

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5501 SRES HB 266 - HB 356

173

Mrs. Fran Ulmer
Re: Recording of Documents

April 1, 1987
Page two

recorded when issued, and had been lost. The present owner of the property was required to convey a marketable, insurable title, which he could not do without completing the chain of title by the recording of the Alaska State Patent. There should never have been raised any objection to the recording of the certified copy.

Very truly yours,

DORIS LOENNIG, P.C.

By: 

DORIS LOENNIG

DL:dcm

RECEIVED MAR 11 1987

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March 10, 1987

REPLY TO ANCHORAGE

Honorable Fran Ulmer
State Representative
P. O. Box V
Juneau, Alaska 99811

Dear Representative Ulmer:

I received the enclosed memorandum from the Alaska Bar Association, as I am a member of the Natural Resources Section Executive Committee of the Bar Association.

I support the language of the attached (proposed) House Bill, "An Act relating to the recording of documents", in its entirety. I wholeheartedly support the bill and the reasoning behind it. I urge you to introduce it, and not by request.

If for no other reason, I object to the current recording regulations and support the proposed bill on the grounds that the Department of Natural Resources has no business placing unreasonable and cumbersome limitations on the public's right to record documents. If it is to be done at all, it should be done by the legislature through elected representatives and not subject the right to record documents to the discretionary, often petty and whimsical "legal" interpretations of clerks. I have personally had the experience of the Fairbanks Recording Office (initially) refusing to record documents that are required by federal mining claim regulations to be recorded with the recording district; only after strenuous argument (the clerks adjourned to a private conference on the matter while I waited an hour) was the document accepted. If the documents had not been recorded, my clients' mining claims could have been declared invalid by the United States Bureau of Land Management.

Most of my practice consists of representing small miners. As a group, these people are bright, but have little formal education; they are literally overwhelmed by the legal and regulatory climate in which they are struggling to survive. As a user group, I would wager that miners use Alaska's recording

Honorable Fran Ulmer
March 10, 1987
Page 2

offices more than any other single group of people. They do so for a very good reason: they must annually file documents with recording offices to preserve their possessory rights, upon pain of losing the claims to rival claimants or the government.

Unlike persons wishing to record documents who are seeking to place themselves prior in time to the interest of another party, the failure to timely record a document for a miner does not simply place that miner's interest in a position subordinate to someone who has filed ahead of him. Instead, the failure to timely file various mining documents can, and usually does, result in a total loss of the miner's rights--e.g., by an administrative declaration from BLM to the fictional effect that their claims have been "abandoned". This abandonment penalty has been sustained as lawful by the United States Supreme Court recently and BLM may take such action, despite abundant evidence that the miner did not intend to abandon the claim.

As a group, miners stand to lose more than any other group under these current recording regulations, because miners typically wait until near the annual deadlines to file their documents. At that time, should a clerk narrowly or adversely interpret any one of the host of regulatory obstacles to recording with which DNR is now armed, it will be too late for the miner to correct the situation; in many instances, the miner will simply lose his rights. Often, the failure to record cannot be cured by filing another mining claim location certificate, because the ground upon which the claim was located is now in one of Alaska's many national parks or other areas now closed to mineral entry.

Long before there were recorder's offices, there were mining districts. Each mining district (many of which were established shortly after acquisition of Alaska from Russia) had a district recorder, whose job was almost exclusively to accept mining claim recordings. It is sad and ironic that State of Alaska recorder's offices, which succeeded to the duties of mining district recorders, now seek to limit the public's right to record.

Finally, I will conclude by suggesting that some teeth be placed in the bill proposed; otherwise, even though the intention of the legislation is clear, it could still be frustrated, without penalty, by State employees. You are probably aware of the fact that some Alaska statutes provide for penalties to be assessed against an employee who violates the statute. For example, I believe there is a statutory prohibition against Department of Revenue employees divulging confidential information about taxpayers; penalties are provided for releasing the information. I can say from personal experience that this penalty provision is

Honorable Fran Ulmer
March 10, 1987
Page 3

terribly effective, because I have sought to obtain seemingly unrelated and harmless information and the Attorney General's Office has always advised the employee to err on the side of caution by refusing to release it. The fear of this penalty is so great that I have even had cases wherein the Attorney General gave this same advice, even though the information was requested pursuant to a lawfully issued subpoena (I was able to obtain the information, but only after persuading the taxpayer to authorize its release).

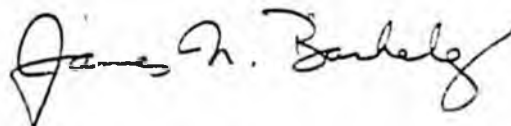
Thus, assuming a reasonable definition of "wrongful refusal to record" could be arrived at, I respectfully submit that penalties should be provided for under those circumstances--which penalties should include all losses proximately caused by the wrongful refusal--e.g., the loss of mining claims or other valuable property rights.

This is not a matter involving a particularly crusty, obstructionist clerk in one recording district; this is a matter of paramount importance and is of state-wide concern.

One last note: my opinions in this letter are conveyed to you from me as an individual, and they do not necessarily constitute the opinions of the Alaska Bar Association nor of Hughes, Thorsness, Gantz, Powell & Brundin.

Very truly yours,

HUGHES, THORSNESS, GANTZ,
POWELL & BRUNDIN



By:
James N. Barkeley

JNB/mt
2793i

cc: Linda Nordstrand, Alaska Bar Association
CLE Director

DOUGLAS L. GREGG, Esq.

PROFESSIONAL CORPORATION

ATTORNEY-AT-LAW

130 SEWARD STREET, SUITE 417

JUNEAU, ALASKA 99801

March 4, 1987

Honorable Fran Ulmer
Representative District 4B
State House of Representatives
P.O. Box V
Juneau, Alaska 99811

Re: Amendments to Recording Statute AS 34.15
My File G-1579

Dear Representative Ulmer:

Thank you for having our bill drafted. It seems to cover all the bases. I am not certain my schedule will allow me to attend Friday's bar luncheon. As a committee member I certainly hope that you will get a bill in as quickly as possible. I keep hearing horror stories. Fred Baxter is currently having a problem getting a certified copy of a court order from Anchorage recorded down here. The reason for refusal: "It is not an original." Can you believe this?

Very truly yours,

DOUGLAS L. GREGG

DLG

cc: Fred J. Baxter, Esq.
Larry Weeks, Esq.
James E. Fisher, Esq.

J U N E A U B A R A S S O C I A T I O N

6645 N. Douglas Highway
Juneau, Alaska

January 7, 1987

Honorable Jim Duncan
State Senator
State Capitol
P.O. Box V
Juneau, Alaska 99811

Honorable Fran Ulmer
State Representative
State Capitol
P.O. Box V
Juneau, Alaska 99811

Honorable Bill Hudson
State Representative
P.O. Box V
Juneau, Alaska 99811

Re: Amendments to AS 44.37.025 (Recording Documents);

Dear Juneau Legislative Delegation:

There is a need for new legislation to correct a serious problem with recording documents in Alaska. In recognition of that difficulty, the Juneau Bar Association, at its regular meeting on December 5, 1986, adopted the recommendation of its Committee on the Office of the Recorder, copy enclosed. The committee was formed as the result of numerous complaints about the many new restrictions on the right to record documents that were imposed through the rule-making power of the Department of Natural Resources, which has jurisdiction over the Office of the Recorder.

In addition to amending existing legislation, we are requesting that new regulations be adopted by DNR. However, we request that a bill be drafted to provide guidelines restricting future rule-making power to those matters of legitimate concern to the Office of the Recorder. Such an amendment to the statute should make it clear that the public has a right to record legal documents and that the Office of the Recorder is not to judge the internal legal integrity of documents but simply to record them

if they meet certain minimum requirements.

As to the rule-making power of the department, six recommendations are contained within the committee's report. However, the department might well consider several other changes in its current regulations. The committee restricted itself to the most obvious areas of needed change. The regulations could be further amended to provide that the Recorder may not refuse to record or file a document because:

- it lacks a title reflecting its overall content;
- it does not contain a "return to" address;
- the individual who incurred an assessment is not named (even though the property against which the assessment is placed is described and the party claiming the assessment is identified).

The Juneau Bar Association is not opposed to all regulation of the right to record. The new regulations are, however, onerous. More importantly, they are constituting a substantial restriction on the right to place a document on the record as public notice. Many times a document serves that purpose even though the document could admittedly be improved in its context and could be more complete than it is. But the right to record and create the public notice for the protection of parties is of paramount importance. Perfection in legal documents is desirable but many people making use of the Recorder's Office are not lawyers or skilled title examiners. Failure to successfully record can have dire results when intervening filings place a party in a secondary position.

We will appreciate your assistance in correcting the problem through the amendment of AS 44.37.025 to insure that future regulations will not contravene public policy. Thank you for your cooperation in this matter.

Very sincerely yours,

JEF

James E. Fisher, President
Juneau Bar Association

ENCL

COPY

REPORT OF COMMITTEE ON OFFICE OF THE RECORDER

The Committee met on August 22nd. The work of the Committee was assigned to its members. Larry Weeks, Fred J. Baxter, and Douglas Gregg. Bruce Hansen of Title Insurance Agency was invited to attend that meeting as an ex-officio member. He was requested to make inquiries of other title companies in an effort to obtain their viewpoints on the current difficulties in recording documents in Alaska. Fred Baxter spent some time outlining the essentials of a hypothetical complaint for damages. Larry Weeks explored the question whether the Office of the Recorder can, under the language of the statute requiring him to record instruments, refuse to record in reliance on the new regulations. Fred concluded that a person suffering damages by reason of the recorder's refusal to record an instrument could frame a good cause of action in many instances. Larry concluded that there would be a good chance, in a declaratory judgment action, to secure a judgment invalidating many of the regulations in question.

Your chairman met with Mr. Hansen on November 7th, at which time Mr. Hansen had received and compiled the results of an informal poll conducted among title insurance offices throughout the state. There were over 35 written responses (some did not answer every question.) Mr. Hansen had posed 15 questions in the poll. A simple "yes" or "no" was solicited to these questions.

The top of the poll asked whether the recipient felt that the Recorder should refuse to record or file a document when the document had certain attributes. These attributes were described in the 15 questions he selected. (Poll and results annexed.) There was near unanimity on several of the 15 items, with a more or less equal division of other items. Comments of respondents are omitted from this report. Several respondents sent letters praising Mr. Hansen for taking a personal hand in the difficulty.

A summary of the poll results shows general dissatisfaction with the system currently being employed by the Recorder in rejecting documents offered for recording.

Your committee's proposed amendments to the statute would help ensure that when new rules and regulations are adopted they will be circumscribed in such manner as to prevent unreasonable or unnecessary restrictions.

The Committee agrees that there is a need for modification in the existing regulations entirely apart from our proposed amendment to AS 44.37.025 which grants rule making power to the Department of Natural Resources. It may adopt regulations ". . . prescribing the records to be maintained and the instruments to be recorded." The statute currently lacks any restrictions or guidelines as to the scope of that power. An amendment would

help ensure that over-zealous rule-making will not in the future impair the ability of the public to make reasonable use of the Recorders' Offices.

Such an amendment to the statute could articulate a public policy. For example, it might state something along these lines:

PREAMBLE. The Legislature recognizes and therefore finds as follows:

1. The recording of legal documents of the kind customarily recorded throughout the United States is an essential State function.
2. The time and place that a document was placed of record may well be more important than the underlying sufficiency of that document from a strictly legal standpoint.
3. The Recorder's Office exists primarily for the benefit and convenience of the general public.
4. Commercial institutions, the business community, banks, and private individuals cannot safely function without the protections afforded by the right to give public notice through the ability to record their legal documents.

BE IT ENACTED etc. etc. . . . that public policy of this State is declared as follows: to maintain a convenient means of regularly recording legal documents and to obtain information concerning existing recorded documents. In the making of rules and regulations to facilitate the legitimate administrative needs of the various recording offices, reasonable doubts shall be resolved in favor of recording rather than of rejection. The Recorder shall not make judgments as to the legality of the contents of any document offered for recording. Nevertheless, the Department of Natural Resources shall adopt such rules and regulations as it requires to control indiscriminate filings of documents that do not meet certain minimum requirements. These regulations may include but shall not be limited to the requirement for a legal description, if needed, names of parties, capacity of parties, legibility and other such reasonably required information to assure that the Recorder's Office functions in a manner consistent with the needs of the citizens of this state.

