

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

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HOUSE RESOURCES

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level of state administration for a final consistency determination which may then be appealed to court. Thus, under the ACMP's consistency determination elevation regulations, commissioners may not delegate their authority to sit on commissioner-level elevations. However, this inability to delegate creates a conflict with AS 44.19.155(d) and AS 46.40.100, which require commissioners to sit on CPC petitions (as explained below). Because of this, the regulations, or the statutes, or both, should be changed.

2. Delegations Under ACMP Statutes

When the legislature created the ACMP it used a holistic, broad-based approach, mandating that all the state resource agencies comply with the ACMP. AS 46.40.200; see 1978 Op. Att'y Gen. No. 27 (Oct. 26). Moreover, just as the federal coastal zone management program delegates authority over federal decisions in state coastal areas (when a state has a federally-approved program such as Alaska's), 16 U.S.C. § 1451 et. seq. (1990); see Timothy Eichenberg, Federalism and Federal Consistency: The State Perspective, 1 Coastal Zone '87, at 542-55 (1987), the ACMP similarly requires the state to comply with approved coastal district programs' standards. See AS 46.40.010(c)(1) (incorporating district programs into the ACMP); AS 46.40.070; 6 AAC 80.010; 6 AAC 85.090; 1980 Op. Att'y Gen. No. 11 (May 12). This makes it extremely important for high-ranking state officials to be integrally involved in the adoption and enforcement of district programs' standards.

Your question asked whether commissioners may delegate their duties under the elevation regulations in 6 AAC 50. Our response is "no," but this means the regulation creates a due-process problem because of what ACMP statutes require. This section explains these statutory requirements. If a commissioner were not statutorily required to sit on CPC petitions, or if due process would allow a commissioner to appoint a subordinate to sit in his or her stead on a petition there would be no problem with the commissioner being bound to participate in an elevation under the process in 6 AAC 50. However, due process considerations and the statutory construction and intent of AS 44.19.155 do not allow a commissioner to delegate his or her duties to sit on a CPC petition to his or her subordinate alternate even if the commissioner has participated in an elevation (as the elevation regulations require). Under present law, the commissioner would be bound to serve in both forums - which is unacceptable under due process considerations. Therefore, either the regulations or statutes must be changed.

3. Delegations Under ACMP Statutes And Due Process

State v. Lundgren Pacific Const. Co., 603 P.2d 889 (Alaska 1979), dealt with a situation where a decision maker had delegated a decision on appeal of his original decision to his subordinates. The court specifically noted that "[i]ndividuals given the right to decide in their own favor or the favor of the person who employs them cannot be said to be exercising a judicial function at all." Id. at 895 (citation omitted). As the court noted, "[a]n impartial tribunal is basic to a guarantee of due process," and "administrative hearings must not only be fairly conducted, but must also give the appearance of complete fairness." Id. at 895-96. As the court finally noted, "Not only is a biased decisionmaker constitutionally unacceptable, but our system of law has always endeavored to prevent even the probability of unfairness." Id. at 896 (citations and quotations omitted). Thus, under due process requirements, a commissioner may not delegate to a subordinate his or her authority to sit on a CPC petition on a matter in which the commissioner participated during the elevation process. See also Utica Packing Co. v. Block, 781 F.2d 71, 78 (6th Cir. 1986) ("There is no guarantee of fairness when the one who appoints a judge has the power to remove the judge. . . .")¹²

4. Delegations Under ACMP Statutes And Statutory Construction And Intent

Besides the due process concern explained above, the CPC's statutory structure and the intent behind it would also preclude delegations from commissioners on petitions in most cases. Under AS 44.19.155, the structure of the CPC reflects the fact that the legislature intended only high-ranking state and local officials to be members. The structure also creates a balance between state and local officials. There are nine public members and seven state members. The public members must be mayors or assembly members, the state members are the director of OMB and six commissioners. Id. Even members' permanent alternates must be mayors, assembly members, deputy commissioners, or division directors. AS 44.19.155(d). It is clear that the legislature intended the CPC be composed of only top-level officials who were capable of making the important decisions necessary to create and manage the ACMP. Alternates may only sit if a member is "unable to

¹² Because of the holding in Lundgren we also note that if the governor were to ever again make a final consistency determination, no state official could sit on a CPC petition because they are all subordinate to her or him. This also creates a break between the ACMP's statutory and regulatory requirements.

attend." Id. Because of the clarity of the statute and the legislative intent, CPC members may not delegate their positions on petitions to their permanent alternates unless they are "unable to attend" for some reason other than the fact that they have previously sat on the issue the petition concerns. As we have noted previously, in determining whether a delegation of authority is allowed, the Alaska Supreme Court has said that

the general rule governing subdelegations is whether it is reasonable to believe that the legislature intended a particular function to be performed by designated persons because of their special qualifications. If the legislature intended a function to be performed only by limited persons, a subdelegation is invalid.

Kaiser v. Sundberg, 734 P.2d 64, 69-70 (Alaska 1987) (citing 1 Norman J. Singer, Sutherland Statutory Construction § 4.14 at 155-56 (4th ed. 1985)) (other citations omitted); see 1992 Inf. Op. Att'y Gen. at 4 (May 29; 663-92-0494). As Professor Singer notes in his treatise on statutory construction, "subdelegations may defeat the desire for 'multiple judgment in rule making . . . [and to] a lesser degree this is also true in the case of final adjudicative determinations.'" Singer, supra at 155. Therefore, AS 44.19.155(d) will not allow commissioners to designate their alternates to sit instead of them on the CPC to decide petitions brought to the CPC from elevations the commissioners decided.

5. Delegations Under ACMP Statutes Versus The General Authority To Delegate

There is one general statute that allows a commissioner to delegate responsibilities to his or her subordinates (AS 44.17.010). However, this statute does not independently allow a commissioner to delegate his or her responsibility to participate in a CPC petition to a subordinate. As previously explained, this would violate both due process and the specific language and intent of the ACMP statutes. But, even if due process were not violated, AS 44.17.010 would not allow commissioners to override the ACMP's requirements. AS 44.17.010 states, "[T]he principal executive officer of each state department may assign the functions vested in the department to subordinate officers and employees." Id. AS 44.17.010 only applies to "functions vested in the department." While the ACMP is a holistic program, used to coordinate the state's coastal management program and the decisions made under it, and while departments must abide by ACMP standards, the ACMP and its regulations are not "functions vested" in the separate departments. See 1978 Op. Att'y Gen. No. 27 (Oct. 26). Rather,

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Division of Governmental
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they are functions independently vested in the ACMP that departments must abide by. See AS 44.17.010; AS 46.40.100; see also 1982 Inf. Op. Att'y Gen. at 5 (July 16; J66-502-81). To "vest" is defined by the dictionary as "to grant, endow, or clothe with a particular authority, right, or property." Webster's New International Dictionary 2547 (3d ed. 1976). Thus we read the terms "functions vested" as requiring that function to be within that particular agency's authority, not one in another agency or statutory scheme. Under AS 46.40.200, state agencies were required within six months of the ACMP's effective date (in 1977) to "take whatever action [was] necessary to facilitate full compliance with and implementation of the [ACMP]." Id. This requirement further denotes the ACMP's statutory independence from the departments, again leading us to the conclusion that ACMP functions are not internally "vested" within agencies for delegation purposes. Moreover, although departments are bound to comply with the ACMP and its regulations, the ACMP statute is independent of departments' statutes, and ACMP regulations are separately adopted by the CPC, not the departments themselves. AS 44.19.160; 44.19.161; 46.40.100.

In the only state case to deal with AS 44.17.010, City of Cordova v. Medicaid Rate Comm'n, 739 P.2d 346 (Alaska 1990), the Alaska Supreme Court rejected an argument that AS 44.17.010's general statutory authority for a commissioner to delegate overcame a more specific statutory requirement for the governor to appoint a member of a commission. In that case, the court noted that specific statutes take precedence over general ones. Id. at 352. Given the ACMP's separate statutory and regulatory identity, under the holding in City of Cordova we do not think that the general authority in AS 44.17.010 can overcome the ACMP's more specific and independent requirements in AS 44.19.155.¹³

Thus, because the ACMP is an independent statutory and regulatory scheme that departments are required to abide by, AS 44.17.010 does not allow commissioners to delegate their responsibilities to participate in petitions. Hearing petitions brought to the CPC under AS 46.40.100 is an important part of CPC members' duties. The fact that there haven't been many petitions

¹³ For similar reasons AS 44.17.010 does not allow commissioners to delegate their authority to sit during elevations under 6 AAC 50.070(k). The ACMP is a separate statutory and regulatory scheme, not "vested" in commissioners' departments. Therefore, under the same analysis as used to show that the general authority to delegate does not apply to the CPC's statutory requirements, we find that AS 44.17.010 does not apply to 6 AAC 50.070(k).

does not reduce the importance of the decision making. For the same reasons noted above, it is important to have high-ranking officials, both state and local, participating in any petition brought to the CPC to maintain the balance strived for throughout the ACMP. As Judge Fabe recognized in her Goodnews Bay decision, "The CPC has considerable institutional competence in these issues." Kuitsarak Corp. Opinion on Rehearing, at 3 (June 10, 1991).

6. Conclusion On Delegations

The practical result is an inconsistency among the statutory requirements of AS 44.19.155 and AS 46.40.100, due process, and the regulatory procedures in 6 AAC 50. Although the issue rarely arises (there have been only seven petitions), when it does it creates an untenable situation. The regulatory scheme creates a due process concern, forcing commissioners to relinquish their positions on the CPC which statutorily they cannot do. Regulations may not be inconsistent with their authorizing statute, nor may they be unreasonable or unnecessary. Chevron U.S.A., Inc. v. LeResche, 663 P.2d 923 (Alaska 1983). Because of the contradiction between ACMP regulations and statutes, changes must be made to 6 AAC 50, or to AS 44.19.155 and AS 46.40.100, or to all of them. As there are numerous possibilities, not within the scope of this opinion request, we will not outline options here but will remain available to provide assistance as requested.

VII. OTHER DUE PROCESS CONCERNS

Your third question was whether it was acceptable for a CPC member or his or her alternate to sit on a petition when the member's agency or municipality initiates the petition. The second part of the question was whether this would amount to a conflict of interest. Our short response was no, it was not acceptable for CPC members or alternates to sit on petitions when the member's agency or municipality initiates the petition. Our analysis follows.

We have previously said:

The rules relating to the disqualification of commissioners or hearing officers to participate in a proceeding are substantially similar to the rules developed for the disqualification of judges. A judge is disqualified from hearing a case when he or she: 1) is a party to the suit or will be a witness in the proceedings; 2) is related to any party by consanguinity or affinity within the third degree; 3) represented any party within two years

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preceding the filing of the action; 4) has a direct interest in the case, such as a pecuniary or proprietary interest, or an interest in a position or term that could be affected by the case; or 5) is impermissibly biased or prejudiced against any party. See AS 22.20.020.

1984 Inf. Op. Att'y Gen. at 1 (Feb. 6; 366-220-84) (emphasis added). See also Canon 3(c), Alaska Code of Judicial Conduct. In essence, if the agency or municipality the CPC member represents on the CPC brings a petition to the CPC, the member may either be a party themselves to the petition, or would at the least have the appearance of not being impartial. This would violate due process as it would raise the question of whether the member could remain fair under the circumstances. See Utica Packing Co. v. Block, 781 F.2d 71, 77 (6th Cir. 1986), and this memo's discussion on impartiality and the requirements of due process, infra. CPC members or alternates whose agencies or municipalities bring petitions to the CPC should recuse themselves from sitting in judgment on these petitions. Because of our response we have not reached your question about whether this is a conflict of interest.

Your fourth question was whether it was acceptable for a CPC member or alternate to sit on a petition proceeding when an action by their agency or municipality is the subject of the petition. The second part of this question was whether a conflict of interest exists in this situation.

As we noted in our brief response, this is the converse of your question number three. The main concern here is whether the member participated in a previous decision on the same subject as the petition. If he or she did, then both the member and the alternate are barred from participating on the petition. Even when the member did not participate in a previous decision in all but exceptional cases we think that participation in the petition decision would present a due process violation for the same reasons outlined in our analysis to your question number 3 and the section

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on due process, infra.¹⁴ Again, because of the due process concern we have not reached the conflict question.

CONCLUSION

In conclusion, we would note that the CPC has striven to make certain that petition proceedings brought before it are handled with the utmost fairness. In 1984, with the adoption of the elevation procedures in 6 AAC 50, it is apparent that the CPC intended to take itself out of the adjudicative role of hearing petitions as appeals of consistency determinations. Unfortunately, the statute governing the "appeals," AS 46.40.100, remained unchanged and the avenue for petitions on final consistency determinations to the CPC remained. This vestigial procedure has created procedural difficulties that the CPC is very carefully trying to overcome. Because of the inconsistency between the ACMP's statutes and regulations, there must be changes made to rectify the untenable position created between elevations and petitions. We hope that the above advice is helpful in this endeavor, and again, we are ready to help with future issues that this situation may present.

