

ALASKA LEGISLATURE COMMITTEE REPORTS

1602 HJ HB 8 - HB 74

H B

8

HOUSE RESOURCES
STANDING COMMITTEE
March 11, 1982
5:30 p.m.

Members Present: Reps. Fanning and Sutcliffe, Co-Chairmen
 Rep. Grussendorf
 Rep. Barnes
 Rep. Vaska

Members Absent: Rep. Carney
 Rep. Halford

COMMITTEE CALENDAR

HB 667 "Relating to State control of land"

HB 8 "Relating to management and control of State
land"

WITNESS REGISTER

Rep. Dick Randolph
Pouch V
Juneau, Alaska 99811
(907)465-4821
Position Statement: Prime sponsor of HB 8 - Tundra Rebellion

Dan Copeland
Soldotna
No address available
No telephone number available
Position Statement: To testify on HB 8

Lynette Clark
Fairbanks
No address available
No telephone number available
Position Statement: To testify on HB 8

Charles Adams
Anchorage
No address available
No telephone number available
Position Statement: To testify on both HB 8 and HB 667

Sen. Dean Rhoads
Nevada State Senator
No address available
No telephone number available
Position Statement: To speak on Sagebrush Rebellion/Tudra
Rebellion

Jim Bogart
Soldotna
No address available
No telephone number available
Position Statement: To speak on HB 667

Sandy Terrant
Fairbanks
No address available
No telephone number available
Position Statement: To speak on HB 8 and HB 667

Jimmy Montgonery
Soldotna
No address available
No telephone number available
Position Statement: To speak on HB 8 and HB 667

John Stephan
Soldotna
No address available
No telephone number available
Position Statement: To speak on HB 667

Les Anderson
Soldotna
No address available
No telephone number available
Position Statement: To speak on HB 8

Larry Haden
Anchorage
No address available
No telephone number available
Position Statement: To speak on land bills.

HB 8 Previous action unavailable

HB 667 Previous action unavailable

ACTION NARRATIVE

Tape #114
Recording
Number 24

(Teleconference) - Rep. Fanning: Several weeks ago a subcommittee for HB 8 and HB 667 was formed. The subcommittee reported back with no recommendations.

Number 38

Rep. Randolph: (Prime sponsor for HB 8 - Sagebrush Rebellion/Tundra Rebellion). Reason for legislation - wants aggressive action by legislation. Discussed map.

showing lands controlled by Federal government. Discussion of lands legislation in lower 48 by other states trying to gain control of their lands. Made not that there is less private land in Alaska than the size of Rhode Island. Mr. Randolph gathered enough signatures to get this concern on the ballot.

Watt has stated he prefers to turn land over to state and local governments. Best opportunity with Reagen in power, and Watt where he is to make significant gains.

Been in touch with Sen. Dean Rhoads (Nevada). He will call and give us a rundown of effort in legislation.

Number 132

Rep. Fanning: Is language in HB 8 and initiative identical? (Randolph's reply: No - Bill is over two years old.)

Number 147

Rep. Fanning: Are there changes that other states have made that we should make? (Randolph's reply: Yes - When we get to the mark-up.)

Number 169

Dan Copeland: Wants definition of land? Likes HB 8 except Sect. 6. Why is 6 included under Sec. 6?

Number 213

Rep. Randolph: They are there because they are needed for uniform legislation. This type of legislation will allow us to have dialog with the Federal government and major concessions.

Number 236

Lynette Clark: Sec. 4 - Federal government now holds over 80% of Alaska lands. The Rebellion was started as a way to tell the Federal government to get out of their lives; and I urge you to pass our legislation.

Number 308

Charles Adams: In favor of both bills. As a hunter, I noted hunting is better when land is in private hands. He has hunted all across the United States.

Number 352

Rep. Fanning to Sen. Dean Rhoads: What are your thoughts on proceeding with legislation? His reply: April 1979, Nevada passed their land bill. Western legislators feel passage of the Tundra Rebellion is very

important. The Land Rebellion was a strong campaigning component in both local and even in the Presidential election.

Since the election, we have less rules and regulations; and a lot of executive orders were suspended. Some lands have been transferred over for community expansion.

In 1980, Congressman Santini introduced a bill in the house, and Senator Hatch introduced a bill in the Senate. Most important of all, I think, is that almost every household in America was exposed to the question, "why should the federal government own one-third of America?"

The Santini/Hatch bills were of course an enhancement to our Sagebrush Rebellion legislation. The Santini legislation (BLM only); had to go through two really tough committees. One chaired by Mo Udall the other by John Seiberling, both of whom are extreme environmentalists. Neither are particularly fond of the Sagebrush Rebellion. We have little chance of a hearing in that committee.

Senator Hatch's bill (including Forest Service and BLM), had several sponsors on it when the bill was introduced. Some Senators have gone so far as to remove their names from the bill later on. I think this is the main reason this situation has worsened. There is practically no chance of a hearing on that particular measure. There is a particularly bad feature of the Hatch bill. That the two most important people on the committee, Senator McClaren, Chairman, and Senator Walt, were not sponsors of the legislation. That makes it tough to get a bill through the committee and the committee chairmanship.

The legislation to transfer lands to states in massive amounts is going to be difficult at this time. Our legal case is pending in the ninth circuit court in San Francisco, and it will take several months before we get an answer.

What we need to do, is to shift gears quietly. We need to continue to pressure legislation such as the Tundra Rebellion;

continue our legal actions, to state, congress and the administration. But, we also need to explore new ground. We need to make massive land exchanges, and we definitely should encourage disposal of surplus lands to be sold to the private sector. We must explore a new era of land ownership, some call it privatization. In the west, and I am sure it would work in Alaska; we could sell surface rights only. Sell it at realistic prices. Present user would have first option on the land, and pay-off would be over a thirty or forty year pay period. All recreation and access rights on all lands should be transferred over to state and local control. We already own the wildlife, there is no reason why we shouldn't manage the habitat. We would let the state and local government resolve conflicts. Gas and oil rights should be retained by the federal government. State and local governments should receive a bigger share of the pie for managing costs. (Side Two of Tape): All of the above revenues, should be ear-marked to reduce the national debt.

As I see it, I am sure as we discuss these issues, it is possible in round-two, of the President's federalism program -- (this is my name for programs of his that may come down the road), that the transfer of control of federal land will be prime candidates for state/local programs. I am sure the passage of the Tundra Rebellion will greatly add support to this direction, particularly to the President's federalist role.

With that, I would like to conclude, and urge you all on the committee to pass the Tundra Rebellion. I think it would serve as a signal back to Washington that we want some changes made.

Number 89

Rep. Randolph: Unfortunately, legislators and the administration could question worth of passing this type of legislation.

Number 102

Rep. Fanning: Alaskans listening can understand delays from U.S. Congress. Re: Earlier testimony from sportsman. There is some opposition and intrepidation on guaranteeing access.

Sen. Rhoads: I will never get support unless access is guaranteed to a reasonable amount. If this had been done before - some of the problems that exist would not.

Questions and Answers - From Rep. Fanning to Sen. Rhoads: As I understand your comment, passage of the Sagebrush Rebellion precludes, and in fact, you would be in agreement with the State mandating the assurance of access to other State lands and across private lands for traditional purposes; such as hunting, (be it subsistence, or sport, and fishing), could and should be mandated.

Let me ask you another question, many legislators up here see as a stumbling block. In the Alaska Legislature, this House Bill has been introduced for several years; but, there are some folks in our legislature who feel that before we deal with this, we should pass an amendment to the constitution of the State; relating to the land disclaimed by the State under the act admitting Alaska into the union. I know that several other western states have that same provision in their constitution, (Article 12 in our constitution - the disclaimer agreement.) I wonder if you could shed some light. Have other states dealt with these issues? In what order? What would your suggestions be?

Senator Rhoads reply: I think our attorney general gave us the best opinion as to what to do with that. We, and other states, considered putting that on the ballot. They told us it wouldn't do us any good, because, congress would also have to reject it. Our attorneys told us, that it is a moot question. It was illegal because prior court cases, (mainly a case in Alabama - Palmer vs. Akin). They did not have the right to make western states put that into their constitution, but they let the eastern and mid western states leave it out. They actually discriminated against us, and Alaska.

We have not gone to the trouble of taking it out of our constitution for this reason: Our attorneys say that when it goes through

the court cycle hopefully, it will be ruled illegal.

Number 200

Larry Hayden: Excellent points were made by Sen. Rhoads. Approves of teleconference. Environment in Washington D.C. is more favorable now than it has been for a long time. At very least, we want a greater partnership in managing Federal lands. Wants legislature to pass bills so Feds know we want more land turned over to the State.

Number 235

Jim Bogart: Disagrees with Rhoads statement that the Federal government should keep subsurface rights when land is released. Likes bill - but why do we have to crawl. The lands belong to us. We don't want part - we want it all. Sec. 38: Property of the people. As Rep. Randolph to speak.

Number 270

Rep. Randolph: The only real reason for limitations was an attempt to write something that would get passed. If parks were in it, it wouldn't pass.

Number 282

Jim Bogart: Why give up mineral rights?

Number 298

Rep. Randolph: In order to achieve conformity with what the other states had passed. I agree with you - but, it was at least a starting point. Progression is good. Passage of HB 8 or initiative is as an impetus to this.

Number 329

Jim Bogart: When will this bill to to a vote?

Number 334

Rep. Fanning: Mark-up will start Monday. We have no direct dates for floor action; but we will try to more it out on Monday.

Number 380

Sandy Terrant: Elected officials should pass legislation, so people know their representatives are working for them.

Number 399

Jimmy Montgomery: When Texas was taken into the United States, they keep all of their Federal lands. Supports all bills.

Number 421

John Stephan: Emphasis in the Kenai moose range has changed. Now emphasis is on fowl, wildlife, then humans, in that order. Supports the bill.

Number 460

Les Anderson: Supports HB 8. It's a shame we have to go through this to get our fair share.

Number 497

Rep. Fanning: If you want to receive the informational packet "Committee on Public Lands", leave your name with the nearest teleconference center.

Number 575

Dan Copeland: Discussion of payment of national debt with land money.

Tape 115 Number 009

Rep. Fanning: Agrees that Alaska should receive surface and subsurface rights.

Number 035

Jim Bogart: I really think you are on the right track. Agrees with remarks made by Stephan. People are now backing away from what the Federal government is doing.

Number 054

Rep. Fanning: There are many volatile issues on the ballot this year. Should the legislators fail to take action on issues the public feels is important, we are fortunate in Alaska to have the initiative process. It is unfortunate that at times legislators are not able to take action in that, we have to bring that process into play. I think that this year, due to the importance of some of the issues, the legislators will get a message loud and clear when the people throughout the State vote on these initiatives that we in the legislature have been unable to come to grips with.

Thank you for your participation and HRC will stand in adjournment. Meeting adjourned at 4:25 p.m.

TUNDRA REBELLION FACT SHEET

By REPRESENTATIVE DICK RANDOLPH

1. What is the Sagebrush Rebellion? Originally under the Constitution, states were sovereign entities which gave the federal government limited powers to act as their agents in such matters as mutual defense and as trustee for lands to be transferred to new states upon admission to the union. This arrangement worked out fairly well for eastern states which have little or no federal land within their boundaries. However, as western states were admitted to the Union, the federal government began to require disclaimers from new states as to their rights to the federal land within their borders as a condition of statehood. These disclaimers did not bother many states because at the time they were made it was federal policy to dispose of these lands anyway. In 1976, however, Congress passed the Federal Land Policy Management Act (Organic Act) which declared that the federal government would from now on hold these lands in perpetuity. This act (FLPMA) touched off the 'sagebrush rebellion' which uses two theories to support it.

(1) FLPMA was a clear breach of trust by the federal government of its Constitutional duty to transfer this land to the states, and

(2) The Constitutional Equal Footing Doctrine requires that western states receive title to this public land on an equal basis with eastern states.

The 'Tundra Rebellion' enacts legislation which declares state ownership of public lands so that through judicial and political efforts, this land can be transferred to local and private interests.

2. Why is the 'Sagebrush Rebellion' important? In Alaska, we refer to this movement as the Tundra Rebellion. Land is the most basic resource in production. Unless land is allowed to be used for human purposes, both recreational and productive, our economy will be stifled and consumers will suffer. Federal policy has been to deter productive use of public lands with the result that our nation is dependent on foreign sources of oil and other minerals. This dependence is unnecessary and has us in a near war situation in the Middle East. Most important is the issue of responsive government and individual freedom. Transfer of these lands to state, local, and ultimately private control insures that those who live on or near this land can decide its best use. That isn't possible when unelected bureaucrats living thousands of miles away control the land. Who has more concern for the land? Those who live on it or unelected bureaucrats in Washington? And who should decide its use, Alaskans or

someone else? Although some question the ability of Alaskans to manage their own land, the 'Tundra Rebellion' asserts that we are worthy and deserving of this trust. With eventual transfer of this land to private hands based on use principles, individuals will have the freedom to decide their destiny and better their lives through use of the land. Thirteen western states (sometimes called the new colonies) contain about 90% of all federal lands. This rebellion has become the new American revolution, fighting a distant federal government which imposes hardships on the western colonies.

