

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8735 HOUSE RESOURCES

MS. BRALEY said she was not a fish biologist, but she said she would assume that would be where you would want to know what the TSS was. She said DEC is doing a lot with water quality standards at this time and referred to mixing zone language up for public review.

Number 512

CHAIRMAN ROKEBERG referred to a document sent from the Governor's office, contained in the committee packet, which is an update of what DEC is doing. He encouraged any committee members to submit any written questions to Ms. Braley.

Number 559

REPRESENTATIVE OGAN made a motion to set forth Amendment 1 on the table for discussion.

REPRESENTATIVE FINKELSTEIN asked if the committee could wait on adopting the Amendment until the committee acted on HB 342.

CHAIRMAN ROKEBERG said a CSHB 342 would be brought forth at a later meeting. He said Amendment 1 requires the commissioner to adjust the Alaskan regulations to meet any changes in EPA regulations whether they increase or decrease in severity.

ADJOURNMENT

There being no further business to come before the House Oil & Gas Special Committee, Chairman Rokeberg adjourned the meeting at 11:10 a.m.

HB

344

SECTIONAL ANALYSIS OF CS HB344 FOR HOUSE RESOURCES COMMITTEE
February 21, 1996

My name is Tom Boutin. I am employed as State Forester, in Department of Natural Resources Division of Forestry. With me is Karl Ohls, Resources Specialist with the Department of Commerce. I would also like to introduce Kathleen Morse, who has just been hired as Forestry Economist with the Department of Commerce. Thank you for inviting us here and thank you for the hard work you have done on HB344; during the interim and now with CS that we have before us.

Thank you also for allowing the Board of Forestry to add to the public process on HB344. Last Fall, the Board of Forestry held a hearing on the bill and then worked what they heard into recommendations. The CS adopted virtually all of those recommendations.

We're very pleased with the processes of which we have been a small part on both HB212 and HB344. The work of the House Resources Committee and HB212 sponsor Representative Jeanette James allowed virtually all stakeholders and interests to reach an understanding. With HB344, the Board of Forestry was able to bring its role as a consensus building body of interest groups to the process. The Board of Forestry looks for sound science and good process.

The Governor introduced this legislation in response to concerns of many groups, including members of the timber industry that we better utilize the timber that is cut in Alaska. HB344 is our response to what we think we heard from many constituents who want better utilization of state timber.

What you see in HB344 is what we heard from people like Steve Seley, of Ketchikan. The Governor's office told me that Steve would be here to talk with you today but we just received the sad news that Steve's Dad just passed away. I understand that some other small SE operators would be patched in to this teleconference except for the busy schedule you have before you today.

In order to not take any more of your time than absolutely necessary, I will now move to the bill. I know this committee has looked at this bill before but there was a recommendation that I run through the bill since there is a CS.

436 Section 1. The purpose of HB344 is to bring some certainty of wood supply to processors who bring high value in the manufacture of state timber. The administration has talked with many small operators and they agree on at least one point: they can find a market for any high-value product they can produce but they cannot buy the capital equipment those products require unless there is a reliable supply of timber. While HB344 is not a mandate to eliminate log exports or change the forest products industry, it's still true that round log export prices prohibit small operators in SE from putting capital equipment in place.

HB344 is a tool and an incentive for high value-added processing. While Governor Knowles would like small independent commercial wood users to have an advantage, this bill is directed toward maximizing the number of jobs per acre harvested and does not favor any sector of the forest products industry.

Section 2. Sec 2 provides that negotiated timber sales of up to 10 million board feet and 10 years in duration can be negotiated for use in the local manufacture of high value-added wood products. HB 344 originally provided for sales of no more than 5 million board feet per year. We did not intend that would be enough to supply all the wood needs of some types of value-added processing. However, a firm that has a certainty of supply for a substantial part of its needs can then compete on the open market for timber sold by private and public timber owners. Very few wood users receive all of their supply from one source.

While the CS now allows sales of up to 10 million board feet per year, we would feel more

comfortable with 5 to 7 million board feet as a maximum. Most timber sale contracts will be far less. A higher amount would alarm the public without gaining any utility whatsoever. The Board of Forestry did not recommend any change to the contract volume.

The Board heard concerns about the increase in timber offered that might result from this bill. Section 2 adopted the Board's recommendation to provide for limiting the number of contracts per region by regulation. There has been some discussion about different possible interpretations of Ln 16, on Page 2. The way I understand it, the commissioner could set a maximum number of contracts per region and that maximum must be two or more. That is acceptable to us if that is the correct interpretation.

Another area that the Board of Forestry investigated is the portion of state timber that is of sufficient quality to produce high value-added products. The CS adopts the Board of Forestry recommendation to allow consideration of other value-added wood products.

Section 2, Paragraph (e), required the commissioner to consider not only the economic benefits from the manufacture of high and other value-added wood products, but also the likelihood of the venture being successful, job creation and stability, fish and wildlife habitat and multiple use, and the stumpage return to the state.

The CS adds public process in providing for an updated Forest Land Use Plan after a 5-year performance review. The requirements of AS 38.05.112 (Forest Land Use Plans) and AS 38.05.113 (5 year schedules of timber sales) apply to HB344 because the Governor wants good public process. The public has told us that at least during the past 2 years, forest land use plans and 5 year schedules have provided good public process.

The Board of Forestry looked at the list of high value-added products and recommended adding to the list. The CS has the amended list to now include veneer, plywood, finger-jointed lumber and house-logs, exactly as the Board of Forestry recommended.

The Board also wanted to encourage the processing of other value-added products where the resource just cannot make high value-added products. The CS includes the list of other value-added wood products in Section 2, Paragraph (k)(2). Other value-added wood products means pulp, chips, waferboard, fiberboard, green lumber, cants, slabs or planks intended for remanufacture. Similar products can be specified by regulation.

Section 3. As noted earlier, the Board of Forestry heard about the public concern that this bill could lead to large increases in the amount of timber offered. The CS limits the number of these timber sales to no more than 2 per region in 1996, 1997 and 1998.

HB344 as originally drafted provided for an Alaska Forest Products Research and Marketing Program. We had not heard of any concerns over that proposal but the CS eliminates it. Karl Ohls will talk about that in a moment.

HB344 does not add timber sales. Timber sales on state land are unlikely to approach the ceiling of sustained yield with multiple use because of budget realities.

HB344 is simply a method of sale option. It does not change public process for timber sales. It does not transfer any forest management responsibilities to the timber purchaser. It does not close the door on round log exports.

We thank you for this hearing today and the interest the House Resources Committee has shown in state timber. We would be glad to answer any questions you may have.

Committee Substitute for House Bill 344

Outline of Changes
Prepared by Representative Bill Williams

An Act authorizing the commissioner of natural resources to negotiate and enter into timber sale contracts that provide for local manufacture of high value-added wood products.

Page 1, Section 1, lines 9-10

Added: "an incentive by reducing the stumpage price of timber offered through negotiated timber sale contracts."

Reason: The Board of Forestry wanted to be certain the only incentive offered is a reduction in the stumpage price for timber.

Page 1, Section 1, lines 12-13

Added: "by providing a steady reliable supply of timber at a reliable rate over a period of time to a purchaser of the timber"

Reason: The Board of Forestry recognized the single most important requirement of a value-added wood processing industry is a long-term reliable supply of timber.

Page 2, Section 1, line 1

Added: "and the forest resources."

Reason: The Board of Forestry wanted to ensure high-grading of state owned timber did not occur and that the forest resources are not significantly adversely impacted by value-added timber sale contracts.

Page 2, Section 2, line 8

Changed from [5,000,000] board feet to 10,000,000 board feet

Reason: Five million board feet was not considered enough timber to people in the Fairbanks areas in particular to encourage new industry to come to Fairbanks.

Page 2, Section 2, lines 16-18

Added: "The commissioner shall by regulation set a maximum number of contracts, but not less than two, per region of the state that may be negotiated under this section."

Reason: The Board of Forestry recommended two sales per region during the transition years; however, we wanted to ensure not less than two per year in the years following the transition.

Page 2, Section 2, line 22

Added: "maximum extent commercially practicable"

Reason: The Board of Forestry understood the intent of the bill would not prohibit the export of some portion of timber to make the sale commercially practicable.

Page 2, Section 2, lines 24-28

Added: "The commissioner shall determine the maximum amount of the timber being sold that is commercially practicable to use for those purposes and make the use of that percentage of the timber for those purposes a term of the contract. In evaluating proposals, the commissioner shall take into account the proposed manufacture of other value-added wood products to be produced under a negotiated contract."

Reason: The Board of Forestry understood the intent of the bill would not prohibit the export of some portion of timber to make the sale commercially practicable.

Page 4, Section 2, lines 11-15

Added: "(2) contract conflicts with the current forest land use plan, the commissioner may terminate the contract if the conflict cannot be resolved, provided the commissioner may not terminate a contract under this paragraph for lack of timber until the commissioner has made a good faith effort to find suitable replacement timber."

Reason: The Board of Forestry discussed the need for periodic public review of a long-term resource development on public land and the counter posing need for a long-term, reliable supply of timber which is necessary for investment in value-added facilities.

Page 4, Section 2, lines 6-7

Added: "and to determine if an updated forest land use plan under AS 38.05.112 is needed."

Reason: The Board of Forestry discussed the need for periodic public review of a long-term resource development on public land and the counter posing need for a long-term, reliable supply of timber which is necessary for investment in value-added facilities.

Page 4, Section, lines 24-25

Added: "veneer, plywood, finger-jointed lumber, house logs"

Reason: The Board of Forestry added four products to the list of high value-added products after hearing that those products have some potential to provide jobs for Alaskans.

Pages 4-5, section 3, lines 31; 1-3

Added: "Notwithstanding AS 38.05.123(a), added by sec. 2 of this Act, the commissioner may negotiate no more than two sales of timber for local manufacture of high value-added timber products under AS 38.05.123 in each region of the state in calendar years 1996, 1997, and 1998."

Reason: The Board of Forestry heard public concern about the volume of timber that might be developed under the bill. The board felt that the best way to answer this concern is to limit the number of sales in any part of the state.

Deleted the original Section 3 which created the Alaska Forest Products Research and Marketing Program.

Reason: Fiscal.

**Testimony of Karl Ohls
Lead Resources Specialist – Division of Trade and Development
Department of Commerce and Economic Development**

**House Resources Committee
Alaska State Legislature**

Wednesday, February 14, 1996

CS For House Bill No. 344(RES)

"An Act authorizing the commissioner of natural resources to negotiate and enter into timber sale contracts that provide for local manufacture of high value-added wood products."

Mr. Chairman, members of the committee, thank you for the opportunity to testify on the committee substitute for House Bill No. 344. My name is Karl Ohls. I am the lead resources specialist for the Division of Trade and Development in the Department of Commerce and Economic Development.

The CS deletes the original Section 3, which created the Alaska Forest Products Research and Marketing Program within the Department of Commerce. I understand the committee made this change because of concerns about creating a new program and adding to the fiscal cost of state government.

The Commerce Department recognizes and respects the committee's legitimate concerns about adding more functions to state government. The department had these same concerns in mind when it decided to address HB 344 by setting new priorities within its existing budget. We currently have a budgeted position for a forest specialist in the Division of Trade and Development. We are incorporating the job duties described in the original HB 344 into the job description for the forest specialist. No additional expense would be involved.

Attached to my testimony is a copy of the department's fiscal note for the Senate companion measure to this bill, SB 180. It is a zero fiscal note.

At this time, I would like to introduce to the committee Ms. Kathleen Morse, who will fill Commerce's existing position. Ms. Morse currently works as a regional economist for the U.S. Forest Service. We are working on the final details of an Intergovernmental Personnel Act agreement with the Forest Service that would allow Ms. Morse to work for the state, starting in mid-March, with the official title of forestry economist.

She will have two main assignments. The first is working on a strategy for maintaining a viable timber supply for the forest products industry. The second is developing a strategy for the expansion of value-added wood products

manufacturing in Alaska. HB 344 will support and contribute to her efforts.

In conclusion, the Commerce Department's view is that Section 3, as originally drafted, should reassure Alaska's forest products industry that the administration is committed to the development of value-added wood products in Alaska. The administration is willing to reinforce this commitment with language in statute.

If the committee, however, leaves the CS as is, the department still plans to commit a significant amount of Ms. Morse's time to the duties described in the original HB 344. We believe these duties are critical for the success of our efforts to promote the value-added wood products industry.

Again, thank you for the opportunity to speak to the committee today. I would be pleased to answer any questions.

FISCAL NOTE

BILL NO. SB 180

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: February 19, 1996 Department: Commerce and Economic Development
 Title: "An Act . . . establishing an Alaska Forest Products BRU: _____
Research and Marketing Program." Component: _____
 Sponsor: Rules, by request of the Governor
 Requestor: Senate Resources Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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	
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CHANGE IN REVENUES	
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FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
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 (FY 96) cost: \$ 0.0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The budget for the Division of Trade and Development already includes a position for a Forest Products Specialist. This existing position would be used to perform the duties assigned for the Alaska Forest Products Research and Marketing Program.