EJK:smm

¹⁴ There has been one exception to this general rule. In the Goodnews Bay case the Commissioner of the Alaska Department of Natural Resources ("DNR") sat on a CPC petition decision even though a DNR decision was the subject of the petition. This was legally acceptable because the commissioner had no conflict and due process was not violated because of the unique circumstances. The DNR decision in that case had been made by a previous commissioner under a different administration, and the new commissioner had no knowledge of the transactions or the decision except for what he heard at the CPC. The new commissioner instructed his agency not to present information to him concerning the petition and created a barrier (sometimes referred to as a "Chinese Wall") between himself and his agency so that he could remain independent and unbiased on the issue. Finally, the commissioner was not challenged by any party concerning his impartiality and his ability to sit on the petition, and the issue was not raised in any appeal. See Sept. 23-24, 1991, transcript from CPC Hearing on Kuitsarak Petition at 8. Under circumstances such as the one described, a CPC member or his or her alternate may be able to sit on a petition even though the member's agency or municipality is a party to the matter. However, this may be a unique situation. We do not hypothesize on what other circumstances might allow commissioners to participate.

**** AGENDA ****

- 1 HCR 12 USE OF NATURAL GAS IN MOTOR VEHICLES
- 2 SB 238 COASTAL ZONE MANAGEMENT PROCEDURES
- 3 SB 151 OIL & GAS EXPLORATION INCENTIVE CREDITS

**** PARTICIPATING LIDS ****

ANC ANCHORAGE	716 W 4TH. #200	LOCATION STAFF
BAR BARROW	COURTHOUSE #305	LOCATION STAFF
COR CORDOVA	705 2ND STREET	LOCATION STAFF
FBX FAIRBANKS	119 N CUSHMAN ST	LOCATION STAFF
HOM HOMER LTC	126 W PIONEER #4	LOCATION STAFF
* JNU JUNEAU	CAPITOL	CAP124 LOCATION STAFF
SOL KEN/SOL	34824 KALIFONSKY	LOCATION STAFF

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3	STEVEN PORTER	ARCO	TSFY. SB 238
	PO BOX 100360	ANCHORAGE	AK 99510 (907)265-6269
4	KEN FREEMAN	RDC	TSFY. SB 151
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PARTICIPANTS IN: BARROW

BAR

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LTN1100-R01

LEGISLATIVE TELECONFERENCE NETWORK

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03/04/94

10:36:08

TCN: 40397

DATE & TIME: 03/04/94 08:15 TO 10:00

STATUS: 6 ADJOURNED

PARTICIPANTS IN: JUNEAU

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2 REP	P CARNEY		TSFY. ALL ITEMS
			AK (907)000-0000
3 REP	D FINKELSTEIN		TSFY. ALL ITEMS
			AK (907)000-0000
4 REP	J GREEN		TSFY. ALL ITEMS
			AK (907)000-0000
5 REP	J JAMES		TSFY. ALL ITEMS
			AK (907)000-0000

SB

293

(9)

Date Referred: April 12, 1994

HOUSE COMMITTEE REPORT
FURTHER REFERRALS:

Judiciary

Date of Committee Action: 4/18/93

The RESOURCES Committee considered:

SB 293

SENATE BILL NO. 293

NATIVE ALLOTMENTS ON STATE LAND

"An Act relating to the authority of the commissioner of natural resources to reconvey, or relinquish an interest in, land to the United States if that land or interest being reconveyed or relinquished is identified in an amended application for a land allotment under federal law."

RECOMMENDATIONS:

be replaced with _____ the same title

_____ a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) DNR / 3-24-94

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Bill Hulse</i>	<input checked="" type="checkbox"/>	<i>for DNR</i>		<input checked="" type="checkbox"/>	
<i>Pat Conroy</i>	<input checked="" type="checkbox"/>				
<i>Joseph R. ...</i>	<input checked="" type="checkbox"/>				
<i>Christette James</i>	<input checked="" type="checkbox"/>				
<i>W.K. Williams</i>	<input checked="" type="checkbox"/>				

W.K. Williams
CHAIRMAN'S SIGNATURE

SENATOR GEORGE JACKO

STATE CAPITOL, ROOM 125 JUNEAU, ALASKA 99801-1182 (907) 465-4942 FAX: (907) 465-2997

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MEMORANDUM

TO: Representative *Bill* Williams, Chair
House Resources Committee

FROM: Senator *George* Jacko, Sponsor
Senate Bill 293

DATE: April 14, 1994

RE: Scheduling request -- SB 293

This memo is to respectfully request the waiver of Senate Bill 293 from the House Resources Committee. I understand HB 404, which is nearly identical to SB 293, was heard by your committee but no action was taken.

SB 293 grants the Commissioner of the Department of Natural Resources the authority to relocate, with the cooperation of the allottee and the federal government, native allotments which are located on top of any state lands set aside for a public purpose. HB 404 has a narrower focus addressing only native allotments which are located in state parks. DNR strongly supports SB 293.

In 1992, Congress authorized the Bureau of Land Management to relocate Native Allotment claims to avoid conflict with legislatively designated areas. SB 293 will grant the Commissioner of Department of Natural Resources the authority to reconvey the land to BLM once the allotment has been relocated.

If you need further information, please contact Bryce Edgmon at 465-4942. Thank you for considering this request.

FISCAL NOTE MAR 23 1994

STATE OF ALASKA

BILL NO. SB293

1991 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources
 Title: "An Act relating to the authority of the commissione BRU: Resource Development
of natural resources to reconvey, or relinquish an interest in..." Component: Land Development
 Sponsor: Senator Jacko
 Requestor: Senator Jacko Component Serial No. 431

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
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 EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ None

POSITIONS	FY95	FY96	FY97	FY98	FY99	FY00
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill authorizes the department to reconvey Native allotments that have been relocated on state land to a different location to avoid public interest conflicts. In order for a relocation to occur it must be with the consent of the department and the applicant. This bill allows Native allotment applicants to receive title to land that they can use while avoiding conflicts over public interest values such as access routes, heavy public use areas and important administrative sites.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 22-Mar-94
 Approved by Commissioner: Harry A. Noah Date: 22-Mar-94
 Agency: Natural Resources

MEMORANDUM State of Alaska
DIVISION OF PARKS AND OUTDOOR RECREATION
DEPARTMENT OF NATURAL RESOURCES

TO: Ron Swanson
 Director
 Division of Land

DATE: 9 December 1993

TELEPHONE: 762-2600
 762-2535 FAX

FROM: Peter J. Panarese **SUBJECT:** Native Allotments in
 Chief, Field Operations Alaska State Parks

Below listed are the approximate numbers of Native Allotment Applications in units of the state park system. The numbers reported are for pending applications still to be adjudicated. Records on file in the Division of Land may be more accurate in units such as the Alaska Chilkat Bald Eagle Preserve and Denali State Park.

Alaska Chilkat Bald Eagle Preserve	35
Wood-Tikchik State Park	104
Kachemak Bay State Park	2
Captain Cook State Rec. Area	2
Denali State Park	12
Shuyak Island State Park	4
<u>Total</u>	159

Numerous allotment applications in state park units have been adjudicated and patent awarded. Developing detailed information on the number of pending or patented Native allotment claims will take more time. Please give me a call if I can be of further assistance.

Alaska State Parks

State offers relocations for Native allotments in park

By Eric Fry
BayTimes Staff

To resolve long-standing Native allotment applications in Wood-Tikchik State Park, the state is proposing two options that will circumvent federal adjudication and quicken the process.

The state Department of Natural Resources is offering to relocate allotments in the state park to unencumbered parcels of equal size anywhere in the state.

And the state is seeking voluntary conservation easements from allottees in the park, in which some of the pa-

cel is left undeveloped.

Dan Hourihan, district ranger for Wood-Tikchik State Park, recently visited villages near the park to explain the state's position.

There are now 127 allottees who claim 104 parcels of state-owned land in the 1.6 million-acre park. The average allotment is 80 acres, and they total about 9,600 acres of park land.

The state is concerned about large-scale commercial development and large-scale subdivision and sales within the park, Hourihan said at a Dec. 14 meeting in Dillingham.

"The concern is private lands being cut up into small parcels and

subdivided and sold," Hourihan said. "And I don't think it's the people from Koliganek and New Stuyahok, Ekwok and Aleknagik who will be buying these lands."

There are now five sportfishing lodges in the park, four on five-acre parcels and one on a slightly larger parcel, Hourihan said.

Three years ago the Golden Horn Lodge was bought by a Japanese company that wanted to build a hotel that would handle 200 guests a week, he said.

"They wanted to lease more land. Local people were concerned. The

See Park, page 3

Park ...

From page 1

only reason that development isn't there is the five-acre lot size. If they had even 10 acres, they would have built an airstrip," Hourihan said.

"Our concern is that in the 20-, 30-, 40-year time range, current use, traditional use, and habitat will be impacted severely."

The options are intended to diminish that threat yet see the certificate of allotment go to the allottee, Hourihan said.

The allotments originally came under the Native Allotment Act of 1906, which was sunsetted in 1971 with the passage of the Alaska Native Claims Settlement Act.

As a result, many applications for allotments were filed in 1971. But in 1961 the state had selected the land that is now Wood-Tikchik State Park as part of its statehood entitlement.

The park itself was created in 1978 with the mandate to protect the area's fish and wildlife breeding and support systems, and to preserve the continued use of the area for subsistence and recreation.

Applicants for allotments in the state park must prove use and occupancy of their parcel to the potential exclusion of others prior to 1961.

Proof can include witnesses statements as well as physical evidence such as access roads, cabins, steam-baths, wood stove remains, or fuel barrels, said Dugan Nielsen of Bristol Bay Native Association Realty.

Also considered is the presence of resources on site that support the user's claim, and the applicant's personal knowledge of the parcel, he said.

If an applicant can support the facts that establish a right to the allotment, Nielsen said, then the federal government has the responsibility to recover title to the land from any present landowner, including the state.

It has been 21 years since the applications were made, Hourihan said. "Nothing has happened. It's still in the application phase. Little or no action has been taken in the Bureau of Land Management to adjudicate the applications and determine their validity."

The allotments in Wood-Tikchik State Park are just a small part of the total allotments to be reconveyed from the federal government to Natives.

"When we got ANCSA passed, there were about 15,000 Native parcels filed on," said Wayne Boden, BLM deputy state director for conveyance management.

"It costs a lot of money to get them

The allotments originally came under the Native Allotment Act of 1906

surveyed and make sure the application is valid," he said. "The survey is the big thing. It costs quite a bit to get an aircraft and surveyor out and get all the approvals."

Boden said about 7,400 parcels remain to be certificated statewide. "We're trying to do it in a systematic blocking process so we can go in and do a whole area at one time. We're trying to close out a window at a time," he said.

Gusty Chythlook of BBNA Realty said at the meeting that 1994 is the window for the upper Nushagak and the Mulchatna area, but there is no window for Wood-Tikchik State Park.

This past summer, on the urging of Tom Hawkins, chief executive officer of the Bristol Bay Native Corp., a meeting was held with representatives of the state DNR, the federal BLM, BBNC and BBNA.

Out of that came an agreement that BLM would work on 10 case files a month during the winter, meaning that it would send out "90-day letters" for 10 applications each month.

The letters give notice to interested parties that they have 90 days to make comments for or against the application.

"What it does is start the process moving," Boden said. "They had been held up because of their status in the park over along period of time. There were controversies with the state over this process."

Last year, Rep. Don Young, R-Alaska, sponsored an amendment to ANCSA that allows valid allottees to relocate their parcel of state land to other state land. The relocation must be voluntary. The state DNR and Rep. Lyman Hoffman, D-Bethel, are seeking a similar amendment to state law.

"There's some debate on whether that is necessary," said Hourihan. "We're going to proceed with discussions with anybody who is interested. ...Relocation will appeal to some people, but many will want their original parcel."

Hourihan said that an applicant who wants to relocate should identify the desired land and contact BBNA Realty, which will notify Hourihan. He will do a title search.

"Once BLM is notified, there is no adjudication. There is no use and occupancy criteria associated with this," Hourihan said.

There are applications with use

and occupancy that dates back as far as 1903 and 915, he said. "There are a lot of people who are elders in the community whose applications and the validity of them cannot be questioned."

But there are also allottees in their early 40s who claim use and occupancy when they were eight to 10 years old.

"I expect that there are a number of applicants that if the state decided to go to the ground would be defeated. What we're saying is, we don't want to go that way. We want to create a win-win situation," Hourihan said.

