

ALASKA LEGISLATIVE COMMITTEE FILES, 1989-1990 8672
6497 SENATE RESOURCES

981

1 IN THE SENATE

BY KERTTULA

2

SENATE BILL NO. 209

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the sale of organic and natural
7 foods."

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

9 * Section 1. LEGISLATIVE PURPOSE. The purpose of this Act is to pro-
10 tect the consumer and producer of organic and natural foods, and to facili-
11 tate the production and marketing of these foods by adopting uniform stan-
12 dards relating to the use of the terms "organic," "natural," and their
13 derivatives.

14 * Sec. 2. AS 03 is amended by adding a new chapter to read:

15 CHAPTER 58. SALE OF ORGANIC AND NATURAL FOODS.

16 Sec. 03.58.010. PROHIBITION. (a) A person may not sell or
17 offer for sale food represented as organic or natural food if the
18 person knows or has reason to know that the food has been grown,
19 raised, or produced with the use of

20 (1) a fertilizer, except for manure and other natural
21 fertilizers;

22 (2) a manufactured pesticide, hormone, antibiotic, or
23 growth stimulant, except for *Bacillus thuringensis* and other natural
24 pesticides;

25 (3) a substance listed by the department under AS 03.58.050
26 that is similar to a substance that is restricted with regard to
27 organic food under (1) or (2) of this subsection.

28 (b) In (a) of this section, "with the use of" means

29 (1) applied to the food before a retail sale;

1 (2) fed to the animal producing the food;

2 (3) unless the substance applied is a pesticide, applied to
3 the soil or other growing medium within one year before seed planting
4 or transplanting, or, if the crops are perennial, before the appear-
5 ance of the flower bud; or

6 (4) in the case of pesticides, applied to the soil or other
7 growing medium within two years before seed planting or transplanting,
8 or, if the crops are perennial, before the appearance of the flower
9 bud.

10 Sec. 03.58.020. DISCLOSURE. (a) Except as provided in (b) of
11 this section, a person may not sell food represented as organic or
12 natural food unless the name and address of the producer of the food
13 are displayed with the food. If the food is not displayed at the
14 purchase site, a written statement with the name and address of the
15 producer must be given to the purchaser unless the name and address
16 are identified on a package containing the purchased food. This
17 subsection does not apply to a sale for consumption on the premises.

18 (b) Advertising for the mail order sale of food represented as
19 organic or natural food must include the name and address of the
20 producer of the food.

21 Sec. 03.58.030. SWORN STATEMENT OF COMPLIANCE. (a) A producer
22 may not sell to a vendor food represented as organic or natural food
23 unless before the sale the producer provides the vendor with a sworn
24 statement that the producer has grown, raised, or otherwise produced
25 the food in compliance with AS 03.58.010. If a producer sells the
26 food to the same vendor more than one time during a calendar year, one
27 statement for the calendar year is sufficient to comply with this
28 section.

29 (b) In this section, "vendor" means a person who sells food

1 represented as organic or natural food to another person for resale or
2 to a consumer.

3 Sec. 03.58.040. ~~RECORDS~~. A person who sells food represented as
4 organic or natural food shall ~~maintain the records~~ relating to this
5 chapter that the department reasonably requires and shall furnish them
6 to the department when requested by the department.

7 ~~Sec. 03.58.050. REGULATIONS~~. The department may adopt regula-
8 tions under AS 44.62 (Administrative Procedure Act) [that the depart-
9 ment determines are appropriate for the proper administration of this
10 chapter, including a regulation that lists and periodically updates
11 substances under AS 03.58.010(a). and implements 03.58.040.

12 Sec. 03.58.060. ORDERS. If the department determines that a
13 person is violating a provision of this chapter, or a regulation
14 adopted under this chapter, the department may require a person to
15 stop the violation and

16 Sec. 03.58.070. If a person is violating a provision of this chapter, a
17 regulation adopted under this chapter, or a regulation adopted under AS 03.
18 58.060, the person is

19 (1) liable for the violation if the person does not
20 exceed the total of \$10,000 for the violation; it does not
21 investigating and taking a civil action for the violation; is of inves-
22 for the violation; ment actions

23 (2) guilty if the person is guilty of the violation; Y _____ N _____
24 Sec. 03.58.080.
25 (1) "department" means the Department of Environmental
26 Conservation when the food is meat, fish, poultry, or processed, and
27 the Department of Natural Resources when the food is not meat, fish,
28 poultry, or processed;

29 (2) "food represented as organic or natural food" means

1 food, including fish, vegetables, fruit, meat, dairy products, and
2 beverages, that is marketed using the term "organic," "natural," or a
3 derivative of those terms in the labeling or advertising;

4 (3) "producer" means a person who grows, raises, or pro-
5 duces food.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to the sale of organic and natural foods.
 Sponsor: KERTULLA
 Requestor: _____

Agency Affected: Environmental Conservation
 BRU: Environmental Health
 Components: Sanitation

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

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

The bill sponsor has stated that the role of the Department would be to enforce on a complaint only basis. With the understanding that compliance is expected to be 100% voluntary and that the Department will not routinely inspect or monitor, we are submitting a zero fiscal note.

Prepared by: Douglas C. Donegan *DCD*
 Division: Environmental Health

Phone: 465-2609
 Date: March 13, 1989

Approved by Commissioner: Dennis D. Kelso *adw/f*
 Agency: Environmental Conservation

Date: 3/13/89

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Relating to the sale of
organic foods
 Sponsor: Senator Kerttula
 Requestor: _____

Agency Affected: _____
 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	0	0	0	0	0	0
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(see attached)

Prepared by: Senator Kerttula Phone: 465-3771
 Division: _____ Date: 3/10/89

Approved by Commissioner: _____ Date: _____
 Agency: _____

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

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Relating to the sale of
organic foods
 Sponsor: Senator Kerttula
 Requestor: _____

Agency Affected: _____
 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	0	0	0	0	0	0
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REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(see attached)

Prepared by: Senator Kerttula
 Division: _____

Phone: 465-3771
 Date: 3/10/89

Approved by Commissioner: _____
 Agency: _____

Date: _____

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.

FISCAL NOTE

REQUEST:

Revision Date: 3/13/89
Title: Natural and Organic Food

Agency Affected: Natural Resources
BRU: Agricultural Management

Sponsor: Senator Kerttula
Requestor: Senate Resources

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, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

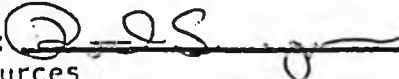
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Because the bill does not require the department to develop or implement regulations, inspections, verification or enforcement related to natural and 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
Division: Commissioner's Office

Phone: 465-2400
Date: 3/13/89

Approved by Commissioner: 
Agency: Natural Resources

Date: 3/13/89

Distribution (by preparer):

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

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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

March 13, 1989

The Honorable Bettye Fahrenkamp
Chair, Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

Subject: Senate Bill 209, relating to the sale of organic and natural foods.

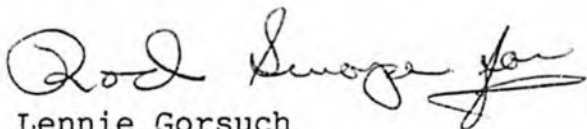
Position: The Department of Natural Resources supports this bill but will be unable to develop and implement organic and natural food product regulations and verification procedures until funding for staff and travel is provided.

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 and natural foods. It would also allow us to inspect products labeled organic or natural 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 and natural food regulations and would not be able to determine or enforce rule violations.

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,

A handwritten signature in cursive script, appearing to read "Lennie Gorsuch".

Lennie Gorsuch
Commissioner

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

SECTIONAL ANALYSIS-- SB 209

This bill adds a new chapter to title 3 (Agriculture and Animals). It requires growers who market food products as "organic" or "natural" to avoid use of synthetic fertilizers, pesticides, growth hormones and related substances during critical periods. Sale of "organic" produce known to violate these standards is prohibited.

Sec.1: Purpose is to protect both consumers and producers.

Sec.2: Prohibition section lists prohibited substances and establishes critical periods during which they cannot be used if end product is to be marketed as organic.

Disclosure section requires that the producer of the organic food be identified on the package or display at the time of sale.

Sworn Statement section requires local producers to provide vendors with an annual sworn statement indicating that organic produce has been raised in compliance with this chapter.

Records, Regulations, Orders and Penalties sections authorize department to supplement list of prohibited substances and establish record keeping requirements if needed; provides authority to stop sales occurring in violation of this chapter; and provides for a civil fine and recovery of costs by the department in addition to conventional criminal sanctions in the event of a violation.

Definition section designates Department of Natural Resources as authority over raw produce and Department of Environmental Conservation as authority over meat and processed foods (conforms to other chapters in title 3).

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.



Official Business

Alaska State Legislature

Senate

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

Statement of Senator Jay Kerttula:
SB 209-- Organic and Natural Foods
March 10, 1989

I have introduced SB 209 to remedy a specific failing in Alaskan statutes dealing with food products: nowhere in our existing law is there any definition or standard which permits one to be certain what is meant when one purchases "organic" food.

What this means is that vegetables and other food products can now be advertised and sold as "organic," "naturally grown," etc. without any guarantee as to what fertilizers and pesticides may have been used or not used in their production and processing.

There is a growing body of medical evidence to suggest that at least in part, we are what we eat. But what are we eating? We tend to think of organic produce as free of synthetic pesticides and fertilizers. SB 209 simply makes sure that this is in fact the case. It establishes uniform standards for organically produced foods, patterned after those used in Washington and some other states, and supported by local scientific data (see attached).

The bill is a simple protective measure that will benefit both consumers and producers who are concerned about the chemicals-- particularly pesticides, hormones and antibiotics-- that we are unknowingly ingesting in our food supply. I believe there are many who are concerned about this contamination, and who would prefer to see that Alaskan consumers have a choice in their purchases. I think this bill will help that choice become more of a reality by making sure that growers, vendors and customers are speaking the same language when they deal in organic produce, and that when an Alaskan says "organic" he is representing that a product has never been exposed to chemical applications.

The interest in organic foods and recognition of their importance to human health is increasing. The recent, much publicized concern about the quantities of pesticides contained in apples and other fruits, and the hazard they may be posing for our children, is only the latest manifestation of a national trend. And on the international scene, it is no secret that Japanese and European importers are reluctant to purchase many of our beef and pork products because of the quantities of antibiotics and hormones injected into American cattle.

We are unusually fortunate in that many of the fresh vegetables, potatoes and carrots that are produced in Alaska can be raised without application of the pesticides that are so heavily relied upon in other

climates. It may also be practical to raise beef and some other kinds of livestock for an organic market by utilizing a combination of local grazing lands and unadulterated locally produced grains. We simply do not have the kind of weed and insect pest problems here that plague farmers in other states, and some of our growers may find that organic production will open a market niche in which they can compete quite successfully with outside growers.

Of course one of the ultimate beneficiaries of any growth in this sector will be the Alaskan consumer.

SECTIONAL ANALYSIS-- SB 209

This bill adds a new chapter to title 3 (Agriculture and Animals). It requires growers who market food products as "organic" or "natural" to avoid use of synthetic fertilizers, pesticides, growth hormones and related substances during critical periods. Sale of "organic" produce known to violate these standards is prohibited.

Sec.1: Purpose is to protect both consumers and producers.

Sec.2: Prohibition section lists prohibited substances and establishes critical periods during which they cannot be used if end product is to be marketed as organic.

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Sworn Statement section requires local producers to provide vendors with an annual sworn statement indicating that organic produce has been raised in compliance with this chapter.

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Definition section designates Department of Natural Resources as authority over raw produce and Department of Environmental Conservation as authority over meat and processed foods (conforms to other chapters in title 3).

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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

March 13, 1989

The Honorable Bettye Fahrenkamp
Chair, Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

Subject: Senate Bill 209, relating to the sale of organic and natural foods.

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

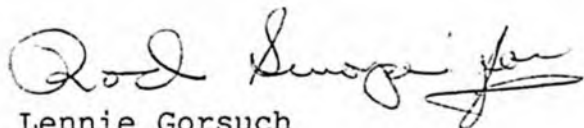
Background: Under AS 03, the Department of Natural Resources is responsible for regulating the sale or use inside the state of plants, seeds, vegetables, shell eggs, fruits, and berries to protect the public interest and prevent product fraud, deception or misrepresentation. Currently, Division of Agriculture 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 and natural foods. It would also allow us to inspect products labeled organic or natural 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 and natural food regulations and would not be able to determine or enforce rule violations.

