Additional generating facilities HEA is planning to construct would use up the remaining available royalty gas from the North Cook Inlet gas field. On March 30, 1976 HEA withdrew its application for the North Cook Inlet royalty gas since it had found another reliable supply source for its new generating facilities, and APC had assured HEA that they would supply the Bernice Lake power plant with gas.

Contract 76-1, selling the State's royalty gas from the North Cook Inlet gas field to APC, was executed June 4, 1976 and approved by the Legislature May 20, 1976. The records show that the House passed SCR 106 on voice vote, and the resolution passed the Senate 17-2. The major provisions of this contract were--

Quantity:	All royalty gas available from the North Cook Inlet gas field.
Delivery Point:	The wellhead. Phillips' platform.
Price:	55.5¢/Mcf to July 1, 1977 with subsequent annual price escalations based on the highest of three pricing alternatives.
Expiration Date:	July 1, 1984, the same time Phillips' contract with Tokyo Gas and Tokyo Electric expires.

Appendix "A", enclosed, sets out the key provisions of this contract together with those currently before the Legislature.

APC discovered that they could not take delivery of the gas under Contract 76-1 for a number of reasons, the most significant of which was that APC would have to take delivery of the gas at the platform, which would subject Phillips to regulatory jurisdiction of the APUC or Alaska Pipeline Commission as a utility. Phillips refuses to be subject to any regulatory jurisdiction. Their refusal to be regulated dates back to the very beginning of the negotiations when the State was first approached by APC to take its royalty gas in-kind rather than value, and has always presented a potential risk to the successful completion of negotiations. An attempt to exempt Phillips from regulatory jurisdiction by the APUC or Alaska Pipeline Commission by way of a waiver proved impossible since to do so Phillips would have had first to submit to the jursidiction of the APUC or the Alaska Pipeline Commission to be granted the waiver, a condition unacceptable to Phillips.

Another difficulty arose as the result of APC not being able to take all of the royalty gas available as provided for in Contract 76-1. The average daily royalty gas production from the North Cook Inlet field amounts to between 15-17 MMcf based on previous years' production. APC's estimated average daily needs to service their North Kenai Road customers is approximately 8 MMcf. Since APC has not constructed a

"royalty" pipeline from the delivery point on the North Kenai Road to their "Anchorage" line, and since they have not been able to work out an "exchange" agreement with Union-Marathon, APC is unable to utilize the excess amount of gas. The contract does not allow APC to resell the excess royalty gas to Phillips (although Phillips was agreeable to such an arrangement) since this would violate the contract provision which required that all of the royalty gas sold to APC be used within the State. Since Phillips exports its gas to Japan, selling any excess royalty gas back to Phillips would be in violation of Contract 76-1.

In conjunction with the excess volume which would have been used if a "royalty" pipeline had been in existence, APC told the APUC in September of 1976 that the short life of the contract (July 1, 1984) was one of the reasons for them not constructing a connecting line. Such a line would have allowed for APC to slow the decline of reserves dedicated to Anchorage, the main reason the APUC allowed the flow through tariff for royalty gas. In addition, such a line would also assure a stand-by gas supply for North Kenai Road customers in case production or supply from the North Cook Inlet field were to be interrupted for any reason.

By the end of January, 1977 APC petitioned the State to "re-draft" Contract 76-1 in order to make the contract operational.

To accomplish this it was suggested that the State have the royalty gas transported to shore thus avoiding APUC jurisdiction over Phillips' pipeline, since the State is not a utility. APC would take delivery at

or near the Kenai LNG plant and reimburse the State for any costs incurred. A legal opinion from the Attorney General's office was secured, at the insistence of Phillips, which holds that Phillips is not a utility subject to APUC jursidiction. Another legal opinion was issued exempting Phillips' pipeline from Alaska Pipeline Commission jursidiction on the basis th[illegible]he pipeline is not used as a common carrier by Phillips, and that it is not subject to the common carrier provision of the current law, since the pipeline was constructed prior to the enactment of that law. (Exemption of Phillips' pipeline from APUC jursidiction had been supported by the Alaska Royalty Oil and Gas Development Advisory Board as early as December 1975 to facilitate the sale of royalty gas to APC.)

It was further suggested that APC would be required to take only such amounts of royalty gas as they had need for. Any gas APC was unable to take delivery of as it became available was to be sold to Phillips as if the State had continued to take its royalty gas in value.

These changes and other provisions were incorporated into agreements between Phillips and the State, and APC and the State. The contract between APC and the State is now awaiting legislative approval, with the agreement between Phillips and the State having been submitted to the Legislature as an exhibit to the APC contract. The key provisions of the two agreements are listed in Appendix "A", which is enclosed.