

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

2900 SRES HB 458 - HB 509 7900

(A) for borrowers who first executed a home ownership assistance agreement prior to February 1, 1983:

(i) the sum necessary to reduce the borrower's monthly payments of principal and interest on the mortgage loan to the amounts payable as if the mortgage loan were a level debt service loan bearing interest at the rate of six percent a year; or

(ii) the sum necessary to reduce the borrower's monthly payments of principal and interest on the mortgage, together with taxes, hazard insurance, mortgage insurance and homeowner association fees if any with respect to the property, to 25 percent of gross income per family;

(B) for borrowers who first executed a home ownership assistance agreement on or after February 1, 1983:

(i) the sum necessary to reduce the monthly payments of principal and interest on the mortgage loan to the amounts payable as if the mortgage loan were a level debt service loan bearing interest at the rate of six percent a year; or

(ii) the sum necessary to reduce the monthly payments of principal and interest on the mortgage loan, together with taxes, hazard insurance, mortgage insurance, credit insurance, space rent, and any homeowner association fees (less any utility expenses included in those fees) with respect to the property, to 28 percent of gross income per household;

(C) Repealed 1/31/84.

(2) the term for a mortgage loan with respect to which there is a home ownership assistance agreement must be the maximum term allowed under the Corporation's program providing financing for the home or the remaining economic life of the property, whichever is less;

(3) Repealed 1/31/84.

(4) Repealed 1/31/84.

(5) the loan-to-value ratio for a mortgage loan with respect to which there is a home ownership assistance agreement shall not exceed the maximum percent allowable by statute.

(6) the borrower shall be required to enter into a home ownership assistance agreement with the Corporation which shall expire December 31 each year and contain periodic income review requirements in the form required by the Corporation including, without limitation, provisions reducing or eliminating assistance depending on

(A) application of the assistance formula of paragraph (d)(1) of this section;

(B) a formula or other method based on the amount available for assistance from income or revenues of the Home Ownership Fund;

(7) when the term of a home ownership assistance agreement, which is originally executed by a borrower on or after February 1, 1983, expires as provided in (d)(6) of this section, a new home ownership assistance agreement may be entered pursuant to the terms of (d) of this section, but the assistance amount under a new agreement may not exceed the assistance amount allowed (prior to any adjustments) under the previous agreement;

(8) after February 1, 1983, the Corporation will not enter into a home ownership assistance agreement with a borrower who has not previously obtained a loan prior to that date under the home ownership assistance program if the amount of assistance is determined to be less than fifty dollars (\$50) per month.

(e) A home ownership assistance agreement is personal to the borrower and may not be assigned.

(f) No secondary financing of a mortgage loan with respect to which there is a home ownership assistance agreement is permitted.

(g) As used in this section

(1) "family" means those individuals executing the mortgage note and Deed of Trust, and their dependents who occupy the residence on a permanent basis;

(2) "household" means all persons who may or may not be members of the family who occupy the residence on a permanent basis as a full or part-time resident. (Eff. 12/15/80, Reg. 78; am 9/17/81, Reg. 81; am 1/26/83, Reg. 85; am 1/31/84, Reg. \_\_\_)

Authority: AS 18.56.091

15 AAC 118.344. FAIRBANKS NORTH STAR BOROUGH PROGRAM. A portion of the special mortgage loan purchase program may be implemented in the Fairbanks North Star Borough by the Corporation with the proceeds of \$35,000,000 bonds of the Borough which are tax-exempt under Section 1104(b)(4) of the Mortgage Subsidy Bond Tax Act of 1980, and with amounts appropriated to the Corporation for the special mortgage loan purchase program. The provisions of this chapter which implement the special mortgage loan purchase program shall govern the portion of the program to be implemented in the Fairbanks North Star Borough, except that the mortgage loans purchased with the proceeds of the bonds shall be secured by real property and owner-occupied residences located only in the Fairbanks North Star Borough, and shall be originated and serviced by seller/servicers with originating and servicing capacity in the Borough. The details of the portion of the special mortgage loan purchase program to be implemented in the Borough including, without limitation, the amount of the appropriation to be used by the Corporation in connection therewith, shall be fixed by agreement between the Corporation and the Borough. The agreement may be part of a trust indenture securing the bonds between the Borough, the Corporation and the Trustee. (Eff. 6/30/80, Reg. 78; am 4/29/82, Reg. 82)

Authority: AS18.56.088 AS 18.56.090 AS18.56.098

15 ACC 118.345. DEFINITIONS. Repealed 2/17/82.

15 AAC 118.400. QUALIFIED MORTGAGE BOND PROGRAM (SPECIAL MORTGAGE LOAN PURCHASE PROGRAM). 15 AAC 118.400 - 15 AAC 118.450, are adopted to permit the Corporation to issue qualified mortgage bonds as described under Section 103A(c)(1) and (c)(2) [(b)(2)] of the Internal Revenue Code and the Temporary Regulations published in the Federal Register with respect thereto (herein called the "Temporary Regulations") and to define and describe mortgages eligible to be financed with the proceeds of qualified mortgage bonds as part of the special mortgage loan purchase program of the Corporation (herein called the "program"). These sections are intended to establish procedures to ensure compliance with the mortgage eligibility provisions referred to in the Temporary Regulations. (Eff. 9/17/81, Reg. 80; am 2/17/82, Reg. 82; am 10/27/82, Reg. 84; am 1/26/83, Reg. 85)

Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.401. ELIGIBILITY. When a person seeks to finance the purchase of a single-family owner-occupied residence, including a condominium, PUD project unit or a duplex, and that purchase is eligible for financing with proceeds from Qualified Mortgage Bonds issued pursuant to Section 103A of the Internal Revenue Code and 15 AAC 118.400-118.450, the person must finance the purchase with those proceeds when proceeds are available. This requirement does not apply to persons who are eligible to finance the purchase of a single-family owner-occupied residence, including a condominium, PUD project unit or a duplex with the proceeds from a State Guaranteed Bond issued under the Veterans Mortgage Program. (Eff. 5/11/83, Reg. 86)

Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.405. SINGLE-FAMILY RESIDENCES. A person is eligible under the program for a residential mortgage loan which is eligible for purchase by the Corporation under the Act to finance the purchase of a single-family, owner-occupied residence, including a condominium, PUD project unit or a duplex (in 15 AAC 118.405 - 15 AAC 118.450 called "residence"). As used in 15 AAC 118.405 - 15 AAC 118.450, "single-family" owner-occupied residences" includes a duplex if one unit of the duplex is occupied by the owner of the duplex and the principal residence within a reasonable time not exceeding 60 days, after the financing is provided and will establish other procedures to ensure that the requirement is met. Whether a residence is used as principal residence will depend on all the facts and circumstances of each case, including the good faith of the mortgagor. Except for duplexes, a residence which can reasonably be expected to be used to a trade or business, as an investment property, or as a recreational home, will not be considered a principal residence. The term "residence" does not include property such as an appliance, a piece of furniture, a radio, etc., which under Alaska law is not a fixture. Land appurtenant to a residence shall be considered as part of the residence only if such land reasonably maintains the basic livability of the residence and does not provide, other than incidentally, a source of income to the mortgagor. Land appurtenant to a residence is not included in the definition of "residence" if the land may be further subdivided under zoning or platting regulations in effect at the time of the making of the mortgage loan. (Eff. 9/17/81, Reg. 80)

Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.410. OWNERSHIP REQUIREMENTS. (a) Except as provided in (d) of this section, each of the mortgagors to whom owner financing (i.e., financing to acquire a residence under 15 AAC 118.405) is provided must meet the requirements

of this paragraph. A mortgagor meets the requirements of this paragraph only if the mortgagor had no present ownership interest in a principal residence located anywhere at any time during the three-year period prior to the date on which the mortgage is executed. For purposes of the preceding sentence, the mortgagor's interest in the residence with respect to which the financing is being provided shall not be taken into account. In the event there is more than one mortgagor with respect to a particular residence, each of the mortgagors must meet the three-year requirement. A person who is liable under a note secured by a mortgage, but who does not have a present ownership interest in a residence subject to the mortgage, need not meet the three-year requirement. For example, where a parent of a home purchaser co-signs the note for a child, but the parent takes no interest in the residence, it is not necessary that the parent meet the three-year requirement since the parent is not a mortgagor of the residence. Examples of interest which constitute present ownership interest are the following:

- (1) a fee simple interest;
- (2) a joint tenancy, a tenancy in common, or a tenancy by the entirety;
- (3) a life estate;

(4) a land contract (i.e., a contract pursuant to which possession and the benefits and burdens of ownership are transferred although legal title is not transferred until some time later); and

(5) an interest held in trust for the mortgagor (whether or not created by the mortgagor) that would constitute a present ownership interest if held directly by the mortgagor.

(b) Examples of interest which do not constitute present ownership interest are the following:

- (1) a remainder interest;
- (2) a lease with or without an option to purchase;
- (3) a mere expectancy to inherit an interest in a principal interest;

(4) the interest that a purchaser of a residence acquires on execution of a purchase contract; and

(5) an interest in other than a principal residence during the previous three years.

(c) The Corporation will require proof by affidavit of mortgagors of eligibility and compliance with the above requirement and will establish other procedures to ascertain eligibility and compliance with the requirements.

(d) Mortgagors who do not meet the qualifications described in (a) of this section are eligible under the qualified mortgage bond program.

(1) to the extent permitted under Section 103A of the Internal Revenue Code, as amended, and any Temporary Regulations with respect thereto;

(2) to the extent of availability of

(A) 10 percent of the lendable proceeds of qualified mortgage bonds issued prior to September 3, 1982 which are uncommitted on that date and

(B) 10 percent of the lendable proceeds of qualified mortgage bonds issued after September 3, 1982; and

(3) pursuant to the provisions of AAC 118.417. (Eff. 9/17/82, Reg. 80; am 10/27/82, Reg. 8')

Authority: AS18.56.088 AS18.56.098

15 AAC 118.415. PURCHASE PRICE REQUIREMENTS. (a) The acquisition cost, as herein defined, of each single-family residence may not exceed the "specified percent" of the average area purchase price of the statistical area in which the residence being financed is located as determined by the executive director in accordance with the Temporary Regulations. The executive director shall determine the average area purchase price separately with respect to (1) residences which have not been previously occupied, (2) residences which have been previously occupied, (3) one-family residences, and (4) two-family residences. The executive director may adopt the average area purchase price limitations published by the Treasury Department for the statistical area in which a residence is located which are referred to in the Temporary Regulations as the "Safe Harbor Regulations". The term "acquisition cost" means the cost of acquiring a residence from the seller as a completed residential unit. The determination whether a particular residence meets the purchase price requirement shall be made as of the date on which the commitment to provide the financing is made, or if earlier, the date of purchase of the residence. The term "acquisition cost" includes the following:

(A) All amounts paid, either in cash or in any kind, by the purchaser (or a related party or for the benefit of the purchaser) to the seller (or a related party or for the benefit of the seller) as consideration for the residence.

(B) If a residence is incomplete, the reasonable cost of completing the residence whether or not the cost of completing construction is to be financed with bond proceeds. For example, where a mortgagor purchases a building which is so incomplete that occupancy of the building is not permitted under local law, the acquisition cost includes the costs of completing the building so that occupancy of the building is permitted;

(C) Where a residence is purchased subject to a ground rent, the capitalized value of the ground rent. Such value shall be calculated using a discount rate equal to the yield on the issue of bonds as defined in the Temporary Regulations.

(b) The term "acquisition cost" does not include the following:

(1) The usual and reasonable settlement or financing costs. Settlement costs include titling and transfer costs, title insurance, survey fees, or other similar costs. Financing costs include credit reference fees, legal fees, appraisal expenses, "points" which are paid by the buyer (but not the seller, even though borne by the mortgagor through a higher purchase price) or other costs of financing the residence. However, such amount will be excluded in

determining acquisition cost only to the extent that the amounts do not exceed the usual and reasonable cost which would be paid by the buyer where financing is not provided through a qualified mortgage bond issue. For example, if the purchaser agrees to pay to the seller more than a pro rata share of property taxes, such excess shall be treated as part of the acquisition cost of a residence;

(2) The value of services performed by the mortgagor or members of the mortgagor's family in completing the residence. For purposes of the preceding sentence, the family of an individual shall include only the individual's brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants. For example, where the mortgagor builds a home alone or with the help of family members, the acquisition cost includes the cost of materials provided and work performed by sub-contractors (whether or not related to the mortgagor) but does not include the imputed cost of any labor actually performed by the mortgagor or a member of the mortgagor's family in constructing the residence. Similarly, where the mortgagor purchases an incomplete residence, the acquisition cost includes the cost of material and labor paid by the mortgagor to complete the residence but does not include the imputed value of the mortgagor's labor or the labor of the mortgagor's family in completing the residence.

(3) The cost of land which has been owned by the mortgagor for at least 2 years prior to the date on which construction of the residence begins.

(c) The term "specified percent" as used in this section is the percentage fixed by Section 103A of the Internal Revenue Code, as amended, and applied to the average area purchase price calculations as a requirement for the use of proceeds of qualified mortgage bonds, and that percentage is 90 percent for qualified mortgage bonds issued prior to September 3, 1982 and 110 percent for qualified mortgage bonds issued thereafter. (Eff. 9/17/82, Reg. 80; am 10/27/82, Reg. 34)

Authority: AS 18.56.088

AS 18.56.098

15 AAC 118.417. ALLOCATION OF PROCEEDS AFTER SEPTEMBER 3, 1982. (a) Proceeds available to mortgagors who do not meet the qualifications described in 15 AAC 18.410(a) will be allocated as follows and in the following sequence depending upon availability of proceeds:

(1) to mortgagors eligible for receipt of funds under the Corporation's home ownership assistance program or such other programs as the Corporation may from time to time establish for handicapped persons and which programs are designated as eligible hereunder by the executive director;

(2) If the executive director determines that mortgagors under the home ownership assistance program or other programs described in (1) of this subsection are not utilizing proceeds in a timely fashion, to mortgagors with a lower or moderate income not otherwise eligible under the qualified mortgage loan program, the home ownership assistance program, or the other programs described in (1) of this subsection;

(3) If the executive director determines that proceeds are not being utilized in a timely fashion for mortgagors eligible under (1) and (2) of this subsection, to any other mortgagor.

(b) Mortgagors who are eligible for funds under the home ownership assistance program and who would meet the qualifications for the qualified mortgage bond program described in 15 AAC 118.410(a) must apply for financing under qualified mortgage bond program procedures prescribed by the Corporation and may not apply through the home ownership assistance program for proceeds made available under (a)(1) of this section.

(c) Subject to the priorities set forth in (a) of this section, the executive director may prescribe rules for the availability and allocation of proceeds available for mortgagors who become eligible for financing under the qualified mortgage bond program by operation of 15 AAC 118.410(d) and this section.

(d) The executive director may prescribe rules for the allocation of proceeds from qualified mortgage bonds subject to different computations for the "specified percent" of the average area purchase price as set forth in 15 AAC 118.415(c). (Eff. 10/27/82, Reg. 84)

Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.420. QUALIFIED HOME IMPROVEMENT LOANS. A person is eligible under the program for a qualified home improvement loan as provided in this section.

(1) The term "qualified home improvement loan" means a mortgage loan in an amount which does not exceed \$15,000 with respect to any residence which finances alterations, repairs, and improvements on, or in connection with, an existing single-family, owner-occupied residence by the owner thereof, but only if such items substantially protect or improve the basic livability or energy efficiency of the residence.

(2) Alterations, repairs, or improvements that satisfy the requirement of subdivision (1) include the renovation of plumbing or electric systems, the installation of improved heating or air conditioning systems, the addition of living space, or the renovation of a kitchen area. Items that will not be considered to substantially protect or improve the basic livability of the residence include swimming pools, tennis courts, saunas, or other recreational or entertainment facilities.

(3) A qualified home improvement loan may be made to a borrower for a residence for which one or more qualified home improvement loans previously have been provided, whether or not by the same lender provided that:

(A) the prior loan or loans have been repaid; and

(B) if any person who had a present ownership interest in such residence at the time the previous qualified home improvement loan or loans were made has a present ownership interest in the residence at the time the subsequent qualified home improvement loan is made, then the allowable amount of the subsequent qualified home improvement loan shall be reduced by the amount, at origination, of any previous qualified home improvement loan, so that the sum of such loans does not exceed \$15,000. (Eff. 9/17/81, Reg. 80; am 2/17/82, Reg. 82)

Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.425. QUALIFIED REHABILITATION LOAN. A person is eligible under the program for a Qualified Rehabilitation Loan as provided in this section.