March 13, 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
Commissioner Dennis Kelso
Department of Environmental Conservation
Bob Evans, Legislative Liaison
Office of the Governor
Denby Lloyd, Special Staff Assistant
Office of the Governor
Frank Mielke, Director
Division of Agriculture

FISCAL NOTE

REQUEST:

Revision Date: 3/13/89
Title: Natural and Organic Food

Agency Affected: Natural Resources
BRU: Agricultural Management

Sponsor: Senator Kerttula
Requestor: Senate Resources

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, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

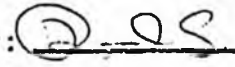
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Because the bill does not require the department to develop or implement regulations, inspections, verification or enforcement related to natural and 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: 3/13/89

Approved by Commissioner:  Date: 3/13/89
Agency: Natural Resources

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

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Relating to the sale of
organic foods
 Sponsor: Senator Kerttula
 Requestor: _____

Agency Affected: _____
 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	0	0	0	0	0	0
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(see attached)

Senator Kerttula

Prepared by: _____ Phone: 465-3771
 Division: _____ Date: 3/10/89

Approved by Commissioner: _____ Date: _____
 Agency: _____

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.

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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.




UNIVERSITY OF ALASKA FAIRBANKS
School of Agriculture and Land Resources Management

Agricultural & Forestry Experiment Station

Palmer Research Center
533 E. Fireweed
Palmer, Alaska 99645
(907) 745-3257

MEMORANDUM

DATE: March 3, 1989
TO: Senator Jalmar Kerttula
FROM: Allen Mitchell, Associate Director
(Ph. D. Soils and Environmental Sciences) 
SUBJECT: Criteria for Organically Grown Produce

This memorandum is a follow-up to conversations that I have had with Mark Weaver regarding certain criteria for organically grown produce. The criteria discussed were related to the use of synthetic fertilizers and pesticides.

Fertilizers

Of the two categories of synthetic chemicals, fertilizers pose the least hazard in terms of human consumption of crops grown on ground to which it has been applied. In fact, of the three primary plant nutrients, nitrogen (N), phosphorus (P), and potassium (K), synthetic forms are chemically indistinguishable from organically derived forms in the soil. Also, of these three, only nitrogen poses a potential problem to human health. For example, nitrate- and nitrite-nitrogen might conceivably accumulate in plants to levels that could cause human health problems. This is a rare occurrence. Furthermore, this type of problem could just as easily occur with nitrogen from organic sources. Another concern that some have with synthetic fertilizers is from chemical impurities they may contain. One example often cited is certain phosphorus fertilizers have been found to contain potentially toxic cadmium. However, the source of this contamination is the naturally occurring rock phosphate from which it was manufactured. Organic growers do use rock phosphate as a source of phosphorus fertilizer.

For some of the above mentioned reasons as well as others, enforcement of regulations on fertilizer sources (organic vs synthetic) would be most difficult. Once incorporated in the soil, it is essentially impossible to distinguish source. It would likewise be impossible to determine how long such nutrients have been in the soil.

With this brief description of the problems, I doubt that requiring a long synthetic fertilizer-free period would be either practical or enforceable. Therefore, I would suggest that you consider a requirement that the ground to be used for organically grown produce be free of synthetic fertilizers for a period of one year.

Pesticides

Synthetic pesticides are a completely different situation. While pesticides vary considerably in their toxicity, a great number of them are potentially hazardous. Our information is incomplete, in many cases, with regard to the absolute safety of many of these products. For those individuals who want to pursue a "chemical" free diet, this is where the regulatory emphasis should be placed in my opinion. Unlike fertilizers, pesticide residues in the soil and in produce can be differentiated from natural occurring compounds. Thus enforcement of regulatory policies is possible. Additionally, soil applied pesticides tend to carry over for longer periods in some environments than in others. However, to further complicate the situation, pesticides change chemical form when they enter the soil and are acted on by soil microbes. Fortunately, the new forms are usually less toxic and eventually are reduced to harmless carbon, hydrogen, and oxygen. Again, the time required to render them harmless varies with the pesticide and soil temperatures.

There's no question in my mind that, for regulatory policy, the residence time required in the soil should be greater for pesticides to insure an appropriate degradation time. For example, the herbicide Lorox (Linuron) degrades to harmless byproducts in four months in temperate climates while we have been able to measure residue in soils 12 months after application. Linuron is a very safe material from a human health standpoint and concentrations remaining after a year are harmless, but it does illustrate that pesticides can carry over for longer periods depending on environmental conditions at specific locations.

Based on the above arguments, I suggest that the law require that soil used to grow organic produce be free of synthetic pesticide application for a period of two years prior to planting a crop.

If you or Mark have any further questions, please don't hesitate to contact me. The whole question of organically grown produce is a difficult one, but it does have to be addressed. Fortunately for Alaska, we currently use substantially less pesticides than most other producing areas and we have an excellent synthetic chemical-free land base available to those who may want to enter the organic produce market.

Watch Those Vegetables, Ma

Pesticide-laden produce may endanger your tots

For many parents, dinnertime is too often a series of exhausting skirmishes with small children who refuse to finish their spinach or salad. Invariably, the parental argument is: "Eat it. It's good for you." This week a new study charges that all too often what is on the plate or in the glass may not be good for you at all. In fact, reports the National Resources Defense Council (NRDC), an environmental group based in New York City, farm produce sold in U.S. supermarkets and green-groceries may contain so much pesticide that it poses a serious hazard to the health of the nation's 22 million preschoolers.

The study, titled "Intolerable Risk: Pesticides in Our Children's Food," examines recent federal data on the eating habits of infants and youngsters through age five, along with figures on the amount of pesticides in 27 different crops. The information is then used to assess the long-term risk of cancer and neurological problems in these children. Eight of the pesticides are believed to be human carcinogens; all are used on fruits and vegetables frequently consumed by children, including peas, carrots, fruit juices and applesauce. Among the key findings:

► Youngsters receive four times as much exposure on average as adults to the eight carcinogenic pesticides evaluated. As many as 6,200 of today's preschoolers, the study predicts, may develop cancer sometime in their life as a result of pesticide-contaminated produce they consume as children.

► Daminozide (trade name: Alar), a chemical that is used chiefly on red apples and that penetrates the fruit's skin, is the greatest cancer hazard. The NRDC predicts that daminozide use may cause one case of cancer for every 4,200 preschoolers. Though the percentage of children affected—0.024%—is minute, the risk is 240 times the standard considered acceptable by the Environmental Protection Agency—one case of cancer per million.

► Exposure to four carcinogenic fungicides, including Captan and Mancozeb, may lead to one case of cancer per 33,000 to 160,000 children, two to seven times the allowable risk.

► At least 3 million youngsters are exposed to unsafe levels of organophosphate insecticides that may cause neurological damage. Among the crops treated by these chemicals are tomatoes, green beans and cucumbers.

The NRDC report goes on to charge that the Government is failing to protect youngsters adequately from such dangers. It points out that current legal limits for pesti-

cide residues, set by the EPA, are based on the consumption patterns and physiology of adults. Children eat a great deal more food for their body weight than adults. They also consume more fruit, which makes up an estimated 34% of preschoolers' diets, in contrast to 20% for adults. Youngsters eat six times as many grapes, seven times as many apples and seven times as much applesauce as their parents. The typical preschooler drinks 18 times as much apple juice as the average woman. Thus the child's ingestion of pesticides is likely to be greater.

Children may also be more vulnerable than adults to pesticides because their

estimates are conservative. They do not, for instance, take into account pesticides in milk or water.

Many agree with the NRDC's basic contention that pesticide-residue limits need to be tightened. Says Dr. Richard Jackson, a member of a panel of the National Academy of Sciences, which is examining this issue at the EPA's request: "The food tolerances are set on good agricultural practices. The Government does not adequately address the impact of pesticides on children." The baby-food companies have already got the message. Gerber and Beech-Nut, for example, do not use Alar-treated apples in their products, and pesticide residues on the crops they accept for processing into baby foods are much lower than federal limits.

Under mounting pressure, the EPA



Beverage of choice: class of thirsty preschoolers takes an apple-juice break in New York City

Youngsters may receive four times as much exposure as adults to some toxic chemicals.

bodies are still maturing. Cells are rapidly dividing, and organs, like the liver, may not be as efficient in removing toxic chemicals. "We must revise all existing tolerances and set the levels for children," says Janet Hathaway, the NRDC's chief lobbyist in Washington. "We should be able to eat food without worrying that we are sowing the seeds of cancer."

Not everyone believes that pesticides are as serious a threat as the NRDC claims. Professor Bruce Ames, head of the biochemistry department at the University of California, Berkeley, labels the NRDC's alarms "wild." Says he: "They are piling one worst-case scenario on top of another." Moreover, Ames points out, plants produce their own poisons to ward off pests. "The proportion of positive cancer tests is about as high for natural pesticides as for synthetic pesticides, and we are eating 10,000 times more of the natural ones," he notes. The NRDC insists that its risk es-

has begun to take action. Last month the agency announced its intention to ban the use of daminozide by next winter and said that it was barring use of the fungicide captan on 42 crops. Some find the Government's response too slow. California's Democratic Representative Henry Waxman and Massachusetts' Democratic Senator Edward Kennedy plan to introduce federal legislation that would force the EPA to act quickly to remove dangerous pesticides from the food supply.

In the meantime, what is a worried parent to do? Jackson counsels caution but still recommends that children get a steady diet of fresh fruits and vegetables, organically grown if possible. And he warns people not to let their fears push them into food foolishness. "I wouldn't want parents to go back to Big Macs," he says, "because they're concerned about the broccoli."

—By Anastasia Toularis.
Reported by Cristina Garcia/Los Angeles

2/28/89

THE NATION'S NEWSPAPER

USA TODAY

NO. 1 IN THE USA...5.3 MILLION READERS EVERY DAY

COVER STORY

Fear: Are we poisoning our children?

Pesticides have parents in uproar: 'But what are you going to do?'
Face-off, 10A

By Tim Friend
and Nanci Hellmich
USA TODAY

Katie Hazlett guzzles apple juice. The 17-month-old drinks at least three glasses a day.

"Whenever she's playing hard and just wants a drink, she says, 'Juice, juice,' and we give her apple juice," says mom Wendy Hazlett, an industrial engineer in Rochester,

N.Y. "We've always trusted apple juice." Until now.

Like millions of other USA parents, Wendy Hazlett and her husband Dave are now concerned that apples and other so-called healthy foods aren't safe for their children.

A report from the Natural Resources Defense Council, released at a news conference Monday, adds to growing concerns that our children are being poisoned by pesticides in the food they eat. Portions of the report were revealed

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over the weekend, sending many parents to their refrigerators in alarm to pour out apple juice and toss questionable produce.

The new report charges that federal guidelines for acceptable pesticide limits don't account for potentially higher health risks in young children, who eat more fruits and vegetables for their size than adults.

Of greatest concern: Daminozide, commonly known as Alar — a carcinogenic agent used to enhance the growth and appearance of red apples.

The latest report suggests exposure to Alar and seven other pesticides found on fruits and vegetables will eventually cause 5,500 to 6,200 cases of cancer in kids now under age 6.

Alar alone is estimated to cause cancer in 1 of every 4,200 preschoolers exposed, says Janet Hathaway of the Defense Council, a Washington-based public interest group. The Environmental Protection Agency estimates Alar's cancer risk is much lower — 1 in 100,000.

"We believe our assessment is right, but because of the concerns we're taking a hard look at their calculations," says Bill Jordan, policy chief for EPA's pesticide program. "If they're right, we'll move rapidly to remove Alar from the market."

Tips on fruit

Five favorite fruits of preschool children, and how to make them safer:

► **Apples.** Washing or cooking may reduce some residues, but Alar can't be washed out.

► **Oranges.** Wash and peel. Pesticides remain primarily on the peel.

► **Tomatoes.** Scrub, don't just rinse.

► **Grapes.** Buy locally grown, in season to reduce likelihood they've been treated with fungicide.

► **Bananas.** Wash before peeling, though most commonly used pesticide can't be peeled away.

Source: Natural Resources Defense Council (Percentages are based on USDA's 1985 Nationwide Food Consumption Survey)

And, he adds: "We do take into account the exposures of children in our regulatory decisions. In fact, we did that specifically with Alar and this why we recommend to apple growers not to use the pesticide."