Conservation easements are another option the state is seeking for allotments in the state park. They are voluntary land use covenants that become part of the reconveyance process when the land goes from the state to the federal government and then to the allottee.

Hourihan said there are three basic zones the state likes to see used in a parcel that has a conservation easement: a non-development zone with no structures, a subsistence heritage zone that can include private homes and camps, and a development zone for any commercial purpose.

"We're open to discussions with anybody based upon what they'd like to do with their land. We can craft an agreement to fit individual needs," Hourihan said.

"We notify BLM if we reach agreement with an individual allottee for a conservation easement on an application in the park. We would notify BLM of our attempt to reconvey, and it would abrogate any further need for BLM to determine use and occupancy. So there's an incentive," Hourihan said.

Dugan Nielsen spoke in an interview of the importance of Native allotments.

"Native people's culture is based on the fact that we have land to exist from. Without that, what are we? Where does our identity go? What are we about, then?"

"The issue of subsistence is way high in priority, obviously, for the Native people. Granted, you can't do your total subsistence off a 160-acre parcel of land. But you can to a certain degree," he said.

"Without that land base from which to exist on, what importance is subsistence? How much subsistence can you eke out of the sidewalk in Anchorage?"

"We could win the subsistence issue, and I'll be forced to live in some metropolis or something larger than a village because we don't have a land base," Nielsen said.

RECEIVED

NOV 01 1993

BRISTOL BAY
NATIVE CORPORATION

800 CORDOVA / P.O. BOX 100220 / ANCHORAGE, ALASKA 99510 (907) 278-3602
TELECOPY (907) 276-3924

October 28, 1993

Honorable George Jacko
Alaska State Senate
715 W. 4th Avenue, #520
Anchorage, AK 99501-2133

Dear Senator Jacko:

Earlier this year, I wrote to you about allotments in Wood-Tikchik State Park. The log jam has broken and the paper has begun to move between BLM and the State Park Division. Cooperation between BBNA, BLM and Alaska State Parks got the ball rolling. Thank you for your interest in this matter.

Another matter deserves your current attention. Last year Congress authorized BLM to allow Native allottees to relocate their claims to avoid conflicts with legislatively designated State lands. Alaska Department of Natural Resources (ADNR) has determined that an amendment to Title 38.05.035b(9) will be necessary to authorize these relocations. The amendment will be offered along with a number of other Title 38 changes proposed by ADNR.

The ability to relocate a claim out of conflict with legislative designations could benefit many of your constituents. This amendment could also benefit allottees in conflict with the Haines Bald Eagle Preserve, Captain Cook Recreation Area, and other locations around the State. It could be legislation that you would introduce separately so that its fate is not connected to other Title 38 changes.

The language was drafted by the Attorney General's office. Proposed deletions are bracketed; proposed additions are underlined:

AS 38.05.035(b) The director may

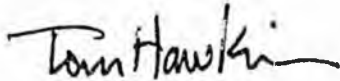
X X X X

- (9) quit claim land or an interest in land to the federal government on a determination that the land or interest in land was wrongfully conveyed by the federal government to the state [;] or that it is in the best interest of

the state to reconvey the land or interest in land under terms authorized by
43 U.S.C. 1617(c)(Supp. 1993);

If you have questions or comments, please give me a call.

Sincerely yours,

A handwritten signature in black ink that reads "Tom Hawkins". The signature is written in a cursive style with a long horizontal flourish at the end.

Tom Hawkins
Senior Vice President

cc: Dugan Nielsen, BBNA Realty

BRISTOL BAY NATIVE ASSOCIATION

P.O. Box 310

DILLINGHAM, ALASKA 99576

(907) 842-5257

FEB 03 1994



Senator George Jacko
Rm. 125 State Capitol
Juneau, Ak. 99801-1182

Re: Amendments to Title 38

January 28, 1994

Dear Senator Jacko,

As per your request I am forwarding to you information regarding the amendment to 38 that will have a direct effect on Native Allotments in the Wood/Tikchik State Park and other allotments in conflict with State Parks and Refuges. I am enclosing the amendment to ANCSA, amendment language from John Baker of the AGO, and a portion of the Legislative Digest. I hope that this will assist you in crafting a piece of legislation that will serve our needs and be passed by the legislature this season. If there is any way we can assist your efforts please do not hesitate to call upon us.

Sincerely,

Handwritten signature of Dugan G. Nielsen

Dugan G. Nielsen
Realty Officer

cc Reading file
W/T file



purchaser by substituting, to approximately equal in volume, affected by such conveyances, Secretary of Agriculture is directed to alter sale contract without the

Act or by operation of the within a contingency area thereafter be subject to such five Corporation has received under the appropriate section selected, no land in such a, by such Corporation under shall be cut thereon, except section, the term "contingency area from which the timber ad in the contract cannot be ing in the contract (2447.)

ACTIVES

as (b), and added subsec.

r Alaska

IONS

real decision of Bureau of Land public easement decision made USCS § 1616(b)(1) requires that property interest within meaning of said property interest is satisfact of valid existing right to which ds under Alaska Native Claims subject pursuant to 43 USCS tionally, appellant must further d decision affects that property d provide access to public lands. Iverline Grazers Assn (1982) 89

f 43 USCS § 1616(b)(1) public ide access across Native lands to such easement necessarily affects hose to be conveyed therefore, who claims private interest in nd to be conveyed, in asserting § 1616(b)(1) easement decision, private holding as his or her affected within meaning of 43 K. Terry (1982) 89 ID 242.

ging allotments on pending

it applicant, who had a valid on December 18, 1971, and nt of this subsection (enacted cation of the applicant (with ureau of Indian Affairs) to ily intended to claim: if— r describes land selected by, a or otherwise conflicts with e United States prior to the

§ 1616 Indian allotment authority in Alaska; revocation; charging allotments on pending application against statutory acreage grant

(a)-(d) [Unchanged]

(c)(1)(A) Notwithstanding any other provision of law, an allotment applicant, who had a valid application pending before the Department of the Interior on December 18, 1971, and whose application remains pending as of the date of enactment of this subsection (enacted Oct. 14, 1992), may amend the land description in the application of the applicant (with the advice and approval of the responsible officer of the Bureau of Indian Affairs) to describe land other than the land that the applicant originally intended to claim if—

(i) the application pending before the Department, either describes land selected by, tentatively approved to, or patented to the State of Alaska or otherwise conflicts with an interest in land granted to the State of Alaska by the United States prior to the filing of the allotment application;

(ii) the amended land description describes land selected by, tentatively approved to,

or patented to the State of Alaska of approximately equal acreage in substitution for the land described in the original application; and

(iii) the Commissioner of the Department of Natural Resources for the State of Alaska, acting under the authority of State law, has agreed to reconvey or relinquish to the United States the land, or interest in land, described in the amended application.

(B) If an application pending before the Department of the Interior as described in subparagraph (A) describes land selected by, but not tentatively approved to or patented to, the State of Alaska, the concurrence of the Secretary of the Interior shall be required in order for an application to proceed under this section.

(2)(A) The Secretary shall accept reconveyance or relinquishment from the State of Alaska of the land described in an amended application pursuant to paragraph (1)(A), except where the land described in the amended application is State-owned land within the boundaries of a conservation system unit as defined in the Alaska National Interest Lands Conservation Act. Upon acceptance, the Secretary shall issue a Native Allotment certificate to the applicant for the land reconveyed or relinquished by the State of Alaska to the United States.

(B) The Secretary shall adjust the computation of the acreage charged against the land entitlement of the State of Alaska to ensure that this subsection will not cause the State to receive either more or less than its full land entitlement under section 6 of this Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (commonly referred to as the "Alaska Statehood Act") [46 USCS note prec. § 21], and section 906 of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635). If the State retains any part of the fee estate, the State shall remain charged with the acreage.

(As amended Oct. 14, 1992, P. L. 102-415, § 3, 106 Stat. 2112.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"The Alaska National Interest Lands Conservation Act", referred to in subsec. (c), is Act Dec. 2, 1980, P. L. 96-487, 94 Stat. 2371. For full classification of such Act, consult USCS Tables volumes.

Amendments:

1992, Act Oct. 14, 1992, added subsec. (c).

INTERPRETIVE NOTES AND DECISIONS

Native Alaskans whose families have used and occupied lands located inside 3 national wildlife refuges do not have right to apply for allotments of such lands, where each applicant's personal use and occupancy commenced after land ceased to be vacant, unappropriated, and unreserved. *Akootchook v. United States*, Dept. of Interior (1984, CA9 Alaska) 747 F2d 1316.

Alaska Natives applying for allotment within national forest under 1906 Alaskan Native Allotment Act must establish personal use and occupancy of land prior to establishment of forest. *Shields v. United States* (1981, DC Alaska) 504 F Supp 1216

Alaskan native's allotment is land held in trust

for an Indian under 30 USCS § 125, and therefore excluded from United States land subject to grant of right of way under Trans-Alaska Pipeline Act (43 USCS § 1632). native allotment application filed in 1971 has priority over pipeline application filed in 1969 because vested native preference relates back to initiation of occupancy; apparent United States approval of right-of-way agreement was by unauthorized official, and government is not estopped to deny approval; pipeline company and state will be awarded title to improvements, but holders of native allotment claim may be entitled to damages. *Alaska v. 3,950 Acres of Land* (1985, DC Alaska) 625 F Supp 1215.

§ 1616. Reservations; revocation; excepted reserve; acquisition of title to surface and subsurface estates in reserve; election of Village Corporations

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Supplemental appropriation for Native Groups, Act Dec. 2, 1980, P. L. 96-457, Title XIV, Part B, 94 Stat. 2498, provided: "The Secretary shall pay by grant to each of the Native Group Corporations established pursuant to section 14(h)(2) of the Alaska Native Claims Settlement Act [43 USCS § 1613(h)(2)] and finally certified as a Native Group, an amount not more than \$100,000..."

Sec. 38.05.010. Appointment of director. The commissioner shall appoint a director. The director is the executive officer of the division of lands. (§ 2 art II ch 169 SLA 1959)

Sec. 38.05.015. Director serves at pleasure of commissioner. The director serves at the pleasure of the commissioner. (§ 3 art II ch 169 SLA 1959)

Sec. 38.05.020. Authority and duties of the commissioner.

(a) The commissioner shall supervise the administration of the division of lands.

(b) The commissioner may

(1) establish reasonable procedures and adopt reasonable regulations necessary to carry out this chapter and, whenever necessary, issue directives or orders to the director to carry out specific functions and duties; regulations adopted by the commissioner shall be adopted under the Administrative Procedure Act (AS 44.62); orders by the commissioner classifying land, issued after January 3, 1959, are not required to be adopted under the Administrative Procedure Act (AS 44.62);

(2) enter into agreements considered necessary to carry out the purposes of this chapter, including agreements with federal and state agencies;

(3) review any order or action of the director;

(4) exercise the powers and do the acts necessary to carry out the provisions and objectives of this chapter;

(5) notwithstanding the provisions of any other section of this chapter, grant an extension of the time within which payments due on any lease or sale of state land, minerals, or materials may be made, including payment of rental and royalties, on a finding that compliance with the requirements is or was prevented by reason of war, riots, or acts of God;

(6) classify tracts for agricultural uses and require the prequalification, including the submission of conservation plans, development plans, or other plans, schedules, or programs, of persons who apply to participate in an agricultural development project under AS 44.33.475;

(7) waive, postpone, or otherwise modify the development requirements of a contract for the sale of agricultural land if

(A) the land is inaccessible by road; and

(B) transportation, marketing, and development costs render the required development uneconomic. (§ 4 art II ch 169 SLA 1959; am § 1 ch 31 SLA 1964; am § 1 ch 76 SLA 1964; am § 3 ch 72 SLA 1972; am §§ 25 — 27 ch 3 FSSLA 1973; am § 1 ch 129 SLA 1982; am § 15 ch 152 SLA 1984)

SB 293
(8)

PARKS AND OUTDOOR RECREATION
CONCEPTUAL CHANGES TO TITLE 38

• Exchange of Native Allotments Within State Park Units. AS 38.05.35 lists the powers and duties of the DNR Commissioner. We propose an addition. About 100 parcels of land in Wood-Tikchik State Park are claimed as Native allotments. These are also prime sites for public fishing and camping. Private development of these parcels could block public use and degrade the recreational and scenic resources that attract tourists and Alaskans to the park. We propose to authorize the Commissioner to allow allotment applicants to choose new sites outside park boundaries. Some allotment applications have been pending for 30 years. This authority would help applicants get title to good land, and solve park management problems. Most applicants who choose to move would probably pick new sites along the Nushagak and Mulchatna rivers.