The foregoing suggestions for a statutory change to control the rule-making authority of DNR is one suggestion. The second is that a request be made to DNR for proposed new amendments to the existing provisions contained in the Alaska Administrative Code relative to recording. Your Committee recommends that at least the following amendments be specifically requested of DNR:

1. All documents valid at the time they were made shall be recorded, notwithstanding that they may not meet the requirements contained in later-adopted rules and regulations.
2. A document shall not be rejected on the ground that it serves more than a single purpose nor shall it be required that a document be recorded separately for each of the

- various purposes for which it may appear to stand. (This shall not preclude the multiple recording by the offering party of a document which has several purposes.)
3. A document which makes reference to an attached exhibit shall not be rejected on the ground that the exhibit does not contain a label.
 4. A document shall not be rejected on the ground that it lacks the recording information contained in another document that is being amended by the one being offered.
 5. An official certified document from any governmental office in this state or a sister state shall not be rejected on the ground that it is not the original provided it is legible.
 6. A document shall not be rejected on the ground that it does not specify the name of the recording district provided that that information is given to the Recorder by the person offering the document, or such information is contained in a cover letter accompanying the document. (The information so received by the Recorder may be noted by the Recorder elsewhere on the document for future reference.)

CONCLUSION

It is recognized that many of the existing regulations may be desirable in the abstract. However, uncompromising loyalty to multiple details, often of questionable importance, result in the rejection of instruments and consequent delays in giving notice. Such delays can have disastrous results. All persons who are drawing legal instruments and submitting them for recording are not attorneys or title companies. The public's right to record ought to be paramount.

DATED: December 5, 1986.

Respectfully submitted,

Douglas L. Gregg

Larry Weeks

Fred J. Baxter

Do you feel that the recorder should refuse to record or file a document because:

YES 10

- 17 15 Contains no "return to" address.
- 30 4 Lacks trustee name on deed of trust.
- 29 8 Lacks real property description.
- 15 17 Lacks a title reflecting its overall content.
- 26 10 Document not executed entirely in English.
- 26 9 Lacks the recording information of the original document being amended, corrected, extended, modified, or released.
- 16 13 Document is larger than 8 1/2 by 14 inches.
- 29 9 Document must state in what capacity the signatory executed the document; individually, as attorney-in-fact, partner, corporate officer, executor, administrator, guardian or trustee.
- 22 11 Lacks the name of the recording district in which it is to be recorded.
- 16 14 Lacks reference to attached exhibit/Exhibit not clearly labeled.
- 26 5 Lacks attached exhibit when reference is made to such.
- 5 27 An original, recordable document may not be accepted as an attachment to another document.
- 3 32 The document serves more than one purpose. Recording fee is charged separately for each purpose.
- 19 14 Does not name person against whom assessment is placed.
- 3 29 Document is valid instrument executed prior to effective date of regulations but does not conform to current regulations.

282 217

COMMENTS:

499 RESPONSES

APPROX 35 INDIVIDUAL RESPONSES

HB

327

SENATE COMMITTEE REPORT

FURTHER

4/14/88

DATE TURNED INTO OFFICE _____

Mr. President:

Resources _____ Committee considered CSHB 327 (FIN)

penalties for violating the Alaska Historic Preservation Act; efd

and recommended

[] replace with _____ CS _____) [] same title
[] or adopt _____ CS _____) [] 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

OTHER RECOMMENDATIONS

[Handwritten signatures]

[Handwritten signature: Don Fisher No Pass]

[Handwritten signature]
Chairman Signature and recommendation

[] Committee Backup attached



Alaska State Legislature

Representative Mike Davis

District 19

P.O. Box V
Juneau, Alaska 99811
(907) 465-4930/4941

Interim Office
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8161

MEMORANDUM

TO: Members of Senate Resources Committee

FROM: Rep. Mike Davis *Mike Davis*

DATE: April 22, 1988

RE: HB 327: An Act relating to penalties for violating the Alaska Historical Preservation act; and providing for an effective date.

The Alaska Historic Preservation Act protects historic, prehistoric and archeological resources, including deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of the people in the state as well as the state's natural history. This protection exists only on state land. The act does not pertain to federal or private land. HB 327 provides a higher level of protection for historical resources by increasing the penalties for violating the act.

Alaska has an unusually rich and largely undisturbed reserve of historic objects. These resources are often sought by collectors undeterred by current penalties or the need to preserve these objects for the public good. It is no exaggeration that ivory and bone tools used by Eskimos, great wood carvings of the Tlingits, dinosaur bones found on the North Slope and World War II relics strewn around the state and across the Aleutians are priceless.

Current law provides penalties of a \$1,000 fine, six months imprisonment or both for violating the act--penalties inadequate to protect the state's historical resources. HB 327 would increase the criminal penalties for violation of existing law to those of a Class A misdemeanor, no more than a \$5,000 fine, one year imprisonment, and adds civil penalties of up to \$100,000.

Passage of HB 327 would provide an effective deterrent against unauthorized destruction or theft of historic objects protected by the Alaska Historic Preservation Act on state lands and would heighten awareness among Alaskans and visitors of the value of these unique and diverse resources.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION CSHB 327 (FIN)
PUBLISH DATE: HOUSE 1/29/88

(66)

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to penalties for violating the Alaska Historic Preservation Act"
 Sponsor: Representative Davis & Koponen
 Requestor: _____
 Agency Affected: Dept. of Corrections
 BRU: _____
 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	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

This legislation would have minimal impact on the Department of Corrections.

Susan E. Knighton

Prepared by: Susan Knighton Phone: 465-3376
 Division: Director of Administrative Services Date: 1-15-88
 Approved by Commissioner: Susan Humphrey-Barnett Date: _____
 Agency: Department of Corrections

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 327
PUBLISH DATE: HOUSE 1/18/88

FISCAL NOTE

REQUEST:

Revision Date: 05/17/87
Title: An act relating to penalties for violating the AHPA
Sponsor: Davis, Koponen
Requestor: House Judiciary

Agency Affected: Natural Resources
BRU: Parks and Recreational Management
Components: Historic Resource Management

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						
---------	--	--	--	--	--	--

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)

Because HB 327 is an upgrade in existing penalties, there should be no additional costs incurred by the Department of Natural Resources.

Prepared by: Lawrence Ostrovsky, Special Assistant
Division: Commissioner's Office

Phone: 465-2400
Date: 01/14/88

Approved by Commissioner: *Judith M. Bouchard*
Agency: Department of Natural Resources

Date: 01/14/88

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

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

January 14, 1988

The Honorable John Sund
Chairman, House Judiciary Committee
State House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

Subject: HB 327 relating to penalties for violating
the Alaska Historic Preservation Act.

Background

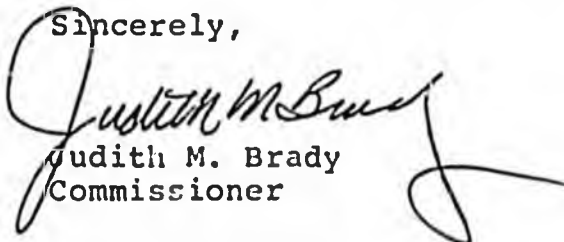
HB 327 increases criminal penalties for appropriating, destroying or otherwise harming any historic, prehistoric or archeological resources of the state. HB 327 provides that violations will be a Class A misdemeanor and provides for a civil penalty of up to \$100,000.

Introduction of a civil penalty will provide a substantial monetary deterrent which does not exist under present law, as archeological artifacts and items such as historic aircraft parts often have substantial monetary value.

Recommendation

The Department of Natural Resources supports HB 327 and recommends its passage out of the House Judiciary Committee.

Sincerely,



Judith M. Brady
Commissioner

cc: Rod Swope
Bob Evans
Bill Sponsors
Committee Members
Department of Law

vices of experts and other persons who may be needed. (§ 1 ch 130 SLA 1971)

Sec. 41.35.200. Unlawful acts. (a) A person may not appropriate, excavate, remove, injure, or destroy, without a permit from the commissioner, any historic, prehistoric or archeological resources of the state.

(b) A person may not possess, sell, buy or transport within the state, or offer to sell, buy or transport within the state, historic, prehistoric or archeological resources taken or acquired in violation of this section or 16 U.S.C. 433.

(c) A person may not unlawfully destroy, mutilate, deface, injure, remove or excavate a gravesite or a tomb, monument, gravestone or other structure or object at a gravesite, even though the gravesite appears to be abandoned, lost or neglected.

(d) An historic, prehistoric or archeological resource which is taken in violation of this section shall be seized by any person designated in AS 41.35.220 wherever found and at any time. Objects seized may be disposed of as the commissioner determines by deposit in the proper public depository. (§ 1 ch 130 SLA 1971; am § 8 ch 112 SLA 1974)

Sec. 41.35.210. Penalties. A person who violates a provision of this chapter is guilty of a misdemeanor, and upon conviction is punishable by a fine of \$1,000, or by imprisonment for not more than six months, or by both. (§ 1 ch 130 SLA 1971)

Sec. 41.35.220. Enforcement authority. The following persons are peace officers of the state and shall enforce this chapter:

- (1) an employee of the department authorized by the commissioner;
- (2) a peace officer in the state;
- (3) any other person authorized by the commissioner. (§ 1 ch 130 SLA 1971)

Cross references. — For definition of "peace officer," see AS 01.10.060(6).

Sec. 41.35.230. Definitions. In this chapter, unless the context otherwise requires,

- (1) "commissioner" means the commissioner of natural resources;
- (2) "committee" means the Historic Sites Advisory Committee;
- (3) "department" means the Department of Natural Resources;
- (4) "historic, prehistoric and archeological resources" includes deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of people in the state as well as to the natural history of the state. (§ 1 ch 130 SLA 1971)

MEMORANDUM

State of Alaska

Department of Natural Resources, Division of Parks and Outdoor Recreation

TO: Tom Moyer
Legislative Aide
Representative Davis' Office
Alaska State Legislature

FROM: Judith E. Bittner *JB*
Chief, Office of History & Archaeology
Department of Natural Resources

REF: Changes to
ACC.11.16

APR 24 REC

The Alaska Historic Preservation Act, (AS 41.35.010) formulates as state law the preservation and protection of Alaska's historic, prehistoric and archaeological resources from loss, desecration and destruction. Title 11, Chapter 16 of the Alaska Administrative Code, establishes implementing regulations to deal with jurisdiction, title to collected items, the permitting process, reports, etc. related to these resources.

It is unlawful for a person to appropriate, excavate, remove, injure, or destroy without a permit from the Commissioner, any historic, prehistoric or archaeological resources of the state. There is, quite properly, a broad definition given to "historic, prehistoric and archaeological resources" under 41.35.230 ("deposits, structures, ruins, sites, buildings, graves, artifacts, fossils, or other objects of antiquity which provide information pertaining to the historical or prehistorical culture of people in this state as well as to the natural history of the state.") Penalties are established under Section 41.35.200 for possessing, selling, buying or transporting within the state, or offering to sell, buy or transport within the state, historic, prehistoric or archaeological resources taken or acquired in violation of this section. Violators are guilty of a misdemeanor and, upon conviction, are punishable by a fine of \$1,000, or by imprisonment for not more than six months, or by both. (AS 41.35.210)

I am certain that aircraft and parts thereof are adequately covered under AS 41.35.230. Alaskan historic aircraft have been accorded recognition as historic artifacts and/or objects of antiquity by the Governor's Historic Sites Advisory Committee (established under AS 41.35.110) in nominations to the National Register of Historic Places and by award of grants to recover rare, endangered aircraft. I would suggest that changes should not be made to Section 11.16.110, a portion of the implementing regulations that define administrative responsibility for historic sites as being within the Division of Parks and Outdoor Recreation. Any changes in State law should, more appropriately, be made to AS 41.35.200. Mr. Long's efforts are in the right direction; as State Historic Preservation Officer I would support efforts to increase the penalty for violation of 41.35.200 from a misdemeanor to a felony.

MOYER. REP

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Protecting the heritage of aviation in Alaska

We are losing part of our aviation and state heritage. Artifacts of Alaska's aviation history are continually scavenged by Outside private interests. It's unfortunate, but aviation artifacts have become something of value.

Three public, nonprofit organizations are concerned with keeping Alaska's aviation heritage in Alaska. They are the Museum of Alaska Transportation and Industry in Palmer, The Alaskan Historical Aircraft Society in Anchorage, and the Interior and Arctic Alaska Aeronautical Foundation in Fairbanks.

Other organizations also are concerned with recovery of historic aircraft, but their efforts are structured to private use or gain.

The United States Historical Aircraft Preservation Museum, with Paul A. Fox as president, has interfered considerably with other legitimate recovery and preservation efforts.

Fox issued public notices claiming ownership to all downed military aircraft that were no longer claimed by the military. He then issued threats of legal action against any other organization that tried to salvage these aircraft. The notice was published the the Western Flyer, a Tacoma, Wash., aviation newspaper.

