

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6063 HOUSE RESOURCES

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A M E N D M E N T

OFFERED IN THE HOUSE

BY HOUSE RESOURCES COMMITTEE

TO: SB 209 (Sale of organic food)

Page 3, Line 12:

Delete "ORDERS."

Insert "ENFORCEMENT. (a)"

Page 3, line 16:

Delete "Sec. 03.58.070. PENALTIES."

Insert "(b)"

Page 3, line 24:

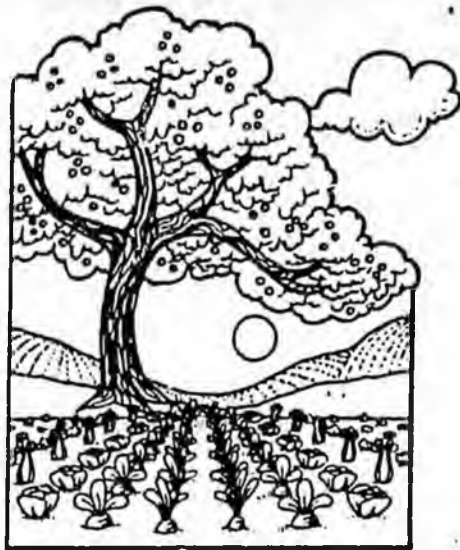
Insert a new subsection to read:

(c) The provisions of this section are in addition to the remedies available under AS 45.50.471-45.50.561.

Page 3, line 24:

Delete "080"

Insert "070"



The Time Is Ripe For Organic Foods

Organic may well become the new standard for the natural foods industry as demand for safe food grows.

WASHINGTON, D.C.—Any natural foods retailer who still questions the market potential for organically grown products would do well to wake up and smell the Cafe Altura brewing. Organic is likely to become the new standard for the the natural foods industry, according to a large

number of store owners, distributors and suppliers interviewed by NATURAL FOODS MERCHANDISER. They are recognizing and responding to the growing demand for high-quality, pesticide-free food.

Consumers now encounter organic labeling on packaged commodities—ranging from breakfast cereal to pasta salad mixes to apple-grape juice— as well as on signs in the fresh produce department. As further proof of organic's impact, top industry wholesalers are demonstrating their commitment by offering a growing selection of naturally processed, pesticide-

free products.

For many natural foods industry members, providing food that is produced without synthetic chemicals is more than a response to the market—it is a social responsibility as well. They maintain that organic agriculture offers benefits to our environment and health that exceed mere monetary value.

STRENGTH IN NUMBERS: TODAY'S ORGANIC MARKET

Maybe it's economics, maybe it's a social conscience, but statistics indicate that more farmers are making the transition to organic agriculture, and more natural foods retailers are dealing in organically grown products.

In California alone, total acreage under organic production increased from 10,000 acres in 1986 to nearly 26,000 acres in 1988, according to the ▶

Public Demand For Organic Flourishes

The impetus to provide organic food stems, in part, from the fact that an overwhelming 95 percent of consumers surveyed by the Food Marketing Institute (FMI) consider pesticide residues on food a hazard to health. According to the U.S. Government Accounting Office (GAO), this fear is not unwarranted. In an investigation conducted in 1986, GAO determined that 3 percent of all foodstuffs inspected by the Food and Drug Administration (FDA) contained illegal pesticide residues, and that the FDA is only checking less than 1 percent of all foodstuffs on the market. On imported foods, the GAO concluded that the residue problem is more than twice that of the domestic market.

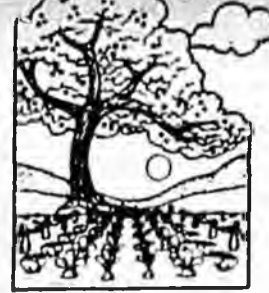
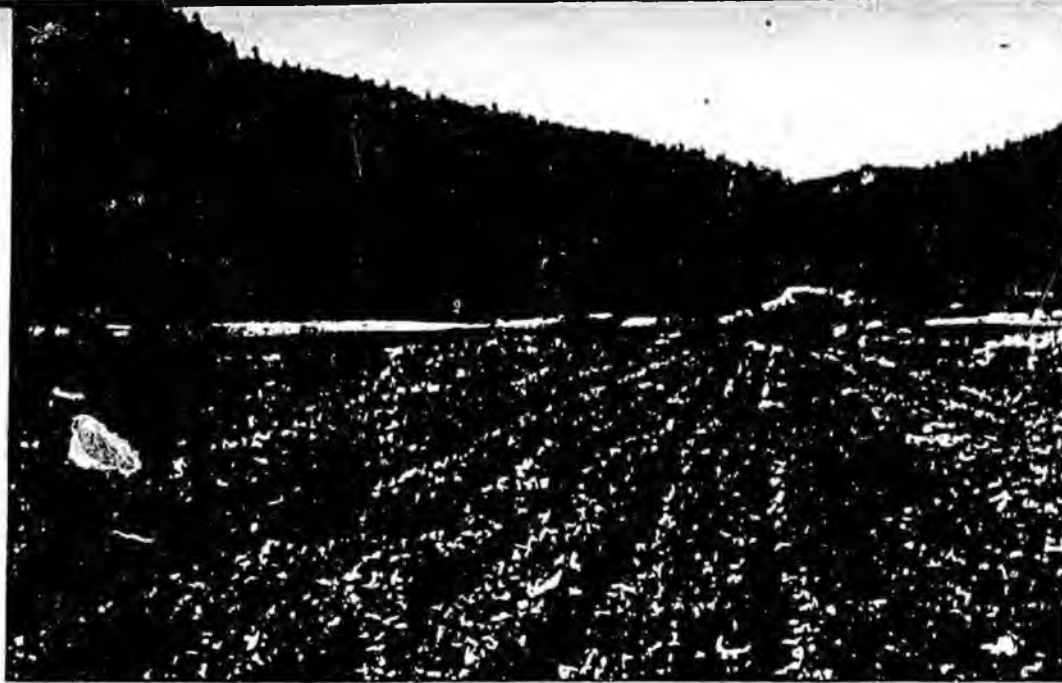
With the Environmental Protection Agency estimating that annual pesticide consumption totals 2.7 billion pounds, it's no wonder that pesticide residues on food has

become a critical issue. "We've gone from using less than 200,000 pounds of pesticides a year in the 1940s to 2.7 billion pounds a year today," says Tom Harding, an organic agriculture consultant and president of Agrisystems International in Wind Gap, Pa. "All of that is going on our food, in our food, around our lawns and down our drains. There's an incredible environmental stress because of the overuse, misuse, and improper understanding of what synthetic chemicals can do.

"Organic agriculture can contribute to reducing this environmental stress and provide us with food we can have confidence in," Harding continues. "We can achieve enormous cleanup and reverse the damages to the environment if we would recognize the problems created in part by conventional agriculture, and start to work together to improve our food system."



At Alfalfa's Markets in Boulder and Denver, Colo., organic foods are promoted in the produce department and throughout the store, with signage and displays.



Organic agriculture utilizes crop rotation and biological and mechanical methods to conserve soil fertility and control insect and disease pests. High quality foods are produced free of synthetic chemicals.

California Certified Organic Farmers (CCOF), a certifying and marketing organization based in Santa Cruz. Membership in the organization has increased as well, from 285 growers in 1986 to 370 growers in 1988, according to certification program coordinator Brian Baker.

Baker estimates the retail market value for organically grown foods to be \$30 million to \$70 million in the state of California alone. Accurate nationwide and worldwide statistics are not available. However, estimates gathered from *New Farm* magazine and a number of wholesalers and suppliers range from \$300 million to \$3 billion for the worldwide organic foods market. Robert Shapiro, director of sales and marketing for the Mercantile Food Co., an organic import/export firm in Redding, Conn., places the domestic retail market for organic foods at roughly \$150 million. His estimate is in line with figures presented in NFM's 1987 Market Overview Survey.

"Based on my knowledge of major distributors, sales of organic foods are the same or higher in Europe," says Shapiro.

While market value estimates vary, the numbers at least indicate a strong demand for organic foods. Rainbow Natural Foods Distributors in Denver and Los Angeles reports 15 to 20 percent growth in sales of organic products, according to general manager Kim Thuon. Albert Lusk, president of Albert's Organics, anticipates a boom for two reasons—growing consumer interest and a more efficient, computerized operation. Lusk runs a 13,000-square-foot warehouse and distributing operation in Los Angeles. He has plans to expand his business with a warehouse in the Midwest.

Processors and packagers of organic foods have experienced recent growth, and Marc Schwartz, president of Little Bear Trading Co., a miller and packager of organic grain products in Winona, Minn., reports a 30 percent

sales increase for his company. Schwartz is also the current president of the Organic Foods Production Association of North America (OFFANA), the trade association for the organic foods industry.

Retailers offering organic foods are seeing sales increases, as well. "We were hearing lots of requests for organic, but we couldn't do anything until our recent expansion," says Todd Loomis, owner of the 4,100-square-foot Granary Market in Pacific Grove, Calif. "Now we're doing \$6,000 per week in produce and 95 percent of it is organic." Loomis sells his produce from a two-layer, 20-foot wet rack and 40 linear feet of dry rack. "The public reception to our commitment to organic foods has been very good, and by next year we should double our sales," he predicts.

Even in a smaller store, organic produce and packaged goods can help increase a retailer's customer base, says David Sharp, owner of the 1,000-square-foot Lambertville Natural

Foods in Lambertville, N.J.

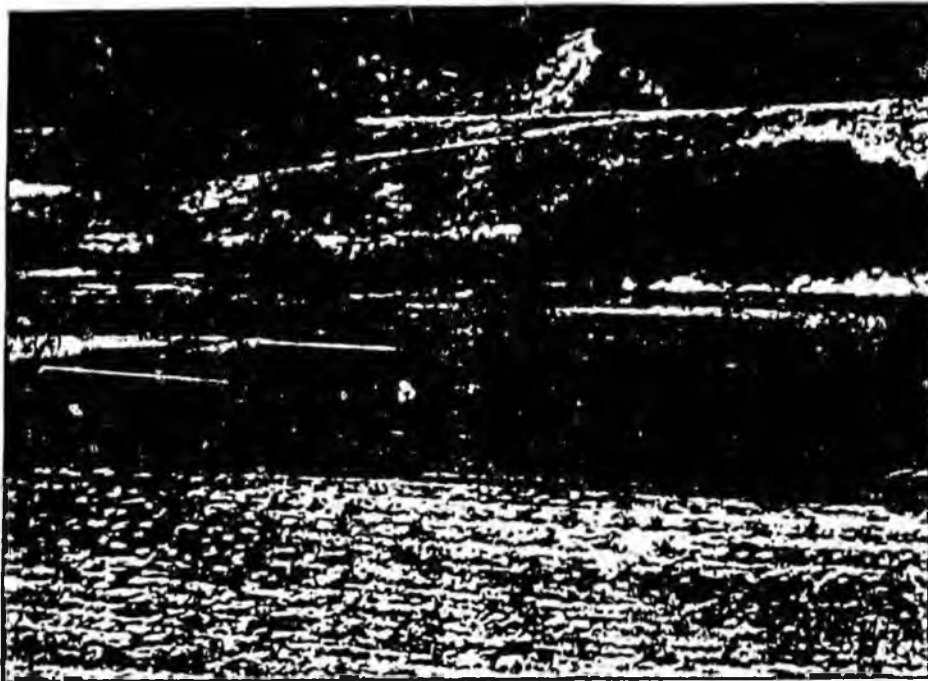
"The store is six years old and we've been carrying produce for three," says Sharp. "Initially, we offered organic produce in season from our own five-acre farm in Bucks County, Pa. This past winter, we went with Organic Farms (a major East Coast distributor of organic foods, based in Beltsville, Md.) to offer strictly organic produce. This has undoubtedly helped to create a broader customer base for us, and there seems to be little resistance to prices. Although the prices of organic foods are more reflective of what it takes to grow food, they are not that far out of line from commercial produce," he comments.

According to Sharp, a small-store retailer should be able to handle a minimum order requirement of \$400 from distributors such as Organic Farms. "Depending on the time of year and what commodity we're dealing with, I don't have any trouble selling two to three cases per week of organic peaches, broccoli and lettuce, and I sell 100 to 200 pounds of carrots a week. A number of things end up in our deli department as well, which minimizes shrink," Sharp adds. "A deli is a perfect match for a fresh produce operation."

STRONG MARKET FOR PACKAGED GOODS

"There is a great potential for organic industry growth," says Shapiro, who indicates that while produce sales are strong, more packaged goods will make their way to market. "As raw materials and availability increase, we'll see tremendous growth in the number of organic retail products reaching the marketplace."

Ron Roller, vice president of Eden Foods in Clinton, Mich., agrees. "We are offering more processed and prepared organic foods, such as pastas



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and some of our cooked beans, to address consumers' desire for high quality, ready-to-use products."

One of the largest distributors in the natural foods industry, Tree of Life, in St. Augustine, Fla., is also responding to this consumer demand by focusing on organic ingredients in a new line of consumer products.

"We've been very conscious of a significant change in consumer interest for products that are free of pesticides and synthetic chemicals," notes Greg Leonard, Tree of Life vice president of merchandising.

"The American consumer is also looking for good taste and texture and sound nutrition. That's where we see organic foods fitting in as the basis of good taste and high quality nutri-

tional integrity. Organic foods can represent a real distinguishing point between the natural foods industry and the commercial food industry," Leonard adds.

In addition to an organic pasta sauce, Tree of Life is also introducing a line of pastas made from organically grown amber durum wheat, according to Leonard. Other organic products bearing the Tree of Life logo include apple cider and cookies made from organic whole wheat flour. "Tree of Life as a total company has placed its support behind consumer products made from organic ingredients," says Leonard. "It's something the marketplace is asking for."

INTEGRITY BACKED BY CERTIFICATION

To verify that its ingredients are organically grown, Tree of Life works with the Farm Verified Organic (FVO) certification program, based in Redding, Conn. Along with a growing number of farmers, processors and packagers, Tree of Life contracts the independent certifying agents to make sure that every stage of organic production meets strict criteria. Such scrutiny of the cultivation, processing, packaging, distribution and storage of organic foods, backed by a well-documented audit trail, helps build retailer and consumer confidence. More and more, both retailers and consumers are demanding that organically grown foods be certified to ensure their authenticity.

"We contract grain from farmers linked to the FVO verification system," says Leonard. "The milling plant is also inspected by an independent party. Flour from the miller to the pasta maker is again inspected. We certainly recognize the need to establish a high degree of integrity behind the use of the word 'organic.' If we're putting our resources so strongly behind organic, then it's important to be sure that our products are truly organic."

Bob Donnola, sales and marketing manager for Earth's Best in Middlebury, Vt., feels that his target audience is a very precious commodity. A manufacturer of baby food, Earth's Best products are both certified and laboratory tested for pesticide residues. "Organic foods are very important for infants because they are at greater risk to pesticide exposure—they eat a lot more food in relation to their body weight," says Donnola.

Additionally, babies are less able to cope with pesticide toxins, he notes.

"I would like to see more companies and retailers become involved with certified organic foods," Donnola adds, "because babies are only babies for so long. Kids and adults need safe food, too."

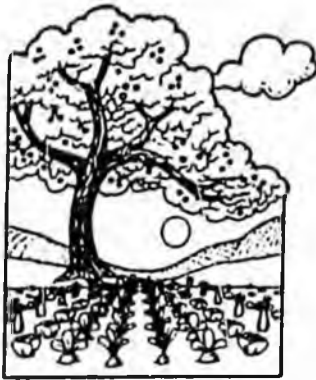
A NATURAL MARKET NICHE

With so much media and consumer attention being paid to pesticide residues on food, major supermarket chains are beginning to take notice of the organic foods market. Raley's and Lucky's, two California chains, currently offer selected organic items. On the East Coast, *Supermarket News* reports that the New Jersey-based Kings Super Markets is considering test marketing organic produce in its 15 stores.

"Organic is no longer exclusive to natural foods retailers," says Todd Loomis of the Granary Market. "However, most of the people buying organic don't really trust commercial markets. The organic industry is new, and I don't think the commercial markets can do a good job. It takes a more personal approach. You have to gain a consumer's trust. People come in here because they trust what we have."

"Smaller retailers do a better job of selling organic than the supermarket chain stores," says Albert Lusk of Albert's Organics. "People who want good tasting organic food are still going to go to natural foods stores to buy it."

That may be the case, but it is still important for retailers to aggressively market organic foods, according to Robert Shapiro of the Mercantile Food Co. "Retailers should strive to offer more organic foods in their product



mix as they become available," he says. "They need to take the initiative to make consumers more aware of organic issues."

To help in this cause, a number of wholesalers and manufacturers offer merchandising and marketing support, from brochures, bag stuffers and signage to grower information and individual retail consultations that can help determine product mix, pricing and marketing strategies.

"What we have to promote is organic agriculture and its positive effect on the environment and health," says Joseph Dunsmoor, president of Organic Farms Inc. "People are very concerned about food and environmental safety, and there's a real tie-in. However, we can play down the pesticides issue. The quality and flavor of organically grown foods are the real selling points and they should be the main focus of our marketing efforts. We need to convert customers one at a time, and there's all kinds of things we can do." ✕

—Steven M. Hoffman

Organic Foods Defined By OFPANA

BELCHERTOWN, Mass.—While the meaning of organically grown food varies state by state, here is a definition proposed by the organic food industry's trade association, the Organic Foods Production Association of North America (OFPANA), headquartered in Belchertown, Mass. In proposing such a definition, OFPANA seeks to endorse independent certifying agencies that meet or exceed the criteria outlined in the definition. It is also meant to serve as a guideline for the federal government in the establishment of national standards for organic foods.

