

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

2854 SRES SB 344 - SB 366 2854

legislative policy, see § 1, ch. 175, SLA 1980, in the 1980 Temporary and Special Acts and Resolves. AS 38.05.325, referred to above, was repealed by § 45, ch. 85, SLA 1979.

**Sec. 38.05.127. Access to navigable or public waters.** (a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the Department of Natural Resources shall,

(1) under regulations, determine if the body of water or waterway is navigable water, public water, or neither;

(2) upon finding that the body of water or waterway is navigable or public water, provide for the specific easements or rights-of-way, or both, reasonably necessary to insure free access to and along the body of water, unless the department finds that regulating or limiting access is necessary for other beneficial uses or public purposes.

(b) The Department of Natural Resources shall adopt regulations implementing this section.

(c) Nothing in this section affects valid existing rights.

(d) Upon application by a municipality or an affected owner of land, the department may vacate, release, modify, or relocate an easement and right-of-way for public access to or along navigable or public waters reserved by the department in a patent issued under AS 29.18.011 — 29.18.610 if the commissioner determines the action is consistent with the public interest. (§ 2 ch 117 SLA 1976; am § 32 ch 113 SLA 1981)

*Effect of amendments.* — The 1981 amendment added subsection (d)

**Sec. 38.05.130. Damages and posting of bond.** No rights shall be exercised by the state, its lessees, successors or assigns under the reservation as set out in AS 38.05.125 until the state, its lessees, successors, or assigns make provision to pay the owner of the land full payment for all damages sustained by the owner, by reason of entering upon the land. If the owner for any cause refuses or neglects to settle the damages, the state, its lessees, successors, assigns, or an applicant for a lease or contract from the state for the purpose of prospecting for valuable minerals, or option, contract or lease for mining coal or lease for extracting geothermal resources, petroleum or natural gas, may enter upon the land in the exercise of the reserved rights after posting a surety bond determined by the director, after notice and an opportunity to be heard, to be sufficient as to form, amount, and security to secure to the owner payment for damages, and may institute legal proceedings in a court where the land is located, as may be necessary to determine the damages which the owner may suffer. (§ 2 art VII ch 169 SLA 1959; am § 15 ch 61 SLA 1960; am § 3 ch 175 SLA 1980)

*Effect of amendments.* — The 1980 amendment deleted "or" preceding "until the state," and substituted "provision" for "provisions" near the beginning of the section, inserted a comma between "option" and "contract," and inserted "geothermal

resources" near the middle of the section. *Editor's notes.* — As to declaration of legislative policy, see § 1, ch. 175, SLA 1980, in the 1980 Temporary and Special Acts and Resolves.

**Article 6. Leasing of Mineral Lands.**

**Section**  
135. Generally  
140. Limitations  
145. Leasing procedure  
180. Oil and gas leasing

**Section**  
181. Geothermal resources  
182. Royalty on natural resources  
183. Sale of royalty

**Sec. 38.05.135. Generally.** (a) Except as otherwise provided, valuable mineral deposits in lands belonging to the state shall be open to exploration, development, and the extraction of minerals. All lands, together with tide, submerged, or shorelands, to which the state holds title to or to which the state may become entitled, may be obtained by permit or lease for the purpose of exploration, development, and the extraction of minerals. Except as specifically limited by AS 38.05.135 — 38.05.181, lands may be withheld from lease application on a first-come, first-served basis, and offered only on a competitive bid basis when determined by the commissioner to be in the best interests of the state. In unproven areas the commissioner may offer additional incentives, including a reduction of royalty to a minimum of five percent in the case of oil and gas, and other terms in and granting permit or lease for exploration and development whenever it appears to be in the best interests of the state to do so.

(b) When mineral land is to be leased, in addition to any other notice given, notice must also be given as provided in AS 38.05.305 and 38.05.345. (§ 1 art VIII ch 169 SLA 1959; am § 1 ch 30 SLA 1964; am § 1 ch 91 SLA 1967; am § 2 ch 71 SLA 1971; am § 10 ch 257 SLA 1976; am § 2 ch 155 SLA 1978)

*Effect of amendments.* — The 1978 amendment rewrote subsection (b), referred to in subsection (b), was repealed by § 15, ch. 113, SLA 1981.

*Editor's notes.* — AS 38.05.305,

**Sec. 38.05.140. Limitations.** (a) No person may take or hold coal leases or permits during the life of coal leases on state lands exceeding an aggregate of 46,080 acres, except that a person may apply for coal leases or permits for acreage in addition to 46,080 acres, not exceeding a total of 5,120 additional acres of state land. The additional area applied for shall be in multiples of 40 acres and the application shall contain a statement that the granting of a lease for additional lands is necessary for the person to carry on business economically and is in the public interest. On the filing of the application, the coal deposits in the

(d) Real property acquired by, and under the management of, the agencies referred to in (a) and (b) of this section, which is no longer needed for its intended use, shall be returned to the jurisdiction of the division of lands, except that the Department of Highways may dispose of real property acquired by it under AS 19.05.040(2) and AS 19.05.080 — 19.05.120.

(e) Repealed by § 20 ch 182 SLA 1978. (§ 3(a) — (d) art XIII ch 169 SLA 1959; am §§ 20, 21 ch 61 SLA 1960; am § 1 ch 27 SLA 1967; am § 1 ch 253 SLA 1970; am §§ 1, 2 ch 35 SLA 1971; am § 2 ch 240 SLA 1976; am § 2 ch 267 SLA 1976; am § 20 ch 182 SLA 1978)

**Effect of amendments.** — The 1978 amendment repealed subsection (e).

**Editor's note.** — Sections 5 and 6, ch. 182, SLA 1978, purported to amend this section by deleting "(a) and" preceding "(b) of this section" in subsections (c) and (d), respectively, and § 20 of ch. 182 purported to repeal subsection (a). Section 27 of ch. 182 made these amendments and repeal effective on the date that the Board of Regents voted to approve the matters under consideration as provided in § 24 of the act. The Board of Regents disapproved all matters on August 17, 1978. Consequently, these amendments were ineffective.

**Opinions of attorney general.** — The

interaction of AS 38.05.030(b), 38.05.035(a), (7) and (12), AS 35.05.040(1), and AS 35.20.010 was examined to determine (1) which agency of the state had authority to accept title to land transferred by the federal government and (2) which agency had authority to manage the land, which was conveyed for airport and other purposes. The division of lands is the proper agency for acceptance of title. The division of aviation in the (former) Department of Public Works possesses the authority to manage the granted land for airport and directly related purposes while the division of lands possesses the authority to manage the land for other public purposes. April 14, 1977, Op. Att'y Gen.

NOTES TO DECISIONS

**Scope of subsection (a).** — Subsection (a) of this section only covers disposals of land by the commissioner of natural resources. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

**Creation of state park including university lands.** — Since creation of a state park which included university lands was a disposal by the legislature, not by administrative action, subsection (a) of this section was inapplicable. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

By enacting AS 41.20.210, creating

Chugach State Park, the legislature did not impliedly repeal subsection (a) of this section, which prevents disposal of university lands by the commissioner of natural resources without the approval of the Board of Regents of the University of Alaska. AS 41.20.210 withdrew the particular university land involved from the operation of the management mechanism created by subsection (a) and AS 14.40.170(a)(4), which grants certain management powers to the Board of Regents. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

**Sec. 38.05.032. School land disposition procedures.**

Repealed by § 20 ch 182 SLA 1978.

**Editor's notes.** — The repealed section derived from § 1, ch. 257, SLA 1976.

**Sec. 38.05.035. Powers and duties of the director.** (a) The director shall

(1) have general charge and supervision of the division and may exercise the powers specifically delegated to him; may employ and fix the compensation of assistants and employees necessary for the operations of the division; and is the certifying officer of the division, with the consent of the commissioner, and may approve vouchers for disbursements of money appropriated to the division;

(2) manage, inspect and control state lands and improvements on them belonging to the state and under the jurisdiction of the division;

(3) execute laws, rules, regulations and orders adopted by the commissioner;

(4) prescribe application procedures and practices for the sale, lease or other disposition of available lands, resources, property, or interest in them;

(5) prescribe fees or service charges, with the consent of the commissioner, for any public service rendered;

(6) under the conditions and limitations imposed by law and the commissioner, issue deeds, leases or other conveyances disposing of available lands, resources, property or any interests in them;

(7) have jurisdiction over state lands, except those lands acquired by the Alaska World War II Veterans Board and the Agricultural Loan Board or the departments or agencies succeeding to their respective functions through foreclosure or default; to this end the director possesses the powers and, with the approval of the commissioner, shall perform the duties necessary to protect the state's rights and interest in state lands, including the taking of all necessary action to protect and enforce the state's contractual or other property rights;

(8) Repealed by § 20 ch 182 SLA 1978.

(9) maintain such records as the commissioner considers necessary, administer oaths, and do all things incidental to the authority imposed; the following records and files shall be kept confidential upon request of the person supplying the information;

(A) the name of the person nominating or applying for the sale, lease, or other disposal of lands by competitive bidding;

(B) before the announced time of opening, the names of the bidders and the amounts of the bids;

(C) all geological, geophysical and engineering data supplied, whether or not concerned with the extraction or development of natural resources;

(D) except as provided in AS 38.05.036, cost data and financial information submitted in support of applications, bonds, leases and similar items;

(E) applications for rights-of-way or easements;

(F) requests for information or applications by public agencies for

*lands which are being considered for use for a public process;*

(10) account for the fees, licenses, taxes or other money received in the administration of AS 38.05.005 — 38.05.370 including the sale or leasing of land, identify their source, and promptly transmit them to the proper fiscal department after crediting them to the proper fund; receipts from land application filing fees and charges for copies of maps and records shall be deposited immediately in the general fund of the state by the director;

(11) select and employ or obtain at reasonable compensation cadastral, appraisal, or other professional personnel he considers necessary for the proper operations of the division;

(12) be the certifying agent of the state to select, accept and secure by whatever action is necessary in the name of the state, by deed, sale, gift, devise, judgment, operation of law, or other means any lands, of whatever nature or interest, available to the state, and shall be the certifying agent of the state, to select, accept or secure by whatever action is necessary in the name of the state any lands, or title or interest to lands available, granted, or subject to being transferred to the state for any purpose;

(13) Repealed by § 15 ch 181 SLA 1978; § 20 ch 182 SLA 1978.

(14) when he makes a written finding that the interests of the state will be best served, he may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available lands, resources, property or interests in them, and, in addition to the conditions and limitations imposed by law, he may impose additional conditions or limitations in the contracts as he, with the consent of the commissioner, determines will best serve the interests of the state; and no contract for the sale, lease, or other disposal of available lands or interests in them, is legally binding on the state until the commissioner formally records his consent to the contract; but if the appraised value is not greater than \$50,000 in the case of the sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or interest in land, the director may approve and issue the contract without the consent or approval of the commissioner; the written finding shall be available to the public upon request; before a public hearing, if held, or in any case no less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them, the director shall make available to the public a written decision in which he sets out the facts and applicable law upon which he based his determination that the sale, lease, or other disposal will best serve the interests of the state; a written finding is not required before the approval of

(A) a contract for a negotiated sale authorized by AS 38.05.115;

(B) the lease of land for a shore fishery site under AS 38.05.082;

(C) a permit or other authorization revocable by the department.

(b) The director may

(1) delegate the administrative duties, functions or powers imposed upon him to a responsible employee in the division;

(2) grant preference rights for the lease or purchase of state land without competitive bid in order to correct the past or future errors or omissions of a state or federal administrative agency when inequitable detriment would otherwise result to a diligent claimant or applicant due to situations over which the claimant or applicant had no control; the exercise of this discretionary power operates only to divest the state of its title to or interests in land and may be exercised only with the express approval of the commissioner;

(3) grant a preference right to a claimant who shows bona fide improvement of state land, or federal land subsequently acquired by the state, and who has in good faith sought to obtain title to the land but who, through error or omission of others, has been denied title to it; upon a showing satisfactory to the commissioner, the claimant may lease or purchase the land at the price set on the date of original entry on the land or, if a price was not set at that time at a price determined by the division to fairly represent the value of unimproved land at the time the claim was established, but in no event less than the cost of administration including survey; the error or omission of a predecessor in interest or an agent, administrator, or executor which has clearly prejudiced the claimant may be the basis for granting a preference right;

(4) sell lands by lottery for less than their appraised value when, in his judgment, past scarcity of land suitable for private ownership in any particular area has resulted in unrealistic land values;

(5) when he determines it is in the best interest of the state and will avoid injustice to a person or his heirs or devisees, dispose of land, by direct negotiation to that person who presently uses and who used and made improvements to that land before January 3, 1959 or his heirs or devisees; the amount paid for the land shall be its fair market value on the date that the person first entered the land, as determined by the director; a parcel of land disposed of under this paragraph shall be of a size consistent with the person's prior use, but may not exceed five acres;

(6) dispose of an interest in land limited to use for agricultural purposes by lottery;

(7) convey to an adjoining landowner a parcel of land created by a highway right-of-way alignment or realignment, or a parcel created by the vacation of a state-owned right-of-way if

(A) he determines that it is in the best interests of the state;

(B) the parcel does not exceed the minimum lot size under an applicable zoning code; and

(C) the director and the platting authority having land use planning jurisdiction agree that conveyance of the parcel to the adjoining landowner will result in boundaries that are convenient for the use of the land by the landowner and compatible with municipal

*land use plans;*

(8) for good cause extend for up to 90 days the time for rental or installment payments by a lessee or purchaser of state land under AS 38.05.005 — 38.05.370 if reasonable penalties and interest set by the director are paid.

(c) A parcel of land may be conveyed under (b) of this section without classification or reclassification under AS 38.05.300.

(d) A parcel of land described in (b) (7) of this section must be sold at its fair market value as determined by the director on the basis of an appraisal completed as provided in AS 38.05.310. Nothing in this subsection prevents the sale of land under AS 38.05.055 or 38.05.057 to a person not qualifying as an adjoining landowner if the adjoining landowner declines to purchase the land. (§ 5 art II ch 16 SLA 1959; am § 1 ch 57 SLA 1960; am §§ 2 — 4 ch 61 SLA 1960; am § 1 ch 55 SLA 1962; am § 1 ch 56 SLA 1964; am § 1 ch 98 SLA 1964; am § 1 ch 5 SLA 1965; am § 1 ch 58 SLA 1965; am § 1 ch 194 SLA 1968; am § 1 ch 164 SLA 1972; am §§ 2, 3 ch 257 SLA 1976; am §§ 1, 2 ch 176 SLA 1978; am § 15 ch 181 SLA 1978; am § 20 ch 182 SLA 1978; am § 1 ch 61 SLA 1980; am §§ 9 — 13 ch 113 SLA 1981)

**Revisor's notes.** — In subsection (b) (7), the word "convey" was substituted for "dispose" at the beginning of the paragraph and in subsection (d), the words "of land" were added following "parcel" by the revisor of statutes under AS 01.05.031.

**Effect of amendments.** — The first 1978 amendment, in subsection (b), substituted "sell lands by lottery" for "dispose of lands by competitive bid" in paragraph (4) and inserted "suitable for private ownership" in paragraph (4).

The second 1978 amendment, in subsection (a), repealed paragraph (13), which related to the powers of the director to select, administer, and dispose of mental health lands for the support of the mental health program. The third 1978 amendment, in subsection (a), repealed paragraphs (8) and (13), which related to the power of the director to administer the Land Registration Law and to select, administer, and dispose of mental health land for support of the mental health program, respectively. Section 28 of this amendatory act makes the repeal of paragraph (13) effective July 1, 1978, while § 30 of the act makes the repeal of paragraph (8) effective July 19, 1978.

The 1980 amendment added "except as provided in AS 38.05.036" at the beginning of subparagraph (a)(9)(D).

The 1981 amendment substituted "\$50,000" for "\$10,000" preceding "in the case of the sale of land," substituted "\$5,000" for "\$1,000" preceding "in the

case of the annual rental of land," substituted semicolons for periods preceding "the written finding" and preceding "before a public hearing," added "a written finding is not required before the approval of" following "interest of the state" and added subparagraphs (A)-(C) in subsection (a)(14). In subsection (b)(3), the amendment added "the price set on the date of original entry on the land or, if a price was not set at that time at" preceding "a price determined by the division." In subsection (b)(5), the amendment substituted "on the date that the person first entered the land" for "as of that date" preceding "as determined by the director." The amendment also added paragraphs (7) and (8) of subsection (b) and added subsections (c) and (d).

**Editor's notes.** — Section 7, ch. 182, SLA 1978, purported to amend this section by adding a paragraph (7) of subsection (b). Section 27 of ch. 182 made this amendment effective on the date that the Board of Regents voted to approve the matters under consideration as provided in § 24 of the act.

The Board of Regents disapproved all matters on August 17, 1978. Consequently, this amendment was ineffective.

**Opinions of attorney general.** — The interaction of AS 38.05.030(b), 38.05.035(a)(7) and (12), AS 35.05.040(1), and AS 35.20.010 was examined to determine (1) which agency of the state had authority to accept title to land transferred

by the federal government and (2) which agency had authority to manage the land, which was conveyed for airport and other purposes. The division of lands is the proper agency for acceptance of title. The division of aviation in the (former) Depart-

ment of Public Works possesses the authority to manage the granted land for airport and directly related purposes while the division of lands possesses the authority to manage the land for other public purposes. April 14, 1977, Op. Att'y Gen.

#### NOTES TO DECISIONS

Applied in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982).

Cited in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982); *State v.*

*Bering Strait Regional Educ. Attendance Area School Dist.*, Sup. Ct. Op. No. 2625 (File No. 6381), 658 P.2d 784 (1983); *Chevron U.S.A., Inc. v. LeResche*, Sup. Ct. Op. No. 2659 (File Nos. 6396, 6648), P.2d (1983).

**Sec. 38.05.036. Audit of royalty and net profit payments.** (a) The Department of Revenue shall audit reports, payments, and payments due relating to royalty and net profits under oil and gas contracts, agreements, or leases under AS 38.05.005 — 38.05.370.

(b) The Department of Revenue may inspect all reports and other information filed in support of or relating to royalty and net profits payments, whether or not that information is confidential, and shall hold that information confidential to the extent required under oil and gas agreements, contracts, or leases, or by AS 38.05.005 — 38.05.370 or AS 43.05.230.

