

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 220(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES MCCABE, G.Nelson

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to easements and rights-of-way in state parks."**

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

3 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 LEGISLATIVE INTENT AND FINDINGS. (a) It is the intent of the legislature that
6 this Act

7 (1) apply exclusively to state park units, not change easement or right-of-way
8 processes applicable to other land, and not affect how other state lands are managed;

9 (2) facilitate timely and reasonable access to private inholdings and public
10 utility infrastructure within state park units while protecting the primary recreational and
11 conservation values served by those areas;

12 (3) be implemented in a manner consistent with federal law, including the
13 Land and Water Conservation Fund Act of 1965; and

14 (4) not be interpreted to authorize large-scale development in state park units
15 or to convert state park land to a nonrecreational use.

1 (b) The legislature finds that minor, minimally invasive linear utility crossings and
2 access routes do not prohibit recreational use of state park units and are generally compatible
3 with the purposes of state parks.

4 * **Sec. 2.** AS 41.21.024 is amended to read:

5 **Sec. 41.21.024. Easements and rights-of-way for access to private land. If**
6 **the commissioner determines an easement or right-of-way within a state park**
7 **unit will not unduly affect park resources, is in the public interest, and complies**
8 **with other applicable law, the** [THE] department

9 (1) may grant a public easement or public right-of-way [WITHIN A
10 STATE PARK UNIT] for access to private property **or an easement or right-of-way**
11 **for the installation of new facilities and infrastructure owned, operated,**
12 **managed, or otherwise controlled by a public utility; or**

13 (2) **shall grant an easement or right-of-way for the operation,**
14 **maintenance, upgrade, removal, or replacement of existing facilities and**
15 **infrastructure owned, operated, managed, or otherwise controlled by a public**
16 **utility** [IF THE COMMISSIONER DETERMINES THAT THE EASEMENT OR
17 RIGHT-OF-WAY

18 (1) WILL NOT UNDULY AFFECT PARK RESOURCES; AND

19 (2) IS IN THE PUBLIC INTEREST].

20 * **Sec. 3.** AS 41.21.024 is amended by adding new subsections to read:

21 (b) In granting an easement or right-of-way for facilities and infrastructure of
22 a public utility under (a) of this section, the department shall ensure that the easement
23 or right-of-way provides adequate and feasible access for

24 (1) the purposes for which the right-of-way or easement was intended;
25 and

26 (2) installation, operation, maintenance, upgrade, removal, or
27 replacement of the affected utility facilities and infrastructure.

28 (c) If a person seeking an easement or right-of-way applies under (d) of this
29 section and the commissioner determines that the easement or right-of-way is not
30 disqualified under (a) of this section, the department shall grant the easement or right-
31 of-way and may not provide the person another lesser land use authorization or

1 permission in lieu of the easement or right-of-way.

2 (d) A utility provider or property owner seeking an easement or right-of-way
3 under (a) of this section shall submit an application on a form provided or in a format
4 approved by the department that

5 (1) describes

6 (A) how the easement or right-of-way will benefit the public
7 interest;

8 (B) the need for the easement or right-of-way;

9 (C) the proposed location of the easement or right-of-way;

10 (D) if applicable, the utility facilities and infrastructure
11 proposed to be located in the easement or right-of-way; and

12 (2) includes

13 (A) an assessment of the potential environmental effects if the
14 easement or right-of-way is granted; and

15 (B) a survey of the area affected by the easement or right-of-
16 way; for purposes of this subparagraph, a cadastral survey is not required, and
17 the survey may be performed by GPS in a format established in regulations
18 adopted by the department.

19 (e) The scope and detail required for an assessment in an application under
20 (d)(2)(A) of this section must be commensurate with the use or planned use, and the
21 likely effects, of an easement or right-of-way applied for and granted under this
22 section. Assessment requirements adopted by the department shall, to the extent
23 possible, minimize project delays and an applicant's expenses.

24 (f) The commissioner shall approve or disapprove an application submitted
25 under (d) of this section within 90 days after the department receives a complete
26 application. An application that contains the information required under (d) of this
27 section shall be considered completed even if the application contains minor
28 omissions. If the commissioner disapproves an application, the department shall
29 provide the reasons for the disapproval in writing to the applicant. For an application
30 that is approved, the commissioner may impose reasonable terms and conditions,
31 including reasonable permit fees to protect the primary uses of the park and the

1 environment, to ensure public safety, and to minimize disruption to other land uses. If
2 the commissioner does not approve or disapprove an application within 90 days after
3 the department receives a complete application, the easement or right-of-way is
4 considered approved unless otherwise prohibited by another law.

5 (g) The commissioner may not impose a term or condition under (f) of this
6 section

7 (1) requiring

8 (A) improvements or other work outside of the area affected by
9 the easement or right-of-way; or

10 (B) the completion or performance of a duplicative study or
11 test;

12 (2) without providing clear standards or defined time limitations; or

13 (3) that is materially different than the terms and conditions imposed
14 on similarly situated applicants.

15 (h) In considering whether granting an easement or right-of-way is in the
16 public interest under (a) of this section, the commissioner shall consider the benefits
17 the easement or right-of-way would provide

18 (1) in accessing private property;

19 (2) by improving or expanding public utility services and facilities and
20 infrastructure; and

21 (3) to the local community and economy.

22 (i) The use of funds from the federal land and water conservation fund
23 established under 54 U.S.C. 200301 - 200310 (Land and Water Conservation Fund
24 Act of 1965) in a state park unit does not by itself vacate, release, or otherwise convert
25 a valid section line easement or right-of-way within the unit. The reasonable use of an
26 easement or right-of-way in a state park unit for public utility infrastructure, or for
27 access to private property, does not by itself convert land in the state park unit to a use
28 other than public outdoor recreational use. Nothing in this subsection shall be
29 construed to authorize a violation of 54 U.S.C. 200301 - 200310 (Land and Water
30 Conservation Fund Act of 1965).

31 (j) In this section,

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(1) "facilities and infrastructure" includes structures, poles, plants, lines, trenches, bridges, tunnels, sewers, pipelines, cables, and other systems for furnishing, producing, generating, transmitting, or distributing power, electricity, heat, gas, steam, water, wastewater, communications, or telecommunications, including broadband;

(2) "public utility" has the meaning given in AS 42.05.990.