▶ Certified organic food is produced without the use of synthetic fertilizers, pesticides and herbicides. Moreover, such conventional pesticides and herbicides have not been used on the land and crops for at least three years.

▶ Certified organic food has been grown with the help of composted organic materials, green manures and/or other natural materials as fertilizers.

▶ Crop rotation systems have been applied to minimize disease and insect damage, and to promote soil health.

▶ Insect control has been by ecological and biological means. When necessary, natural, mechanical, botanical or biological controls with minimum impact on health and the environment may be used.

▶ Weed control has been accomplished by mechanical and/or ecological methods.

▶ Certified organic food has been harvested, preserved, processed and stored without the use of fumigants, irradiation, synthetic coloring agents, artificial sweeteners, synthetic chemical preservatives or other similar additives.

▶ Certified organic meat, fish, eggs (or comparable products) are from animals/fish/fowl fed certified organically grown feed. Animals, etc., have been raised under humane conditions and have not been exposed to synthetic growth promoters, hormones,

or other such additives, in feed or water or by injection. Animals which have been treated on an emergency basis with antibiotics or other allopathic drugs cannot be sold as certified organic but may be sold through conventional markets.

▶ Processed certified organic food is made from certified organic agricultural products.

▶ Certified organic food meets all local, state and federal regulations governing the food supply.

For more information on guidelines and definitions regarding organic foods, contact: OFPANA, P.O. Box 31, Belchertown, Mass. 01007. ✕



To help retailers merchandise organic foods, the Organic Foods Production Association of North America (OFPANA) prepared a point-of-sale brochure explaining the meaning of organic in easy to understand terms.



Whole Foods Taste Fair Helps Launch Texas Organic Program

DALLAS—Natural foods retailers are increasingly demanding that the foods they buy from growers and processors be certified organic. Now, one state is demanding that retailers be certified to sell organic foods, as well.

Texas agriculture commissioner Jim Hightower recently announced that Whole Foods Market, a five-store chain that reportedly will sell \$8.4 million of Texas agricultural products this year, is the first retailer approved to market "Texas Certified Organic" products.

Hightower made his announcement during "Tejas Tropicales—A Taste of Texas with a Tropical Twist," a consumer taste fair sponsored by the Whole Foods Market in Dallas. This indoor and outdoor event featured more than 25 vendor booths displaying food and beverage products produced in the state of Texas.

"Producers, distributors and retailers all have to be certified by the TDA in order to participate in the Texas organic program."

"Certification establishes consistency and credibility for consumers," says Hightower. "Right now, the word 'organic' is not defined by either federal or Texas law. That means that anybody can legally label any food as organic, no matter how it was produced. Now, with effective state certification, consumers and retailers can have confidence in the product."

According to Hightower, state certification is what makes the Texas Department of Agriculture's (TDA) program unique. Of the 11 states with laws governing organic foods, only two—Texas and Washington—are involved in the actual certification of organically grown products.

Under the Texas program, a farm cannot use synthetic pesticides for at least three years and must not use artificial fertilizers for at least two years before its products can be sold as "Certified Organic." Farms are inspected and certified annually to ensure that organic standards are followed.

For retailers to qualify for the program, they must agree not to commingle, or mix together, Texas-grown organic and non-organic food products. Approved retailers can then use the "Certified Organic" logo only on products that have been certified by the TDA. Grocery stores will also be checked periodically to ensure compliance, according to Hightower.

"Producers, distributors and retailers all have to be certified by the TDA in order to participate in the Texas organic program and use the logo," says Fleur Hedden, vice president of the Austin-based Whole Foods Markets. "The primary requirements for a retailer include an inventory control system that can trace TDA certified products back to the suppliers

and written descriptions and inspections of systems in place to prevent commingling of organic with other produce."

In addition to the Agriculture Department's "Certified Organic" logo, homegrown organic products are tagged with small red paper diamonds that say "organically grown." "We put these tags on every product in the bulk, grocery, produce and cheese sections, and any other area of the store where organic foods are displayed," says Hedden. "The red diamond is also up as a 10-foot sign that

hangs in the bulk foods and produce aisles to alert customers about our participation in the organic program."

According to Hedden, Whole Foods Market—with \$3 million a year in sales of organic products—is the largest retail supplier of organic foods in the United States. X

The Texas Department of Agriculture (TDA) established its own organic certification program in 1988. The label is used to help growers and retailers market Texas certified organic foods.

Texas Department of Agriculture commissioner Jim Hightower (right) shakes hands with David Mathis, manager of the Dallas Whole Foods Market, to inaugurate the new Texas certified organic program at a "Taste of Texas" fair held at the Dallas store. Whole Foods vice president Fleur Hedden looks on (center).



Organic Labeling Laws At A Glance

State	Status of Law	Contains Enforcement Mandate	Lists Allowable Materials	Time required between last synthetic-chemical treatment and sale of product		
				Non-Meats	Meats	Dairy
California	Enacted '79; pending revision '89	No	Yes	1 yr.	90 Days	30 days
Colorado	Pending	N/A	N/A	N/A	N/A	N/A
Iowa	Planned for '89	Yes	Yes	Gradual (3 yrs. as of July '90)	Unspecified	Unspecified
Kansas	Pending	No	Yes	3 yrs.	90 days	30 days
Maine	Enacted '79	No	Yes	3 yrs.	90 days	30 days
Minnesota	Enacted '88	No	Yes	3 yrs.	90 days	30 days
Montana	Enacted '86	No	Yes	2 yrs.	90 days	30 days
Nebraska	Enacted '86	No	Yes	Gradual (3 yrs. as of Mar. '90)	Unspecified	Unspecified
New Hampshire	Enacted '85	Yes	No	Unspecified	90 days	30 days
New Mexico	Pending	N/A	N/A	N/A	N/A	N/A
North Dakota	Enacted '87	No	N/A	3 yrs.	N/A	N/A
Ohio	Pending	N/A	N/A	N/A	N/A	N/A
Oregon	Enacted '73	No	No	Unspecified	90 days	30 days
Texas	Enacted '88	Yes	N/A	3 yrs. (pesticides) 2 yrs. (synthetic fertilizers)	N/A	N/A
Vermont	Enacted '87	Yes	N/A	N/A	N/A	N/A
Washington	Enacted '87	Yes	N/A	N/A	N/A	N/A
Wisconsin	Enacted '88	N/A	N/A	N/A	N/A	N/A

State legislative information compiled by the Rodale Institute and The New Farm, Emmaus, Pa.
 N/A—Information Not Available

State by state, organic agriculture is being defined in the legislative arena as a protection for farmers and as a guarantee to consumers that products labeled "organic" are truly organically grown. While most states set production guidelines and definitions to determine what produce can bear the "organic" label, two states, Washington and Texas, have entered the certification business. These states set legal standards for production, processing, transportation and storage of organic food, conduct independent farm inspections, and are involved in marketing products grown under state approved organic labels. There are almost as many conflicting definitions for organic foods as there are states that have passed organic legislation. That is why, according to Tom Harding, president of Agrisystems International in Wind Gap, Pa., a consultant and marketer of organically grown foods, uniform, federally mandated guidelines are needed.

"The role of government is to define what organic foods are and to make it clear where the United States, particularly the Food and Drug Administration (FDA), the U.S. Department of

Agriculture (USDA) and the Federal Trade Commission (FTC), stand relevant to organic food production and marketing," he says. With Europe poised to establish organic criteria that could affect U.S. exports, uniform national standards are as important in overseas marketing as they are for domestic distribution, Harding indicates. "Consumers need to know exactly what certified organic means," he adds.

According to *The New Farm*, the U.S. Senate Agriculture Committee, chaired by Sen. Patrick Leahy (D-Vt.), is currently reviewing organic food certification laws from all 11 states that have passed such laws, plus information on the six other states considering similar legislation. There are no plans at this time to sponsor a federal organic certification bill; according to Kathleen Merrigan, a member of the Agriculture Committee staff. However, reports *The New Farm*, the fact that a growing number of states have often conflicting certification laws, while others have no legal standards, is cause for concern at the federal level. "It's an issue with the potential to introduce legislation," says Merrigan.

Organic Foods Resource List

DAVIS, Calif.—There are a number of sources where one can turn for more information concerning the cultivation, certification, distribution, merchandising and marketing of organic foods.

For a comprehensive listing of organic food and farm suppliers in the United States and Canada, consult the California Action Network's (CAN) 1988 Organic Wholesalers Directory & Yearbook. This book, published annually, also contains valuable marketing information and listings for organizations and publications concerned with organic foods. The publication is available from CAN for \$19, plus \$1.75 shipping and handling per copy

MARKETING AND CERTIFICATION

California Action Network (CAN), P.O. Box 464, Davis, Calif. 95617, 916/756-8518

California Certified Organic Farmers (CCOF), P.O. Box 8136, Santa Cruz, Calif. 95061, 408/423-2263

Demeter Association (Bio-Dynamic Farming and Gardening Association), 4214 National Ave., Burbank, Calif. 91505, 818/843-5521

Farm Verified Organic (FVO), P.O. Box 45, Redding, Conn. 06875, 203/544-9896

Natural Organic Farmers Association (NOFA), c/o RFD #2, Barre, Mass. 01005, 617/355-2853

Organic Crop Improvement Association (OCIA), P.O. Box 819, Kearny, Neb. 68848, 308/234-2645

Organic Foods Production Association of North America (OF-PANA), P.O. Box 31, Belchertown, Mass. 01007, 413/323-4531

RELATED SUPPORT ORGANIZATIONS

Americans for Safe Food (ASF),

Center for Science in the Public Interest, 1501 16th St., N.W., Washington, D.C. 20036, 202/332-9110

Institute for Alternative Agriculture (IAA), 9200 Edmonston Rd., Suite 117, Greenbelt, Md. 20770, 301/441-8777

International Alliance for a Sustainable Agriculture, 1701 University Ave., S.E., Rm. 202, Minneapolis, Minn. 55414, 612/331-1099

National Coalition Against the Misuse of Pesticides (NCAMP), 530 7th St., S.E., Washington, D.C.

20003, 202/543-5450

Pesticide Education and Action Project (PEAP), 220 Golden Gate Ave., 9th Fl., San Francisco, Calif. 94102, 415/771-7327

Steering Committee for a Sustainable Agriculture, P.O. Box 1394, Davis, Calif. 95617, 916/753-1054



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For many, the production and marketing of organic food is a social responsibility to preserve our health and the environment. However, as demand for organically grown food increases, premiums paid for organic produce and other economic incentives are now attracting conventional growers and mainstream supermarkets to consider making the transition to organic.



Stalking organic foods

By Ed Randegger

There's a lot of talk about "organic food." But few ask what it is. Looking in the dictionary won't help. The U.S. Department of Agriculture doesn't regulate, or even define, it. A couple of states have set up loose standards, but regulation is hit or miss.

The leading "organic food" retailer in Colorado says:

"By organic, we mean foods that are absolutely clean of such impurities as "chemical residues from artificially derived fertilizers, herbicides, pesticides, artificial growth stimulants, tenderizers and additives."

That sounds good, but does it have any relation to the reality of the "organic food" on that retailer's shelves and in its meat cases? Probably not

according to the conscience of the organic food industry, the Organic Foods Production Association of North America (OFFANA).

OFFANA is an international organization of farmers and ranchers, processors and manufacturers, wholesalers and retailers, who care about healthy food. Its mission is to promote honesty and accuracy throughout the organic food chain — from farm to consumer.

Founded in 1984, it has made great strides in four short years. It's first major product was a December, 1986, position paper on Laboratory Testing and the Production and Marketing of Certified Organic Foods which explains the problems of depending on chemical testing to determine whether a

food is truly organic (see Food Testing). A year later, OFFANA completed its first set of Guidelines for the Organic Foods Industry.

The guidelines, approved by OFFANA's voting membership, are based on a draft developed by Grace Gershuny, Barnet, VT, and Joseph Smille, Weedon, Quebec, Canada, both principals in Oala Services. William F. Drilton, Jr., Woods End (MP) Laboratory, an agricultural testing facility, reviewed the drafts that incorporated suggestions from OFFANA members and the final product was edited by Judith Ollan, an organic farmer who is secretary to the board and membership club of OFFANA.

The guidelines represent an attempt to "set standards of excellence for the organic foods industry." When they are tested by a couple of volunteers — organizations that certify organic foods — beginning later this year, OFFANA will learn if its high "minimum" standards are attainable.

The standards are based on soil and water stewardship. The premise is that if farming methods are sound and healthy, they will result in wholesome food. Then the standards attained on a well run organic farm must follow certified organic food all the way into the shopper's grocery cart.

The guidelines introduction states:

Ecological farm management relies on building soil humus through crop rotations, recycling organic wastes, and applying balanced mineral amendments. Along with the use of resistant varieties, this minimizes problems associated with pests and disease. As necessary, mechanical, botanical, and/or biological controls with minimum impact on health and environment are implemented.

Organic foods are processed, packaged, transported and stored to retain maximum nutritional value, without the use of artificial preservatives, coloring, or other additives; irradiation; or synthetic pesticides.

It takes nearly 40 pages to flesh out this definition. The primary tool is a three-tier breakdown of farming practices:

1) Permitted substances and practices which "generally qualify as acceptable (but not necessarily optimum) management strategies."

2) Regulated substances and practices which may involve "some controversy, or whose use should be limited or qualified in some way."

3) Prohibited substances/practices.

The guidelines for "agricultural practices" begin with a description of ecological soil management:

The fertility of the soil is based on the harmonious interaction of physical, chemical and biological factors. It is the proper cyclic interplay of these factors that creates a healthy soil.

Of critical significance is the maintenance of active humification, whereby not only nutrients but a broad array of plant growth-promoting substances and pathogen suppressants are supplied. In an ecologically managed system, fertilization consists of fostering this biological activity, with the proper management of organic matter being the key task.

This is accomplished through judicious tillage, crop rotation, and the addition to the soil of manure and other organic wastes. Soil mineral balance, which is also essential for soil health and the production of quality organic food, may require the application of mineral fertilizers.

The dos and don'ts begin with the section on manure management, pointing up one of the major problems in organic food production. The guidelines proclaim that animal manure is "one of the most beneficial inputs in organic food production" and there is a consensus that a farm with livestock can be self-sustaining far more readily than one without. But they go on to say that

raw manure, even when it's produced by animals fed organic grain and clean water, can be a problem.

So the guidelines permit free use only of composted manure, aerated slurry, and raw manure only before a "green manure" crop, later plowed under. They call for regulation of raw manure in all other instances and use of sewage sludge only if laboratory analysis shows it's free of poisons which can range from petrochemicals to heavy metals. Such contaminated organic waste is prohibited whether it comes from "factory farms" or sewage treatment plants.

Gardeners should be aware that the "organic manure" now available in most stores probably comes from factory farms, or sewage, and is likely to be laced with poisons. Try to find an organic farmer with clean composted manure.

The guidelines allow only limited use of nitrogen additives permitting only green manures, nitrogen fixing crops, composted materials and nitrogen fixing organisms. Regulated are such widely used "organic" supplements as vegetable meals; blood, leather or other animal byproduct meals; fish emulsion; tested sewage sludge; and under limited conditions Chilean nitrate. Prohibited are potassium and calcium nitrates; urea; anhydrous ammonia; ammonium nitrate; ammonium phosphate; and other synthetics.

Balance is stressed throughout the conservative guidelines. For example, they bar "excessive doses of any micronutrient," even unfertilized seaweed extract, kelp meal and rock powders.

The guidelines make it clear that seeds and seedlings pose special problems for organic farmers. The first

obvious is "organically produced seeds and seedlings." Regulated are seeds and seedlings fertilized nonorganically. Prohibited are "synthetic fungicide-treated seeds" or pesticide treated plant materials, unless otherwise unobtainable and an exception is granted by the certifying organization."

The section on weed control, also applicable for organic gardeners, contains one of the few errors I could spot in the guidelines. It calls for regulation of "mulching with recycled newspaper containing colored inks" while prohibiting "petroleum distillate herbicides." Although it's possible your newspaper now uses one of the safer soy inks for color, at this point almost all black ink is derived from toxic petrochemicals. So beware of all inked mulches if you want your garden to be pure. The guidelines also call for regulation of plastic mulches. We assume use of one of the new biodegradable corn plastics would be unregulated, though they're probably not made with organic corn.

Pest control is another area where organic farmers and gardeners face similar problems. The guidelines say:

Prevention is the first line of defense in pest infestations. When planning production schedules and the location/size of plantings, and choosing crop/varieties and soil management practices, pest prevention should be high on the list of grower concerns. When preventive measures prove inadequate, those methods of control having lowest ecological profile should be a grower's first choice.



The photo on this preceding page shows a Nicaraguan farmer spraying deadly pesticides on his crops without taking proper protective measures. CARI, the international relief and development organization, says it's trying to instruct farmers in Guatemala, Ecuador and Nicaragua on application safeguards as well as nontoxic strategies of pest control. But Organic Foods, published by the Organic Food Production Association of North America, reports that the Sandinista regime in Nicaragua considers nontoxic farming "outdated and irrelevant." Fortunately, as reported in *The Wary Canary* No. 2, not all communist governments feel that way. Cuba is now retraining its extension agents to convert to organic agriculture. Polconculture is not a political issue. Right-wing Chile is promoting organic farming as are Peru, Guatemala, Brazil, Costa Rica, El Salvador and the Dominican Republic. And you may be able to find certified organic Mexican produce in markets soon.