(1) The term "qualified rehabilitation loan" means any owner financing provided in connection with -

(A) A qualified rehabilitation; or

(B) The acquisition of a residence with respect to which there has been a qualified rehabilitation,

but only if the mortgagor to whom such financing is provided is the first resident of the residence after completion of the rehabilitation. Where there are two or more mortgagors of a rehabilitation loan, the first residency requirement is met if any of the mortgagors meets the first residency requirement.

(2) The term "qualified rehabilitation" means any rehabilitation of a residence if

(A) there is a period of at least 20 years between the date on which the building was first used and the date on which physical work on such rehabilitation begins;

(B) 75 percent or more of the existing external walls of such building are retained in place as external walls in the rehabilitation process; and

(C) the expenditures for such rehabilitation are 25 percent or more of the mortgagor's adjusted basis in the residence (including the land on which the residence is located).

(3) For purposes of (1)(A) and (B), the rules applicable to the investment tax credit for qualified rehabilitated buildings under section 48(g)(1)(A)(iii) and (B) of the Internal Revenue Code shall apply. However, unlike section 48(g)(1)(B), once a building meets the 20-year test, more than one rehabilitation of that building within a 20-year period may qualify as a qualified rehabilitation.

(4) The adjusted basis to the mortgagor is the mortgagor's adjusted basis for purposes of determining gain or loss on the sale or exchange of a capital asset (as defined in Section 1221 of the Internal Revenue Code). The mortgagor's adjusted basis shall be determined as of the date of completion of the rehabilitation, or, if later, the date the mortgagor acquires the residence, i.e., the date on which the mortgagor includes in basis any amounts expended for rehabilitation that are expended for capital assets.

(5) The amount expended by the mortgagor for rehabilitation include all amounts expended for rehabilitation regardless of whether the amounts expended were financed from the proceeds of the loan or from other sources, and regardless of whether the expenditure is capital expenditure, so long as the expenditure is made during the rehabilitation of the residence and is reasonably related to the rehabilitation of the residence. The value of services performed by the mortgagor or members of the mortgagor's family (as used in 15 AAC 118.415) in rehabilitating the residence will not be included in determining the rehabilitation expenditures for purposes of the 25 percent test.

(6) Where a mortgagor purchases a residence that has been substantially rehabilitated, the 25 percent test is determined by comparing the total expenditures made by the seller for the rehabilitation of the residence with the acquisition cost of the residence to the mortgagor. The total expenditures made by the seller for rehabilitation do not include the cost of acquiring the building or land but do include all amounts directly expended by the seller in rehabilitating the building (excluding overhead and other indirect charges). (Eff. 9/17/81, Reg. 80)

Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.430. QUALIFIED MORTGAGE LOANS. (a) First lien mortgage loans may be purchased under 15 AAC 118.400 - 15 AAC 118.450 only if made to persons who did not have a mortgage (whether or not paid off) on the residence securing the mortgage note at any time prior to the execution of the mortgage. For purposes of this section, the replacement of -

- (1) construction period loans;
- (2) bridge loans or similar temporary initial financing; and
- (3) in the case of a qualified rehabilitation, an existing mortgage,

shall not be treated as the acquisition or replacement of any existing mortgage. Generally, temporary initial financing is any financing which has a term of 24 months or less.

(b) Second lien mortgage loans may be purchased under 15 AAC 118.400 - 15 AAC 118.450 to extent such loans are allowable under applicable Federal law and comply with the provisions of 15 AAC 118.420 and 15 AAC 118.425. (Eff. 9/17/81, Reg. 80; am 2/17/82, Reg. 82)

Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.440. LOAN TERMS. Repealed 2/17/82.

15 AAC 118.450. PURCHASE OF QUALIFIED MORTGAGE LOANS FROM SELLER/SERVICER. In addition to the terms and conditions fixed by Section 250 for the purchase of mortgage loans from the originating mortgage lender ("seller/servicer"), the sales and servicing agreement between seller/servicer and the Corporation and the seller/servicer guide will provide for reasonable periodic inspection by, and other reasonable procedures, including reasonable investigations by the seller/servicer to assure that the mortgage loans purchased comply with the requirement of the Temporary Regulations. The sales and servicing agreement shall contain covenants by the seller/servicer designed to assure compliance with the Temporary Regulations. (Eff. 9/17/81, Reg. 80; am 2/17/82, Reg. 82)

Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.490 QUALIFIED VETERANS' MORTGAGE BOND PROGRAM (SPECIAL MORTGAGE LOAN PURCHASE PROGRAM). (a) 15 AAC 118.490 - 15 AAC 118.580 are adopted to permit the Corporation to issue qualified mortgage bonds as described under Section 103A(c)(3) of the Internal Revenue Code and the Temporary Regulations published in the Federal Register with respect thereto (herein called the "Temporary Regulations") and to define and describe mortgages eligible to be financed with the proceeds of qualified veterans' mortgage bonds as part of the

special mortgage loan purchase program of the Corporation (herein called the "program"). These sections are intended to establish procedures to ensure compliance with the mortgage eligibility provisions referred to in the Temporary Regulations.

(b) A person is eligible under the program for a residential mortgage loan which is eligible for purchase by the Corporation under the act if

(1) the person is a qualified veteran as described in 15 AAC 118.500 - 15 ACC 118.580;

(2) the residential mortgage loan will finance a single-family, owner-occupied residence as the term "single-family, owner-occupied residence" is used and described in 15 AAC 118.405. (Eff. 1/26/83, Reg. 85)

Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.492. QUALIFIED VETERANS' MORTGAGE LOANS. (a) First lien mortgage loans may be purchased under 15 AAC 118.490 - 15 AAC 118.580 only if made to persons who did not have a mortgage (whether or not paid off) on the residence securing the mortgage note at any time prior to the execution of the mortgage. For purposes of this section, the replacement of

(1) construction period loans;

(2) bridge loans or similar temporary initial financing; and

(3) in the case of a qualified rehabilitation, and existing mortgage,

shall not be treated as the acquisition or replacement of an existing mortgage. Generally, temporary initial financing is any financing which has a term of 24 months or less.

(b) Second lien mortgage loans may be purchased under 15 AAC 118.490 - 15 AAC 118.580 to the extent such loans are allowable under applicable federal law and comply with the provisions of 15 AAC 118.420 and 15 AAC 118.425. (Eff. 1/26/83, Reg. 85)

Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.494. PURCHASE OF QUALIFIED VETERANS' MORTGAGE LOANS FROM SELLER/SERVICERS. In addition to the terms and conditions fixed by 15 AAC 118.260 for the purchase of mortgage loans from the originating mortgage lender ("seller/servicer"), the sales and servicing agreement between seller/servicer and the Corporation and the seller/servicer guide will provide for reasonable periodic inspection by, and other reasonable procedures, including reasonable investigations by the seller/servicer to assure that the mortgage loans purchased comply with the Temporary Regulations. The sales and servicing agreement shall contain covenants by the seller/servicer designed to assure compliance with the Temporary Regulations. (Eff. 1/26/83, Reg. 85)

Authority: AS 18.56.088 AS 18.56.098

15 AAC 118.500. VETERANS. As provided in sec. 7, Ch. 35 SLA 1982, "qualifying veteran", for the purposes of the State Guaranteed Veterans' Home Mortgage Program, has the meaning provided for the term "qualified veteran" under the

Mortgage Subsidy Bond Tax Act of 1980 (94 Stat. 2660 - 2680). Temporary regulations of the Internal Revenue Service (Sec. 6a.103A-3(c), as published in the Federal Register, Vol. 46, no. 126, Wednesday, July 1, 1981, page 34324) have implemented the Mortgage Subsidy Bond Tax Act by defining "veteran" to have the meaning provided in 38 U.S.C. 101(2). There is no definition of "qualified veteran" under the Mortgage Subsidy Bond Tax Act or the regulations adopted under that Act. The corporation will accept as a "qualified veteran" a person who meets the definition of "veteran" as established in the temporary regulations of the Internal Revenue Service described above. The provision of 15 AAC 118.500 - 15 AAC 118.580 are intended to interpret and clarify the temporary regulations. However, Sec. 7, Ch. 35, SLA 1982, incorporates by reference future amendments to the definition of "qualified veteran" under the Mortgage Subsidy Bond Tax Act. Therefore to the extent that the temporary regulation of the Internal Revenue Service referred to above is amended or replaced by another regulation, the provisions of the later amendment or replacement prevail over contrary provision in 15 AAC 118.510 - 15 AAC 118.580. (Eff. 1/26/83, Reg. 85)

Authority: Sec. 7, Ch. 35 SLA 1982  
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.510 DUTY IN ARMED FORCES. (a) A person is a qualified veteran for purposes of the state guaranteed veterans' home mortgage program if the person satisfies the requirements of (b) of this section and if

(1) the person has served on full-time duty, other than for training, in the United States Army, Navy, Marine Corps, Air Force, or Coast Guard or in a reserve component of the United States Army, Navy, Marine Corps, Air Force, or Coast Guard;

(2) subject to (c) of this section, the person has served on full-time duty for training purposes in a reserve component of the United States Army, Navy, Marine Corps, Air Force, or Coast Guard and was disabled from a disease or injury incurred or aggravated in the line of that duty; or

(3) subject to (d) of this section, the person was disabled from a disease or injury incurred or aggravated in the line of duty as a member of a reserve component of the United States Army, Navy, Marine Corps, Air Force or Coast Guard if

(A) the duty was other than full-time duty and was prescribed for the reserve component of which the person was a member by the appropriate United States Secretary under 37 U.S.C. 206 or another law; or

(B) the duty was part of special additional duties authorized for the reserve component of which the person was a member by an authority designated by the appropriate United States Secretary and was performed by the person on a voluntary basis in connection with the prescribed training or maintenance activities of the reserve component to which the person was assigned.

(b) In addition to the requirements of (a) of this section, a person is a qualified veteran for purposes of the state guaranteed veterans' home mortgage program if the person

(1) has retired or been discharged or released from the duty described in (a) of this section under conditions other than dishonorable; or

(2) has not retired or been discharged or released from duty described in (a) of this section but

(A) has completed his or her initial period of duty; and

(B) would have been entitled to a discharge or release under conditions other than dishonorable at the end of his or her initial period of duty.

(c) A person is not a qualified veteran under (a)(2) of this section if the duty served by the person was as a temporary member of the Coast Guard Reserve.

(d) A person is not a qualified veteran under (a)(3) of this section if the duty served by the person consisted of

(1) work or study performed in connection with correspondence courses;

(2) attendance at an educational institution in an inactive status; or

(3) duty performed as a temporary member of the Coast Guard Reserve. (Eff. 1/26/83, Reg. 95)

Authority: Sec. 7, Ch. 35, SLA 1982  
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.520. DUTY IN PUBLIC HEALTH SERVICE. (a) A person is a qualified veteran for purposes of the state guaranteed veterans' home mortgage program if the person satisfies the requirements of 15 AAC 118.510(b) with regard to the duty described in this section and if

(1) the person has served on full-time duty, other than for training purposes, as a commissioned officer of the Public Health Service, or of the Reserve Corps of the Public Health Service, after July 28, 1945, or, if the duty occurred before July 29, 1945, under circumstances affording entitlement to full military benefits;

(2) the person has served on full-time duty for training purposes as a commissioned officer of the Reserve Corps of the Public Health Service at the times and under the circumstances required by (1) of this subsection and the person was disabled from a disease or injury incurred or aggravated in the line of that duty; or

(3) subject to the limitations in 15 AAC 118.510(d), the person was disabled from a disease or injury incurred or aggravated in the line of duty as a commissioned officer of the Reserve Corps of the Public Health Service under the circumstances described in 15 AAC 118.510(a)(3)(A) and (B).

(b) For the purposes of (a) of this section, the corporation will, in its discretion, seek the assistance of the Veterans' Administration in determining whether an individual's service before July 29, 1945, in the Public Health Service was under circumstances affording entitlement to full military benefits. (Eff. 1/26/83, Reg. 85)

Authority: Sec. 7, Ch. 35, SLA 1982  
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.530. DUTY IN NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OR IN COAST AND GEODETIC SURVEY. A person is a qualified veteran for purposes of the state guaranteed veterans' home mortgage program if

(1) the person has served on full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or of the Coast and Geodetic Survey

(A) after July 28, 1945; or

(B) before July 29, 1945, if

(ii) the person was on transfer to the United States Army, Navy, Marine Corps, Air Force, or Coast Guard;

(ii) during time of war or national emergency declared by the President, the person was assigned to duty on a project for the United States Army, Navy, Marine Corps, Air Force, or Coast Guard in an area determined by the Secretary of Defense to be of immediate military hazard; or

(iii) the person served continuously in the Philippine Islands from December 7, 1941, to July 28, 1945; and

(2) the person satisfies the requirements of 15 AAC 118.510(b) with respect to the duty described in (1) of this section. (Eff. 1/26/83, Reg. 85)

Authority: Sec. 7, Ch. 35, SLA 1982  
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.540. DUTY IN UNITED STATES MILITARY, AIR FORCE, COAST GUARD, OR NAVAL ACADEMY. A person is a qualified veteran for purposes of the state guaranteed veterans' home mortgage program if

(1) the person has served as a cadet at the United States Military, Air Force, or Coast Guard Academy or as a midshipman at the United States Naval Academy; and

(2) the person satisfies the requirements of 15 AAC 118.510(b) with respect to the duty described in (1) of this section. (Eff. 1/26/83, Reg. 85)

Authority: Sec. 7, Ch. 35, SLA 1982  
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.550. DUTY IN ALASKA NATIONAL GUARD OR AIR NATIONAL GUARD. A person is a qualified veteran for purposes of the state guaranteed veterans' home mortgage program if

(1) the person has served in the Alaska National Guard or Air National Guard under 32 U.S.C. 316, 502, 503, 504, or 505 (or a prior corresponding provision of law);

(2) the person was disabled from a disease or injury incurred or aggravated in the line of that duty; and

(3) the person satisfies the requirements of 15 AAC 118.510(b) with respect to the duty described in (1) of this section. (Eff. 1/26/83, Reg. 85)

Authority: Sec. 7, Ch. 35, SLA 1982  
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.560. TRAVEL TO OR FROM DUTY. For the purposes of 15 AAC 118.510 - 115 AAC 118.550, "duty" or "service" includes authorized travel to and from the duty or service. (Eff. 1/26/83, Reg. 85)

Authority: Sec. 7, Ch. 35, SLA 1982  
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.570. SPOUSES. A spouse of a qualified veteran is not a qualified veteran for purposes of the state guaranteed veterans' home mortgage program unless the spouse also qualifies under 15 AAC 118.510 - 15 AAC 118.550. However, if the residence for which a loan is sought is to be owned by a husband and wife as joint tenants and one spouse is a qualified veteran for purposes of the state guaranteed veterans' home mortgage program, the Corporation will consider both spouses as qualified veterans with regard to that loan. (Eff. 1/26/83, Reg. 85)

Authority: Sec. 7, Ch. 35, SLA 1982  
AS 18.56.050 AS 18.56.088 AS 18.56.090

15 AAC 118.580. EVIDENCE OF QUALIFICATIONS. (a) The corporation may accept, as evidence of the satisfactory fulfillment of the requirements of 15 AAC 118.510(b)(1), an official document of the appropriate federal agency indicating that the individual has received an honorable or general discharge. If the individual has received a discharge or release other than honorable or general, the Corporation may require additional evidence to demonstrate that the discharge or release was under conditions other than dishonorable.