Another study — requested a year ago by EPA — is under way, examining the health risk to children from the same pesticides studied by the Defense Council. At issue: How do kids differ from adults in their cancer risk from these chemicals?

"Children eat more fruits and drink more fruit juices than adults," says Dr. Philip Landrigan, who heads the ongoing National Academy of Sciences study. "Also, children are very different in the way their bodies handle toxins. In some instances, they may be at greater risk, and in others there is less risk."

But the results of Landrigan's study won't be out until

1990. So what are worried parents to do until then?

Trish Ward, a mother of three in Greece, N.Y., explains the dilemma many parents face: "It's frustrating when you think you're making your family eat fruits and vegetables and you find out that even they are tainted."

Michele Heyen of Crystal Lake, Ill., who has a daughter, Lauren, 3, agrees: "Everything I read about is bad for kids. It's depressing and extremely frustrating. But what are you going to do? Give them Kool-Aid filled with sugar?"

Commercial baby food is probably safe.

Both Gerber and Beech-Nut have high standards for pesticide testing, officials say. Neither accepts Alar-treated apples.

Apple juice is of particular concern because there's no way to know if the fruit is free of Alar. The pesticide can't be removed in processing — in fact, the concentration increases.

Consumer Reports is scheduled to release a major review of apple juice products in mid-March. It tested 32 samples and found nine brands had no detectable Alar, but five had high content. The majority of manufacturers have reduced Alar levels in their products, but "some have been less successful than others," an initial report says.

Next Tuesday, actress Meryl Streep, mother of three, will be named co-chairman of a new group, Mothers and Others for Pesticide Limits. The group, organized by NRDC, will offer a 900 phone number for parents to call for information.

In the meantime, if you're really worried about apples, eat only Granny Smith and Golden Delicious types, says EPA's Jordan, and eliminate apple juice altogether.

Hathaway also offers these tips for parents:

► **Grow your own fruits and vegetables.** You can control what goes on them.

► **Buy foods grown in the USA.** Imported foods are twice as likely to violate even the EPA's limits for pesticide residues.

► **Beware of perfect looking produce.** "The kinds of pesticides that are used to make a perfect looking product are chemicals that are likely to injure your health."

► **Talk to your supermarket manager.** Ask where the fruits and vegetables are coming from. Show your concern.

► **Wash all fresh produce.** "Don't let your children suck on or play with fruits and vegetables that aren't washed."

► **Buy fruits that are in season.** Because they aren't being stored for long, they're less likely to have been treated with fungicides and other chemicals to preserve their appearance.

► **Peel fruits that have thick skin.** Many residues are removed this way.

► **Talk to local growers.** Ask them what pesticides they're using, and urge them to cut back. Then buy their produce.

A REVIEW OF SENATE BILL 209 BY
NANSEN AND DANA OLSON. WE ARE
GOING INTO ORGANIC APPLE AND
SMALL FRUIT PRODUCTION, AND THEREFORE
WANT (NEED) A QUALITY ORGANIC
FOODS LAW. A QUALITY LAW IS REQUIRED
IN ORDER TO ALLOW EXPORT OF ALASKAN
ORGANIC FOODS TO OTHER STATES AND/OR
COUNTRIES. IT IS ALSO REQUIRED IN ORDER
TO MAINTAIN "LOCAL" CONSUMER CONFIDENCE.
THE "ORGANIC FOODS PRODUCTION ASSOCIATION
OF NORTH AMERICA (OFPA)" IS FEDERAL
EXPRESSING A PACKET OF INFORMATION ON
ORGANIC STANDARDS TO SENATOR BETTYE
FAHRENKAMP. THIS PACKET WILL PROVIDE INFORMATION
ON ORGANIC CERTIFICATION AND OTHER LEGAL
ASPECTS AND MINIMUM STANDARDS REQUIRED
TO ALLOW CONSUMER CONFIDENCE AND EXPORT
OF ALASKAN PRODUCE.

FOR SEC. 03.58.010 (B)(2) FED TO THE ANIMAL PRODUCING
THE FOOD — THE FOOD CHAIN MUST BE
RECOGNIZED. ANIMAL FEEDS INCLUDING GRAINS
AND HAYS WHICH CONTAIN SUBSTANCES LISTED
IN SEC. 03.58.010 (A)(2) CAN NOT BE FED TO ANIMALS
PRODUCING ORGANIC FOOD. IN OTHER WORDS,
THE ANIMAL FEED MUST ALSO COMPLY WITH
THE STATE ORGANIC CERTIFICATION PROGRAM.

SEC. 03-55.010 NEEDS TO INCLUDE A CERTIFICATION PROGRAM TO PROVIDE CONSUMER CONFIDENCE, PROTECT HONEST PRODUCERS AND ALLOW FOR EXPORT.

SEC. 03-55.010(A) SHOULD INCLUDE ... ~~IT HAS BEEN GROWN,~~
RAISED, PRODUCED OR TREATED WITH THE USE OF ...

SEC. 03-55.010(A)(2) SHOULD INCLUDE ... HERBICIDES,
RIPENING AGENTS, RET RETARDANTS AND FRUIT POLISHES
WAXES - -

SEC. 03-55.010(B)(1) SHOULD INCLUDE ... APPLIED TO THE
SEED, FOOD PRODUCING PLANT, FOOD, SOIL, PLANT
GROWTH MEDIA OR SEED STARTING MEDIA ...

SEC. 03-55.010(B)(2) SHOULD BE CHANGED TO
"SEC. 03-55.010(B)(1)(c) UNDER "APPLIED TO..."
AS A SUBSECTION.

... UNLESS THE SUBSTANCE APPLIED IS
APPLIED TO THE SOIL OR OTHER GROWING MEDIUM,
MORE THAN FOUR YEARS PRIOR TO SEED PLANTING
OR TRANSPLANTING, OR, IF THE CROPS ARE PERENNIAL,
MORE THAN FOUR YEARS PRIOR TO THE APPEARANCE
OF THE CROPPING YEAR FLOWER BUD.

SEC. 03-55.010(B)(4) DELETE - ITS COVERED IN THE
NEW SUBSECTION 03-55.010(B)(1)(c)

SEC. 03-55.020 AN ORGANIC CERTIFICATE ALSO
NEEDS TO BE REQUIRED W/A COPY BEING
DISPLAYED AT THE RETAIL SALES SITE.

SEC. 03.58.030 SWORN STATEMENTS HAVE NOT WORKED IN OTHER STATES, WHICH ARE NOW REQUIRING CERTIFICATION PROGRAMS WHICH INCLUDE LAB TESTS OF GROWTH MEDIA, PLANT TISSUE AND ANIMAL TISSUE. THIS SECTION SHOULD BE REPLACED WITH A CERTIFICATION PROGRAM WHICH INCLUDES LAB TESTS. CERTIFICATION PROGRAM ADMINISTERED BY STATE DEPT. OF AGRICULTURE. W/COSTS AND LAB FEE BORN BY FARMER. ONE ANNUAL CERTIFICATION PER CROP SHOULD BE REQUIRED.

SEC. 03.58.040 RECORDS SHOULD BE REQUIRED TO BE KEPT FOR A MINIMUM OF TWO YEARS AFTER THE "SALE" BY PRODUCERS. THESE RECORDS SHOULD INCLUDE DATA FOR FOUR YEARS PRICR TO THE "SALE."

SEC. 03.58.070 (1) A ONE THOUSAND DOLLAR FINE WOULD ONLY TEND TO ENCOURAGE VIOLATIONS AS THE PROFITS TO BE GAINED WOULD BE FAR FAR GREATER THAN ONE THOUSAND DOLLARS PER AVERAGE WHOLESALE CONTRACT. RAISE THE MAXIMUM FINE TO AT LEAST TEN THOUSAND DOLLARS.

NANSEN AND DANA OLSON

HC 30 BOX 5438

WASILLA, AK 99687

907-373-4612



UNIVERSITY OF ALASKA FAIRBANKS
School of Agriculture and Land Resources Management

Agricultural & Forestry Experiment Station
Palmer Research Center
533 E. Fireweed
Palmer, Alaska 99645
(907) 745-3257

MEMORANDUM

DATE: March 3, 1989
TO: Senator Jalmar Kerttula
FROM: Allen Mitchell, Associate Director
(Ph. D. Soils and Environmental Sciences) *AM*
SUBJECT: Criteria for Organically Grown Produce

This memorandum is a follow-up to conversations that I have had with Mark Weaver regarding certain criteria for organically grown produce. The criteria discussed were related to the use of synthetic fertilizers and pesticides.

Fertilizers

Of the two categories of synthetic chemicals, fertilizers pose the least hazard in terms of human consumption of crops grown on ground to which it has been applied. In fact, of the three primary plant nutrients, nitrogen (N), phosphorus (P), and potassium (K), synthetic forms are chemically indistinguishable from organically derived forms in the soil. Also, of these three, only nitrogen poses a potential problem to human health. For example, nitrate- and nitrite-nitrogen might conceivably accumulate in plants to levels that could cause human health problems. This is a rare occurrence. Furthermore, this type of problem could just as easily occur with nitrogen from organic sources. Another concern that some have with synthetic fertilizers is from chemical impurities they may contain. One example often cited is certain phosphorus fertilizers have been found to contain potentially toxic cadmium. However, the source of this contamination is the naturally occurring rock phosphate from which it was manufactured. Organic growers do use rock phosphate as a source of phosphorus fertilizer.

For some of the above mentioned reasons as well as others, enforcement of regulations on fertilizer sources (organic vs synthetic) would be most difficult. Once incorporated in the soil, it is essentially impossible to distinguish source. It would likewise be impossible to determine how long such nutrients have been in the soil.

With this brief description of the problems, I doubt that requiring a long synthetic fertilizer-free period would be either practical or enforceable. Therefore, I would suggest that you consider a requirement that the ground to be used for organically grown produce be free of synthetic fertilizers for a period of one year.

Pesticides

Synthetic pesticides are a completely different situation. While pesticides vary considerably in their toxicity, a great number of them are potentially hazardous. Our information is incomplete, in many cases, with regard to the absolute safety of many of these products. For those individuals who want to pursue a "chemical" free diet, this is where the regulatory emphasis should be placed in my opinion. Unlike fertilizers, pesticide residues in the soil and in produce can be differentiated from natural occurring compounds. Thus enforcement of regulatory policies is possible. Additionally, soil applied pesticides tend to carry over for longer periods in some environments than in others. However, to further complicate the situation, pesticides change chemical form when they enter the soil and are acted on by soil microbes. Fortunately, the new forms are usually less toxic and eventually are reduced to harmless carbon, hydrogen, and oxygen. Again, the time required to render them harmless varies with the pesticide and soil temperatures.

There's no question in my mind that, for regulatory policy, the residence time required in the soil should be greater for pesticides to insure an appropriate degradation time. For example, the herbicide Lorox (linuron) degrades to harmless byproducts in four months in temperate climates while we have been able to measure residue in soils 12 months after application. Linuron is a very safe material from a human health standpoint and concentrations remaining after a year are harmless, but it does illustrate that pesticides can carry over for longer periods depending on environmental conditions at specific locations.

Based on the above arguments, I suggest that the law require that soil used to grow organic produce be free of synthetic pesticide application for a period of two years prior to planting a crop.

If you or Mark have any further questions, please don't hesitate to contact me. The whole question of organically grown produce is a difficult one, but it does have to be addressed. Fortunately for Alaska, we currently use substantially less pesticides than most other producing areas and we have an excellent synthetic chemical-free land base available to those who may want to enter the organic produce market.

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Tips on fruit

Five favorite fruits of preschool children, and how to make them safer:

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Source: Natural Resources Defense Council (Percentages are based on USDA's 1985 Nationwide Food Consumption Survey)

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Apple juice is of particular concern because there's no way to know if the fruit is free of Alar. The pesticide can't be removed in processing — in fact, the concentration increases.

Consumer Reports is scheduled to release a major review of apple juice products in mid-March. It tested 32 samples and found nine brands had no detectable Alar, but five had high content. The majority of manufacturers have reduced Alar levels in their products, but "some have been less successful than others," an initial report says.

Next Tuesday, actress Meryl Streep, mother of three, will be named co-chairman of a new group, Mothers and Others for Pesticide Limits. The group, organized by NRDC, will offer a 900 phone number for parents to call for information.

In the meantime, if you're really worried about apples, eat only Granny Smith and Golden Delicious types, says EPA's Jordan, and eliminate apple juice altogether.