Prepared by: Karl Ohls Phone: 465-5467
 Division: Trade and Development Date: Feb. 16, 1996
 Approved by Commissioner: [Signature] Date: 2-19-96
 Agency: Commerce and Economic Development

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2/19/96

CS FOR HOUSE BILL NO. 344(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing the commissioner of natural resources to negotiate and enter
2 into timber sale contracts that provide for local manufacture of high value-added
3 wood products."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that it is
6 in the best interests of the people and economy of Alaska to encourage the establishment and
7 sustainable operation of local timber processing facilities in Alaska to produce high value-
8 added wood products and other value-added wood products from timber cut on state land.
9 One means of encouraging such facilities is through the use of an incentive ~~by reducing the~~
10 ~~stumpage price of timber offered through negotiated timber sale contracts.~~ The value-added
11 use of timber harvested in Alaska is intended to foster a stable, small scale, locally run,
12 finished wood products industry by providing a steady reliable supply of timber at a reliable
13 rate over a period of time to a purchaser of the timber that will provide maximum
14 opportunities for jobs in Alaska without significantly adversely affecting fish and wildlife

1 habitat ~~and the forest resources.~~

2 * Sec. 2. AS 38.05 is amended by adding a new section to article 4 to read:

3 Sec. 38.05.123. NEGOTIATED TIMBER SALES FOR LOCAL
4 MANUFACTURE OF WOOD PRODUCTS. (a) Notwithstanding the provisions of
5 AS 38.05.115 and 38.05.120, and upon a finding that the sale is in the best interest of
6 the state, the commissioner may negotiate a sale of timber for use in the local
7 manufacture of high value-added wood products. A timber sale contract entered into
8 under this section may provide for a harvest of up to 10,000,000 board feet of timber
9 each year, consistent with sustained yield principles, and may be for a term of up to
10 10 years. Initial stumpage rates for a contract under this section shall be determined
11 by negotiation but may not be less than the base price for the area as established under
12 regulations adopted by the commissioner. A contract under this section shall provide
13 that stumpage rates shall be redetermined by negotiation at least once every three years
14 during the term of the contract, to reflect changes in market conditions; the
15 redetermined rates may not be less than the base price for the area as established under
16 regulations adopted by the commissioner. The commissioner shall by regulation set
17 a maximum number of contracts, but not less than two, per region of state that may
18 be negotiated under this section.

19 (b) Notice of intent to negotiate a contract under this section shall be given in
20 accordance with AS 38.05.945.

21 (c) The commissioner may negotiate a sale of timber under this section if the
22 prospective purchaser agrees to use to the ~~maximum extent commercially practicable~~
23 the timber subject to the sale for the local manufacture of high value-added wood
24 products. The commissioner shall determine the maximum amount of the timber being
25 sold that is commercially practicable to use for those purposes and make the use of
26 that percentage of the timber for those purposes a term of the contract. In evaluating
27 proposals, the commissioner shall take into account the proposed manufacture of other
28 value-added wood products to be produced under a negotiated contract.

29 (d) Before a sale may be negotiated under this section,

30 (1) the area of the sale must be designated for forestry purposes by a
31 valid, existing area plan adopted under AS 38.04; and

1 (2) the requirements of AS 38.05.112 and 38.05.113 must be met.

2 (e) In making the best interest finding required by AS 38.05.035(e) and this
3 section, the commissioner shall consider, in addition to other factors,

4 (1) the direct economic benefit from the local manufacture of high
5 value-added wood products as a result of the sale;

6 (2) the direct economic benefit from other local processing of the
7 timber to be undertaken by the purchaser as a result of the sale, including the
8 manufacture of other value-added wood products in addition to high value-added wood
9 products;

10 (3) the likelihood of commercial success of the locally manufactured
11 high value-added wood products and other value-added wood products;

12 (4) the extent to which the sale is likely to result in the creation and
13 maintenance of a stable local job base;

14 (5) the existence of adequate protection measures to ensure the
15 sustainability of fish and wildlife habitat and populations and continuation of other
16 uses of the area subject to the negotiated sale;

17 (6) the stumpage return to the state; and

18 (7) any other reasonably foreseeable benefits to the state and local
19 economies from the sale.

20 (f) As part of the timber sale negotiations authorized by this section, the
21 commissioner may require a prospective purchaser negotiating a timber sale contract
22 to submit financial and technical data that demonstrates that the requirements of this
23 section have been or will be met. Upon the prospective purchaser's request, the
24 commissioner shall keep data provided by the purchaser confidential in accordance
25 with the requirements of AS 38.05.035(a)(9).

26 (g) If the commissioner determines that additional analysis is necessary in
27 order to complete the best interest finding for a sale under this section, the
28 commissioner may require the prospective purchaser to retain and pay for the services
29 of a contractor to assist the commissioner in evaluating the proposed negotiated sale
30 and financial and technical data relating to the proposed sale. The contractor shall be
31 selected by the prospective purchaser from a list of consultants in forestry and timber

1 economics provided by the commissioner. If the commissioner requires a prospective
2 purchaser to retain the services of a contractor under this subsection, the commissioner
3 shall determine the scope of the work to be performed by the contractor.

4 (h) Under this section, a performance review shall be completed not more than
5 five years after a timber sale contract is entered into by the department to ensure that
6 the purchaser is performing in accordance with the terms of the contract, and to
7 determine if an updated forest land use plan under AS 38.05.112 is needed. If the
8 commissioner determines that the

9 (1) purchaser is not performing in accordance with the contract, the
10 commissioner may terminate the contract;

11 (2) contract conflicts with the current forest land use plan, the
12 commissioner may terminate the contract if the conflict cannot be resolved, provided
13 that the commissioner may not terminate a contract under this paragraph for lack of
14 timber until the commissioner has made a good faith effort to find suitable replacement
15 timber.

16 (i) A timber sale negotiated under this section does not affect other timber
17 harvest programs under AS 38.05.110 - 38.05.120.

18 (j) A purchaser may not be a party to more than one contract under this
19 section at any one time.

20 (k) In this section,

21 (1) "high value-added wood product" means kiln-dried or commercially
22 dried lumber, interior finish paneling, and trim, flooring, doors, and windows, cabinet
23 stock, furniture, musical instruments or parts of instruments, toys, tools and
24 implements, ready-to-assemble building kits, veneer, plywood, finger-jointed lumber,
25 house logs, and other similar finished wood products specified by the commissioner
26 by regulation and, for deciduous aspen, poplar, and high defect birch, includes
27 engineered wood products and paneled wood products;

28 (2) "other value-added wood product" means pulp, chips, waferboard,
29 chipboard, fiberboard, green lumber, cants, slabs, or planks intended for remanufacture,
30 and other similar wood products specified by the commissioner by regulation.

31 * Sec. 3. Notwithstanding AS 38.05.123(a), added by sec. 2 of this Act, the commissioner

1 may negotiate no more than two sales of timber for local manufacture of high value-added
2 timber products under AS 38.05.123 in each region of the state in calendar years 1996, 1997,
3 and 1998.

HOUSE BILL NO. 344

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 5/10/95

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing the commissioner of the Department of Natural Resources
2 to negotiate and enter into timber sale contracts that provide for local
3 manufacture of high value-added wood products; and establishing an Alaska Forest
4 Products Research and Marketing Program within the Department of Commerce
5 and Economic Development."

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

7 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that it is
8 in the best interests of the people and economy of Alaska to encourage the establishment and
9 sustainable operation of local timber processing facilities in Alaska to produce high value-
10 added wood products and other value-added wood products from timber cut on state lands.
11 One means of encouraging such facilities is through the use of incentives offered through
12 negotiated timber sale contracts. The value-added use of timber harvested in Alaska is
13 intended to foster a stable, small-scale, locally run, finished wood products industry that will

1 provide maximum opportunities for Alaskan jobs without significantly adversely impacting
2 fish and wildlife habitat.

3 * Sec. 2. AS 38.05 is amended by adding a new section to article 4 to read:

4 Sec. 38.05.123. NEGOTIATED TIMBER SALES FOR LOCAL
5 MANUFACTURE OF WOOD PRODUCTS. (a) Notwithstanding the provisions of
6 AS 38.05.115 and 38.05.120, and upon a finding that the sale is in the best interest of
7 the state, the commissioner may negotiate a sale of timber for use in the local
8 manufacture of high value-added wood products. A timber sale contract entered into
9 under this section may provide for a harvest of up to five million board feet of timber
10 each year, consistent with sustained yield principles, and may be for a term of up to
11 10 years. Initial stumpage rates for a contract under this section shall be determined
12 by negotiation but may not be less than the base price for the area as established under
13 regulations adopted by the commissioner. A contract under this section shall provide
14 that stumpage rates shall be redetermined by negotiation at least once every three years
15 during the term of the contract, to reflect changes in market conditions; the
16 redetermined rates may not be less than the base price for the area as established under
17 regulations adopted by the commissioner. *Timber sale*

18 (b) Notice of intent to negotiate a contract under this section shall be given in
19 accordance with AS 38.05.945.

20 (c) The commissioner may negotiate a sale of timber under this section if the
21 prospective purchaser agrees to use at least 50 percent of the timber subject to the sale
22 for the local manufacture of high value-added wood products. *25 percent*

23 (d) Before a sale may be negotiated under this section,

24 (1) the area of the sale must be designated for forestry purposes by a
25 valid, existing area plan adopted under AS 38.04; and

26 (2) the requirements of AS 38.05.112 and 38.05.113 must be met.

27 (e) In making the best interest finding required by AS 38.05.035(e) and this
28 section, the commissioner shall consider, in addition to other factors,

29 (1) the direct economic benefit from the local manufacture of high
30 value-added wood products as a result of the sale;

31 (2) the direct economic benefit from other local processing of the

1 timber to be undertaken by the purchaser as a result of the sale, including the
2 manufacture of value-added wood products other than high value-added wood
3 products;

4 (3) the likelihood of commercial success of the locally manufactured
5 high value-added wood products and other value-added wood products;

6 (4) the extent to which the sale is likely to result in the creation and
7 maintenance of a stable local job base;

8 (5) the existence of adequate protection measures to ensure the
9 sustainability of fish and wildlife habitat and populations and continuation of other
10 uses of the area subject to the negotiated sale;

11 (6) the stumpage return to the state; and

12 (7) any other reasonably foreseeable benefits to the state and local
13 economies from the sale.

14 (f) As part of the timber sale negotiations authorized by this section, the
15 commissioner may require a prospective purchaser negotiating a timber sale contract
16 to submit financial and technical data that demonstrates that the requirements of this
17 section have been or will be met. Upon the prospective purchaser's request, the
18 commissioner shall keep data provided by the purchaser confidential in accordance
19 with the requirements of AS 38.05.035(a)(9).

20 (g) If the commissioner determines that additional analysis is necessary in
21 order to complete the best interest finding for a sale under this section, the
22 commissioner may require the prospective purchaser to retain and pay for the services
23 of a contractor to assist the commissioner in evaluating the proposed negotiated sale
24 and financial and technical data relating to the proposed sale. The contractor shall be
25 selected by the prospective purchaser from a list of consultants in forestry and timber
26 economics provided by the commissioner. If the commissioner requires a prospective
27 purchaser to retain the services of a contractor under this subsection, the commissioner
28 shall determine the scope of the work to be performed by the contractor.

29 (h) No more than five years after a timber sale contract is entered into under
30 this section, a performance review shall be completed by the department to ensure that
31 the purchaser is performing in accordance with the terms of the contract. If the

1 commissioner determines that the purchaser is not performing in accordance with the
2 contract, the commissioner may terminate the contract.

3 (i) A timber sale negotiated under this section does not affect other timber
4 harvest programs under AS 38.05.110 - 38.05.120.

5 (j) A purchaser may not be a party to more than one contract under this
6 section at any one time.

7 (k) In this section, "high value-added wood product" means kiln-dried or
8 commercially dried lumber, interior finish paneling and trim, flooring, doors and
9 windows, cabinet stock, furniture, musical instruments or parts of instruments, toys,
10 tools and implements, ready-to-assemble building kits, and other similar finished wood
11 products specified by the commissioner by regulation and, for deciduous aspen, poplar,
12 and high defect birch, includes engineered wood products and paneled wood products.
13 Except as otherwise provided in this subsection, "high value-added wood product" does
14 not include plywood, pulp, chips, waferboard, chipboard, fiberboard, green lumber,
15 cants, slabs, or planks intended for remanufacture, and other similar wood products
16 specified by the commissioner by regulation.

17 * Sec. 3. AS 44.33 is amended by adding a new section to read:

18 ARTICLE 10. ALASKA FOREST PRODUCTS
19 RESEARCH AND MARKETING PROGRAM.

20 Sec. 44.33.900. ALASKA FOREST PRODUCTS RESEARCH AND
21 MARKETING PROGRAM. (a) The Alaska Forest Products Research and Marketing
22 Program is established in the Department of Commerce and Economic Development.

23 (b) The program is established to provide a statewide information clearinghouse
24 and coordinator to gather and disseminate information relating to research and
25 development, including technical, logistical, financing, marketing and other relevant
26 information regarding the manufacture of specific value-added wood products and the
27 establishment of new high value-added manufacturing facilities in Alaska, and to assist
28 in coordinating existing research and development efforts by state and federal agencies
29 and other public and private entities.

30 (c) The program coordinator shall identify unfilled needs and problems
31 impeding the development of a high value-added wood products industry in Alaska,

- 1 gather information and conduct analyses, and propose solutions by exploring successful
- 2 models in other states and nations.

TONY KNOWLES, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FORESTRY

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February 8, 1996

The Honorable Bill Williams
Co-Chair, House Resources Committee
Alaska House of Representatives
Room 128, State Capitol
Juneau, Alaska 99801-1182

The Honorable Joe Green
Co-Chair, House Resources Committee
Alaska House of Representatives
Room 128, State Capitol
Juneau, Alaska 99801-1182

Dear Representatives Williams and Green:

At the request of the administration, the board of forestry examined HB344. The administration values the consensus process used by the board of forestry. The board represents a broad spectrum of public forest users.

For HB344, the board held a special meeting for public input followed by a second meeting at which recommendations were prepared. In addition to the board hearing oral comment, receiving written comment and having discussions with members of the public, we talked with small mill operators. A summary of the public input collected by the board is attached.

The board believes that the fundamental idea of the administration to develop more Alaska jobs for the amount of timber harvested is sound. The board had no difficulty developing a consensus on the basic concepts of HB344.

All recommendations for changes to HB344 were made in the form of motions at a properly noticed public meeting. The recommendations are respectfully submitted to the House Resources Committee for consideration. All motions received unanimous consent.

INDUSTRY SUBSIDIES

The board talked about the future difficulties associated with establishing an industry based upon governmental subsidies. The board wanted to caution against turning the part of the forest industry that relies on state timber into a subsidized industry. The forest products industry that purchases state timber is not subsidized and the sale of state timber gives a net financial return to the state without consideration of any of the other benefits.

