

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5459 SRES SB 98 - SB 130

Give Alaska miners realistic regulations

If ever there were a political and environmental issue that should see the dawn of common sense and compromise, it is the ongoing fuss over state water quality regulation of placer mining.

Now, here is a relatively small, seasonal industry that has seen a renaissance in recent years with higher gold prices. Placer mining contributes about 2,200 jobs and \$160 million yearly to the state's economy. It's no Prudhoe Bay, but jobs immune from sliding oil prices are worth an effort to preserve.

Also, larger mining concerns that someday could make more substantial contributions to Alaska employment watch how the state treats placer miners as a kind of barometer of how they may be treated.

The problem is that water quality standards set by the state Department of Environmental Conservation and enforced, under terms of the federal Clean Water Act, by the Environmental Protection Agency, are almost impossible for placer miners to meet. A 1984 study by Shannon and Wilson Inc., commissioned by DEC, says as much: "Alaska water quality standards regarding turbidity are not attainable by any demonstrated or widely used mining practice ... attainable levels are at least two orders of magnitude above current standards."

Miners argue the standards are appropriate for municipal water treatment plants but not generally applied across vast stretches of Alaska. If they are really enforced, the effect will be to shut down this industry.

This is a shame, because it clouds real progress that DEC and other state agencies are making in working with placer miners, particularly in the innovative and successful new



tim bradner

technology grant program, aimed at improving water quality and gold recovery. But if new technology can't approach the standards, it is of uncertain value.

If there's blame to be laid for this public policy quagmire, it can be spread in many directions. Miners themselves helped precipitate the situation through the practices of a few sloppy operators that soured relations for all placer miners with the public and agencies. But the agencies deserve some poor marks for first not enforcing water quality laws, then apparently over-reacting in setting and enforcing standards that may be unrealistic.

This is bad government, for many reasons. First, impossible standards breed selective enforcement. Agencies say they want a "big stick" to go after bad operators, but laws that are universal should be universally and fairly enforced. Secondly, the system encouraged distrust and non-cooperation, rather than confidence and good relations, between miners and the regulators. For example, DEC and EPA don't have resources to monitor all mining operations. They rely largely on miners to do sampling themselves, then supply the data. But because the standards can't be met, fines and penalties are the result. This sets

See Page J-10, BRADNER

BRADNER: Miners need realistic water standards

Continued from Page J-1

u, an incentive, in the future, for fiddling with the data. A solution is realistic standards and a trustful relationship on both sides.

But worst is that environmental rules that appear to have little basis in sound policy or good science can result, in the long run, in the undermining of public confidence in the agency and its procedures.

Alaska's regulations are modeled on municipal drinking water standards and techniques of measurement in urban water treatment plants, and are impractical when applied generally across Alaska. Most streams or rivers, in their natural state, would meet the standard.

The most difficult is the "turbidity" limit, a measurement of cloudiness of water. The Yukon River and its tributaries would measure 10 to 20 times the limit required of miners. The bizarre outcome of this is that most placer operators are required to put water back into a stream cleaner than when they took it out. The federal EPA has no turbidity requirement. It is a state standard.

The state's other standard is a limit on "settleable solids" or the amount of large soil particles in water coming from a settling pond. This standard is strict, but it might be attainable, some miners say. But combined with turbidity, it is impossible.

Last year, the EPA proposed a more flexible limit for settleable solids that miners felt they could meet. But the state adopted a very tight, inflexible standard. EPA was then required, under the Clean Water Act, to revise its own limit to match the state.

There ought to be room for negotiation and reasonable compromise in this. If state requirements are more strict than EPA's, there should be a good reason. A gripe by the miners, quite legitimate, is that the reasons for this tightening never have been spelled out. The change was made without a public hearing process, which is the procedure that requires agencies to lay out their reasoning and factual basis before the public, to allow critical scrutiny and the presentation of conflicting evidence.

And, what's the purpose? To protect fish downstream? Fair enough, but the fact that the Yukon River, which doesn't meet the turbidity standard, supports great fish populations would seem to undercut this reason.

If Gov. Sheffield wants to facilitate resolution to environmental problems facing miners, as he says he does, this is a good place to start. Unlike many issues caught in the web of state-federal relationships, this one is almost entirely under his control.

Miners would like a somewhat more flexible system like that proposed by EPA. The state's current standards, particularly turbidity, should be goals toward which industry, with improving technology, could work. Miners have proposed a "blue ribbon" task force of agency heads, scientists, miners, environmental groups and other affected parties, to look at this.

The governor should consider it. It isn't often that a complex, controversial policy issue can be resolved like this one could be. But a solution will take the kind of cooperation and clear thinking that can only come through communication and trust.

The Bradner writes for the Alaska economic reporting service.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 23, 1987

MEMORANDUM

TO: Representative Mike Miller

ATTN: Gene Therriault

FROM: Karen Oakley *KO*
Legislative Analyst

RE: Number of Placer Mines with NPDES Permits on Salmon Streams
Research Request 87.210

You asked us to find out how many Alaska placer mines with National Pollutant Discharge Elimination System (NPDES) permits are located on streams that have been specified by Alaska Department of Fish and Game (ADF&G) regulation as important for the spawning, rearing or migration of anadromous fish pursuant to AS 16.05.870.¹ The ADF&G maintains a catalog of all specified anadromous streams, and any person proposing to use, divert, obstruct, pollute or change the natural flow or bed of such a stream is required to submit plans to the ADF&G and receive approval prior to commencing any such work. The letter from the ADF&G approving plans for work in a specified anadromous stream is called a Fish Habitat Permit. Any conditions attached to a Fish Habitat Permit are designed to prevent interference with migration or to protect spawning and rearing habitats.

The NPDES permits, which are issued by the U. S. Environmental Protection Agency (EPA), are designed to protect water quality by regulating the quality of effluent discharged into streams. Currently, 368 Alaska placer mines have NPDES permits. Of these 368 mines, 131 are located on specified anadromous streams.

¹Anadromous fish are those fish that spend part of their lives in the ocean and return to freshwater to reproduce. In Alaska, anadromous species include all five species of Pacific salmon and certain whitefishes.

Representative Miller
March 23, 1987
Page 2

Of the 131 mines with NPDES permits on anadromous streams, the number that may also require a Fish Habitat Permit is not currently known, because not all operators have completed their plan of operations. When plans are completed, the ADF&G will review them and determine whether a Fish Habitat Permit is needed. Depending upon the type of operation proposed, no permit may be needed. For example, an operation that employed complete recycling of mining water would not generally require a permit.

I hope this information is useful. Please let me know if we can provide any further information.

ALASKA DEPARTMENT OF FISH AND GAME TESTIMONY
ON 3/16/87 CSSB 98
(AN ACT RELATING TO THE USE OF WATER)
BEFORE THE ALASKA SENATE RESOURCES COMMITTEE

MARCH 23, 1987

Mr. Chairman, my name is Norman Cohen, Deputy Commissioner, Department of Fish and Game. I wish to testify on behalf of the department regarding the March 16 CS for SB 98. This bill has important implications for salmon fishing in Alaska.

The department has serious concern over Section 8 of the bill which repeals essential provisions in the Department of Fish and Game's Title 16 authority (AS 16.05.870(b)-(c) and 16.05.880-900). The 16.05.870 provisions have, since statehood, given definition to the Commissioner's broader statutory responsibility to manage, protect, maintain, improve, and extend the fish resources of the state. These are the only state statutes on the books which directly protect the habitat of salmon and other anadromous fish. They require the submittal of plans and specifications for certain activities in freshwater bodies important for anadromous fish and for the proper protection of fish in connection with such activities. The array of activities covered by this statute is much broader than either SB 98 or the March 16 memorandum from Senator Fahrenkamp and Representative Miller to this committee suggest. The statute says that if a person or governmental agency desires to construct a hydraulic project, or use, divert, obstruct, pollute, or change the natural flow or bed of a specified river, lake, or stream, or use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed of a specified river, lake, or stream, they shall notify the Commissioner of Fish and Game beforehand. Clearly, pollution is but one of a variety of activities covered by this law. Although you have heard claims that this reference to pollution duplicates DEC's water quality standards, I can

assure you that it does not. Neither department can afford redundancy in permitting activities. We do what our biologists do best; we document for DEC the biological effects of pollution on fish propagation, and we rely on DEC to implement its water quality standards.

It is essential that the agency possessing the state's fisheries expertise be responsible for AS 16.05.870 if it is to be carried out effectively. It is, for example, imperative that ADF&G biologists be intimately involved in a determination of whether or not the use of wheeled or tracked equipment will destroy a valuable salmon spawning bed. It is often necessary for us to tap the experience of experts within our Commercial or Sport Fisheries divisions in the sampling of stream gravels for the presence of salmon eggs. Similarly, the best technical talent in our department may be needed in determining if and how a proposed stream diversion is likely to affect the historical migration, spawning, and rearing habits of salmon. The knowledge of these same experts may be brought to bear on the development of performance standards that must be stipulated in permit approvals so that these essential life processes can be sustained. It is this expertise which allows ADF&G to provide assistance to applicants in their identification of alternative construction methods, locations, materials, or timing of project implementation. Section 8 of SB 98 would repeal our department's authority to require the application of best management practices or other permit conditions for the protection of salmon and other anadromous fishery resources during such activities as stream channelization, road crossings, gravel washing operations, water withdrawals and diversions for industrial activities, hydro-electric projects, and in-stream material extractions.

You'll notice on Page 3 of your memorandum from Senator Fahrenkamp and Representative Miller, a reference to AS 16.10.010 and a conclusion that it provides basically the same protection as AS 16.05.870, the provision that I just discussed. The

"10-10" provision, as we often refer to it, is an artifact from pre-statehood days, and although it has been amended since then, it creates an enigma. It appears to partially duplicate our .870 authority, yet in practice it does not. The reason is that although it exists in ADF&G's Title 16 statutes, it is to be administered by the Department of Environmental Conservation. That department does not have the fisheries expertise to effectively carry out "10-10," and they have deferred to us for the overall protection of the state's anadromous fisheries. The result is that only one anadromous fish protection permit is required for an applicant. I should also add that there are provisions in AS 16.05.870 that are not contained in AS 16.15.010. If the Legislature does anything with the statutes I have mentioned, we would encourage you to designate ADF&G as the agency responsible for AS 16.10.010. We strongly encourage you to omit Section 8 of the March 16 CS for SB 98.