Hathaway also offers these tips for parents:

► **Grow your own fruits and vegetables.** You can control what goes on them.

► **Buy foods grown in the USA.** Imported foods are twice as likely to violate even the EPA's limits for pesticide residues.

► **Beware of perfect looking produce.** "The kinds of pesticides that are used to make a perfect looking product are chemicals that are likely to injure your health."

► **Talk to your supermarket manager.** Ask where the fruits and vegetables are coming from. Show your concern.

► **Wash all fresh produce.** "Don't let your children suck on or play with fruits and vegetables that aren't washed."

► **Buy fruits that are in season.** Because they aren't being stored for long, they're less likely to have been treated with fungicides and other chemicals to preserve their appearance.

► **Peel fruits that have thick skin.** Many residues are removed this way.

► **Talk to local growers.** Ask them what pesticides they're using, and urge them to cut back. Then buy their produce.



Official Business

Alaska State Legislature

Senate

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

MARCH 9, 1989

TO: Senator Bettye Fahrenkamp
Chair, Senate Resources Committee

FROM: Senator Jay Kerttula

SUBJECT: SENATE BILL 209, relating to the sale of
organic and natural foods.

This memo is to confirm my verbal request which I made through my staff, Mark Weaver.

I would appreciate your scheduling Senate Bill 209 for a committee hearing as soon as possible. This legislation is straightforward; it provides minimum standards which must be met before a food can be sold as organic. There is no fiscal impact.

Thank you for your consideration of this request.

S B

213

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION : SB 213
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: 17-Apr-89 Agency Affected: Natural Resources
 Title: An Act relating to commercial BRU: Land & Water Mgmt
development leasing of state land.
 Sponsor: Senator Kertulla Components: Land & Water Mgmt
 Requestor: Senate Resource

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)

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 17-Apr-89

Approved by Commissioner: Lennie Gorsuch Date: 17-Apr-89
 Agency: Department of Natural Resources

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

56213

RESOURCES COMMITTEE SUBSTITUTE FOR H.B. 290 (CSHB 290(Res))

The Department of Natural Resources (DNR) believes that CSHB 290(Res) would considerably improve and modernize the process of leasing state-owned land for hunting and fishing lodges, resorts, and other recreational facilities. It does not change existing land use laws, but instead provides a special process for this type of lease. The bill offers the following distinct advantages:

- Existing general-purpose leasing laws are not only old, they are poorly suited to recreation site leasing because they were designed for other uses. CSHB 290(Res) incorporates up-to-date concepts of recreational facilities leasing, including full public review of the lease's specifics, better safeguards of the public interest, and more careful control over the development process.
- Existing laws require a high-bid auction with no negotiating, giving DNR and the Alaskan public little control over the "style" of the development. Though negotiating such details is unnecessary for a fish processing plant or a warehouse, it is essential for a recreational facility intended to attract Alaskans and visiting tourists. Under CSHB 290(Res), developers will bid competitively for the opportunity to negotiate a lease. The negotiating process gives state agencies, nearby communities, and the general public a full voice in determining how the site will be developed. The final decision to issue the lease is not made until most project details have been established and exposed to agency and public review.
- Similarly, existing laws do not always provide a fair return to the state if used for recreational leases. At present, the department must lease land only at approved, appraised market value (with minor exceptions). However, the appraised value of a lease does not include the value added to a lodge or resort by the surrounding acreage of pristine forest land and streams. Charging on the basis of a lodge's gross receipts or a ski area's total clientele might be much more appropriate to ensure a fair return for the state. CSHB 290(Res) provides the flexibility to set lease payments in these and other ways, depending upon specific circumstances.
- Existing laws also freeze lease payments for 25 years, prohibiting any adjustment for inflation. CSHB 290(Res) allows lease payments to be adjusted every five years for changed circumstances and to ensure the state is adequately compensated.

If enacted, CSHB 290(Res) will expand opportunities for Alaskans to develop visitor facilities, provide better incentive for the state to market a prime resource, and give the public and agencies the information needed for full participation and wise recreational leasing decisions.

Proposed amendments to SB 213

AMENDMENT #1

Page 1, lines 27-28
Section 1, paragraph (c)

Insert after "this section,":

"...the commissioner may solicit proposals from potential lessees. The..."

AMENDMENT #2

Page 2, line 16
Section 1, paragraph (d)

After "state", delete "." and insert:

"and in a local newspaper in general circulation in the region where the land is located."

AMENDMENT #3

Page 3, line 15
Section 1, paragraph (g)

After the sentence ending "public and state agencies." and before the sentence beginning "The preliminary decision...." insert new sentence:

"The commissioner may hold public hearings in the regions where the land proposed for lease is located."

6-0841H
Bannister
4/6/90

Original sponsor(s): SEN. KERTTULA

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 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 ^{conservation} 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. If an adopted land use plan specifically allows the
15 type of development under consideration, the commissioner may request
16 proposals from potential lessees under (c) of this section. Consis-
17 tent with AS 38.04.065, the development of a land use plan used to
18 identify land suitable for recreational facilities development leasing
19 must consider the supply of recreational opportunities and alterna-
20 tives, economic and social factors, and fish, wildlife, and other
21 resources affected by the specific type and location of recreational
22 facilities development under consideration.

23 (b) AS 38.05.070(a), 38.05.085(c), 38.05.090, and 38.05.103
24 apply to leasing under this section. The other provisions of AS 38.-
25 05.070 - 38.05.105 do not apply to leasing under this section.

26 (c) If the commissioner identifies land for recreational facili-
27 ties development leasing under (a) of this section, the commissioner
28 shall prepare a written request for proposals that includes

29 (1) the specific type of recreational facilities

1 development for which the land may be leased;

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

4 (3) the selection criteria that the commissioner will use
5 to determine the eligibility of a developer, including the developer's
6 financial backing and capability, experience in the proposed undertak-
7 ing, ability to meet bonding or insurance requirements, and ability to
8 comply with resource and environmental analysis requirements; and

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

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

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

24 (f) After soliciting proposals under (d) of this section, if the
25 commissioner determines that two or more potential lessees are accept-
26 able, the commissioner may select the potential lessee who submits the
27 highest bid during an auction or by sealed bids, whichever method the
28 commissioner chooses. The minimum bid must equal the amount estab-
29 lished by the commissioner plus the administrative fee established

1 under (j) of this section. The commissioner shall also require the
2 potential lessee to make an earnest money deposit under AS 38.05.-
3 860(b). After the commissioner selects a potential lessee, the com-
4 missioner may begin negotiations with the potential lessee to develop
5 the terms and conditions for the lease.

6 (g) After developing proposed lease terms and conditions with a
7 potential lessee under (e), (f), or (i) of this section, the commis-
8 sioner may issue a preliminary decision under AS 38.05.035(e) that
9 leasing the land to the potential lessee on the proposed terms and
10 conditions serves the best interests of the state. During preparation
11 of the preliminary decision, the commissioner shall consult with
12 affected state agencies regarding issues within the agencies' areas of
13 responsibility and expertise. The commissioner shall give public
14 notice of the preliminary decision under AS 38.05.945 and request
15 comments from the public and state agencies. The preliminary decision
16 must include

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

19 (2) an analysis of alternative sites;

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

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

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

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

1 proposed development;

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

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

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

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

1 methodology and scope are appropriate for the plan or study, the
2 methodology and scope may be used for the plan or study.

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

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

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

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

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

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

19 (3) the fair market rental value;

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

22 (5) a fee for each user;

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

24 (7) a combination of the above.

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

1 five-year period.

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

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

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

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

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

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

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

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

1 (s) In this section, "recreational facilities development"
2 includes the development of lodges, resorts, and other tourism and
3 recreation-related facilities.
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6-0814H✓
Bannister
3/30/90

Original sponsor(s): SEN. KERTTULA

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 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."

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10 Sec. 38.05.073. RECREATIONAL FACILITIES DEVELOPMENT LEASING.

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13 or a site specific land use plan adopted under AS 38.04.065. If an
14 adopted land use plan specifically allows the type of development
15 under consideration, the commissioner may request proposals from
16 potential lessees under (c) of this section. Consistent with AS 38.-
17 04.065, the development of a land use plan used to identify land
18 suitable for recreational facilities development leasing must consider
19 the supply of recreational opportunities and alternatives, economic
20 and social factors, and fish, wildlife, and other resources affected
21 by the specific type and location of recreational facilities develop-
22 ment under consideration.

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5 to determine the eligibility of a developer, including the developer's
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25 expertise or responsibilities shall be involved in the review of
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27 or customary and traditional use of natural resources, the Department
28 of Fish and Game shall approve the methodology and scope of the plan
29 or study.

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

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

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10 lease when it is in the best interest of the state.

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

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

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

17 (3) the fair market rental value;

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25 five-year intervals. The annual compensation for each five-year
26 period after the initial five years of the lease shall be calculated
27 by the same method used to establish the compensation for the initial
28 five-year period.

29 (n) Before a lease is issued under this section, the land to be

1 covered by the lease shall be surveyed. The survey must be adequate
2 to describe the land to be covered by the lease.

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

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

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

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

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

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

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

28 (s) In this section, "recreational facilities development"
29 includes the development of lodges, resorts, and other tourism and

1 recreation-related facilities.
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STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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

April 17, 1989

The Honorable Bettye Fahrenkamp
Chair, Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

Subject: SB 213, Commercial Development Leasing

Position: The Department of Natural Resources supports the concept of this new commercial development leasing statute. We believe our existing leasing statutes are inadequate to allow the department to capture a meaningful revenue return for the long-term use of state land and resources for commercial recreational purposes. The department does have some suggested changes to this bill which we believe will enhance its effectiveness.

Background: Under current leasing statutes rental is fixed for a 25-year period. It cannot be adjusted to reflect changes in the lease's fair market value. This makes it impossible to ensure that large commercial developments will bring a fair return to the state. Furthermore, there is no opportunity to employ alternative revenue generation techniques, such as percentage of gross receipts or user fees.

In order to ensure that proposed developments generate a fair return for the resources being utilized, a commercial development lease that allows the department more flexibility in negotiating a greater return would benefit the state. The proposed statute would allow the department to do business in a manner more consistent with private industry, as well as that already being used by many other public land agencies (i.e. U.S. Forest Service).

Recommendations: The department recommends the following modifications to SB 213.

1. Under (a), the commissioner requests the authority to apply AS 38.05.085(c), AS 38.05.085(f) and AS 38.05.095(a) to leases issued under this section.

2. Under (b), the area plan should be adopted prior to soliciting expressions of interest. The process for adopting a plan would require adequate public notice; therefore, (c) is redundant and could be deleted.
3. The commissioner requests the authority to set a minimum bid for the auction or sealed bid for the right of first refusal under (f).
4. Under (g), if the potential developer who is offered the lease declines, the commissioner is forced to begin the negotiations with the second highest bidder, thus requiring another preliminary decision, public notice and final finding. As an alternative, if the potential developer declines the offer, the same offer could be made to subsequent bidders until one of the potential developers accepted the offer.
5. The commissioner requests the authority to reappraise and adjust the annual compensation at five year intervals to ensure a fair return to the state.
6. The justification for a performance bond should be expanded to include the ability to complete and/or maintain a project in the event the lessee defaults on a condition of the lease. The department also needs the ability to cash in the bond for use on the project. In the past, the Department of Law has questioned whether bond proceeds could actually be used for such purposes. If the bond proceeds must be deposited into the general fund and an appropriation sought during the next budget cycle, the attendant delays could result in a great deal of interim damage.
7. Under (j), the lease appears to be renewable. The lease should not be automatically renewable, however. The commissioner should reserve the right to offer the lessee the right of first refusal if the land is going to be offered again as a commercial development lease.
8. The commissioner requires the ability to terminate the lease for a breach of a term or condition of the lease.
9. The income generated from commercial development leases should be accounted for separately by the Commissioner of Administration to allow the Legislature to make appropriations to carry out the purposes of AS 38.05.073.

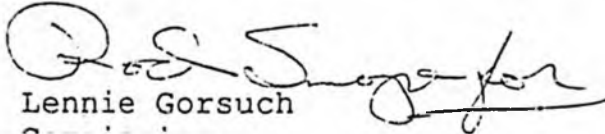
Senator Fahrenkamp

-3-

April 17, 1989

We appreciate the opportunity to work with the committee and offer our continued assistance to the committee and staff on this important piece of legislation.

