

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5203 SCRA SB 163 - SB 166

S B

163

5-0709B
Bradley
4/16/87

Original sponsor: Kerttula

1 IN THE SENATE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 163 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Willow Mountain Critical
7 Habitat Area; and providing for an effective date."

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

9 * Section 1. AS 16.20.220 is amended by adding a new subsection to
10 read:

11 (b) The Willow Mountain Critical Habitat Area is established to

12 (1) protect the area's exceptional fish and wildlife habi-
13 tats and populations;

14 (2) ensure that the area will be managed primarily to
15 maintain the productivity of the habitat for moose and will provide
16 opportunities for hunting, trapping, and other dispersed recreational
17 activities.

18 * Sec. 2. AS 16.20.230 is amended by adding a new paragraph to read:

19 (13) Willow Mountain:

20 (A) Township 20 North, Range 2 West, Seward Meridian
21 Section 7

22 Sections 18 - 19

23 (B) Township 20 North, Range 3 West, Seward Meridian
24 Sections 1 - 2

25 Sections 11 - 14

26 Sections 23 - 24

27 (C) Township 21 North, Range 2 West, Seward Meridian
28 Sections 4 - 7

29 Section 18: W1/2

(D) Township 21 North, Range 3 West, Seward Meridian
Section 1

Sections 11 - 14

Sections 23 - 26

Sections 35 - 36

(E) Township 22 North, Range 2 West, Seward Meridian
Sections 19 - 21

Sections 28 - 33

* Sec. 3. AS 16.20 is amended by adding a new section to read:

Sec. 16.20.235. MANAGEMENT OF WILLOW MOUNTAIN CRITICAL HABITAT AREA. The commissioner of fish and game and the commissioner of natural resources shall exercise their respective authorities over the Willow Mountain Critical Habitat Area consistent with a management plan prepared by the commissioner of fish and game in consultation with the commissioner of natural resources.

* Sec. 4. Until a management plan is developed under AS 16.20.235, enacted by sec. 3 of this Act, management decisions for the Willow Mountain Critical Habitat Area must reflect the intent of the Willow Mountain Sub-unit of the Hatcher Pass Management Plan adopted in October 1986.

* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF



P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989

Senate Community and Regional Affairs Committee

TO: Senate C&RA Members

April 16, 1987

FROM: Senate C&RA Staff

A handwritten signature in dark ink, appearing to be "MFA".

RE: SB 163 - "An Act establishing the Willow Mountain Critical Habitat Area; and providing for an effective date."

This bill establishes the Willow Mountain Critical Habitat Area. The original bill was only a boundary description. The committee substitute adds some management language to the bill and is the result of work by the sponsor, the departments of Fish and Game and Natural Resources and committee staff. All of these parties are supportive of the CS.

Dick Bradley, of Legislative Legal Services has expressed concern that committee members understand that there are other existing statutes regarding management of critical habitat areas that will also apply to this area. A copy of those statutes are in this packet.

Also in this packet are position papers and zero fiscal notes from Fish and Game and DNR, a copy of the relevant section of the Hatcher Pass Management Plan, a letter from the mayor of the Mat-Su borough expressing the assembly unanimous support for the bill, and a map of the area.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 16, 1987

The Honorable Arliss Sturgulewski
Chair, Senate Community & Regional
Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Sturgulewski:

Subject: CSSB 163, establishing the Willow Mountain
Critical Habitat Area.

Background: Willow Mountain contains numerous moose and, because of its proximity to urban locations, is an important moose hunting area. The planning team agreed that the area would be managed to maintain wildlife productivity and provide opportunities for hunting, trapping and recreation. The team also agreed that the area would remain open to mineral entry and forestry operations would be limited to disease control and habitat enhancement.

Position: The Department of Natural Resources supports the conclusion of the recently adopted Hatcher Pass Management Plan that this area be legislatively designated to ensure its long-term retention in public ownership and management for wildlife habitat values and public recreation. CSSB 163 will meet the conclusion of the Hatcher Pass Management Plan.

Please let me know if you would like additional information about the Hatcher Pass Management Plan.

Sincerely,



Judith M. Brady
Commissioner

cc: Committee Members
Bill Sponsors
Rod Swope
George Sullivan
Commissioner Collinsworth

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____
 Revision Date: 4/13/87
 Title: An act establishing the Willow Mountain Critical Habitat Area
 Sponsor: Kerttula
 Requestor: Senate C&RA

Bill Version: CSB 163
 Publish Date: _____

Agency Affected: Natural Resources
 BRU: Land and Water Management
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The Department of Natural Resources anticipates no additional funding requirements stemming from this legislation.

Prepared by: Carol Wilson Phone: 465-2400
 Division: Commissioner's Office Date: 4/13/87

Approved by Commissioner: [Signature] Date: 4/16/87
 Agency: Natural Resources

Distribution (by preparer):

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



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

*2 copies
File*

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER SB163	SPONSOR Senator Kerttula
DEPARTMENT POSITION Support			
PREPARED BY Habitat Division	DATE 3/10/87	COMMISSIONER'S SIGNATURE <i>Donna Collinsworth</i>	DATE 3-17-87

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Natural Resources	CONSTITUENT GROUP(S) AFFECTED BY BILL Hunting, fishing, trapping, recreational interests, Palmer/Wasilla area residents
ORGANIZATIONAL SUPPORT FOR BILL Mataruska-Susitna Borough Department of Natural Resources Environmental Organizations	ORGANIZATIONAL OPPOSITION TO BILL None known

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The purpose of establishing Willow Mountain Critical Habitat Area is to protect and preserve the habitat that is most crucial to the perpetuation of fish and wildlife populations, especially moose.

ANALYSIS OF BILL/PROGRAM EFFECTS

The bill establishes Willow Mountain Critical Habitat Area. It provides for the management of the area under the State Critical Habitat Area program. It establishes the purpose for which the area is to be managed and ensures protection of essential moose habitat.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____
 Revision Date: _____
 Title: An Act establishing the Willow Mountain Critical Habitat Area
 Sponsor: Kerttula
 Requestor: _____

Bill Version: SB163
 Publish Date: 3/4/87

Agency Affected: Fish and Game
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		0				
TRAVEL		0				
CONTRACTUAL		0				
SUPPLIES		0				
EQUIPMENT		0				
LAND & STRUCTURES		0				
GRANTS, CLAIMS		0				
MISCELLANEOUS		0				
TOTAL OPERATING		0				

CAPITAL		0				
---------	--	---	--	--	--	--

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS		0				
OTHER		0				
TOTAL		0				

POSITIONS:

FULL-TIME		0				
PART-TIME		0				
TEMPORARY		0				

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Bruce Baker
 Division: Habitat
 Approved by Commissioner: Omni Ballinaworth
 Agency: Fish and Game

Phone: 465-4105
 Date: 3/16/87
 Date: 3-17-87

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agencies
 Senate Secretary



Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-4801

BOROUGH ASSEMBLY

February 5, 1987

FEB 9 1987

Jan Faiks, Senate President
State of Alaska
Pouch V
Juneau, AK 99811

RE: Willow Mountain Critical Habitat Area ←

Dear Senator Faiks:

The Matanuska-Susitna Borough Assembly voted unanimously on February 3, 1987 to approve and endorse legislation to create the Willow Mountain Critical Habitat Area (approximately 23,000 acres) and to express concern for ensuring that the management intent of the area stays in-tact as described in the Hatcher Pass Management Plan.

If you should have any questions or need further information, please feel free to contact my office.

Sincerely,

Dorothy A. Jones
Dorothy A. Jones, Mayor
Matanuska-Susitna Borough

DJ/cls
Enclosure

cc: Commissioner, Dept. of Fish. & Game
Senators ✓Kerttula & Szymanski
Representatives Larson & Menard
Jack Didrickson

HATCHER PASS

MANAGEMENT PLAN

FINAL
OCTOBER, 1986



Prepared by:

Alaska Department of Natural Resources

In cooperation with:

Alaska Department of Fish and Game

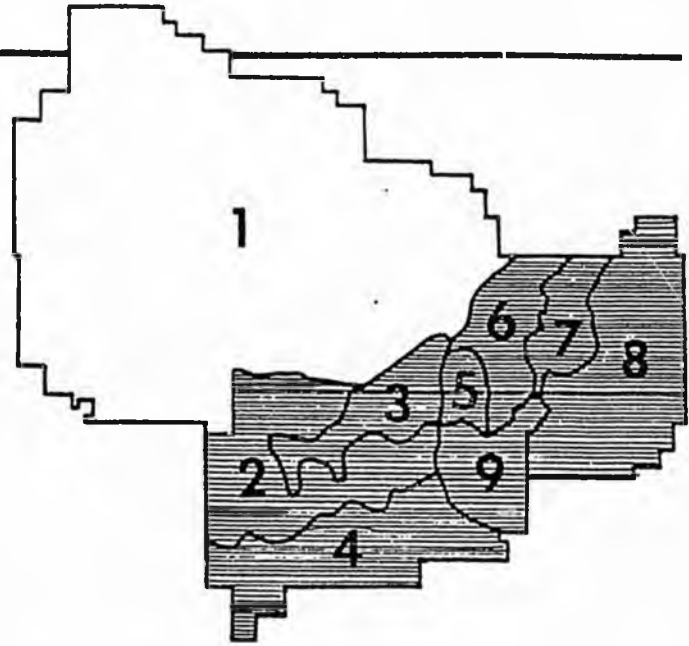
Alaska Department of Transportation and Public Facilities

Matanuska-Susitna Borough



Alaska Department of
**NATURAL
RESOURCES**

I. Willow Mountain



A. LAND USE DESIGNATIONS

Primary Uses: Fish and Wildlife Habitat, Recreation

Secondary Uses: Grazing (see Map 11 for location)

Prohibited Uses: Settlement, Remote Cabin Permits, Commercial Recreation Development, Grazing outside designated areas (see Map 3, pages 116/117)

Mining: Open

B. BACKGROUND

The rugged peaks of the Talkeetna Mountains end in a gently sloped plateau known as Willow Mountain in this subunit. Peters, Purches and Little Willow Creeks flow out of steep-walled mountain valleys to the north and south of the Willow Mountain plateau. The lowlands portions of the subunit contain many swampy areas that make access difficult.

Willow Mountain is an important moose habitat area. Year-round populations between 1,500 and 2,000 moose occur in western portions of this unit and are among the highest in the Susitna Basin. Willow Mountain provides winter and summer moose habitat that supports breeding and calving activities. This is an important moose hunting area due to its relative accessibility to urban areas and an abundance of moose. The alpine zone (above 2,800 feet in elevation) is good bear, sheep, and caribou habitat, and brown and black bear are often seen in these areas. Furbearing animals are also common and trapping is an important use of the area. Black bear and ptarmigan hunting are popular as well.

Extensive placer claims occur along Peters and Purches Creeks; mineral potential in the eastern mountainous portion is high. However, the Willow Mountain plateau has low mineral potential.

The Willow Mountain subunit contains a significant portion of the potential range resources within the management unit. However, many portions of the Willow Mountain plateau where most of the grazing resources occur in the subunit has boggy and standing water areas, and access is difficult.

Currently, there are no roads to this subunit. Motorized access is by aircraft, snowmachine or all terrain vehicle. This is a popular snowmachining area due to extensive, wide-open terrain. A cabin built by the Mat-Su Motor Musers and used by the public is located on the southeast corner of the Willow Mountain plateau. Dog mushing also occurs in some areas. Views of the Susitna Valley and Alaska Range from Willow Mountain are spectacular. Wilderness foot travel occurs in the steep eastern portions. Bogs, brush, wetlands and creeks limit summer and fall access in the lowlands portions of this subunit. Extensive ORV trails occur in the wetlands in the southwest corner of the subunit. The Peters-Purches trail which goes over Lucky Shot Ridge receives its heaviest use during moose hunting season. However, erosion and trail widening is occurring in the steep portions and in bogs along the existing trail alignment.

There is high forestry potential on the western edge below 1000 feet where a dense white spruce forest occurs. Access for forestry to the proposed Kashwitna State Forest area west of Willow Mountain is planned in the near future.

C. MANAGEMENT INTENT

The Willow Mountain subunit will be managed primarily to maintain its exceptional wildlife productivity and to continue to provide opportunities for hunting, trapping and other dispersed recreational activities to meet existing and future demand. The entire subunit is open to mineral entry.

The management intent includes reserving the option to utilize existing grass forage resources for future grazing; however, the priority is to utilize the grasslands in the Hillside and Little Susitna subunits prior to those in the Willow Mountain subunit. In the interim, research should be conducted to determine whether grazing can take place without major adverse impact to wildlife habitat.

Forestry is an allowed use in the western perimeter of the subunit. The intent is that any forestry operations will be limited to disease control or habitat enhancement as defined by ADF&G and compatible with scenic views from the ridge above.

Motorized access is an important use for hunting, trapping, and general recreation. The intent is for these uses to continue. The management intent is to limit summer/fall use to designated trails to minimize erosion and trailmaking. An exception will be to allow retrieval of

downed big game animals. This policy will be put into effect after working with users to clearly map and sign designated trails. No highway vehicles will be allowed in the Willow Mountain Subunit (unless authorized as part of a mineral development). New trails may be established within the subunit and designated for a specific use, such as for dog mushing, ATV and snowmachine use.

D. PLANNED ACTIONS

1. HABITAT DESIGNATION

The moose concentration area on the west slope of Willow Mountain is proposed for legislative designation to ensure long term retention in public ownership and management for its wildlife values (see Map 11). ADF&G originally proposed that the plan recommend that the entire subunit be legislatively designated as a Critical Habitat Area and a portion closed to mineral entry. However, the planning team was unable to agree on this. See Appendix X for further explanation.

2. TRAIL REPAIR

Where erosion and extensive trail making in boggy areas is occurring, DNR and ADF&G should work with users to reduce trail damage, establish trail erosion prevention measures and do minimal trail improvements to maintain motorized access opportunities.

3. SNOWMACHINE USE AND MOOSE

If there is documentation that snow machine use is adversely affecting overwintering moose in certain areas, seasonal closures in these key areas may be established.

4. MOTORIZED USE MANAGEMENT POLICY

A special use area will be established for off-road vehicle use. When there is insufficient snow cover to protect the soil and vegetation from cutting and erosion, motorized use will occur on designated trails only by non-highway vehicles. An exception will be to allow retrieval of big game. This policy will be put into effect once DNR and ADF&G work with users to map and designate a trail system. See Chapter Three, ORV Management Guidelines, page 160, for more information.

5. IDENTIFY BROWN BEAR CONCENTRATIONS

ADF&G will identify brown bear concentration areas and habitat use areas and make a recommendation to DNR on when a significant potential or actual conflict with grazing may exist

6. PUBLIC USE CABINS

The existing cabin on Willow Mountain built by the Mat-Su Motor Musers should be converted to a public use cabin. Agreements with recreational groups may be negotiated for its maintenance. Other cabins on public land in the subunit should also be evaluated for suitability as public cabins.

Other public cabins may be established at three possible backcountry locations. Potential sites are indicated on the land plan map.

7. DOG MUSHING TRAIL

Establish a 20-mile dog mushing loop trail. The location is to be determined by DNR based on consultation with ADF&G, and recreational users.

8. CROSS COUNTRY SKI TRAIL

Establish a cross-country ski trail in the forest/alpine transition zone accessible to the Hatcher Pass Road.

E. GUIDELINES1. FORESTRY/BROWSE ENHANCEMENT

Type of Forestry Cuts. Timber harvest to enhance moose habitat may occur. If this occurs cutting areas will be located on the western perimeter of this unit and must receive concurrence with ADF&G and DNR. DOF maintains the option, however, to institute emergency harvests for insect control after receiving ADF&G approval. ADF&G maintains the statutory obligation to institute habitat enhancement activities when necessary and appropriate.