(b) The Corporation may seek assistance from the United States Veterans' Administration as the corporation considers necessary or appropriate to determine whether an individual qualifies as a veteran under 15 ACC 118.500 - 15 ACC 118.580. The corporation may accept a certification from the Veterans' Administration as evidence of an individual's qualification as a veteran for the purposes of the state guaranteed veterans' home mortgage program. However, a certification or other determination of the Veterans' Administration is not binding upon the Corporation. (Eff. 1/26/83, Reg. 85)

15 AAC 118.900. DEFINITIONS. In 15 AAC 118.210 - 15 AAC 118.900 unless the context requires otherwise,

- (1) the definitions in AS 18.56.210 apply to words used in this chapter;
- (2) "act" means AS 18.56;
- (3) "adjusted income per family" means total family gross income, less adjustments for
  - (A) the number of family members in the household;
  - (B) child support payments for children; and

(C) the second wage earner's income as determined from time to time by the Corporation based on standard reporting data for the State of Alaska:

(4) "appraised value" means the market value of the property securing the mortgage as estimated by an appraiser acceptable to the Corporation;

(5) "common elements" mean those things which are maintained by, but not owned by, the owner's association of a condominium project. The common elements typically include, among other things, the land, roofs, floors, lobbies and community space and facilities;

(6) "condominium" means a form of ownership of real property characterized by title created by statute to a unit in a project together with an undivided real estate interest in the common elements which are a part of said project in accordance with state enabling law;

(7) "executive director" means the executive director of the Alaska Housing Finance Corporation;

(8) "FHA" means the Federal Housing Administration or its legal successors;

(9) "FNMA" means the Federal National Mortgage Association or its legal successors;

(10) "FHLMC" means the Federal Home Loan Mortgage Corporation or its legal successors;

(11) "home mortgage" or "residential mortgage" means a mortgage which is secured by real property upon which is located a dwelling unit designed for residential use and where the real estate is owned in fee simple or consists of a leasehold estate;

(12) "leasehold estate" means an estate having a remaining term running or renewable at the option of the lessee, for a period of not less than 10 years after the maturity of the mortgage loan, or to any earlier date at which the fee simple title will vest in the lessee, which leasehold estate is assignable or transferable if the same is subjected to the lien of the mortgage, and the term of the mortgage loan must not exceed the term of the set ground rent by more than 10 years and the leasehold estate must otherwise be acceptable to the Corporation;

(13) "mortgage" means the mortgage deed, deed of trust or other security instrument, the obligation secured thereby, the title evidence, and all other documents and other papers pertaining to the mortgage loans;

(14) "owner-occupant" means a borrower whose principal residence is the dwelling which is the subject of the mortgage loan;

(15) "permitted encumbrances" means liens, encumbrances, reservations and other imperfections of title as shall not materially impair the use or value of the premises or as to which appropriate steps have been taken to secure the interest of the Corporation; and

(16) "planned unit development (PUD)" means a real estate development which consists of separately owned lots with contiguous or noncontiguous area or facilities usually owned by an owner's association in which the owners of the lots have a stock or membership interest which cannot be severed from the ownership of an individual unit. Title to the real estate under the dwelling units is held by the individual lot owners and not by the owner's association. The owner's association usually has title to and administers the common areas, and levies monthly charges against lot owners for common area expenses. (Eff. 2/17/82, Reg. 82)

Authority: AS 18.56.088



PO Box 953  
Delta Junction, Alaska 99737

MAY 1984

May 7, 1984

The Honorable Jay Kerttula  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Kerttula:

Enclosed is a copy of a resolution expressing discontent with HB 458. We feel that both HB 458 and CSHB 458 would unnecessarily jeopardize one of Alaska's valuable resources--its agricultural lands. For this reason, this resolution has the unanimous concensus of the Alaska Association of Soil and Water Conservation Districts.

Sincerely,

Mike Carlson  
President

SUBJECT OF RESOLUTION HB 458

ORIGIN OF RESOLUTION 1984 Spring Meeting of the Alaska Association of  
Soil and Water Conservation Districts

DATE OF ORIGIN March 31, 1984

WHEREAS, the Alaska Association of Soil and Water Conservation Districts is on record as supporting the concept of the conveyance of agricultural rights only on agricultural land disposals; and

WHEREAS, there are substantial problems with the existing method of conveying agricultural rights to lands that unnecessarily tend to cloud the title to the lands, impede the agricultural development of these lands, and invite needless litigation; and,

WHEREAS, the proposed HB 458 seeking to remedy these problems appears to be jeopardize the agricultural potential of these lands by unacceptably inviting non-agricultural development;

THEREFORE BE IT RESOLVED, that the Alaska Association of Soil & Water Conservation Districts respectfully requests that the legislature take no further action on HB 458 during the 1984 legislative session in order that the Association and other interested bodies can present additional commentary, and develop suggested alternative approaches more consistent with the philosophy of the conveyance of agricultural rights only, and which are more acceptable to our cooperators.

ACTION TAKEN BY AASWCD STANDING COMMITTEE \_\_\_\_\_

ACTION TAKEN BY AASWCD RESOLUTIONS COMMITTEE \_\_\_\_\_

ACTION TAKEN BY AASWCD \_\_\_\_\_

MEMORANDUM

TO: Senate Committee on Resources  
Senator Bettye Fahrerkamp, Chair

FROM: Senator Jay Kerttula  
Senate President

SUBJECT: CS HB 458 (Finance) am

DATE: May 14, 1984

CS HB 458 (Finance) am passed the House 23-17. It is scheduled for a hearing in Senate Resources, Monday May 14, at 3:00 p.m. I believe, the sponsors' intention was to enable holders of state disposed agricultural land to receive a "better" title, become eligible for loans from traditional lending institutions, become eligible for AHFC to purchase farmstead mortgages, and to provide an "out" for persons who received land in inaccessible or inadequate areas.

While these intentions are commendable, the effect is benign and may in some cases be harmful to agricultural development in the state.

Sec. 1, P. 2 Lines 6-10 is intended to aid tract holders in Gustavus by relieving them of their development schedules and requirements. Although the provision is well intended (there is a real problem in Gustavus created through poor disposal by DNR) it threatens all large developments. For example, Nenana-Totchaket, may not have access provided when disposed. A slick attorney could argue that a market does not exist - allowing postponement or cancellation of development schedules and requirements. The specific intent of the subsection is good; the generic effect could be disastrous.

Sec. 2 provides a new description of the type of interest in ag land to be conveyed to the disposal winners. The intention is to get better title to the tract holders allowing them to borrow from banks for agricultural activities. House Resources heard testimony from banks and

title companies in favor of this provision. That research was not thorough. Jim Reaves, 1st Interstate Bank, Wasilla, will testify and send a letter to the committee saying that the statute change will not make ag ventures any more attractive to lenders.

The last principle issue is to enable AHFC to purchase mortgages for farmstead structures on ag disposed lands. AHFC should be at the hearing to testify on the problems with the existing situation and the minimum needs in order to purchase mortgages. P. 3 lines 10-15 does not accomplish this. It allows construction of farmsteads on areas not to exceed 20 acres. This would allow over help of some farms to be used for farmsteads. It would be allowed to be 10% not to exceed 20 acres.

This bill does not really accomplish what it sets out to do and it may even jeopardize some elements of the ag industry, such as the land base.

Several groups have opposed the bill: Alaska Association of Soil and Water Conservation Districts, Alaska Farmers and Stockgrowers Association and over 450 Alaskans who signed the petition supporting SJR 3, which retains the ag rights only and would put the measure before the voters with a constitutional amendment.

If you have any questions or need additional information, please advise.

JK/rjr/st

*prefiled 1/84*

1 IN THE HOUSE

BY BETTISWORTH

2

HOUSE BILL NO. 458

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 agricultural rights to land."

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

8 \* Section 1. AS 38.05.069 is repealed and reenacted to read:

9           Sec. 38.05.069. AGRICULTURAL LAND. (a) If the commissioner has  
10 conveyed or leased state land only for agricultural purposes, the  
11 ~~remainin~~ interests retained by the state shall be conveyed or leased  
12 by the commissioner on the request of the grantee or lessee or the  
13 assigns of the grantee or lessee. The commissioner shall convey or  
14 lease the remaining interests without compensation to the state except  
15 for administrative costs of the conveyance or lease.

16           (b) The commissioner may not transfer an interest under (a) of  
17 this section to a person who is in arrears on the purchase or lease of  
18 the land. Before conveying or leasing under (a) of this section, the  
19 commissioner may require the submission of a development plan with  
20 covenants specified by the commissioner regarding agricultura' use of  
21 the land.

22           (c) An Alaska resident may submit to the commissioner a request  
23 for the sale or lease for agricultural purposes of unoccupied state  
24 land situated adjacent to or in the approximate vicinity of land  
25 presently used for agricultural purposes and held by the resident. If  
26 the resident submits with the request a development plan that contains  
27 covenants specified by the commissioner regarding the agricultural use  
of the land and if the commissioner determines that it is in the best  
interests of the state to sell or lease the unoccupied state land for

*make  
compatible  
w/our  
lands  
bill*

1 agricultural purposes, the commissioner shall grant to a resident  
2 owning and using or leasing and using land for agricultural purposes a  
3 60-day first option after the date of the public auction to purchase  
4 or lease the unoccupied land for the amount of the high bid received  
5 at public auction. A parcel of agricultural land transferred under  
6 this subsection may not be less than 20 acres.

7 (d) Land that is acquired under (c) of this section shall be  
8 used consistently with covenants required in the development plan  
9 specified by the commissioner.

10 (e) If more than one person files a request under (c) of this  
11 section for the same land and each person owns or leases land situated  
12 adjacent to or in the approximate vicinity of the state land, the  
13 commissioner shall determine priority among the applicants for the  
14 state land under the following standards:

15 (1) to the person who demonstrates the greatest need for  
16 the unoccupied land in order to establish an economic unit;

17 (2) to the person who occupies land that is most readily  
18 accessible to the unoccupied land to be sold or leased if two or more  
19 persons have qualified under (1) of this subsection;

20 (3) to the veteran if two or more persons have qualified  
21 under (1) and (2) of this subsection;

22 (4) by lot if two or more persons have qualified under (1),  
23 (2) and (3) of this subsection.

24 (f) When not in conflict with this section, other provisions of  
25 AS 38.05.045 - 38.05.105 apply to disposals under this section.

26 (g) Nothing in (a) of this section affects the disposal of  
27 minerals under AS 38.05.135 - 38.05.183.

28 (h) For the purposes of this section,

29 (1) "agricultural purposes" includes farming, ranching,

1 grazing, and storage or control of agricultural crops or livestock;

2 (2) "approximate vicinity" includes an area in which the  
3 land does not have a common boundary to presently held land or in  
4 which the land is physically separated from presently held land by any  
5 type of barrier.

6 \* Sec. 2. The commissioner of natural resources shall advise the  
7 owners, lessees, and the assignees of owners or lessees of land limited to  
8 agricultural uses of the changes in the law made by this Act.

9 \* Sec. 3. AS 38.05.321(a) is repealed.

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

(b) When not in conflict with this section, other provisions of §§ 45 — 69 of this chapter apply to sales under this section. (§ 1 ch 26 SLA 1963; am § 39 ch 127 SLA 1974)

**Effect of amendment.** — The 1974 amendment substituted "§§ 45 — 69" for "§§ 45 — 67" in subsection (b). **Legislative committee report.** — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

**Sec. 38.05.069. Preference to persons for agricultural purposes.** (a) If the director determines that the highest and best use of unoccupied land is for agricultural purposes, and if he determines that it is in the best interests of the state to sell or lease the land, he shall grant to an Alaskan resident owning and using or leasing and using land for agricultural purposes a 60-day first option after the date of the auction to purchase or lease the unoccupied land situated adjacent to or in the approximate vicinity of his presently held land for the amount of the high bid received at public auction; provided the aggregate number of acres owned and acquired under the option shall not exceed 320 acres; and further provided that the land acquired under this section is used for agricultural purposes as required by law.

(b) If more than one person is eligible for a first option under (a) of this section, the director shall determine priority by granting precedence first to the person who demonstrates the greatest need for the unoccupied land in order to establish an economic unit and, secondly, to the eligible person who occupies land that is most readily accessible to unoccupied land to be sold or leased. In the event that two or more persons have approximately equal qualifications for priority under this section, the director shall grant priority to that person who is a veteran. If more than one person is approximately equally well qualified under this section, the director shall determine priority by lot.

(c) Under this section

(1) the director may convey or lease an interest in the land only for agricultural purposes, and all other interests in the land remain in the state; the sale or lease shall be at public auction;

(2) the remaining interests may subsequently be conveyed or leased by the director only upon the request of the grantee or lessee or his

(3) the conveyance or lease of the remaining interests shall be at public auction; the original grantee or lessee or his assigns have preference right to meet the high bid within 30 days after the day of the auction; if the right is exercised, the value of improvements owned by the holder of the preference right, included with the remaining interests sold, shall be deducted from the purchase price;

(4) by requesting the conveyance or lease of the remaining interests the original grantee or lessee or his assigns

(A) consents to the sale or lease, and

(B) if the preference right provided by (3) of this subsection is not exercised, consents to sell at fair market value the improvements related to the remaining interest, as appraised by the director;

(5) the remaining interests in the land may not be conveyed or leased for less than their appraised value together with improvements except for the deduction allowed by (3) of this subsection.

(d) When not in conflict with this section other provisions of §§ 105 — 105 of this chapter apply to disposals under this section.

(e) For the purposes of this section,

(1) "agricultural purposes" includes farming, ranching, grazing, and storage or control of agricultural crops or livestock;

(2) "approximate vicinity" includes an area in which the land does not have a common boundary to presently held land or in which the land is physically separated from presently held land by any type of barrier

(f) Nothing in (e) of this section affects the disposal of minerals under §§ 135 — 183 of this chapter. (§ 1 ch 97 SLA 1965; am §§ 1, 2 ch 71 SLA 1976; am §§ 4 — 6 ch 257 SLA 1976)

**Revisor's note (1976).** — AS 38.05.069 was amended by both § 1 ch. 71, SLA 1976, and § 4, ch. 257, SLA 1976. Since the two amendments appear to be inconsistent, and ch. 71 is superseded by ch. 257, only the later enactment has been given effect here.

**Cross reference.** — For provision restricting the sale, lease or other disposal of agricultural land in a manner inconsistent with this section, see AS 38.05.321.

**Effect of amendments.** — The first 1976 amendment, in the first sentence of subsection (a), substituted "after the date of the auction" for "from the date the land becomes available to the public or 90 days from the effective date of this section,

whichever is later" and inserted "for the amount of the high bid received at public auction" near the middle of the sentence substituted "320 acres" for "640 acres" near the end of that sentence, and substituted "as required by law" for "for at least one year following purchase" at the end of that sentence. The amendment also added the second sentence of subsection (c) and rewrote subsection (e).

The second 1976 amendment rewrote subsection (a), substituted "leased" for "lease" at the end of the first sentence of subsection (b), substituted "shall determine" for "may determine" in the third sentence of subsection (b), and added subsection (f).

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SENATE RESOURCES COMMITTEE  
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: *CSHB 479 (FIN)*  
BILL NAME: *Relating to the issuance of citations for the violation of certain offenses with state park; red. facilities.*  
SPONSOR(S): *Mattz* RELATED BILLS PENDING:  
DATE INTRODUCED: *3/27/94*  
REFERRALS: *Resources*  
*Finance*

INITIAL RESEARCH:

BILL SUMMARY COMPLETED: SUMMARY BY LEGAL DIVISION:  
SPONSOR CONTACTED FOR DEPT. OF LAW SUMMARY:  
BACKUP MATERIALS: 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:

*Gail Horetzki, AG - <sup>3429</sup>~~3400~~ - Lisa Nelson will call back*  
*Ron Sommerille - will testify*  
*Rep Hayes, sponsor - Neil Munson - Phelps - will testify*  
*DNR - Neil Johnson*  
*Public Safety*

# MEMORANDUM

HB 479  
State of Alaska

TO: Sandra Schubert  
Senate Resources

DATE: April 27, 1984

FILE NO:

TELEPHONE NO:

FROM: Carol Wilson *ow*  
Special Assistant  
Department of Natural Resources

SUBJECT: Citations for State Park  
Violations

Listed below are examples of how a bail schedule may be applied to enforce park regulations.

11 AAC 12.050 REFUSE AND WASTE. This regulation prohibits the disposal of refuse in a state park. The following example shows the application of this regulation with a bail schedule in place:

A group of fishermen from Anchorage are camping at a campground on the Kenai Peninsula. During the course of their stay they litter the campsite and are preparing to return to Anchorage when contacted by a park ranger. The ranger elects to issue a citation for a violation of 11 AAC 12.050. REFUSE AND WASTE. The individuals cited for the offense would be responsible for mailing to the appropriate authority and location the established bail amount for the violation. A fifty dollar fine would be reasonable for littering the campsite.

Without a bail schedule, the violators would be forced to return to court on the Kenai Peninsula for a hearing on their violation and forced to return a second time for trial should they plead "not guilty" to the offense. The ranger would also be required to appear in court.

11 AAC 12.100. VEHICLES. This regulation prohibits the use of vehicles in areas that are closed to vehicle use. An application of this regulation with the bail schedule in place might occur like this:

The Eagle River area of Chugach Park has received two inches of snow, the first snow of the winter. The area is closed to the use of vehicles. Two individuals are contacted by a ranger and cited for operating in a closed area and asked to leave. The individuals were cooperative and merely anxious to try their new machines. With the bail schedule they need only mail in their fine of from 25 to 30 dollars for the offense. Without the bail schedule, the violators would have to appear before a magistrate for a hearing on their offense, and could receive a maximum sentence of a year in jail or a thousand dollar fine. All DNR violations are Class A misdemeanors punishable at that level.