Sincerely,


Lennie Gorsuch
Commissioner

cc: Bill Sponsor
Committee Members
Denby Lloyd, Special Staff Assistant
Office of the Governor
Bob Evans, Legislative Liaison
Office of the Governor
Gary Gustafson, Director
Division of Land and Water Managment
Department of Natural Resources

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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

February 28, 1990

The Honorable Ron Larson
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Dear Representative Larson:

Thank you for your gracious comments following the unfortunate news of Mitsui & Co.'s lease termination. Mitsui's exit may be considered a temporary setback, but it will by no means set the tone for the future of the magnificent Hatcher Pass area.

You are correct, the recreational development potential of the Hatcher Pass area is now well documented. Mitsui representatives have repeatedly indicated to us that their decision to terminate was linked directly to timing and immature market conditions. Actual site development potential does not appear to have been a significant factor.

As you know, I have placed a great deal of importance on the ability to incorporate flexibility and achieve realistic objectives in our leasing process. Passage of the commercial recreation leasing bill, HB 290, currently under legislative consideration could help us meet those goals. The practical effect of amended statutes guiding our leasing procedures will be felt statewide. It will greatly increase our chances of success with the next Hatcher Pass leasing package. Your support of this bill is appreciated.

With the experience gained administering the Mitsui lease, the department looks forward to renewed opportunities for the Hatcher Pass area.

Sincerely,

Lennie Gorsuch

Lennie Gorsuch

RECEIVED

TESTIMONY ON CS FOR HB 290 (3/9/90 Draft)
By Susan Flensburg, Bristol Bay Coastal Resource Service Area

House Finance Committee
March 28, 1990

My name is Susan Flensburg and I'm the Director of the Bristol Bay Coastal Resource Service Area which has an approved coastal management program for the the Bristol Bay region. We support HB 290 and have followed the progress of this bill very closely because the issue of leasing state lands for recreational development has been a controversial one in our region, and because of the current and anticipated demand for future leases in our area. We've been fortunate in that the departments of Natural Resources and Fish and Game, along with our CRSA Board, are cooperatively preparing a recreation management plan for two major river systems in our region covering almost 6 million acres of state land. The plan, which is nearing completion, specifically addresses where leases and permits for recreational development will be allowed, and is a good example of the coordination that can exist between the state and local areas.

There are two major reasons why we support the committee substitute for HB 290. First, it will allow DNR to negotiate a more equitable financial return to the state on leases issued, which is clearly needed. This should also benefit ANCSA corporations in that potential developers may be more inclined to enter into a lease or other financial arrangement with corporations and private landowners. One of the things we have consistently heard from some of the corporations in our region is that the current fee structure for permits and leases on state land is so low, that it serves as a disincentive for developers to work with those corporations interested in developing their lands.

The other reason we support HB 290, as amended, is because it is a vast improvement over the current leasing process. The bill would establish specific procedures to be followed and require consideration of the impacts associated with a proposed lease as part of the decision-making process, such as the effects on traditional and other existing uses of state land and resources.

It seems that much of the debate over this bill has stemmed from the perception that it is a back-door attempt to promote development by allowing DNR to identify lands suitable for leasing and to solicit proposals from potential developers. Part of the problem is that people or organizations opposed to the bill do not realize the law already requires DNR to prepare a regional or site specific land use plan before it can even consider offering a lease, or that there is nothing in statute to prevent DNR from soliciting proposals instead of waiting until someone applies for a lease. This approach, in conjunction with the rest of the leasing process outlined in the bill, makes more sense and should help weed out speculative proposals or economically infeasible projects. We also believe the bill contains enough safeguards,

Bristol Bay CRSA
Testimony on CS for HB 290
March 28, 1990

agency and public involvement so that local interests will be given fair and due consideration throughout the leasing process.

In closing, we would like to state again our support of CS for HB 290, and encourage the House Finance Committee to take favorable action on the bill as soon as possible.

Thank you for the opportunity to testify.

Bills would alter land development assessment rules

By BILL KELDER
Times Valley Bureau

WASILLA — Legislation that would allow Alaska's land managers more flexibility in dealing with proposed commercial recreation development on state land has won support from Matanuska-Susitna Borough officials and the Department of Natural Resources.

The bills, SR 218 and HR 701, also would enhance development of Alaska tourism and mean more money for the state, their sponsors claim. The House bill was sponsored by Rep. Curt Menard, D-Wasilla; the Senate version by Sen. Jay Kerttula, D-Palmer.

Menard said state law requires the division to lease state land for commercial ventures at its current assessed value.

"But that law also requires that DNR not take a look at the assessed value again for 25 years. Our bills will provide for a value reassessment every five years," Menard said in a telephone interview from his Juneau office.

Commercial recreational and tourism could include developments such as ski resorts, campgrounds and fishing camps.

The bills, as written, would allow the state to charge more for the leases if the value of the state property increased, or to give the leaseholder a break if the value decreased.

Statutes allow the Natural Resources commissioner to seek compensation through a percentage of gross receipts, user fees, guaranteed minimum annual re-

'That provision gives the type of flexibility necessary to help a tourism or recreational development project succeed.'

John Duffy,
Mat Su Planning Director

by allowing the agency to negotiate with a developer.

"That provision gives the type of flexibility necessary to help a tourism or recreational development project succeed," said John Duffy, the borough's planning director.

Duffy said the borough supports the bills, but would like to see a provision requiring consultation with local government.

"To me, it is only logical to want that consultation up front. That way the developer making the proposal knows early on if there are local zoning, permitting or land use requirements with which he will have to comply," Duffy said. "No developer wants to get to the end of all the state requirements only to find there are local requirements to deal with."

Tom Hawkins, DNR assistant commissioner, and Gary Gustafson, director of the Land and Water Division, said their agency supports the bills.

The measures still would require the department to consult with other state agencies, such

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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

April 17, 1989

The Honorable Bettye Fahrenkamp
Chair, Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

Subject: SB 213, Commercial Development Leasing

Position: The Department of Natural Resources supports the concept of this new commercial development leasing statute. We believe our existing leasing statutes are inadequate to allow the department to capture a meaningful revenue return for the long-term use of state land and resources for commercial recreational purposes. The department does have some suggested changes to this bill which we believe will enhance its effectiveness.

Background: Under current leasing statutes rental is fixed for a 25-year period. It cannot be adjusted to reflect changes in the lease's fair market value. This makes it impossible to ensure that large commercial developments will bring a fair return to the state. Furthermore, there is no opportunity to employ alternative revenue generation techniques, such as percentage of gross receipts or user fees.

In order to ensure that proposed developments generate a fair return for the resources being utilized, a commercial development lease that allows the department more flexibility in negotiating a greater return would benefit the state. The proposed statute would allow the department to do business in a manner more consistent with private industry, as well as that already being used by many other public land agencies (i.e. U.S. Forest Service).

Recommendations: The department recommends the following modifications to SB 213.

1. Under (a), the commissioner requests the authority to apply AS 38.05.085(c), AS 38.05.085(f) and AS 38.05.095(a) to leases issued under this section.

2. Under (b), the area plan should be adopted prior to soliciting expressions of interest. The process for adopting a plan would require adequate public notice; therefore, (c) is redundant and could be deleted.
3. The commissioner requests the authority to set a minimum bid for the auction or sealed bid for the right of first refusal under (f).
4. Under (g), if the potential developer who is offered the lease declines, the commissioner is forced to begin the negotiations with the second highest bidder, thus requiring another preliminary decision, public notice and final finding. As an alternative, if the potential developer declines the offer, the same offer could be made to subsequent bidders until one of the potential developers accepted the offer.
5. The commissioner requests the authority to reappraise and adjust the annual compensation at five year intervals to ensure a fair return to the state.
6. The justification for a performance bond should be expanded to include the ability to complete and/or maintain a project in the event the lessee defaults on a condition of the lease. The department also needs the ability to cash in the bond for use on the project. In the past, the Department of Law has questioned whether bond proceeds could actually be used for such purposes. If the bond proceeds must be deposited into the general fund and an appropriation sought during the next budget cycle, the attendant delays could result in a great deal of interim damage.
7. Under (j), the lease appears to be renewable. The lease should not be automatically renewable, however. The commissioner should reserve the right to offer the lessee the right of first refusal if the land is going to be offered again as a commercial development lease.
8. The commissioner requires the ability to terminate the lease for a breach of a term or condition of the lease.
9. The income generated from commercial development leases should be accounted for separately by the Commissioner of Administration to allow the Legislature to make appropriations to carry out the purposes of AS 38.05.073.

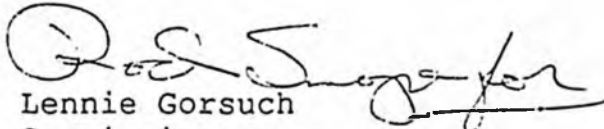
Senator Fahrenkamp

-3-

April 17, 1989

We appreciate the opportunity to work with the committee and offer our continued assistance to the committee and staff on this important piece of legislation.

Sincerely,


Lennie Gorsuch
Commissioner

cc: Bill Sponsor
Committee Members
Denby Lloyd, Special Staff Assistant
Office of the Governor
Bob Evans, Legislative Liaison
Office of the Governor
Gary Gustafson, Director
Division of Land and Water Management
Department of Natural Resources

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.

March 23, 1990

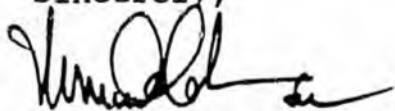
1. ADF&G has an appropriate role in the identification and leasing process.
2. The public is involved as much, or more so, than is currently provided.
3. User conflicts are taken into account.
4. Proper planning and management tools are in place.
5. Sites are selected, taking into account the ability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

TALAHEIM LODGE

An Alaskan Adventure

Jan. 23, 1990

Nancy Peterson
Resource Comm.
P.O. Box V
Juneau, AK. 99811

Dear Nancy,

I would like this letter to be recored with SB 213 when it comes up on the floor. I would also like to beable to speack in that hearing whether in person or through Teleconference.

Title: "An Act relating to commercial development leasing of state land."

I am the only one currently holding a long term lease in Alaska that not only pays a annual payment but a percentage of my gross annual income.

I am not against the leases; I am not against a fair annual lease payment. What I am against is a percentage of gross income.

My reasoning: I have less than one acre on the Talachulitna River 80 airmiles west of Anchorage. I pay now \$2000 per year annual lease plus a \$1700 additional fee which is 3% of my gross three years ago. The gross is revaluated every five years. With just the annual payment the state would net \$110,000 in 55 years. Not bad for one acre of land valued at \$15,000 to \$20,000. Add on a percentage of gross and you can double to triple that figure. I think this is rape of private business. A one acre lease from the State of Alaska on Lake Hook in Anchorage currently runs about \$2000 annually. Certainly one acre on Lake Hood is worth more than 80 miles from the nearest road where income can be only generated three to four months each year...not 12 months like in Anchorage.

Another failure of the percentage of ones gross is this: I certainly hope that the state of Alaska is trying to cut down its state workforce. This bill if left unchanged would require one, possible serveral more state employees. These employees would have to be trained to audit. We would have to form a state bureau like that of the IRS. Lodge owners are not selling products, they sell a service. Much of the money they take in is cash. Business like fishing and hunting lodges may just be base camps...much of the income is actually generated from "Spike" camps that may be 100 miles away from the lease. The state would have to carefully investitage each lease holder. If just a fair annual lease is charged than the state would not have to have any additional imployees to implemate this kind of lease. It is already in effect.

In conclusion: I think that the state should charge a fair market value lease which in the past has been 10% of the apprased value of the land yearly. The state should stimulate the tourist industry and private development in that industry...not strangle it and make the individual cheat and hide income like we all have towards the IRS. Leases in remote places should be well spaced as not to overcrowd. Alaska is getting a bad reputation as being too crowded when it comes to fishing lodges in some locations...that is now too late.

Mark Miller, Registered Alaskan Guide and Outfitter

1317 West Northern Lights #643 • Anchorage, Alaska 99503 • Telephone (907) 563-3272 • Fax (907) 279-6626

SB213

TALAHEIM LODGE

An Alaskan Adventure

Jan. 23, 1990

Bettye M. Fahrenkamp
Kurt Menard
P.O. Box V
Juneau, AK. 99811

Dear Bettye and Kurt,

There is a SB 213 that I think you in the house will be writing your side of that bill. The bill is titled "An Act relating to commercial development leasing of state land."