U.S. Congress

Alaska Land Status Technical Corrections Act of 1992 - Referred to as the "ANCSA Technical Amendments Package," the bill contained twenty provisions at final passage, of which twelve were land related and worked on by the AFN Land Committee.

The process employed to generate the bill included an extensive list of proposed amendments by the Department of the Interior (Bureau of Land Management) and the State of Alaska. Since the rules laid down by Congress indicated that only amendments that were non-controversial would be included in the bill, there was a period of approximately eight months when AFN's Land Committee worked with federal and state representatives to forge agreement on proposed amendments.

The Land Committee focused on the following provisions that became law on October 14, 1992:

Section 2. Fort Davis Native Allotment - Legislatively approved Native allotment claims in the Fort Davis (Nome) area.

Section 3. Native Allotment Relocation - Provides an opportunity whereby an allotment applicant with a valid application as of December 18, 1971 and whose application remains pending as of October 14, 1992, may amend the applications land description, if said description describes land selected by the State of Alaska, to another parcel of State land elsewhere. The exchange is purely voluntary on the part of the allottee. This legislation resolves allottee/State conflicts over land primarily in State park areas.

Section 5. Shareholder Homesite - Extends indefinitely the time frame for village corporations to implement Shareholder Homesite Programs.

Section 6. Chugach National Forest Boundary Change - Modified the boundary of the National Forest to include an additional 9,300 acres. A review of the proposal concluded there would be no adverse impact to adjacent ANCSA corporations.

Section 12. Alaska Native Allotments - Provides an opportunity for the Secretary of the Interior to accept land relinquished by ANCSA corporations in NPRA in order that Native allotments in the respective areas may be certified.

Section 13. Point Hope Townsite - Provides a mechanism by which the Native residents of Point Hope may receive deeds to the lots within the village in accordance with the terms of the Alaska Native Townsite Act of 1926 and allows for reconveyance of lands from the regional and village corporation's to the Department of the Interior when necessary to convey lots to individual Natives.

SB

306

Date of Committee Action: 4/25/94

The RESOURCES Committee considered: SB 306

SENATE BILL NO. 306 ANTITRUST EXEMPTION FOR FISHERMEN

"An Act relating to an antitrust exemption for persons engaged in the fishing industry."

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

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
 fiscal impact _____ fiscal note(s) _____
 zero fiscal note _____ zero fiscal note(s) Labor / 3-30-94

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Bill Hudson</u> Hudson	<input checked="" type="checkbox"/>	<u>Clayton Mulder</u> Mulder		<input checked="" type="checkbox"/>	
<u>Robert Carney</u> Carney	<input checked="" type="checkbox"/>	<u>Clayton Bunde</u> Bunde		<input checked="" type="checkbox"/>	
<u>Paul Davies</u> Davies	<input checked="" type="checkbox"/>				
<u>W.K. Williams</u> Williams	<input checked="" type="checkbox"/>				
<u>Jeannette Jones</u>	<input checked="" type="checkbox"/>				

W.K. Williams
 CHAIRMAN'S SIGNATURE

SENATOR JIM DUNCAN
ALASKA STATE LEGISLATURE

Alaska State Senate

State Capitol • Room 119 • Juneau, Alaska 99801-1132 • (907) 465-4766 • Fax 465-4748

April 21, 1994

SPONSOR STATEMENT, SB 306

ANTYTRUST EXEMPTION FOR COMMERCIAL FISHERMEN

SENATOR JIM DUNCAN

Senate Bill 306 confers state antitrust immunity on fishermen, allowing them to negotiate raw fish prices with processors in order to improve the market price of Alaska seafood. It also permits fishermen and fish processors to agree to the minimum price for which processors will sell the processed fish.

In recent years, salmon prices have fallen dramatically. Alaska needs to offer greater support to our fishing industry, which is the state's largest private employer.

Fishing affects every segment of our economy, from small coastal villages to the state's general fund. Ex-vessel value of Alaska salmon declined by 67 percent between 1988 and 1993, yet salmon fishermen caught 64 percent more fish. As raw fish prices continue to drop, fishing communities and boroughs suffer from poor local economies, as well as decreased state revenue sharing from fisheries taxes.

British Columbia fishermen have consistently been getting higher salmon prices than Alaska fishermen, in part because of multi-year collective bargaining agreements with processors. SB 306 provides for a similar system, allowing fishermen to form associations to negotiate prices with processors.

The legislation was recommended in the 1993 Alaska attorney general's report on the Bristol Bay sockeye salmon industry. A state antitrust exemption is the first step. Once the legislature has approved a state exemption, the state will request a federal exemption.

Collective bargaining between fishermen and processors will help stabilize commercial fishing prices, bolstering local and state economies. Stable raw fish prices also will promote stable consumer prices for processed seafood products, which means greater sales of Alaska seafood.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO : SB 306

Revision Date: _____
 Title: Antitrust Exemption for Fishermen
 Sponsor: Senator Duncan
 Requestor: Senate Resources

Department Affected: Labor
 BRU: Commissioner's Office
 Component: Commissioner's Office
 COMPONENT SERIAL NO. 340

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: John Abshire, Deputy Commissioner Phone: 465-2700
 Division: Commissioner's Office Date: 3/24/94
 Approved by Commissioner: Charles W. Mahlen
 Agency: Department of Labor Date: 3/24/94

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Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 2, 1994

SUBJECT: Sectional Summary of SB 306; An Act relating to an antitrust exemption for persons engaged in the fishing industry. (Work Order No. 8-LS1305\E)

TO: Senator Jim Duncan
ATTN: Rosemarie Alexander

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of SB 306; An Act relating to an antitrust exemption for persons engaged in the fishing industry.

A sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill repeals and reenacts AS 45.50.572(c) in order that the antitrust exemption granted to fishermen's cooperatives (associations) under state law is similar to the exemption for fishermen's cooperatives under federal antitrust laws. In addition to retaining the current exemption allowing fishermen to collectively catch, collect, or prepare aquatic products for market, the new version of AS 45.50.-572(c) extends the exemption to include processing, handling, and marketing of aquatic products. The term "association" is defined to have the same meaning as it does under the federal antitrust exemption.

Section 2 of the bill adds a new subsection to AS 45.50.572 to grant an exemption from state antitrust laws so that fishermen's cooperatives could enter into agreements with fish processors regarding prices to be paid to fishermen and the minimum price that fish processors will accept for the sale of their processed products.

GU:pl
94-172.plm

MEMORANDUM

State of Alaska

Department of Law

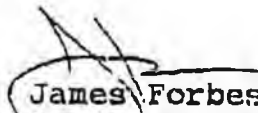
TO: Honorable Jim Duncan
Alaska Senate

DATE: April 13, 1994

FILE NO.: n/a

TEL. NO.: 269-5206

SUBJECT: SB 306

FROM:  James Forbes
Assistant Attorney General
Fair Business Practices Section
Anchorage

SB 306 addresses the question of antitrust immunity for the fishing industry. It would change existing law by clarifying the antitrust immunity of fishers and fisher organizations; and it would provide a measure of immunity under state law for fish processors when they negotiate prices with fishers.

The current statute, AS 45.50.572(c), permits fishers to act collectively for the purpose of catching, collecting, and preparing their product for market. It does not specifically provide that fishers may collectively negotiate prices for their product, although the corresponding federal law does provide an antitrust exemption for that purpose. Section 1 of SB 306 would bring AS 45.50.572(c) into line with the federal law. In doing so, it would clarify the legal status of fishers when they collectively bargain for the sale of their product. This change is a step in the direction of helping the fishers obtain higher prices for seafood products.

Section 2 of the bill would change existing law by allowing fishers to negotiate seafood prices with more than one processor during the same meeting. Currently, a processor may not meet to discuss prices or pricing strategy with another processor (or a processor organization) whether fishers are present at the meeting or not. Section 2 would allow several processors to conduct meetings at the same time to negotiate the price to be paid the fishers, so long as fishers are present during the discussions. The bill does not allow processors to discuss pricing with other processors if fishers are not present. Section 2 would also allow processors to agree, during meetings with fishers, on the price that processors will accept for processed fish from their buyers. Allowing the processors to negotiate collectively to this extent should improve their negotiating strength in the market, which should, in turn, improve the prices they are able to obtain for Alaskan seafood products.

Senator Duncan
Page 2

April 13, 1994

The seafood processors do not currently have antitrust immunity under federal law. Federal antitrust immunity for them could be conferred after passage of SB 306 by either of two means: a grant of immunity by the United States Congress; or the implementation of a system by the Alaska legislature that requires state approval of prices at which processors acquire raw seafood and sell the processed product. My February 15, 1994 memorandum to you describes these possibilities in greater detail.

cc: Elizabeth Shaw
Deborah Behr
Raga Elim

MEMORANDUM

State of Alaska Department of Law

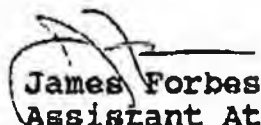
TO: Hon. Jim Duncan
Alaska Senate

DATE: February 15, 1994

FILE NO.: n/a

TEL. NO.: 269-5206

SUBJECT: SB 306: Federal antitrust
immunity

FROM:  James Forbes
Assistant Attorney General
Fair Business Practices Section
Anchorage

Rosemarie Alexander of your staff has asked for legal comment on SB 306 which seeks to confer antitrust immunity on fishers and processors of aquatic products in Alaska so they can collectively negotiate in order to improve the market price of Alaska seafood. Specifically, she has asked for comment on whether the bill confers immunity from federal antitrust law and if not, what amendments could be made to accomplish that purpose. As the bill is currently written, it confers state antitrust immunity, but not federal.

Federal antitrust immunity can, of course, be granted by the U.S. Congress. But where Congress has not granted immunity, the states have certain powers under our system of federalism to regulate commerce without application of federal antitrust law.

Under various rulings of the U.S. Supreme Court, a state legislature has the power to confer federal antitrust immunity where it intentionally determines that competition in an industry should be replaced with regulation, and where it establishes a mechanism for actively supervising the price setting activity. In the seminal case of Parker v. Brown, 317 U.S. 341 (1943), the court recognized that a California program regulating production and marketing of raisins by the state's growers immunized the raisin industry from antitrust liability. The declared purpose of the law was "to conserve the agricultural wealth of the state and to prevent economic waste in the marketing of agricultural products". The program allowed for a committee consisting of growers, packers and handlers to establish output and prices, which were then confirmed (or not) by a commission, which had the power to enforce its pricing decisions.

In the cases that have followed, the court has found that antitrust immunity exists where the legislature determines that competition in an industry is more harmful than beneficial, and where the legislature puts a mechanism in place to monitor and have final authority over the prices and production policies that are set by private industry participants. The usual arrangement features a state board or commission that has power to review and either approve pricing or production policies established by private industry participants, or reject them where the commission finds the policies suggested by those private persons are not in accord with state policy.

February 15, 1994

As a general rule, federal antitrust immunity will exist where the board or commission overseeing the industry: is staffed, funded and operational; has adequate power to monitor compliance with state regulatory policies; has the power to enforce compliance in state courts; and shows a basic level of activity aimed at insuring that the private industry entities carry out the state's policies, and not simply their own policies. See: New England Motor Rate Bureau v. FTC, 908 F. 2d 1064 (1st Cir. 1990).

In the case of carrying out the objectives of SB 306, and providing federal antitrust immunity, the legislature would have to find that competition among Alaska processors is resulting in prices that are so low they are injurious to the Alaskan economy. The legislature would have to find that regulation of prices is necessary to conserve the aquatic wealth of the state. The legislature should then establish a board or commission (or give an existing board or commission new powers) to oversee the setting of minimum prices for Alaskan aquatic products. Industry participants such as fishers and processors could be given permission (as under the current draft of the bill) to meet and agree on minimum resale prices and ex-vessel prices. The board or commission must then review these suggested prices and either approve or reject them. After approval, the board or commission must have the authority to enforce the price structures -- in court, if necessary.

If prices for Alaskan seafood were set in this fashion, the price setting activities of the industry participants would be immune from both state and federal antitrust liability.

This memorandum is intended to address legal issues only. To obtain the administration's policy perspective on SB 306, please contact the Governor's Legislative Liaison or the Commissioner of Commerce.

cc: Deborah Behr, Legislative Attorney, Department of Law
Raga Elim, Governor's Office Legislative Liaison
Paul Fuhs, Commissioner of Commerce

JF/

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FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 14, 1994

SUBJECT: SB 306: Antitrust exemption for fishermen and fish processors
(Work Order No. 8-LS1305\E)

TO: Senator Jim Duncan

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a concise summary of how SB 306 changes state antitrust laws.