Fox's claim was denied by The U.S. Department of the Interior, which wrote, "We have reviewed those public notices and find them legally insufficient to establish any claim of ownership to the downed aircraft. Under any interpretation of applicable law, mere publication of claimed ownership is not sufficient to establish ownership of downed aircraft. Consequently, we are of the opinion that public notices may simply be ignored as legally innocuous."

The problems have not stopped with the Department of Interior's decision. Seven Curtis P-40 crash sites have been scavenged in recent months; the Nome site was allegedly picked over by a member of Fox's organization.

The P-40 is a World War II fighter that was staged in Alaska during the war years. Like most WWII fighters, the P-40 is a rare airplane, worth about \$100,000 in flying condition. The destination of its recovered parts is Texas, not Alaska.

Site locations include federal, Native lands and land still in question. Alaska's state Department of Natural Resources and the U.S.

Everett Long

Pilot's
Corner



Commentary

"We are investigating (the theft or trespass) because two wrecks were on federal land," said Larry Hood, an agent with the USFWS. The fine is \$250 to \$500. A wrecked P-40 is worth over \$100,000.

"It's a big question of ownership after the fines have been paid," Hood said. The state and the three legitimate aircraft museum organizations are trying to have the P-40 seized and kept in Alaska. There are enough parts to make three complete restored aircraft. They would become part of the air museum displays in Fairbanks, Palmer, and Anchorage.

Paul Chattey, who represents the Department of Natural Resources' Office of History and Archeology, is among those who'd like to see more cooperation among the various preservation groups.

"We are concerned with aircraft that are covered by the Alaska Historic Preservation Act," Chattey said. "But that only applies to aircraft on state land. At the moment we need the cooperation of all groups, like the IAAAF, the museum in Palmer, and the Alaskan Historical Aircraft Society. "Our position is this: If those P-40 parts are seized, they would be moved to storage at Palmer—and used for all Alaskans."

The Palmer museum has contacted U.S. Sen. Ted Stevens for help in seizing and keeping these aircraft in Alaska. The IAAAF and the AHAS support these efforts, and encourage people to express their views to Sen. Stevens. Locally, Rep. Mike Davis also is working to assist the effort.

It looks grim concerning saving the P-40s. Most of the salvaged parts are presently stored at Unalaska and Unalak Island. This "Gold Rush" on irreplaceable historic aircraft has got to be stopped. If not stopped, nothing will remain for educational and exhibit value



ALASKA HISTORICAL and TRANSPORTATION MUSEUM

Box 920 • Palmer, Alaska 99645 • Tel: (907) 745-4493

Honorable Ted Stevens
United States Senator
147 Russell Office Building
Washington, D.C. 20510

11/14/85

Dear Senator Stevens,

We need your help!!! We have been working with the State of Alaska Office of History and Archeology, the Governors Office, The Army Corps of Engineers and aviation historical groups across Alaska to formulate and expedite a rational plan for the assessment, recovery and exhibit placement, in Alaska, of World War II aircraft wrecks.

It has been a difficult process, but substantial progress has been made. The Governor of Alaska requested a plan dealing with the W.W. II aircraft recovery and exhibit from a coalition of groups in October of this year and the plan was produced and submitted on time. In cooperation with the mentioned state or federal agencies initially the coalition of non profit groups included this museum, as an established " physical " museum facility in Palmer, the Alaskan Aviation Committee of Anchorage and has expanded to include the Interior Alaska and Arctic Aeronautical Foundation of Fairbanks, which at this time is developing an aviation collection within the Gold Dome at Alaskaland.

At this critical time when we are getting an " Alaskans for Alaska " effort well underway a potentially major disaster is in the making. A combined group of in state and " outside " salvors has gone to both Unalaska and Umnak Islands and gathered up the remains of at least seven P-40 W.W.II fighter aircraft for shipment to the Lower 48 states. This involves federal lands and has been done without the necessary federal permits which should have been obtained from the U.S. Fish and Wildlife Service. It is also the second violation by the same group within several months as similar violations recently occurred on Amchitka Island and were documented by the U.S. Fish and Wildlife Service.

Our concern arises from the fact that the U.S. Fish and Wildlife Service has been forming a position on this particular instance which maintains that the violators will be fined (\$250) for their trespass, but that they can have these historically important aircraft!!! For your information a rock bottom price for a flyable P-40 at this time is in the range of \$400,000. As useful parts alone the assembled wrecks represent, we estimate , a figure substantially in excess of \$400,000. Not a bad return for a couple of \$250 fines!!!

762-

Per Dave Olson of the U.S. Fish and Wildlife Office in Anchorage his agency is about to claim ownership of all other documented wrecks on their lands, but as these particular wrecks have been moved it would be difficult to prove ownership.

This is an indefensible position!! We have photographs of the wrecks in question as they were in place on federal land and this documentation has existed for years, these wrecks were included in our plan which was requested by the Governor of Alaska and the helicopter pilot in Dutch Harbor who actually airlifted these wrecks for the salvors has pointed out the origin points to Alaska State Troopers.

Is the U.S. Fish and Wildlife Service acting in an ethical, professional and non biased manner on this issue?? We believe not particularly when their past performance, please see the enclosed information, indicates that at least some U.S. Fish and Wildlife personnel in Alaska seem to have played favorites with Lower 48 collectors in the past. An Alaskan group long on the field definitely came out second best to the Confederate Airforce, in Texas. Does perhaps someone or a number of people in Alaskas U.S. Fish and Wildlife Service have a vested interest in the outside sale of these materials? Perhaps this question should also be examined.

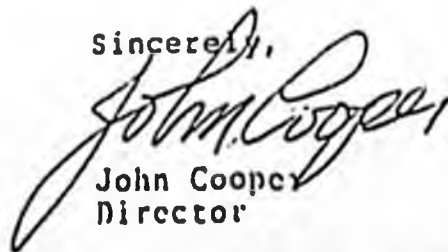
What we want at this time is your help in stopping the drain of historical materials from Alaska which in turn will help us get in place an Alaskan system for dealing with these materials. We want the authority for collection or disposal of W.W.II aircraft, or any important aviation materials, on federal lands to be turned over to the State of Alaska Office of History and Archeology. At this moment we specifically want authority for the P-40s in question to be turned over to the State of Alaska Office of History and Archeology. That agency can then in turn work with our museum and its allied preservation groups to insure quality exhibits within Alaska and perhaps a funding base, via sales of aviation materials deemed surplus, for other important aviation history preservation activities.

We have included a letter we wrote to another historical group recently as part of our effort to include Alaskan interests in the current Army Corps of Engineers Aleutians/W.W.II cleanup impact study. It should clearly illustrate our position on historical aviation preservation in Alaska.

In closing I would like to add that after a great deal of effort and real pain on the part of Alaskans the proposed U.S. Fish and Wildlife stand on the P-40s in question will set a precedent which will virtually open Alaska up to a salvors "Gold Rush". Irreplaceable historical aircraft remains of high educational and exhibit value, worth virtually millions of dollars, will disappear and what will be left for our people, our children?

Please contact us for whatever additional information you might need.

Sincerely,



John Cooper
Director

THE ALASKAN
HISTORICAL AIRCRAFT
SOCIETY

2397 East 47th Court
Anchorage, Alaska 99507
907-276-1807

June 7, 1979

Dear Sir:

The Alaskan Historical Aircraft Society would like to ardently protest the occurrence of a situation and the conduct of certain federal agencies. During April and May a group of gentlemen representing the Confederate Air Force of Harlingen Texas arrived in Alaska with a DC-3 cargo aircraft and a helicopter. Their intent was to salvage as much WWII aircraft or aircraft parts as was feasible. Their journeys took in the Alaskan Peninsula (King Salmon - Cold Bay - Chernofski) and eventually to Adak, a restricted entry Navy base in the Aleutians. There they spent five days and flew on government O.A.S. aircraft in the company of FWS personnel to areas containing actual or reported WWII aircraft wreckage. The survey aircraft was originally chartered to serve the native population at Atka Village, through the BIA. In questioning John Moore, Director of BIA in Juneau, he claims that BIA did not authorize the flying excursions by Confederate Air Force people. He indicates that the flights were FWS authorized as "refuge survey flights." He feels that the "truth" would never have come to light except that the aircraft got stuck in the sand at Tanaga Bay (a rich historical area) and was 18 hours overdue for doing BIA work. The Coast Guard was called out for a search mission.

The FWS refuge manager in Adak, Mr. John Martin, indicates he thought that the flights had been authorized by BIA and the Office of Aircraft Services claims it doesn't know exactly what went on or who paid for the flights. All they did was fly the airplane and land it where ever the CAF indicated. The Confederate Air Force maintains the largest

THE ALASKAN HISTORICAL AIRCRAFT SOCIETY

2397 East 47th Court
Anchorage, Alaska 99507
907-276-1807

Page 2

group flying WWII aircraft in the world and is a major salvager of aircraft, world wide.

The Alaskan Historical Aircraft Society has been working long and hard in a volunteer effort to preserve WWII aircraft in Alaska as valuable historic objects. These machines relate to an important stage of Alaska's development, not to mention the commendable services and events of human courage and sacrifice during the Aleutian Campaign. We're up against the fact that these museum objects are worth tens of thousands of dollars each on vintage aircraft market. Our complaint is this: why is a major aircraft salvager from the states afforded an expeditious tour of Aleutian wreckage sites apparently with government assistance and at government expense when the Alaskan Historical Aircraft Society cannot get similar accommodation when seeking to do the federal mandated task of gathering information for the National Register of Historic Places. This nomination work is necessary to get recognition of these aircraft as historic objects and thus cause them to be preserved in the interest of future generations of Alaskans. It is reflected in Executive Order 11593, and 36 CFR800 _____, that the various federal agencies have a responsibility to do this work. These machines are rare and are historic in the finest sense of historic value. We have established this with the submission and acceptance by the State of Alaska of our nominations of the P-38 on Attu and B-24D at Atka...nominations we put together from photos gleaned from private citizens in Nevada and Massachusetts; information that should have been provided by the federal government in light of Executive Order No. 11593 and 36 CFR800. The work is recognized and endorsed by the Manager of Federal Antiquities of the Heritage Conservation Recreation Service in Wash. D.C. Even though the nomination work is the responsibility of the federal agencies, our small group has endeavored to do it out of pocket and in spare time. We do this because the FWS Service in particular claims to have no time, manpower or funds to conduct such a survey and furthermore cannot offer us any assistance whatsoever in doing their job. They say only that they will issue us a special use permit. They cannot spare any people to assist or accompany us. When we ask what assurance we have that the machines are properly protected until a proper evaluation is done, the FWS claims no one can get into Adak without security clearance and must have legitimate interest there and that, according to Mr. Owen Vivian of the FWS, no salvage

THE ALASKAN
HISTORICAL AIRCRAFT
SOCIETY

2397 East 47th Court
Anchorage, Alaska 99507
907-276-1807

Page 3

personnel would have entry to refuge lands. Yet the people with FWS in Adak can get aircraft together and find time to visit sites with prominent aircraft salvagers.

We feel this historical resource is being compromised by someone in the federal government. Aviation represents a fourth of Alaska's 20th Century development and not much has been done to save it in a heritage sense. The Alaska Historical Aircraft Society is trying desperately to preserve this history. Would you please earnestly investigate this matter? What we want to know is this:

1. Who sponsored the Confederate Air Force with the Navy at Adak.
2. Who paid for the accommodations and the government aircraft for the CAP survey team. Who authorized the aircraft's use. (FWS; USN; BIA; OAS) (aircraft costs: \$324/day + \$247/hr. for fuel + Misc.
3. Where exactly did the crew from the CAF fly to and what did they take away.
4. Why does FWS personnel have time to accompany the people on permit (#A1-179-9 for Max Hoffman; CAF 116-S Ridge Ct. Ft. Collins, Col) and cannot assist the Alaskan Historical Aircraft Soc. personnel trying to perform federal mandated duties.
5. What part did the OAS play in this and what did pilot Dave Macelroy experience during the flights (i.e. log books)
6. Why cannot the AHAS get similar cooperation in their efforts to save this resource for Alaska.
7. Why are efforts to do nominations on valuable WWII aircraft being blocked by federal apathy.

If we cannot get some assistance, soon these historic aircraft will be scattered and broken down for parts and used to line the pockets of a few entrepreneurs. It's going to look bad if it is done with government assistance. Thank you for your time and energy concerning this situation. We know that you are busy.