(c) All information obtained by the Department of Revenue relating to royalty and net profits payments, including information obtained under AS 43.05.010 — 43.80.040, may be made available to the department, in the form of summaries and, when in furtherance of the department's royalty and net profits functions, relevant portions of the audits. Information made available to the department that was obtained under AS 43.05.010 — 43.80.040 is confidential and subject to the provisions of AS 43.05.230.

(d) The Department of Revenue may conduct audits under this section concurrently with audits or investigations under AS 43.05.010 — 43.80.040, and may use information obtained from the department in tax audits, investigations, or proceedings under AS 43.05.010 — 43.80.040.

(e) In this section, "audit" means the process of obtaining sufficient competent evidentiary matter through inspection, observation, inquiry, and confirmation to afford a reasonable basis for ascertaining the compliance by the subject of the audit with the applicable law, regulation, lease, agreement, and contract terms; it does not include any other actions necessary to administer AS 38.05.005 — 38.05.370 pertaining to oil and gas royalty and net profits payments, including daily accounting functions, certification procedures associated with those accounting functions, and enforcement of payments of royalties and net profits (§ 2 ch 61 SLA 1980).

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# Alaska State Legislature

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## Senate

### Committee on Resources

#### MINUTES

January 30, 1984  
3:02 pm

Beltz Room  
Room 211, Capitol

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#### MEMBERS PRESENT

Senator Fahrenkamp, Chairman  
Senator Ziegler, Vice Chair  
Senator Eliason  
Senator P. Fischer  
Senator V. Fischer  
Senator Mulcahy  
Senator Sturgulewski

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#### CALENDAR

SB 349, An Act relating to recreational activities in state parks.

SJR 32, Relating to the capture of orcas in Alaska waters.

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#### SB 349

Senator Faiks testified in support of SB 349. This bill would require the Department of Natural Resources to consider the users of horses and other animals when promulgating new regulations in state parks.

Carol Wilson, Special Assistant to the Commissioner, Department of Natural Resources, spoke in support of this bill. It would allow the department to have a consistent guideline while still making decisions on a park by park basis. She referred to an existing order that allows horses in some parts of Chugach State Park.

Senator Mulcahy moved the bill from Committee with individual recommendations. The motion passed without objection.

Senator Vic Fischer spoke of his growing concern about the methods of capturing whales and asked that more consideration be given to Alaska and Alaskans when issuing permits for capture.

Dennis Kelso, Deputy Commissioner, and John Burns, Chief Marine Biologist, Alaska Department of Fish and Game (ADF&G), have determined that, based on ADF&G's best estimate of orca population in the areas affected, the population can biologically sustain the harvest of two whales a year for the next five years. ADF&G made comments to the National Marine Fisheries Service (NMFS) on the permit application, but their suggestions that specific conditions be included were denied. Burns pointed out the need for more baseline data on orca populations, and stressed the importance of State control in the taking of whales.

Lanny Cornell, Senior Vice President/ Zoological Director, Sea World, Inc., spoke of his company's history of cooperation with the State, and intention to seek a State permit from the Alaska Department of Fish and Game for the capture of orcas. He objected to the charges against Sea World in SJR 31.

Dr. Robert Elsner, Institute of Marine Science, University of Alaska, Fairbanks, felt the proposed project was a worthy one and that the University of Alaska would be happy to work with the Alaska Department of Fish and Game in overseeing the research and the capture of orcas.

Vivia Boe, Greenpeace, International, related her experience with monitoring Sea World's orca captures in Washington state. She discussed the federal lawsuit against Sea World, and the capture techniques used by Sea World in the past. She urged the resolution be strengthened to ensure the safe and humane treatment of Alaskan orcas.

Richard Osborne, Research Director, Moclips Cetological Society, Friday Harbor, Washington, recommended that research be done with photo identification methods to determine accurate population data before any management decisions on harvesting orcas are made.

Jim Brooks, Deputy Director, National Marine Fisheries Service (NMFS), Alaska Region, testified that the permit contained ample safeguards and the harvest by Sea World would be biologically irrelevant to the Alaskan orca population. Hearings were not held in Alaska because of limited time and money. He said the authority to manage marine mammals, even within 3 miles, lies with NMFS.

Larry Edwards, Alaska Environmental Lobby, spoke in support of SJR 31, and the need for placing additional conditions on the issuance of a permit.

John Howard, Juneau, spoke in support of Sea World's past research efforts, and feels Sea World should be allowed to conduct further research on orcas in Alaska.

The meeting adjourned at 5:33 pm.

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tial reduction of the continuing capability of the land or water to produce renewable resources at their natural or historic levels;

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

(14) "state forest" means an area which is retained in state ownership in order to

(A) provide a base for sustained yield management of renewable resources; and

(B) permit a variety of beneficial uses;

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

(16) "timber owner" means a person who owns timber on forest land or who has the rights to timber, but does not own the land itself. (§ 1 ch 108 SLA 1978; am § 88 ch 59 SLA 1982)

Revisor's notes. — In 1983 paragraphs (12) — (16) were reorganized to place the terms defined in alphabetical order.

Effect of amendments. — The 1982

amendment substituted "forestry" for "forest, land, and water management" in paragraph (5).

#### NOTES TO DECISIONS

The "sustained yield principle" as used in Alas. Const. art. VIII, § 4 accords with the definition set forth in AS 38.04.910(10), and the added language in the definition of "sustained yield" in this section that it "does not require that timber be harvested in a nondeclining yield

basis over a rotation period"; and it should be read as permitting timber cutting at a level that cannot be sustained over a forest rotation period only in unusual circumstances. *Southeast Alaska Conservation Council, Inc. v. State*, Sup. Ct. Op. No. 2662 (File No. 5855), P.2d (1983).

### Chapter 20. Parks and Recreational Facilities.

[Renumbered as AS 41.21.010 — 41.21.990.]

### Chapter 21. Parks and Recreational Facilities.

#### Article

1. Administration (§§ 41.21.010 — 41.21.040)
2. State Parks (§§ 41.21.110 — 41.21.167)
3. Alaska Marine Parks (§§ 41.21.300 — 41.21.306)
4. State Recreation Areas (§§ 41.21.410 — 41.21.490)
5. Wildlife Preserves (§§ 41.21.610 — 41.21.630)
6. Roadside Rests, Benches (§§ 41.21.800 — 41.21.805)

designating incompatible uses within the boundaries of state park and recreational areas to protect the property and to preserve the peace;

(7) cooperate with the United States and its agencies and local subdivisions of the state to secure the effective supervision, improvement, development, extension, and maintenance of state parks, state monuments, state historical areas, and state recreational areas, and secure agreements or contracts for the purpose of AS 41.21.010 — 41.21.046;

(8) encourage the organization of state public park and recreational activities in the local political subdivisions of the state;

(9) provide for consulting services designed to develop local park and recreation facilities and programs;

(10) provide clearing-house services for other state agencies concerned with park and recreation matters; and

(11) perform other duties as are prescribed by executive order or by law;

(12) maintain memorials to Alaska veterans located in state parks;

(13) adopt, in accordance with the Administrative Procedure Act (AS 44.62), regulations governing the use of the Chena River State Recreation Area and designating incompatible uses within the boundaries of the Chena River State Recreation Area in accordance with AS 41.21.490. (§ 2 ch 158 SLA 1959; am § 1 ch 233 SLA 1970; am § 3 ch 30 SLA 1981; am §§ 1, 2 ch 78 SLA 1981)

**Revisor's notes.** — Formerly AS 41.20.020. Renumbered in 1983.

The present second sentence of AS 41.21.490 was originally enacted as part of (13) of this section and was transferred, with appropriate minor word changes in (13) of this section in 1981. Two paragraphs (12) were added by the 1981 amendments. The paragraph added by the second amendment was renumbered as (13).

**Cross references.** — For power of the department of military affairs to construct

memorials to veterans, see AS 44.35.030.

**Effect of amendments.** — The first 1981 amendment added paragraph (12).

The second 1981 amendment made minor word changes in paragraph (5) and added paragraph (13).

**Collateral references.** — Grant of licenses or special privileges in parks, 18 ALR 1263; 63 ALR 484; 144 ALR 486.

Use to which park property may be devoted; power of legislature or state officers, 18 ALR 1266; 63 ALR 484; 144 ALR 486.

**Sec. 41.21.025. Zoning of private land within state parks.** (a) The department may adopt, under the Administrative Procedure Act (AS 44.62), zoning regulations governing private property within the boundaries of state parks established under this chapter.

(b) Land patented to or under interim conveyance to a regional or village native corporation under 43 U.S.C. 1601-1623 (P.L. 92-203, Alaska Native Claims Settlement Act) which falls within a state park boundary is subject to the zoning regulations provided for under (a) of this section only if the affected regional or village native corporation consents to or fails to reject the zoning regulations within 60 days from the date they are submitted to the effected corporation.

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tial reduction of the continuing capability of the land or water to produce renewable resources at their natural or historic levels;

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

(14) "state forest" means an area which is retained in state ownership in order to

(A) provide a base for sustained yield management of renewable resources; and

(E) permit a variety of beneficial uses;

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

(16) "timber owner" means a person who owns timber on forest land or who has the rights to timber, but does not own the land itself. (§ 1 ch 108 SLA 1978; am § 88 ch 59 SLA 1982)

**Revisor's notes.** — In 1983 paragraphs (12) — (16) were reorganized to place the terms defined in alphabetical order.

**Effect of amendments.** — The 1982

amendment substituted "forestry" for "forest, land, and water management" in paragraph (5).

**NOTES TO DECISIONS**

The "sustained yield principle" as used in Alas. Const. art. VIII, § 4 accords with the definition set forth in AS 38.04.910(10), and the added language in the definition of "sustained yield" in this section that it "does not require that timber be harvested in a nondeclining yield basis over a rotation period"; and it should be read as permitting timber cutting at a level that cannot be sustained over a forest rotation period only in unusual circumstances. Southeast Alaska Conservation Council, Inc. v. State, Sup. Ct. Op. No. 2662 (File No. 5855), P.2d (1983).

**Chapter 20. Parks and Recreational Facilities.**

*[Re-numbered as AS 41.21.010 — 41.21.990.]*

**Chapter 21. Parks and Recreation Facilities.**

**Article**

1. Administration (§§ 41.21.010 — 41.21.040)
2. State Parks (§§ 41.21.110 — 41.21.167)
3. Alaska Marine Parks (§§ 41.21.300 — 41.21.306)
4. State Recreation Areas (§§ 41.21.410 — 41.21.490)
5. Wildlife Preserves (§§ 41.21.610 — 41.21.630)
6. Roadside Rests, Beaches (§§ 41.21.800 — 41.21.805)

- 7. Trails, Footpaths and Campsites (§§ 41.21.850 — 41.21.872)
- 8. Miscellaneous Provisions (§§ 41.21.900 — 41.21.918)
- 9. General Provisions (§§ 41.21.950 — 41.21.990)

**Article 1. Administration.**

Section	Section
10. Purpose	30. Disposition of funds
20. Duties of Department of Natural Resources	40. Division within department
25. Zoning of private land within state parks	

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**Collateral references.** — 59 Am. Jur. 2d, Parks, Squares and Playgrounds, §§ 1 — 15; 63 Am. Jur. 2d, Public Lands, § 17. 81A C.J.S., States, §§ 138, 145 — 150. Statutes relating to establishment or administration of parks as encroachment on right of local self-government, 88 ALR 228.

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**Sec. 41.21.010. Purpose.** It is the purpose of AS 41.21.010 — 41.21.040 to foster the growth and development of a system of parks and recreational facilities and opportunities in the state, for the general health, welfare, education, and enjoyment of its citizens and for the attraction of visitors to the state. (§ 1 ch 158 SLA 1959)

**Revisor's notes.** -- Formerly AS 41.20.010. Renumbered in 1983.

**Sec. 41.21.020. Duties of Department of Natural Resources.** The Department of Natural Resources shall

- (1) develop a continuing plan for the conservation and maximum use in the public interest of the scenic, historic, archaeological, scientific, biological, and recreational resources of the state;
- (2) plan for and develop a system of state parks and recreational facilities, to be established as the legislature authorizes and directs;
- (3) acquire by gift, purchase, or transfer from state or federal agencies, or from individuals, corporations, partnerships or associations, land necessary, suitable and proper for roadside, picnic, recreational or park purposes;
- (4) control, develop and maintain state parks and recreational areas;
- (5) provide for the acquisition, care, control, supervision, improvement, development, extension and maintenance of public recreational land and make necessary arrangements, contracts or commitments for the improvement and development of land acquired under AS 41.21.010 — 41.21.040;
- (6) adopt, in accordance with this section and the Administrative Procedure Act (AS 44.62), regulations governing the use and

designating incompatible uses within the boundaries of state park and recreational areas to protect the property and to preserve the peace;

(7) cooperate with the United States and its agencies and local subdivisions of the state to secure the effective supervision, improvement, development, extension, and maintenance of state parks, state monuments, state historical areas, and state recreational areas, and secure agreements or contracts for the purpose of AS 41.21.010 — 41.21.040;

(8) encourage the organization of state public park and recreational activities in the local political subdivisions of the state;

(9) provide for consulting service designed to develop local park and recreation facilities and programs;

(10) provide cleaning-house services for other state agencies concerned with park and recreation matters; and

(11) perform other duties as are prescribed by executive order or by law;

(12) maintain memorials to Alaska veterans located in state parks;

(13) adopt, in accordance with the Administrative Procedure Act (AS 44.62), regulations governing the use of the Chena River State Recreation Area and designating incompatible uses within the boundaries of the Chena River State Recreation Area in accordance with AS 41.21.490. (§ 2 ch 158 SLA 1959; am § 1 ch 233 SLA 1978; am § 3 ch 30 SLA 1981; am §§ 1, 2 ch 78 SLA 1981)

**Revisor's notes.** — Formerly AS 41.20.020. Renumbered in 1983.

The present second sentence of AS 41.21.490 was originally enacted as part of (13) of this section and was transferred, with appropriate minor word changes in (13) of this section in 1981. Two paragraphs (12) were added by the 1981 amendments. The paragraph added by the second amendment was renumbered as (13).

**Cross references.** — For power of the department of military affairs to erect

memorials to veterans, see AS 44.35.030.

**Effect of amendments.** — The first 1981 amendment added paragraph (12).

The second 1981 amendment made minor word changes in paragraph (6) and added paragraph (13).

**Collateral references.** — Grant of licenses or special privileges in parks, 18 ALR 1263; 63 ALR 484; 144 ALR 486.

Use to which park property may be devoted: power of legislature or state officers, 18 ALR 1266; 63 ALR 484; 144 ALR 486.

**Sec. 41.21.025. Zoning of private land within state parks.** (a) The department may adopt, under the Administrative Procedure Act (AS 44.62), zoning regulations governing private property within the boundaries of state parks established under this chapter.

(b) Land patented to or under interim conveyance to a regional or village native corporation under 43 U.S.C. 1601-1628 (P.L. 92-203, Alaska Native Claims Settlement Act) which falls within a state park boundary is subject to the zoning regulations provided for under (a) of this section only if the affected regional or village native corporation consents to or fails to reject the zoning regulations within 60 days from the date they are submitted to the effected corporation.

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11 AAC 12.120. HORSES. Horses and pack stock shall not be ridden, driven, led, or otherwise used in a state park except in an area or on a roadway or trail of the state park designated by the director for the use of horses. (Eff. 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

(2) the maximum number of people to occupy a facility or area; and

(3) any other provision the director deems necessary to protect the health and welfare of

11 AAC 12.130. PETS. Dogs and other pets, while in a building, campground or other developed area of a state park, shall be on a leash not exceeding nine feet in length at all times. The director may prohibit dogs and other pets from areas or buildings in a state park. Seeing-eye dogs are exempt from prohibitions against pets in a building, campground, or other area of a state park. A dog or other pet running at large in a state park may be destroyed by a state park official. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 03.55.010 AS 41.20.020  
AS 03.55.020 AS 41.20.040  
AS 18.75.020

11 AAC 12.140. CONSTRUCTION OF STRUCTURES. No dock, cabin, home, building, or other structure may be constructed or maintained on state park lands or waters unless authorized by the director. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

11 AAC 12.150. CONSTRUCTION OF SIGNS. Construction or display of signs in a state park is prohibited unless authorized by the director. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

11 AAC 12.160. ASSEMBLY. (a) An assembly of more than 20 people in a state park is prohibited without a permit. A permit may be obtained by applying to the director. Where more than one application for the same period of time is received by the director, a permit shall be issued to the applicant filing the first application.

(b) The permit may provide

(1) restrictions as to facilities or area;

**MEMORANDUM**  
DEPARTMENT OF NATURAL RESOURCES

**State of Alaska**  
DIVISION OF PARKS

TO: Neil C. Johannisen  
Director

DATE: January 12, 1984

THRU: Skip Harding  
Deputy Director

FILE NO: 6210-12-9

FROM: Peter J. Janssen  
Superintendent  
Chugach/Southwest District

TELEPHONE NO: 279-3413

SUBJECT: Horses in Chugach

On January 11, 1984, I met with the Anchorage Horse Trails and Facilities Committee, which is the primary organization representing the interests of the equestrian community in the Anchorage area. The goal of the meeting was to identify how the use of horses in State Parks could be recognized as a legal recreational pursuit and to come to agreement on which trails in Chugach State Park would be open to horses.

After a lengthy and often heated discussion on why the Division could not simply do away with the current regulation, 11AAC 12.120 HORSES, and open all parks to horses, we knuckled down and proceeded to explore the various options available to open trails in Chugach State Park. Those methods being the formulation of a Division Order under the existing 11AAC 12.120, the application of the revised 11AAC 12.010 LIMITATION ON USE OF PARK LAND AND WATER, when adopted, or the inclusion of Horses in 11AAC 20 when those regulations are promulgated.

Prior to attending the meeting, I consulted the Deputy Director to ascertain which method would best apply to this particular situation. We agreed that due to the length of time required to promulgate Chapter 20 and the uncertainty as to when the proposed 11AAC 12.010 would be in effect, the best direction at this time would be to issue a Division Order opening trails to horses.

