

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7547 SENATE LABOR & COMMERCE

TABLE B
Financing Arrangements for Oil Spills in California

Description	Statute Reference
The Fish and Wildlife Pollution Cleanup and Abatement Account (FWPCAA) is created in the Fish and Game Preservation Fund. Money from oil spill settlements to be placed in the account and will be spent for oil spill cleanup only if money is not available from the spiller or the Hazardous Substance Account. Fund to be used for response coordination, planning, resource injury assessment, economic valuation, and restoration. Amounts over \$1,000,000 at the end of each fiscal year may be used for fish & wildlife preservation	F&G 12017*
Money recovered from oil spill settlements and civil penalties shall be deposited in the FWPCAA.	F&G 5655 H&N 153* F&G 5656
Funds for oil spill cleanup will be obtained first from the Hazardous Substance Account (HSA) of the General Fund, then from the FWPCAA.	F&G 12015
The Oil Spill Prevention and Administration Fund (OSPAP) is created and shall be administrated by the administrator.**	Gov 8670.38 Gov 8670.39
Administrator to collect an annual fee not to exceed \$0.04 per barrel from marine terminal or pipeline operators and placed in the OSPAP. Money to be used for research, oil spill response and implementation programs, and reimbursement to the Interagency Oil Spill Committee (not to be used for spill response). Commission shall be reimbursed by the fund.	Gov 8670.40 PR 8759*
The Oil Spill Response Trust Fund (OSRTF) is created & shall be administrated by the administrator	Gov 8670.46
Fees to be deposited in fund include: \$0.25 per barrel fee for out-of-state oil, \$0.25/barrel for oil produced in-state but not refined there, federal funds, and borrowed money. Fees will not be collected when there is \$100,000,000 in the fund. Fund to provide money to respond to oil spills including cleanup and abatement, wildlife rehabilitation, and claims for damages. Interest on fund to be placed in OSPAP.	Gov 8670.47.5 Gov 8670.48
OSRTF fees may be raised in increments of \$0.25 up to \$1.00 under specific circumstances. Money to be used only after there is a spill.	Gov 8670.48.5 Gov 8670.49
OSRTF funds may be used for wildlife rehabilitation, local response costs or to reimburse people who are unable to collect settlements.	Gov 8670.50 Gov 8670.51.1
Expenditure for this section to be paid from the OSRTF or from the State Water Pollution Cleanup and Abatement Account.	Gov 8754.4
Administrator to designate responsible party and require it to advertise how claims will be processed. People may apply directly to the fund for claims less than \$50,000. Contributors to the fund may advise on how funds will be spent but cannot contest payments of less than \$1,000,000.	Gov 8670.51.1
Attorney general will attempt to recover costs from spillers and reimburse fund.	Gov 8670.53
Governor may request that money be borrowed to be placed in OSRTF but borrowed funds must be repaid. Obligations for money borrowed for fund accorded only to the fund and not to the state.	Gov 8670.53.15 Gov 8670.53.3 Gov 8670.53.4
Environmental Enhancement Fund created. Money to be deposited in fund from Article 9 of the Government Code. Projects must be approved by the Environmental Enhancement Committee. The committee is made up of the administrator, a public member, and an executive member of the State Coastal Conservancy.	Gov 8670.70 Gov 8670.71 Gov 8670.72

* Gov refers to the Government Code, PR refers to the Public Resources Code, H&N refers to the Harbors and Navigation Code, and F&G refers to the Fish and Game Code.

** The administrator is a deputy commissioner of the Department of Fish and Game and is responsible for oil spills.

Source: California Statutes

Prepared by the Legislative Research Agency, November 1990 (91.046-1)

Description	Statute Reference
The Department of Environmental Conservation (DEC) shall seek reimbursement from applicable federal funds and money received shall be placed in the general fund and credited to the Oil and Hazardous Substance Release Mitigation Account (OHSRMA).	AS 46.04.010
The Oil and Hazardous Release Response Fund (OHRRF) is created for payment of expenses associated with: the release of oil or hazardous substances.	AS 46.08.005
The OHRRF is established in the General Fund for actual expenses, not for capital projects.	AS 46.08.010
Funding for the OHRRF is from state, federal and private donor sources, oil spillers, and fines and penalties. Money from settlements or penalties shall be placed in the OHSRMA and may be appropriated to the fund.	AS 46.08.020
The intent of the legislature is that funds for oil spills will always be available.	AS 46.08.030
Uses of fund: investigate and clean up releases, monitor compliance, maintain Oil and Hazardous Substances Response Office, review contingency plans, verify financial responsibility, maintain the Oil and Hazardous Substances Response Corps, depots, matching funds for federal monies, review and revise state and regional plans, environmental restoration, reimburse the Legislative Council for operations of the Citizen's Oversight Council on Oil and Hazardous Substances, and reimburse municipalities.	AS 46.04.040
DEC to keep records for fund. The DEC and the Governor to complete an annual report to legislature.	AS 46.08.050 AS 46.08.060
DEC to seek reimbursement for costs of cleanup and may reimburse municipalities if an agreement exists between the state and the municipality.	AS 46.06.070

Source: Alaska Statutes

Prepared by the Legislative Research Agency, November 1990 (91.0461)

TABLE 10
Institutional Arrangements for Oil Spills in California

Description	Statute Reference
INSTITUTIONS	
The administrator* for oil spill response shall be a chief deputy director of the Department of Fish and Game, appointed by the governor and confirmed by the senate rules committee.	Gov 8670.4**
The administrator shall ensure that the staff is trained in oil spill response. The staff shall be funded by the Oil Spill Prevention and Administration Fund. The administrator shall be the primary authority for oil spill prevention and response, shall implement the state contingency plan, and shall be on-site for all oil spills over 100,000 gallons. The administrator shall provide training for volunteers and groups such as the California Conservation Corps.	Gov 8670.6 Gov 8670.7 Gov 8670.8
State Interagency Oil Spill Committee (SIOSC) created with the administrator acting as chairperson for the 19-member committee.	Gov 8574.9
Review Subcommittee of the SIOSC created. The 5-member committee to review and comment on regulations. Agencies may reject the recommendations only if tougher standards are employed.	Gov 8754.10
Administrator shall negotiate with Alaska, Washington and Oregon to complete an interstate compact.	Gov 8670.9
Administrator to negotiate with the Coast Guard to provide a vessel traffic service to be operated by the Coast Guard and voluntarily funded by the maritime industry. Funds will be kept in the Vessel Safety Account.	Gov 8670.21
Administrator shall create Harbor and Safety Committees for specific harbors to assure safety of vessels. Regulations will be adopted to require committees to develop harbor safety plans.	Gov 8670.23
Oil Spill Technical Advisory Committee composed of 9 members to oversee actions of the administrator. Committee to provide recommendations to the administrator, the lands and coastal commissions, and the Interagency Oil Spill Committee. Committee maybe funded from the OSPAF.	Gov 8670.54 Gov 8670.55 Gov 8670.56
PROCEDURES	
Persons responsible for spills above one barrel shall notify the Office of Emergency Services.	Gov 8670.25.5
Operators of disabled vessels will notify Coast Guard.	
Persons will respond to the oil spill contingency plan and will follow orders of the administrator unless such orders endanger the public safety or the environment.	Gov 8670.27
Administrator may request the attorney general to seek an injunction. Civil actions may be consolidated and shall be brought in the county of the spill.	Gov 8670.57 Gov 8670.59 Gov 8670.61
Responsible party to provide a rehabilitation plan for full mitigation of damage to wildlife.	Gov 8670.51.5
Administrator may issue a cease and desist order.	Gov 8670.60.4

* The administrator is a deputy commissioner of the Department of Fish and Game and is responsible for oil spills.

** Gov refers to the Government Code

Source: California Statutes

Prepared by the Legislative Research Agency, November 1990 (S1.046J)

Institutional Arrangements for Oil Spills in Alaska

Description	Statute Reference
INSTITUTIONS	
The Department of Environmental Conservation (DEC) shall negotiate with government agencies to facilitate a coordinated and effective oil spill prevention and response.	AS 46.04.020
The Alaska State Emergency Response Commission (AERC) created in DEC and the Oil and Hazardous Response Office shall serve as its staff. The commission is composed of commissioners of state departments. The commission oversees emergency response activities concerning hazardous materials (oil is defined as a hazardous substance).	AS 46.13.010 AS 46.14.020 AS 46.14.030
The Hazardous Substance Spill Technology Review Council is created to recommend research topics, review effectiveness of spill technologies and maintain information on cleanup technology.	AS 46.13.110 AS 46.13.120
The Citizen's Oversight Council on Oil and Other Hazardous Substances is created within the legislature to determine if state agencies are carrying out their duties; to recommend policies, assist in the development of compacts, meet with local and regional advisory committees. State agencies are to cooperate with the council.	AS 46.20.600 AS 46.20.610 AS 46.20.620
The Division of Emergency Services (DES) within the Department of Military and Veterans' Affairs shall respond to disasters and may use the Oil and Hazardous Response Fund.	AS 26.23.040 AS 26.23.050
The Division of Emergency Services (DES) shall establish an Oil and Hazardous Substance Response Corps.	AS 46.08.110
The DEC's Oil and Hazardous Substance Response Office (OHSRO) shall be trained in oil spill programs and technologies.	AS 46.08.100
The OHSRO shall be prepared to respond promptly to a spill and has authority to enter private land without a prior public hearing.	AS 46.08.130 AS 46.08.140
The OHSRO or DES may enter into agreements to provide training, personnel, or research.	AS 46.06.050
PROCEDURES	
The DES shall maintain response depots equipped to respond to a spill.	AS 42.08.120
A catastrophic oil discharge emergency may exist without a declaration by the governor. In such cases, the DEC shall coordinate duties.	AS 46.04.080
When conflicts arise with municipalities, the DEC decisions shall prevail.	AS 46.04.110
The governor may enter into compacts concerning oil spills contingency planning.	AS 46.04.100
The DEC may issue an order declaring an emergency and people must comply with its orders but may request a hearing.	AS 46.03.865
Actionable rights are for the benefit of the state and do not create a presumption of law for other persons.	AS 46.02.870
Manufacturer's information about chemical and biological agents for use in oil spills will be kept confidential.	

Source: Alaska Statutes

Prepared by the Legislative Research Agency, November 1990 (91.046K)

CRS Report for Congress

Liability Provisions in State Oil Spill Laws: A Brief Summary

SENT TO YOU BY YOUR
UNITED STATES SENATOR

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October 1, 1990



Liability Provisions in State Oil Spill Laws: A Brief Summary

This report briefly summarizes state oil spill liability and compensation statutes applicable to vessels, with particular emphasis on which states provide for unlimited liability for damages resulting from oil spills, and which states limit liability. It updates and supersedes an earlier survey dated Sep. 27, 1989. Examined were laws of the Atlantic, Pacific, and Gulf coastal states, and in addition, laws of states bordering on the Mississippi and Ohio rivers. Of the 37 states surveyed, we have identified 28 that provide for liability to the state or to others for oil spill damages. Of these 28, 19 provide for unlimited liability and 9 provide for limited liability to the state. Fifteen of the 28 states also create a private right of action to recover damages; of these, 10 provide for unlimited recovery and 5 for limited liability. We also identified the following 9 states that have general water pollution control laws that contain no express authority for the state or for private parties to recover for cleanup costs or for other damages: Hawaii, Indiana, Louisiana, Minnesota, Ohio, Pennsylvania, Rhode Island, Tennessee, and West Virginia.

A few general cautionary notes. Our investigation was limited to a check of *statutory* law, and did not include decisional law. Thus, our figures do not address the possibility of recovery under the common law of torts, or under general statutory provisions not contained in the same statute as the identified oil spill or water pollution control provisions. Secondly, we have relied on the most recent compilations of state codes and statutes available to us, and cannot be certain that all recent enactments have been accounted for.

For purposes of categorization, we have distinguished between those state statutes specifically addressing oil spills, and general pollution control laws (for the most part, water pollution laws) that define pollution broadly enough to include oil pollution, and that also provide for liability to the state for cleanup costs or other damages. Our findings are summarized in chart form below, followed by a brief narrative summary of each state's laws.

**General Pollution Control Laws Covering Oil Pollution,
Providing for Liability to the State,
and Not Providing for Liability to Private Parties**

	<u>liability to state</u>
Alabama	U
Arkansas	U
Connecticut	U
Georgia	U
Illinois	U
Iowa	L
Kentucky	U
Michigan	U
Mississippi	U
Missouri	U
Texas	U
Wisconsin	U

CORRECTION

**THIS DOCUMENT
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TO ASSURE LEGIBILITY**

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State Statutes Specifically Addressing Oil Spills

	<u>liability to state</u>	<u>to private parties</u>
Alaska	U	U
California	U	U
Delaware	L	L
Florida	L	L
Maine	U	U
Maryland	U	U
Massachusetts	U	U
New Hampshire	U	U
New Jersey	L*	L
New York	L	L
North Carolina	L	U
Oregon	U	U
South Carolina	L*	U
Vermont	U	
Virginia	L	L
Washington	L	U

U = unlimited liability

L = limited liability

* = unclear. See discussion.

**General Pollution Control Laws Covering Oil Pollution,
Providing for Liability to the State,
and Not Providing for Liability to Private Parties**

	<u>liability to state</u>
Alabama	U
Arkansas	U
Connecticut	U
Georgia	U
Illinois	U
Iowa	L
Kentucky	U
Michigan	U
Mississippi	U
Missouri	U
Texas	U
Wisconsin	U

State-By-State Summary

Alabama. The Alabama Water Pollution Control Act defines "pollution" broadly enough to include oil pollution, and authorizes the attorney general or any district attorney to bring a civil action to recover the state's "reasonable costs to prevent, minimize or clean up any damage resulting from pollution resulting from the wrongful act, omission or negligence." ALA. CODE § 22-22-9(m). In addition, if the pollution causes the death of any fish or wildlife, the state may recover money reasonably necessary to restock waters or replenish wildlife. § 22-22-9(n).

Alaska. In addition to having provisions specifically addressing oil pollution, Alaska also provides for strict liability, without regard to fault, for the damages "to persons or property, whether public or private, including damages to the natural resources of the state or a municipality," and for response costs, caused by the discharge of "hazardous substances" into state waters, (ALASKA STAT. § 46.03.822), and defines hazardous substance to include oil (§ 46.03.826). Damages are defined to include "injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit." (§ 46.03.824).

Arkansas. Arkansas has a general water pollution control law broad enough to cover oil, and authorizes the state to recover for cleanup costs, investigatory expenses, and damages for loss of fish and wildlife. ARK. STAT. ANN. § 8-4-103. There is no provision for private recovery, and no express limit on state recovery.

California. California provides for liability to the state for "all actual damages, in addition to the reasonable costs actually incurred in abating or cleaning up the oil deposit." CAL. HARB. & NAV. CODE § 151. In addition, the Miller Anti-Pollution Act of 1971 (HARB. & NAV. CODE § 293) provides for absolute liability for vessel owners or operators for "any property damage incurred by the state or by . . . any person, and for any damage or injury to the natural resources of the state" resulting from oil spills. No limitation is placed on either of these liability provisions.

Connecticut. Connecticut imposes liability to the state for response costs incurred in "containing, removing, or mitigating" pollution caused by spills of oil or hazardous wastes. The attorney general is authorized to bring a civil action to recover such costs. Conn. Gen Stat. § 22a-451. No limitation is placed on such recovery. No express provision is made for recovery by private parties.

Delaware. Delaware has a specific oil pollution liability statute. Persons responsible for oil pollution are liable to the state for cleanup costs and natural resources damages, and to private parties for a variety of damages, including injury to or loss of the use of real or personal property, and loss of the use of natural resources. DEL. CODE ANN. tit. 7, § 6207. All such liability is limited; in the case of vessels the limitation is the greater of \$300 per gross

ton or \$250,000, but may not exceed \$30 million. § 6208. The liability limitation is inapplicable if the spill resulted from gross negligence or willful misconduct.

Florida. Florida has a Pollutant Spill Prevention and Control Act governing spills of oil and other chemicals. Responsible parties are liable to the state (*i.e.*, to the Florida Coastal Protection Trust Fund) for costs of cleanup or abatement. In addition, the Fund may pay private claimants for damages resulting from a spill. Liability to the Fund is limited, in the case of vessels, to the *lesser* of \$50 million or \$625 per gross ton, unless the discharge resulted from willful misconduct or gross negligence. The liability limits are also inapplicable if the responsible party fails to report the incident or fails or refuses to provide "reasonable assistance" in cleanup activities. FLA. STAT. § 376.12.