3. What are the chances of ultimate success? Clearly, the 'Tundra Rebellion' is Alaska's best chance available to rectify the unjust treatment that it is receiving from the federal government, and to develop the economy of our state. For that reason alone it is worth doing.

So far, six states have passed 'rebellion' legislation. They are Nevada, Utah, Arizona, Washington, Wyoming, and New Mexico. All thirteen western states will hopefully pass this type of legislation by 1981. It is incredible that Alaska, with about 95% of its land in federal ownership, has not taken the lead in this effort.

The 'Rebellion' effort has gone beyond the hopes of judicial satisfaction. Political pressure is mounting. Legislation has been introduced in Congress to rectify the situation, and with western states uniting and increasing the pressure, relief may be coming from that avenue. Although Secretary Andrus disclaims the 'Rebellion's' credibility, he has so far been afraid to challenge Nevada in court, and some Interior Department solicitors have admitted the chances of success for Nevada. There is considerable legal precedence on the side of the rebellion. Three presidential candidates have endorsed the 'rebellion' concept. Votes in state legislatures which have passed this legislation have run 5 to 1 in favor of the 'rebellion.' It is clear that we have everything to gain and nothing to lose by this course of action. The initiative effort will encourage elected officials to act responsibly on this issue.

THE TUNDRA REBELLION
March 5, 1980

This is meant to be an easy to understand explanation of issues involved in a 'Sagebrush Rebellion' type of statute for Alaska and the court proceedings which would follow.

Firstly, one might ask why Alaska should pursue this course at all. The reasoning behind this effort is one of more local control with individual control over one's own life as an ultimate objective. The theory is that federal control offers the least amount of Alaskan and individual choice. If title is transferred into state hands, Alaskans will have more control, and the likelihood of eventual transfer of land into private ownership is greatly enhanced.

Since an understanding of the history of federal land control is essential to seeing the whole picture, and since the courts will likely lean heavily on historical factors, a brief historical sketch is appropriate.

Before the French and Indian Wars, France claimed lands west of the 13 colonies all the way to the Mississippi River. When they lost the French and Indian Wars, France gave this land to England. Upon this grant, the King of England proclaimed these lands to be 'Temporary Indian Land' and unavailable for extension of existing colonies. When the Declaration of Independence occurred, each colony became an independent sovereign state and started making claims to expand westward. Next came the Articles of Confederation.

The Articles of Confederation gave Congress no power to own land within a state. Ordinances and resolutions enacted under the Articles of Confederation confirmed the trust of the public lands and acknowledged the duty of the feds to

dispose of the land. Included in these was the Northwest Ordinance regarding land north of the Ohio River. It provided for the admission of new states on an equal footing and for a duty on Congress to dispose of this land. Congress was to dispose of this land until the area became a state, in which case it would be transferred to the state along with sovereignty.

Under the Articles of Confederation, each state maintained its sovereignty but the federal government was charged with resolving boundary disputes. The Confederacy did not own one foot of land in the original 13 colonies.

Also under the Articles of Confederation, original states were to give back to the federal government claims to westward land which they had made following the Declaration of Independence. This was so the feds could hold this land in trust, both to sell and pay off revolutionary war debts, and to transfer to new states upon admission.

It is the contention of Nevada, based on legal arguments discussed elsewhere, that the new Congress under the Constitution succeeded the old Congress as the trust administrator for the land to be transferred to new states.

The Constitution itself manifests an intention that Congress continue to hold the unappropriated lands in trust. This is evidenced in: (1) property clause of Article IV, Section 3; (2) the framers' intentions to create a federal system of government; (3) from express grant of power to Congress to admit states and implied power to acquire territory; (4) the limitation on the federal government's powers to acquire land for its own use in the "needful buildings" clause of Article I, Section 8; and (5) from the Equal Footing Doctrine. These will be briefly discussed elsewhere.

The first two new states admitted were Vermont and Kentucky in 1791 and 1792. No terms or conditions were placed on their admission to the union and the federal government kept no land within those states. Tennessee was

the third new state admitted in 1796 with specific language in their statehood act which guaranteed them admission on an equal footing with the original states in all respects whatsoever.

As new states were admitted to the Union, very little land was retained by the federal government until the Rocky Mountains were reached. From that point westward, most states had imposed on them, as a condition to becoming a state, that they forever disclaim all rights and title to any lands or other property not granted to the state under the authority of the Act. Because of this term of these statehood acts, many states, including Alaska, wrote into their state constitutions this disclaimer on land. It is interesting to note, however, that Section 3 of the Alaska Statehood Act, also requires that the Constitution of the State of Alaska not be repugnant to the Constitution of the United States. It is clear that any land disclaimers in statehood acts are ineffective to derogate from the grant under the Equal Footing Doctrine.

The Equal Footing Doctrine is a well settled truism of Constitutional law which has been developed by judicial interpretation. The actual term "equal footing" does not appear in either the Constitution or in the Articles of Confederation. The Supreme Court has repeatedly referred to the condition of equality between the states as if it is an inherent attribute of the federal union. In short, the Equal Footing Doctrine prohibits Congress from imposing by consent or otherwise, conditions on admission to statehood which infringe upon the equality of the new state in relation to the other states. Cases, so far, leave the question open as to the application of the Equal Footing Doctrine to unappropriated lands within a state. At least this establishes no precedent against Alaska. Alaska would have to argue that the subject of unappropriated lands is a necessary incident of internal sovereignty affecting the dominion

or eventual dominion of the state over its unappropriated lands. The leading case on 'Equal Footing' (The Pollard case) clearly establishes that since the original thirteen states were specifically granted ownership of all navigable waters and the land thereunder, then the other states are also entitled to such ownership. This brings up an interesting question regarding federal rights to offshore natural resource rights and wild and scenic rivers designations.

One argument given by opponents of the 'sagebrush rebellion' is that the Equal Footing Doctrine only applies to political rights. This is countered, however, by the Pollard case and the fact that without federal relinquishment of land, states would be denied political "rights" such as large property tax bases.

Another Constitutional area involved in this issue is the "Property Clause" of Article 4 Section 3. This clause gives Congress power to dispose of and make all needful rules and regulations respecting territory or property of the United States. As can be readily seen, this clause is somewhat ambiguous in its application to the trust theory and Equal Footing Doctrine. State's advocates claim that this clause supports their case because it implies that Congress will dispose of its property, rather than keep it forever, and that the 'needful rules and regulations' only refers to those temporary ones which are applicable prior to disposal, or which specify the disposal itself. Opponents, on the other hand, argue that this clause only allows Congress to dispose of United States property if it so chooses, and that if it doesn't, then Congress may establish rules and regulations and keep the land forever. There are many complicated arguments in this regard, with the weight seemingly on the states' side. At any rate, it is likely that if a confrontation were to occur between the Equal Footing Doctrine and the federal government's interpretation of the property clause, the latter would yield. This is because of the relative importance of the two theories. The heavy

importance of the 'federal system of government' inherent in the Equal Footing Doctrine is a cornerstone of the Constitution. As such, it is more persuasive than an ambiguous interpretation of the property clause.

Another important concept in the 'sagebrush rebellion' issue is the "trust theory" which says that the federal government only holds land in trust for states until it can be transferred to them incident to statehood. The Articles of Confederation and ordinances thereunder recognized this trust theory, and, as mentioned in my historical discussion, the argument goes that this trust theory continued to be applied to Congress under the Constitution.

The Supreme Court has intimated on numerous occasions that it would deny the federal government the right to hold public lands permanently without the consent of the state. The Pollard case, mentioned previously, cites that whenever the United States shall have fully executed these trusts, the sovereignty of the new states will be complete throughout their respective borders, and they and the original states will be on an equal footing, in all respects whatever. Other cases indirectly support this trust theory, such as the Dred Scott case, which established that Congress cannot maintain what is in essence a territory or colony within any state in perpetuity.

In addition, a very strong argument can be made that the "necessary buildings, etc" clause of Article I, Section 8 of the Constitution clearly shows an intention for federal public land only to be held in trust. This clause specifically limits the federal government as to what land it can own within a state. This limitation includes forts, magazines and arsenals, dock yards, and other needful buildings upon consent of the state involved.

A brief examination of the constitutional powers of the states and the federal government is applicable to this issue as well. Under our Constitution the federal government was to have limited powers. Powers to remain with the

states were to be numerous and indefinite. Thus the power of the federal government was not to be exercised over internal or local objects such as land within states.

Some see Article 12, Section 12 of the Alaska Constitution as an impediment to a successful 'sagebrush rebellion' for Alaska. It is true that an Alaska 'sagebrush rebellion' initiative might be legally challenged as unconstitutional under Article 12, Section 12. However, this may not be true if the courts hold that federal retention of this land is unconstitutional in terms of the United States Constitution. Obviously, the Alaska Constitution would have to yield. In addition, HJR 51 calls for a constitutional amendment to be placed on the ballot which would take out that hindrance in our State Constitution.

Another potential problem with a successful legal challenge of federal control of Alaska land is the concept of sovereign immunity. This concept says that the federal government cannot be sued except in those cases where it has granted its permission. At first, Nevada was hoping the federal government would initiate suit against them over their statute. It became clear however, that the federal government chose to ignore the statute and put the burden on Nevada to find a way to initiate suit. Unfortunately, Nevada cannot bring the issue up very easily as a counterclaim to an ancillary suit by the feds, since counterclaims may not be for issues other than those which could have been brought as an original suit.

The way out of this dilemma appears to be a federal statute (28 USC 2409a) passed in 1972 which allows certain suits against the federal government in matters of settling title to land. One problem with this vehicle is that it contains a 12 year statute of limitations on suits. This means that any suit thereunder must be brought within 12 years of the date when the action arose or when the plaintiff would have known of the existence of the cause of action. The most likely argument is that since the statute was not in effect until 1972, an action couldn't have been

brought until that time and therefore Nevada, or Alaska, must bring suit by about 1984. Time is on the side of the federal government and they are probably delaying as much as possible and hoping to appropriate or reserve as much of the public land as possible prior to suit. It would behoove Alaska to start this process as soon as possible. Nevada's stance at this time is to wait in hopes of having other states pass similar legislation and join them in the suit. It is obvious that the Supreme Court is a political animal and that unified political pressure by western states will increase the possibility of success. One case relating to this issue pointed this out clearly by making the remark that the Supreme Court is a constitutional convention which is constantly in session.

It is to the state's advantage that there is no precedent on the issue of the Equal Footing Doctrine application to public lands. Alaska and Nevada could argue that not only are they unequal to the original 13 states, but that they are unequal to other public land states.

It is clear that any future suit by states to settle this issue will be based on the theory that the states should have received this land under the Equal Footing Doctrine shortly after statehood. Further, such suit would claim that since the land has not been transferred, it has been held in trust by the federal government for the states. Since there is no adequate remedy at law and since trusts are creations of an equitable nature, the remedy to be sought is an equitable one. The claim would be that the federal government has breached its trust responsibilities and that therefore a new trust administrator should be appointed. The only possibilities for a new trust administrator is the state itself or the courts. The courts do not have the administrative capacity to administer such a trust, and the trust would be virtually terminated if the state became the administrator. One other possibility is that as a remedy in equity, the court would order the feds

to begin the transfer of the land to the states with a timetable and certain conditions on interim management. The courts are reluctant to issue such orders to the federal government because they lack the capabilities to enforce such a decree short of a citation for contempt of court.

It is anyone's guess as to what would result from such a suit. Many guess that even though the legal weight of authority is on the states' side, the courts will find a way to resolve in favor of the feds because of the many years of established federal land management systems. They might be reluctant to disturb those systems. On the other hand, some theorize that the court will find some middle ground compromise position which will transfer at least a portion of the public lands to 'worthy' states on an equitable basis. In the end, since the courts rarely decide issues on the basis of principle, it is clear that political pressure will settle the issue. It is also clear that unless Alaska gains political leadership which will support this effort 100%, it may not be effective. This avenue for gaining state control of public lands appears to be about the only one available to us. If we pass it up, we may not get another chance short of Congressional action, mass civil disobedience, or secession from the United States.

NEVADA LEGISLATURE
SELECT COMMITTEE ON PUBLIC LANDS

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



ASSEMBLYMAN KAREN W. HAYES, *Chairman*
SENATOR NORMAN D. GLASER, *Vice Chairman*
SENATOR DON W. ASHWORTH
SENATOR RICHARD E. BLAKEMORE
ASSEMBLYMAN ALAN GLOVER
ASSEMBLYMAN DEAN A. RHOADS

STAFF DIRECTOR: ROBERT E. ERICKSON (702) 885-5

March 4, 1982

The Honorable Dick Randolph
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Randolph:

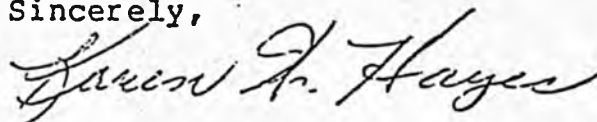
Thank you for your efforts in Alaska along the lines of Nevada's "Sagebrush Rebellion." Although the movement in Alaska has apparently been called the "Tundra Rebellion" because of your lack of sagebrush, we understand that it is basically the same concept as that advocated by Nevada and several other western states.