11 AAC 12.120. DISTURBANCE OF NATURAL MATERIAL. This regulation prohibits random cutting and digging and removing of material objects in a state park. Application:

A park ranger in Northcentral Alaska encounters a camper at Chena Lake and Recreation Area who has cut two small live trees to use as a shelter, with

visquine, for his dog. The ranger issues a citation to the Anchorage visitor. The violator may return to Anchorage and mail in his fine of from 50 to 75 dollars. Without a bail schedule allowing such a process, the violator must remain in Northcentral Alaska for his court appearance.

Should a park ranger encounter a situation where a violator cuts 50 live trees in order to build a large structure, then a mandatory court appearance is necessary. The damage to the natural resources in this case is of such magnitude that the courts are better able to deal with it.

11 AAC 12.210. LIMITATION AS TO NUMBERS. The number of vehicles and persons occupying a campsite may be limited. Application:

A group of teenagers have pulled four vehicles into a campsite that is designed for one vehicle. The cars are circled nose to nose on the grass so that all of the radio speakers are focused on the center of the circle. The park ranger, who has dealt with the individuals before and has broken up such activity without issuing a citation, elects to issue citations at this time. The violators, who have not seriously damaged park facilities or resources, can mail in the fine of from 50 to 75 dollars, which should get their attention but not cause additional expense to the State.

11 AAC 12.230. CAMPING. This regulation prohibits camping within a mile of a developed campsite and imposes a 15 day annual stay limit in a state park. Application:

Seasonally the State of Alaska is visited by thousands of people. Many come to stay living in our park facilities briefly until they establish themselves.

The area ranger has contacted the head of a household living in a campground on several occasions and has asked the family to move because they have overstayed their camping limit. Getting no results from the repeated request to move along, the ranger issues a citation to the head of the household. He informs the violator that unless they move, other citations will follow. The violator has the opportunity to send in a fine of from 25 to 50 dollars. Should the violator not comply, then the ranger may bring him to court through a citation which requires a court appearance.

not adopted

SENATE RESOURCES COMMITTEE  
LETTER OF INTENT  
FOR  
CSHB 479 (Finance)

It is the intent of the Resources Committee in passing out this bill that the Supreme Court shall specify certain park violations for which bail amounts can be set and for which citations could be issued which would not require court appearances. It is intended that this procedure be similar to that currently employed under the motor vehicle code for traffic citations. Through implementation of this procedure it is intended that savings in time to the court system, enforcement agencies and violators would be realized.

However, the Committee recognizes that only some park misdemeanors would be identified under this new statute as amenable to disposition without court appearance. Other misdemeanors would continue to require court appearances by the cited violators. In statements to the Committee the following misdemeanors were mentioned as examples of those violations for which the provisions of this bill might in all likelihood apply:

- 1) littering,
- 2) defacing public property,
- 3) building a campfire in a closed area,
- 4) camping over the designated time limit.

The following misdemeanors were mentioned as examples of those violations for which the provisions of this bill should probably not apply:

- 1) serious damage to park facilities, such as destroying a picnic shelter,
- 2) serious damage to park resources, such as cutting 50 live trees,
- 3) noncompliance with a park ranger's repeated request to cease an unlawful action.

It is the intention of the Committee that the Supreme Court, in consultation with the advisory committee established in CSHB 479 (Fin), would identify misdemeanors under this bill consistent with the above lists.

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Bettye Fahrenkamp, Chairman  
Senate Resources Committee

# 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

April 27, 1984  
3:08 pm

Beltz Room  
Room 211, Capitol

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### MEMBERS PRESENT

Senator Fahrenkamp, Chairman  
Senator Paul Fischer  
Senator Vic Fischer  
Senator Mulcahy  
Senator Sturgulewski

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### CALENDAR

CSSJR 38 (State Affairs), Relating to a nuclear free arctic.

HB 479, An Act relating to the issuance of citations for the violation of certain offenses within state park and recreational facilities.

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### CSJR 38 (State Affairs)

Senator Vic Fischer, sponsor of the resolution, explained that SJR 38 would call upon the Governor and the Alaska Congressional delegation to promote efforts to establish a nuclear free zone in the arctic. He spoke in support of a proposed Resources committee substitute that defines the "arctic" as the region above the arctic circle, and clarifies that safe and benign uses of nuclear technology would not be limited by this resolution. Fischer moved CSSJR 38 (Resources) from committee with individual recommendations. There was no objection.

### HB 479

Senator Mulcahy asked the Department to submit to the committee a list of citations and appropriate fines when available.

Senator Sturgulewski moved CSHB 479 (Finance) from committee with individual recommendations. There was no objection.

Korean Cattle Proposal

Bob Breeze, representing the HanA-Samick Corporation, gave an overview of the proposal to lease State of Alaska and University of Alaska lands on the Kenai Peninsula for a beef export project.

The meeting adjourned at 3:30 pm.

# Alaska State Legislature

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



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## Senate

### Committee on Resources

#### MINUTES

April 25, 1984  
3:12 pm

Beltz Room  
Room 211, Capitol

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#### MEMBERS PRESENT

Senator Fahrenkamp, Chairman  
Senator Ziegler, Vice Chairman  
Senator Paul Fischer  
Senator Vic Fischer  
Senator Mulcahy  
Senator Sturgulewski

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#### CALENDAR

HCSSB 269 (2d Finance), An Act relating to the sale of royalty oil by the State of Alaska to Chevron, U.S.A., Inc.

SB 288, An Act relating to the Board of Fisheries.

SB 289, An Act relating to discharge of firearms, and hunting and fishing in state park and recreation areas.

CSSB 407 (Resources), An Act relating to the prevention and abatement of water pollution.

HB 479, An Act relating to the issuance of citations for the violation of certain offenses within state park and recreational facilities.

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#### SB 289

Skip Harding, Deputy Director, Division of Parks and Recreation, Department of Natural Resources, reviewed the status of current regulations governing the discharge of firearms in state parks, specifically those for Denali State Park. Draft regulations that reflect a restructuring of all park regulations, including provisions for allowing lawful discharge of firearms in most areas, will be out for public review within three weeks. He testified that the Department did not support this bill.

Ron Sommerville, Alaska Outdoor Council, spoke in support of CSSB 289.

Senator Mulcahy moved to adopt the committee substitute for SB 289 and report it out of committee with individual recommendations. There was no objection.

HB 479

Skip Harding, Deputy Director, Division of Parks and Recreation, Department of Natural Resources, explained that HB 479 would save the Department of Law, the Department of Natural Resources, and the public a significant amount of time and money by allowing the Supreme Court to establish a bail schedule for park violations.

Lisa Nelson, Criminal Division, Department of Law, spoke in support of the bill.

Senator Mulcahy requested a list of those park violations that would have a bail schedule set.

HCS SB 269 (2d Finance)

Kay Brown, Director, Division of Oil and Gas, Department of Natural Resources, reviewed the changes in the royalty oil contracts that had been negotiated over the interim. The major change in the Chevron contract is a 2-year price reopener.

George Day, Public Affairs Officer, Chevron, U.S.A., Inc., spoke in support of the bill.

Senator Fahrenkamp moved that the committee recommend that the Senate concur with the House amendments to the bill. There was no objection.

SB 288

Senator Vic Fischer moved an amendment to SB 288 that would require that at least two members of the Board be participants in sport fisheries.

Senator Bettye Fahrenkamp moved to adopt CSSB 288 and report it from committee with individual recommendations. There was no objection.

CSSB 407

Randy Bayliss, Department of Environmental Conservation, spoke in support of the committee substitute, explaining that it would direct the Department to inventory significant streams, set standards for a "placer mining use" classification, and plan for resource use in basin-wide areas.

Senator Vic Fischer proposed amending Section 1, Subsection 1, to read "...adequately inventoried and properly classified..."

Phil Holdsworth, Alaska Miners Association, proposed two amendments and a letter of intent to CSSB 407. They would urge the commissioner to utilize all information and the expertise of other agencies in stream classification.

Senator Mulcahy moved to adopt CSSB 407 and the letter of intent for CSSB 407 and report it from committee with individual recommendations. There was no objection.

The meeting adjourned at 4:25 pm.

Bill was on the floor May 11, 1984.  
Judiciary asked for referral.

# HB 479

They adopted a Letter of Intent  
(that we drafted but didn't adopt). Judiciary  
added the last sentence (see attached).

HB 479 - AN ACT RELATING TO THE ISSUANCE OF CITATIONS FOR THE  
VIOLATION OF CERTAIN OFFENSES WITHIN STATE PARK AND  
RECREATIONAL FACILITIES: AND PROVIDING FOR AN EFFECTIVE DATE.

HB 479 AUTHORIZES THE STATE SUPREME COURT TO ESTABLISH A BAIL FEE  
SCHEDULE FOR PARK VIOLATIONS. AT PRESENT, ANY CITATION ISSUED FOR  
VIOLATION OF STATE PARK REGULATIONS MEANS A MANDATORY COURT APPEARANCE.  
THE OFFENDER WOULD BE GIVEN THE OPTION OF NOT  
CONTESTING THE CITATION AND MERELY SENDING IN THE FEE, OR CHALLENGING  
THE VIOLATION AND ASKING FOR A COURT APPEARANCE.  
UNDER PRESENT LAW, A BAIL SCHEDULE FOR VIOLATIONS IS ONLY ALLOWED FOR  
TRAFFIC REGULATIONS.

#### EXAMPLES OF VIOLATIONS ARE

SPEED LIMITS (exceeding basic speed)  
REFUSE & WASTE (littering)  
FIRES (in closed areas)  
EXPLOSIVES AND FIREARMS (in closed areas)  
PEDDLING

THE NATIONAL PARK SERVICE AND THE US FISH & WILDLIFE SERVICE HAVE BAIL  
SCHEDULES WITH FINES RANGING FROM \$50 to \$100. THEY SAY IT SAVES THE  
PUBLIC AND COURT SYSTEM A GREAT DEAL OF TIME AND MONEY.

Senate Judiciary Committee

Letter of Intent

CSHB 479 (FIN)

It is the intent of the Judiciary Committee in passing out this bill that the Supreme Court shall specify certain park violations for which bail amounts can be set and for which citations could be issued which would not require court appearances. It is intended that this procedure be similar to that currently employed under the motor vehicle code for traffic citations. Through implementation of this procedure it is intended that savings in time to the court system, enforcement agencies and violators would be realized.

However, the committee recognizes that only some park misdemeanors would be identified under this new statute as amenable to disposition without court appearance. Other misdemeanors would continue to require court appearances by the cited violators. In statements to the committee, the following misdemeanors were mentioned as examples of those violations for which the provisions of this bill might in all likelihood apply:

- 1) littering,
- 2) defacing public property,
- 3) building a campfire in a closed area,
- 4) camping over the designated time limit.

The following misdemeanors were mentioned as examples of those violations for which the provisions of this bill should probably not apply:

- 1) serious damage to park facilities, such as destroying a picnic shelter,
- 2) serious damage to park resources, such as cutting 50 live trees,
- 3) noncompliance with a park ranger's repeated request to cease an unlawful action.

HB 479

SENATE JOURNAL - PAGE 3120- 1 5/17/84

It is the intention of the committee that the Supreme Court, in consultation with the advisory committee, established in CSHB 479 (FIN), would identify misdemeanors under this bill consistent with the above lists. The Supreme Court, in conjunction with the advisory committee, is also encouraged to attempt to adopt a mechanism which would take into account the need for greater sanctions against egregious and repeat offenders of bailable offenses.

*added in  
Judiciary*

/s/ Bill Ray

Senator Bill Ray, Chairman  
Senate Judiciary Committee

CS FOR HOUSE BILL NO. 479 (FIN) was referred to the Rules Committee.

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: CSHB 479(FIN)  
 Title: "An act ... issuance of citations... within state parks."  
 Sponsor: Representative Hayes  
 Requestor: Senate Resources  
 Date of Request: 4/2/84

FISCAL DETAIL

Agency Affected: Public Safety  
 Program Category Affected: Administration of Justice  
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

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	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
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: Francis C. Allan G.C.A. Phone: 269-5691  
 Division: Alaska State Troopers ml Date: 03/28/84

Approved by Commissioner: Robert J. Sundberg Date: \_\_\_\_\_  
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

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

12/1/83

## Analysis of Fiscal Note for Bail Schedule legislation

Present System - Each person cited for a violation of a park regulation must go to court. If a Park Ranger cites an Anchorage person for a minor violation in Ninilchik, approximately ten days later the Ranger and the individual must attend the court session in Kenai. Both individuals spend at least one day in the Kenai court plus the cost of meals, lodging and transportation. These expenditures and inconveniences do not include the costs of a judge, court clerks, District Attorney and the correspondence necessary to document the case, which generally run \$300-400 for each arraignment.

Proposed System - A bail schedule would establish a predetermined fee for violation of regulations or statutes and the person would have the option of not contesting the citation and sending in the fee or challenging the violation and asking for a court appearance. It is anticipated that most people will elect not to challenge the citation and simply send in the fee. This would save money for the individual, the District Attorney's office, the courts and parks staff. The only cost we anticipate on this matter is for the printing of citation forms at an annual cost of \$1000.00 to \$2000.00. This is approximately what is spent on the existing citation program, so no real new costs should occur. Because of the savings in costs for the state, the individual, and more efficient management of our Park Rangers, the Bail Schedule will be a cost-effective program.

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 11/27/83

I. REQUEST

Bill/Resolution No.: \_\_\_\_\_  
Title: Bail Schedule  
Sponsor: \_\_\_\_\_  
Requestor: \_\_\_\_\_  
Date of Request: \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected: Natural Resources  
Program Category Affected: Div. of Parks  
BRU, Program of Subprogram(s) Affected: Park Management/Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Mike Lee  
Division: Parks

Phone: (907) 264-2123  
Date: 11/23/83

Approved by Commissioner: \_\_\_\_\_  
Department: Natural Resources

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

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

9/14/83

## Fact Sheet on Bail Legislation

The State Division of Parks is proposing legislation which would allow the Supreme Court to set a bail forfeiture schedule for violations of State Statutes and Alaska Administrative Codes which apply to State Parks.

1. Why is a bail schedule for violation of park regulations necessary?

At the present time any citation issued for violation of State Park Regulations means a mandatory court appearance -- usually in the court nearest where the violation occurs. This means that a person -- perhaps an Anchorage resident -- who receives a citation for exploding fireworks in a Kenai Peninsula park, must return to Kenai to make the mandatory appearance.

2. What does the court system think about the problem?

The courts are very crowded. Presently they must schedule time to see each individual regardless of how he/she intends to plead. On small violations this is an obvious waste of time to all parties.

3. Why is this legislation needed?

Under present law a bail schedule for violations is only allowed for traffic regulations. This new legislation would allow and instruct the Supreme Court to set a bail schedule for violation of park regulations.

4. Would a bail schedule eliminate court appearances in all cases?

No, the park ranger/peace officer issuing the citation could still summon an individual to a mandatory court appearance if the violation were of unusual significance. Any individual could still plead not guilty and request a court appearance.

5. Is this new for Alaska?

No, the most notable example is the bail schedule for traffic violations. Traffic court would be literally overwhelmed without this help. The Fish & Wildlife Protection Division is also requesting legislation for a bail schedule on fish and game violations.

6. Does the Federal Government have a bail schedule?

Yes, the National Park Service has a bail schedule which they revised in 1982 and will revise again in the fall of 1983. The attached schedule includes such items as: camping over the time limit - \$100.00; pets not on leash - \$50.00; fireworks - \$50.00, etc. The U.S. Fish & Wildlife Service has a very similar schedule and they say it saves the public a great deal of money in travel costs (to and from court) alone.

7. Would a bail schedule be favored by the Department of Natural Resources/Division of Parks?

Yes, park enforcement people need to retain discretionary authority to use the bail schedule or cite into court, but they, too, would be able to spend a great deal more time in the field if they were not tied up in court appearances. Additionally, fewer court appearances would result, thus helping to alleviate the glut of work facing the Alaska Court System and unnecessary demands upon state park rangers.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF PARKS

BILL SHEFFIELD, GOVERNOR

619 WAREHOUSE AVE., SUITE 210  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-2653

November 8, 1983

The Honorable Joe L. Hayes, Speaker  
Alaska House of Representatives  
P. O. Box 1821  
Anchorage, Alaska 99510

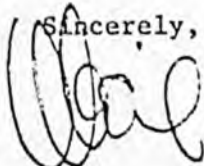
Dear Representative Hayes: *Joe*

I appreciated the opportunity to meet with you recently. I'm specifically excited over the possibility of your introducing legislation to authorize the State Supreme Court to establish a bail fee schedule for park violations.