2. GRAZING

a. Grazing on Important Habitat Lands. Grazing is proposed to occur on Willow Mountain only after complete utilization of the grass resources of the Little Susitna and Hillside units. The option to graze livestock in this unit shall be retained and research should be initiated and continued to determine how to make livestock and wildlife uses compatible in this area. There are approximately 8600 acres of land that is potentially feasible for grazing between Canyon

Creek and an unnamed stream in Section 24, Township 21 North, Range 3 West. About 17-20 miles of fence may be required.

- b. Grazing Season. Cattle shall be removed from the range two weeks prior to opening of the moose hunting season.
- c. Grazing in Habitat Areas. See area-wide policy in Chapter 3, page 121.

3. ACCESS

- a. Minimize Wildlife Impacts. Any new roads and trails proposed for forestry, mining, recreation or grazing within or near the subunit will be designed to minimize negative impacts to the wildlife resources and related public uses. Access routes will be centralized and of very low density. ADF&G will be consulted on location prior to authorization.
- b. Public Use of Mining Roads. The public use of access roads developed for mining will be determined on a case-by-case basis by ADF&G and DNR, based on what will be most beneficial to the management of the moose population. The options are private or public access, temporary or permanent. That is, use of the access road by highway vehicles may be restricted to mine personnel only if necessary to minimize impacts to wildlife. The mine operator may be required to remove the road upon completion of the project. The other option would be to keep it open as a public access road. Seasonal use restrictions may be authorized.
- c. Wetlands. Where an ever-widening network of trail making is occurring in the Willow Mountain subunit, DNR and ADF&G will work with user groups and/or state correctional facility labor to do primitive corduroy-type improvements to enable access through the bogs for hunting purposes. The level of damage to these wetlands should be assessed by DNR and ADF&G and recommendations made for rehabilitation and prevention of further damage.

4. RECREATIONAL OPPORTUNITY SPECTRUM

- a. Setting. The intended recreational setting described in Part "a" is for the purpose of guidance to land managers who must adjudicate land use requests. It is not intended to be a hard and fast set of rules.
 - (1) Physical Setting: Predominantly natural appearing environment in western portions; unmodified, natural environment in the eastern, mountainous portions
 - (2) Social Setting: Low concentration of users except in moose season; low interaction between users

- (3) Managerial Setting: Minimum of on-site controls
 - (4) Access and Mode of Travel: Designated trails for ORV use with minimum improvements to prevent rutting and erosion in western portions; cross-country foot travel in mountains; aircraft access
 - (5) Vegetative Alterations and duration of impact: Moderate loss of vegetation and soil on major trail routes and where camping occurs, trail impacts persist from year to year. Non-trail areas should only show temporary impacts.
 - (6) Type of Experience: High probability of seeing wildlife, experiencing quiet and solitude (except for trail areas), freedom, challenge, risk, closeness to nature
- b. Facilities. The purpose of this section is to describe the intended level of recreation facility development. Where no facilities are proposed, this does not mean it is a prohibited use.
- (1) Public Facilities: Public cabins: one each in Peters and Purches below timberline, one existing Willow Mountain, one in alpine north of Dogsled Pass; parking at Peters-Purches trailhead
 - (2) Camp Sites: No developed sites
 - (3) Picnic Sites: None planned
 - (4) Water Supply: None planned
 - (5) Sanitation: Outhouses at public cabins
 - (6) Signs: Limited signing for designated trails
 - (7) Water Crossings: Ford crossings, no bridges
 - (8) Interpretative: Interpretation through self-discovery
- c. Guidelines for Appropriate Commercial or Other Private Uses to be Authorized by Lease or Permit
- (1) Commercial and Other Private Uses: None by lease; generally permitted activities as listed in the Division of Land and Water Management Policy and Procedure Manual (Chapter 5122, Section 01) will not be affected; applications for permit will be considered on a case-by-case basis if compatible with guidelines and management intent.
 - (2) Stipulations on Private Uses: It is important that private uses maintain the recreation setting as described above and provide a clear public benefit. Additionally, private recreational uses must require no roads and not negatively impact wildlife populations.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____
 Revision Date: 4/13/87
 Title: An act establishing the Willow Mountain Critical Habitat Area
 Sponsor: Kerttula
 Requestor: Senate C&RA

Bill Version: CSB 163
 Publish Date: _____

Agency Affected: Natural Resources
 BRU: Land and Water Management
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The Department of Natural Resources anticipates no additional funding requirements stemming from this legislation.

Prepared by: Carol Wilson Phone: 465-2400
 Division: Commissioner's Office Date: 4/13/87
 Approved by Commissioner: Ham [Signature] Date: 4/16/87
 Agency: Natural Resources

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 16, 1987

The Honorable Arliss Sturgulewski
Chair, Senate Community & Regional
Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Sturgulewski:

Subject: CSSB 163, establishing the Willow Mountain
Critical Habitat Area.

Background: Willow Mountain contains numerous moose and, because of its proximity to urban locations, is an important moose hunting area. The planning team agreed that the area would be managed to maintain wildlife productivity and provide opportunities for hunting, trapping and recreation. The team also agreed that the area would remain open to mineral entry and forestry operations would be limited to disease control and habitat enhancement.

Position: The Department of Natural Resources supports the conclusion of the recently adopted Hatcher Pass Management Plan that this area be legislatively designated to ensure its long-term retention in public ownership and management for wildlife habitat values and public recreation. CSSB 163 will meet the conclusion of the Hatcher Pass Management Plan.

Please let me know if you would like additional information about the Hatcher Pass Management Plan.

Sincerely,



Judith M. Brady
Commissioner

cc: Committee Members
Bill Sponsors
Rod Swope
George Sullivan
Commissioner Collinsworth

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5/10/87 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

FURTHER: TRANSPORTATION
RESOURCES

DATE TURNED INTO OFFICE 4/17/87

Mr. President:

C&RA

Committee considered SB 163

establishing the Willow Mountain Critical Habitat Area; efd.

and recommended:

replace with

CS

for SB 163

same title
 new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Rick Warren
Mike Syme

Arthur Stupulis Do Pass
Chairman signature and recommendation

Committee Backup Attached

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 16, 1987

SUBJECT: Willow Mountain Critical Habitat Area
[CSSB 163(C&RA)]

TO: Senator Arliss Sturgulewski
Chairman, Senate Community and Regional
Affairs Committee

FROM: Richard A. Bradley 
Legislative Counsel

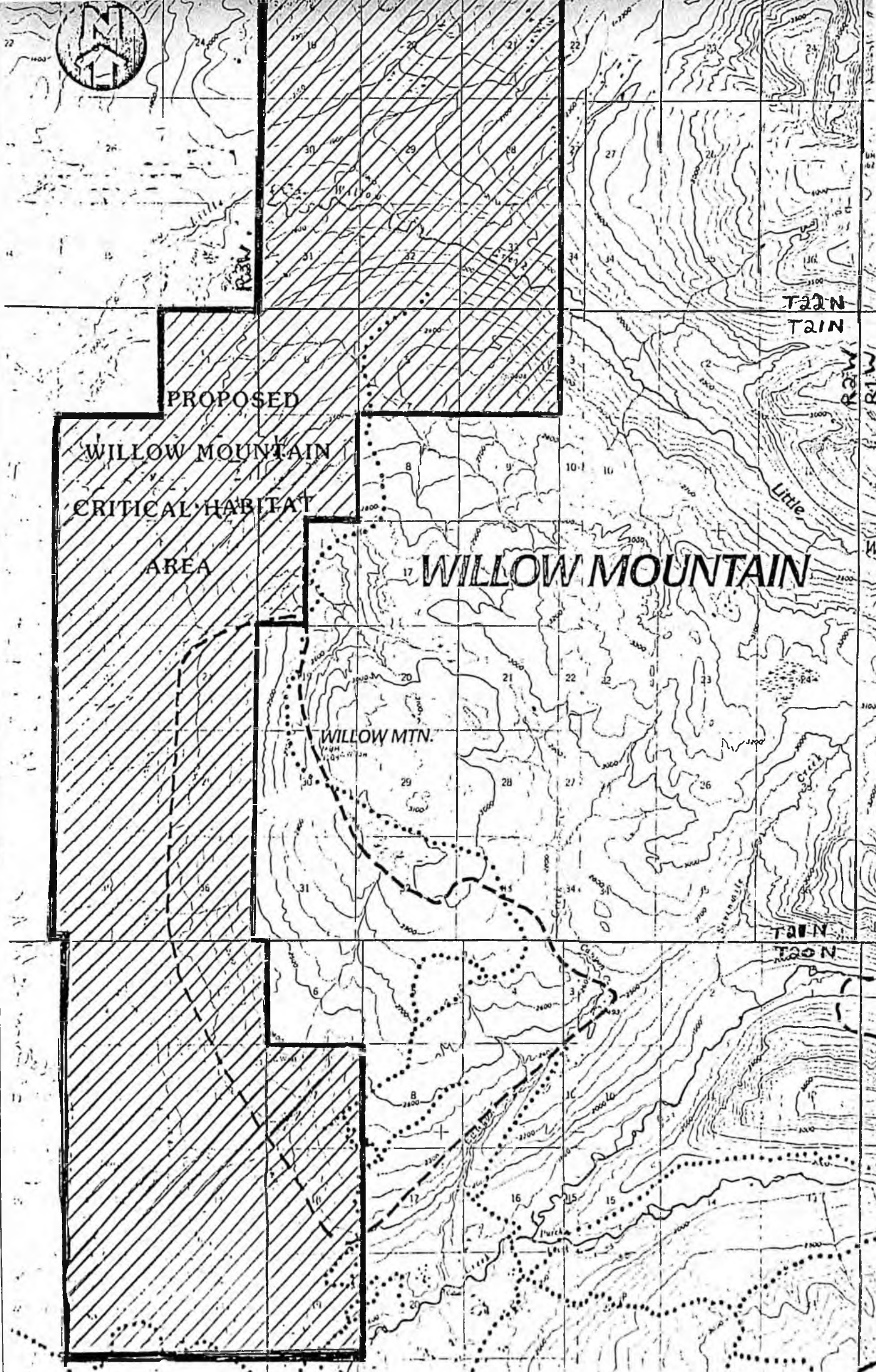
McKie Campbell has requested a committee substitute for SB 163. It is enclosed as requested although I changed the section numbers somewhat to accommodate the existing provisions of AS 16.20.220 - 16.20.270.

But that is the problem that I would note for the committee. The existing provisions of the article dealing with critical habitat areas contain some substantive law regarding the management of the areas and I believe that the material added in the CS is not altogether consistent with it. I suggest that the committee consider that material, particularly AS 16.20.250 - 16.20.260.

If I may be of further assistance, please advise.

RAB:csh
c8/001

Enclosure



PROPOSED

WILLOW MOUNTAIN
CRITICAL HABITAT
AREA

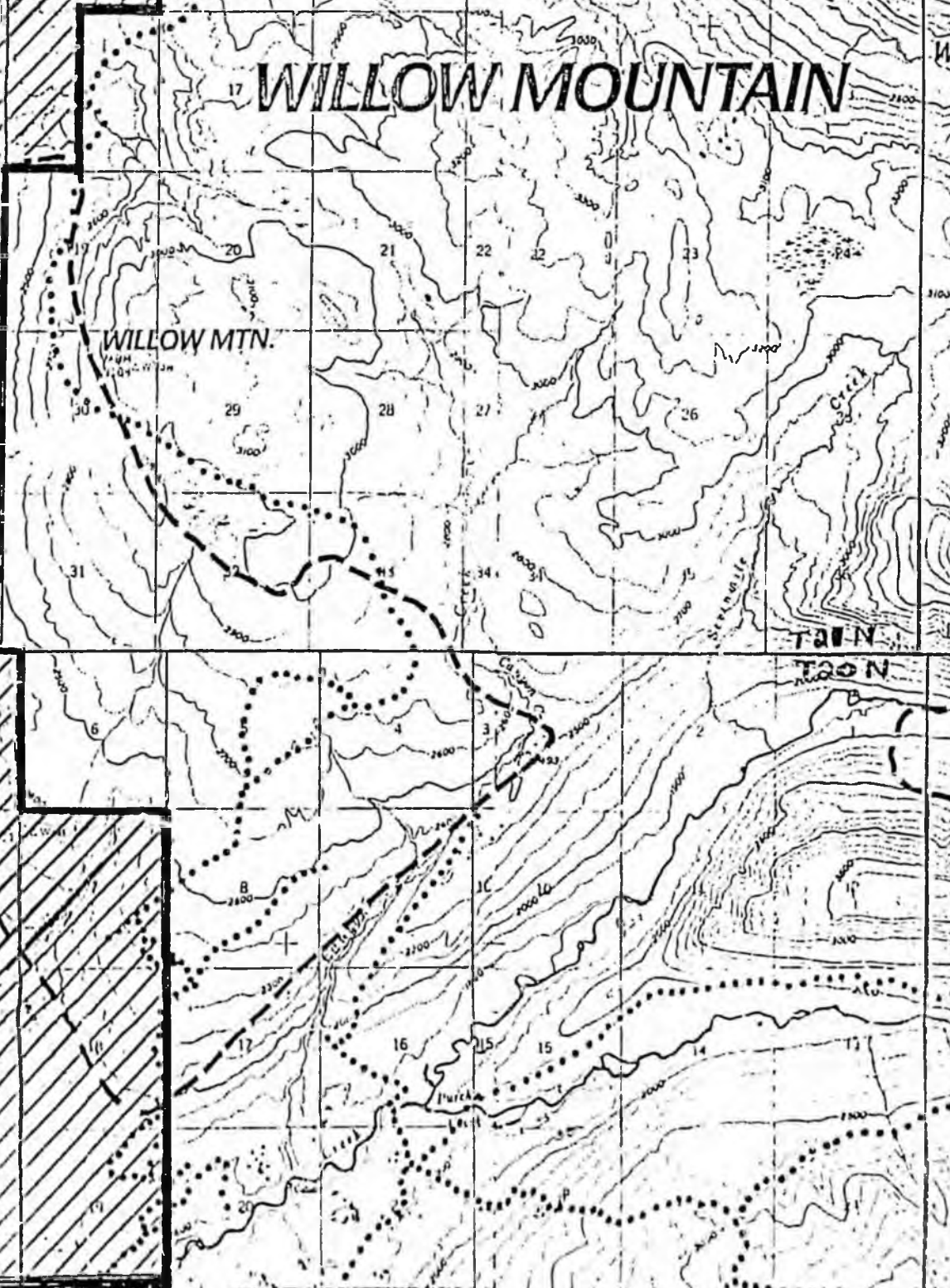
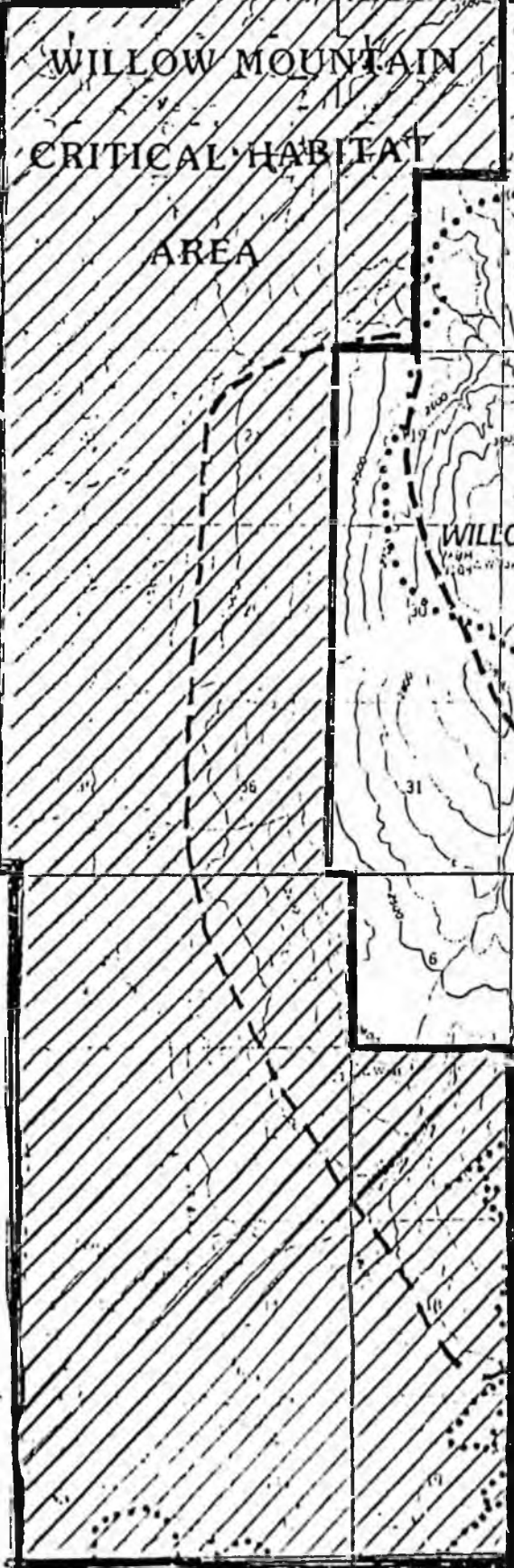
17 WILLOW MOUNTAIN