I integrated this rationale into the meeting and those in attendance were concerned about the possibility of this Division Order being repealed at a later date. I explained that the likelihood of that occurring was remote, without a similar order or regulation being in place or in the process of being promulgated.

To summarize, the issuance of a Division Order opening trails in Chugach State Park will serve to depolitize the issue and recognize the use of horses as a legal activity on designated trails. The wording of the Division Order (draft attached) will be such that it can be used under the procedure outlined in the proposed 11AAC. 12.010 or to be promulgated at a later date in Chapter 20.

PJP/1k

DELIVER TO: Carol W. ISO	LOCATION: ANA - CND
FROM: PARKS	LOCATION: Anch.
TELEPHONE/TELECOPIER #	TOTAL NUMBER OF PAGES: 3

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF PARKS

BILL SHEFFIELD, GOVERNOR

818 WAREHOUSE AVE., SUITE 210  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 275-2553

January 12, 1984

Division Order No. 55

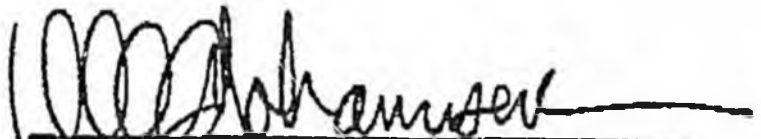
SUBJECT: Use of Horses in Chugach State Park

AUTHORITY: AS 41.21.020  
AS 41.21.040  
11AAC 12.120

1. All areas of Chugach State Park are open to the use of horses and pack stock with the exception of the following areas:
  - A. Campgrounds, swim beaches and picnic areas;
  - B. The Eagle River Valley from Crow Pass to the Eagle River Visitor Center;
  - C. The Old Johnson Trail from Potter to Indian;
  - D. All trails in the Hillside Trail System (North Fork of Campbell Creek to Rabbit Creek) from April 1 to June 1 annually;
  - E. Designated trails in the Hillside Trail System;
    - 1) Glen Alps access trails to the Powerline;
    - 2) Trails and roads above (southeast of) the gas-line and powerline junction from Nov. 1 to June 1 annually;
    - 3) All trails east of the powerline from Nov. 1 to June 1 annually;
    - 4) The Wolverine Peak Trail from Nov. 1 to June 1 annually;
    - 5) Middle Fork Loop Trail;
    - 6) Flattop Mountain Trail;

Division Order No. 55 (con't)  
January 12, 1984  
Page 2 of 2

2. Groups consisting of ten or more animals must obtain a Park Use Permit prior to entering the park;
3. Quartering of horses and packstock within 100' of fresh water is prohibited.

  
\_\_\_\_\_  
Neil C. Schanzen, Director  
Division of Parks and Outdoor Recreation

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 2/27/84

REQUEST

Bill/Resolution No.: CS SB 349  
Title: Activities in State  
parks

Sponsor: Faiks  
Requestor: Resources  
Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources  
Program Category Affected:  
Div. of Parks

BRU, Program or Subprogram(s) Affected:  
Park Management/Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Jim Price Phone: 265-4526  
Division: Parks Date: 1/26/84

Approved by Commissioner: *William D. Schmidt, Deputy* Date: 2/27/84  
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

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SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: *SB 355*

BILL NAME: *Qualifications for parent to homesites*

SPONSOR(S): *Rae*

RELATED BILLS PENDING:

DATE INTRODUCED: *1-17-84*

*HB 541*

REFERRALS: *Resources*  
*Finance*

*1/25/84*

INITIAL RESEARCH:

BILL SUMMARY COMPLETED:

SUMMARY BY LEGAL DIVISION:

SPONSOR CONTACTED FOR  
BACKUP MATERIALS:

DEPT. OF LAW SUMMARY:

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR  
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS/GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE:

BACKGROUND MATERIAL DISTRIBUTED:

PSA/PRESS RELEASE:

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/COMMIT'  
SUBSTITUTES DRAFTED:

SB 355 - relating to qualifications to patents for homesites  
Sponsor: Senator Ray

Under AS 38.08.060 a permit holder for a homesite must meet three requirements (see below)\* to be eligible for a patent to the land.

SB 355, by adding a new subsection, .060(e), allows the permit holder the opportunity to waive requirement (a)1 for (e), which at 5% of the fair market value at the time the permit was granted and conformity to subsections (b) and (c), will allow the permittee to acquire a patent to the homesite under the purchase provisions provided for in 38.05.065 (terms of contract sale).

The concept of SB 355 is embodied in the work draft of Senator Fahrenkamp's Title 38 rewrite. The differences in the two versions are:

1. The 5% downpayment stipulation in SB 355 is not included in the rewrite; and,
2. purchase under 38.05.065 is based on the fair market value at the expiration date of the permit in Senator Fahrenkamp's version, not at the time the permit is issued.

#### PATENT REQUIREMENTS

**Sec. 38.08.060. Issuance of patent.** (a) A person who enters upon homesite entry land under a permit issued by the director shall be issued a patent to the land conveying an unencumbered title if that person

(1) occupies the land for a cumulative total of 35 months within the seven-year period following issuance of the homesite entry permit;

(2) erects a habitable, permanent, single-family dwelling on the homesite, which meets all applicable state and local regulations, within five years of the date of issuance of the homesite entry permit; for the purposes of this paragraph, mobile homes are not considered to be permanent dwellings unless they are placed on a permanent foundation;

(3) reimburses the state for the survey and platting undertaken in accordance with AS 38.08.010 — 38.08.120; the director shall provide by regulation for installment payments of this requirement.

(b) Nothing in AS 38.08.010 — 38.08.120 shall be construed to prohibit a person issued a homesite entry permit from residing in a temporary habitable dwelling on the homesite until revocation of the homesite entry permit.

(c) No person may be issued more than one patent during his lifetime, nor may any person who is a member of a patent holder's household be issued a patent while a member of the patent holder's household.

(d) If a dwelling is found to have been substantially completed under AS 38.08.100, patent shall be issued upon completion of the dwelling, notwithstanding (a) (2) of this section. (§ 2 ch 142 SLA 1977; am § 11 ch 181 SLA 1978; am § 42 ch 85 SLA 1979; am § 38 ch 113 SLA 1981)

**Effect of amendments.** — The 1978 amendment substituted "five years" for "three years" in paragraph (2) of subsection (a).

The 1979 amendment, in paragraph (1) of subsection (a), substituted "35 months within the five-year period" for "21 months within the three-year period" and deleted "or five months with 20 years Alaskan cumulative residence" from the end.

The 1981 amendment substituted "seven-year" for "five-year" in paragraph (1) of subsection (a).

**Editor's notes.** — Section 47, ch. 113, SLA 1981 provides: "A person who is granted a homesite entry permit before July 1, 1981, is entitled to a patent to the land if the person satisfies the conditions imposed (1) in the homesite entry permit; or (2) by AS 38.08.060(a)."

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SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: *SB 356*

BILL NAME: *Establishing a preference right to land*

SPONSOR(S): *Josephson*

RELATED BILLS PENDING:

DATE INTRODUCED: *1-17-84*

REFERRALS: *Resources  
Finance*

INITIAL SEARCH:

BILL SUMMARY COMPLETED:

SUMMARY BY LEGAL DIVISION:

SPONSOR CONTACTED FOR  
BACKUP MATERIALS:

DEPT. OF LAW SUMMARY:

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR  
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS/GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE:

BACKGROUND MATERIAL DISTRIBUTED:

PSA/PRESS RELEASE:

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/COMMITTEE  
SUBSTITUTES DRAFTED:

*Ned Feltgus, DWR  
Sen. Josephson*

## BILL SUMMARY

SB 356 - preference right to land  
SPONSOR: Sen. Josephson

---

The Statute affected by SB 356 is AS 38.05.035 which provides for the powers and duties of the director of the Division of Land and Water Management, DNR.

Within .035 is a subsection which specifically provides the director with "the authority to grant preference rights for the lease or purchase of state land without competitive bid in order to correct the past or future errors or omissions of a state or federal administrative agency..."

SB 356, primarily by adding a new subsection (.036), provides a definition for errors and omissions which is currently neither clarified in statute nor defined in regulations.

Introduction of the bill was prompted by a request to the State from a Mr. Meslier for the granting of a preference right under .035. The request was denied, and though the case is involved, the deciding factor for the rejection was its failure to fall within the Department's interpretation of error and/or omission.

# ALASKA STATE SENATE

JOE P. JOSEPHSON  
DISTRICT G - ANCHORAGE  
1526 F STREET  
ANCHORAGE, ALASKA 99501  
(907) 277-4419

WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4907  
(907) 465-4525

## COMMITTEES

HEALTH, EDUCATION & SOCIAL SERVICES (CHAIR)  
JUDICIARY (VICE-CHAIR)  
FINANCE  
MAJORITY CAUCUS (CHAIR)

February 24, 1984

The Honorable Bettye Fahrenkamp  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

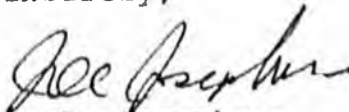
In regard to my letter of February 21, 1984, to Commissioner Wunnicke concerning preference rights, I would appreciate your scheduling a hearing on this issue on or after March 5. This would allow enough time for Commissioner Wunnicke to respond to my letter.

The bill in question is SB 356, "An Act establishing a preference right to land".

Thank you for your attention to this matter.

With best wishes, I am

Sincerely,

  
Joe P. Josephson  
State Senator

JPJ:kbk

# ALASKA STATE SENATE

JOE P. JOSEPHSON  
DISTRICT G ANCHORAGE  
1526 F STREET  
ANCHORAGE ALASKA 99501  
(907) 277 4419

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POUCH V  
JUNEAU ALASKA 99811  
(907) 465 4907  
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COMMITTEES  
HEALTH EDUCATION & SOCIAL SERVICES (CHAIR)  
JUDICIARY (VICE CHAIR)  
FINANCE  
MAJORITY CAUCUS (CHAIR)

March 7, 1984

Honorable Bettye Fahrenkamp  
Chairman, Senate Resources Committee  
Alaska State Senate  
Juneau

Dear Bettye:

As per our conversation, I am requesting a hearing on my bill, Senate Bill 356, relating to preference rights to land. I will want to testify on this matter personally, so if possible, would prefer that the matter not be scheduled on a Monday, Wednesday or Friday afternoon when I hold meetings of the Committee on Health, Education and Social Services.

I would also be pleased to brief your Committee staff before the hearing, so that staff may be aware of the history of the matter which prompted the introduction of Senate Bill 356. I have some extensive "back-up" which can be reproduced as well.

With thanks and best wishes,

Sincerely,



Joe P. Josephson

SB 356

# ALASKA STATE SENATE

JOE P. JOSEPHSON  
DISTRICT G - ANCHORAGE  
1526 F STREET  
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COMMITTEES  
HEALTH EDUCATION & SOCIAL SERVICES (CHAIR)  
JUDICIARY (VICE CHAIR)  
FINANCE  
MAJORITY CAUCUS (CHAIR)

February 21, 1984

The Honorable Esther C. Wunnicke  
Commissioner  
Department of Natural Resources  
Pouch M  
Juneau, Alaska 99811

Dear Esther:

Thank you for your letter of February 1 concerning preference rights.

I understand, of course, that the preference right provisions of AS 38.05.035 create a mechanism which calls for thorough consideration and justification. But it remains my judgment that the case of Mr. Messerli, my constituent, is one which calls for the exercise of the discretion authorized by the legislature in favor of the preference right. In viewing his case as one in which the equities cry out for relief, I am merely following the perspectives of people like Jack Sedwick and the late E. L. ("Bob") Bartlett.

I know you recognize my own long-standing commitment to a land management regime that serves the broad public interest. In supporting Mr. Messerli's preference right application, I found no inconsistency with that commitment.

In one of your letters of February 1, you mentioned that up to 200 cases might be affected by the passage of the legislation I have sponsored. In one sense, I was startled to hear that, because Mr. Dale Tubbs had opined that Mr. Messerli's case was almost unique, and because the bill has been drafted so as to meet only cases which have all the unusual equities presented by Mr. Messerli's long history of interest since the 1950's.

In another sense, I am pleased to know that there are so many other Alaskans of that number who might be beneficiaries of remedial legislation.

FEB 23 1984

The Honorable Esther C. Wunnicke  
February 21, 1984  
Page Two

It would be helpful for me to have the names and addresses of the other Alaskans who might be directly affected. From that information, I could determine whether they meet the criteria, and if so, I could make them aware of the pendency of my bill and invite them to offer input to the legislature.

Alternatively a review of their cases could suggest that the language of my bill is unnecessarily broad. If so, I would be open to specific proposals for amendment which the Department might wish to propose to me.

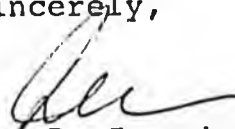
Obviously, the possibility of 200 cases is not necessarily an argument against the passage of the bill, but may suggest that there is a significant number of Alaskans with equally meritorious preference rights claims which an equitable state policy ought to recognize.

I am asking Senator Fahrenkamp to schedule an early hearing. Again, I regret we do not agree about how the public interest should be served in this matter. Frankly, no convincing rationale against the exercise of the preference right provisions in the case of Mr. Messerli has been proffered to me. I will not reiterate the arguments I made in earlier submissions on Mr. Messerli's behalf, but as I see it, the Department has elected not to refute them, preferring to reiterate its conclusionary statements such as that "there is no reason to grant Mr. Messerli a preference right".

I would appreciate your usual expeditious treatment of a request for information so that I may have the names and addresses. Should you or your staff wish to discuss this matter with me, or to review the files and records that are involved with members of my staff, please don't hesitate to let me know.

With best wishes, I am

Sincerely,

  
Joe P. Josephson  
State Senator

JPJ:rak  
cc: Senator Fahrenkamp ✓  
Loyd Messerli

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

file SB 356

BILL SHEFFIELD, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE: 907-465-2400

March 2, 1984

The Honorable Joe Josephson  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Josephson:

Thank you for your letter about preference rights and your proposed amendments (SB 356) to AS 38.05.035.

My estimate that up to 200 cases may be affected by the proposed legislation is based upon the expertise and knowledge of the Department's land managers. We have not reviewed our casefiles -- of which approximately 50,000 are active -- to determine which might be affected. Thus I regret that I cannot supply you with the names and addresses that you have requested. If it would be useful, I would be pleased to arrange a briefing for you so that the Department's staff can explain the issues involved and how the number was estimated.

Please allow me to offer some additional comments on SB 356.

✓ In SB 356 you propose requiring the grant of a preference right under certain conditions. I strongly believe that any grant of preference rights by the Commissioner should remain discretionary. Each application needs thorough consideration by the Department and the Commissioner, particularly to provide the best interest finding required of the Commissioner under AS 38.05.035(a)(14) prior to the conveyance of any interest in state land.

✓ In SB 356, you propose to make the recognition of claims retroactive to July 1959, but other preference right subsections go back to Statehood (January 3, 1959). Also, you should be aware that I support the proposal in SB 375 (Senator Fahrenkamp's bill on land disposals and management) that would require application for preference rights within three years of an error or omission.

The bill raises a number of questions. For instance, in defining errors and omissions, should the Commissioner rely only on the written record, or upon the applicant's averment of error or omission? When an agency is unable to adjudicate claims (valid or not) promptly, does delay

March 2, 1984

constitute error? Does the third party holder have no right to protect a valid, legal interest in land, whatever the actual or intended use? Is the Legislature willing to budget funds for obligatory acquisition/exchange of lands claimed by preference right?


An issue I have not addressed in detail is cost. In Mr. Messerli's case, the land he claims is probably worth hundreds of thousands of dollars. If, in his case, federal administrative error were determined to have occurred and the Department were obliged (by SB 356) to obtain and reconvey the lands to him, he would receive the land at well below fair market value. The State (in kind or in funds) would have to pay for the difference in value between 1959 and 1984. Even a few such cases would present substantial costs to the State.

The proposal to acquire preference claim lands from a third party by an exchange of State lands would also prove expensive and complicated. Generally, land exchanges are difficult to accomplish.

In this review of the proposed legislation, I have presented only a few of the concerns of this department. The existing law permits the consideration of the public's best interest in land conveyance and provides for review and judgment by the Commissioner and the Department's professional land managers. It does not bind the State to expensive, complicated preference right processing. These important features commend the current law. I would urge you to consider them.

I much appreciate your interest in the subject. Please let me know if my staff and I can provide any further background or can answer questions.

Sincerely,

  
Esther C. Wunnicke  
Commissioner

Enclosure

cc: The Honorable Bettye Fahrenkamp,  
Chair, Senate Committee on Resources

(d) Real property acquired by, and under the management of, the agencies referred to in (a) and (b) of this section, which is no longer needed for its intended use, shall be returned to the jurisdiction of the division of lands, except that the Department of Highways may dispose of real property acquired by it under AS 19.05.040(2) and AS 19.05.080 — 19.05.120.

(e) Repealed by § 20 ch 182 SLA 1978. (§ 3(a) — (d) art XIII ch 169 SLA 1959; am §§ 20, 21 ch 61 SLA 1960; am § 1 ch 27 SLA 1967; am § 1 ch 253 SLA 1970; am §§ 1, 2 ch 35 SLA 1971; am § 2 ch 240 SLA 1976; am § 2 ch 267 SLA 1976; am § 20 ch 182 SLA 1978)

**Effect of amendments.** — The 1978 amendment repealed subsection (e).

**Editor's notes.** — Sections 5 and 6, ch. 182, SLA 1978, purported to amend this section by deleting "(c) and" preceding "(b) of this section" in subsections (c) and (d), respectively, and § 20 of ch. 182 purported to repeal subsection (a). Section 27 of ch. 182 made these amendments and repeal effective on the date that the Board of Regents voted to approve the matters under consideration as provided in § 24 of the act. The Board of Regents disapproved all matters on August 17, 1978. Consequently, these amendments were ineffective.

