

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2899 SRES HB 404 - HB 458

2899

FISH TICKETS RCVD,FWP-1982,83

REL. DATE	RELEASE INIT. BY	TPR. DETACH	NO.OF TICKETS
830607	FWP	D	3
830608	FWP	I	11
830611	ADFG		4
830618	FWP	C	1
830622	ADFG	D	6
830623	ADFG		3
830624	ADFG	D	3
830625	FWP		2
830627	FWP	D	1
830629	ADFG	I	3
830702	FWP	D	8
830705	ADFG	D	7
	FWP	D	2
830706	ADFG	C	3
		I	1
		D	4
830708	ADFG	D	2
			1
	FWP		1
830709	ADFG	D	4
		D	3
	FWP		3
830721	ADFG	C	9
830731	ADFG		4
			18
830808	ADFG		2
830819	ADFG	I	3
830912	ADFG	D	3
C31021	FWP	D	26
831121	ADFG		56

AVERAGE: 6
TOTAL: 785
COUNT: 128

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

May 18, 1984

The Honorable Bettye M. Fahrenkamp
Chairman
Senate Resources Committee
Pouch V
Juneau, AK 99811

RE: CS for Sponsor
Substitute for
House Bill 404

Dear Senator Fahrenkamp:

As requested by the Fisheries Sub-Committee, attached is information regarding enforcement activities as a result of this department having access to records related to landing of fish, shellfish, or fishery products (fish tickets).

At the outset, I wish to respectfully point out that the availability of access to fish tickets by this Department's law officers acts as a deterrent to violations by fish pirates and thus sustains the resource availability for the predominantly law abiding commercial fishermen. In fact, past experience has shown that in most cases, fishermen accused of illegal activities by others are immediately cleared of any wrongdoing by simply reviewing their fish tickets.

I know it is of great concern to some members of the Committee that proliferation of access to the fish tickets encourages leakage of information contained therein that is financially harmful to the fishermen. Let me assure the Committee and the Legislature as a whole that of all those agencies that have had access to the tickets, this Department's enforcement officers have, and will continue to, treat the information gained as confidential evidentiary knowledge as is done in all investigations. Any officer who would do less would be severely disciplined.

As expressed before the Fisheries Sub-Committee, the fish tickets are an excellent tool to deter and detect violations. Without this Department's enforcement officers having such immediate availability, and if there was common

MAY 18 1984

The Honorable
Bettye Fahremkamp

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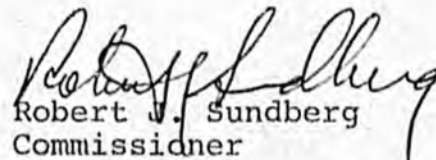
May 18, 1984

knowledge to that fact, violations would be encouraged. As an example, the Norton Sound herring fishery is an exclusive registration area. If this Department does not have access to fish tickets, it will not be able to immediately determine who is fishing illegally in that exclusive area. This fact could be tempting to the some 500 boats now in Togiak as well as vessels in other locations.

To accurately address the question of the number of cases made by this Department via use of fish tickets requires a hand search of all cases in file within the five various detachments of the Division of Fish & Wildlife Protection. This is a time consuming activity. Time being of the essence in this instance, as the Fisheries Sub-Committee is graciously holding the bill awaiting this Department's input on cases made, a current list based on individual enforcement officers personal knowledge is being submitted at this time. There are other cases in file but that knowledge would not be gained in time for consideration.

I can appreciate the concerns of members of the Committee related to this Department having access to the fish tickets, but our only interest is in protection of the renewable fish resource by bringing charges against the fish pirates.

Sincerely,


Robert J. Sundberg
Commissioner

Attachments: a/s

cc: Senator Bob Mulcahy, Chairman
Fisheries Sub-Committee

Senator Richard I. Eliason
Alaska State Legislature

D DETACHMENT - PRINCE WILLIAM SOUND - LOWER COOK INLET

OMITTING BRISTOL BAY

1982

Includes only those with convictions. Other cases were investigated.

Case Number	Charge	Total Fine	Net Fine
D82-3077	Closed Period	\$1,000.00	\$ 500.00
3048	Closed Waters	4,000.00	2,600.00
3053	Closed Season	4,000.00	2,000.00
2026	Closed Waters	2,000.00	1,000.00
2029	Closed Period	2,000.00	1,000.00
2035	Closed Period	3,000.00	1,500.00
2040	Closed Period	2,000.00	1,500.00
2058	Closed Period	2,000.00	500.00
2146	Closed Period	2,000.00	1,000.00
2140	Fail to Register	1,500.00	500.00
2152	Closed Water	5,000.00	2,500.00
1084	Closed Period		5,000.00 15 days
	Closed Period (6 DEF)	5,000.00	2,000.00 (2 days)
1089	Closed Period		2,250.00
1115	Closed Period	5,000.00	2,000.00
1135	Unlawful Salmon		1,300.00
1247	Closed Waters	1,000.00	500.00
1248	Closed Waters	1,000.00	500.00
0453	Closed Period		500.00
0455	Closed Waters	1,000.00	550.00
0458	Closed Period		5,000.00
0501	Closed Period		3,000.00
0539	Closed Period		2,800.00
0548	Closed Period		500.00
0554	Closed Waters		500.00
0556	Closed Waters		2,000.00
0593	Limited Entry		2,000.00
0594	Limited Entry		2,000.00
0595	Limited Entry		2,000.00
0602	Closed Waters	5,000.00	2,500.00
0604	Limited Entry	5,000.00	2,500.00
0605	Limited Entry	5,000.00	2,500.00
0755	Closed Period	3,000.00	1,000.00

D DETACHMENT - PRINCE WILLIAM SOUND - LOWER COOK Inlet

INCLUDING BRISTOL BAY

1983

Number	Charge	Net Fine
Total	Charge	Net Fines
42	Closed Season or Period	\$250.00 - 5,000.00
67	Closed Area	250.00 - 5,000.00 @30 days

E DETACHMENT - Kodiak & Westward

Dutch Harbor

August 1982 to Present

Initiated 132 cases involving Fish Tickets

Judgements against 67 individuals

Net Fine \$67,850.00

Kodiak

August 1982 to Present

Investigator's Cases

Still pending-on appeal or filed, no judgment.

1983

1984

Case Number

Case Number

83-0238

84-0164

0722

0308

0432

0309

0520

0310

0551

0312

0318

0320

0321

0322

0323

C DETACHMENT

Southcentral

Bethel

1982	1983
Case Number	Case Number
C82-08638	C83-61 521
11784	542
12885	563
12887	588
12890	606
12897	608
13191	621
13207	
13761	
13764	
13766	
13783	
13789	
13790	

Exact charges unknown

Almost all cases had charges filed

B DETACHMENT

Juneau

Case Number	Charges
WB82-4433	Yes
4434	Yes
7342	Yes
WB83-3939	Yes
0074	Yes
6682	No

Haines - None

Hoonah

Case Number	Charges
WB83-0633	Yes
0634	Yes
0630	Yes
0635	Yes
0636	Yes
0115	Yes

Wrangell Post - Information not available

Petersberg Post - Information not available

Yakutat

Case Number	Charges
WB83-7113	Yes
7115	Yes
7114	Yes
7128	Yes

Ketchikan

Case Number	Charges
WB82-5057	Yes
2282	Yes
4368	Yes
4355	Yes
4260	Yes
4261	Yes
4269	Yes
0148	Yes
4281	Yes
4330	Yes
4331	Yes
4332	Yes
4333	Yes
4334	Yes
4335	Yes
4328	Yes
4329	Yes
4337	Yes
4290	Yes
WB84-0147	Yes
0148	Yes
0150	Yes
0136	Yes
0135	Yes
0140	Yes
0142	Yes
0143	Yes
0144	Yes
0141	Yes
0145	Yes
0146	Yes

Craig

Case Number	Charges
WB82-0864	Yes
5930	Yes
5929	Yes
5907	Yes

Sitka

Case Number	Charges
WB83-0585	Yes
0556	Yes
0536	Yes
6696	Yes

Ketchikan

Case Number	Charges
WB82-3936	Yes
7604	Yes
7634	Yes
0612	Yes
0692	Yes
6369	Yes
0588	Yes
0577	Yes
6368	Yes
6694	Yes
0587	Yes
6693	Yes
6393	Yes
6413	Yes

I DETACHMENT - NORTHERN AREA

Case Number	Charge
I82-2369	Unlawful Geer
3298	Closed Waters
3309	Sale of Subsistence Fish
I83-7751	Comm. Fish no permit
7760	Comm. Fish Closed
7804	Fish Exclusive Area
7822	Fish Exclusive Area

No Processors involved in violations

HOUSE RESOURCES
STANDING COMMITTEE
January 25, 1984
3:10 p.m.

Members Present: Rep. Ringstad, Co-Chairman
Rep. Shultz, Co-Chairman
Rep. Goll
Rep. Liska
Rep. Uehling
Rep. Larson

Members Absent: Rep. Bussell
Rep. Vaska
Rep. Cowdery

COMMITTEE CALENDAR

SSHB 404 "An Act making miscellaneous amendments to
the fish and game codes."

WITNESS REGISTER

Dennis Kelso
Deputy Commissioner
Alaska Dept. of Fish & Game
P.O. Box 3-2000
Juneau, Alaska 99802
Position Statement: Favors passage of the legislation.

Paddy McGuire
Alaska Dept. of Fish & Game
P.O. Box 3-2000
Juneau, Alaska 99802
465-4100
Position Statement: Answered technical questions, favors
passage.

Bob Clasby
Alaska Dept. of Fish & Game
P.O. Box 3-2000
Juneau, Alaska 99802
465-4210
Position Statement: Answered technical questions, favors
passage.

Ron Somerville
Alaska Outdoor Council
3780 McGinnis
Juneau, Alaska 99801
789-3450
Position Statement: Generally in favor of passage, with some

amendments.

Larry Edwards
P.O. Box 2158
Sitka, Alaska 99835
747-8996

Position Statement: Suggested changes to the legislation.

Arthur Robinson
Kenai Peninsula Fishermen's Co-op
P.O. Box 3519
Soldotna, Alaska 99669
262-9164

Position Statement: Suggested changes to the legislation.

PREVIOUS ACTION

SSHB 404

HOUSE ACTION: First reading on 01/18/84.
Current status: Presently in House
Resources Committee with a referral to House
Judiciary Committee. Governor's transmittal
letter, 01/18/84. Journal page 2296.

ACTION NARRATIVE

TAPE#9
Recording
Number 0001

Co-Chairman Ringstad called the meeting of
the House Resources Committee to order at
3:10 p.m., and brought SSHB 404 before the
members. *

Number 0014

Dennis Kelso, Deputy Commissioner of Alaska
Dept. of Fish and Game presented an overview
of the issue.

Number 0043

Rep. Goll asked a question regarding
discretionary powers of department personnel
to arrest. Mr. Kelso replied that the
change was to update statutes to conform to
present practice.

Number 0110

Rep. Shultz related an incident illustrative
of present practice. Paddy McGuire responded
by giving another illustration.

Number 0145

Rep. Ringstad asked a question regarding the
present practice. Mr. Kelso responded that
required enforcement activities detract from
biological management activities.

Number 0150

Rep. Liska asked how many people are
involved. Mr. Kelso responded that it was

more or less 400.

- Number 0220 Rep. Ringstad asked for comments on amendments proposed by Rep. Hurlbert and Rep. Vaska.
- Number 0230 Rep. Ringstad asked why "must" is used instead of "shall" on page 3, line 27. Mr. McGuire replied that it is more appropriate in the court's view.
- Number 0245 Rep. Goll asked about the deletion of the word "improve" on page 3, line 5-7. Mr. McGuire replied that protection includes improvement.
- Number 0290 Rep. Shultz asked about the deletion of the word "stocking" on page 3, line 7. Mr. McGuire replied that stocking is included in propagation.
- Number 0320 Rep. Shultz asked how intentions are proven. Mr. Kelso replied that the proof is in the sale of the fish.
- Number 0360 Rep. Larson asked a question regarding the use of wheeled vehicles in streambeds, and a discussion ensued regarding the issue.
- Number 0560 Rep. Ringstad asked for comment on Rep. Vaska's proposed amendment. Mr. Kelso said it would correct an oversight in a bill passed last year, and would mean a slight reduction in revenue.
- Number 0590 Rep. Ringstad asked about Rep. Hurlbert's amendment regarding denial of petitions to the boards. A general discussion ensued.
- Number 0756 Ron Somerville of the Alaska Outdoor Council gave a statement generally in favor of the bill, but said a policy needs to be set down regarding the stream crossing issue.
- Number 0788 Rep. Liska asked about the stream crossing problem in the mining community. Mr. Somerville said he thought it was up to industry and the general public to get before the appropriate board and make policy.
- Number 0806 Rep. Goll said in his experience in Southeast Alaska, the present policy seems to be working.