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PROPOSED

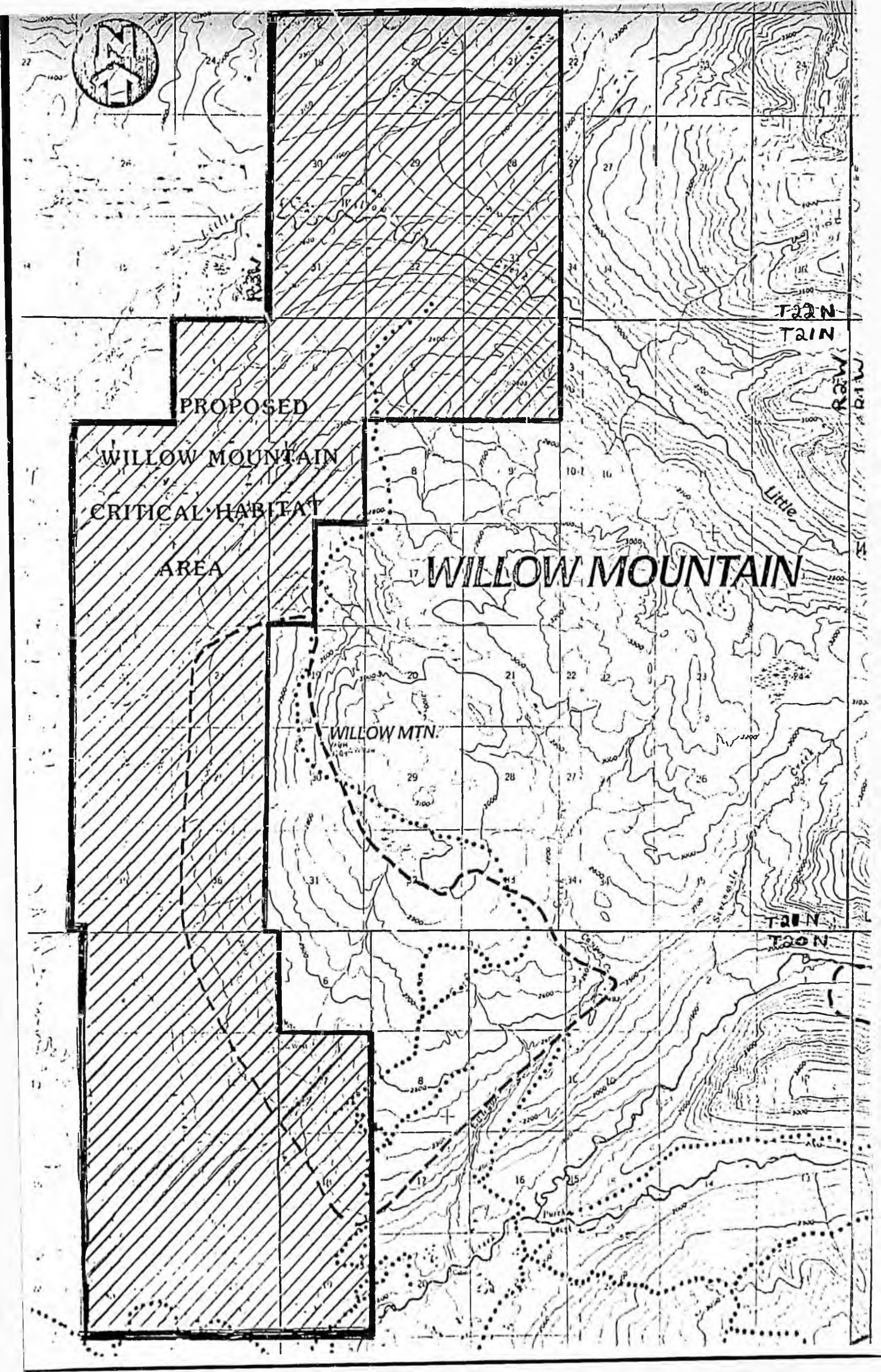
WILLOW MOUNTAIN
CRITICAL HABITAT
AREA

WILLOW MOUNTAIN

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HATCHER PASS MANAGEMENT PLAN

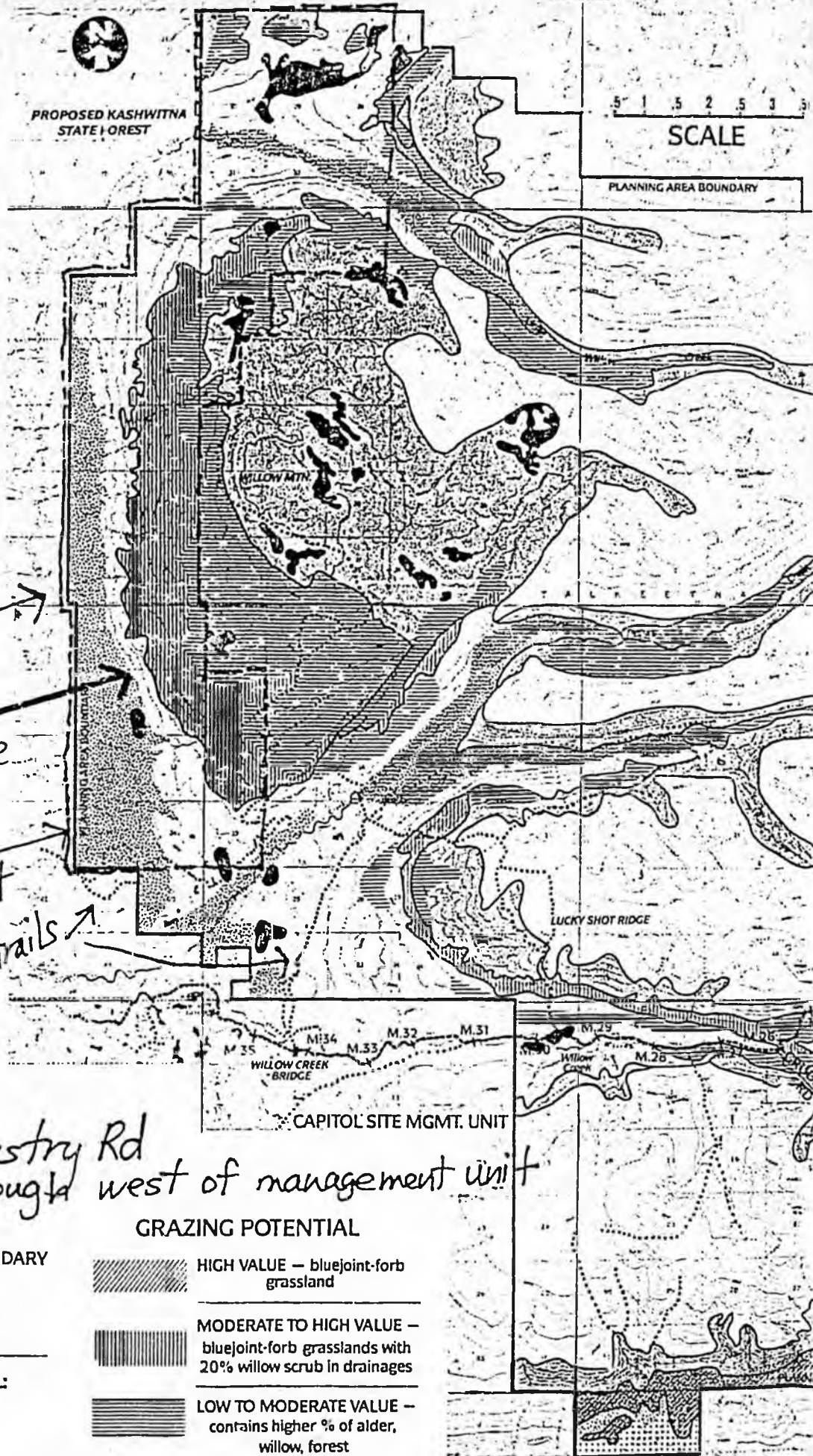
R.2W. R.2W.

R.2W. R.1W.

PROPOSED KASHWITNA
STATE FOREST

5 1 .5 2 .5 3 5
SCALE

PLANNING AREA BOUNDARY



Proposed CTHA →
Grazing a Secondary use →
Medium Potential Forest →
Existing trails →

↑
 Kashitna Forestry Rd
 will come through west of management unit

- TRAILS
- PLANNING AREA BOUNDARY
- M.17 MILEPOSTS
- LOCAL ACCESS ROADS
- HATCHER PASS ROAD

FORESTRY POTENTIAL:

- HIGH
- MEDIUM

GRAZING POTENTIAL

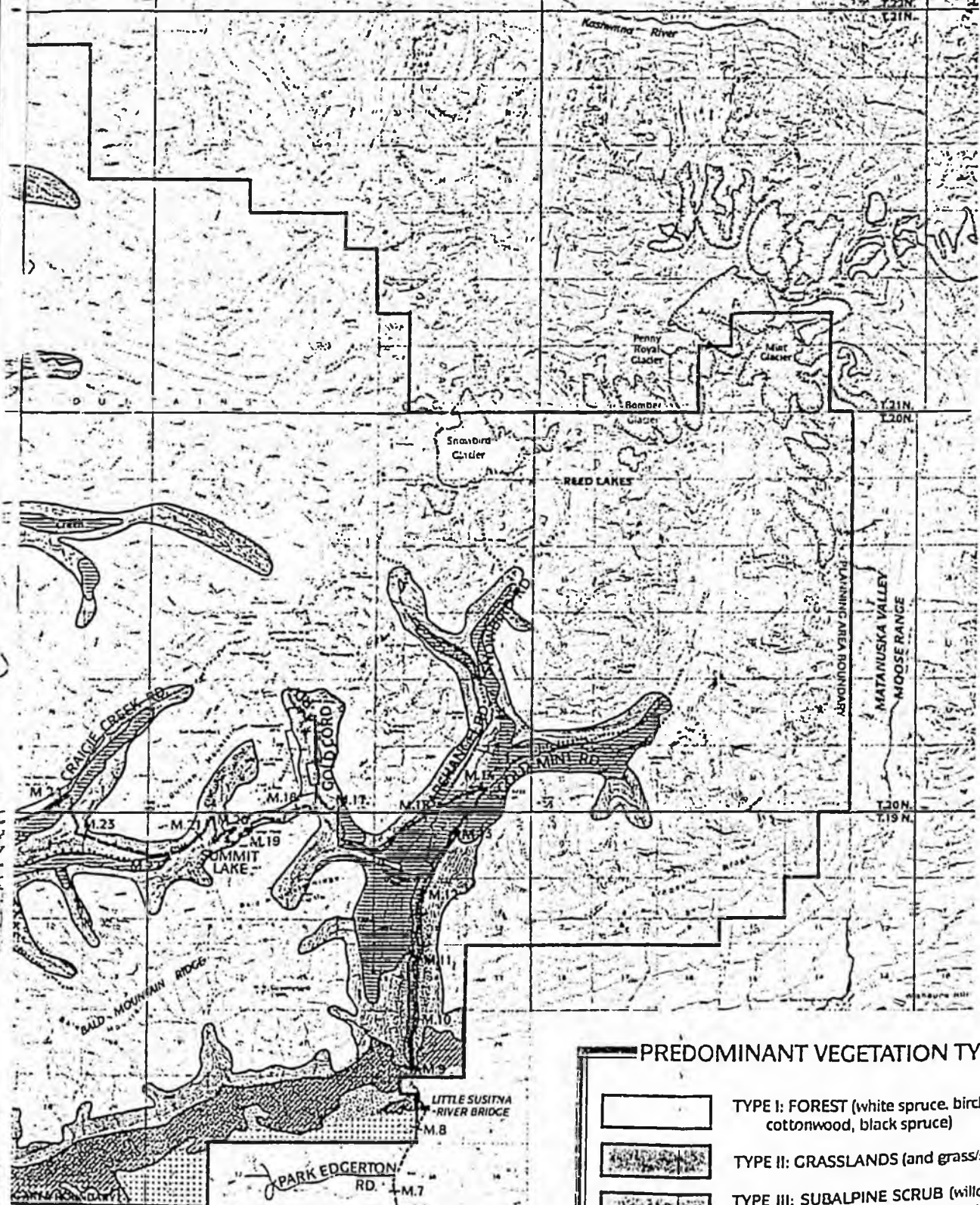
- ▨ HIGH VALUE — bluejoint-forb grassland
- ▨ MODERATE TO HIGH VALUE — bluejoint-forb grasslands with 20% willow scrub in drainages
- ▨ LOW TO MODERATE VALUE — contains higher % of alder, willow, forest

R.1W. R.1E.

R.1E. R.2E.

E. R.3E.

MAP 5.
VEGETATION WITH GRAZING
AND FORESTRY POTENTIAL



Vegetation
 Map labeled
 to showing
 Willow Mt.
 proposed
 critical
 habitat area
 and grazing
 area.

I have copies of citizen comments
 on this if you need it.
 Please let me know if you
 need more information.

PREDOMINANT VEGETATION TYPES:

	TYPE I: FOREST (white spruce, birch, cottonwood, black spruce)
	TYPE II: GRASSLANDS (and grass/scrub lands)
	TYPE III: SUBALPINE SCRUB (willow, alder, grassland, crowberry-blueberry hummocks)
	TYPE IV: MUSKEG (sedges and spaghnum)

Outside study area: ALPINE OR BARE ROCK

Original sponsor: Kerttula

1 IN THE SENATE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 163 (C&RA)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Willow Mountain Critical
7 Habitat Area; and providing for an effective date."

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

9 * Section 1. AS 16.20.220 is amended by adding a new subsection to
10 read:

11 (b) The Willow Mountain Critical Habitat Area is established to

12 (1) protect the area's exceptional fish and wildlife habi-
13 tats and populations;

14 (2) ensure that the area will be managed primarily to
15 maintain the productivity of the habitat for moose and will provide
16 opportunities for hunting, trapping, and other dispersed recreational
17 activities.