Under current law (AS 45.50.572(c)), fishermen are granted an exemption from the state antitrust laws (AS 45.50.562 - 45.50.596) to form groups to collectively engage in catching and collecting of fish and in preparing those fish for market. Section 1 of SB 306 rewrites AS 45.50.572(c) so that it is virtually identical to its federal counterpart (15 U.S.C. 521). By closely following the federal provision, the state antitrust exemption for fishermen is expanded to cover additional activities such as producing, processing, handling, and marketing of fish, so that the state law permits fishermen's groups to engage in the same activities that are permitted under federal law.

Section 2 of SB 306 adds a new exemption from the state antitrust laws to allow fishermen and processors to collectively agree on the price that processors will pay to fishermen for fish or that processors will accept for the sale of processed fish. The exemption does not authorize processors to agree among themselves on the prices that they will pay for raw fish or charge for their processed fish. The exemption only covers combined collective action of fishermen and a processor or a group of processors.

The exemption granted by sec. 2 of the bill applies only to the state antitrust laws. The activities covered by the proposed state exemption would still be subject to federal antitrust laws. Without a corresponding federal exemption, the state exemption is virtually of no effect. The Congress could enact a federal antitrust exemption for those activities protected under sec. 2 of the bill. But, if Congress does not enact the exemption, the state has the option of enacting a regulatory program that would suffice to establish an exemption from the federal antitrust laws through the "state action" exemption. Under the judicially created "state action" doctrine, anticompetitive conduct that is mandated or fostered by the state and that is regulated by the state is exempt from the federal antitrust laws. Parker v. Brown, 317 U.S. 341, 87 L.Ed. 315 (1943).

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

P.O. BOX 110800
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500
FAX: (907) 465-5442

March 24, 1994

The Honorable Senator Jim Duncan
State Capitol
Juneau, Alaska 99811

Dear Senator Duncan:

I would like to take this opportunity to express my support for the timely passage of SB 306, "An Act relating to an antitrust exemption for persons engaged in the fishing industry."

This proposed legislation would provide Alaskan fishers with the ability to negotiate long term raw fish prices with the processors without incurring liability for antitrust violations. This ability for collective bargaining will provide a stability factor currently lacking in Alaskan commercial fishing prices. Currently, Alaskan fishers and processors cannot publicly discuss prices without violating U. S. antitrust laws. SB 306 provides for a state antitrust exemption.

SB 306 is of vital importance to the current economic outlook of the Alaskan fishing industry. Providing stability to commercial fishing prices will provide a mechanism for stable consumer prices for processed seafood products, thus increasing marketing potential of seafood.

SB 306 as an important step in sustaining a viable economic future for the Alaskan fishing industry.

Sincerely,



Paul Fuhs
Commissioner

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF ECONOMIC DEVELOPMENT

WALTER J. HICKEL, GOVERNOR

P.O. BOX 110804
JUNEAU, ALASKA 99811-0804
PHONE: (907) 465-2017

The Honorable Senator Jim Duncan
State Capitol
Juneau, Ak. 99811

Dear Senator Duncan,

I would like to take opportunity to express my strong support for the passage of SB 306, "An Act relating to an anti-trust exemption for persons engaged in the fishing industry."

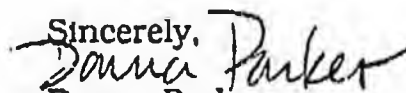
A similar anti-trust exemption exists in Canada where long term price contracts have helped keep pink salmon prices 113% higher than pink prices paid to Alaskan fishermen and sockeye prices 60% higher.

This proposed legislation would help bring stability to the the Alaska fishing industry by allowing fishermen and processors to negotiate long term fish price contracts without incurring liability for anti-trust violations. Currently, Alaska fishermen and processors cannot discuss price issues without violating U.S. anti-trust laws. SB 306 provides for a state anti-trust exemption. While a federal anti-trust exemption is probably necessary, this is an important first step in a direction that will help our salmon industry to recover.

Since 1983, the average ex-vessel value of salmon has declined by 64% despite a 67% increase in production. That means fishermen are working alot harder to make alot less money. Every time the average price of Alaska salmon drops one cent, salmon fishermen lose \$7 million. Every dime lost translates into a loss \$70 million annually to fishermen and \$4.5 million in lost revenues to the state. This effects both our coastal and urban communitities. More than 600 permit holders reside in Anchorage. In 1988, they brought home \$33 million in gross revenues. By 1991, their catch was worth about \$12 million.

The problem is caused by increased world production of salmon which has more than doubled in the past decade. Alaska has increasingly lost marketshare to farmed salmon which is able to deliver to the marketplace a product that offers consistent supply, quality and price.

While we can't address all these issues with a single piece of legislation, SB 306 is an important first step that offers the hope of stable pricing. I urge you to support this legislation.

Sincerely,

Donna Parker
Fisheries Specialist

BILL NO: Senate Bill No. 306

DATE: March 14, 1994

TITLE: Antitrust Exemption for Fishermen

CONTACT: Arbe Williams
465-2700

Senate Bill No. 306 would allow fishers to form associations to negotiate fish prices. AS 16.20.280 provides that the Department of Labor serve as mediator of disputes between fishers and fish processors on the price to be paid for salmon. The department's experience has revealed that the inability of fishers to form such associations, due to current anti-trust laws, to negotiate with processors was a primary factor in the dispute.

This legislation would provide a mechanism to stabilize raw fish prices, thereby protecting Alaskan fishers and processors from the debilitating and extreme fluctuations in fish prices. A stable fishing industry will have a direct and positive effect on the Alaskan economy. It is only reasonable that Alaskan fishers and processors have the legal ability to protect themselves and this important resource from price setting by outside interests..

The Department of Labor supports Senate Bill No. 306.

APPROVED:



Charles W. Mahlen, Commissioner

DATE:

3/14/94

POSITION PAPER/Department of Labor



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545

March 10, 1994

The Honorable Mike Miller, Chair
and Members of the Senate
Resources Committee
The Capitol Building
Juneau, Alaska 99801

Dear Chairman Miller and Committee Members:

UFA supports SB 306 regarding Antitrust Exemption for Commercial Fishermen and we request that a hearing be scheduled in the near future.

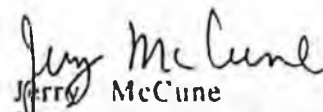
This legislation was first recommended in the 1993 Alaska Attorney General Report on the Bristol Bay salmon fishery.

Fishermen need to breathe new life in our industry. This bill is one avenue to be able to do so - it gives fishermen the ability to make collective bargaining agreements with processors.

This is only one of the first steps fishermen view as a means to stabilize salmon prices in the State of Alaska.

Again, this is a very important issue to the fishermen of Alaska and we would very much appreciate a hearing to be able to have the opportunity to discuss this important matter with you.

Sincerely,


Jerry McCune
UFA President & Lobbyist

✓ cc: Senator Jim Duncan

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Longline Fisherman's Association • Alaska Trollers Association • Area K Seiners Association
Bering Sea Fishermen's Association • Bristol Bay Driftnetters Association • Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Kenai Peninsula Fishermen's Association
North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Seafood Producers Cooperative
Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association

Ketchikan Office
P.O. Box 9579
Ketchikan, AK. 99901
phone: (907) 225-5156
fax: (907) 225-5258



Juneau Office
9226 Long Run Dr.
Juneau, AK. 99801
phone: (907) 789-5117
fax: (907) 789-5117

April 15, 1994

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

Dear Jim,

The Executive Committee of SEAS reviewed your bill, SB 306, and support it as originally written. We recognize that SB 306 is only the first step toward relaxing the anti-trust exemptions in a manner favorable to the fishing industry. But it is a good first step. This bill will remove the state-talking barrier for those fishermen and processors interested in multi-year contract agreements. And as you know, the next step will be to get the federal barrier removed. Passage will help our Congressional delegation to act similarly. We are glad to see that SB 306 is gaining bipartisan support. Hopefully, more support will come as we would like very much to see SB 306 passed this session.

Thank you for introducing this bill.

Sincerely,

A handwritten signature in cursive script that reads "Kathryn Troll".

Kathryn Troll
Executive Director



Bristol Bay Driftnetters' Association, Inc.

P.O. Box 21951

Juneau, AK 99802

Phone: (907) 463-4970 • FAX: (907) 586-1001

April 11, 1994

Senator Jim Duncan
Alaska State Senate
State Capitol, Room 119
Juneau, AK 99801-1182

Dear Senator Duncan:

In behalf of this association and all of the fishermen in Bristol Bay, I want to express my appreciation for your initiative in the sponsoring of SB 306, Antitrust Exemption for Commercial Fishermen.

This is a much-needed piece of legislation, although I feel sure that all of us - fishermen, processors, and just plain interested Alaskans - realize that ultimately there needs to be additional legislative work done to address our marketing problems. As I stated in my testimony before the Senate Judiciary Committee on April 8, we believe that this is an excellent first step.

I was pleased to see the committee move the original bill out of committee today, rather than risk bogging down the process for this session by attempting to work with the much more complicated issues which are intertwined in the proposed Committee Substitute.

I do want to note that I believe that all of us in the fishing industry are highly pleased to find the strong support for our plight which is exhibited in the Committee's willingness to consider the approach contained in the Substitute. It was, however, with a real sigh of relief that we watched the original bill meet committee approval.

I'm not an attorney and have no expertise in corporate or anti-trust law, but as a long-time observer of both fishermen, marketing agreements, and the Alaska Legislature, my gut feeling tells me that the committee's action today is the right way to go for now.

Thanks again.

Sincerely,

Bristol Bay Driftnetter's Association, Inc.
Dean Paddock, Executive Director



Cordova District Fishermen United

P.O. Box 93
Cordova, Alaska 9957
(907) 424-3447 FAX (907) 424-3443

March 28, 1994

Senator Jim Duncan
Alaska State Legislature
State Capital
Juneau, AK 99801-1182

Dear Senator Duncan:

On behalf of Cordova District Fishermen United (CDFU), I am pleased to write in support of Senate Bill 306—*An Act relating to an antitrust exemption for persons engaged in the fishing industry*. CDFU supports SB306 for three primary reasons:

- **SB306 serves to clarify ambiguities in existing law.**
Under current law, it is clear that fishermen may harvest, process and handle their catch or prepared product collectively but it is unclear whether they may collectively see the fruit of their labors through to the marketplace. The current law is interpreted by some to mean that after collectively catching or processing their fish, each individual fishermen has to separate his portion of the catch or product from that of other fishermen and then attempt to sell his portion individually. CDFU supports SB306 because it expressly allows fishermen to collectively sell their catch or their prepared product.
- **SB306 removes inconsistencies between state and federal laws.**
The federal exemption covers harvesting, processing, handling and marketing and is, thus, inconsistent with existing state law. This inconsistency creates an atmosphere wherein a group of fishermen may acquire an exemption from the state government and be in violation of federal law—and vice versa. Section 1 of SB306 rewrites existing law to make the state exemption virtually identical to its federal counterpart. CDFU believes this is an important improvement over existing state law.
- **SB306 levels the playing field for fishermen.**
Section 2 of SB306 places fishermen in a better position to obtain the best price for their fish by allowing them to collectively agree on the price that processors will pay to fishermen for raw fish and that processors will accept for the sale of processed fish. This will have the effect of leveling the playing field so that fishermen are in a better position to obtain the best price for their fish by allowing them to deal with processors in order to put up a united front against the major corporations that dominate the world markets for processed fish.

The nearly 250 commercial fishermen who comprise CDFU stand together with United Fishermen of Alaska and other fishing groups in support of SB306. If you have any questions or require additional information, please do not hesitate to contact me at the number above. Thank you for your consideration.

Sincerely,
CORDOVA DISTRICT FISHERMEN UNITED

Dorne Hawxhurst, Executive Director

cc: Senator Georgianna Lincoln
Representative Harley Olberg



Edward E. Crane
President

2550 Denali Street, Suite 1201
Anchorage, Alaska 99503
(907) 276-2007

March 22, 1994

Via FAX 465-4748

Senator Jim Duncan
Alaska State Senate
State Capitol, Room 119
Juneau, Alaska 99801-1182

Dear Senator Duncan,

I note that Senate Bill 306 is scheduled for hearing in the Senate Resources Committee on Friday, March 25. A schedule conflict precludes my attendance at that hearing. However, SB306 serves a relevant and highly significant purpose, in my view, and I respectfully offer the following comments for distribution as you may see fit.

I have been directly or indirectly involved with individual producers of food and fiber, and with both formal and informal associations of such producers, for nearly 30 years. That includes almost continuous and intense involvement with producers and marketers of agricultural commodities of all kinds from 1965 through 1981.

As contrasted with manufacturers, an individual producer of food and fiber commodities is greatly disadvantaged by his or her isolated status within what may be a huge conformation of economic forces. The producer is further made vulnerable by the limited-life nature of most commodities and by the pressure to capture whatever value may exist on a timely basis.