Georgia. Georgia has a statute directed at oil or hazardous substance spills, but it provides only for civil penalties and not for liability to the state or to private parties. GA. CODE ANN. §§ 12-14-1 to 12-14-4. Under Georgia's general Water Quality Control Act, pollution is defined broadly enough to include oil spills, and violators can be held liable to the state for costs incurred in cleaning up and abating a spill, and for replacing aquatic wildlife. GA. CODE ANN. § 12-5-51. There is no limitation placed on this liability to the state. No provision is made for private recovery.

Illinois. Illinois has a general provision protecting public water supplies from oil or other water pollution. When oil or other pollutants are discharged into the state's waters, appropriate units of local government are authorized to act to remove the pollution. Responsible parties are then liable to such governmental body for actual removal costs. Ill. Ann. Stat. ch. 85, § 1705.

Iowa. Iowa has a hazardous substances response law with a broad definition of "hazardous substance" that has been interpreted administratively to include oil. When a "hazardous condition" exists, the state may recover for reasonable cleanup costs, for costs incurred in evacuating people threatened by the condition, and for damages to natural resources. IOWA CODE ANN. § 455B.392. Liability to the state is limited to a total of \$5 million for vessels and other transportation conveyances, and to \$50 million for any facility. No provision is made for private recovery.

Kentucky. Under Kentucky law, persons responsible for water pollution that causes "injury, death, or destruction of fish or other wildlife" are liable to the state "in an amount reasonably necessary to restock or replenish such fish or wildlife." KY. REV. STAT. § 224.110.

Maine. Maine's oil spill compensation and liability law provides for unlimited liability to the state for all damages incurred by the state for cleanup costs, and for disbursements to private claimants who have been paid by the Maine Coastal and Inland Surface Oil Clean-up Fund. ME. REV. STAT. ANN. tit. 38, §§ 551, 552.

Maryland. Maryland's oil spill law provides for liability to the state for removal costs and for "the cost of restoring the area damaged by the spillage to its original condition." MD. ENV. CODE § 4-408. In addition, persons responsible for an oil spill are liable to private parties for resulting damage to real or personal property. § 4-409.

Massachusetts. The Massachusetts Oil and Hazardous Substances Material Release Act is (but for its coverage of oil) patterned on CERCLA. Persons responsible for the release of oil or hazardous substances into the waters of the state are liable to the state for "all costs of assessment, containment and removal," and for damages for injury to and destruction of natural resources, and in addition are liable to private parties for damage to real or personal property. There is no limitation on this liability; liability to the state for assessment, containment, and removal can be for treble damages. MASS. GEN. LAWS ANN. ch. 21E, § 5.

Michigan. Under Michigan law, the owner or operator of any "watercraft" that discharges oil into state waters is liable to the state "for the full amount of the costs reasonably incurred for its removal." MICH. COMP. LAWS § 323.337.

Mississippi. Mississippi's general water pollution control law defines pollution broadly enough to include oil, and, in addition to prescribing penalties for violations, provides that anyone causing pollution that results in the death of fish or other wildlife shall be liable to the state for an additional amount "reasonably necessary to restock such waters or replenish such wildlife." MISS. CODE ANN. § 49-17-43.

Missouri. Missouri's Clean Water Law defines pollution broadly enough to include oil pollution, and authorizes the state or its subdivisions to sue to recover damages resulting from water pollution, including "costs and expenses of restoring any waters of the state to their condition as they existed before the violation." MO. ANN. STAT. § 644.096.

New Hampshire. Under New Hampshire's oil spill law, responsible parties are strictly liable to the state for containment and removal of the discharged oil, and for "cleanup and restoration of the site and surrounding environment." N.H. REV. STAT. ANN. § 146-A:3-a. In addition, persons responsible for an oil spill that results in damage to private property are "liable in tort to the person whose property is damaged in double the amount of the damages." § 146A:10.

New Jersey. New Jersey's Spill Compensation and Control Act, N.J. Rev. Stat. §§ 58:10.23.11 *et seq.*, prohibits the discharge into state waters of hazardous substances, defined to include petroleum products, and creates a Spill Compensation Fund to pay for cleanup and to compensate private parties. A discharger who fails to comply with a cleanup order is liable to the Department of Environmental Protection for three times the Department's cost of removal. § 58:10-23.11f. The Fund is liable for the cost of restoring

and replacing natural resources, for restoring, repairing, or replacing damaged real or personal property, for lost income due to damage to property or natural resources, and for revenue lost by the state. The fund may recover for these damages, but such recovery is limited to \$50 million for major facilities, and to \$150 per gross ton for vessels. These limitations are inapplicable if the discharge resulted from gross negligence or willful misconduct, or from a gross or negligent violation of an applicable safety, construction or operating standard or regulation. Partially duplicative of the Spill Act is the state's Water Pollution Control Act. This law defines pollutant to include oil, and authorizes the state to bring a civil action to recover for removal costs and for "damages for any loss or destruction of wildlife, fish, or aquatic life, or other natural resources, and for any other actual damages caused by an unauthorized discharge." Authority is also conferred on the court to order payment to the state of "the actual amount of any economic benefits accruing to the violator from a violation," and to order payment of "compensatory damages" to "any persons who have been aggrieved by the unauthorized discharge." N.J. REV. STAT. § 58:10A-10. No limitations are placed on recovery under this provision.

New York. New York has an oil spill prevention, compensation, and control law that provides for strict but limited liability to the state and to private parties for damages resulting from spills. In addition, responsible parties who fail to undertake necessary relocation of persons residing in the area of the spill may be liable for twice the cost of such relocation. A spill compensation fund is liable in the first instance for "all cleanup and removal costs and all direct and indirect damages, no matter by whom sustained." These damages can include the cost of restoring, repairing, or replacing damaged property, the cost of restoration and replacement of natural resources, loss of income or earning capacity, and loss of tax revenues. Responsible parties are liable to the fund, but their liability is limited to \$50 million for facilities and to \$300 per gross ton for vessels, unless gross negligence or willful misconduct can be shown. N.Y. NAV. LAW § 181.

North Carolina. North Carolina's Oil Pollution and Hazardous Substances Control Act of 1978 provides for liability for damages to public and private resources resulting from an unlawful discharge. Liability to the state is for cleanup costs and for damage to public resources; if "fish, animals, vegetation or other resources" of the state are injured or if water quality is degraded, damages include investigatory costs as well as expenses reasonably necessary to restock waters, replenish resources "and otherwise restore" waters to their condition prior to the discharge. N.C. GEN. STAT. § 143-215.90. Liability to the state is limited to "applicable limits prescribed by federal law" for federal government recovery. (§143.215.89). In addition, violators are liable to private parties for "damages to persons or property" (§ 143-215.93); this liability is not limited by the statute.

Oregon. Oregon's oil spill law makes persons responsible for the unlawful discharge of oil that enters state waters "strictly liable, without regard to fault, for the damages to persons or property, public or private." OR. REV.

STAT. § 468.790. The state may sue to recover its costs in collecting, removing, treating, containing, or dispersing the oil. § 468.805.

South Carolina. South Carolina has a statute directed at spills of oil, gasoline, pesticides, ammonia, and chlorine, and provides for liability to private individuals for resulting damages. The state is authorized to "arrange for the removal of the pollutant"; if the discharge occurred in waters of the United States, the state is directed to act in accordance with the national contingency plan, and removal costs are to be paid "in accordance with the applicable provisions of the [federal] law." S.C. CODE ANN. § 48-43-560. The provision is unclear as to whether the state has a cause of action to recover its cleanup costs, and as to whether the liability limitation of the federal Clean Water Act limits any such recovery by the state. Recovery by private claimants is not limited; private persons may submit claims to an arbitration board, or may in the alternative bring a civil action to recover "all damages." § 48-43-600.

Texas. The Texas Hazardous Substances Spill Prevention and Control Act creates a Spill Response Fund and authorizes the state to recover cleanup costs and other damages from responsible parties. A provision limiting the state's recovery to \$5 million was repealed in 1989. Moreover, the state may recover double its cleanup costs if the responsible party has, after reasonable notice, failed to clean up the spill. Cleanup costs may include costs of scientific studies to measure environmental impact and to determine the best response, "out-of-pocket costs associated with state agency actions," "reasonable costs incurred by the state in cleanup operations," and "costs of remediating injuries proximately caused by reasonable cleanup activities." TEXAS WATER CODE ANN. § 26.265. The statute contains no private right of action.

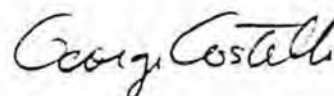
Vermont. Vermont has an environmental contingency fund to finance state response to oil and hazardous substances spills. Fund disbursements may be made for investigations, cleanup, and "to take appropriate interim action to prevent or minimize the immediate impact of such releases to the public health and the environment." The state may bring an action against a responsible party to reimburse the fund, and there is no express limitation on the state's recovery. VT. STAT. ANN. tit. 10, § 1283. No private right of action is created by the statute.

Virginia. Virginia prohibits discharge of oil into state waters, and provides for limited liability to the state and to private parties for damages resulting from an unlawful discharge. The state may recover "all costs of investigation, containment, and cleanup," and in addition may recover for all property damage incurred by the state or by a political subdivision and for loss of tax or other revenues, and for loss of any natural resources that cannot be replenished or restored. Private parties may recover for injury to person and property, and for lost income and for loss of the use of damaged property. Total liability for damages (excluding the State's cleanup costs) is limited in the case of tank vessels to the greater of \$10 million or \$500 per gross ton. The limitations do not apply in the case of gross negligence or willful misconduct, violation of safety regulations, failure or refusal to report the

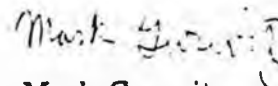
discharge, or failure or refusal to cooperate in the cleanup. VA. CODE § 62.1-44.34:18.

Washington. Washington law provides that any person owning or having control over oil that unlawfully enters state waters "shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry." WASH. REV. CODE ANN. § 90.48.336. There is no statutory limitation on private recovery, and responsible parties are also liable to the State for the full cost of cleanup. §90.48.335. However, the State's recovery for damages to public resources is to be established in a compensation schedule prepared by the Department of Ecology; this schedule is to reflect "adequate compensation for unquantifiable damages . . . for any adverse environmental, recreational, aesthetic, or other effects" caused by the spill. The State's recovery under this compensation schedule is to be no less than one dollar and no more than \$50 per gallon of oil spilled. §90.48.366.

Wisconsin. Wisconsin's general water pollution control act covers oil pollution (WIS. STAT. ANN. § 147.015), and a polluter is liable to the state for cleanup costs, including the cost of replacing fish and wildlife. § 147.23. No limitation is placed on the state's recovery, and the statute makes no provision for a private right of action.



George Costello
Legislative Attorney



Mark Gurevitz
Paralegal Specialist
American Law Division
October 1, 1990

Comparison of Oil Spill Legislation in Alaska, Oregon and Washington

DRAFT

Category	Alaska	Oregon	Washington
Proof of Financial Responsibility - Type of Proof Accepted	Insurance, self-insurance, guarantoo, surety, letter of credit, or other approved proof.	Insurance, surety bonds, self-insurance, or other evidence approved by the commission.	Insurance, surety bonds, self-insurance, or other evidence of financial responsibility. Documents to be kept on vessel.
- Amount	Amount per incident: Crude Oil terminal \$50 million; noncrude terminal \$25 per barrel; tank vessel with crude oil, \$300 per barrel (\$100,000,000 maximum); non-crude tank vessel, \$100 per barrel (\$35 million maximum).	Vessels over 300 gross tons, \$150/ton or \$1 million, whichever is greater.	Vessels over 300 gross tons, \$150/ton or \$1 million, whichever is greater.
Prevention Requirements - Oil Tankers			Must not exceed speed of escorting tugs. Must have Washington state licensed pilots in Puget Sound. Certain vessels need to be accompanied. Vessels larger than 125,000 deadweight tons may not enter certain areas unless they have double bottoms, two radars, and other safety equipment.
Contingency Planning - Facility and vessel plans	Terminals, pipelines, tank vessels & oil barges must have contingency plans renewed every 3 years. The state may approve, modify or disapprove plans within 65 days of submittal. State may establish regional plans.		Each facility or vessel must have a contingency plan outlining: method of response, removal of oil, early detection procedures, training & drills, equipment available, & disposal of recovered oil. Department shall review plans under specific criteria and conduct drills. Plans are legally binding.
- Statewide Plan	State master plan to be revised annually. Plan shall identify actions to reduce oil spills, depot locations, and provide for unannounced drills.	State to develop an integrated interagency response plan for oil or hazardous material spills. Plan to include an inventory of private contractors, agency personnel, volunteers, wildlife rehabilitation centers & equipment. Plan also to contain a spill response strategy.	State to update master plan annually after consultation with an advisory committee. Plan to include a map of sensitive areas. Department to develop policies for use of chemical agents and means to dispose of oil.
Equipment Requirements	The Division of Emergency Services to maintain equipment depots.		Department shall publish an annual index of contingency plans and equipment available.
Liability of Spiller or Owner	Owner and operators strictly liable, jointly & severally, for public and private damages. Vessel may be detained and sold to recover costs. Spiller liable for loss of persons, income and property. Responsible party liable for cleanup costs and restoration of environment.	Owner or person having control over oil is strictly liable without regard to fault for damages. Liable for reasonable costs. If there is not a good faith effort to clean up oil, state may recover three times the amount of its costs.	Oil discharger liable for state's cleanup expenses. Owner or controller of oil is strictly liable, without regard to fault, for damages. Other persons directly liable to the state for the state's cleanup expenses.
Limits on Liability	Contractors liable for negligence. State and response corps workers not liable.	Volunteers not liable unless grossly negligent or if there was reckless, wanton or intentional misconduct. Contractors liable.	Contractors and volunteers not liable.

Penalties	<p>Criminal penalties: criminal negligence - class A misdemeanor or class C felony depending on amount spilled. Civil penalties assessed with consideration of toxicity of oil: \$1 - \$10 per gallon (penalty 5 times higher if there is gross negligence. If the spill is over 18,000 gallons, additional penalties of \$8 - \$12 per gallon (\$500 million maximum). Other penalties may be assessed. Rockless operation of a tank vessel is a class C felony.</p>	<p>Persons willfully or negligently discharging oil shall incur a civil penalty equal to the amount of damage incurred. Intentional or negligent discharge of oil results in a penalty of up to \$20 thousand per day.</p>	<p>Civil penalty for violating chapter: up to \$100 thousand (RCW 88.44.190). Negligent discharge: up to \$20 thousand per day. Penalty for rockless discharge: \$100 thousand. Criminal penalty: \$10 per day. Civil penalty: up to \$10 thousand per day.</p>
- Operating without a contingency plan			<p>First conviction: gross misdemeanor, second conviction: class C felony. Business license may be revoked and a fine of up to \$100 thousand.</p>
- Operating without required financial responsibility.			<p>Privilege of operating vessel may be suspended. Penalty not to exceed \$10 thousand.</p>
Response Procedures	<p>Spiller must immediately notify state of spill. Spiller must clean up oil immediately.</p>	<p>Owner or controller of oil must immediately collect & remove oil or at least contain it. Anyone with knowledge of spill must report it.</p>	<p>Spiller must notify coast guard and the state Division of Emergency Management.</p>
Cleanup Standards			<p>Department to establish standards for cleanup contractors.</p>
Response Funds	<p>Oil & Hazardous Substance Release Mitigation Account in General Fund for money recovered. Oil & Hazardous Release Response Fund for actual cleanup expenses; funded by penalties, state, federal & private sources. Fund used for cleanup, monitoring, Oil & Hazardous Substances Response Corps, equipment depots, & environmental restoration.</p>	<p>Oil Spillage Control Fund within the General Fund to be used for cleanup and environmental restoration. Fund may be invested. Oil & Hazardous Material Emergency Response & Remedial Action Fund is separate from General Fund & used for cleanup.</p>	<p>Per transit assessments collected and placed in a fund. Tankers with an agreement with a cleanup cooperative or contractor exempt from fee. Fee not collected when fund reaches \$1.5 million. Commission may issue bonds or obtain loans.</p>
Commissions & Councils	<p>Citizen's Oversight Council on Oil & Hazardous Substances, in the Legislative Branch, assists in developing compacts, recommends policies, & determines if state agencies are carrying out their duties. The Hazardous Substance Spill Technology Review Council recommends research topics and maintain information on spill technology.</p>	<p>Environmental Quality Commission shall adopt an oil and hazardous material emergency response master plan. Commission establishes policies for operation of the Department of Environmental Quality.</p>	<p>Washington State Maritime Commission created to establish procedures for spill prevention and response. The commission must: assess a per transit fee, establish an emergency response communication system, contract with cleanup contractors, recover response costs, conduct drills, develop an oil spill contingency plan, and cooperate with other government jurisdictions.</p>
Response	<p>State employees or response corps may enter private property.</p>	<p>Director has right to enter private property to control oil spill.</p>	<p>State may enter private property to respond to a spill.</p>
Wildlife Rescue Provisions			<p>Wildlife rescue coalition established to coordinate rescue and rehabilitation.</p>

Source: State Statutes From Alaska, Washington and California

Prepared by Legislative Research Agency, March 1991 (91.201)

DRAFT

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FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 125

Revision Date: _____ Department Affected: Commerce & Economic Dev.
 Title: An Act relating to pharmacies located outside of the state. BRU: Occupational Licensing
 Component: Administration
 Sponsor: Senator Melard
 Requestor: Senate HES COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

SB 125 creates another pharmacy licensing category by registering outside pharmacies that ship, mail or deliver prescription drugs into Alaska. New funds are not required to implement the bill. **Revenues: A registration fee will be charged however, at this time we are unable to estimate the number of outside pharmacies affected by the bill.