18 * Sec. 2. AS 16.20.230 is amended by adding a new paragraph to read:

19 (13) Willow Mountain:

20 (A) Township 20 North, Range 2 West, Seward Meridian
21 Section 7

22 Sections 18 - 19

23 (B) Township 20 North, Range 3 West, Seward Meridian
24 Sections 1 - 2

25 Sections 11 - 14

26 Sections 23 - 24

27 (C) Township 21 North, Range 2 West, Seward Meridian
28 Sections 4 - 7

29 Section 18: W1/2

(D) Township 21 North, Range 3 West, Seward Meridian
Section 1

Sections 11 - 14

Sections 23 - 26

Sections 35 - 36

(E) Township 22 North, Range 2 West, Seward Meridian
Sections 19 - 21

Sections 28 - 33

* Sec. 3. AS 16.20 is amended by adding a new section to read:

Sec. 16.20.235. MANAGEMENT OF WILLOW MOUNTAIN CRITICAL HABITAT AREA. The commissioner of fish and game and the commissioner of natural resources shall exercise their respective authorities over the Willow Mountain Critical Habitat Area consistent with a management plan prepared by the commissioner of fish and game in consultation with the commissioner of natural resources.

* Sec. 4. Until a management plan is developed under AS 16.20.235, enacted by sec. 3 of this Act, management decisions for the Willow Mountain Critical Habitat Area must reflect the intent of the Willow Mountain Subunit of the Hatcher Pass Management Plan adopted in October 1986.

* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF



P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989

Senate Community and Regional Affairs Committee

TO: Senate C&RA Members

April 16, 1987

FROM: Senate C&RA Staff

A handwritten signature in dark ink, appearing to be "MCA".

RE: SB 163 - "An Act establishing the Willow Mountain Critical Habitat Area; and providing for an effective date."

This bill establishes the Willow Mountain Critical Habitat Area. The original bill was only a boundary description. The committee substitute adds some management language to the bill and is the result of work by the sponsor, the departments of Fish and Game and Natural Resources and committee staff. All of these parties are supportive of the CS.

Dick Bradley, of Legislative Legal Services has expressed concern that committee members understand that there are other existing statutes regarding management of critical habitat areas that will also apply to this area. A copy of those statutes are in this packet.

Also in this packet are position papers and zero fiscal notes from Fish and Game and DNR, a copy of the relevant section of the Hatcher Pass Management Plan, a letter from the mayor of the Mat-Su borough expressing the assembly unanimous support for the bill, and a map of the area.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 16, 1987

The Honorable Arliss Sturgulewski
Chair, Senate Community & Regional
Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Sturgulewski:

Subject: CSSB 163, establishing the Willow Mountain
Critical Habitat Area.

Background: Willow Mountain contains numerous moose and, because of its proximity to urban locations, is an important moose hunting area. The planning team agreed that the area would be managed to maintain wildlife productivity and provide opportunities for hunting, trapping and recreation. The team also agreed that the area would remain open to mineral entry and forestry operations would be limited to disease control and habitat enhancement.

Position: The Department of Natural Resources supports the conclusion of the recently adopted Hatcher Pass Management Plan that this area be legislatively designated to ensure its long-term retention in public ownership and management for wildlife habitat values and public recreation. CSSB 163 will meet the conclusion of the Hatcher Pass Management Plan.

Please let me know if you would like additional information about the Hatcher Pass Management Plan.

Sincerely,



Judith M. Brady
Commissioner

cc: Committee Members
Bill Sponsors
Rod Swope
George Sullivan
Commissioner Collinsworth

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: CSSB 163

Publish Date: _____

Revision Date: 4/13/87

Agency Affected: Natural Resources

Title: An act establishing the Willow Mountain Critical Habitat Area

BRU: Land and Water Management

Sponsor: Kerttula

Components: _____

Requestor: Senate C&RA

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Department of Natural Resources anticipates no additional funding requirements stemming from this legislation.

Prepared by: Carol Wilson

Phone: 465-2400

Division: Commissioner's Office

Date: 4/13/87

Approved by Commissioner: [Signature]

Date: 4/16/87

Agency: Natural Resources

Distribution (by preparer):

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



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

*2004-2 copies
File*

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER SB163	SPONSOR Senator Kerttula
DEPARTMENT POSITION Support			
PREPARED BY Habitat Division	DATE 3/10/87	COMMISSIONER'S SIGNATURE <i>(Doreen Callanworth)</i>	DATE 3-17-87

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Natural Resources	CONSTITUENT GROUP(S) AFFECTED BY BILL Hunting, fishing, trapping, recreational interests, Palmer/Wasilla area residents
ORGANIZATIONAL SUPPORT FOR BILL Mataruska-Susitna Borough Department of Natural Resources Environmental Organizations	ORGANIZATIONAL OPPOSITION TO BILL None known

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The purpose of establishing Willow Mountain Critical Habitat Area is to protect and preserve the habitat that is most crucial to the perpetuation of fish and wildlife populations, especially moose.

ANALYSIS OF BILL/PROGRAM EFFECTS

The bill establishes Willow Mountain Critical Habitat Area. It provides for the management of the area under the State Critical Habitat Area program. It establishes the purpose for which the area is to be managed and ensures protection of essential moose habitat.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____
 Revision Date: _____
 Title: An Act establishing the Willow Mountain Critical Habitat Area
 Sponsor: Kerttula
 Requestor: _____

Bill Version: SB163
 Publish Date: 3/4/87

Agency Affected: Fish and Game
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		0				
TRAVEL		0				
CONTRACTUAL		0				
SUPPLIES		0				
EQUIPMENT		0				
LAND & STRUCTURES		0				
GRANTS, CLAIMS		0				
MISCELLANEOUS		0				
TOTAL OPERATING		0				
CAPITAL		0				
REVENUE		0				

FUNDING: (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS		0				
OTHER		0				
TOTAL		0				

POSITIONS:

FULL-TIME		0				
PART-TIME		0				
TEMPORARY		0				

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Bruce Baker
 Division: Habitat
 Approved by Commissioner: Omni Pedersen
 Agency: Fish and Game

Phone: 465-4105
 Date: 3/16/87
 Date: 3-17-87

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agencies
 Senate Secretary



Matanuska-Susitna Borough

BOX B. PALMER, ALASKA 99645 • PHONE 745-4801

BOROUGH ASSEMBLY

February 5, 1987

FEB 9 1987

Jan Faiks, Senate President
State of Alaska
Pouch V
Juneau, AK 99811

RE: Willow Mountain Critical Habitat Area ←

Dear Senator Faiks:

The Matanuska-Susitna Borough Assembly voted unanimously on February 3, 1987 to approve and endorse legislation to create the Willow Mountain Critical Habitat Area (approximately 23,000 acres) and to express concern for ensuring that the management intent of the area stays in-tact as described in the Hatcher Pass Management Plan.

If you should have any questions or need further information, please feel free to contact my office.

Sincerely,

Dorothy A. Jones
Dorothy A. Jones, Mayor
Matanuska-Susitna Borough

DJ/cl
Enclosure

cc: Commissioner, Dept. of Fish & Game
Senators Kerttula & Szymanski
Representatives Larson & Menard
Jack Didrickson

HATCHER PASS

MANAGEMENT PLAN

FINAL
OCTOBER, 1986



Prepared by:

Alaska Department of Natural Resources

In cooperation with:

Alaska Department of Fish and Game

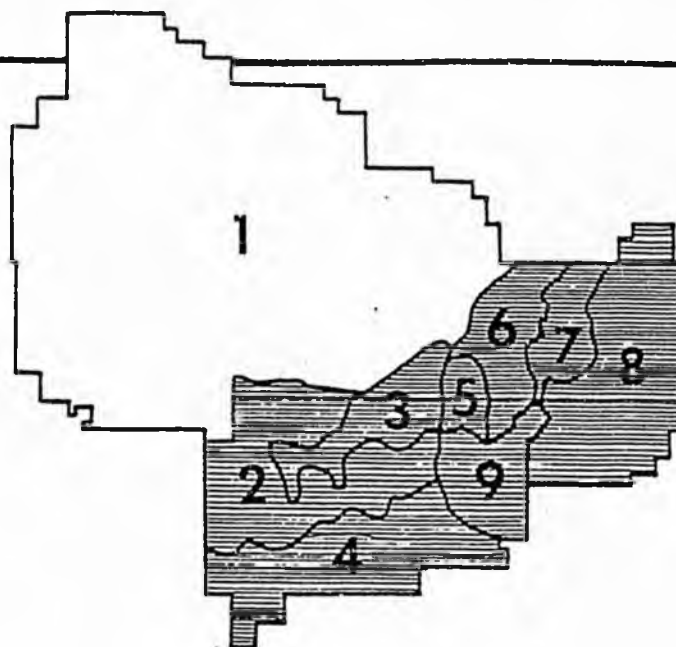
Alaska Department of Transportation and Public Facilities

Matanuska-Susitna Borough



Alaska Department of
**NATURAL
RESOURCES**

I. Willow Mountain

A. LAND USE DESIGNATIONS

Primary Uses: Fish and Wildlife Habitat, Recreation

Secondary Uses: Grazing (see Map 11 for location)

Prohibited Uses: Settlement, Remote Cabin Permits, Commercial Recreation Development, Grazing outside designated areas (see Map 3, pages 116/117)

Mining: Open

B. BACKGROUND

The rugged peaks of the Talkeetna Mountains end in a gently sloped plateau known as Willow Mountain in this subunit. Peters, Purches and Little Willow Creeks flow out of steep-walled mountain valleys to the north and south of the Willow Mountain plateau. The lowlands portions of the subunit contain many swampy areas that make access difficult.

Willow Mountain is an important moose habitat area. Year-round populations between 1,500 and 2,000 moose occur in western portions of this unit and are among the highest in the Susitna Basin. Willow Mountain provides winter and summer moose habitat that supports breeding and calving activities. This is an important moose hunting area due to its relative accessibility to urban areas and an abundance of moose. The alpine zone (above 2,800 feet in elevation) is good bear, sheep, and caribou habitat, and brown and black bear are often seen in these areas. Furbearing animals are also common and trapping is an important use of the area. Black bear and ptarmigan hunting are popular as well.

Extensive placer claims occur along Peters and Purches Creeks; mineral potential in the eastern mountainous portion is high. However, the Willow Mountain plateau has low mineral potential.

The Willow Mountain subunit contains a significant portion of the potential range resources within the management unit. However, many portions of the Willow Mountain plateau where most of the grazing resources occur in the subunit has boggy and standing water areas, and access is difficult.

Currently, there are no roads to this subunit. Motorized access is by aircraft, snowmachine or all terrain vehicle. This is a popular snowmachining area due to extensive, wide-open terrain. A cabin built by the Mat-Su Motor Musers and used by the public is located on the southeast corner of the Willow Mountain plateau. Dog mushing also occurs in some areas. Views of the Susitna Valley and Alaska Range from Willow Mountain are spectacular. Wilderness foot travel occurs in the steep eastern portions. Bogs, brush, wetlands and creeks limit summer and fall access in the lowlands portions of this subunit. Extensive ORV trails occur in the wetlands in the southwest corner of the subunit. The Peters-Purches trail which goes over Lucky Shot Ridge receives its heaviest use during moose hunting season. However, erosion and trail widening is occurring in the steep portions and in bogs along the existing trail alignment.

There is high forestry potential on the western edge below 1000 feet where a dense white spruce forest occurs. Access for forestry to the proposed Kashwitna State Forest area west of Willow Mountain is planned in the near future.

C. MANAGEMENT INTENT

The Willow Mountain subunit will be managed primarily to maintain its exceptional wildlife productivity and to continue to provide opportunities for hunting, trapping and other dispersed recreational activities to meet existing and future demand. The entire subunit is open to mineral entry.

The management intent includes reserving the option to utilize existing grass forage resources for future grazing; however, the priority is to utilize the grasslands in the Hillside and Little Susitna subunits prior to those in the Willow Mountain subunit. In the interim, research should be conducted to determine whether grazing can take place without major adverse impact to wildlife habitat.

Forestry is an allowed use in the western perimeter of the subunit. The intent is that any forestry operations will be limited to disease control or habitat enhancement as defined by ADF&G and compatible with scenic views from the ridge above.

Motorized access is an important use for hunting, trapping, and general recreation. The intent is for these uses to continue. The management intent is to limit summer/fall use to designated trails to minimize erosion and trailmaking. An exception will be to allow retrieval of

downed big game animals. This policy will be put into effect after working with users to clearly map and sign designated trails. No highway vehicles will be allowed in the Willow Mountain Subunit (unless authorized as part of a mineral development). New trails may be established within the subunit and designated for a specific use, such as for dog mushing, ATV and snowmachine use.

D. PLANNED ACTIONS

1. HABITAT DESIGNATION

The moose concentration area on the west slope of Willow Mountain is proposed for legislative designation to ensure long term retention in public ownership and management for its wildlife values (see Map 11). ADF&G originally proposed that the plan recommend that the entire subunit be legislatively designated as a Critical Habitat Area and a portion closed to mineral entry. However, the planning team was unable to agree on this. See Appendix X for further explanation.

2. TRAIL REPAIR

Where erosion and extensive trail making in boggy areas is occurring, DNR and ADF&G should work with users to reduce trail damage, establish trail erosion prevention measures and do minimal trail improvements to maintain motorized access opportunities.

3. SNOWMACHINE USE AND MOOSE

If there is documentation that snow machine use is adversely affecting overwintering moose in certain areas, seasonal closures in these key areas may be established.

4. MOTORIZED USE MANAGEMENT POLICY

A special use area will be established for off-road vehicle use. When there is insufficient snow cover to protect the soil and vegetation from cutting and erosion, motorized use will occur on designated trails only by non-highway vehicles. An exception will be to allow retrieval of big game. This policy will be put into effect once DNR and ADF&G work with users to map and designate a trail system. See Chapter Three, ORV Management Guidelines, page 160, for more information.

5. IDENTIFY BROWN BEAR CONCENTRATIONS

ADF&G will identify brown bear concentration areas and habitat use areas and make a recommendation to DNR on when a significant potential or actual conflict with grazing may exist.

6. PUBLIC USE CABINS

The existing cabin on Willow Mountain built by the Mat-Su Motor Musers should be converted to a public use cabin. Agreements with recreational groups may be negotiated for its maintenance. Other cabins on public land in the subunit should also be evaluated for suitability as public cabins.

Other public cabins may be established at three possible backcountry locations. Potential sites are indicated on the land plan map.

7. DOG MUSHING TRAIL

Establish a 20-mile dog mushing loop trail. The location is to be determined by DNR based on consultation with ADF&G, and recreational users.

8. CROSS COUNTRY SKI TRAIL

Establish a cross-country ski trail in the forest/alpine transition zone accessible to the Hatcher Pass Road.

E. GUIDELINES

1. FORESTRY/BROWSE ENHANCEMENT

Type of Forestry Cuts. Timber harvest to enhance moose habitat may occur. If this occurs cutting areas will be located on the western perimeter of this unit and must receive concurrence with ADF&G and DNR. DOF maintains the option, however, to institute emergency harvests for insect control after receiving ADF&G approval. ADF&G maintains the statutory obligation to institute habitat enhancement activities when necessary and appropriate.

2. GRAZING

a. Grazing on Important Habitat Lands. Grazing is proposed to occur on Willow Mountain only after complete utilization of the grass resources of the Little Susitna and Hillside units. The option to graze livestock in this unit shall be retained and research should be initiated and continued to determine how to make livestock and wildlife uses compatible in this area. There are approximately 8600 acres of land that is potentially feasible for grazing between Canyon

Creek and an unnamed stream in Section 24, Township 21 North, Range 3 West. About 17-20 miles of fence may be required.

- b. Grazing Season. Cattle shall be removed from the range two weeks prior to opening of the moose hunting season.
- c. Grazing in Habitat Areas. See area-wide policy in Chapter 3, page 121.