Our rangers occasionally apprehend persons vandalizing recreation facilities, operating vehicles in closed areas, building fires in closed areas under dangerous circumstances--to name a few violations. Without a bail schedule, both the violator and usually the ranger must appear before a judge or magistrate. This simply uses up valuable staff time, inconveniences the minor violator, clogs our courts.

I've enclosed a question and answer sheet and draft legislation. I would sincerely appreciate your efforts to see this draft bill become law. If there is anything I can do for you, let me know.

Sincerely,



Neil C. Johannsen  
Director

Attachments

Revisor's notes. — Formerly AS 41.20.440. Renumbered in 1983.

Sec. 41.21.918. Duties of coordinator. The director of the division of parks shall designate a member of the division staff as coordinator of the Alaska youth hostel program. The coordinator shall

(1) recommend to the division of parks locations for the construction of youth hostels;

(2) advise the division on use policy for the Alaska youth hostel system;

(3) render other assistance considered necessary and appropriate by the division;

(4) establish criteria for the grant programs authorized under AS 41.21.912(2) and have approval authority for grants made under AS 41.21.912(2). (§ 1 ch 39 SLA 1977)

Revisor's notes. — Formerly AS 41.20.450. Renumbered in 1983.

Article 9. General Provisions.

Section

950. Penalties

955. Enforcement authority

990. Definitions

Sec. 41.21.950. Penalties. A person who violates a provision of this chapter or a regulation adopted under this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than six months, or by both. (§ 1 ch 161 SLA 1970)

Revisor's notes. — Formerly AS 41.20.043. Renumbered in 1983. Enacted as 41.20.200 and renumbered in 1970.

Sec. 41.21.955. Enforcement authority. (a) For offenses committed within parks and recreational facilities subject to the department's supervision, the following persons are peace officers of the state and they shall enforce the provisions of this chapter and the regulations adopted under this chapter:

(1) an employee of the department authorized by the commissioner;

(2) a police officer in the state;

(3) any other person authorized by the commissioner.

(b) Each person designated in (a) of this section may, when enforcing the provisions of this chapter or a regulation adopted under this chapter,

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(1) an employee of the department authorized by the commissioner;

(2) a police officer in the state;

(3) any other person authorized by the commissioner.

(b) Each person designated in (a) of this section may, when enforcing the provisions of this chapter or a regulation adopted under this chapter,

TO: Carol Wilson

Bail Schedule Information as requested.

The below list of citations are from the Department of Natural Resources  
11 AAC 12 regulations that will be affected by bail schedule.

Citation

- 11 AAC 12.020 Speed Limits in Parks
- 11 AAC 12.030 Waters closed to aircraft or boats
- 11 AAC 12.050 Refuse and Waste
- 11 AAC 12.100 Vehicles
- 11 AAC 12.110 Motor Vehicle Operation
- 11 AAC 12.120 Horses
- 11 AAC 12.130 Fats
- 11 AAC 12.140 Construction of structure
- 11 AAC 12.150 Construction of signs
- 11 AAC 12.160 Assembly
- 11 AAC 12.170 Disturbance of natural materials
- 11 AAC 12.180 Fires
- 11 AAC 12.190 Explosives and firearms
- 11 AAC 12.200 Underwater diving safety
- 11 AAC 12.210 Limitation as to numbers
- 11 AAC 12.230 Camping
- 11 AAC 12.300 Paddling

The Division of Parks and Outdoor Recreation will request what the bail range  
for ticket issued against the above listed violations will be in the \$50 to \$100  
area.

attachment

Camping over designated time limit  
defacing or removing natural objects  
without a permit

violation

PART 2.  
PARKS, RECREATION AND PUBLIC USE

Chapter

12. Public Use (11 AAC 12.010—  
11 AAC 12.340)
14. Contracts (11 AAC 14.010—  
11 AAC 14.300)
15. Trails and Footpaths Grant Program  
(11 AAC 15.010—11 AAC 15.100)
16. Historic, Prehistoric and Archaeo-  
logical Resources (11 AAC 16.010—  
11 AAC 16.900)
17. Outdoor Recreational, Open Space, and  
Historic Properties Development Fund  
Grant Program (11 AAC 17.010—  
11 AAC 17.900)
18. Incompatible Uses (11 AAC 18.010—  
11 AAC 18.200)
20. State Parks (11 AAC 20.010—  
11 AAC 20.400)

CHAPTER 12.  
PUBLIC USE

Article

1. State Park Land and Water Restrictions  
(11 AAC 12.010—11 AAC 12.050)
2. Trails, Roads and Campsites  
(11 AAC 12.100—11 AAC 12.230)
3. General Provisions (11 AAC 12.300—  
11 AAC 12.340)

ARTICLE 1.  
STATE PARK LAND AND  
WATER RESTRICTIONS

Section

10. Limitation on use of park lands and  
waters
20. Speed limits in parks
30. Waters closed to aircraft or boats
40. Special events
50. Refuse and waste

11 AAC 12.010. LIMITATION ON USE OF  
PARK LANDS AND WATERS. Land or water  
in a state park may be designated by the director  
for exclusive use by hikers, skiers, cyclists  
swimmers, snowmobilers, and other  
recreationalists and may be closed to all uses in

order to protect the public health and welfare or the environment. Notice shall be posted on the land or water in such a manner as to identify prohibited uses. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

**11 AAC 12.020. SPEED LIMITS IN PARKS.**

Maximum speed limits may be posted and standard traffic control signs erected to regulate and control the operation or parking of a vehicle or boat on state park land or water. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020

**11 AAC 12.030. WATERS CLOSED TO AIRCRAFT OR BOATS.** (a) When it is necessary in the interest of public safety or to further park management objectives, the director may

(1) impose aircraft and boat restrictions on state park waters; or

(2) close park waters to the use of aircraft or boats.

(b) Before imposing restrictions or closure under (a) of this section, the director shall publish, in a newspaper of general circulation in the area of the state park in which the water to be closed or restricted is located, a notice of his intentions describing the state park waters involved and the proposed limitations.

(c) After imposing the restrictions or closure the director shall post and publish a notice setting forth the restrictions or closure. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

**11 AAC 12.040. SPECIAL EVENTS.** The use of a state park for an organized athletic event or competitive recreational event characterized as a spectator attraction is unlawful without a permit issued by the director. The permit shall be issued when the director determines that the activity will not irreparably damage the resources and is compatible with the primary purpose of the area. (Eff. 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

**11 AAC 12.050. REFUSE AND WASTE.** (a) Waste or refuse shall not be brought into a state park for the purpose of disposal.

(b) Waste or refuse shall not be placed in water within a state park or on land capable of allowing discharge into the waters of the state.

(c) Waste or refuse created in the course of activities in a state park shall be removed from the park by those responsible for its creation unless deposited in a waste receptacle placed for that purpose by the division. (Eff. 1/13/73, Reg. 44)

Authority: AS 11.20.590  
AS 41.20.020

**ARTICLE 2.  
TRAILS, ROADS AND CAMPSITES**

**Section**

- 100. Vehicles
- 110. Motor vehicle operations
- 120. Horses
- 130. Pets
- 140. Construction of structures
- 150. Construction of signs
- 160. Assembly
- 170. Disturbance of natural materials
- 180. Fires
- 190. Explosives and firearms
- 200. Underwater diving safety
- 210. Limitation as to numbers
- 220. Unattended camps
- 230. Camping

**11 AAC 12.100. VEHICLES.** It is unlawful to place, drive or operate a vehicle on state park land or water except in an area or on a roadway, parking area, or trail of the state park designated by the director for the use of vehicles, or on an established state highway. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

**11 AAC 12.110. MOTOR VEHICLE OPERATIONS.**

Snowmachine and other motor vehicle operators shall be 16 years of age or older. Adequate proof of age shall be presented at the request of a law enforcement officer. (Eff. 1/13/73, Reg. 44)

Authority: AS 41.20.020

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

Authority: AS 41.20.020  
AS 41.20.040

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

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

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

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

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

Authority: AS 41.20.020  
AS 41.20.040

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

Authority: AS 41.20.020  
AS 41.20.040

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

(b) The permit may provide

(1) restrictions as to facilities or area;

people using the facility or area and the environment. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

**11 AAC 12.170. DISTURBANCE OF NATURAL MATERIAL.** (a) Disturbing, damaging, defacing, or removing natural objects including plants, minerals, or fossils is prohibited except that a permit may be obtained from the director to remove certain materials for collection, preservation for study and interpretation purposes.

(b) A person may gather berries, fruits, mushrooms and similar edibles for personal consumption, but not for sale or distribution. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

**11 AAC 12.180. FIRES.** On state park land all fires shall be in a portable or other camp stove or confined to a structure or facility provided in the park for this purpose, unless otherwise authorized by the director or by regulation. State fire permit regulations apply to park lands. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

**11 AAC 12.190. EXPLOSIVES AND FIREARMS.** Discharge of explosives, firearms, mechanical or air-operated guns, gas-operated explosive devices, fireworks, or similar devices in a unit of the state park system is prohibited, except as otherwise provided in 11 AAC 20. The director will, in his discretion, authorize the use of these items for lawful hunting, construction or maintenance purposes, or for the general public safety or welfare. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44; am 7/19/73, Reg. 47; am 10/6/83, Reg. 87)

Authority: AS 41.20.020 AS 41.20.261  
AS 41.20.040 AS 41.20.280  
AS 41.20.230

**11 AAC 12.200. UNDERWATER DIVING SAFETY.** A person engaged in underwater diving, using scuba or other special gear shall place a flagged buoy in the area. The flag shall be red with one white diagonal stripe and large enough to be identifiable at 100 yards. The diver shall rise to the surface within 50 feet of the

flagged buoy. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020

**11 AAC 12.210. LIMITATION AS TO NUMBERS.** The number of vehicles and persons occupying a campsite unit may be limited by a local park officer for the preservation of the site and safety of the campers. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020

**11 AAC 12.220. UNATTENDED CAMPS.** A campsite shall be occupied on the first night after camping equipment has been set up. Equipment left unattended for a period of 72 hours at a campsite may be impounded by a park officer unless advance arrangements have been made with a park officer. (Eff. 1/13/73, Reg. 44)

Authority: AS 41.20.020

**11 AAC 12.230. CAMPING.** (a) Within a developed campground camping is permitted only in a developed campsite. Camping is prohibited within one mile of a developed campground, except in an area designated by the director.

(b) It is unlawful for a person to camp in a state park for more than 15 days in a calendar year except when authorized by a park officer. If the director determines that a campsite in a state park is in danger of being damaged or subject to unusual demand he may limit camping at that site to a period of less than 15 days. Notification of a time limit of less than 15 days shall be posted at the campsite or in the campground. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

### ARTICLE 3. GENERAL PROVISIONS.

Section	
300.	Peddling
310.	Fees
320.	(Repealed)
330.	Transfer to local agencies
340.	Definitions

**11 AAC 12.300. PEDDLING.** Engaging in the business of touching, selling, or peddling any liquids or edibles for human consumption, or distributing circulars, or hawking, peddling, or vending any goods, wares, services or merchandise in a state park is prohibited except as provided in 11 AAC 14.200. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

**11 AAC 12.310. FEES.** (a) Fees for use of a state park facility shall be established by the director and posted at the facility. Use of the facility without payment of the prescribed fee is prohibited. Fees shall be subject to annual review.

(b) An annual entrance fee of \$10 for each motor vehicle using state park lands or waters is established effective January 1, 1974. A numbered decal showing the year for which it is valid will be issued upon payment of the fee and shall be attached and displayed as prescribed by the instructions accompanying the decal. The display of a currently valid decal is required on motor vehicles placed, driven or operated in the state park system. Nothing in this section requires the payment of the park entrance fee for motor vehicles driven or transported through the state park system on the state highway system nor does it apply to vehicles which remain loaded on a transporter and are not operated within the state park system.

For the purposes of this section "motor vehicles" excludes the following:

- (1) watercraft;
- (2) aircraft;
- (3) snowmachines; and,
- (4) unlicensed off-road vehicles, including motorcycles. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44; am 7/19/73, Reg. 47)

Authority: AS 11.55.050  
AS 41.20.020  
AS 41.20.040

**11 AAC 12.320. FISHING, HUNTING AND TRAPPING.** Repealed. (Eff. 7/19/73, Reg. 47)

**11 AAC 12.330. TRANSFER TO LOCAL AGENCIES.** Title to a state park facility located in a political subdivision may be transferred to the subdivision, provided that the transfer document contains a suitable reservation to guarantee continued operation of the facility in accordance with these regulations for a period of time deemed adequate by the director. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

**11 AAC 12.340. DEFINITIONS.** In this chapter

(1) "assembly" means the gathering or meeting of a group of people for a common purpose;

(2) "boat" means any device in which a person or property may be carried on or beneath the surface of the water;

(3) "campground" means an area developed and maintained by the division which contains one or more campsites as defined in (4) of this section;

(4) "campsite" means any space designated for individual or family camping and normally containing a table and fireplace and parking space;

(5) "director" means the director of the division of parks, Department of Natural Resources or his authorized agent;

(6) "division" means the division of parks, Department of Natural Resources;

(7) "park officer" means an employee of the state or a political subdivision whose duties include responsibility for management, protection, or maintenance of state park lands or facilities;

(8) "road," "trail" means each road or trail established and designated by the director;

(9) "snowmachine" means a self-propelled vehicle designed to travel over ice or snow and steered by skis, wheels, or skids and includes all terrain vehicles;

(10) "state park land" means the state land managed by the division and designated for use as public recreation land and includes waysides, recreation areas, parks and historic sites;

(11) "state park water" means the water located within the state park land, managed by the division and designated for use as public recreation water;

(12) "vehicle" means a manual or self-propelled device by which a person or property is or may be transported or drawn and includes bicycles, air-cushioned vehicles, snowmachines, and other tracked or wheeled devices. (Bff. 8/1/6E, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

**CHAPTER 18.  
INCOMPATIBLE USES**

**Article**

- 1. Park Uses (11 AAC 18.010—11 AAC 18.020)
- 2. General Provisions (11 AAC 18.200)

**ARTICLE 1. PARK USES**

**Section**

- 10. State park incompatible uses
- 20. Access routes

**11 AAC 18.010, STATE PARK INCOMPATIBLE USES.** On public lands located within the boundaries of a state park, surface or subsurface mineral (including gravel and rock) exploration or extraction, removal or cutting of timber or other plant growth, grazing or pasturing of domestic animals, or other activities which do not increase park values or which do not add to the value of a recreational experience are incompatible uses and are prohibited without a permit from the director. The director shall issue a permit if he determines that the

(1) ecology of state park lands will not be irreparably damaged or imperiled;

(2) state park lands are protected from pollution;

(3) public use values of the state park are maintained and protected; and

(4) public safety, health and welfare will not be damaged or imperiled. (Eff. 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

**11 AAC 18.020, ACCESS ROUTES.** (a) An access route to gain access across state park land or water to a privately-owned parcel of property wholly or partially within a state park may be obtained by applying for an access permit on an application form provided by the director. The permit will be issued when the director determines that there is no reasonable land or water route, by road or otherwise, to the applicant's property across land or water located outside the state park, unless the director determines that park values would be irreparably

damaged by any construction activity and subsequent use.

(b) Any part of an access route permitted to be constructed under (a) of this section which is in state park land or water

(1) is to be constructed and maintained by the permittee in accordance with the specifications provided by the director;

(2) is the property of the state of Alaska; and

(3) may be used by the general public when permitted by the director. (Eff. 1/13/73, Reg. 44)

Authority: AS 41.20.020  
AS 41.20.040

**ARTICLE 2. GENERAL PROVISIONS**

**Section**

- 200. Definitions

**11 AAC 18.200 DEFINITIONS.** In this chapter

(1) "pollution" means the contamination or altering of waters, land, or subsurface land of the state in a manner which creates a nuisance or makes waters, land or subsurface land unclean or noxious or impure, or unfit so that they are actually or potentially harmful or detrimental or injurious to public health, safety or welfare to domestic, commercial, industrial or recreation use, or to livestock, wild animals, birds, fish or other aquatic life;

(2) "state park" means state land and water managed by the division and designated for use as public recreation land and includes wayides, recreation areas, parks and historic sites;

(3) "domestic animal" includes any animal which is controlled or herded by a person. (Eff. 1/13/73, Reg. 44)

Authority: AS 41.20.020

**CHAPTER 20.  
STATE PARKS**

**Article**

1. Chugach State Park (11 AAC 20.010)
2. Kachemak Bay State Park (11 AAC 20.100)
3. Kachemak Bay State Wilderness Park (11 AAC 20.200)
4. Wood-Tikchik State Park (11 AAC 20.300-11 AAC 20.360)
5. Denali State Park (11 AAC 20.400)

**ARTICLE 1.  
CHUGACH STATE PARK**

**Section**

**10. Use of firearms**

11 AAC 20.010. USE OF FIREARMS. The use and discharge of firearms for the purpose of lawful hunting will be permitted on all state land in the Chugach State Park except within the following drainages:

(1) Eklutna River excluding Thunderbird Creek;

(2) Meadow Creek;

(3) Eagle River below the gorge and within ¼ mile either side of the Iditarod Trail, excluding the South Fork;

(4) South and Middle Fork Campbell Creek;

(5) Rabbit Creek; and

(6) McHugh Creek.