- Number 0825 Larry Edwards, representing himself, made a statement on the bill, noting that "person" needs stronger definition, and some answer to repeat violation should be set forth.
- Number 0857 Rep. Goll asked about the use of Class A misdemeanor. Mr. McGuire responded that the bill tries to tie into the new criminal code.
- Number 0882 Arthur Robinson, of the Kenai Peninsula Fishermen's Co-operative, gave a statement regarding changes proposed to the activities of the Board of Fisheries. Mr. Clasby responded that most of those have to do with budgetary matters, with which the board is not statutorially empowered.
- Number 0985 Rep. Goll asked a question regarding the three tiers of enforcement action the department can take. Mr. McGuire responded that the department does not now have the authority to issue citations.
- Number 1096 Rep. Liska asked what's the difference between shall, may and must. Mr. McGuire responded that shall and must are nearly identical in the court's view, but may is not mandatory.
- Number 1165 Rep. Goll made a comment about the wording of the bill.
- Number 1170 Rep Ringstad adjourned the meeting at 4:40 p.m..

HOUSE RESOURCES
STANDING COMMITTEE
February 3, 1984
3:10 p.m.

Members Present: Rep. Ringstad, Co-Chairman
Rep. Uehling, Vice-Chairman
Rep. Bussell
Rep. Liska
Rep. Goll

Members Absent: Rep. Shultz, Co-Chairman
Rep. Larson
Rep. Vasila
Rep. Cowdery

COMMITTEE CALENDAR

SSHB 404 "An Act making miscellaneous amendments
regarding fish and game."

WITNESS REGISTER

Ed Hein
Legal Counsel
Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99811
465-2450
Position Statement: Gave technical review of committee
substitute

Dennis Kelso
Deputy Commissioner
Department of Fish and Game
P.O. Box 3-2000
Juneau, Alaska 99802
465-4100
Position Statement: Favors passage of bill, did not object to
changes

PREVIOUS ACTION

SSHB 404 First Reading - 1/18/84

See Resources minutes of 1/25/84

Committee Referrals - Resources, Judiciary
and Rules

See Governor's Transmittal Letter on page

2296 of House Journal

No previous action in Resources

ACTION NARRATIVE

TAPE# 12
Recording
Number 0001

Rep. Ringstad called the meeting of the House Resources Committee to order at 3:10 p.m. and brought SSHB 404 before the members.

Number 0012

Ed Hein, Legal Counsel, briefed the members on the changes made by the proposed committee substitute, saying that six of them are substantive, and the remainder are technical, drafting or style changes. He also noted that there was a typographical error on page 9, line 6, where "fisheries" should have been "game".

Number 0040

Mr. Hein explained the change dealing with discretionary arrest or citation powers.

Number 0046

Mr. Hein discussed the reinsertion of the words "and stocking."

Number 0055

Mr. Hein discussed deletion of the section in the original bill that addressed wheeled vehicular use of streambeds.

Number 0064

Mr. Hein discussed amendments dealing with the Boards' rejection of proposals to change regulations, or the Hurlbert amendment.

Number 0075

Mr. Hein discussed the amendment dealing with fishing boats on the Yukon-Kuskokwim drainages (Vaska amendment).

Number 0105

Rep. Liska asked a question regarding guidelines on the issuance of citations. Mr. Hein replied that the court's determine what the bail schedule will be on these types of citations.

Number 0164

Dennis Kelso stated that Alaska Department of Fish and Game has no objections to the changes proposed by the CS.

Number 0174

Rep. Uehling moved and asked unanimous consent for the adoption of the CS with the typographical change as discussed on page 9,

line 6. There were no objections.

Number 0181

Rep. Uehling moved and asked unanimous consent that the committee pass out CSSSHB 404 (Resources) and there were no objections.

Number 0184

Rep. Ringstad adjourned the meeting at 3:40 p.m.

ec

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 3, 1984

SUBJECT: Sectional analysis of CSSB 101 (Resources)

TO: Representative John Ringstad
Representative Richard Shultz
Co-Chairmen, House Resource Committee

FROM: Edward H. Hein *EH*
Legislative Counsel

Section 1 adds a new section, AS 16.05.165, to the fish and game code that provides that a peace officer investigating a misdemeanor violation of the code or a regulation adopted under it may issue a citation as provided in AS 12.25.180, notwithstanding the provisions of AS 16.05.160, which requires a peace officer to arrest any person committing a code violation in the officer's presence. Note that SSHB 404 would amend AS 16.05.160 to make such arrests discretionary, but would expand the arrest authority to include violations of all of AS 16 except AS 16.51 and 16.52. Section 1 also directs the supreme court to establish a bail schedule for fish and game misdemeanor violations and provides for paying fines by mail, similar to what is done with traffic tickets.

Section 2 amends AS 16.05.410, which provides for revocation of licenses for conviction of sport fishing and hunting license violations. The amendment provides that the existing revocation provisions do not apply to violations for which a forfeitable bail amount is established under AS 16.05.165. Two convictions of such an offense, however, could result in a peace officer filing a civil action to have the person's license revoked. A non-jury court hearing is required. If the court finds that the person's actions demonstrate a disregard for the preservation of the state's fish or wildlife resources, the license may be revoked for a mandatory one-to-three year period.

Section 3 amends AS 12.25.190(c) to provide that a person receiving a citation under AS 16.05.165 is not required to

Representative John Ringstad and
Representative Richard Shultz
Page 2
February 3, 1984

give a written promise that he or she will appear in court
in response to the citation.

EHH:ojb
J3/050

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 3, 1984

SUBJECT: House Resources Committee substitute
for SSHB 404

TO: Representative John Ringstad and
Representative Richard Schultz
Co-Chairmen, House Resources Committee

FROM: Edward H. Hein *EH*
Legislative Counsel

1. The provisions of CSSB 101 (Resources) are merged into the committee substitute at sections 1, 6, and 15. (See attached sectional analysis of CSSB 101 (Res) for details of that bill).
2. Section 5 of the CS reverts back to the mandatory language of existing law, but allows a peace officer discretion to issue a citation or a warning when, in the officer's judgment, "it is in the state's best interest".
3. In section 8 (page 6, lines 26 - 27) and section 10 (page 8, lines 22 - 23), the CS reinserts "stocking" within the scope of regulations that may be adopted by the boards of fisheries and game.
4. The CS deletes amendments to AS 16.05.870(b) that appeared in section 17 of SSHB 404.
5. Sections 9 and 11 add new language that requires the boards of fisheries and game to provide a written explanation of reasons for rejecting proposals for regulations submitted to the boards.
6. Section 16 amends AS 16.05.495 to redefine the area covered by the vessel license exemption.
7. All other changes reflected in the CS are technical changes required by the legislative drafting manual.

EHH:ojb
J3/049



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 17, 1984

The Honorable Joe Hayes
Speaker of the House
Pouch V
Juneau, AK 99811


Dear Representative Hayes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a sponsor substitute for HB 404, providing for the statutory clarification and reform of AS 16. HB 404 was introduced on May 6, 1983 (1983 Hse. Jrnl., pg. 1211). The section-by-section analysis which accompanied the original HB 404 at the time it was introduced (1983 Hse. Jrnl., pp. 1212 -- 1217), describes the effect of the bill and the reasons why the amendments contained in it would substantially benefit effective management of the fish and game resources of the state.

The attached sponsor substitute differs from the original HB 404 in only minor ways. It changes the title to a more appropriate one, and inserts the word "means" in sec. 10. It deletes the original sec. 14 (amending AS 16.05.-340(b)), since ch. 23, SLA 1983 corrected the problem addressed there, and the original sec. 26, because the amendment to AS 16.30.012 in that section was accomplished by ch. 123, SLA 1982. The remaining sections of the bill are renumbered accordingly. AS 16.05.632, mandating an identification system for crab pots, is deleted from the repealer section; the Board of Fisheries and the Department of Public Safety have determined that the repeal would not be appropriate since the board has concluded that pot limits are biologically justified, and department personnel can enforce pot limits. AS 16.05.-940(28) (the definition of "visitor") is deleted; in sec. 12 of the original HB 404 "nonresident" is used instead of "visitor," but the repeal of the definition of "visitor" was overlooked. Finally, the sponsor substitute adjusts some discrepancies between the language of current statutes and the language of the original HB 404.

We have tried to eliminate all the controversial or unpopular provisions of versions of this bill introduced in earlier years, and the sponsor substitute is consistent with that aim. I therefore urge your passage of this bill this year.

Sincerely,


Bill Sheffield
Governor

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 3, 1984

REQUEST

Bill/Resolution No.: CSRS HB 404
Title: Miscellaneous amendments regarding Fish and Game

Sponsor: House Resources Comm
Requestor: House Resources Comm

Date of Request: Feb 3, 1984

FISCAL DETAIL

Agency Affected: Fish and Game
Program Category Affected: NRNEC

BRU, Program or Subprogram(s) Affected: All

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: (Thousand of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Beverly Reaume

Division: Administration

Phone: 465-4120

Date: February 3, 1984

Approved by Commissioner: [Signature]

Agency: Department of Fish and Game

Date: Feb 3 1984

Distribution (by Agency preparing fiscal note):

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

12/1/83

DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER - CSSH 404 (RES)

Support

The Department of Public Safety supports passage of CSSH 404 (RES). This bill authorizes the Supreme Court to establish a bail schedule for specific misdemeanor offenses.

Under existing law, peace officers have the authority to issue citations for misdemeanors instead of arrest under AS 12.25.180, however, once a citation is issued, the offender must ordinarily appear in court, even if he does not wish to contest the charge. The Bill adopts a procedure similar to that found in the motor vehicle code (AS 28.05.151) which allows the offender to post and forfeit bail if he does not wish to contest the charge.

Passage of this will benefit both law enforcement and the person cited for relatively minor offenses. The person will avoid the time and expense associated with a court appearance, while law enforcement will be able to concentrate its resources on serious resource offenses.

An added benefit will be a reduction in offenses requiring action by the Department of Law and a correspondence reduction in the court calendars.


Robert J. Sundberg
Commissioner

Governor's Bill Would Loosen Controls In Fish and Game Dept.'s Use of Poison

By JOE La ROCCA

JUNEAU — The Sheffield administration has quietly endorsed a controversial proposal to relax the use of poison to kill wild game animals, such as wolves, a proposition which has been consistently rejected by the legislature for nearly a decade.

The provision, which is buried deep within a 12-page bill introduced by the governor recently, would enable the boards of fisheries and game to promulgate regulations authorizing the use of poison to control wildlife population and predators.

Under existing law, the Dept. of Fish and Game cannot use poison to kill animals in Alaska unless it gets the written consent of either the board of fisheries or game for a specific, one-time application.

But the proposed legislation would give the department standing authority to use poison whenever and wherever it pleases, without consulting the boards.

The measure, House Bill

404, purports to be a housekeeping measure, designed merely to clarify and update the state's fish and game code.

For example, in his cover letter accompanying the bill, the governor told the legislature that the bill would "provide for the statutory clarification," and "correct some anomalies . . . by repealing outdated sections and clarifying ambiguities."

The governor added: "We have tried to eliminate all the controversial or unpopular provisions of versions of this bill introduced in earlier years."

But in fact, the bill — which the governor probably signed off on without reading — proposes a number of substantive changes in the fish and game code. The most egregious of them is the provision to relax controls on the use of poison for predator control and other purposes.

The current law, which has been on the books since 1968, was sponsored by former Gov. Jay Hammond, when he was a

member of the State Senate.

Prior to that time, the department had the same freedom to use poison for predator control which HB 404 now seeks to restore.

But because of controversy stemming from the use of poison to kill wolves in Southeast Alaska in order to protect diminishing blacktail deer herds here, then-Sen. Hammond pushed through the law now on the books prohibiting the use of poison without the explicit and written consent of what was then the Board of Fish and Game.

Ironically, during Hammond's second term in office, the Dept. of Fish and Game sought a bill similar to the one now pending which also masqueraded as a housekeeping bill making purely technical changes in the fish and game code.

But in fact, it proposed a number of substantive changes, including — without Hammond's knowledge or consent — the repeal of the clamp-down on the use of poison for predator

control authored by Hammond while he was in the Senate.

The cumulative effect of these proposed changes then, as now, was to increase dramatically the powers of the commissioner of fish and game, at the expense of the boards of fish and game.

The use of poison to control predatory species of fish and game is a legitimate management tool. But its use should be closely monitored by a broad range of decision makers.

Because of the powerful emotional impact its use gen-

erates, decisions to implement poison for predator control should not be left to the narrow discretion of fish and game specialists and technicians. Nor should it be used without public hearings each time its use is contemplated.

But under the bill introduced by the governor, both the broad decisional and public hearing processes would be circumvented. For these and other reasons, this unsavory provision in HB 404 should be killed, by poison or any other means at the legislature's disposal.

State Publishes 1982 Mining Report

JUNEAU — A report summarizing mining activity in Alaska during 1982 has been released for public distribution.

Expenditures for exploration and development, and production statistics are reported.