As you know, it is vital for as many western states as possible to unify in a common protest of the massive and unnecessary federal landholdings in the western United States. Although there is apparently no "appetite" in Congress at present for wholesale land transfers into state or local control, as originally advocated by the "Sagebrush Rebellion," there is growing support on Capitol Hill for disposal of excess federal lands into private ownership. If the legislature and people of Alaska make known their support for a general divestiture of the federal lands, this would be another indication to the politicians in Washington that we in the West are indeed serious regarding public lands issues.

It should also be mentioned that Nevada's attorney general is continuing the fight on the basic issue behind the "Sagebrush Rebellion," namely that Nevada and other western states were deprived of their basic Constitutional rights by not being placed on an "equal footing" with earlier states in respect to the percentage of lands under state and private control. This matter will be reviewed in the next few months in the Ninth U.S. Circuit Court of Appeals. We will keep you informed of our progress along this legal front.

Again, thank you for your efforts in Alaska which have complemented our "Sagebrush Rebellion" movement. We strongly encourage you to keep your public lands movement active in Alaska. We need to put as much pressure as possible on the Federal Government in order to reverse the current federal land situation.

Sincerely,



Assemblyman Karen W. Hayes, Chairman
Clark Co. Assembly District No. 13 (D)

Senator Norman D. Glaser, Vice Chairman
Northern Nevada Senatorial District (D)

Senator Don W. Ashworth
Clark County District No. 3 (D)

Senator Richard E. Blakemore
Central Nevada Senatorial District (D)

Assemblyman Alan H. Glover
Assembly District No. 40 (D)

Assemblyman Dean A. Rhoads
Assembly District No. 33 (R)

JAN 12 1982

United States Senate

WASHINGTON, D.C. 20510

January 4, 1982

The Honorable Dick Randolph
Alaska State Legislature
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Dick:

Thank you for your recent letter.

I certainly appreciate and share your concern over the issue of responsible land management. The Sagebrush Rebellion is a major issue in Idaho just as the "Tundra Rebellion" is in Alaska.

The Sagebrush Rebellion has been misrepresented as a land grab, despite numerous safeguards to assure that the lands will remain in government hands. The Western States, which have an excellent record as government land managers, are sending a message to Washington, D.C. that they are capable, if the BLM is not, to manage those government lands responsively and efficiently. The beautiful system of state parks, and state management of wildlife and other natural resources are testament to the fact that the federal government does not have a monopoly on land management talent.

I am a strong supporter of the concept of the Sagebrush Rebellion. I feel it is high time to send a message to the federal land managers that if they are incapable of managing the government lands responsibly and efficiently, that they should turn them over to the states. Consequently, I was pleased when Senator Hatch introduced S. 1245, although there are several reasons why I have not cosponsored the bill.

First, by including the Forest Service in the definition of lands for transfer, the debate will be shifted from the subject of land management to the subject of transfer. That inclusion will defeat the bill, in my opinion, since the Forest Service enjoys a greater reputation for responsive land management than do other land management agencies such as the BLM.

Secondly, the bill allows the state to select the prime federal lands for transfer. Such an action would leave the federal Treasury paying for losses incurred on unprofitable (and unwanted) federal lands. I feel that the land transfers should be complete, that is, they should include all of the land of a federal agency that is not managing the lands to their fullest multiple-use. Again, the issue of the bill should be land management, not land transfer.

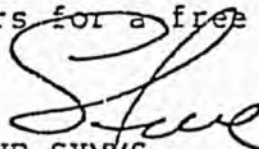
The Honorable Dick Randolph
January 4, 1982
Page 2

As this legislation moves through Congress, I will closely monitor its progress, and will be active in its consideration. In the meantime, I will continue to work with Secretary Watt in his efforts to improve the administrative government land management policies.

Thanks for making me aware of your views.

With best regards, I am

Yours for a free society,



STEVE SYMMS
United States Senator

SS/wfc



TED SCHWINDEN
GOVERNOR

State of Montana
Office of the Governor
Helena 59620

UAK . . . 2

January 25, 1982

The Honorable Dick Randolph
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Randolph:

Thank you for your letter of December 18, 1981, explaining some of the issues being covered by your "Tundra Rebellion". In many ways your "Rebellion" parallels that of Montana's "Sagebrush Rebellion".

I hope that you will keep my office informed of your progress and any information pertaining to your "Rebellion".

Sincerely,

A handwritten signature in cursive script that reads "Ted Schwinden".

TED SCHWINDEN
Governor

United States Senate

WASHINGTON, D.C. 20510

FEB 01 1982

January 22, 1982

The Honorable Dick Randolph
Alaska House of Representatives
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Randolph:

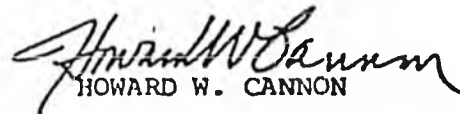
Thank you for your letter advising me of developments in the State of Alaska to secure greater control over present Federal land in that State, which you call the Tundra Rebellion. I appreciate knowing of your leadership in this effort in Alaska.

While the so-called Sagebrush or Tundra Rebellion efforts are mostly State initiatives, I want you to know I am a co-sponsor with Senator Hatch of his bill to provide for a legislated process for transferring public lands in the West to State control.

Thank you for your letter on this important matter, and you may be sure I will be supportive of the effort both in your State of Alaska, as well as Nevada and other Western States.

With best wishes, I am

Sincerely,


HOWARD W. CANNON

HWC:KAbv

COMMITTEES:
INTERIOR AND INSULAR AFFAIRS
SMALL BUSINESS

Congress of the United States

House of Representatives

Washington, D.C. 20515

FEB 0 2 1982

DISTRICT OFFICE:
2311 FEDERAL BUILDING
SALT LAKE CITY, UTAH 84138
(801) 524-4394

COUNTIES:

BEAVER	PIUTE
GARFIELD	SALT LAKE
IRON	TOOOLE
JUAB	WASHINGTON
KANE	WAYNE
MILLARD	

January 28, 1982

The Honorable Richard Randolph
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Randolph:

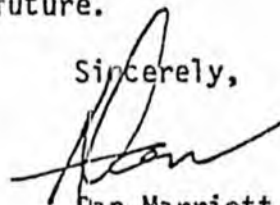
I have received your recent letter regarding the "Tundra Rebellion" and your initiative to transfer Alaskan lands from the federal government to the State of Alaska.

While I am pleased with the response that the Department of Interior under Secretary Watt has given to the land issues in the western states and Alaska, I believe there remains a fundamental inequality between states of the Union because of the distribution of land ownership.

It is unthinkable to many that the federal government should own 90 percent of the land in New York or Massachusetts, and yet citizens of these and other nonwestern states have no problem imposing that condition on your state and my State of Utah.

In the past, I have cosponsored legislation to redress this situation and I shall continue to do so in the future.

Sincerely,



Dan Marriott
Member of Congress

DM/c

INTERIOR AND INSULAR AFFAIRS
 SUBCOMMITTEES:
 MINES AND MINING, CHAIRMAN
 PUBLIC LANDS AND NATIONAL PARKS
 ENERGY AND COMMERCE
 SUBCOMMITTEES:
 COMMERCE, TRANSPORTATION AND TOURISM
 OVERSIGHT AND INVESTIGATIONS
 SELECT COMMITTEE ON AGING
 SUBCOMMITTEE:
 HOUSING AND CONSUMER INTERESTS
 U.S. CONGRESSIONAL TRAVEL
 AND TOURISM CAUCUS, CHAIRMAN

WASHINGTON OFFICE:
 2429 RAYBURN HOUSE OFFICE BUILDING
 WASHINGTON, D.C. 20515
 TELEPHONE: (202) 225-5965

Congress of the United States
 House of Representatives
 Washington, D.C. 20515

DISTRICT OFFICES:
 SUITE 4-620 FEDERAL BUILDING
 300 LAS VEGAS BOULEVARD SOUTH
 LAS VEGAS, NEVADA 89101
 TELEPHONE: (702) 335-6575

SUITE 1129 FEDERAL BUILDING
 300 BOOTH STREET
 RENO, NEVADA 89502
 TELEPHONE: (702) 784-5557

January 7, 1982

Representative Dick Randolph
 Alaska House of Representatives
 Pouch V
 Juneau, Alaska 99811

Dear Representative Randolph:

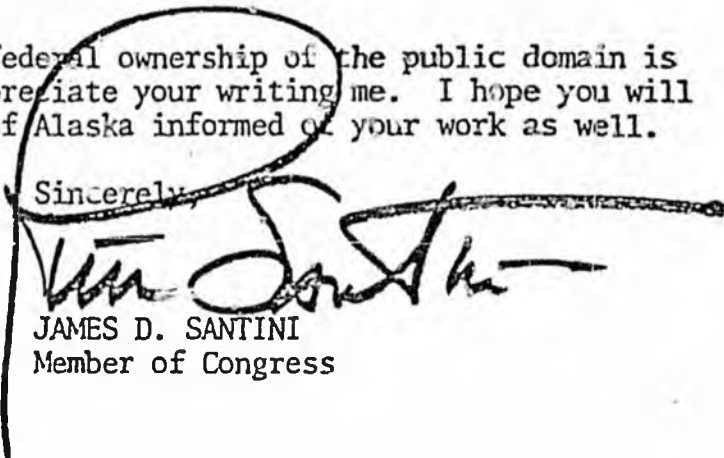
I very much appreciated hearing about the "Tundra Rebellion" in Alaska. Your goals and objectives are very similar to the Sagebrush Rebellion and I wish you the best of luck in your public initiative and in your legislative efforts.

As you may know, Nevada is 87 percent federally owned and controlled. I introduced H.R. 3655 in the House of Representatives to return millions of acres of federally appropriated lands (most federal lands with the exception of national forests, parks, and national wildlife refuges) to states to control and manage.

In fairness, I must tell you the support behind the Sagebrush Rebellion, which began in the Nevada Legislature, seems to be changing. The prime movers in my state have informed me they are temporarily putting off land transfers in favor of amending another federal proposal as a short term solution. You may want to contact Nevada Assemblyman Dean Rhoads, Tuscarora, Nevada to obtain his views and to discuss strategy. Assemblyman Rhoads has been very active on the Sagebrush Rebellion issue.

The whole question of federal ownership of the public domain is vitally important, and I appreciate your writing me. I hope you will keep Congressman Don Young of Alaska informed of your work as well.

Sincerely,



JAMES D. SANTINI
 Member of Congress

JDS:mcs



FEB 11 1982

The State of Nevada
Executive Chamber

Robert List
Governor

Capitol Complex
Carson City, Nevada 89710

February 9, 1982

The Honorable Dick Randolph
Alaska House of Representatives
Pouch V, Juneau, Alaska 99811

Dear Representative Randolph:

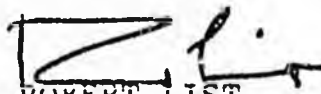
While I am not familiar with all the details of the "Tundra Rebellion", I can assure you that Nevada shares Alaska's interest in achieving genuine land reform in the West. However, I must respectfully disagree with your assessment of the Reagan Administration. We are, in fact, pleased by the efforts this Administration is making to be a more reasonable and responsive landlord.

We, too, are pursuing the judicial and legislative avenues for land reform while, at the same time, we are working with the federal administration to immediately reduce the burden of excessive control from Washington.

As you know, there have recently been discussions in Washington that the federal government could and should dispose of much unneeded real property to both reduce the national debt and eliminate massive operating bureaucracies. Furthermore, the States Rights Coordinating Council, composed of legislators in the western states, and the Western Council of State Governments have both passed resolutions with this in mind. Most recently, a resolution (SR 231) has been introduced in the U.S. Senate by Senator Charles Percy (R) Illinois which leads in the same direction.

Much good has been accomplished already in the land reform movement but we all need to work for permanent solutions for the future of the west. We, as westerners, must move forward with a unified front.

Sincerely,


ROBERT LIST
Governor



STATE OF NEW MEXICO
OFFICE OF THE GOVERNOR
SANTA FE
87503

BRUCE KING
GOVERNOR

June 17, 1980

Dr. William P. Stephens
P. O. Box 3189
NMSU Campus
Las Cruces, New Mexico 88001

Dear Bill:

I am pleased to appoint you to serve on the Public Lands Board of Review effective June 6, 1980 for a term ending at the pleasure of the Governor.

Your membership on this Board is a public service to the people of this state. Your willingness to serve is commendable, and we appreciate the contribution you will make.

Thanks for your help.

Sincerely,

A handwritten signature in cursive script that reads "Bruce King".

BRUCE KING
Governor



STATE OF NEW MEXICO

OFFICE OF THE GOVERNOR

SANTA FE

87503

JAN 27 1982

BRUCE KING
GOVERNOR

January 6, 1982

The Honorable Dick Randolph
Alaska House of Representatives
1105 Cushman Street
Fairbanks, AK 99701

Dear Representative Randolph:

Thank you for your letter of December 18, 1981 setting forth your position on the "Tundra Rebellion." The question of federally administered public lands is, of course, a volatile issue with profound implications. The issue of control of the vital resources represented by these lands persists, to varying degrees, despite the apparent equivocation at the national level which you point out.

Due to this uncertainty, it is difficult to accurately discern the eventual outcome of this intense and pervasive question. Nonetheless, it is quite apparent that the fundamental questions which have been raised reflect a persistent doubt about the inviolability of the status quo. Increasingly, states have been asserting their prerogative to exercise greater control over the lands within their boundaries.