There has probably been no more positive statutory force affecting commodities producers than the limited antitrust exemptions in Federal, and most state, statutes. While a superficial glance may suggest they are merely the



* PLEASE PRINT + INCLUDE
COMPLETE MAILING ADDRESS *

HOUSE RESOURCES COMMITTEE

DATE: 4-25-94

PLACE: Capitol, Room 124

SUBJECT OF MEETING:
SB 306 - Anti-Trust Exemption for Fishermen
SB 314 - Material Sites for Timber Operations
SB 310

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Kate Troll	SFAS	9226 Ken Run			786-5117	(Y) N	SB 306
John Abshire	Dep. Com. - DOH	P.O. Box 21449 Juneau 99802-1149			465-277	(Y) N	SB 306 if necessary
Ron Woffel	KFIP	JUNEAU			789-7114	(Y) N	310
Jerry McCune	UFA	JUNEAU			586-2020	(Y) N	SB 306
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	



* PLEASE PRINT + INCLUDE
COMPLETE MAILING ADDRESS *

HOUSE RESOURCES COMMITTEE

DATE: 4-25-94

PLACE: Capitol, Room 124

SUBJECT OF MEETING:
SB 306 - Anti-Trust Exemption for Fishermen
SB 314 - Mineral Sites for Timber Operations
SB 310

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Kate Troll	SFAS	9226 Long Run			786-5117	(Y) N	SB 306
John Abshire	Dep. Coman. DOH	P.O. Box 21449 Juneau 99802-1149			465-277	(Y) N	SB 306 if necessary
Ron Wolf	KFIP	JUNEAU			789-7164	(Y) N	310
Jerry McCune	UFA	JUNEAU			586-2820	(Y) N	SB 306
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

SB

310

(9)

Date Referred: April 8, 1994

HOUSE COMMITTEE REPORT
FURTHER REFERRALS:

Date of Committee Action: 4/25/94

The RESOURCES Committee considered:

CSSB 310(RES)

CS FOR SENATE BILL NO. 310(RES)

STATE/PRIVATE/MUNI TIMBER OPERATION/SALE

"An Act relating to the management and sale of state timber and relating to the administration of forest land."

RECOMMENDATIONS:

be replaced with HCS CS SB 310 (RES)

the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) DNR / 3-30-94

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>Bill Anderson</i>		<input checked="" type="checkbox"/>	
<i>W.R. Williams</i>	<input checked="" type="checkbox"/>	<i>Karl [Signature]</i>		<input checked="" type="checkbox"/>	
		<i>Chanelle Jones</i>		<input checked="" type="checkbox"/>	
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
		<i>Car Brunk</i>		<input checked="" type="checkbox"/>	

W.R. Williams
CHAIRMAN'S SIGNATURE



Alaska State Legislature

HOUSE RESOURCES COMMITTEE

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3715

MEMORANDUM

TO: Jerry Luckhaupt, Drafting Attorney
Legislative Legal Services

FROM: Rep. Bill Williams, Chairman *WJW*
House Resources Committee

DATE: April 29, 1994

RE: Requesting corrected version of HCS SB 310 (RES)

On April 25 the House Resources Committee moved a new committee substitute version of SB 310 out of committee which was to include ten amendments. Several of those were amendments that had been drafted by Legal Services, but were amended in committee before adoption by the committee. In transmitting instructions to you for drafting of the final committee-passed CS, my staff evidently did not make it clear that amendment X. 20 had been amended in committee to include two additional words before the full amendment was adopted.

The omission of the two words in the final copy of the House Resources CS was not noticed until after the bill had been read across the House floor and transmitted to its next committee of referral, House Finance. Since official committee action added the two words, it is important that we have a corrected version of the bill done and available to the Finance Committee as soon as possible.

I am hereby requesting that a corrected version of HCS CS SB 310 (RES) be issued. The needed change to the currently published House Resources CS is this:

Page 3, line 4, after the word "scientific" insert "or economic"

If there are any questions regarding this request please contact my House Resources Committee Aide, Mary McDowell, at 465-3715.

PASSED AS
AMENDED 4/22/94

8-LS1558X.20 -
Luckhaupt
4/14/94

AMENDMENT

X.20

OFFERED IN THE HOUSE
TO: CSSB 310(RES)

BY REPRESENTATIVE JAMES

Page 1, line 4:

Delete "AS 38.05.112(c)"

Insert "AS 38.05.112"

Page 1, following line 4:

Insert new material to read:

"Sec. 38.05.112. FOREST LAND USE PLANS. (a) The department may not [SELL OR] harvest timber, except for isolated sales of less than 50,000 board feet [PERSONAL USE TIMBER HARVEST], until a site-specific forest land use plan has been adopted. A forest land use plan is required whether or not a regional or area land use plan under AS 38.04.065(a) or a forest management plan under AS 41.17.230 has been adopted.

(b) The commissioner shall base a forest land use plan on the best available data, including information provided by other agencies [DESCRIBING THE IMMEDIATE AND LONG-TERM EFFECTS OF INDIVIDUAL AND COLLECTIVE FOREST ACTIVITIES ON THE TIMBER BASE AND ON OTHER RESOURCES AND USES]."

Page 2, following line 14:

Insert a new subsection to read:

"(d) A management plan prepared by the commissioner under AS 41.17.230 or AS 38.04.065 must consider and permit the uses described in (c) of this section. If the commissioner finds that a permitted use is incompatible with one or more other uses in a portion of a state forest, the commissioner shall, consistent with AS 41.17.200, affirmatively state in the management plan that finding of

incompatibility for the specific area where the incompatibility is anticipated to exist and the time period when the incompatibility is anticipated to exist together with the reasons for each finding. If the commissioner finds that the use described in (c)(1) of this section is incompatible, or otherwise restricts that use, the commissioner must also document the finding with sound scientific data that clearly proves the incompatibility and the benefits of the restriction.

or economic

(passed)
A-A

Back-up for Amendment X-20

SENT BY:
kinko's
the copy center

418 THIRD ST.
FAIRBANKS, ALASKA 99701
FAX: 907-452-3805
PHONE: 907 456 7340

4-10-94 ; 2:37PM ;

KINKO'S

CCITT ECM: # 1

TODAY'S DATE

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TO JAMES
LOCATION JUNEAU
FAX NUMBER 465 2278
TELEPHONE NUMBER

SENT BY Don Purser
LOCATION FOKES
FAX NUMBER
TELEPHONE NUMBER 456 5054

COMMENTS

456-5054

Kinko's provides these fax services. We are not responsible for the contents of any communication transmitted or the any form associated with them.

Interior Alaska Forest Association

April 5, 1994

Dear Representative James:

The needs of the existing timber industry was not considered in the final version of SB310. What started out as a bill that would help our industry was whittled down to nothing by the end of the compromises. To be able to support this bill our top priorities, listed below, must be included:

1. ***AS 38.05.112(a) The department may not (sell or) harvest timber, except for isolated (personal use timber harvest) sales of less than 50,000 board feet,....***

Delete the (enclosed) words and add the underlined, this means wood in decks from a previous harvest would not have to have a new plan to be resold and small salvage clean up could be made without a long review process. Division of Forestry won't do these sales anymore because they are too small for all the effort.

2. ***AS 38.05.112(b) The commissioner shall base a forest land use plan on the best available data, including information provided by other agencies(.) describing the immediate and long-term effects of individual and collective forest activities on the timber base and on other resources and uses. ****

Delete the underline. It would be impossible for each sale to meet these stipulations and survive a court challenge. If absolutely necessary this could be moved to AS41.17.230 in the forest management plan for the state forest as a whole.

3. ****AS 38.05.112(d) A management plan prepared by the commissioner under AS 41.17.230 and AS 38.04.065(a) must consider and permit the uses described in (c) of this section. If the commissioner finds that a permitted use is incompatible with one or more other uses in a portion of a state forest, the commissioner shall, consistent with AS 41.17.200, affirmatively state in the management plan that finding of incompatibility for the specific area where the incompatibility is anticipated to exist and the time period when the incompatibility is anticipated to exist together with the reasons for each finding. If AS 38.05.112(c)(1) is found incompatible or restricted, sound scientific data and documentation must be provided that clearly proves such incompatibility and the benefits of such restrictions.***

Add the underlined parts. The key in stopping the state forest from being locked up is the underlined parts, which reminds them

Re: Amendment X.20 for CSSB310 (RECS)

F-35a

A. 5/2/94
TOP OF DOCUMENT

ALASKA WITH TOP OF DOCUMENT

of the intent for state forests and requires proof of the need for restriction on harvest for any part of the state forest. After seeing what has happen in Mat-Su, it is our opinion and deep concern that if these changes are not added there is nothing to stop huge 1/4 mile buffers, 100 year rotation ages on birch (making them rotten), and individual tree selection harvest, all of which will kill our industry. If these Susitna Forest Guidelines were applied here about two-thirds of the commercial timber would be off limits for harvest. As written now Section 1 of SB310 will not stop this. Environmentalists don't object to logging outright, they make it uneconomical by endless conditions. That's why our additions must be made to SB310.

4. ***AS 38.05.122 (g)

(1) must be reviewed by a committee consisting of a representative of affected local government, and recognized experts in Forestry, local forest industry and Business.*****

Our association believes that there needs to be a blue-ribbon panel to approve the FMA to get the best deal for the state. Since any FMA would deal with hardwoods it should open new markets for our members. We endorse such an industry coming in, but we are taking a risk that the DNR will watch out for us. DNR's track record so far has been awful. We will support the FMA if there is a blue-ribbon panel to review the final proposal.

Are we overreacting? When a large sale was proposed in the Mat-Su in the late 1980's, environmentalists from Anchorage formed The Susitna Valley Association to kill the large sale. They didn't stop there. They pushed DNR into putting severe restrictions on existing industry. When ever environmentalists get loud and vocal, DNR placates them to keep them quiet. DNR's Division of Lands willingly bent over backwards meeting every demand of the environmentalists resulting in "The Susitna Forest Guidelines". After these restrictions went into affect, timber sales dropped from 12 timber sales to 1 sale a year. The person who designed these restrictions is an environmentalist and has now been put in charge of the timber section in forestry. These guidelines are not based on scientific fact or reasonable environmental controls.

It's the way planning is now done. They call it "consensus" where they try to satisfy everyone. So the radicals know all they have to do is to take an extreme way out position, get loud and intimidating, and they will get most of what they want. Reasonable controls to protect fisheries are already in the Forest Practices Act. We feel that they should prove any further restrictions.

The environmentalists know if they yell and shout, DNR and Division of Forestry will cave in. These agencies will bend over backwards to keep them quiet to the detriment of the people who make their living from the forest. Another example is the Kenai, where trees killed by beetles four years ago have yet to be sold. There have

been endless plans, committees, and public hearings, while the trees rot. The trees are now almost worthless. Yet, private land owners have been salvaging their trees with no problem. Just two weeks ago, the auction to salvage some of these trees was postponed to have yet a another hearing because of environmentalists complaints. This is after four years of public process. DNR is becoming completely paralyzed by a small radical group. We are not afraid of sound scientific restrictions and we don't need most of the valley, only a small piece. But what we do need is protection in law, because DNR won't do it on it's own.

Environmentalists' restrictions are based on feelings, not facts. Our version of AS 41.17.230 requires that any incompatibility or the need for restriction on harvest such as buffers must be proven. You have to remember that only a small piece of the valley has been set aside for use, so we feel any restrictions must be justified.

As we said before, it doesn't matter if you have an FMA bill, because the restrictions that the environmentalists will put in the state forest plan will kill any FMA and the local industry.

Please help us get these final changes into SB310 so we can all get strongly behind it. We need this bill for our survival, but it must have our additions for us to support it. We know we can count on your help to make sure we protect the industry we already have.

Sincerely,

Don Parks
Parks Wood Service

Al Pagh
Four Star Lumber

WITHDRAWN

1/22/94

8-LS1558X.21 ✓

Luckhaup:

4/14/94

AMENDMENT

#X.21

OFFERED IN THE HOUSE
TO: CSSB 310(RES)

BY REPRESENTATIVE JAMES

Page 2, line 30, following "year,":

Insert "the commissioner shall solicit public comment concerning the extent and type of proposals under this section that the commissioner should solicit and the areas of the state the proposals should cover. The public comment period concerning the solicitation of proposals may not be less than 30 days nor more than 60 days. After soliciting and considering public comment under this subsection,"

Page 3, line 9, following "for":

Delete "a"

Insert "an unsolicited"

Page 3, line 10, following "that the":

Insert "unsolicited"

Page 4, line 17:

Delete "A"

Insert "An unsolicited"

Page 6, line 12, following "section":

Insert "concerning an unsolicited proposed agreement"

Page 6, line 13:

Delete "proposed agreements are public records and are"

Insert "unsolicited proposed agreement is a public record and is"

Page 6, line 15:

Delete ", proposed agreements"

Insert "concerning an unsolicited proposed agreement, the unsolicited proposed agreement"

Page 6, line 16:

Delete "are confidential and are"

Insert "is confidential and is"

Page 6, line 21, following "AS 09.25.120.":

Insert "Before the time the commissioner selects a tentatively successful proposed agreement under (e) of this section, proposed agreements solicited under (b) of this section are confidential and are not open to public inspection or disclosure under AS 09.25.120."