All biocidal materials, no matter how innocuous-seeming, should be handled with caution. Many "natural" insecticides, such as pyrethrum, rotenone, azadirachtin, and nicotine, are broad-spectrum and highly toxic. Although widely accepted because of their natural origin and swift decomposition, they are often overused and pose a danger to soil organisms and wildlife, as well as to the humans using them. Pest-specific bacterial and viral diseases have been reported to have adverse effects on soil organisms and humans, and there is concern that overuse will create resistant populations.

Petroleum distillates that function as carriers or synergists, such as xylene, are commonly used in conjunction with natural botanical and biological insecticides. Although these additives are not desirable in an ecological system, they may reduce the amounts of restricted materials needed for effective control. Traps containing prohibited pesticides may be authorized by certification organizations, provided that their contents do not contaminate the environment. However, their use further supports the manufacture and distribution of these materials, posing threats to the environment and health of production workers.

Permitted pest control measures include: natural predators and parasites; sprays and dusts such as insecticidal soaps, rock powders and diatomaceous earth; herbal preparations; dormant oil sprays in orchards; solutions of insects or plants for repellants; diseases such as *Bacillus thuringiensis* if not delivered in a petroleum-based carrier, and pheromones used as traps and to disrupt mating. Regulated are "natural" insecticides such as pyrethrum, quassia and ryania. Banned are all synthetic "icides" and "natural poisons" such as

arsenic and lead salts.

Organic livestock management poses special problems, especially in the area of organic feed. The guidelines stipulate that though the "ideal" is organic feed, "a percentage of conventionally produced feeds may be permitted, depending on type of livestock, availability of organic feeds and the regional context of the farm."

Banned are antibiotics, synthetic hormones, urea, animal manures, plastic pellets, and forced malnutrition to produce "white veal."

The guidelines mandate that livestock have a right to: access to pasture during fair weather; housing with maximum fresh air, daylight and proper bedding; proper sanitation to control parasites and diseases; and room to get up, lie down, groom normally, turn around and stretch.

Prohibited are all synthetic pesticides and routine administration of medication. Regulated are emergency treatment, vaccination and use of botanical pesticides such as rotenone.

At least one area of "permitted substances and practices" raises questions involving scientific credibility that probably should have been avoided and perhaps will be eliminated when the guidelines are redrafted. They include:

"holistic veterinary medicines" which should be defined; homeopathy, whose premises have never been proven in double-blind studies of humans; rail-oules, which you won't find in your dictionary but apparently involves electromagnetic fields; herbal preparations which again should be more narrowly defined since some may be toxic; and acupuncture. I suspect no one would ever be decertified for using acupuncture to treat a hog, but its effects might be hard to assess. This apparently unneeded section, and perhaps others I'm not qualified to pick up, gives ammunition to those who want to treat organic agriculture as a cult and not a science.

Perhaps the most important contribution the guidelines will make is in the handling of organic foods. All possible steps must be taken to avoid contamination during shipping including "residues from previous cargos. Bags or other containers used to ship commodities must not have been used for any substance that could compromise the organic quality of the product."

And in a plastic age, the guidelines mandate:

"Plastic or other materials subject to depolymerization should not be in contact with organically grown food-stuffs."

The Lead Diet

Grapefruit and fresh grapefruit juice from Florida that arrives in September and October probably has been poisoned.

The National Coalition Against the Misuse of Pesticides (NCAMP) revealed May 24 that lead arsenate is used by some growers to get the jump on their competition with early ripening. NCAMP said the only manufacturer of the heavy metal ripener, Micro-Flo Co., Lakeland, FL, surrendered its license rather than conduct tests ordered by EPA.

But NCAMP said EPA permitted Micro-Flo to sell off its inventories giving Florida growers enough for two more seasons. NCAMP said growers had used up to 100,000 pounds of lead arsenate each year to earn an extra \$10 million with the early fruit.

Lead can damage the brain and kidneys and also may contribute to high blood pressure, according to EPA. So wait for November grapefruit unless it's certified by a reputable organic food organization.



Verification will be the key to how the OFPANA guidelines work in practice. Despite their base in "traditional" farming, organic farmers must rely on computers to insure that their input and output is tagged at every stage of the farming process from preparing a field to the consumer's shopping cart. This will be the only way to trace the inevitable problems back to their source.

One gaping and disturbing hole exists in the OFPANA guidelines: at this point it doesn't deal with ethics, especially in the labor area. OFPANA has created an Ad Hoc Committee on Ethics because:

"Exploitative labor practices, for example, can not be tolerated in a system designed to produce the highest quality foods."

But organic farmers, like all farmers (and maybe more so since they don't depend on government handouts), are individualists. Some are more interested in their crops and livestock — and of course their bank accounts — than in making sure that their relationships with their workers are legal, let alone ethical. I suspect that in the long run the unethical will be driven out of organic farming by other violations since the tendency to cut corners in some areas has a way of carrying over into others. But OFPANA should draft strong ethical guidelines with teeth — automatic decertification — as soon as possible.

Looking back at the Colorado retailer's definition of "organic" foods, you'll note that it falls far short of the OFPANA guidelines. For example, organic fertilizers and pesticides can be as toxic as the synthetic. There is no mention at all of distribution and packaging. Plastic is used nearly as much by natural food purveyors as by regular supermarkets. Under the present system, verification usually is a dream, not a reality.

And any claim that food is "absolutely clean" is ridiculous in today's world (see Food Testing). So until OFPANA's guidelines are implemented, you'll have to use your own best judgment. A tip:

Certification by organizations such

RESOURCES

1988 Organic Wholesalers Directory & Yearbook: Organic Food & Farm Supplies was excellent when it was first put together in 1983 and it gets better every year. Editor Edith M. Stanley should take a deep bow. This 1988 edition has 154 pages including the new and much appreciated index. More food wholesalers are listing their certifying organizations rather than the meaningless, unattributed "certified." If you are truly interested in eating organic food, get the guide. Then you can track down retailers through their wholesalers. The regional directory covers the U.S. and Canada. There also are regional listings of farm suppliers which are extremely helpful to the organic gardener looking for seeds and predators. The yearbook section includes an article on testing. The directory is available for \$20.75 a copy to non-Californians and \$21.89 to Californians who must pay the state tax. Order from: California Action Network, P.O. Box 464, Davis, CA 95617.

Americans for Safe Food is part of the Center for Science in the Public Interest, one of the groups spawned by Ralph Nader. It publishes a 4-page list of organic food that's available by mail. Unfortunately even this limited listing appears to be out of date. But the price is right. It's free if you send a self-addressed, stamped envelope to: Center for Americans for Safe Food, 1501 16th St. NW, Washington, DC 20036.

Institute for Alternative Agriculture Inc. publishes a monthly newsletter, *Alternative Agriculture News*, and a quarterly, *American Journal of Alternative Agriculture*. Both focus on farm problems and solutions. The newsletter is \$12 a year and the journal is \$20 from: Institute for Alternative Agriculture, 9200 Palmonston Road, Suite 117, Greenbelt, MD 20770.

Organic Food Production Association of North America is a trade association founded "to establish and maintain standards of excellence for organic food businesses." To keep current, sign on as a consumer (nonvoting) member for \$25 a year. Write: OFPANA, P.O. Box 31, Belchertown, MA 01007.

AgriSystems International sells biocontrols, seed, seeds and advice to organic farmers. It also sells Natur-Oro products to consumers. For a free 1988 catalog, write: AgriSystems International, 125 West 7th St., Wind Gap, PA 18091.

as California Certified Organic Farmers (CCOF); Tillth; Natural Organic Farmers Association (NOFA) with chapters in six New England states, or the Organic Crop Improvement Association, Inc. (OCIA), which has members in the U.S., Canada and Latin America, is certainly a good starting point.

If growers or retailers claim their products are certified, find out which organization did the certifying. Then check out that organization to determine how high its standards are and how they are verified.

Then look forward to a future with minimum standards set by OFPANA and administered by regional and local certifying units, private or government. When that happens, we'll all be a lot healthier. When we learn which of the

local and regional certifying groups volunteer to check the OFPANA guidelines, Environ will let you know. At that point, certifications by those groups will become more meaningful.

After the guidelines have been tested, OFPANA plans to lend its endorsement to products certified by local and regional organizations. These products would bear an "endorsed by OFPANA" label signifying safety that could be relied on...and the "organic charlatans" will have to shape up or give up their claims.



FOOD TESTING

There probably is no food in North America and possibly the world that isn't tainted by toxic chemicals. Since the 1940s when DDT (and DDE), that chlorinated hydrocarbon and its derivatives (including the organophosphates, derivatives of DDT) and others have been contaminating soil, water, plants, and the animals living on them. Nothing seems to have escaped being touched by these poisons.

Tom Marling, the first president of Organic Foods Production Association of North America (OFPANA), commissioned expensive parts per million (ppm) testing of organic foods. Chemists could find no food that was absolutely free of pesticides and their breakdown products.

So when you read the ads that claim a food is "pesticide clean," take them with a generous sprinkle of salt. What that means is that any tests that were run on the "clean food" weren't measured in parts per trillion.

That doesn't mean tests aren't worthwhile. OFPANA said in its December, 1986, position paper Laboratory Testing and the Production and Marketing of Certified Organic Foods:

"Technically responsible and affordable analytical work, utilized in an appropriate context, may make valuable contributions to the successful development of the organic foods industry."

But drafters devoted much of their 30-page position paper to büllying caveats on testing. For example:

Within the context of our present food system, there is no absolutely "clean" food and there are no absolute guarantees of food safety or quality. Consumers should never be led to believe that such levels of purity can be guaranteed through organic production, the certification of growing methods, laboratory testing, or by some other means.

But that's exactly what may be happening. NutriClean, office in Oakland, CA, is a private third-party testing and certification system subscribed to by growers "for the purpose of making public marketing claims." It puts a "laboratory tested" OK on produce sold by a growing group of retailers across the nation. They include: Raley's supermarkets in northern California; Irvine Ranch Farmers Market and Ralph's in southern California; Fred Meyer, in the Pacific Northwest including Alaska; Farm Fresh in Virginia and North Carolina; and Head & Circus in Boston.

Certification by NutriClean indicates that chemists could find "no detectable residue" on produce at the levels tested for—that means parts per million (ppm) and in some cases parts per billion (ppb), but never in the parts per trillion range.

NutriClean's standards are more stringent than the Environmental Protection Agency's but those standards were

developed when technicians were capable of testing DDTs daily at ppm. And as the waler package in Davison No. 6 explained, parts per trillion (ppt) of poison can be toxic for many, if not all, people. Even EPA is starting to think in terms of ppt, ordering any firm producing a new drug or hormone for animals to also submit evidence that a test is available that can detect it in ppt.

So what NutriClean offers is a level of protection over and above untested commercial produce. But this private certification program may be profiting a false sense of security for those who misinterpret the "clean" in NutriClean claims. It does not certify that food is "organic" or that a chemical-free, pesticide-free organic growing protocol was used. And although the common aim of NutriClean and participating retailers is ultimately an abundance of no-chemical residue produce, current certification is for freedom (in ppm levels) from chemicals the EPA and/or NAS (National Academy of Sciences) has determined hazardous (potentially carcinogenic or mutagenic) at certain levels. It may also foster the impression that a little poison is not a dangerous thing.

As NutriClean's founder, Stanley Rhodes told a Western Growers Association meeting in 1987: "We don't think that you can grow food without pesticides."

The Oct. 17, 1987, *The Produce News* also quoted Rhodes as saying: "You can't sustain 30 years of agricultural development in this country by throwing out our pesticides."

Those are the words of an organic chemist who in 1969 received his Ph.D. from Purdue University as a student of agribusiness. Rhodes and the publicity he's promoted have publicized the fact that most of the nation's food is not tested at all at any level. That's a worthwhile message that needs broader exposure.

But the OFPANA position paper concluded:

Although there seem to be valuable specific uses for laboratory testing, it is felt that there are many serious constraints on its extensive general use (either in-house or in the marketplace). Among others, these include the technical complexities in accurately performing laboratory analyses (particularly in the area of toxic residue tests where false negatives present serious problems) as well as the economic burden its frequent use would place on small scale growers. There is also a distinct danger that the "market" could grab this new application of laboratory testing technology and take it further than ethically or scientifically justified.

How reliable is lab testing? We trust the technicians who conduct NutriClean's testing are better than those involved in medical testing. Tests of medical testers indicate they are wrong up to 40% of the time. Still, some level of testing is better than no testing at all. And it indicates that both the growers and retailers who subscribe to NutriClean's service recognize that safer foods are good for business.

According to Frank McMillin, Raley's VP of Advertising, his stores have contracted with NutriClean to begin taking

loading dock samples of six kinds of regular produce most likely to have been treated with chemicals EPA allowed prior to 1978, but for which more stringent controls have been set following NAS review of studies of their effects on lab animals. The tests ordered are for the more common and abundantly used produce — lettuce, tomatoes, carrots, peaches and grapes, for example. Although a variety like bitter melon is commonly treated with some of these "older" chemicals, it is not eaten in such quantities as to warrant loading dock testing.

The dock testing program is separate from NutriClean certification testing done in the fields, which is backed up by production disclosure forms on which growers state the date, type, rate and method of chemical applications, and variables such as drift from known applications nearby. Post-harvest and distribution disclosure forms are also part of certification when applicable. Filled out by distributors or sales agents, they ask for grades, storage times and methods including temperature and humidity, and "treatment" (e.g., wax, fungicide).

Where's the beef?

Environ hopes NutriClean soon will begin testing meat for retailers. Mark Barnhill, who covers the sick meat beat for the *Los Angeles Daily News*, went to the 11th annual National Food Policy Conference in Washington, D.C., in March. He said the food supply continues to be "threatened by new strains of resistant bacteria, an outmoded regulatory system and public health officials slow to react to the problem of food-borne disease which kills thousands and probably sickens millions in the U.S. each year.

At the top of the problem list are pork, beef and poultry. Still the U.S. Department of Agriculture shugs off its 2-decade-old Congressional mandate to stop the sale of unwholesome food by refusing to test for bacteria such as salmonella, campylobacter and listeria, all common in animal feces.

Barnhill said Douglas L. Archer, director of microbiology for the Food and Drug Administration's Center for Food Safety and Applied Nutrition, not only thought microbiological testing would be too expensive but also favored a head-in-the-sand approach to the sick meat problem. Archer told the conference:

"The public simply doesn't want to hear or deal with the fact that if you contract a salmonella infection, you have a 1-in-1,000 chance of dying (or a 1-in-50 chance of contracting arthritis). A pregnant woman does not want to hear she has a chance of losing her child if she contracts listeriosis."

In other words, ignorance is bliss. Congress is considering legislation forcing USDA to start microbiological testing. But past experience indicates USDA in the hands of toxic agribusiness — is not capable of handling such a program.

So it's time for NutriClean to get into the act.

Nutritional Values

NutriClean already is running nutrient tests for its retail clients to determine if produce meets U.S. Department of Agriculture standards for certain vitamins and minerals. Nutritional testing and marketing: boosting nutrition-based acceptability has its own "strings of safety." For several reasons: 1) Nutritional standards are subject to inflation, e.g., crude protein measured don't correlate with usable protein; 2) European research underscores balance rather than quantity for assessing nutrient quality; 3) when a limited number of nutrients are tested, high scores of those tested could be interpreted to mean untested nutrients are correspondingly high; and 4) nutrient values can change dramatically between the farm where testing is done and the consumer, depending on handling, refrigeration, the time elapsed since harvest, so that only testing at the retail level on shelf produce that's undergone normal turnaround time is valid.

On nutritional tests, OFPANA concludes:

While there are studies indicating that some nutritional benefits may derive from treatment of plants growing methods (versus conventional methods), adequate research has not yet been done to prove this, and such market claims are ill-advised at this time. Furthermore, the use in the marketplace of individual nutrient test results (even if no generalized claims are made regarding growing method superiority) is problematic and of questionable validity. Therefore, nutrient testing is seen as best relegated to the realm of research for the present.

Drafters of the OFPANA report included chemists, agronomists and nutritionists as well as organic farmers which adds to its credibility.

Locating "clean" food

So if you're interested in cleaner food, look first to food certified by such organizations as California Certified Organic Farmers (CCOF), Organic Crop Improvement Association (OCIA), and TUFU. But certainly a good second choice would be produce — and perhaps in the near future, meat — certified by NutriClean's chemists.

And let's hope Rhodes will get together with OFPANA experts to discuss peer review of NutriClean's program. This may be difficult since NutriClean tests and raises roots from commercial as well as organic growers. But the situation's still such a review. Private, like USDA, certification raises serious problems of believability. Evaluation by outsiders might help.

— Zia and Ed Raskerger

TELECOPY COVER SHEET

TO: House Resources Committee PHONE: _____

FROM: LID Matosa PHONE: _____

INSTRUCTIONS: teletcopy for (cancelled) 4-26
committee meeting on SB 209

RECEIVED DATE: _____ TIME: _____

SENT DATE: 4-26-89 TIME: _____

BY: (YOUR OFFICE AND PHONE NO.)

