

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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The Honorable Bettye Fahrenkamp
Chairman, Resources Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

The bill before you represents substantial changes to the Alaska Forest Practices Act. It is the result of almost six months of work by representatives of the timber industry, the state resource agencies, and fishing and environmental groups. I believe that this bill, as a result of hard work and compromises by all interest groups, will allow Alaska's forest practices program to both meet the needs of Alaska's growing timber industry and achieve appropriate protection for public resources such as fish habitat and water quality. I would like to take this opportunity explain the consensus mediation process used to arrive at this bill -- the Alaska Forest Practices Act Review, and explain the provisions of the bill.

Last year, the Governor directed the state resource agencies to conduct a public review of the Forest Practices Act and to make recommendations for any improvements in the Act, its regulations, and implementation. In order to facilitate an objective and balanced review, a steering committee was formed, including representatives of timber land owners and operators, state agencies, and users of public resources that are affected by forest practices. Because the agencies felt it would be possible to review the state's forest practices program and meet both the needs of the timber industry and resource protection needs for fish habitat and water quality, the committee attempted to operate by unanimous consent. This approach ensured that the committee's decisions respected all interests.

The bill before you achieves near total consensus; it has the support of representatives of Native Corporations, boroughs, fishing groups, and environmental groups. There have been question raised to a provision of the bill that might affect harvest on federal land through the Alaska Coastal Management Program. (For information on that section, please see the attached bill analysis, Section 27.) Agency staff will be available during the committee hearing to discuss any questions raised on this issue.

The committee's long and difficult work was not completed until early this week, and so the bill could not be introduced earlier. However, because of the importance of the bill and the extraordinary and fragile achievement of achieving near-total consensus on these controversial issues, I urge your prompt and favorable consideration.

Attached is an analysis of the bill.

Sincerely,


Lennie Gorsuch
Commissioner

Attachment 1

Bill Analysis
Senate Bill 317

An Act relating to forest resources and practices and to the management of forest lands;
and providing for an effective date

Section 1: State Timber Planning Process. Title 38 is amended to require additional planning before state timber sales. The division of forestry must prepare a site-specific plan before all state timber sales that fully integrates appropriate resource protection measures into the sale design. This site-specific design would also improve public review of individual timber sales.

The department would also be required to annually prepare a five-year timber schedule of proposed state timber sales. Except for small sales and emergencies such as salvage, a proposed sale would be required to appear on the two five-year schedules preceding the sale. The five-year schedule will inform the public and the timber industry of the state's long-term plans.

Section 2, 3 and 4: Coordinating Overlapping Agency Jurisdiction. These sections coordinate overlapping agency jurisdiction regulating timber harvest activities.

Section 2: DEC. Regulations of the amended forest practices act will serve as timber harvest standards for non-point source pollution under the leadership of DEC.

Section 3: ACMP. The amended forest practices act will serve as the Coastal Management Program for harvest activities on private land.

Section 4: DF&G. Regulations of the amended forest practices act provide the fish habitat protection standards except for those activities subject to AS 16.06.840 and AS 16.05.870.

Section 5: Board of Forestry Membership. The current 13-member board of forestry is restructured to a smaller, more balanced, 7-member board. (See section 7 for duties of the board.) It also details qualifications for board members, staffing requirements, and voting procedures.

Section 6: Board of Forestry Terms of Office. The section amends existing terms of office to provide staggered terms of office for the Board of Forestry.

Section 7: Powers and Duties of the Board of Forestry. This section amends the duties of the Board of Forestry. Existing duties include only commenting on regulations. New duties are added: providing a forum for discussion for representatives of affected interests to discuss and resolve forestry issues before they become divisive; coordinating an annual survey of research needs; coordinating the monitoring of the implementation and effectiveness of the forest practices program and making recommendations for change; and holding annual hearings in southeast, southcentral, and interior Alaska to take public testimony on the state's forest practices program.

Section 8: Technical Change, Coordination with DEC. References to DEC's program for non-point source water pollution are amended to be consistent with the coordination provisions in Section 3.

Section 9: Technical Change, Non-point Source Pollution Control. Wording is changed to make clear the meaning of the existing law concerning recognition of environmentally sensitive areas in non-point source pollution control measures.

Section 10: Standard for Soil Erosion and Mass Wasting. The section provides a standard of minimizing or preventing significant adverse affects of soil erosion and mass wasting.

Section 11: Standard for Scenic Quality. The existing standard for scenic quality near tourism and recreation areas is amended. The standard applies to state and municipal land only. The standard would be implemented by regulations of the act, and by state and municipal planning for timber harvest.

Section 12: Standard for Important Fish and Wildlife Habitat. A new standard is added that requires planning for harvest allowance be made for important fish and wildlife habitat. The standard applies to state and municipal land only. The standard would be implemented by regulations of the act, and by state and municipal planning for timber harvest.