The Department of Fish and Game's inability to carry out AS 16.05.070 would be detrimental to the state's commercial fishing industry, tourism industry, sportfishing public, subsistence users, and the general public service sector that is supported by expenditures from these user groups. We're talking about protecting the very wellspring of a world class renewable natural resource, one that we are all counting on to make its contribution to the economy of our state. In terms of commercial salmon fishing alone, the statewide ex-vessel value in 1986 was \$404 million.

As a footnote, I would like to share some actual numbers regarding the implementation of our fish habitat protection statutes. In FY 86, we conducted 1,255 Title 16 reviews of activities in fish bearing waters. These activities relate to transportation systems, utilities, hydroelectric projects, material removal, and other types of development. Of the 1,255 reviews, 835 resulted in the issuance of a permit, 407 did not require permits, and only 13 were denied. Of the 835 permits,

85 percent were for activities in waters important for anadromous fish. Not a single permit condition or permit denial was elevated by the applicant above the regional level for reconsideration at the Director or Commissioner level. We turned these applications around in an average of 22 days, and 79 percent were reviewed within 30 days. Most of the remaining 21 percent were tied to other agencies' authorizations that have longer review periods. Sixty four percent of the time we were able to conduct on-the-ground site examinations before issuing a permit. Mr. Chairman and committee members - our department believes that to be creditable record and we share your frustration at claims to the contrary.

We appreciate the opportunity to testify and will try to answer any questions that you may have.

SB

108

Original sponsor: Coghill

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 108 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to decisions of the commissioner of
7 natural resources regarding the eligibility of an
8 applicant for a pipeline right-of-way permit."

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

10 * Section 1. AS 38.35.100 is amended to read:

11 Sec. 38.35.100. DECISION ON APPLICATION. (a) The commissioner
12 shall promptly determine, on an application filed under AS 38.35.050,
13 whether the applicant is fit, willing, and able to perform the trans-
14 portation or other acts proposed in a manner that will be required by
15 the present or future public interest. In making a determination the
16 commissioner shall consider whether or not

17 (1) the proposed use of the right-of-way will unreasonably
18 conflict with existing uses of the land involving a superior public
19 interest;

20 (2) the applicant has the technical and financial capabil-
21 ity to protect state and private property interests;

22 (3) the applicant has the technical and financial capabil-
23 ity to take action to the extent reasonably practical to

24 (A) prevent any significant adverse environmental
25 impact, including but not limited to, erosion of the surface of
26 the land and damage to fish and wildlife and their habitat;

27 (B) undertake any necessary restoration or revegeta-
28 tion; and

29 (C) protect the interests of individuals living in the

1 general area of the right-of-way who rely on fish, wildlife, and
2 biotic resources of the area for subsistence purposes;

3 (4) the applicant has the financial capability to pay
4 reasonably foreseeable damages for which the applicant may become
5 liable on claims arising from the construction, operation, mainte-
6 nance, or termination of the pipeline;

7 (5) the applicant has agreed that in the construction and
8 operation of a pipeline within the right-of-way the applicant will
9 comply with and require contractors and their subcontractors to comply
10 with applicable and valid laws and regulations regarding the hiring of
11 residents of the state then in effect or that take effect subsequent-
12 ly.

13 (b) If the commissioner makes the [THESE] determinations under
14 (a) of this section favorably to the applicant, then the commissioner
15 may grant the whole or part of the application. If the commissioner
16 makes the determinations under (a)(1) - (5) of this section favorably
17 to the applicant but determines that the applicant is not then fit,
18 willing, and able to perform under the application, the commissioner
19 may grant the application subject to conditions established by the
20 commissioner that will ensure that the applicant will, within a pre-
21 scribed period of time not exceeding 10 years, establish that the
22 applicant is fit, willing, and able, under (a) of this section, to
23 perform the transportation or other acts that will be required by the
24 present or future public interest. An applicant is not entitled to a
25 notice or authorization to proceed to construction, or its equivalent,
26 under a conditional lease until the commissioner determines in writing
27 that the applicant has satisfactorily established that the applicant
28 is then fit, willing, and able to perform under (a) of this section.
29 Otherwise, the commissioner shall deny the application.

1 (c) The commissioner may offer the applicant a lease under this
2 section. If the applicant does not accept a lease offered under this
3 section within 30 days, the lease offered is withdrawn [IN ORDER TO
4 GRANT THE WHOLE OR PART OF THE APPLICATION THE COMMISSIONER SHALL

5 OFFER A LEASE TO THE APPLICANT FOR ITS ACCEPTANCE THROUGH SIGNING OF

6 THE LEASE AND AGREEING TO COMPLY WITH ITS TERMS, CONDITIONS, AND

7 OBLIGATIONS. ONLY UPON PROPER ACCEPTANCE OF OFFERED LEASE BY THE

8 APPLICANT WITHIN 30 DAYS AFTER ITS HAVING BEEN PRESENTED IS THE GRANT

9 OF THE APPLICATION CONSUMMATED].

10 * Sec. 2. AS 38.35.100 is amended by adding new subsections to read:

11 (d) The commissioner shall include in a conditional lease each

12 requirement and condition of the covenants established under AS 38.-

13 35.120. The commissioner may also require that the lessee agree to

14 additional conditions that the commissioner finds to be in the public

15 interest. In place of the covenant established under AS 38.35.-

16 120(a)(9), the commissioner shall require the lessee to agree that it

17 will not transfer, assign, pledge, or dispose of in any manner, di-

18 rectly or indirectly, its interest in a conditional right-of-way lease

19 or a pipeline subject to the conditional lease, unless the commis-

20 sioner, after considering the public interest, authorizes the trans-

21 fer. The commissioner shall also require the lessee to agree not to

22 allow the transfer of control of the lessee without the approval of

23 the commissioner; as used in this subsection, "transfer of control of

24 the lessee" means the transfer of 30 percent or more, in the aggre-

25 gate, of ownership interest in the lessee in one or more transactions

26 to one or more persons by one or more persons.

27 (e) The commissioner shall require a conditional lessee to agree

28 that

29 (1) in the absence of the approval of the commissioner, a

1 transfer may not relieve the lessee of an obligation assumed under the
2 lease;

3 (2) a transfer, including the transfer of lessee, that
4 occurs without the approval of the commissioner is ineffective to
5 transfer interests in and obligations under the lease; and

6 (3) a transfer constitutes a default under the lease.

7 (f) In an application for the approval under (d) of this section
8 of a transfer of an interest, the commissioner shall consider whether
9 the proposed transferee will be fit, willing, and able to perform the
10 transportation or other acts proposed under the conditions established
11 in the conditional lease and whether the transfer is in the public
12 interest. In approving the transfer of an interest under (d) of this
13 section and this subsection, the commissioner may impose any condition
14 on the transfer that the commissioner considers in the public inter-
15 est.

16 (g) If the commissioner determines under (a) of this section
17 that the applicant is fit, willing, and able to perform the transpor-
18 tation or other acts proposed in a manner that will be required by the
19 present or future public interest, the commissioner may amend the
20 conditional right-of-way lease to insert the covenant established in
21 AS 38.35.120(a)(9) in place of the covenant against a transfer estab-
22 lished under (d) and (e) of this section.

23 (h) The issuance of a conditional lease does not prevent the
24 commissioner from issuing other conditional or unconditional leases
25 for the same right-of-way. An applicant or conditional lessee accrues
26 no priority rights to a particular right-of-way until the commissioner
27 makes a determination that the applicant or conditional lessee is then
28 fit, willing, and able to perform the transportation or other acts
29 proposed under (a) of this section.

1 (i) The commissioner shall insert a provision implementing the
2 requirements of (a)(5) of this section into each agreement entered
3 into by the commissioner for the construction and operation of a
4 pipeline within the state.
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SENATE COMMITTEE REPORT

FURTHER: FINANCE

DATE TURNED INTO OFFICE _____

Mr. President:

RESOURCES _____ Committee considered SB 108

relating to decisions on right-of-way lease applications.

and recommended:

replace with CS FOR SB 108 (Res)) same title
 or adopt _____ CS FOR _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous

zero fiscal impact

MEMBERS SIGNING DO PASS

[Signature]

[Signature]

OTHER RECOMMENDATIONS

[Signature] - no Rec
[Signature] - no Rec *
[Signature] - no Rec
* suggested Judiciary version

[Signature]
Chairman signature and recommendation

Committee Backup Attached

STATE OF ALASKA



SENATE JUDICIARY COMMITTEE

4/14/87

SEN. JAY KERTTULA
SEN. ARLISS STURGULEWSKI
SEN. RICK HALFORD
SEN. JOE JOSEPHSON
SEN. PAT RODEY

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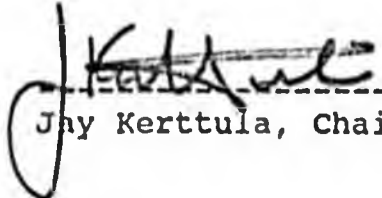
CSSB 108 (Judiciary)

Letter of Intent

*Bob
Reference*

The Judiciary committee, in considering SB-108, ~~was made aware by a principal proponent of the bill (Yukon-Pacific Corporation) that in the corporation's project description and~~ its scoping document, it has signified its intention to encourage local hire at all "TAGS" facilities; to provide training for operation and maintenance personnel; to comply with State and Federal standards which are applicable or which will become applicable for the Alaska labor market and to use qualified Alaska labor in construction.

The committee welcomes these assurances. It is intended that in the administration of this chapter, the commissioner will encourage the utilization of qualified Alaska workers to the maximum possible extent.



Jay Kerttula, Chair Senate Judiciary

Senator John B. (Jack) Coghill
Alaska State Legislature



Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0802

MEMORANDUM

To: All Members of the Senate

From: Senator John B. Coghill

Re: CSSB 108 (Res), "An Act relating to decisions of the commissioner of Natural Resources regarding the eligibility of an applicant for a pipeline right-of-way permit."

Presently under AS 38.35.100 (b), the Commissioner of DNR must make the determination that the applicant is "fit, willing and able to perform the transportation" prior to issuance of a right-of-way lease permit.