DISPOSAL OF ORIGINAL: 1 page THROW AWAY _____ HOLD FOR PICKUP _____
cremer

FRESH PRODUCE

Health Consciousness and Buyer Beware Marketing

With the advent of our deteriorating environment and the fear that chemical pollution is entering our food chain, mothers, in concern for the health and welfare of their children, are questioning the produce on the market shelves.

Fresh organically healthy produce is recognized as essential for the immune growth of our children and ourselves. To meet this fast growing demand natural health food stores and organic growers are proliferating the food arena. The term "organic" has become a household word, with very few agreeing on the meaning of the term. To help answer this question of terminology SB 209 is working its way through the legislative process. Altho this bill is well intended, it may become discriminatorily restrictive and do more harm than good to the fledgling organic growing business.

To alleviate this concern a companion bill is being proposed. This bill would be known as the "Fresh Produce buyers beware bill". This bill would require, under the penalty of perjury, that the marketer, ^{not} furnish enough information so the consumer can make a rational decision, whether they be wholesale or retail, to display a full disclosure in plain view by all produce, of all pertinent factors pertaining to the health and welfare of the consumer. This would include but ^{not} be limited to, the name and location of the grower and processor if applicable, date of harvest, fertilizer and pesticides used, treatments and their composition used in treating after harvest up till the time of sale to the consumer. The seller would also have to list recommendations for care prior to consumption. ie: Peel before eating, wash with 3% peroxide solution before eating, etc. Any produce not carrying this information would be required to display a visible sign reading "this produce may be detrimental to your health"

Proponents of this measure:

Name	Address	Phone
Fred Panfili	HC 30 Box 12016V WASILLA, 99687	367-7476

enough information so the consumer can make a rational decision.

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 21, 1989

FURTHER REFERRALS: RESOURCES

Date of Committee Action: 4/13/89

The HESS Committee considered:

CSSB 209(Res)am

[SALE OF ORGANIC FOOD]

CS FOR SENATE BILL NO. 209 (Resources) am

"An Act relating to the sale of organic foods."

RECOMMENDATIONS:

- be replaced with _____ the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S): _____ APPROVES PREVIOUS: _____ (Date/Dept)
(Dept)

- fiscal impact _____ fiscal note(s) _____
- zero fiscal note _____ zero fiscal note(s) _____
- zero with analysis _____ zero fn/analysis DEC, DNR 3-15-89

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

	Do Not Pass	No Rec	Amend
<i>Max Kuenen</i>			←
<i>Cheri Davis</i>		✓	
<i>Ann Boyon</i>		✓	
<i>J. Ellis</i>		✓	

J. Ellis
Chairman's Signature

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ELLIS

NAME: SANDRA BALLARD

TITLE:

ADDRESS: 7310 WOBURN CIRCLE #D

CITY: ANCHORAGE

ZIP: 99502

PHONE: 243-8753

BILL NO:

SUBJECT: DAY CARE ASSISTANCE PROGRAM

MESSAGE: THIS PROGRAM IS ESSENTIAL TO SINGLE PARENTS WHO ARE WORKING HARD TO SUPPORT THEIR FAMILIES AND HAVING TO PAY \$400.00 PER MONTH CHILD CARE, RENT AND CHILD CARE CAN EASILY CONSUME THE ENTIRE PAYCHECK. PLEASE HELP THOSE WHO ARE TRYING TO HELP THEMSELVES AND SAVE THIS PROGRAM.

POHID: 03142031

DATE: 04/13/89

TIME: 14:20:31

LIONAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

BARNES	BOUCHER	ADAMS
BOYER	BROWN	BINKLEY
CATO	COLLINS	COGHILL
COTTEN	DAVIDSON	DUNCAN
DAVIS, C.	DAVIS, M.	ELIASON
DONLEY	FINKELSTEIN	FAHRENKAMP
FOSTER	FURNACE	FAIKS
GOLL	GRUENBERG	FISCHER
GRUSSENDORF	HANLEY	FRANK
HOFFMAN	HUDSON	HALFORD
JACKO	KOPONEN	JONES
LARSON	LEMAN	KELLY
MACLEAN	MARTIN	KERTTULA
MENARD	MILLER	PEARCE
NAVARRÉ	PETTYJOHN	POURCHOT
PHILLIPS	RIEGER	RODEY
SHARP	SHULTZ	STURGULEWSKI
SHACKHAMMER	TAYLOR	SZYMANSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ELLIS

NAME: DAHA OLSON

TITLE:

ADDRESS: HC30 BOX 5438

CITY: WASILLA

PHONE: 373-4612

ZIP: 99687

BILL NO: SB 209

SUBJECT: SALE OF ORGANIC FOOD

MESSAGE: WOULD YOU PLEASE HAVE YOUR COMMITTEE AIDE PASS ON TO THE RESOURCES COMMITTEE ALL THE INFORMATION I SENT TO YOU ON THIS BILL? I WOULD LIKE TO HAVE THE INFORMATION THAT WAS FAXED DIRECTLY TO YOUR OFFICE FROM TOM HARDING OF THE ORGANIC CROP IMPROVEMENT ASSN ON CERTIFICATION OF ORGANIC FOODS. THANK YOU AND YOUR STAFF FOR YOUR COOPERATION IN THIS MATTER.

POHID: 14142214

DATE: 04/13/89

TIME: 14:22:14

LIONAME: MAT-SU LIO

JAN -

Please make sure this is in the referral file.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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

April 12, 1989

The Honorable Johnny Ellis
Chair, House HESS Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Ellis:

Subject: Committee Substitute for Senate Bill 209 (Resources) am, relating to the sale of organic foods.

Position: The Department of Natural Resources supports this bill but will be unable to develop and implement organic food product regulations and verification procedures until funding for staff and travel is provided.

Background: Under AS 03, the Department of Natural Resources is responsible for regulating the sale or use inside the state of plants, seeds, vegetables, shell eggs, fruits, and berries, to protect the public interest and prevent product fraud, deception or misrepresentation. Currently, Division of Agriculture staff inspect farm products in storage or in retail stores to determine whether products match labeling statements related to grade, kind, etc.. If a product violates our regulations, staff can direct the possessor concerning the appropriate disposition of the product.

This bill would allow (but not require) the department to develop regulations specific to organic foods. It would also allow us to inspect products labeled organic and enforce violations of our quality or labeling requirements. Unless additional funding for staff and travel is provided, however, the department would not be able to develop organic food regulations and would not be able to determine or enforce rule violations.

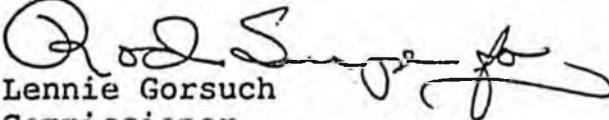
Representative Ellis

-2-

April 12, 1989

Recommendation: Authorize a fee schedule (and use of program receipts to fund necessary staff and travel) for inspection and verification work by state inspectors.

Sincerely,


Lennie Gorsuch
Commissioner

cc:Bill Sponsors
Committee Members
Dennis Kelso, Commissioner
Department of Environmental Conservation
.. Bob Evans, Legislative Liaison
Office of the Governor
... Frank Mielke, Director
Division of Agriculture

FISCAL NOTE

REQUEST:

Revision Date: 4/12/89
 Title: Organic Food
 Sponsor: Senator Kerttula
 Requestor: House HESS

Agency Affected: Natural Resources
 BRU: Agricultural Management
 Components: Marketing Services and Inspection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIM						
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-
----------------	-----	-----	-----	-----	-----	-----

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 this bill does not require the department to develop or implement regulations, inspections, verification or enforcement related to organic food sales, no funding is required. However, when development and implementation of regulations is desired, funding for staff and travel will be necessary

Prepared by: Carol Wilson Phone: 465-2400
 Division: Commissioner's Office Date: 4/12/89

Approved by Commissioner: [Signature] Date: 4/12/89
 Agency: Natural Resources

Distribution (by preparer):

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

FISCAL NOTE ANALYSIS -- SB 209

This bill does not obligate any agency to perform new or additional services. The fiscal impact to be calculated pursuant to AS 24.08.035 is therefore "0".

The bill does give DEC and DNR discretion to adopt regulations they may believe desirable relating to identity of chemicals prohibited in organic farming; also to require reasonable records to be maintained by sellers of organic products. Because of the infancy of the organic food industry in this state, however, it would be premature to conclude that state regulatory intervention in this area is needed or desirable. It is more likely that once statutory standards are in effect, local industry will for the most part regulate itself, as it does in other states.

It should be noted that should an authorized agency elect to pursue an investigation of any alleged misrepresentation relating to organic food, both DEC and DNR have existing inspection staff who deal regularly with meat and vegetable produce. Some investigatory work could therefore be undertaken without additional appropriation.

Nonetheless, recent experience with similar legislation in the state of Washington-- where there is a large agriculture industry and significant trade in organic produce-- indicates that enforcement effort is rarely required. Thus, even in the event that commercial traffic in organic food increased substantially in Alaska, it is unlikely that there would be any need to fund an increased regulatory presence in the marketplace.

A Guide to the Grocery

Keep eating fruits and vegetables, but be careful—and wash your hands!

BY SHARON BEGLEY AND MARY HAGER

It isn't poisoned Chilean grapes or tainted Arkansas chickens, then it's dioxin in milk or chemicals on apples. Eating is beginning to seem like a hazardous enterprise, and there are indeed real risks out there. The trip to the pantry has become a cost-benefit game. Here's how to play.

Don't believe all the scare stories. Look for evidence, look for numbers—actual illnesses, quantified cancer risks—and beware of terms like "trivial" what may be a small risk to industry is unacceptable to a mother. Then, *understand* the numbers. The average American has a one in four chance of getting cancer. A new prediction of 6,000 excess cancers in today's preschoolers seems like a horrible toll, but for each kid, it's equivalent to an increase in risk from 25 to 25.925 percent. Consider the benefits: Skim milk that may have tiny traces of dioxin also provides protein, calcium and vitamin D. The biggest food risk—microbial contamination—kills thousands each year but can be avoided with better cleanliness. Another high risk is poor diet, such as one high in fat or salt. Here is NEWSWEEK's guide to the grocery



Fruits and Vegetables

Farmers apply hundreds of chemicals every year to control weeds, fungi or insects on produce. What's deadly to a corn borer may not be exactly healthy for people. The Environmental Protection Agency says pesticide residues pose the third highest threat of environmentally induced cancer, behind cigarettes and radon. Many pesticides were approved for use decades before researchers had good tests of their toxicity, and many still remain on the market.

The recent controversial report by the environmental group Natural Resources Defense Council, NEWSWEEK Jan. 30, concludes that some 3 million kids are exposed to neu-

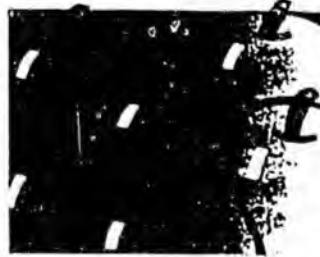
rototoxic pesticides above what the EPA considers an "acceptable" level. And because children eat relatively more fruits and vegetables than adults, they receive several times the exposure to carcinogenic pesticides than their parents. As a result, says the NRDC, 5,500 to 6,200 of today's preschoolers may get cancer eventually because of childhood exposure to just eight pesticides. A 1987 study by the National Research Council showed how dangerous food is allowed to be. The NRC examined cancer risk from about 20 out of 60 pesticides known to be carcinogenic. It found that if all produce had the maximum allowable residue of every pesticide approved for use on it—more than 110 on apples, 70 on bell peppers, 100 on tomatoes—Americans would face a cancer risk of three in 1,000 over a 70-year lifetime.

The good news is that real life is not this bad. In 1988 the FDA found no residue at all in 77 percent of 14,492 food samples; less than 1 percent had illegally high residues. And instead of using every permitted pesticide every year, farmers use only those necessary for

that season's pests—six to 20 on apples, for instance, not the whole 110.

Fruits and vegetables also contain *natural* poisons, some of which may cause cancer. Biochemist Bruce Ames of the University of California, Berkeley, estimates that people ingest 10,000 times as much "natural pesticides" as man-made ones. The EPA can't do anything about nature. But it is re-evaluating all 300 agricultural pesticides with an eye toward lowering the allowable residues or banning some chemicals entirely.

While that goes on, remember that fruits and vegetables such as broccoli and carrots provide nutrients that have been linked to *reduced* risks of cancer. The National Research Council recommends that Americans eat five or more servings of produce a day, especially citrus fruits and green and yellow vegetables. To lessen your risk from any lingering pesticides, wash all produce with soap and water. If you can't bear the sight of a stinky cabbage leaf, cook your vegetables: the heat will eliminate some residues. For a good primer on residues try the Sierra Club book "Pesticide Alert."



Apples

To many confused consumers, apples now look like the poisoned fruit of the Snow White tale. Since 1965 some red varieties have been sprayed with the suspect chemical daminozide, made by Uniroyal Chemical Co. under the trade name

Alar. This growth regulator keeps apples from dropping off trees before they ripen, improves color and firmness and extends shelf life. But the chemical penetrates the pulp and cannot be washed, cooked or peeled off. In 1986, bowing to consumer pressure, processors and stores pledged not to accept Alar-treated apples.

Some seem to have reneged. Next week Consumers Union will announce whether most traces bought this year contain traces of Alar, as did 1988 samples. CU already reported levels in some brands of juice bought in 1988 as high as 53 parts per million—high enough to pose a risk of cancer much greater than the one in a million which prompts EPA action. There are wide regional disparities in Alar levels in eating apples. New York officials said last week that as much as 20 percent of their 1988 crop was sprayed with Alar. The EPA's estimate that only 5 percent of the domestic crop is sprayed may be way too low.

The real culprit, however, is not Alar but its breakdown product, called UDMH. This chemical cousin of rocket fuel forms when Alar is heated, as during processing into sauce or juice. Also, traces of it can be found in the Alar itself which is sprayed in the orchard. Uniroyal's latest data on daminozide show that it is probably not carcinogenic. The still preliminary UDMH data are more worrisome: the EPA calculates that UDMH in apple products, consumed in amounts that may underestimate actual eating patterns, poses a cancer risk of 45 in a million over a lifetime. The EPA says it intends to ban Alar within 18 months. For a baby who drinks one ounce of apple juice a day, the risk of getting cancer because of the juice drunk over that waiting period is nine in a million. A toddler drinking

eight ounces a day would have a risk of about 20 in a million. Unroyal insists that, when completed, its tests will exonerate UDMH.

To avoid the risks of Alar and UDMH, grow your own apples. Or eat those from California, where the chemical isn't used. Or stick to green varieties like Granny Smith, that aren't treated with Alar. Drink juice brands that get a clean bill of health in independent (not manufacturer) tests.



Chicken and Eggs

Here the latest risk comes from salmonella, ubiquitous bacteria that can cause nausea, diarrhea and fever. Symptoms can last one day or several. There are more than 40,000 cases—and 500 deaths—of salmonella poisoning reported in the United States every year, says the federal Centers for Disease Control. Many more poisonings go unreported; the actual incidence may be 4 million. Not all come from eggs or poultry. But last April, CDC researchers reported on 65 salmonella outbreaks in the Northeast that caused 2,119 illnesses. Of those that could be traced to a specific food, 77 percent were apparently caused by uncracked eggs. The eggs seemed to have been contaminated by salmonella in the hen. Approximately one third of the chickens in the nation's supermarkets contain salmonella.

Salmonella poisoning is easy to avoid. Wash raw poultry and everything it touches—utensils, cutting board, counter top. Cook the bird thoroughly. Don't eat raw eggs—no homemade mayonnaise, eggnog or ice cream, and no cake batter. Boil eggs at least seven minutes—swear off soft-boiled. Poach eggs for five minutes or fry for three minutes a side.



Beef, Poultry and Pork

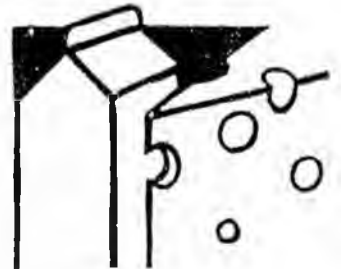
One concern is hormones, an issue raised when the European Economic Community recently banned American beef containing hormones. Cattle-men give steers the natural sex hormones estradiol, testosterone and progesterone—through ear implants—to make the animal put on lean muscle with less feed; they also sometimes use two synthetics. (A third, DES, has been linked to cancer and was banned in 1979; illegal use was detected in 1980 and 1983.) Pork and poultry producers do not use hormones. Three ounces of beef

from an untreated animal contain about 1.3 nanograms (billionths of a gram) of the animal's own natural estrogen; meat from a treated animal has 1.9 nanograms. By comparison, an average man produces 380,000 nanograms of estrogen a day; a serving of cole slaw has 2,500 nanograms (the hormone is in cabbage). Hormone residues do seem harmless.

Antibiotics in livestock feed pose a different problem. Pork producers feed their animals low doses of penicillin, tetracycline and other human antibiotics; cattlemen use tetracycline. (Poultry producers usually feed animals only antibiotics that aren't prescribed for humans.) The concern is that people may become infected with microbes that won't respond to antibiotics. This might happen because the drugs can make the animals' resident microbes resistant to antibiotics. If the meat is then contaminated with resistant bugs, they could infect people handling it. In February, the Institute of Medicine, part

of the National Academy of Sciences, reported that it was "unable to find data directly implicating" low doses of the drugs in human disease. But it estimated that 10 of the 500 salmonella deaths in the United States annually might be traced to resistant strains produced by antibiotics in animal feed.