Prepared By: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: March 18, 1991
 Approved by Commissioner: Glenn A. Olds
 Agency: Commerce and Economic Development Date: 3-20-91

Distribution (by preparer): Legislative Finance; Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



Alaska State Legislature

✓
Senator Curt Menard



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Juneau, Alaska
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Senate
District
E

SPONSOR STATEMENT

SB 125 "An Act relating to pharmacies located outside of the state"

There is a growing number of mail order pharmacies doing business in the state who are not accountable to their Alaskan customers. SB 125 addresses this consumer protection problem and provides reassurance to Alaskans who rely on those services.

SB 125 requires any pharmacy located outside of the state that ships, mails, or delivers prescription drugs into Alaska on a routine basis to register with the Alaska State Board of Pharmacy.

In order to register the pharmacy must provide specific documents that indicate compliance with licensing requirements in their home jurisdiction. The bill sets reasonable standards of disclosure to the Alaska Board of Pharmacy.

The most important requirement of this bill is the provision for out of state pharmacies to provide a toll free telephone service at least 40 hours a week and at least six days a week. When questions or problems resulting from prescription medication arise, it is imperative that the customer or medical responder be able to contact the dispensing pharmacist.

This legislation provides important measures to protect the health, safety and welfare of Alaskan consumers. Your support is greatly appreciated.

WE SUPPORT



DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
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Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

March 2, 1992

SUBJECT: State's potential for liability under CSSB 125(HES)

TO: Senator Drue Pearce
Attn: Bill

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have asked for a brief memo addressing whether the state is exposing itself to liability by enacting a bill requiring the registration of out-of-state pharmacies. It is my understanding from your questions that you mean liability for personal injury, not liability for contractual obligations.

Initially, please be aware that this memo addresses only the state's potential liability under the bill. Determination of actual liability depends on the specific facts of each case. The state's potential for liability for personal injury is generally governed by AS 09.50.250. In that statute, the state indicates to what extent and in what cases it waives its sovereign immunity from liability.

Generally, a claim could not be maintained against the state for injuries suffered by a person if the claim was based on the state's failure to exercise or perform a discretionary function or duty under the registration procedures enacted by the bill. Discretionary acts are those acts that rise to the level of planning or policy formulation. They would include such acts as management decisions on how to implement the new registration requirements.

On the other hand, under AS 09.50.250 the state would have a potential for liability if state employees did not use due care when carrying out the registration provisions. This type of liability only arises when there is negligence in the performance of activities that are merely operational in nature, thereby implementing policy decisions, and are not discretionary acts discussed in the preceding paragraph. Just because a person is injured by a pharmacy registered under bill (e.g. pharmacy sends the wrong prescription) does not mean the state is potentially liable for the injury. The state

Senator Drue Pearce
March 2, 1992
Page 2

must be negligent in these operational activities before the potential for liability arises.^{1/}

If I may be of further assistance, please advise.

TLB:pl
92-148.plm

^{1/}And, of course, other requirements for liability must be present, such as a connection between the state negligence and the injury.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM

November 18, 1991

SUBJECT: Regulation of pharmacies and drugs (CSSB 125 (HES))

TO: Senator Curt Menard

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have requested an opinion regarding two questions that the Senate Labor and Commerce Committee raised while discussing CSSB 125 (HES). This memo addresses those questions.

1. Additional requirements for out-of-state pharmacies.

You have asked whether the commerce clause prevents Alaska from imposing requirements on out-of-state pharmacies that are in addition to those of the home jurisdiction of the pharmacy, such as maintaining an 800 telephone number. This memo assumes that the requirement would apply only to out-of-state pharmacies that do business to some degree in the state, such as mail order pharmacies, which brings them within the jurisdiction of the state. The state may impose the requirements if they satisfy the federal commerce clause criteria and equal protection criteria.

A. Commerce Clause--where requirement not imposed on in-state pharmacies. If the requirements are to be imposed only on out-of-state pharmacies, the requirements would discriminate against the out-of-state pharmacies. In such a situation, the commerce clause^{1/} requires the state to demonstrate that the requirement serves a legitimate local purpose and that this purpose could not be served as well by available nondiscriminatory means. See Maine v. Taylor, 91 L.Ed.2d 110, 121 (1986), citing Hughes v. Oklahoma, 60 L.Ed.2d 250. The standards for such justification are high. See New Energy Co. v. Limbach, 100 L.Ed.2d 302, 312 (1988). The requirements will not be upheld "unless the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism." New Energy, supra at 308.

^{1/}The commerce clause is found at art. I, sec. 8, cl. 3 of the United States Constitution and reads in pertinent part as follows: "Congress shall have power . . . to regulate commerce with foreign nations, and among the several states....").

You give as an example requiring the out-of-state pharmacy to maintain an 800 phone number. I presume that the purpose of the 800 number is to make it easier and less costly for consumers who purchase drug products from a pharmacy that is located out of the state to place orders, check on orders, and to deal with problems that may arise with the order or the drug product. This requirement would arguably help maintain the health of the drug product consumer by facilitating the use of necessary drug products. This appears to be a legitimate purpose. However, there is no reason why in-state pharmacies should not be required to maintain an 800 number as well. Due to the great distances between communities in the state, some state residents may have to order from a distance within the state, particularly those residents living in outlying bush areas. The state's purpose for imposing the telephone requirement would be served better if the requirement were imposed on all pharmacies, not just out-of-state pharmacies. Therefore, imposing this requirement only on out-of-state pharmacies may violate the commerce clause, unless there is another significant justification for imposing it only on out-of-state pharmacies.

B. Commerce clause--where requirement imposed on all pharmacies. If the requirement is imposed on all pharmacies, whether they are in-state or out-of-state, the requirement does affect interstate commerce, but the criteria to satisfy the commerce clause are more relaxed.

Where a statute regulates evenhandedly to promote a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on the commerce is clearly excessive in relation to the putative local benefits. See Pike v. Bruce Church, 25 L.Ed.2d 174, 178 (1970), citing Huron Cement Co. v. Detroit, 4 L.Ed.2d 852, 856 (1960). With regard to the 800 number, as discussed above, having an 800 number would promote public health by facilitating the use of necessary drug products, so the statute would promote a legitimate local public interest.

The effect of the 800-number requirement on interstate commerce appears to be an incidental effect on interstate commerce, since it does not apply just to or otherwise discriminate against interstate commerce.^{2/} It does not appear to be for the purpose of economic protectionism. The burden of the requirement on interstate commerce would, therefore, need to be balanced against the anticipated local benefits. For example, with regard to the 800 number, a court would examine the need for and purpose of easy telephone access. Then it would examine the

^{2/}It is not clear just what the court means by the term "incidental". However, it appears to mean a requirement that does not affirmatively discriminate against interstate commerce. See Maine v. Taylor, 91 L.Ed.2d 110, 120 (1986). The term "incidental" appears to be a modern replacement for the terms "direct" and "indirect". Notwithstanding the Pike court's reference to "incidental", the term does not appear to be significant to the current standard for commerce clause review. See L. Tribe, American Constitutional Law 408 (2d ed. 1988).

administrative and monetary costs for an out-of-state pharmacy to maintain the number, as well as the disruption the requirement would cause for a pharmacy to design its system to handle the requirement of one state. The monetary and administrative costs of maintaining an 800 number do not seem to be particularly burdensome for a pharmacy. When balanced against the benefits to consumer health, the costs do not seem excessive. Therefore, imposing the 800 number requirement on all pharmacies does not seem to violate the commerce clause. The success of other requirements depends on the circumstances of the particular requirement imposed.

C. Equal Protection. Although you have raised only the commerce clause issue, if the requirements are imposed only on out-of-state pharmacies, the issue arises whether the classification and discrimination between in-state pharmacies and out-of-state pharmacies would violate the equal protection provision of the Alaska State Constitution (art. I, sec. 1). Assuming that the state equal protection clause is not violated by the requirements, it is unlikely that the requirements would violate the more lenient federal equal protection clause.

Art. I, sec. 23 of the state constitution allows the state to prefer its residents over nonresidents. Although the term "resident" that is used in sec. 23 usually carries the connotation of a natural person, not a legally constructed entity, the use of the term in the section is susceptible to the argument that sec. 23 also covers resident corporations, partnerships, and other non-natural business entities. If the term "residents" is interpreted to include corporations, partnerships, and other non-natural business entities, then there would be no violation of the state's equal protection clause. If the term "residents" is interpreted to apply only to natural persons, then the proposed requirements would satisfy the state's equal protection criteria for natural persons, but may not for non-natural persons.

The printed legislative history of the provision and the summary of the measure in the 1988 Election Pamphlet do not provide much assistance on the interpretation. (If you would like me to review the committee and floor tapes on this matter, please advise.) The statement by Representative Donley in the election pamphlet in support of the measure indirectly lends support to the provision applying to more than natural persons. In it he mentions the bidders' preference, which is found at AS 36.30.270(b) and which naturally involves corporations and other artificial entities, as an example of an important state preference that would survive better under the federal equal protection provision (which would be a result of the new measure). At this point, the result of an interpretation by the Supreme Court is a toss-up and not really predictable.

If artificial persons are not covered by art. I, sec. 23, in order for a state requirement that discriminates between resident pharmacies and non-resident pharmacies to be valid under the equal protection clause, the classification between in-state and out-of-

state must be reasonable, not arbitrary, and must bear a fair and substantial relation to a legitimate governmental objective; depending on the importance of the interest involved, a greater or lesser burden will be placed on the state to show this fair and substantial relationship. Wilson v. Municipality of Anchorage, 669 P.2d 569 (Alaska 1983). For example, the 800 number, as indicated above, appears to bear a fair and substantial relation to a legitimate governmental objective. However, as also indicated above, the classification may be considered arbitrary because it would be as helpful to have the number for some in-state pharmacies as for out-of-state pharmacies. Therefore, the 800-number requirement may not satisfy the state's equal protection clause in this situation. Other requirements would have to be examined individually for compliance with the equal protection clause.

2. Country-of-origin labelling for drugs. You have asked whether the state could require drugs to be labelled with the country of origin. I understand this requirement to mean the country where the drug was manufactured. It is my understanding that the committee's concern is that the quality of drugs from some countries may be low and the consumer should be told the country of origin.

A. Necessity for state requirement. Drug products that are imported into the United States generally must be labelled with the country of origin, and this requirement extends to the consumer container. See 19 CFR 134. Once in the United States, federal law does not require that the country of origin appear on the label. Federal law allows the package to display the name and place of business of the manufacturer, packer, or distributor. 21 U.S.C.S. 352. Since the manufacturer, packer, and distributor of the drug product may not be located in the same country, and since the distributor or packer may be located in the United States, a label that gives the address of the distributor or the packer may not disclose that the product was manufactured in a foreign country.

A foreign country may register its drug product with the United States under 21 U.S.C. 360, which involves Department of Agriculture inspection of the drug for compliance with the standards for new drugs under 21 U.S.C. 355. In order to register the drug the establishment must provide the department with considerable information to assist the department to determine whether the establishment's drugs meet U.S. standards. 21 U.S.C.S. 360(i). Unless the product is so registered, when the product arrives in the United States, U.S. Customs is required to deliver samples of the product to the Department of Agriculture. 21 U.S.C. 381. The Department then inspects the samples to determine if they are adulterated, misbranded, or violate the U.S. standards for new drugs under 21 U.S.C. 355. Once a foreign the drug product has been admitted into the U.S., the product is subject to the same requirements as all other drug products in the U.S. It is my understanding from talking with the Director for the Compliance Section of the FDA's office in Seattle that the United States inspects foreign establishments regularly to determine if they are meeting the U.S. standards for drug products.

A. Federal preemption. If the state chooses to require drug products to be labelled with the country of origin of the manufacturer, it is necessary to determine whether the FDCA has preempted state action in this area. Under the supremacy clause (art. VI, cl.2, of the federal constitution) a federal law can override state laws that interfere with or are contrary to federal law. Gibbons v. Ogden, 6 L.Ed.23 (1824). Predictions regarding preemption issues are difficult to make since the U.S. Supreme Court has not enunciated a clear preemption standard,^{3/} and each case tends to be determined on an ad hoc basis.

In this situation, drug products in interstate commerce are heavily regulated by the federal government, particularly by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 - 392) ("FDCA"). The FDCA regulates the interstate commerce activity of drug products, including the labelling of the products. As indicated above, the FDCA requires a drug to be labelled with the name and place of business of the manufacturer, packer, or distributor. See 21 U.S.C. 352(b). The FDCA does not require the drug to be labelled with the address of the manufacturer. The state labelling requirement would, therefore, be more restrictive than that of the FDCA.

The FDCA does not expressly prohibit states from imposing their own labelling requirements on drug products. In this situation, labelling with the country of origin of the manufacturer would satisfy both the FDCA and the state requirement, so it would be possible for a person to comply with both the federal and the state requirements. Although it could be argued that labelling uniformity in the country is a goal of the FDCA, the inclusion of the manufacturer's address is consistent with the FDCA requirement. The comprehensive nature of federal regulation of this area suggests that congress intended state law to be preempted. On the other hand, health and welfare are traditional areas of state regulation, so federal interest is not dominant in this area. Further, the state requirement does not stand as an obstacle to the goal of the FDCA, since both are attempting to protect the health of drug product consumers by proper labelling.

There is a presumption that state or local regulation of matters related to health and welfare is not invalidated under the supremacy clause. See Hillsborough County, Fla. v. Automated Medical Laboratories, Inc., 85 L.Ed.2d 714, 722 (1985). The historic police powers of the states are not preempted unless that was the clear and manifest purpose of Congress. Id. at 722-723 (quoting Jones v. Rath Packing Co., 51 L.Ed.2d 604, 614, reh'd denied, 53 L.Ed.2d 240 (1977)). There also appears to be an overriding reluctance to infer preemption in ambiguous cases. L. Tribe, American Constitutional Law 479 (2d ed. 1988).

^{3/}See Rothschild, "A Proposed 'Tonic' with Florida Lime to Celebrate our New Federalism: How to Deal with the 'Headache' of Preemption", 38 U. of Miami L. Rev. 829, 833 (1983).

In light of the absence of express preemption, the lack of a conflict between the two statutes, the presumption for state health and welfare measures, and the reluctance to preempt state laws, it is my opinion that the labelling requirement would not be preempted by federal law.

B. Commerce clause. Since the labelling requirement would be imposed on all drug products (not just those in interstate commerce), the more relaxed commerce clause criteria used in 1.B. of this memo would be applied. Where a statute regulates evenhandedly to promote a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on the commerce is clearly excessive in relation to the putative local benefits. See Pike v. Bruce Church, 25 L.Ed.2d 174, 178 (1970), citing Huron Cement Co. v. Detroit, 4 L.Ed.2d 852, 856 (1960).

In this situation, the purpose of the labelling requirement appears to be to protect public health by allowing consumers to avoid drug products manufactured in countries that may not have the same standards as the United States. Since the requirement applies across the board to all drug products, the requirement applies evenhandedly and does not appear to have any goal of economic protectionism. The effect of the requirement on interstate commerce appears to be an incidental effect on interstate commerce, since the requirement does not discriminate against interstate commerce.^{4/}

Here again the burden of the requirement on interstate commerce would need to be balanced against the anticipated local benefits. A court would examine the need for a consumer to have the information. This probably would include an inquiry into whether the federal law regulating the quality of drug products that are manufactured in foreign countries is sufficient to cover the concern that drug products in some foreign countries do not have the same quality as those produced in the United States. Since the federal government appears to regularly inspect drug product plants in foreign countries and to impose the same quality standards on foreign drug products as to domestic drug products, the actual benefits to citizens of Alaska of the labelling requirement appear to be questionable. The public would be able, however, to choose whether or not to purchase products from foreign countries. The requirement would assist a person who does not believe that the quality of the drug products from certain countries is very good to avoid those products. The state may believe that this is an important goal.