Similar

I would like to speak through teleconference ^{if} the house comes up with a bill that is similar. I think that I qualify to talk in such that I am the only one currently holding a wilderness lease who pays not only a annual payment but a percentage of my gross.

I am not against the leases; I am not against a fair annual lease payment. What I am against is a percentage of gross income.

My reasoning: I have less than one acre on the Talachulitna River, 80 airmiles west of Anchorage. For my lease I pay the state \$2000 each year annual payment plus \$1700 which represents 3% of my annual gross several years ago. The gross is to be evaluated every five years. With just the annual payment the state would net \$110,000 in 55 years. Not bad for less than one acre. Add on the percent of gross payment and you can triple that figure. I call that rape of private business. An acre of land on lake hood which is leased by the state of Alaska is currently going for about \$2000. I would suggest that a acre on Lake Hook could generate more business than one in the wilderness that can only be worked four months a year...not 12 like in Anchorage.

Another failure of the percentage of ones gross is this: I certainly hope that the state of Alaska is trying to cut down its state workforce. This bill if left unchanged would require one, possible several more state employees. These employees would have to be trained to audit. We would have to form a state bureau like that of the IRS...what a lovely thought! Lodge owners are not selling products like that in the airport terminals, they are selling a service. Businesses like hunting and fishing lodges generate much of their business from "out camps" which can be miles away from the leased ground. The state would have to carefully audit each lease owner. It would be too easy to hide income under other businesses. The state already is set up to lease land under just a annual payment.

IN conclusion: I think that the state should charge a fair market value lease which in the past has been 10% of the appraised value yearly. The state should stimulate the tourist industry and private development in that industry...not strangle it and make the individual cheat and hide income like we "all" have towards the IRS. Leases in remote places should be well spaced as not to over-crowd. Alaska is getting a bad reputation as being too crowded when it comes to fishing lodges in some locations...that is now too late and degrading our industry.

over

Mark Miller, Registered Alaskan Guide and Outfitter

STATE OF ALASKA
THE LEGISLATURE

POUCH - STATE CAPITOL
JUNEAU ALASKA 99811
907 465 2800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 2, 1990

SUBJECT: Ambiguities in draft CSSB 213 (Resources)

TO: Senator Bettye Fahrenkamp
Chair, Senate Resources Committee

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies an amendment that you have requested for the above-referenced bill. The amendment addresses two ambiguities in the bill.

1. First Ambiguity. With regard to the first sentence of sec. 38.05.073, it is my understanding that the intent is to prohibit the commissioner from making the land identification unless the commissioner does it through certain land use plans. However, due to the nature of the word "only", the sentence could be interpreted differently from that intent. The "only" could be read as modifying "recreational facilities development leasing" or as modifying "through a regional land use plan...." If it is read as modifying the development leasing phrase, the sentence would not prohibit the commissioner from making the identification through other approaches than the land use plans. The amendment contains language that would eliminate the ambiguity.

2. Second Ambiguity. It is my understanding that the intent is for the Department of Fish and Game to review and perhaps establish the methodology and scope for certain plans and studies. The relevant language begins on page 4, at line 26. Because the sentence uses "shall approve" without any qualification, the sentence could be interpreted to mandate that the department approve the methodology and scope of the plan or study even if it does not believe that the methodology and scope are appropriate. If the sentence were interpreted that way, the intent would not be achieved. The amendment contains language that would remove the problem.

If I can be of further assistance with this matter, please advise.

TLB:lmb
L10/045

Enclosure

A M E N D M E N T

OFFERED IN THE SENATE

BY THE RESOURCES COMMITTEE

TO: CSSB 213 (Resources) (6-0841H, 3/30/90)

Page 1, lines 11 - 13:

Delete "The commissioner may identify land suitable for recreational facilities development leasing only through a regional land use plan or a site specific land use plan adopted under AS 38.04.065."

Insert "To identify land suitable for recreational facilities development leasing, the commissioner shall make the identification through a regional land use plan or a site specific land use plan adopted under AS 38.04.065."

Page 4, line 28, following "shall", through line 29:

Delete all material.

Insert "review the methodology and scope of the plan or study. If the Department of Fish and Game determines that the methodology and scope are appropriate for the plan or study, the methodology and scope may be used for the plan or study."



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

March 27, 1989

MEMORANDUM

TO: Representative Curt Menard

ATTN: Johanna Munson

FROM: Gretchen Keiser *G. Keiser*
Legislative Analyst

RE: Leasing State Lands for Commercial Development
Research Request 89.329

You asked us to obtain information on the provisions other states make for the leasing of state lands for commercial development. You were specifically interested in provisions for land-use planning, solicitation of bids, compensation to the state and other lease terms and conditions, and public notice, as proposed under Senate Bill No 213 (Attachment A). You asked us to consider commercial development in general and specifically development of recreational facilities, as elaborated in SB 213.

In the time available, I was able to obtain information for Colorado, Montana, Vermont, and Washington. Since many commercial recreational facilities, particularly ski resorts, in the western states are located on National Forest lands, I also contacted the U.S. Forest Service (USFS) in order to determine how it allows for commercial development of federal lands. This memorandum summarizes the main points, and several attachments provide more details for your review.

Summary

The other states and the USFS follow a different sequence for the leasing of public lands for commercial development than is proposed in SB 213. They determine the minimum acceptable compensation to the state or federal government prior to requesting proposals and do not restrict the award of leases to the highest bidder. In cases where one developer approaches the states or USFS with a commercial proposal and no other interest exists, the public agency still conducts sufficient market analysis to determine fair market value of the proposed lands for that type of commercial development.

Representative Menard
March 27, 1989
Page 2

Land-use Planning

States' approaches vary with respect to the extent of state land-use planning that specifically identifies potential sites for commercial development. Montana classifies and reclassifies state lands for grazing, timber, agricultural, and "other" (including commercial activities) purposes (Attachment B). According to Reed Lommen, land management specialist, Montana Department of State Lands, the state--rather than initiate development proposals itself--often responds to a proposal by a private developer who wishes to lease state lands for commercial activities (e.g., apple orchards, Christmas tree farms, or industrial buildings).

During the 1980s, Washington has begun to designate more of its state "resource" lands--traditionally managed for their timber, oil/gas, or agricultural value--as "transition" lands available for leasing for commercial development. To date, most of the commercial leasing has been highly urban in nature (i.e., buildings, supermarkets, etc.) although the state is investigating the potential for land exchanges with the U.S. Forest Service in order to obtain title to existing ski developments and adjacent federal land in order to expand into overnight accommodations and encourage tourism. Attachment C provides considerable detail on Washington's Transition Lands program and policy.

In Vermont, there has been considerable public sentiment since the 1970s against further recreational skiing developments because of the rapid development and urbanization of formerly rural areas since ski resorts blossomed in the early 1960s. As a result, the state has had a policy that there will be no new leasing of state lands for ski developments.¹ The Colorado State Board of Lands, as a general rule, contracts for land-use planning services and requests the consultant to identify potential recreation sites.

On the other hand, the U.S. Forest Service undertakes an in-house land management planning process and has been in the mode of identifying sites and permitting ski developments on federal lands since the 1930s. The USFS planning process includes a survey of state and local officials and the public to get a sense of the public need and marketability of a new recreational development.

All individuals noted that their agencies react to a private developer's specific proposal as much as actively designate specific sites for potential commercial or recreational development. Proposals are examined in light of existing land-use plans for serious conflicts which would preclude further consideration. The USFS conducts an in-house public need/marketability analysis as part of its preliminary review of unsolicited proposals. It does not appear to be unusual for states to have the flexibility to modify existing

¹Rod Barber, Assistant Director of State Lands, Vermont Department of Forests, Parks, and Recreation, personal communication, March 22, 1989.

Representative Menard
March 27, 1989
Page 3

land-use plans or to reclassify state lands for other purposes. Senate Bill 213 appears to provide for this flexibility and also references AS 38.04.065, which specifies several factors that must be taken into consideration by the commissioner of the Department of Natural Resources (DNR) in land-use planning decisions.

Solicitation of Proposals for Commercial Development

Without exception, the individuals I contacted indicated that their agency identifies the minimum acceptable state compensation and other major elements of the lease document prior to the solicitation of proposals or bids for commercial development of state lands.² In general, the solicitation requires information on a developer's financial backing/capability, experience in the proposed commercial undertaking, development idea/project, and what the developer is willing to pay (at or above the state's minimum)--all of which constitute selection criteria. Although the bid is an important criteria, the other factors are given serious consideration, and the various states contacted apparently do not specify the automatic selection of the highest bidder.

Although the USFS issues long-term special use permits instead of leases, they also define conditions and require detailed information from respondents to their prospectus. For your information, Attachment D provides USFS regulations governing special use applications and Attachment E presents a 1987 USFS prospectus seeking interest in a tour boat operation on Portage Lake south of Anchorage. Even in the case where a developer approaches an agency regarding a specific development proposal, the state or USFS will, at a minimum, issue a public notice regarding the proposal/application and seek other potential competitors. Several individuals noted that the public solicitation ensures that competitors have an opportunity and that the state receives fair market value.

Under SB 213, the DNR would provide the public an opportunity to comment on the agency's intent to seek proposals for commercial development of specific state lands. Following public review, the DNR would issue a written decision that is in the state's best interest to solicit development proposals. Senate Bill 213 specifies that 1) the written decision would present eligibility criteria for "potential lessees," 2) the Commissioner would select the highest bid if two or more potential lessees were acceptable, and 3) the department would then begin negotiations on the terms and conditions of the lease. It is unclear to me what potential lessees would bid on if the lease terms and conditions--particularly the minimum acceptable compensation to the state--are not in hand at the time proposals or bids are solicited.

²Alaska's procedures for leasing of state lands for oil and gas activities involve detailed specification of the lease terms and conditions at the time of a lease sale. Companies offer bids on the basis of these lease specifications.

Representative Menard
March 27, 1989
Page 4

State Compensation and Other Lease Terms and Conditions

Unlike Alaska, much of the state lands in western states is trust land received from the federal government at statehood. These lands are to be managed for the maximum benefits to the designated trust beneficiaries (e.g., public school, universities, mental hospitals, etc.) Montana, Colorado and Washington are required to obtain fair market value for state lands which they lease for commercial development. Larned Waterman, of the Colorado State Board of Lands, suggested that Alaska has to determine what is a minimum acceptable rate of return for private use of state land; Colorado and Washington seek returns of ten and 11 percent, respectively. Today, these states lease lands under varying combinations of up to ten to 11 percent fair market annual rental (typically reappraised every five years) and 3.0 to 5.0 percent of the annual gross receipts. Vermont's leases for state lands in several of its well known ski areas of Killington, Stowe, Jay Peak, Smuggler's Notch and Okemo require five percent of gross receipts. A percentage of gross receipts is preferred because it allows for a development stage and also encourages efficiency in operations by not basing the state's share on net receipts.

Unlike the states--which are more oriented toward economic development--the Forest Service approaches commercial recreational development from a perspective of seeking private partners who are willing to provide a recreation opportunity for the general public on federal lands. The Forest Service employs a fairly complicated, graduated rate fee system which generally translates to about three percent of gross receipts.³

Several individuals offered caution regarding commercial development leasing, noting that commercial real estate experience is a crucial requirement for state staff. Rod Hilden, real estate manager in the Washington Department of Natural Resources, said that states cannot expect foresters or recreation planners to have the in-house expertise needed to conduct preliminary market studies, determine fair market values, and negotiate successfully with private developers. Attachment F provides a copy of a sample commercial lease from the Washington Department of Natural Resources.

Lease terms are typically 30 to 55 years, depending upon the type of commercial development. The USFS is operating under recent federal legislation which extended the maximum term for special use permits for winter sports from 30 years to 40 years.

³Jim Cochrane, director, Recreation, Subsistence and Cultural Resources Section, U.S. Forest Service, Alaska Regional Office, personal communication, March 23, 1989.

Representative Menard
March 27, 1989
Page 5

Public Notice

All the states contacted and the USFS generally provide for public notice and public participation throughout the land-use planning and commercial leasing process. Likewise, requests for development proposals are widely advertised. In general, previous research that I have conducted regarding various states' public process with respect to the leasing or sale of public resources suggests that Alaska's statutes (Title 38: Public Lands) provide comparatively greater opportunities for public participation.

Please contact me if you have any questions regarding this information.

Attachments

ATTACHMENT A
Senate Bill 213

1 IN THE SENATE

BY KERTTULA

2

SENATE BILL NO. 213

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to commercial development leasing of
7 state land."