**Opinions of attorney general.** — The

interaction of AS 38.05.030(b), 38.05.035(a)(7) and (12), AS 35.05.040(1), and AS 35.20.010 was examined to determine (1) which agency of the state had authority to accept title to land transferred by the federal government and (2) which agency had authority to manage the land, which was conveyed for airport and other purposes. The division of land is the proper agency for acceptance of title. The division of aviation in the (former) Department of Public Works possesses the authority to manage the granted land for airport and directly related purposes while the division of lands possesses the authority to manage the land for other public purposes. April 14, 1977, Op. Atty. Gen.

#### NOTES TO DECISIONS

**Scope of subsection (a).** — Subsection (a) of this section only covers disposals of land by the commissioner of natural resources. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

**Creation of state park including university lands.** — Since creation of a state park which included university lands was a disposal by the legislature, not by administrative action, subsection (a) of this section was inapplicable. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

By enacting AS 41.20.210, creating

Chugach State Park, the legislature did not impliedly repeal subsection (a) of this section, which prevents disposal of university lands by the commissioner of natural resources without the approval of the Board of Regents of the University of Alaska. AS 41.20.210 withdrew the particular university land involved from the operation of the management mechanism created by subsection (a) and AS 14.40.120(a)(4), which grants certain management powers to the Board of Regents. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

#### Sec. 38.05.032. School land disposition procedures.

Repealed by § 20 ch 182 SLA 1978.

**Editor's notes.** — The repealed section derived from § 1, ch. 257, SLA 1976.

**Sec. 38.05.035. Powers and duties of the director.** (a) The director shall

(1) have general charge and supervision of the division and may exercise the powers specifically delegated to him; may employ and fix the compensation of assistants and employees necessary for the operations of the division; and is the certifying officer of the division, with the consent of the commissioner, and may approve vouchers for disbursements of money appropriated to the division;

(2) manage, inspect and control state lands and improvements on them belonging to the state and under the jurisdiction of the division;

(3) execute laws, rules, regulations and orders adopted by the commissioner;

(4) prescribe application procedures and practices for the sale, lease or other disposition of available lands, resources, property, or interest in them;

(5) prescribe fees or service charges, with the consent of the commissioner, for any public service rendered;

(6) under the conditions and limitations imposed by law and the commissioner, issue deeds, leases or other conveyances disposing of available lands, resources, property or any interests in them;

(7) have jurisdiction over state lands, except those lands acquired by the Alaska World War II Veterans Board and the Agricultural Loan Board or the departments or agencies succeeding to their respective functions through foreclosure or default; to this end the director possesses the powers and, with the approval of the commissioner, shall perform the duties necessary to protect the state's rights and interest in state lands, including the taking of all necessary action to protect and enforce the state's contractual or other property rights;

(8) Repealed by § 20 ch 182 SLA 1978.

(9) maintain such records as the commissioner considers necessary, administer oaths, and do all things incidental to the authority imposed; the following records and files shall be kept confidential upon request of the person supplying the information;

(A) the name of the person nominating or applying for the sale, lease, or other disposal of lands by competitive bidding;

(B) before the announced time of opening, the names of the bidders and the amounts of the bids;

(C) all geological, geophysical and engineering data supplied, whether or not concerned with the extraction or development of natural resources;

(D) except as provided in AS 38.05.036, cost data and financial information submitted in support of applications, bonds, leases and similar items;

(E) applications for rights-of-way or easements;

(F) requests for information or applications by public agencies for

(10) account for the fees, licenses, taxes or other money received in the administration of AS 38.05.005 — 38.05.370 including the sale or leasing of land, identify their source, and promptly transmit them to the proper fiscal department after crediting them to the proper fund; receipts from land application filing fees and charges for copies of maps and records shall be deposited immediately in the general fund of the state by the director;

(11) select and employ or obtain at reasonable compensation cadastral, appraisal, or other professional personnel he considers necessary for the proper operations of the division;

(12) be the certifying agent of the state to select, accept and secure by whatever action is necessary in the name of the state, by deed, sale, gift, devise, judgment, operation of law, or other means any lands, of whatever nature or interest, available to the state, and shall be the certifying agent of the state, to select, accept or secure by whatever action is necessary in the name of the state any lands, or title or interest to lands available, granted, or subject to being transferred to the state for any purpose;

(13) Repealed by § 15 ch 181 SLA 1978; § 20 ch 182 SLA 1978.

(14) when he makes a written finding that the interests of the state will be best served, he may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available lands, resources, property or interests in them, and, in addition to the conditions and limitations imposed by law, he may impose additional conditions or limitations in the contracts as he, with the consent of the commissioner, determines will best serve the interests of the state; and no contract for the sale, lease, or other disposal of available lands or interests in them, is legally binding on the state until the commissioner formally records his consent to the contract; but if the appraised value is not greater than \$50,000 in the case of the sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or interest in land, the director may approve and issue the contract without the consent or approval of the commissioner; the written finding shall be available to the public upon request; before a public hearing, if held, or in any case no less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them, the director shall make available to the public a written decision in which he sets out the facts and applicable law upon which he based his determination that the sale, lease, or other disposal will best serve the interests of the state; a written finding is not required before the approval of

(A) a contract for a negotiated sale authorized by AS 38.05.115;

(B) the lease of land for a shore fishery site under AS 38.05.082;

(C) a permit or other authorization revocable by the department.

(1) delegate the administrative duties, functions or powers imposed upon him to a responsible employee in the division;

(2) grant preference rights for the lease or purchase of state land without competitive bid in order to correct the past or future errors or omissions of a state or federal administrative agency when inequitable detriment would otherwise result to a diligent claimant or applicant due to situations over which the claimant or applicant had no control; the exercise of this discretionary power operates only to divest the state of its title to or interests in land and may be exercised only with the express approval of the commissioner;

(3) grant a preference right to a claimant who shows bona fide improvement of state land, or federal land subsequently acquired by the state, and who has in good faith sought to obtain title to the land but who, through error or omission of others, has been denied title to it; upon a showing satisfactory to the commissioner, the claimant may lease or purchase the land at the price set on the date of original entry on the land or, if a price was not set at that time at a price determined by the division to fairly represent the value of unimproved land at the time the claim was established, but in no event less than the cost of administration including survey; the error or omission of a predecessor in interest or an agent, administrator, or executor which has clearly prejudiced the claimant may be the basis for granting a preference right;

(4) sell lands by lottery for less than their appraised value when, in his judgment, past scarcity of land suitable for private ownership in any particular area has resulted in unrealistic land values;

(5) when he determines it is in the best interest of the state and will avoid injustice to a person or his heirs or devisees, dispose of land, by direct negotiation to that person who presently uses and who used and made improvements to that land before January 3, 1959 or his heirs or devisees; the amount paid for the land shall be its fair market value on the date that the person first entered the land, as determined by the director; a parcel of land disposed of under this paragraph shall be of a size consistent with the person's prior use, but may not exceed five acres;

(6) dispose of an interest in land limited to use for agricultural purposes by lottery;

(7) convey to an adjoining landowner a parcel of land created by a highway right-of-way alignment or realignment, or a parcel created by the vacation of a state-owned right-of-way if

(A) he determines that it is in the best interests of the state;

(B) the parcel does not exceed the minimum lot size under an applicable zoning code; and

(C) the director and the platting authority having land use planning jurisdiction agree that conveyance of the parcel to the adjoining

(8) for good cause extend for up to 90 days the time for rental or installment payments by a lessee or purchaser of state land under AS 38.05.005 — 38.05.370 if reasonable penalties and interest set by the director are paid.

(c) A parcel of land may be conveyed under (b) of this section without classification or reclassification under AS 38.05.300.

(d) A parcel of land described in (b) (7) of this section must be sold at its fair market value as determined by the director on the basis of an appraisal completed as provided in AS 38.05.310. Nothing in this subsection prevents the sale of land under AS 38.05.055 or 38.05.057 to a person not qualifying as an adjoining landowner if the adjoining landowner declines to purchase the land. (§ 5 art 11 ch 169 SLA 1959; am § 1 ch 57 SLA 1960; am §§ 2 — 4 ch 61 SLA 1960; am § 1 ch 55 SLA 1962; am § 1 ch 56 SLA 1964; am § 1 ch 98 SLA 1964; am § 1 ch 5 SLA 1965; am § 1 ch 58 SLA 1965; am § 1 ch 194 SLA 1968; am § 1 ch 164 SLA 1972; am §§ 2, 3 ch 257 SLA 1976; am §§ 1, 2 ch 176 SLA 1978; am § 15 ch 181 SLA 1978; am § 20 ch 182 SLA 1978; am § 1 ch 61 SLA 1980; am §§ 9 — 13 ch 113 SLA 1981)

**Revisor's notes.** — In subsection (b) (7), the word "convey" was substituted for "dispose" at the beginning of the paragraph and in subsection (d), the words "of land" were added following "parcel" by the revisor of statutes under AS 01.05.031.

**Effect of amendments.** — The first 1978 amendment, in subsection (b), substituted "sell lands by lottery" for "dispose of lands by competitive bid" in paragraph (4) and inserted "suitable for private ownership" in paragraph (4).

The second 1978 amendment, in subsection (a), repealed paragraph (13) which related to the powers of the director to select, administer, and dispose of mental health lands for the support of the mental health program. The third 1978 amendment, in subsection (a), repealed paragraphs (8) and (13), which related to the power of the director to administer the Land Registration Law and to select, administer, and dispose of mental health land for support of the mental health program, respectively. Section 28 of this amendatory act makes the repeal of paragraph (13) effective July 1, 1978, while § 30 of the act makes the repeal of paragraph (8) effective July 19, 1978.

The 1980 amendment added "except as provided in AS 38.05.036" at the beginning of subparagraph (a)(9)(D).

The 1981 amendment substituted "\$50,000" for "\$10,000" preceding "in the case of the sale of land," substituted "\$5,000" for "\$1,000" preceding "in the

case of the annual rental of land," substituted semicolons for periods preceding "the written finding" and preceding "before a public hearing," added "a written finding is not required before the approval of" following "interest of the state" and added subparagraphs (A)-(C) in subsection (a)(14). In subsection (b)(3), the amendment added "the price set on the date of original entry on the land or, if a price was not set at that time at" preceding "a price determined by the division." In subsection (b)(5), the amendment substituted "on the date that the person first entered the land" for "as of that date" preceding "as determined by the director." The amendment also added paragraphs (7) and (8) of subsection (b) and added subsections (c) and (d).

**Editor's notes.** — Section 7, ch. 182, SLA 1978, purported to amend this section by adding a paragraph (7) of subsection (b). Section 27 of ch. 182 made this amendment effective on the date that the Board of Regents voted to approve the matters under consideration as provided in § 24 of the act.

The Board of Regents disapproved all matters on August 17, 1978. Consequently, this amendment was ineffective.

**Opinions of attorney general.** — The interaction of AS 38.05.030(b), 38.05.035(a)(7) and (12), AS 35.05.040(1), and AS 35.20.010 was examined to determine (1) which agency of the state had

by the federal government and (2) which agency had authority to manage the land, which was conveyed for airport and other purposes. The division of lands is the proper agency for acceptance of title. The division of aviation in the (former) Depart-

ment of Public Works possesses the authority to manage the granted land for airport and directly related purposes while the division of lands possesses the authority to manage the land for other public purposes. April 14, 1977. Op. Att'y Gen.

#### NOTES TO DECISIONS

Applied in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982).

Cited in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982); *State v.*

*Bering Strait Regional Educ. Attendance Area School Dist.*, Sup. Ct. Op. No. 2625 (File No. 6381), 658 P.2d 784 (1983); *Chevron U.S.A., Inc. v. LeResche*, Sup. Ct. Op. No. 2659 (File Nos. 6396, 6648), P.2d (1983).

**Sec. 38.05.036. Audit of royalty and net profit payments.** (a) The Department of Revenue shall audit reports, payments, and payments due relating to royalty and net profits under oil and gas contracts, agreements, or leases under AS 38.05.005 — 38.05.370.

(b) The Department of Revenue may inspect all reports and other information filed in support of or relating to royalty and net profits payments, whether or not that information is confidential, and shall hold that information confidential to the extent required under oil and gas agreements, contracts, or leases, or by AS 38.05.005 — 38.05.370 or AS 43.05.230.

(c) All information obtained by the Department of Revenue relating to royalty and net profits payments, including information obtained under AS 43.05.010 — 43.80.040, may be made available to the department, in the form of summaries and, when in furtherance of the department's royalty and net profits functions, relevant portions of the audits. Information made available to the department that was obtained under AS 43.05.010 — 43.80.040 is confidential and subject to the provisions of AS 43.05.230.

(d) The Department of Revenue may conduct audits under this section concurrently with audits or investigations under AS 43.05.010 — 43.80.040, and may use information obtained from the department in tax audits, investigations, or proceedings under AS 43.05.010 — 43.80.040.

(e) In this section, "audit" means the process of obtaining sufficient competent evidentiary matter through inspection, observation, inquiry, and confirmation to afford a reasonable basis for ascertaining the compliance by the subject of the audit with the applicable law, regulation, lease, agreement, and contract terms; it does not include any other actions necessary to administer AS 38.05.005 — 38.05.370 pertaining to oil and gas royalty and net profits payments, including daily accounting functions, certification procedures associated with those accounting functions, and enforcement of payments of royalties

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SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: *SB 357*

BILL NAME: *Management Plans: Ref. adopted by  
Board of Fisheries*

SPONSOR(S): *P. Fischer; Gilman*

RELATED BILLS PENDING:

DATE INTRODUCED: *1-18-84*

REFERRALS: *Resources  
Finance*

INITIAL RESEARCH:

BILL SUMMARY COMPLETED:

SUMMARY BY LEGAL DIVISION

SPONSOR CONTACTED FOR  
BACKUP MATERIALS:

DEPT. OF LAW SUMMARY:

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATOR  
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS/GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE:

BACKGROUND MATERIAL DISTRIBUTED:

PSA/PRESS RELEASE:

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/  
SUBSTITUTES DRAFTED:

*Henry Smith  
Bob Penney*

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
BOB MULCAHY  
ARLISS STURGULEWSKI

POUCH V  
STATE CAPITAL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Senate Committee on Resources

### MEMORANDUM

TO: Senator Mulcahy, Chairman  
Resources Subcommittee of Fisheries

FROM: Senator Fahrenkamp, Chairman  
Senate Resources Committee

SUBJECT: SB 257

DATE: February 7, 1984

This bill has been prepared for the Senate Resources Committee. I am requesting it be the Subcommittee on Fisheries for consideration by the Subcommittee.

As set, it addresses management plans and regulations needed by the Board of Fisheries.

cc: Senate Resources Committee

## BILL SUMMARY

SB 357 - Standards for adopting regulations/Board of Fisheries  
Sponsor: P. Fischer

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SB 357 adds a new section to AS 16.05 (Boards of Fish and Game) which establishes standards for the Board of Fisheries to use as a guideline in adopting regulations and management plans.

Of the five subsections, (a) and (b) specify criteria for adopting regulations and management plans. Subsection (c) establishes the Board's responsibility to provide, in writing, findings of fact to user groups affected by new regulations or management plans; and, subsection (d) requires the Commissioner of F&G to review all management plans and provide, in writing, a department position. Subsection (e) exempts this section in cases where emergency regulations need to be adopted under AS 44.62.250.

Probably in response to Kenai situation. At issue is the establishment of use priorities - SB 357 sets up a framework for making such decisions and attempts to ensure a thorough process.

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0 P.2d 377, (Alaska  
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state separate offenses.

[19] While the rule is generally used in larceny situations, it has also been held to apply in cases involving multiple charges of receiving and concealing. In *People v. Lyons*, 50 Cal.2d 245, 324 P.2d 556 (1958), the California Supreme Court stated:

Defendant meritoriously contends that the receipt by him of the two items of property which are, respectively, the subjects of counts 5 and 6, constituted only one criminal transaction and that therefore he should not have been sentenced on two counts. The evidence of the accomplices shows that defendant originally received the watch and the fur coat on a single occasion. Therefore, but one offense of receiving stolen property is shown, although the goods were stolen from different sources, and the duality of the sentences, even though they are ordered to run concurrently, cannot be permitted to stand.

324 P.2d at 573 (citations omitted). In the case at bar, there was no evidence presented by the prosecution to prove that Nelson and Herring received the stolen goods for which they were tried on more than one occasion. Thus, under the single larceny rule, Nelson and Herring can stand convicted of only one count. The state has conceded this in its supplemental briefing.

doned that position in favor of the single larceny doctrine, although cases from one jurisdiction have continued to follow the separate larcenies doctrine.

Of the jurisdictions which at one time held that the stealing of property of different persons at the same time and place could be prosecuted at the pleasure of the government as one offense or as several distinct offenses, all but one have subsequently abandoned that position in favor of the single larceny doctrine.

This ruling renders it unnecessary for us to address the appellants' arguments that their sentences were excessive.

These cases are remanded for further proceedings in light of this opinion.



**KENAI PENINSULA FISHERMAN'S  
COOPERATIVE ASSOCIATION,  
INC., Appellant,**

v.

**STATE of Alaska; The Board of Fisheries; Ronald Skoog, Commissioner of the Department of Fish and Game; and Ken Middleton, Regional Supervisor, Commercial Fishing Division of the Department of Fish and Game, Appellees.**

No. 5072.

Supreme Court of Alaska.

May 22, 1981.

Appeal was taken from an order of the Superior Court, Third Judicial District,

Even though the applicability of the single larceny doctrine is always limited to cases wherein the taking occurred at one time and from the same place, and is often limited to cases wherein the taking was a single act or transaction, there is some diversity in the construction of these requirements and in the manner in which they have been applied to various fact situations. Hence, no general statement can adequately describe the application of this doctrine, and a reading of individual cases is necessary.

Mark C. Rowland, J., which granted summary judgment in favor of State in suit challenging the validity of action taken by the Board of Fisheries and Commissioner of Fish and Game affecting recreational and commercial fisheries of salmon stock in Cook Inlet. The Supreme Court, Dimond, Senior Justice, held that: (1) Board had authority to establish priorities of use between commercial and recreational fishermen for certain salmon stocks in Cook Inlet, and (2) comprehensive management policy and specific policy option establishing priorities of use between commercial and recreational fishermen for certain salmon stocks in Cook Inlet had effect of regulations or standard of general application for management of those stocks and therefore were required to be adopted according to Administrative Procedure Act.

Reversed.