3. ACCESS

- a. Minimize Wildlife Impacts. Any new roads and trails proposed for forestry, mining, recreation or grazing within or near the subunit will be designed to minimize negative impacts to the wildlife resources and related public uses. Access routes will be centralized and of very low density. ADF&G will be consulted on location prior to authorization.
- b. Public Use of Mining Roads. The public use of access roads developed for mining will be determined on a case-by-case basis by ADF&G and DNR, based on what will be most beneficial to the management of the moose population. The options are private or public access, temporary or permanent. That is, use of the access road by highway vehicles may be restricted to mine personnel only if necessary to minimize impacts to wildlife. The mine operator may be required to remove the road upon completion of the project. The other option would be to keep it open as a public access road. Seasonal use restrictions may be authorized.
- c. Wetlands. Where an ever-widening network of trail making is occurring in the Willow Mountain subunit, DNR and ADF&G will work with user groups and/or state correctional facility labor to do primitive corduroy-type improvements to enable access through the bogs for hunting purposes. The level of damage to these wetlands should be assessed by DNR and ADF&G and recommendations made for rehabilitation and prevention of further damage.

4. RECREATIONAL OPPORTUNITY SPECTRUM

- a. Setting. The intended recreational setting described in Part "a" is for the purpose of guidance to land managers who must adjudicate land use requests. It is not intended to be a hard and fast set of rules.
 - (1) Physical Setting: Predominantly natural appearing environment in western portions; unmodified, natural environment in the eastern, mountainous portions
 - (2) Social Setting: Low concentration of users except in moose season; low interaction between users

- (3) Managerial Setting: Minimum of on-site controls
 - (4) Access and Mode of Travel: Designated trails for ORV use with minimum improvements to prevent rutting and erosion in western portions; cross-country foot travel in mountains; aircraft access
 - (5) Vegetative Alterations and duration of impact: Moderate loss of vegetation and soil on major trail routes and where camping occurs, trail impacts persist from year to year. Non-trail areas should only show temporary impacts.
 - (6) Type of Experience: High probability of seeing wildlife, experiencing quiet and solitude (except for trail areas), freedom, challenge, risk, closeness to nature
- b. Facilities. The purpose of this section is to describe the intended level of recreation facility development. Where no facilities are proposed, this does not mean it is a prohibited use.
- (1) Public Facilities: Public cabins: one each in Peters and Purches below timberline, one existing Willow Mountain, one in alpine north of Dogsled Pass; parking at Peters-Purches trailhead
 - (2) Camp Sites: No developed sites
 - (3) Picnic Sites: None planned
 - (4) Water Supply: None planned
 - (5) Sanitation: Outhouses at public cabins
 - (6) Signs: Limited signing for designated trails
 - (7) Water Crossings: Ford crossings, no bridges
 - (8) Interpretative: Interpretation through self-discovery
- c. Guidelines for Appropriate Commercial or Other Private Uses to be Authorized by Lease or Permit
- (1) Commercial and Other Private Uses: None by lease; generally permitted activities as listed in the Division of Land and Water Management Policy and Procedure Manual (Chapter 5122, Section 01) will not be affected; applications for permit will be considered on a case-by-case basis if compatible with guidelines and management intent.
 - (2) Stipulations on Private Uses: It is important that private uses maintain the recreation setting as described above and provide a clear public benefit. Additionally, private recreational uses must require no roads and not negatively impact wildlife populations.



PROPOSED

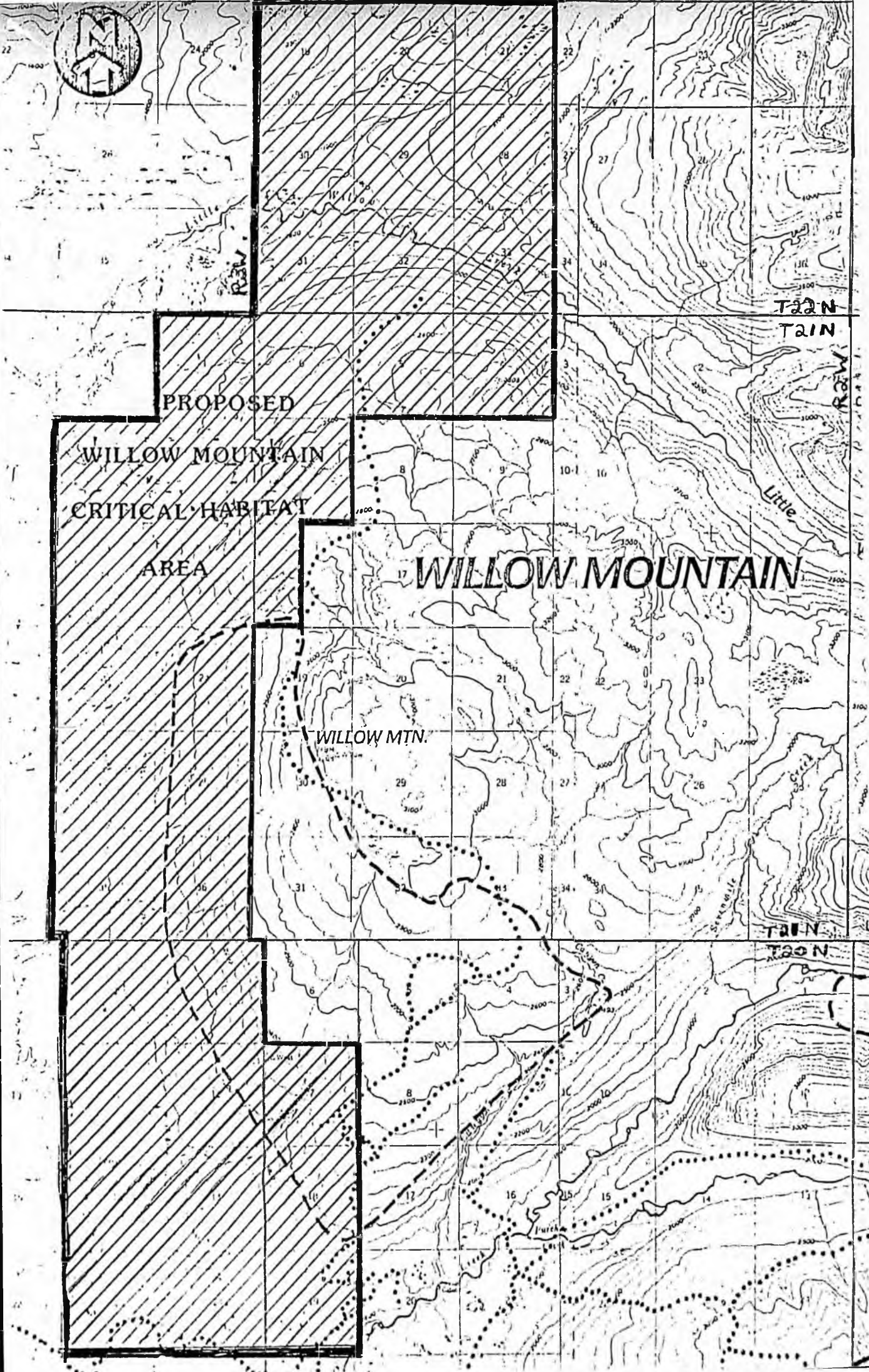
WILLOW MOUNTAIN
CRITICAL HABITAT
AREA

WILLOW MOUNTAIN

WILLOW MTN.

T22N
T21N

T20N
T20N



S B

166

FISCAL NOTE

REQUEST:

Revision Date: March 8, 1988
Title: an act relating to administrative regulations, and appeals . . .
Sponsor: Fahrenkamp
Requestor: _____

Agency Affected: Education
BRU: Executive Administration
Components: Commissioner's Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		36.0	72.0	75.0	78.0	81.0
TRAVEL		2.0	5.0	5.0	5.5	6.0
CONTRACTUAL		8.0	20.0	21.0	22.0	23.0
SUPPLIES		2.0	2.0	2.0	2.5	3.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		48.0	99.0	103.0	108.0	113.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		46.0	99.0	103.0	108.0	113.0
FEDERAL FUNDS						
OTHER						
TOTAL		46.0	99.0	103.0	108.0	113.0

POSITIONS:

FULL-TIME		2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached analysis.

Prepared by: Robert Davis Phone: 465-2800
Division: Commissioner's Office Date: 3-21-88
Approved by Commissioner: William G. Demmert Date: 3-21-88
Agency: Department of Education

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE
(page 2 of 2)

Bill Version: CSSB No. 166 (03/08/88)
Title: "An Act relating to administrative regulations, adjudications, and appeals; amending Alaska Court Rule of Appellate Procedure 508; and providing for an effective date."

ANALYSIS

Assumptions:

(1) Sec. 9 repealers effective 6/30/89 will require State Board of Education reviews and actions over a six month period prior to that effective date.

(2) Sec. 8 reviews of regulations by the legislative legal services division will require at least two full time Department staff for six months of FY89 for research, analysis and impact assessment of all regulations contained in Title 4, Alaska Administrative Code.

(3) The review process in Sec. 8, and the economic analyses in Sec. 6 would apply to about half the state school districts. By the nature of the data collection related to schools and the types of the analyses required, and in order to sustain the review functions of the State Board of Education contained in AS 44.27.010, a continuing staff capability is required.

Program Summary:

Title 4 AAC contains a mixture of educational standards for programs and staff as well as administrative requirements. The proposed legal and economic analyses will inevitably require analyses of educational impacts. Existing staff will be utilized depending on the subject and requirements for analysis. The efficiency and quality of the workload, and a substantial volume of both informal and formal activities needed to keep school districts and the State Board of Education informed of what is going on will require control and coordination through one individual.

Positions. Administrative Officer I (Range 17-A) @ \$44.0 annually
Clerk-Typist III (Range 8-A) @ 28.2 annually

Other Expenditures. Travel estimate includes centralized meetings with school officials, and to State Board of Education scheduled meeting locations. Contractual estimates are based 75% upon public notice costs related to actions modifying or repealing regulations on a quarterly basis.



ALASKA STATE CHAMBER OF COMMERCE

310 Second Street
Juneau, Alaska 99801
(907) 586-2323

March 22, 1988

The Honorable Bettye Fahrenkamp
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Bettye:

You have asked for our comments on SB 166. The State Chamber supports SB 166 for the following reasons.

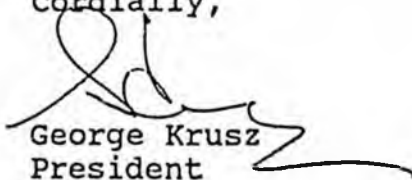
As you are aware, the Executive Branch in Alaska is one of the strongest in the U.S. Many times over the years the Administration has felt free to differ with the legislative intent of laws adopted by the Legislature through interpretation in the form of regulations.

Agencies of State government given such power have occasionally abused their authority to the detriment of development interests. When the Legislature has tried to overturn regulatory interpretations of statutory enactments, the Alaska Supreme Court has sided with the Administration. The Legislature is frequently found with interpretation of law not of their making. A way must be found to permit the Legislature to overturn regulations. SB 166 would be a giant step to ensure that the intent of the Legislature is fulfilled.

SB 166 empowers the Administrative Regulation Review Committee to bird-dog agency compliance with the proposed statutory requirement to undertake an economic analysis of a proposed action on small businesses and small municipalities. It also authorizes the committee to participate as a friend of the court in litigation brought to address the effect of a regulation on small entities.

The legislation furthermore calls upon each agency of the State government to review the existing regulations that have a potential economic effect on small businesses and municipalities for the purpose of determining whether the regulations should continue to be implemented. Each of these mandates will have the effect of forcing the Administration to examine regulations for their economic impact and lay bare for public review how they affect the business community. Accordingly, in our view, this is legislation which would have great merit in any democracy and is sorely needed in Alaska.

Cordially,


George Krusz
President

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99611-0300
PHONE: (907) 465-3600

March 22, 1988

The Honorable Arliss Sturgulewski, Chair
Senate Community and Regional Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: Proposed CS for SB 166
(administrative regulations,
adjudication, and review) --
additional comments, fiscal
note, etc.

Dear Senator Sturgulewski:

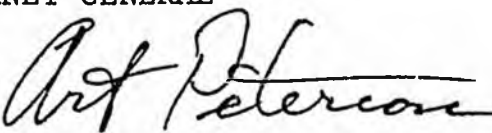
As indicated in my March 18 letter to you on this bill, you will find attached the Department of Law's fiscal note, along with position papers and other commentary from various other state agencies. I hope that you will find this material helpful in your committee's analyses of this bill.

Thank you for this opportunity to comment.

Yours truly,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:


Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney

AHP:cb

cc w/enc.: Hon. Bettye Fahrenkamp
Alaska State Senate

Bob Evans, Legislative Liaison
Office of the Governor

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: _____
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: CSSB 166 () 5-0798B
An Act relating to admin. regulations...
Sponsor: Senator Fahrenkamp
Requestor: Senator Sturqulewski

Agency Affected: Legislative Affairs Agency
BRU: Legislative Council
Components: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	130.3	130.3	130.3	130.3	130.3
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	6.2	6.2	6.2	6.2	6.2
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	136.5	136.5	136.5	136.5	136.5

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	136.5	136.5	136.5	136.5	136.5
FEDERAL FUNDS						
OTHER						
TOTAL	0	136.5	136.5	136.5	136.5	136.5

POSITIONS:

FULL-TIME	0	2	2	2	2	2
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	1	1	1	1	1

ANALYSIS : (Attach a separate page if necessary)

CSSB 166 () requires all agencies to submit a regulation or order to the Legislative Legal Services Division for review and to analyze the probable economic effect of the proposed act on small entities. It also requires the Legal Services Division to review all existing regulations before January 1, 1993 and report the results to the Administrative Regulation Review Committee.

Prepared by: Pamela A. Stoops, Manager *Pamela A. Stoops* Phone: 465-3850
Division: Administrative Services Date: 3/22/88

Approved by: Warren Endicott *Warren Endicott* Date: 3/22/88
Executive: Director
Agency: Legislative Affairs Agency

Distribution (by preparer):

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

CONTINUATION OF FISCAL NOTE FOR CSSB 166 ()

Costs needed to carry out the Legal Services functions are as follows:

Personal Services

Attorney III	Range 23/A	12 months	65,648
Economist I	Range 18/A	12 months	51,181
Secretary	Range 10/A	6 months	13,500

Contractual

Office Space	- 200 square feet	5,184
Phones		<u>1,000</u>

TOTAL COST 136,513

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 455-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

March 22, 1988

POSITION PAPER

RE: Proposed CS for SB 166

ORIGINAL SPONSOR: Senator Fahrenkamp

Program Effects of Bill:

The major program effects of this bill on the Department of Community and Regional Affairs would result in a greatly complicated administration of programs that are governed by regulation.

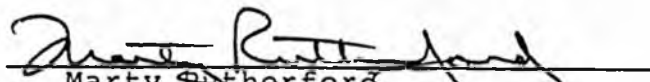
Comments:

Among the programs governed by regulation in this department are the following: Local Boundary Commission, Municipal Lands Trustee, the Senior Citizen and Disabled Veteran Tax Exemption Program, the Senior Citizen and Disabled Veteran Tax Equivalency Program, the State Employment Training Program, The Rural Economic Development Initiative Grant Program, the Energy Conservation Program, the Housing Assistance Loan Fund, the Home Ownership Assistance Program, and the Nonconforming Housing Loan Program. Over the last four years (FY 85 - present), the department has opened with the Department of Law 20 regulation files, representing new adoptions, amendments or repeals of regulations.

The portions of the bill providing for automatic repeal of regulations and legislative disapproval of regulations create a significant danger of program interruption and increased administrative expense. If no action were taken by the legislature to extend the regulations, the department would be faced with the public notice and hearing process on these regulations on an annual basis. This would require a tremendous investment of time and effort on the part of the department. It would mean either a reallocation of staff time away from direct program service delivery and administration, with the consequent reduction in program efficiency, or new staff to meet the new demands. If the legislature were to disapprove a regulation, the possibility of interruption of program services becomes even greater because of the lack of positive guidance provided by such action, with the resultant hardship to program participants.