To guard against resistant microbes, after handling raw meat wash your hands and all utensils and surfaces thoroughly with hot water and soap.



Milk

Last summer a Canadian government scientist showed that dioxin in cardboard cartons can migrate into the milk they contain. John Ryan measured .04 parts per trillion (ppt) of the form of dioxin known as TCDD. It apparently enters paper products during a leaching process that uses chlorine.

The only documented effect of dioxin in people is a skin disease called chloracne, which afflicted victims of an industrial accident. But TCDD is, according to animal tests, the most powerful carcinogen ever evaluated. The EPA concluded that even 1 ppt of TCDD poses an "unacceptable" cancer risk; TCDD has also been linked to birth defects and immune-system disorders in test animals. The FDA estimates that children drinking all their milk from contaminated cartons may be doubling their daily dioxin intake, and it is now trying to verify Ryan's work. If the Canadian scientist is correct, drinking milk in dioxin-laced cartons may pose a lifetime cancer risk of one in 10,000.

The American Paper Institute is studying the potential problem of dioxin in paper products; it may be possible to line

Anxiety in the Market

Americans still believe their food is safe, but there are more worries and calls for remedial action.

Fears About Food

- 38% Are more worried that the food they eat may be contaminated by pesticides or other toxic chemicals
- 6% Less worried
- 53% About the same

Buying Habits

- Consumers who say they're worried or have cut purchases:
- 44% Apples
 - 41% Vegetables
 - 23% Eggs and poultry
 - 25% Fish
 - 9% Milk
 - 11% Corn

Confidence in the U.S. Government

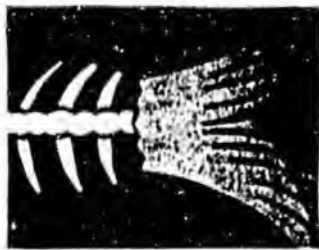
- 52% Feel the government ensures food produced in the United States is safe
- 44% Feel food imported from foreign countries is safe

Pesticides

- 73% Think we should use fewer pesticides and chemicals to ensure safer food even if it means higher prices
- 45% Often or occasionally buy organic foods
- 47% Never or hardly ever buy organic foods

For this Newsweek Poll, The Gallup Organization interviewed a national sample of 750 adults by telephone March 16-17. The margin of error is plus or minus 1.6 percentage points. Some "Don't know" and other responses omitted. The Newsweek Poll, ©1989, Newsweek Inc.

the cartons with foil to prevent dioxin from leaching into the beverage. In the meantime, to play it safe, buy fresh milk only in glass or plastic.



Fish

Lake fish pose more of a threat than ocean fish. Some species from the Great Lakes, such as coho salmon, chinook salmon, contain PCBs as well as the pesticides DDT, chlordane, aldrin, dieldrin, toxaphene and more than 100 other compounds found in industrial wastes. Although many chemicals have been banned, they remain in lake sediments and in the food chain, including fish. The compounds have been linked to cancers, neurotoxicity and other ills. The Great Lakes states issue annual advisories warning consumers not to eat certain species, or to eat at less of them, if a certain percentage of the fish have contamination levels above the FDA's "action level."

Contamination varies widely, both from year to year and from lake to lake. In 1986 DDT levels for salmon and lake trout in Lake Michigan ranged from

1 ppm to 1.5 ppm (the action level is 5 ppm). Dieldrin contamination varied from .01 to 0.2 ppm (the action level is 0.3 ppm). Overall, the risk of cancer from eating 50 meals a year of Lake Michigan fish is one in 1,000 over a lifetime, says J. Milton Clark of the EPA's regional office in Chicago; eating only one meal a year poses a risk of one in 50,000. But according to a new study in the American Journal of Public Health the danger may be greater: eating 150 meals a year, as a sports fisherman might, poses a one in 100 cancer risk from dieldrin and three in 1,000 from DDT if the fish contain the action levels of these poisons. Even contamination well below the ac-

tion levels can raise cancer risk by six in 10,000 for DDT and four in 1,000 for dieldrin, say the researchers.

Exotic chemicals are not the only threat in fish. Fish from both fresh water and from the sea can contain microbes, including those from sewage, and on average they pose a tenfold higher risk of bacterial and viral infection than beef and five to ten times higher than chicken.

Inspection, like contamination, varies. Individual states—not the federal government—monitor local markets. Some states do a good job, some don't. Short of running your trout through a gas chromatograph, all you can do is sharply limit consumption of freshwater fish, especially fatty varieties like lake trout that concentrate the contaminants the most. Lean ocean fish, like red snapper and flounder, are a safer bet. The best precaution is a question: where did this fish come from? Avoid those from polluted waters like some Great Lakes and the New York coast. Cook it thoroughly to kill microbes. Nothing gets rid of the toxics. Sushi is riskier than cooked fish, but no one knows how much riskier. Decide for yourself whether you can live without a yellowtail hand roll.



Canned food

Lead from soldered can seams gets into the food through leaching or splattering during manufacture. Some 20 to 30 percent of cans are lead-soldered. Acidic foods such as tomato products, fruit juice and anything packed in citric acid are the worst offenders. Because neuroscientists have found that lead damages children's brains at even trace levels, they recommend that kids get no avoidable lead from food. Says neurochemist Ellen Siihergeld of the Environmental

Defense Fund, "Lead and lead exposure is the most serious environmental health problem, far outweighing carcinogens." Recent surveys indicate that 60 percent of young children have blood lead levels that may impair their neurological development.

To minimize your child's risk, buy products in seamless or welded cans. A welded can has a black-striped, flat seam. Lead-soldered cans have crimped seams, and an irregular line of silver-gray metal along the joint.



Corn and Peanuts

The *Aspergillus flavus* mold can infest wheat, corn, millet, other grains and peanuts; it secretes a highly toxic compound called aflatoxin. For years aflatoxin has plagued peanuts in the Southeast; last year's hot, dry summer created an ideal environment for the fungus in Midwestern grain. Animal studies show aflatoxin to be the second most potent carcinogen ever tested (surpassed only by TCDD). It causes liver cancer in rodents, but its impact on people remains unclear. Five epidemiological studies carried out in the Third World showed a clear link between intake of aflatoxin and cancer, says Ronald Shank of the University of California at Irvine. In these countries, however, aflatoxin intake was five to 500 times higher than in the United States. "This is a genuine carcinogen, but you're going to have to really pig out on corn or peanuts to face a serious risk," says microbiologist Lloyd Witter of the University of Illinois.

The FDA allows 0.5 parts per billion (ppb) aflatoxin in milk and 20 ppb in other foods. The 20 ppb was chosen because it can generally be met by industry, not because it is "safe."

charge some consumer groups. Actual levels in peanut butter vary from year to year, but lately have been holding below 1 ppb. Berkeley's Bruce Ames estimates that if the average aflatoxin level in peanut butter is 2 ppb, a sandwich is 100 times more carcinogenic than all the DDT in our diet. Sweet corn, which is eaten canned, fresh or frozen, shows no aflatoxin. Field corn, fed to livestock or processed into such foods as breakfast cereal and flour, has some aflatoxin. FDA tests of chips, popcorn, tortillas and cereal found every sample to be under the 20 ppb limit—but again, that figure may not be meaningful for health. Corn flour and meal exceeded that level in 2 percent of the cases, and was not allowed to be sold.

For safety, cook grits, flour or meal to substantially reduce aflatoxin levels. Cornflakes are probably OK, since processing cuts aflatoxin. Don't subsist on peanut butter; even though the crop has been getting cleaner, the risk is not negligible.

The odd thing is, food should be the least of our worries: radon from the soil poses a cancer risk of 1 in 1,000, smoking a pack a day increases a woman's chance of dying of lung cancer fourteenfold. A blood cholesterol level of 300 increases the risk of heart attack fourfold compared to a level of 200. But risk has its own psychology. Smoking is voluntary; radon is natural and ranting at nature doesn't do much good. Says Peter Sandman of Rutgers University, "The risks that kill you are not necessarily the risks that anger and frighten you. Risk is the sum of hazard and outrage." Since food is supposed to be safe, if it poses any risk at all, people are outraged. If their outrage and fear make consumers shun produce in favor of, say, fatty, salty snacks, attempts to raise public consciousness on food safety will have backfired. But if the outrage translates into political action—stricter and faster controls on dangerous pesticides, for instance—then the panic may have been worth it.



Page 12, The Frontiersman - Friday, April 7, 1989

Lawmakers try to define what makes food 'organic'

The Associated Press
TACOMA, Wash. — With consumers becoming increasingly concerned about chemicals used in growing most of America's fruits and vegetables, more people are turning to organically grown produce.

However, there are few assurances that produce advertised as "organic" really is organic.

Alaska is now considering legislation proposed by state Sen. Jay Keruula, D-Palmer, which would set standards for what is "organic" produce in Alaska.

Only a handful of states have any legislation concerning organic farming, and Washington is one of them, said Wendy Wendlandt, executive director of the Washington Public Interest Research Group.

Even then, only the producer is regulated.

"Now, we just inspect the farms (of participating organic growers," said Tom Sweeney, research analyst for Democrats in the Washington state House of Representatives. "But we don't know what the wholesaler does ... There should be some sort of

certification for wholesalers."

There are about 300 organic farmers in Washington state. Also, food processors have expressed an interest in participating, said Sweeney.

"We're better than most states. (But) from the consumers' point of view, there's a need for standardization," Ms. Wendlandt said. "Less than two-tenths of 1 percent of produce that come in our borders are tested."

State laws passed in 1984 and 1987 set standards for organic produce and allowed farmers to be certified as organic producers after meeting certain requirements.

Under the state's Organic Labeling Act of 1984, produce can be called organic only if it has been farmed with non-synthetic fertilizers and no chemical pesticides or herbicides.

Farmers are required to keep records of their growing procedures to support their claim that their crops are "organic."

Optional certification was implemented in 1987 as part of the Agriculture Omnibus Bill in which organic farmers apply for

certification as organic producers.

Their farms are visited and tested twice by a Department of Agriculture inspector to determine that they haven't used synthetics in their farms for at least two years.

But the certification program is drawing fire from some officials.

Verne Hedlund, chief of the food inspection section of the state Department of Agriculture, said the problem is that the certification program does not have adequate financial support.

The program is supported solely by fees paid by participating organic growers, Hedlund said.

Rep. Ken Jacobson this year sponsored a bill allowing additional funding sources for the program other than just participation fees to improve its effectiveness, Sweeney said.

The bill, HB1554, is awaiting hearing before the Washington state Senate Agriculture Committee and needs \$150,000 from the general fund to support the certification program, Sweeney said.

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Mail Order Foods

Who sells organic apples?

BY ANN NUGENT



IF YOU'RE HAVING TROUBLE finding organically grown apples, cheese, bread, chicken, jam, or orange juice, or if getting to the markets that sell organic food is too inconvenient for you, try ordering organic food by mail. Over a dozen mail-order food companies offer organically grown food. (You can write Americans For Safe Foods for a complete list: 1501 16th Street NW, Washington, DC 20036; 202/332-9110.)

These mail-order companies vary widely, however. A few are distributors and sell only wholesale. Some carry nearly a complete line of organic food, while others specialize only in one item — like dried herbs. Only two carry meat and poultry, and only one carries a large variety of fresh produce. A few carry breads, muffins, cakes and pies. And some are more expensive than others. One company just began to stock organic cheese, yogurt, and jam with organic fruit sweeteners. Several carry food that's "certified organic," and they're especially careful in defining "organic," while other companies don't bother to define the term at all.

The following selected, mail-order, natural-food companies are the ones that feature organic food. They all carry such stock items as beans and grains, and all accept small orders (though groups of people often buy in bulk to take advantage of the cheaper rates). Some outlets have large inventories; the smaller ones often feature specialty items. The ones that carry only "certified organic" foods are listed first.

USEFUL TERMS

Certified organic

Standards vary in different states. In some cases the state legislature has determined the standards; in other cases, private organizations have drawn them up. Generally the term means that crops are grown without synthetic pesticides, herbicides or fertilizers on soil that has been free of chemical pollutants for one to three years. Moreover, only certain natural materials may be applied to the soil, like composted or well-rotted manure (raw manure is forbidden).

Organic

A doubtful term. Some states,



like Washington, forbid anyone using this term unless the food or farm is certified.

Ask, though; it may mean any of the terms used below.

Chemical-free, or grown without pesticides, herbicides, or chemical fertilizers

These terms most likely mean that the farm grows its crops in soil that hasn't been free of chemical residues long enough to be certified organic. Farms that grow crops under these conditions are usually in the transition stage before they can qualify as certified organic.

Pesticide-free

Crops grown without the use

of pesticides, though other chemicals may be used.

Spray-free

An ambiguous term. It might mean the farmer isn't using pesticide sprays on the produce, but may use pesticides in the fields, say, during the winter.

IPM (Integrated Pest Management)

Foods marked with this label indicate that the farmer works within the biological environment; rather than indiscriminately eradicating pests, he monitors them, curbing them only if they get out of hand. He encourages natural predators and rotates his crops as a way of keeping pests

under control. He applies pesticides sparingly and only when and where they will do the least damage.

AS ONE distributor put it: foods bought under these labels are usually all right as long as the labels are clearly defined and mean what they say. Any of these methods of raising crops is better than foods raised without any pesticide restrictions whatsoever. Farmers who are in the transition stage as they switch over to organic farming — a process that takes years — should be encouraged. —Ann Nugent



Alaska State Legislature

Please enter into the record my testimony to the HOUSE N.E.S.S
committee name

committee on _____, dated 4-13-89
bill/subject

SB 209 is modeled after the State of Washington Bill. See Comments About Certification Program Washington has. We need a Voluntary Certification Program in Alaska.

Signed: _____
Testifier

Representing (Optional)

Address

Phone No.

S B

213

HOUSE COMMITTEE REPORT

(9)

Date Referred: April 28, 1990

FURTHER REFERRALS:

Date of Committee Action: 5/5/90

The RESOURCES Committee considered:

CSSB 213 (RESOURCES)

CS SB NO. 213 (Res)

COMMERCIAL DEVELOPMENT LEASING/STATE LAND

"An Act relating to the leasing of state land for recreational facilities development."

RECOMMENDATIONS:

be replaced with HCS CS SB 213 (Resources) the same title
 a new title

have attached amendment(s)

do pass

do not pass

no recommendation

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

zero with analysis _____

zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass
No Rec
Amend

Cliff Davidson
Scott Williams
Mike Savana

	Do Not Pass	No Rec	Amend
<u>Cliff Davidson</u>			
<u>Scott Williams</u>		X	
<u>Mike Savana</u>		/	

Cliff Davidson

Chairman's Signature

Original sponsor(s): SEN. KERTTULA

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 213 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL.

6 For an Act entitled: "An Act relating to the leasing of state land for
7 recreational facilities development."

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

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

10 Sec. 38.05.073. RECREATIONAL FACILITIES DEVELOPMENT LEASING.

11 (a) To identify land suitable for recreational facilities development
12 leasing, the commissioner shall make the identification through a
13 regional land use plan or a site-specific land use plan adopted under
14 AS 38.04.065. The identification of land for leasing under this
15 section shall be consistent with any existing regional recreational
16 management plan. The commissioner may request proposals from poten-
17 tial lessees under this section if consistent with an adopted land use
18 plan that expressly allows the specific type of development under
19 consideration. Consistent with AS 38.04.065, the development of a
20 land use plan used to identify land suitable for recreational facil-
21 ities development leasing must consider the supply of recreational
22 opportunities and alternatives, economic and social factors, and fish,
23 wildlife, and other resources affected by the specific type and loca-
24 tion of recreational facilities development under consideration.

25 (b) AS 38.05.070(a), 38.05.055(c), 38.05.090, and 38.05.103
26 apply to leasing under this section. The other provisions of AS 38.-
27 05.070 - 38.05.105 do not apply to leasing under this section.

28 (c) If the commissioner identifies land for recreational facili-
29 ties development leasing under (a) of this section, at least 30 days

1 before the commissioner decides to solicit proposals from potential
2 lessees, the commissioner shall provide public notice of the location
3 and the specific type of recreational facilities development being
4 considered and request comments. The notice shall be provided to (1)
5 a municipality if the land is entirely or partially within the bound-
6 aries of the municipality; (2) a regional corporation organized under
7 43 U.S.C. 1601 - 1629e (Alaska Native Claims Settlement Act) if the
8 boundaries of the corporation established by 43 U.S.C. 1606(a) encom-
9 pass part or all of the land and the land encompassed by the corpo-
10 ration's boundaries is entirely or partially outside the municipality;
11 (3) a village corporation organized under 43 U.S.C. 1601 if all or
12 part of the land is within 40 miles of the village for which the
13 corporation was established and the land is located entirely or par-
14 tially outside a municipality; (4) other persons affected by the
15 specific recreational facility development; and (5) persons who have
16 specifically requested to be notified. Public notice identifying the
17 location and the specific type of recreational facilities development
18 under consideration must also be published at least twice in a news-
19 paper of general circulation in the state and in a local newspaper in
20 general circulation in the region where the land is located. The
21 comments received under this subsection become part of the public
22 record for the consideration of the commissioner.