#### 1. Fish ⇐12

Board of Fisheries had authority to establish priorities of use between commercial and recreational fishermen for certain salmon stocks in Cook Inlet. AS 16.05.251(a); Const. Art. 8, § 2.

#### 2. Fish ⇐9

Game ⇐4

Generally, conservation laws such as fish and game laws should be liberally construed to achieve their intended purpose.

#### 3. Fish ⇐12

Board of Fisheries' comprehensive management policy and specific policy option establishing priorities of use between commercial and recreational fishermen for certain salmon stocks in Cook Inlet had effect of regulations or standards of general application for management of those stocks and therefore were required to be adopted according to Administrative Procedure Act. AS 44.62.010 et seq.

#### 4. Administrative Law and Procedure ⇐797

If adopted according to procedures specified in Administrative Procedure Act and within discretion vested in administra-

tive agency, appellate review of regulations adopted by an agency in its quasi-legislative capacity is limited to whether regulation is within scope of agency's authority and reasonably necessary to its purposes and whether regulation is reasonable and not arbitrary.

#### 5. Fish ⇐12

If regulation establishing fishing seasons were reasonable and not arbitrary, based on total information before Board of Fisheries at time each was adopted and excluding management priorities established in an invalidly adopted policy, the invalidity of the policy, which served as guide for the regulations, would not affect validity of fishing season regulations.

#### 6. Administrative Law and Procedure ⇐209

Where a statute delegating authority to an administrative agency does not expressly provide a standard, a standard may be applied from the general policy for purposes underlying the legislative enactment.

#### 7. Fish ⇐12

Emergency order issued by Commissioner of Fish and Game in 1978 was invalid because it was premised on compliance with an invalidly adopted policy and adoption, but emergency order amending gear regulations so as to close a season or in area to one gear type but not to others was within Commissioner's powers. AS 16.05.060.

#### 8. Fish ⇐12

Board of Fisheries may validly adopt management policy which establishes priorities of use and Commissioner of Fish and Game may use the emergency order process to implement a properly adopted management policy.

Sandra K. Saville and Susan Vaitan-court, Kay, Christie, Fuld, Saville & Coffey, Anchorage, for appellant.

John A. Gissberg, Asst. Atty. Gen., Anchorage and Avrum M. Gross, Atty. Gen., Juneau, for appellees.

Before RABIN BURKE and MA MOND, Senior Ju

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DIMOND, Senior

This case arises judgment granted concerns the valid Board of Fisheries the Commissioner after Commissioner and commercial f stocks in the Upper

Appellant, Kenae Cooperative Association), is a group of men who harvest salmon in the district of the Central. The Association's adoption by the Board of Fisheries management policy option which establishes priorities between commercial fishermen for certain salmon stocks in Cook Inlet. The Association's subsequent actions taken by the Commissioner which are illegal policy and option

We hold that, while the authority to establish the policy and option priorities should have been subject to the provisions of the Administrative Procedure Act.

#### SUMMARY

In 1977, the Department of Game prepared a document titled "Report of Cook Inlet and Their Utilization." The report addressed the issue of competition between recreational fishermen for

1. According to the report, salmon stocks in Cook Inlet are more abundant than in other parts of the state. The statewide commercial salmon runs in the Inlet are the largest of the statewide commercial fishermen hold up about fourteen per

Before RABINOWITZ, C. J., CONNOR, BURKE and MATTHEWS, JJ., and DIMOND, Senior Justice.

### OPINION

DIMOND, Senior Justice.

This case arises on appeal from summary judgment granted in favor of the state. It concerns the validity of actions taken by the Board of Fisheries (hereafter Board) and the Commissioner of Fish and Game (hereafter Commissioner) affecting recreational and commercial fisheries of the salmon stocks in the Upper Cook Inlet.

Appellant, Kenai Peninsula Fisherman's Cooperative Association, Inc. (hereafter Association), is a group of commercial fishermen who harvest salmon in the Upper Sub-district of the Central District of Cook Inlet. The Association challenges the adoption by the Board of a comprehensive management policy and a specific policy option which established priorities of use between commercial and recreational fishermen for certain salmon stocks in the Cook Inlet. The Association also claims that subsequent actions taken by the Board and the Commissioner which follow the assertedly illegal policy and option are invalid.

We hold that, while the Board does have the authority to establish priorities of use, the policy and option establishing these priorities should have been adopted pursuant to the provisions of the Administrative Procedure Act.

### SUMMARY OF FACTS

In 1977, the Department of Fish and Game prepared a document entitled "Summary Report of Cook Inlet Salmon Stocks and Their Utilization," (hereafter report). The report addressed the growing problem of competition between commercial and recreational fishermen for the salmon stocks in

1. According to the report, competition for stocks in Cook Inlet is probably worse than in other parts of the state. While the natural salmon runs in the Inlet are about five per cent of the statewide production capability, commercial fishermen holding entry permits make up about fourteen per cent of the statewide

Cook Inlet,<sup>1</sup> and requested long term direction from the Board on how to proceed with the management of various stocks in the Inlet.

All five species of salmon enter Cook Inlet, with considerable overlap in timing and migration routes.<sup>2</sup> While the commercial fishery harvests all five species, the report identified sockeye, chum and pink salmon as the three principal commercial species because of their total number, weight and value to the commercial fishery. The recreational fishery also harvests all five species, but the report indicated that sport demand centers on king and coho salmon.

The report discussed eleven different runs of the various salmon species which could to some degree meet the needs of the growing sports fishery. For certain runs which presented difficult management decisions, the report suggested several specific policy options for management of the stocks. The options generally provided for either maintenance of current management policies, curtailment of recreational fishing in favor of commercial fishing, or curtailment of commercial fishing in favor of recreational fishing.

The report was distributed to the members of the Board and the public at a September/October, 1977, hearing in Anchorage regarding Cook Inlet salmon. At a meeting in December, 1977, which had been called to consider proposed changes in fishing season regulations in the state, the Board also discussed long term management strategy for Upper Cook Inlet, salmon stocks, and adopted a Comprehensive Management Policy for the Upper Cook Inlet (hereafter policy). The policy established certain priorities of use between commercial and recreational fisheries based on the target species indicated for each group in the report. One consideration in adoption

salmon net fishery, and nearly half of all recreational anglers in the state fish the Inlet and adjacent streams.

2. The five species of salmon are sockeye (red), chum, pink, king and coho (silver).

Susan Vaillan-  
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Atty. Gen., An-  
ross, Atty. Gen.,

of the policy was the need to inform user groups of the management plan for the stocks so that they could adjust their future uses consistent with that plan.<sup>3</sup>

In connection with the policy, the Board also adopted a Specific Policy Option (hereafter option) with respect to the late (after August 15) Kenai coho salmon run.<sup>4</sup> The option directed closure of the commercial fishery of this run if the commercial catch

3. The policy reads as follows:

**COMPREHENSIVE MANAGEMENT POLICY FOR THE UPPER COOK INLET**

The dramatically increasing population of the Cook Inlet area has resulted in increasing competition between recreational and commercial fishermen for the Cook Inlet salmon stocks. Concurrently, urbanization and associated road construction has increased recreational angler effort and may adversely affect fisheries habitat. As a result the Board of Fisheries has determined that a policy must now be determined for the long-term management of the Cook Inlet salmon stocks. This policy should rest upon the following considerations:

1. The ultimate management goal for the Cook Inlet stocks must be their protection and, where feasible, rehabilitation and enhancement. To achieve this biological goal, priorities must be set among beneficial uses of the resource.

2. The commercial fishing industry in Cook Inlet is a valuable long-term asset of this state and must be protected, while recognizing the legitimate claims of the noncommercial user.

3. Of the salmon stocks in Cook Inlet, the king and silver salmon are the target species for recreational anglers while the chum, pink, and red salmon are the predominant commercial fishery.

4. User groups should know what the management plan for salmon stocks will be in order that they can plan their use consistent with the plan. Thus, commercial fishermen must know if they are harvesting stocks which in the long-term will be managed primarily for recreational consumption so that they may plan appropriately. Conversely, as recreational demands increase the recreational user must be aware of what stocks will be managed primarily for commercial harvest in order that he not become overly dependent on these fish for recreational purposes.

5. Various agencies should be aware of the long-term management plan so that salmon management needs will be considered when making decisions in areas such as land use planning and highway construction.

6. It is imperative that the Department of Fish and Game receive long-range direction

rates were below average. The purpose of this policy was to provide a satisfactory recreational fishery of the run, which had been identified in the policy as a primarily recreational species.

On September 2, 1978, the Commissioner declared an emergency closure of commercial fishing on the late Kenai coho stocks in order to comply with the Board's policy and management strategy governing these

in management of these stocks rather than being called upon to respond to annually changing Board directives. Within the Department, divisions such as F.R.E.D., must receive such long-term direction.

Therefore, the Board establishes priorities on the following Cook Inlet stocks north of Anchor Point. In so doing it is not the Board's intent to establish exclusive uses of salmon stocks; rather its purpose is to define the primary beneficial use of the stock while permitting secondary uses of the stock to the extent it is consistent with the requirements of the primary user group.

1. Stocks which normally move in the Cook Inlet to spawning areas prior to June 30, shall be managed primarily as a non-commercial resource.

2. Stocks which normally move in Cook Inlet after June 30, shall be managed primarily as a non-recreational resource until August 15; however existing recreational target fish shall only be harvested incidental to the non-recreational use; thereafter stocks moving to spawning areas on the Kenai Peninsula shall be managed primarily as a non-commercial resource. Other stocks shall continue to be managed primarily as a non-recreational resource.

3. The Susitna coho, the Kenai king, and the Kenai coho runs cannot be separated from other stocks which are being managed primarily as non-recreational resources; however, efforts shall be made, consistent with the primary management goal, to minimize the non-recreational catch of these stocks.

4. The Specific Policy Option provided:

Option B—Curtailed commercial fishery catch level to attempt to provide a satisfactory recreational fishery:

1. Adopt a policy that, if the commercial catch rates indicate a below average run, the commercial fishery would close. If the commercial fishery catch rates are at or above average, the maximum commercial fishing time would be two 12-hour periods.

stocks after August 15 that commercial run from August 15 below average. commercial fish

In December regulation 5 A. son. The regulation opening date for Upper Subdistrict the Central District closing date for Subdistrict and five miles of the and Lower Sub regulation was appellant association early king and the late Kenai runs were all men.

The Association state challenge validity of the subsequent order by the Board a Association motion based on stipulation the Association proposed that motion for summary judgment the joint stipulation filed a statement in opposition

5. Regulations, by the Board, the closing date recreational fisheries this area of Cook Inlet closure by commissioner.

Authorization from AS 16.05.0

This chapter the commission when circumstances open or close weekly closures means of emergency order has the field announce his authorized order adopted under to the Administrator 62).



budgeting and fiscal powers from the Board's function.<sup>8</sup> In AS 16.05.251(a), the Board is delegated the power to "make regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62)" for certain enumerated areas of fisheries management.<sup>9</sup>

The Association maintains that these statutes do not delegate to the Board the power to determine "utilization" of fish resources, and therefore the Board cannot establish priorities of use. This claim is based primarily on the fact that, while article VIII, section 2,<sup>10</sup> of the Alaska Constitution gives the legislature authority to provide for *utilization, development and con-*

*servation* of all natural resources of the state, AS 16.05.221(a) establishes the Board for the purposes of *conservation and development* only. The Association argues that establishment of priorities among beneficial users comes exclusively within the ambit of "utilization," and that the legislature's failure to include "utilization" among the purposes for which the Board was created indicates that the legislature reserved this function to itself exclusively.

In support of this contention, the Association cites the passage by the legislature of the statute establishing subsistence use as the top priority use for all fish and game resources. Ch. 151, SLA 1978.<sup>11</sup> In the

8. AS 16.05.241 provides:

The boards have regulation-making powers as set out in this chapter, but do not have administrative, budgeting or fiscal powers. The regulation-making powers set out in the chapter include: (1) AS 16.05.251(a), set out in note 9 *infra*; (2) AS 16.05.251(b), relating to subsistence use as a priority use; and (3) AS 16.0. 260, relating to establishment of advisory committees.

9. AS 16.05.251 provides in part:

(a) The Board of Fisheries may make regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

(1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;

(2) establishment of open and closed seasons and areas for the taking of fish;

(3) setting quotas and bag limits on the taking of fish;

(4) establishment of the means and methods employed in the pursuit, capture and transport of fish;

(5) establishment of marking and identification requirements for means used in pursuit, capture and transport of fish;

(6) classifying as commercial fish, sport fish or predators or other categories essential for regulatory purposes;

(7) engaging in biological research, watershed and habitat improvement, fish management, protection, propagation and stocking;

(8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;

(9) entering into cooperative agreements with educational institutions and state, federal, or other agencies to promote fish re-

search, management, education and information and to train men for fish management;

(10) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;

(11) establishing seasons, areas, quotas and methods of harvest for aquatic plants;

(12) establishment of the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this paragraph does not apply to permits issued or transferred under ch. 43 of this title.

10. Article VIII, section 2, of the Alaska Constitution provides:

The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

11. Chapter 151, SLA 1978, provides in part:

Section 1. INTENT. The legislature finds that there is a need to develop a statewide policy on the utilization, development and conservation of fish and game resources, and to recognize that these resources are not inexhaustible and that preferences must be established among beneficial users of the resources. The legislature further determines that it is in the public interest to clearly establish subsistence use as a priority use of Alaska's fish and game resources and to recognize the needs, customs and traditions of Alaska residents. The legislature further finds that beneficial use of those resources by all state residents should be carefully monitored and regulated, with as much input as possible from the affected users, so that the viability of fish and game resources is not threatened and so that resources are conserved in a manner consistent with the sustained-yield principle.

statement of inter-legislature recognition of a statewide policy on development and conservation of resources." The legislature's enunciation of these purposes from among support action taken indicates that the legislature's intentional omission of "utilization" powers delegated to

[2] We find that the legislature's suggested purposes are not inconsistent with laws such as fish and game laws liberally construed for subsistence purpose. 3 C. S.A. Construction § 77. Liberal construction of the statute to establish the Board's regulation-making power is consistent with the position that the Board's decisions affecting fish and game resources in this

The legislature's purposes of development of fishery resources and "developing" utilization of resources are not prevent its exploitation of a resource to the detriment of the State. If the Board is designated purpose to make decisions about the resources it

12. See Webster (1973), which "planned management prevent exploitation and defines "developable."

13. A grant of legislative authority may be functions in an area of public concern, but where the legislature is exercising a general power of precise and specific contingencies therefor, State Admin.

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statement of intent for that legislation, the legislature recognized the "need to develop a statewide policy on the utilization, development and conservation of fish and game resources." The Association argues that this enunciation of the entire trilogy of purposes from article VIII, section 2, to support action taken by the legislature "evidences that the legislature made a clear and intentional omission of 'utilization' from the powers delegated" to the Board.

[2] We find no merit in the Association's suggested interpretation of Board powers. As a general rule, conservation laws such as fish and game laws should be liberally construed to achieve their intended purpose. 3 C. Sands, Sutherland Statutory Construction § 71.14 at 365 (4th ed. 1974). Liberal construction of the statutes which establish the Board and delegate to it regulation-making powers leads to the conclusion that the Board has the power to make decisions affecting the utilization of fishery resources in this state.

The legislature established the Board for the purposes of conserving and developing fishery resources. The terms "conserving" and "developing" both embody concepts of utilization of resources. "Conserving" implies controlled utilization of a resource to prevent its exploitation, destruction or neglect. "Developing" connotes management of a resource to make it available for use.<sup>12</sup> If the Board is going to accomplish its designated purposes, it is necessarily going to make decisions concerning utilization of the resources it is charged with managing.

12. See Webster's, New Collegiate Dictionary (1973), which defines "conservation" as "planned management of a natural resource to prevent exploitation, destruction, or neglect"; and defines "develop" as "to make available or usable."

13. A grant of broad discretion to an administrative agency may be advisable where the agency functions in an area "where social or economic controls of private activity are deemed desirable, but where the legislature despairs of formulating a general rule which will be capable of precise and equitable application to all the contingencies that are anticipated." 1 F Cooper, State Administrative Law 35 (1965).

The legislature's statement in ch. 151, SLA 1978, does not indicate that it intended to reserve to itself the *exclusive* power to decide questions of utilization of fishery resources. That legislation created a statewide preference among beneficial users and affected all fish and game resources in the state. Such broad scale action is not evidence of an intent to deprive the Board of the ability to make the various other utilization decisions necessary to effectively conserve and develop the many fishery resources of the state.

Under this construction, the scope of Board action is not wholly without limitation. The Board must act under its specifically delegated regulatory powers, and actions taken must be premised on the need to effectuate conservation and development purposes. For example, in AS 16.05.251(a), the legislature delegated to the Board the power to "make regulations it considers advisable" for the twelve areas set out in the subsection. The quoted language indicates that the legislature intended to give the Board discretion to decide methods of regulation in these areas.<sup>13</sup> If, as is likely, the method of regulation affects the utilization of fishery resources by various user groups,<sup>14</sup> it will still be within the Board's powers as long as the regulation is based on the need to conserve and develop the affected fishery. An establishment of priorities of use which meets these criteria would be within the Board's delegated powers.

The Association also claims that article VIII, section 15,<sup>15</sup> prohibits an establish-

14. Many of the specific areas of regulation set out in AS 16.05.251(a) inevitably will involve regulation of the use of the fishery resources. For example, the Board cannot make regulations establishing open and closed seasons, set quotas, classify fish, or make fish management decisions without somehow directing the use of the fishery resources.