SB 166
March 22, 1988
Page Two

While the department is sympathetic to the objective of analyzing the impacts of changes in regulations on small entities, and particularly municipalities, other provisions of the bill have the potential for significant negative impact on the department's ability to administer programs and deliver services to its clients. Consequently, the department cannot support this legislation.


Marty Rutherford
Acting Deputy Commissioner

Proposed CSSB 166: "An Act relating to administrative regulations, adjudications, and appeals; amending Alaska Court Rule of Appellate Procedure 508; and providing for an effective date."

The Department of Commerce and Economic Development is charged with the regulation of a number of industries in a manner which balances the encouragement of business growth with the need for consumer protection. In this capacity, the department regulates banking, securities, corporations, 28 occupations through 18 boards and commissions, insurance, loan programs, utilities, the conservation of the oil and gas resources of the state, and commercial trade through the maintenance of weights and measurements standards.

The changes in the proposed committee substitute for SB 166 substantially alter the intent and scope of the original bill. Primary among them is the provision in Section 9 requiring the repeal of all administrative regulations, according to a timetable, for all but one of the boards or commissions falling under the department's centralized licensing statutes as well as the regulations of the department itself.

This repeal is automatic, unless the regulations are "extended by law." The bill does not address how this extension is to be accomplished: by the Legislature's Budget and Audit Committee? by request of the Governor? or by some other means?

The automatic "sunset" of an entire department's or board's regulations is simply too drastic. While the department is supportive of at least one of the intents of this legislation (to analyze the economic impact of regulating decisions on small business) and agrees that more attention ought to be focused on how the state develops a climate favorable to the growth and development of business, a wholesale repeal of administrative regulations is, frankly, throwing the baby out with the bath water. In a number of professions, individuals are required by law to be licensed in order to perform their jobs. Nursing home administrators must be licensed in order for the state to receive federal Medicaid reimbursement.

In the case of regulations adopted by the boards and commissions within the Division of Occupational Licensing, the bill fails to recognize one key factor: the regulations adopted by the boards are proposed and approved by board members (most of them small business persons) to regulate their own professions. The boards contain a balance between licensed professionals providing the technical expertise to self-regulate their professions and lay representation representing consumer interests. It would appear to be a major shift in policy and philosophy if the Legislature were to repeal the regulations that the citizens active in the various professions have developed to regulate themselves. It goes without saying that rarely, if ever, has a board considered adoption of a regulation which negatively impacted the economic well-being of its profession. Indeed, the division and the Department of Law spend a great deal of time and energy making sure that the regulations proposed by the boards are not too protectionist and, thus, subject to antitrust considerations.

The clear advantage of having regulatory boards with a majority of members from each of the regulated industries is to avoid just the kind of over-regulation this bill seems to feel currently exists. To add another level of oversight would appear to defeat a primary purpose of the bill, which is to get government off the backs of the people. Enactment of this legislation would, in fact, add another layer of government.

Another flaw in the decision to repeal all regulations automatically is the total disregard for the struggle many boards, commissions and agencies have gone through to get their regulations adopted. In the case of the Division of Occupational Licensing, one of the biggest frustrations board members have is over the length of time it takes to get their adopted regulations reviewed and formally approved for publication by the Department of Law.

If the division were to inform the members of the boards that all of their hard work were to be thrown out, including the considerable time spent during board meetings discussing needed regulations and in public hearings and debate, the Legislature would certainly discover that the small business persons regulated by these boards are not interested in returning to the days before regulation. Deregulation is not, in and of itself, always a positive move.

Finally, the suggested repeal seems to fly in the face of the work of the sunset process for boards and commissions. The performance audits completed by the Legislative Affairs Agency's audit division have been very successful in addressing problems identified by the Legislature's Budget and Audit Committee. This process has made the boards much more responsive to public concerns, while still providing them with considerable regulatory independence. The sunset process has professionalized the boards and their decision-making process.

The repeal of all regulations contemplated in the committee substitute seems to abrogate all the work of past Legislatures in reviewing the boards. The specific requirements of the performance audit are that it addresses the extent to which a board, commission, or agency or its operation:

1. has operated in the public interests;
2. has been impeded or enhanced by existing statutes and regulations and other policies it has adopted;
3. has recommended statute or regulation changes that are in the public interest; and
4. has encouraged public comment on the effect of its regulations and encouraged public participation in the drafting of its regulations and decisions.

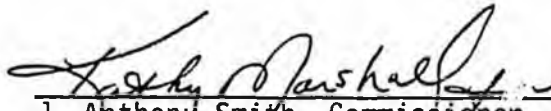
Although the main focus of this position paper is on the dramatic impact the proposed legislation would have on the activities of the Division of Occupational Licensing and its regulatory boards and commissions, other areas of the department would be affected as well.

For example, there are many provisions of regulations in Title 6, regulated by the Division of Banking, Securities, and Corporations, which provide parity for state-chartered financial institutions in competition with federal-chartered institutions. If the state regulations were suddenly repealed, banks would find themselves in violation of federal law, thus, subjecting themselves not only to penalties but also to the disagreeable position of being at a disadvantage in the marketplace.

The securities section also is concerned with the provision in the proposed legislation that would require affirmative action to extend regulations, particularly in regard to regulations governing the Alaska Native Claims Act Corporations on the solicitation of proxies. The absence of the regulations would result in a serious lack of shareholder protection to the largest group of shareholders of Alaska domestic corporations. ANCSA corporations are the only U.S. corporations not governed by the U.S. Securities and Exchange Commission. ANCSA shareholders may exercise control only through the election of directors, as capital stock is not currently alienable. The present regulations were adopted January 4, 1981 in response to the widespread problems associated with the void in the law regarding proxy solicitation.

The Division of Investments has promulgated a number of regulations in conjunction with its loan programs. These regulations clarify or define terms in the statutes, provide the department with a consistent basis for evaluating loan requests equitably, and cover details that are necessary in order to administer the statutes. A number of lending practices have been established by regulation. For example, under the commercial fishing loan program, subjects such as refinancing, assumptions, permit leasing and the loan process itself are dealt with through regulation. These details would be extremely cumbersome to place in statute, yet are such an integral, ongoing part of the program that it would simply not make sense to automatically sunset them. The regulations of the division receive frequent review because, due to the ever changing environments in the industries affected by the loan programs, they are amended fairly often. Amending through regulation is a much faster and easier process than a statutory change.

Again, while the department supports the goal of regulatory flexibility, it is our conviction that the methodology presented in the committee substitute is simply too extreme. Although it is not unreasonable to require agencies to review all regulations every few years, wholesale sunset goes too far. In conclusion, the department is opposed to the bill in its current form.



J. Anthony Smith, Commissioner
Department of Commerce and Economic
Development


3/22/88
Date

MEMORANDUM

DRAFT

To: Linda Wild
Legislative Liaison
DC&ED

Date: March 22, 1988

 From: Ted Moninski
Executive Director
APUC

Subject: CSSB166

Linda, attached are a few brief paragraphs which represent the Commission's preliminary response to the the above referenced bill. As you are aware, I was unable to review the bill until yesterday and the Commissioners had even less time to consider it. Given that, please accept our comments as a very rough cut at what appears to be a rather substantial piece of legislation. With adequate lead time, I am sure the Commission will be prepared to offer a more comprehensive analysis. Please let me know if this item is subject to further committee action this session. Thanks.

cc. Susan M. Knowles
Chairman, APUC

MAR 22 '88 11:03 APUC 907-263-2155

P.3

COMMENTS ON CSSB 166

The legislation appears to maintain the existing scheme (See AS 42.05.151) whereby the provisions relating to administrative adjudications do not apply to the Commission, whereas the provision relating to regulations does apply to the Commission. Therefore, the sections regarding the award of costs to a prevailing party against the Commission would apparently not apply to the APUC. The provisions regarding the review and repeal of regulations would apply to the Commission.

Section 6 (adding a new section designated AS 44.62.295) and perhaps Section 9, provide for the automatic revocation of existing regulations without normal legislative enactment procedures. In view of State v. A.L.I.V.E. Voluntary, 606 P 2d. 769 (1980), these provisions may violate Article II, Section 14 of the State Constitution.

The proposed statute is not drafted to repeal only those regulations which somehow place a burden on regulated entities. Instead, it would also repeal regulations which the Commission has been required by the legislature to adopt: (rules of practice and procedure, AS 42.05.151(b)); regulations which save cost, for example, by providing guidance to regulated entities regarding information they must file with the Commission to obtain a rate increase; regulations which were adopted by the Commission in compliance with the specific recommendations of the sunset review procedure (Electric Service and Safety Standards); regulations which were adopted to reduce regulatory requirements for small entities (Simplified rate procedures for electric cooperatives, AS 42.05.381(e)). Enactment of the proposed legislation with the potential for a blanket revocation of existing regulations could result in confusion and a greater burden to all involved.

The proposed statute would create an additional layer of state review with unnecessary associated costs. Existing procedures already provide affected utilities, pipeline carriers and other interested parties sufficient opportunity to comment on proposed regulations before those regulations are adopted. The Commission gives full consideration to the impact on these entities before regulations are adopted, and in many cases regulations have been drafted to apply only to companies greater than a certain size.

The APUC is subject to a rather unique accountability requirement in that the cost burden, if any, imposed by its regulations must eventually come back before the Commission for approval prior to becoming part of the utility rates paid by consumers. This process creates an internal incentive to control the cost implications of new regulations. In addition, the Commission typically provides a transitional period and staff assistance to facilitate the requirements associated with new regulations. -----

MAR 22 '88 11:05 AM IC 907-263-2155

P.4

Given the highly technical and integrated nature of utility regulation, any further substantive review by an agency or committee less familiar with the particular area being regulated will be inefficient, costly, and unproductive.

MEMORANDUM

State of Alaska

TO:

Arthur H. Peterson
Assistant Attorney General
Department of Law

DATE:

March 22, 1988

FILE NO:

TELEPHONE NO:

THRU:

SUBJECT:

Proposed
CS SB 166

FROM:

Tom Hawkins
for Judith M. Brady
Commissioner

I am writing to briefly spell out this department's position on SB 166, "An Act relating to administrative regulations, adjudications, and appeals; amending Alaska Court Rule of Appellate Procedure 508; and providing for an effective date."

First, the bill's provisions relating to the award of costs and attorney fees allowed prevailing parties in administrative adjudications will have very little impact on the Department of Natural Resources. The department takes this position as very few of our adjudications are conducted under the Administrative Procedures Act (AS 44.62.330 -- 44.62.630). As such, the department maintains a neutral position on this portion of the bill.

Second, the bill's provisions relative to administrative regulations cause this department some concern. Those concerns center on the practicality of dealing with regulations which automatically expire on an annual basis, the fact that regulations are already subject to extensive review by the Department of Law and will be subject to an even more extensive (and time consuming) level of review by the legislative legal services division, the duplication of administrative efforts needed to maintain administrative regulations, the added burden placed upon the legislature in enacting subsequent legislation to "reauthorize" regulations, and the bill's lack of specificity in its requirement for an analysis of the "probable" economic effect of a proposed departmental action.

The department also questions the propriety of the bill's distinction between small businesses, entities, and municipalities and any other size business, entity, and municipality. If the legislature sees value in imposing new regulation-adoption requirements, why are those new requirements not uniformly applicable?

Finally, section 9's provision repealing all regulations of the department on July 1, 1991 will cause havoc with ongoing programs of the department. Nothing in the bill repeals the statutory

obligation underlying the regulations subject to repeal and nothing in the bill relieves the department's obligation to carry out the functions imposed on it by the statutory provisions. If the legislature intends to act in the area of regulatory affairs, it is important that the legislature recognize the fact that a "fix" to one portion of the picture will not necessarily fix the problem. Instead, it might resurrect problems that the regulations subject to the bill's legislative "fix" solved in the first place.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF



P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989

Senate Community and Regional Affairs Committee

March 22, 1988

TO: Senate Community and Regional Affairs Committee Members

FROM: Senate C&RA Staff

RE: CS for SB 166 (C&RA) - "An Act relating to administrative regulations, adjudications, and appeals; amending Alaska Court Rule of Appellate Procedure 508; and providing for an effective date."

The committee has previously heard this bill. At today's meeting a representative of the Small Business Administration will testify via teleconference. Art Peterson of the Department of Law will be at today's meeting to testify and a lengthy bill analysis and fiscal note from the Department of Law has been added to the packet. A fiscal note from Legislative Affairs will be available at the meeting.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to administrative regulations...Appellate Procedure 508..."
Sponsor: Senate C&RA
Requestor: Senate C&RA

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		228.4	235.3	242.4	249.7	257.2
TRAVEL		4.8	4.9	5.0	5.2	5.4
CONTRACTUAL		21.3	21.9	22.6	23.3	24.0
SUPPLIES		16.8	11.1	11.4	11.7	12.1
EQUIPMENT		28.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS		100.0	103.0	106.1	109.3	112.6
MISCELLANEOUS						
TOTAL OPERATING		399.3	376.2	387.5	399.2	411.3
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		399.3	376.2	387.5	399.2	411.3
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		4.0	4.0	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 21, 1988
Richard I. Pegues /FOR/
Approved by Commissioner: Grace Berg Schaible, Atty. Gen. Date: March 21, 1988
Agency: Department of Law

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 166 (C&RA)

The committee substitute for SB 166 amends AS 09.60, AS 24.20, and AS 44.62 by changing existing statutes and adding new sections to these statutes that provide for the payment of fees and costs to prevailing parties in administrative adjudications, other than state agencies, and that provide for the review and expiration of all new administrative regulations, and the review and repeal of all existing administrative regulations, unless the legislature postpones repeal or extends the regulations by law.

The department's fiscal analysis of the bill, which is discussed at some length below, indicates that certain of the bill's sections will have considerable impact on the Department of Law.

Sections 1 and 2 provide that a court award costs and fees to a prevailing party in a judicial review of an administrative adjudication, other than a state agency, based upon the prevailing market rate for the kind and quality of services furnished. The bill provides two restrictions to prevailing market rates. One, a prevailing party could not be compensated for an expert witness at a rate that exceeds the highest rate of compensation that is paid by the state agency for expert witnesses. Because a single state agency may employ multiple expert witnesses for different purposes, at widely varying rates of compensation, this provision should be further restricted to provide that the rate to be compensated not exceed the highest rate of compensation that is paid by the state agency for expert witnesses for a like or similar service. Two, attorney or agent fees in excess of \$75 an hour could not be awarded unless the state agency determines by regulation that an increase in the cost of living or a special factor, including the limited availability of qualified attorneys or agents for the adjudication involved, justifies a higher fee. Of the approximately 2,300 active attorneys currently licensed to practice law in the state, about 100 of these practitioners frequently appear at consequential agency adjudications, representing the largest effort in terms of the hours and the cost devoted to the practice of administrative law. And although many other practitioners also handle less important adjudications, the limited availability of qualified attorneys special factor could nearly always be present in serious adjudications that require larger blocks of attorney time. Experienced administrative law attorneys currently charge between \$125 an hour and \$170 an hour.

The state is currently subject to paying costs and fees to prevailing parties in any court action it brings and in court actions brought against the state, including appeals from administrative adjudications, as provided by Rules 79 and 82 of the Rules of Civil Procedure. Such costs and fees are, however, limited to the Rule 82 fee schedule, or in the absence of a readily determined monetary value, the "reasonable cost" method. Currently, the state may also seek costs and fees, under the existing rules, when it is the prevailing party in a judicial

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 156 (C&RA)

review of an administrative adjudication. Sections 1 and 2 would radically change the method by which the state pays costs and fees to a prevailing party in a judicial review of an administrative adjudication, and these sections would also prohibit the state from collecting costs and fees when it is the prevailing party. Section 7 similarly extends payment of costs and fees to a prevailing party in an agency administrative adjudication, other than a state agency, on the same terms as provided for in Section 2.