Total value of 1982

Exploration expenditures, which are sensitive to general economic conditions, were predictably lower in 1982, falling



By Sen. Bettye Fahrenkamp

Each year, as the session draws on and on, a ritualistic finger-pointing exercise ensues

home is, another responsibility and concern of mine relates to the constant proliferation of regulations by the state govern-

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) 465-2334
(907) 465-3835

Senate

Committee on Resources

MEMORANDUM

TO: Senator Mulcahy, Chairman
Fisheries Subcommittee

FR: Senator Bettye Fahrenkamp, *Chairman*
Senate Resources Committee

RE: HB 404

DT: April 26, 1984

HB 404, An Act relating to fish, game, and other animals, has been referred to the Resources Committee. I am assigning it to the Subcommittee on Fisheries for your consideration.

cc: Senate Resources Committee members

superseded

SPONSOR SUBSTITUTE FOR HOUSE BILL 404

AN ACT MAKING MISCELLANEOUS AMENDMENTS
REGARDING FISH AND GAME

SECTION-BY-SECTION ANALYSIS

Sections 1, 3, 4, 5, 6, 19, and 21 would change the word "chapter" to refer to the appropriate chapters of AS 16 so that the powers and duties of the boards, commissioner and department, and definitions, apply to the appropriate chapters of that title. The Legislature enacted AS 16.05 1959. Some other old provisions were apparently overlooked, and, when new provisions were added, the various powers and obligations established in AS 16.05 should have been, but were not, amended to cover other chapters. This oversight has left gaps in the statutes which need to be corrected.

Section 2 would expressly authorize the Commissioner of Fish and Game to conduct research and enter into cooperative agreements and contracts.

In addition to cooperative agreements, it is also appropriate for the department to enter into contracts or to make grants for specific projects. Section 2 also would require the commissioner to establish criteria governing department grants and contracts to ensure that those expenditures are a wise use of public money.

Sections 4 and 5 would authorize peace officers to enforce the provisions of AS 16 except AS 16.51 and AS 16.52, and to arrest persons violating the fish and game title. Section 6 would permit the officers to execute warrants. The word "chapter" is changed to refer to AS 16 except AS 16.51 and AS 16.52, which relate to the Alaska Seafood Marketing Institute and the Fishery Industrial Technology Center, respectively, so that uniform enforcement procedures will apply to almost all of Title 16. Also, the requirement that offenders be brought before a magistrate "immediately" is dropped. This would delete an unnecessary burden imposed on protection officers. Finally, the mandatory requirement that deputies arrest all offenders is stricken because an arrest for certain minor violations may not be appropriate and could result in unnecessary expenditures for enforcement and prosecution.

Sections 7 and 9 set out the authority of the Board of Fisheries and the Board of Game, respectively, to set quota and bag limits. No express authorizations exist for harvest levels or sex and size limitations, even though regulations of this nature are basic to resource management and have been adopted based on interpretations of other board powers. That authority is made express in sections 7 and 9, as a legal safeguard.

Sections 8 and 11 would remove the authority of the boards to adopt regulations for engaging in biological research, since biological research is a departmental function.

Section 10 would amend existing law to reflect the true function of the Board of Game. Despite the current language of AS 16.05.255(a)(6), the board does not adopt regulations regarding investigation of predators, which is an administrative function of the department. The board does, however, establish methods and means and harvest levels for the taking of predators or other competitors through regulations.

Sections 12 and 14 would eliminate the burden upon sport fishing license vendors who must distinguish between long-term nonresidents and short-term sojourners when issuing 14-day and three-day licenses. The problem arose because the definition of "visitor" included only temporary nonresidents and did not include long-term nonresidents or those awaiting residency status. Thus a person who had not yet lived here for one year was required to pay the higher nonresident license fee, even if only a few days remained in a fishing season. The proposed change is fair and will be more efficient to administer.

Section 13 would make minor technical amendments to AS 16.05.340(a)(9), to clarify the meaning of existing law.

In section 15, language in AS 16.05.685(c)(2) which describes areas no longer used in the management of king crab would be deleted.

Section 16 would clarify AS 16.05.831(a) which was enacted in 1975 to prohibit the waste of salmon. That section now contains language that could be considered ambiguous, and thus reduce the law's effectiveness. The clarification expressly provides that no salmon intended for sale, whether to a private individual or a commercial buyer, may be wasted.

Section 17 would make grammatical changes in the anadromous fish protection statute to correct an apparent deficiency. Currently, only a person or agency desiring to use, divert, obstruct, pollute or change the flow or bed of an anadromous fish stream must first notify the commissioner. In order to make AS 16.05.870 more enforceable, notification would be required before beginning any activity which may change the stream or pollute the stream.

Section 18 would restrict the criminal sanctions in AS 16.05.900 to apply only to AS 16.05.870--16.05.895, relating to anadromous fish protection. The basic penalty section

for Title 16 would be moved to a new section (AS 16.05.925, contained in section 20 of the bill) under the "general provisions" article, where it more logically belongs.

Sections 19 and 20 deal with the basic prohibition of Title 16 that it is unlawful to possess fish and game unless permitted by a statute or a board regulation. This prohibition and the accompanying penalty are AS 16.05.920(a) and 16.05.900(a), respectively. Section 20 would set out the general penalty section separately in AS 16.05.920(a). Through apparent oversight which resulted from enactment of AS 16.20 well after enactment of AS 16.05, certain prohibitions were created by regulation without an enforceable penalty. The new AS 16.05.925 would provide a uniform penalty for the violation of a regulation adopted under AS 16.05 or AS 16.20. The penalty is made a class A misdemeanor, to conform with sentencing under AS 12.55.035 and 12.55.135. Also, s.c. 19 of the bill changes "made" to "adopted," with regard to regulations, for the sake of consistent terminology.

Section 21 amends AS 16.05.940 which is the basic definition section for AS 16.05--AS 16.40. Four of the definitions contained in this section would be amended as follows:

(9) the definition of "fish" would be amended to include parts of the fish; this would affect enforcement, for example, when salmon roe is sold separately from the carcass;

(13) the definition of "fur dealing" would be rewritten for clarity and to correct punctuation errors;

(14) the definition of "game" would be amended to include reptiles; this would provide regulatory authority to control the importation of undesirable snakes and other reptiles into the state; and

(28) the definition of "visitor" would be repealed, which only appears in Title 16 in conjunction with the "visitor's special sport fishing license" in AS 16.05.340(a)(6); that designation would be changed by section 12 of this bill to "nonresident special sport fishing license."

Section 22 would add a criminal sanction for wasting herring. Existing law prohibits this waste but does not clearly specify a criminal penalty.

Section 23 would amend AS 16.10.280 to allow the department's determination of a price dispute to be based on an estimate of the number of fishermen involved. During a recent Bristol Bay price dispute, the department's role in setting up mediation was hampered by the need to actually

"certify" that one-third of the registered fishermen were involved in a price dispute, as provided under existing law. Given the information available, this is not always possible.

Section 24 would correct a technical error in the land description of the Susitna Flats State Game Refuge, established by ch. 140, SLA 1976.

Section 25 would amend AS 16.35.200 to require that the use of poison to kill an animal be governed by regulations adopted by the Board of Fisheries or Board of Game as appropriate. Currently only written consent of the appropriate board is required. The requirement of regulation will provide for full public comment. The use of poison within a building, or to kill rodents at dumps or landfills, is exempt from board regulation.

Section 26 would repeal the following laws:

(a) AS 16.05.51(a)(9) and 16.05.255 (a)(8). These provisions empower the boards to adopt regulations for cooperative agreements to promote research and education and to train persons for management. These are administrative functions and do not require board regulations. The repeal of these sections will permit the separation of the rulemaking functions of the boards from the administrative functions of the commissioner of fish and game.

(b) AS 16.05.903. This section, which created the Alaska Big Game Photo Contest, was enacted in 1975. The original intent was that the revenues from entry fees and the sale of a published volume of the winning photographs would generate enough money to pay for cash prizes and operating expenses. Unfortunately, the revenues from the sale fell far short--less than 20 percent of the costs were recovered during the first year. The 1975 legislation created public criticism of the department with respect to spending priorities and proper use of taxpayer's money. The repeal will not affect the continuation of the department's annual Wildlife Photo Contest.

(c) AS 16.10.230(1). This section provides exemptions to the unlawful taking of migratory fish and shellfish in high seas areas designated by the International Pacific Salmon Fisheries Commission. That commission no longer exists and enactment of the federal Fisheries Conservation and Management Act (P.L. 94-265) makes the other exemptions set out in the statute obsolete. Therefore, this subsection should be repealed.

(d) AS 16.15.010-16.15.090. This chapter created the Alaska Fisheries Experimental Laboratory, which no longer exists.

(e) AS 16.35.010--16.35.180. These sections relate to bounties which are no longer paid. The bounties on seals are in conflict with the Marine Mammal Protection Act of 1972, which preempted these state laws. In addition, AS 16.05.255 provides that the Board of Game may establish bounties through the adoption of regulations. The remainder these sections pertain to employment of trappers and hunters for predator control, and have become obsolete.



REPRESENTATIVE TONY VASKA
Alaska State Legislature
House of Representatives

Mulcahy

HOME
 P.O. BOX 1495
 BETHEL, ALASKA 99559

WHILE IN JUNEAU
 POUCH V
 JUNEAU, ALASKA 99811

(907) 465-4914
 (907) 465-3071

To: Senator Fahrenkamp, Chair
 Senate Resources Committee

From: Representative Tony Vaska

Subject: Amendment to HB 404

Date: May 10, 1984

- DISTRICT 25
 AKIACHAK
 AKIAK
 ATMAUTHLUAK
 BETHEL
 CHEFORNAK
 EEK
 GOODNEWS BAY
 KASIGLUK
 KIPNUK
 KONGIGANAK
 KWIGILLINGOK
 KWETHLUK
 MEKORYUK
 NAPAKIAK
 NAPASKIAK
 NEWTOK
 NIGHTMUTE
 NUNAPITCHUK
 NYAC
 OSCARVILLE
 PLATINUM
 QUINHAGAK
 TOKSOOK BAY
 TUNTUTULIAK
 TUNUNAK

In House Resources I had introduced an amendment to HB 404 to change certain language in the vessel licensing exemption provisions of the Fish and Game code. The purpose was to fulfill the intent of the exemption originally proposed by Senator Ferguson last year by describing more particularly the area where the exemption was to apply. It has been brought to my attention that there has been a typographical error in the language which now appears in the bill. That appears at line 3, page 11 of CSSSHB 404(Jud) am, where Cape Romanzof should be Cape Romanof. Cape Romanzof is south of the Yukon River delta, while Cape Romanof is north of the mouth of the Yukon by Kotlik.

Should your committee be considering a committee substitute I would appreciate this matter being attended to. If you or your staff have any questions, please contact me or my staff.

MAY 10 1984

H B

4 5 5

SENATE RESOURCES COMMITTEE
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: *CSHB 455 (Rea)*

BILL NAME: *Relative to defects in the title of the State to land*

SPONSOR(S): *gpc*

DATE INTRODUCED: *3/1/84 - Senate*

REFERRALS: *Resources
Judiciary*

RELATED BILLS PENDING:

*SB 344
incorporated in SB 328*

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:



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Anchorage District Office
4700 East 72nd Avenue
Anchorage, Alaska 99507

IN REPLY
REFER TO:

cc all to Linda Kruger, SLD/Field
Paul Maki
Andy Pekovich
~~Wanda~~
Barbara Malchick, AGO/As
2561 (016)
Sandra Schubert, Sen
Resources Ct.
Ref. 6011

APR 26 1984

Mrs. Esther C. Wunnicke
Commissioner
State of Alaska
Dept. of Natural Resources, Pouch M
Juneau, Alaska 99811

APR 23 1984
R 5 OFFICE

Dear Mrs. Wunnicke:

Realty specialists from the Peninsula Resource Area will be in Southeast Alaska from April 30 through mid-May. They will be working with the Bureau of Indian Affairs conducting field examinations of lands claimed under the Native Allotment Act of 1906. A list of the parcels presently scheduled for examination is enclosed.

We appreciate your concerns about creating disturbances in the Chilkat Eagle Preserve. According to your letter of December 23, 1983, disturbance would be most critical during fall and winter.

These considerations, the Bureau of Indian Affairs' work schedule, and the hopes of having good weather have led us to select May for our field work in southeast Alaska.

We will minimize potential impacts by making as few trips into the Preserve as possible.