Motion #1

The board recommends that language be added to section 1 of the bill, legislative findings and purpose, making it clear that the only incentive intended to be offered is a reduction in the stumpage price for the timber.

RELIABLE TIMBER SUPPLY NECESSARY FOR VALUE-ADDED INVESTMENT

The board recognized that the single most important requirement of a value-added wood processing industry is a long-term reliable supply of timber. The board heard that from the public. At the same time, the board heard and is aware that there is always a tension between people who need timber from the public forests and people who use the forests for other purposes.

Motion #2

In the purpose section include that this bill is meant to provide a steady, reliable supply of timber at a reliable rate over a period of time to the purchaser of the timber.

NEED FOR A BETTER UNDERSTANDING OF THE FOREST INDUSTRY

The board heard of a diversity of opinion as to why there is a round-log export industry and there is only a small amount of value-added wood products processing. The board felt that HB344 represents a step in a process and that a better understanding will be gained over time. The board recognized that the administration began a process for forest industry development right from the beginning; first investigating the loss of sawmill employment in Wrangell (even before the first day of the administration); looking at the industry state-wide during the transition process; followed by the forest products marketing sector report; and, having evolved to the introduction of HB344.

Motion #3:

The barriers to the development of this type of industry be studied in an economic study sponsored by the Alaska Forest Products Research and Marketing program (under Article 10).

The board understood that the intent of the bill would not prohibit the export of some portion of that timber to make the sale commercially practicable.

CONCERN ABOUT HIGH-GRADING STATE TIMBER

The board had a concern that the tool of negotiated sales offered by the bill not lead to the department offering only the very best stands of timber, thereby high-grading the timber owned by the state. Therefore, the board wants to ensure that the forest resources are not significantly adversely impacted by value-added timber sale contracts.

Motion #4:

Add to line 2 on page 2 "and the forest resources."

The sentence would now read:

The value-added use of timber harvested in Alaska is intended to foster a stable, small-scale, locally run, finished wood products industry that will provide maximum opportunities for Alaskan jobs without significantly adversely impacting fish and wildlife habitat and the forest resources.

MATCHING VALUE-ADDED PROCESSING TO THE QUALITY OF THE TIMBER

The board spent a great deal of time discussing the requirement in the bill to use at least 50 percent of the timber in high value-added wood products. The board heard that this percentage did not relate to the timber resource found in Alaska. That is particularly true for state-owned land. The board felt that giving discretion to the commissioner is the best solution to this problem.

The board added four products to the list of high value-added products after hearing that those products have some potential to provide jobs for Alaskans. Those products

are veneer, plywood, finger-jointed lumber and house logs.

For at least two reasons, the board felt that some recognition of the manufacture of commodity products from state timber is desirable. One reason is that no Alaskan industry can be created except one that uses that type of timber found growing in Alaska. The other reason is that the bill emphasizes the encouragement and operation of processing facilities to produce other value-added products as well as high value-added wood products. See Page 1, Line 10, of the bill.

Therefore the board felt that replacing Section 2(b) and (k) is required:

Motion #5:

The commissioner may negotiate the sale of timber under this section if the prospective purchaser agrees to use, to the maximum extent commercially practicable, the timber subject to the sale for the local manufacture of high value-added wood products. The commissioner shall determine the maximum amount of the timber being sold which is commercially practicable to use for those purposes and make the use of that percentage of the timber for those purposes a term of the contract. In evaluating proposals, the commissioner also shall take into account the proposed manufacture of all other value-added wood products to be produced under any negotiated contract under this section.

(k) In this section, "high value-added wood product" means kiln dried or commercially dried lumber, interior finish paneling and trim, flooring, doors and windows, cabinet stock, furniture, musical instruments or parts of instruments, toys, tools and implements, ready-to-assemble building kits, veneer, plywood, finger-jointed lumber, house logs, and other similar finished wood products specified by the commissioner by regulation and, for deciduous aspen, poplar, and high defect birch, includes engineered wood products and paneled wood products. In this section, "other value-added products" means chips, pulp, waferboard, chipboard, fiberboard, green lumber, cants, slabs or planks intended for remanufacture, and other similar wood products specified by the commissioner by regulation.

NEED FOR PERIODIC PUBLIC REVIEW VERSUS A RELIABLE TIMBER SUPPLY

The board discussed the need for periodic public review of a long-term resource development on public land and the counter posing need for a long-term, reliable supply of timber which is necessary for investment in value-added processing facilities.

Motion #6

(h) No more than five years after a timber sale contract is entered into under this section, a performance review shall be completed by the department to:

(1) ensure that the purchaser is performing in accordance with the terms of the contract;

(2) provide that stumpage rates shall be redetermined by negotiation to reflect changes in market conditions. The redetermined rates may not be less than the base price for the area as established under regulations adopted by the commissioner; and

(3) shall be subject to an updated Forest Land Use Plan as determined by the commissioner.

If the commissioner determines at any time that the purchaser is not performing in accordance with the terms of the contract, the contract may be terminated. If the commissioner determines at the time of the five-year review that the contract conflicts with the then-current Forest Land Use Plan, the commissioner may terminate the contract if this conflict cannot be resolved. Prior to termination the commissioner will make a good faith effort to find suitable replacement timber.

LIMITING THE VOLUME OF TIMBER TO BE DEVELOPED

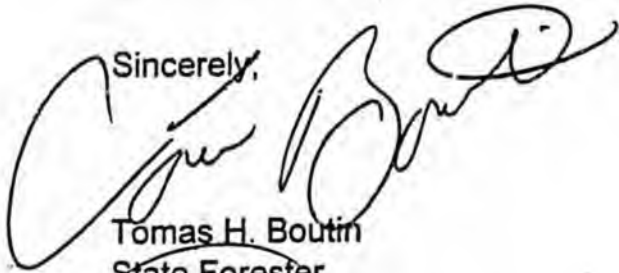
The board heard public concern about the volume of timber that might be developed under the bill. The board felt that the best way to answer this concern is to limit the number of sales in any part of the state. The board recommended a new section be added to the bill.

Motion #7

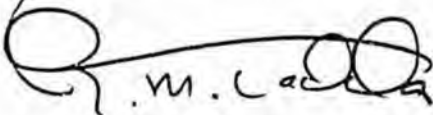
The Board of Forestry recommends that a new provision be added to Section 38.05.123(a) providing that there shall not be more than two sales under this section in each region, as defined in 11 AAC.95.800, in the three years following the enactment of HB344, and after that three year period the maximum number of sales in each region under this section shall be set out in regulations to be adopted by the commissioner.

The board stands ready to assist you in any further work you might require on HB344 and to work on any forestry matter that you would like.

Sincerely,



Tomas H. Boutin
State Forester



Ruth Tadda
Board of Forestry Liaison

c: John Shively, Commissioner
Alaska Department of Natural Resources

Board of Forestry

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Juneau, Alaska 99801-2105

MEMORANDUM

February 19, 1996

SUBJECT: Local Manufacture of High Value-Added Wood Products -
CSHB 344(RES), Draft, Dated 2/19/96
(Work Order No. 9-GH0046\C)

TO: Representative Bill Williams
Attn: Cheryl Sutton

FROM: Gerald P. Luckhaupt 
Legislative Counsel

Enclosed is the draft committee substitute you requested. I have one comment concerning the bill. There is a risk that the provisions of this bill requiring local manufacture may violate the interstate commerce clause of the United States Constitution.^{1/} While the state can try to craft an argument that the bill is not unconstitutional, if I were a betting man I'd probably put my money on a court finding the bill unconstitutional. My concern in this area is based upon the decision of the United States Supreme Court in South-Central Timber Development Inc. v. Wunnicke, 467 U.S. 82, 81 L.Ed. 2d 71, 104 S.Ct. 2237 (1984).^{2/} I do believe the state could provide that in-state or local processing of timber

^{1/}I assume that this is what Governor Knowles is referring to on page 2 of his transmittal letter for HB 344 where he says: "My Administration will be working with the Alaska Congressional delegation to ensure that appropriate-related changes are made to federal law."

^{2/}As a note, the state currently has a regulation, 11 AAC 71.230, that addresses the subject of "primary manufacture" or partial processing of timber offered for sale by the state. The regulation says:

PRIMARY MANUFACTURE OF TIMBER. (a) The director will, in his discretion, require the primary manufacture of timber removed under this chapter [11 AAC 71] be accomplished within the state to the extent consistent with law.

(b) For the purposes of this section, the director will consider timber which has been manufactured into a product for use without further processing as having been primarily manufactured only if the director determines that there is a market for the

(continued...)

could be a factor the commissioner considers in determining whether to enter into a negotiated sale of timber for local manufacture of high value-added wood products. The consideration of this as one of many factors, while not actually requiring it as a contractual provision, would probably not run afoul of Wunnicke.

The United States Supreme Court in Wunnicke found Alaska's primary manufacture requirement embodied in 11 AAC 71.230 unconstitutional. Briefly summarized, the court first found that Congress had not authorized Alaska's primary manufacture requirement. While the court found evidence (in a series of annual riders attached to federal appropriation Acts in the preceding decade) of a clearly defined federal policy imposing primary manufacture requirements as to timber taken from federal lands in Alaska, in order for the state's regulation to be removed from the reach of the Commerce Clause of the United States Constitution,^{2/} it required that Congressional intent to allow state regulation over a facet of interstate commerce must be unmistakably clear. The court concluded that Congress had acted only with respect to activities on federal lands and determined that its authorization, by silence, of similar activities on non-federal lands could not be inferred.

^{2/}(...continued)
product.

At 11 AAC 71.910(11) there appears this definition of "primary manufacture":

"primary manufacture" means manufacture which is first in order of time or development; the term

(A) when used in relation to a saw milling operation, means the breakdown process in which logs are reduced in size . . . to the extent that the residual cants, slabs, or planks do not exceed a nominal eight and three-quarters inches in thickness;

(B) when used in relation to a pulp operation, means the breakdown process to the point at which wood fibers have been separated;

(C) when used in relation to an operation for veneer for plywood production, it means the production of green veneer;

(D) when used in relation to poles or piling, whether treated or untreated, means manufacture for the purpose of use as poles or piling; and

(E) when used in relation to timber processing wastes, means manufacture into chips.

^{2/} Article I, section 8, clause 3 provides, in pertinent part, that the United States Congress may "regulate commerce with foreign nations [and] among the several states

The court then rejected Alaska's further assertion that its restrictions on the export of unprocessed timber from state-owned land was exempt from Commerce Clause scrutiny under the so-called "market-participant doctrine."^{4/} The court could not find evidence that Alaska was, in fact, a participant. Instead, the court opinion declared:

[D]ownstream restrictions have a greater regulatory effect than do limitations on the immediate transactions. Instead of merely choosing its own trading partners, the State is attempting to govern the private, separate economic relationships of its trading partners; that is, it restricts the post-purchase activity of the purchaser, rather than merely the purchasing activity. In contrast to the situation in White v. Massachusetts Council of Construction Employees, Inc., 460 U.S. 204, 75 L.Ed.2d 1, 103 S.Ct. 1042 (1983)], this restriction on private economic activity takes place after the completion of the parties' direct commercial obligations, rather than [as in White] during the course of an ongoing commercial relationship in which the city retained a continuing proprietary interest in the subject of the contract. In sum, the State may not avail itself of the market-participant doctrine to immunize its downstream regulation of the timber-processing market in which it is not a participant.

Southcentral Timber Development, 81 L.Ed.2d at 84 (emphasis added, note omitted).^{5/}

^{4/} Case law makes clear that, if a state acts in a market as a participant, as distinguished from its exercising its role as a regulator, the Commerce Clause places no restrictions on the state's activities. Hughes v. Alexandria Scrap Corp., 426 U.S. 794, 49 L.Ed.2d 220, 96 S.Ct. 2488 (1976), Reeves, Inc. v. Stake, 447 U.S. 429, 65 L.Ed.2d 244, 100 S.Ct. 2271 (1980), White v. Massachusetts Council of Construction Employers, Inc., 460 U.S. 204, 75 L.Ed.2d 1, 103 S.Ct. 1042 (1983). The cases all considered factual situations in which government expenditure of public money for commercial purposes yielded benefits that the governments wished to keep within the affected communities.

^{5/} And, the court cautioned,

This is not to say that the State could evade the reasoning of this opinion by merely including a provision in its contract that title does not pass until the processing [of the timber] is complete. It is the substance of the transaction, rather than the label attached to it, that governs Commerce Clause analysis.

Southcentral Timber Development, 81 L.Ed.2d 84, n. 11.

Representative Bill Williams
February 19, 1996
Page 4

Finally, the court summarily rejected the state's further contention that the restriction does not impose a burden on interstate or foreign commerce.

In the intervening years, relying on the opinion cited, the Alaska Department of Natural Resources has not implemented its regulation.^{6/}

I wish I could tell you that the "market participation" exception has been substantially altered by one or more intervening court decisions so that another effort to craft a primary manufacture requirement might be brought within a refashioned, broadened definition of "market." But Southcentral Timber Development appears to have been the last word from the Court on the subject, and I think we should understand that the Court is highly unlikely to look kindly on further state efforts aimed at regulating commercial activity involving resources that happen to be found on state land. The earlier decisions infer that the Court may be willing to accept more modest efforts limited to those with whom government engages as a business participant including, especially, instances in which the government commits to expenditure of public money in conjunction with those commercial efforts.^{7/}

^{6/} In the other Western states, with one notable exception, the recent trend has been to ban the sale and export of unprocessed timber. Under the Forest Resources Conservation and Shortage Relief Act of 1990, a series of provisions set out in 16 U.S.C. 620 et seq., effective in January, 1991, extended an existing ban on unprocessed log exports from federal lands in the 11 contiguous Western states, directed the U.S. Secretary of Commerce to ban all exports of unprocessed timber from these 11 states with annual sales volume of 400 million board feet or less, but allowed a partial sale of unprocessed timber from states with sales exceeding that volume (to the amount of not more than 25 percent of unprocessed timber). 16 U.S.C. 620a - c. In essence, the provision favored limited continued sales of unprocessed timber from state and private lands only in Washington; one rationale offered was that revenue from these sales provided substantial support for public education in that state and helped a number of counties with substantial lands that were under timber harvest to meet the costs of a range of other general government services. Very recently, however, on October 23, the Secretary of Commerce, acting under authority given elsewhere in that Act, terminated even this limited exception for export of unprocessed timber from Washington by making the ban on those sales total. The statutory provisions and the secretary's orders were struck down as violative of the Tenth Amendment by the Ninth Circuit Court of Appeals in Board of Natural Resources of Washington v. Brown, 992 F.2d 937 (9th Cir. 1993).