^{4/}See fn. 2 on this point.

Senator Curt Menard
November 18, 1991
Page 7

A court would also examine the nature and extent of the burden that would be imposed on interstate commerce. The initial burden would be significant, since some products would have to be relabelled especially for Alaska. The ongoing burden does not seem to be very heavy, because a company could substitute one address for another when printing its labels.

When balancing the benefits with the burden, although the state benefits do not seem to be very significant, the burden on interstate commerce does not appear to be clearly excessive in relation to the anticipated local benefits. In that case, the requirement would not violate the commerce clause.

If you would like me to review other requirements for pharmacies or if I may be of other assistance, please advise.

TLB:gc
91-404.glc

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
707 JAS JB(1)

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 6, 1990

SUBJECT: Pharmacy licensing requirements in other
states (Work Order No. 6-2115)

TO: Representative Curt Menard
Attn: Iola

FROM: John B. Gaguine ^{JBG}
Legislative Counsel

Per your request, I have been looking at the pharmacy licensing requirements in some of the other Western states. In all of the statutes I have examined, a pharmacy can be licensed if it complies with the pharmacy laws, which is essentially the same requirement as is found in AS 18.-80.157. (Sometimes there are minor additional requirements, such as the North Dakota requirement that a pharmacy must possess the standard pharmaceutical reference book to get licensed.) However, the majority of the other statutes I looked at regulate pharmaceutical practices considerably more closely than do Alaska's laws and regulations, and all of them regulate at least as closely as Alaska. For your interest I am enclosing some of the statutes of Nevada (since that is the location of the mail-order pharmacy under the revised state employee health care program) and Washington (since Seattle pharmacies can logically be expected to enter the mail-order prescription drug business).

Incidentally, I found that Wyoming has adopted an out-of-state pharmacy law that is also apparently based on the California statute on which I modeled W.O. 6-2018A. North Dakota, on the other hand, takes a different approach, requiring out-of-state pharmacies doing mail-order business in that state to get a license from the North Dakota board. I am enclosing a copy of the North Dakota statute. I think that the approach taken by the California law is better, since I do not think that the Alaska board (or the North Dakota board, for that matter) would be able to effectively

Representative Curt Menard
Page 2
February 6, 1990

regulate an out-of-state pharmacy. Hence requiring it to get an Alaska license would not, in my opinion, accomplish much.

If I may be of further assistance, please advise.

JBG:lmb
L9/095

Enclosures

STATE OF ALASKA
THE LEGISLATURE

POUCH STATE CAPITOL
ALASKA 998
1990

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 26, 1990

SUBJECT: Out-of-state pharmacies and licensing requirements (Work Order No. 6-2018)

TO: Representative Curt Menard
Attn: Iola Young

FROM: John B. Gaguine *JBG*
Legislative Counsel

You have asked for a bill that would require out-of-state pharmacies doing business within the state (primarily out-of-state pharmacies soliciting and filling mail orders) to meet the requirements of licensing for in-state pharmacies. I am writing this memo to explain that there are essentially no requirements for in-state pharmacies, and that control of out-of-state mail order pharmacies can probably be better achieved through a different bill.

Under AS 08.80, the Board of Pharmacy regulates and licenses both pharmacies and pharmacists. Unlike the stringent requirements for issuance of a pharmacist license, however, there are virtually no requirements for a pharmacy license. AS 08.80.157 provides:

(a) If an applicant furnishes proof satisfactory to the board that the applicant is equipped with land, facilities, and equipment, in fee or leased, necessary to carry on the business described in the application and the applicant complies with this chapter, applicable regulations adopted by the board, and pays fees provided for under AS 08.80.160, the board may issue

(1) a wholesale drug dealer license to an applicant who manufactures or distributes noncontrolled legend drugs to licensed retail pharmacists, dentists, physicians, surgeons, or veterinarians, who may legally purchase noncontrolled legend drugs at a wholesale level, or to government

agencies which may legally purchase noncontrolled legend drugs at a wholesale level;

(2) a wholesale drug dealer license to a qualified applicant who is in compliance with the Federal Controlled Substance Act of 1969 as amended;

(3) a license to a retail pharmacy.

(b) A license under this section may not be issued to a person who has been convicted of a wilful violation of a federal law or a law of any state relating to a drug or controlled substance, or who is addicted to a drug or controlled substance. A license may not be issued to a corporation with a managing officer who has been convicted of a wilful violation of a federal law or a law of any state relating to a drug or controlled substance, or who is addicted to a drug or controlled substance.

The specific requirements listed in subsection (a) - land, facilities, and equipment - obviously would be met by any out-of-state pharmacy capable of filling orders in Alaska. The "no conviction" provision of (b) is likely equally meaningless, as such a provision is likely found in virtually all state licensing acts. (I examined the pharmacy licensing statutes of several states, and they all had such a provision.) The other provisions in AS 08.80 concerning pharmacies, rather than pharmacists, are so vague as to be useless in regulating out-of-state pharmacies; see, e.g., AS 08.80.230 (pharmacy must have proper sanitary appliances and maintain orderly and sanitary premises). Most important, the Board of Pharmacy, which could issue regulations giving some meaning to these vague provisions, has to date not done so, likely because there have been major problems with duty pharmacies.

I would suggest instead an approach along the line of California's, which requires the out-of-state pharmacy to submit proof of compliance with the licensing laws of the pharmacy's state of residence, and also allows the California board to request information. I am enclosing

Representative Curt Menard

Page 3

January 26, 1990

copies of the relevant California statutes. If this approach appeals to you, I can draft a bill based on those statutes (but likely far simpler). Or I can draft a bill along the lines of your request, that an out-of-state pharmacy must meet Alaska qualifications, in the hope that the Board of Pharmacy will someday issue the necessary regulations.

JBG:gc
G13/071

Enclosure

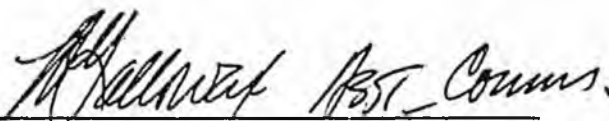
SB 125: An Act relating to pharmacies located outside of the state.

SB 125 establishes requirements for pharmacies located outside of Alaska to register with the Alaska Board of Pharmacy, if the pharmacy ships, mails, or delivers prescription drugs into the state.

The out-of-state pharmacy will be required to meet certain criteria established in the bill, including 1) registration of the names and locations of pharmacists who dispense prescription drugs to Alaska residents, 2) proof of maintenance of a current license and active pharmacy inspection in the jurisdiction in which the pharmacy is located, 3) compliance with all laws of the licensing authority within the jurisdiction where the pharmacy is located, and 4) proof that the pharmacy may readily retrieve the records of drugs prescribed to Alaska residents.

Currently, Alaska is not able to monitor or identify the out-of-state pharmacies who distribute prescription drugs to residents within the state. SB 125 will allow the Alaska Board of Pharmacy to require registration of outside pharmacies, thus providing some level of oversight -- albeit minimal -- of their activities in Alaska. The current lack of any review of outside pharmacies that mail, ship or deliver prescription drugs in Alaska raises consumer protection concerns.

Pharmacies located in Alaska are regulated by law to protect the health, safety and welfare of Alaskan consumers. Pharmacies located outside the state who service Alaska residents with prescription drugs should be subject to some degree of regulatory oversight. For this reason, the department supports SB 125.


Glenn A. Olds, Commissioner
Department of Commerce and
Economic Development

Date: 3/20/01

GAO/RPB/JS/wfd2162W
31891b

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION DIVISION OF RETIREMENT & BENEFITS

PLEASE REPLY TO:

P.O. BOX CR
JUNEAU, ALASKA 99811-0203
PHONE: (907)465-4460

701 EAST TUDOR ROAD, SUITE 240
ANCHORAGE, ALASKA 99503-7445
PHONE: (907) 563-5885

Fax# 465-3086

Public Employees Retirement System
Teachers Retirement System
Judicial Retirement System
Elected Public Officers Retirement System
National Guard Retirement System
Territorial Retirement System
Retirees Voluntary Dental-Vision-Audio Plan
Supplemental Benefits System
Group Health/Life Insurance Benefits
Deferred Compensation Plan
Public Employers Social Security Contributions

STEVE COWPER, GOVERNOR

March 19, 1990

The Honorable Curt Menard
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Menard:

Your staff requested an analysis from this division of the impact HB 508 would have on the health insurance plan for State of Alaska employees.

The health insurance plan that was negotiated last summer by the Alaska State Employees Association (ASEA) includes a provision for prescription drugs to be obtained through the mail. I have reviewed HB 508 and do not see any provisions that would be at cross purposes with the current negotiated agreement with ASEA or increase the cost of health insurance premiums.

The mail order prescription drug plan is provided by National Pharmacies, Inc. through a subcontract with Aetna, our health insurance carrier. I have also discussed the bill's requirements with Aetna and have been informed that National Pharmacies would currently be able to satisfy these requirements.

Sincerely,



Michael B. Coughlin
Deputy Director

MBC/ksl

cc: Sally Smith
Director
Division of Retirement and Benefits

Lynn Withrow
Aetna Life Insurance
Seattle, WA 98111

Representative Curt Menard
March 19, 1990
Page 2

cc: (continued)

Frank S. Baxter, CPA
Commissioner
Department of Administration

Gary Bader
Deputy Commissioner
Services to State Agencies
Department of Administration

Sioux Plummer
Special Assistant
Department of Administration

RB90-017



RETIRED PERSONS SERVICES, INC.

March 25, 1991

The Honorable Curt Menard
Senate of Alaska
State Capitol
P.O. Box V
Juneau, Alaska 99811

Re: Support for SB.125--Pharmacies Located
Outside of the State

Dear Senator Menard:

I am writing in my capacity as Director of Governmental Affairs of the AARP Pharmacy Service and its Oregon subsidiary, the Oregon Retired Persons Pharmacy of Beaverton, Oregon. Our Oregon facility provides service to approximately 5,000 AARP members living in Alaska. This is to commend you for authoring and introducing SB.125, a bill to require the registration of out-of-state pharmacies which provide pharmacy services to residents of Alaska. The AARP Pharmacy Service strongly supports the enactment of SB.125.

Your bill represents a significant contribution toward enhancing and improving professional relations between pharmacies engaged in interstate commerce and the Alaska Board of Pharmacy. Just as important, the bill will serve to improve cooperation and communication between the Alaska Board and the boards of other states. Finally, the regulatory framework adopted by SB.125 is reasonable, realistic and based on sound constitutional principles.

Very truly yours,

A handwritten signature in cursive script that reads "F. Nicholas Willard".

F. Nicholas Willard
Director, Governmental Affairs

cc: AARP Alaska State Legislative
Committee

500 Montgomery Street
Alexandria, Virginia 22314-1563
(703) 684-0244 Fax: (703) 684-0246

**ALASKA PHARMACEUTICAL ASSOCIATION**

Box 10-1185 Anchorage, Alaska 99510

Senator Curt Menard
Alaska State Legislature
Juneau, Alaska FAX 465-3756

March 25, 1991

Dear Senator Menard:

The members of the Alaska Pharmaceutical Association wish to convey to you their support of your bill SB 125. Mail-order pharmacy involves many significant realities, especially in the state of Alaska.

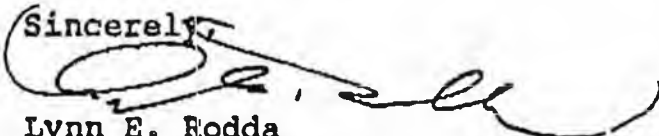
One very important reality is that the State has the duty to protect the health and welfare of its citizens. SB 125 addresses that duty with respect to those pharmacy businesses which are not resident in the state of Alaska and which do a preponderance of their prescription volume through mail-order dispensing.

The issue of mail-order pharmacy is of great concern to the members of the Alaska Pharmaceutical Association. The Association and its Board of Directors appreciate your efforts to address this concern. It is gratifying to have a Senator who not only listens to his constituents, but who also acts.

The Association will participate in your hearings tomorrow (March 26th) through Katy Fishel, Past President of the Association. We will continue to watch the progress of SB 125 with interest and support.

Please contact me if I can be of help as SB 125 continues toward passage, hopefully this term. I can be reached at 261-3078 or via FAX 261-3048. Or, you may write to me at the Association's address given above.

Sincerely,



Lynn E. Rodda
President, Alaska Pharmaceutical Association

cc: Association Board of Directors

EMENS, HURD, KEGLER & RITTER Co., L.P.A.

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NICK J. VIZY
NOREEN S. WOLFF

OF COUNSEL
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JOSEPH M. MILLIOUS

March 18, 1991

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

RE: Nonresident Pharmacy Legislation/Senate Bill 125

Dear Senator Menard:

I am writing this letter in my capacity as Regulatory Counsel for Medco Containment Services, Inc., to include each of its regionally located mail service pharmacies, and with respect to the Alaska State Legislature's consideration of licensure, or registration, requirements for nonresident pharmacies. In this regard, Medco is pleased to support Senate Bill 125 upon the following terms and conditions:

I. Background Statement

The regulation of nonresident pharmacies, and particularly those engaged in the practice of mail service pharmacy, has been the subject of frequent, often emotional and sometimes even misinformed debate over the last several years. No issue of this debate has engendered more interest than whether a state has the power to compel a nonresident pharmacy to be locally licensed. Evidenced by legislative and administrative initiatives in any number of states, the lines of debate are well-drawn and range from arguments supporting regulation by restrictive licensure to enacted licensure requirements consistent with legal, policy and practice standards. At the center of debate is Art. 1, Sec. 8, cl. 3 of the Constitution of the United States of America, the Commerce Clause, granting Congress the power "(t)o regulate commerce . . . among the several states" Advocates on either side cannot avoid the impact of the Commerce Clause upon the regulation of the interstate delivery of prescription drugs

The Honorable Curt Menard
March 18, 1991
Page 2

and its special relevance to those pharmacies who regularly and uniformly dispense prescription drugs from one state to another.

If a state chooses to regulate that portion of the business of a nonresident pharmacy which is engaged in interstate commerce, the Commerce Clause cannot be relied upon to suggest that the state is without the power to impose licensure requirements. This concept is too often lost in the rhetoric of the debate but essential to any dialogue. Rather, the Commerce Clause can be correctly relied upon to suggest that the nature and extent of the conditions of licensure must satisfy the basic criteria for determining the validity of state action which affects interstate commerce. The Commerce Clause of the Constitution of the United States of America prohibits states from enacting legislation that would have an unduly burdensome impact upon interstate commerce. When a state statute, or administrative rule promulgated thereunder, directly regulates interstate commerce, or when its effect is to discriminate against out-of-state interests, the statute, or administrative rule, is per se invalid under the Commerce Clause. When a state statute has only indirect impact on interstate commerce and regulates evenhandedly, the United States Supreme Court has employed a balancing approach to determine whether the regulation substantially impedes the free flow of commerce.

There is generally no clear line which separates a statute that satisfies the balancing approach and a statute that otherwise fails to conform to the constitutional standards mandated by this approach. On the issue of licensure requirements for nonresident pharmacies, specifically those engaged in the practice of mail service pharmacy, the search for that line is made easier by the development of an objective pattern of facts. This pattern has proven mail service pharmacy to be a safe, effective means of dispensing prescription drugs for chronic and long-term conditions, adequately regulated by present licensing protocols, particularly when complimented by reasonable licensure requirements, and, a discipline consistent with legitimate local objectives. Indeed, the day-to-day operations of a mail service pharmacy favorably compares with the Standards of Practice of the American Pharmaceutical Association. And not one fiction, if established as fact, would be avoided or resolved by restrictive licensure. Numerous objective, third-party authorities, from governmental agencies (e.g. FDA, Federal Trade Commission, Michigan State Legislature) to academia (e.g. Brandeis University, University of Texas College of Pharmacy) to professional bodies (e.g. American Medical Association), have so contributed to a formal record in the legislative and

The Honorable Curt Menard
March 18, 1991
Page 3

administrative forums of the states that support these conclusions.