Recognizing the monumental implications of this issue, the second session of the thirty-fourth New Mexico legislature enacted into law a bill addressing state control of public lands. I am pleased to enclose a copy for your information.

I share the concern of many of those in the western states, both within and outside of government, regarding the critical importance of public lands, and will continue to advocate for the realization of states' prerogatives in this area.

Sincerely,

BRUCE KING
Governor

Enclosure

Randolph 3-31-82
HB8

Randolph —

Freeman — his resolution

Randolph →

Entertaining motion to amend:

Freeman: as far as mineral its. →

oil & gas ?

F: only a gesture — could it be
detrimental to us as far as our oil its.

This does conform to the intention —

Freeman: was admin. notified?

Jules: D.W.R.

Barnes: amicus curiae brief on side of Nevada —

Sec 3 deleted — 4-1

CS moved

H

B

4

7

WORK ORDER REQUEST FORM

N2 - 2669

KEYWORDS: fish/game, game
food
analysis

ASSIGNED TO Hein

REQUEST FOR: BILL RESOLUTION RESEARCH Analysis
OTHER A

SUBJECT HB 47 - Wasting of Meat From Game

REQUESTED FOR House Judiciary BY Barnes EXT. _____

* DELIVER TO Representative Barnes Hein TAKEN BY Hein

INSTRUCTIONS, EXPLANATIONS _____

Section by section analysis of CSHB 47 (Judiciary) relating to the prohibition
against waste of the meat of big game animals and wild fowl.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED

AUTHORIZED TO CONFER WITH _____

RETURN _____

_____ TO REQUESTER

APPROVED: BGB Director, Legal Services

REVIEWED _____

IN 3/2 DUE _____

TYPED - Draft _____ DATE _____

Final _____ DATE _____

PROOFED _____ DELIVERED _____

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT

FINAL

1201

****COPY****
ALASKA HOUSE OF REPRESENTATIVES
CSHB 47 JUD 3RD

2ND SESSION 12TH LEG

3/17/82 5:55 PM

	32	YEAS	3	NAYS	2	EXC	3	ABS		
Y			Y	CHUCKWUK	Y		HAUGEN	Y	PHILLIPS	
Y			Y	CLOCKSIN	Y		HAYES	Y	RANDOLPH	
Y			N	COTTEN	Y		HURLBERT	E	ROGERS	
Y			Y	CUDDY	Y		MALONE	E	SMITH	
Y			Y	DUNCAN	Y		MARTIN	Y	SUTCLIFFE	
Y			Y	FANNING	Y		MEEKINS	N	VASKA	
Y			A	FREEMAN	Y		METCALFE	Y	ZHAROFF	
Y			N	FULLER	Y		MILLER			
Y			A	GARDINER	Y		MONTGOMERY			
Y			Y	GRUSSENDORF	Y	A	MOSS			
Y			Y	HALFORD	Y		O'CONNELL			

+ VOTED FOR
* CHANGED VOTE

Sec. 16.30.010 WANTON WASTE OF WILD FOOD ANIMALS.

(a) It is unlawful for a person to kill a wild food animal and with criminal negligence, fail to salvage for human consumption at least 51% of the required portions of the edible meat, regardless of the removal of any non-edible parts.

(b) A person violating this section shall be guilty of a class C felony. A definite term of one hundred and twenty consecutive hours imprisonment shall be imposed, and a minimum fine of \$2,500 shall be imposed upon conviction. Imprisonment for the definite minimum term and imposition of the \$2,500 minimum fine may not be suspended under AS 12.55.080 or any other law, nor may imposition of that definite minimum term and the minimum fine be suspended under AS 12.55.085.

(c) In addition to any imprisonment and fine imposed under this section, the convicted person's hunting, trapping, and guide licenses, if any, shall be revoked by the court for five years. ~~Any such revocation by the court shall not be dependent of any administrative revocation of the same license.~~ ~~practice~~

(d) It shall be a defense to any criminal charge under this section that the failure to salvage for human consumption, a percentage of the required portion of the edible meat was due to circumstances beyond the control of the person killing the animal, including but not limited to the following:

- (1) theft;
- (2) unanticipated weather conditions or other acts of God;
- (3) unavoidable loss in the field to another wild animal.

Sec. 16.30.011 WASTE OF WILD FOOD ANIMALS

(a) It is unlawful for a person to kill a wild food animal and with criminal negligence, fail to salvage for human consumption all of the required portion of the edible meat, regardless of the removal of any non-edible parts.

(b) A person violating this section shall be guilty of a class ~~B~~ ^A misdemeanor.

(c) In addition to any imprisonment and fine imposed upon conviction under this section, the convicted person's hunting, trapping, and guide licenses, if any, shall be revoked in the court for the remainder of the year.

(d) It shall be a defense to any criminal charge under this section that the failure to salvage for human consumption of a percentage of the required portion of the edible meat was due to circumstances beyond the control of the person killing the animal, including but not limited to the following:

- (1) theft;
- (2) unanticipated weather conditions or other acts of God;

to persons specified at 08.54.240(2).

(3) unavoidable loss in the field to another wild animal.

Sec. 16.30.025 LEGAL ACCOUNTABILITY AND COMPLICITY.

For purposes of this chapter, except for AS 16.30.012, AS 11.16 shall apply ~~to a person who assists another person to take game~~

with the intent of receiving monetary or material remuneration for the services, by accompanying and directing the client personally or through licensed assistants for the duration of a hunt, and not solely for the purpose of providing transportation services

Sec. 16.30.030 DEFINITIONS. For this chapter:

- (1) "department" means the Department of Fish and Game.
- (2) "big game wild food animal" means moose, caribou, mountain sheep, mountain goat, feral reindeer, deer, elk, bison, walrus and musk-ox;
- (3) "criminal negligence" is defined and used as in AS 11.81.
- (4) "required portion of the edible meat" means:

(A) no less than the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and the radius-ulna (knee), hind quarters as far as the distal joint of the tibia-fibula (stifle joint), and that portion of the animal between the front and hind quarters, except the viscera, as to big game wild food animals.

(B) no less than the meat of the breast, as to small game wild food animals.

However, none of the following shall be considered with the "required portion of the edible meat":

- (A) meat of the head; *that has been damaged and made inedible by the method of taking*
- (B) ~~any meat damaged in the killing and consequently inedible;~~
- (C) bones, sinew, and incidental meat reasonable lost as a result of boning or a close trimming of the bones;
- (D) ~~internal organs and glands, such as heart, liver, spleen, lungs, bladder and stomach.~~ (D) viscera

(5) "small game wild food animal" means all species of wild water fowl, snipe, crane, goose and ptarmigan;

(6) "wild food animal" means all species listed under (2) or (3) of this section;

5

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

SUBPORT BUILDING
JUNEAU, ALASKA 99801

PHONE: 465-4190

February 11, 1982

The Honorable Ramona Barnes
State House of Representatives
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Ms. Barnes:

You requested an analysis of the amendments, offered by Rep. Fanning, of CSHB 47, the bill that would amend AS 16.30, the "wanton waste of game" statute. As you know, the Department has several times gone on record as favoring HB 47, especially the concept of cleaning up this statute and providing stiffer penalties for waste of game.

Rep. Fanning's amendments are, in effect, a complete re-write of CSHB 47, and so must be compared to both the existing statute (AS 16.30) and CSHB 47.

HB 47 leaves the existing AS 16.30.010 (a), (b) and (c) intact; the amendment re-writes these sections. There are advantages to this approach; "most" of the edible meat is now qualified as 51 percent or greater. Note, however, two deletions: (b) (2) that now requires a person convicted of waste to turn over to the Department all meat salvaged (perhaps this is not important, since the court could confiscate the meat), and the statement that "The shooting of a wild food animal is prima facie evidence of intent to kill it." Whether the latter statement is important should be decided by competent legal authority.

The amendment also substitutes "criminal negligence" for the existing terms, "intentionally, knowingly, recklessly or negligently;" this seems to be justified, since criminal negligence is defined in AS 11.81.900 (4).

Perhaps the primary thrust of the amendment, as compared to CSHB 47, is to establish different levels of culpability for various degrees of failure to salvage; failure to salvage at least half of the edible meat of a wild animal is a class C felony, while failure to salvage the entire amount of the edible meat (as defined) is a class B misdemeanor. I think this approach is a reasonable one and would strengthen the bill.

A considerable problem still exists with Rep. Fanning's amended version, that CSHB 47 attempted to solve: the differentiation between "big game wild food animals" and "small game wild food animals." The original

problem lies in existing statute, where it is required that "most of the edible meat" of a wild food animal includes "meat of the front quarters ---," etc, which obviously was intended to apply to big game, and not to waterfowl, grouse, ptarmigan, etc that are also defined (AS 16.30.030 (2)) as wild food animals. CSHB 47 attempts to cure this problem by splitting the definition of wild food animal into big game and small game components, and separately defining the amount of edible meat to be salvaged from each (in the case of small game, the meat of the breast only). Rep. Fanning's amendments, however, uses the term "wild food animal" in sections 10 and 11; only in 16.30.030 (2) and (5) are the terms "big game wild food animal" and "small game wild food animal" listed. Therefore, his 16.05.030 (4) "required portion of the edible meat" applies to all wild food animals - the problem existing in present statutes. My suggestion would be to provide that his 16.30.030 (9) apply specifically only to big game wild food animals (as defined in 16.30.030 (2)) and another section be added similar to CSHB 47, page 1 lines 23 and 24.

Two typographical errors are noted: in 16.30.010 (6), line 3, "improved" should presumably be "imposed;" in 16.30.030 (5), line 2, "goose" should be "grouse".

Sincerely,



Robert A. Hinman
Deputy Director
Game Division

March 1, 1982

Original sponsors: Grussendorf, Bettisworth,
Fanning, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 47 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the prohibition against waste of
7 the meat of big game animals and wild fowl."

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

9 * Section 1. AS 16.30.010 is repealed and reenacted to read:

10 Sec. 16.30.010. WANTON WASTE OF BIG GAME ANIMALS AND WILD FOWL.

11 (a) It is a class A misdemeanor for a person who kills a big game
12 animal or a species of wild fowl to fail, intentionally, knowingly,
13 recklessly, or with criminal negligence, to salvage for human consump-
14 tion the edible meat of the animal or fowl.

15 (b) A person convicted of violating this section who has failed to
16 salvage from a big game animal at least the hindquarters as far as the
17 distal joint of the tibia-fibula (stifle joint) shall be sentenced to

18 (1) a definite term of imprisonment of not less than 160
19 consecutive hours; and

20 (2) a fine of not less than \$2,500.

21 (c) ^{fine} A sentence imposed under (b) of this section may not be sus-
22 pended, nor may imposition of the sentence be suspended.

23 * Sec. 2. AS 16.30 is amended by adding new sections to read:

24 Sec. 16.30.015. SURRENDER OF SALVAGED PORTIONS, LICENSE FORFEITURE.

25 A person convicted of violating AS 16.30.010

26 (1) shall surrender to the department all salvaged portions
27 of the animal or fowl;

28 (2) forfeits his hunting license;

29 (3) is ineligible to hold a hunting license for

*The word "sentence" is
1. Term of fine*

1 (A) the year in which the conviction is entered and the
2 year following the year in which the conviction is entered;

3 (B) a period of five years from the date of the convic-
4 tion if he has failed to salvage from a big game animal at least
5 the hindquarters as far as the distal joint of the tibia-fibula
6 (stifle joint).

7 Sec. 16.30.017. DEFENSES. It is a defense to a criminal charge
8 under AS 16.30.010 that the failure to salvage the edible meat was due
9 to circumstances beyond the control of the person charged, including

10 (1) theft of the animal or fowl;

11 (2) unanticipated weather conditions or other acts of God;

12 (3) unavoidable loss in the field to another wild animal.

13 * Sec. 3. AS 16.30.030 is amended by adding new paragraphs to read:

14 (3) "big game animal" means moose, caribou, mountain sheep,
15 mountain goat, feral reindeer, deer, elk, bison, walrus, or musk-ox;

16 (4) "criminal negligence" means criminal negligence as
17 defined in AS 11.81.900(a)(4);

18 (5) "edible meat" means, in the case of big game animals, the
19 meat of the ribs, neck, brisket, front quarters as far as the juncture
20 of the humerus and the radius-ulna (knee), hindquarters as far as the
21 distal joint of the tibia-fibula (stifle joint), and that portion of the
22 animal between the front and hindquarters; in the case of wild fowl, the
23 meat of the breast; however, "edible meat" of big game or wild fowl does
24 not include

25 (A) meat of the head;

26 (B) meat that has been damaged and made inedible by the
27 method of taking;

28 (C) bones, sinew, and incidental meat reasonably lost as
29 a result of boning or a close trimming of the bones;

1 (D) viscera;

2 (6) "intentionally" means intentionally as defined in AS 11.-
3 81.900(a)(1);

4 (7) "knowingly" means knowingly as defined in AS 11.81.900(a)-
5 (2);

6 (8) "recklessly" means recklessly as defined in AS 11.81.900-
7 (a)(3);

8 (9) "wild fowl" means species of wild fowl for which seasons
9 or bag limits have been established by state or federal law.

10 * Sec. 4. AS 16.30.020 is repealed.