^{7/}The argument can be made if expenditure of state funds qualifies the state as a market participant then foregoing the receipt of state funds should qualify the state as a market participant also. Therefore, if the state were to provide incentives that involved foregoing the receipt of state funds, for example by providing for the sale of timber at less than fair market value, then the state is economically involved as a market participant and
(continued...)

Representative Bill Williams

February 19, 1996

Page 5

The negotiated sales and decisions to enter into them could be considered to be just such a situation where the state is involved as a business participant with the logger. As such, a provision that allows or requires the commissioner to consider where the timber will be processed may be permissible. But I'm not convinced that a provision of a local manufacture negotiated sale that requires in-state processing could be enforceable as I don't believe that that situation would be distinguishable from the downstream regulation condemned by the Supreme Court in Wunnicke. See infra, p.3-4 and footnote 4.

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96-115.klb

⁷(...continued)

a requirement of primary or local manufacture should be permissible. I do not know what the likelihood of success for this argument is, I only know that facially it appears to meet the requirements for the market participant doctrine.

DRAFT FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB344(RES)

Revision Date: 20-Feb-96 Dept Affected Natural Resources
 Title: An Act authorizing the commissioner of the BRU: Resource Development
 Dept. of Natural Resources to negotiate and enter into timber... Component: Forest Management & Development
 Sponsor: House Rules by request of the Governor
 Requestor: House Resources Component Serial No. 435

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES	20.0	3.5	3.5	3.5	3.5	3.5
TRAVEL	3.5					
CONTRACTUAL	3.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	26.5	3.5	3.5	3.5	3.5	3.5
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	26.5	3.5	3.5	3.5	3.5	
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	26.5	3.5	3.5	3.5	3.5	3.5

Estimate of any current year (FY96) cost: \$ none

POSITIONS	FY97	FY98	FY99	FY00	FY01	FY02
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 analysis assumes that the Act would be signed into law in June of 1996, and no timber sales enabled by the Act would take place until FY98. In FY97 there would be a cost of promulgating regulations. Additional annual costs (\$3.5) would be limited to evaluating the direct economic benefit, commercial success, etc., required under the best interest finding. If this program was intended to be a second concurrent timber sale program, then the program would require \$350.0 to \$560.0 annually and 4 to 5 full-time personnel, depending on the number of negotiated sales. However, because this program will most likely replace existing sales, funding and personnel requirements will displace costs of existing programs and are not reflected in the fiscal note. Timber sale receipts would continue to go to the general fund.

Prepared by: Tom Boutin, Director Phone: 465-3379
 Division: Forestry Date: 20-Feb-96
 Approved by Commissioner: [Signature] Date: 20-Feb-96
 Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA

BILL NO. _____

1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affects: Natural Resources
 Title: An Act authorizing the commissioner of the DNR BRU: Resource Development
 to negotiate and enter into timber sale contracts that provide... Component: Forest Management & Development
 Sponsor: Rules Committee
 Requestor: Governor Component Serial No. 435

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES	0.0	20.0	3.5	3.5	3.5	3.5
TRAVEL		3.5				
CONTRACTUAL		3.0				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	26.5	3.5	3.5	3.5	3.5
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		26.5	3.5	3.5	3.5	3.5
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	26.5	3.5	3.5	3.5	3.5

Estimate of any current year (FY95) cost: \$ None

POSITIONS

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)

See attached

Prepared by: Tom Boutin, Director Phone: 485-3379
 Division: Forestry Date: 8-May-95
 Approved by Commissioner: [Signature] Date: 5-8-95
 Agency: Natural Resources

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ATTACHMENT
FISCAL NOTE (NEGOTIATED TIMBER SALES)
May 8, 1995

This analysis assumes that the Act would be signed into law in June of 1996, and no timber sales enabled by the Act would take place until FY98. In FY97 there would be a cost of promulgating regulations. Additional annual costs (\$3.5) would be limited to evaluating the direct economic benefit, commercial success, etc., required under the best interest finding. As an isolated effort, program implementation requires \$350.0 to \$560.0 annually and 4 to 5 full-time personnel, depending on the number of negotiated sales. However, because this program will most likely replace existing sales, funding and personnel requirements will displace costs of existing programs and are not reflected in the fiscal note. Timber sale receipts would continue to go the General Fund.

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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MAY 03 1995
MAY 09 1995

May 9, 1995

The Honorable Gail Phillips
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Phillips:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that establishes a new negotiated timber sales program for state land managed by the Department of Natural Resources. This bill addresses the need to stimulate local, small scale value-added processing of Alaska's forest resources and to foster creation of Alaskan jobs. With the introduction of this bill, we seek to provide a new focus on how timber should be managed in Alaska by providing more jobs from timber cut on state lands by encouraging industries that process high-value finished wood products. At the same time, this legislation provides direction on management of our forests to preserve fish and wildlife habitat and other uses of the forest including tourism, fisheries, personal and family uses including hunting and fishing.

The goal of my Administration in proposing this bill is to develop sound long-term strategies for managing Alaska's forest resources so as to provide the highest and best economic uses in local communities that are dependent on timber resources while maintaining other Alaskan uses through the constitutionally mandated sustained yield principles. The attached bill maximizes the opportunity for employment while minimizing the impact on other uses of our state forests.

I am introducing this legislation in the final days of the session because it is my understanding that the legislature will be holding hearings on timber over the interim and I think it is critical that the new directions embodied in this bill are considered in the discussions of the legislature.

The bill has two main components:

- provisions for incentives for local manufacture of high value-added wood products and other value-added wood products from timber on state lands and authorizing use of such incentives in awarding special negotiated timber sale contracts (sec. 2 of the

The Honorable Gail Phillips

May 9, 1995

Page 2

bill)

- creation of an Alaska Forest Products Research and Marketing Program within the Department of Commerce and Economic Development to coordinate research and marketing efforts related to value-added manufacturing of Alaska wood products (sec. 3 of the bill).

An uncertain supply of timber is one of the primary factors limiting the development of high value-added wood products manufacturing facilities in the state. To address this problem, sec. 2 of the bill proposes a new special negotiated timber sale program for timber destined for local manufacture of high value-added wood products. Contracts negotiated under this section may be for the harvest of up to five million board feet of timber each year for up to 10 years. Stumpage rates would not be less than the base price established under regulations. Planning for this program by the Department of Natural Resources also will take into account sustained yield principles of timber harvest, the need for protection of fish and wildlife populations and habitat and maximizing opportunities for public uses of the state's forests. The same public comment will apply to the planning process as it does with sales conducted presently. Existing forest planning requirements would apply to these new negotiated sales and other timber sales programs would not be affected.

To participate in a negotiated timber sale authorized in sec. 2 of the bill, the prospective purchaser must agree to use at least 50 percent of the timber from the sale for the local manufacture of high value-added wood products. In determining whether it is in the state's best interest to enter into a sale contract under sec. 2, the commissioner is to consider the economic benefits to the region from the local manufacture of the high value-added wood products as well as from the local manufacture of other value-added wood products; the commissioner also must ensure the sustainability of fish and wildlife populations and habitat and other uses of the forest. My Administration will be working with the Alaska Congressional delegation to ensure that appropriate related changes are made to federal law.

Section 3 of the bill establishes an Alaska Forest Products Research and Marketing Program to encourage in-state processing of Alaska timber into value-added wood products. The program coordinator is to gather and disseminate existing information related to the manufacture of value-added wood products and to identify unfilled needs and problems, conduct analyses and propose solutions to assist local manufacturers. This program will be accomplished through an existing position in the Department of Commerce.

The provisions proposed in this bill will provide a mechanism for encouraging the development of Alaskan businesses and Alaskan jobs, and will establish a new timber sales program as a means of encouraging local processing. It should help address the crisis that faces Alaskan communities that are largely dependent on the jobs the forest products

The Honorable Gail Phillips

May 9, 1995

Page 3

industry provides. I urge your favorable action on this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tony Knowles".

Tony Knowles
Governor

Knowles' Administration testimony on Governor's House Bill 344 (Value-Added Timber Bill) presented to the House Resources Committee Meeting of 9/19/95 in Fairbanks.

Presented on behalf of the administration by Marty Rutherford, Deputy Commissioner/Department of Natural Resources

H. B. 344

Testimony on the Governor's Value-Added Legislation

The Governor introduced this legislation in response to concerns of members of the timber industry that we better utilize the timber that is cut in Alaska. In particular, Steve Seley from Seabourne Lumber in Ketchikan had brought to our attention that we should find ways to encourage value added processing so that the forest products industry in Alaska could grow. The premise of the legislation is that the forest products industry be provided the tools to create more jobs in Alaska per board feet of timber harvested while at the same time minimizing impacts to fish and wildlife. We have seen figures that would lead us to believe that with certain types of value-added processing we could see as many as 4 times the number of jobs from high value-added processing versus the export of timber. The point we'd like to make is that if we can just double the number of jobs in Alaska's forest products industry, it will be a significant achievement.

Before introducing this legislation we received comments from the timber industry, other state and federal agencies, and the environmental community. Although we have not addressed every concern, we have gone to a great deal of effort to find the balance between all of these interests. H.B. 344 is not an end product. This represents our best response to what we think we heard from the many constituents who want better utilization of state timber. We want to see this issue on the table and a good discussion to occur about the goals of the legislation.

This bill provides incentives to the timber industry, it is not a mandate to eliminate log exports or change the forest products industry. We do not want to ban export nor do we want to require value-added processing, rather we wanted to help make it more economic to do in state processing of our timber rather than exporting it to Japan or the Pacific Northwest. This is simply a tool, a way to encourage high value-added processing.

Under the bill timber sales can be negotiated rather than going through a competitive bid process. The Commissioner could contract with a private entity to supply timber to help them get started in a high value-added processing business. This would result in more jobs per board foot. The size of the sales are relatively small, but result in the employment of more Alaskans while minimizing the export of timber from state lands.

Specifically, the legislation provides for the following:

- Gives the DNR Commissioner the ability to enter into long-term timber contracts, of no greater than 5 million board feet, and no longer than 10 years, for companies that guarantee that no less than 50% of the timber will be used for high value-added wood products;

I might add that we don't intend that 5 million board feet per year is enough to supply all the wood need of some types of value-added processing. However, a company that has a certainty of supply for a substantial part of its needs are in a very good position to compete on the open market for timber sold by private and public timber owners. Very few wood users receive all of their supply from one source.

(The purpose of H.B. 344 is to bring some certainty of wood supply to processors who will bring high value in the manufacture of state timber.)

- Establishes the Alaska Wood Products Research and Marketing Program in the Department of Commerce and Economic Development;
- Defines high value-added wood products as plywood, kiln dried lumber, interior finish paneling and trim, flooring, doors and window cabinets, furniture, musical instruments, and other similar finished wood products specified by the Commissioner by regulation.

I might note that within the definition of high value-added wood products, we made special provision for Interior Timber.

Al Pagh, and a number of other people who have a great deal of experience in the Interior woods, have told us that in order to have a healthy forest and a healthy forest industry, we need to have a market for the hard wood. DNR Foresters agree. While much of it is second growth, the hardwood is over-mature and consequently it is of low overall economic value. The only known use for that resource is in the manufacture of plywood substitutes such as material used for sheathing and underlayment, commonly called waferboard and oriented strand board. While not commonly considered a high value-added wood product, that product is the highest value for the resource we have in the Interior. Also, the manufacture of plywood substitutes usually includes the use of recycled wood with offers benefits to the community. And, using the hardwood is very compatible with wildlife management and provides access to firewood and higher value spruce for a variety of users.

In closing I'd like to reiterate that this bill represents what the Knowles' Administration is hearing about the use of state timber. But this is the beginning of a process. We thank you for this hearing today and the interest the House Resources Committee has shown in state timber.

Seley

Corporation

P.O. Box 5380 • Ketchikan, Alaska 99901

MAY 11 1995

May 5, 1995

Representative Scott Ogan
Alaska State Legislature
State Capitol, RM 409
Juneau, AK 99801

Dear Representative Ogan:

I would like to take this opportunity to commend you on your concerns regarding in-state processing of State of Alaska timber and corresponding legislation supporting such measures as found in SB 16. I believe any opportunity that the State of Alaska has to make available a supply of timber to statewide sawmills for further processing should be condoned and any legislation, namely SB 16, should be utilized as a vehicle for causing this in-state manufacture ideal to transpire.

I have enclosed for your review a copy of a recent paper placed into circulation by Seley Corporation. This document is a proposal asking the State of Alaska to pursue two avenues: 1) the best opportunities to make available a supply of timber from State lands to statewide sawmills and similar processing operations and couple with this approach a recognition of the importance of the timber industry in Alaska and the reliance upon Federal timber holdings; and 2) the potential of incorporating secondary manufacturing of Alaska based timber prior to sale in either domestic and/or international markets.

The first objective asks that the State of Alaska, primarily through the Governor's office, acknowledge and support the timber industry in the State of Alaska and recognize its importance to socio-economic levels in timber dependent and other surrounding communities. This will be accomplished by seeking a guaranteed supply of timber from State of Alaska lands which will be sought for creating a secondary manufacture forest products industry in the State of Alaska Through an incentive based program. Alaska wood species would be subject to secondary manufacturing, producing a high value added wood product prior to entering either domestic or international markets.