It is significant, and a clear indication of the obvious trend of choice in the regulation of mail service pharmacy on this issue, that the California Disclosure Legislation, adopted in 1988, has now been enacted, or implemented in original form or with reasonable modifications, in an increasing number of states, to this past year include Kentucky, Maine, Missouri, South Carolina, Virginia and Wyoming. A number of other states are expected to do likewise this year. If mail service pharmacy is truly a form of discipline consistent with the high standards of pharmacy, then the California Disclosure Legislation shall be the extent of licensure requirements necessary to be consistent with legal, policy and practice standards. On the other hand, if the advocates of restrictive licensure are correct, then the California Disclosure Legislation provides the best vehicle to gather together those facts necessary to satisfy the Supreme Court's balancing approach and, thereby, support their position and advance more restrictive licensure requirements. The history of the regulation of mail service pharmacy, and indeed nonresident pharmacies as an identifiable group suggests that the California Disclosure Legislation is now, and shall be in the future, the reality of state licensure requirements.

II Senate Bill 125

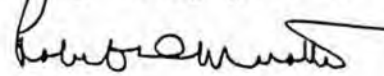
The proposed legislation appears to be consistent with the California Disclosure Legislation and to the extent modifications raise legal, policy or practice concerns, these concerns are satisfactorily addressed so long as the nonresident pharmacy would not be required to violate the law and regulation of its home jurisdiction. As drafted, Senate Bill 125 does not appear to cause the nonresident pharmacy to violate the law and regulation of its home jurisdiction. With this consideration in mind, Medco is supportive of Senate Bill 125.

In closing, it is the hope of Medco that the substance of this letter can serve to encourage a broader, more comprehensive dialogue on the issue. It is through dialogue, not debate, that regulators, nonresident pharmacies, and even those who advocate restrictive licensure can work toward a common, practical, constitutionally viable end, all of which can only benefit the object of our mutual concern -- the patient.

The Honorable Curt Menard
March 18, 1991
Page 4

Thank you for the opportunity to comment and the
consideration of this letter.

Very truly yours,



Robert D. Marotta

Attachment (California Disclosure Legislation)

cc: Medco Containment Services, Inc.

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Senate Bill No. 2213

CHAPTER 1424

An act to amend Section 4084.6 of, to add Sections 4050.1 and 4383 to, and to add and repeal Section 4350.6 of, the Business and Professions Code, relating to pharmacy, and making an appropriation therefor.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2213, Craven. Pharmacy.

Under existing law, it is unlawful for any person to, among other things, sell or dispense any prescription of a medical practitioner unless the person is a registered pharmacist under specified provisions of the Business and Professions Code. The law requires an out-of-state pharmacy which conducts the business of selling or distributing drugs in this state to be licensed by the Board of Pharmacy.

This bill would require any pharmacy, as specified, located outside this state which ships, mails, or delivers any controlled substances or dangerous drugs or devices into this state to register with the board, disclose specified information to the board, and meet other conditions.

The bill would authorize the board to deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with specified provisions of California law and, until January 1, 1992, for conduct which causes serious bodily or psychological injury to a resident of this state if the regulatory agency in the state where the pharmacy is located fails to initiate an investigation into the matter within 45 days of being notified by the board.

The bill also would prohibit specified advertisements with regard to unregistered, nonresident pharmacies.

Existing provisions of the Business and Professions Code continuously appropriate the moneys in the Pharmacy Board Contingent Fund. Because this bill would increase the amount of moneys in the fund, it would constitute an appropriation.

A violation of those provisions of the Business and Professions Code constitutes a misdemeanor.

This bill would impose a state-mandated local program by creating or revising a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this

act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares that the practice of pharmacy is a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and drug related therapy.

(b) The Legislature recognizes that with the proliferation of alternate methods of health delivery, there has arisen among third-party payers and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail order pharmacies located outside the State of California.

(c) As a result, the Legislature finds and declares that to continue to protect the California consumer-patient, all out-of-state pharmacies that provide service to California residents shall be registered with the board, disclose specific information about their services, and provide pharmacy services at a high level of protection and competence.

SEC. 2. Section 4050.1 is added to the Business and Professions Code, to read:

4050.1. (a) Any pharmacy located outside this state which ships, mails, or delivers, in any manner, controlled substances or dangerous drugs or devices into this state shall be considered a nonresident pharmacy, shall be registered with the board, and shall disclose to the board all of the following:

(1) The location, names and titles of all principal corporate officers and all pharmacists who are dispensing controlled substances or dangerous drugs or devices to residents of this state. A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer, or pharmacist.

(2) That it complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

(3) That it maintains its records of controlled substances or dangerous drugs or devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs

dispensed.

(b) Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(c) The registration fee shall be the fee specified in subdivision (a) of Section 4416.

(d) The registration requirements of this section and Sections 4350.6 and 4383, shall apply only to a nonresident pharmacy which only ships, mails, or delivers controlled substances and dangerous drugs and devices into this state pursuant to a prescription.

SEC. 3. Section 4084.6 of the Business and Professions Code is amended to read:

4084.6. No out-of-state manufacturer, wholesaler, or pharmacy doing business in this state who has not obtained a certificate, license, permit, registration, or exemption from the board and who sells or distributes drugs in this state through any person or media other than a wholesaler who has obtained a certificate, license, permit, registration, or exemption pursuant to the provisions of this chapter or through a selling or distribution outlet which is licensed as a wholesaler pursuant to the provisions of this chapter, shall conduct the business of selling or distributing drugs in this state without obtaining an out-of-state drug distributor's license from the board or registering as a nonresident pharmacy.

Applications for an out-of-state drug distributor's license or a nonresident pharmacy registration, under this section shall be made on a form furnished by the board. The board may require such information as the board deems is reasonably necessary to carry out the purposes of the section.

The board may deny, revoke, or suspend such out-of-state distributor's license for any violation of this chapter or for any violation of Division 21 (commencing with Section 26001) of the Health and Safety Code. The license or nonresident pharmacy registration shall be renewed annually on or before the first day of January of each year.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to change or affect the tax liability imposed by Chapter 3 (commencing with Section 23501) of Part 11 of Division 2 of the Revenue and Taxation Code on any out-of-state manufacturer, wholesaler, or pharmacy.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration, issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to

serve as any evidence that such out-of-state manufacturer, wholesaler, or pharmacy is doing business within this state.

SEC. 4. Section 4350.6 is added to the Business and Professions Code, to read:

4350.6. (a) The board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of Section 4050.1 or 4383 or for any failure to comply with Section 11164 of the Health and Safety Code.

(b) The board may deny, revoke, or suspend a nonresident pharmacy registration for conduct which causes serious bodily or serious psychological injury to a resident of this state if the board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and the regulatory or licensing agency fails to initiate an investigation within 45 days of the referral. The board shall obtain and maintain a record of referrals pursuant to this subdivision and any action taken thereon and shall report its findings to the Legislature on or before March 31, 1991.

This section shall be operative until January 1, 1992, and as of that date, is repealed unless a later enacted statute deletes or extends that date.

SEC. 5. Section 4350.6 is added to the Business and Professions Code, to read:

4350.6. The board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of Section 4050.1 or 4383 or for any failure to comply with Section 11164 of the Health and Safety Code.

This section shall become operative on January 1, 1992.

SEC. 6. Section 4383 is added to the Business and Professions Code, to read:

4383. It is unlawful for any nonresident pharmacy which is not registered pursuant to Section 4050.1 to advertise its services in this state, or for any person who is a resident of this state to advertise the pharmacy services of a nonresident pharmacy which has not registered with the board, with the knowledge that the advertisement will or is likely to induce members of the public in this state to use the pharmacy to fill prescriptions.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Seniors: More drug use, more adverse reactions

by Jeffrey R. Richardson

Older adults use 25 percent of prescription drugs, more than people in younger age brackets. This makes them, as a group, proportionately more susceptible to adverse drug reactions, according to Cameale Johnson, clinical pharmacist at Humana Hospital-Alaska.

"Older adults are more frequently hospitalized due to adverse drug reactions," Johnson said. And medication misuse accounts for two-thirds of adverse drug reactions in the senior population, she said.

Drug side-effects that may be mild to nonexistent in younger people "may be significant in older adults," Johnson noted.

The phrase "adverse drug reaction" refers to any effect occurring from the use of a drug that is undesirable, including the failure to absorb the drug properly so it can address the targeted problem. A side-effect is a form of adverse reaction which can usually be anticipated because of the constituents of drugs and their known impact on the human organism.

Johnson said there are a number of reasons why people handle drugs differently as they age:

- To be effective, all drugs must be absorbed. Often changes in the gastro-intestinal system prevent

drugs from being readily absorbed.

- Drug effectiveness is dependent on good circulation. Throughout the aging process there are changes in the circulatory system which affect the ability of drugs to go to get where they are needed.

- Body composition, that is, the amount of fat or lean muscle tissue in a person, is a factor in the way the body handles drugs, since many drugs are taken up and stored in fat tissue.

"Probably the most significant one is the way we metabolize and excrete the drug," Johnson said. "The activity of the liver declines with age. Also, the kidneys don't always work quite as well. If they don't eliminate them, they're going to be subject to the toxic effect."

Johnson acknowledged it's easy to get prescription drugs confused, especially if a person is being treated for more than one condition. This raises the problem of adverse drug reactions resulting from drug interactions.

A number of steps can be taken to prevent harmful drug interactions. The most important is to utilize the services of one pharmacist who is familiar with your medical history and all of the drugs being utilized. In this way,

'Medication misuse accounts for two-thirds of adverse drug reactions in the senior population.'

- Cameale Johnson

interactions can be spotted that might be missed because doctors, or other pharmacists, don't know all the drugs a person is taking.

Johnson cautioned against storing prescription drugs in the bathroom, where they can rapidly deteriorate.

"It's the worst place you can store medications. It's a damp, humid environment," Johnson said. She suggested a hall closet, out of the reach of children.

Johnson also urges people to pay attention to the age of medications.

"I think it's important when you're no longer taking a medication to discard it."

Generally, drugs should not be kept longer than one year from the date the prescription was filled.

Johnson also warns people who tend to lose track of their dosages:

"In general, you should not double up on medications if you think you've skipped a dose."

Johnson concluded.

This information is presented by Senior Health Exchange, co-sponsored by Humana Seniors Association and Older Persons Action Group, Inc.

S B

1 4 8

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERENCE

DATE: 2/27/91

FURTHER: Resources
Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: _____

L&C Committee considered SB 148

Special appropriations to the Dept. of Natural Resources for the purchase of the inholdings of the Seldovia Native Association, and the timber rights of the Timber Trading Company, within the Kachemak Bay State Park; and recommended:

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

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

ATTACHES NEW FISCAL NOTE(S):

- | | |
|---|--|
| <input type="checkbox"/> fiscal note(s) _____ Dept/Date _____ | <input type="checkbox"/> zero fiscal note(s) _____ Dept/Date _____ |
| _____ | _____ |
| _____ | _____ |
| <input type="checkbox"/> appropriation-no fiscal note | <input type="checkbox"/> Governor's bill w/fiscal note |

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Buck Halford NO REC
Cyril Collier NO REC

Steve Pearce . No Rec
 Chair: Signature and Recommendation

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 148

Revision Date: _____ Department Affected: Natural Resources
 Title: Appropriation for Kachemak BRU: Land and Water Management
Bay Park Inholding Purchase Components: _____
 Sponsor: Sen Fischer
 Requestor: Senator Pearce COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Ron Swanson Phone: 762-2680
 Division: Land & Water Management Date: 3-26-91

Approved by Commissioner: Harold Heinze Date: 3-26-91
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,
 & Impacted Agency(ies).

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Hallford
Senator Jay Kerttula




WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3844

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99504
(907) 561-2018

SENATE LABOR AND COMMERCE COMMITTEE

TO: Senator Lloyd Jones, Chair
Senate Resources Committee

FROM: Senator Drue Pearce, Chair 
Senate Labor & Commerce Committee

DATE: April 3, 1991

RE: SB 148 - Kachemak Bay State Park

In spite of taking extensive testimony on the subject legislation, there were a considerable number of individuals who, in the interest of time, waived their chance at offering testimony.

For that reason, I would encourage the Senate Resources Committee to allow for teleconference testimony when hearing this legislation. I have enclosed a copy of those who signed up to testify and were unable to do so when it was being heard in the Senate Labor & Commerce Committee.

Attachment

DP:rrm

MAR 20 1991

Alaska State Legislature

Senator Paul Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269



State Senate

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3791

MEMORANDUM

TO: Senator Drue Pearce, Chairman
Senate Labor & Commerce Committee

FROM: Senator Paul Fischer *PF*

SUBJECT: Senate Bill 148
(relating to Kachemak Bay State Park
timber rights)

DATE: March 19, 1991

I would appreciate your scheduling the above referenced bill for a hearing before the Senate Labor & Commerce Committee at your earliest possible convenience.

I have attached backup information for your committee files.

Your consideration would be greatly appreciated.

PAF/sgn

Attachments

House Bill 83

Kachemak Bay State Park

Land and Timber Inholding Acquisition

History:

Kachemak Bay State Park was created by the Alaska Legislature in 1970. The following year, the U.S. Congress passed the Alaska Native Claims Settlement Act (ANCSA), which entitled Alaska Natives to receive land as settlement of aboriginal land claims (including federal lands that had already been transferred to the state).

SNA selected and received title to over 29,000 acres of its ANCSA settlement from lands within Kachemak Bay State Park. The SNA selections included key coastline and other high public use areas, including lands near China Poot Bay, one of the most beautiful and accessible sites within the park.

In 1979, a Memorandum of Understanding between SNA and the state Department of Natural Resources (DNR) was executed. Among other things, the memorandum committed the state and SNA to exchange SNA's park inholdings for state land of equal value.

In 1983 and again in 1985, the state and SNA successfully completed two small land exchanges. Two larger exchange attempts were unsuccessful, and further negotiations waned. At this writing, SNA still owns 23,642 acres within the park.

Recent Developments:

Roughly three years ago, it was disclosed that SNA had sold timber cutting rights on 15,400 acres of its park inholdings as well as other nearby SNA land to Koncor Forest Products Company, through its subsidiary Timber Trading Company (TTC).

With a twelve year timber harvest contract (from May 30, 1987 until April 30, 1999), TTC planned to begin logging operations in the near future. These plans dismayed a number of people who appreciate the recreational and scenic values of Kachemak Bay State Park, and who want to see the integrity of the park preserved.

Almost immediately, a statewide grass roots effort to revive the trade started, and a new round of negotiations began. Participants included representatives from DNR, SNA, TTC, members of the Kachemak Bay Citizen's Coalition, and legislative representatives.

The first step in the revived exchange process was to assemble a pool of state land to offer SNA. Once DNR completed this, the next step was an appraisal of SNA's land within the park.

An independent appraiser, under contract to SNA, arrived at two different values for SNA's property within the park, depending on the potential for timber harvest

was treated: \$22.7 million and \$25.6 million. Market value of timber was considered in addition to this, and at one point, the total value of the inholdings was estimated to be in the area of \$32 million.

DNR officials disagreed with the methods used by SNA's appraiser, maintaining that these values were not substantiated. DNR then contracted for its own independent appraisal, which placed the land values at \$12 million. SNA disagreed with this value.

In February of 1990, an arbitration panel of independent appraisers was selected by DNR and SNA to review the appraisals and render an opinion of the value of SNA's property. Though SNA agreed to the panel, it did not agree to be bound by the panel's results.

After some deliberation, the panel concluded that if timber on a portion of those lands were harvested, the value for the land alone ranged from \$11.62 to \$15.49 million, depending on what assumptions were made regarding the impact of any potential timber harvest. SNA still felt these values were too low, but agreed to negotiate.