23 (d) If the commissioner decides to solicit proposals, the com-
24 missioner shall prepare a written request for proposals that includes

25 (1) the specific type of recreational facilities develop-
26 ment for which the land may be leased;

27 (2) the form of compensation that the commissioner intends
28 to require for the lease under (1) of this subsection;

29 (3) the selection criteria that the commissioner will use

1 to determine the eligibility of a developer, including the developer's
2 financial backing and capability, experience in the proposed undertak-
3 ing, ability to meet bonding or insurance requirements, and ability to
4 comply with resource and environmental analysis requirements; and

5 (4) the criteria that the commissioner will use to deter-
6 mine the suitability of proposals.

7 (e) After preparing a request for proposals under (d) of this
8 section, the commissioner may issue the request to solicit proposals
9 from persons who are interested in leasing the land for recreational
10 facilities development. The request for proposals must be advertised
11 at least three times in a newspaper of general circulation in the
12 state and in a local newspaper in general circulation in the region
13 where the land is located. The proposals submitted to the commis-
14 sioner must include the specific facts on which the potential lessee
15 bases its ability to develop the land, including its ability to comply
16 with the items identified in (d)(1) - (4) of this section.

17 (f) After soliciting proposals under (e) of this section, if the
18 commissioner determines that only one potential lessee is acceptable,
19 the commissioner may begin negotiations with the potential lessee to
20 develop the terms and conditions for the lease.

21 (g) After soliciting proposals under (e) of this section, if the
22 commissioner determines that two or more potential lessees are accept-
23 able, the commissioner may select the potential lessee who submits the
24 highest bid during an auction or by sealed bids, whichever method the
25 commissioner chooses. The minimum bid must equal the amount estab-
26 lished by the commissioner plus the administrative fee established
27 under (k) of this section. The commissioner shall also require the
28 potential lessee to make an earnest money deposit under AS 38.05.-
29 860(b). After the commissioner selects a potential lessee, the

1 commissioner may begin negotiations with the potential lessee to
2 develop the terms and conditions for the lease.

3 (h) After developing proposed lease terms and conditions with a
4 potential lessee under (f), (g), or (j) of this section, the commis-
5 sioner may issue a preliminary decision under AS 38.05.035(e) that
6 leasing the land to the potential lessee on the proposed terms and
7 conditions serves the best interests of the state. During preparation
8 of the preliminary decision, the commissioner shall consult with
9 affected state agencies regarding issues within the agencies' areas of
10 responsibility and expertise. The commissioner shall give public
11 notice of the preliminary decision under AS 38.05.945 and request
12 comments from the public and state agencies. A public hearing shall
13 be held in the region where the land proposed for lease is located if
14 the commissioner determines there is sufficient local interest. The
15 preliminary decision must include

16 (1) a statement of the specific type of recreational facil-
17 ities development for which the land will be leased;

18 (2) an analysis of alternative sites;

19 (3) a statement of the terms and conditions to be required
20 in the proposed lease agreement;

21 (4) a statement of the compensation that the state may
22 require under the proposed lease agreement;

23 (5) a statement of the potential economic, social, and
24 environmental effects of the proposed development, including the
25 effect on water quality and the traditional and recreational uses of
26 the land;

27 (6) a statement of the long-term commitments of fish,
28 wildlife, and other natural resources that would be involved in the
29 proposed development;

1 (7) a statement of alternatives to the commitments identi-
2 fied under (6) of this subsection and alternatives or measures that
3 may reduce or eliminate the effects identified under (5) of this
4 subsection;

5 (8) an identification of any studies, including economic
6 feasibility studies, or plans to be required by the commissioner; and

7 (9) for a large project, a preliminary assessment of the
8 project's economic feasibility based on available information.

9 (i) After reviewing the comments received under (h) of this
10 section, the commissioner shall make a final determination whether the
11 proposed lease will serve the best interests of the state. If the
12 commissioner determines that the proposed lease will serve the best
13 interests of the state, the commissioner shall offer the lease to the
14 proposed lessee subject to the terms, conditions, and study require-
15 ments the commissioner determines to be necessary. If a study or plan
16 is required, the potential lessee may be required to provide and pay
17 for the study or plan. For a large project where the commissioner has
18 determined under (h) of this section that there may be significant
19 economic, social, or environmental effects or long-term commitments of
20 fish, wildlife, or other natural resources, the commissioner shall
21 require the potential lessee to prepare and submit a comprehensive
22 economic feasibility study to be completed no later than 18 months
23 after the execution of the lease. State agencies with pertinent
24 expertise or responsibilities shall be involved in the review of
25 required plans and studies. If the plan or study involves fish, game,
26 or customary and traditional use of natural resources, the Department
27 of Fish and Game shall review the methodology and scope of the plan or
28 study. If the Department of Fish and Game determines that the method-
29 ology and scope are appropriate for the plan or study, the methodology

1 and scope may be used for the plan or study.

2 (j) If a potential lessee who was selected under (g) of this
3 section declines the lease offer made under (i) of this section, the
4 commissioner may begin negotiations with the potential lessee who
5 provided the next highest bid under (g) of this section to develop
6 under (g) of this section the terms and conditions for a lease.

7 (k) The commissioner shall require the potential lessee awarded
8 the right to negotiate a lease under (f), (g), or (j) of this section
9 to pay a nonrefundable administrative fee of at least \$250.

10 (l) The commissioner shall reject all proposals or bids for a
11 lease when it is in the best interest of the state.

12 (m) The compensation to be paid to the state for a lease issued
13 under this section may include, in the discretion of the commissioner,

14 (1) a percentage of the annual gross receipts as reported
15 to the United States Internal Revenue Service;

16 (2) a guaranteed annual minimum rent or a percentage of
17 gross receipts, whichever is greater;

18 (3) the fair market rental value;

19 (4) a fixed annual rent that is not less than the fair
20 market rental value of the land;

21 (5) a fee for each user;

22 (6) other compensation acceptable to the commissioner; or

23 (7) a combination of the above.

24 (n) The annual compensation paid to the state for a recreational
25 facilities development lease shall be reevaluated and adjusted at
26 five-year intervals. The annual compensation for each five-year
27 period after the initial five years of the lease shall be calculated
28 by the same method used to establish the compensation for the initial
29 five-year period.

1 (o) Before a lease is issued under this section, the land to be
2 covered by the lease shall be surveyed. The survey must be adequate
3 to describe the land to be covered by the lease.

4 (p) Before entering into a lease under this section, the commis-
5 sioner shall require the lessee to post a performance bond or provide
6 other security acceptable to the commissioner to cover the costs to
7 the department of one or more of the following, as determined by the
8 commissioner:

9 (1) completing the development, including site planning,
10 under the terms and conditions of the lease;

11 (2) maintaining the development under the terms and con-
12 ditions of the lease;

13 (3) restoring the lease site if the lease is abandoned or
14 terminated.

15 (q) The term of the lease may not exceed 55 years. At the
16 expiration of the lease, the commissioner may offer the lessee a right
17 of first refusal on a new lease under this section for the same land
18 if the commissioner determines that leasing the land for an additional
19 term serves the best interests of the state.

20 (r) The lessee's violation of a provision of this section or of
21 a term or provision of a lease issued under this section subjects the
22 lessee to appropriate legal action and penalties, including a forfei-
23 ture of the lease.

24 (s) The commissioner of administration shall separately account
25 for all money collected under this section that the department de-
26 posits in the general fund. The annual estimated balance in the
27 account may be used by the legislature to make appropriations to the
28 department to carry out the purposes of this section.

29 (t) In this section, "recreational facilities development"

1 includes the development of lodges, resorts, and other tourism and
2 recreation-related facilities.
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February 22, 1990

Rep. Curt Menard, Co-Chair
House Resources Committee
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Re: Recreational Facilities Development Leasing (HB 290)

Dear Representative Menard:

We appreciate the opportunities your committee is providing for public testimony on proposed legislation regulating recreational facilities development leasing. We thought it might be useful to clarify and expand somewhat the oral testimony ACE offered at the February 1 hearing.

We very much support the goal of the committee and DNR to ensure that the state receives a reasonable financial return from the leasing for private benefit of its most valuable long-term public resource, its land. Historically, on both state and federal lands, within and outside of Alaska, compensation to the public landholder has generally at best been adequate to manage impacts generated by the project, that is, impacts that would not have occurred but for the project, providing no net benefits to the landholder's coffers.

Furthermore, we strongly support focusing our commercial facility development efforts on the state's unreserved multiple use lands, the lands managed by the Division of Land and Water Management. With a large unreserved state land base, we have no excuse for making the serious mistake made Outside, where commercial development on park lands has in far too many instances destroyed or substantially degraded the very natural resources which were the basis for the establishment of the park. Unfortunately, and totally unnecessarily, we seem to be headed in that direction at Denali State Park.

And we have seen how extremely controversial commercial facility development leasing proposals can be, especially those for major facilities, like the ones proposed for Eagle River, Hatcher Pass, and Denali State Park, and those that could pose substantial conflicts to subsistence uses, like lodge proposals in rural Alaska. Attractive sites for commercial recreational facilities will generally have long ago been recognized and widely used for a variety of other purposes. An orderly, comprehensive procedure can benefit everyone--the agencies, the possible developers, and the public--by weeding out speculative or inappropriate projects, preventing wasteful expenditures of time and money, and avoiding litigation.

If this bill is to address concerns other than ensuring a reasonable financial return to the state, we would like to address a few of those issues.

1. Initial Land Allocation Decision. The initial land allocation decision is critical and deserves very careful consideration. The decision should be an interagency one and should require full public involvement. We feel uncomfortable relying totally on regional land use plans and believe that in every case the public should have some opportunity to comment before the process has proceeded all the way to the approval of lease terms and conditions phase. Regional plans deal with millions of acres of land. The decisions are necessarily somewhat abstract. In those situations where a site-specific plan or an amendment would be required (see subsection (b)), we feel fairly comfortable with the initial public participation opportunity. However, we have two concerns regarding the third situation (where a regional plan "specifically allows" the type of development under consideration).

Recommendations:

a. It should be made very clear that the mere fact that a land use designation or classification (such as "Resource Management") in the regional plan allows commercial development doesn't qualify as a specific allowance. The Management Intent or Management Guidelines narrative should have to specifically mention, and authorize, the type of development under consideration.

b. Even if a plan specifically mentions and authorizes the development, some minimal opportunity to comment should be provided at this initial stage, when the reality of a specific, focused proposal on a specific piece of land is first concretely proposed to the public without the distraction of hundreds of other competing issues affecting millions of acres of land. We suggest the following at the end of subsection (b): "If an adopted regional land use plan specifically allows the type of development under consideration, the commissioner shall nevertheless, before issuing a request for proposals, provide the public and other interested agencies with an opportunity to offer scoping comments regarding the proposed development and the issues which should be addressed in the Preliminary Decision required under (g) of this section."

2. Lands Available for Lease. This bill appears to allow DNR to lease lands regardless of any legislative or other designation they might have received. This is clearly inappropriate.

Recommendation: For legislatively designated lands entrusted to the management of an agency other than the Division of Land and Water Management (such as ADF&G), DNR should be allowed to proceed only with the concurrence of that agency.

3. Agency Involvement. Other interested agencies should be closely involved throughout the process. Their involvement should not be limited to commenting on a preliminary decision at the same time the public is commenting; when that happens the public does not have the benefit of the other agencies' perspectives and

concerns prior to commenting.

Recommendation:

a. Insert at the end of subsection (b): "In preparing a site-specific plan or proposing a plan amendment, the commissioner shall consult with other interested state agencies."

b. In subsection (g), insert the language proposed by Gary Gustafson.

4. Economic Feasibility. At least for major projects, economic feasibility, not environmental or social feasibility, generally determines whether or not the projects go forward. This was true for Eagle River and Hatcher Pass, and it appears that it will also be the case for South Denali. Unfortunately, there is no requirement, and to date we have not decided administratively to require, that a determination of likely economic feasibility be made prior to the expenditure of thousands of agency hours and thousands of public dollars. When, for varying reasons, economic feasibility determinations were finally made for Eagle River and Hatcher Pass, the conclusion reached was that the projects were not feasible. We don't know what will happen at South Denali, since after about 2 1/2 years of agency work attempting to justify the most recent proposal, an economic feasibility determination acceptable to the Division of Parks has yet to be made public.

In all three of these cases, we believe enough was known about the projects to do a determination long before one was actually done. For example, what did Mitsui learn a couple of weeks ago about the nature or scope of its proposed project from the phone calls it made to a few travel agents and airlines (after which it pulled out) that it did not know more than a year ago when it submitted its concept development plan--or even earlier? The relatively little money Mitsui spent doing low quality work on a prospective multi-million dollar project was for it a drop in the bucket. For state resource agencies with far too few individuals to do an adequate job of on-the-ground management of state lands, and budgets stretched about as thin as they can get, the waste of hours and dollars was substantial (please also see Tim Bradner's Feb 11, 1990 column in the Anchorage Daily News, which we have enclosed).

Recommendations:

a. For large projects, a preliminary determination of economic feasibility, based on available information, should be made either by the state before it requests proposals, or by the companies submitting proposals.

b. Within six months after a lease is signed the lessee should be required to submit a more detailed determination.

We appreciate Gary Gustafson's proposals addressing this issue, and

support authorizing the commissioner in subsection (g) to require lessees to prepare an economic feasibility study. This flexibility is probably appropriate in most situations. For large projects, however, which Gary would address in subsection (h), we believe that waiting 18 months for such a study is far too long and unnecessarily puts at risk too many hours and dollars of public resources.

5. State Subsidies. Another economic issue that is of great interest to the public, and to many decision-makers, is the amount of public subsidies a project is likely to require. For example, only when it became apparent that Mr. Rogner wanted millions of dollars worth of state loan guarantees did we decide to put a halt to lease processing pending the completion of an economic feasibility study, and require him to fund 1/2 of it (it's unfortunate that we aren't as protective of our public lands as we sometimes are of our public monies). The South Denali Preliminary Decision circulated for public comment contained no discussion of possible public subsidies. It was only after a direct question was asked at the Anchorage public meeting that DNR said that a \$6-10 million state subsidy for resort roads and utilities was likely. In the relatively short time since that meeting the estimate has risen to some \$14 million. At the Preliminary Decision stage, DNR should be required to estimate the likely amount of public dollars that will be needed (we know that would have been possible, at least roughly, for South Denali).

Recommendation: Insert a new (c)(3): "the estimated capital and operating costs to the state;".

6. Social, Economic and Environmental Studies. It is not unusual, at the federal level, for those who wish to profit from public resources to be required to bear the costs of any social, economic or environmental studies that are needed by the decision-makers and the public to arrive at a sound decision about the best use of public lands or resources. We agree with Mr. Bradner that, for large resource development projects, the state should follow the federal lead and require the developer to pay for necessary studies. The state should be a prudent steward of its lands and natural resources, not a pushover. Will such a requirement really discourage serious developers who have done their homework? We doubt it. What it might do is prevent the public waste of precious agency time and money, and weed out the speculators and the flakes.

Recommendation: In subsection (h) change "may" to "shall".

7. Adequate Financial Return to State. We understand that one of the primary reasons for this bill is DNR's desire to ensure that the public receives a reasonable return for the use of public land for profit making purposes by private individuals or businesses. As we said earlier, we fully support that goal. However, why shouldn't this goal apply to all leases, not just those for recreational facilities? And why is Gary proposing to delete the requirement that the state receive at least fair market rental

value for its lease? Although a dollar figure might not be able to be calculated until an appraisal is done, the ultimate requirement should remain.

Recommendations:

- a. Apply the financial return provisions to all leases.
- b. At subsection (1), page 4, line 21, insert between "section" and "may" the phrase "must at a minimum equal the fair market rental value of the land to be leased and".
- g. Evaluation of Alternative Sites. After a general area for possible leasing has been identified in subsection (b), it is still critical that several potential specific locations be evaluated. The environmental impacts at, or the political acceptability of, different specific locations can vary tremendously, as our experience at South Denali has demonstrated.

Recommendation: Insert at subsection (g) the language suggested by Gary Gustafson.

9. Bonding. At subsection (o), why shouldn't the bond cover all three possible needs: completing the development, maintaining the development, and restoring the lease site?

Recommendation: Rewrite lines 14 and 15 at page 5 to read "the department of the following:".

Thank you again for all your work on this bill. We would be happy to answer any questions you might have or to help in any way we can.

Sincerely,

Cliff Eames

Cliff Eames
Issues Director

cc: Committee Members
Senator Kerttula
Gary Gustafson

State can learn from the failure of ambitious resort plans

Mitsui's cancellation of its Hatcher Pass ski resort was a real disappointment. But coming not long after Austrian developer Robert Rogner shelved his ambitious Eagle River ski resort plan, it should have been no surprise.

In terms of winter tourism development, we're now left with Seibu's planned expansion at Mount Alyeska, which fortunately is moving ahead, Seibu Alaska told state officials last week.

All this seems to confirm the cynic's view that these ambitious plans were spawned by Anchorage's

Anch. Daily News
Feb 11, 1990

tim bradner



Winter Olympics bid. That having failed, for now at least, the "world-scale" resort projects faded away fast.

What have we learned from this? Two things are striking about Mitsui's plan, and that of Rogner's as well.

First is that neither seemed to have their project really thought out in terms of markets and problems like getting seats on international air carriers coming into Anchorage, both pretty basic. The second is that both projects required a considerable

investment of public dollars in dealing with their applications.