Sincerely,

Dale Jackson

Sheila Dewey

Ted Spencer
President

Vice President

Treasurer

BENJAMIN B. TALLEY
BRIG. GEN. U. S. ARMY, RETIRED
STAR ROUTE BOX 600
ANCHOR POINT, AK 99556
(907) 235-7473

3 February 1986

The Honorable Mike Davis
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

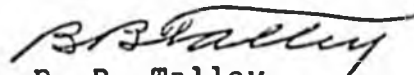
Dear Representative Davis:

I have just learned through Admiral James S. Russell that you have introduced legislation to protect World War II artifacts in Alaska.

There is a dire need for such protection, and I give this legislation my whole hearted support.

It would be appreciated if you would send me a copy of your bill so that I may discuss it with others.

Most sincerely,



B. B. Talley
Officer in Charge of Army and
Air Corps Construction in Alaska
during WWII

cc: Admiral James S. Russell



North Star Flying Lions, Inc.

F.O. Box 31301, Fairbanks, Alaska
99708

January 16, 1986

Representative Mike Davis
Pouch V
Juneau, Alaska 99811

Dear Mike:

The twenty five members of the North Star Flying Lions wish to lend their support to the proposed amendments of the Alaska Historic Preservation Act. We are deeply concerned regarding the removal of historical artifacts from Alaska.

We appreciate being made fully aware of this problem through Everett Long's recent Pilot's Corner column in the Fairbanks Daily News-Miner. The tragic loss of the planes mentioned in the column diminishes Alaska's aviation heritage, which we feel is incumbent on all of us to protect and preserve.

The proposed legislation to increase the civil penalty from \$1,000 to \$100,000 is a good start in getting the kind of attention that is apparently necessary to stem further acts of criminal removal (theft, if you will) of these rare planes.

Please include our organization as being 100% in favor of your proposed amendment. Members names will be sent on request.

Sincerely yours,

L. Stanley Zielinski
President, 1985-86

LSZ:mv

CC: Letter to the Editor
Fairbanks Daily News-Miner

ADMIRAL JAMES S. RUSSELL, USN (RETIRED)
7734 WALNUT AVENUE SOUTHWEST
TACOMA, WASHINGTON 98498

29 January 1986

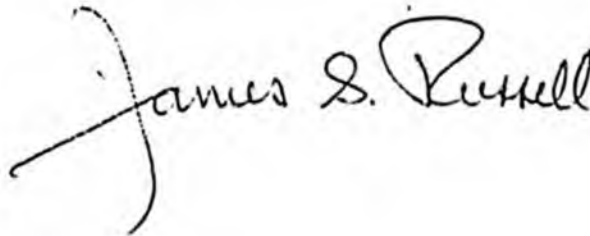
The Honorable Mike Davis
Member of the State Legislature
Representative of the 19th District
Juneau, Ak., 99801

Dear Representative Davis

From one who flew and fought in Alaska in WW II,
please accept my hearty endorsement of your effort to
preserve for Alaskans those historic airplanes which,
due to enemy action or weather, were wrecked and
abandoned in the State of Alaska.

With all good wishes for your success.

Sincerely,

A handwritten signature in cursive script that reads "James S. Russell". The signature is written in dark ink and is positioned below the typed name "Sincerely,".

Enclosure: News clip from Fairbanks paper

CC; Brig.Gen. Benjamin B. Talley, USA (retired)
Anchor Point, AK.

Representative Mike Davis
Interior House Delegation Office
542 4th Ave, Suite C
Fairbanks, Alaska 99701

Dear Mr. Davis

This is to express strong support for House Bill 438. It is absolutely essential that the plundering of Alaska's valuable artifacts, in particular historical aircraft or their parts, be stopped. Maximum felony penalties should be imposed on those who would illegally remove or assist in the removal of the artifacts. They are of great and increasing value both historically and monetarily to the people of Alaska. Even a penalty of \$100,00 might not deter the theft of, for example, a World War II airplane with a value of 1/4 to 1/2 a million dollars.

Sincerely yours,



Richard R. Hoopes, President IAAAF
120 Concordia Drive
Fairbanks, AK 99709

477-6119



KETCHIKAN
HISTORICAL
COMMISSION

POST OFFICE BOX 7055
KETCHIKAN, ALASKA 99901
907-225-6166

(7)

March 10, 1986

Representative Mike Davis
Alaska State Legislature
Pouch V (MS 3100)
Juneau, AK 99811

Dear Representative Davis:

The Ketchikan Historical Commission met on March 5, 1986 and voted to give support to HB 283 regarding historic preservation.

We have worked diligently in our programs to educate and promote historic preservation and restoration in the Ketchikan area. With the passage of HB 283, additional incentive would be given to those persons wishing to preserve their historic properties throughout Alaska.

We encourage you and your legislative counterparts to give total support to HB 283 during the current session.

Sincerely,

BILL LATTIN
Chairman

cc: Governor Bill Sheffield

Paul Chatty
Division of Parks & Recreation

WUKLD
452-7684

ALL DOWN PARKA, \$125.

MARK GAS & diesel heaters for interior & engine cooling systems of cars & trucks. Full repair & service on all types of gas heaters. Roger Lang's Volkswagen Shop. 479-2748.

MOVING - NEW BROWN plaid loveseat with oak trim; 1 year old brown naugahyde couch with oak trim, both good condition. 488-0101.

MUST SELL!! 1978 CJ-5, 2600 or best offer. 3 1974 Ski-Doo snowmobiles, 3600 or best offer, 1,000 for all. 456-7762, ask for Luann Jerklev.

NEW TORO ELECTRIC power snow shovel, 100' cord included. \$75. Call 479-7676.

OWATONNA SKID LOADER (like Bob Cat), V-4 Ford propane engine. Gas or propane. Good running condition. \$4,500. 488-2767.

PIONEER VIDEO DISC player w/ remote control, 70 movies, \$3,600 value. Must sell. \$1,000. 457-1912 after 5pm.

POOL TABLE, \$75. New Scandia lacust. 8'x13". Pump, filter, used boiler. \$4,000 or best. 457-4318.

POOL TABLE WITH accessories. \$225. 2 chrome mag wheels with fair tires, 10x15 Chev. \$125. 479-4605.

POOL TABLE, 8 sticks, accessories, 3 1/2"x7". New cover, \$500. Wood typewriter desk, 32"x60. \$50. 488-2691.

PORTABLE CIRCULAR SAW MILL. Belsaw arbor, 30" and 42" diameter blades. Best offer. 451-4845.

REDUCE YOUR HEATING BILLS. Save on your heating bills. Purchase a gas press for your furnace. Purchase a savings. Call 452-4154.

REWARD FOR INFORMATION on location of intact World War II aircraft: P-39, P-40, P-47, P-51 or P-43. Dave. 209-438-5406 collect.

SALE

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PANTHER 440
\$2,850

REGULARLY \$3,499

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433 2nd St., Cr.
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444, under 100
bliss end rp
450 Yamaha
Cub. fuel

SHEEP
17
15

REBU
Mitsubishi

440 Church
WARN WINCHES
Specials, sales,
217-1700 Rental, 452

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50 HP EVENRUE outbo
Completely rebuilt. Bored .030 -
size \$1,500. Pierce Enterprises
2726 evenings.

170 Motorcycles - So...

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Your motorcycle headgear, helmets, Paris and accessories for all makes.

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WHEELS

1817 COLLEGE RD

ALI

December 1,
17th Hall Drive off
P... and Skyline.

LEAVING ALASKA. Like new winter clothes sizes 10-12, boots and miscellaneous. Saturday, 12/1, 9am-12pm. 4953 Dartmouth #2.

MOVING SALE: Saturday, 12/1, 10am-3pm, Mary Kay sell-out plus lots of goodies. Everything priced to go. 100 10th Avenue, 2CA.

MOVING SALE, furniture, household items, some tools, lawn furniture. 1228 Denali Way. Saturday only, 9am-3pm, December 1.

A MOVING SALE. Plants, Christmas toys, exercise bicycle, desks, shelves, microwave, new bicycle, TV, stereo, collector albums. 452-4855.

TV, STEREO, sewing machine, hexagon aquarium, mirrored plant stands, beds, desk, wicker, clothes. Saturday & Sunday, 10am to 4pm, 229 West St.

2 APT. SALE: Christmas tree, 50,000 BTU Sears furnace, hand-crafted items, antique sewing machine, 1453 Eielson St. Apt. A & C. 451-0163.

160 Aircraft & Equipment

ALASKA'S WING
SPECIAL
LIMITED TIME OFFER

456-4704, Metro Field.

CESSNA 170B, 180 Lycoming, CS prop, Avcon conversion. Leaving state and MUST sell this super clean well-equipped bird. See at Fair International. Call for details (in Delta) at noon, or after.

FLIGHT INSTRUCTION or yours. FAA design flight test exam 488-3649.

FLIGHT
ALASKA

Cut rate
OR

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Handwritten characters in a stylized, bold font, possibly representing the number '33' or a similar symbol.

SENATE COMMITTEE REPORT

FURTHER

DATE TURNED INTO OFFICE _____

5/3/88
Mr. President:

Resources _____ Committee considered CSHB 339 (JUD) am
timber, defining the crime of trespass by cutting or injuring timber,
regulating commercial sales of firewood, and authorizing disposition of
state-owned unbranded and abandoned timber to persons for personal,
noncommercial use
and recommended

replace with Sen CS For CS For HB 339) same title
 or adopt _____ CS _____) 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

OTHER RECOMMENDATIONS

[Signature]
[Signature]
[Signature]
[Signature]

[Signature]
Chairman signature and recommendation

Committee Backup attached

revd 4/26

SENATE COMMITTEE REPORT

FURTHER

RESOURCES

4/26/88

DATE TURNED INTO OFFICE _____

Mr. President:

JUDICIARY Committee considered CSHB 339 (JUD) am

timber, defining the crime of trespass by cutting or injuring timber, regul. commercial sales of firewood, and authorizing disposition of state-owned unbranded and abandoned timber to persons for personal, noncommercial use. and recommended

[] replace with _____ CS _____) [] same title
[] or adopt _____ CS _____) [] new title

[] attached amendment(s) and

(old)

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

OTHER RECOMMENDATIONS

[Signature]
[Signature]
[Signature]
[Signature]

[Signature]
Chairman Signature and recommendation

[] Committee Backup attached

5-15262

Chenoweth
5/4/88

Original sponsors: Davis and Boyer

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 339 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to timber, defining the crime of
7 trespass by cutting or injuring timber, regulating
8 commercial sales of firewood, and authorizing dispo-
9 sition of state-owned unbranded and abandoned timber
10 to persons for personal, noncommercial use."

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

12 * Section 1. AS 09.45.730 is repealed and reenacted to read:

13 Sec. 09.45.730. TRESPASS BY CUTTING OR INJURING TIMBER. (a) A
14 person who cuts down, injures, or carries off timber without lawful
15 authority is liable for treble the amount of damages that may be
16 assessed in a civil action

17 (1) to the owner of the land for destruction or removal of
18 the timber from the owner's land;

19 (2) to the state for destruction or removal of the timber
20 from state land;

21 (3) to a municipality or village for destruction or removal
22 of the timber from the land of the municipality or village.

23 (b) Notwithstanding (a) of this section, the person who cuts
24 down, injures, or carries off timber without lawful authority is
25 liable for actual damages to the owner of the land specified in (a) of
26 this section if

27 (1) the trespass was unintentional or involuntary;

28 (2) the defendant had probable cause to believe that the
29 land on which the trespass was committed was the defendant's own or

1 that of the person in whose service or by whose direction the act was
2 done; or

3 (3) the timber was taken from unenclosed woodland for the
4 purpose of repairing a public highway or bridge that is constructed on
5 the land or adjoining it.

6 (c) In this section, "timber" means

7 (1) live trees and shrubs; and

8 (2) trees and shrubs grown on the land that are dead from
9 any cause and remain on the land.

10 * Sec. 2. AS 41.15 is amended by adding new sections to article 5 to
11 read:

12 Sec. 41.15.910. COMMERCIAL FIREWOOD SALES. (a) Except as
13 provided in (e) of this section, a person may not sell firewood with-
14 out first obtaining a commercial firewood sales permit from the com-
15 missioner.

16 (b) The commissioner shall issue a permit to a person who pro-
17 vides the commissioner with adequate proof of ownership of the fire-
18 wood to be sold. The commissioner may accept as proof of ownership

19 (1) a harvest permit, contract, or other legal instrument
20 issued by the owner of the land from which the firewood was harvested
21 or, if the firewood was harvested from public land, issued by a muni-
22 cipality or a state or federal agency that specifies the

23 (A) date of execution of the legal instrument and the
24 date of its termination, if any;

25 (B) name and address of the permittee or contractor
26 who harvested the firewood;

27 (C) location, by legal description or legal address,
28 where the firewood was harvested; and

29 (D) estimated amount, volume, and species of the

1 firewood harvested from each location;

2 (2) a bill of sale showing title to the firewood that
3 specifies the

4 (A) date of execution of the bill of sale;

5 (B) name and address of the person who sold the fire-
6 wood to the permit applicant;

7 (C) name and address of the permit applicant;

8 (D) amount, volume, and species of the firewood trans-
9 ferred by the bill of sale; and

10 (E) location, by legal description or legal address,
11 from which the firewood was harvested; or

12 (3) a certificate of registration issued as evidence of
13 compliance with AS 45.50.210 - 45.50.325.