At present, state law does not provide for the award of attorney's fees and costs to those who prevail in administrative adjudications. From a policy perspective, it may well be appropriate if some limited allowance for costs and attorney's fees was provided in these proceedings. Any such provision, however, should treat all litigants equally, insofar as the award of such costs is concerned.

The use of the "reasonable cost" standard under Civil Rule 82 represents the fairest method of apportioning litigation expenses where the parties in a dispute have litigated on a good faith basis. Civil Rule 82 recognizes that a party doesn't usually prevail totally, it requires a justification of the expenses being claimed, and it considers the good faith nature of an unsuccessful party's claim or defense. Using this standard, a prevailing party is typically awarded about one-half of its justified actual expenses. If bad faith on the part of the unsuccessful party can be shown, the prevailing party could be awarded all of its justified expenses. The purpose of Civil Rule 82 is to compensate a prevailing party for costs of litigation without placing such a heavy burden on the unsuccessful party as to discourage access to the courts. The department does not believe that application of this rule at the court level (i.e. in appeals of administrative decisions) should be disturbed. Also, if costs and fees are to be awardable at the agency level in administrative adjudications, it seems the principles of Civil Rule 82 should also be utilized.

Treatment of the state in a manner less equal than the other parties to a dispute, under the principles of Civil Rule 82, at either the court or agency level, will not only subject the state to substantially higher claims for costs and fees, but it may also have the undesired effect of establishing a separate disadvantaged class of litigant, of which the state will be the only member. Moreover, the bill may inadvertently set up the state as a "deep pocket" by encouraging unmeritorious or questionable claims on a contingent fee basis.

It can be expected that the number of administrative adjudications and subsequent judicial reviews, that the state must defend, will increase without state access to Civil Rule 82 and the protection it affords against frivolous actions. Unfortunately, the bill may well be

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 166 (C&RA)

read by some as a signal that the state resides on a one-way street where it must pay, but need not be paid. Consequently, if awards of costs and fees are to be allowed in those administrative proceedings covered by the bill, the department believes they should be determined on the basis of the principles of Civil Rule 82 and should be available to all prevailing parties, including the state. The department strongly urges that prevailing market rates, or actual costs, be allowed only in those cases where a hearing officer or other official makes a clear finding that a party's claim was without merit. And it also supports continuation of the application of Civil Rule 82 to the payment of costs and fees to prevailing parties in judicial reviews of agency administrative adjudications.

Both Section 2 and Section 7 provide that a party seeking costs and fees must simply allege that the position of the agency was not substantially justified, without having to offer proof or evidence to substantiate such an allegation. Moreover, the bill's requirement that a court or hearing officer shall award fees and other expenses to a prevailing party, unless they find that the position of the agency was substantially justified, will cause additional litigation as attorneys for both sides argue over the appropriateness of an agency's position. Likewise, additional litigation will occur as disputes arise over the setting of costs and fees at administrative adjudications. During FY 1987 the department participated in 152 administrative proceedings that would be covered under the bill. The number of attorney hours the department devoted to this effort was equivalent to the time of 1.9 attorneys, or 2,810 hours. The department believes this provision could easily cause administrative adjudication litigation to increase by as much as 100% because of the risk-free environment it provides for potential litigants.

The department carefully screens agency complaints before deciding to initiate proceedings or before advising another agency to initiate proceedings. As a consequence, the state prevails in approximately 80% of the administrative adjudications that it brings. The department's costs in these proceedings range from a few hundred dollars for a simple adjudication to many thousands of dollars for a major adjudication. During FY 1987, the department's total attorney/staff cost for these proceedings was approximately \$235,000. Because of case backlogs, which have substantially reduced the amount of time that the department would otherwise have spent on these matters, and because Sections 2 and 7 will encourage additional litigation, it is estimated that private litigant attorney fees may increase to over \$500,000. If private parties continue to prevail at their current rate, the annual cost to the state could be about \$100,000 or 20% of the amount that private parties will probably pay in fees and expenses each year in administrative adjudications covered by the bill. Depending on the area of the law, state attorney costs are 30% to 50% lower than the private

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 166 (C&RA)

bar in terms of salary and the time required (or available) to litigate these matters. Consequently, the department believes that the \$100,000 estimate for fees and expenses is very conservative.

Any increase in litigation will also increase the attorney staff time that the department will have to devote to administration adjudications. At this juncture, the department cannot accurately predict what the cost for its increased staff time may be. Therefore the cost of this likely increase is not included in this fiscal note analysis. However, if increased litigation caused by this bill becomes substantial (equivalent to one or more attorneys), it may become necessary to request additional funds later.

Section 3 amends AS 24.20.460 to give the Administrative Regulation Review Committee the additional power to petition the court for permission to appear as amicus curiae in an action brought under AS 44.62.300 to address the effect of the regulation on small entities. This provision will have some impact on the department as its attorneys respond to amicus pleadings, but this impact cannot be predicted and the impact is not anticipated to be sufficient enough to warrant fiscal note costs.

Section 4 will not have a direct fiscal impact on the department.

Section 5 provides that agencies twice-yearly publish an agenda that describes regulations that they expect to propose or adopt that are likely to have a significant economic effect on a substantial number of small entities. This provision will not have an impact on the Department of Law, but it may have an impact on other agencies.

Section 6 provides for the expiration of a regulation or order of repeal adopted between October 1 and September 30 on July 1 of the following year unless the legislature postpones its repeal by law. Section 6 also provides for a thorough economic analysis and review of affected regulations on the part of the legal services division of the Legislative Affairs Agency, including the type and number of small entities affected, identification of less costly means of achieving the purpose of the regulations, and the identification of other regulations that may duplicate, overlap, or conflict with the regulation or order.

To the extent that the legislature's legal services division is adequately staffed to carryout these reviews, the Department of Law anticipates that it will require the full-time services of one attorney and the part-time services of one paraprofessional, plus part-time secretarial support, to represent and advise agencies during this new legislative review process, as the agencies explain and justify their need for the regulations they adopt or repeal each year.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 166 (C&RA)

The department reviews and assists other agencies to draft, adopt and repeal as many as 150 separate regulations projects each year. Some of these regulations are simple one-line repeals and some are quite comprehensive administrative law totalling perhaps 80 or 90 pages, each. During FY 1987, the department's attorneys and paraprofessionals spent 3,427 hours working on regulations. Thus the time already being spent annually on regulations equals 2.3 attorney/paraprofessional years, without adding an entirely separate review process. The department cautions that if the legislature's division of legal services annual review of regulations is not done as carefully as agency sunset reviews, the Department of Law's costs will be substantially higher than those shown in this fiscal note.

Section 8 directs the legislature's legal services division to undertake a comprehensive four and one-half year economic analysis of all of the state's existing regulations to, among other things, determine their lawfulness, continued need, complexity, economic effect on small entities, and to determine whether regulations should be continued without change or be amended or repealed to minimize significant economic impact. This provision, by itself, will not have an impact on the Department of Law unless it is read in conjunction with Section 9, which is discussed below.

Under Section 9, nearly all of the state's regulations would be repealed on a staggered basis over a four-year period, beginning on June 30, 1989, unless extended by law. This massive sunset provision will have a considerable fiscal impact on the Department of Law as it will be necessary to represent and advise agencies in explaining and justifying the legality, need, usefulness, and appropriateness of agency regulations that are required for the day-to-day operations of many state government programs. The department believes that the full-time services of one attorney and the part-time services of a paraprofessional, plus part-time secretarial support, will be required to see to it that government operations continue uninterrupted.

Once again, the department cautions that its fiscal impact estimate is premised on the assumption that the legislative review of state regulations under the bill will be carried out as seriously and carefully as agency sunset review. Even the inadvertent repeal of certain regulations could have disastrous impact on some programs. For instance, the lack of commercial fishing or subsistence regulations could force the unintended closure of commercial and sports fishing and hunting for an entire season. Likewise, the absence of state regulations in regulatory areas shared by the federal government, such as coastal management and environmental protection, could result in federal usurpation of state control in these areas. Any of these events would cause an immediate and dramatic increase in the department's litigation costs, as it attempts to undo the damage in the courts.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 166 (C&RA)

Fiscal Analysis Summary (FY 89)

	<u>Sec. 7 Fees & Expenses</u>	<u>Sec. 6 Atty IV</u>	<u>Sec. 9 Atty IV</u>	<u>Sec. 6/9 Assoc. Atty II</u>	<u>Sec. 6/9 Legal Sec'y I</u>	<u>TOTAL</u>
Per. Svcs.		72.0	72.0	52.9	31.5	228.4
Travel		2.4	2.4	-0-	-0-	4.8
Contr.		5.7	5.7	5.7	4.2	21.3
Supplies		4.5	4.5	4.5	3.3	16.8
Equip.		6.5	6.5	6.5	8.5	28.0
Judgments	100.0					100.0
TOTAL	100.0	91.1	91.1	69.6	47.5	399.3

Costs after FY 89 include a 3% annual inflation factor, less one-time start-up costs.

Position Title Attorney IV		No. of Positions 1	Range/Step 24A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location Juneau		Elct District 4
Justification				
This position is needed to advise and represent agencies in the annual review of all state regulations adopted or reviewed in the preceeding year that would be required by Section 6, of CSSB 166 (C&RA). A wide variety of regulations will be subject to review that deal with often complex areas such as resources, transportation, public assistance, taxation, commerce, public utilities, child protection, public safety, mental health, custody of prisoners, the environment, and development. An Attorney IV will be required because of the substantive areas of law that will be subject to the annual review.				
Type of Expenditure		Amount		
1	2	3		
Salary	56,244			
Benefits	15,713			
Premium Pay				
Other				
Total Personal Services		71,957		
Travel		2,400		
Contractual		5,700		
Commodities		4,500		
Equipment		6,500		
Other				
Total Cost		91,057		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	91,057		
GF Program Receipts	1005			
Other				

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Position Title Attorney IV		No. of Positions 1	Range/Step 24A	Barg. Unit PX	
Time Status PFT	Staff Months 12	Location Juneau		Election District 4	
Type of Expenditure		Justification			
		<p>This position is needed to advise and represent agencies in the four-year review and repeal of nearly all of the state's administration regulations that would be required by Section 9 of CSSB 166 (C&RA). Both an enormous number and an enormous variety of regulations will be subject to review and repeal. These regulations deal with often complex areas such as resources, transportation, public health and public assistance, taxation, commerce, public utilities, child protection, public safety, mental health, custody of prisoners, the environment, and development. An Attorney IV will be required because of the substantive areas of law that will be subject to review and repeal.</p>			
Amount					
1	2				3
Salary	56,244				
Benefits	15,713				
Premium Pay					
Other					
Total Personal Services					71,957
Travel					2,400
Contractual					5,700
Commodities					4,500
Equipment					6,500
Other					
Total Cost					91,057
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	91,057			
GF Program Receipts	1005				
Other					

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Position Title Associate Attorney II		No. of Positions 1	Range/Step 19A	Barg. Unit PX	
Time Status PFT	Staff Months 12	Location Juneau		Election District 4	
Type of Expenditure		Justification			
		<p>This position is needed to assist the two Attorney IV's, who will handle both the annual review of new regulations and the four-year review of all existing regulations in the state's administrative code. The position will handle executive branch review of routine, less complex regulations, independently, and assist the two attorneys with the review of more complex regulations. Use of this advanced level paraprofessional is appropriate for this work and far more cost efficient than adding a third attorney for the review process.</p>			
1	2				3
Salary	40,236				
Benefits	12,633				
Premium Pay					
Other					
Total Personal Services					52,869
Travel					-0-
Contractual					5,700
Commodities					4,500
Equipment		6,500			
Other					
Total Cost		69,569			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	69,569			
GF Program Receipts	1005				
Other					

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CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Position Title Attorney IV		No. of Positions 1	Range/Step 24A	Barg. Unit PX	
Time Status PFT	Staff Months 12	Location Juneau		Election District 4	
Type of Expenditure		Justification			
		<p>This position is needed to advise and represent agencies in the annual review of all state regulations adopted or reviewed in the preceeding year that would be required by Section 6, of CSSB 166 (C&RA). A wide variety of regulations will be subject to review that deal with often complex areas such as resources, transportation, public assistance, taxation, commerce, public utilities, child protection, public safety, mental health, custody of prisoners, the environment, and development. An Attorney IV will be required because of the substantive areas of law that will be subject to the annual review.</p>			
Amount					
1	2				3
Salary	56,244				
Benefits	15,713				
Premium Pay					
Other					
Total Personal Services					71,957
Travel					2,400
Contractual					5,700
Commodities					4,500
Equipment					6,500
Other					
Total Cost		91,057			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	91,057			
GF Program Receipts	1005				
Other					

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Position Title Attorney IV		No. of Positions 1	Range/Step 24A	Barg. Unit PX	
Time Status PFT	Staff Months 12	Location Juneau		Election District 4	
Type of Expenditure		Justification			
Amount		<p>This position is needed to advise and represent agencies in the four-year review and repeal of nearly all of the state's administration regulations that would be required by Section 9 of CSSB 166 (C&RA). Both an enormous number and an enormous variety of regulations will be subject to review and repeal. These regulations deal with often complex areas such as resources, transportation, public health and public assistance, taxation, commerce, public utilities, child protection, public safety, mental health, custody of prisoners, the environment, and development. An Attorney IV will be required because of the substantive areas of law that will be subject to review and repeal.</p>			
1	2				3
Salary	56,244				
Benefits	15,713				
Premium Pay					
Other					
Total Personal Services					71,957
Travel					2,400
Contractual					5,700
Commodities					4,500
Equipment		6,500			
Other					
Total Cost		91,057			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	91,057			
GF Program Receipts	1005				
Other					

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Position Title Associate Attorney II		No. of Positions 1	Range/Step 19A	Barg. Unit PX	
Time Status PFT	Staff Months 12	Location Juneau		Election District 4	
Type of Expenditure		Justification			
Amount		<p>This position is needed to assist the two Attorney IV's, who will handle both the annual review of new regulations and the four-year review of all existing regulations in the state's administrative code. The position will handle executive branch review of routine, less complex regulations, independently, and assist the two attorneys with the review of more complex regulations. Use of this advanced level paraprofessional is appropriate for this work and far more cost efficient than adding a third attorney for the review process.</p>			
1	2				3
Salary	40,236				
Benefits	12,633				
Premium Pay					
Other					
Total Personal Services					52,869
Travel					-0-
Contractual					5,700
Commodities					4,500
Equipment		6,500			
Other					
Total Cost		69,569			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	69,569			
GF Program Receipts	1005				
Other					

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Position Title Legal Secretary I		No. of Positions 1	Range/Step 10B	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Juneau		Election District 4
Justification				
This position is needed to provide legal secretarial services to the two attorneys and the paraprofessional associate attorney who will be needed to represent and assist agencies in the annual and four-year multi-part review and repeal of nearly all of the state's administrative code. This position will handle typing, filing and communications on behalf of the attorneys and paraprofessionals, including final bill drafts and regulations drafts.				
Type of Expenditure		Amount		
1	2	3		
Salary	22,716			
Benefits	8,749			
Premium Pay				
Other				
Total Personal Services		31,465		
Travel		-0-		
Contractual		4,200		
Commodities		3,300		
Equipment		8,500		
Other				
Total Cost		47,465		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	47,465		
GF Program Receipts	1005			
Other				

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STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

March 18, 1988

The Honorable Arliss Sturgulewski, Chair
Senate Community and Regional Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: Proposed committee substitute
for SB 166 (administrative
regulations, adjudications,
etc.)