(b) The use and discharge of firearms in the following drainages is limited to shotguns with shot shells for the purpose of lawful hunting:

(1) Rainbow Creek; and

(2) Indian Valley south of the north line of Sections 31, 32, and 33, T11N, R1W, S.M. (Eff. 1/16/74, Reg. 48; am 8/11/80, Reg. 75).

Authority: AS 11.55.050  
AS 41.20.020  
AS 41.20.230

**ARTICLE 2.  
KACHEMAK BAY STATE PARK**

**Section**

**100. Use of firearms**

11 AAC 20.100. USE OF FIREARMS. The use and discharge of firearms for the purpose of lawful hunting will be permitted on all state lands in the Kachemak Bay State Park. (Eff. 1/16/74, Reg. 48)

Authority: AS 11.55.050  
AS 41.20.020  
AS 41.20.280

**ARTICLE 3.  
KACHEMAK BAY STATE  
WILDERNESS PARK**

**Section**

**200. Use of firearms**

11 AAC 20.200. USE OF FIREARMS. The use and discharge of firearms for the purpose of lawful hunting will be permitted on all state lands in the Kachemak Bay State Wilderness Park. (Eff. 1/16/74, Reg. 48)

Authority: AS 11.55.050  
AS 41.20.020  
AS 41.20.260

**ARTICLE 4.  
WOOD-TIKCHIK STATE PARK**

**Section**

**300. Wood-Tikchik State Park management council**

**310. Qualification of members**

**320. Designated alternates**

**330. Officers**

**340. Quorum**

**350. Meetings**

**360. Management plan**

11 AAC 20.300. WOOD-TIKCHIK STATE PARK MANAGEMENT COUNCIL. (a) The term of membership on the Wood-Tikchik State Park management council is three years.

(b) The initial terms for the members appointed from the following nominations are as follows:

(1) the village council of Kolliganek - one year;

(2) the village council of New Stuyahok - two years;

(3) the village council of Aleknagik - three years;

(4) the city council of Dillingham - one year;

(5) the Bristol Bay Native Association, Inc. - two years.

(c) The initial terms for the members appointed from the following nominations are as follows:

(1) the commissioner of natural resources - three years; and

(2) the commissioner of fish and game - one year. (Eff. 3/30/79, Reg. 69)

Authority: AS 41.20.020  
AS 41.20.480

**11 AAC 20.310. QUALIFICATION OF MEMBERS.** Each nominee submitted to the governor for selection under sec. 300(b) of this chapter must be a resident of the area represented by the nominating body. (Eff. 3/30/79, Reg. 69)

Authority: AS 41.20.020  
AS 41.20.480

**11 AAC 20.320. DESIGNATED ALTERNATES.** Each member of the management council may designate an alternate to serve on the council in the member's absence. Designated alternates must possess the same qualifications as members selected by the governor. (Eff. 3/30/79, Reg. 69)

Authority: AS 41.20.020  
AS 41.20.480

**11 AAC 20.330. OFFICERS.** The council shall elect a chairman and a vice-chairman by majority vote. The term of the officers will be one calendar year. The chairman is the presiding officer and shall call meetings of the council. The vice-chairman shall assist the chairman and shall assume his duties when the chairman is

absent. The commissioner of natural resources, or his designee, is ex officio secretary for the council. (Eff. 3/30/79, Reg. 69)

Authority: AS 41.20.020  
AS 41.20.480

**11 AAC 20.340. QUORUM.** A majority of the members serving on the council constitutes a quorum for the transaction of business. Every act done or decision made by a majority of the members present at a meeting of the council at which a quorum is present is the act of the council. (Eff. 3/30/79, Reg. 69)

Authority: AS 41.20.020  
AS 41.20.480

**11 AAC 20.350. MEETINGS.** (a) The council shall meet at least once each year and may meet at other times if considered necessary. The council shall select the time and place for the transaction of business.

(b) The council may meet at any time upon the call of the chairman, upon the request of a majority of the council members, or upon the request of the commissioner of natural resources, or the commissioner of fish and game, or the designee of either. (Eff. 3/30/79, Reg. 69)

Authority: AS 41.20.020  
AS 41.20.480

**11 AAC 20.360. MANAGEMENT PLAN.** The council, with the advice and assistance of the department of natural resources, shall draft a management plan to be presented at public meetings within two years from the initial appointments. After receiving public testimony on the draft management plan, a final draft must be submitted to the commissioner of natural resources for approval and implementation, and to the commissioner of fish and game for approval and implementation of elements governing fish and wildlife management. The management council may recommend changes to the management plan and implementation procedures at any time after its approval and implementation. (Eff. 3/30/79, Reg. 69)

Authority: AS 41.20.020  
AS 41.20.480

ARTICLE 5,  
DENALI STATE PARK

Section

400. Use of firearms.

11 AAC 20.400. USE OF FIREARMS. The use and discharge of firearms for the purpose of lawful hunting is allowed west of the west bank of the Chulitna River. (Eff. 10/6/83, Reg. 87)

Authority: AS 41.20.02



# Alaska State Legislature

HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES

JOHN RINGSTAD, CO-CHAIRMAN  
RICHARD SHULTZ, CO-CHAIRMAN  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3715

To: Committee Members  
From: Committee Staff  
Date: February 10, 1984  
Re: CS HB 479

Committee staff, after reviewing HB 479, has discovered several statutory problems with the bill, thus felt it necessary to draft a committee substitute that has the very same intent, but with much cleaner language.

✓ Section 1 of CS HB 479 writes language into the criminal code (AS 12.25) which allows an ~~exception~~<sup>ex</sup>ception for people who have received a citation to not have to appear in court. This gives clear ~~ex~~ception, where the original bill did not do this.

✓ Section 2 clearly gives the park ranger enforcement authority to issue citations. This was not present in the original bill.

Section 3, -subsection (a) <sup>gives</sup> allows a peace officer arresting and citing authority in a state park or recreational facility.

-subsection (b) requires the State Supreme Court to establish a bail schedule for those offenses committed inside a state park. This is the same as in the original bill, but new language allows for the DNR to aid in establishing the bail schedule (citation amount).

? *others* -subsection (c) is the same as in the original bill, but clarify<sup>o</sup> the problem of people who forget to sign the citation. In the original bill, if a person forgot to sign the citation, but sent in the penalty money, the court could not deposit the money.

-subsection (d) is the same as in the original bill. This says that when you pay your bail, you are then formally convicted of the misdemeanor which you committed.

-subsection (e) is the same, less the last sentence, which is addressed in new subsection (f). Subsection (e) says that if a person fails to pay the bail amount, the citation then is considered a summons.

*after court appearance & guilty verdict* -subsection (f) is new language that just makes sure that the penalty imposed will not exceed the bail <sup>amount</sup> amount. With the original bill language, there was a question as to whether a judge could impose a higher penalty if the person lost his/her case.

Regulation  
OFFENSE

## MINIMUM FINE SCHEDULE

## OFFENSE

## FINE

## A. Movable Optional/Mail-In

14AAC10.030(D2)	Expired Parking Meter	\$ 2
11AAC12.020	Speed 10-19MPH Over Posted Limit-State Parks	2MI
11AAC12.020	Speed 3-9MPH Over Posted Limit-State Parks	2MI
13AAC02.275(B)	Speed 10-19MPH Over Posted Limit	2MI
13AAC02.275(B)	Speed 3-9MPH Over Posted Limit	2MI
13AAC02.280(A-D)	Altered Limits 3-9MPH Over Posted Limit	2MI
13AAC02.280(A-D)	Altered Limits 10-19MPH Over Posted Limit	2MI
13AAC02.325(B, C, E)	Spd Lim Tow/Min Lght/Sch us Yel Lgh-10-19MPH	2MI
13AAC02.325(B, C, E)	Spd Lim Tow/Min Lght/Sch Bus Yel Lgh- 3- 9MPH	2MI
13AAC02.325(F)	Overweight/Size Speed Viol 10-19MPH Over	2MI
13AAC02.325(F)	Overweight/Size Speed Viol 3-9MPH Over	2MI
14AAC10.030(A2, C3)	Speed 10-19MPH Over Prescribed Limits	2MI
14AAC10.030(A2, C3)	Speed 3-9MPH Over Prescribed Limits	2MI
17AAC25.080(A)	Permit Viol-Speed 10-19MPH Over Authorized Spd	2MI
17AAC25.080(A)	Permit Viol-Speed 3-9MPH Over Authorized Speed	2MI
14AAC10.030(D1, D3)	Illegal Parking/Abandoning Vehicle	5
AS05.30.010	Operating An Unregistered Snowmachine	10
AS05.30.040(B)	Failure To Display Numbered Registration Decal	10
AS05.30.100	Snowmachine Oper To Report Accidents	10
AS19.25.030	Damages To Obstructions, Signs & Construction	10
AS28.10.031(B)	Certificate Of Registration Carried In Veh	10
AS28.10.451	Violate Registration/Title Requirements	10
AS28.10.461	Plates/Decals/Permits Must Be Prop Displayed	10
AS28.10.461	Certificate Of Registration Carried In Veh	10
AS28.10.471	Oper Veh With Suspended/Revoked/Expired Reg	10
AS28.10.481	Improper Use Of Evidence of Registration/ Title	10
AS28.15.281(B)	Permitting Unauthorized Person To Drive	10
AS28.35.140	Obstructing Or Blocking Traffic	10
13AAC02.015	Pedestrian Control Signal	10

## Uniform Bail Schedule Cont'd

STATE	OFFENSE	BAIL
	B. Mandatory Court Appearance	
13AOC4.325(A)	Bicycle Taillight Requirements	**
13AOC4.325(A,B)	Motorcycle Taillight Requirements	**
13AOC4.330(A,B)	Motorcycle Stop/Turn Light Requirements	**
13AOC4.335(A)	Motorcycle Reflector Requirements	**
13AOC4.340(A)	Motorcycle/Motor-Driven Cycle Brake Req	**
13AOC4.345(A)	Motorcycle Passenger Carrying Requirements	**
13AOC4.345(B)	Motorcycle Handlebar Requirements	**
13AOC4.355(A,B)	Other Motorcycle Equipment Required	**
13AOC6.030	Sch Bus Driver Permit/OL Req In Pos/Displayed	**
AS11.20.590(B)	Littering From A Motor Vehicle	***
AS28.35.245	Motorcycle Helmet Required Minor Drivers	***
11AAC12.020	Speed 20MPH Or More Over Limit-State Parks	***
13AOC2.140(A,B)	Fty To Authorized Emergency Vehicle	***
13AOC2.260(A)	Stop For School Bus Flashing Red Lights	***
13AOC2.275(B)	Speed 20MPH Or More Over Posted Limit	***
13AOC2.280(A-D)	Altered Limits 20MPH Or More Over Posted Limit	***
13AOC2.325(B,C,E)	Spd Lim Tow/Min Lght/Sch Bus Yel Lgt-15MPH	***
13AOC2.325(D)	Speeding School Zone/Playground Crosswalk	***
13AOC2.325(F)	Overweight/Size Speed Vio 20MPH Or More Over	***
13AOC2.330(A)	Racing On Highways	***
13AOC2.530(A,B)	Littering/Depositing Material On Highway	***
13AOC4.007(C,D)	Not To Move Unsafe Veh Unless Authorized	***
13AOC4.227(A,B)	Steering Asses./Wheel Align/Body Condition	***
14AAC10.030(A2,C3)	Speed 20MPH Or More Over Prescribed Limits	***
14AAC10.030(C2)	Vehicle To Be In Safe Operating Condition	***
17AAC25.030(A)	Permit Viol Speed 20MPH Or More Over Auth Spd	***

\*\* Corrected and Dismissed or Appears In Court  
 \*\*\* Mandatory

HOUSE RESOURCES  
STANDING COMMITTEE  
February 22, 1984  
6:25 p.m.

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

Members Absent: Rep. Vaska

COMMITTEE CALENDAR

HB 479 "An Act relating to the issuance of citations for the violation of certain offenses within State park and recreational facilities."

HB 486 "An Act authorizing fees for the use of State park facilities; and providing for an effective date."

WITNESS REGISTER

No testimony was taken.

PREVIOUS ACTION

HB 479 First Reading - 1/9/84  
Committee Referrals - Resources, Judiciary, Finance and Rules

No previous action in Resources

HB 486 First Reading - 1/9/84  
Committee Referrals - Resources, Finance and Rules

No previous action in Resources

ACTION NARRATIVE

TAPE# 18

Recording  
Number 0002

Co-Chairman Ringstad called to order the meeting of the House Resources Committee at 6:25 p.m., and brought HB 479 before the members noting that the CS had been adopted at the previous hearing.

Number 0020

Rep. Shultz moved that the committee pass CSHB 479 with individual recommendations and asked unanimous consent. Rep. Goll objected to address a concern he has regarding the discretionary powers authorized by the bill. Rep. Ringstad said the intent was to get the bill to Judiciary where Rep. Bussell will consolidate it with other similar bills. Rep. Goll removed his objection and with no further objection the bill passed from the committee.

Number 0042

Co-Chairman Ringstad brought up the proposed CS for HB 486.

Number 0050

Rep. Cowdery asked a question regarding the application of the fees in developed campsites. Rep. Ringstad responded that the intent is to charge only for the campsite, not for use of the entire park.

Number 0060

Rep. Cowdery asked a question regarding the fee for guided tours of historical sites. Rep. Ringstad replied that that would apply to specific facilities such as the House of Wickersham.

Number 0065

Rep. Goll commented in regard to Rep. Cowdery's concern that there was not intended to be a fee for general use of parks.

Number 0078

Rep. Cowdery expressed concern that the State parks would be competing with private facilities. Rep. Ringstad responded that the intent of the language is to give the division several factors to weigh in establishing their fees.

Number 0100

Rep. Uehling reminded the members that Neil Johannsen had testified that the fees would be applied only to 12 to 15 specific parks.

Number 0106

Rep. Larson commented that the parks should be a service to all, not profit-oriented, and wondered what would be the division's parameters on setting the fees.

- Number 0127 Rep. Cowdery reiterated his concern that the parks to which fees would apply should be listed in the bill.
- Number 0142 Rep. Brussell stated that he has received lots of POMs on the issue over the last week and that it was bad public policy to have the administration doing the Legislature's work by establishing by regulation what should be laid out in statute.
- Number 0190 Rep. Liska expressed concern that the committee was handing the division a blank check by allowing it to establish the fees. Rep. Ringstad referred to the proposed fee schedule Mr. Johannsen had provided at the previous meeting.
- Number 0220 Rep. Larson commented that if the fee schedule did not reflect the committee's intent when it is officially proposed, the Legislature can use the Regulation Review Committee to effect a change.
- Number 0240 Rep. Goll who had proposed the change reflected in the CS, said he would have no problem deleting "developed campsites and public-use cabins" leaving fees on only "guided tours of historic sites."
- Number 0248 Rep. Cowdery said it would be in the public interest to clearly define what are educational facilities and what would be the fees as well as to what they would apply.
- Number 0270 Rep. Uehling suggested the committee should leave the language as is allowing the division some measure of flexibility in administering the program.
- Number 0280 Rep. Goll expressed his concern that with the current administration he had no problem, but with a change in Parks, it's hard to predict what might happen.
- Number 0335 Rep. Cowdery said in reference to Rep. Uehling's remarks, that the Legislature needs to do its job during the session.
- Number 0348 Rep. Larson commented that there is a lot of good in having fees, such as ensuring the availability of campsites and that guided tours are a part of tourism.