14 (c) The commissioner may include in the permit the terms and
15 conditions that the commissioner believes to be necessary to carry out
16 this section.

17 (d) A permit is valid for one year.

18 (e) The provisions of this section do not apply to a person who
19 sells firewood harvested from land that the person owns.

20 (f) The commissioner may adopt regulations to implement and
21 enforce this section.

22 Sec. 41.15.915. CIVIL PENALTY FOR SALES WITHOUT PERMIT. In
23 addition to damages under AS 09.45.730, a person who sells firewood in
24 violation of AS 41.15.910, who violates a term or condition of the
25 permit issued under AS 41.15.910, or who violates a regulation adopted
26 under AS 41.15.910 is liable to the state in a civil action for

27 (1) the reasonable costs incurred by the state in the
28 detection, investigation, and attempted correction of the violation,
29 including reasonable court costs and attorney's fees; and

1 (2) three times the retail value of the firewood, other
2 than values already calculated as damages under AS 09.45.730, that is
3 sold in violation of AS 41.15.910, the permit, or the regulations.

4 Sec. 41.15.920. SALES WITHOUT PERMIT MADE A VIOLATION. (a) A
5 person who knowingly sells firewood in violation of AS 41.15.910 or
6 who knowingly violates a term or condition of the permit issued under
7 AS 41.15.910 or a regulation adopted under AS 41.15.910 is guilty of a
8 violation.

9 (b) If, in a proceeding under this section, the defendant shows,
10 by a preponderance of the evidence, that the commercial firewood was
11 harvested from the property of another with the permission of the
12 property owner, the court may not impose a fine.

13 Sec. 41.15.925. INJUNCTIONS. (a) The superior court has juris-
14 diction to enjoin a violation of AS 41.15.910 - 41.15.930, a regu-
15 lation adopted under AS 41.15.910 - 41.15.930, or a permit, or a term
16 or condition of a permit issued under AS 41.15.910 - 41.15.930.

17 (b) In an action brought under this section, temporary or pre-
18 liminary relief may be obtained upon a showing of an imminent threat
19 of continued violation and probable success on the merits, without the
20 necessity of demonstrating irreparable physical harm.

21 Sec. 41.15.930. DEFINITIONS. In AS 41.15.910 - 41.15.930

22 (1) "commissioner" means the commissioner of natural re-
23 sources;

24 (2) "firewood" means natural logs or portions of natural
25 logs suitable for use as a solid fuel, with processing of the logs
26 limited to cutting to length and splitting;

27 (3) "permit" means a commercial firewood sales permit
28 authorized by AS 41.15.910.

29 * Sec. 3. AS 45.50.235(b) is amended to read:

1 (b) Timber property that [WHICH] becomes state property under
2 the provisions of (a) of this section may be

3 (1) sold under terms and conditions established by the
4 director of the division of lands; or

5 (2) recovered, without a permit, by any person for per-
6 sonal, noncommercial use.
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Alaska State Legislature

Representative Mike Davis

District 19

P.O. Box V
Juneau, Alaska 99811
(907) 456-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708
(907) 456-8161

MEMORANDUM

To: Senate Resources Committee

From: Rep. Mike Davis

Re: HB 339

Date: May 4, 1988

I introduced HB 339 in response to a serious problem faced by commercial firewood sellers in the Interior. There have been a number of cases involving persons who trespass and steal timber off private or state land and then sell the timber as firewood. These people compete with the legitimate lumber and firewood sales companies.

The existing statutes and regulations do not provide adequate authority to deal with the problem. The only way the Department can prove that a person has illegally taken timber is by catching the person in the act, which has proven to be very time consuming and resource intensive.

HB 339 requires that persons who sell firewood must first obtain a firewood sales permit from the Department of Natural Resources.

Although, legislative solutions could be directed at the harvest phase, the transportation phase or the commercial sale phase, the sale phase offers the simplest and most effective way to address the problem.

SECTIONAL ANALYSIS FOR HB 339

Section 1 TRESPASS BY CUTTING OR INJURING TIMBER

Amends the existing trespass statutes in AS 09.45.730 to provide that treble damages be assessed against persons who trespass and cut timber on state or municipal lands.

Section 2 COMMERCIAL FIREWOOD SALES

Requires that a person who wishes to sell firewood must first obtain a commercial firewood sales permit from the Department of Natural Resources. In order to obtain a permit a person must provide proof of ownership. This section explains what may be used as proof of ownership and gives the Commissioner the authority to adopt regulations to enforce the bill.

Sec. 41.15.915 Civil Penalties

Creates a civil penalty for persons who knowingly sell firewood without a valid permit. The civil penalty includes damages and costs incurred by the state in the correction of the violation and treble the retail value of the firewood.

Sec. 41.15.920 Sales without permit made a violation

(a) Creates a violation for persons who knowingly sell firewood without a valid permit.

(b) Creates an affirmative defense if the defendant can prove that the firewood was harvested from the defendants own property or from the property of a person from which permission to harvest firewood was received.

Sec. 41.15.925 Injunctions

(a) Allows the Court to issue an injunction to prevent a person from selling firewood without a permit.

(b) Allows the issuance of a temporary or preliminary injunction upon a showing of continued threat of violation without demonstrating that irreparable physical harm will result if such an injunction is not issued.

Sec. 41.15.930 Definitions

Section 3.

Amends 42.50.235(b) to allow persons to recover beach logs and use them for personal or noncommercial use.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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

March 7, 1988

The Honorable John Sund
Chairman, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Representative Sund:

Subject: HB 339, an act relating to theft of timber products.

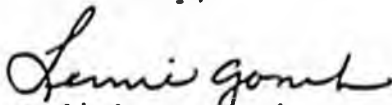
Position: The Department of Natural Resources supports HB 339 with changes as proposed by the Attorney General's Office.

Background: HB 339 attempts to address a problem faced by the Division of Forestry and many commercial firewood dealers in Northern Alaska. This problem involves the unauthorized harvest of timber from state lands. The existing statutes provide inadequate authority to deal with this problem. At present, the Division of Forestry must prove that the firewood seller unlawfully obtained timber from state land, which is difficult to do once timber has been removed from the harvest site. The department, the sponsor of the house version of this bill (which is identical to the senate version), and private timber operators have recently worked with the office of the Attorney General in Fairbanks to craft language that will more effectively get at the problem. This language has been provided to the sponsors and committee staff, as well as an analysis by John McDonagh, Assistant Attorney General.

Recommendation: The department supports the concept of the bill as originally written but prefers the changes drafted by the office of the Attorney General as a more effective way to address the problem.

We look forward to working with the committee and staff through the progress of this legislation.

Sincerely,



Judith M. Brady
for Commissioner

cc: Committee Members
Bill Sponsors
Bob Evans
Rod Swope

FISCAL NOTE

REQUEST:

Revision Date: 4-11-88 Agency Affected: Natural Resources
 Title: An Act relating to Timber Trespass BRU: Forest Management
and Commercial Sale of Firewood
 Sponsor: Davis Components: Forest Management
 Requestor: House Judiciary

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						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

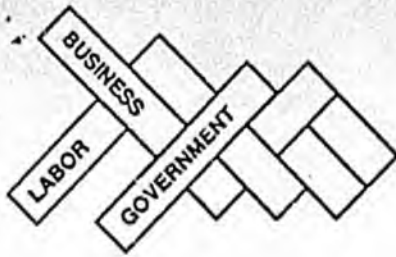
ANALYSIS : (Attach a separate page if necessary)

[Empty box for analysis]

Prepared by: B George K. Hollett Phone: 465-2491
 Division: Division of Forestry Date: 4-11-88

Approved by Commissioner: [Signature] Date: 4-11-88
 Agency: _____

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



UNIFIED FAIRBANKS

A RESOLUTION IN SUPPORT OF HOUSE BILL #339

AN ACT RELATING TO THEFT OF TIMBER PRODUCTS

WHEREAS, the Interior of Alaska has the largest timber reserves in the state of Alaska; and

WHEREAS, the marketing of this timber resource is a top priority of the timber industry; and

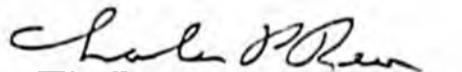
WHEREAS, interest is now being expressed in the development of that timber industry; and

WHEREAS, it is necessary to protect the timber resources to allow for their full development by licensed and regulated operators;

NOW THEREFORE be it resolved that Unified Fairbanks encourages the Legislature to pass House Bill #339 for the benefit of protecting that resource.

This resolution was passed by Unified Fairbanks on February 3, 1988.

UNIFIED FAIRBANKS


Charles P. Rees, President

PC:bill339

ALASKA INTERIOR WOODCUTTER'S ASSOCIATION
5180 Aeronca
Fairbanks, Alaska 99709

RESOLUTION 88-1

Title: Timber Trespass Legislation, H.B. 339

WHEREAS the Interior Woodcutter's Association was organized to represent all segments of the wood products industry of Interior Alaska.

WHEREAS the wood products industry employs over 200 people in the wood industry and sells products with a market value of over six million dollars.

WHEREAS timber trespass and theft have become an overwhelming problem on state, borough, university, and private lands.

WHEREAS timber theft denies large amounts of revenue to the state for timber resources stolen.

WHEREAS timber thieves largely steal in Personal Use Woodcutting Areas taking the easily accessible wood and leaving harder-to-get wood for legitimate Personal Use Firewood cutters.

WHEREAS the timber thieves bear no responsibility for clean-up and proper utilization of timber resources and seriously hurt legitimate commercial operators who have to bear such costs.

WHEREAS current legislation puts the burden of proof on the Division of Forestry whose limited budget and manpower make enforcement of such statutes nearly impractical.

WHEREAS current legislation would require a "man behind every tree" to enforce.

THEREFORE, be it resolved that:

The Alaska Interior Woodcutter's Association fully endorses the passage of H.B. 339 relating to timber theft and proof of ownership.

Further be resolved that the Alaska Interior Woodcutter's Association requests the State of Alaska, Department of Natural Resources, to promulgate regulations to make enforcement of legislation practical

Recommendation: PASS

Adoption: PASS X NO PASS

Distribution: Legislative Distribution
Governor
FNSB, W. Helms
United Fairbanks
DNR Commissioner
State Forester

Karla Bouray 1/25/88
KARLA BOURAY (Date)
Acting Secretary, A.I.W.A.

Monday, January 25, 1968, The Anchorage Times

City/State

B

Timber rustling suspect charged by state

FAIRBANKS (AP) — A two-month undercover investigation has resulted in a Fairbanks man being charged with stealing wood and trespassing on state land.

Gary Burke, 33, faces up to a year in jail and a \$3,000 fine following the investigation by the Department of Natural Resources.

"Existing laws require us to observe people harvesting the wood and selling it," said Don Fuller, area forester. "To do

that, we had to go undercover.

"We followed people into the woods to watch them cut trees illegally, then we followed them into town to observe them selling it," Fuller said Friday. "In some cases, we purchased wood from the unlicensed vendors."

Fuller blames "timber rustlers" for depleting timber in some areas intended for public use, for stealing wood from private land, for leaving gaping holes and large stumps in areas that were

to be re-forested, and for undermining the business of legal commercial operators, who must abide by strict regulations.

Some of the nine cutters under investigation have sold more than 200 cords of wood this year, Fuller said.

"I don't want to hold this as a hammer over the public head, but if these illegal practices don't stop . . . we may have to close down public wood cutting areas."

Unless they own land, most commercial operators must contract with the state to cut trees from a specific plot. There are about 20 commercial operators in Fairbanks, Fuller said.

Operators are bound by law to post promissory bonds, pay the state \$5 per cord of wood sold, abide by environmental standards and clean up and replant plots, Fuller said.

"Frankly, I'm being asked by some legal woodcutters why they

should not revert to stealing wood too if we are not going to do anything about the theft going on at this point," Fuller said.

Fuller said some illegal woodcutters have cheated customers.

"We intend to file fraud charges against one guy," Fuller said. "We bought a cord from him and donated it to Santa's Clearinghouse. Not only did the guy not deliver a full cord, the wood was rotten."

Fr. 3/30 News Miker
**Firewood area
closed down**

The Big Bend public firewood area at 25.5 Mile Chena Hot Springs Road is closed because too many white spruce trees have been cut down there, according to Division of Forestry officials.