WITHDRAWN

4/22/94

8-LS1558X.23
Luckhaupt
4/14/94

AMENDMENT

X.23

OFFERED IN THE HOUSE
TO: CSSB 310(RES)

Page 4, following line 11:

Insert a new paragraph to read:

"(7) extent to which the proposed agreement provides for processing
in the state of the timber harvested to the extent permitted by law;"

Renumber the following paragraphs accordingly.

PASSED 4/22/94

~~2/11/94~~

8-LS1558X.24
Luckhaupt
4/14/94

AMENDMENT

X.24

OFFERED IN THE HOUSE
TO: CSSB 310(RES)

Page 2, line 31, following "land.":

Insert "The commissioner shall identify the forest land included in the solicitation of proposals. The land identified may include land covered by a cooperative resource management or development agreement under AS 38.05.027, subject to the approval of the owner of any land other than state land."

Page 6, line 10, following "commissioner.":

Insert "If the forest management agreement covers nonstate land under an agreement authorized under AS 38.05.027, the owner of the land must approve the agreement."

FAILED 4-22-94

8-LS1558X.25 ✓
Luckhaupt
4/15/94

A M E N D M E N T

OFFERED IN THE HOUSE
TO: CSSB 310(RES)

BY REPRESENTATIVE DAVIES

Page 8, following line 23:

Insert a new bill section to read:

** Sec. 7. AS 41.17.230(a) is amended to read:

(a) The commissioner shall prepare a management plan consistent with AS 38.04.005 and this chapter for each state forest and for each unit of a state forest to assist in meeting the requirements of this chapter. An operational level forest inventory shall be completed before a management plan for the state forest or the unit of a state forest is adopted. The management plan shall be adopted, implemented, and maintained within three years of the establishment of a state forest by the legislature. The management plan shall set a total amount of the harvestable timber of the forest or unit, not to exceed 75 percent, that may be the subject of forest management agreements under AS 38.05.122."

not passed

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSB 310(RES)

Page 2, line 29, following "yield.":

Insert "The commissioner may only enter into one forest management agreement that covers land within each state forest in a three-year period. The commissioner may only enter into one forest management agreement in a three-year period in each region of the state for which a regional land use plan has been adopted or is to be adopted for land outside of state forests. In this subsection, "state forest" has the meaning given in AS 41.17.950."

X 26

FAILED

4-22-94

passed
4-22-94

AMENDMENT

Revised
X.28

OFFERED IN THE HOUSE
TO: CSSB 310(RES)

Page 4, following line 11:

Insert a new paragraph to read:

"(7) extent to which the proposed agreement provides for processing in the state of the timber harvested, to the extent permitted by law;"

Re-number the following paragraphs accordingly.

Page 5, following line 19:

Insert a new subparagraph to read:

"(F) provisions requiring the processing of the timber in the state if that is the highest and best use of the timber as determined by the commissioner and if permitted by law;"

Re-letter the following subparagraphs accordingly.

Page 8, following line 23:

Insert a new bill section to read:

"* Sec. 7. SEVERABILITY. Under AS 01.10.030, if AS 38.05.122(d)(7) or (g)(2)(F), or the application of those provisions to any person or circumstance, is held invalid, the remainder of this Act and its application to other persons or circumstances shall not be affected."

AMENDMENT

X.29

OFFERED IN THE HOUSE
TO: CSSB 310(RES)

Page 2, line 30:

Delete "shall"

Insert "may"

Amended
4-22-94

RESCINDED

4/25/94

AMENDMENT

X.30 passed
4/25/94

OFFERED IN THE HOUSE
TO: CSSB 310(RES)

Page 8, line 6, following "industry:"

Delete "and"

Insert "[AND]"

Page 8, line 7, following "habitat":

Insert new material to read:

": and

(8) to the fullest extent practicable, harvested forest land shall be reforested, naturally or artificially, so as to result in a sustained yield of merchantable timber from that land: if artificial planting is required, silviculturally acceptable seedlings must first be available for planting at an economically fair price"

Page 8, following line 7:

Insert a new bill section to read:

"* Sec. 5. AS 41.17.060 is amended by adding a new subsection to read:

(d) With respect to private forest land only, to the fullest extent practicable, harvested forest land shall be reforested, naturally or artificially. If artificial planting is required, silviculturally acceptable seedlings must first be available for planting at an economically fair price."

Re-number the following bill sections accordingly.

Page 8, following line 23:

Insert a new bill section to read:

"* Sec. 8. AS 41.17.060(b)(4) is repealed."

(c) The commissioner is authorized to undertake cooperative forestry programs, extension services, and education programs, and to otherwise offer a full range of professional management services to the interested public. When the commissioner considers it beneficial, the commissioner may participate in federal assistance programs by accepting assistance in whatever form offered.

(d) The commissioner may develop regulations under this chapter as part of the state program for control of nonpoint source pollution under the Federal Water Pollution Control Act, as amended. However, the Department of Environmental Conservation is the lead agency for water quality and control of nonpoint source pollution under that Act, and the regulations are therefore subject to the approval of the commissioner of environmental conservation.

(e) In the administration of this chapter, the commissioner shall consult with and draw upon the expertise of interested organizations, enterprises, individuals, government agencies, educational institutions, and landowners. The commissioner may enter into cooperative agreements and contracts with them to carry out this chapter.

(f) The commissioner shall locate department personnel with forestry expertise throughout the state to facilitate public access to professional management services and other forest resources programs.

(g) The commissioner may take other actions necessary and proper for the administration of this chapter, including the adoption of regulations under AS 44.62 (Administrative Procedure Act) and AS 41.17.047. (§ 1 ch 108 SLA 1978; am § 5 ch 34 SLA 1990)

Revisor's notes. — Formerly AS 41.17.020(d)-(i), (k). Renumbered in 1983.

Effect of amendments. — The 1990 amendment, effective October 1, 1990, rewrote subsection (d).

Opinions of attorney general. — The adoption of forest practices regulations by

the Department of Natural Resources in 11 AAC 95 has completely preempted the coastal policy council's regulations. 6 AAC 80.100, in regulating timber harvest and processing in the coastal area. April 20, 1981 Op. Att'y Gen.

Re:
Amendment
X.30
for CSSB310(RES)

Sec. 41.17.060. Regulatory and administrative standards.

(a) All regulations, administrative actions, and other activities and duties undertaken under this chapter shall be in full accordance with the standards set out in this section.

(b) With respect to state, municipal, and private forest land, the following standards apply:

(1) to the maximum extent possible, all applicable data and information of applicable disciplines shall be updated and used in making decisions relative to the management of forest resources;

(2) environmentally sensitive areas shall be recognized in the development of regulations and best management practices that are designed to implement nonpoint source pollution control measures authorized under this chapter;

(3) administration of forest land shall consider marketing conditions and other economic constraints affecting the forest landowner, timber owner, or the operator;

(4) to the fullest extent practicable, harvested forest land shall be reforested, naturally or artificially, so as to result in a sustained yield of merchantable timber from that land; if artificial planting is required, silviculturally acceptable seedlings must first be available for planting at an economically fair price in the state; and

(5) significant adverse effects of soil erosion and mass wasting on water quality and fish habitat shall be prevented or minimized.

(c) With respect to state and municipal forest land only, the following standards also apply:

(1) forest land shall be administered for the multiple use of the renewable and nonrenewable resources and for the sustained yield of the renewable resources of the land in the manner that best provides for the present needs and preserves the future options of the people of the state;

(2) a system of allocating predominant uses or values to particular units within a contiguous area of land shall reflect in reasonable proportion the various resources and values present in that area;

(3) to the extent its capacity permits, forest land shall be administered so as to provide for the continuation of businesses, activities, and lifestyles that are dependent upon or derived from forest resources;

(4) timber harvesting is limited to areas where data and information demonstrate that natural or artificial reforestation techniques will result in the production of a sustained yield of merchantable timber from that area;

(5) there may not be significant impairment of the productivity of the land and water with respect to renewable resources;

(6) allowance shall be made for scenic quality in or adjacent to areas of substantial importance to the tourism and recreation industry; and

(7) allowance shall be made for important fish and wildlife habitat.

(§ 1 ch 108 SLA 1978; am §§ 6, 7 ch 34 SLA 1990)

Effect of amendments. — The 1990 amendment, effective May 12, 1990, in subsection (b), rewrote paragraph (2) and added paragraph (5); and in subsection (c), substituted "allowance shall be made" for

"where economically practicable, allowance may be made" in paragraph (6), added paragraph (7), and made stylistic changes throughout.

Re: Amendment No. 30

NOTES TO DECISIONS

Applied in Southeast Alaska Conservation Council, Inc. v. State, 665 P.2d 544 (Alaska 1983).

FAILED 4/22/94

X 33

8-LS1558X.33 ✓
Dierdorff
4/20/94

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES


TO: CSSB 310(RES)

Page 7, line 4, after "(l)":

Insert "The commissioner shall conduct biennial performance reviews of the agreement throughout the term of the agreement."

Page 7, line 9, after "operator.":

Insert "The operator shall pay the reasonable cost of all reviews conducted under this subsection."

A large, dense, and somewhat illegible handwritten scribble or signature in dark ink, located in the lower-left quadrant of the page.

X34

A M E N D M E N T

OFFERED IN THE HOUSE
TO: CSSB 310(RES)

BY REPRESENTATIVE DAVIES

Page 5, line 6, after "agreement":

Insert "and the final agreement"

*passed
4-22-94*

Page 5, line 12, after "timber":

Insert ", which may not be less than fair market value and shall be adjusted annually by the commissioner using a nationally recognized index that is suitable for measuring inflation or deflation in the cost of comparable stumpage"

may A-A

Page 5, line 19, after "agreement;":

Insert "the cost of construction and maintenance of necessary access roads and other necessary infrastructure shall be paid by the operator;"

temporary

Page 6, line 5:

Delete "may"

Insert "must"

Davis

*A-A
Failed
4-22-94*

*Failed
4-22-94*

*withdrew
1-22-94*

x35

8-LS1558\X.35
Dierdorff
4/20/94

A M E N D M E N T

OFFERED IN THE HOUSE
TO: CSSB 310(RES)

BY REPRESENTATIVE DAVIES

Page 6, after line 7:

Insert a new subsection to read:

"(h) The commissioner may not enter into a final agreement until the state receives from the federal government an exemption from federal law so that the state may require that timber harvested under the agreement be processed within the state."

Reletter the following subsections accordingly.

Page 6, line 10, after "subsection,":

Insert "and subject to (h) of this section,"

FAILED
4/22/94

X 360

8-LS1558X.36
Dierdorff
4/20/94

A M E N D M E N T

OFFERED IN THE HOUSE
TO: CSSB 310(RES)

BY REPRESENTATIVE DAVIES

Page 7, after line 12:

Insert a new subsection to read:

"(n) Notwithstanding any other provision of this section, the operator under an agreement that includes timber harvesting on land within the Tanana Valley drainage may not harvest timber on that land under the agreement if the harvest would result, during a calendar year, in timber harvest operations

(1) on more than 6,000 acres of land, public and private, in the Tanana Valley drainage; or

(2) that harvested more than 1,000 acres of white spruce in the Tanana Valley drainage."

Relater the following subsection accordingly.



AMENDMENT

X.38

OFFERED IN THE HOUSE
TO: CSSB 310(RES)

WITHDREW
4/25/94

~~310~~

Page 2, following line 21:

Insert new bill sections to read:

"* Sec. 3. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.117. SALVAGE SALES. (a) Notwithstanding the provisions of AS 38.05.113, the commissioner, after making a determination that the disposal will serve the best interests of the state, may offer for salvage sale timber stands that will lose substantial economic value, or will perpetuate insect or disease epidemics, if not salvaged within two years. Timber on land to be cleared for conversion to nonforest uses also may be offered as a salvage sale under this section.

(b) A salvage sale offered as a negotiated timber sale is exempt from AS 38.05.115.

* Sec. 4. AS 38.05.118(c) is amended to read:

(c) A sale of timber may not be negotiated by the commissioner under this section except on a finding that, within an area proximate to the business site that [WHICH] the manufacturer may economically serve, there exists, or will exist within two years.

- (1) a high level of local unemployment;
- (2) an underutilized timber manufacturing capacity; and
- (3) an underutilized allowable cut of state timber, or timber that will lose substantial economic value due to insects, disease, fire, or land use conversion."