Number 0364 Rep. Bussell returned from his office with a stack of POM's which he reviewed for the members. He said that although there was a mix of opinions, the majority was against the fees.

Number 0440 Rep. Larson addressed the vandalism problem and suggested that fees help to keep vandalism down.

Number 0462 Rep. Cowdery asked what groups had been contacted regarding the bill.

Number 0482 Rep. Uehling moved and asked unanimous consent that the committee adopt the CS. There was no objection.

Number 0488 Rep. Uehling moved that the committee pass CSHB 486 with individual recommendations and asked for unanimous consent. There was no objection and CSHB 486 passed from committee.

Number 0495 Co-Chairman Ringstad announced that the committee meeting scheduled for Friday had been cancelled.

Number 0499 Co-Chairman Ringstad adjourned the meeting at 6:50 p.m..

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

Members Present: Rep. Ringstad, Co-Chairman  
Rep. Cowdery  
Rep. Larson  
Rep. Coll  
Rep. Uehling

Members Absent: Rep. Shultz, Co-Chairman  
Rep. Bussell  
Rep. Vaska  
Rep. Liska

COMMITTEE CALENDAR

HB 479 "An Act relating to the issuance of citations for the violation of certain offenses within state park and recreational facilities."

HB 486 "An Act authorizing fees for the use of state park facilities; and providing for an effective date."

WITNESS REGISTER

Neil Johannsen  
Director  
Division of Parks DNR  
619 Warehouse Ave, Suite 210  
Anchorage, Alaska 99501  
276-2653  
Position Statement: Favors passage of both bills

Neil Phelps-Monson  
Speaker's Office  
House of Representatives  
Pouch V  
Juneau, Alaska 99811  
465-3740  
Position Statement: Favors passage of HB 479

Rep. Bob Bettisworth  
Pouch V  
Juneau, Alaska 99811  
465-4967  
Position Statement: Prime sponsor of HB 486, favors passage

Gayle Horetski

Department of Law  
Pouch KC  
Juneau, Alaska 99811  
465-3428  
Position Statement: Favcrs passage of HB 479

Sam McDowell  
Issach Walton League  
336 East 23rd  
Anchorage, Alaska 99503  
272-6605  
Position Statement: Favors passage of both bills

Ron Somerville  
Alaska Outdoor Council  
3780 McGinnis Drive  
Juneau, Alaska 99801  
789-2399  
Position Statement: Favors passage of both bills

PREVIOUS ACTION

HB 479	First Reading - 1/9/84  Committee Referrals - Resources, Judiciary, Finance and Rules  No previous action in Resources
HB 486	First Reading - 1/9/84  Committee Referrals - Resources, Finance and Rules  No previous action in Resources

ACTION NARRATIVE

TAPE# 15A  
Recording  
Number 0002

Co-Chairman Ringstad called to order the meeting of the House Resources Committee, and brought before the members the bills on the calendar.

Number 0014

Neil Phelps-Monson, Representing Speaker Hayes, the prime sponsor of HB 479, introduced the bill to the members.

Number 0026

Neil Johannsen, Director of Parks, spoke on HB 479 favoring its passage.

- Number 0054 Rep. Uehling asked how much the state could be expected to save, and if the change would become a source of income. Mr. Johannsen replied that the savings would be in terms of time, in allowing the park rangers to spend more time doing more constructive business.
- Number 0068 Rep. Cowdery asked if court time constituted a major part of a ranger's workload. Mr. Johannsen replied that it was only a minor amount of time.
- Number 0087 Rep. Larson asked a question regarding the wording of the officer's discretion in giving citations. Mr. Johannsen replied that it would depend on the circumstances of the violation.
- Number 0111 Rep. Larson asked a question regarding the bail amount being more or less if the offender appeared in court. Mr. Johannsen referred the question to Gayle Horetski of the Department of Law.
- Number 0122 Ms. Horetski described the proposed CS, and then addressed Rep. Larson's concerns, saying the penalty cannot be greater if a person prefers to appear in court, as that is unconstitutional.
- Number 0223 Rep. Goll asked a question regarding the difference between "shall except..." in the original, and "may" in the CS. A discussion on "arrest" and officer's discretion ensued.
- Number 0326 Rep. Larson moved that the committee adopt the CS, and asked for unanimous consent. No objection was voiced.
- Number 0335 Rep. Goll asked a question regarding endorsement of the citation by the offender. Ms. Horetski explained that it now amounts to a "promise to appear."
- Number 0360 Rep. Goll asked if there was any requirement for the citing officer to ascertain positive identity. Ms. Horetski referred him to AS 12.21.130, referenced in the bill, that fulfills the requirement.
- Number 0380 Sam McDowell, of the Issach Walton League, gave a statement in favor of the bill, as long as it doesn't compound the problem.

- Number 0440 Rep. Goll asked what he meant by not compounding the problem. Mr. McDowell replied that the law should be worded properly so that the citation will stick.
- Number 0457 Ron Somerville of Alaska Outdoor Council gave a statement that his organization supports mailable bonds.
- Number 0487 Rep. Bettisworth gave a statement introducing HB 486.
- Number 0515 Rep. Larson asked a question regarding the wording of "recreational and educational" facilities. Rep. Bettisworth replied that one fee would cover use of all facilities within the park.
- Number 0524 Rep. Goll asked about the repealer in the CS. Rep. Bettisworth replied that was the only change between the bills.
- Number 0536 Rep. Cowdery stated that he was opposed to the idea, and asked the sponsor if he would turn away Alaskans who couldn't pay the fee. Rep. Bettisworth replied that he would, and that there are plenty of other places for people to go. He added that some people like the security and facilities parks offer, and are willing to pay for them.
- Number 0568 Rep. Goll asked about the political ramifications of user fees, and whether that would make it difficult to get more land into parks. Rep. Bettisworth replied that it would have little effect, and that the legislature is not inclined to continue to fund the \$12 million necessary to keep them going.
- Number 0611 Rep. Goll asked a question about the money. Rep. Bettisworth replied it is for maintenance and operations.
- Number 0625 Rep. Larson asked if it would take more personnel to administer the program. Rep. Bettisworth said the fiscal note is \$57,000, but would take in \$200,000. Rep. Larson then asked if tentative fees had been discussed yet. Rep. Bettisworth replied that none had been set.
- Number 0673 Mr. Johannsen said his division supports the bill, and related his experience in

California after the passage of Proposition 13. He said Alaska is the only state with no user fees on parks, that most other states average 25% of their budgets captured by fees, that fees keep vandalism down, and that of the park providers in Alaska, USFS, NPS, BLM, and private operators all charge.

Number 0775

Rep. Larson asked if fees had been determined. Johannsen referred to a proposal, described the use of "iron rangers" for self-registration, and cited statistics showing 77-92% compliance.

Number 0843

Rep. Cowdery asked if we shouldn't list the parks and their fees in the bill. Mr. Johannsen replied that he would prefer to have the flexibility to expand. Rep. Cowdery asked if DNR would be running ads in the papers to let people know fees were going to be imposed. Mr. Johannsen said they would do what ever was necessary to inform the public.

Number 0874

Rep. Goll asked about the political reaction to the fees and future expansion. Mr. Johannsen said he would have only reasonable fees in parks worth paying for. He doesn't expect a backlash, but as he enjoys his job and would like to keep it, would walk, not run.

Number 0935

Rep. Goll asked if there would be a problem with people going elsewhere to avoid paying the fee. Mr. Johannsen said that by and large most people prefer an organized, patrolled campground.

Number 0969

Rep. Goll asked a question regarding the wording of recreational and educational facilities. Mr. Johannsen said he had no problem with a change in the wording.

Tape# 15B  
Recording  
Number 0003

Rep. Uehling asked questions regarding funding. Mr. Johannsen explained the request for safes and for a 1/2 time bookkeeper.

Number 0014

Rep. Uehling asked a question regarding the House of Wickersham. Mr. Johannsen said a non-profit organization could run it but couldn't by law charge any fees.

- Number 0038 Rep. Larson asked if the fees could be waived for certain groups. Mr. Johannsen said it was their intent to waive fees for school outings.
- Number 0062 Rep. Larson asked what percent of the M&O the expected \$200,000 in revenue would be? Mr. Johannsen replied that M&O is current \$4 million. Rep. Larson then asked if there would be a difference in fees charged residents and non-residents. Mr. Johannsen said some states do, some don't, and some structure them as reprisals. The problem is that much of the park monies are federal grants.
- Number 0115 Rep. Goll noted the resident/non-resident variant in fishing licenses, and asked if the fees would really have any impact. Mr. Johannsen said he didn't think so, and that BC and Yukon parks are quite a bit higher by comparison.
- Number 0162 Rep. Larson asked if a user's length of stay would be limited. Mr. Johannsen said it would depend on the demand for the park. Rep. Larson asked what percent are "residential users", meaning people who live in the parks. Mr. Johannsen said it was much higher during pipeline days, but apparently didn't know a figure. He said fewer than 250 campsites in the state's 3000 inventory would be charged for.
- Number 0210 Rep. Goll asked if the language could be changed to "campsites and conducted tours at historical sites." Mr. Johannsen said he had no problem with it.
- Number 0258 Co-Chairman Ringstad appointed a subcommittee on HB 600, relating to royalty oil. The subcommittee will be chaired by Rep. Cowdery, and will have as members, Representatives Uehling, Vaska and Ringstad. Co-Chairman Ringstad then adjourned the meeting at 4:50 p.m..

SB 289, An Act relating to discharge of firearms, and hunting and fishing in state park and recreation areas.

In 1981 the confiscation of a moose shot within Denali State Park brought to light problems with the regulation of hunting by the Department of Fish and Game and the Game Board vis a vis the regulation of the discharge of firearms by the Division of Parks, Department of Natural Resources. Although Denali State Park was legally open to hunting by the park enacting legislation and by Game Board regulations, the entire park (320,000 acres) was closed to the discharge of firearms by DNR regulations under broad park management authority. Furthermore, the public hunting regulation booklet failed to adequately show the nature of this "closed" area. Although the Fairbanks Ombudsman directed that more complete public notification of this situation be given, the conflicting management policies of DNR and ADF&G remained.

SB 289 was introduced to clarify that where hunting and fishing are authorized under fish and game regulations in park areas, DNR could not restrict such use or restrict lawful discharge of firearms in such use. A draft committee substitute that would allow closures for public safety purposes has been prepared.

In testimony provided at the public hearing on SB 289 in May 1983, DNR requested postponement of action on the bill so that they could initiate regulations addressing the situation. A first step was taken prior to this year's hunting season, when regulations were amended to open the western half of Denali State Park to the discharge of firearms. Further, general park regulations, including those affecting firearms discharge, are undergoing revision. Expected to be complete by January, 1984, these regulations are just now in the final hearing process.

CS SB 407 (Resources), An Act relating to the prevention and abatement of water pollution.

CS SB 407 (Resources) addresses the longstanding concerns of placer miners, environmentalists, and governmental agencies relative to the use of water in placer mining. The draft Committee Substitute would establish specific classification categories for waters of the state, and provide criteria for establishing water quality standards for each classification. In addition, a statewide inventory of state waters would be conducted and basinwide management plans would be developed.

HB 479, An Act relating to the issuance of citations for the violation of certain offenses within state park and recreational facilities.

HB 479 would allow the Supreme Court to set a bail forfeiture schedule for violations of State laws and regulations that apply to parks. The offender would be given the option of not contesting the citation and merely sending in the fee, or challenging the violation and asking for a court appearance.

HB

509

# Alaska State Legislature

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



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## Senate

### Committee on Resources

#### MEMORANDUM

TO: Senate Resources Committee Members

FROM: Senate Resources Committee Staff

RE: Committee Meeting, Friday, May 11th

DATE: May 10, 1984

*S. Resources  
Comm Sub  
a committee  
formed*

On Friday, May 11th at 3:00 pm in the Beltz Room, the Senate Resources Committee will hear the following bills:

HB 509, An Act relating to aviation fuel refiners.

HB 509 (Judiciary) deals with the civil liability of an aviation fuel supplier and the sale of aviation fuel. The House Judiciary Committee substitute states that a supplier of aviation fuel may be held liable in a civil action for injuries resulting from the use of contaminated or impure fuel only when the supplier transfers the contaminated aviation fuel directly into the fuel tanks of an aircraft. The limitation of liability does not apply unless at the time of sale the purchaser signs a sales invoice or other sales document that clearly states that the purchaser assumes all risks of contaminated or impure aviation fuel, that the purchaser is aware that water contamination is an inherent risk of improperly stored fuel, and that the purchaser knows the limitation on liability. The section of the bill on the sale of aviation fuel states that a fuel supplier may not refuse to sell fuel solely on the basis that the purchaser is supplying drums in which the fuel is to be delivered.

Information on major projects fund legislation, which will be heard on Friday, is attached.

MAY 26 1984

Offered: 5/19/84  
Referred: Rules

Resources C.S. simply corrected  
grammatical error.

Original sponsors: Hurlbert, Fritz  
and Cowdery

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 509 (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 aviation fuel suppliers; and  
7 providing for an effective date."

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

9 \* Section 1. FINDINGS. The legislature finds that

10 (1) aviation is essential to the life of every Alaskan, in  
11 communications, commerce, and emergencies;

12 (2) suppliers distributing aviation fuel in Alaska perform an  
13 important service by supplying high quality products throughout the state;

14 (3) once aviation fuel has been transferred by a supplier to the  
15 storage tanks of a third party, a supplier has no control over the con-  
16 tinued quality and integrity of the fuel; and

17 (4) in the event of a civil action arising from an aircraft  
18 accident, it may be unfair to hold a supplier liable for the contamination  
19 of fuel that was placed in aircraft fuel tanks after transfer from the  
20 supplier to a third party.

21 \* Sec. 2. AS 09.65 is amended by adding a new section to read:

22 Sec. 09.65.093. CIVIL LIABILITY OF AN AVIATION FUEL SUPPLIER.

23 (a) An aviation fuel supplier may be held liable in a civil action  
24 for injuries resulting from the use of contaminated or impure fuel  
25 only when the aviation fuel supplier transfers the contaminated or  
26 impure aviation fuel directly into the fuel tanks of an aircraft.

27 (b) The limitation of liability in (a) of this section does not  
28 apply unless at the time of the sale the purchaser signs a sales  
29 invoice or other sales document that clearly [states that]

1           (1) states that the purchaser assumes all risks of  
2 contaminated or impure aviation fuel placed in containers other than  
3 aircraft fuel tanks;

4           (2) states that water contamination is an inherent risk of  
5 improperly stored fuel; and

6           (3) refers to the limitation on liability under (a) of this  
7 section.

8           (c) This section does not apply to a sale of mislabeled fuel.

9           (d) In this section

10           (1) "aviation fuel supplier" means a person or business  
11 that sells or exchanges aviation fuel in the state;

12           (2) "injury" includes death, personal injury, and property  
13 damage, whether tangible or intangible.

14 \* Sec. 3. AS 45.45 is amended by adding a new section to read:

15           Sec. 45.45.910. SALE OF AVIATION FUEL. An aviation fuel sup-  
16 plier may not refuse to sell aviation fuel solely because the pur-  
17 chaser provides drums into which the aviation fuel is to be delivered.  
18 In this section "aviation fuel supplier" has the meaning given in  
19 AS 09.65.093.

20 \* Sec. 4. This Act takes effect immediately in accordance with AS 01.-  
21 10.070(c).

*Chapman*

CS HOUSE BILL NO.(509) (JUDICIARY)

ACT RELATING TO AVIATION FUEL SUPPLIERS

BACKGROUND

The importance of aviation, both commercial and general, to Alaskan communication and commerce cannot be overstated. It is common knowledge that more air miles per resident are flown in Alaska than any other state; indeed, aviation is the only mechanism by which modern commerce and communication can be undertaken by the vast majority of Alaskans.

In order to fuel the evergrowing aviation traffic in Alaska, it has become necessary to develop an enormous marketing system to distribute the relatively few gallons of aviation fuel to many geographically diverse and rural locations across the state. However, because of the increasing exposure to expensive, time-consuming litigation some refiner/suppliers have removed themselves from the Alaskan market. Due to the relative low volume, and geographically diverse aviation fuel marketing in Alaska, the increased exposure to litigation has resulted in a declining incentive to market aviation fuel in the state.

In an attempt to reduce their exposure to liability, the major suppliers have declined to place aviation fuel in used barrels. Some dealers, while not contractually obligated to do so, have also adopted this practice. Additionally, independent marketers of aviation fuel have been found to have adopted this policy. As a further result of the potential exposure to litigation, at least one of the major suppliers has declined to establish further aviation fuel dealerships in the state.