Hein

2/26/82

Original sponsors: Grussendorf, Bettisworth,
Fanning, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 47 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the prohibition against waste of
7 the meat of big game wild food animals and wild fowl."

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

9 * Section 1. AS 16.30.010 is repealed and reenacted to read:

10 Sec. 16.30.010. WANTON WASTE OF BIG GAME WILD FOOD ANIMALS. (a)

11 It is unlawful for a person who kills a big game wild food animal to
12 fail, with criminal negligence, to salvage for human consumption at
13 least ^{most} 51 percent of the edible meat of the animal.

14 (b) A person violating this section is guilty of a class A mis-
15 demeanor and upon conviction shall be sentenced to 160 consecutive hours
16 of imprisonment and a fine of not less than \$2,500, nor more than \$5,000.

17 ^{Neither} ~~The sentence and the imposition of sentence may not be suspended.~~ ?

18 (c) The court shall order that all salvaged portions of the animal
19 be surrendered to the department.

20 (d) A person convicted of a violation of this section

21 (1) forfeits all hunting, trapping, and guide licenses; and

22 (2) is ineligible to hold a hunting, trapping, or guide
23 license for a period of five years from the date of the conviction.

24 (e) Edible meat of a big game wild food animal

25 (1) includes the meat of the ribs, neck, brisket, front
26 quarters as far as the juncture of the humerus and the radius-ulna
27 (knee), hindquarters as far as the distal joint of the tibia-fibula
28 (stifle joint), and that portion of the animal between the front and
29 hindquarters;

2/26/82

1 (2) does not include meat of the head; meat that has been
2 damaged and made inedible by the method of taking; bones, sinew, and
3 incidental meat reasonably lost as a result of boning or a close trim-
4 ming of the bones; or viscera.

5 * Sec. 2. AS 16.30 is amended by adding a new section to read:

6 Sec. 16.30.011. WASTE OF WILD FOWL. (a) It is unlawful for a
7 person who kills a species of wild fowl for which the department has
8 established seasons and bag limits to fail, with criminal negligence, to
9 salvage for human consumption all of the edible meat (of the breast) of
10 the fowl.

11 (b) A person violating this section is guilty of a class A mis-
12 demeanor.

13 (c) In addition to any imprisonment or fine imposed upon a person
14 convicted of a violation of this section, the court shall order that all
15 salvaged portions of the fowl be surrendered to the department.

16 (d) A person convicted of a violation of this section

17 (1) forfeits all hunting, trapping, and guide licenses; and

18 (2) is ineligible to hold a hunting, trapping, or guide
19 license for the year in which the conviction is entered and the year
20 following the year in which the conviction is entered.

21 (e) Edible meat of the breast of a species of wild fowl does not
22 include meat that has been damaged and made inedible by the method of
23 taking; bones, sinew, and incidental meat reasonably lost as a result of
24 boning or a close trimming of the bones; or viscera.

25 * Sec. 3. AS 16.30.012(a) is amended to read:

26 (a) It is unlawful to possess the raw horns or antlers of a big
27 game wild food animal without its being accompanied by most of its
28 edible meat unless

29 (1) most of its edible meat was salvaged in accordance with

2/26/82

1 law;

2 (2) the horns or antlers were acquired by gift from another
3 person after the associated meat was salvaged;

4 (3) the meat was lost due to circumstances beyond the posses-
5 sor's control, including loss in the field to another animal, weather or
6 other acts of God, or theft.

7 * Sec. 4. AS 16.30.012(b)(2) is amended to read:

8 (2) "raw" means an appearance, by reasonable observation,
9 that indicates its having been taken from a big game wild food animal
10 during the current or most recent lawful hunting season for that animal.

11 * Sec. 5. AS 16.30 is amended by adding a new section to read:

12 Sec. 16.30.015. DEFENSES. It is a defense to a criminal charge
13 under AS 16.30.010 - 16.30.011 that the failure to salvage for human
14 consumption the required portion of the edible meat was due to circum-
15 stances beyond the control of the person charged, including

16 (1) theft;

17 (2) unanticipated weather conditions or other acts of God;

18 (3) unavoidable loss in the field to another wild animal.

19 * Sec. 6. AS 16.30.020 is amended to read:

20 Sec. 16.30.020. ANIMALS EXEMPTED [EXCEPTED]. The provisions of
21 this chapter [AS 16.30.010 - 16.30.012] do not apply to animals which
22 the Board of Game [BOARD] exempts by regulation.

23 * Sec. 7. AS 16.30.030 is amended by adding new paragraphs to read:

24 (3) "big game wild food animal" means moose, caribou, moun-
25 tain sheep, mountain goat, feral reindeer, deer, elk, bison, walrus and
26 musk-ox;

27 (4) "criminal negligence" means criminal negligence under
28 AS 11.81.

29 * Sec. 8. AS 16.30.030(2) is repealed.

Original sponsors: Grussendorf, Bettisworth,
Fanning, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 47 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TWELFTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to the prohibition against waste of
7 the meat of wild food animals."

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

9 * Section 1. AS 16.30.010 is repealed and reenacted to read:

10 Sec. 16.30.010. WANTON WASTE OF WILD FOOD ANIMALS. (a) It is
11 unlawful for a person to kill a big game wild food animal and, with
12 criminal negligence, fail to salvage for human consumption ^{at least} ~~at least 51~~
13 ^{of the meat} ~~percent~~ of the required portions ^{of} of the edible meat, regardless of the
14 removal of any nonedible parts.

15 (b) A person violating this section is guilty of a class A mis-
16 ^{minimum} ~~a~~ term of 160 consecutive hours imprisonment shall be
17 imposed. A minimum fine of \$2,500 shall be imposed upon conviction.
18 Imprisonment for the definite minimum term and imposition of the minimum
19 fine may not be suspended under AS 12.55.080 or any other law. Imposi-
20 tion of sentence may not be suspended under AS 12.55.085 or any other
21 law.

22 (c) In addition to the imprisonment and fine imposed under this
23 section, the convicted person's hunting, trapping, and guide licenses,
24 if any, shall be revoked by the court for five years, and all portions
25 of the animal that have been salvaged shall be surrendered to the depart-
26 ment.

27 (d) It is a defense to a criminal charge under this section that
28 the failure to salvage for human consumption ^{most} ~~a percentage of~~ the required
29 portion of the edible meat was due to circumstances beyond the control

1 of the person killing the animal, including but not limited to the
2 following:

- 3 (1) theft;
4 (2) unanticipated weather conditions or other acts of God;
5 (3) unavoidable loss in the field to another wild animal.

6 * Sec. 2. AS 16.30 is amended by adding a new section to read:

7 Sec. 16.30.01i. WASTE OF WILD FOOD ANIMALS. (a) It is unlawful
8 for a person to kill a wild food animal and with criminal negligence
9 fail to salvage for human consumption all ~~of the required portion~~ of the
10 edible meat, ^{of the animal} regardless of the removal of any nonedible parts.

11 (b) A person violating this section is guilty of a class A mis-
12 demeanor.

13 (c) In addition to any imprisonment or fine imposed upon convic-
14 tion under this section, the convicted person's hunting, trapping, and
15 guide licenses, if any, shall be revoked in the court for the remainder
16 of the year and the following year, and all portions of the animal that
17 have been salvaged shall be surrendered to the department.

18 (d) It is a defense to a criminal charge under this section that
19 the failure to salvage for human consumption a ^{ade} percentage ~~of the required~~
20 portion of the edible meat was due to circumstances beyond the control
21 of the person killing the animal, including but not limited to the
22 following:

- 23 (1) theft;
24 (2) unanticipated weather conditions or other acts of God;
25 (3) unavoidable loss in the field to another wild animal.

26 * Sec. 3. AS 16.30 is amended by adding a new section to read:

27 Sec. 16.30.025. LEGAL ACCOUNTABILITY AND COMPLICITY. For purposes
28 of AS 16.30.010 - 16.30.011, AS 11.16 applies to persons specified in
29 AS 08.54.240(2).

1 * Sec. 4. AS 16.30.030(2) is repealed and reenacted to read:

2 (2) "wild food animal" means all species listed under (3) or
3 (6) of this section;

4 * Sec. 5. AS 16.30.030 is amended by adding new paragraphs to read:

5 (3) "big game wild food animal" means moose, caribou, mountain
6 sheep, mountain goat, feral reindeer, deer, elk, bison, walrus and
7 musk-ox;

8 (4) "criminal negligence" means criminal negligence as defined
9 and used in AS 11.81;

10 (5) ~~"required portion of the edible meat"~~ means, in the case
11 of big game wild food animals, no less than the meat of the ribs, neck,
12 brisket, front quarters as far as the juncture of the humerus and the
13 radius-ulna (knee), hindquarters as far as the distal joint of the
14 tibia-fibula (stifle joint), and that portion of the animal between the
15 front and hindquarters, except the viscera; in the case of small game
16 wild food animals, no less than the meat of the breast; however, none of
17 the following shall be considered with the ~~"required portion of the~~
18 edible meat" of big game or small game wild food animals:

19 (A) meat of the head;

20 (B) meat that has been damaged and made inedible by the
21 method of taking;

22 (C) bones, sinew, and incidental meat reasonably lost as
23 a result of boning or a close trimming of the bones;

24 (D) viscera;

25 (6) "small game wild food animal" means all species of wild
26 fowl, for which there are seasons and bag limits set by the department.
27
28
29

DEFINITIONS - CULPABLE MENTAL STATES

NEW CRIMINAL CODE

Sec. 11.81.900. DEFINITIONS. (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when his conscious objective is to cause that result;

person who is unaware of a risk of which he would have been aware had he not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when he fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

PRIOR CRIMINAL CODE

None.

COMMENTARY

From Senate Journal, 139-143:

As discussed in the Alaska Criminal Code Revision, Tentative Draft, Part 2, Commentary at 8-11 (1977), the important area of culpable mental states is one of great confusion and uncertainty in existing law. The proliferation of culpable mental state terms coupled with their haphazard use hampers the interpretation of individual sections and frustrates one of the principal purposes of the mens rea concept: providing a structure for the classification of offenses according to their degree of blameworthiness. Additionally, some statutes are exposed to constitutional attack by their failure to specify a culpable mental state, or by their specification of an unconstitutional form of culpability.

The Code addresses itself to these three problems by replacing the myriad of existing terms with a four-tiered framework of culpable mental states that clearly establishes levels of blameworthiness. Only four culpable mental states apply throughout the Code: intentionally, knowingly, recklessly and criminal negligence. The terms are defined in § 11.81.900(a)(1)-(4). Use of one or more of these terms, whether specifically included in a statute or implied

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HB 47
 Title "An Act Establishing Mandatory Imprisonment/Fines For Violation of Hunting
 Requested by House Resources Date 1/29/82 Laws....."

II. FISCAL DETAIL
 Agency Affected Department of Public Safety
 Program Category Affected NRMEC
 BRJ, Program, Or Subprogram(s) Affected Fish & Wildlife Protection
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

NO FISCAL IMPACT

IV. DATE 1/29/82 PREPARED BY Col. Robert J. Stickles
 AGENCY Fish & Wildlife Protection, DPS
 Original: Legislative Finance PHONE 269-5534
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

WANTON WASTE OF A BIG GAME ANIMAL: Any person who captures, kills, or destroys any of the big game animals of this State and removes from the carcass only the head, claws, teeth, hide, antlers, horns or tusks and fails to salvage the edible meat, or any person who kills a big game animal and fails to attempt to salvage the meat is guilty of a Class C felony. This section does not apply to bear.

WASTE OF A WILDFOOD ANIMAL: Any person who captures, kills, or destroys a big or small game animal and fails to salvage most of the edible meat of an animal is guilty of a Class A misdemeanor.

Legis.

February 11, 1982

The Honorable Ramona Barnes
State House of Representatives
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Ms. Barnes:

You requested an analysis of the amendments, offered by Rep. Fanning, of CS HB 47, the bill that would amend AS 16.30, the "wanton waste of game" statute. As you know, the Department has several times gone on record as favoring HB 47, especially the concept of cleaning up this statute and providing stiffer penalties for waste of game.

Rep. Fanning's amendments are, in effect, a complete re-write of CS HB 47, and so must be compared to both the existing statute (AS 16.30) and CS HB 47.

HB 47 leaves the existing AS 16.30.010 (a), (b) and (c) intact; the amendment re-writes these sections. There are advantages to this approach; "most" of the edible meat is now qualified as 51 percent or greater. Note, however, two deletions: (b) (2) that now requires a person convicted of waste to turn over to the Department all meat salvaged (perhaps this is not important, since the court could confiscate the meat), and the statement that "The shooting of a wild food animal is prima facie evidence of intent to kill it." Whether the latter statement is important should be decided by competent legal authority.

The amendment also substitutes "criminal negligence" for the existing terms, "intentionally, knowingly, recklessly or negligently;" this seems to be justified, since criminal negligence is defined in AS 11.81.900 (4).

Perhaps the primary thrust of the amendment, as compared to CS HB 47, is to establish different levels of culpability for various degrees of failure to salvage; failure to salvage at least half of the edible meat of a wild animal is a class C felony, while failure to salvage the entire amount of the edible meat (as defined) is a class B misdemeanor. I think this approach is a reasonable one and would strengthen the bill.