The benefits to such a program would be witnessed through timber receipts to communities, increased employment figures, business loans from regional financial lending institutions, increased small business entrepreneurial enterprises, and the incorporation of a finished Alaskan Forest Products industry. Further State of Alaska support should be shown through the recognition of importance of the Federal timber sale program on the Tongass and Chugach National Forests and the Forest Service's recent inability to meet both the operator and market demand for a viable and economic timber supply.

The second objective states the need for incorporating a secondary manufacturing plant in Alaska. The basis for a productive secondary manufacturing wood products industry is installation of a lumber kiln drying facility. Installation of a kiln drying facility will dry Alaska timber to a point where it will be workable by cottage industry into such products as dimensional

lumber, interior panels, molding, flooring, window and door components, musical instrument componentry and many other products.

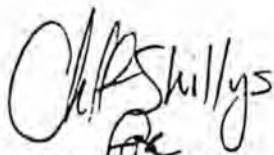
I believe that the time is right for the incorporation of a secondary manufacturing industry in Alaska. The only way for an expansion of industry such as this to occur and operate without economic strife is to ensure a fiber supply; this will aid timber operators by enabling them to justify the financing needed to build such manufacturing facilities. Assistance in the timber supply crisis can be achieved both through the Governor's office and timber bills, such as SB 16, found in the State legislature.

I would ask that you locate a copy of the Governor's recent bill proposal seeking a secondary manufacturing industry built upon an incentive based, State of Alaska timber sale program. This bill is conceivable and has proven favorable to a majority of groups in the Alaska timber industry.

I would appreciate the opportunity to meet with you about your concerns and comments surrounding both the Seley Corporation proposal and the Governor's proposed bill.

Once again, I thank you for your initiative and insight concerning the export of State of Alaska round log prior to any form of processing.

Sincerely,



Steve Seley, Jr.
Seley Corporation
Seaborne Lumber Company

encl: Secondary Manufacturing in Southeast Alaska: A Plan for the Future

cc: Representative Bill Williams
Senator Robin Taylor
Senator John Torgerson
Marilyn Heiman, Office of the Governor

**James V. Drew
4725 Villanova Drive
Fairbanks, Alaska 99709**

**TESTIMONY ON HB 344
Alaska House Resources Committee Work Session on Timber
Fairbanks, Alaska
September 19, 1995**

I recommend passage of HB 344 by the Alaska State Legislature following changes in line with those recommended in the resolution relating to HB 344 that was passed by the Greater Fairbanks Chamber of Commerce.

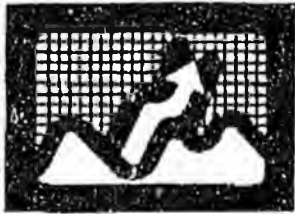
1. HB 344 provides incentives for the local manufacture of high value-added wood products in Alaska. Encouragement of value-added industries is a significant part of economic development, a process that also creates jobs and opportunities for people. Economic development involves the production, distribution, and consumption of goods and services. Both state and local governments support economic development because it provides income for people which, in turn, provides a revenue base for government to use in providing services needed by society. The stronger the revenue base, the better equipped is government to meet the demands of society.
2. Alaska's timber resources, managed on an intensive and sustained yield basis, can provide the basic raw materials needed to produce value-added wood products. Sustained yield based on silviculture and modern forest regeneration technology can maintain this source of raw material for as long as there is a demand for the value-added products. Thus, the effectiveness of production of high value-added wood products depends on effective stewardship of the renewable timber base.
3. From a business perspective, I support the resolution passed by the Fairbanks Chamber, including the provision that the words "small scale", "locally run", and "finished" be deleted from Section 1, page 1, line 13 of HB 344. Limiting the development of value-added wood products to small scale industry will place severe constraints on the acquisition of investment capital to finance the development of the industry, and will severely limit the jobs and opportunities for people that the industry can provide. Given the existing fiscal constraints in state government in Alaska, it seems unlikely that investment capital will be provided by state appropriations. Limiting the industry to locally run businesses will also diminish access to investment capital needed for the successful development of a wood products industry. Moreover, it would seem to be at odds with the effective, large scale development of petroleum, mining, and tourism industries in Alaska by national and international firms that are now providing new wealth and jobs for Alaskans. In addition, limiting value-added wood products to only finished wood products prevents other Alaskan entrepreneurs from using the resulting wood products in subsequent manufacturing enterprises.

4. Limiting high value-added wood products industries to those that are small-scale, locally run, and that produce only finished products will support only a very small annual timber harvest from state lands. Some view this as being critically important because limited forest harvests are perceived to have a minimal impact on fish and wildlife habitat and, consequently, on the life style of Alaska residents. An alternative view supported by forestry experience in other northern countries is that silvicultural practices based on basic principles in forest ecology can guide forest harvesting and successful forest regeneration in a manner that will not adversely impact fish and wildlife populations. In fact, certain silvicultural practices significantly enhance habitat for fish and wildlife.

5. Moreover, if the purpose of HB 344 is to provide incentives for high value-added wood products industries that will, in turn, provide enhanced economic and societal benefits for Alaskans, I strongly recommend that negotiated timber sale contracts for the local manufacture of wood products, as provided in Section 2, page 2, line 9 of HB 344, be changed from five million to fifteen million board feet of timber each year, as recommended in the resolution passed by the Fairbanks Chamber. In addition, I support the Chamber recommendation that the term of the sale contract be changed from 10 to 15 years in Section 2, page 2, line 11 of HB 344. These changes will improve incentives for attracting investment capital for wood products industries which, in turn, will provide local jobs and the economic benefits of local manufacturing.

6. In line with these benefits, the Fairbanks Chamber recommended redrafting Section 2, page 4, subsection (k) to recognize that a "high value-added wood product" can include veneer, laminated veneer lumber, and all of the products listed in lines 13-15 except chips, cants, slabs, or planks. This change will permit the value-added production of wood products used in the manufacture of a number of products that are purchased extensively by Alaskans. From a business and marketing perspective, the current definition of a "high value-added wood product" in HB344 severely limits the economic viability of value-added wood products industries the bill is designed to encourage.

7. In summary, I endorse the resolution supporting HB 344 that was passed by the Greater Fairbanks Chamber of Commerce, pending specific modifications indicated in the resolution.



RECEIVED DEC 13 1995

Fairbanks Industrial Development Corporation

December 11, 1995

Hon. Gail Phillips,
Speaker of the House
126 W. Pioneer Ave., Suite 3
Homer, Alaska 99603

Handwritten signature/initials

Dear Gail:

It was good to speak with you at the House Majority fund raiser here in Fairbanks concerning HB 344, the Governor's value-added bill. As I mentioned, timber supply is everything if we are to obtain an expanded forest industry here in the Interior, or for that matter, anywhere else on state lands. To that end I started working several years ago with Senator Frank on a bill that lead to SB 310. Having failed in that endeavor, I was very pleased when the Governor proposed his bill late in the last session.

As I testified before the House Resources Committee at a hearing on the bill here in Fairbanks, it should be amended as follows: a) increase the timber volume from 5 to 15 million board feet per year; b) increase the term from 5 years to 10 years; c) define value-added products to include all wood products except round logs and chips. As to chips, they should also be included as a residual by-product.

I have been working with two forest products companies which are very interested in coming to the Interior and building manufacturing facilities -- if we can assure them the long term supply necessary to furnish their mills. So it is important that we get an acceptable bill into law during this next session. I am confident that the bill, as amended, will have the bipartisan support of our Interior Delegation as well as general support of House and Senate Majorities.

If there is anything further I can do to assist in the process, do not hesitate to let me know either directly or through Rep. Kelly.

Yours very truly,

Ronald L. Ricketts
Executive Director

cc: Rep. Pete Kelly
Rep. Bill Williams

515 Seventh Avenue, Suite 320, Fairbanks, Alaska 99701 (907) 452-2185 Fax: (907) 451-9534



Northern Alaska Environmental Center

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FAIRBANKS, ALASKA 99701-2806
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House Resources Committee
September 19, 1995
Comments on HB 344

The Northern Alaska Environmental Center opposes efforts to promote and subsidize the logging industry at the expense of other important forest resources and uses with long term contracts that make large areas of the state's public forests available for logging. The long-term contracts on the Tongass should have taught us how dangerous it is to allow contract obligations and the needs of processing facilities, rather than sound resource policies, to drive forest management.

Commercial logging is just one, and in Alaska frequently not the most important economic one, of a large number of forest resources and uses. Fish, wildlife, water quality, scenic beauty, wilderness, subsistence, recreation, sport and commercial fishing, and tourism are all dependent on the state's forests and can be seriously damaged by large-scale unsustainable logging. All of these uses provide both non-economic and economic benefits, that should not be threatened by focusing too heavily on a single, frequently incompatible use. Any logging that does occur on the state's public lands must be sustainable, not just in terms of timber as a commodity, but in terms of all of these additional resources and uses as well.

When logging is to occur on public lands, however, we agree with the premise of the proposed legislation, that it makes no sense to export round logs and chips, and consequently jobs out of the state. High value should be added to a substantial portion of any timber that is cut in order to create sustainable jobs for Alaskans. However, job creation at any cost is not acceptable. Sustained yield of all forest resources and uses is essential. Ensuring that sustained yields are maintained will require not only that possible impacts of individual logging sales be carefully evaluated, but that cumulative effects of logging on nearby private and other public lands also be fully analyzed.

Recently the Knowles/Ulmer Administration prepared very eloquent testimony regarding legislation that would affect the Tongass National Forest of Southeast Alaska, this testimony contained four "hallmarks" which the administration stated should guide policies on the Tongass. These hallmarks can and should guide policy on all forests in the state. Adjusted to reflect a statewide perspective, the hallmarks which should guide our policies in connection with Alaska's forests include:



1. informed decision-making and prudent management of our resources through the use of sound science;
2. multiple, balanced and sustainable use of the forests rich resources, including conservation measures that reflect our concern for future generations of people who will depend on these resources;
3. a planning process that is inclusive of the many and varied interests associated with the forest and is designed to foster consensus; and,
4. maximum self-determination for the people of the region with respect to land management decisions which affect them, and a minimum of legislative prescriptions from Juneau.

These are the policies by which we should evaluate forest policies. The speakers before me on the panel asked much of the same.

There are two areas where HB 344 clearly does not live up to the standards of these hallmarks.

First, the volume figures will result in large-scale logging (page 2 line 9). On a regional level volume levels have a wide range of variability. For example, here in the Interior board feet/acre can vary from 3,000 to 12,000. A harvest of five million board feet could result in nearly 2,000 acres being cut under just one of these negotiated contracts. The current level of harvest in the Interior off of state land is about 1,000 acres. One of these contracts could double the harvest level and two of them could quadruple it. I have heard the State Forester say a number of times that he does not believe that the people of the Interior do not have enough trust in the Division of Forestry to see a dramatic increase in cutting, and I think that the State Forester was right. To push this bill with a maximum cut of five million board feet goes against the four "ideal" hallmarks of good forest policy. A better approach might be a direct tie to individual stand characteristics (such as species composition and average board feet/acre). Our bottom line is that contract volumes must be calculated on a site specific basis to meet sustained yield requirements.

The second area of conflict is with the contract lengths (page 2 lines 10-11). Last winter two surveys were conducted by separate groups here in the Interior, both surveys concluded that the community would like to see increased timber harvesting to support jobs for Alaskan's (so HB 344 is on target here). The more detailed survey showed that the community is clearly opposed to long term contracts and 10 years is a long term contract. I believe that the survey results showed that most of the community would be willing to support three year contracts. Additionally, contract renewals must be tied to objective performance reviews and standards and include provisions to tie stumpage fees to market price.

Alaska is a big and diverse state, if we read and apply the four hallmarks we will see that it is almost if not entirely impossible to pick one number as a standard for anything and apply it to the entire state in any regulation or legislation. If we do chose one number as a standard, or cut-off we should be sure that we choose conservatively on the side of resource protection. For these reasons, we suggest a change in the wording regarding the percentage of trees used for local high value-added wood products (page 2, line 21). More than 50% of the trees should remain in the state. We recomm end language such as "The Commissioner shall negotiate a percentage of the sale volume that is designated to high value-added processing so that: 1) the percentage to high value added is at least 65% and 2) the maximum percentage feasible is dedicated to high value-added products.

A final change to the language of the bill, suggested by the four hallmarks of an ideal forest policy, is to add a subsection that requires the state to do a cumulative impact analysis on all other resources, uses, and interests before each sale is negotiated. This would include looking at other timber activities in the watershed on all land ownership's. Adding this type of language would make this program a model in forest resource planning.

We do not agree that plywood and kiln-dried lumber are high value-added. If the intent of this legislation is to produce more Alaskan jobs per board foot, then stipulate that high value-added industries are those which use at least use x worker hours per board foot.

One last thought I would like to end with today is that there might be better ways to encourage local processing and discouraging the exporting of round logs, chips and jobs. Some of these might include:

Designing timber sales to ensure a supply of timber for the smaller operator.

Providing a framework for pool bonding and insurance.

Providing bidder's incentives to encourage use of Alaska's forest products on state financed or loan guaranteed projects.

Having DOT build more timber bridges.

Eliminating export subsidization: no loan guarantees, no road credits, no supplying seedlings.

Providing grading or engineer approval services to help identify structural uses of locally produced lumber to meet the Uniform Building Code.

Directing the Alaska Science and Technology Foundation to grant fixed percentages of its support to end-product manufacture.

Creating a Multiple Use of Forest Resources Advisory Committee in the Commissioner's office; staffed by Forestry, Parks and Outdoor Rec., and other appropriate divisions.

These are all just the result of a quick brainstorming session, but they illustrate the point that perhaps we should investigate other alternatives.

We believe that the answer to any problems with the management of our state forest land does not lie in special interest legislation from Juneau, but in broad-based community planning efforts. The Northern Center believes the impacted people of the region should have a major role in forest management decisions. Local residents are most directly affected by management decisions and must be fully involved in the formulation of legislation and agency policies which affect management and use of the Tanana Valley State Forest. We especially encourage collaborative efforts such as consensus building, to bring differing interests together to mutually resolve problems. We believe that effective public participation will ultimately lead to management decisions that are best for the forest and the wildlife, fish, and people that depend on the Forest.