Dear Senator Sturgulewski:

Your assistant, McKie Campbell, has asked, on your behalf, for Department of Law comments on this proposed committee substitute. The version I will be commenting on is a 14-page one that we received March 8. McKie has also furnished us copies of Senator Bettye Fahrenkamp's two memos of that date to you.

I have not discussed this bill, either the original version or this proposed committee substitute, with the governor, and my comments should not necessarily be construed as the Administration's position. However, as McKie and I have discussed, I expect to furnish you with position papers and fiscal notes from this department and some other state agencies. It is possible that you have already received some directly from other agencies. We have not requested a fiscal note from the Legislative Affairs Agency, but the additional costs to it as a result of this bill (especially secs. 6 and 8) would be substantial, too.

As you know, the proposed committee substitute would make a number of profound changes in the way the state deals with administrative regulations and administrative adjudications and appeals. Before supporting any change in the law, especially such fundamental ones as proposed in this bill, we would like to be able to identify the problem in the current law and would like to feel assured that the proposal is a good solution to that problem. In other words, what is broken that needs fixing, and is the repair worth the cost? Is the solution tailored to a particular problem, or is it a wholesale revamping of the procedures and policies enacted by prior legislatures? If the latter, why?

Notwithstanding generalized complaints about there being "too many" regulations, and notwithstanding possible legislative disagreement with the policy expressed in a particular regulation or adjudication, I am not aware of any particular problem

stemming from the absence of the proposals in this bill. In addition, it is not at all clear that there will be any public benefit derived from the changes that will cost a great deal to implement. I cannot support this bill.

Here are some quick section-by-section comments:

Section 1:

The current AS 09.60.010 provides for the Alaska Supreme Court to adopt rules regarding the award of costs and attorney fees to the prevailing party in a civil action. The court has implemented this provision in Rule 82, Rules of Civil Procedure, and Rule 508, Rules of Appellate Procedure. The only change made by sec. 1 of the bill is to provide that the court's authority is limited by the provisions that the bill's sec. 2 would add. This amendment would stand or fall with the provisions of sec. 2.

Section 2:

As described in one of Senator Fahrenkamp's March 8, 1988 memos to you, the proposed subsec. (b) for AS 09.60.010 directs a court to award to a prevailing party, other than the state, the fees and expenses incurred, unless the state agency's position "was substantially justified or special circumstances would make the award unjust." This applies only to the judicial review of the agency's adjudication.

Although this subsection provides certain limits on the amount of fees that may be awarded, and, under the language quoted in the preceding paragraph, an important area for the exercise of judicial discretion, it has a major, fundamental defect. A state agency is not given a comparable opportunity for an award of costs and attorney fees.

As Senator Fahrenkamp's other March 8 memo to you indicates, this provision is intended to put small businesses on an equal footing with large businesses. The opportunity to recoup the costs of an appeal is supposed to encourage a small business to take an appeal from an administrative adjudication in the same situation in which a better-financed large business might do so. However, it presents two major problems: (1) it encourages protracted litigation, with increased

attorney and other costs to the state, because the challenger has "nothing to lose" since the state agency will not be able to recoup its costs from the challenger if the state agency wins in court; and (2) by providing this unique benefit to someone challenging an agency's adjudication in order to promote his or her own interest, the general interests of the public will be subordinated to a private interest. Public money will pay the bill. The basic concept is one-sided and unfair.

The proposed subsec. (c) sets the time limit and certain requirements for seeking an award of costs and attorney fees. Among the requirements is one that specifies that the application for the award must allege that the agency's position was not "substantially justified." More than just an allegation should be required. Obviously, the party seeking the award will allege whatever seems to be required. However, normally in submitting a bill of costs it is necessary to present a justification for what is sought. In this context, it would be appropriate to require the applicant to submit evidence (if any) that the agency's position was not substantially justified.

Subsection (d) is a worthwhile provision, given this whole arrangement, that allows the judge some latitude, based on the conduct of the party applying for the award.

Subsection (e) merely provides for the supreme court to set procedures.

Subsection (f) defines certain terms. The definition of "agency" is a bit troublesome in that it includes a reference to the agency's "failure to act." Under the Alaska Administrative Procedure Act, the failure to act is not considered an adjudication, and, as provided in the proposed subsec. (b), it is adjudications that are the subject of all of the proposed subsections. An agency might deny an application or refuse to issue a permit, for example, but that decision is not a "failure to act." It is not appropriate to include, by way of the definition, agency conduct that is not covered by the basic substantive provision of the statute.

Subsection (f) also defines "fees and other

expenses," a term that is consistently used in the proposed material. However, the existing statute (AS 09.60.010, which would become subsec. (a)) uses the more traditional "costs" and "attorney fees," and it might be better to use consistent terminology throughout the statute and the court rules. The definition of "final judgment" is also troublesome in that it refers to such a judgment not being appealable. However, normally one cannot appeal until one has a final judgment. See Rule 202, Rules of Appellate Procedure. The definition of "position of the agency" presents the same problem as the definition of "agency," discussed above.

Section 3:

This section merely adds to the powers of the Administrative Regulation Review Committee the power to petition the court for permission to appear as amicus curiae, or "friend of the court," in certain actions. The effect of this is to cause the state agency and its attorneys to respond to whatever action might be taken or motions and briefs that might be filed by the amicus. While providing for the Administrative Regulation Review Committee to appear as an amicus is not necessarily a bad idea, there will be very definite and substantial costs associated with it. The committee will, of course, incur its own costs and attorney fees, and the state agency's response will require additional attorney fees and costs. It is impossible to estimate with precision what the grand total will be.

Section 4:

This section amends AS 44.62.030 in two ways, one that appears to be merely a change in language style, and one that is a profound but confusing substantive change. I don't think that the change from "no regulation adopted is valid or effective" to read "a regulation adopted is void" does anything beyond stating in a positive rather than negative way the effect of a regulation's failure to meet that statute's standard for validity.

However, the proposed new last sentence is not a good idea. It prohibits treating a regulation as within an agency's statutory authority solely on the grounds that it is not contrary to a statute. First of all, existing AS 44.62.020 requires that the regulation

be "within the scope of authority conferred and in accordance with standards prescribed by other provisions of law." And existing AS 44.62.030 (the first sentence of the proposed amended version) requires that the regulation be "reasonably necessary to carry out the purpose of the statute" in addition to being consistent with it. Thus, there are at least four statutory criteria that every regulation must meet. No regulation will be found valid "solely" because there is no contrary statute.

Secondly, in that the existence of statutory authority is one of the four basic criteria, the absence of a statute contrary to the regulation is relevant to the consistency criterion, not to the authority one. The question of the absence of a contrary statute simply will not arise in connection with the search for statutory authority. The proposed sentence achieves nothing, but causes confusion among the four basic criteria. One wonders what the specific situation giving rise to such a provision as proposed in sec. 4 could have been.

Section 5:

This section of the bill would add a new statute (AS 44.62.177) to require that each agency publish twice a year a "regulatory flexibility agenda." The need for this is certainly questionable, especially since an agency is not bound by it (see the proposed AS 44.62.177(b)). Under the current AS 44.62.190, an agency is required to give a broad distribution (and, for legislators to some extent, duplicate and triplicate distribution) of the notice of proposed regulation adoption, at least 30 days before the adoption. It is not clear that, in addition to the currently required saturation notice, this regulatory agenda would provide anything more than a time-consuming irritant to each regulation-adopting agency.

Moreover, the language of the provision itself presents problems. For example, there is no definition of the "significant economic effect on" the "substantial number" of small entities that this agenda is suppose to cover. And, when the statute speaks of the effect that the proposed regulation is "likely to have," it does not say when. Is the statute referring to an immediate effect or some effect spread over a

substantial period of time? In subsec. (c), we are given a definition of "small entity," with a cross-reference to AS 44.62.295, proposed in sec. 6 of this bill. That statute's definition, in turn, refers to two other definitions ("small business" and "small municipality") that specify numbers that might not be appropriate for the Alaska context.

Section 6:

Section 6 proposes addition of a new statute (AS 44.62.295) that would provide for the automatic expiration of new regulations. (Cf. sec. 9 of the bill, regarding existing regulations.) This section merits vigorous opposition.

The proposed statute's caption, incidentally, refers only to the expiration of regulations. However, buried in the statute are numerous provisions on an economic analysis. This other feature should be reflected in the caption.

First of all, subsec. (a) imposes on the legislature itself (even with its "120-day" session limit), as well as on the various executive-branch agencies, another sunset burden. Under subsec. (a), if a regulation is adopted or repealed between October 1 and September 30, that adoption or repeal is "repealed" on "July 1 of the following year unless the legislature postpones its repeal by law." That means that important programs, which everybody agrees are essential to some aspect of the well-being of the people or resources of the state, could automatically and unintentionally come to a halt, which they would do in the absence of essential regulations.

Consider for a moment just the quantity of regulations involved. For the past 11 fiscal years, the Department of Law has averaged 155 regulations project assignments per year (with a high of 181 in 1978 and a low of 127 in 1979 and 1986), and we are up to 115 already this fiscal year. Each of those projects could range from a one-line repealer to an 89-page, single-space comprehensive revision of the "aid to families with dependant children" regulations.

Next, consider the specific wording of subsec. (a). Under the current provisions of the Alaska

Administrative Procedure Act, a regulation (including an order of repeal) does not take effect when it is adopted (except for "emergency regulations"). It takes effect 30 days after filing by the lieutenant governor, and the lieutenant governor cannot file a regulation until the Attorney General's Office has given it a legal review and approved it. Sometimes there is a several-month gap between the adoption and the effective date. This proposed statute probably should not use the word "adopted."

Also, one wonders what the intent was with the language about October 1 and September 30. For example, a regulation adopted on December 31 of some year would be "repealed" six months and a day later, whereas a regulation adopted on January 1 (ignoring, for the moment, that that would be a holiday) would not be repealed until one year and six months later. Does that make sense?

And, if a regulation is repealed, say, on November 15, and the legislature does not postpone the repeal of that repeal, the repeal will be repealed the following July 1. Does that mean that the original regulation springs back into effect (which would be contrary to AS 01.10.100(c)'s provision regarding the repeal of statutes)? This question is not answered by subsec. (g), which speaks only of the effect of passage of a bill repealing a regulation.

If the legislature fails to postpone the automatic repeal of a regulation, what is the agency to do? May it readopt that regulation? May it adopt a different regulation on the same point? How is it to know?

This is a very strange subsection.

The proposed AS 44.62.295(b) requires agencies to submit their adopted regulations to the legal services division of the Legislative Affairs Agency (described in the bill as the "legislative legal services division"). (Incidentally, so far as I know, there is no other statutory reference to the divisions of the Legislative Affairs Agency, and, to maintain administrative flexibility, it is probably a good idea to delete that reference here.) This subsection also imposes upon that division the duties of reviewing each regulation (1) to determine whether it is within the adopting

agency's regulation-making (which ought to be "regulation-adopting" to be consistent with the Administrative Procedure Act) authority, and whether it is authorized by law, and (2) to analyze the probable economic effect of the proposed action on small businesses and small municipalities.

Agencies are required to submit their regulations within 20 days after they are submitted to the lieutenant governor, but no deadline is imposed upon the Legislative Affairs Agency for its review.

To the extent of its review to determine regulation-adopting authority, the legal services division would be duplicating the work of the Department of Law under existing AS 44.62.060. One wonders about the necessity of that duplication. It is potentially troublesome in that it could inspire a private litigant, for his or her own personal gain, to pit one part of the government against another.

To the extent that subsec. (b) requires the legal services division to analyze the probable economic effect of a regulation, I see no problem with the basic idea. Certainly, "legislative oversight of the administration of statutes" is a valuable part of our three-branch system of government. (Incidentally, when referring to the "probable economic effect," the bill still refers to the "proposed action"; however, under this subsection the regulation is not submitted to the legal services division until "within 20 days after" it is submitted to the lieutenant governor. I.e., it is no longer a "proposed" action, and this wording should be changed.)

I cannot, of course, speak for the Legislative Affairs Agency, but I would think that the duties imposed on it by this bill are not realistic. Although most executive-branch agencies would rather have the Legislative Affairs Agency staff provide this economic analysis than have to do it themselves, many of the terms in the proposed statute are vague, the accuracy of the analysis is going to be questionable, and the value of the effort might not be worth the cost.

The proposed subsec. (c), setting out the requirements for the analysis, includes such considerations as "the types and numbers of small entities that will

probably be affected by the regulation." "Small entity" is defined in subsec. (k) in a way that does not look appropriate for the Alaska context. For example, a "small municipality," one of the kinds of small entity, is a municipality with 10,000 or fewer persons. That would cover just about every one except Anchorage, Fairbanks, and Juneau. In addition, how is the Legislative Affairs Agency staff to assess the probability? And what is the time context for determining that probability? I.e., "affect" when? Then, para. 2 requires consideration of the "probable economic effect" of a regulation on the probably affected entities. Some effects will be obvious, but many will depend upon the way in which the entity attempts to satisfy a requirement and whether the entity is one that is efficiently run or not efficiently run. How is the Legislative Affairs Agency going to determine that? The division's staff's review of the reasons for a regulation, the identification of alternatives, and the identification of possible duplicative or conflicting provisions might be helpful to the agencies involved. ("(a)" on page 6, line 10, should read "(b).")

Subsection (d) simply provides for the legal services division to give a regulation a clean bill of health.

Subsection (e) sensibly, given this whole arrangement, allows an agency to consider "a series of closely related regulations" (e.g., an entire chapter of new sections on a subject, along with some relevant, incidental amendments to old sections) as one regulation for the purposes of this statute.

Subsection (f) requires the Administrative Regulation Review Committee to report to the legislature. The report is to include any "proposed legislation." The assumption clearly appears to be that the legislation will be of the "disapproval" sort -- not the sort that will provide guidance and policy direction, through substantive amendments that set limitations, resolve ambiguities, and fill gaps in existing legislation. As has been said so many times before, this purely negative kind of legislation is of little value, either to the people of this state generally or to the agency involved in trying to execute a particular statutory program.

In subsec. (g), the reference to the "remaining portion" of a regulation, a portion of which is disapproved, retaining "its character as an administrative regulation" is not clear. What else would it be? Is the intent simply to say that the portion of a regulation that is not disapproved is still valid?

In addition, the last sentence of subsec. (g) poses two problems: (1) its reference to "repealing a regulation or disapproving an order" is not consistent with subsec. (a), under which both regulations and orders of repeal are "repealed on July 1 of the following year." How do these two subsections relate to each other? Simply as two independent ways of getting rid of a regulation? Should the terminology in both provisions be made consistent? (2) Being a statement of a negative condition, perhaps it doesn't matter much, but it is not always going to be clear what a "predecessor regulation" is. If it is in the same location and on the same subject, the answer is easy; but, the more remote the location and the less directly on point the other provision is, the more difficult is the answer. This could cause confusion when an agency is trying to salvage its program with other regulations.

I don't know what subsec. (h) means. The reference to publication in the Alaska Administrative Register makes one wonder whether the Alaska Administrative Code was intended, and, if so, why any such reference is necessary. Clearly, if an agency whose regulations are covered by the Administrative Procedure Act adopts regulations, they will end up being published in the Alaska Administrative Code. But, even more importantly, if the "action taken by the legislature" is merely a disapproval, how is the agency going to know how to "revise its regulations to conform" to that legislative action? This is one of the fundamental problems with this whole disapproval idea. To the extent that an executive-branch agency is prevented from performing its constitutional responsibility to execute a statutory program -- something that administrative regulations provide an essential tool for -- such an arrangement raises serious separation-of-powers constitutional problems.

Subsection (i) says that an agency "may not readopt a regulation or order of repeal that was