Renumber the following bill sections accordingly.

A M E N D M E N T

X.39

OFFERED IN THE HOUSE

TO: CSSB 310(RES)

PASSED 4-25-94

Page 5, line 13:

Delete "regarding"

Insert "requiring"

Page 5, lines 15 - 16:

Delete "regarding compensation, if required by the department,"

Insert "requiring compensation"

Page 5, line 23:

Delete "regarding responsibilities"

Insert "requiring the proposer to be responsible"

Page 5, line 28:

Delete "for"

Insert "requiring"

Page 6, lines 5 - 7:

Delete all material and insert:

"(N) provisions requiring the proposer to reforest, stabilize, monitor, and meet other residual obligations upon deactivation or termination; these provisions may include bonding;"

8-LS1558X.40

Luckhaupt

4/25/94

AMENDMENT

X.40

OFFERED IN THE HOUSE

TO: CSSB 310(RES)

PASSED 4/25/94

Page 4, line 7:

Delete "proposed agreement"

Insert "proposal"

X 41

FAILED 4/25/94

AMENDMENT

TO CSSB 310(RES)

BY REPRESENTATIVE FINKELSTEIN

Page 4, Lines 10-13

Delete all material and insert new subsections (6) and (7) to read:

(6) economic benefits and liabilities from the proposed agreement to the region in which the land that is to be covered by the agreement is located;"

(7) economic benefits and liabilities to the State and to the state forest land under the proposed agreement;"

X 42

FAILED 4-25-94

AMENDMENT

TO CSSB 310 (RES)

BY REPRESENTATIVE FINKELSTEIN

Page 3, Line 10-11

Delete: "unless the evaluation under (d) indicates it is unlikely that the proposed agreement will be selected as a tentatively successful proposed agreement"

Page 3, Line 12

Delete: "30"

Insert: "60"

Delete: "60"

Insert: "120"

Page 5, Line 1

After "government agencies" insert: "and hold public hearings "

Page 5, Line 5

After "section." insert: "and determining that the tentatively proposed agreement is in the best interests of the State,"

Page 6, Line 8

Delete: "The"

Insert: "After soliciting public comment, holding public hearings, and determining that the proposed final agreement is in the best interests of the State, the"

Page 7, Line 5

After "shall" insert: "solicit public comment, hold public hearings,"

X 43

FAILED 4/25/94

8-LS1558X.16

Luckhaupt

4/13/94

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 310(RES)

Page 5, line 2, following "agreement.":

Insert "If a tentatively successful proposed agreement includes land within a municipality, the commissioner shall submit the tentatively successful proposed agreement to the municipality to determine if the agreement is consistent with municipal land use plans. The municipality shall make a consistency determination within 60 days of receipt of the tentatively successful proposed agreement and, if the agreement is not consistent with municipal land use plans, specifically set forth the provisions of the agreement that are not consistent."

Page 5, following line 8:

Insert a new paragraph to read:

"(2) must be consistent to the maximum extent practicable with municipal land use plans if the agreement includes land within a municipality;"

Renumber the following paragraph accordingly.

X 44

PASSED AS AMENDED

DRAFTER TO PLACE WHEREVER
IT BELONGS

BY FINKELSTEIN

AMENDMENT

CSSB 310 (RES)

Page ~~4~~. Line ~~31~~

After ~~"agreement."~~ insert:

~~"The commissioner shall conduct a competitive bidding procedure in order to determine the highest qualified bidder for the proposed agreement; in addition to the bid price,~~ The commissioner shall consider the value of the area for the long-term production of timber, the extent that local hire will be increased, the intent of the bidder to process a value added product within the State of Alaska, and the experience of the bidder in the forest products industry.

X 45
PASSED AS AMENDED

AMENDMENT

OFFERED IN THE HOUSE
TO: CSSB 310(RES)

BY REPRESENTATIVE FINKELSTEIN

Page 7, line 4, after "(l)":

Insert "The commissioner shall strictly enforce the provisions of the final agreement.
~~The commissioner shall perform an annual review of the operator's performance under the agreement."~~

X 46

FAILED 4-25-96

8-LS1558X.18 ✓

Luckhaupt

4/13/94

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 310(RES)

Page 5, line 13:

~~Delete "regarding compensation from the proposer"~~

Insert "requiring the proposer to compensate the state for full costs incurred"

Page 5, lines 15 - 16:

Delete all material and insert:

"(D) provisions requiring the proposer to pay the state's cost of administering, monitoring, and enforcing the terms and conditions of the agreement and other requirements of state law;"

Page 5, line 17:

~~Delete "regarding responsibilities for"~~

Insert "making the proposer responsible for all costs of"

Page 5, line 22, following "agreement;":

Insert "provisions under this paragraph must provide that the proposer shall pay fair market value for all material purchased from the state;"

X 47

FAILED 4-25-94

A M E N D M E N T

OFFERED IN THE HOUSE
TO: CSSB 310(RES)

BY REPRESENTATIVE FINKELSTEIN

Page 1, line 4, through page 2, line 21:

Delete all material.

Page 2, line ...

Delete "* Sec. 3."

Insert "* Section 1."

Page 7, line 18, through page 8, line 23:

Delete all material.

A M E N D M E N T

[Handwritten signature] 48

OFFERED IN THE HOUSE
TO: CSSB 310(RES)

FAILED 4-25-94

Page 8, lines 8 - 15:
Delete all material.

Renumber the following bill section accordingly.

100

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 310(RES)

Page 4, following line 13:

Insert "(8) timber inventory;"

Reumber the following text accordingly.

Proposed
4-22-94

Alaska State Legislature

STEVE FRANK

119 N. Cushman, Rm. 213
Fairbanks, Alaska 99701
(907) 452-3421



Senate

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709
Capitol Rm. 417

Sponsor Statement - Senate Bill No. 310 (RES)

Management and Sale of State Timber

The legislation would authorize the Department of Natural Resources to utilize Forest Management Agreements (FMA's) on state land. Also, some of the duplicative planning requirements currently in law would be modified, while maintaining a public process.

After listening to public and agency comment in Senate Resources and doing further analysis, we revised the legislation to focus on the central purpose of the legislation, clarify certain aspects and incorporate specific suggestions.

We strengthened the public process, by adding additional comment periods, public notice and allowing documents to be public. Further, we clarified the environmental protection provisions that will apply to FMA's, such as sustained yield, biennial plan review and capping exempt sales at 1 MM board feet. Finally, we removed provisions of the bill not essential to our purpose that included, forest land closures, state notification, etc. A detailed listing of those changes is attached.

Forest Management Agreements have become an desirable tool in accomplishing responsible timber development because the government owner can spell out in a contract the specific terms and conditions of timber harvest, and the cost of that development is born by the operator.

Further, because FMA's are negotiated, they can provide a long term stable supply of timber to the operator which is a critical element in a companies' decision to invest because value added timber development is usually capital intensive and those investments require a long time to pay back.

Finally, FMA's can be negotiated to provide for local value added manufacturing, something that the Department cannot do today, because current law does not allow for negotiated agreements on timber sales.

I believe the general public wants new long term jobs and I believe that they support responsible development of our timber resource.

Thank you for your consideration.

DEPARTMENT OF NATURAL RESOURCES

P. O. BOX 107005
ANCHORAGE, AK 99510-7005
PHONE: (907) 762-2501

DIVISION OF FORESTRY

March 31, 1994

The Honorable Mike Miller
Chairman, Senate Resources Committee
Alaska Senate
Room 403, State Capitol
Juneau, Alaska 99801

Dear Senator Miller:

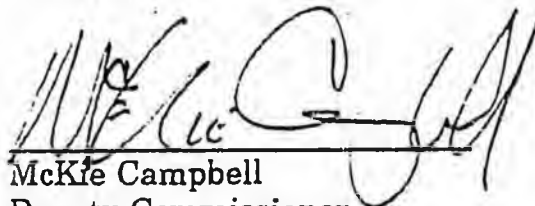
Representatives from the Governor's Office, the Department of Fish and Game, the Department of Commerce and Economic Development and the Department of Natural Resources have thoroughly reviewed Senate Bill 310 and the committee substitute for that bill. While there were a number of acute concerns identified when reviewing the original bill, the committee substitute answers those concerns and, in some instances, does a better job of answering those concerns than did the draft language offered to you after the review of the original bill.

We want to thank the Senate Resources Committee for its hearings on this resource issue. The process which resulted in the committee substitute was a useful one and the resulting committee substitute meets the objectives and concerns of the departments represented here.

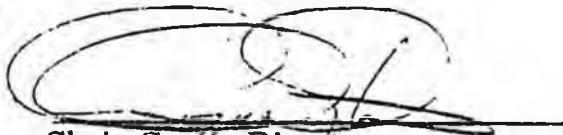
Forest management agreements require adequate public involvement as a part of the process. Good public process involves the public at the very beginning and gives assurance that the public will affect the outcomes. Our belief is that the committee substitute for Senate Bill 310 does that. The two distinct public comment periods, together comprising not less than 120 days, are necessary for a process that could result in a contract that might last as long as 20 years. Separate from requirements for forest management agreements, we believe that the cap on the amount of timber that can be offered without having been in the 5 year harvest schedule, as provided in section 2 of the committee substitute, is important.

The Alaska Forest Resources and Practices Act and other state law apply to any state timber sale, with the tighter restrictions for state land than for other types of ownerships, including a timber sale using a forest management agreement. However, enforcement requires maintenance of adequate funding. Finally, using the AS38.04.910 definition of sustained yield for forest management agreements is proper.

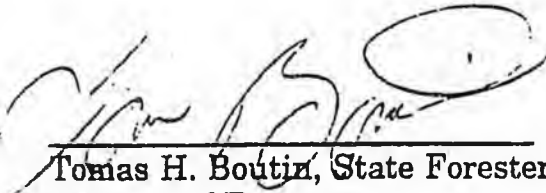
Sincerely,



McKie Campbell
Deputy Commissioner
Department of Fish and Game



Chris Gates, Director
Division of Economic Development
Department of Commerce and
Economic Development



Thomas H. Boutin, State Forester
Division of Forestry
Department of Natural Resources

2. Because of the large scale and rapidity at which timber will be cut, and the fact that the FMA structure will make it more difficult to get meaningful fish and wildlife protection built into the sale agreements, more biologists will be required to review operating plans, negotiate ground rules, and to monitor operations in the field. Based on the Canadian experience, at least one staff biologist should be assigned full-time to monitor each FMA exceeding 500,000 acres (780 square miles).
3. The number of U.S. Forest Service (USFS) biologists working on a long-term, large-scale contract, such as the L&P Tongass contract, would probably be a good indicator of the amount of biological work required for a similar state FMA. As many as 23 USFS biologists may work on layout and monitoring operations on long-term timber contracts in the Sitka Ranger District alone.
4. Experience with Canadian FMAs indicates that one of the major problems is that government does not monitor FMA operations closely enough and is so slow in detecting violations that they often become large problems. Once problems have been identified, they have been slow in enforcing the terms of the agreement or environmental regulations. The State of Alaska needs to avoid this problem by having staff biologists monitoring operations in the field.
5. Based on information that at least two and possibly more major timber companies have been interested in the feasibility of constructing large mills in southcentral and interior Alaska to utilize cheap Alaskan timber it is assumed that they would move quickly to submit FMA proposals. Given the current interest in using state timber to stimulate local businesses and support by the Alaska Division of Forestry, it is estimated that there could be as many as three agreements in place by 1998.
6. A single oriented-strand-board (OSB) manufacturing plant requires up to 20 million board feet (bf) of timber per year to operate. Fibreform Wood Products, Inc. 1992 corporate proposal requested up to 115 million bf annually of mixed species (equal to the total estimated volume from the Tanana Valley State Forest). [Source: Dave Wallingford (DOF) memo to Bob Dick dated July 7, 1992.]
7. Merchantable quantities of mixed species timber volumes in interior Alaska's boreal forest range between 1,200 cubic feet (4,800 bf) to 2,500 cubic feet (10,000 bf) per acre. Timber volumes in the Dawson Creek, B.C. area average 1,200 cubic feet (4,800 bf) per acre. Maximum volumes in southcentral Alaska are 3,000 cubic feet (12,000 bf); average volumes range between 2,000 cubic feet (8,000 bf) to 2,500 cubic feet (10,000 bf) per acre. [Source: Cal Kerr (American North) letter to Dave Wallingford dated July 27, 1992].
8. To support a single oriented-strand-board manufacturing plant, up to 4,167 acres (or 6.5 square miles) of interior Alaska's boreal forest would have to be harvested annually. Using only the highest yield forests, up to 2,000 acres (3.1 square miles) would have to be harvested annually.