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. COMMERCIAL DEVELOPMENT LEASING. (a) The com-
11 missioner may identify land suitable for commercial development leas-
12 ing. Commercial development leases for the identified land are gov-
13 erned by this section. Except for AS 38.05.070(a), 38.05.090, and
14 38.05.103, AS 38.05.070 - 38.05.105 do not apply to leasing under this
15 section.

16 (b) If the commissioner decides to proceed with commercial
17 development leasing for land identified under (a) of this section, the
18 commissioner shall initiate the preparation of a site-specific land
19 use plan under AS 38.04.065 unless a land use plan has been prepared
20 for the land. If a land use plan has been prepared for the land but
21 does not permit the type of development under consideration, the
22 commissioner shall propose a revision of the existing land use plan
23 under AS 38.04.065.

24 (c) Before soliciting expressions of interest from potential
25 lessees under this section, the commissioner shall give public notice
26 that the land is being considered for commercial development leasing
27 and provide state agencies, affected local governments, and members of
28 the public with an opportunity to comment.

29 (d) If, after evaluating the information and comments obtained

1 under (b) and (c) of this section, the commissioner determines that
2 solicitation of expressions of interest from potential lessees best
3 serves the interests of the state, the commissioner shall issue a
4 written decision and give public notice of the decision. The written
5 decision must describe the specific types of commercial development
6 for which the land may be leased and request that persons who are
7 interested in leasing the land for commercial development submit
8 certain information to the commissioner. The requested information
9 must include the specific facts on which the potential lessee bases
10 its ability to develop the land. The decision must state the criteria
11 that the commissioner will use to determine the eligibility of a
12 potential lessee.

13 (e) After soliciting proposals under (d) of this section, if the
14 commissioner determines that only one potential lessee is acceptable,
15 the commissioner may begin negotiations with the potential lessee to
16 develop the terms and conditions for the lease.

17 (f) After soliciting proposals under (d) of this section, if the
18 commissioner determines that two or more potential lessees are accept-
19 able, the commissioner may select one potential lessee with whom to
20 negotiate a lease. The commissioner shall select the potential lessee
21 who submits the highest bid during an auction or by sealed bids,
22 whichever method the commissioner chooses. After the commissioner
23 selects the potential lessee, the commissioner may begin negotiations
24 with the potential lessee to develop the terms and conditions for the
25 lease.

26 (g) After developing proposed lease terms and conditions with a
27 potential lessee under (e), (f), or (h) of this section, the commis-
28 sioner may issue a preliminary decision that leasing the land to the
29 potential lessee on the proposed terms and conditions best serves the

1 interests of the state. The commissioner shall give public notice of
2 the decision and request comments from the public. If, after the
3 public notice and comment period, the commissioner makes a final
4 determination that a lease with the potential lessee will best serve
5 the interests of the state, the commissioner shall offer the lease to
6 the potential lessee.

7 (h) If a potential lessee under (f) of this section declines the
8 lease offer made under (g) of this section, the commissioner may begin
9 negotiations with the potential lessee who provided the next highest
10 bid under (f) of this section to develop the terms and conditions for
11 a lease.

12 (i) The compensation to be paid to the state for a commercial
13 development lease issued under this section may include

14 (1) a percentage of the annual gross receipts;

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

17 (3) the fair market rental value;

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

20 (5) a fee for each user; or

21 (6) a combination of the above.

22 (j) Before issuing or renewing a lease under this section, the
23 commissioner shall require the lessee to post a performance bond or
24 provide other security to cover the costs to the department of restor-
25 ing the lease site if the lease is abandoned or terminated.

26 (k) The term of the lease may not exceed 55 years.

27 (l) The commissioner may reject all bids for leases when it is
28 in the best interest of the state.

29 (m) In this section, "commercial development" includes the

- 1 development of lodges, resorts, other tourism facilities, and other
- 2 recreational facilities.

ATTACHMENT B
Montana Statute Governing Leasing State Land

disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board.

(3) Nothing in this section may be construed as a delegation of rule-making authority to the board.

History: En. Sec. 1, Ch. 459, L. 1983.

Cross-References

Legislative History Act, Title 5, ch. 4, part 4.

77-1-209. Leasing rules. The board may prescribe rules relating to the leasing of state lands as it considers necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they are granted to the state of Montana.

History: En. Sec. 37, Ch. 60, L. 1927; re-en. Sec. 1805.37, R.C.M. 1935; amd. Sec. 24, Ch. 428, L. 1973; R.C.M. 1947, 81-423; MCA 1981, 77-6-104; redes. 77-1-209 by Code Commissioner, 1983.

Cross-References

Promulgation of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-210 reserved.

77-1-211. Acceptance of federal land grants. (1) The board may accept any grant of lands from the United States to the state made in carrying out the provisions of The Enabling Act and also any other grant for any special purpose that may be made by the United States to the state, except as provided in subsection (2).

(2) Legislative approval is required for any acceptance of land by the state of Montana from the United States if the land was acquired by the United States through condemnation procedures.

History: En. Sec. 113, Ch. 60, L. 1927; re-en. Sec. 1805.113, R.C.M. 1935; amd. Sec. 70, Ch. 428, L. 1973; R.C.M. 1947, 81-1101(part); amd. Sec. 1, Ch. 452, L. 1979.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

77-1-212. Acceptance of federal facilities and installations — title in state. The board may, on behalf of the state, accept donations of federal installations, facilities, lands, or properties. All title to the installations or facilities shall be vested in the name of the state for its use. This section does not limit, reduce, or supersede Title 18, chapter 5, part 2.

History: En. Sec. 1, Ch. 252, L. 1965; amd. Sec. 71, Ch. 428, L. 1973; R.C.M. 1947, 81-1101.1.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

77-1-213. Acceptance of gifts, donations, grants, legacies, and devises to the state. (1) The board is hereby authorized and empowered to accept on behalf of the state from any natural person gifts, donations, grants, legacies, and devises having a value of not less than \$250 from each person

All lands passing to the state under of law shall be managed as other state lands and shall be applied in accordance with the provisions of this chapter subject to all constitutional limitations.

(2) All money realized from the sale of lands, and all gifts, donations, grants, and the equivalent of money shall be applied to the specific purposes designated in this chapter and as further regulated by rules of the board. The provisions of this section shall apply to gifts, donations, grants, and devises to the state and now under the administration of the state. Any specific provisions made therein shall not apply.

History: En. Sec. 114, Ch. 60, L. 1927; re-en. Sec. 100, L. 1973; R.C.M. 1947, 81-1102.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

77-1-214. Donations of land to the state. The board may accept gifts, donations, or contributions of land for any purposes and enter into agreement with any agency for acquiring by lease, purchase, or otherwise. The judgment of the board are desirable for the state.

History: En. Sec. 1, Ch. 159, L. 1937; amd.

Cross-References

Secretary of State to record conveyances to state, 2-15-401.

77-1-215. Expenditures authorized. Under 77-1-214, the board is hereby authorized to:

(1) make expenditures from any account for the management, development, and utilization of such lands;

(2) sell or otherwise dispose of such lands;

(3) make such rules as may be necessary to carry out this section.

77-1-214 through 77-1-217 and 77-1-219.

History: En. Sec. 2, Ch. 159, L. 1937; R.C.M. 1947, 81-1101.1.

Cross-References

Adoption of rules governed by Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-216. Disposition of revenues. From lands acquired under the provisions of this chapter, the state treasurer for the use of the state shall develop, and use of such lands shall be paid in full. Thereafter, 50% of all net proceeds from the disposition of such lands shall be applicable to the purposes prescribed and 50% shall be paid into the state treasury for lands are located.

History: En. Sec. 3, Ch. 159, L. 1937; R.C.M. 1947, 81-1101.1.

ty schools equalization revenues,
1.
est and income money, 209-111 through
1.

ons. Obligations for the acquisi-
e authority of 77-1-214 shall be
ived from such lands and shall
t and taxing power of the state.
1-1106.

State Lands

ous forestry functions transferred from
of Natural Resources and Conservation,
14, 77-2-213, 77-2-214, 77-5-104.

partment. (1) Under the direc-
of the selecting, exchange, clas-
ale, or other disposition of the
s the board directs, the purpose
quire.

payable to the state through its
lties, or payments on mortgages
from any other source. It shall
ever requested by the payer.

5.8, R.C.M. 1935; amd. Sec. 2, Ch. 26,
nd. by Sec. 5, Ch. 428, L. 1973; R.C.M.

to identify, protect, and develop heritage
ies and paleontological remains on state
22-3-424.

partment to administer abandoned railroad
f-way until needed for transportation,
11.

nt may prescribe fees, with the
g, or making of a copy of any

05.120, R.C.M. 1935; amd. Sec. 19, Ch.
3, R.C.M. 1947; redes. 81-108 and amd.

by mistake. If any money is
t, lease, certificate of purchase,
e department shall refund the
oper fund.

1805.116, R.C.M. 1935; Sec. 81-1109,
L. 1973; R.C.M. 1947, 81-107.

f lands granted by United
ard and as rapidly as the appro-
tment shall select and locate all

lands granted to this state by the United States for any purpose and not
located by the grant itself. It shall also select and locate lands in lieu of all
those lands in sections 16 and 36 and in the other federal land grants which
for any reason have been lost to the state. All selections shall as far as pos-
sible be in legal subdivisions. In the selection and location of these lands,
careful attention shall be given to the water available and which may be
appropriated for these lands for domestic use, livestock, and irrigation.

History: En. Sec. 15, Ch. 60, L. 1927; re-en. Sec. 1805.15, R.C.M. 1935; amd. Sec. 7, Ch. 428,
L. 1973; R.C.M. 1947, 81-301; amd. Sec. 1, Ch. 286, L. 1985.

Cross-References

Appropriations, permits, and certificates of
water rights, Title 85, ch. 2, part 3.

Part 4

Classification of State Lands

77-1-401. Classes of land. The state lands are classified as follows:

- (1) Class 1—lands which are principally valuable for grazing purposes;
- (2) Class 2—lands which are principally valuable for the timber that is on
them or for the growing of timber or for watershed protection;
- (3) Class 3—lands which are principally valuable for the production of
crops;
- (4) Class 4—lands which are principally valuable for uses other than graz-
ing, crop production, timber production, or watershed protection.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428,
L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(1).

Cross-References

Classification required, Art. X, sec. 11, Mont.
Const.

77-1-402. Basis for classification or reclassification. (1) The classi-
fication or reclassification shall be so made as to place state land in the class
which best accomplishes the powers and duties of the board as specified in
77-1-202 and 77-1-203(1). When state lands are classified or reclassified in
accordance with these duties and responsibilities, special attention shall be
paid to the capability of the land to support an actual or proposed land use
authorized by each classification.

(2) It is the duty of the department to classify or reclassify state lands so
that no state land will be sold, leased, or used under a different classification
from that to which it actually belongs.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428,
L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(part).

77-1-403. Capability inventory. A capability inventory shall be made
prior to changing the classification of state lands. Such inventory shall
include, when appropriate to the classification, information on soils capability,
vegetation, wildlife use, mineral characteristics, public use, aesthetic values,
cultural values, surrounding land use, and any other resource, zoning, or plan-
ning information which is related to the classification.

History: En. Sec. 16, Ch. 60, L. 1927; re-en. Sec. 1805.16, R.C.M. 1935; amd. Sec. 8, Ch. 428,
L. 1973; amd. Sec. 1, Ch. 8, L. 1974; R.C.M. 1947, 81-302(part).

All field books, plats, maps, and class to which each tract therein schools of the state or to a state grant or instrument by which title shall also show whether or not the land is owned by the United States and shall not consider necessary.

En. Sec. 16, R.C.M. 1935; amd. Sec. 8, Ch. 428, L. 1973; R.C.M. 1947, 81-1116.

County Payments

County. The department shall, before December 1, prepare and transmit a statement to each county in which the state has land and area of the county and from which the county receives grazing or forest income. The statement shall show the amount of taxes paid by the state in that county and the amount of grazing or forest land.

En. Sec. 391, L. 1973; amd. Sec. 77, Ch. 428, L. 1973; R.C.M. 1947, 81-1119.

equalization payment. (1) The amount of taxes which would be paid on the property as if it were owned by

to be listed shall be determined by dividing the total value of property within the county where the taxes are levied by the number of acres per grazing acre, 35 cents per acre. The average tax may be derived from the department of revenue. The total amount of taxes shall be divided by the gross assessment figure.

be determined by dividing the per-acre tax by the total land area of the county into the gross assessment figure, and the

subtracted from the gross assessment figure.