A considerable problem still exists with Rep. Fanning's amended version, that CS HB 47 attempted to solve: the differentiation between "big game wild food animals" and "small game wild food animals." The original

February 10, 1982

problem lies in existing statute, where it is required that "most of the edible meat" of a wild food animal includes "meat of the front quarters --," etc, which obviously was intended to apply to big game, and not to waterfowl, grouse, ptarmigan, etc that are also defined (AS 16.30.030 (2)) as wild food animals. CSHB 47 attempts to cure this problem by splitting the definition of wild food animal into big game and small game components, and separately defining the amount of edible meat to be salvaged from each (in the case of small game, the meat of the breast only). Rep. Fanning's amendments, however, uses the term "wild food animal" in sections 10 and 11; only in 16.30.030 (2) and (5) are the terms "big game wild food animal" and "small game wild food animal" listed. Therefore, his 16.05.030 (4) "required portion of the edible meat" applies to all wild food animals - the problem existing in present statutes. My suggestion would be to provide that his 16.30.030 (9) apply specifically only to big game wild food animals (as defined in 16.30.030 (2)) and another section be added similar to CSHB 47, page 1 lines 23 and 24.

Two typographical errors are noted: in 16.30.010 (6), line 3, "improved" should presumably be "imposed;" in 16.30.030 (5), line 2, "goose" should be "grouse".

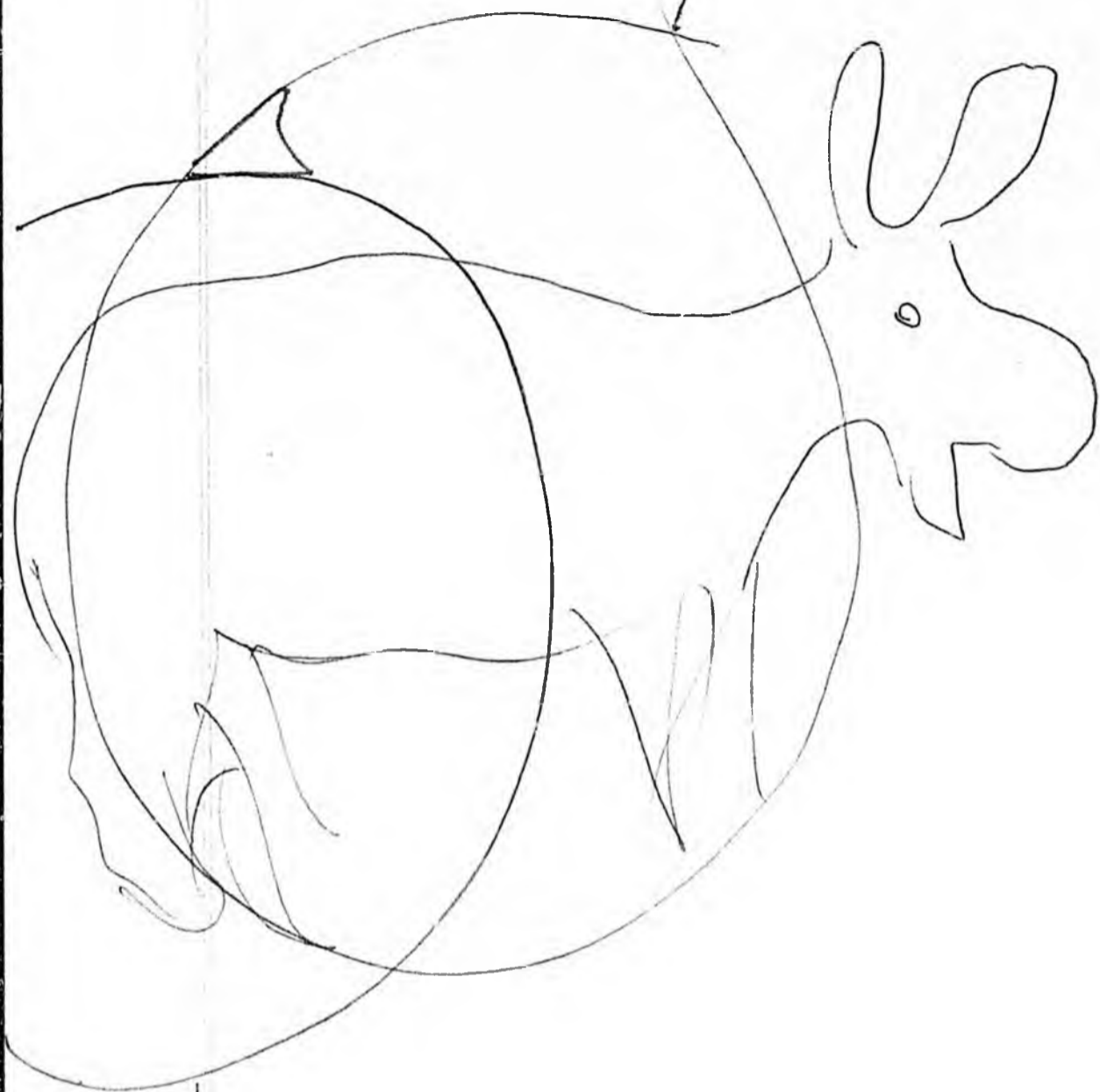
Sincerely,



Robert A. Hinman
Deputy Director
Game Division

RAH/es

less than 100% = a misdemeanor



less than 51% = a felony

222-82

Ferris - ^{A.} OK to be made
if 5 day, \$2500 fare.

- take small game enroute at
of felony

change 16.30.010 - big game
will post on

SEC. 16.30.010 WASTE OF WILD FOOD ANIMALS.

(a) It is unlawful for a person to kill a wild food animal and with criminal negligence fail to do the following:

(1) salvage for human consumption any of the edible meat, at the same time removing any of the following portions:

- (A) head
- (B) claws
- (C) teeth
- (D) hide
- (E) tusks
- (F) horns
- (G) antlers

if the animal is a big game wild food animal;

(2) salvage for human consumption at least 51% of the required portion of the edible meat of a ~~big game~~ wild food animal, regardless of the removal of any non-edible ~~portion~~ parts;

(3) salvage for human consumption ~~at least~~ ~~51%~~ the required portion of the ~~same~~ required portion of the edible meat of a wild food animal, regardless of the removal of any non-edible parts;

~~For~~

(b) It shall be a defense to any criminal charge under this section that ^{the} failure to salvage for human consumption ~~if~~ of a percentage of the required portion of the edible meat was due to circumstances beyond the

control of the person killing the animal, including but not limited to the following:

- (1) theft;
- (2) unanticipated weather conditions or other acts of God;
- (3) unavoidable loss in the field to another wild animal.

(c) In this section the term "required portion of the edible meat" is defined as follows:

- (1) no less than the meat of the ribs, neck, breast, front quarters as far as the juncture of the humerus and the radius-ulna (knee), ~~and~~ hind quarters as far as the distal joint of the tibia-fibula (stifle joint), and that portion of the animal between the front and hind quarters, except the viscera, as to big game wild food animals.
- (2) no less than the meat of the breast, ~~of the~~ as to small game wild food animals.

However, none of the following shall be considered within the "required portion of the edible meat":

- (1) meat of the head;
- (2) any meat damaged by the killing and consequently inedible;
- (3) bones, sinew, and incidental meat reasonably lost as a result of boning or a close trimming of the bones;
- (4) internal organs and glands, ~~such~~ such as heart, liver, spleen, lungs, bladder, and stomach.

(d) A person violating (a) (1) or (2) of this section shall be guilty of ~~a~~ a C felony;

(e) A person violating (a) (3) of this section shall be guilty of an ~~A~~ ^B misdemeanor.

~~A definite minimum term of ~~90~~ consecutive days imprisonment and ~~\$2500~~ ²⁵⁰⁰ fine shall imposed upon conviction. No portion of the definite minimum term of imprisonment or of the ~~the~~ ^{minimum} fine may be suspended under AS 12.55.080 or any other statute, and no suspended imposition of sentence may be given, under AS 12.55.085 or any other law, until the ~~an~~ definite minimum term of imprisonment ~~and~~ ~~she~~ has been served and the ~~minimum~~ ^{minimum} fine has all been paid. Imposition of sentence under this subsection may not be suspended.~~

(f) In addition to imprisonment and fines imposed under (d) ~~and~~ ~~and~~, the convicted person's hunting license shall be revoked for ~~one~~ ^{five} years for a conviction under (d) and for the remainder of the year ~~of the year under~~ for a conviction under (e).

SEC. 16.30.030 DEFINITIONS. In this chapter

(1) "department" means the Department of Fish and Game;

(2) "big game wild food animal" ~~means~~ ^{includes} means moose, caribou, mountain sheep, mountain goat, feral reindeer, deer, elk, bison, ~~musk ox, walrus walrus, and musk-ox;~~

~~(3) "wild food animal" includes all "big game wild food animals" and all species of wild waterfowl, snipe, crane, grouse, and ptarmigan.~~

~~(4)~~

(3) "small game wild food animal" means ~~includes~~ all species of wild waterfowl, snipe, crane, grouse, and ptarmigan;

(4) "wild food animal" means all species listed under (2) or (3) of this section;

(5) "criminal negligence" is defined and used ~~in this~~ as in AS 11.81. ~~amended~~

Cheechalco/2-12
News

15 Days Jail for Drunk Driving

Convictions on a first drunk driving charge will bring 15-day jail sentences in the Homer District Court, Judge James Hornaday has warned.

The usual sentence for first offenders in Homer, as in Kenai, has been three days in jail along with a \$150 fine.

Further, if the convicted Homer drivers don't cooperate with the community work program or Cook Inlet Council alcohol screening, "They'll sit in jail 60 days," the Judge is

quoted in the Homer News.

Homer previously had a community work program for convicted drunk drivers, but it was discontinued due to legal liability. Drunk driving cases decreased substantially while it was in effect, according to the judge. Recently the Court system received permission to renew the program.

The tough sentences for drunk driving responds to a 70 percent increase in DWI cases filed in the Homer court in January 1982, as compared to January 1981.

Drunk drivers. 2-18-82/News

Hurrah for the judge. It was great to read your article on Judge Hornaday and his get-tough attitude on drunken drivers. Let's hope that some of our Anchorage District Judges will follow this lead.

The danger presented by the drunken driver touches all levels of society, whether one is driving the highways, riding the school bus, or simply walking on the sidewalk. With no warning or provocation, the driver who has been drinking may cross the center line, or totally miss the stop sign, or wander onto the sidewalk, causing untold devastation!

While it may be true that certain crimes of passion like murder and assault are not deterred by heavy punishment, I seriously doubt that is true with most drivers who drink and drive. A punishment that is absolutely terrifying may just be sufficient to discourage some drunks from driving and thus make life a little safer for all of us!

— James M. Powell

H

B

5

2

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

ALASKA TRANSPORTATION COMMISSION

1000 MACKAY BUILDING
100 DENALI STREET
ANCHORAGE, ALASKA 99501
PHONE 279-1177

February 16, 1982

Honorable Ramona Barnes, Chairperson
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Barnes:

The Staff of the House Judiciary Committee requested that the Alaska Transportation Commission provide additional section-by-section review of CSRB 52(Trsp).

Section 1. AS 02.05.050(d) is amended by adding a new paragraph to read:

(7) May not change his base of operations without approval of the Commission.

DISCUSSION

This amendment was added last season by the Transportation Committee and clarifies the requirement for an air taxi operator to receive the approval of the Commission before moving his base of operation.

After AS 02.05.050(d)(5) was amended by Chapter 115 SLA 1980, certain air taxi operators interpreted the deletion of the wording "public convenience and necessity requires it and a change in the base or bases of operation may be made only upon approval of the Commission" to mean they could switch their base of operation by simply notifying the Commission and without any requirement to show fitness.

Since air taxi authorities are granted for a specific base of

operation only after such fitness requirements as economic feasibility of service; the financial capability of the applicant; and that a physical base of operation and maintenance capabilities exist, it appears appropriate that an operator should be required to meet the same fitness requirements when changing the base of its operation. To not require a showing that a transfer of the base of operation will continue to meet the fitness requirements considered at the time the authority was granted, seriously negates the value of the original finding.

Finally, only by requiring that an air taxi operator secure approval of the Commission to change its base can the protesters retain their right under AS 02.05.060(g) to show the proposed service from the new base is contrary to the public interest.

Section 2. AS 02.05.075 is amended to read:

Sec. 02.05.075. APPLICATION FEES...for temporary exemption:

(1) Applications involving aircraft weight of a maximum payload capacity of 7,500 pounds or a maximum seating configuration, exclusive of the pilot's seat of 30 passengers [12,500 pounds gross takeoff weight] or less....\$100.

(2) Applications involving aircraft weight of a maximum payload capacity in excess of 7,500 pounds or a maximum seating configuration, exclusive of the pilot's seat, in excess of 30 passengers [12,501 pounds gross takeoff weight or over]....\$200.

DISCUSSION

The effect of this amendment is to substitute the 7,500 pound payload and 30 passenger standard for fees to be consistent with AS 02.05.060 and 02.05.080. The revision made in chapter 115 SLA 1980 changed the previous 12,500 pound takeoff weight standard to 7,500 pounds payload, but no change was made to the fee structure. It should be noted that the weight substitution will have minimal impact as most air taxi operators operate aircraft under 7,500 pounds payload.