After an exchange of offers and counter-offers, an agreement was reached on February 28, 1990. Under the terms of this accord, the state declared its willingness to purchase the balance of SNA's lands within Kachemak Bay State Park for \$15.5 million. Though the figure is at the high end of the arbitration panel's valuation, DNR concedes that it is a very difficult parcel to appraise. SNA has assented to this price only if the state makes an outright purchase of the property, not an exchange of land. At that point, the timber values were still in question. Through subsequent arbitration, the marketable timber values were set at \$6.4 million, and through negotiations a cash purchase value of \$ 4.5 million was determined. **The end result produced a final cash value for both land and timber at \$20 million.**

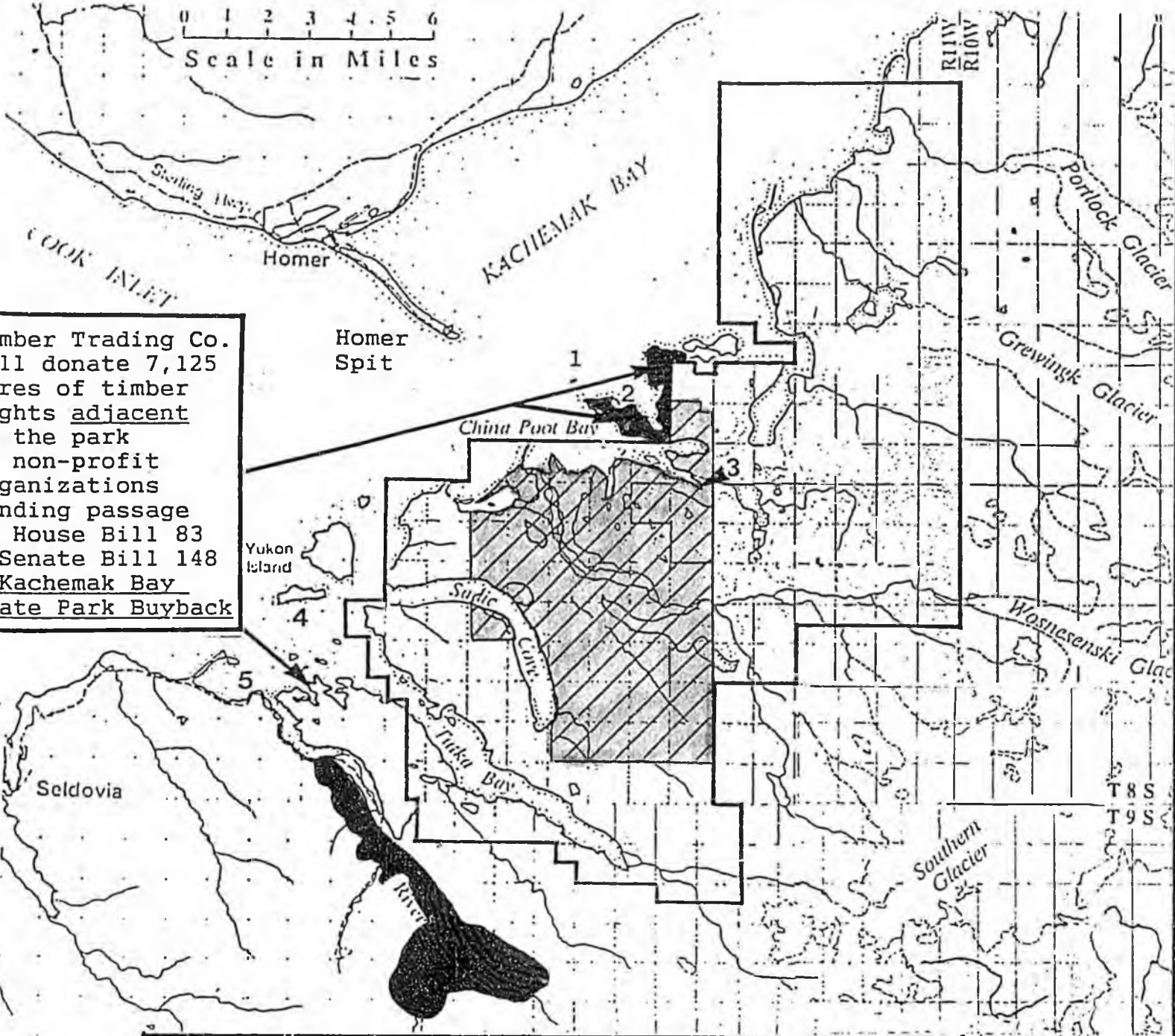
During the last legislative session, House Bill 590 (and a Senate companion bill, Senate Bill 536) was introduced by former Governor Cowper on March 28, 1990. The House Resources substitute provided \$20 million for the outright purchase of both land and timber inholdings within Kachemak Bay State Park. Unfortunately, HB 590 failed on the House floor by a 20-20 vote.

On January 30, 1991, Representative Mike Navarre introduced House Bill 83, to accomplish the purchase of the land and timber inholdings. HB 83 is a duplicate of HB 590 from the previous session.




What the State will Gain:

Seldovia Native Association's 23,785 acres are in the center of Kachemak Bay State Park, lying south and east of China Poot Bay, and extending southward to Sadie Cove. This comprises the "heart" of the park, and is noted as one of the most beautiful scenic areas in the state. **Because of its high recreational values as well, state acquisition of these inholdings will protect and preserve the integrity of the park for generations to come.**

HOUSE BILL 83 AND SENATE BILL 148:
 LAND AND TIMBER PURCHASE
 INSIDE KACHEMAK BAY STATE PARK



Timber Trading Co. will donate 7,125 acres of timber rights adjacent to the park to non-profit organizations pending passage of House Bill 83 & Senate Bill 148 Kachemak Bay State Park Buyback

-  Kachemak Bay State Park
 -  Seldovia Native Assoc. inholdings
 -  Timber Trading Co. timber rights outside the Park
- 1-Gull Is. seabird rookery
 - 2-Center for Ak. Coastal Studies facility
 - 3-ADFG personal use dipnet fishery
 - 4-sea otter habitat
 - 5-Univ. Ak. Fairbanks marine station

Seldovia/Kachemak Bay State Park Land Exchange

Land Values

Seldovia Native Association appraisal ----- \$25.6 million
Department of Natural Resources valuation --- \$12.0 million
Arbitrator (land value with some timber cut) -\$15.49 million

Timber Values

Timber Trading Corporation ----- \$10.6 million
Department of Natural Resources ----- \$ 5.9 million
Arbitrated value ----- \$ 6.4 million

Arbitrated Value of Land and Timber (last year's bill)

Arbitrator ----- \$17.82 million

Scenic and Recreational Values

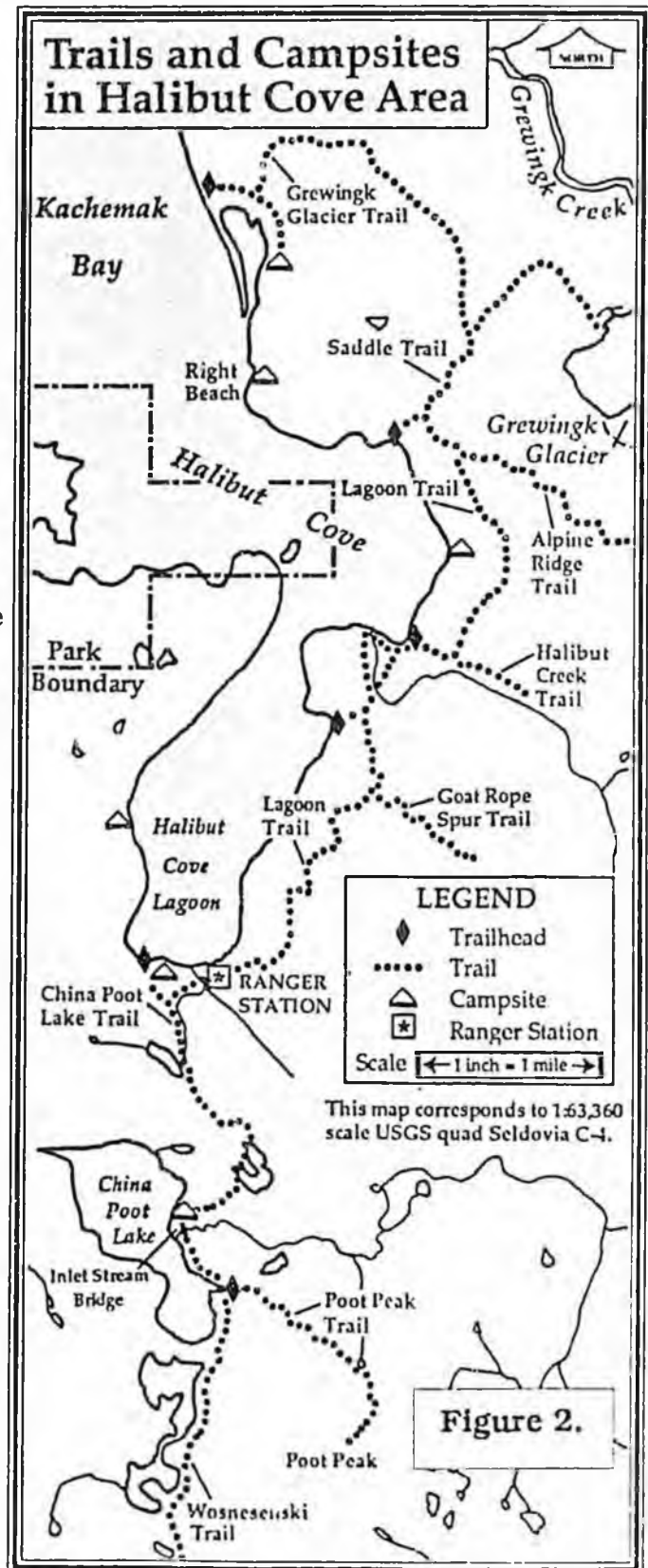
A large portion of SNA's park inholdings are highly visible from Homer and the Homer Spit, with China Poot Bay being the centerpiece for this breathtaking tableau. A photograph of China Poot, taken from the Homer side, was used by the Nation Geographic Society in its 1990 calendar, "Seashores of the World." The proposed timber harvest would include most of these scenic uplands.

Scenic flights and fly-in fishing trips are conducted by at least two Homer based flight services, and there are numerous charter boat operators offering scenic and fishing tours of the area. A major commercial lodge is located at China Poot Bay, directly across from SNA's land, and the Center for Alaska Coastal Studies is located on the Island Peninsula between Peterson bay and China Poot Bay. There are smaller lodges, private residences and cabins located along Peterson Bay, Neptune Bay, Sadie Cove and Halibut Cove. Most park users feel strongly that any logging of this pristine area would threaten the primary uses of the park, which are based on fishing and tourism. The common focus of the Homer and Kachemak Bay communities is to enhance and encourage greater recreational opportunities, while retaining the wilderness values of the park.

Most recreational use of Kachemak Bay State Park is concentrated on or adjacent to water - pleasure boating, sport fishing, clam digging, kayaking, crabbing, shrimping, beachcombing, photography, scuba diving and wildlife observation. Visitor use figures for Kachemak Bay State Park are hard to determine, and are incomplete, but annual visitor use day counts taken during periods from 1982 to 1989 range from 21,444 (seven-month period in 1982) to 27,134 (four-month period in 1987). A visit to the bay on any summer day makes it obvious that the park is one of the most heavily used recreational areas in southcentral Alaska.

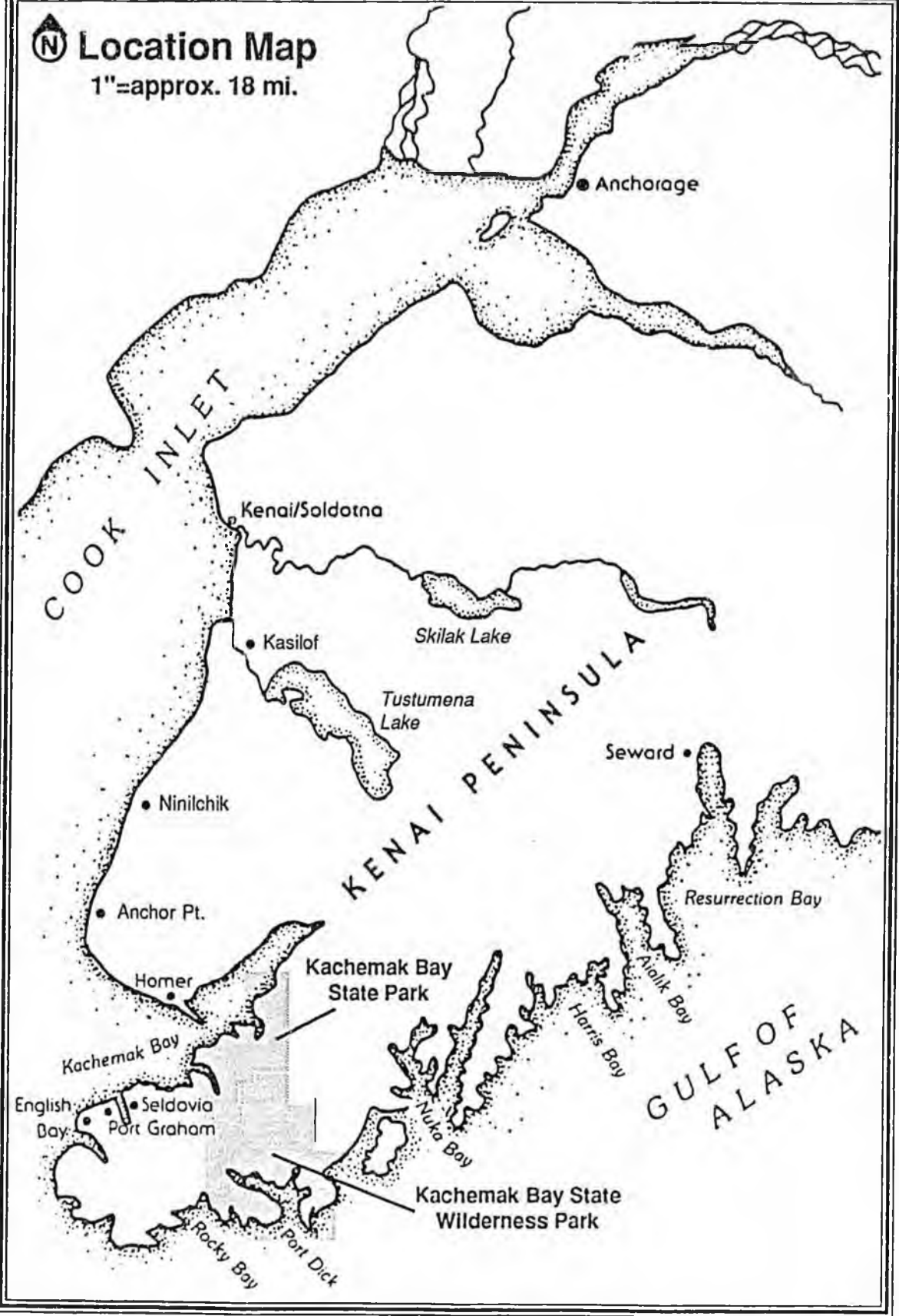
Since many beach areas provide firewood, tent sites, and occasional drinking water, they are important focal points for recreational activities, including picnicking, camping and hiking. Many of the existing trailheads in the park (see Fig. 2) are located on beaches, and thus are entry points for other upland activities - hunting, backpacking, mountaineering and skiing. As the trail system improves, backpacking is becoming more popular, and improved access has spurred an increase in mountaineering and skiing on the park's many snowfields and glaciers.

Natural fish runs, combined with Dept. of Fish & Game enhancement programs, provide fishing opportunities that attract large numbers of both sport and commercial fishermen to Kachemak Bay waters.



N Location Map

1"=approx. 18 mi.



COOK INLET

KENAI PENINSULA

GULF OF ALASKA

● Anchorage

● Kenai/Soldotna

● Kasilof

● Ninilchik

● Anchor Pt.