15. Article VIII, section 15, states:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those depend-

ment of priorities because that section precludes the creation of an exclusive right or special privilege of fishery.<sup>16</sup> Again, the Association's contention is without merit. While section 15 does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment of such diverse user groups as commercial, sports, and subsistence fishermen. To conclude that, because a certain species is made available for sport fishing in a given area, commercial fishing of the same species in the same area must also be allowed, would be to go far beyond the purpose of the section.<sup>17</sup>

## II.

[3] The Association next contends that the comprehensive management policy and the specific policy option adopted by the Board in December, 1977, are invalid because they were not adopted in accordance with the provisions for adoption of regulations set out in the Administrative Procedure Act, AS 44.62 (hereafter APA). The Board is required to follow APA procedures when adopting regulations pursuant to its statutorily delegated authority.<sup>18</sup> We have determined that an establishment of priorities of use may be adopted pursuant to a valid exercise of the Board's delegated regulatory powers. The state acknowledges that the policy and the option were not adopted according to APA procedures, but maintains that compliance was not necessary because they are not regulations; instead, they are merely general guidelines,

ent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

16. The Association has raised a number of constitutional arguments concerning the Board's actions. Because we hold that the policy is invalid on the ground that it was not adopted according to proper APA procedures, *infra*, we need not consider the equal protection, due process, and other issues raised regarding the validity of the actual policy adopted. We will, however, consider the constitutional issue raised concerning the general validity of establishment of priorities of use as a means of resource management.

adopted for the convenience of the public and other state agencies, to inform them of the Board's thinking on critical management issues in areas within its delegated authority.

AS 44.62.640(a)(2) defines "regulation" in part as:

every rule, regulation, order, or standard of general application or the amendment, supplement or revision of a rule, regulation, order or standard adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one which relates only to the internal management of a state agency; "regulation" includes "manuals," "policies," "instructions," "guides to enforcement," "interpretive bulletins," "interpretations," and the like, which have the effect of rules, orders, regulations or standards of general application, and this and similar phraseology shall not be used to avoid or circumvent this chapter; whether a regulation, regardless of name, is covered by this chapter depends in part on whether it affects the public or is used by the agency in dealing with the public. [Emphasis added.]

The Alaska APA is modeled after the California Administrative Procedure Act, Cal.Gov.Code § 11370 *et seq.*, and the Model State Administrative Procedure Act, House Journal 1959 at 397. However, the Alaska APA goes beyond the definition of regulation contained in either of these statutes<sup>19</sup> by stating, "[R]egulation' includes

17. See *Hynes v. Grimes Packing Co.*, 165 F.2d 323, 326 (9th Cir. 1947), *vacated and remanded*, 337 U.S. 86, 69 S.Ct. 968, 93 L.Ed. 1231 (1949); *Methakata Indian Community v. Egan*, 362 P.2d 901 (Alaska 1961), *vacated and remanded*, 369 U.S. 45, 82 S.Ct. 552, 7 L.Ed.2d 562 (1962).

18. See AS 16.05.251(a) and (b); AS 16.05.260.

19. (See Cal.Gov.Code § 11342 (Deering's Supp. 1980) (former Gov.Code § 11371); Model State Administrative Procedure Act § 1 Revised 1961).

The California APA has been commented on as demonstrating "a desire to achieve ... a much greater coverage of rules than Congress sought in the federal APA." *Armistead v.*

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'manuals,' 'policies,' 'instructions,' 'guides to  
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"[i]n view of the tendency of many adminis-  
trative officers to avoid compliance with  
the rulemaking requirements of the applica-  
ble statutes by utilizing a name other than  
'rule' or 'regulation' to describe agency  
statements which have the effect of rules."  
1 F. Cooper, State Administrative Law 115  
(1965).

Clearly, then, the label placed on a particu-  
lar statement by an administrative agency  
does not determine the applicability of the  
APA. Under the Alaska statute, "regula-  
tion" encompasses many statements made  
by administrative agencies, including poli-  
cies and guides to enforcement. However,  
the state maintains that the policy and the  
option do not have the effect of rules, or-  
ders, regulations or standards of general  
application, and therefore are not covered  
by the statute. We disagree.

Under AS 44.62.640(u)(2), an indicia of a  
regulation is that it implements, interprets  
or makes specific the law enforced or ad-  
ministered by the state agency. As previ-  
ously discussed, the Board is charged with  
management of the fishery resources of this  
state for conservation and development  
purposes. The policy and the option make  
specific the management policies of the  
Board for the Upper Cook Inlet fishery  
resources.

The wording of the policy suggests that it  
was intended to regulate future manage-  
ment of the salmon stocks in the Upper  
Cook Inlet. In the policy, the Board states  
that it "establishes priorities" of use for  
certain stocks, not that it intends to estab-  
lish priorities in future regulations. The

*State Personnel Bd.*, 22 Cal.3d 198, 149 Cal.  
Rptr. 1, 533 P.2d 744, 745 (1978) (footnote  
omitted). The federal act creates specific ex-  
ceptions from notice and hearing requirements  
for interpretive rules and general statements of  
policy. 5 U.S.C. § 553(b)(A).

20. See *People v. Cull*, 10 N.Y.2d 123, 218 N.Y.  
S.2d 38, 176 N.E.2d 495 (N.Y.App.1961), where  
in the New York court held that the term  
"rule" or "regulation" encompassed "any kind  
of legislative or quasi-legislative norm or proced-

priorities established in the policy are based  
on the targeting of certain species as pri-  
marily commercial or primarily recreation-  
al. This classification of fish was under-  
taken without notice to commercial or rec-  
reational fishermen, who are obviously af-  
fected by the action. Furthermore, the pol-  
icy directs that, on the basis of these estab-  
lished priorities, certain stocks "shall be  
managed" primarily as either noncommert-  
cial or nonrecreational resources. The man-  
datory language here is indicative of an  
intent to have the policy establish a course  
for future Board and Commissioner conduct  
affecting fishery rights in the Upper Cook  
Inlet.<sup>20</sup>

Another indicia of a regulation is that it  
"affects the public or is used by the agency  
in dealing with the public." Actions taken  
by the Board and the Commissioner demon-  
strate that the policy and the option served  
as a basis for decisions affecting commer-  
cial and recreational fishermen and were  
used by the Board in dealing with these  
groups.

The clearest instance of the policy and  
the option directly affecting commercial  
and recreational fishermen is the Septem-  
ber, 1978, emergency closure of the late  
Kenai coho run to commercial fishermen.  
On August 11, 1978, the Commissioner an-  
nounced that, because of the Board's policy  
and specific option concerning the late Ka-  
nai coho run, the Department of Fish and  
Game would use the catches from three  
commercial fishing periods in mid and late  
August to determine the strength of the  
run. If the catches were below average,  
that commercial fishery would be closed  
pursuant to the direction of the policy and  
the option. The emergency order, issued

ture which establishes a pattern or course of  
conduct for the future." *Id.* 10 N.Y.2d 123, 218  
N.Y.S.2d 38, 176 N.E.2d at 497 (emphasis add-  
ed). In that case, the New York Constitution  
required that, in order to be effective, all rules  
and regulations had to be filed with the appro-  
priate department of the state. The court con-  
cluded that an order setting a maximum speed  
limit, which was made by the state traffic com-  
missioner, was a rule or regulation subject to  
the constitutional provision.

September 2, 1978, stated that because commercial catches were below average "commercial fishing on the late run Kenai River coho salmon stocks *must be curtailed* to comply with the Board of Fisheries' policy and management strategy governing these stocks after August 15." (Emphasis added.)

The staff of the Department of Fish and Game also used the policy as a guideline for proposing regulations setting opening and closing dates for the 1979 commercial season in the Upper Cook Inlet. The regulation adopted established opening and closing dates which were consistent with the priorities of use set out in the policy. In connection with the adoption of this regulation, the Board rejected a proposal from an area advisory committee which would have opened commercial fishing before July 1 in the Upper Subdistrict, and cited the policy as a reason for its action. In response to a letter to the governor criticizing the August 15 closure in the 1979 regulation, the governor wrote, "It is my understanding that the allocation to the sport fishery [of the salmon runs after August 15] is in keeping with the Upper Cook Inlet comprehensive management policy adopted by the Board in 1977. The policy has established long term direction for management of Cook Inlet salmon stocks. . . ."

We conclude that the policy and the option make specific management policies for Upper Cook Inlet salmon stocks, and have the effect of regulations or standards of general application for the management of those stocks. As such, they are regulations, and should have been adopted according to APA procedures. The state acknowledges that the policy and the option were not adopted according to APA procedures;<sup>21</sup> therefore, they are invalid. *Coghill v. Boucher*, 511 P.2d 1297, 1304-05 (Alaska 1973). There can be no future reliance on this particular policy or option either in the

21. The state contends in its brief that all the Board would have to do to comply with the APA would be to complete the appropriate filing procedures under AS 44.62.040-.125. This contention seems to be based on the fact that the notice for the December, 1977, meeting specified that at the meeting fishing season dates would be set. AS 44.62.200 requires that

regulation-making process or as a basis for emergency orders until the procedures required by the APA are observed.

### III.

The Association also raises several issues concerning the validity of subsequently adopted regulations and the emergency order.

#### A.

The Association contends that the invalidity of the policy also renders the 1977, 1979, and future regulations invalid. In response, the state argues that the invalidity of the policy should have no effect on regulations establishing fishing seasons because these regulations are adopted according to APA procedures. The state reasons that the regulations stand independent of the policy and, though a review of the factual bases for the regulation may reveal many of the same concerns expressed in the policy, this duplication should not invalidate the regulations. We do not have sufficient information in the record to determine the validity of the regulations. However, we will briefly review the process for deciding this question.

[4, 5] Our review of regulations adopted by an agency in its quasi-legislative capacity is set out in *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971). If adopted according to APA procedures and within the discretion vested in the Board by the legislature, our review is limited to (1) whether the regulation is consistent with the statute (*i. e.*, within the scope of the Board's authority) and reasonably necessary to its purposes, and (2) whether the regulation is reasonable and not arbitrary. *Id.* at 911. The record indicates that the policy served as a guide for the regulation proposed and adopted in

the notice of a proposed adoption of a regulation must include "an informative summary of the proposed subject of agency action. The notice of the December, 1977, meeting made no mention of planned adoption of a long-term management policy for the area. Therefore, it was insufficient notice of the Board's adoption of the comprehensive management policy.

1979. Because the regulation was adopted, it was impossible, however, the regulation was reasonable and not arbitrary. The total information available at the time each was adopted was adequate for management prior to the policy, the invalidity of the regulations does not affect the validity of the regulations.

Although the regulation expired, the question of its validity since expired, the question of its validity because of "the . . . may similarly be . . . sioner] in the future . . . tion's contention that the regulation was misinterpreted the regulation was referred on him by . . .

The Association . . . Commissioner . . . openings or closures . . . complementing a management policy but can only make a basis of a biological . . . current fish stocks . . . rizes the Commissioner's . . . es require, to sun . . . sons or areas . . . orders." AS 16.0 . . . guide as to what . . . which might need . . . der. It is the AS . . . "circumstances" . . . emergencies.

[6, 7] We find . . . delegating authority . . . agency does not . . . dard, the standard . . . general policy as . . . legislative enact . . . Trustees, *Calxi* . . . 16 Cal.3d 818, 1

22. See note 5 *supra*.

23. The emergency . . . it was determined . . . were below average . . . an alternative is

1979. Because the policy was invalidly adopted, it was improperly relied upon. If, however, the regulations adopted were reasonable and not arbitrary, based on the total information before the Board at the time each was adopted and excluding the management priorities established in the policy, the invalidity of the policy would not affect the validity of the fishing season regulations.

#### B.

Although the emergency order has long since expired, the Association asserts that the question of its validity is not moot because of "the prospect that the power may similarly be misused [by the Commissioner] in the future." It is the Association's contention that the Commissioner has misinterpreted the scope of the power conferred on him by AS 16.05.060.<sup>22</sup>

The Association first claims that the Commissioner cannot order emergency openings or closures for the purpose of implementing a management plan or policy, but can only make such an order on the basis of a biological emergency endangering current fish stocks. AS 16.05.060 authorizes the Commissioner "when circumstances require, to summarily open or close seasons or areas . . . by means of emergency orders." AS 16.05.060 does not provide a guide as to what the "circumstances" are which might necessitate an emergency order. It is the Association's contention that "circumstances" can only mean biological emergencies.

[6.7] We disagree. Where a statute delegating authority to an administrative agency does not expressly provide a standard, the standard may be implied from the general policy and purposes underlying the legislative enactment. *Turner v. Board of Trustees, Calexico Unified School District*, 16 Cal.3d 818, 129 Cal.Rptr. 443, 548 P.2d

22. See note 5 *supra* for text of AS 16.05.060.

23. The emergency order was issued only after it was determined that commercial catch rates were below average. Thus, there was arguably an alternative independent rationale for order-

ing closure separate from the policy and the option. However, both the news release and the order itself indicate that it was issued specifically to comply with the policy and the option.

1115, 1120 (1976). The extent of the Commissioner's power under AS 16.05.060 should therefore be interpreted in light of the overall purpose of the constitutional and legislative scheme of management of state resources prescribed by other provisions of the law. Thus, if the Board properly adopted a plan for the management of state fishery resources, the Commissioner could enforce that policy through the emergency order process. The 1978 emergency order was invalid because it was premised on compliance with the invalidly adopted policy and option.<sup>23</sup> However, future emergency closures which are ordered to implement properly adopted management policies would be valid.

The Association next contends that the method used by the Commissioner to implement the 1978 emergency closure was outside the scope of his authority. In the emergency order, the Commissioner sought to close commercial fishing of the late Kenai coho run in the Upper Cook Inlet. He did this by amending the 1978 gear regulations for set gill nets and drift gill nets in the central district because these were the gear types commercially harvesting this run in the Upper Cook Inlet. The Association claims that the Commissioner's power under AS 16.05.060 is limited to ordering closure of a season or an area, but does not extend to amending gear regulations so as to close a season or an area to one gear type but not to others.

[8] We have already concluded that the Board may validly adopt a management policy which establishes priorities of use, and that the Commissioner may use the emergency order process to implement a properly adopted management policy. The Commissioner may therefore use the emergency order process to close down one type of fishery and not another in order to implement a policy establishing priorities of use.

ing closure separate from the policy and the option. However, both the news release and the order itself indicate that it was issued specifically to comply with the policy and the option.

The effect of the gear regulation amendment was to close the commercial fishing season for the Kenai coho run in the area of the Upper Cook Inlet where this species was commercially fished. Because closure by season or by area was within the Commissioner's powers, and the amendment of the gear regulation had that effect, we conclude that the method of implementing the emergency closure was not outside the Commissioner's delegated authority.

## IV.

The trial court found that the policy adopted by the Board did not violate the Association's constitutional rights of equal protection and due process, nor did it violate the provisions of article VIII of the Alaska Constitution. Because we find that the policy was not adopted according to proper APA procedures, we do not feel it is proper to reach the constitutional validity of the actual policy adopted. The purpose of the notice and hearing provisions of the APA is two-fold. First, it gives notice to interested parties of proposed agency actions which may affect their interests. Next, it gives the administrative agency the opportunity to receive information and comments from those interested parties on its proposed action.<sup>24</sup> Both the Board and interested fishermen should have full benefit of these opportunities before a review is made of the validity of the policy adopted.

The decision of the superior court that the Comprehensive Management Policy need not be adopted according to APA procedures is REVERSED.

COMPTON, J., not participating.



24. See *Cheshire Convalescent Ctr. v. Comm'n on Hospitals*, 34 Conn.Sup. 225, 386 A.2d 264, 271 (1977); *Essett v. State Fish & Wildlife*

Lester J. FICKES and Dorothy M. Fickes, Appellants,

v.

PETROLANE-ALASKA GAS SERVICE, INC., Appellee.

PETROLANE-ALASKA GAS SERVICE, INC., Cross-Appellant,

v.

Lester J. FICKES and Dorothy M. Fickes, Cross-Appellees.

Nos. 4035, 4077.

Supreme Court of Alaska.

May 29, 1981.

Trailer court owners filed an action against gas company claiming that an explosion in a water treatment plant was caused by propane gas escaping from underground lines installed and maintained by the gas company. The Superior Court, Fourth Judicial District, Fairbanks, James R. Blair, J., denied the trailer court owners' motion for a new trial and entered judgment for the gas company on the jury verdict. Appeal was taken. The Supreme Court, Connor, J., held that: (1) the failure of a juror to acknowledge on voir dire that he knew one of the witnesses for the gas company and subsequent argument by juror during deliberations that he knew the witness, that the witness was competent and that if the witness did the job, then it must have been done well, amounted to an obstruction of justice; (2) the conduct of the juror deprived the trailer court owners of a fair trial, since it was highly likely that the trailer court owners would have challenged the juror had they been aware that the juror knew the employee who did the repair work and the comment of the juror went to the heart of the defense of nonnegligence; and (3) instruction on the duty of care should have pointed out that handling propane gas creates a dangerous circumstance

*Comm'n*, 27 Or.App. 639, 556 P.2d 1382, 1384 (1976).

and requires a deliberate with that danger.  
Reversed and

## 1. New Trial ⇐

In action by against gas company claimed that explosion plant was caused from underground maintained by gas company either intentionally to disclose that he ny's employees were performed by gas company by arguing to fellow witness, that witness that if witness did been done well at of justice.

## 2. New Trial ⇐

Failure by juror acquaintance with probability of fact that acquaintance of justice.

## 3. New Trial ⇐

In determining violation party of fair trial whether, if party known true facts ty would have caused improper comment lateral matter, defense, and whether probable effect of

## 4. New Trial ⇐

In action against gas company claimed that explosion plant was caused from underground maintained by gas company disclose that he subsequent argument knew witness, and that if witness had been done

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SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: *SB 358*

BILL NAME: *Amending Expiration Date of AAAC*

SPONSOR(S): *Kertulla*

RELATED BILLS PENDING:

DATE INTRODUCED: *1-18-84*

*SB 339*

REFERRALS: *Reviews*

INITIAL RESEARCH:

BILL SUMMARY COMPLETED:

SUMMARY BY LEGAL DIVISION:

SPONSOR CONTACTED FOR  
BACKUP MATERIALS:

DEPT. OF LAW SUMMARY:

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR  
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS/GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE:

BACKGROUND MATERIAL DISTRIBUTED:

PSA/PRESS RELEASE:

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/COMMITTEE  
SUBSTITUTES DRAFTED:

*Kertulla - Richard Ramsey  
(M.A.)*

*Sharon Boston, DNR  
Carl Amstrup - via Fairbanks, available for question.  
DCEI - Vince O'Reilly*

BILL SUMMARY

SB 358

Sponsor: Ker~~tu~~l~~ta~~

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SB 358 repeals the termination date of the Alaska Agriculture Action ~~Committee~~<sup>Council</sup> and extends its life for five more years.