En. Sec. 391, L. 1973; R.C.M. 1947, 81-1116.

county agent of the department shall provide a form to be followed and used by each county. The agent shall show the computations required and submit to the department of revenue the computations and the amount of equalization payment.

En. Sec. 391, L. 1973; amd. Sec. 78, Ch. 428, L. 1973; R.C.M. 1947, 81-1118.

77-1-504. Processing of county statements. The department shall examine the statement returned by the agent of the department of revenue for accuracy, and in no case shall the state land equalization payment be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The department shall, before November 1 of each year, prepare and file a claim with the department of administration for all counties who are eligible for state land equalization payments, and this claim shall show the amount of money each eligible county will receive.

History: En. Sec. 4, Ch. 235, L. 1967; amd. Sec. 57, Ch. 391, L. 1973; amd. Sec. 79, Ch. 428, L. 1973; R.C.M. 1947, 81-1118.

77-1-505. Warrant for payments to counties. The department of administration shall, before December 1, approve and authorize the issuance of a warrant on the general fund of the state made payable to the county treasurer of the counties shown on the claim for the payment of the state land equalization payment.

History: En. Sec. 5, Ch. 235, L. 1967; amd. Sec. 80, Ch. 428, L. 1973; R.C.M. 1947, 81-1119.

77-1-506. County distribution. The county treasurer shall distribute the money received under this part within his county as hereinafter provided:

(1) Sixty percent of total payment shall be broken down into cents per acre of total state-owned land within the county and apportioned between the elementary school districts in accordance with the amount of state-owned land in each elementary district.

(2) Forty percent shall be allotted to the county road fund.

History: En. Sec. 6, Ch. 235, L. 1967; R.C.M. 1947, 81-1120.

Cross-References

County road funds, 7-14-2501.

County School Equalization Fund, 20-9-331.

77-1-507. School district use of proceeds. The money received by any school district under this part shall be designated as district money for the general maintenance and operation of the elementary schools of the district. Such money may be used by the district as all other cash balances are used in accordance with the provisions of 20-9-335.

History: En. Sec. 7, Ch. 235, L. 1967; amd. Sec. 81, Ch. 428, L. 1973; R.C.M. 1947, 81-1121.

77-1-508. Repealed. Sec. 1, Ch. 214, L. 1979.

History: En. Sec. 9, Ch. 60, L. 1927; re-en. Sec. 1805-9, R.C.M. 1935; Sec. 81-205, R.C.M. 1947; redes. 81-1122 and amd. by Sec. 6, Ch. 428, L. 1973; R.C.M. 1947, 81-1122.

Part 6

Development of State Lands

77-1-601. Statement of policy. It is in the best interest and to the great advantage of the state of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system, and other institutions benefiting therefrom, and that in so doing the economy of the local community as well as the state is benefited as a result of the impact of such development.

History: En. Sec. 1, Ch. 295, L. 1967; R.C.M. 1947, 81-2401.

Cross-References

Board to direct and control state lands, Art. X, sec. 4, Mont. Const.

Department of Fish, Wildlife, and Parks management of centennial acre, Title 2, ch. 89, part 2.

Use of coal severance tax proceeds for development, operation, and maintenance of state parks, recreational areas, monuments, or historical sites, 15-35-108.

77-1-602. Definition of terms. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Account" means the resource development account in the state special revenue fund.

(2) "Income" means all proceeds received for the use of state land except revenues required by law to be placed in the Montana nonexpendable trust fund type.

History: En. Sec. 2, Ch. 295, L. 1967; amd. Sec. 106, Ch. 428, L. 1973; R.C.M. 1947, 81-2402; amd. Sec. 36, Ch. 281, L. 1983.

Cross-References

Trust and agency fund types — state special revenue fund, 17-2-102.

School Trustees to hold property in trust, 20-6-602.

Interest and income money, 20-9-341.

Income from state lands:

land donated for forestry purposes, 77-1-216.

for granting an easement, 77-2-106.

sale of state land, 77-2-337.

prospecting permits, 77-3-106.

mining lease, 77-3-116.

nonmetallic minerals except coal, oil, and gas, 77-3-206.

coal, 77-3-318.

oil and gas — credited to general fund unless otherwise disposed of, 77-3-436.

underground storage of natural gas, 77-3-501.

geothermal resources, 77-4-127.

surface leases, Title 77, ch. 6, part 5.

77-1-603. Rules. The board shall adopt such rules as it considers necessary and proper for the purpose of carrying out the provisions of this part.

History: En. Sec. 8, Ch. 295, L. 1967; amd. Sec. 112, Ch. 428, L. 1973; R.C.M. 1947, 81-2408.

Cross-References

Adoption of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

77-1-604. Resource development account. A resource development account in the state special revenue fund in the state treasury is created to be used solely for the purpose of investing in the improvement and development of state lands acquired by grant or foreclosure in order to increase the revenue to be derived therefrom for common school support and support of the other entities, institutions, and objects for which the lands are held in trust. Appropriations from the account shall be expended for no other purposes.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part); amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Treasury fund structure — state special revenue fund, 17-2-102.

77-1-605. Types of developments. The developments contemplated may include those projects that will develop or conserve the various state land resources, including water, both surface and underground, grazing land, agricultural land, and timber land to the benefit of the state. They may also include expenses necessary to perfect title to lands claimed by the state which

are suitable for development and the value of the land or the revenue therefrom. The terms and conditions of the board are desirable

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 1, Ch. 281, L. 1983.

77-1-606. Restriction on additional lands. Moneys in the account for school lands, university lands, and other lands, normal school lands, capital lands, shall not be expended by the department and expenses necessarily incurred by the department and trust. If the board determines that the moneys in the account from the sale of lands and necessary costs and expenses incurred by the department from moneys from other trusts in the account shall be reimbursed from the account.

History: En. Sec. 4, Ch. 295, L. 1967; amd. Sec. 1, Ch. 281, L. 1983; R.C.M. 1947, 81-2404.

77-1-607. Deductions from income. The maximum percentage of income, not to exceed 2 1/2%, shall be deducted from this part and shall provide by rule the percentage from the income which is to be deducted from the trusts benefited by this part.

History: En. Sec. 5, Ch. 295, L. 1967.

77-1-608. Crediting of development. The amount made in accordance with 77-1-607 shall be credited to the account of the proceeds shall be paid to the proper account.

History: En. Sec. 6, Ch. 295, L. 1967.

77-1-609. Investment of funds. The board of investments shall invest the moneys in the account in safe interest-bearing investments.

History: En. Sec. 7, Ch. 295, L. 1967.

Cross-References

Unified investment program, Title 17, ch. 2, part 2.

Ownership Record

77-1-701. Definitions. When the term "ownership record" clearly appears from the context, it shall mean:

(1) "Ownership record" means the record of the instrument signifying state ownership of the land.

(2) "State agency" means an agency of the state or officer of the state.

of coal severance tax proceeds for development, operation, and maintenance of state recreational areas, monuments, or historical sites, 15-35 108.

as the context requires otherwise,

development account in the state spe-

ded for the use of state land except the Montana nonexpendable trust

, Ch. 428, L. 1973; R.C.M. 1947, 81-2402;

prospecting permits, 77-3-106.

mining lease, 77-3-116.

nonmetallic minerals except coal, oil, and 77-3-206.

coal, 77-3-318.

oil and gas — credited to general fund as otherwise disposed of, 77-3-436.

underground storage of natural gas, 77-3-501.

geothermal resources, 77-4-127.

surface leases, Title 77, ch. 6, part 5.

not such rules as it considers necessary without the provisions of this part.

, Ch. 428, L. 1973; R.C.M. 1947, 81-2408.

account. A resource development account in the state treasury is created to be used in the improvement and development of public lands to increase the revenue from school support and support of other public services for which the lands are held in trust. All moneys shall be expended for no other purpose.

, 107, Ch. 428, L. 1973; R.C.M. 1947,

The developments contemplated in this part are to develop or conserve the various state land resources, including surface, underground, grazing land, agricultural, and other lands for the benefit of the state. They may also include lands claimed by the state which

are suitable for development and other expenses or costs which in the judgment of the board are desirable or necessary in order to develop or increase the value of the land or the revenue therefrom.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part).

77-1-606. Restriction on use of income from school and institutional lands. Moneys in the account derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands shall be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust. If the board determines that public lands in a trust may be developed and moneys in the account from that trust are insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient moneys from other trusts in the account. Trust accounts from which money is transferred shall be reimbursed by a method approved by the board.

History: En. Sec. 4, Ch. 295, L. 1967; amd. Sec. 1, Ch. 180, L. 1973; amd. Sec. 108, Ch. 428, L. 1973; R.C.M. 1947, 81-2404.

77-1-607. Deductions from income for development account — maximum percentage. The board shall determine the amount or percentage of income, not to exceed 2 ½%, which is necessary to achieve the purposes of this part and shall provide by rule for deductions of that amount or percentage from the income which is secured from the lands by the department for the trusts benefited by this part.

History: En. Sec. 5, Ch. 295, L. 1967; amd. Sec. 109, Ch. 428, L. 1973; R.C.M. 1947, 81-2405.

77-1-608. Crediting of deductions. All deductions from gross proceeds made in accordance with 77-1-607 shall be paid into the account, and the balance of the proceeds shall be paid into the state treasury to the credit of the proper account.

History: En. Sec. 6, Ch. 295, L. 1967; amd. Sec. 110, Ch. 428, L. 1973; R.C.M. 1947, 81-2406.

77-1-609. Investment of moneys in development account. The board of investments shall invest the moneys in the resource development account in safe interest-bearing securities for the benefit of the account.

History: En. Sec. 7, Ch. 295, L. 1967; amd. Sec. 111, Ch. 428, L. 1973; R.C.M. 1947, 81-2407.

Cross-References

Unified investment program: Title 17, ch. 6, part 2.

Part 7

Ownership Records of State-Owned Land

77-1-701. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Ownership record" means the original deed, abstract, and any other instrument signifying state ownership or other interest in real property.

(2) "State agency" means any board, bureau, department, commission, or officer of the state.

ATTACHMENT C
Washington's "Transition Lands Policy Plan"

TRANSITION LANDS POLICY PLAN



WASHINGTON STATE DEPARTMENT OF

Natural Resources

Brian Boyle - Commissioner of Public Lands
Art Stearns - Supervisor

June 1, 1988

Preface

The Department of Natural Resources manages over three million acres of trust land for the support of various public institutions. Historically, these lands have been managed for a sustained yield of natural resources. However, individual site characteristics and the changing context of surrounding land uses mean that many of these properties have become either too valuable or inefficient to administer and manage for natural resource production. These transition land properties are presently underutilized assets in the portfolio of the trusts. The purpose of this Transition Lands Policy Plan is to provide a systematic framework for addressing changing values and opportunities on these lands. This program will be the basis for the department's future management activities, including commercial leasing, on selected trust lands.

The conceptual heart of this document is a strategic plan for the management of the transition lands portfolio. Viewing the income-producing potential of the land assets of the trusts as an issue in portfolio management is a new direction for the department. This program provides the means for the department to purposefully deploy these real property assets and thus diversify and increase future trust incomes. Since each type of property asset contains a different combination of risk and income potential, the policies emphasize the need for periodic evaluation and assessment of the portfolio to protect the trusts' interests.

To develop this policy plan, the department brought together 16 working groups to address specific issue areas identified by Department of Natural Resources staff, state and local government officials, and the public. Working group members included state agency managers from the State Career Executive Program, faculty members from the University of Washington and department staff. Team members and their professional affiliations are listed on the inside front cover. These 16 teams developed alternative policy proposals for addressing each issue area. Policies presented here are the preferred choices among numerous alternatives considered. The preferred policies were selected by an executive review team including the Commissioner of Public Lands and top department managers.

A draft Transition Lands Policy Plan was issued in late August of 1987. Copies were distributed to local and state government agencies, organizations and individuals. Seven public hearings were held around the state in late September and early October. The written comment period was extended to early November to allow interested parties ample time to respond to the draft plan. The following document incorporates comments received from that review process.

This document is organized into four major sections: Basic Principles, Analysis of Transition Lands, External Relations, and Management Activities. Each major section contains chapters describing various aspects of the department's proposed policy plan. The goals of the program are presented at the beginning of Part I.