Sincerely yours,

Don Hinrichsen
Area Manager
Peninsula Resource Area

Enclosure (1)
List of Native Allotments

APR 4 1984

COPIES OF NATIVE ALLOTMENT LETTERS SENT TO:

1. A-003821
Mr. Archie Abbott
Klukwan, Alaska 99831

1 parcel, T. 26 S., R. 56 E., CRM
2. AA-007953
Mr. Charles Abbott, Sr.
407 Erwin Street
Juneau, AK 99801

1 parcel, T. 31 S., R. 59 E., CRM
3. AA-007033
Mr. Thomas Abbott
P.O. Box 339
Haines, AK 99827

1 parcel, T. 30 S., R. 58 E., CRM
4. AA-007927
Ms. Ethel Aguilar
Box 195
Klukwan, AK 99831

1 parcel, T. 29 S., R. 56 E., CRM
5. AA-006600
Mr. David F. Berry
Box 8
Haines, AK 99827

1 parcel, T. 29 S., R. 59 E., CRM
6. AA-006599
Mr. Franklin L. Berry
P.O. Box 1379
Anchorage, AK 99510

1 parcel, T. 29 S., R. 59 E., CRM
7. AA-008022
Mr. Fred Chambers
Box 219
Haines, Alaska 99827

1 parcel, T. 27 S., R. 55 E., CRM
8. AA-045060
Mr. Murray Clayton
P.O. Box 188
Haines, AK 99827

1 parcel, T. 30 S., R. 58 E., CRM

9. AA-007874
Ms. Virginia Amy Yester Demmert
General Delivery
Kake, AK 99830

1 parcel, T. 68 S., R. 79 E., CRM
10. AA-045063
Ms. Katherin Clayton Engstrom
c/o Murray Clayton
Box 188
Haines, AK 99827

1 parcel, T. 30 S., R. 58 E., CRM
11. AA-007944
Mr. Donald Hotch
Box 195
Klukwan, AK 99831

1 parcel, T. 29 S., R. 56 E., CRM
12. AA-007928
Mr. Eimer R. Hotch
General Delivery
Klukwan, AK 99831

1 parcel, T. 29 S., R. 56 E., CRM
13. AA-007929
Ms. Esther L. Hotch
Box 524
Klukwan, AK 99831

1 parcel, T. 29 S., R. 56, 57 E., CRM
14. A-062053
Ms. Helen Hotch (deceased)
c/c Norman L. Hotch
Box 33
Haines, AK 99827

1 parcel, T. 28 S., R. 54 E., CRM
15. AA-007020
Mr. William J. Hotch
Box 195
Klukwan, AK 99831

1 parcel, T. 29 S., R. 57 E., CRM

16. AA-047636
Mr. Johnny C. Jackson
General Delivery
Kake, AK 99830

1 parcel, T. 57 S., R. 72 E., CRM
17. AA-06619
Mr. Samuel Johnson
B-7 Cedar Park
Juneau, AK 99801

1 parcel, T. 31 S., R. 59 E., CRM
18. AA-006603
Mr. George J. Katzeek
421 West 10th Street
Juneau, AK 99801

1 parcel, T. 29 S., R. 56 E., CRM
19. AA-006602
Mr. John D. Katzeek
Box 346
Haines, AK 99827

1 parcel, T. 29 S., R. 56 E., CRM
20. AA-007946
Mr. Smith J. Katzeek, Sr.
General Delivery
Klukwan, AK 99831

1 parcel, T. 29 S., R. 56, 57 E., CRM
21. A-004612
Mr. Jim King (deceased)
Klukwan, AK 99831

1 parcel, T. 28 S., R. 55 E., CRM
22. AA-007011
Mr. Robert R. Martin, Sr.
Box 112
Juneau, AK 99801

1 parcel, T. 56 S., R. 68 E., CRM
23. AA-0045069
Ms. Dorothy M. Meyers
P.O. Box 188
Haines, AK 99827

1 parcel, T. 30 S., R. 58 E., CRM

24. AA-045068
Ms. Mary Clayton Paddock
c/o Murray Clayton
P.O. Box 188
Haines, AK 99827
- 1 parcel, T. 30 S., R. 58 E., CRM
25. A-012638
Mr. Louis F. Paul
General Delivery
Wrangell, AK 99929
- 1 parcel, T. 64 S., R. 75 E., CRM
26. AA-045066
Ms. Nellie L. Pettit
Box 188
Haines, AK 99827
- 1 parcel, T. 30 S., R. 58 E., CRM
27. AA-006601
Mr. Paul Eli Philips
Box 165
Haines, AK 99827
- 1 parcel, T. 31 S., R. 59 E., CRM
28. AA-45065
Ms. Mae Philpott
Box 188
Haines, AK 99827
- 1 parcel, T. 30 S., R. 58 E., CRM
29. AA-045064
Mr. Patrick L. Philpott
Box 188
Haines, AK 99827
- 1 parcel, T. 30 S., R. 58 E., CRM
30. A-001717
Mr. Aaron Sharp (deceased)
HJoonah, AK 99829
- 2 parcels, Parcel A: T. 40 S., R. 59 E., CRM
Parcel B: T. 40 S., R. 59 E., CRM

31. A-002888
Mr. Louis Shotridge
General Delivery
Haines, AK 99827

1 parcel, T. 30 S., R. 59 E., CRM
32. A-004489
Mr. Harry Shukdake
General Delivery
Hoonah, AK 99829

1 parcel, T. 40 S., R. 55 E., CRM
33. J-011108
Ms. Alice L. Tagg (deceased)
c/o Bureau of Indian Affairs
Juneau, AK 99801

1 parcel, T. 30 S., R. 59 E., CRM

December 23, 1983

Mr. Curt McVee, State Director
Bureau of Land Management
U.S. Department of the Interior
701 C Street
Box 13
Anchorage, Alaska 99513

Dear Mr. McVee:

The Chilkat Bald Eagle Preserve Advisory Council has recommended that the State ask the federal government to conduct Native allotment surveys within the preserve during summer months (July, August, September).

Several allotments are in critical locations, and the Council is concerned that the eagles be disturbed as little as possible in the fall, the winter, and sometimes the spring, when the eagles are concentrated in the area.

Neither the Council nor the Department wishes to impede the progress of surveying Native allotments in any way, but we hope to make the Bureau aware of the sensitivity of the area.

Thank you for considering this request. Please contact me if I can be of any assistance.

Sincerely,

Esther C. Wunnicke

Esther C. Wunnicke
Commissioner

HAINES-SKAGWAY NATIVE ALLOTMENT INHOLDERS ASSN.

P.O. Box 282

Skagway, Alaska 99840

March 2, 1984

EXPLANATION OF HOUSE BILL 455

Several years ago, a lawsuit was filed on behalf of Native Allotment applicants whose land had been patented to the State of Alaska. The Department of the Interior refused to consider the applications because the land had already been conveyed to the State and was no longer within the Department's jurisdiction.

In Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979), the United States District Court held that where the Native Allotment applicant could prove that he or she was using and occupying the land before it was conveyed to the State, the United States was obligated to recover the land from the State so that it could be conveyed to the Native Allotment applicant. Unfortunately, however, the Court did not set forth procedures by which the land was to be recovered. It was not until February, 1983, that Alaska Legal Services Corporation, counsel for the class members, and the United States agreed upon stipulated procedures to implement the Aguilar decision. The procedures state how the United States will retrieve patent from the State of Alaska.

One paragraph in the procedures allows the State of Alaska to voluntarily convey an allotment back to the United States, and avoid further litigation. The State has indicated its willingness to convey title to several Native Allotments back to the United States. However, the Attorney General for the State of Alaska has decided that the State constitution and statutes may not allow it to implement the Aguilar settlement procedures. Therefore, the Department of Natural Resources (DNR) drafted a bill which would give the State authority to settle the Aguilar allotment claims.

Such a bill was introduced in House Bill 455, Senate Bill 796 provided for an act establishing the Alaska Chilkat Bald Eagle Preserve and the Haines State Forest Resource Management Area, and providing for an effective date.

The principals involved in the passage of this legislation recognized the needs and concerns of those holding native allotments in the Haines-Skagway area and a meeting was called for April 1 & 2, 1982, to be held in Juneau. Among those in attendance for the State were then Commissioner of DNR Katz and Deputy Commissioner Reed Stoops, as well as high ranking officials from D.O.T., Parks, Highways and Forestry. At these hearings the parties went through each allotment and cataloged the allotments in various degrees of State interest.

Many promises were made to the allottee delegation at these meetings. One of which Commissioner Katz made a firm commitment to transfer lands wrongfully conveyed to the State back to the Federal Government within a time frame of 30 days. In return, the allottees promised to withdraw objections to Senate Bill 796, which they did and Senate Bill 796 was subsequently passed and put into legislation.

Now after two more frustrating years of countless meetings with various legislators and officials from DNR, it is the opinion of the State Attorney General's office that willing as the State and DNR might be, it cannot reconvey lands without legislation such as House Bill 455.

Passage of this bill would not mandate the lands be conveyed as it allows discretion on the Commissioner's part.

The State would not lose these lands as in most all cases the Federal Government would allow the State to re-select federal lands of equal acreage.

Much time and expense would be adverted in costly litigation.

Hopefully passage of this bill would permit the State to fulfill promises made some two years ago. Therefore, the Haines-Skagway Native Allotment Assn. respectfully requests your consideration on this legislation.

Sincerely,

Larry Jacquot / Jack-01
Haines-Skagway Allotment Inholders Assn.

LJ:jb

Aguilar

Procedures
By U.S. District Court
2-9-83

Briefly - Aguilar vs. U.S.

Allotment applications rejected that are on state lands; application alleges occupancy prior to the state selection.

Southeast Alaska: Haines there are - approximately 90 applications.

1. BLM will review each application for defects.
2. Deceased owners' heirs to be determined by Administrative Law Judge before BLM proceeds. (This requires a complete investigation to determine heirs - notices mailed - hearing - order issued - 60 day protest period: The judge is headquartered in Sacramento and only makes one or two trips to Alaska yearly - for all agencies).
3. BLM to examine to determine prior rights, 90 day appeal period.
4. Valid applicants and State of Alaska notified, 90 days for state to appeal.
5. Valid uncontested application referred for settlement.
6. Hearing afforded for sufficient proof of entitlement.
7. Opportunity for BLM to order field report before the hearing.
8. Solicitor to negotiate a settlement.
9. Negotiations fail - recommendation to the Department of Justice to cancel state patent.
10. If state will quit claim back to Government they will issue trust patent. State will be credited for land entitlement.
11. Negotiations for settlement, ei Rights of Way etc.
12. Settlement agreements to court for approval.
13. Notices to all parties.
14. Third party rights - same notices (where the state has sold or deeded the property to a third party).

JM/ae

STATEMENT OF ROBERT D. ARNOLD,
DEPUTY COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES
ON HOUSE BILL 455
BEFORE THE HOUSE RESOURCES COMMITTEE
JANUARY 30, 1984

Mr. Chairman, members of the Committee, I am pleased to appear in support of House Bill 455, introduced by Representatives Peter Goll and Ben Grussendorf.

This bill would authorize the Department of Natural Resources to correct defects in the State's title to lands received from the federal government. It is designed primarily to allow for the administrative settlement of Native allotment claims on State land.

The bill would authorize our department to reconvey lands that were mistakenly conveyed to the State by the federal government. To insure that the State receives credit for the reconveyed lands in its overall entitlements under the Statehood Act, the bill would also waive the provisions of AS 38.05.125 requiring reservation of the mineral estate.

The primary need for this legislation arises from the fact of more than 200 Native allotment claims on State land. In 1979, a federal district court ruled that land used and occupied by Native allotment applicants should not have been conveyed to the State, even though the allotment applications were not filed until after the State received title. Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979). The court also ruled that the federal government has a trust responsibility to recover any such lands it wrongfully conveyed to the State. Id.

The expedited settlement procedures established by the allotment applicants and the federal government provide that the State may reconvey the lands to the federal government and that the reconveyed acreage will be credited to the State's entitlements under the Alaska Statehood Act. The State desires to expedite settlement of the valid allotment claims where possible, but lacks express statutory authority to reconvey.

The State has also received defective title to lands from the federal government in a variety of other contexts. For example, through administrative error the federal government recently conveyed to the State six sections of land underlying the TAPS pipeline. This bill would authorize the department to correct those defects without the need for burdensome quiet title litigation which is now the only available means to do so. The federal government already has this type of authority.

Virtually all of Section 2 of the bill before you makes technical changes to subsection (b) of A.S. 38.05.035. The department has no objection to these changes (through line 15 of page 3). However, the Committee may want to take into account that Senator Bettye Fahrenkamp has introduced a bill that would make a large number of changes to Title 38, including a substantive change in subsection (b).

The substantive changes in the bill before you begin on line 16, page 3.

Subparagraph 9 of the bill would require a determination that the land was "wrongfully or erroneously conveyed to the State." In the case of a Native allotment claim, this would mean determining that Native use and occupancy predated State selection and that the allotment is otherwise valid. In the case of other title defects, this would mean determining that the federal government did not have the authority to transfer a tract of land to the State, owing, for instance to its title being held by others.

The following section of the bill would waive the requirement of AS 38.05.125 to reserve mineral estates. This provision is necessary because the State would not receive credit for the reconveyance if the mineral estate is reserved. Both our attorney general and the Bureau of Land Management regional solicitor are of the opinion that section 6(i) of the Statehood Act (the federal statute requiring reservation of the mineral estate) would not prohibit reconveyances made to the federal government under the bill. This section also waives the provisions of AS 38.05.321 which restricts disposal of State land classified as agricultural land.

The need for this bill has been discussed extensively with representatives from Native groups and various agencies of both the State and federal governments. It has the support of all of them. I hope the Committee will be able to promptly act on this measure.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/8/84

REQUEST

Bill/Resolution No.: CSHB 455 (Res)
Title: defects in the title of
State land
Sponsor: Goll & Grussendorf
Requestor:
Date of Request:

FISCAL DETAIL

Agency Affected: Natural Resources
Program Category Affected: Information &
Record Management - Title Defense
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		46.2				
200 TRAVEL		1.2				
300 CONTRACTUAL		4.0				
400 SUPPLIES		2.0				
500 EQUIPMENT		1.5				
600 LAND & STRUCTURES						
700 CRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	54.5	57.7	61.1	64.7	68.5
CAPITAL	0	0	0	0	0	0
REVENUE	0	0				

FUNDING: (Thousands of Dollars)

GENERAL FUND		54.5	57.7	61.1	64.7	68.5
FEDERAL FUNDS						
OTHER						
TOTAL		54.5	57.7	61.1	64.7	68.5

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

General Fund

ANALYSIS: Attach a separate page for analysis

Prepared By: Carol Shobe/Joe Burch Phone: 276-2653
Division: Technical Services Date: 2/8/84

Approved by Commissioner: *William D. Amundson, Deputy* Date: 2/8/84
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

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

12/1/83

HOUSE RESOURCES
STANDING COMMITTEE
January 30, 1984
3:05 p.m.