Section 3. AS 02.05.110(a) is amended to read:

(a) A certificate may be...or lessor and lessee. In determining the fitness of a transferee or lessee under this section, the economic feasibility of the service is not a factor for consideration if a certificate has been in continuous and active use.

DISCUSSION

This amendment is intended to clarify that if a certificate has been in continuous and active use, there is no need to go through a showing of economic feasibility. The Commission hopes this language will streamline the processing of transfers or leases. This language does not prevent the review of the fitness of the transferee or lessee to operate the certificate.

Section 4. AS 02.05.250(6)(B) is amended to read:

(B) As to fixed-wing aircraft with a payload capacity of 7,500 pounds or less or a seating configuration, exclusive of pilot's seat, of 30 passengers or less or with a payload capacity in excess of 7,500 pounds or a seating configuration exclusive of the pilot's seat, in excess of 30 passengers [IN EXCESS OF 12,500 POUNDS GROSS CERTIFICATED TAKEOFF WEIGHT], a specific make...its handling characteristics;

DISCUSSION

This amendment like Section 2 is intended to standardize the aircraft payload capacities throughout the chapter. Clearly, the intention in Chapter 115 SLA 1980 was to use 7,500 pounds payload and 30 seats instead of 12,500 pounds gross takeoff weight. This amendment in fact increases the size of aircraft since a plane with a payload capacity of 7,500 pounds payload and 30 seats is larger than a 12,500 gross takeoff weight aircraft.

Section 5. AS 42.10.420 is amended by adding a new paragraph to read:

(13) "GVW" means gross vehicle weight which is the maximum rating in pounds as established by the original manufacturer of the vehicle.

DISCUSSION

By Section 27 of Chapter 115 SLA 1980 the legislature made motor vehicles under 14,000 pounds GVW operated as tow trucks exempt from regulations. The exemption is that such vehicles must file proof of insurance with the Commission. This amendment simply adds a definition of the term GVW to the Definition Section of chapter 42.10. There has been some confusion as to what was intended when the limit was set at 14,000 pounds GVW. The definition provided by the amendment uses the original manufacturer's intended maximum weight for the vehicle when fully loaded or equipped.

Passage of the language will make it easier for all concerned to determine what weight a vehicle is since most vehicles have an inspection plate affixed to the vehicle at the time of manufacture indicating the GVW. Thus, the vehicle will not have to be weighed at the scales to determine whether it is a regulated vehicle or not. Under this definition most tow trucks will be exempt from regulation and only the larger recovery type wreckers will remain regulated.

The Governor at the request of the Alaska Transportation Commission has submitted an amendment adding the following:

Section 5. AS 42.07 is amended by adding a new section to read:

SEC. 42.07.143. EXPENSES OF INVESTIGATION OR HEARING. After completion of a hearing or investigation held under this chapter, AS 02.05 or AS 42.10, the Commission may allocate the costs of the hearing or investigation among the parties, as is just under the circumstances. In allocating costs, the Commission may consider the results, ability to pay, evidence of good faith, and other relevant factors, including mitigating circumstances. The costs allocated may include the cost of: any time devoted to the investigation or hearing by hired consultants, whether or not the consultants appear as witnesses or participants, attorney fees incurred by any party; and the cost

of transcripts of the hearing. The costs allocated may also include any other out-of-pocket expenses incurred by the Commission in the particular proceeding. The Commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final. Notwithstanding any other provision of this section, the Commission may collect charges in advance for transcripts of hearings. Before requiring advance payment of charges, the Commission shall confer with the parties in regard to the amount of hearing time expected and the equitable allocation of costs.

DISCUSSION

This amendment will give the Commission the necessary authority to allocate the costs of hearings and the cost of preparing transcripts of hearings. Currently, the Commission has no authority to assign hearing costs, and transcripts are normally prepared only when a finding is appealed to Superior Court.

The rationale for requesting this amendment to allow the Commission to assign hearing cost is that experience has shown that some protests are of a spurious nature. However, since the Commission is obligated to hear all parties, a hearing is conducted and the applicant is forced to incur the additional expenses of legal counsel through an unnecessarily lengthy hearing and post hearing petitions. The obvious benefit of such actions on the part of protestant is to place barriers in the path of both the applicant and the Commission which may result in restricting valid competition. While the Commission is not suggesting that such protests should be completely eliminated, we are suggesting that the cost should be borne by the spurious party.

On the other hand, the Commission has received applications that when assigned to hearing the applicant fails to show. Such non-appearances cause an undue burden on the protestants and the Commission. There is adequate time to withdraw an application before all parties have expended money to prepare their respective cases.

Generally, the Commission would not expect to assign costs of legal fees and hearings in more than a handful of cases each year. Normally, all concerned parties conduct themselves in a manner that results in a speedy, efficient hearing and

final decision. It is not suggested that all applicants or protestants will be required to pay costs. Before any party will be required to pay costs, it will be necessary to develop procedures to assure that all parties have benefit of due process prior to the assignments of costs.

The objective of securing statutory authority to assign costs for transcripts of hearings is to allow all parties to benefit from being able to review the proceedings. Currently, the hearings are taped and all parties can take advantage of listening to tapes, but this is often inconvenient for the parties and not efficient. The Commission is not budgeted to pay the expense involved in preparing the written transcripts, therefore, this proposal to assign costs to the parties involved. As in the case of assigning hearing costs, the Commission does not propose to prepare transcripts of every hearing. As currently conceived, the procedure would be to normally determine if a transcript is desired by the parties before the hearing process begins.

The Commission expects to use private reporting services to prepare the transcripts and not staff. The cost will be clearly documented for all parties to review and all parties will have the benefit of being able to review the proceedings and quote the record.

The combination of assigning hearings costs and preparation of transcripts should improve the hearing process and streamline the decision-making process.

If you need additional information, please let us know.

Very truly yours,

ALASKA TRANSPORTATION COMMISSION

Keith H. Miller
Keith H. Miller
Chairman

LWM/KHM/rm

cc: Keith Specking
Legislative Assistant
Governor's Office
Pouch A
Juneau, AK 99811

Charles webber
Commissioner
Commerce & Economic Development
pouch B
Juneau, AK 99811

MEMORANDUM

State of Alaska

TO: Keith Specking
Legislative Assistant
Governor's Office

DATE: November 18, 1981

FILE NO: J-77-054-82

TELEPHONE NO: 465-3600

FROM: Wilson L. Condon
Attorney General

SUBJECT: Attached amendment to
CSHB 52 (Trsp) - Anchorage, Alaska
Alaska Transportation
Commission

By: Arthur H. Peterson
Assistant Attorney General

My notes from the October 29, 1981 meeting with the governor on the Department of Commerce and Economic Development's bill requests indicate that you are to handle this amendment which was requested by the Alaska Transportation Commission. You will find attached an amendment sheet and a draft transmittal letter to Rep. Ramona Barnes, chairperson of the House Judiciary Committee where the bill now resides.

The transmittal letter is based on language submitted by the department with its bill request. The amendment itself is based on the corrected version which I received from the department November 6, 1981. The source of the new statute is AS 42.05.651, pertaining to the Alaska Public Utilities Commission; one difference between the two is that the new statute would authorize the ATC to allocate costs whereas AS 42.05.651 requires the APUC to do so.

If you should have any questions on this, please contact Chuck Schmidt, our assistant attorney general assigned to the ATC (279-1451 [ATC] or 276-3550 [AGO]).

WLC:AHP:eja

cc w/enc.: G. Charles Schmidt
Assistant Attorney General
Anchorage

Charles R. Webber
Commissioner
Department of Commerce & Economic Development

Keith Miller, Chairman
Alaska Transportation Commission
Anchorage

D R A F T

Hon. Ramona Barnes, Chairperson
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Attached amendment
to CSHB 52 (Trsp) --
Alaska Transportation
Commission

Dear Rep. Barnes:

The attached proposed amendment to CSHB 52 (Trsp) adds a new sec. 5 (enacting AS 42.07.142) to that bill. The added section gives the Alaska Transportation Commission the power to assess costs in cases before it. Of particular importance is the commission's ability to levy costs for transcripts. The commission has worked for years without transcripts of its hearings. The requirement of transcripts in lengthy cases and the power to assess costs will discourage drawn-out proceedings. In addition, the existence of transcripts will greatly aid the decision-making process. Transcripts will allow for direct citations of pertinent facts. This will allow parties to present a case clearly and will provide the commission with the necessary clarity of the record for efficient decision making.

The proposed language parallels the provisions of AS 42.-05.651 which confers similar powers on the Alaska Public Utilities Commission.

I urge your committee to give the bill a "do pass" recommendation and to include the attached provision in the bill.

Sincerely,

Jay S. Hammond
Governor

A M E N D M E N T

Offered in the HOUSE

TO: CSHB 52 (Trsp)

Page 2, between lines 16 and 17:

Add the following:

* Sec. 5. AS 42.07 is amended by adding a new section to read:

Sec. 42.07(143). EXPENSES OF INVESTIGATION OR HEARING. After completion of a hearing or investigation held under this chapter, AS 02.05, or AS 42.10, the commission may allocate the costs of the hearing or investigation among the parties, as is just under the circumstances. In allocating costs, the commission may consider the results, ability to pay, evidence of good faith, and other relevant factors, including mitigating circumstances. The costs allocated may include the cost of: any time devoted to the investigation or hearing by hired consultants, whether or not the consultants appear as witnesses or participants; attorneys fees incurred by any party; and the costs of transcripts of the hearing. The costs allocated may also include any other out-of-pocket expenses incurred by the commission in the particular proceeding. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final. Notwithstanding any other provision of this section, the commission may collect charges in advance for transcripts of hearings. Before requiring advance payment of charges, the commission shall confer with the parties in regard to the amount of hearing time expected and the equitable allocation of costs.

Page 2, line 17:

Change "Sec. 5" to read "Sec. 6."

HB 52 continuedLETTER OF INTENT
CSHB 52

It is the intent of the House Transportation Committee that the following language accompany Section 1, AS 02.05.050 (d) (7) to state that approval by the Commission is contingent upon a finding that the air taxi operator is fit, willing, and able to provide the additional service.

Bette Cato
Representative Bette Cato, Chairman
House Transportation Committee

HB 187

The Finance Committee has had HOUSE BILL NO. 187 (relating to the penalty on tax) under consideration and recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 187 (Judiciary)(same title)(page 598 of the journal) and that it do pass. Concurring: Cotten (Chairman), Freeman, Buchholdt, Adams, Carney, Haugen, Montgomery, Malone and Moss.

HB 187 was referred to the Rules Committee for placement on the calendar.

HB 313

The Finance Committee has had HOUSE BILL NO. 313 (relating to the Alaska Fisheries Center and to appropriations to that center) under consideration and recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 313 (Finance):

"An Act relating to the Alaska Fisheries Center and to appropriations to that center; and providing for an effective date."

and reports it back with individual recommendations. Freeman (Vice Chairman), Haugen and Malone recommend do pass. Rogers, Montgomery, Moss and Carney have no recommendation.

HB 313 was referred to the Rules Committee for placement on the calendar.

H

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STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH 5
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

February 11, 1982

The Honorable Ramona L. Barnes
Chairwoman
House Judiciary Committee
Room 122 - Capitol Building
Juneau, Alaska

Dear Ms. Barnes:

Re: House Bill No. 74

House Bill No. 74, an Act relating to the rights of debtors and creditors, was introduced in the House on February 4, 1981 and was referred to the House Judiciary Committee.

For the consideration of the House Judiciary Committee, I am enclosing a copy of a Fiscal Note prepared by Ms. Marilla Gemmer, Director, Enforcement Division, Department of Revenue concerning the proposed legislation.

Sincerely,



R. D. Stevenson
Special Assistant

Enclosure

cc: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Marilla Gemmer, Director
Enforcement Division
Department of Revenue

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 74

Title An Act relating to the rights of debtors and creditors

Requested by House Judiciary Committee

Date 2/5/82

II. FISCAL DETAIL

Agency Affected Department of Revenue

Program Category Affected Revenue Collection & Management

BRU, Program, or Subprogram(s) Affected Enforcement Division

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

NONE

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						

TOTAL

FUNDING (Thousands of Dollars)

NONE

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

NONE

FULL TIME						
PART TIME						
TEMPORARY						

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

See attached memo.

IV. DATE February 5, 1982

PREPARED BY Marilla L. Gemmer

AGENCY Department of Revenue

PHONE 465-2366

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

MEMORANDUM


State of Alaska

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: February 5, 1982

FILE NO:

TELEPHONE NO:

FROM: Marilla L. Gemmer 
Director
Enforcement Division

SUBJECT: House Bill 74

The Enforcement Division would not have any problem if HB 74 were to be enacted. The right to levy against exempt property under AS 09.35.080(b)(2)(C) which would be repealed by HB 74, would be preserved under 09.38.030(c) and 09.38.065(a)(1)(C).

There would be no additional costs.

NOTE: A new Sec. 15 should be added to HB 74 as follows:

Sec. 15. AS 43.20.270 is amended to read:

Sec. 43.20.270. DISTRAINT ON PROPERTY. (b)
Notwithstanding the provisions of AS 09.35.070,
09.33.010-09.38.020 (-09.38.020) or any other provision of law
exempting property from execution, only the following property,
if it belongs to the head of a family, is exempt from distraint
and sale under this chapter:

Sec. 16. Sec. 15 as it currently appears on HB 74 would now
become Sec. 16.