A few people have permits to cut down white spruce for log homes there, but many more trees have been taken illegally, said Don Fuller, Fairbanks Area Forester.

"It is an expensive load of wood when the trees are worth \$300-\$400 a piece if they are ridge pole quality," Fuller said.

Forestry officials opened the area to public cutting last month to thin out mature birch tree stands there. They'd hoped to preserve the white spruce for seed trees to help the natural regeneration of the area, Fuller said.

A week before it closed, forestry officials posted signs warning people that the area would be shut down unless they stopped cutting white spruce.

"There is a good supply of birch out there," Fuller said. "It is beyond me why these individuals are cutting green spruce for firewood."

HB

346

SENATE COMMITTEE REPORT

FURTHER

FINANCE

4/12/88

DATE TURNED INTO OFFICE

4/27/88

Mr. President:

RESOURCES Committee considered CSSH B 346 (RES)

authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for elderly persons; efd

and recommended

[] replace with CS _____) [] same title
[] or adopt CS _____) [] new title

[] attached amendment(s) and

[X] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted _____

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

[] new [] updated or [] previous

[X] zero [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Handwritten signatures of committee members under 'MEMBERS SIGNING DO PASS'

Blank lines for 'OTHER RECOMMENDATIONS'

Handwritten signature of the Chairman under 'Chairman signature and recommendation'

[] Committee Backup attached

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CS SSHB 346 (RES)
PUBLISH DATE: HOUSE 3/16/88

REQUEST: - FISCAL NOTE No. 1

Revision Date: _____
Tide: An act authorizing the Board of Fisheries to establish noncommercial fishing seasons...
Sponsor: Adams, Goll
Requestor: House Resources
Agency Affected: Public Safety
BRU: Fish & Wildlife Protection
Components: Enforcement

230

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	0	0	0	0	0	0
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated.

JNR
2/10/88

Prepared by: Captain Conrad G. Seibel
Division: Fish & Wildlife Protection

Phone: 269-5509
Date: 2/2/88

Approved by Commissioner: [Signature]
Agency: Department of Public Safety

Date: 2.1.88

Distribution (by preparer):

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

No. 2
BILL VERSION: CSHB 346 (RES)
PUBLISH DATE: HOUSE 3/22/88

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Fish and Game
Title: Authorizing Bd. of Fish to BRU: Boards
establish fishing areas for children & elderly
Sponsor: Adams and Goll Components: _____
Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE						
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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: Beth Stewart Phone: 465-4100
Division: Boards Date: 2/11/88

Approved by Commissioner: [Signature] Date: 2/11/88
Agency: Fish and Game

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

DEC 11 1988

FEB 10 1988

LEGISLATIVE FINANCE

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: An act authorizing the Board of Fisheries to establish noncommercial fishing seasons... BRU: Fish & Wildlife Protection
 Sponsor: Adams, Goll Components: Enforcement
 Requestor: House Resources

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	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

JNL
2/10/88
Prepared by: Captain Conrad G. Seibel *C. Seibel* Phone: 269-5509
 Division: Fish & Wildlife Protection Date: 2/2/88
 Approved by Commissioner: Paula H. Hartzel *P. Hartzel* Date: 2-11-88
 Agency: Department of Public Safety

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Fish and Game
 Title: Authorizing Bd. of Fish to BRU: Boards
establish fishing areas for children & elderly
 Sponsor: Adams and Goll Components: _____
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE						
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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: Beth Stewart *BS* Phone: 465-4100
 Division: Boards Date: 2/11/88

Approved by Commissioner: *W. Michael* Date: 2/11/88
 Agency: Fish and Game

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



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Boards	BILL NUMBER HB 346	SPONSOR Adams & Goll
SHORT TITLE OF BILL An act authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for children and elderly persons; and providing and providing for an effective date.			
DEPARTMENT POSITION Neutral			
PREPARED BY Beth Stewart	DATE 2/11/88	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 2/11/88

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Board of Fisheries	CONSTITUENT GROUP(S) AFFECTED BY BILL Fishermen
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Introduced by Adams & Goll

ANALYSIS OF BILL/PROGRAM EFFECTS

In the past, the board has received proposals to establish restricted areas and seasons for people in certain age groups, or for those with physical handicaps. The Attorney General's Office advised the board that those proposals were beyond the scope of their authority. This bill would clarify that authority. In addition, there have been questions about the constitutionality of such arrangements under the exclusive fisheries or equal protection clauses of the Alaska Constitution. To address these concerns, the Attorney General's Office has suggested that the legislation include a set of findings in the bill sufficient to justify the special treatment of these groups.

AMENDMENTS PROPOSED

RECEIVED

FEB 12 1988

LEGISLATIVE FINANCE

formal hearing has been concluded. (Eff. 3/25/83, Reg. 85)

Authority: AS 16.05.340 AS 16.05.460
AS 16.05.380 AS 43.05.080
AS 16.05.390 AS 44.25.020

15 AAC 116.070. FEES, REPORTS, AND LICENSE INVENTORY DUE WHEN LICENSE OFFICER APPOINTMENT EXPIRED, SUSPENDED, OR REVOKED. The reporting and accounting obligations of the license officer, all money collected, except the license officer's commission, and all license inventory are due by the last day of the month following the month during which the license officer appointment expired, was suspended, or was revoked. (Eff. 3/25/83, Reg. 85)

Authority: AS 16.05.340 AS 16.05.460
AS 16.05.380 AS 43.05.080
AS 16.05.390 AS 44.25.020

**ARTICLE 2.
LICENSING**

Section

- 100. Qualifications for license and proof of qualification
- 110. Persons exempt from licensing requirements
- 120. Refund of license fees
- 130. Lost or destroyed licenses

15 AAC 116.100. QUALIFICATIONS FOR LICENSE AND PROOF OF QUALIFICATION. (a) Only natural persons may be issued licenses under AS 16.05 and this chapter.

(b) An applicant claiming entitlement to a resident license or special status license has the burden of proving to the license officer that he is entitled to the license and shall take an oath administered by the license officer certifying the truthfulness of the applicant's status.

(c) The license officer shall accept as adequate proof of residency an Alaska driver's license, voter registration card, school records, proof of home ownership or rental receipts, tax records, employment records, or court or other governmental agency records, showing that the applicant is a resident. (Eff. 3/25/83, Reg. 85)

Authority: AS 16.05.330 AS 43.05.080
AS 16.05.360 AS 44.25.020
AS 16.05.450

15 AAC 116.110. PERSONS EXEMPT FROM LICENSING REQUIREMENTS. (a) A person who is 60 years of age or older and who has been a resident of Alaska for one year or more, and is currently a resident, may apply for a permanent identification card from the department for purposes of AS 16.05.400. In this subsection, "one year" means any 12-consecutive-month period preceding the date of application.

(b) A person who has lawfully obtained a permanent identification card under (a) of this section is not required to obtain hunting, fishing, or trapping licenses to engage in those activities.

(c) If a person who has been issued a permanent identification card ceases to be a resident of Alaska, that person must surrender the card to the department. (Eff. 3/25/83, Reg. 85; am 6/17/84, Reg. 90)

Authority: AS 16.05.400
AS 43.05.080
AS 44.25.020

15 AAC 116.120. REFUND OF LICENSE FEES. (a) License officers may not refund license fees. A person who wishes a refund of a license fee must apply directly to the department.

(b) A refund of a license fee will be granted by the department only if the licensee or his representative demonstrates that

(1) he or she was unable to make any use of the license as a result of death, or serious, disabling illness or injury occurring after purchase of the license and before the opening of any season for which the license could have been used; in the case of illness or injury, the illness or injury must have lasted until all seasons for which the license could be used are closed;

(2) the opening of all seasons to which the license applied were permanently canceled, rendering the license unusable at any time during the year for which it was issued; or

(3) other extraordinary circumstances beyond the control and reasonable anticipation of the licensee exist, which the department determines to justify a refund.

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 32000
JUNEAU, ALASKA 99802
PHONE (907) 465-4100

January 29, 1988

The Honorable Al Adams
Alaska State Legislature
P.O. Box 7
Juneau, AK 99811

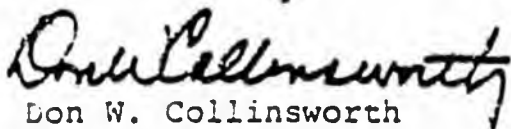
Dear Representative Adams:

The department has reviewed HB 346 authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for children and elderly persons, and have the following comments.

In the past, the board has received proposals to establish restricted areas and seasons for people in certain age groups, or for those with physical handicaps. The Attorney General's Office advised the board that those proposals were beyond the scope of their authority. This bill would clarify that authority. In addition, there have been questions about the constitutionality of such arrangements under the exclusive fisheries or equal protection clauses of the Alaska Constitution. To address these concerns, the Attorney General's Office has suggested that the legislation include a set of findings in the bill sufficient to justify the special treatment of these groups.

If the Legislature wishes to give the board this authority, I am certain that the board will consider any proposals it receives for these types of fisheries.

Sincerely,



Don W. Collinsworth
Commissioner

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 26, 1968

SUBJECT: Constitutionality of HB 346
TO: Representative Al Adams
FROM: Edward H. Hein *EH*
 Legislative Counsel

You have asked whether HB 346 is constitutional. The bill authorizes the Board of Fisheries to establish restricted noncommercial fishing seasons and areas for children and elderly persons, if consistent with resource conservation goals and if necessary to assist these two groups to participate in sport, personal use, or subsistence fishing.

The authorization provided in the bill is consistent with the mandate of Art. VIII, secs. 1, 2, 4, and 5 of the Alaska Constitution. These sections provide (emphasis supplied):

SECTION 1. STATEMENT OF POLICY. It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

SECTION 2. GENERAL AUTHORITY. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

SECTION 4. SUSTAINED YIELD. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

SECTION 5. FACILITIES AND IMPROVEMENTS. The legislature may provide for facilities, improvements, and services to

assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

In keeping with this constitutional mandate, the authority given to the Board of Fisheries is clearly for a public purpose and is very narrowly drawn. The exercise of the board's power is subject to two conditions: the establishment of restricted seasons and areas must be consistent with resource conservation goals, and must also be necessary in order to help children and the elderly to participate in noncommercial fishing. In other words, the circumstances must be such that these groups would not be able to participate adequately in fishing without this sort of assistance from the board.

It is envisioned that areas which would be set aside for children and elderly persons would be areas that otherwise would not be open to the public. These would be areas in which the fish stocks could not withstand extensive effort beyond that anticipated by children and the elderly. An example would be a creek in Anchorage that is not currently open to fishing, but which could serve nicely as a place for children to learn how to fish.

Finally, although virtually any law that allows a government agency to give special treatment to certain groups has a potential for abuse, the board is required to exercise its authority in a manner consistent with the constitution. The regulations adopted should not be any more restrictive or discriminatory than necessary to accomplish the goals of the legislation. It is assumed, moreover, that the board will act in accordance with the legal advice of the Attorney General's office.

EHH:bb
wkb2/005

Alaska State Legislature
House of Representatives

Al Adams
Chairman
Committee on Finance

WHILE IN SESSION
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3706

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3320

1024 W. 6th
Anchorage, Alaska 99501
(907) 274-0615

Official Business

DATE: April 8, 1988

TO: Senator Mitch Abood, Chair
Senate State Affairs

FROM: Representative Al Adams, Chair *AAA*
House Finance Committee

RE: House Resources Committee Substitute for House Bill 346, "An Act authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for elderly persons; and providing for an effective date."

APR 8 1988

Herein is a history, analysis and supporting documents on the aforementioned legislation that I would like scheduled in the Senate State Affairs Committee at your earliest convenience.

This bill would allow the Board of Fisheries to open fishing areas otherwise closed to those age 60 or over if this act was consistent with resource conservation goals. Currently the Board lacks the statutory authority to allow for these exceptions.

This issue was brought to my attention because of an incident on the Unalakleet River where fishing was suspended yet the community and local Fish and Game Department staff realized that continued fishing by the elderly would cause no harm to the resource. The Southern Norton Sound Fish and Game Advisory Committee endorsed passage of legislation that would permit the board to make these exceptions, according to Chairman Weaver Ivanoff. Upon further investigation, it appears the problem has not been limited to this particular area of the state but on occasion has presented problems in Homer and Anchorage.

This knowledge led to my sponsorship of the bill that has taken a change somewhat in form but not in intent since its introduction. The first change involved a sponsor substitute to change the age cut-off for the elderly from age 65 to age 60. This was an important alteration in that it created consistency with other statutory exceptions for the elderly such as the provisions that allow this age group to cease purchase of hunting, fishing or trapping licenses. According to the Attorney General's office, if there were a constitutional challenge to special treatment of this age group, the consistency of this age cut-off throughout statutes would provide knowledge that this was not an arbitrary choice of age and legal security from an individual section of statute being challenged successfully.