Section 13: Records for Public and Agency Review. The division is required to maintain a records of decisions made under the act for use by the public and state agencies in assessing the effectiveness of implementation of the act.

Section 14: Regulations. This section provides a list of forestry activities subject to regulation under the act; allows the commissioner to establish regions and make appropriate distinctions between public and private land; and directs the commissioner to only adopt those regulations that yield significant benefits.

Section 15: Control of Infestation and Disease. A new section of the act is added that allows the commissioner to take action to control forest infestation and disease outbreaks that threaten forest resources.

Section 16: Variation from Requirements of the Act. The state forester is directed to allow variations from forest practice requirements established under this act. The state forester may allow variations to requirements he determines that the harm such as degradation of fish habitat or water quality not likely to occur because of site-specific circumstances of the particular activity. It allows private landowners to appeal an adverse decision by the state forester, but they must conform to the requirement during the period of the appeal.

Section 17: Review of Private and Municipal Timber Harvest Operations. The section provides an improved process for efficient and detailed review of timber harvest plans. This efficient review allows the timber industry to respond to changing timber markets but ensures that harvest operations conform to forest practices standards and regulations. The section also requires public review of private harvest plans. Review by state agencies may occur in the office or, if necessary, in the field prior to the start of the operations.

Section 18: Interagency Coordination. Because of overlapping agency expertise for issues concerning timber harvest, this section provides coordination mechanisms for DNR, DF&G, DEC, and where appropriate, coastal districts. The coordination system retains DNR as the lead agency for forest practices but ensures that the appropriate agency expertise from DF&G and DEC is included for forest practice issues that involve their expertise. The section requires that the agencies recognize fish habitat as the primary value within the riparian areas established under the bill.

Section 19: Riparian Management. This section of the bill provides for a streamside management program that strikes a fair balance between the needs of the timber industry and those of fish habitat and water quality protection. It provides for significant timber harvest while providing appropriate protection for public resources. Riparian standards for timber harvest differ depending on land ownership, stream, type, and region. The section also provides the intent of riparian management standards: a list of fish habitat

components that the riparian standards are designed to protect.

On private land in southeast Alaska, streamside areas of up to 30 meters will be managed for the protection of fish habitat and water quality, although timber operators will not be required to leave more than five percent of their timber volume for this purposes. In this way, strong resource protection exists without requiring any one private owner to shoulder an undue portion of the resource protection costs.

On private land outside southeast Alaska, it directs the commissioner to establish riparian protection standards and provides interim standards until regulations are drafted.

On state land north of the Alaska Range, timber harvest within 30-meters of an anadromous or high value resident fish waterbody will be allowed where adequate protection remains for fish habitat.

On state land south of the Alaska Range, no timber harvest is allowed within 30-meters of an anadromous or high value resident fish waterbody. Within the adjacent 60-meters, timber harvest must be consistent with the maintenance of important fish and wildlife habitat.

For municipal and trust lands, timber harvest within 30-meters of an anadromous or high-value resident fish waterbody must be sited and designed primarily to protect fish habitat and water quality.

Section 20: Enforcement Coordination. Because existing overlapping jurisdiction by DEC, DF&G, and the department of law, and because of additional authorities provided DNR by this bill, this section directs the agencies to establish "uniform enforcement strategy." The strategy requires a method of coordinating enforcement that avoids duplicating and inconsistent enforcement by the agencies. All agencies retain existing enforcement authorities.

Section 21: Penalties for Violations. This section amends the act by streamlining existing procedures for levying civil penalties of up to \$10,000 per violation, and adds additional enforcement authorities. Under these additional authorities, the state may issue a citation for a class A misdemeanor for violations of the act, its regulations, agency directives or stop orders; also, DNR may issue remedial orders requiring operators to repair or correct damage resulting from a violation.

Section 22: Directives. This new section provides that DNR may issue enforceable, written orders directing that timber operations that violate or would violate this act or its regulations be changed. These directives may be written as part of the DNR office or field review of private timber operations as provided under Section 17 of the act. Directives may be appealed and operations may continue pending the outcome of the appeal.

Section 23: Stop-work Orders. If the forester determines that a violation of the act or its regulation is occurring or is likely to occur and that significant harm to public resources is likely to occur if work is not halted before a hearing, the state forester may issue a stop-work order. A stop-work order may be written as part of the DNR office or field review of private timber operations as provided under Section 17 of the act. Stop-work orders may be appealed, but the operation must stop pending the outcome of the appeal.

Section 24: Hearing Procedures. This section amends the cumbersome hearing process existing law by deleting the requirement that hearings be held before lawyer appointed by the attorney general. The new process allows the hearing officer to be an employee of the department. The new process will be quicker, and more efficient for both the landowners and the department. It will also be significantly less costly for the department.

Section 25: Appeals and Judicial Review. This section provides appeal procedures from department decisions. It provides for appeal of DNR decisions by landowners or timber operators to the state forester, in some cases to the commissioner, and gives the option of going to court. Also it provides that parties other than an aggrieved forest landowner, timber owner, or operator may not receive judicial review of individual timber harvest decisions. Third parties may, however, seek judicial review of regulations, or of a systematic error in DNR decisions.