MLG:lw

cc: Joseph K. Donohue
Deputy Commissioner - Taxation

Art Peterson
Assistant Attorney General
Department of Law

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE Amended 3/2/82

I. REQUEST

Bill/Resolution No. HB 74

Title An Act relating to the Rights of Debtors and Creditors

Requested by House Judiciary Committee Date 2/15/82

II. FISCAL DETAIL

Agency Affected Alaska Court System

Program Category Affected Administration of Justice

BRU, Program, Or Subprogram(s) Affected Trial Courts

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		47.4	51.0	55.0	60.0	65.0
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT		2.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		49.9	51.0	55.0	60.0	65.0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		49.9	51.0	55.0	60.0	65.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

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

(See attached)

IV. DATE 3/2/82

PREPARED BY Richard P. Barrier

AGENCY Alaska Court System

Original: Legislative Finance

PHONE 264-0545

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

The court system's initial FY 83 budget projection of \$182,573 was based upon information provided by district court judges and the clerks of court. It was their belief that while the proposed statute is substantively sound, it will generate a substantially increased volume of hearings, and that clerical responsibilities will increase commensurately.

At the request of the administrative director of the court system, two members of the Code Revision Commission met with court system staff on February 26, 1982. They explained that although the bill does not eliminate any existing court functions, the result of the bill is not to burden the courts, but to simplify and modernize execution procedures. The bill can be implemented to place any new procedural requirements upon the parties and their attorneys rather than the courts, without frustrating the intention of its drafters.

Based upon the representation of the Commission members that the fiscal impact will not be substantial, it appears that HB 74 could be implemented with the addition of the Legal Technician (Range 13) in Anchorage and a part-time Legal Technician in Fairbanks. The Legal Technicians will: review affidavits pursuant to Section 9.30.050(b) (requests for increased exemption from wages) and pursuant to Sections 9.30.075 and .080 (prelevy affidavits filed by creditors); process orders for notice to debtors and develop notice forms; process paperwork generated by any additional hearings at the District Court level (for example, 9.38.050(a): increased exemption from disability or injury payments).

The cost of these positions is shown below:

Position:

Anchorage:		
Legal Technician at Range 13		\$23,136
Fairbanks:		
Legal Technician, Range 13 (half-time)		<u>13,278</u>
		36,414
Benefits:		<u>11,025</u>
		47,439
Equipment:		<u>2,500</u>
	Total FY '83 Cost	\$49,939

ALASKA CODE REVISION COMMISSION



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JUDGE (RET.) THOMAS B. STEWART

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Bill Cook, Committee Counsel
House Judiciary Committee *Dick Regan*

FROM: Dickerson Regan, Consultant
Alaska Code Revision Commission

DATE: February 11, 1982

RE: HB 74--Exemptions Act

Two things about the bill on exemptions from execution which I marked up for you "for inflation." I forwarded the marked up bill to you January 20, 1982.

1. On the first page of the bill on line 20, the figure "\$19,000" should go to "\$27,000." My file copy indicates I may have marked in a wrong figure. Also on that page, I may not have marked the change on line 28: \$28,000 on that line becomes \$40,000.

2. I had marked in on the bill two changes that I believe were on the "work draft" the committee had last session. My notes are unclear, but please check page 3 on your copy of that 1981 "work draft." There may be one additional change there, moving line 9 on limited entry permits up to become a subparagraph (7) following line 5.

DR:chw

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EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Bill Cook, Counsel
House Judiciary Committee

FROM: Dickerson Regan, Consultant
Alaska Code Revision Commission *Dickerson*

DATE: January 20, 1982

RE: Inflation adjustments to HB 74

You asked me to mark up the figures in HB 74 on exemptions (rights of debtors and creditors).

The bill was introduced as HB 56 in the 1979 session. As introduced it apparently contained figures based upon the December 31, 1977, Consumer Price Index for All Urban Consumers for the Anchorage Metropolitan Area. I am informed the House Judiciary Committee last year was given the December 31, 1977 date by John Abbott, Chairman of the Alaska Code Revision Commission, who was active in drafting the bill.

Attached is a memorandum dated March 9, 1981, from Jack Kreinheder, Issues Analyst, to Representative Fred Brown relating the figures that are penciled in the "mark-up" bill from last year.

One can carry forward the concepts of that memorandum and adjust the figures to a January 1982 date (extrapolating for the January 1982 CPI which is not yet available). On that basis the CPI rose from 179.2 for December 31, 1977, to 256.9 for January 1982, an increase of about 43 percent.

All figures penciled on the attached copy of HB 74 are rounded in the way described in the March 9, 1981 Kreinheder memorandum attached.

Although I did not work on the bill, if there are questions about it I would be glad to be intermediary to get further information from the commission.

DF:chw

Attachments

1-21-82
Bill - I also marked on the bill the other two changes that were in the 1981 markup and explained in the two attached memoranda (Kreinheder 3-9-81; Webber 2-17-81). Secp. 16+22 of the bill.
Dick Regan



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 9, 1981

MEMORANDUM

TO: Representative Fred Brown

FROM: Jack Kreinheder *JK*
Issues Analyst

RE: Inflation Adjustments to HB 74
Research Request No. 81-61

[1981 OR] - You requested that we adjust the dollar amounts used in HB 74, "An Act relating to the rights of debtors and creditors," to account for inflation since December 31, 1977. Between January, 1978, and January 1980 (the most recent data available), the Anchorage Consumer Price Index (CPI) rose from 179.2 to 240.1, an increase of about 34 percent¹. The dollar figures in HB 74 have therefore been increased by this amount.

The enclosed copy of HB 74 has the inflation-adjusted figures printed in red above the original amounts used in the bill. In making these adjustments, the figures were rounded to the nearest \$25 for amounts under \$500, the nearest \$100 for amounts between \$500 and \$5,000, and the nearest \$500 for amounts over \$5,000. For example, an adjusted figure of \$168 was rounded up to \$175, while an amount of \$1,340 was rounded down to \$1,300.

If these updated figures are incorporated into the bill, an amendment to Section 09.38.115, Adjustment of Dollar Amounts, would appear to be necessary. This section now reads, in part (lines 16-17, page 16): "The index for November of the year preceding the year in which this section becomes effective is the reference base index." Given the fact that the dollar amounts have been updated through January, 1981, it would appear appropriate to change this wording from "November of the year preceding the year in which ..." to "January of the year in which...".

¹ In June, 1978, the single Consumer Price Index published until that time was replaced with two new series for "All Urban Consumers," and "Urban Wage Earners and Clerical Workers." The All Urban Consumers index would appear to be the most appropriate one for this purpose, and has been used in making the adjustments for inflation since 1977.

Representative Fred Brown

March 9, 1981

Page 2

One additional amendment may be desirable, although it does not appear necessary. As discussed in the footnote on the preceding page, the Consumer Price Index was divided into two new series in June, 1978. Because the language in HB 74 was drafted before this change in the CPI was made, the bill refers only to the single Consumer Price Index as a basis for future adjustments of dollar amounts. Section 09.38.115 does specify that if the single index is superseded, the index referred to in the bill is the one which reflects most accurately the effects of inflation on Alaskan consumers. However, it may be clearer and more accurate to change the wording on lines 12-13 of page 16 from "changes in the Consumer Price Index for the Anchorage Metropolitan Area Consumer Price Index..." to "changes in the Consumer Price Index for All Urban Consumers for the Anchorage Metropolitan Area...". It would probably be desirable to retain the existing language regarding superseding of the CPI in the event that additional changes are made to the index in the future.

I hope this information is helpful. If we may be of further assistance, please do not hesitate to contact us.

JK/bf
Enclosures

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

Phone. ---

February 17, 1981

Honorable Fred Brown
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. Brown:

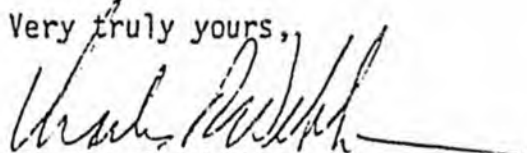
RE: HB 74

Thank you for your request to comment on the unintentional repealer contained in HB 74. The bill organizes statutes relating to exemptions to execution on a judgement in a single chapter within the code of civil procedure. It also repeals a number of statutes, including some in the insurance code (AS 21).

On page 22, line 13, there is a repeal of AS 21.42.320-21.42.350. Sections 320, 330, 340 and 350 are appropriately repealed in view of the structure of HB 74. However, AS 21.42.345 is also repealed and does not relate to the material in Sections 320, 330, 340 or 350. It deals with required provisions for coverage of newly born children in disability policies. This can be corrected by amending "AS 21.42.320-21.42.350" to read "AS 21.42.320-21.42.340; AS 21.42.350."

We appreciate any help you can give us in correcting this unintentional repeal.

Very truly yours,


Charles R. Webber
Commissioner

CRW/jar2/3

1 under AS 47.25.790 - 47.25.970 is inalienable by assignment or transfer
2 and is exempt from garnishment, levy, or execution as provided in
3 AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

4 * Sec. 13. AS 47.45.120 is amended to read:

5 Sec. 47.45.120. EXEMPTION FROM TAXATION AND PROCESS. (a) Bonuses
6 received under this chapter are exempt from all state and political
7 subdivision taxes except sales and use taxes [AND ARE NOT SUBJECT TO
8 EXECUTION, ATTACHMENT, GARNISHMENT OR OTHER PROCESS]. No bonus received
9 under this chapter may be exempt from a federal tax requirement.

10 (b) Bonuses received under this chapter are exempt from levy to
11 enforce the collection of a debt as provided in AS 09.38 (exemptions).

12 * Sec. 14. AS 09.35.035, 09.35.040, 09.35.050; ^{AS} 09.35.080 - 09.35.090,
13 ^{AS} 09.35.120; AS 21.24.110; AS 21.42.320 - ^{21.42.340} ~~21.42.350~~; ^{AS 21.42.350} AS 23.20.405(b) and (c);
14 and AS 32.05.200(b)(3) are repealed.

15 * Sec. 15. All writs of execution, claims of exemption, sales, confirma-
16 tions of sales, rights of redemption and priorities of redemption issued or
17 filed under any law repealed by this Act and in full force and effect on the
18 effective date of this Act, shall remain in full force and effect for the
19 term issued or until revoked, vacated, or modified under the provisions of
20 this Act.

PER WEBBER MEMO 2-17-81

M E M O R A N D U M

February 21, 1980

SUBJECT: Comparison of exemption schedules

TO: John Abbott, Chairman
Code Revision Commission

FROM: James L. Baldwin
Legislative Counsel

Congress has enacted a new bankruptcy law, Title 11 of the United States Code - Bankruptcy. This new law is commonly known as the Bankruptcy Reform Act of 1978 (P.L. 95 - 598). This new law of bankruptcy took effect on October 1, 1979, and repeals the Bankruptcy Act of 1898, and the Nelson Act, as revised generally 40 years later by the Chandler Act. The provisions of the old Bankruptcy Act provided that the bankrupt was entitled to exclude certain property from bankruptcy if he was entitled to exempt the property from debt collection under the law of the state of his domicile or nonbankruptcy federal law. The new Bankruptcy Act establishes a list of federal exemptions which are available to an individual debtor. The debtor may choose to be protected by the federal exemptions or he may choose the exemptions provided by his state law (as under the old bankruptcy act). It should be noted that the new Bankruptcy Act has a provision which permits states to "opt out" of the federal bankruptcy exemption alternative. If a state chooses to do this, a debtor domiciled there would only have available the exemptions authorized by state law. The choices between state and federal exemptions are mutually exclusive alternatives and may not be combined by a debtor. However, spouses who are joint debtors are not required to choose the same exemptions. Under this system it is expected that a debtor will compare the state and federal exemptions and choose the alternative more advantageous to him. Set out in the attachments in table format is a comparison of the current state exemptions with those proposed in HB 56 (proposed Alaska Exemptions Act) and the federal alternate exemptions enacted by the Bankruptcy Reform Act of 1978.

JLB:jdn

Attachments

PROPERTY EXEMPT WITHOUT LIMITATION

Social Security.....	all exempt.....	all exempt.....	all exempt.....
Unemployment Compensation.....	all exempt.....	none exempt <u>4/</u>	all exempt.....
Veterans' Benefits.....	all exempt.....	none exempt.....	all exempt.....
Disability or Illness Benefits.....	all exempt.....	none exempt.....	all exempt.....
Violent Crime Compensation.....	all exempt.....	all exempt.....	all exempt.....
General Relief Assistance.....	all exempt.....	none exempt <u>4/</u>	all exempt.....
Alaska Longevity Bonus.....	all exempt.....	all exempt.....	all exempt.....
PERS.....	all exempt.....	none exempt <u>4/</u>	all exempt.....
TRS.....	all exempt.....	none exempt <u>4/</u>	all exempt.....

LIFE INSURANCE

Loan Value.....	no provision.....	\$5,000.....	\$4,000.....
Proceeds.....	all exempt.....	all exempt.....	all exempt.....

4/ This type of public assistance or pension benefit is treated as cash and other liquid assets after it is paid to the debtor and is exempt if the value of these benefits is less than \$500 per month or, if the increased exemption amount is claimed, \$800 per month.