SB 358 is very similar to SB 339, MOSS, which simply repeals the termination date for the Council, extending the life for perpetuity.

Chapter 75

(1) "council" means the Alaska Agricultural Action Council;

(2) "Delta agricultural development project" means the state funded program to develop agricultural land located in the Big Delta, Tanana Loop region for the production of small grains and other related agricultural products.

\* Sec. 2. Notwithstanding the terms of office specified for members of the Alaska Agricultural Action Council in AS 44.33.400(c), enacted in sec. 2 of this Act, the terms of the first appointees shall be one member serving a term ending June 30, 1980, one member serving a term ending June 30, 1981, one member serving a term ending June 30, 1982, one member serving a term ending June 30, 1983, and one member serving a term ending June 30, 1984.

\* Sec. 3. AS 39.50.200(9) is amended by adding a new subparagraph to read:

(QQ) Alaska Agricultural Action Council.

\* Sec. 4. This Act terminates July 1, 1984.

\* Sec. 5. This Act takes effect July 1, 1979.



# LAWS OF ALASKA

1979

Source

HCSSB 63(Finance) am H

## AN ACT

Making appropriations to the Office of the Alaska Power Authority for feasibility study of a hydroelectric project, and to the Legislature and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

THE ACT FOLLOWS ON PAGE 1, LINE 1

from council funds.

MEETINGS. The council shall schedule regular meetings, and may hold special meetings upon the call of a majority of the members of the council.

QUORUM. Three members of the council constitute a quorum. A vote of at least three members is necessary to carry any action of the council.

POWERS AND DUTIES OF THE COUNCIL. (a) The council shall

1. amend bylaws for the management and regulation of the council;

2. maintain an office at any place or places in the state;

3. perform such other duties as may be required by law;

4. hold public hearings in areas of the state considered to be of special interest;

5. determine the need for farm conservation plans for land in the state;

6. employ a coordinator for gathering information and data concerning agricultural development;

7. conduct appropriate activities for the promotion of agricultural development;

8. collect technical information and make recommendations concerning the use of natural resources regarding the classification of land;

9. determine the land suitable for agricultural use;

10. administer the Delta agricultural development project authorized by law;

11. contract with the owners of land prepared for agricultural use under (7) of this subsection for reimbursement to the state of the cost of the clearing, draining and breaking of the land;

(8) contract with the owners of land prepared for agricultural use under (7) of this subsection for reimbursement to the state of the cost of the clearing, draining and breaking of the land;

(9) contract for the construction of access roads in the Delta agricultural development project;

(10) conduct studies and carry out experimental and pilot projects to develop markets for agricultural products produced in the state; and

(11) recommend legislation to the governor to improve agricultural development in the state.

Sec. 44.33.425. AGRICULTURAL DEVELOPMENT PROJECTS. (a) Before January 15 of each year the council shall report to the governor and the legislature concerning the activities of the council during the current fiscal year. The report shall contain recommendations for the development of agriculture in the state during the next fiscal year.

(b) An agricultural development project recommended under (a) of this section may not be implemented unless authorized by law. The report required by (a) of this section shall include recommended legislation which

(1) sets out the type of agricultural development to be accomplished and, if state land is to be developed for agricultural production, describes the boundaries of the land to be developed;

(2) defines specific tasks to be performed by appropriate state agencies to the extent the tasks are identifiable at that time; and

(3) grants to the council sufficient authority to insure cooperation of all state agencies involved in the implementation of the agricultural development project.

Sec. 44.33.450. DEFINITIONS. In AS 44.33.400 - 44.33.450,

Chapter 75

1 and travel expenses from council funds.

2 Sec. 44.33.410. MEETINGS. The council shall schedule regular  
3 meetings during the year, and may hold special meetings upon the call  
4 of the chairman or four members of the council.

5 Sec. 44.33.415. QUORUM. Three members of the council constitute  
6 a quorum. An affirmative vote of at least three members is necessary to  
7 approve any action of the council.

8 Sec. 44.33.420. POWERS AND DUTIES OF THE COUNCIL. (a) The council  
9 has the power to

10 (1) adopt and amend bylaws for the management and regulation  
11 of its affairs; and

12 (2) maintain an office at any place or places in the state.

13 (b) The council has the duty to

14 (1) hold public hearings in areas of the state considered  
15 important for agricultural development;

16 (2) evaluate the need for farm conservation plans for land  
17 under agricultural production in the state;

18 (3) serve as coordinator for gathering information and data  
19 relating to agriculture;

20 (4) recommend appropriate activities for the promotion of  
21 agriculture in the state;

22 (5) provide technical information and make recommendations to  
23 the commissioner of natural resources regarding the classification of  
24 state land having a potential for agricultural use;

25 (6) act as administrator of the Delta agricultural develop-  
26 ment project and any other agricultural development project authorized  
27 under AS 44.33.425;

28 (7) contract for the clearing, draining and breaking of  
29 agricultural land located in the Delta agricultural development project

(8) contract with the  
under (7) of this section  
of the clearing, draining and

(9) contract for the  
agricultural development

(10) conduct studies  
to develop markets for  
land

(11) recommend legisla-  
tive development in the state

Sec. 44.33.425. AGRICUL-  
tural Development Report

By 15 of each year the council  
shall submit a report to the  
governor concerning the ac-  
tivities of agriculture in the state

(1) An agricultural develop-  
ment project may not be imple-  
mented unless the conditions  
required by (a) of this section  
are met

(2) The report shall  
include information on which

(1) sets out the  
accomplished and, if state legisla-  
tion, describes the benefits

(2) defines specific  
agencies to the extent

(3) grants to the  
commissioner of all state agri-  
cultural development projects

Sec. 44.33.450. DEFINI-  
TIONS

AN ACT

Relating to agricultural development; and providing for an effective date.

Section 1. AS 44.33 is amended by adding new sections to read:

ARTICLE 9. ALASKA AGRICULTURAL ACTION COUNCIL.

Sec. 44.33.400. CREATION OF COUNCIL. (a) There is established in the Department of Commerce and Economic Development the Alaska Agricultural Action Council. The council is composed of five members appointed by the governor. The chairman of the council is to be designated by the governor from among the members.

(b) The council may invite representatives from the United States Soil Conservation Service, the United States Forest Service, or from other federal agencies to participate in the deliberations of the council in an advisory capacity.

(c) The term of a member of the council is four years. Vacancies are filled in the same manner as original appointments, but a member appointed to fill a vacancy serves for the unexpired term of the member he succeeds.

Sec. 44.33.405. COMPENSATION OF MEMBERS. (a) Members of the council who are not state officers or employees are entitled to per diem and travel expenses provided for boards and commissions under AS 19.20.

(b) State officers or employees appointed as members of the council serve without compensation but are entitled to receive per diem

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: SB 358  
 Title: Amending the expiration date of the AAAC  
 Sponsor: Kerttula  
 Requestor: \_\_\_\_\_  
 Date of Request: 1-18-84

**FISCAL DETAIL**

Agency Affected: DCED  
 Program Category Affected: \_\_\_\_\_  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		-0-	-0-	-0-		
<b>CAPITAL</b>		-0-	-0-	-0-		
<b>REVENUE</b>		-0-	-0-	-0-		

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:**

**ANALYSIS:** Attach a separate page for analysis

Prepared By: Sharon L. Barton Phone: 465-2400  
 Division: Commissioner's Office Date: 1-24-84

Approved by Commissioner: W. D. Arnold, Deputy Date: 1-24-84  
 Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITAL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Senate

### Committee on Resources

#### MINUTES

January 25, 1984  
3:03 pm

Beltz Room  
Room 211, Capitol

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#### MEMBERS PRESENT

Senator Fahrenkamp, Chairman  
Senator Ziegler, Vice Chair  
Senator V. Fischer  
Senator Paul Fischer  
Senator Mulcahy  
Senator Sturgulewski

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#### CALENDAR

- SB 322 An Act relating to the Alaska Agricultural Loan Board; and providing for an effective date.
- SB 342 An Act amending the Alaska Agricultural Loan Act.
- SB 339 An Act repealing the expiration date of the Agricultural Action Council; and providing for an effective date.
- SB 358 An Act amending the expiration date of the Alaska Agricultural Action Council.

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#### TELECONFERENCED TO:

Fairbanks	Anchorage
Delta	Homer
Palmer/Wasilla	Soldotna

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Senator Kerttula testified in support of SB 322. He said the geographic areas where agricultural development exists have expanded and suggested the Governor appoint two more members to represent farmers from those areas.

Senator Faiks testified in favor of SB 342. She answered questions about the bill and also supported the Kerttula amendment regarding soil classification.

Bob Arnold, Deputy Commissioner, Department of Natural Resources, acknowledged that SB 342 would create a greater demand on the Agricultural Revolving Loan Fund and asked for clarification from the Legislature on granting loans for non-food products.

Steve Shropshire, Alaska Horticulture Association, spoke in support of SB 342. He felt the definition of "agriculture" should include horticulture.

Mavor Bill Allen, Fairbanks North Star Borough, supported all the bills before the Committee. He urged the continuation of the Alaska Agricultural Action Council and the expansion of the agricultural loan program.

Frank Geiger, Mavor, Delta Junction, spoke in support of all four bills. He recommended that two Boards be established, one for the Interior and one for the rest of the state.

Richard Ramsey, Aide to Senator Kerttula, testified in support of Kerttula's proposed amendment to SB 342. This amendment would allow more lands to be eligible for clearing loans.

Edna Anderson, Homer, recommended passage of SB 339 and SB 358 and said she agreed with Mayor Allen's comments.

Pete Roberts, Homer, supported Kerttula's proposed amendment to SB 342.

Ed Merdes, Fairbanks, supported all the bills being heard. He introduced the idea of "production incentives" to lower costs of production and make our crops more competitively priced.

Pat Mulligan, President, Alaska Farmers and Stock Growers, spoke in support of SB 342 and horticulture.

Bill Heim, Director, Division of Agriculture, DNR, wanted legislative guidance, through SB 342, on the expansion of the loan program. He supported Kerttula's proposed amendment to SB 342. Regarding SB 322, he recommended that the two new members be from Delta and Fairbanks.

Ken Ulz, Kobuk Fuel and Feed, spoke in support of all the bills being heard. He felt fur ranching was just as valid as any other ranching enterprise.

Bruce Willard, Homer, supported the continuation of the Alaska Agricultural Action Council.

Harry Wassink, Anchorage, proposed raising the cap on ARLF loans, particularly for dairy farmers.

Sig Restad, Agricultural Experimental Station, Palmer, testified in support of the four bills before the Committee.

Burton L. Clifford, U.S Department of Agriculture (USDA),  
spoke in support of all of the bills.

Carrol Martin, Soldotna, testified in support of all the bills  
heard today.

Jerry Giaugue, Palmer, spoke in support of all the bills.

Terry Weiland, Palmer, supported SB 339 and SB 358 and also  
wanted the cap raised on ARLF loans.

Jerry Brehmer, Delta, was in favor of all of the bills.

Vincent O'Reilly, Deputy Commissioner, Department of Commerce  
and Economic Development, testified that the Administration  
supports agricultural development. They are currently  
reexamining the program, trying to focus on in-state market  
needs. He felt that coordinating that effort should be done by  
the line agencies, specifically the Department of Natural  
Resources and the Department of Commerce and Economic  
Development, rather than the Alaska Agricultural Action  
Council.

Annelly Girard, Palmer, testified that farmers need to  
diversify. She felt the passage of SB 342 would allow them to  
do that. She spoke of growing shrubs and fast growing trees  
such as poplars in greenhouses for use as windbreaks.

Bob Arnold, Deputy Commissioner, Department of Natural  
Resources, spoke again to concur with Vincent O'Reilly, Deputy  
Commissioner, Department of Commerce and Economic Development,  
that the functions of the Alaska Agricultural Action Council  
can be better carried out by the line agencies, particularly  
the Department of Natural Resources.

The meeting adjourned at 4:42 pm.

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366

NEGOTIATIONS WITH: D.N.R. (BILL SPONSORED BY GOVERNOR)  
ALASKA MUNICIPAL LEAGUE  
FIRE CHIEFS ASSOCIATION

FEATURES:

1. CLARIFIES THAT STATE NEED NOT PROTECT ALL LAND IN STATE BUT ONLY LAND THAT IS OWNED PRIVATELY, BY THE STATE, OR BY A MUNICIPALITY.
2. PROTECTION PROVIDED BY STATE IS TO BE COMMENSURATE WITH THE VALUE OF THE RESOURCES AT RISK.
3. REMOVES THE LIMITATION ON THE NUMBER OF MANHOURS OF EMERGENCY FIREFIGHTING SERVICE THAT DNR MAY USE YEARLY.

CHANGE FROM ORIGINAL: ORIGINAL BILL WOULD HAVE TRANSFERRED FIRE SUPPRESSION RESPONSIBILITY FROM STATE TO MUNICIPALITY. OPPOSED BY MUNICIPAL LEAGUE ( CONCERNED ABOUT MUNICIPALITIES' CAPABILITIES AND THE COSTS AND LIABILITY THEY WOULD INCUR).

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NOTES:

CURRENT LIMITATION IS 30,000 MAN-HOURS PER YEAR. THIS IS EQUIVALENT TO 8 DAYS OF A FULL FIRE FORCE. THE ROSIE CREEK FIRE IN FAIRBANKS (SPRING 1983) TOTALED OVER 30,000 MAN-HOURS.

PROTECTION CATEGORIES WHICH HAVE BEEN CATEGORIZED BY LAND USE COUNCIL:

1. CRITICAL (INVOLVING LIFE AND PROPERTY)
2. HIGH VALUE (VALUABLE NATURAL RESOURCES - TIMBER, WILDLIFE)
3. MODIFIED SUPPRESSION (RESOURCE VALUE DOESN'T MERIT CONSIDERABLE COMMITMENT)
4. LIMITED SUPPRESSION ("LET BURN", MONITORED)

TO: BETTYE  
FROM: SANDRA

SB 366, PROTECTION OF  
FORESTED LAND

March 5, 1984

- 
1. FIRE PROTECTION PROVIDED BY STATE COMMENSURATE WITH VALUE OF RESOURCES AT RISK - BASED ON CATEGORIES DEVELOPED BY ALASKA LAND USE COUNCIL (CRITICAL, HIGH VALUE, MODIFIED SUPPRESSION, LIMITED SUPPRESSION).
  2. PRIMARY RESPONSIBILITY FOR FIRE PROTECTION WITHIN TAX-SUPPORTED FIRE SERVICE AREA RESTS WITH MUNICIPALITY. (MUTUAL AID AGREEMENTS)  
FAIRBANKS N. STAR BOROUGH ACCEPTS THIS. (PER MUTUAL AID AGREEMENT DEVELOPED WITH STATE.)

MAT-SU BOROUGH WANTS PAGE 1, LINE 13 TO READ INITIAL, NOT PRIMARY.

ALSO WANTS MUNICIPAL RESPONSIBILITY ONLY IN AREAS SERVED BY A MAINTAINED ROAD SYSTEM. (PAGE 1, LINE 15)

BOARD OF FORESTRY WANTS FIRE PROTECTION RESPONSIBILITY TO STAY WITH STATE, AND FOR PROTECTION TO BE "COMMENSURATE WITH VALUE OF RESOURCES AT RISK" ONLY IF APPROVED FIRE MANAGEMENT PLAN FOR THAT AREA.

QUESTIONS:

1. FOR WHICH MUNICIPALITIES HAVE MUTUAL AID AGREEMENTS BE MADE?
2. WHAT IS FISCAL IMPACT OF THIS BILL ON MUNICIPALITY? (ZERO FOR STATE)
3. AT WHAT POINT ONCE A MUNICIPALITY DETERMINES THAT THEY NEED STATE ASSISTANCE WILL THE STATE COME IN TO HELP?
4. THE BILL AMENDS CURRENT STATUTE TO SAY STATE IS RESPONSIBLE FOR FIRE PROTECTION ON STATE, MUNICIPAL, AND PRIVATE LAND, NOT "ALL LAND IN THE STATE" AS IT CURRENTLY READS. HOW WILL THIS AFFECT THE CURRENT FEDERAL/STATE COOPERATIVE FIRE PROTECTION AGREEMENTS? (THROUGH WHICH STATE IS RESPONSIBLE FOR CERTAIN FEDERAL LANDS AND VICE VERSA, FOR THE SAKE OF CONVENIENCE.)

FNSB  
wants  
clarification  
in bill.

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

*JB366*

Bill/Resolution No.: 377-041-84  
Title: protection of forested land

FISCAL DETAIL

Agency Affected: Dept. of Natural Resources  
Program Category Affected: Forestry

Sponsor: Governor  
Requestor: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

BRU, Program or Subprogram(s) Affected: Fire suppression

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-			
CAPITAL	-0-	-0-	-0-			
REVENUE	-0-	-0-	-0-			

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

Analysis: Although this legislation neither requires an appropriation nor generates revenue, it is expected to reduce future fire fighting costs to the State by defining the lands for which the State is responsible.

ANALYSIS: Attach a separate page for analysis

Prepared By: Sharon L. Barton Phone: 465-2400  
Division: Commissioner's Office Date: 12-20-83

Approved by Commissioner: Marjorie Hecker Date: 12/20/83  
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

# Alaska MUNICIPAL League

TELEPHONES  
(907) 586-1325  
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301  
JUNEAU, ALASKA 99801

March 5, 1984

To: Senate Resources Committee  
From: Ginny Chitwood *Ginny*  
Re: SB 366 - Fire Protection of Forested Land

The Alaska Municipal League opposes shifting the responsibility for fighting forest fires on state land to municipalities because the state would be mandating additional costs to municipalities without compensating funding. It might be reasonable, however, if municipalities were able to tax the state land in order to provide fire protection service.

In addition, this proposed shift in responsibility would create another inequity in service delivery throughout the state. Those areas that are willing to organize would be penalized with an extra burden, while the other areas would continue to be taken care of by the state.

We urge you to delete lines 13 through 20 on page 1 or to add a section authorizing the assessment of state land for fire protection services.