Section 26: State Forest Plans, technical change. This section changes existing law by deleting a list of uses to consider in completing plans; and instead referencing a similar list in Title 38 (section 1 of this bill). It eliminates confusion from two close but not identical lists with similar purposes.

Section 27: Affect on Federal Timber Harvest. Other sections of this bill set specific standards for activities on state, municipal, and private land. This section states that the bill's specific resource protection provisions, such as riparian management zones defined for private, state, and municipal lands, do not apply to timber harvest activities on federal land. However, the bill proposes that the federal government achieve a level of resource protection commensurate with that provided for on state lands. This would occur as the federal agency, primarily the Forest Service, proceeds with its normal environmental planning process for timber harvest activities. While this measure does create a broad performance test for operations on federal land, the real effect on Forest Service actions is not considered to be significant, given the generally higher federal requirements for environmental protection.

The bill assures that federal lands will not be subject to the specific forest practice act standards "either directly or for purposes of compliance with the (federal) Coastal Zone Management Act." This statement effectively severs the applicability of the Act's specific standards to National Forests and other federal lands. However, some participants in the forest practices discussions wanted to take the point one step further to resolve a long-standing discussion of what specific environmental protection the state can ask the federal government to provide on National Forest lands through the coastal management consistency process.

The forest practices act discussions did not address federal timber harvest activities in any detail. Therefore, the parties to the consensus decided that the bill was not the appropriate vehicle to include specific environmental protection standards for federal lands, nor address the application of coastal management standards to federal timber harvest activities. Instead, the vehicle to address this question will be through a change to the Alaska Coastal Management Program regulation established for timber harvest and processing by the Alaska Coastal Policy Council (CPC). Following enactment of the forest practices act, the CPC will amend this timber harvest standard as necessary to address lands not covered by the forest practices act, including federal lands. The CPC will provide for the full involvement of the federal government, industry, and the public in drafting the new timber harvest standards.

Section 28: The Act Does Not Alter Other Rights and Jurisdictions. This new section of the act confirms that it does not alter or diminish the authorities of DF&G under title 16, DEC under title 46, or any state agency under other laws. It also confirms that the act does not diminish the rights of Alaska Native or of Alaska Native corporations with respect to the Alaska Native Claims Settlement Act.

Section 29: Wildlife on Private Land. This new section provides that state agencies and private landowners will establish cooperative, voluntary processes for protection of wildlife habitat on private land.

Section 30: Definitions, technical changes. This section provides definitions necessary for the act. Few changes are made.

Section 31: Legislative Review. This section provides legislative acknowledgement that this act should be reviewed by the legislature within three years after further research and experience is gained in implementing the act.

Section 32: Repeal of Superseded Sections.

Section 33: Effective Date. An effective Date is provided: January 1, 1990.

FRPA Regulations Applicable to Federal Land

- 11 AAC 95.185 Purpose and relationship to other laws
- 11 AAC 95.195 Clearing of spruce trees
- 11 AAC 95.200 Land use conversion
- 11 AAC 95.260(c) Riparian standards
- 11 AAC 95.265(a)(4)-(5), (b), (c) (excluding the second part relating to private land), (d), (e), (f) Classification of surface water bodies
- 11 AAC 95.270 Designation and marking of a riparian retention area (excluding last provision in subpart (a) relating to private land)
- 11 AAC 95.275 Uses within a riparian area
- 11 AAC 95.280(b)-(d) Slope stability standards
- 11 AAC 95.285 Road location
- 11 AAC 95.290 Road construction
- 11 AAC 95.295 Road drainage
- 11 AAC 95.305 Culverts and other water crossing provisions
- 11 AAC 95.315 Road maintenance
- 11 AAC 95.320 Road closure
- 11 AAC 95.325 Material extraction and disposal sites
- 11 AAC 95.330 Rehabilitation after mass wasting
- 11 AAC 95.335 Blasting standards
- 11 AAC 95.340 Harvest unit planning and design
- 11 AAC 95.345 Landing location, construction, and operation
- 11 AAC 95.350 Bank integrity
- 11 AAC 95.355 Felling and bucking
- 11 AAC 95.360 Cable yarding
- 11 AAC 95.365 Tracked and wheeled harvest systems
- 11 AAC 95.370 Slash
- 11 AAC 95.375(b)-(f) Reforestation requirement
- 11 AAC 95.380 Natural regeneration
- 11 AAC 95.385 Regeneration survey and report
- 11 AAC 95.390 Site preparation
- 11 AAC 95.810 Measurement of distances
- 11 AAC 95.815 Disposal of waste material
- 11 AAC 95.820 Aesthetics
- 11 AAC 95.825 Water quality monitoring
- 11 AAC 95.900 Definitions