Members present: Rep. Ringstad, Co-Chairman
Rep. Shultz, Co-Chairman
Rep. Larson
Rep. Bussell
Rep. Goll
Rep. Vaska
Rep. Liska
Rep. Cowdery
Rep. Uehling

Members absent: None

COMMITTEE CALENDAR

HB 455 "An Act relating to defects in the title of the state to land; and providing for an effective date."

WITNESS REGISTER

Representative Peter Goll
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811
465-4925

Position statement: Prime sponsor of HB 455; favors passage.

Robert Arnold, Deputy Commissioner
Department of Natural Resources
State of Alaska
Pouch M
Juneau, Alaska 99811
465-2400

Position statement: Favors passage of HB 455.

Frank Mielke
Chief of Land Management, DNR
State of Alaska
Pouch 7-034
Anchorage, Alaska 99501
279-5577

Position statement: Answered technical questions; favors passage.

Tred Eyerly
Alaska Legal Services
615 H Street

Anchorage, Alaska 99501
272-9431

Position statement: Favors passage; represents Aguilar class members.

Larry Jacquot
P.O. Box 282
Skagway, Alaska 99840
983-2389

Position statement: Favors passage; Aguilar class member.

Hank Jacquot
P.O. Box 412
Haines, Alaska 99827
766-2524

Position statement: Favors passage; Aguilar class member.

PREVIOUS ACTION

Please refer to bill history.

ACTION NARRATIVE

Tape No. 11
Recording
Number 0002

Rep. Ringstad called the meeting of the House Resources Committee to order at 3:05 pm, and brought HB 455 before the members.

Number 0014

Rep. Goll gave a brief overview of the history behind the bill.

Number 0062

Rep. Goll mentioned an amendment he will propose at the proper time to cover lands classified as agricultural.

Number 0072

Rep. Uehling asked how many cases we are talking about, and how far back. Rep. Goll responded that it was at least 200.

Number 0095

Rep. Larson asked a question regarding the effect of the problem on municipal selections. Rep. Goll replied that the power created in HB 455 would be discretionary.

Number 0122

Bob Arnold, DNR, supported Rep. Goll's assessment of the situation, and said the state would save time and money by avoiding quiet title actions by the feds.

Number 0145

Arnold addressed Rep. Larson's previous question, saying the state, municipalities and third parties would settle claims on a case-by-case basis.

Number 0165 Arnold mentioned that other types of title defects could be cleared up by the mechanism in the bill, such as simple errors made by BLM.

Number 0185 Rep. Ringstad asked if this bill was the same as one he had discussed with Commissioner Wunnicke. Arnold replied that it was, and if Rep. Goll had not introduced it, DNR would have.

Number 0195 Rep. Shultz asked a question regarding land problems near Mentasta. Arnold responded.

Number 0220 Rep. Larson asked a question regarding land exchanges. Arnold said DNR hopes to solve many of the allotment claims with exchanges when needed.

Number 0228 Rep. Larson asked if previous work done by the municipalities on land selection process would be undone by HB 455. Arnold said it would not.

Number 0252 Rep. Cowdery asked if the state has ever wrongfully conveyed land. Arnold replied that under the definition of wrongfully we had.

Number 0260 Rep. Cowdery asked if HB 455 would prevent this from happening again. Arnold replied that it wouldn't in the case of BLM defects.

Number 0275 Rep. Shultz asked if the land exchanges are decided at the state level. Arnold replied that they are.

Number 0288 Rep. Liska asked the nature of the allotment in Chugiak. Frank Mielke described it as a parcel along Peters Creek.

Number 0297 Rep. Liska asked why these allotments had not been settled by ANCSA. Arnold gave a brief history of the relationship between ANCSA and the Native Allotments.

Number 0319 Rep. Larson asked what effect the allotments would have on the Alaska Railroad. Meilke replied that none of the allotments are in the right-of-way.

Number 0322 Rep. Liska asked if the Peters Creek allotment was alongside the rail line. Meilke replied that the claimant had not been born by 1916, and would have trouble proving use prior to establishment of the railroad.

Number 0330 Rep. Larson asked about the location of a high school campus. Meilke replied that it had been built on Native Corporation Selection land.

- Number 0749 Rep. Ringstad asked a question regarding what the state would get in exchange from the feds. Arnold replied that with statehood entitlement, it would be exchanged 1 to 1, but with mental health lands, federal legislation would be necessary.
- Number 0766 Rep. Ringstad asked about the necessity of legislative oversight. Arnold replied that given the pattern of administrative action, it would not be needed.
- Number 0798 Rep. Bussell asked about proposed federal legislation. Arnold said it had been discussed with the Governor's representative in Washington.
- Number 0810 Rep. Liska made a statement regarding his experiences with BLM.
- Number 0822 Rep. Bussell asked a question regarding 90-day notice letters sent out in 1979. A discussion on the point ensued.
- Number 0885 Rep. Bussell asked why the state could not simply deed the lands over to the allotment claimants. Eyerly responded that the allotment involves a trust relationship with the federal government, which would not exist if the state granted the land.
- Number 0910 Rep. Goll asked why the lands do not automatically return to the federal government if they have been wrongly conveyed. Arnold responded that that would take more time, money and court action.
- Number 0938 Rep. Ringstad announced that further action on HB 455 would take place at a later meeting. He then adjourned the meeting at 4:05 pm.

Number 0340 Tred Eyerly gave Alaska Legal Services view of the bill.

Number 0361 Rep. Larson asked about Natives' legal occupation in the 1950s. Eyerly replied that under ANCSA, they were entitled to it legally.

Number 0372 Rep. Larson asked if there were legal documents on file that proved entitlement. Eyerly replied that most people did not know of the Native Allotment Act until it was about to be repealed by ANCSA.

Number 0408 Rep. Larson asked how a third party would be compensated for improvements made in good faith. Eyerly said the state would not be obligated to automatically give the land to the claimant, and it would be decided on a case-by-case basis.

Number 0445 Rep. Shultz asked how they'd figure compensation for non-construction for fear of arson, as happened in the Mentasta area.

Number 0485 Rep. Liska asked what sort of qualifications the allotment applicants had to meet. Eyerly generally described the program.

Number 0522 Rep. Goll made a statement regarding the ongoing nature of the suits, regardless of action on HB 455.

Number 0554 Rep. Bussell asked a question regarding the fiscal note, saying it did not properly reflect the high cost of land exchanges.

Number 0597 Arnold apologized for the tardy fiscal note, and said that the land actually involved in exchanges could not be calculated.

Number 0635 Rep. Bussell pursued the question of compensation for improvements made by third parties. Arnold admitted that some compensation would probably be forthcoming.

Number 0670 Rep. Bussell asked a question regarding the necessity of the bill. Arnold referred to the AG's opinion on what to do about Aguilar.

Number 0732 Rep. Larson asked if more legislation would be needed to solve municipalities' problems. Arnold said no.

Number 0742 Rep. Larson asked if there were any claims in the middle of Anchorage or Fairbanks. Meilke replied that there weren't any they were aware of.

Offered: 2/9/84
Referred: Finance

Original sponsors: Goll, Grussendorf
and Herrmann

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 CS FOR HOUSE BILL NO. 455 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to defects in the title of the state
7 to land; and providing for an effective date."

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

9 * Section 1. LEGISLATIVE PURPOSE AND FINDINGS. (a) The purpose of
10 this Act is to provide a mechanism to correct defects in the title of the
11 state to land and in doing so, to settle certain claims, including Nat'l
12 allotment claims, against the state.

13 (b) The legislature finds that the correction of title defects is a
14 matter of statewide significance, is in the public interest, and will
15 foreclose possible protracted and divisive litigation.

16 * Sec. 2. AS 38.05.035(b) is amended to read:

17 (b) The director may

18 (1) delegate the administrative duties, functions or powers
19 imposed upon the director [HIM] to a responsible employee in the
20 division;

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

29 (3) grant a preference right to a claimant who shows bon

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

13 (4) sell land [LANDS] by lottery for less than its [THEIR]
14 appraised value when, in the director's [HIS] judgment, past scarcity
15 of land suitable for private ownership in any particular area has
16 resulted in unrealistic land values;

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

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

29 (7) convey to an adjoining landowner a parcel of land

1 created by a highway right-of-way alignment or realignment, or a
2 parcel created by the vacation of a state-owned right-of-way if

3 (A) the director [HE] determines that it is in the
4 best interests of the state;

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

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

12 (8) for good cause extend for up to 90 days the time for
13 rental or installment payments by a lessee or purchaser of state land
14 under AS 38.05 if reasonable penalties and interest set by the direc-
15 tor are paid;

16 (9) quitclaim land or an interest in land to the federal
17 government on a determination that the land or the interest in land
18 was wrongfully or erroneously conveyed by the federal government to
19 the state.

20 * Sec. 3. AS 38.05.125 is amended by adding a new subsection to read:

*reservation of
mineral rights*

21 (b) The provisions of (a) of this section do not apply to a
22 quitclaim of land or an interest in land made under AS 38.05.035-

23 (b)(9).

24 * Sec. 4. AS 38.05.321(c) is amended to read:

*restriction to
ag. rights
only*

25 (c) The provisions of this section do not apply to
26 (1) state land classified as agricultural land which has
27 been selected by a municipality under the provisions of AS 29.18.190 -
28 29.18.200 if the selection is an approved selection before April 1,
29 1978 and is otherwise valid under AS 29.18.205(b); or

1 (2) a quitclaim of the interest of the state to the federal
2 government under AS 38.05.035(b)(9).

3 * Sec. 5. This Act takes effect immediately in accordance with AS 01.-
4 10.070(c).

H B

4 5 8

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 10, 1984

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

The Honorable Jalmar M. Kerttula
President
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: HCS CSSB 375(Res) and
agricultural disposals

Dear Senator Kerttula:

Richard Ramsey, your aide, requested a brief review of the provisions of HCS CSSB 375(Res) relating to agricultural disposals. In particular, he asked us to review them to ensure that those provisions did not weaken or diminish the current restrictions on the use of such land for agricultural purposes.

Sections 23 and 27 of the bill relate specifically to agricultural disposals. Section 23 repeals and reenacts AS 38.-05.059 which outlines limitations and conditions on the sale or lease of agricultural land. In substance, the section makes clear that land obtained in an agricultural disposal, whether by conveyance of the state's entire interest or by lease, must be used for agricultural purposes. In our view, we believe this section provides sufficient assurances that the land must be used for agricultural purposes and gives the state sufficient legal authority to reacquire the land if it is used for any purpose other than agricultural.

Section 27 amends AS 38.05.069(c) in a manner which does not affect restrictions on the use of agricultural land by a grantee of such land from the state.

The Honorable Jalmar M. Kerttula
President, Alaska State Senate
Re: HCS CSSB 375

May 10, 1984
Page 2

In conclusion, it is our opinion that the provisions of HCS CSSB 375(Res) relating to agricultural disposals do not reduce or diminish the current restrictions that such land be used by the state's grantee only for agricultural purposes. If we can be of further assistance, please contact us at your convenience.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

151
By: G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: ~~The Honorable Robert H. Ziegler, Sr.~~

The Honorable Robert H. Ziegler, Sr.

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: Senate Resources Committee Members

FROM: Senate Resources Committee Staff

RE: Committee Meeting, Monday, May 14th

DATE: May 11, 1984

On Monday, May 14th at 3:00 pm in the Beltz Room, the Senate Resources Committee will hear the following bills:

HB 188, An Act relating to big game hunting by nonresidents.

Under current statute, nonresident hunters of brown bear, porcupine bear, grizzly bear, or dall sheep must be accompanied by a licensed guide or an Alaskan resident within the second degree of kindred. HB 188 would amend the kindred provision to include "marriage relations" such as fathers-in-law and step children. The fine for violation is increased from \$2500 to \$5000.

HB 458, An Act relating to agricultural rights to land.

Under current statute, the Commissioner is authorized to require a development plan of agricultural land purchasers. Section 1 of HB 458 would allow waiver, postponement, or modification of the development requirements if certain conditions are present. The provision, though broadly applicable, is intended to provide relief to recipients of agricultural land in Gustavus.

Under the "agricultural rights" title currently issued by the state, private financing for home construction has been difficult to obtain. Section 2 of HB 458 is intended to provide relief through issuance of a fee simple conditional title, with the condition being that DNR may reenter the land if it is used for other than agricultural purposes.

HB 546, An Act relating to harassment of persons lawfully engaged in hunting, fishing, or trapping.

HB 546 is intended to protect hunters, fishers, and trappers from harassment. Obstructing or hindering a person legally engaged in hunting, fishing or trapping would be punishable by a fine of up to \$500 and/or 30 days or both. Civil remedies, including recovery of damages, would be allowed. The bill is patterned after legislation being adopted in other states where anti-hunting groups have "taken to the field" in an attempt to deter hunters.