Thank you for the opportunity to testify.

Dan Ritzman
Boreal Forest Coordinator



P.O. Box 1383
 Valdez, AK 99686
 Phone: 907-835-4300
 Fax: 907-835-5679

HB-344 - Value Added Forest Products Bill
House Resources Committee Hearing
Testimony by Ed Davis, AWRTA Board Member
9/19/95

I would like to thank the House Resources Committee for providing this opportunity to testify on the Value Added Forest Products bill. I would also like to thank the Boreal Forest Council for inviting AWRTA to testify on their panel.

My comments relate to the specifics of HB-344, and supplement the more generalized testimony expressed earlier by AWRTA member Dave Lacey. In this bill, a framework exists for a forest management plan that can be compatible with both the tourism and timber industries. We offer cautious support for the bill provided that potential loopholes are eliminated, and that no changes are made to the bill which undermine tourism and recreational uses of Alaska's public forests.

My testimony addresses: 1) a loophole which needs to be eliminated, 2) why the current version of this bill is consistent with AWRTA policies on Natural Resources and Forest Management, and 3) proposed changes in the bill which AWRTA finds objectionable.

1) The number of negotiated sales for value-added enterprises appears to be limited only by the timber harvest schedules proposed in the "5 year plans" for various regions of the state. Limits need to be established for these "value added" sales. The *"Five Year Timber Harvest Schedule for the Fairbanks, Delta, and Tok Regions, 1994-98"* provides an illustration of why this cap is needed.

AWRTA is undertaking an evaluation of the impacts of this "5 year plan" after extending the proposed timber harvest rates over a 100 year average timber harvest rotation. The preliminary results show that nearly 90% of the projected timber volume is slated for harvest. After a full harvest rotation, this will leave only regrowth and uncut scrublands (with an average of only 2 cords per acre and a maximum of 9 cords per acre) for all other forest uses including tourism, and recreation.

According to rough calculations, the timber harvest rates proposed in the "5 year plan" will permit at least 15 or 20 of these value added timber sales. I recognize that the legislature cannot correct the problems that we have identified in this "5 year plan". You can correct a potential loophole in HB-344 by limiting these negotiated sales to assure that they do not lock up public forests in long term contracts that will harm other industries, such as tourism.

2) The concept behind this bill is consistent with AWRTA's policy statements for Natural Resources

AWRTA, P.O. Box 1353, Valdez, AK 99686

p. 2

and Forest Management (see attached). We agree with timber harvest plans that are designed to maximize the number of jobs for Alaskans per unit of timber harvested.

The forest product marketing efforts proposed in this bill have parallels in the tourism industry. The Alaska Tourism Marketing Council is a service provided by state government which could not be undertaken by tourism businesses individually. It is a service that provides large dividends for the Alaskan economy, and can only be undertaken collectively by an agency such as ATMC. Likewise a value added timber industry needs a collective effort to identify and develop markets for Alaska's value-added forest products.

The Knotty Shop and the Alaska Birch Bowl Company are local examples of value added forest product enterprises that are major tourist attractions, and will benefit from this bill.

3) Our support for this bill would be diminished if it is modified to promote industries that: a) emit large quantities of chemical pollutants, b) require widespread and large scale clearcutting to be economically viable, and/or c) provide minimal numbers of jobs for Alaskans with respect to the volume of timber volume harvested (i.e. pulp mills, fiberboard plants, saw/wood chip export, etc).

With these factors in mind, AWRTA offers cautious support for HB-344. Thank You



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Phone: 907-835-4300
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Alaska Wilderness Recreation and Tourism Association

Natural Resource Policy Statement

The Alaska Wilderness Recreation and Tourism Association supports natural resource policies which:

- 1) balance the competing needs of Alaska's natural resource users while assuring the long-term sustainability for a diversity of economic interests and lifestyles;
- 2) keep jobs and profits in Alaska by maximizing local value added, environmentally responsible economic activities;
- 3) recognize remote tourism and recreation as resource-dependent economic activities; and
- 4) meet these resource needs by managing public lands used for tourism and recreation to sustain scenic viewsheds and healthy ecosystems.

Adopted by the ANRTA Board: November 15, 1994

Approved by ANRTA Membership: February 15, 1995



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Phone: 907-835-4300
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Alaska Wilderness Recreation and Tourism Association

Policy Statement: Managing Alaska's Public Forests:

- 1) Alaska's public forests should be managed for long-term sustainability and for the benefit of all Alaskans, and
- 2) Forest management plans should acknowledge that Alaska's forest-related commercial/subsistence economies, recreational activities, and lifestyles depend on maintaining healthy forest ecosystems, and
- 3) Forest management plans should acknowledge that many forest users have competing, but equal, needs for access to public forests. For example, just as some "commercial" forests require varying degrees of protection to sustain remote recreation, tourism, and biological diversity, others will be harvested to sustain the forest products industry, and
- 4) In evaluating competing uses, forest management plans should:
 - a) compare both the economic and non-economic costs and benefits between the time of harvest and the rotation age of the timber, and
 - b) extend this comparison to the time of old growth regeneration, and
- 5) Forest management plans should acknowledge the role that insect infestations, disease, and naturally caused fires play in the life cycle of forests. Firefighting efforts and/or salvage timber sales may undermine land use objectives in forests managed for habitat, scenic viewsheds, water resources, parks, and remote recreation.

Adopted by the ANRTA Board: November 15, 1994

Adopted by ANRTA Membership: February 15, 1995



Alaska
Wilderness
Recreation &
Tourism
Association

Sustainable recreation and tourism for a quality future

Most of jobs are still state - Timber - div. of labor
EXPORT WILDERNESS

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ALASKA WILDERNESS AND RECREATION TOURISM ASSOCIATION
COMMENTS ON HB344
PRESENTED BY DAVE LACEY, AWRTA MEMBER

The Alaska Wilderness and Recreation Tourism Association is a 501c (6) organization which represents tourism businesses which generally operate in public lands around the state. As a trade group that represents 225 business members, our mission is, in part, to be come an integral partner in the economic and resource use decision making process. We were not contacted by the facilitators of the Business Community Leadership panel. However, we appreciate the opportunity offer our comments under the auspices of the Northern Center for the Environment's panel.

Timber is neither the largest nor the only industry that depends on sustained access to Alaska's public land and forest resources. Both tourism and the sport/commercial salmon fishing industries are larger than the timber industry and they are every bit as forest-dependent as the timber industry. Tourism and other related industries have equal rights for equal access to Alaska's public forests. Research is needed to determine the economic value of an old growth forest as it relates to non-consumptive industries and uses. The tourists who visit and the local residents who depend on these areas for the successful operation of their business need a guaranteed long-term access to high-volume public forests. AWRTA requests that in the future, these facts will be recognized when forest policies are being developed.

We encourage the state include a long term plan to sustain multiple-use on Alaska's high volume public forests. The real competition between forest user groups is over access to the high-volume public forests. They offer the most economic value to both consumptive and non-consumptive industries, and they are also the richest forests in terms of habitat and recreational potential. Just as some timber companies are asking for long term contracts to assure them of a timber supply, the non-consumptive forest dependent industries such as tourism also need assured long term access to the high volume forests on public lands.

All forest users theoretically have equal rights for equal access to public forests. However, after a clear-cut, the forest dependent qualities on which tourism and other non-consumptive forest users depend are irreversibly destroyed for at least one generation, and are undermined for several more generations. In evaluating competing uses, forest management plans should compare the economic and non-economic costs and benefits between the time of harvest and the rotation age of the timber and extend this comparison to the time of old growth regeneration.

The next time you go to Sitka, you can see an easily accessible example of this problem. Try hiking through the old-growth forests at Starrigaven beach just north of town. The old growth forest is beautiful, open, easy to walk through, and deer sign is everywhere. Then try walking through the clear-cut at the shooting range just up the valley. It was harvested in the mid 60's, and even after 30 years of regrowth, it consists of a nearly impenetrable thicket. The new spruce are about 6' tall. It takes half an hour to struggle through a few hundred yards of this thicket. There is no deer sign, except along the edges of the clear-cut.

As the harvest rotation advances, the high volume timber suitable for recreation and tourism disappears unless there is a proactive plan to protect them. The "value added timber bill" needs to incorporate a plan to allocate the high volume forests between various forest users, and protect the high volume forests used by non-consumptive industries.

4) **Forest qualities needing protection:** The state has spent large sums of money on forest inventories that quantify stands valuable to the timber industry. Extensive research is likewise necessary to identify areas with economic potential for tourism and other non-consumptive forest-dependent industries. The "value added timber bill" needs to include provisions to conduct this research.

Public forests are an integral part of the "Alaskan mystique" which visitors come here to experience. The following list identifies forest qualities that need to be identified and protected:

a) **Road, aerial, and river/coastal view sheds** - Many AWRTA members operate flight-seeing, river running, and tourboat businesses. Aerial view sheds with a high potential tourism value need to be identified and protected near communities with airstrips and cities with airports. View sheds from the road system, rivers, and coastal areas form an integral part of nearly every visitor's enjoyment/perception of Alaska, and also require protection.

- b) **Areas valued for their remote qualities** - Many of our members operate lodges and camps on remote property. Their location is a marketing tool for their business. Since logging roads would be unacceptable to their businesses and lifestyles, many areas not accessible by road need to be protected.
- c) **High use areas** - In 1985, recreation and tourism activities accounted for 5.7 million user days in the Tanana Basin. About 1/3 of the average visitor's stay was spent on activities associated with state land. Residents of the Tanana Valley listed outdoor recreation as the second most frequently stated reason for moving to the Tanana Basin, and why they stay. (1987 TVSF Resource Analysis, Alaska DNR). Areas with a high potential for tourism and recreational usage need to be identified and protected.
- d) **Areas where the standing forest has a higher economic value than the timber**-Our business members operate in the Tanana Valley. They generate a substantial amount of revenue by attracting visitors who spend money in the State, employing local residents and supporting other recreationally dependent businesses. When these dollars add up, they exceed the revenue generated by the timber industry.
- e) **Forests that may appear appropriate for salvage sales** - Where beetle killed forests are being managed for recreation, tourism, and habitat, clear-cutting will delay the restoration of forest dependent activities by 30 to 50 years. The living trees in these forests should be protected from clear-cut logging.

The Alaska Wilderness and Recreation Tourism Association believes that Alaska's public forests should be managed for the long-term sustainability and benefit for all Alaskans. Forest management plans should acknowledge that Alaska's forest-related commercial/subsistence economies, recreational activities and lifestyles depend on healthy forest ecosystems.

The timber industry's methodology for harvesting forests typically precludes any other use of the forest. Large scale and long-term timber harvest plans represent many threats to our member's businesses and lifestyles. Research is needed to determine the economic potential of an old growth forest as it relates to non-consumptive industries and uses, and this documentation should be compared with the harvest management plans to determine public policy.



Greater Fairbanks

Chamber of Commerce

709 Second Avenue

Fairbanks, Alaska 99701

Introduced by: Natural Resources Committee
Date Introduced: September 18, 1995
Date Passed: September 18, 1995
Date Transmitted: September 19, 1995

RESOLUTION 95-0918.2

**A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF
COMMERCE IN SUPPORT OF HOUSE BILL 344 WITH SUGGESTED
CHANGES.**

WHEREAS, the governor has introduced a bill which would provide incentives for the local manufacture of high value-added wood products, and

WHEREAS, the Greater Fairbanks Chamber of Commerce, by and through its duly elected Board of Directors, (the Fairbanks Chamber) generally finds that such legislation is valuable and important to the development of one of Alaska's abundant natural resources, its timber, and

WHEREAS, the chamber is generally in support of such legislation, subject to changes in three areas, namely:

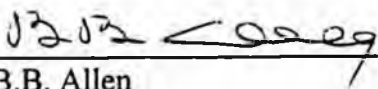
- 1) From Section 1, page 1, line 13, delete words "small scale, locally run, finished;"
- 2) In Section 2, page 2, line 9, change the word "five" to read "fifteen," and in line 11, change number "10" to read "15;"
- 3) In Section 2, page 4, subsection (k), redraft the subsection to recognize that "high value-added wood product" can include veneer and laminated veneer lumber and all of the products listed in lines 13-15 except chips, cants, slabs or planks intended for remanufacture,

NOW THEREFORE BE IT RESOLVED that the Greater Fairbanks Chamber of Commerce supports HB 344, subject to the changes above enumerated.

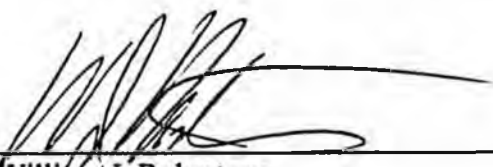
BE IT FURTHER RESOLVED that this resolution be distributed to:

cc: Fairbanks North Star Borough
The City of Fairbanks
The Honorable Tony Knowles, Governor of the State of Alaska
Legislative Information Office
John Shively, Commissioner of the Department of Natural Resources
Honorable Frank Murkowski, United States Senate
Honorable Ted Stevens, United States Senate
Honorable Don Young, United States Representative

PASSED on September 18, 1995 by the Greater Fairbanks Chamber of Commerce Board of Directors.



B.B. Allen
Chairman



William J. Robertson
President/CEO

Oral testimony give on HB344 before the Resources Committee on 9/19/95 by Roger J. Siglin, 169 Frog Pond Circle, Fairbanks Ak. 99712.

Thank you for the opportunity to speak to you today. I'm not here to tell you how many acres of trees should be cut every year or for what purpose. The claims and counter claims on both sides of the issue would confuse even the wisest of individuals. The primary point I want to make is we don't trust you, our legislature, to represent the general publics interests and with good reason. We have seen too many blatant attempts to give our Interior forest to industry on a silver platter. Often the excuse given is to provide jobs. That's not a sound basis for forest management policy. Jobs are necessary for a healthy economy, but they should be the result of sound ecological and economic decisions and not another form of welfare. A forest can provide many things such as habitat for fish and wildlife, opportunities for recreation and subsistence activities, useful wood products, and last but not least, scenic beauty that contributes immeasurably to the quality of life in Interior Alaska. If jobs are provided in the process that's an added benefit.