Let me first deal with this second issue: State agencies and local governments put a lot of time and money, including contracted consulting studies, into dealing with projects that in retrospect seemed highly speculative. Rogner and Mitsui also put up money, but I'll wager the public expenditure exceeded that private investment.

I'll admit the counter-argument that public agencies may spend too much money on planning and studies. But

I don't really buy that, in these cases.

Another argument. The planning work may not be wasted if it can be used by others someday proposing resorts in Hatcher Pass or Eagle River. That, however, just reminds me of the huge public expenditure we blew on environmental and feasibility studies for the Susitna River hydro project, now abandoned, that are still sitting around on shelves.

I'm a believer in the idea of public-private partnership in economic development, and that, at a certain point, it makes sense for public

investment to help a private project that generates public benefits move along.

But having seen two "world-scale" international tourism projects fade away, I would suggest federal and state governments require developers of these large resource-development projects to pay for an environmental impact statement (or an environmental assessment, in the case of state agencies) that also includes social and economic components. This work is actually done by private contractors working

Please see Page E-3, BRADNER

BRADNER: Alaskans can learn from disappointment after resort plans fall through

Continued from Page E-1

for the agencies involved, but with considerable involvement by the developer.

If this has the effect of increasing a developer's front-end investment in the conceptual stage, that's not all bad. If we up the entry fee a bit, it might make entrepreneurs and developers look more carefully, and perhaps do their homework

more thoroughly, before launching a process that costs us all money, arouses our expectations and then leads to disappointment.

Going to the first point made earlier: I was surprised at the evident lack of basic market research by Rogner and Mitsui. Rogner hadn't done a real market study until the legislature, as a condition to discussions of state investment, required

him to foot half the bill for a study done through Alaska Industrial Development and Export Authority. Rogner's project didn't look very good in that assessment, possibly a factor in his shelving the project.

With Rogner, we can accept, even admire, a certain amount of entrepreneurial seat-of-the-pants venturing, even if it costs us money. But we hold Mitsui, which is

a major Japanese world trading company, to a different standard.

We assumed Mitsui had its project thought-out and knew its own market in Japan. Turns out, it didn't. As far as state officials involved with the project could determine, Mitsui never did do a real market study. It did make inquiries of tour agencies and airlines,

the company told state officials.

In fairness, Mitsui always candidly said that its project was contingent on markets and feasibility. If Alaskans allowed their expectations to soar, that was their problem, not Mitsui's.

But all this has left a bit of a sour taste for me. We desperately need new tourism facilities in Alaska, and a winter resort, properly

planned, could help ease the overcrowding during summer. I just hope our disappointment with the Rogner and Mitsui projects doesn't hurt public acceptance of other tourism proposals.

□ Tim Bradner is editor of an Alaska economic reporting service, and does research and writing for private clients, including petroleum companies.

February 16, 1990

Briefing Paper CSHB 290

ADF&G Habitat Division

BACKGROUND/LEGISLATIVE INTENT

CSHB 290 establishes a recreational facilities leasing program within the Alaska Department of Natural Resources (ADNR) and is intended to expedite the process of leasing state lands for recreational development. Section (a) of the bill can be interpreted to give the commissioner of ADNR total discretion in the initial identification of state lands that may be leased for recreational facilities. No criteria are provided for what lands may or may not be selected, and no lands appear to be excluded from leasing, including tide and submerged lands or legislatively designated areas such as State Game Refuges, Critical Habitat Areas, and State Game Sanctuaries. It appears that Section (a) would give the commissioner of ADNR blanket approval to begin the process of offering these lands for lease prior to any analysis of economic return to the state or impacts to other resources or resource users.

Under section (b) the bill can be interpreted as requiring the commissioner of ADNR to propose a site-specific plan justifying a recreational disposal, or to propose an amendment to a regional land use plan if the plan does not allow for or prohibit the

proposed use.

CSHB 290 exempts ADNR from all present leasing statutes except those pertaining to lease terms, removal of improvements, and security holder's interests. It establishes new standards for lease payments and requires the lessee to pay for certain studies. It also establishes a legislative account for the receipt of lease payments and the possibility of these funds being allocated to ADNR.

ANALYSIS OF BILL/PROGRAM EFFECTS

It is not clear what advantages CSHB 290 offers over existing Title 38 statutes, beyond allowing the state to maximize its economic return from recreational leases, and there appears to be several disadvantages as presently drafted. It also is not clear why ADNR would not want to maximize the state's return from all other types of leases, and we suggest the bill be amended to include all types of leases. Based upon the recent Mitsui and Rogner ski area leasing process, it is clear that current statutes need to be changed to screen out, at the beginning rather than the end of the leasing process, those projects that are not economically viable, conflict with other beneficial uses, or do not have public support at the project identification stage. It does not appear that CSHB 290 does this.

CSHB 290 seems to allow the commissioner of ADNR almost total

discretion in selecting and leasing lands for economic development. Section (a) would allow ADNR to identify lands and begin the process of leasing prior to notifying other resource agencies, local governments, or residents of the area. The bill does not restrict any state lands from potential leasing, even if leasing is specifically prohibited in an ADNR area plan. During the development of many area plans, there was strong local opposition to the development of permanent recreational facilities because of likely conflicts with subsistence and the other traditional uses and conflicts with maintenance of important fish and wildlife habitat such as caribou calving areas, and goose and swan nesting areas. Although planning units were classified for recreation, it was intended to be dispersed public recreation. It would be unproductive to force ADNR to amend a regional or area land use plan as it can now be read, if the use was not allowed in the previous plan and if there is public opposition to amending the plan. Many areas of state land such as recreation rivers, State Game Refuges, and Critical Habitat Areas would not be appropriately addressed through this process even if they are open to recreational facilities leasing.

Under present wording in Section (a), CSHB 290 could allow ADNR to identify potential recreational facilities in legislatively designated State Game Refuges, Critical Habitat Areas, or State Game Sanctuaries prior to seeking Alaska Department of Fish and Game (ADF&G) concurrence. In many cases, this might be

incompatible with important fish and wildlife habitat, an ADF&G plan, or a primary purpose of the legislatively designated area (e.g., protection of fish and wildlife habitat and opportunities for public use of fish and wildlife resources).

The bill also appears to undermine ADF&G's ongoing process of identifying guide areas throughout the state, under SB 112 and CSHB 139. This bill could conflict with the legislative task force's report on guiding of game by allowing the opportunity to lease key guiding facility locations on state lands for periods longer than the recommended ten-year maximum or to individuals who do not have guiding rights. A section by section comparative analysis of CSHB 290 and these bills is necessary.

Although the ADF&G is the state agency that has expertise in the commercial, subsistence, and recreational and other non-consumptive uses of fish and wildlife and is responsible for maintaining these resources for public use, there is no requirement in CSHB 290 for ADNR to defer to ADF&G's expertise and responsibilities in identifying the impacts of fish and wildlife based recreational facilities.

There is also no opportunity to point out potential conflicts with important fish and wildlife habitat, or with existing recreational and subsistence uses in many rural areas of Alaska, such as the Kuskokwim river and Bristol Bay, prior to identifying lease sites

in Section (a). This deficiency is likely to result in unnecessary conflicts between the statutory mandates of resource agencies and between user groups. Failure to evaluate the need for and impact of proposed recreational facilities prior to initiating a leasing process is also likely to severely affect the value of existing recreational facilities in the area if the new facilities overload the market or degrade the quality of the attraction that present owners are offering. Sections (a) and (b) need to be combined to ensure that adequate social, economic (both short and long-term), and environmental assessments are done prior to identifying areas for leasing.

CSHB 290 should also be amended to require an economic analysis of the proposed project at the very beginning of the site identification process rather than at the end as is presently the case. Over the past five years, state agencies have spent hundreds of thousands of dollars in state funds participating in planning and leasing processes for recreational projects which have been dropped at the very end because they were economically nonviable. This includes both the Eagle River and Mitsui/Hatcher Pass ski areas. In both cases, state agencies may have invested more time and money than the project promoters. CSHB 290 appears to perpetuate that problem. This bill needs to be revised to require ADNR or the developer to demonstrate the economic viability of the project before the state invests a lot of time and money in it. Alternatively, the bill could be amended to require that the

prospective lessee fund the entire process beginning with the land use plan or plan amendment.

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99802-2000
PHONE: (907) 465-4100

March 23, 1990

The Honorable Curt Menard
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Menard:

Thank you for the opportunity to address our concerns on the legislation you have proposed pertaining to the leasing of state land for recreational facilities. I was pleased that you incorporated the amendments jointly proposed by the Departments of Fish and Game (ADF&G) and Natural Resources into the new version of the bill. Accordingly, I want to restate the position that the Department of Fish and Game supports Committee Substitute for House Bill 290 (Resources).

I anticipate that as the bill continues to move through the Legislature, many questions will be raised about the amendments incorporated in your bill and the concerns the Department of Fish and Game has had with the bill. We will be restating our position before the House Finance committee on Wednesday, March 28, and for your convenience I wanted to take the time to reiterate in writing the nature of our concerns that serve as the basis for our support.

The bill addresses two distinct purposes. First, the bill proposes changes to the current statute to allow the state to receive a better financial return for leasing state land for recreational development. In the wake of the recent experience with the proposed Mitsui ski area in Hatcher Pass, these changes are fully warranted and fiscally responsible.

Secondly, the bill proposes revisions to the procedure for identifying and leasing state land for recreational facilities.

In order to ensure the success of recreation development and to generate the maximum economic benefits from recreation facilities, it is crucial to ensure protection of fish, wildlife, and other resources that serve as the primary attraction of visitors, tourists, and the Alaskan public seeking recreation opportunities.

We believe that recreation facilities development can occur compatibly with fish and wildlife resources, and in turn support long-term economic benefits, provided the conditions now in the bill and discussed below are adequately addressed.

ORCD on
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H.B.
290
PACK.

March 23, 1990

1. ADF&G has an appropriate role in the identification and leasing process.
2. The public is involved as much, or more so, than is currently provided.
3. User conflicts are taken into account.
4. Proper planning and management tools are in place.
5. Sites are selected, taking into account the ability of the resource to sustain increased pressure and use.
6. Mitigating measures are allowed.

I believe these concerns have been addressed in CSHB 290 (Resources) and will allow for long-term economic benefits by protecting fish and wildlife resources of concern to the public.

Because the long-term benefits depend on adequate protection for fish and wildlife resources, the list of concerns discussed above will continue to serve as a basis for evaluating any amendments that may be proposed to the bill.

Your continued support for these provisions is most appreciated. If any additional information would helpful, please do not hesitate to contact me or my staff.

Sincerely,



Don W. Collinsworth
Commissioner

cc: Senator Fahrenkamp, Chairman, Senate Resources Committee
Senator Binkley, Co-chair, Senate Finance Committee
Senator Uehling, Co-chair, Senate Finance Committee
Senator Kerttula, Vice-chair, Senate Resources Committee
Senator Eliason, Senate Resources Committee
Senator Frank, Senate Resources Committee
Senator Halford, Senate Resources Committee
Senator Sturgulewski, Senate Resources Committee
Senator Zharoff, Senate Resources Committee
Representative Davidson, Co-chair, House Resources Committee
Representative Hoffman, Co-chair, House Finance Committee
Representative Larson, Co-chair, House Finance Committee
Senate Sponsor of Companion Bill
Commissioner Lennie Gorsuch

Norman A. Cohen
Warren W. Wiley
Denby Lloyd
Bob Evans
Larry Ostrovsky
Gary Gustafson
Deborah Greenberg
Molly McCammon
Frank Rue
Lance Trasky
Steve Behnke
Lew Pamplin



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Representative Cliff Davidson
Representative Curt Menard

FROM: Representative Kay Wallis *KW*

DATE: May 1, 1990

SUBJ: SB 213

I still have concerns on SB 213 and have not worked out all my amendments/concerns. Please hold SB 213 today.

Thank you.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HCS CSSB 213(Resources) (draft 6-0841D, dated 5/1/90)

Page 1, lines 27 - 28:

Delete ", the commissioner may solicit proposals from potential lessees. If the commissioner"

Insert "and"

Page 2, following line 12:

Insert a new subsection to read:

"(d) After preparing a written request for proposals under (c) of this section, the commissioner shall give public notice under AS 38.05.945 of the written request for proposals and request comments from the public and state agencies."

Page 2, lines 13 - 14:

Delete

"(d) After preparing a request for proposals under (c) of this section"

Insert

"(e) If, after reviewing and considering the public and state agency comments received under (d) of this section, the commissioner determines that soliciting proposals is in the best interest of the state"

Reletter the following subsections accordingly.

Page 2, line 23:

Delete "(d)"

Insert "(e)"

Page 2, line 27:

Delete "(d)"

Insert "(e)"

Page 3, line 4:

Delete "(j)"

Insert "(k)"

Page 3, line 10:

Delete "(e), (f), or (i)"

Insert "(f), (g), or (j)"

Page 4, line 14:

Delete "(g)"

Insert "(h)"

Page 4, line 23:

Delete "(g)"

Insert "(h)"

Page 5, line 7:

Delete "(f)"

Insert "(g)"

Page 5, line 8:

Delete "(h)"

Insert "(i)"

Page 5, line 10:

Delete "(f)"

Insert "(g)"

Page 5, line 11:

Delete "(f)"

Insert "(g)"

Page 5, line 13:

Delete "(e), (f), or (i)"

Insert "(f), (g), or (j)"

SCR 213

SCR 34

A M E N D M E N T

by Davidson

Amendment to amendment #1

Page 2 Line 12, after "municipality;"
delete "and"

Line 13 after "development" add "and (5) any other individuals or groups which have specifically requested to be notified of proposals in a region".

May 1, 1990

A M E N D M E N T

Page 1, line 26

AFTER (c) DELETE

If the commissioner identifies land for recreational facilities development leasing under (a) of this section, the commissioner may solicit proposals from potential lessees.

AFTER (c) ADD

If the commissioner identifies land for recreational facilities development leasing under (a) of this section, the commissioner shall provide public notice of the location and the specific type of recreational facilities development under consideration at least 30 days prior to a decision to solicit proposals from potential lessees, ~~the~~ Public notice identifying the location and the specific type of recreational facilities development under consideration must ^{also} be published at least twice in a newspaper of general circulation in the state and in a local newspaper in general circulation in the region where the land is located.

Any comments received under this public notice will become part of the public record for the consideration of the commissioner.

The notice shall be provided to the following:

- 1) to a municipality if the land is within the boundaries of the municipality;
- 2) to a regional corporation if the boundaries of the corporation as established by § 7(a) of the AK Native Claims Settlement Act encompass the land and the land is outside the municipality; and
- 3) to a village corporation organized under § 8(a) of the AK Native Claims Settlement Act if the land is within 25 miles of the village for which the corporation was established and the land is located outside a municipality and
- 4) other entities affected by the ^{specific} recreational ~~facilities~~ development

PROPOSED AMENDMENT TO CSSB 213 (RESOURCES)

To BE INSERTED in paragraph (i), line 22, p. 4 after "State"

In determining the best interest of the state the commissioner shall determine whether the proposal provides

- (1) for maximum feasible equity ownership of the facility by citizens of the United States;
- (2) that the recreational use of the planned facility is consistent with prior existing uses of the surrounding areas;
- (3) that the public interest as defined in AS 38.04.010 and AS 38.04.015 is met by the plan.

Sever remainder of sec(i) as new paragraph p. 4, l. 22 beginning with "If the commissioner determines that..."

Remember remaining sections

EXISTING LEASE LAW - AS 38.05.070 - .075

Adoption of Area Plan (.945 public notices) *

Lease Proposed (if consistent with plan)

Lease Proposed (if consistent with plan)

→

Preliminary Decision On Lease (.945 notice) *

→

Final Decision On Lease

* public notice
⊗ public hearing

PROPOSED CSSB 213

Adoption of Area Plan (.945 public notice) *

Public Notice Lease being Considered *

RFP Distributed to Public *

→

RFP Responses Received

Selection of Potential Lessee

Negotiate Terms/Conditions With Potential Lessee

Preliminary Decision On Lease (.945 notice) *

Final Decision On Lease

←

←

←

A M E N D M E N T # 1

TO HCS FOR CS FOR SENATE BILL NO 213 (RES)

PAGE 4, LINES 11 AFTER "agencies." IS AMENDED TO READ:

[THE COMMISSIONER MAY] "A public hearing[S] shall be held in the region[S] where the land proposed for lease is located [.] if the commissioner determines there is sufficient local interest."

S B

227

HOUSE COMMITTEE REPORT

(9)

Date Referred: April 20, 1989

FURTHER REFERRALS:

Date of Committee Action: 5-4-89

The RESOURCES Committee considered:

SB 227

SENATE BILL NO. 227

[INHERITED HOMESITE ENTRY PERMITS]

"An Act relating to the inheritance of homesite entry permits."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
[] have attached amendment(s) [] a new title
 do pass
~~[]~~ do not pass
[] no recommendation
[] individual recommendations
[] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- [] fiscal impact _____
[] zero fiscal note _____
[] zero with analysis _____

- [] fiscal note(s) _____
 zero fiscal note(s) DNR 4-17-89
[] zero fn/analysis _____

SIGNING DO PASS:

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

SIGNING: (Check appro. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>			
<u>[Signature]</u>		*	
<u>[Signature]</u>		✓	

[Signature]
Chairman's Signature

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 227
PUBLISH DATE: 4/17/89

FISCAL NOTE

REQUEST:

Revision Date: 10-Apr-89 Agency Affected: Natural Resources
 Title: An Act relating to the inheritance of homesite entry permits. BRU: Land & Water Mgmt
 Sponsor: Senator Duncan Components: Land & Water Mgmt
 Requestor: Senate Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

[Handwritten signature]

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 10-Apr-89

Approved by Commissioner: Lennie Gorsuch Date: 10-Apr-89
 Agency: Department of Natural Resources

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

BY SENATOR DUNCAN

Senate Bill 227

"An Act relating to the inheritance of homesite entry permits."