● Homer

● Seward

● English Bay

● Seldovia

● Port Graham

● Rocky Bay

● Port Dick

Skilak Lake

Tustumena Lake

Resurrection Bay

Alak Bay

Harris Bay

Nuka Bay

Kachemak Bay State Park

Kachemak Bay State Wilderness Park

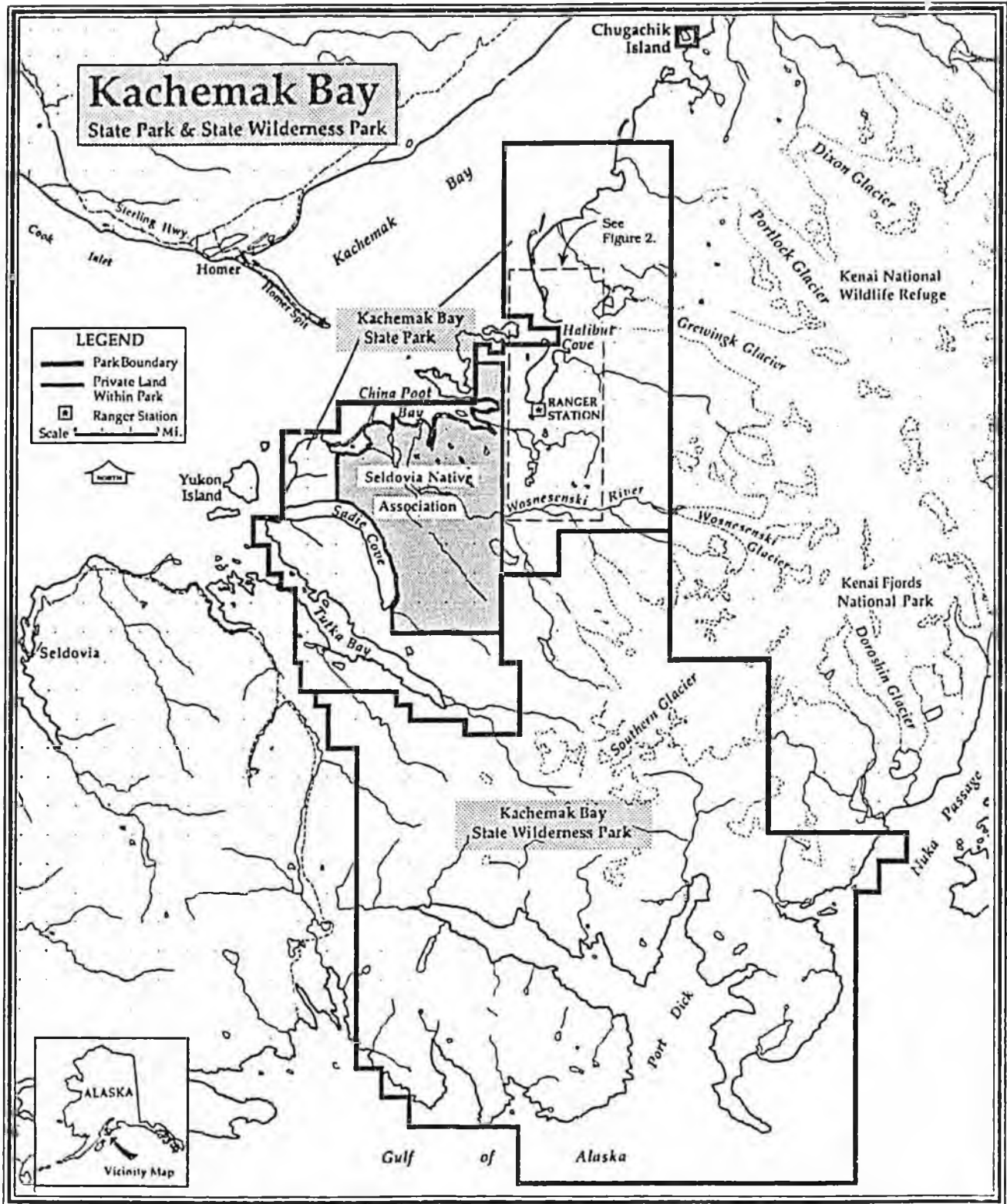


Figure 1.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

March 26, 1991

The Honorable Drue Pearce, Chair
Senate Labor and Commerce Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Pearce:

Subject: SB 148, which appropriates \$20 million to the Department of Natural Resources to purchase land and timber inholdings within Kachemak Eay State Park.

Position: The Department will carry out the wishes of the Legislature if the funds are appropriated.

The Department acknowledges that there is value in obtaining this sort of inholding in a designated park area. The amount of the appropriation is not unreasonable for this type of transaction. While the legal interpretations of the Exxon-Valdez settlement are not specifically DNR's area, we understand that the money from the settlement may not be available for this type of expenditure.

Recommendation: If a general fund appropriation is required for the purchase of this inholding, the Department recommends that the appropriation receive an high level of scrutiny.

Sincerely,



Harold C. Heinze
Commissioner

cc: Senator Fischer
Bruce Kendall, Legislative Liaison, Office of the Governor



Center for Alaskan Coastal Studies

P.O. Box 2225 Homer, Alaska 99603 907/235-6667

The goal of the Center for Alaskan Coastal Studies, a non-profit organization, is to increase knowledge and understanding of the coastal and marine environments of Alaska by providing educational programs and encouraging research. Supported by approximately 500 paid memberships and numerous volunteers, the Center now delivers educational programs to approximately 1600 students and visitors every year.

The nucleus of the Center's programs is a marine field station on what is called locally the "Island Peninsula," a point of land between Peterson Bay and China Poot Bay, on the south side of Kachemak Bay. Covering this peninsula is a sub-arctic rain forest which is nearly surrounded by rich intertidal areas.

Approximately one half of those served by the Center's programs are children, grades one through twelve, locally and from as far as 500 miles away. In the spring and fall, school groups visit the field station accompanied by trained volunteer naturalists. During the summer months, visitors from all over Alaska, the rest of the United States and other countries visit the Center under the guidance of volunteer naturalist/guide teams.

The forest of the Island Peninsula, explored by hundreds of Alaskan school children every year, along with inholdings within Kachemak Bay State Park, is slated for clear-cutting if the Park buy-back (House Bill 83) does not pass. Within site and sound of the richest intertidal study pools will be a log transfer station.

However, if House Bill 83 succeeds, the timber owner (Timber Trading Company) has agreed to give the timber on the Island Peninsula to the Center, and the owner of the land (Seldovia Native Association) has agreed to sell it to the Center. Thus, in addition to restoring the private inholdings in Kachemak Bay State Park to the public in perpetuity, passage of House Bill 83 will enable the Center for Alaskan Coastal Studies to continue to provide its award-winning educational programs to the children of Alaska and other students of nature, while protecting the unique and beautiful Island Peninsula for the study and enjoyment of future generations.



Center for Alaskan Coastal Studies

P.O. Box 2225 Homer, Alaska 99603 907/235-6667

Mission Statement

The mission of the Center for Alaskan Coastal Studies is to increase awareness, knowledge, and understanding of the marine and coastal environment by providing educational programs and encouraging research with emphasis on the Kachemak Bay area, and to advocate protection of habitats and responsible stewardship of Alaskan coastal and marine resources.

Adopted December 8, 1990

In just a few years we have accomplished a great deal with limited funding and an amazing volunteer effort. To expand our programs and serve the many people who request our services we need continuous, broad-based funding.

We invite you to become a partner with us in building on what has already been accomplished. Become a member. Join with us as a volunteer. Make a donation of time, materials or dollars. Do plan a visit so that you can see our programs in action.

The Center For Alaskan Coastal Studies

YES! I would like to help the Center for Alaskan Coastal Studies by donating:

Time

Materials (please describe)

I would like to make a donation in the amount of \$

Name:

Address:

City:

State:

Zip:

Phone (H):

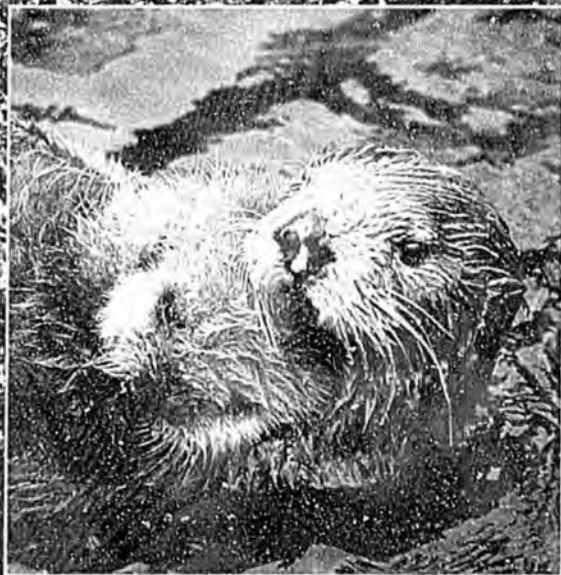
(W):

Please clip and mail to:

Center for Alaskan Coastal Studies
P.O. Box 2225, Homer Alaska 99603

or call us at 907-235-0067

This brochure is donated by Westmark Hotels



The Center for Alaskan Coastal Studies in southcentral Alaska is an educational and scientific nonprofit organization whose goals are to increase awareness, knowledge and understanding of our marine environment. The Center is not anti-development, but advocates wise use of the environment. Established in 1981, the Center now delivers educational programs to over 1,500 students and visitors every year. Our grass-roots organization has grown to over 500 memberships, including many families.

The Center's programs are unique. Visitors have a chance to learn about the ecosystems and how the organisms in them live and interrelate. Elsewhere in the world, marine museums and botanical gardens display these organisms, but they cannot recreate the natural environment. We know of no other place in the world that has as many rich, living laboratories accessible for learning and appreciation as our Center in Kachemak Bay.



Thousands of students from public and private schools and universities visit the Center for field studies in the productive and diverse intertidal areas within walking distance of the Center. Students also study botany and ecological concepts at the 27 stations along the natural trail through the coastal forest. Our locally developed award-winning educational program is further enhanced by the use of two nationally recognized curricula: FOR SEA and Alaska Sea/River Week were selected as two of the top ten environment education programs in the United States.

During the summer months, visitors from all over the world can spend a day in this extraordinary outdoor setting



under the guidance of our trained volunteer naturalist/guide teams. Groups who come to the Center range from children's camps to senior citizens. We have also hosted churches, museums, natural history groups, hospital administrators, Audubon, the Alaska Native Plant Society, Alaska Prospectors, and the Elderhostel.

In keeping with our research goal, we sponsor the annual Kachemak Bay Coastwalk to gather baseline data and monitor the shores of Kachemak Bay. This bay is reported to be one of the richest in the world in regards to marine life. Through research, education, and wise use of resources, We hope to continue to have it as a living educational laboratory and an example of how people can live in harmony with their environment.

Protecting Our Heritage

Join Us

We need your support. As a member you will be part of an action-oriented group that is doing something tangible to protect natural lands, wildlife and plants for future generations as well as promoting sustainable relationships between people and land. You will receive our semi-annual newsletter. You will have the opportunity to get involved by casting your vote in our annual election or by volunteering your time, if you so choose.

Please Enroll Me

Please enroll me(ua) as a member(s) of Kachemak Heritage Land Trust. Enclosed are dues for:

- | | | |
|--------------------------|--------|--------------------|
| <input type="checkbox"/> | \$15 | Special |
| <input type="checkbox"/> | \$25 | Regular Membership |
| <input type="checkbox"/> | \$50 | Family |
| <input type="checkbox"/> | \$100 | Supporting |
| <input type="checkbox"/> | \$250 | Contributing |
| <input type="checkbox"/> | \$500 | Associate |
| <input type="checkbox"/> | \$1000 | Benefactor |

(Name)

(Street Address or P.O.)

(City, State and Zip)

(Telephone Number)

Mail to
Kachemak Heritage Land Trust
P.O. Box 2400
Homer, Alaska 99603

More Information

If you are interested in volunteering time, or would like additional information, please give us a call at (907)-235-5263 or write to us. Ask for our separate brochure on land and conservation easements.

"Whatever happens to the earth happens to the children of the earth. The earth does not belong to us; we belong to the earth. All things are connected, like the blood which unites one family."

Chief Seattle, 1844



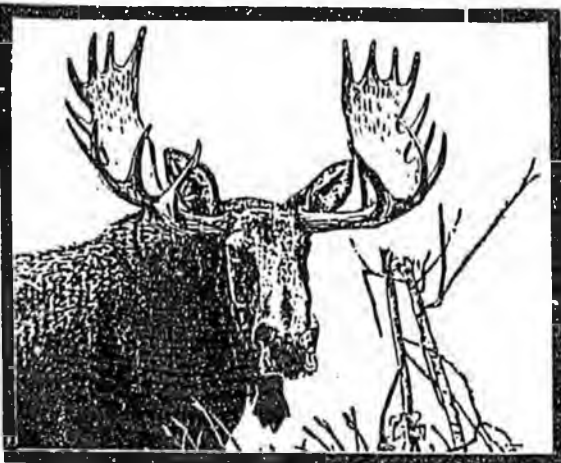
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Kachemak Heritage Land Trust



Protecting Our Heritage

KACHEMAK HERITAGE LAND TRUST



Land Trusts

Land trusts have been in existence since the 1800's. They were created to protect lands that could not otherwise be protected through political action. Because they operate outside of political constraints, they can act with speed and flexibility. They enable private citizens to voluntarily protect their land from development and other undesirable activity for eternity.

Kachemak Heritage Land Trust

Kachemak Heritage Land Trust (KHLT) is a non-profit organization dedicated to preserving the natural heritage of the Kachemak region for public benefit. KHLT protects wildlife habitat, community greenbelts, and open space through the acquisition of land and conservation easements. KHLT's service area encompasses the lower Kenai Peninsula, from Anchor Point south to the Gulf of Alaska. The Trust works with landowners to safeguard the conservation values of their property for present and future generations. The Trust also works with the general public to foster sustainable relationships between people and the environment. Such activities include trail development, education and energy conservation.

Goals

We follow a three-step program to protect the priceless natural heritage of the Kachemak region:

1. We identify land that has one or more of the important conservation values designated by the Trust. We do not try to preserve the whole landscape but concentrate on selecting areas of the highest ecological value.
2. We work with landowners to protect the targeted land by accepting donations of conservation easements or outright gifts of land.
3. We maintain the perpetual health of the land through careful monitoring and management.

Conservation Easements

A conservation easement is a legal agreement between a landowner and a land trust which restricts the type and amount of development which may take place on the property. This voluntary agreement is tailored to satisfy the desires of the landowner to protect the conservation values of the property, such as wetlands, bird nesting sites, moose browse, salmon streams, old growth forest and scenic open space.

Under a conservation easement the land remains in private ownership and may be sold or bequeathed. The conservation easement runs with the deed and it is the legal responsibility of the land trust to ensure that the restrictions on the land are honored forever.

The gift of a conservation easement requires that the landowner and Kachemak Heritage Land Trust get together and agree on the specific terms of the easement. There is a twelve-step process to execute an easement. If the landowner wants to obtain income and estate tax benefits, the easement must meet certain federal requirements.

Funding

Our funding comes from membership dues, contributions, gifts, inheritances, grants and fund-raising activities, such as the the Lodge Hop and the Kachemak Heritage Costume Ball. We are an all volunteer operation. We have low overhead and efficient operations. Because of this you can be assured that your contributions go directly toward meeting the goals of the Trust.

Tax Benefits

The Trust is a non-profit and tax-exempt organization. As such, membership dues and contributions are tax deductible. In addition, gifts of land and conservation easements may generate substantial savings of income and estate taxes.



CONSERVATION AGREEMENTS ARE LANDMARKS OF COOPERATION

After two years of negotiations, Conservation Agreements providing a solution to Kachemak Bay conservation concerns have been signed by a timber corporation, Native Corporation, and two conservation-education associations. Costs of the agreements are being borne by private citizens and corporations:

Timber Trading Company has agreed to transfer timber rights outside Kachemak Bay State Park boundaries to Kachemak Heritage Land Trust (KHLT) and Center For Alaskan Coastal Studies (CACS).

Seldovia Native Association (SNA) signed an agreement to sell the Island Peninsula, focal point of Center For Alaskan Coastal Studies educational programs, to CACS. SNA has also agreed to work with the Land Trust in creating conservation covenants. Such covenants would include public access corridors to western reaches of Kachemak Bay State and Wilderness Park from SNA land.

Concerns regarding timber harvesting of Kachemak Bay Critical Habitat, including lands in Peterson and Jakof Bays, and along the anadromous Rocky River (see attached map) sparked formation of the Land Trust in 1989. "KHLT initiated negotiations with TTC and SNA," says KHLT Board President Janice Schofield, "seeking to acquire timber rights and conservation easements on lands outside Kachemak Bay State Park boundaries that would remain unresolved by State Park Buyback legislation."

CACS joined KHLT at the negotiation table in 1990 to acquire the Island Peninsula, where the Center's marine education programs are based. According to CACS President Steve Yoshida, "We felt our involvement was warranted as the Island Peninsula, lying just 4 miles from Homer Spit, is a gateway to the State Park, providing educational programs for 1600 statewide students and teachers, and nationwide visitors annually."

Implementation of the Conservation Agreement hinges on passage of the State Park buyback. "The Conservation Agreement," says Janice Schofield, "is designed to complement through the private sector, what the state is accomplishing with the Park. The goal is to protect the integrity of the whole ecosystem for present and future generations."

Mobilization for a timber operation would entail logging all TTC timber holdings, both within and adjacent to the State Park. Said operation would create 50 to 60 temporary timber jobs locally. However, a study of "Values at Risk" indicates that business and employment losses would occur throughout the Kachemak's multi-million dollar tourism industry from logging of the Kachemak Bay viewshed. For example, closure of just the Island Peninsula educational and tourist businesses could eliminate a dozen jobs and over \$400,000 in annual tourist-generated dollars for the local economy.

Passage of House Bill 83 (resolving lands and timber rights within State Park boundaries), together with the cooperative Conservation Agreement formulated by private citizens and industry (resolving park-adjacent lands) would permanently settle a longstanding land use issue. Implementing the comprehensive solution hinges on a YES vote by the 1991 Alaskan legislature.

Timber Trading Company

For Immediate Release
March 20, 1991

Timber Trading Company
AGREES TO GIFT 7,125 ACRES
OF TIMBER RIGHTS

In 1988, Timber Trading Company (TTC) was approached by The Kachemak Heritage Land Trust (KHLT) concerning timber rights held by TTC outside Kachemak Bay State Park boundaries that would remain unresolved by State Park Buyback legislation. In 1990, KHLT was joined by The Center for Alaskan Coastal Studies (CACs) in their efforts.