HB 709, An Act relating to fees for guided tours through historical sites.

HB 709 would authorize DNR to establish and collect fees for guided tours through historical sites. In 1983, DNR acquired the House of Wickersham as a part of our state park system. Passage of HB 709 is intended to allow for costs to be covered through entrance fees. Under current statute, vehicle registration is all that is required for entry into a state park.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 4/25/84

REQUEST

Bill/Resolution No.: CSHB 458 (Res)
Title: re: Agricultural Rights to Land

FISCAL DETAIL

Agency Affected: Natural Resources
Program Category Affected: NRMEC

Sponsor: _____
Requestor: _____
Date of Request: _____

BRU, Program or Subprogram(s) Affected:
NONE

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						
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Frank Mielke Phone: 265-4347
Division: Land & Water Management Date: 4/25/84

Approved by Commissioner: *William D. Amundson* Deputy Date: 4/25/84
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

tial purchaser
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lottery under
n agricultural
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an applicant's
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in the lottery.
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29 SLA 1982;

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July 1, 1984,
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AS 38.05.077
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applicant who is entitled to receive a conveyance of the land by lottery. If the commissioner does not receive an application for a parcel of state land or if a purchaser fails to sign a lease agreement or contract of sale, the parcel shall be offered to the first eligible person to apply for the parcel. If the parcel was designated as a homesite and offered to the public under AS 38.05.047(f), the parcel shall be disposed of under the terms required by AS 38.08.010 — 38.08.120."

AS 38.05.047, referred to near the end of subsection (f), was repealed by § 45, ch. 113, SLA 1981.

AS 38.05.055, referred to in (g) of this section, was amended by § 15, ch. 113, SLA 1981. One of the changes was the deletion of language relating to the form of contract. See AS 38.05.065(h) for the terms required in contracts of sale for land sold under this section.

NOTES TO DECISIONS

Quoted in *Gilman v. Martin*, Sup. Ct. No. 2656 (File No. 6058), P.2d Op. No. 2652 (File No. 5937), 662 P.2d 120 (1983); *LeResche v. Lustig*, Sup. Ct. Op.

Sec. 38.05.058. Land discount program. [Repealed, § 19 ch 67 SLA 1983.]

Sec. 38.05.059. Limitation on purchases of agricultural land. A person may purchase from the state a total of not more than one parcel of land that is part of an agricultural development project under AS 44.33.475 during any eight-year period. (§ 3 ch 129 SLA 1982)

Sec. 38.05.060. Rejection of bids.

NOTES TO DECISIONS

Cited in *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

Sec. 38.05.065. Terms of contract of sale. (a) The contract of sale for land sold at public auction under AS 38.05.055 shall require the remainder of the purchase price to be paid in monthly, quarterly or annual installments over a period of 20 years, with interest at the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed. Installment payments plus interest shall be set on the level-payment basis.

(b) The contract of sale for land sold under AS 38.05.057 and under AS 38.05.078 shall require the remainder of the purchase price to be paid in monthly, quarterly, or annual installments over a period of not more than 20 years. Installment payments plus interest shall be set on the level-payment basis. The interest rate to be charged on installment payments is the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed.

text otherwise

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appraised fair market value, exclusive of value accruing from improve-
 ments or development, such as fill material, buildings or structures, by
 the occupant or his predecessor in interest or reflecting, equities of the
 occupant:

§) "home rule cities and cities of the first class" do not include a
 borough. (§ 5 art III ch 169 SLA 1959; am § 6 ch 61 SLA 1960; am § 1
 ch 18 SLA 1962; am §§ 1, 2 ch 81 SLA 1964; am § 1 ch 4 SLA 1966)

Editor's notes. — This section is set out
 above to correct an error in the main pam-
 phlet.

NOTES TO DECISIONS

Purpose of section. — One purpose of
 the Alaska Land Act was to establish equi-
 table methods of disposing of certain
 tidelands. Toward this end, and within the
 general parameters requiring the
 recognition of "preference rights," this sec-
 tion was included in the Act. City of
 Homer v. State, Sup. Ct. Op. No. 1455 (File
 No. 3009), 566 P.2d 1314 (1977).

Due process required. — Private
 parties are entitled to due process of law
 before property rights may be removed;
 therefore, the minimal protection provided
 by adjudicatory procedures of the Depart-
 ment of Natural Resources must meet that
 standard. City of Homer v. State, Sup. Ct.
 Op. No. 1455 (File No. 3009), 566 P.2d
 1314 (1977).

Municipalities are entitled to due pro-
 cess in the adjudication of claims to tide
 and submerged lands. City of Homer v.
 State, Sup. Ct. Op. No. 1455 (File No.
 3009), 566 P.2d 1314 (1977).

With respect to the disposition of
 tidelands, municipal corporations are to be
 afforded the same rights of due process as
 are private parties. City of Homer v. State,
 Sup. Ct. Op. No. 1455 (File No. 3009), 566
 P.2d 1314 (1977).

The language of subsection (b) is
 clear and unambiguous. State Dept of
 Nat'l Resources v. City of Haines, Sup. Ct.
 Op. No. 2342 (File No. 5067), 627 P.2d
 1047 (1981).

Scope of subsection (b) grant. — The

grant in subsection (b) of this section
 encompasses tideland adjacent to subse-
 quently expanded municipal boundaries.
 State, Dept of Nat'l Resources v. City of
 Haines, Sup. Ct. Op. No. 2342 (File No.
 5067), 627 P.2d 1047 (1981).

In effect, this section gives the
 authorities of a city, etc.

In accord with original. See Talbot's,
 Inc. v. Cessnun Enter., Inc., Sup. Ct. Op.
 No. 1462 (File Nos. 2561, 2671), 566 P.2d
 1320 (1977).

In order for easement under subsec-
 tion (b)(6) of this section to be estab-
 lished, it must appear that it is reasonably
 necessary for the enjoyment of the prop-
 erty, the term "necessary" meaning that
 there could be no other reasonable mode of
 enjoying the dominant tenement without
 the easement. An easement by implication
 does not arise merely because its use is
 convenient to the beneficial enjoyment of
 the dominant portion of the property.
 Talbot's, Inc. v. Cessnun Enter., Inc., Sup.
 Ct. Op. No. 1462 (File Nos. 2561, 2671),
 566 P.2d 1320 (1977).

While strict or absolute necessity is not
 required, something more than mere
 convenience must be shown before an occu-
 pant of tidelands is entitled to an easement
 under subsection (b)(6) of this section.
 Talbot's, Inc. v. Cessnun Enter., Inc., Sup.
 Ct. Op. No. 1462 (File Nos. 2561, 2671),
 566 P.2d 1320 (1977).

~~Sec. 38.05.321~~ restriction on sale, lease or other disposal of
 agricultural land. (a) The sale, lease or other disposal of state land
 classified as agricultural land transfers only rights for agricultural
 purposes, and all other interests in the land remain with the state
 unless otherwise required by law.

4/12/84

HB 458

A mechanism for agriculture use on lands designated, classified, reserved or homesteaded with the intention of farming:

A covenant between the State of Alaska and the landowner to be recorded in the Judicial District in which said land is geographically located. Within this covenant the State and the landowner shall agree upon special conditions relative to agricultural development and conservation planning. Any subdividing of parcels smaller than forty acres or the division of parcels more than once shall be decided by a Board of Directors. This Board of Directors would be selected from each Judicial District from which said parcel is located. The Board of Directors would be elected from the Soil and Water Conservation District cooperators. Their election would be on a rotational basis.

Rick Rinear
SR Box 51055
Fairbanks, Alaska 99701

*This guy was at
Brown Bag - made
pitch - no comments
from anyone -*

RELATING TO DEVELOPMENT OF SMALL FARMS

SB 44

Still in Resources - sponsor
hasn't requested a hearing.

MOSS/V. FISCHER

Establishes a cost-sharing program for the development of small farms to provide financial assistance for clearing and breaking of land. Excludes land with timber that has commercial value and land that's subject to a long-term ag. loan.

Development plan must be prepared in consultation with USDA (Agricultural Stabilization and Conservation Service). Establishes limits on cost-sharing money.

No repayment required if put land into production as crop or pasture within 3 years and keep it in production for 5 of the next 7 years.

SB 45 - 5 year moratorium on land purchase payments if
(MOSS) farm is being developed, (Benefits Delta II landowners).
in Finance

SB 47 - Scheduled for hearing this Monday in Resources.
(MOSS) 3 year moratorium on land clearing payments if
farm being developed.

SB 297 - Establishes separate land clearing account
(MOSS) within the Ag. Revolving Loan Fund.
in Finance

SB 298 - Provides for repayment of outstanding clearing
(MOSS) loans to the new clearing account, rather than
in Finance to the general fund.

Loans for clearing land are allowed under current
statute - \$250,000 limit, 8% interest, maximum 20 year term.

Alaska State Legislature



POUCH V
JUNEAU, ALASKA 99811

REPRESENTATIVE
ROBERT H. "BOB" BETTISWORTH

211 CUSHMAN STREET
FARBANKS, ALASKA 99701

April 24, 1984

M E M O R A N D U M

To: Representative Al Adams, Chairman House Finance Committee
From: Representative Bob Bettisworth *YHS*
Subject: HB458 "An Act relating to agricultural rights to land".

As it was originally introduced HB458 attempted to cure existing defects in state patents to agricultural land by requiring the Commissioner of Natural Resources to convey retained interests at the request of the grantee or lessee provided certain conditions are met. The essential problem is that the present language of the agricultural patents is far too restrictive. The documents contain severe impediments to perfection of a security interest by potential lenders (other than the State of Alaska) and the ability of those potential borrowers to obtain title insurance for certain purposes. The state, under the present system, would be ahead of any other party in a situation where a grantee or lessee has not performed on a state contractual obligation. Discretion to re-enter, on the part of the state, is totally left up to the Department and other interests are not protected should the state elect to re-enter. This situation prevents commercial lending on housing or the ability to obtain title insurance where agricultural patents are involved.

The Resources CS differs from my original approach by causing the issuance of a fee simple conditional title. The condition being that if the land is used for other than agricultural purposes, as defined, the title can revert to DNR and prior liens and/or security interests are valid.

Other elements of the original bill including what the department may require of grantees or lessees--for example development plans, conservation plans and repayment of state loans--are retained.

TO: SENATOR JAY KERTTULA
FROM: JIM REAVES

It is my considered opinion that CSHB458(fin) will not serve any worthwhile purpose and in fact will dilute the statutes as originally written and destroy the intended purpose. This land should not be allowed to be subdivided under any circumstances. Since inception of the farm community within Alaska, conventional lenders, banks and others have considered most farm units as extremely high risk.

For this reason, institutional lenders have not chosen to make loans to farmers in general without adequate collateral and sources of repayment rather than dependency upon farm products.

Presently banks and other investors are not able to loan funds on land that is restricted in use and not held in fee simple. By attempting to change this land to fee simple and retaining a restricted use, it will not, in my opinion, meet the criteria required by those lenders as mentioned above, and therefore no good purpose will be served by changing the present statutes. Perhaps the state may need to revise or expand its present lending policy within the Alaska Agricultural Revolving Loan Fund in order to accommodate the needs for housing, etc.

The successful purchasers of this agricultural land knew well in advance under what terms and conditions they were purchasing this land. upon presentation of their farm development plans the commissioners had the

option to determine whether or not they could provide themselves with adequate shelter.

In those cases where adequate funds or other provision for housing were not available within their development plan, a lease should not have been granted. It also appears to me that there are some major legal considerations that the sponsors of this bill did not address. Without the benefit of legal counsel, I do not think the state should enter into an arrangement such as this.

This is not a good bill for the farm community or the State of Alaska. I recommend that it be soundly defeated.

Alaska State Legislature

RONALD L. LARSON
DISTRICT 16B

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3727



BOX 53
PALMER, ALASKA 99645
(907) 745-3826

House of Representatives

March 21, 1984

TO: Members of the Senate Resources Committee

FROM: Representative Ron Larson *R.L.*

SUBJECT: HB 458

The enclosed document is from the testimony of Wayne E. Burton, PhD, Agricultural Development Economist, which was given during the teleconference hearing on March 10th. Dr. Burton has also provided some additional comments which he forwarded to me in relation to his testimony and I would like to offer this information for your information in relation to HB 458 and agricultural preference lands.

MAR 21 1984

P.O. Box 871750
Wasilla, AK 99687
March 12, 1984

Honorable Ronald L. Larson
Alaska Legislature
Pouch V (mail stop 3100)
Juneau, Alaska 99811

Dear Ron:

I am sending along my prepared statement regarding HB 458 (03/10/84) as per your request. The brief delay has resulted from hunting up some additional materials you might find of interest.

I would note that my critical assessment of the testimony given during the teleconference would indicate those testifying in favor of HB 458 were addressing that which I identified (page 2, lines 2 & 3) as "asset viability of state conveyed agricultural-rights lands". The "patent" (exhibit 1) given is, in fact, not a 'fee simple' title, but is a unique 'agricultural profit a prendre' (similar in nature to an "oil" lease). The unique features of the so-called "patent" are: (1) the "conditions and covenants of the farm conservation plan ..." (exhibit 1) and (2) the "reverter clause" also found on the so-called "patent": "If at any time the Director of the Division of (Forest) Land and Water Management of the Department of Natural Resources determines that the grantee or his successors in interest has failed to observe any provisions or conditions of this patent, the Director may declare a forfeiture of this conveyance and title hereby conveyed shall thereupon revert to the State of Alaska" (exhibit 1). [underline added] A perceptive reading of the relevant statutes (exhibit 2) should illustrate quite well why lenders and title insurers do not recognize any asset viability what-so-ever for said "agricultural-rights patents".