We need a process which ensures that our forest, the publics forest, provides all of its potential benefits, including wood products, in a reasonable mix. On a worldwide basis we constantly hear about examples of the rape and ruin of forested lands. Closer to home in the Tongass we see how watersheds are damaged by excessive road building and clear cutting of immense tracts. Fish, wildlife, and other values have suffered greatly, and keeping the sawmills running has become the primary purpose of the forest.

House Bill 344 may be a step in the right direction, but it still gives the forest industry too much in the way of guaranteed millions of board feet and other economic incentives. The end result is it often costs the public to have it's trees cut before we even consider the loss in forest values other than timber production.

I recognize it may be difficult to manage our forest properly and still compete economically in a world where politicians and industry conspire to make short term profit the primary goal of forest management. But I refuse to believe we must do the same in the Tanana Valley. If you want to gain our trust help us lead the way in establishing a model for management that respects all forest values and provides the owners of that forest, the public not industry, a continuous role in management decisions. If you don't do that we will have continuous conflict which benefits no one.

I would like like to make one last point. It has been stated by one of our legislators that the best way to provide for our children is to provide jobs for their parents. That is true in a short term, limited sense, but it is not true if the end result is the exhaustion of the earths resources, be it non-renewables such as fossil fuels and minerals, or the reduced capacity of the land to produce renewable resources. If we were truly concerned for our children's future we would use the earths resources as frugally and efficiently as possible instead of selling them off to balance the budget.

HB

357

Alaska State Legislature

Resources, Vice Chair
State Affairs, Vice Chair
House Special Committee on Oil & Gas, Vice Chair
House Special Committee on Fisheries



State Capitol
Room 409
Juneau, Alaska 99801-1182
(907) 465-3878

Representative Scott Ogan
House District 27

Sponsor Statement HB 357 Amendments to Title 16

HB 357 simplifies the enforcement of residency requirements for hunting, trapping, and noncommercial fishing licenses. This legislation will reduce the number of nonresidents who use loopholes in current state residency laws to hunt, trap, and fish Alaska's resources. After meeting and working diligently with the department of law, department of fish & game, department of public safety, and legislative legal this bill was drafted to accommodate all the participants concerns addressed during those discussions.

The definition of residency was separated into subsections for clarification purposes. In these subsections, you will note the different changes that were made to better define the rules of residency for Title 16 purposes.

Also, passage of HB 357 could increase revenue annually by thousands of dollars in relationship to current statistics of nonresidents in terms of licenses, game tags, and hunting fees for guides.

Alaska State Legislature

Resources, Vice Chair
State Affairs, Vice Chair
House Special Committee on Oil & Gas, Vice Chair
House Special Committee on Fisheries



State Capitol
Room 409
Juneau, Alaska 99801-1182
(907) 465-3878

Representative Scott Ogan
House District 27

Sectional Analysis HB 357 Amendments to Title 16

Section 1. This change has been proposed to clarify the intent of the law to allow a human being, not a proprietor that may be a part of a partnership, association, joint stock company, trust, or corporation registered in the state of Alaska, to qualify for resident status in obtaining a hunting, trapping, or fishing license.

Section 2. This new section establishes the basic rules for establishing residency under the bill (Sec. 16.05.415 (a) (1) - (3)). Also, this section addresses that once a person establishes residency, the person maintains residency until the person demonstrates that their intent is no longer to consider the state of Alaska as their home state.

Section 3. This section has been amended to accomplish several purposes. Overall, it has been separated into subsections for clarification purposes. Also, the rules for declaring residency have been clarified.

In the Sec. 16.05.940(26)(A), the phrase *a permanent place of abode* has been deleted and the replaced with the phrase *a person's domicile*. The two main reasons for this change that are being proposed to accomplish two items. The first being, the requirement to maintain a *permanent place of abode* is unduly restrictive and unnecessary to prevent nonresidents from obtaining resident privileges in the state. If a person is forced to move from one location to another around the state due to their work commitment they may not satisfy the residency requirement because they have not maintained a *permanent place of abode*. The second reason for this change is because the term *abode* is not defined in statute. The lack of strict legal definition creates enforcement problems. Blacks Law Dictionary states: "As

"domicile" and "residence" are usually in the same place, they are frequently used as if they had the same meaning, but they are not identical terms, for a person may have two places of residence, as in the city and country, but only one domicile. Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed permanent home..." We believe that replacing the current phrase *a permanent place of abode* to *domicile* will make it more clear that the legislature intended only those who are domiciled in the state are entitled to residency licensing privileges.

In the Sec. 16.05.940 (26)(B), the present requirement that a person maintain a voting residence in the state is also problematic. Though an Alaska voting address is easy to establish and provides an easy enforcement tool, it is not clear that the state can compel a person to register to vote as a condition of obtaining a resident hunting license. Also this requirement is not appropriate for persons under the voting age. Persons over 16 years of age are required to obtain hunting, trapping, and sport fishing licenses but they do not have a voting address until they are old enough to vote. One other area that this amendment clarifies is that a natural person may not qualify as a resident by virtue of an interest in a partnership, association, joint stock company, trust, or corporation.

In Sec. 16.05.940(26)(C) and in Sec. 16.05.940(26)(D) the branch of United States Coast Guard has been added because the federal definition of military does not include the United States Coast Guard. By adding the United States Coast Guard clarifies the intent of the law to have provisions for this branch that are consistent with military personnel and their dependents. Also, the amendment provides consistency between the language in both paragraphs in reference to the requirement of a resident member of the military service or the United States Coast Guard and their dependents have lived in the state for the preceding 12 consecutive months.

In Sec. 16.05.940(26)(E) the amendments provided are to make the language consistent with the proposed subsections 16.05.940(26)(C) and 16.05.940(26)(D).

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: HB 357

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An Act relating to the issuance of hunting, trapping and
noncommercial fishing licenses, tags, & permits....." BRU: Enforcement
 Sponsor: Representative Ogan Component: _____
 Requestor: (H) H. Ogan COMPONENT SERIAL NO. _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

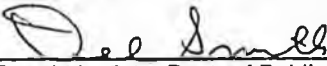
Estimate of current year (FY 95) impact: \$ 0.00 _____

POSITIONS:

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.)

The Division of Fish and Wildlife Protection anticipates no fiscal impact as a result of this legislation.

Prepared By: Captain Richard L. Graham Phone: (907)269-5589
 Division: Fish and Wildlife Protection Date: January 25, 1996
 Approved by Commissioner:  Date: _____
 Agency: Ronald L. Otte, Dept. of Public Safety

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For further distribution information call the Governor's Legislative Office

HB

360

Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT

P.O. Box 55326
North Pole, Alaska 99705
(907) 488-0862

House District 33



White in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797

House Of Representatives

House Bill 360:

"An Act prohibiting the Department of Environmental Conservation from including an administrative fine in certain consent orders or other agreements."

Sponsor:

Representative Gene Therriault

Sponsor Statement

This legislation is intended to halt a practice currently in use by the Department of Environmental Conservation that allows the agency to levy fines without having the specific statutory authority to do so. Under current law, DEC has broad authority to "enter into contracts necessary or convenient to carry out the functions, powers and duties of the department." Under that authority, DEC can issue a "consent order" that functions as a contract with an entity the DEC believes has violated an emission standard or law. In the contract, DEC agrees to forgo other remedies in return for the agreement of the other party to abate the alleged pollution and pay a fine for past alleged pollution. Although this practice could possibly hold up in court if challenged, I do not believe it is appropriate as a policy matter for an agency to levy administrative fines and penalties when the Legislature has chosen not to grant them that specific power.

Sectional Analysis

House Bill 360, "An Act prohibiting the Department of Environmental Conservation from including an administrative fine in certain consent orders or other agreements.

Section 1 Adds a new section that prohibits the Department of Environmental Conservation from including in a consent order a provision that requires the other party to pay a fine for a violation or alleged violation under AS 46.03.

Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT
P.O. Box 55326
North Pole, Alaska 99705
(907) 488-0862


House District 33



White in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797

House Of Representatives

To: Representative Joe Green
Chairman, House Resources Committee

From: Representative Gene Therriault 

Date: February 13, 1996

Re: Hearing Request for House Bill 360

I would like to request a hearing for House Bill 360, "An Act prohibiting the Department of Environmental Conservation from including an administrative fine in certain consent orders or other agreements."

This legislation is intended to halt a practice currently in use by the Department of Environmental Conservation that allows the agency to levy fines without having the specific statutory authority to do so.

Attached to this memorandum are a Sponsor Statement and Sectional Analyses. I would appreciate consideration of this bill at the Committee's earliest convenience. Thank you.

STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL HEALTH
DRINKING WATER PROGRAM

ALASKA DEPARTMENT OF)
ENVIRONMENTAL CONSERVATION)
)
Complainant,)
)
vs.)
)
)
Respondent)
_____)

COMPLIANCE ORDER BY CONSENT

C.O. # _____

The Alaska Department of Environmental Conservation ("department") and _____ ("respondent" or "_____") enter into this Compliance Order by Consent, stipulating and agreeing that:

1. Respondent is responsible for the Class A public water system serving the _____ (Public Water System Identification Number _____) plant, located in _____, Alaska.

2. Respondent is providing water through this public water system from a surface water source that is not filtered.

3. The U. S. Environmental Protection Agency, in consultation with the department, notified _____ in writing on March 12, 1992 that it could not continue to provide unfiltered surface water after June 29, 1993.

4. The department notified _____ in writing on December 29, 1992, that this water system will be required to comply with the Surface Water Treatment Rule's adequate filtration and disinfection requirements.

5. _____ wrote to the department on November 4, 1993, requesting an extension, for one year from the date of the letter, to purchase and install the necessary equipment.

6. _____ wrote to the department on October 3, 1995, requesting another extension, until August 31, 1996, to complete the construction and installation of the required drinking water system and to comply with the rule.

7. The department alleges that the _____ failed to sample the public water system for:

a. volatile organic chemicals, once every year as required by 18 AAC 80.200; annual sampling was missed in calendar year 1994.

b. lead and copper, a set of five samples for two consecutive six months as required by 18 AAC 80.850; samples were missed during the initial monitoring period, July 1, 1993 - June 30, 1994.

8. The department further alleges that the Respondent failed to notify all persons served by this public water system of these violations and of their failure to monitor, as required by 18 AAC 80.900.

9. _____ past and future provision of unfiltered surface water through its _____ public water system has been

and will be in violation of at least AS 46.03.720 and Alaska's Drinking Water Regulations, 18 AAC 80, including but not limited to 18 AAC 80.500, 80.501, 80.505, 80.510, 80.530, 80.540, 80.560, 80.580.

10. In consideration of the Department's promise to refrain from pursuing administrative compliance order proceedings under AS 46.03.850, _____ stipulates and agrees to the conditions of this Compliance Order by Consent.

11. _____ shall, by no later than June 15, 1996, begin construction of the improvements as described according to the engineering plans it has already submitted to the department and which the department approved on March 2, 1995.

12. _____ shall, beginning within 30 days of the effective date of this Compliance Order by Consent, submit progress reports to the department on a monthly basis. Reports shall outline accomplishments and problems encountered while fulfilling the requirements of this compliance order. The reports are to be submitted within 10 days of the end of each month to:

Alaska Department of Environmental
Conservation
555 Cordova St.
Anchorage, AK 99501

13. The Respondent shall, by November 1, 1996, have completed installation of the public water system for the _____ plant approved in the department's approval letter of March 2, 1995

and this system shall be at that time physically and legally capable of operation.

14. The Respondent shall, by December 1, 1996, submit to the department As-Built Plans under 18 AAC 80.350, signed by an Alaskan registered engineer which meet all the conditions stated in the department's March 2, 1995 approval letter.

15. The Respondent shall collect water samples for analysis by a certified drinking water laboratory, by March 15, 1996 for:

a) coliform bacteria, in accordance with 18 AAC 80.605. Respondent shall continue taking samples for coliform bacteria during the first week of every month. If any monthly sample is found to contain either (a) any coliform bacteria or (b) other bacteria in amounts too numerous to count, the Respondent shall submit repeat or additional samples as directed by the department.

b) volatile organic chemicals (VOC's), in accordance with 18 AAC 80.200. If VOC's are detected in any of the samples, monitoring must be repeated as required by the department.

16. The Respondent, as required by 18 AAC 80.530, shall provide interim disinfection treatment that will provide a residual disinfection concentration in the water entering the distribution system not less than 0.8 mg/l. The daily chlorine and turbidity readings should be submitted to the department within ten days after the end of the month during which the samples were taken.

17. The Respondent shall collect water samples for analysis by a certified drinking water laboratory, by June 30, 1996, for lead and copper, in accordance with 18 AAC 80.850. A second set of samples shall be collected before December 31, 1996.

18. All schedules contained herein will be considered enforceable conditions under the terms of this order.

19. If, for any reason, Respondent is unable to comply with a term or condition of this order, including a time deadline, or should Respondent anticipate a future cause for noncompliance, Respondents shall immediately notify the department in writing with a detailed explanation of the condition or conditions and Respondents' proposal to remedy the violation and a timetable for compliance. If Respondent establishes the grounds for noncompliance to the satisfaction of the department, Respondent's obligation to meet the applicable requirement may be extended or altered as the department, in its discretion, deems warranted.

20. In the event that Respondent fails to meet any deadline or other condition contained in this order, Respondent shall pay to the department stipulated penalties as follows:

(a) if Respondent fails to complete installation in accordance with paragraph 13, above, Respondent shall immediately owe and pay to the department \$4,000.

(b) if Respondent fails to collect or submit water samples or water analysis reports as outlined in this Compliance Order By Consent or as routinely required of a Class A public water system, Respondent shall pay \$500 for

each monitoring violation incurred. This subparagraph shall apply to water samples or water analysis reports which are required to be submitted prior to February 1, 1998.