After two years of negotiations, TTC has agreed, through Conservation Agreements, to gift 7,125 acres of timber rights to KHLT and CACS pending passage of House Bill 83 and Senate Bill 148.

"We believe that open communication is an effective way to solve environmental issues," says John L. Sturgeon, President of Timber Trading Company. "Cooperative efforts, when attempting to solve difficult issues, offer the best possible ways to reach a solution all parties can agree with."

Main Office: 3501 Denali, Suite 202
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(907) 562-3335
FAX (907) 562-0599

Marketing Div.: Transpacific Trade Center, Suite 418
3700 Pacific Highway East
Tacoma, Washington 98424
(206) 922-5510 FAX (206) 922-8044

GRASSROOTS MOVEMENT RALLIES SUPPORT FOR STATE PARK BUYBACK

The Kachemak Bay Park Buyback has mobilized citizens both state and nationwide. Grassroots activities of the past two years include:

- *weekly Coalition meetings on the State Park buyback

- *KBCC and KHLT participation in Department of Natural Resources negotiations with SNA and TTC

- *conservation agreement meetings between SNA, TTC, KHLT, CACS, KBCC, and the Nature Conservancy regarding protection of park adjacent lands

- *meeting with TTC Board of Directors regarding transfer of timber rights outside State Park Boundaries to KHLT

- *fundraising- Over \$55,000 has been raised by concerned citizens (since fall 1988) in support of the Kachemak Bay State Park Buyback:

 - KBCC has raised over \$30,000 -- funding mailings and petition drives, as well as lobbyist Mary Pearsall.

 - KHLT received \$4000 in grants for the State Park education campaign.

The Save-the Park campaign (sponsored by KBCC, CACS, and KHLT) features direct mail of educational packets, and promotion of a Save-the-Park fund for sponsoring ads and continued mailings. In the past month, over \$4500 has been raised from state, national, and international donations.

Additional donations to the project include pledges of permanent fund checks and gifts, totalling over \$17,000.

- *press coverage includes statewide newspapers, television, Alaska Geographic, and Wall Street Journal

- *networking with Kachemak Bay State Park Advisory Board and statewide organizations

- *resolutions by local government and statewide associations

- *petition drives supporting the State Park Buyback, garnering over 2000 signature state and nationwide

KBCC: Kachemak Bay Citizens Coalition KHLT: Kachemak Heritage Land Trust
CACS: Center For Alaskan Coastal Studies SNA: Seldovia Native Association
TTC: Timber Trading Co. subsidiary of Koncor Forest Products

TESTIMONY ON SENATE BILL NO. 148

Comments by David L. Nebert
862 Redpoll Lane
Fairbanks, AK 99712

I SUPPORT THE BUY BACK OF KACHEMAK BAY STATE PARK LANDS.

The highest and best use for Kachemak Bay Park land is for recreation and tourism. Clear cut logging practices are NOT a compatible use. One need only tour the clear cut areas in S.E. and in the Pacific Northwest for confirmation. My youth was spent in Oregon where I vividly remember walking through decimated clear cut areas on public lands. I am in sympathy with those residents of the Homer area who would have their view and tourist related businesses compromised. High visibility clear cutting areas in the park have the same appeal as a junkyard next door.

Marine resources flourish in Kachemak Bay waters. As a marine scientist I have a selfish concern that logging operations may have an adverse impact on breeding and nursery areas which contribute to the region's abundant marine life. Marine scientists are presently attempting to study this relatively pristine and productive ecosystem. Disturbances produced by potential logging operations may cloud studies of long term natural variability. It is more difficult to understand natural variability when manmade disturbances are added.

The dollar value is reasonable as it was determined by a form of arbitration. Timber Trading Company should not be forced to take a business loss; they appear to be negotiating in good faith and should be commended for holding up a potential sale so that this buy back can occur.

I object to Section 4 of Senate Bill 148. This buy back should not be tied to any other issue; it should stand or fall on it's own merit.

Thank you for the opportunity to provide input for your consideration.

David L. Nebert
26 MARCH 1991

Position Statement: March 1991
Private

I came here to help the Hickel administration.

The Kachemak Bay State Park issue is an opportunity.

Through his charismatic leadership, Governor Hickel can garner great public approval if he will move firmly to protect environmental, spiritual, and tourist industry concerns in Kachemak Bay.

This single issue has the potential of assuaging the fears and concerns of even some of his most loyal supporters. If Governor Hickel takes a strong position on this issue, as he has tried to do on the very expensive Prince William Sound Parks concept, legislative fence - hangers will rally to the cause. Typical of Alaskan issues, this one is very evenly split. The Governor's support will certainly break the gridlock, and forge new support and trust.

This is an either/or issue which can become a win/win/win situation if the right decision is made. A strong pro-environmental stance on this long-fought issue will assist in creating public confidence in the Governor's ability and intent to develop ANWR sensitively. It will demonstrate his ability to "Do it right the first time."

Either the state will allow the 2nd most scenic view visible from the highway system of Alaska to be clear cut or it will move to protect this priceless resource for future generations.

The community of Homer, which fears a significant loss of real estate value, and all of Alaska await the governor's word and leadership. The impact of his positive decision will have far - reaching implications for the future of the tourism industry in the entire South Central region. The people of Homer are not looking for a "quick fix," but industry wide balance and wise use.

Public relations and national media coverage can present to the world a positive environmental Governor for a cost that history will easily prove is worthwhile to the state.

It is worthwhile to note that the Federal Government is presently investing in the future of the Homer and Kenai Peninsula tourist economy an amount equal to the buyout figure. They are presently spending \$20 million to build a visitor's center in Homer for the National Maritime Wildlife Refuge.

As a state we should accept their challenge and rise to match this capital investment which they are making to our tourist industry infrastructure.

George Ripley

POB 2074
Homer, Alaska 99603
(907) 235-5635 or 4174

MAR 27 1991

bill file



PETER JOHNSON

LIBP, FRP, Hon CIP

Senator Pearce,
Alaska State Legislature,
P.O. Box V (MS3100),
JUNEAU, AK 99811,
U.S.A.

14th March 1991.

Dear Senator Pearce,

In 1987 my co-author Alf Wannenburg, and I, visited Homer, Kachemak Bay the Kenai Peninsula and the Kachemak Bay State Park. It was, and will remain, one of the greatest of all of our wilderness and environmental experiences - in 20 years of travelling the world and writing books about conservation biology and environmental management for sustainable resource utilization in wilderness areas - as alternatives to other forms of land use.

The biological energy of Kachemak Bay State Park - the sheer volume of productivity from that incredibly beautiful place, left an indelible mark upon us.

So, Sir, may I add our voices to those of your own citizens who appeal to you to leave the Park free of clear-cut logging.

You see, if I may put it that way, wilderness areas, such as Kachemak Bay State Park, create wealth about them. To rape short term wealth from inside them (the Parks) is to remove the certain longterm creation of wealth outside and around their boundaries. Kachemak Bay State Park is an environmental factory - who ever heard of setting up a shop inside a working factory, to sell its manufacturing guts?

Besides, the creation of wealth by Parks outside their boundaries has an added advantage - it's a very inexpensive way for the State to stimulate and fund private enterprise

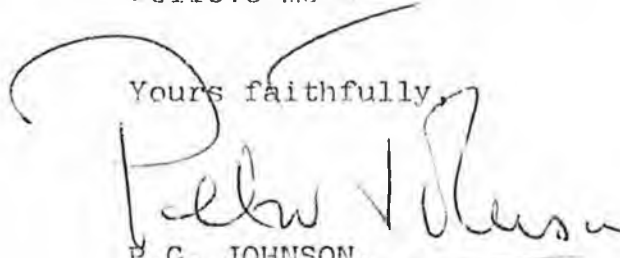
2/.....

and entrepreneurial endeavour. Then those that benefit from the park by setting up business around it can come from all walks of life and all sorts of economic backgrounds - own their own thing - employ people - contribute to the economy.

And the bottom line - the Park goes on and on and on creating more wealth.

Believe me .

Yours faithfully,



P.G. JOHNSON.

c.c. Mr A. Wannenturgh.
Mr M. McBride.



**WILDLIFE
FEDERATION
OF ALASKA**

The Alaska Affiliate of the
National Wildlife Federation

bill file

MAR 27 1991

March 25, 1991

Senator Drue Pearce
Chairman, Senate Labor and Commerce Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SB 148

Dear Senator Pearce:

The Wildlife Federation of Alaska seeks your support for the purchase at fair negotiated value of the inholdings of the Seldovia Native Association, and the timber rights of the Timber Trading Company, within the Kachemak Bay State Park.

In 1970 the Alaska State Legislature recognized the need for permanent protection of this unique area because of its exceptional scenic value and outstanding natural features. It established Kachemak Bay State Park, described by the Alaska Department of Natural Resources as "one of the most majestic in the state park system" and an area of "quiet, natural beauty." It was a farsighted decision, as shown by international acclaim and increasing tourism.

Our organization, dedicated to habitat conservation, can point out the costs of habitat destruction. We can discuss the effect upon exceptionally rich marine resources of the erosion and siltation caused by clear-cut logging. We can emphasize the value of the Park as a living laboratory and a center for educational programs which attract thousands of students from all over the United States. Yet beyond the aforementioned aspects, this locale is so special as to merit consideration, without contingency, for its importance in terms of the human need for inspiration and revitalization, the meaning of "recreation." The long-term value of the 24,000 acres in question, the centerpiece of the Park, should be seen not in board feet, but in an enhanced quality of life for all future Alaskans.

We ask and appreciate your assistance in necessary funds appropriation so that the integrity of Kachemak Bay State Park may be preserved.

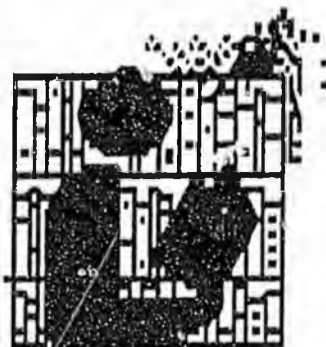
Sincerely yours,

Jeff Parker
President

JP:sm

APR 8 1991

1203



Library

Paul Banks Elementary School
Phyllis Cooper, Librarian
1340 East Road
Homer, AK 99603

(907) 235-8511

March 18, 1991

The Honorable Drue Pearce
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Pearce:

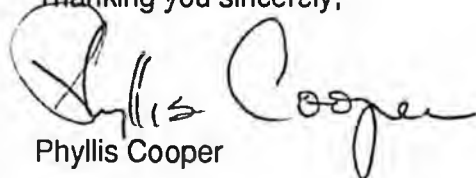
SENATE BILL 148

Each year hundreds of students from Anchorage and elsewhere use our Kachemak Bay for marine study. Pushing, shoving, laughing, they come into our school to bed down in the gym, eat in our cafeteria, and visit our wonderful seashore "classroom." They arrive, study, and leave with the thrill that they have experienced nature such as they may not see anywhere else in the world, certainly not anywhere else within a few hours drive from the metropolitan areas. Perhaps you or your children or your grandchildren have experienced walking our beaches and discovering the joy of tide pools and hidden caches of marine life.

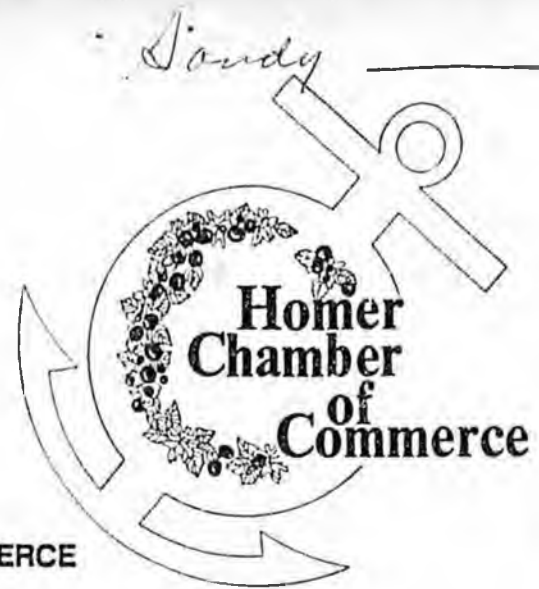
I have lived in Homer since 1958. I arrived here a young wife, and our three boys were born and raised loving the outdoors, the beauty of the bay, and the freedom to roam and learn the mysteries of our sea. Even as "worldly" adults they are drawn back here to the wonders of our Kachemak Bay. Please, let our future children of this state learn to love the sea and shores by keeping this extraordinary classroom in as close to a natural state as possible.

Homer has become the "playground" of Anchorage residents as well as tourists from around the world. Thousands of dollars are brought into our state, borough, and city every year by people who are enthralled by the natural beauty of the area. Please don't ruin this with short term solutions. Please vote YES on Senate Bill 148. This is your state, my state, and even more importantly our children's and grandchildren's state. Let us leave it so that they may be proud of it and of us.

Thanking you sincerely,



Phyllis Cooper



**Resolution 2 - 91
HOMER CHAMBER OF COMMERCE**

A Resolution Supporting House Bill 83 Relating to the Appropriation of Funds for the Purchase of Land from Seldovia Native Association and Timber Rights from Timber Trading Company within Kachemak Bay State Park.

WHEREAS, the City of Homer and most of its related businesses are presently dependent on industries relating to fishing and tourism; and,

WHEREAS, Homer is now a major tourism destination because of its outstanding scenery, geographic location, recreational opportunities and road accessibility from a major population center; and

WHEREAS, the economic, aesthetic, mental health and general quality of life is threatened due to the loss of Homer's view-shed; and

WHEREAS, Kachemak Bay State Park offers outstanding economic resource development potential for current and future enterprise relating to tourism for Homer; and

WHEREAS, the integrity of the Park is of vital interest to Homer, the borough and the state in relation to Alaska's visitor industry; and

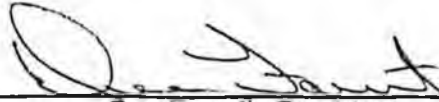
WHEREAS, the Homer Chamber of Commerce, an organization developed for the economic vitality of Homer, is **not opposed** to the logging industry, but finds that it is **opposed** to the development of the logging industry in this specific area which is the focal point of the view across the Bay directly from Homer proper.

WHEREAS, the purchase is contingent upon the 1991 Alaska State Legislature appropriating the necessary funds;

THEREFORE, BE IT RESOLVED, THAT

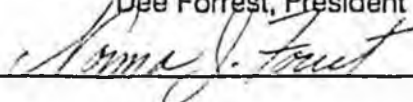
The Homer Chamber of Commerce urges the 1991 Alaska State Legislature to appropriate the necessary funds to purchase land from the Seldovia Native Association and timber rights from Timber Trading Company within the legislative boundaries of Kachemak Bay State Park, and therefore return these lands to their highest and best use for the people of the entire state of Alaska.

BE IT FURTHER RESOLVED, THAT the Governor is urged to support the appropriation of funds in its entirety.



Dee Forrest, President

Attest:



POD
APR 8 1991

THOMAS C. WOOD, M.D., F.A.C.P.
INTERNAL MEDICINE AND NEPHROLOGY
PROVIDENCE MEDICAL OFFICE BLDG
3340 PROVIDENCE DRIVE, SUITE 551
ANCHORAGE, ALASKA 99508
(907) 562-2712

April 3, 1991

Senator Drew Pierce
P.O. Box V
Juneau, AK 99811

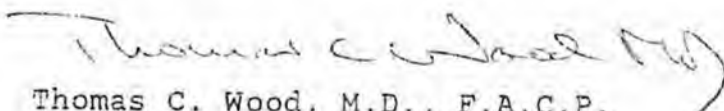
Dear Senator Pierce:

I am writing to encourage the passage of House Bill 83 and Senate Bill 148 which would allow purchase of the Timber Trading Company and Seldovia Native Association land on Katchemak Bay. This would increase the value of the Katchemak Bay State Park which would otherwise be damaged by creation of access roads and by disrupting much natural habitat.

I have hiked and hunted in the area of the Katchemak Bay State Park and it is certainly one of Alaska's most scenic areas. Removal of timber in this area, which is so easily visible from the Homer region, would greatly detract from Homer as a tourist destination.

I hope you will support legislation enabling unification of the two segments of Katchemak Bay State Park.

Sincerely yours,


Thomas C. Wood, M.D., F.A.C.P.

TCW/DAU



© Ed Spence Photography

VOTE YES KACHEMAK BAY STATE PARK

Senator Pearce
Alaska State Legislature
P.O. Box V (MS3100)
Juneau, AK 99811