When the bill was in the House Resources Committee in its original form, it provided exceptions for those age 12 or under in addition to the elderly age group. When the issue of a need for legislative findings to support reasons for special treatment of the

age 12 and under group emerged, it was found to be difficult to arrive at these justifications. As a result, and with my support, the Resources Committee removed the younger group leaving the provisions for the elderly intact.

Another question that arose during Finance Committee hearing involved whether in the instance of subsistence activities in a boat, whether all of the people participating in the activity would need to be age 60 or over. Norm Cohen of the Office of the Commissioner of Fish and Game has replied that most probably the Board of Fisheries would adopt regulations that limited direct involvement in the subsistence activity to those over age 60. For example, younger people could ride in the boat but not operate it or become involved in setting or pulling the net.

For its length, the bill is relatively simple as shown in the following sectional analysis:

- Sect 1: Findings section that cites the difficulty the elderly may have in access to fishing areas.
- Sect 2: Cites the criteria for the Board of Fisheries to use when establishing regulations that now includes the elderly provision.
- Sect 3: Immediate effective date.

The bill has no fiscal impact.

Please feel free to contact Martha Stewart or my staff if you have further questions. She will also be available to testify at committee hearings in the Senate. I would appreciate any assistance you can offer to expedite this bill's passage.

Alaska State Legislature

House of Representatives

Al Adams

Chairman

Committee on Finance

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1024 W. 6th
Anchorage, Alaska 99501
(907) 274-0615

Official Business

DATE: April 11, 1988

TO: Senator Jack Coghill, Chair
Senate Resources Committee

FROM: Representative Al Adams, Chair *AAA*
House Finance Committee

RE: House Resources Committee Substitute for House Bill 346, "An Act authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for elderly persons; and providing for an effective date."

Herein is a history, analysis and supporting documents on the aforementioned legislation that I would like scheduled in the Senate Resources Committee at your earliest convenience.

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- Sect 3: Immediate effective date.

The bill has no fiscal impact.

Please feel free to contact Martha Stewart of my staff if you have further questions. She will also be available to testify at committee hearings in the Senate. I would appreciate any assistance you can offer to expedite this bill's passage.

Sec. 16.05.470. Fee for issuance of licenses and interim-use or entry permits. (a) A person appointed and authorized by the commissioner of revenue to sell licenses under AS 16.05.440 — 16.05.480, except salaried employees of the state, shall retain the sum of 15 per cent of the fee for the issuance of a license. An agent shall transmit monthly to the commissioner all license fees collected by the agent, less the authorized commission, together with a full accounting of the fees. The commissioner shall make monthly remittances of the fees collected to the proper state official. The commissioner is not liable for defalcation or failure to account for the fees collected by an agent, but the commissioner shall require a bond in the sum the commissioner considers adequate, conditioned upon the faithful accounting of money collected.

(b) A person appointed by the commissioner of revenue under AS 16.05.460 to issue licenses under AS 16.05.440 — 16.05.480, except salaried employees of the state, shall retain the sum of 15 per cent of the interim-use or entry permit fee for assisting in completion of the annual application or renewal form for the interim-use or entry permit. An agent shall transmit promptly to the Commercial Fisheries Entry Commission all application or renewal forms and fees collected by the agent, less the authorized commission, together with a full accounting of the fees. The commissioner and the Commercial Fisheries Entry Commission are not liable for defalcation or failure to account for the fees collected by an agent, but the commissioner shall require a bond in the sum the commissioner considers adequate, conditioned upon the faithful accounting of money collected (§ 5 art III ch 94 SLA 1959; am § 9 ch 31 SLA 1963; am § 1 ch 8 SLA 1977; am §§ 5, 6 ch 105 SLA 1977)

Sec. 16.05.475. Registration of fishing vessels. (a) A person may not employ a fishing vessel in the water of Alaska unless it is registered under the laws of the state. Vessels registered under the laws of another state, and persons residing in another state, are not excused from this provision.

(b) The term "employ", as used in this section, shall be defined by the Board of Fisheries through the adoption of regulations under the Administrative Procedure Act (AS 44.62). The definition may include any activities involving the use or navigation of fishing vessels.

(c) The term "registered under the laws of the state", as used in this section, shall be defined by the Board of Fisheries through the adoption of regulations under the Administrative Procedure Act (AS 44.62). The definition may include any existing requirements regarding registration, licenses, permits, and similar matters imposed by law or regulation together with modifications of them and with any additional requirements the board finds necessary to maximize the authority of the state to apply and enforce fisheries regulations under

the Fishery Conservation and Management Act of 1976 (P.L. 94-265, 90 Stat. 331, 16 U.S.C. 1801-1882).

(d) In this section "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for

(1) fishing, or

(2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing. (§ 7 ch 105 SLA 1977)

NOTES TO DECISIONS

Cited in *State v. Baranof*, Sup. Ct. Op. No. 2785 (File Nos. 7287, 7324), 677 P.2d 1245 (1984); *State v. FV Baranof*, Sup. Ct. Op. No. 2787 (File Nos. 7287, 7324), 677 P.2d 1256 (1984).

Sec. 16.05.480. Commercial fishing license. (a) A person engaged in commercial fishing shall obtain a commercial fishing license. The fee for the license is \$30 for residents, and \$90 for nonresidents. Except for those which are also entry or interim-use permits, all commercial fishing licenses are nontransferable. The commercial fishing license shall be retained in the possession of the licensee, readily accessible for inspection at all times. No more than one fee may be charged annually against a person. For the purposes of this section, "commercial fishing license" includes entry permits and interim-use permits issued under AS 16.43 and crewmember fishing licenses.

(b) A person applying for a resident commercial license under this section shall provide the proof of residence which the department requires by regulation.

(c) (*Repealed, § 12 ch 123 SLA 1978.*) (§ 6 art III ch 94 SLA 1959; am § 19 ch 131 SLA 1960; am § 1 ch 93 SLA 1966; am § 2 ch 42 SLA 1968; am § 8 ch 105 SLA 1977; am §§ 1, 2, 12 ch 123 SLA 1978; am § 1 ch 79 SLA 1982)

Editor's notes. — Sixty percent of the fees collected under this section is deposited in the fishermen's fund, AS 23.35.060. For opinions of the Attorney General regarding constitutional limits on altering the amount of a license fee upon which a dedicated fund is based, see annotations following Article IX, section 7 in the Alaska Constitution pamphlet.

Opinions of attorney general. — Dis-

crimination against aliens and nonresidents in issuance of fishing licenses. — See 1959 Op. Att'y Gen. No. 15.

Employees of shore-based floating canneries are not required to have a commercial fishing license, but employees of floating canneries are required to have a commercial fishing license. February 22, 1984 Op. Att'y Gen.

NOTES TO DECISIONS

The Board of Fisheries has the power to make decisions affecting the utilization of fishery resources. *Kenai Peninsula Fisherman's Coop. Ass'n v. State*, Sup. Ct. Op. No. 2358 (File No. 5072), 628 P.2d 897 (1981).

Differential treatment not prohibited. — While Alaska Const., art. VIII, § 15, does prohibit granting monopoly fishing rights, that section was not meant to prohibit differential treatment by the Board of Fisheries of such diverse user groups as commercial, sports, and subsistence fishermen. *Kenai Peninsula Fisherman's Coop. Ass'n v. State*, Sup. Ct. Op.

No. 2358 (File No. 5072), 628 P.2d 897 (1981).

Establishment of use priorities. — While the Board of Fisheries did have the authority to establish priorities of use between recreational and commercial fisheries of the salmon stocks in the Upper Cook Inlet, the policy and option establishing these priorities were regulations which should have been adopted pursuant to the provisions of the Administrative Procedure Act, AS 44.62.010 — 44.62.650. *Kenai Peninsula Fisherman's Coop. Ass'n v. State*, Sup. Ct. Op. No. 2358 (File No. 5072), 628 P.2d 897 (1981).

Sec. 16.05.250. Regulations. [Repealed, § 40 ch 206 SLA 1975.]

Sec. 16.05.251. Regulations of the Board of Fisheries. (a) The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

- (1) setting apart fish reserve areas, refuges and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature;
- (2) establishing open and closed seasons and areas for the taking of fish;
- (3) setting quotas, bag limits, harvest levels, and sex and size limitations on the taking of fish;
- (4) establishing the means and methods employed in the pursuit, capture and transport of fish;
- (5) establishing marking and identification requirements for means used in pursuit, capture and transport of fish;
- (6) classifying as commercial fish, sport fish, personal use fish, subsistence fish, or predators or other categories essential for regulatory purposes;
- (7) watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation and stocking of fish;
- (8) investigating and determining the extent and effect of disease, predation, and competition among fish in the state, exercising control measures considered necessary to the resources of the state;
- (9) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;
- (10) establishing seasons, areas, quotas and methods of harvest for aquatic plants;
- (11) establishing the times and dates during which the issuance of fishing licenses, permits and registrations and the transfer of permits and registrations between registration areas is allowed; however, this

paragraph does not apply to permits issued or transferred under AS 16.43;

(12) regulating commercial, sport, subsistence, and personal use fishing as needed for the conservation, development, and utilization of fisheries:

(13) requiring, in a fishery, observers on board fishing vessels, as defined in AS 16.05.475(d), that are registered under the laws of the state, as defined in AS 16.05.475(c), after making a written determination that an on-board observer program

(A) is the only practical data-gathering or enforcement mechanism for that fishery;

(B) will not unduly disrupt the fishery;

(C) can be conducted at a reasonable cost; and

(D) can be coordinated with observer programs of other agencies, including the National Marine Fisheries Service, North Pacific Fishery Management Council, and the International Pacific Halibut Commission;

(14) establishing nonexclusive, exclusive, and superexclusive registration and use areas for regulating commercial fishing.

(b) *[Repealed, § 12 ch 52 SLA 1986.]*

(c) If the Board of Fisheries denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later

(d) Regulations adopted under (a) of this section must, consistent with sustained yield and the provisions of AS 16.05.258, provide a fair and reasonable opportunity for the taking of fishery resources by personal use, sport, and commercial fishermen.

(e) The Board of Fisheries shall establish criteria for the allocation of fishery resources among personal use, sport, and commercial fishing. The criteria may, as appropriate to particular allocation decisions, include factors such as

(1) the history of each personal use, sport, and commercial fishery;

(2) the number of residents and nonresidents who have participated in each fishery in the past and the number of residents and nonresidents who can reasonably be expected to participate in the future;

(3) the importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption;

(4) the availability of alternative fisheries resources;

(5) the importance of each fishery to the economy of the state;

(6) the importance of each fishery to the economy of the region and local area in which the fishery is located;

(7) the importance of each fishery in providing recreational opportunities for residents and nonresidents. (§ 3 ch 206 SLA 1975; am § 2 ch 218 SLA 1976; am § 4 ch 151 SLA 1978; am §§ 1, 2 ch 110 SLA 1980; am §§ 8, 9 ch 132 SLA 1984; am §§ 1-3, 12 ch 52 SLA 1986; am § 4 ch 76 SLA 1986; am § 1 ch 33 SLA 1987)

Revisor's notes. — Paragraph (a)(13) was enacted as (a)(12). Renumbered in 1986.

Cross references. — For restriction on maximum area of land that may be closed to multiple uses without an act of the state legislature, see AS 38.05.300(a); for validity of regulations of former Board of Fish and Game, see § 41, ch. 206, SLA 1975 in the Temporary and Special Acts; for legislative findings in connection with the enactment of (a)(13) of this section, see § 1, ch. 76, SLA 1986, in the Temporary and Special Acts.

Effect of amendments. — The 1984 amendment in subsection (a), substituted "bag limits, harvest levels, and sex and size limitations" for "and bag limits" in paragraph (3), deleted "engaging in biological research" from the beginning of paragraph (7), substituted "and management, conservation, protection, use, disposal, propagation and stocking of fish"

for "fish management, protection, propagation and stocking" in paragraph (7), repealed paragraph (9), and renumbered former paragraphs (10)-(12) as present paragraphs (9)-(11). The amendment also added subsection (c).

The first 1986 amendment in subsection (a) inserted "personal use fish, subsistence fish" in paragraph (6) and added paragraph (12); added subsections (d) and (e); and repealed subsection (b), concerning adoption of regulations.

The second 1986 amendment in subsection (a) added paragraph (13).

The 1987 amendment added subsection (a)(14).