It is also relevant to note that one major supplier has a nationwide policy, which is varied only in Alaska, to the effect that it will deliver aviation fuel only in 10,000 gallon deliveries and only to its own airport dealers or to wholesale purchasers having vehicles appropriate for the transport of aviation fuel.

The practice of the major aviation fuel suppliers in the state, of declining to place aviation fuel in used barrels, imposes an economic burden on many Alaskans. For example, Alaskans living on or near the Kuskokwim River or the Yukon River and their tributaries generally receive their aviation fuel through barge shipments up the rivers during the summer months. A purchaser of aviation fuel can generally achieve a savings of approximately \$.20 to \$.30 per-gallon if he can induce the seller

to place it in used barrels as opposed new barrels.

An individual who lives on a tributary of the Yukon or Kuskokwim River generally must have a means of water transportation to transport drums of aviation gas from the river up the tributary to the area of his residence. When such an individual makes a trip to the main river to obtain aviation fuel it is quite simple for him to transport used drums to an area accessible by barge as he must transport barrels back to his residence to ultimately get the fuel to his residence. Thus, by merely placing used drums in his water transport on his trip down to get the gas such an individual can achieve a significant savings of \$.20 to \$.30 per gallon. However, attempts at achieving such savings are often frustrated by a policy of the supplier, as described above, of not delivering aviation fuel into used drums.

It is common knowledge that an inherent risk of improperly stored aviation fuel is water contamination. It is a common and accepted practice for any pilot to take appropriate measures (such as pouring aviation fuel through a chamois) before placing the aviation fuel in an aircraft. Thus any individual who follows normal and recognized procedures for the protection of aviation fuel can achieve a savings of \$.20 to \$.30 a gallon by having the fuel delivered into used barrels and properly caring for it before placing it in the aircraft.

The principal concern of aviation suppliers is that they will be embroiled in expensive, time-consuming litigation anytime an accident occurs as to which contaminated fuel is a suspected cause. Additionally, such suppliers will be the subject of negative and adverse publicity as a result of any such litigation. House Bill 509 provides a solution for the aviation suppliers which will enable and require them to deliver aviation fuels into used drums and which will enable an aviation gas consumer to achieve a substantial savings if he desires to care for his own aviation fuel.

THE BILL - HB509

Section 2(a) provides that an aviation fuel supplier may be held liable in a civil action resulting from the use of contaminated or impure fuel only when the aviation suppliers transfers the contaminated or impure fuel directly into the fuel tanks of an aircraft.

Thus, if a person purchasing aviation fuel does not wish to assume the responsibility for the proper care and filtering of aviation fuel and wishes the supplier to instead retain such potential liability, the prospective purchaser need only fly his aircraft to an aviation fuel supplier, and have it fueled by the supplier.

Section 2(b) of the bill provides that the limitation of the liability of a aviation fuel supplier does not apply unless at the time of the sale, the purchaser signs a sales invoice or other document which clearly states that:

1. The purchaser assumes all risk of contaminated or impure aviation fuel.
2. Water contamination is an inherent risk of improperly stored fuel.
3. Refers to the limitation on liability provided in section 2(a) of the bill.

Thus any purchaser of aviation fuel who does not have his aircraft fueled directly by a aviation fuel supplier is given clear and explicit knowledge that he is assuming the risk of contaminated aviation fuel and that water is an inherent risk of improperly stored fuel. The prospective purchaser of aviation fuel is thus given clear and unequivocal notice that by purchasing the fuel and having it delivered other than into his aircraft he is assuming such risk.

Section 3 of the bill, provides that an aviation supplier may not refuse to sell aviation fuel solely because the purchaser provides used drums into which the aviation fuel is to be delivered. Thus, upon the passage of this bill an aviation fuel supplier would be violating the law if he declined to deliver aviation fuel into a used drum provided by the customer.

It is important to note that the concept of assumption of the risk and waiver of liability set forth in HB 509 has precedence in other provisions of the Alaska Statutes. For example, AS 9.65.135 provides a similar concept in regard to assumption of the risk and waiver of liability by one who uses the slopes and tows of the ski-resort facility.

In summary HB 509 provides the potential purchaser of aviation fuel with a knowing informed choice as to whether he desires to achieve an economy by taking delivery of aviation fuel in used drums and at the same time provides the suppliers of aviation fuel with relief from expensive, costly litigation with its attendant adverse publicity. Your support of the bill is urged.

STATE OF ALASKA  
THE LEGISLATURE

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


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 14, 1984

SUBJECT: CS HB 509(Jud) am

TO: Senator Bettye Fahrenkamp  
Chairman  
Resources Committee

FROM: Richard C. Folta   
Legislative Counsel

You have asked for an opinion on (1) the meaning of "mis-label" as used in Section 2(c); (2) liability of producers; and (3) liability of suppliers in the above bill.

Mislabeled or misbranding describes a departure from the labeling description of a commodity within a package. Agricultural Service Association, Inc. v. Ferry-Morse Seed Co. Inc. 551 F2d 1057 (1977) A "food" is misbranded if it appears that any one representation is false or misleading U.S.U. An Article of Food. 377 F Supp 746, 748.

In the case of aviation fuel products in HB 509 mislabeling would constitute, in my opinion, the placement of the wrong ingredients on a label on a container of aviation fuel products, like "kerosene" on a drum of aviation gasoline. Since fuel contaminants are not considered aviation fuel ingredients, it is my opinion that their presence in aviation fuel is not "mis-labeled fuel" under Sec. 2(c).

HB 509 limits the liability of aviation fuel suppliers in the state to cases resulting from deliveries of fuel directly into aircraft tanks or from mislabeled fuel. The purchaser, after signing a sales document with a limited liability provision, assumes all other risks of aviation fuel including contamination or impure fuel conditions. The liability of aviation fuel producers, although not covered in HB 509, is affected by the limited liability of aviation fuel suppliers. If a supplier is adjudged not liable under HB 509 provisions then most likely the producer would not be held liable as well.

RCF: csh  
W2/147

MEMORANDUM

(FROM CHEVRON, USA.)

RE:

HB 509 - Aviation Fuel Liability

The importance of aviation, both commercial and general, to Alaskan communication and commerce cannot be overstated. It is common knowledge that more air miles per resident are flown in Alaska than in any other state; indeed, aviation is the only mechanism by which modern commerce and communication can be undertaken to the vast majority of Alaskan locations.

1. Marketing Aviation Fuels in Alaska.

In order to fuel the ever growing aviation traffic in Alaska, it has become necessary to develop an enormous marketing system to distribute the relatively few gallons of aviation fuel to many geographically diverse locations across the state. However, because of the increasing exposure to liability from the sale of aviation products, many companies have removed themselves from the Alaskan market. Due to the relatively low volume, and geographically diverse, aviation fuel market in Alaska, the increased exposure to liability has resulted in a declining incentive to market aviation fuel in the state.

This is particularly true with aviation gasolines, as opposed to jet fuels. For the most part, jet fuels are used in commercial aviation where the volume sales are high, and the geographical distribution is not as great. Aviation gasoline constitutes a relatively minor portion of the total market for aviation fuels. On the other hand, because of its low volume, the relative multitude of individual sales, and the geographical diversity of the ultimate customers, aviation gasolines account for the greatest exposure to liability in the aviation fuel market.

For example, in 1981, Chevron U.S.A. Inc., the largest marketer of aviation fuels in the state of Alaska, sold a total of 375 million gallons of aviation fuel in the state. Of that total, jet fuel sales accounted for 360 million gallons. Only 15 million gallons of aviation gasoline were sold. As stated before, although aviation gasolines account for only 4% of Chevron's annual aviation fuel sales, these sales provide, by far the greatest exposure to liability.

## 2. Aviation Fuel Refiners - Unprecedented Exposure to Liability.

Aviation fuel refiners are at an unfair disadvantage with respect to the sale of their products as opposed to the sale of other products by other companies. The exposure to liability is much greater than with almost any other product because of the serious consequences of any aviation accident.

The court's development of the strict liability theory for defective products has created a legal situation wherein the refiner is virtually guilty until he proves himself innocent.

Because most refiners are large companies, the Deep Pocket Theory invites plaintiffs' attorneys to join them in actions even where liability is unlikely. Refiners may at times find it more economical to settle a case than spend thousands in defense, even when they believe there is no liability.

Even where the refiner is successful in defending such cases, the court's award of costs and attorneys' fees rarely represents even one-half of the actual expenditures. This, of course, does not even consider the in-house costs of the refiner in investigative and administrative endeavors related to the litigation. In addition, where the court makes a cost award for attorneys' fees and costs incurred in defending such an action, collection of the award is never guaranteed and often is not possible.

Examples of the effect of this increased exposure to liability are not difficult to find in Alaska. In 1980, Texaco quietly withdrew from the aviation fuel market because of the potential liability it faced. This removal prompted a letter from Governor Hammond to Chevron U.S.A. Inc., asking that Chevron do everything possible to remain in the aviation fuel market, and inquiring as to whether there might be any assistance the State of Alaska could render in that regard.

Union Oil Company withdrew from the aviation fuel market in Southeast Alaska sometime ago for the same reason. Others may do the same thing in Southcentral Alaska as a result of the Spernak Airways incident.

In that case, a plane carrying four people crashed on take-off at Merrill Field in Anchorage. It was determined that the cause of the crash was water in the gas lines of the airplane. According to the investigator for the National Transportation Safety Board (NTSB), the source of the water which contaminated the plane's fuel lines was the storage tanks kept by Spernak Airways at Merrill Field. Spernak Airways maintained a \$500,000 general liability policy, and has settled the case for the policy limits. However, in spite of the NTSB's findings that the source of the water was the Spernak storage tanks, Union Oil was sued for damages in the amount of \$5,000,000.

### 3. The Use of Barrels in the Distribution of Aviation Fuels.

In an attempt to reduce its exposure to liability, Chevron has declined to place aviation fuel in used barrels for distribution to the popular aviation market. Chevron continues to market aviation fuels in new barrels only in Alaska, and only as an accommodation to the unique reliance this state has on general aviation in remote areas where the most practical means of supply is by barrel. In all other states, Chevron will not sell aviation fuel in a barrel.

In this regard, it should be noted that there is no such thing as a "sealed barrel." All barrels, whether new or used, are susceptible to moisture contamination particularly when they are stored outside in the widely fluctuating temperatures encountered in Alaska. During such fluctuations, when moisture is present on top of the barrel near the bung hole, moisture can be pulled right through the threads on the bung with the expansion and contraction of the barrel. There is thus no guarantee that uncontaminated, clean, dry fuel purchased in a new barrel will remain so when it is stored improperly.

Typical supply routes of aviation fuel in rural Alaska include the following:

- A) Direct purchase by the consumer from a Chevron-owned bulk plant - such as the bulk plants located at Kotzebue, Nome and Bethel.
- B) Purchase by a Chevron aviation fuel dealer from a Chevron-owned bulk plant and sale by the Chevron aviation fuel dealer to the consumer.
- C) Purchase by anyone acting as a "middleman" from a Chevron-owned bulk plant or a Chevron aviation fuel dealer and sale by the middleman to the consumer or to another middleman - such an ultimate sale by the middleman would be of unbranded product.

Chevron has learned that some of its dealers and some "middlemen" who buy aviation fuel from Chevron have (while not be under any obligation to do so) adopted Chevron's policy of declining to deliver aviation fuel in used drums supplied by the customer.

A recent example may help to illustrate the complex supply routes and the impact on rural residents.

Representative Hurlbert lives in Sleetmute which is about 200 miles up the Kuskokwim River from Bethel. The source of petroleum products including aviation gasoline, for this river system is Chevron's bulk plant in Bethel. Avgas can be purchased from Chevron FOB Bethel in new drums or 5 gallon pails or in bulk quantities delivered to a customer's barge or tank truck. There are two barge companies currently serving the river communities.

Sometime last fall Representative Hurlbert apparently had hauled a number of used drums down the river expecting to have the barge operator fill them directly from storage tanks or the barge. The barge operator was not a Chevron aviation fuel dealer but had purchased aviation gas in bulk from Chevron at Bethel. The barge operator, as an independent businessman, apparently adopted Chevron's policy regarding used drums and refused to fill them. Representative Hurlbert had to wait until bulk product was pumped ashore into another customers' tank then move his barrels to that location for filling.

#### 4. Alternate Marketing Options

It should also be noted that Chevron has implemented a new program in the lower 48 states concerning the sale and distribution of aviation fuels. This program could prove deleterious to the flow of Alaska commerce if implemented in this state.

In the lower 48 states, Chevron will deliver aviation fuel only in 10,000-gallon deliveries and only to its own airport dealers that meet its quality specifications. All other wholesale purchasers must take delivery of such fuels in minimum 10,000-gallon allotments at a Chevron bulk plant when Chevron has certified that the carrying vehicle is appropriate for the transport of aviation fuels.



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

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

January 12, 1984

TO: Representative John Cowdery  
ATTN: Merrill Sikorski

FROM: Nancy Pease *Nancy Pease*  
Legislative Analyst

RE: Product Liability Laws for Aviation Gasoline  
Research Request 83-249

Merrill Sikorski of your office requested information regarding product liability for aviation gasoline in other states. He expressed a special interest in legislation that would limit the liability of suppliers and distributors of aviation gasoline.

I contacted Chevron USA, the Office of Air Worthiness Standards of the Federal Aviation Administration (FAA), the Aircraft Owners and Pilots Lobbying Association, and the aeronautics and consumer protection agencies in Alaska and five other states. It appears that no states have laws which limit product liability for aviation gasoline. However, several of the agencies I contacted mentioned other issues regarding the quality control of aviation fuel which may be of interest to you.

According to Thomas Horess, manager of the Propulsion Branch of the FAA's Office of Air Worthiness Standards, the FAA has seen no need to federally regulate aviation gasoline in the past. However, since August of 1982, the FAA has authorized the use of high octane automobile fuel in 12 or more models of general aviation engines and airplanes. As a result, concern has increased in several states over liability for auto fuel used in aviation. Automobile fuel normally is not subject to the strict quality controls that assure the purity of aviation gasoline. The FAA stipulates that automobile gas used in aircraft be handled according to the American Society of Testing and Materials (ASTM) standards for aviation gasoline. However, Mr. Horess said that the gasoline industry has difficulty controlling product quality at the gas station distribution level, a problem that has raised concern about product liability for the fuel suppliers.

Pat Chapman, a researcher for the Aircraft Owners and Pilots Lobbying Association, also mentioned the issue of product liability for automobile fuel used in aviation. Mr. Chapman noted that the fuel manufacturers are increasingly concerned over major settlements and awards in product liability lawsuits, but he could find no legislation addressing the issue in other states.

Representative Cowdery  
January 12, 1984  
Page 2

Jim Day of Chevron's public affairs office in Anchorage reported that he was not aware of any efforts to legislate limits to liability for aviation fuel. However, Mr. Day mentioned that Chevron had refused to supply some remote fueling sites in Alaska in instances where facilities were inadequate to assure against fuel contamination. According to Mr. Day, general aviation in Alaska involves unique fuel liability situations which are not likely to have arisen in other states.

Mr. Sikorski indicated that he thought Ohio might have a law limiting the product liability of aviation fuel, but I could find no such law in the Ohio Revised Code or through talking with numerous Ohio state agencies. I contacted aeronautics and consumer protection agencies in four other states with similar negative results.

While no states have limited the liability for fuel products, approximately 15 states have adopted ASTM quality standards for the production and handling of petroleum products, and a few states have developed fuel inspection programs.<sup>1</sup> Otherwise, states have little involvement in regulating fuel quality.

I am still trying to contact the Product Liability Defense Bar, an association of attorneys based in Washington D.C. If they can provide any further information on this issue, I will certainly pass it on to you. However, it appears that no states have passed legislation to limit product liability for aviation gasoline.

If we can assist you further on this or other issues, please feel free to contact us.

NP

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<sup>1</sup> Brad Parker, investigator for the Alaska Consumer Protection Agency, telephone conversation, December 20, 1983.

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

REQUEST

Bill/Resolution No.: CSHB 509(L&C)  
Title: "An Act relating to  
aviation fuel refiners;..."  
Sponsor: Repr. Hurlbert  
Requestor: House Labor & Commerce  
Date of Request: 3/28/84

FISCAL DETAIL

Agency Affected: Department of Law  
Program Category Affected: General Government  
BRU, Program or Subprogram(s) Affected: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<u>TOTAL</u>						

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 3-28-84  
 Approved by Commissioner: Richard I. Pegues / AR Date: 3-28-84  
 Agency: Department of Law

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