Section 1.

Provides that a person who has qualified for a homesite entry permit and inherits an unpatented homesite entry permit of another applicant may be issued a patent for both homesite entries if they can meet the standard requirements for issuance.

Section 2.

Allows for a person who is holding a homesite patent to apply for and hold a homesite entry permit by inheritance as provided in section 1.

Section 3.

Provides for a homesite entry permit holder who has inherited an entry permit of another applicant may use the efforts of the deceased applicant to qualify for the patent to be issued on the inherited homesite.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

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

FURTHER

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE _____

3/17/89

Mr. President:

Resources _____ Committee considered _____ SB 227

inheritance of home site entry permits

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) attached zero
 appropriation no FN attached

fiscal impact
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Keith Halford

J. Gaffal

Donna

[Signature]

[Signature]

Antoin S. Fungulerchi Do Pass
Chairman signature (and recommendation)

Committee backup attached

Acting Chan

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

September 23, 1988

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

The Honorable Jim Duncan
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: Homesite entry permits
AG File No. 663-89-0071

Dear Senator Duncan:

This is a belated response to your August 10, 1988, inquiry regarding the proper interpretation of AS 38.08.040 -- 38.08.060(c) as those sections pertain to a homesite permittee or patentee receiving a bequest of a homesite entry permit. As I explained to Dale Staley of your staff on September 16, 1988, I have been unable to address this matter before now because of the press of defensive litigation -- i.e., defending the state in actions brought by others. (These cases include, among others, United States v. Alaska, the "Dinkum Sands" case; Weiss v. State, the mental health trust land case; and USAG v. State, a challenge to the state's management of the Southeast Alaska seine and gillnet fleets on the basis of area, time, and gear restrictions.)

I nonetheless have briefly looked at AS 38.08.040 -- 38.08.060(c), and agree with your initial conclusion that the statutes are somewhat inconsistent. AS 38.08.040(c) provides for the transfer of a homesite permit "by testate or intestate succession, to a spouse during marriage, by order of a court as part of a divorce settlement, or to either a member of the immediate family or a grantee of the applicant in the case of an extreme emergency or illness that disables the applicant." At the same time, AS 38.08.040(d) provides in part that "a person may not simultaneously hold more than one homesite entry permit." In addition, AS 38.08.060(c) provides that a person may not be issued more than one homesite patent in a lifetime.

From the statutes, we cannot conclude which provisions would control if a homesite entry permittee or patentee also

The Honorable Jim Duncan
Our File No. 663-89-0071

September 23, 1988
Page 2

received a transfer of a homesite entry permit under the methods authorized in AS 38.08.040(c). The transfer provisions of that subsection would seem to authorize a transfer; the prohibitions in AS 38.08.040(d) and AS 38.08.060(c) would appear to prohibit it.

We have been unable to find any administrative regulation addressing this situation, and we are not aware of any instance in which this situation has been addressed by the Department of Natural Resources. You may wish to contact that department directly to determine whether such a situation has occurred in the past and, if so, how the department handled it administratively.

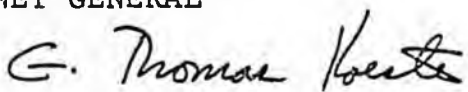
In the meantime, and looking only at the statutes, it would appear that an amendment to clarify the legislature's intent in this regard might be appropriate.

If we can answer further questions, please contact us at your convenience.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:


G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Hon. Judith M. Brady
Commissioner
Department of Natural Resources

ATTORNEYS AT LAW

BAXTER & MARKS

PROFESSIONAL CORPORATION

P. O. BOX 32819
JUNEAU, ALASKA 99803
(907) 789-3166 (Telephone)
(907) 789-1913 (Telecopier)

FRED J. BAXTER
STEVEN G. MARKS
DANIEL G. BRUCE
CRYSTAL SOMMERS BRAND

July 26, 1988

Mr. Dale Staley
Senator Duncan's Office
P. O. Box V
Juneau, Alaska 99811

Dear Dale:

A client of mine has requested that I contact your office requesting Senator Duncan's assistance in obtaining a statutory interpretation as to AS 38.08.050, and AS 38.08.050. Our specific concern has to do with AS 38.08.060(c). This provision provides that a person may not be issued more than one patent for a homesite during a lifetime, nor may any person who is a member of a patent holder's household be issued a patent while a member of the patent holder's household.

The situation my client is confronted with is that while he currently is a patent-holder, AS 38.08.060 appears to prohibit him from having issued any further patents in his name. My client has now been bequeathed an interest in a homesite entry permit by his aunt. While I can understand the intent of the Legislature prohibiting an individual and/or family members from multiple filings, it seems rather harsh to prohibit a patent holder of a homesite from receiving a homesite entry permit which he would then be entitled to prove up on. If the language of AS 38.08.060(c) is taken at face value, my client would not be able to receive a bequest left to him.

Mr. Dale Staley
July 26, 1988
PAGE 2

I am requesting your assistance in contacting the Attorney General's Office in an attempt to determine whether it was actually the legislative intent of this statutory section to prohibit an individual from inheriting a homesite entry permit when in fact he has already been issued a patent. The statute specifically provides that a homesite entry permit may be assigned by testate or intestate succession. Allowing the conveyance by testate or intestate succession without a limitation set forth in AS 38.08.040, seems to be contradictory of the language in AS 38.08.060(c).

Your assistance in attempting to obtain a clarification of the legislative intent in this regard would be helpful. Should you desire additional information, please feel free to contact me.

Very truly yours,

BAXTER & MARKS



Fred J. Baxter

FJB/pc

WPS 1.33



Alaska State Legislature

SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811

(907) 465-4766

COMMITTEES
FINANCE
RESOURCES
BUDGET AND AUDIT

August 10, 1988

Grace Berg Schaible
Attorney General
State of Alaska
P.O. Box K
Juneau, Alaska 99811

Dear Attorney General Schaible:

I am requesting a formal opinion concerning the proper interpretation of AS 38.08.040 thru AS38.08.060(c) as those sections pertain to a patent holder of a homesite receiving a bequeath of a homesite entry permit.

My first reading of the statutes is that a person may not hold more than one homesite entry permit or patent. However, the statute does provide for transfer by testate or intestate succession. This form of conveyance without statutory limitation seems to be contradictory to the provisions of AS 38.08.060(c) that reads in part, "A person may not be issued more than one patent during a lifetime..."

I would like to know if this statute is contradictory or not. Does it prohibit an individual from inheriting a homesite entry permit when in fact he has already been issued a patent or is that a misinterpretation of the statute?

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jim Duncan".

Jim Duncan
Senator

S B

241

HOUSE COMMITTEE REPORT

(9)

Date Referred: May 6, 1989

FURTHER REFERRALS:

Date of Committee Action: 5-8-89

The RESOURCES Committee considered:

CSSB 241 (RESOURCES)

CS FOR SENATE BILL NO. 241 (Resources)

[AUTHORIZING STATE TO ACCEPT TRUST LAND]

"An Act authorizing the commissioner of community and regional affairs to accept land conveyed by a state or federal agency and to receive land from dissolved municipalities and requiring the transfer of certain land to the commissioner of natural resources; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with _____ the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: _____ (Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) DNR - CIRA 5/5/89
- zero fn/analysis _____

SIGNING DO PASS:

Cliff Davidson
Charles Spradley
George...
Michael...
Mike...

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>Ben...</i>	<input checked="" type="checkbox"/>		
<i>Bill...</i>	<input checked="" type="checkbox"/>		

Cliff Davidson

Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act..DCRA..accept land..receive land from dissolved municipalities."
Sponsor: Senator Adams
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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	-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)

Jim Plasman
Prepared by: Jim Plasman, Deputy Director Phone: 465-4750
Division: Municipal & Regional Assistance Date: 4/5/89
Approved by Commissioner: [Signature] Date: 4-7-89
Agency: Community & Regional Affairs

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

*Changes in the Resources CS
have no fiscal effect.
This fiscal note is appropriate.
DC 5/5/89*

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SSB 241 (Resources)

PUBLISH DATE: 5/5/89

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Authorizing the DCRA to accept land
land conveyed by agencies and receive land
 Sponsor: Senator Adams
 Requestor: Senate C&RA Committee

Agency Affected: Natural Resources
 BRU: Division of Land and Water Mgt.
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		0.0	0.0	0.0	0.0	0.0
TRAVEL		0.0	0.0	0.0	0.0	0.0
CONTRACTUAL		0.0	0.0	0.0	0.0	0.0
SUPPLIES		0.0	0.0	0.0	0.0	0.0
EQUIPMENT		0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky *[Signature]* Phone: 465-2400
 Division: Commissioner's Office Date: 5-Apr-89

Approved by Commissioner: Lennie Gorsuch *[Signature]* Date: _____
 Agency: Department of Natural Resources

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

*Changes in the Resources CS have
no fiscal impact.*

This fiscal note is appropriate.

DC 5/5/89

ALASKA FEDERATION OF NATIVES, INC.

411 W. 4th Avenue, Suite 301 • Anchorage, Alaska 99501 • Phone (907) 274-3611

April 24, 1989



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

Dear Senator Adams:

This letter is in support of Senate Bill No. 241 and thus your efforts to resolve land conveyance problems it addresses. Included in these comments are suggested amendments to the committee substitute that emerged from Senate CRA.

The purpose of SB 241 is to broaden Department of Community and Regional Affairs (DCRA) authority, specifically that of the Municipal Lands Trust Program, to accept and administrator land other than land reconveyed under provisions of Section 14(c)(3) of the Alaska Native Claims Settlement Act (ANCSA).

Should the bill become law as currently written, the Municipal Lands Trust (MLT) Program within DCRA would have the statutory authority to accept and administer (manage) land conveyed by the State of Alaska, Federal Government (Federal Townsite Program) and municipal dissolution, in addition to its current ANCSA 14(c)(3) obligations.

Acceptance and administration of such land would be subject to established policy and regulations that govern the MLT Program.

Section 14(c)(3) of ANCSA establishes the Municipal Lands Trust. Alaska Statute 44.47.150 accepts the trust and defines its structure. 19 AAC 90 establishes regulations under which the trust program is administered.

The intent of the trust program is to serve as trustee for land reconveyed under ANCSA 14(c)(3) for future municipalities. Trust villages are those communities currently unincorporated and thus subject to future incorporation as municipalities under state law.

Land conveyed to the MLT Program is administered or managed by DCRA in conjunction with a local advisory entity known as an "Appropriate Village Entity" (AVE). Regulations require that such an entity be established through a local petition process.

Integrity • Pride in Heritage • Progress

Communities not having a recognized AVE may provide input through a representative association or a public hearing process conducted in the respective community.

The MLT Program maintains records and accounts of all land transactions. Upon incorporation as a municipality all records, accounts, revenues and land title is turned over to the new city and the trust responsibility for that particular community is removed from the State.

It is important to note that extraordinary relationships and policies exist with respect to community land conveyed to the State in trust. This arises from the language of Section 14(c)(3) of ANCSA establishing the trust, the acceptance of the trust by the State legislature in AS 44.47.150 and the expectations of rural people affected by the land trust.

The State is expected to assume and maintain a constructive trust role by the Congress, the legislature, and affected rural people. The Commissioner of DCRA, as trustee, accepts the adoption of legal trust principles as the underlying policy of the MLT Program. As trustee, the State does not acquire title to, nor administer, municipal trust land for its own sovereign use and benefit. Rather, land is conveyed and administered "in trust" for any municipal corporation established in the Native village in the future.

The trust administered through the MLT Program is quite different from the Department of Natural Resources (DNR) trust role over State land. In DNR's case the State is a sovereign and interests to be protected extend beyond individual community interests.

Senate Bill 241 is intended to address three land conveyance related problems.

The first problem relates to the conveyance of land title when a municipality elects to dissolve its incorporated status.

Current law (AS 29.06) directs that assets, including land, and liabilities of a dissolved municipality succeed to the State of Alaska. The DNR is the only State land managing agency with authority to accept land assets in the case of municipal dissolution.

This presents the problem of an agency (DNR) acquiring land that a community needs for public purposes without a mandate or structure that allows it to accommodate said community needs. The DNR is not structured to accommodate land management with respect to individual community interests nor, I suspect, does it want that responsibility.

Since the MLT Program is specifically designed to accommodate such a role, ie administrative structure is in place and policies and regulations established, it is logical to convey the land to the MLT Program. Senate Bill 241 provides DCRA/MLT the authority to accept and administer land succeeding to the State via municipal dissolution.

The second problem Senate Bill 241 addresses relates to the Federal Townsite Program.

Under 1891 and 1926 Acts of Congress, federal land in and around certain communities was made available for individual and community purposes. A municipality could acquire land for a public purpose. Individuals could "prove-up" and claim a parcel for a residence and/or business.

Ninety nine rural Alaska communities are affected by the Federal Townsite Program. Communities petitioned the Bureau of Land Management (BLM) to be subdivided or platted into lots, rights of ways, etc. The plats were recorded and title provided as appropriate.

The Federal Townsite Program was repealed in 1976 by the Federal Land Policy and Management Act (FLPMA). The FLPMA requires that the Federal Townsite Program be terminated as soon as possible.

As previously stated, the Bureau of Land Management has the authority to convey townsite lots to individuals and municipalities. An obstacle to terminating the program is that twenty six unincorporated communities have approximately seven hundred and eighty three vacant parcels remaining within their settlement areas and BLM lacks the tools to transfer title to other than incorporated municipalities.

Senate Bill 241, as written, addresses this problem by providing an option which allows DCRA/MLT to accept federal townsite land. BLM needs parallel legislation at the federal level to authorize the Federal Townsite Trustee to convey land to the State. Such legislation is being considered by BLM.

Again, providing DCRA/MLT the authority to accept and administer federal townsite land on behalf of an unincorporated community is logical. Of the remaining twenty-six unincorporated communities in the program, nineteen are in the MLT Program and have established an appropriate village entity to foster local control over land management decisions. One of the twenty-six communities is non-Native and thus has no ANCSA 14(c)(3) reconveyance and no entry to the MLT Program.

The third problem Senate Bill 241 addresses relates to scattered parcels of State land within unincorporated communities.

Capitol projects funded by State appropriations require site control. Site control is achieved by acquiring an interest in the land on which the project is to be built. In a small number of past situations (Stony River, Egegik and Iliamna) the DNR has acquired an interest in land so as to facilitate the construction and use of a community facility for an unincorporated community. This action was necessary as DCRA/MLT authority to accept and administer land did not extend beyond ANCSA 14(c)(3) reconveyances and the land in question was not 14(c)(3) land.

If given the authority as proposed in Senate Bill 241, DCRA would be in a position to accept a transfer of these lands from the DNR to the MLT Program, thus resolving the problem of having community land in an agency that has neither the mandate nor administrative structure to protect community interests as does DCRA.

As a final note, it is my understanding that the DNR is concerned about the recovery of municipal land entitlements when a municipality dissolves its corporate status. This concern appears reasonable since, to some extent, municipal land entitlements are intended as an incentive to municipal incorporation. However, while it appears reasonable for the State to recover land entitlements in the case of municipal dissolution, I strongly recommend that such recovery be limited to undeveloped land.

The incorporated or unincorporated status of a community does not eliminate the factors that create physical growth and thus the need for public and private land. Unincorporated communities will continue to need a land base for public service facilities. If entitlement land, or a portion thereof, is developed for public use it is logical that it be entered into the MLT Program and thus administered for the benefit of the community.

The issue of recovery of municipal land entitlements may be of minor importance. Municipalities receiving such entitlements are larger communities where dissolution is very unlikely. Smaller rural municipalities that are considering dissolution do not have entitlements and in almost all cases the State has no land ownership presence in the area.

With regard to amendments to the version of Senate Bill 241 which passed out of Senate CRA Committee, I offer the following recommendations and explanations.

1. Section 1, (2) line 23 - the term recognized village entity should be changed to "appropriate" village entity. This is consistent with the term used throughout the MLT Program. Retaining the term "recognized" may imply a desire to create an entity other than an AVE.

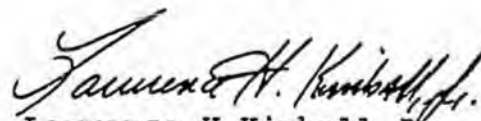
I believe the problem is a drafting oversight.

2. Section 4, (f) lines 16 through 21 - the Committee amendment should be redrafted to read "notwithstanding any other section of this act, and in the case of municipal dissolution, municipal land acquired pursuant to a municipal entitlement grant and undeveloped on the date of dissolution shall succeed directly to the Department of Natural Resources".

The intent of this recommended language is to convey only the undeveloped portion of an entitlement grant to the DNR with the portion developed for public use being entered into the MLT Program.

Secondly, land succeeding to the DNR would do so directly to avoid the administrative cost of an additional transfer step, ie, from DCRA to DNR.

Best regards,


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Land Manager