Past interpretation of this standard has meant that any applicant must have the financial capability to go forth with the project which would utilize the right-of-way.

In today's world a right-of-way permit has a value all its own when negotiating financing. To make financing a condition of the ROW lease application hampers a project's chances of becoming a financial reality.

This bill amends the Right-of-Way Leasing Act so that the Commissioner can condition a grant of right-of-way so that the applicant can receive the right-of-way but must demonstrate that it is "fit, willing and able" prior to being allowed to start construction on that right-of-way.

The current standard of "fit, willing and able" is not circumvented but the finding is postponed to a later phase in the process.

This legislation applies to all right-of-way applicants equally and allows those who have been seeking a permit to benefit from these provisions.

I believe it is important in these times to allow modifications in our statutes that assist industry in the real world, without lifting our standards.

A sectional analysis is attached.

Senator John B. (Jack) Coghill
Alaska State Legislature

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Juneau, Alaska 99811
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March 23, 1987

MEMORANDUM

To: Members of the Senate
Committee on the Judiciary

From: Senator John B. Coghill

Re: SB 108, "Decisions on ROW Lease Applications"

Presently under AS 38.35.100(b), the Commissioner of DNR must make the determination that the applicant is "fit, willing and able to perform the transportation" prior to issuing a right-of-way lease.

Past interpretation of this standard has meant that any applicant must have the financial capability to go forth with the project which would utilize the right-of-way.

In today's world a right-of-way permit has a value all its own when negotiating financing. To make financing a condition of the ROW lease application hampers a project's chances of becoming a financial reality.

This bill amends the Right-of-Way Leasing Act so that the Commissioner can condition a grant of right-of-way so that the applicant can receive the right-of-way but must demonstrate that it is "fit, willing and able" prior to being allowed to start construction on that right-of-way.

The current standard of "fit, willing and able" is not circumvented but the finding is postponed to a later phase in the process.

This legislation applies to all right-of-way applicants equally and allows those who have been seeking a permit to benefit from these provisions. Invested time, effort and financial input can now show results instead of stagnation.

I believe it is important in these times to allow modifications in our statutes that assist industry in the real world, without lifting our standards.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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

February 16, 1987

The Honorable Lloyd Jones
Chairman
Senate Transportation Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99801

Dear Senator Jones:

Subject: Senate Bill 108, relating to decisions on right-of-way lease applications.

Position: The Department of Natural Resource supports the amendment to the oil and gas pipeline right-of-way leasing statute (AS 38.35.100(b)) described in this bill.

Background: Senate Bill 108 would allow the commissioner to issue a conditional pipeline right-of-way lease even if the applicant is not presently "fit, willing and able."

The existing "fit, willing and able" standard requires the applicant to be nearly ready to begin construction before a right-of-way lease can be issued. In other words, financing has to be reasonably assured, gas sale contracts and markets in place, and construction designs substantially completed.

The commissioner currently has only one alternative to finding an applicant "fit, willing and able," and that is to deny the application. This bill would provide the commissioner with an additional alternative; the ability to issue a conditional right-of-way lease, subject to conditions that ensure the applicant will become "fit, willing and able."

This bill would have a positive effect on the economic development of pipeline projects in Alaska and would not reduce the "fit, willing and able" standards an applicant would be required to meet prior to actual construction of a pipeline.

The Honorable Lloyd Jones

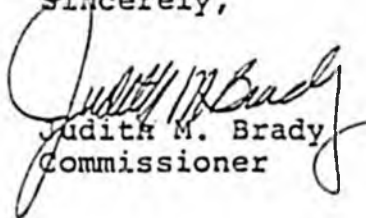
-2-

February 16, 1987

Recommendation: To ensure that the applicant is required to become "fit, willing and able" within a reasonable period of time, add the words "within a prescribed amount of time" to line 15, after the word able.

Please let me know if you would like additional information.

Sincerely,


Judith M. Brady
Commissioner

cc: Committee members
Governor's Legislative Liaison

- STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: SB 108
Publish Date: _____

Revision Date: February 16, 1987

Agency Affected: Natural Resources
BRU: Land and Water Management

Title: Right-of-way Lease Decisions

Sponsor: Senator Cochill

Components: _____

Requestor: Senate Transportation

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

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)

Prepared by: Carol J. Wilson
Division: Commissioner's Office

Phone: 465-2400
Date: 2/16/87

Approved by Commissioner: *Walter M. B...*
Agency: Natural Resources

Date: 2/16/87

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

MMS plans to revamp gas royalty valuation regs

The U.S. Minerals Management Service has proposed revised royalty valuation regulations for natural gas production from federal and Indian land.

The regulations are similar to those MMS recently issued for crude oil and coal production (OGJ, Feb. 2, p. 16). The gas valuation rules will be issued in final form about Aug. 15.

The proposed rules generally declare royalty values to be equal to the "gross proceeds" the lessee receives for production under a contract signed as a result of arm's length bargaining.

What's proposed. Royalties will be due on gas avoidably lost or wasted but not gas used in lease equipment on unitized leases.

Royalties also will be required on all residue gas and gas plant products resulting from processed gas, less a processing allowance determined by MMS.

MMS will allow royalty free use of a

reasonable volume of residue gas for operation of the processing plant.

A deduction will be allowed for transportation costs but will be limited to half the value of the transported gas unless the lessee submits data to MMS that shows a higher allowance is warranted.

The rules require that processing costs be allocated among all gas plant products and a processing allowance determined for each product. MMS will limit that allowance to 66.6% of the value of each gas plant product at the tailgate of the plant, although greater allowances can be approved if warranted.

MMS will not require lessees to obtain prior approval before using a valuation basis or allowance, but the methods will be subject to review and audit.

It acknowledged the high costs of some offshore operations and exten-

sive facilities needed to process deep, sour gas.

MMS asked for comments on whether final regulations should provide that unusual or unconventional production costs be allowed as a deduction in determining royalty values regardless of whether those costs are incurred on or off the lease.

Definitions. The agency defined arm's length contracts as those between nonaffiliated entities. It will consider two parties affiliated if one owns an interest in the other.

If a product is not sold under an arm's length contract, MMS will set royalty values by comparing the production with gross proceeds from other production in another field.

Gross proceeds will be defined as money paid to the lessee or money the lessee is entitled to receive, including take or pay payments and reimbursements.

Canadian Arctic gas line seen a decade away

Plans are still alive for a Canadian Arctic gas pipeline, but it likely won't be in place for more than a decade, says Esso Resources Canada Ltd.

The company believes the earliest date for operation of an export-oriented line is in the late 1990s, even if a construction decision is made soon.

Esso said there has been no commitment to build, and discussions on Arctic gas with the National Energy Board (NEB) have been limited to how northern gas will fit into the overall export picture.

Esso and partners hold substantial gas reserves on the Mackenzie Delta and in the Beaufort Sea. There also are large reserves farther north in the Arctic Islands, discovered by a group led by Panarctic Oils Ltd.

Esso said in-house work on an Arctic pipeline has been limited to preliminary cost estimates and the outlook for gas markets in the U.S.

A U.S. company executive told a Canadian parliamentary committee the U.S. gas surplus will end between 1988 and 1993, and U.S. customers will want gas supplies from the Canadian Arctic.

Dick Snyder, planning director of Tennessee Gas Transmission, Houston, told the committee in Ottawa the gas bubble will end by 1993 at the latest.

Snyder said there is "considerable

urgency" at this time to proceed with planning for connection of Canada's frontier resources.

Tennessee Gas is a member of the Polar Gas group, which includes TransCanada PipeLines Ltd., Panarctic, and Petro-Canada. Polar Gas proposes to lay a gas line from the Beaufort Sea via the Mackenzie Valley to connect with systems in northern Alberta (OGJ, Jan. 6, 1986, p. 76).

Polar Gas estimates the cost of its line at \$3.4 billion and says it would be economical at a price of about \$3/Mcf. Current export prices are about one-third lower than that.

Export policies. Meanwhile, NEB plans to begin hearings Apr. 13 in

Ottawa on Canada's gas export policies. The board has received notice from 66 parties that they want to appear at the hearings.

NEB will examine whether current surplus tests will be appropriate after full deregulation of gas markets and what alternatives are available.

The board wants to hear arguments on whether reliance on market forces to balance gas supply and demand in Canada would be an acceptable substitute for the surplus test. The test requires a 15 year supply of gas to be reserved for domestic markets before additional shipments to the U.S., Canada's only export customer, are authorized.

Chevron switches to midgrade in Florida

Chevron Corp. has become the latest U.S. major oil company to drop leaded regular for an unleaded midgrade.

The Chevron Plus midgrade (89 R + M/2) was introduced at nearly 220 stations in eight South Florida counties covering Miami, Fort Lauderdale, West Palm Beach, and Fort Pierce.

Chevron has about 800 outlets in Florida selling 536 million gal/year of gasoline, about 10.5% of the total Florida market. The midgrade con-

tains Chevron's proprietary detergent additive Techrolene. Chevron's nearest refinery is its 295,000 b/cd Pasca-goula, Miss., plant.

The company described its move as a "market introduction," not a test as some other oil companies have called their introduction of midgrades. The move allows Chevron to meet mid-grade competition from Amoco Oil Co., which last year launched its mid-grade sales in Florida.

SB

109

SENATE COMMITTEE REPORT

FURTHER: FINANCE

4/8/87

DATE TURNED INTO OFFICE _____

Mr. President:

RESOURCES _____ Committee considered SB 109

RURAL ELECTRIFICATION REVOLVING LOAN FUND.

and recommended:

[] replace with CS FOR _____) [x] same title
[x] or adopt _____ CS FOR SB 109 (L4C)) [] new title

[] attached amendment(s) and

[] do pass

[] do not pass

[] no recommendation

[x] individual recommendations

[] further referral to _____

[] letter of intent adopted _____

Committee [] attached or [x] adopted fiscal note(s)

[] new [] updated or [x] previous
[x] zero [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Paul Frank N. Re
Lord Jones N. Re
Jim Duncan No Rec

[Signature]
Chairman signature and recommendation
Do Pass

[] Committee Backup Attached

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 3-26-87 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: RESOURCES
FINANCE

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

DATE TURNED INTO OFFICE _____

Mr. President:

LABOR & COMMERCE Committee considered SB 109
relating to the rural electrification revolving loan fund.

and recommended:

- replace with CS SB 109 (L+C) same title
- attached amendment(s) and new title
- 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

Tim Kelly (No Pass)
Mike Symonci

Tim Kelly - Do Pass
Chairman signature and recommendation

Committee Backup Attached

STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

FISCAL DETAIL

Bill/Resolution No.: SB109
 Title: An Act Relating to the Rural Electrification Revolving Loan Fund
 Requestor: SIL & C Comm. (S) Resources Comm.
 Date of Request: _____

Agency Affected: Alaska Power Authority
 BRU: Department of Commerce & ECONOMIC DEVELOPMENT
 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

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

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

FINDINGS (Thousands of Dollars)

TOTAL	0	0	0	0	0	0
-------	---	---	---	---	---	---

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Enactment of SB109 would make available one half of the funds available for loans to extend service along the highway; it does not affect the overall activities of the Rural Electrification Revolving Loan Fund.