Tom Williams did a very effective job of focusing on the absolute jeopardy incurred by each and every "agricultural interest only" purchaser, and on the resulting void of asset viability. As the present statutes stand, each and every recipient of state "agricultural interests only" holds said land from day-to-day at the absolute sufference of the Director (11 AAC 67.162) and (11 AAC 67.165). The "forfeiture" (reverter) clause (11 AAC 67.165 (d)) includes all permanent structures and growing crops. The only things which could be removed by the "prior owner" (farmer) would be household goods, rolling stock (vehicles, machinery, equipment & tools), livestock & stored crops - if they were removed within the allowable 60 days! Now, to back up just a bit, the title and interest conveyed (11 AAC 67.162 a.) is the conveyance of the surface estate in fee simple subject to the conditions subsequent and covenants relating to agricultural use and development. It is my very considered professional judgement that there isn't a single attorney in the state of Alaska, except perhaps my son Dan, that can perceptively define "the conditions subsequent and covenants relating to agricultural use and development" as stated! I can assure you, however, that they include the Director's interpretation of each and every statement in both the "Farm Conservation Plan" and the "Farm Development Plan", both of which must be prepared within a 30 day period subsequent to the relevant lottery or sale by the state.

Tom Williams noted in his testimony that the "Farm Conservation Plan", as prepared by the District (Federal) Soil Conservation Service personnel, was overly detailed, to the extent of detailed "practices", and was seven (7) pages long. I do not believe this was the type of "Farm Conservation Plan" intended by the legislature to begin with, but they are "title covenants" as a intergal part of the title conveyed! I would seriously welcome the opportunity to challenge the Soil Conservation Service district personnel on their technical competency and validity of each and every inclusion in the "Farm Conservation Plans" prepared for "agricultural interests only" purchasers. While I have a great admiration for the Soil Conservation Service, and have had a long and productive working relationship with them, I have found on various occasions that district conservationists can take off on tangents, being quite authoritative, where they have no substantive Alaska research data to back up their positions, i.e., Burt Clifford, 1970, went to great lengths to criticize the use of a breaking disc in the Delta Junction area. His expressed position was that no "real" would attempt to break agricultural land with other than a mole-board plow. There is a long technical explanation of why this would have been the worst possible tillage method for that soil and location. Burt later changed his mind and recommendations. There are other illustrations of the same type of instances. Any way, this situation regarding the "Farm Conservation Plan" must be changed! Since the present situation has been institutionalized, it will be necessary to amend the statutes to alleviate this unnecessary constraint on farm development.

The "Farm Development Plan", with its statutory requirements of 40% or class II and III lands being developed within 3 years & 75% being developed within 6 years, poses an undue hardship on all farm operators, and in some instances is certainly not in the best interests of either individual or state interests in said farm development. It is my considered judgement that the initial period should be increased to five years, and the second period should be increased to either nine (9) or ten (10) years. Reasons: it will take one or more years to develop a viable farm organization and development plan, and develop and arrange for a viable financial package; it would allow time for considered utilization of timber found on the prospective farm lands in the construction of needed housing and farm buildings; it would allow for the continued part or full time employment of the prospective farmer, or spouse, thus reducing materially the initial needed capitalization (in the form of hard cash or loan money which could not be repaid during the several year development period due to no farm product sales). While I certainly do not disagree with the need for a farm organizational and development plan, I heartily disagree with such being included as a covenant on the title. Further, the "conditions subsequent" inclusion provides a "sword of Damocles" for the prospective farmer; it allows the state, via the vagaries of inclination of a Division Director, to add any requirement or 'regulation' to the covenants - after the fact - at any time!

Ron, much of the disappointment, both from "agricultural interests only" farmers and from state and other public interests, in the rate and nature of agricultural production development has resulted from the lack of recognition of the fore-mentioned statutory and regulatory or administrative constraints. It will get no better until the above mentioned statutes have been changed to a more realistic fit. It is inconceivable to me that no-one has previously recognized and addressed the "forfeiture" clause! Some of the other statutes are equally bad. While I am the first to recognize that the legislature which enacted such legislation had the best of intentions, it is time to readdress the whole topic from the farmer's viewpoint! It is my considered judgement that the initial statutes

were overly influenced by agency bureaucrats - to protect "the land" at all costs, and that the "people" factor was completely forgotten. I would respectfully suggest that the Alaskan "agricultural interests only" farmer, particularly the project farmer, will in time find that he or she has less "rights" than did the traditional "plantation" share-cropper! This situation will never be conducive to building a viable agricultural industry!

I was very serious in my testimony suggestion that someone "hold the feet of agency and institutional professionals to the fire" until they provide perceptive and knowledgeable answers to current and prospective problems of modern agricultural development being expressed today. I am grossly disappointed in recent agency and institutional reports regarding Alaskan agricultural development. Not one has addressed the problems of the "real world", or the technical production system and data needs on developing commercial farmers. No comprehensive assessment has been made, that I have heard of, of the Delta I farming project. One Ag. Action Council report on agri. finance, didnt even mention the critical problems caused by the "forfeiture clause" in the statutes and so-called patents for "agricultural interests only". I have yet to see any recent Alaska study of farm organization and development of "new lands" farming efforts. Research and service efforts, that are conspicuous by their absence, are legion. I have often heard the statement: "There isn't a single research effort being carried out that is of any use what ever to Alaska's commercial farmers!" That's not to say there isn't some good work being done, but it just isn't perceived as relevant, and in most instances for very good reasons. One could probably identify several millions of dollars of state money being spent each year, on things considered agriculture, with out one iota of beneficial effect to the developing farmers. What a waste!!

I am enclosing a few things for your perusal: (1) Exhibit 1. a blanked copy of an "agricultural interests only" patent (note the marked sections); (2) Exhibit 2 relevant parts of the Alaska Statutes (note the marked sections); (3) exhibit 3. a copy of my 1976 critique of the first plan draft for the Delta barley project; and Exhibit 4. a copy of my 1977 critique of the second planning draft for the Delta barley project. While several changes were made in plans for that project before it was actually started, I would suggest much of the basic philosophy remains to-day through out the agricultural interests only development efforts by the state.

Ron, I hope I have sufficiently identified the fact that even with the passage of the existing HB 458 nothing would change regarding asset viability of agricultural interests only farms. As long as the "forfeiture" (reverter) terminology and concept remains part of the statutes, there is no real asset value to the agricultural interests! Regarding the second emphasis of HB 458, all of those "purchase preference" clauses are found within current Alaska statutes! Some one's legislative assistant just didn't do a very comprehensive job!

I suppose I tend to be a wee bit sadistic on rare occassions, but, from time to time, I get a real chuckle thinking what fun it would be to select, by lottery, one or more of our agricultural agency and/or institutional professionals that prospective farmers must deal with, and assign them to a state "agricultural interests only tract, for a period of three years, giving them the full time assignment to plan, organize, and develop/operate an demonstration farm (only one staff member to a semi-remote tract location) - without state budget other than salary and a small office budget. Require that they go through the same activities, on the same terms, as a prospective farmer acquiring such agricul-

tural interests only tract(s). A comprehensive report on such an effort(s) should provide most interesting and very enlightening!

Sincerely,

Wayne E. Burton

Wayne E. Burton, PhD
Agricultural Development Economist

enc: (5)

Sorry for being so slow, but ran into a few additional interruptions

Wayne

House sub-committee on agriculture
Teleconference hearing
March 10, 1984, 1:30-4:30 pm

A STATEMENT OFFERED AS TESTIMONY FOR THE PUBLIC RECORD ON HOUSE
BILL NO. 458 "An Act relating to agricultural rights in land."

Mr. Chairman and Members of the Sub-Committee: My name is Wayne E. Burton. My address is P.O. Box 871750, Wasilla, and I reside at Lot 9, Block 1, Woodside Estates near Wasilla. I am an agricultural development economist by training and experience. I am testifying in my own behalf. I would further note that I have practiced my profession of agricultural economist in Alaska for the past twenty (20) years.

I would first express my unalterable opposition to HOUSE BILL 458, and strongly recommend rejection of the Bill for further consideration since it provides for the "give-away" of hundreds of millions in State assets and provides for preferential treatment in acquiring State agricultural lands to those who have already benefitted greatly by State lands disposals. I am certain that I am not alone in my frustrations regarding the unequal distribution of State gratuities, and my inability to acquire agricultural lands.

Section (a) of the proposed HB 458 disturbs me greatly. This section states: "... the remaining interests retained by the state shall be conveyed or leased by the commissioner on the request of the grantee or lessee ...", and "The commissioner shall convey or lease the remaining interests without compensation to the state except for administrative costs ...". A cursory perusal of probable asset value transfer from the state to purchasers of "agricultural-rights" lands (1978-1984 period), without compensation to the state, would probably exceed \$129,000,000 and could run as high as \$250,000,000. Recognizing that state agricultural-rights lands lottery recipients have already received very substantial gratuities from the state through severely discounted prices, residency and veterans discounts, and heavily subsidized clearing loans on project lands (also development credits against purchase price on Delta I project lands), I find the inclusions of section (a) totally unacceptable. The very thought of the state conveying assets, without cost, at an average rate of \$338,000 to each of the 382 state agricultural-rights land purchasers leaves me cold!!!

Section (c) of the proposed HB 458 makes me exceedingly angry!! I have been trying to acquire state agricultural lands through sale and/or lottery since 1964, and have as yet been unable to do so. My interest in doing so has not diminished one whit!! The "preference right" inclusion of this section is an insidious discrimination against each and every Alaskan who desires to acquire agricultural lands to farm or ranch, but has as yet been unable to do so. It is a classic example of "those who has gets, and those who ain't dont!!". One personal example: I sat in the Delta Junction sale of 1970 where some very excellent and accessible state agricultural land was being sold, with an acute desire to buy; every tract in the sale but one fell under a "preference right" filing. In recent years, every agricultural-rights land lottery tract that I have applied for has been applied for by from 200 to 800 other people. More than 3,000 people went away from the Point MacKenzie agricultural-rights land lottery without agricultural land. I cannot conceive of the committee continuing with this preferential treatment of so few at the expense of so many!!

The proposed Bill, H.B. 458, would appear to tacitly address two critical problems of present day Alaskan farm development: (1) asset viability of state conveyed agricultural-rights land, and (2) economic viability of present and prospective farm development in Alaska. H.B. 458 will not contribute to the resolution of structural deficiencies associated with either problem. Moreover, each and every individual purchaser of state agricultural-rights land entered into the present situation with full knowledge of state imposed deficiencies and constraints; each recipient's signature is on documents noting their awareness and understanding. I would respectfully suggest a more viable and productive approach, to the resolution of noted problems, would be to "hold the feet of agency and institutional professionals to the fire" until the committee received viable and constructive answers, data, and recommendations regarding the above noted problems. It is my professional judgement that recent reports by state agencies, regarding agricultural development topics, display voids in understanding, incomplete and inaccurate data, ineptness in the treatment of data, and, on occasions, impotence in the reporting effort.

In closing, I would again urge the committee to terminate further consideration of H.B. 458. The proposed Bill would provide for a "give-away" of untold millions of dollars worth of state assets to not more than 382 individual state agricultural-rights land purchasers - with absolutely no benefit to the state's agricultural development efforts. Moreover, the proposed Bill, H.B. 458, would provide for the totally unwarranted "purchase preference" of state agricultural-rights land by existing agricultural land holders at the expense of those thousands of landless Alaskans who are now prospective farmers and agriculturalists. I would further suggest that prospective development of viable agricultural lands has now fallen to less than 800,000 acres, from the some 20 million acres identified some 10 years ago. I would again reiterate the conclusion that I reached in 1977; "Alaska will be unable to respond in any manner to any national food emergency within any foreseeable future (50 years)". I would ask this committee: "What are you going to do about this unfortunate situation?"

Thank you for your kind attention.

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

May 14, 1984
3:13 pm

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chairman
Senator Ziegler, Vice-chairman
Senator Eliason
Senator Paul Fischer
Senator Vic Fischer
Senator Mulcahy
Senator Sturgulewski

CALENDAR

HB 188, An Act relating to big game hunting by nonresidents.
HB 458, An Act relating to agricultural rights to land.
HB 546, An Act relating to harassment of persons lawfully engaged in hunting, fishing, or trapping.
HB 709, An Act relating to fees for guided tours through historical sites.

HB 188

Dave Stancliff, Aide to the House Resources Committee, explained that this bill would allow nonresident hunters of big game to be accompanied by Alaska residents of the second degree of kindred, including "marriage relations". It would also increase the fine for violation of this provision from \$2500 to \$5000.

Paddy McGuire, Alaska Department of Fish and Game, spoke in support of the bill.

Senator Mulcahy moved CS HB 188 (Finance)am from committee with individual recommendations. There was no objection.