Opinions of attorney general. — For discussion of compatibility of state subsistence-use law with federal standards as set forth in Alaska National Interest Lands Conservation Act (16 U.S.C. § 3115 et seq.), see 1981 Op. Att'y Gen. No. 11.

NOTES TO DECISIONS

The Board of Fisheries has the power to make decisions affecting the utilization of fishery resources. *Kenai Peninsula Fisherman's Coop. Ass'n v. State*, Sup. Ct. Op. No. 2358 (File No. 5072), 628 P.2d 897 (1981).

Authorization for regulations. — In determining whether a regulation is authorized by statute the Court of Appeals of Alaska looks to four things: First, the scope of authority conferred by the authorizing statute; second, the extent to which the regulation is in accordance with "standards prescribed by other provisions of law"; third, the extent to which the regulation is consistent with the authorizing statute; and fourth, the extent to which the regulation is reasonably necessary to carry out the purpose of the authorizing statute. *Beran v. State*, Ct. App. Op. No. 506 (File Nos. A-535, A-629, A-630, A-679), 705 P.2d 1280 (1985).

Differential treatment not prohibited. — While Alaska Const., art. VIII, § 15, does prohibit granting monopoly fishing rights, that section was not meant

to prohibit differential treatment by the Board of Fisheries of such diverse user groups as commercial, sports, and subsistence fishermen. *Kenai Peninsula Fisherman's Coop. Ass'n v. State*, Sup. Ct. Op. No. 2358 (File No. 5072), 628 P.2d 897 (1981).

Establishment of use priorities. — While the Board of Fisheries did have the authority to establish priorities of use between recreational and commercial fisheries of the salmon stocks in the Upper Cook Inlet, the policy and option establishing these priorities were regulations which should have been adopted pursuant to the provisions of the Administrative Procedure Act, AS 44.62.010 — 44.62.650. *Kenai Peninsula Fisherman's Coop. Ass'n v. State*, Sup. Ct. Op. No. 2358 (File No. 5072), 628 P.2d 897 (1981).

Regulation held invalid because inconsistent with statutes. — Regulation developed by the Board of Fisheries to identify customary and traditional uses of Cook Inlet salmon qualifying for subsistence priority and codified as 5 AAC

01.597 was held invalid because it was inconsistent with former subsection (b) and AS 16.05.940 and contrary to the legislature's intent in enacting the 1978 subsistence law, ch. 151 SLA 1978. *Madison v. Alaska Dep't of Fish & Game*, Sup. Ct. Op. No. 2911 (File Nos. 6824-7181, 7410), 696 P.2d 168 (1985).

Cited in *Reynolds v. State*, Ct. App. Op. No. 182 (File No. 6432), 655 P.2d 1313 (1982); *Langesater v. State*, Ct. App. Op. No. 279 (File No. 7357), 668 P.2d 1359 (1983); *State v. Eluska*, Ct. App. Op. No. 456 (File No. A-210), 698 P.2d 174 (1985).

Sec. 16.05.253. Operation of stationary fishing gear. (a) The Board of Fisheries may require a person who holds a limited entry permit or an interim-use permit under AS 16.43 to be physically present at a beach or riparian fishing site during the operation of net gear or other stationary fishing gear at the site, except when the permit holder is at or traveling to or from the location of

- (1) a sale of fish caught in the gear; or
- (2) other stationary gear of the permit holder.

(b) For purposes of this section, "fishing site" means fishing site as defined by the Board of Fisheries and includes any structure used for providing shelter in support of the operation of the net gear or other stationary fishing gear. (§ 1 ch 94 SLA 1982; am § 1 ch 19 SLA 1983)

Effect of amendments. — The 1983 amendment rewrote the existing language of this section and designated that language subsection (a) and added subsection (b).

Sec. 16.05.255. Regulations of the Board of Game. (a) The Board of Game may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

- (1) setting apart game reserve areas, refuges and sanctuaries in the water or on the land of the state over which it has jurisdiction, subject to the approval of the legislature;
- (2) establishing open and closed seasons and areas for the taking of game;
- (3) establishing the means and methods employed in the pursuit, capture and transport of game;
- (4) setting quotas, bag limits, harvest levels, and sex, age, and size limitations on the taking of game;
- (5) classifying game as game birds, song birds, big game animals, fur bearing animals, predators or other categories;
- (6) methods, means, and harvest levels necessary to control predation and competition among game in the state;
- (7) watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation and stocking of game;
- (8) prohibiting the live capture, possession, transport, or release of native or exotic game or their eggs;
- (9) establishing the times and dates during which the issuance of game licenses, permits and registrations and the transfer of permits

HB

356

SENATE COMMITTEE REPORT

FURTHER

DATE TURNED INTO OFFICE _____

2/16/88

Mr. President:

Resources _____ Committee considered CSHB 356 (Rules) am

authority of the Alaska Public Utilities Commission in connection with certain activities of the Alaska Power Authority, certain agreements among certain public utilities, and calculating power cost equalization; and recommended relating to certain meetings between the Alaska Power Authority and public utilities; efd

replace with SCS CS HB 356 (RES)) same title
 or adopt _____ CS _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted new resources

Committee attached or adopted fiscal note(s)

new updated or previous

zero fiscal impact

MEMBERS SIGNING ~~DO~~ PASS

OTHER RECOMMENDATIONS

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

[Signature] DO PASS
Chairman signature and recommendation

Committee Backup attached



Alaska Power Authority

State of Alaska

February 23, 1988

FEB 24 1988

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

RE: CSHB 356 (Rules) am

Dear Senator Coghill:

Following are the answers to the questions posed in your February 17 letter concerning CSHB 356 (Rules) am.

To summarize, neither bond counsel, the Attorney General's Office nor I see anything in the subject bill that would indicate the need for amendments. The bill as presently drafted would fully accomplish the purpose of the original legislation drafted by the Administration -- and ensure that construction of the Bradley Lake project will proceed this summer. The present bill also includes all the language necessary to ensure that the tax-exempt revenue bonds can be sold at the most reasonable rates the market will allow.

Specifically:

1. CSHB 356 (Rules) am, contains nothing that will cause further delays to the project nor increase the cost of revenue bond financing.
2. Bond counsel's opinion is enclosed.
3. Attorney General's opinion is enclosed.
4. The letter of intent is not wholly redundant; and, in fact, it constitutes a clarification of intent requested by the utilities. Personally, I feel the legislation is clear on its face, but the utilities derive some measure of added comfort from the letter of intent in its present form.

53/J06/1

PO Box AM Juneau, Alaska 99811 (907) 465-3575
 PO Box 190869 701 East Tudor Road Anchorage, Alaska 99519-0869 (907) 561-7877

The Hon. John Coghill
February 23, 1988
Page 2

Finally, let me emphasize that time is truly of the essence with this legislation. Our target date for the Governor's signature is March 15. If this can occur by then, we will be able to meet our schedule (enclosed) of: calling for bids on March 15, opening bids by May 15 and issuing the Notice to Proceed by the first of July. If the March 15 target date is met, there should be over 200 Alaskans at work on the project by late summer.

Thank you for the opportunity to comment, and thank you especially for your strong and positive leadership in this matter.

Sincerely,

A handwritten signature in cursive script, reading "R. LeResche", followed by a long horizontal line extending to the right.

Robert E. LeResche
Executive Director

REL:cb

Enclosure

WOHLFORTH, FLINT & GRUENING

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

800 WEST 8TH AVENUE, SUITE 800
ANCHORAGE, ALASKA 99501PETER ARGETSINGER
JULIUS J. BRECHT
CHARLES G. EVANS
ROBERT B. FLINT
CLARK S. GRUENING*
ROBERT M. JOHNSON
ROBERT S. SPITZFADEN
KENNETH E. VASSAR
ERIC E. WOHLFORTHJANICE COLEMAN GRAHAM**
STEPHEN E. GREER
THOMAS F. LINKNER
ROGER A. LUDOVICH
BRADLEY E. MEYER
DANIEL PATRICK O'TIERNEY
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February 23, 1988

Robert E. LeResche
Executive Director
Alaska Power Authority
P.O. Box AM
Juneau, Alaska 99811

Re: CS for House Bill No. 356 (Rules) am

Dear Mr. LeResche:

You asked that we review the bill referred to above. The purpose of this review is to determine whether amendments to the bill as originally introduced this legislative session would (1) cause further delays to the Bradley Lake Hydroelectric Project, or (2) increase the cost of revenue bond financing for the Project. We conclude that the amendments will have neither of these effects.

The amendments to the original House Bill 356 effect the following substantive changes:

- The exemption from Alaska Public Utilities Commission review and approval for contracts related to the Bradley Lake power sales agreement is limited to related contracts entered into after October 31, 1987, and before January 1, 1988.
- The exemption from Alaska Public Utilities Commission review and approval for the Bradley Lake power sales agreement and related contracts expires when all long-term debt for the project is retired.
- Meetings between the Alaska Power Authority and public utilities concerning the matters exempted from Alaska Public Utilities Commission review and approval are made subject to AS 46.62.310, the Alaska open meetings statute.
- The requirement that costs be allowed by the Alaska Public Utilities Commission is restricted to

Robert E. LeResche
February 23, 1988
Page 2

"validated costs" under related contracts only.
"Validated costs" are defined as the costs a utility uses as the basis for rates and charges under a formula in a related contract.

While the exemption from review and approval of related contracts is limited to contracts entered into after October 31, 1987 and before January 1, 1988, it is our understanding that all such contracts that are necessary to the delivery of Project power to the purchasing utilities were entered into between those two dates. Thus this amendment has no effect on those contracts and should not delay the Bradley Lake Hydroelectric Project or increase the cost of revenue bond financing for the Project.

The expiration of the exemption from review and approval of the Bradley Lake power sales agreement and related contracts upon the retirement of all long-term debt for the Project will not delay the Project or increase the cost of revenue bond financing for the Project, because it has no effect on events occurring while the Project is under construction or while debt to finance the Project is outstanding.

The addition of AS 42.05.431(d) requires that meetings between the Alaska Power Authority and public utilities "concerning a wholesale agreement for the sale of power or other matters exempted from review" under AS 44.05.431(c) must comply with the Alaska open meetings statute. I understand that this provision is intended only to make project management committee meetings open to the public. I caution that aggressive media representatives and their counsel may construe this provision more broadly, making it desirable that legislative intent supporting the narrower construction be well documented. Nonetheless, if this provision, as interpreted by the courts, is complied with, it should cause no further delay to the Bradley Lake Hydroelectric Project or increase the cost of revenue bond financing for the Project.

AS 42.05.431(c)(2) assures that the Alaska Public Utilities Commission is bound to allow purchasing utilities to charge rates sufficient to meet their obligations under the Bradley Lake power sales agreement and related contracts. Therefore, the reduction in the scope of the cost allowance requirement in AS 42.05.511 should have no effect on the availability of power sales revenues to service debt incurred

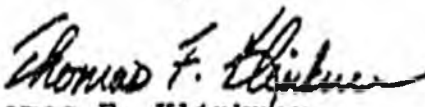
A180768

Robert E. LeResche
February 23, 1988
Page 3

to finance the Project, or on the cost of such debt. Since this amendment has no effect on events occurring before the completion of Project construction, it will not delay Project construction.

Please contact me if you have any additional questions regarding this matter.

Yours truly,


Thomas F. Klinkner

TEK/mlo

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Alaska Power Authority

NEED FOR EXPEDITIOUS PASSAGE OF NEW "SB22" LEGISLATION

The revised construction schedule adopted for Bradley Lake has been developed to accomplish two primary objectives: first, to complete the project in a reasonable timeframe which will bring the project on line when the utilities' seasonal demand for power is increasing; and second, to stimulate the construction industry and employment opportunities by initiating major construction efforts during the 1988 construction season.

To accomplish the above objectives, and in particular to create a meaningful positive effect on the labor situation in 1988, it is imperative that the main construction contract (General Civil Construction) be awarded early enough in the summer of 1988 to enable the contractors to initiate work on both the dam and power tunnel. If the contract award is delayed beyond July 1, 1988, the contractor will still begin work on the power tunnel. However, due to the limited summer season remaining, work on the dam will probably not be initiated until the spring of 1989. As a consequence, the total 1988 work force will be reduced by approximately one-half.

Due to the time involved in advertising, bid preparation, bid opening, potential bid protests and the contract award process, in order to achieve a contract notice to proceed on July 1, 1988, it is imperative that "clean SB22" legislation be enacted and signed into law on or before March 15, 1988.

The attached flow chart shows the timetable required to achieve timely award of the General Civil Construction contract and other project contracts involving 1988 construction. Also attached is a bar chart which compares the estimated manpower requirements for 1988 resulting from early passage of SB22 (prior to March 15), versus late passage of the bill (May 15).

Attachments