Prepared by: Robbie E. LeResche, Executive Director
 Division: Alaska Power Authority

Phone: 465-3575
 Date: April 7, 1987

Approved by Commissioner: _____
 Agency: _____

Date: _____

Distribution (by Agency preparing fiscal note):

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

Original sponsors: Coghill and Szymanski

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 109 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the rural electrification revolving
7 loan fund."

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

9 * Section 1. FINDINGS AND INTENT. (a) Although the rural electrifica-
10 tion revolving loan fund has existed since 1981, it has not adequately met
11 the purpose for which it is intended. The principal reason for that fail-
12 ure has been regulations that have, at least in part, opposed the purpose
13 of this program. The purpose of this program is to assist electric util-
14 ities and their consumers in extending pioneer electric distribution lines
15 into developing rural areas.

16 (b) The legislature finds that

17 (1) the installation of pioneer electric distribution lines is
18 essential to the orderly development of areas that are suitable and appro-
19 priate for development; frequently it is prohibitively expensive for the
20 utilities and their consumers to build the necessary distribution lines in
21 anticipation of sufficient development to make the lines feasible;

22 (2) it is in the public interest for the state to assist in
23 financing distribution lines in areas where development is expected; the
24 appropriate role of the state in regard to the lines is that of assuming
25 the risk that the anticipated development will in fact occur;

26 (3) populated areas along state highways that have a source of
27 central station electric service available for distribution are expected to
28 develop further and loans from this program to construct pioneer distribu-
29 tion lines along those state highways are appropriate, and should be given

1 priority for one-half of the funds available.

2 (c) It is the intent of the legislature that all existing regulations
3 relating to this loan program be reconsidered and that they be amended to
4 conform to this Act.

5 * Sec. 2. AS 44.83.361(b) is amended to read:

6 (b) The authority may make loans from the rural electrification
7 revolving loan fund to electric utilities certified by the Alaska
8 Public Utilities Commission. A loan from the fund may be made only
9 for the purpose of extending new electric service into an area of the
10 state that an electric utility may serve under a certificate of public
11 convenience and necessity issued by the Alaska Public Utilities
12 Commission. A loan may be made from the fund to an electric utility
13 if the utility invests the money necessary to provide one pole, one
14 span of line, one transformer, and one service drop for each consumer
15 for whom immediate service would be provided by the extension of
16 electric service. Applications for loans to extend service along
17 state highways shall be given priority on one-half of the funds avail-
18 able for loans under this section. However, a loan may not be made
19 from the fund unless

20 (1) the loan is recommended by a loan advisory committee
21 appointed under AS 44.83.363; and

22 (2) the extension of electric service would provide immedi-
23 ate service to at least three consumers.

24 * Sec. 3. AS 44.83.361(c) is amended to read:

25 (c) A loan from the rural electrification revolving loan fund
26 shall bear an annual rate of interest of two percent of the unpaid
27 balance of the loan. Interest received on a loan made under this
28 section must be transferred annually (MONTHLY) to the commissioner of
29 revenue for deposit in the general fund. The unpaid balance on a loan

made under this section remaining after 20 years may be forgiven.

* Sec. 4. AS 44.83.363 is amended to read:

Sec. 44.83.363. LOAN ADVISORY COMMITTEE. When an application for a rural electrification loan is submitted to the authority under AS 44.83.361, the authority shall appoint a local advisory committee from persons residing in the area that the applicant utility is certified to serve. The loan advisory committee shall consider the loan application, and shall recommend whether the loan application is to be approved or disapproved. A favorable recommendation from the loan advisory committee shall be based on a determination that development in the area of the proposed extension of electric service is likely to provide for full repayment of the loan under AS 44.83.361(D) within 20 (10) years. In making that determination the committee shall consider

- (1) permanence of the premises to be served by the extension;
- (2) land use patterns in the area;
- (3) access for the line that would be installed with loan proceeds;
- (4) availability of other utility service in the area; and
- (5) the financial (ECONOMIC) feasibility of the extension of electric service with the proceeds of the loan.

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Artiss Stungulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Elason

Box V
Juneau, Alaska 99811
(907) 465-1007

April 2, 1987

MEMORANDUM

To: Members of the Labor and Commerce Committee

From: Senator John B. Coghill

Re: SB 109, "An act relating to the rural electrification revolving loan fund"

In general, the purpose of SB 109 is to make it easier for the Rural Electrification Revolving Loan Fund to accomplish its original intent i.e. extension of electric service to rural areas where the costs are otherwise prohibitively expensive due to sparsity of customers. The ambiguity of the current statute has resulted in regulations which have been more detrimental than helpful.

Sect. 1 is self-explanatory.

Sect. 2 amends AS 44.83.36(b) by allocating one-half of the available funds for projects that will extend the electrical service along state highways.

Sect. 3 amends AS 44.83.361(c) by eliminating the requirement that interest received on the loans be transferred monthly for deposit into the general fund because the interest is not collected on a monthly basis now. The section is further amended by adding a forgiveness clause that forgives any unpaid balance after 20 years. If the projected growth has not occurred in that time frame and the loan repaid, the burden would be unfair to the remaining customers.

Sect. 4 amends AS 44.83.363 by changing the loan evaluation repayment criteria from ten to twenty years in order to be more consistent with

SB 109 cont.

the actual growth experienced in rural areas after the extension of the electrical service has occurred. Additionally, under the loan evaluation criteria to be considered by the loan advisory committee, financial feasibility is substituted for economic feasibility. Financial feasibility is the more significant and relevant criteria because it evaluates the ability of the parties involved to pay off the loan.

STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB109
Title: An Act Relating to the Rural
Electrification Revolving Loan Fund
Requestor: SIT & C Comm., (S) Resources Comm.
Date of Request: _____

FISCAL DETAIL

Agency Affected: Alaska Power Authority
BRU: Department of Commerce &
ECONOMIC DEVELOPMENT
Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

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

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

FINDING (Thousands of Dollars)

TOTAL	0	0	0	0	0	0
-------	---	---	---	---	---	---

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Enactment of SB109 would make available one half of the funds available for loans to extend service along the highway; it does not affect the overall activities of the Rural Electrification Revolving Loan Fund.

Prepared by: Robert E. LeResche, Executive Director
Division: Alaska Power Authority

Phone: 465-3575
Date: April 7, 1987

Approved by Commissioner: _____
Agency: _____

Date: _____

Distribution (by Agency preparing fiscal note):

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

SB

112

110.98

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

SENATE

BILL VERSION: CSSB 112(Res)

PUBLISH DATE: 3/5/87

REQUEST:

Revision Date: 2/19/87

Title: An Act Relating to Forest Management Agreements

Sponsor: Jones

Requestor: _____

Agency Affected: Natural Resources
BRU: Forest Management

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
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 :

An agreement with a timber operator could provide savings to the State and reduce manpower needs, while at the same time providing a long term commitment of timber to private enterprise.

Prepared by: James L. McAllister
Division: Forestry

Phone: 465-2491
Date: 2/19/87

Approved by Commissioner: [Signature]
Agency: Natural Resources

Date: 2/19/87

Distribution (by preparer):

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

5-0567B
Bradley
2/25/87

Original sponsors: Jones and Sturgulewski

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 112 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to forest management agreements."

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

8 * Section 1. AS 38.05 is amended by adding a new section to read:

9 Sec. 38.05.122. FOREST MANAGEMENT AGREEMENTS. (a) Notwith-
10 standing AS 38.05.110 - 38.05.120 and 38.05.300, the commissioner may,
11 if consistent with a land use plan then in effect, enter into an
12 agreement with a purchaser doing business in the state for the sale of
13 timber from state land, including land within a state forest, on which
14 the right to harvest timber has not been specifically prohibited by
15 law. An agreement entered into by the commissioner under this section
16 shall be used to foster the development of the state's forest products
17 industry.

18 (b) The commissioner shall establish by regulation requirements
19 for the selection, harvest, and regeneration of timber on state land
20 that is subject to an agreement under this section.

21 (c) In an agreement for the harvest of state timber entered into
22 under this section, the commissioner may provide for

- 23 (1) the term of the sale and an extension of the term;
24 (2) the stumpage prices to be charged for the timber;
25 (3) incentives to the purchaser for the completion of the
26 agreement;
27 (4) compensation from the purchaser for the scaling ser-
28 vices required to account for the timber sold;
29 (5) the construction and maintenance of access roads

1 necessary to the harvest of the timber, including the sale of mate-
2 rials from state land for the construction of the access roads;

3 (6) timber harvest to be at a volume in excess of that
4 permissible under the nondeclining even-flow method of calculating
5 sustained yield;

6 (7) penalties for violation of the terms of the agreement
7 and termination of the agreement;

8 (8) areas sized to the capability of small purchasers;

9 (9) other terms, conditions, and limitations determined to
10 be in the public interest by the commissioner; and

11 (10) the preparation of reports determined necessary by the
12 commissioner.

13 (d) In entering into an agreement under this section, the com-
14 missioner shall consider

15 (1) the economic activity to be generated in the state by
16 the proposed operation of the purchaser;

17 (2) the technical and financial qualifications of the
18 purchaser;

19 (3) the stumpage payments proposed to the state by the
20 purchaser;

21 (4) the experience of the purchaser in the state.

22 (e) The commissioner shall consult with other agencies of the
23 state or with federal agencies when considering an agreement under
24 this section.

25 * Sec. 2. The commissioner of natural resources shall request proposals
26 for the management of state timber land under AS 38.05.122, as enacted in
27 sec. 1 of this Act, within one year after the effective date of this Act.
28
29

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturgulewski
Sen. Jim Duncan
Sen. Fred Zhatoff
Sen. Dick Ehasen

Box V
Juneau, Alaska 99811
(907) 465-1907

February 23, 1987

MEMORANDUM

To: All Resource Committee Members
From: Committee Staff
Re: SB 112, Forest Management Agreements

Under SB 112, sponsored by Senator Jones, the Commissioner of Natural Resources is authorized to enter into forest management agreements. Also addressed are the criteria the commissioner may provide for in regulation when negotiating a management agreement.

Included in your packet are:

Senator Jones' Statement
DNR Position Paper
Zero Fiscal Note
AS 38.05.110, 120, 300
Treatise by Terry Brady on FMAs
Statement of Paula Easley, Resource Development Council Before Western State Foresters, May 1985

ALASKA STATE LEGISLATURE


Home Address
3813 Denali Street
Ketchikan, AK 99901
907-225-9082

While in Juneau
P.O. Box V
Juneau, AK 99811
907-465-3743

Senator Lloyd Jones

M E M O R A N D O M

TO: Senator John B. "Jack" Coghill,
Senator Paul Fischer,
Senator Arliss Sturgulewski,
Senator Jim Duncan,
Senator Dick Eliason,
Senate Resources Committee

FROM: Senator Lloyd Jones, Member 
Senate Resources Committee

DATE: February 19, 1987

SUBJECT: SB 112, An Act relating to forest management agreements

I have introduced SB 112 to facilitate the development of forestry on state lands. At present the forest products industry is underdeveloped. It is my belief this bill could bring increased forestry and value added industry to our state through its implementation.

The main thrust of this bill would allow the Commissioner of Natural Resources to negotiate proposals for forestry development on state lands. Presently, the law only allows for the acceptance or rejection of bids.

By being able to negotiate, the Commissioner will have the necessary latitude of directing development towards state goals rather than reacting to bids presented. Also, our peers in Canada have been successfully using Forest Management Agreements for many years.

I respectfully request your support for Senate Bill 112.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1798
PHONE: (907) 465-2400

February 18, 1987

The Honorable Jack Coghill, Chair
Senate Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Senator Coghill:

Subject: SB 112 - An Act Relating to Forest Management
Agreements.

Response: The Department supports this bill with the change as
noted below.

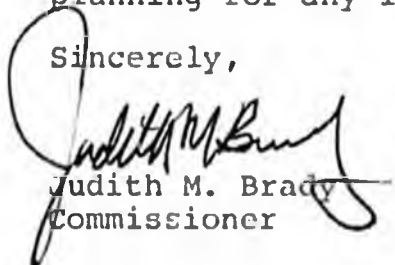
Discussion: The idea of private management of public lands for
commercial development is a good one. Such an agreement
with a timber operator could provide savings to the state
and reduce manpower needs, while at the same time
providing a long term commitment of timber to private
enterprise.

We do have some concerns with the wording in section (a).
Under section (a), we would prefer to have the word
primary substituted for the word exclusive in describing
the potential beneficial use.

Though this bill does not address lands designated as
State Forests, those lands are mandated to be managed
under the multiple use concept, and not exclusively for
timber development.

Recommendation: That section (a) be amended to provide for timber harvest
as a primary use while at the same time preserving the
ability of other land user groups to participate in
planning for any land management programs.

Sincerely,


Judith M. Brady
Commissioner

FOREST MANAGEMENT AGREEMENTS
WILL the Ontario System
Work in the United States?

by

Terry T. Brady

Forest Management 560
Graduate Studies Forest History & Policy

College of Forest Resources

University of Washington

August 1986

In partial fulfilment of requirements for
a Ph.D. in Forest Industries Management

CONTENTS

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History of FMA's.....	5
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Drawbacks/Benefits of FMA's.....	11
References.....	13
Appendix, Some Facts Concerning Ontario.....	15

Forest Management Agreements

cost effective manner, is a challenge to public land managers; and a challenge that has not been satisfactorily met on federal and public lands, in the west, to date.

This paper is an examination of one of the newest methods of overseeing public-private interests on the same forest land base. This is a system of *Forest Management Agreements (FMA's)* now in effect in the Canadian province of Ontario.

In its simplest form, a *Forest Management Agreement* is a contract, between a public land agency, and a private concern wishing to utilize a resource (timber) or resources associated with the land.

Because it is a contract an *FMA* predetermines rights and obligations of the participating parties.

The agreement spells out, in phrases and words, the goals of the contract, the term of the contract, considerations due each party, and the events that can lead to default, termination and even damages.

In these matters an *FMA* is similar to any other contract, but where it differs from a contract of sale, or even lease, as found in most U.S. timber disposal agreements, is the *FMA* squarely puts the management of the public land in the hands of the private party.

While resources, and particularly timber, may be sold through contract in the United States, the management of the land falls under the jurisdiction of a public agency, and the private party, in addition to being governed by the

Forest Management Agreements 4

presumptuous to suggest that the U.S. federal government, or any state or local government, should adopt the Ontario system in toto, it is strongly suggested that the system be studied, and perhaps even amended to fit into the American scheme of things.

The need for tenure and continuity are important in the American forest products industry is to fulfill its potential.

Forest Management Agreements 6

licensee.

However, it is fair to state, that with few exceptions, little integration of these two activities were accomplished by private industry.

Also, while failure to accomplish true forest management generally can be attributed to reluctance on the part of industry, it is necessary to point out that professional land technical expertise to provide such management was just then under development.

This development primarily was being done by government foresters in the Crown Forest Management Units.

Also, at that time a significant portion of the northern forest land was just beginning to be inventoried for the first time, and much of the land was without access.

In the early 1950's reforestation in northern Ontario (the bulk of the forest land) relied primarily on experience gained in, and planting stock from, different soil and climactic zones in southern Ontario. Reforestation efforts were often failures, even when attempted with the best of motives.

By 1960 it became evident that industry was not adequately reforesting land it was cutting over, particularly in the northern areas.

In 1962 the *Crown Timber Act* was amended and the provincial government assumed full responsibility for forest regeneration.

Forest Management Agreements 3

the province, were made available to the private sector.

During 1978 and 1979 negotiations between the Ontario Ministry of Resources and the Ontario pulp and paper industry (the major consumer of government timber) resulted in the development of the *Forest Management Agreement* concept, taken partly from an Alberta system..

The announced purpose of the *FMA's* is to "provide for a continuous supply of forest resources to the agreement holder and to ensure that forests are harvested and regenerated on a sustained yield basis."

Forest Management Agreements in

prior to the commencement of operations.

The *FMA's* contain what is known as an *Evergreen Clause* which gives a licensee an automatic extension (usually five years) beyond the basic 20 year period, when in the opinion of the government, the licensee is living up to the contract, based on a review, usually every five years.

Under the agreements government pays the costs of all roading associated with the agreement. Government also pays reproduction costs, while the private sector both designs and builds the roads, and conducts regeneration activities.

Other sections of the agreements relate to stumpage prices, remedies for default, etc.

Forest Management Agreements 12

binding on the companies to practice forest renewal."

Looking at benefits one sees much the same list as the negatives. Exclusive cutting rights (coupled with contractually binding management requirements) creates the tenure so important for long term financing.

The solution to the timber harvest/regeneration problem, is another major plus.

Looking at the Ontario experience, it does appear that the greatest benefit of the system, however, is the increased productivity of the forest, and the increased participation in forest management by the private sector, at net cost savings to the province.

Another benefit, related to tenure, is increased investment in the forest products industry. Ontario requires private parties to use the timber from license areas (a contract clause in *FMA's*) in a value added manner. This means investments in pulp and paper plants, modern sawmills, etc.

In 1983 the province reported that 80,000 persons were directly employed in the Ontario forest products industry, but only 15 percent of those were woodworkers. Another 80,000 support jobs were also reported.

During that year the industry generated more than C\$7 billion in cash flow, and some C\$300 million was paid by industry in stumpage fees and taxes.

During that year government spent about \$194 million on roads, regeneration and planning.

Forest Management Agreements 14

by Jim Stratton, vice-president of the Alaska Conservation Foundation.

15. *Forest Management in Ontario*: paper prepared by the Ministry of Natural Resources, Province of Ontario, 1983.

Forest Management Agreements. 16

larch (*Larix*), pine (*Pinus*), birch (*Betula*), poplar (*Populus*), and in the south other hard and softwoods common to the temperate forests of north-central North America.

Ontario lies in the cool temperate climactic zone, characterized by warm summers and cool winters, with extreme cold not uncommon in the northern areas. The land is covered with a thick blanket of snow from four to six months of the year. Precipitation averages run from 64 cm/yr in the south to 51 cm/yr in the north, and is well-distributed throughout the year. Total land area of Ontario is some 415,900 sq. miles, of which about 63,000 sq. miles is covered with water. Some 310,000 sq. miles is covered with forest, of which 291,500 sq. miles is controlled by the government (The Crown). Out of this some 148,000 sq. miles, or 95 million acres, is considered productive forest land.

Recent estimates state the annual allowable cut is some 36.6 million net merchantable cubic meters, of which slightly less than 50 percent is harvested annually.

FOREST MANAGEMENT AGREEMENTS

A New Canadian Approach-Will It Work In The American West?

Paula Easley, Executive Director
Resource Development Council for Alaska, Inc.

Before the
Council of Western State Foresters

Girdwood, Alaska
June 25, 1985

Good Morning. On behalf of our Council, welcome to the sunny north. I recently left Palm Springs where it was 120 degrees, so this cool, brisk weather is just as refreshing to me as I hope it is to you.

The Resource Development Council, which has been active for more than 10 of the 26 years of Alaska Statehood, is acutely aware of the problems that face public land managers. That's because we represent thousands of private-sector land users who are directly and immediately affected by every decision, every law and regulation made concerning these lands.

Your theme of "providing public services in an era of declining budgets" is one RDC has been addressing since late 1983 when the full impact of Alaska's declining petroleum revenue picture came into sharp focus. We took the approach that in Alaska's case, we had only three options for dealing with the reduction in petrodollars that have fueled both our public and private sector economies.

These options are (1) to spend less but spend more wisely, (2) generate new income, and (3) find more oil. We've been holding meetings with mayors around the state and devoted a major

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conference last year to looking at Alaska's economic priorities and what can be accomplished in the next five years to achieve economic goals.

We have explored a variety of options for providing government services at less cost. And we have considered positive programs for generating additional tax revenues and creating more jobs in the private sector.

Our Council believes Alaska's forest products industry holds great potential for doing both--increasing tax revenues and creating much needed private sector employment. A key element of this approach is cooperation. Cooperation between public and private interests charged with gaining the most economic and social value from our extensive, but nonetheless finite forest resources. While we are proposing this new program for Alaska, we see no reason why it can't hold intriguing possibilities for application in other Western states.

What we propose is to copy a program from the Canadian province of Ontario. Foresters and land managers in our Renewable Resources Division have studied this program, and the comments that follow reflect the results of their investigation. I'm sure some of you are familiar with the Ontario program and can offer additional insight as to why it is successful and is now being considered by both Alberta and British Columbia as a management scheme for their forests.

Forestlands and the timber industry are vitally important to Ontario, which has attempted for more than 135 years to find an equitable solution to allocating timber resources, and at the same time protect the environment.

Like many of our Western states, the land base of Ontario is predominantly owned by government. Ontario is somewhat smaller than Alaska, and contains around 310,000 square miles of forestland. The Province owns about 90 per cent of the forestland and some 148,000 square miles of potentially productive forestland. Commercial use of Ontario's timberland has been underway for some 200 years. The government enacted the first Crown Timber Act in 1849.

Until the early 1900s stumpage fees provided the largest single source of income to the province.

In 1953 the province enacted a new Crown Timber Act, that like the original, put the responsibility of both timber harvesting and forest regeneration onto the licensee. However, without oversight and cooperation, the industry basically "set its own course" and there was very little integration between harvesting and regeneration. In other words there was a lack of management by either the private or public sectors.

By 1960 the province determined that private licensees were not doing an effective job of regeneration. Accordingly, in 1962, the Crown Timber Act was amended, and the province assumed full responsibility for regeneration.

The 1960s were a stimulating period for government service foresters and forestry technicians. They developed many regeneration practices tailored for the northern Ontario forest conditions. At the same time, industry continued developing its harvesting techniques.

It turned out that what was most efficient for harvesting was

4
not necessarily the best for regeneration.

This caused rising resentment against the timber products companies and demands for more regulation and tighter enforcement of the Crown licensing system.

In 1976 two important studies recommended that the responsibility for both harvesting and regeneration be returned to licensees so they could be integrated into total management.

Wozan Disc
~~Three years later the recommendations were acted upon, by adopting a new Crown Timber Act that created ~~provisions~~ of Forest Management Agreements (FMAs) that allowed the government to contract forest management, including road building and reforestation, to private companies.~~

The FMAs replace the policing duties of the government with contractual agreements beneficial to both parties. The contracts contain stiff penalties for poor performance and incentives to stimulate good performance.

The greatest reported gain from the FMAs is the integration of timber harvesting with regeneration, which is proving successful, and providing for a larger annual timber harvest in the future. Ontario officials told us this has been successful because the private manager now has a vested interest or incentive to regrow the forest.

They contain what is known as an "Evergreen" clause. The basic contract is for 20 years, but after each five-year period the results of private harvesting and regeneration are evaluated by the government, and if standards are met, the contract is given a five-year extension. This is one of the program's features we like the most.

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It is beneficial to the private party because financiers always know the firm has 20 years of raw material ahead of it. Obviously this makes it far easier to raise capital for the timber processing plants, required by the contract.

~~The Act requires~~ ^{FMA's would} that all timber cut, except that used domestically for fuel, building or other purposes, be manufactured ^{AK Alaska} in Canada into ties, poles, pit props, lumber, veneer or like products or into pulp. ~~Round logs or first-pass processed logs are prohibited from being exported.~~

From our initial analysis of this system, we are today recommending it be intensely studied for adoption, particularly in Alaska and states similarly situated, because evidence has shown it works; it creates jobs and industry, and results in better forest management and forestland amenities.

It is also saving the government of Ontario money. No longer need it hire as many foresters and engineers to pre-plan timber sales. (These folks are now in highly paid positions in the private sector.) No longer need government act as "policemen" to enforce a myriad of contradictory regulations.

All they do, in the words of K.A. Armson, the author of the 1976 report that advocated the contractual agreements, is "put a high priority on renewal and protection of Crown forests, but play only a limited role in determining the forest industry's financial future."

Can we, Alaskans and other Westerners, gain the public-private cooperation that those in Ontario have gained, by lessening confrontational activities, and substituting cooperation?

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And, will such programs increase public services in our western states, in an era of declining government budgets?

Can this, as in Ontario, be done by government providing access, reforestation costs, and most of all, long-term fiber supplies, which convert to private investment and jobs, the source of real wealth and growth in the economy?

Again, a look at the Ontario experience is worthwhile. Ontario contains about 148,000 square miles of Crown timberlands. This is about three times the acreage of commercial forestland (state, public and private) in Alaska.

As of the end of 1983 almost more than 30,000 square miles of this land had been placed under Forest Management Agreements and more is being added all the time.

This represents about 45 per cent of the Crown land under private licensed areas. New Forest Management Agreements are continually being negotiated.

What are the costs and benefits to the province utilizing this system?

In 1983 the Ontario government invested about C\$194 Million in forest management. This was spent primarily paying licensees to construct roads, and for direct reforestation costs.

I say invested, because industry only returned about C\$40 million back in direct fee and stumpage payments.

Yet Ontario lacks an organized "no-growth" voice decrying deficit timber sales.

Why?

Because for the C\$194 million investment, on three times the

7

timber land base of Alaska, the provincial government collected C\$60 million in corporate taxes and C\$200 million in individual income taxes. The return to the government, then, was about C\$300 million-- including the stumpage fees--plus the capital improvements to its land in the form of roads and other infrastructure.

Also, 80,000 people were directly employed in the forest products industry, collecting some \$1.7 billion in wages and benefits. Another 80,000 were employed supporting the industry.

About 15 per cent of those directly employed by the forest products companies were in the woods. The remainder owed their jobs to timber conversion and manufacturing activities. And the private sector operating expenses for that year were C\$6.7 billion. More than C\$700 million was spent in capital and repair expenditures.

Also, the industry created almost 40 million tons of freight, to and from the mills.

This program, with the slogan "The Name of the Game is Cooperation" should closely observe what true public and private sector cooperation can do--not only in Alaska, but in other areas where government controls large blocks of valuable renewable resources.

Certainly the Resource Development Council for Alaska stands ready to join in expediting such cooperation.

S B

114

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET DIVISION OF GOVERNMENTAL COORDINATION

STEVE COWPER, GOVERNOR

CENTRAL OFFICE

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NORTHERN REGIONAL OFFICE

675 SEVENTH AVENUE
STATION H
FAIRBANKS, ALASKA 99701-4596
PHONE: (907) 456-3084

May 1, 1987

Mr. Bruce Geraghty
Legislative Aide
Senator Jack Coghill's Office
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Mr. Geraghty:

Enclosed, as you requested, is a copy of the Division of Governmental Coordination's (DGC) comments on Senate Bill (SB) 114, relating to legislative disapproval of district coastal management programs prepared under the Alaska Coastal Management Program. The DGC appreciates the opportunity to testify at the hearing scheduled before the Senate Resources Committee on May 4, 1987, regarding the bill. Please call at me 465-3562 if you have any questions about this material.

Sincerely,


Jan Mills
Coastal Program Coordinator

Enclosures

bs87043001jmi

Division of Governmental Coordination
Comments on Senate Bill 114
Senate Resources Committee Hearing
May 4, 1987

Senate Bill (SB) 114, "An Act relating to legislative disapproval of the Alaska Coastal Management Program," would provide the Legislature a role in the approval of local coastal district programs prepared under the Alaska Coastal Management Program (ACMP) and all amendments to those programs. The bill would give the Legislature 60 days to act to disapprove any proposed addition or amendment to the ACMP. Absent disapproval by act of the Legislature, the proposed program or program changes would take effect.

The Division of Governmental Coordination's (DGC) comments regarding SB 114 focus on both practical and legal considerations with the bill's implementation. These comments are outlined below.

The ACMP allows local coastal communities and rural regions of the state (called "coastal districts") to author coastal management programs that guide the management and development of coastal resources in their areas. Coastal district programs are developed according to guidelines and standards established in the Alaska Coastal Management Act by the Legislature in 1977, with oversight and approval by the Alaska Coastal Policy Council (CPC). The CPC includes the commissioners of seven state agencies and nine locally-elected officials representing coastal regions of the state. Coastal district programs and any subsequent program changes are reviewed for compliance with ACMP guidelines and standards prior to CPC approval, and address comments received from the public and agencies during an extensive public review process.

Thirty-four coastal districts participate in the ACMP. To date, 27 programs have been reviewed and approved by the CPC through the process outlined above. The last of the large regional programs, a plan for the Bering Straits region, is expected to be approved by the CPC in June 1987.

The state has considerable experience with the implementation of these approved district programs. All projects which occur within the coastal area of the state and which require a state or federal permit are reviewed for "consistency" with the respective local district program. The consistency review involves the project applicant, the coastal district, the state resource agencies, and DGC.

Implementation of district programs has been successful. Since January 1984, DGC has coordinated the review of 1541 projects for consistency with the ACMP and approved local district coastal management programs. Of these 1541 projects, 1525 have been

found to be consistent with the ACMP and have received the necessary state approvals to proceed. The average timeframe for completing a project consistency review has been only 47 days, even for major projects such as causeway developments which will service oil and gas activity on Alaska's North Slope.

The success that has been experienced in the implementation of approved district programs indicates that few major amendments to these approved programs are anticipated in the future. Future program changes would likely be limited to fine-tuning of the programs, such as a recent request from the Municipality of Anchorage to prepare a new program document that more clearly outlines the components of the approved Anchorage Coastal Management Program for project applicants, or a request from the City of Pelican to allow a community recreation facility in an area formerly designated in their plan for only water-dependent uses.

At the request of DGC, the Attorney General's Office prepared a review of SB 114 that is also pertinent. The Department of Law notes that establishing a role for the Legislature in reviewing and approving individual district programs raises separation-of-power issues and creates uncertainty regarding the constitutionality of this bill. The Department of Law's concerns are sufficient for them to suggest that the administration consider vetoing this legislation in light of its constitutional infirmity and the practical problems associated with its implementation. A copy of the Attorney General's analysis of the bill is attached.

Legislative involvement in the ACMP may be accomplished without special legislation approving or disapproving adoption of a particular district program or program amendment. The Legislature sets the standards of the ACMP through the enabling statute. Further, the Legislature may comment on proposed district programs and program changes that are of specific interest during the review and approval process outlined in regulation.

The history of acceptance of adopted plans by the coastal districts, agencies, and public; the demonstrated success in implementation of approved programs; and the constitutional questions surrounding SB 114 do not support the need for the statutory change contained in the bill. Also, given that most of the local coastal district programs have been completed and substantive program changes are not anticipated, through adoption of SB 114 the Legislature will burden itself with the task of monitoring only minor program changes.

As the implementation of SB 114 would cause no fiscal impact to DGC, a zero fiscal note is attached.

Attachments

bs07042901jmi

MEMORANDUM

State of Alaska

TO: Boo Grogan, Associate Director DATE: April 1, 1987
Division of Governmental Coordination
Office of the Governor FILE NO.: 663-87-0392

THRU: TELEPHONE NO.: 465-3600

FROM: Grace Berg Schaible
Attorney General

SUBJECT: Review of SB 114,
legislative approv-
al of Alaska Coastal
Management Program

By: Joseph W. Geldhof
Assistant Attorney General
Department of Law

You have requested our counsel with respect to Senate Bill 114. This bill would amend the Alaska Statutes at 46.40 and afford the Alaska Legislature an opportunity to disapprove of proposed additions or revisions to the Alaska Coastal Management Program (ACMP). The proposed bill would give the legislature 60 days to disapprove of a proposed addition or revision by act of the legislature. Absent disapproval by act of the legislature, the proposed program or proposed changes would take effect.

Previous measures enacted by the legislature that required the legislature to approve individual programs or program changes presented significant constitutional difficulties. See 1980 Inf. Op. Att'y Gen. (Apr. 29; J66-506-80). Other legislative proposals to cure the constitutional infirmities of legislative oversight of the ACMP have raised serious legal problems. See 1985 Inf. Op. Att'y Gen. (Mar. 1; 366-378-85).

The particular form of legislative oversight contained in SB 114 pertaining to adoption of coastal management programs also raises constitutional, separation-of-power issues. This bill, if enacted, would not alleviate uncertainty regarding the constitutionality of legislative oversight of the ACMP. Although this specific oversight issue has not been presented to the Alaska Supreme Court, a strong case could be maintained that the legislative oversight function contemplated by SB 114 violates the separation-of-powers doctrine under the Alaska Constitution. Certainly, arguments against legislative veto as a decision-making tool were recognized by the Alaska Supreme Court in State v. A.L.I.V.E. Voluntary, 666 P.2d 769, 779 (Alaska 1980). Accord 1985 Inf. Op. Att'y Gen. (Mar. 1; 366-378-85).

United States Supreme Court Justice White has observed that the legislative veto is a useful "political invention." I.N.S. v. Chadha, 462 U.S. 919, 972 (1983) (dissenting opinion). But, as the majority of the United States Supreme Court pointed out in the Chadha case:

OFFICE OF
MANAGEMENT & BUDGET

APR 02 1987

GOVERNMENTAL
COORDINATION

Bob Grogan, Associate Director
Div. of Governmental Coordination
Office of the Governor
Our File No. 663-87-0392

April 1, 1987
Page 2

[P]olicy arguments supporting even useful "political inventions" are subject to the demands of the Constitution which defines powers and ... sets out just how those powers are to be exercised.

I.N.S. v. Chadha at 945. Whether the legislative veto as a useful "political invention" actually advances the program and policy objectives contained in AS 46.40.010--46.40.210 is a topic for additional thought. Arguments have been made that the legislative veto has been unimpressive in practice. See Truff and Galhorn, Congressional Control of Administrative Regulation: A Study of Legislative Vetoes, 90 Harv. L. Rev. 1369 (1977). The legislative oversight measure contained in SB 114 may also constitute special legislation prohibited by article II, section 19, of the Alaska Constitution. Accord 1985 Inf. Op. Att'y Gen. (Mar. 1,; 366-378-85). The separation-of-powers doctrine under the Alaska Constitution suggests that legislative power should be exercised through general legislation and appropriation of funds and may not be exercised by special legislative action vetoing specific administrative acts made pursuant to lawfully delegated authority. Legislative oversight of the Alaska Coastal Management Program may be accomplished without special legislation approving or disapproving adoption of a particular program or program amendments.

The legislature receives proposed Alaska Coastal Management Program amendments prior to their adoption by the Alaska Coastal Policy Council. The legislature may comment on a proposed program or program amendments prior to adoption. If the legislature objects to the policies contained in a particular district program, the guidelines and standards governing review and approval of district coastal management programs may be amended in conformity with the specific desires and wishes of the legislature. See generally AS 46.40.070.

In conclusion, this bill raises constitutional legal issues which warrant your critical scrutiny. Because of constitutional infirmities and possible practical problems with the administration of this bill, you should consider recommending that the governor veto this legislation if the measure is passed by the legislature.

Bob Grogan, Associate Director
Div. of Governmental Coordination
Office of the Governor
Our File No. 663-87-0392

April 1, 1987
Page 3

Please contact me if I can answer additional questions
about this piece of legislation or this topic in general.

JWG:jf

cc: Jan Mills, OMB/DGC

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version:
Publish Date:

Revision Date: SB 114
Title: An Act relative to legislative dis-
approval of the Alaska Coastal Mgt. Program
Sponsor: Coghill, Fahrenkamp, Bennett, Faiks
Requestor: _____

Agency Affected: Office of the Govern-
ment
BRU: Div. Gov. Coord.

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Robert L. Grogan Phone: 465-3562
Division: Division of Governmental Coordination Date: April 30, 1987

Approved by Commissioner: [Signature] Date: 5/1/87
Agency: [Signature]

Distribution (by preparer): Office of the Governor

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Inspectors Agency
- Senate Secretary



ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, AK 99503 (907) 276-0347 April 24, 1987

Senator Jack Coghill
P.O. Box V (MS 3100)
Juneau, Alaska 99811

APR 27 1987

RE: SB 114

Dear Senator Coghill:

The Alaska Miners Association strongly supports SB 114.

The Resource Development Council recommended this legislation in their "New Strategies for Advancing Alaska's Economy, 1986-1990".

The Alaska Minerals Commission endorsed the concept of legislative oversight of district management programs in their "Initial Report of the Alaska Minerals Commission, January, 1987".

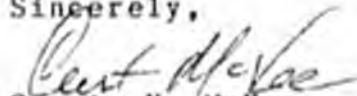
All three of these groups have as their primary concern, the liberal and unwarranted extension of district coastal zone boundaries beyond the coastal areas. Clearly, lands 250 miles from the active coast should not be considered as within the coastal zone.

The AMA feels that the incorporation of the vast areas incorporated into coastal zone management plans such as the North Slope plan, Nana, Bristol Bay, and the proposed Bering Straits plan, clearly violate the intent and purpose of state and federal law. The policies promulgated by these districts are strongly weighted toward subsistence uses to the point that all other uses, including uses of State and National concern, are subordinated. In essence, the coastal zone management plans are being used to establish a non-elected body as a zoning and management authority to oversee and control development in vast areas of Alaska.

State agencies have been ineffective in mitigating the concerns identified by the resource industries during plan development. The plans that have been approved at the State level are seriously flawed and will deter responsible resource development. The history of failure of the State's plans at the federal level substantiates our concern.

The Alaska Miners Association feels that legislative oversight of the district coastal plans is necessary to protect State concerns and we recommend passage of SB 114 as a vehicle to accomplish this.

Sincerely,


Curtis V. McVee
Executive Director



Resource Development Council

for Alaska, Inc.

807 "G" Street, Suite 200, Anchorage, Alaska 99501-3446
 Box 100510, Anchorage, Alaska 99510-0516 - 907/276-0700

April 22, 1987

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 Congressman Don Young

Senator Jack Coghill
 Senate Resources Committee
 Pouch V
 Juneau, AK 99811

APR 27 1987

re: SB 114, an act relating to legislative disapproval of the Alaska Coastal Management Program

Dear Jack:

The Resource Development Council strongly supports SB 114, legislation allowing legislative review of Coastal Zone Management Plans. We believe the potential for legislative disapproval will bring about the development of better coastal resource planning and management.

The Alaska Coastal Management Program (ACMP) was designed to allow coastal residents to have a direct role in the evolution of coastal land use policy. For a variety of reasons the ACMP has developed into a program with substantial statewide impacts without appropriate statewide review of its contents or impacts.

When the ACMP was devised several years ago the program contained an adequate legislative review process. The Supreme Court has since struck down the review process employed in the ACMP. We believe that the modified procedure spelled out in SB 114 will provide the legislature with the appropriate review authority.

At present, in the absence of legislative review steps, the ACMP plans are ratified without any opportunity for substantive action by anyone except the Coastal Policy Council, an organization made up of delegates of coastal areas and appointed state officials.

The re-creation of the legislative review procedure that was originally built into the ACMP would vastly improve the credibility of the program. It would also allow for meaningful review by the ultimate arbiters of sound state land use policy, coastal or otherwise, the legislature.

Thank you for your support on this important issue.

RESOURCE DEVELOPMENT COUNCIL
 for Alaska, Inc.

Michael K. Abbott
 Projects Coordinator

ALEUTIANS EAST COASTAL RESOURCE SERVICE AREA
P.O. BOX 90
SAND POINT, ALASKA 99661
(907) 383-2699

May 4, 1987

Senator Jack Coghill
Senate Resources Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Coghill,

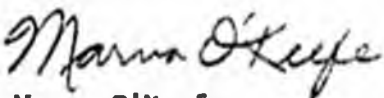
I am writing on behalf of the Aleutians East Coastal Resource Service Area (CRSA) Board in regards to SB 114, an act relating to legislative disapproval of the Alaska Coastal Management Program. I understand that you will include our comments in the committee packet to be distributed today prior to the 4:30 p.m. hearing.

The Board is strongly opposed to SB 114. We believe the current structure and process for approval of coastal management programs, including local and Coastal Policy Council review achieves the goal of public and agency involvement in the programs. The Coastal Policy Council is comprised of 7 state agency representatives and 9 locally elected officials appointed by the Governor from nominations submitted by municipalities. This body has the necessary expertise and experience to approve local district programs.

SB 114 would build a 2-month delay into the approval process for all coastal management programs and any additions, revisions or amendments to those programs. In light of the Legislature's expressed desire to save the state time and money, it seems highly inefficient to consider implementing such a process.

We urge you to vote against SB 114. Thank you for considering our comments.

Sincerely,



Marva O'Keefe
Chairperson
Aleutians East CRSA Board



Coastal Resource Service Area

P.O. Box 3110, Dillingham, Alaska 99578

(907) 842-2688-842-2667

May 1, 1987

Senator John B. Coghill
Senate Resources Committee
P.O. Box V, MS 3100
Juneau, AK 99811

Re: Senate Bill 114

Dear Senator Coghill:

The Bristol Bay Coastal Resource Service Area (CRSA) Board would like to provide the resources committee with comments on the above referenced legislation. This is very important to the Board given its responsibility for the development and implementation of a coastal management program for the Bristol Bay region.

The Alaska Coastal Management Program (ACMP) is a mechanism, and the only one in the unorganized borough, that allows for local input into decisions affecting land and water use in the coastal areas of Alaska. Existing regulations allow for all public agencies and private interests to have numerous opportunities to comment on both the implementation of, and amendments to, the ACMP. This includes the placement of local programs into it.

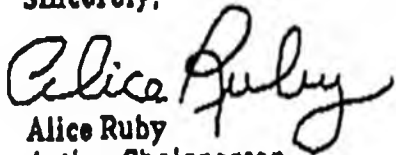
The Coastal Policy Council (CPC), which is made of agency commissioners and locally-elected officials, reviews all of the many different opinions presented on amendments to the ACMP. It is at this time that they can be analyzed in order to determine they are consistent with the ACMP regulations; required at this time are that uses of state concern are not unreasonably restricted (AS 46.40.060 (g)(4)). Thus, the argument that the coastal management program is too restrictive on actions of importance to the state as a whole is not valid.

An opinion from the attorney general in 1980 directly addressed the major point of this legislation, and is referenced under AS 46.40.080. Although the language has a minor change (from "resolution" to an "act" of the legislature), it appears that the same intent is implied. Thus, prior to any action on this piece, the Department of Law should provide the committee with an opinion on whether it is permissible under the constitution.

Another concern that the Board has with the proposed legislation is in regard to the extra burden that a legislative review of district program would place upon the legislature. This is particularly relevant given the 120-day limit which the legislature must work under. Coupled with this reference to timing is a logistical question: what happens if the CPC gives approval to a program/amendment in June or September, after the legislature has recessed? Will the program be held in abeyance until the legislature reconvenes? If so, is this fair to local districts, state agencies and the public, who many times have spent a number of years reaching this point?

The Bristol Bay CRSA Board objects to this piece of legislation and feels that it should not be passed out of committee.

Sincerely,

A handwritten signature in cursive script that reads "Alice Ruby". The signature is written in dark ink and is positioned above the typed name and title.

Alice Ruby
Acting Chairperson
Bristol Bay CRSA Board

AR/com

SB

129

Alaska State Legislature

Senate Resources Committee



Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturqulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
(907) 465-1907

TO: RESOURCE COMMITTEE MEMBERS

FROM: COMMITTEE STAFF

RE: SB 129 "An act relating to sport fishing and hunting licenses, and providing for an effective date"

DATE: MARCH 9, 1987

Senate Bill 129 is a bill introduced by the Governor to raise the cost of resident sport fishing and hunting licenses.

The purpose of this action would be to generate additional revenue to offset the rising costs of managing the state's fish and wildlife resources.

CONTENTS OF FOLDER

1. STAFF MEMO
2. GOVERNOR'S SPONSOR POSITION
3. FISCAL NOTE FROM FISH AND GAME

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 12, 1987

The Honorable Jan Faiks
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to sport fishing and hunting licenses. This bill would raise the cost of a resident sport fishing license by \$5. The cost of a resident hunting license and the combination hunting and trapping license would be raised by \$8. The cost of two other combination licenses covering both sport fishing and hunting would be raised by \$13.

These increases would generate additional revenue to offset the escalating costs of managing the state's fish and wild-life resources, and would provide for expansion of existing programs. Present technology still requires labor-intensive activities to acquire the necessary data for management, and operational costs of the Department of Fish and Game are expected to rise in order to meet those demands.

Money received from the sale of state sport fishing and hunting licenses is deposited in the Fish and Game Fund, which was created at statehood and is described in AS 16.-05.100 and 16.05.110. As a dedicated fund, it is addressed by the Alaska Constitution in art. IX, sec. 7:

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article [the Permanent Fund] or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

The Fish and Game Fund was created after the date of ratification of art. IX, sec. 7 of the Alaska Constitution. However, it is protected under the federal-government-requirement exemption. A federal regulation, 50 C.F.R. sec. 80.2, adopted under the Pittman-Robertson Act, 16 U.S.C. secs. 669 -- 669i, and under the Dingell-Johnson Act, 16 U.S.C. secs. 777 -- 777k, prohibits "diversion" of fees

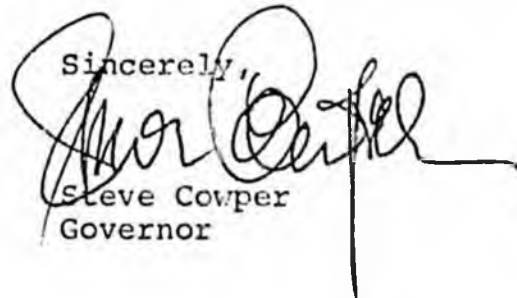
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collected from the sale of fishing and hunting licenses to purposes other than administering the state's fish and wildlife agency; this is a precondition to participation in federal fish and game grant programs. Since the federal law provides matching money for funds from the sale of fishing and hunting licenses, and does not specify the cost of those licenses, no problem of inconsistency with the federal requirement and thus no problem with the constitutional provision on dedicated funds will be encountered if these license fees are raised. In 1977, the fees for both licenses were increased; that is the only increase in residents' fees since statehood.

P.L. 98-369, July 18, 1984, expanded the Dingell-Johnson Act to make additional federal matching money available to the state. Some of this money must be utilized for motor boat access for sport fishing and support facilities, and additional state matching money will be required to optimize use of these three-for-one funds for capital projects.

In light of the availability of additional matching money, and the increasing management needs of the Department of Fish and Game, I urge your favorable consideration of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name and title.

Steve Cowper
Governor

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 129
 Title : An Act relating to sport fishing and hunting licenses; and providing for an effective date.
 Sponsor : Governor
 Requestor : Dept. of Fish and Game
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept. of Fish & Game
 BRU : Game Resource Conservation, Sport Fish and Fishery Resource Conservation.
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

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

REVENUE	1116.13*	1776.8	1866.4	1954.0	2024.5	2114.5
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

* The license increase will take effect January 1. Therefore, revenues for the first year represent revenue for one-half of FY 88.

Prepared by : Roland Shanks
 Division : Commissioner's Office

Phone : 465-4100
 Date : September 30, 1986

Approved by Commissioner : *Orin Pellensworth*
 Agency : Department of Fish and Game

Date : 9-30-86

Distribution (by Agency preparing fiscal note) :

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

SB

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SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2-26 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

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

DATE TURNED INTO OFFICE _____

Mr. President:

RESOURCES _____ Committee considered SB 130

making a supplemental appropriation to the Department of Natural Resources for recorders' offices; efd .

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title
- 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

Lois Jones
Bob Laska
Lewis Stumpeloch
Frank Zhanoff
Jim Duran
Paul A. Frank

John B. Cochran

 Chairman signature and recommendation

Committee Backup Attached

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

SENATE
BILL VERSION: SB 130
PUBLISH DATE: 3/5/87

REQUEST: _____

Revision Date: 3/3/87
Title: Supplemental Appropriation to DNR

Agency Affected: Natural Resources
BRU: Management & Administration

for Recorders' Offices
Sponsor: Kerttula & Szymanski
Requestor: _____

Components: Information/Records Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	95.0					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	95.0					

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	95.0					
TOTAL	95.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS :

The \$95.0 non-GF will cover personal services costs of existing, filled positions in the seven rural Recorder's Offices (Nome, Bethel, Palmer, Kenai, Homer, Sitka, Ketchikan) through June 30, 1987.

Prepared by: Virginia Stonkus, DNR Budget Analyst
Division: Management

Phone: 465-2424
Date: 3/3/87

Approved by Commissioner: [Signature]
Agency: Natural Resources

Date: 3/3/87

Distribution (by preparer):

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

Alaska State Legislature

Senate Resources Committee



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Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
(907) 465-1907

March 3, 1987

MEMORANDUM

To: Members of the Senate Committee on Resources

From: Committee Staff

Re: SB 130, "Making a supplemental appropriation to DNR to keep recorder's offices open"

The passage of SB 130 would appropriate \$95,000 from the recorder's offices program receipts in the general fund to DNR to keep the offices open until the end of this fiscal year.

Offices slated for closure without this appropriation are in Nome, Bethel, Palmer, Homer, Kenai, Sitka and Ketchikan. The appropriation covers the cost of personal services for existing positions.

Included in your packet are:

DNR's position paper and fiscal note
A memorandum from Legislative Finance staff to Sen. Kerttula
Sponsor's letter to DNR

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

March 3, 1987

The Honorable Jack Coghill
Chairman, Senate Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Coghill:

Subject: Senate Bill 130, which makes a supplemental appropriation to the Department of Natural Resources for Recorder's Offices.

Position: The department supports this bill because it would allow use of \$95,000 in program receipts to operate the Recorder's Offices through the remainder of Fiscal Year 1987.

Please let me know if you would like additional information.

Sincerely,

Jennie Bestm gorsuch
for
Judith M. Brady
Commissioner

cc: Senator Szymanski
Committee Members
George Sullivan
Rod Swope