SENATE BILL #366  
SUMMARY

Revision of the basic wildland fire protection statutes (AS 41.15.010 and 41.15.030) is needed for the following reasons:

1. Fire Protection <sup>would</sup> ~~Should~~ be Commensurate with Values at Risk.

The proposed wording in SB #366 will provide some flexibility to the Department of Natural Resources to provide fire protection based on the resource values on the land. This flexibility can result in lower fire cost and less damage to the land from fire suppression actions.

2. The Man-hour Limitation on Emergency Fire Fighting Personnel ~~is~~ is Not Applicable Under Current Conditions.

The Department of Natural Resources cannot adequately suppress the fires occurring on our expanded land base using only the 30,000 man-hours permitted by AS 41.15.030. This limitation should be removed.

3. Primary Responsibility for Suppressing Fires on Forested Land within Tax-supported Fire Service Areas should be with Local Government.

Fire Service areas, supported by a tax, should be responsible for fires occurring on forested land within their capability to attack and suppress them. It is the Department of Natural Resources position that these in-place fire departments have the capability to attack roadside fires with the equipment they have on-hand. Therefore, if the service areas were clearly responsible to take action on these fires, the Department of Natural Resources will not have to increase its fire fighting forces to assure an adequate protection level is maintained. DNR would provide any support and attack requirements that are beyond the capability of the service areas fire department.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM  
LEGIBLY BECAUSE OF POOR QUALITY OF THE  
ORIGINAL.

6. Assume command of any wildfire when:

a. requested by FSA officer-in-charge.

b. The amount of State equipment dictates the need for State management of said equipment.

7. Provide the FSA with the information needed to fill out the State fire report for any fire within the FSA in which the State was in attendance, and the FSA was not.

8. Waive all claims against the Borough for any loss, damage, death or injury connected with the performance of this Mutual Aid Agreement.

AND FINALLY, let nothing within this agreement be construed as to restrict either party's initiative to attack fires quickly and aggressively in order to fulfill the public's expectations for property and resource protection.

BY: \_\_\_\_\_  
State of Alaska  
Division of Forestry

TITLE: STATE SENATOR

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the protection of forested land. This bill clarifies the extent of the state's duty to protect forested land, and removes the limitation on the number of man-hours of emergency fire-fighting service that the Department of Natural Resources may use each year.

AS 41.15.010 currently provides that "[i]t is the intent of AS 41.15.010 -- 41.15.170 to provide protection for the timber resources and watersheds on all land in the state." The bill first clarifies that the protection provided by the state is to be commensurate with the value of the resources at risk. The state is not obligated to provide more protection to forested land than is reasonable, based on the value of the resources at risk.

This bill next clarifies that the state need not protect all forested land located within the state, but only state land (as defined in AS 38.05.365(16)) or land owned privately or by a municipality. The U.S. Departments of Agriculture, Interior, and Defense are obligated to protect federal land located within the state, and there is no reason for the state to provide duplicate protection.

This bill also clarifies that the primary responsibility

for suppressing fires on forested land located within a tax-supported fire service area rests with the municipality in which that service area is located. The state's duty with regard to fires in these areas is to provide assistance to the municipality if the fire exceeds its capabilities.

Finally, this bill removes the limitation placed on the number of man-hours of emergency fire-fighting service that may be used each year by the Department of Natural Resources. In an average or worse-than-average year, the state cannot adequately suppress forest fires occurring in the areas for which it is responsible using only the 30,000 man-hours permitted by AS 41.15.030.

Sincerely,

Bill Sheffield  
Governor

SENATE BILL #366

BACKGROUND INFORMATION

I. Problems Resulting from Present Alaska Statute 41.15.010 and 41.15.030:

- A. Wording in AS 41.15.010 is so general that the written intent cannot be complied with. Timber resources and watersheds of all lands in the State cannot be protected by the State.
1. The State has no authority or responsibility to protect Federal lands except under agreement with a Federal agency.
  2. Many local government agencies assume protection responsibility for the lands within their municipality or fire service area.
  3. Alaska Department of Natural Resources does not have the built-in capability to protect all the forested lands both inside and outside municipalities and fire service areas. Costs to acquire this capability would amount to many millions of dollars (at least \$10,000,000 for capital improvements and \$5,000,000 annual operational costs).
- B. Various interpretations of AS 41.15.010 have led some local governmental agencies to conclude that the DNR-Division of Forestry should be responsible for suppression of all grass, brush, or timber fires both inside and outside of municipalities and fire service areas.
1. Tax-supported fire service area boundaries are being established with thousands of acres of forested land included, for which the fire service area or local government assumes no fire protection responsibility.
  2. Some local tax-supported fire departments are refusing to enter into cooperative or mutual aid fire agreements with the State because they assume no responsibility for forested lands even within their protection boundaries.
  3. Duplication of protection responsibility for the same land area is occurring with some local fire departments assuming responsibility for structures only, and the Division of Forestry is required to provide wildland fire protection to the same land area.

Such duplication is extremely inefficient if the protection job could be accomplished by only one agency.

- a. Most local structural fire departments are capable of suppressing wildland fires that are accessible by road and can be reached by highway type fire equipment.

- b. The DNR-Division of Forestry does not have the type of equipment nor the trained personnel to attack and suppress structural fires. They do not, at this time, have responsibility for suppression of such fires.
- C. Present wildland fire statutes do not address the need to provide fire protection commensurate with the resource values on the land.
- D. AS 41.15.030 established a limit of 30,000 man-hours each year of emergency fire-fighting personnel hire. DNR cannot adequately suppress the fires occurring on our expanded land base using only the man-hours permitted.

## II Anticipated Results of Senate Bill #366:

- A. SB#366 will define the responsibility and relationship of the local tax-supported fire service area or municipality and the State Division of Forestry for wildland fire suppression, both inside and outside of fire service areas.

The revised statute follows the simple principle that all fires within a protection area should be suppressed by the local fire agency unless it is beyond their capability.

Under this principle, structural fires and accessible wildland fires within tax-supported fire service areas or municipalities would be suppressed by the local fire agency. Wildland fires outside of fire service areas or municipalities and inaccessible wildland fires inside fire service areas and municipalities would be suppressed by the Alaska DNR-Division of Forestry with suppression costs absorbed by Alaska DNR.

The Division of Forestry will also provide mutual aid and back-up support to local fire agencies within their fire protection area when requested to do so by the local agency.

It is anticipated that most local fire agencies will enter into cooperative or mutual aid fire agreements with the Alaska DNR-Division of Forestry in order to provide the best fire protection possible at the least cost to the State, the municipality and the taxpayers.

- B. The Alaska DNR-Division of Forestry will have instructions from the State Legislature to provide fire protection to State and private wildlands based on the value of the resources on the land or the values-at-risk.

These instructions will allow the DNR to take less than full suppression action on remote wildland fires that are a natural component of the environment and may improve rather than damage the resource values of the land.

- C. SB366 will remove the limitation placed on the hire of emergency fire-fighting personnel. Because of wide fluctuations in the severity of fire seasons and the need for emergency fire-fighter hire, it is impossible to set a usable limit on this element that will fit all fire seasons. This 30,000 man-hour limitation was imposed at a time when DNR only protected less than 30 million acres. Currently the protection area exceeds 67 million and will increase to nearly 137 million acres in 1985.

There are other limitations built into the use of the fire suppression fund that will protect the integrity of this fund.

	<u>REVISIED FIRE STATUTE    IMPACT ON TAX SUPPORTED FIRE DEPARTMENTS</u>				
FIRE DEPT. CONTACTED	Anchorage (Girdwood) (Chugiak)	Lakes Fire Service Area	Juneau Fire Department	North Star Department	Nikiski Fire Service Area
CHIEF OR OFFICER CONTACTED	Chief Evans	Chief Postisbek	Chief Judson	Chief Lundfelt	Chief Al Willis
TYPE OF DEPT.	Fully Paid and Volunteer	Part Paid	Paid - on call	Part Paid	Paid On Call
RESPONSE TO WILDLAND FIRES	Yes - both inside & outside their protection area	Yes - Inside and Outside protection area	Yes - Inside Protection Area	Yes - Inside and outside Protection area	Yes - Inside and Outside
COOPERATIVE OR MUTUAL AID AGREEMENT WITH STATE D.O.F.	Yes	No	No	No	Yes
DOES STATE WILDLAND FIRE STATUTE NEED TO BE REVISED?	Yes	Yes	Yes	Yes	Yes
WOULD DEPARTMENT BE OPPOSED TO NEW STATUTE PROPOSED?	No	No	No Comment	No	No
REMARKS OR RECOMMENDATIONS				Thinks Dept. should be paid for protection of State Lands	Dept. should be paid for protection of State Lands

FIRE DEPT. CONTACTED	REVISED FIRE STATUTE		IMPACT ON TAX SUPPORTED FIRE DEPARTMENTS			
	Palmer Fire Department	Big Lake Fire Dept	Soldotna Fire Department	Ridgeway Fire Service Area	Butte Fire Department	Cordova Fire Department
CHIEF OR OFFICER CONTACTED	Capt. Dick Barrett	Chief Walt Embree	Chief Al Phillips	Chief Greg Barkley	Chief Barnhardt	Chief Whetsell
TYPE OF DEPT.	Paid - On Call	Volunteer	Part Paid	Part Paid	Volunteer	Part Paid
RESPONSE TO WILDLAND FIRES	Yes - Inside Protection Area	No	Yes - Inside and Outside Protection Area	Yes - Inside and Outside Protection Area	Yes - Inside No. - Outside	Yes - Inside
COOPERATIVE OR MUTUAL AID AGREEMENT WITH STATE D.O.F.	Yes - in the past	No	Yes	Yes	Yes	No
DOES STATE WILDLAND FIRE STATUTE NEED TO BE REVISED?		Yes	No	Yes	No objection	No Objection
WOULD DEPARTMENT BE OPPOSED TO NEW STATUTE PROPOSED?	No	Yes	No comment	No comment	No	No
REMARKS OR RECOMMENDATIONS		Response influenced by his job with D.O.F.	Happy with present statute but not following it.	Needs to see new statute to decide	Cooperative Agreements are working well	Get better interpretation of present statute

	<u>REVISIED FIRE STATUTE      IMPACT ON TAX SUPPORTED FIRE DEPARTMENTS</u>				
FIRE DEPT. CONTACTED	North Pole Fire Dept.	Seldovia Fire Department	Valdez Fire Department	Wrangell Fire Department	Homer Fire Department
CHIEF OR OFFICER CONTACTED	Chief McGraw	Chief Ihrie	Ass't. Chief	Chief Bunes	Ass't. Chief Purcell
TYPE OF DEPT.	Part Paid	Part Paid	Part Paid	Part Paid	Part Paid
RESPONSE TO WILDLAND FIRES	Yes - Inside and outside fire protection area	Yes -	Yes - Inside and outside protection area	Yes - inside and outside protection area	Yes - Inside and outside protection area
COOPERATIVE OR MUTUAL AID AGREEMENT WITH STATE D.O.F.	Yes	No	No	No	Yes
DOES STATE WILDLAND FIRE STATUTE NEED TO BE REVISED?	Yes	Yes	Yes	Yes	Yes
WOULD DEPARTMENT BE OPPOSED TO NEW STATUTE PROPOSED?	No	No	No	No	No Comment
REMARKS OR RECOMMENDATIONS	Revision sounds good	Revision might actually help this Dept.	Revision is needed	Not logical for State to gear up for fires local Depts can handle	Fire Service Areas relieving tax revenue from wildlands should have some fire protection responsibility for those lands.

REVISED FIRE STATUTE      IMPACT ON TAX SUPPORTED FIRE DEPARTMENTS

FIRE DEPT. CONTACTED	Douglas Fire Department	Fairbanks Fire Department	Haines Fire Department	U of A Fire Department	Ketchikan Fire Department	Kenai Fire Department
CHIEF OR OFFICER CONTACTED	Bob Johnson	Chief Warren Tilman	Dick Jackson Paid Fireman	Chief Shechter	Chief Fisher	Chief Winston
TYPE OF DEPT.	Volunteer	Part Paid	Part Paid	Fully Paid	Part Paid	Part Paid
RESPONSE TO WILDLAND FIRES	Yes	Little or no Wildfire response needed	Yes - inside Protection area	Yes - Inside and Outside protection area	Yes - inside and outside	Yes- Inside and outside H/A
COOPERATIVE OR MUTUAL AID AGREEMENT WITH STATE D.O.F.	No		yes	No	No	No
DOES STATE WILDLAND FIRE STATUTE NEED TO BE REVISED?	Yes		Yes	No Comment	Yes	Yes
WOULD DEPARTMENT BE OPPOSED TO NEW STATUTE PROPOSED?	No		No	Agreed in principle	No	No
REMARKS OR RECOMMENDATIONS	Agrees with our efforts to revise statute	No objection to the intent of the new statute	Dept. could handle the wildland fires but City fathers would have to agree	Sees need for revision to present statute proposal	Sees no problem with changing statute	No problem with proposed change

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF FORESTRY

Pouch 7-005  
Anchorage, Alaska 99510  
PHONE: (907) 276-2653

1111.1

February 28, 1984

Administrator  
City of

Dear Administrator:

We are sending you the attached Senate Bill No. 366 to inform you of this proposed legislation and to advise you of the reasons this new language change is needed.

The present basic wildland fire statute (AS 15.44.010) is so ambiguous and all-encompassing that the Alaska Department of Natural Resources Division of Forestry cannot comply with the law. We cannot provide fire protection for the timber resources and watersheds of all lands in the state, which is the written intent of the law.

We cannot, for instance, protect all the Federal lands within the State because we do not have the authority nor the capability to do so. It is also unrealistic and inefficient for the Division of Forestry to protect wildlands within urban areas with well-established fire departments. Most fire protection agencies have interpreted the intent of the present law to mean that the Division of Forestry will provide fire protection to State and private wildlands outside of tax-supported fire service areas and municipalities. Most of these agencies have been agreeable to entering into cooperative or mutual-aid agreements with the Division to assure that wildland fires, both inside and outside of fire service areas, are suppressed by the agency that can do the job in the quickest and most efficient manner at the least cost to the taxpayers.

Recent interpretations of this basic wildland fire statute has led a few agencies to the conclusion that the Division of Forestry should be responsible for suppression of all grass, brush or timber fires regardless of fire service area boundaries. If one were to carry this interpretation to the extreme, the Division would have to respond to a grass-brush fire on a residential lot within a few yards of a well-equipped and manned municipal fire department while that department would stand by unless and until a structure caught fire. The inefficiency and needless expense to the taxpayer in this situation is quite obvious.

The Alaska DNR Division of Forestry recognizes the responsibility it has to protect State and private wildlands outside of tax-supported fire service areas and those wildlands inside fire service areas that are inaccessible to or beyond the capability of the local fire departments. The proposed legislation is designed to allow us to operate in that fashion.

The intent of the proposed fire statute (SB #366) is to better define the wildland fire responsibility inside tax-supported fire service areas and municipalities. This new statute will follow the principle that all fires should be suppressed by the local fire agency unless it is beyond their capability.

Most wildland fires beyond the capability of the local fire departments will be those fires that are not accessible by road and cannot be reached by highway type fire equipment. The Division of Forestry will continue to suppress these fires as we have in the past when requested to do so by the local fire agency. The local fire officer will make the decision as to which fires are beyond his capability.

The Division of Forestry will also continue to suppress wildland fires on State and private lands outside of tax-supported fire service areas and will continue to provide backup support to local fire departments inside their service areas when cooperative or mutual aid agreements allow for such support.

Other changes that are needed in the present fire statutes are included in Senate Bill #366. These changes will allow the Division of Forestry to take less than full suppression action on remote fires where little or no resource damage will result from the fire and will remove a limitation on the man-hours of emergency fire fighters hired by the Division. With our area of fire protection now exceeding 67 million acres, this limitation is too low for even an average fire season.

We would be happy to answer any questions you might have concerning this proposed legislation. Please call Elmer Hurd or Jack Wilcock in Anchorage at 265-4465.

Sincerely,

John L. Sturgeon  
State Forester

cc: Elmer Hurd  
Jack Wilcock  
F-5

#### IV. FIRE MANAGEMENT ALTERNATIVES

##### A. INTRODUCTION

The Tanana/Minchumina Fire Management Plan establishes four management options: Critical Protection, Full Protection, Modified Action, and Limited Action. Fire suppression alternatives range from immediate and aggressive suppression to no attack. As presented, the alternatives set forth general standards for selection of the appropriate option by the land manager/owner. Further, they provide basic guidance and parameters within which the fire suppression organization and land manager/owner make initial strategies and tactical decisions. Fire management options selected for the lands in the Tanana/Minchumina planning area are shown in Appendix E (in attached map pocket).

It will be incumbent upon the land manager/owner to select a fire management option based upon an evaluation of local conditions in order to provide guidance to the fire suppression organization. In turn, the fire suppression organization is expected to respond to the land manager/owner to the best of its capability. Because of rapidly changing land status, the State of Alaska and Native corporations chose fire management options on lands which they have selected but have not yet been conveyed to them, even though management rests with a Department of the Interior agency.

These options are presented under the basic philosophy that they are not "set in concrete" when applied to a specific land area in this plan. Rather, the application of the options must be flexible and subject to revision as conditions change, such as formulation of specific land use objectives and availability of new data. This places a burden on managers to maintain continued evaluation of all factors, at least annually, to accomplish plan and individual land manager/owner management options. The land manager/owner(s) can change their selection of a fire management option between September 30 and April 1 of any year, but not during the fire season. (Refer to Section I.H., Revision, p. 5.)

##### B. INTENT OF MANAGEMENT OPTIONS

Critical Protection Management Option - This option was specifically created to differentiate the protection of human life and inhabited property from natural resource protection. The designation of a site (area) with this option is left to the discretion of the land manager/owner responsible for fire protection for the site. Unquestioned priority over all other fires is automatically given to sites (areas) identified in this option.

Full Protection Management Option - Areas assigned this designation will receive fire protection equivalent to what has been supplied in the past. That is, all fires in these areas will receive aggressive initial attack and aggressive suppression efforts until the fire is declared out. This option was designed for the protection of cultural and historical sites, high resource value areas, and those types of things which require wild land fire protection but do not involve the protection of human life and habitation.