(c) if Respondent fails to comply with any other deadline or condition of this Compliance Order by Consent and Respondent thereafter operates the _____ plant, Respondent shall immediately owe and pay to the department \$500 per day for each day the system operated in noncompliance with the deadline or condition.

_____ that the stipulated penalties set forth in this paragraph do not preclude the department from electing to pursue and are in addition to any other remedies or sanctions available to the department as a result of Respondent's breach of this compliance order.

21. Respondent acknowledges and agrees that this Compliance Order by Consent constitutes an order of the department for all purposes, including but not limited to the purposes of AS 46.03.765, AS 46.03.760, AS 46.03.790 and AS 46.03.850, and that should any provisions of this Compliance Order by Consent not be met, including any provision of any plan submitted and approved pursuant to this Compliance Order, the department may initiate legal proceedings for such breach, and may seek enforcement of this order, including but not limited to actions for specific performance, injunctive relief, damages, and/or costs. The Respondent agrees to pay the department's full attorney fees should the department prevail in such an action. Additionally or

alternatively, in its sole discretion, the department may pursue formal administrative action and/or may file a suit for injunctive relief, civil penalties, and/or for damages under AS 46 03.760 or AS 46.03.822, and/or may pursue criminal penalties under AS 46.03.790, and/or may pursue any other appropriate relief under any other provision of law.

22. In the event of Respondent's breach of a provision of this Compliance Order by Consent, Respondent consents to the entry of temporary and/or preliminary injunctive relief against it for the purpose of enjoining such violation. Respondent agrees that the department may apply to and obtain such injunctive relief from the Superior Court for the State of Alaska without a showing of imminent threat of continued violation or probable success on the merits, or the necessity of demonstrating physical irreparable harm, but must only show the violation of this Compliance Order by Consent.

23. The department expressly reserves its right to initiate any administrative or legal proceeding related to any violation, including a proceeding for injunctive relief and civil penalties and/or damages under AS 46.03.760 or AS 46.03.765 or any combination thereof and for criminal penalties under AS 46.03.790 and for any other appropriate remedy for any violation arising from the events alleged herein (except as provided in paragraph 10, above) or for any future violation. In addition, the department reserves the right to initiate appropriate legal action as to any matter if subsequently discovered events or conditions constitute

an immediate threat to public health, public safety, or the environment, whether or not the department may have been able to discover the event or condition prior to entering into this Compliance Order by Consent.

24. This Compliance Order by Consent is not and shall not be construed to be a waiver of any cause of action or regulatory authority which may be claimed or exercised by any agency or department of the State of Alaska other than the Department of Environmental Conservation. Respondent recognizes that it may be subject to additional requirements imposed by other local, state, or federal agencies.

25. This Compliance Order by Consent does not affix or otherwise affect obligations, liabilities, claims, defenses, or rights as between Respondent and any other party potentially responsible for the _____ public water system.

26. Respondent acknowledges by execution of this compliance order that it is waiving rights it may have were the department to issue a mandatory compliance order under AS 46.03.850 and 18 AAC 95, including the right to an adjudicatory hearing and judicial review of the department's determinations in this matter, and that these rights are knowingly and voluntarily waived.

27. Nothing in this Compliance Order by Consent shall be construed as altering Respondents' existing or future obligations to monitor, record, or report information required under any environmental or public health laws, regulations or permits, or to allow the department access to such information.

28. Respondent hereby expressly grants the department access to its _____ Class A public water system for inspection of the system and the records of the system's operation at any time during any business day without any prior notice.

29. The State of Alaska shall not be held as a party to any contract entered into by Respondent related to activities conducted pursuant to this compliance order by consent.

30. Respondent agrees to hold the State of Alaska and its representatives, agents, and employees harmless and to indemnify and defend the State of Alaska against all claims (including but not limited to legal, equitable, or administrative claims), liabilities, losses, and damages, and costs awarded or incurred, including attorney fees, and against all claims and actions (including but not limited to legal, equitable, or administrative claims and actions), whether wrongfully brought or not, for injury to or death of persons and loss of or damage to property arising out of or in any manner connected with the incidents which give rise to this Compliance Order by Consent, except for any claims arising out of the sole negligence of the State.

31. Respondent agrees that this Compliance Order by Consent shall apply to and bind their agents, heirs, assigns, and successors and all persons, contractors, and consultants acting on their behalf. If Respondent transfers, sells or leases the premises described in paragraph one to another party prior to Respondents' fulfillment of the provisions of this order,

Respondent shall incorporate a copy of this order into the documents of transfer or lease, and shall provide in those documents that the new owners or lessees shall take or lease subject to the terms and conditions of this compliance order; however, respondent's failure to comply with this procedure shall not relieve any new owner or lessees from liability as Respondents' successor.

32. This compliance order by consent may be modified by the written agreement of the parties. No amendment is valid unless approved in writing by the Director of the Environmental Health Division of the department or his/her written designee.

33. A failure to enforce any provision of this compliance order by consent in no way implies a waiver of the department's right to insist upon strict performance of the same or other provisions in the future.

34. The Effective Date of this Compliance Order by Consent shall be the date the Order is signed by Respondent and the department.

35. It is the intent of the parties hereto that the clauses of this Order are severable and should any part of it be declared by a court of law to be invalid and unenforceable, the other clauses shall remain in full force and effect.

36. This Compliance Order by Consent shall expire upon final approval by the department of the _____ system as outlined in the department's March 2, 1995 approval letter.

DEPARTMENT OF ENVIRONMENTAL

CONSERVATION

Dated: _____, 1996

By: _____

Director, Environmental Health
State of Alaska
Department of Environmental
Conservation

ASSENT OF COUNSEL

Approved as to legality and form.

BRUCE M. BOTELHO
ATTORNEY GENERAL

Dated: _____, 1996

By: _____

Assistant Attorney General

I, _____, hereby certify that I have
authority to enter into agreements and to otherwise legally bind
_____ and that on behalf of _____, I have freely
and voluntarily entered into this agreement with the State of
Alaska, Department of Environmental Conservation.

DATED: _____

By: _____

SUBSCRIBED AND SWORN before me this _____ day of _____
_____, 1995, at _____, Alaska.

Notary Public, State of Alaska
My Commission Expires: _____

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1989)

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Contamination of
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Alaska Petro., Inc. v.
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(c) Subject to the \$500,000,000 maximum set under (a) of this section the court shall assess four times the penalty set out in (a) of this section if the court finds

(1) the discharge was caused by the gross negligence or intentional act of the defendant;

(2) the defendant did not take reasonable measures to contain and clean up the discharged oil; or

(3) the defendant did not act or respond in accordance with an approved oil discharge prevention and contingency plan.

(d) Notwithstanding AS 46.03.875, a person liable for civil penalties under this section is not also liable for the discharge of the crude oil under AS 46.03.760(a). A person causing or permitting a discharge of crude oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than \$500 for the discharge.

(e) The court may reduce the penalty imposed under this section if the defendant demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person unless the third person is a person with whom the defendant was found jointly and severally liable for the discharge under other state law.

(f) A person otherwise liable for penalties under this section is not liable if the person demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

(1) an act of God;

(2) a negligent or intentional act of the State of Alaska or the United States; or

(3) an act of war.

(g) In this section, "discharge" means entry of crude oil into or upon the water or public land of the state, regardless of causation, except discharges into an enclosed and impervious oil spill containment area. (§ 3 ch 41 SLA 1989; am § 2 ch 191 SLA 1990)

Revisor's notes. — The introductory language of (c) of this section was reorganized in 1989 to conform to the style of the Alaska Statutes.

Sec. 46.03.760. Civil action for pollution; damages. (a) A person who violates or causes or permits to be violated a provision of this chapter other than AS 46.03.250 — 46.03.314, or a provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial

violation, nor more than \$5,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, which shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

(b) Except as determined by the court under (e)(4) of this section, actions under this section may not be used for punitive purposes, and amounts assessed by the court must be compensatory and remedial in nature.

(c) The court, upon motion of the department or upon its own motion, may defer assessment of all or part of that portion of the sum imposed upon a person under (a)(3) of this section conditioned upon the person complying, within the shortest feasible time, with the requirement for which a violation is shown.

(d) In addition to liability under (a) — (c) of this section, a person who violates or causes or permits to be violated a provision of AS 46.03.740 — 46.03.750 is liable to the state, in a civil action brought under AS 46.03.822, for the full amount of actual damages caused to the state by the violation, including

(1) direct and indirect costs associated with the abatement, containment, or removal of the pollutant;

(2) restoration of the environment to its former state;

(3) amounts paid as grants under AS 29.60.510 — 29.60.599 and as emergency first response advances and reimbursements under AS 46.08.070(c); and

(4) all incidental administrative costs.

(e) A person who violates or causes or permits to be violated a provision of AS 46.03.250 — 46.03.314, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 — 46.03.314 or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance dis-

er that on which the n applicable, liquidated damages the violation, which g to the toxicity, the substance dis- nent, and the degree onmental quality; detection, investiga-

on in not complying charged.

e)(4) of this section, nitive purposes, and ory and remedial in

or upon its own mo- portion of the sum on conditioned upon le time, with the re-

his section, a person d a provision of AS civil action brought l damages caused to

th the abatement,

ner state; — 29.60.599 and as rsements under AS

its to be violated a 4, or a regulation, a roval, or acceptance, ptance issued under a civil action, to the t less than \$500 nor e more than \$10,000 inues, and that shall

liquidated damages y the violation, that g to the toxicity, the substance dis-

charged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged; and

(4) the need for an enhanced civil penalty to deter future noncompliance.

(f) As used in this section, "economic savings" means that sum which a person would be required to expend for the planning, acquisition, siting, construction, installation and operation of facilities necessary to effect compliance with the standard violated. (§ 3 ch 120 SLA 1971; am § 9 ch 220 SLA 1976; am § 5 ch 266 SLA 1976; am §§ 5, 6 ch 116 SLA 1980; am §§ 5 — 7 ch 77 SLA 1984; am § 9 ch 59 SLA 1986; am § 8 ch 83 SLA 1991; am § 16 ch 74 SLA 1993)

Revisor's notes. — In 1995, former (d) of this section was relettered as (f); former subsections (e) and (f) were relettered as (d) and (e), respectively; "(e)(4)" was substituted for "(f)(4)" in subsection (b); and "(a)-(c)" was substituted for "(a)-(d)" in subsection (d).

Cross references. — For oil pollution control, see AS 46.04; for provision that actions brought under (a) and (d) of this section may be brought directly against insurers or other persons providing evidence of financial security, see AS 46.04.040(e); for limited immunity from liability under this section, see § 4, ch. 96, SLA 1990 in the Temporary and Special Acts.

Effect of amendments. — The 1991

amendment, effective June 28, 1991, in subsection (f), added the paragraph designations, added paragraph (3), and made punctuation changes.

The 1993 amendment, effective June 26, 1993, inserted "AS 46.14" in two places in the beginning language of subsection (e) and added the language beginning "for a violation" to the end of paragraph (e)(1).

Editor's notes. — Section 23, ch. 83, SLA 1991 provides that the amendment to subsection (e) made by § 8, ch. 83, SLA 1991 does "not apply to a release of oil or a hazardous substance and resultant cleanup activities or to efforts to respond to or abate that release if the release occurred before June 28, 1991."

NOTES TO DECISIONS

This section and AS 46.03.790 held not unconstitutional. — See Stock v. State, 526 P.2d 3 (Alaska 1974), decided prior to the 1976 amendment of those sections.

Quoted in State v. Alaska Int'l Air. Inc., 552 P.2d 1064 (Alaska 1977).

Collateral references. — Injunction against pollution of stream by private persons or corporations. 46 ALR 8. When statute of limitations commences

to run as to action against municipality for damages to riparian premises by pollution of stream by discharge of sewage. 122 ALR 1509.

HB 360 would prevent DEC from including a fine for violations or alleged violations of AS 46.03 in any "consent order" or other agreement. The way this bill has been drafted is somewhat confusing - DEC does not have the authority to levy fines. In addition, consent orders are judgments entered by a court, and agreed to by both parties involved. We have not prepared a fiscal note yet because we need to get clarification on both the question of fines, and whether or not the intent of the bill is to divest the judiciary of its ability to levy penalties.

It is probably worthwhile to first review what kinds of costs can be assessed for violations of DEC statutes and also review the kinds of agreements, including consent orders, that DEC negotiates with permittees.

AS 46.03.760 outlines the costs a person who violates provisions of Title 46 may be liable to pay in a civil action. Those costs are:

- 1) liquidated damages that represent reasonable compensation for adverse affects of the violation;
- 2) reimbursement of reasonable costs incurred by the department in the detection, investigation, and attempted correction of the violation, and
- 3) the economic savings realized by the person for not complying.

The statute specifically states that these sums must be compensatory and remedial in nature.

They may not be punitive.

The only penalties that are authorized may be imposed by the court for violations of the air statutes and hazardous waste statutes. The language in the statute refers to "the need for an enhanced civil penalty to deter future noncompliance." The imposition of penalties is not mandatory but the ability to do so is a requirement for state primacy in both the air and hazardous waste programs.

When we have a situation where there is a violation, the department's preferred option is to negotiate a compliance schedule with the permittee. There are two kinds of negotiated agreements we use. The most common is a Compliance Order by Consent, and the other is a Consent Order, or Consent Decree. Both of these documents are negotiated with the permittee who is allegedly violating some statute which DEC is required to implement. They are contracts where both sides - the state and the permittee - get something out of it. A Consent Decree is filed with the Court, while a COBC is not. Other than that, they are essentially the same thing.

As I said, both sides get something out of these agreements. The permittee gets time to come into compliance while remaining in operation. The state gets compliance with the law. Both sides stay out of court. Compliance Orders by Consent and Consent Decrees or Orders will forestall an EPA action because the state is actively seeking compliance. Consent Decrees can also forestall citizen lawsuits which are allowed under most all federal environmental laws for the same reason - the state is actively seeking compliance.

Negotiated into these contracts will be "stipulated" penalties. That is, penalties the permittee *agrees* to pay if he fails to comply with the Compliance Order, or if more time is needed for