HB 709

Carol Wilson, Special Assistant to the Commissioner, Department of Natural Resources, spoke in support of the bill, which would authorize DNR to establish and collect fees for guided tours through historical sites.

Senator Mulcahy moved CS HB 709 (State Affairs) from committee with individual recommendations. There was no objection.

HB 546

Dave Stancliff, Aide to the House Resources Committee, spoke in support of the bill and explained that the problems with HB 163, a similar bill that was vetoed by the Governor last year, have been solved in HB 546.

Lisa Nelson, Criminal Division, Department of Law, testified that there is no Constitutional problem with the bill as currently written.

Ron Sommerville, Alaska Outdoor Council, spoke in support of the bill.

Senator Mulcahy moved CS HB 546 (Resources) from committee with individual recommendations. Senator Sturgulewski objected and then withdrew her objection.

HB 458

Representative Bob Bettisworth, sponsor of the bill, explained that the bill was intended to help those purchasers of "agricultural rights" land who are having difficulty obtaining financing for home construction by issuing a fee simple conditional title to those purchasers.

Senator Kerttula reviewed the history of federal homesteading, the problems of diminishing farm land in other states, and the importance of preserving agricultural land in Alaska.

Betty Cook, Alaska Housing Finance Corporation, Anchorage, testified that even if fee simple title were issued, AHFC's regulations would prohibit loans being made on land that produces significant income, and prohibit refinancing of loans. There would be additional problems if there were other liens on the property and because of AHFC's lack of experience with agricultural loans.

Ralph Bennett, Aide to Representative Bettisworth, testified that his research indicated that banks were willing to make loans on land for which fee simple conditional title was held.

The meeting adjourned at 3:58 pm.

conditional title - would have to sell as ag land.

HB 458

p. 18, p. 24

wouldn't qualify

(ii) restricts the ground rent to annual increases of no more than 10 percent per annum;

(iii) has a term no less than that of the loan;

(iv) is recordable in the appropriate district recording office.

how do other states do?

Bank - Federal regs.

(14) The collateral securing the loan must have been appraised no more than six months before the loan application is submitted to the Corporation. The appraisal shall have been

(A) performed by an appraiser approved by the Corporation and completed on a form approved by the Corporation;

(B) completed after improvements to the property have been completed for existing units;

(C) subject to a final inspection for units not set up on the site at the time of appraisal.

(c) For the purpose of determining the maximum financing allowed under (b) of this section, the cost of real property is limited to the purchase price or amount refinanced and the direct costs paid to a party other than the borrower for providing permanent improvements including, but not limited to water, sewer, and access improvements.

(d) In this section,

(1) "borrower's mobile home" means

(A) the mobile home the borrower will purchase with the loan if the loan is one described in (a)(1), (2), or (3) of this section

(B) the mobile home described in (a)(4) of this section if the loan is one described in (a)(4) of this section; and

(2) "mobile home" means a mobile home which has at least 600 square feet of living area determined by measuring the exterior of the unit at the base but excluding the tongue of the unit and any lean-tos, wanigans, and the like;

(3) "Class I Loan" means a loan that qualifies for purchase under a Corporation bond indenture the funds related to which are being committed at the time the loan is approved.

(4) "Class II Loan" means a loan under this section which does not qualify for purchase under a Corporation bond indenture the funds related to which are being committed at the time the loan is approved. (Eff. 10/1/83, Reg. 87)

Authority: AS 18.56.090(3), 5
AS 18.56.100

15 AAC 118.290. DEFINITIONS. Repealed 2/17/82.

establish special program - State & - could not sell bonds for such a risky

15 AAC 118.300. SPECIAL MORTGAGE LOAN PURCHASE PROGRAM SCOPE. (a) 15 AAC 118.300 - 15 AAC 118.580 implement the special mortgage loan purchase program established by AS 18.56.098.

(b) 15 AAC 118.400 - 15 AAC 118.450 implement the portion of the special mortgage loan purchase program to be financed with the proceeds of qualified mortgage bonds.

(c) 15 AAC 118.490 - 15 AAC 118.580 implement the portion of the special mortgage loan purchase program to be financed with the proceeds of qualified veterans' mortgage bonds. (Eff. 6/30/80, Reg. 78; am 9/17/81, Reg. 80; am 2/17/82, Reg. 82; am 1/26/83, Reg. 85)

Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.305. BORROWER ELIGIBILITY. A person is eligible under the program for a residential mortgage loan to finance the purchase of dwelling, including a duplex, triplex or four-plex, condominium, or an individual unit within a PUD project, subject to any restrictions under 15 AAC 118.400 - 15 AAC 118.580 for mortgages financed by bonds issued thereunder. Eligibility is without regard to location of the dwelling within the State of Alaska or another eligible location. The dwelling must be designed for residential use, and intended for use and used as the principal residence of the borrower pursuant to AS 18.56. A person is not eligible for a loan if the person is an owner of a dwelling financed by an outstanding loan purchased by the Corporation. As used in this section "owner" includes a person who is liable on a mortgage or note with respect to a loan but does not include a person not occupying a dwelling but remaining a co-owner after legal termination of marriage. A loan to finance the purchase of a dwelling includes a loan to an owner/builder, providing that the loan constitutes the first permanent financing of a dwelling which has been newly constructed by the owner/builder; OR a loan to a purchaser, providing that the loan constitutes the initial permanent financing obtained for the dwelling by the purchaser, and further providing that the loan is submitted to AHFC as soon as practicable, but in no event more than one year from date of purchase. The determination of whether the dwelling constitutes "newly constructed" or whether a loan constitutes the first "permanent financing" by the purchaser on a dwelling or whether the loan is submitted to AHFC as soon as practicable shall be made by the Corporation based upon information submitted to the Corporation. (Eff. 10/2/80, Reg. 78; am 1/27/81, Reg. 78; am 2/17/82, Reg. 82; am 10/27/82, Reg. 84; am 1/26/83, Reg. 85; am ___/___/83, Reg. ___)

Authority: AS18.56.088 AS18.56.098

15 AAC 118.310. LOAN TERMS. (a) Each residential mortgage loan purchased by the Corporation as part of the special mortgage loan purchase program, except as otherwise provided in (d) of this section for triplexes and four-plexes and (f) of this section for loans to members of the Alaska Delegation to Congress, must

(1) be serviced by a seller/servicer approved by the Corporation;

(2) constitute a first or second lien on real estate in fee simple or on a leasehold estate and, if a first lien, be subject only to permitted encumbrances, and, if a second lien, be subject only to permitted encumbrances and a first lien mortgage loan serviced by a seller/servicer approved by the Corporation;

(3) if a first lien, be the subject of private mortgage insurance, federal insurance, or federal guarantee, the benefits of which are payable to the Corporation, in the event that the ratio of the loan to the value of the property ("loan-to-value ratio") exceeds 80 percent;

(4) if a second lien, be the subject of private mortgage insurance, federal insurance or federal guarantee, the benefits of which are payable to the Corporation, in the event that the ratio of the first and second lien mortgage loans combined to the value of the property exceed 80 percent to the extent necessary to cause the ratio to go down to 75 percent;

(5) be for purchase of completed, owner-occupied residential housing or for the improvement or rehabilitation of owner-occupied residential housing, the mortgage of which shall be eligible for purchase by the Corporation under the Act;

(6) be insured by a mortgagee's policy of title insurance issued by a title insurance company qualified to do business in the area in which the residence is located and acceptable to the Corporation, insuring the enforceable mortgage, subject only to permitted encumbrances or in the case of a second lien mortgage, subject only to permitted encumbrances and the first lien mortgage.

(b)(1) The loan-to-value ratio and the loan amounts on first lien mortgage loans of the Corporation to finance a single-family residence, including a unit in a condominium project or a planned unit development (herein called a "single-family residence") or a duplex shall be as set forth in this paragraph:

(A) The loan-to-value ratio on a mortgage loan for a single-family residence and a duplex shall not exceed 95 percent.

(B) The loan amount on a mortgage loan for a single-family residence shall not exceed \$178,650.

(C) The loan amount on a mortgage loan for a duplex shall not exceed \$207,750.

(D) The loan amount on a mortgage loan guaranteed by the Veterans Administration for a single-family residence and a duplex shall not exceed \$135,000.

(E) The amount of the guarantee plus the down payment on a mortgage loan guaranteed by the Veterans Administration for a single-family residence and a duplex must equal 25 percent of the value of the single-family residence or the duplex.

(F) The loan amount on a mortgage loan insured by the FHA for a single-family residence shall not exceed \$101,250.

(G) The loan amount on a mortgage loan insured by the FHA for a duplex shall not exceed \$114,000.

(H) The down payment and loan-to-value ratios of mortgage loans insured by the FHA shall be as required by FHA.

(2) The limitations provided in (b)(1) of this sub-section are applicable to a first lien mortgage loan. The limitations as to amount of loan shall also limit the amount of a second lien mortgage loan provided that in computing the amount of a second lien mortgage loan any first lien mortgage loan shall be deducted. The loan-to-value ratio of a second lien mortgage loan shall be as fixed in the Act. All loan-to-value ratios and maximum lien amounts shall be reduced if Federal National Mortgage Association, Veterans Administration of FHA limits are reduced for Alaska.

(c) One unit of a duplex, triplex, or four-plex must be owner-occupied for a residential mortgage loan to finance the purchase of that duplex, triplex, or four-plex to be eligible for purchase by the Corporation.

(d) For triplexes and four-plexes, loans purchased as part of the special mortgage loan purchase program

(1) must constitute a first lien on real estate in fee simple or on a leasehold estate and be subject only to permitted encumbrances;

(2) must be only for the purchase of a completed owner-occupied residential housing, the mortgage of which shall be eligible for purchase by the Corporation under the Act;

(3) must have a loan-to-value ratio no more than 90 percent for a triplex or four-plex;

(4) will not exceed a loan amount of \$250,800 for a triplex and \$311,850 for a four-plex.

(e) A residential mortgage loan hereafter purchased by the Corporation in order to finance a unit in a condominium project or in a planned unit development project ("condominium" or "PUD project") shall be subject to the following terms and conditions:

(1) the living units of the condominium or PUD project must be within the same structure or a reasonably contiguous structure. Common elements of the project must have been completed prior to the purchase of the loan; and

(2) prior approval procedures, warranties and provisions relating to the sale and occupancy of units which are reasonable and customary in mortgage lending, shall apply as prescribed in the seller/servicer guide.

(f) A residential mortgage loan hereafter purchased by the Corporation in order to finance a residence for members of the Alaska Delegation to Congress shall be subject to the following term and condition:

(1) the residence shall be located in the District of Columbia or within 50 miles of the District of Columbia. (Eff. 6/30/80, Reg. 78; am 6/18/81, Reg. 78; am 9/17/81, Reg. 80; am 2/17/82, Reg. 82; am 10/27/82, Reg. 84; am 1/4/83, Reg. 85; am ___/___/___, Reg. ___)

Authority: AS 18.56.096 AS 18.56.098(a) and (e)

15 AAC 118.315. PURCHASES OF LOANS FROM SELLER/SERVICERS. Repealed 2/17/82.

15 AAC 118.320. ASSUMPTIONS OF MORTGAGE LOANS. Repealed 2/17/82.

15 AAC 118.325. MINIMUM CONSTRUCTION STANDARDS AND STANDARD DEVIATIONS.
Repealed 2/17/82.

15 AAC 118.330. IMPROVEMENT OR REHABILITATION. Repealed 2/17/82.

15 AAC 118.335. APPEALS PROCEDURE. Repealed 2/17/82.

15 AAC 118.340. SERVICING FEE. Repealed 2/17/82.

15 AAC 118.342. HOME OWNERSHIP ASSISTANCE PROGRAM. (a) The home ownership assistance program provides assistance to persons of lower and moderate income to purchase homes financed with a mortgage loan purchased by the Corporation under 15 AAC 118.283 - 15 AAC 118.345. Except as provided in this section, the same limitations and conditions otherwise applicable under 15 AAC 118.283 - 15 AAC 118.345 apply to mortgage loans where the borrower is eligible for home ownership assistance under this section.

(b) A person is eligible for home ownership assistance for the purchase of a single-family residence, including a condominium or PUD unit after having met general borrower loan qualifications of the Corporation and those of this section. Owner/builder refinances, are not eligible under this section.

(c) To be eligible to receive benefits under the program, an applicant must establish that:

(1) A minimum of 28 percent of the gross income per household is contributed toward the applicant's monthly payments of principal and interest on the loan, together with applicable taxes, hazard insurance, mortgage insurance, credit insurance, space rent, and home owner association fees (less any utility expenses included in those fees).

(2) The household must not own assets of value exceeding \$50,000 for a one member household and an additional \$5,000 for each household member beyond one. If a member of the household is 65 years old or over, the household must not own assets of value exceeding one and one-half times the applicable limit for the household size set forth in this paragraph.

(3) Neither the purchase price nor the appraised value of the property for which the subsidy under the program is provided exceeds:

- (i) \$80,000 for a 1 or 2 member family;
- (ii) \$85,000 for a 3 member family;
- (iii) \$90,000 for a 4 member family; and
- (iv) \$100,000 for a family with 5 or more members.

(d) The terms for home ownership assistance are as follows:

(1) mortgage payments may be partially subsidized by the home ownership fund in an amount not to exceed the lesser of the following amounts: