

CS FOR SENATE BILL NO. 35(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 2/19/97
Referred: Finance

Sponsor(s): SENATORS GREEN, Pearce, Taylor

A BILL

FOR AN ACT ENTITLED

1 "An Act restricting the Board of Fisheries, the Board of Game, the Department
2 of Fish and Game, and the Department of Natural Resources from enacting any
3 regulation that prohibits or restricts traditional access; relating to the means of
4 transportation used to provide access for the taking of game; relating to
5 management of state land, water, and land and water as part of a state park,
6 recreational or special management area, or preserve; relating to reports to the
7 legislature concerning prohibitions or restrictions of traditional means of access for
8 traditional recreational uses within a park, recreational or special management
9 area, or preserve; requiring legislative approval before park land may be closed
10 or have access restricted; relating to Chilkat State Park."

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

12 * Section 1. AS 16.05.050 is amended by adding a new subsection to read:

1 (b) Notwithstanding any other provision of law, the commissioner may not
 2 adopt a regulation that prohibits or restricts traditional access to land, water, or land
 3 and water. If the commissioner finds a compelling reason to prohibit or restrict
 4 traditional access to land, water, or land and water, the commissioner shall forward
 5 that finding to the governor for submission to the legislature under the procedure
 6 provided in AS 24.08.060 for the introduction of bills by the governor.

7 * **Sec. 2.** AS 16.05.251 is amended by adding a new subsection to read:

8 (i) Notwithstanding any other provision of law, the Board of Fisheries may not
 9 adopt a regulation that prohibits or restricts traditional access to land, water, or land
 10 and water. If the board finds a compelling reason to prohibit or restrict traditional
 11 access to land, water, or land and water, the board shall forward that finding to the
 12 governor for submission to the legislature under the procedure provided in
 13 AS 24.08.060 for the introduction of bills by the governor.

14 * **Sec. 3.** AS 16.05.255(a) is amended to read:

15 (a) The Board of Game may adopt regulations it considers advisable in
 16 accordance with AS 44.62 (Administrative Procedure Act) for

17 (1) setting apart game reserve areas, refuges, and sanctuaries in the
 18 water or on the land of the state over which it has jurisdiction, subject to the approval
 19 of the legislature;

20 (2) establishing open and closed seasons and areas for the taking of
 21 game;

22 (3) establishing the means and methods employed in the pursuit,
 23 capture, taking, and transport of game, including regulations, consistent with resource
 24 conservation and development goals, establishing means and methods that may be
 25 employed by persons with physical disabilities; **however, the board may not prohibit**
 26 **or restrict access into an area by a means of transportation that has historically**
 27 **been used in that area unless the board finds, based on clear and convincing**
 28 **evidence, that the means of transportation has resulted in significant biological**
 29 **harm to the game population for which the means of transportation is being used;**

30 (4) setting quotas, bag limits, harvest levels, and sex, age, and size
 31 limitations on the taking of game;

1 (5) classifying game as game birds, song birds, big game animals, fur
2 bearing animals, predators, or other categories;

3 (6) methods, means, and harvest levels necessary to control predation
4 and competition among game in the state;

5 (7) watershed and habitat improvement, and management, conservation,
6 protection, use, disposal, propagation, and stocking of game;

7 (8) prohibiting the live capture, possession, transport, or release of
8 native or exotic game or their eggs;

9 (9) establishing the times and dates during which the issuance of game
10 licenses, permits, and registrations and the transfer of permits and registrations between
11 registration areas and game management units or subunits is allowed;

12 (10) regulating sport hunting and subsistence hunting as needed for the
13 conservation, development, and utilization of game;

14 (11) taking game to ensure public safety.

15 * **Sec. 4.** AS 16.05.255 is amended by adding a new subsection to read:

16 (h) Notwithstanding any other provision of law, the Board of Game may not
17 adopt a regulation that prohibits or restricts traditional access to land, water, or land
18 and water. If the board finds a compelling reason to prohibit or restrict traditional
19 access to land, water, or land and water, the board shall forward that finding to the
20 governor for submission to the legislature under the procedure provided in
21 AS 24.08.060 for the introduction of bills by the governor.

22 * **Sec. 5.** AS 38.95 is amended by adding a new section to read:

23 **Article 7. Restriction on Authority of the Department of Natural Resources**
24 **to Adopt Regulations That Restrict Traditional Access.**

25 **Sec. 38.95.300. Restriction on regulations that restrict traditional access.**

26 Except as provided in AS 41.21.020(e) and notwithstanding another provision of law,
27 the Department of Natural Resources may not adopt a regulation that prohibits or
28 restricts traditional access to state land, water, or land and water. If the department
29 finds a compelling reason to prohibit or restrict traditional access to state land, water,
30 or land and water, the department shall forward that finding to the governor for
31 submission to the legislature under the procedure provided in AS 24.08.060 for the

1 introduction of bills by the governor.

2 * **Sec. 6.** AS 41.21.020(a) is amended to read:

3 (a) The department shall

4 (1) develop a continuing plan for the conservation and maximum use
5 in the public interest of the scenic, historic, archaeologic, scientific, biological, and
6 recreational resources of the state;

7 (2) plan for and develop a system of state parks and recreational
8 facilities, to be established as the legislature authorizes and directs;

9 (3) acquire by gift, purchase, or transfer from state or federal agencies,
10 or from individuals, corporations, partnerships, or associations, land necessary, suitable,
11 and proper for roadside, picnic, recreational, or park purposes;

12 (4) develop, manage, and maintain state parks and recreational areas;

13 (5) provide for the acquisition, care, management, supervision,
14 improvement, development, extension, and maintenance of public recreational land, and
15 make necessary arrangements, contracts, or commitments for the improvement and
16 development of land acquired under AS 41.21.010 - 41.21.040; contracting for
17 improvement and development under this paragraph is governed by AS 36.30 (State
18 Procurement Code);

19 (6) adopt, in accordance with this section and AS 44.62 (Administrative
20 Procedure Act), regulations governing the use and designating incompatible uses within
21 the boundaries of state park and recreational areas to protect the property and to
22 preserve the peace;

23 (7) cooperate with the United States and its agencies and local
24 subdivisions of the state to secure the effective supervision, improvement,
25 development, extension, and maintenance of state parks, state monuments, state
26 historical areas, and state recreational areas [,] and secure agreements or contracts for
27 the purpose of AS 41.21.010 - 41.21.040;

28 (8) encourage the organization of state public park and recreational
29 activities in the local political subdivisions of the state;

30 (9) provide for consulting service designed to develop local park and
31 recreation facilities and programs;

1 (10) provide clearinghouse services for other state agencies concerned
2 with park and recreation matters;

3 (11) perform other duties as are prescribed by executive order or by
4 law;

5 (12) maintain memorials to Alaska veterans located in state parks;
6 [AND]

7 (13) adopt, in accordance with AS 44.62 (Administrative Procedure
8 Act), regulations governing the use of the Chena River State Recreation Area and
9 designating incompatible uses within the boundaries of the Chena River State
10 Recreation Area in accordance with AS 41.21.490; and

11 (14) annually, by the first day of each regular session of the
12 legislature, submit a report to the legislature on each designation of an
13 incompatible use under this chapter, or other action, that prohibits or restricts a
14 traditional means of access across a park, area, or preserve established under this
15 chapter for a traditional recreational activity on or within the park, area, or
16 preserve; for each prohibition or restriction, the report must state reasons for the
17 designation of incompatibility or prohibition or restriction of a traditional means
18 of access, the specific area of the prohibition or restriction, and the time period
19 during which the incompatibility or prohibition or restriction is expected to exist;
20 in this paragraph,

21 (A) "traditional means of access" means those types of
22 transportation on, to, or in the state land, water, or land and water, for
23 which a popular pattern of use has developed; the term includes general
24 or commercial aviation, ballooning, motorized and nonmotorized boating,
25 snowmachining, operation of all-terrain vehicles, mushing, use of pack
26 animals, skiing, snowshoeing, and walking;

27 (B) "traditional recreational activity" means those personal
28 or commercial types of activities that people may use for sport, exercise,
29 subsistence, or personal enjoyment, including hunting, fishing, trapping, or
30 gathering, and that have historically been conducted as part of an
31 individual, family, or community life pattern on or in the state land, water,

1 **or land and water.**

2 * **Sec. 7.** AS 41.21.020 is amended by adding new subsections to read:

3 (d) Notwithstanding (a)(3) of this section, the department may not manage as
4 part of a park, area, or preserve established under AS 41.21.110 - 41.21.630, land,
5 water, or land and water that is not within the boundaries, as designated by the
6 legislature, of the park, area, or preserve.

7 (e) Except as otherwise specifically provided in this chapter, the department
8 may not close or restrict traditional access to land, water, or land and water, managed
9 under this chapter unless the closure or restriction (1) is limited to a period of not
10 more than 90 days in a calendar year, or (2) is submitted to the legislature for approval
11 at the next regular session of the legislature. If the legislature fails to approve a
12 closure or restriction under this subsection by the last day of that regular session, the
13 closure or restriction ends and cannot be enforced after the last day of that regular
14 session.

15 * **Sec. 8.** AS 41.21.111 is amended to read:

16 **Sec. 41.21.111. Authority to designate Chilkat State Park.** The governor
17 may designate by proclamation the state-owned land and water and all that acquired
18 in the future by the state, lying within the parcels described in this section, as the
19 Chilkat State Park. The proclamation may include the entire area or portions of the
20 area at different times, shall reserve the areas included from all uses incompatible with
21 their primary function as public recreation land and water, and shall assign them to the
22 department for control, development, and maintenance. Land covered by AS 41.21.110
23 - 41.21.113 has a total acreage of **6,056.30** [6,045.45] acres, including approximately
24 610 acres of federal land, and is described as follows:

25 (1) Township 31 South, Range 60 East, Copper River Meridian U.S.S.
26 1599: the portions of Sections 6-8 known as Battery Point Light House Reserve;

27 (2) Township 31 South, Range 59 East, Copper River Meridian Section
28 1, excluding the portions of Lots 2 and 3 within the Chilkoot Inlet Alaska Subdivision
29 Section 12: NW1/4, NE1/4, SE1/4 Township 31 South, Range 60 East, Copper River
30 Meridian Section 6: Lots 1-3 Section 7: Lots 1-7 Section 8: Lot 1 Sections 17 and 18
31 Section 19: NE1/4NW1/4, N1/2NE1/4;

1 (3) Township 31 South, Range 60 East, Copper River Meridian Section
 2 30: Lots 8 and 9 Section 31 Section 32: SW1/4, W1/2NW1/4SE1/4,
 3 W1/2SE1/4NW1/4SE1/4, Lots 9-16 including W1/2SW1/4SE1/4SE1/4;

4 (4) Township 32 South, Range 60 East, Copper River Meridian Section
 5 5: W1/2, W1/2SE1/4 Sections 6-9, 15-17, 21 and 22, excluding Tongass National
 6 Forest; and

7 **(5) the following particularly described parcels:**

8 **(A) approximately 6.49 acres in U.S. Survey 1243, Haines**
 9 **Recording District, described as: begin on the South line of said survey**
 10 **South 88 degrees 31 minutes 45 seconds East 1950.84 feet from Southwest**
 11 **corner (corner 4 M.C.) of said survey, said point being the Southeast**
 12 **corner of the tract in said survey excepted in the decree in Case No. 68-328**
 13 **of the Superior Court at Juneau, in which the distance is recited as being**
 14 **29.55 chains (1950.30 feet), run thence North 01 degree 12 minutes 00**
 15 **seconds East, on the East line of said excepted tract, 1028.77 feet, recited**
 16 **as 15.59 chains (1028.94 feet) in said decree, to the Northeast corner of**
 17 **said excepted tract; thence North 88 degrees 31 minutes 45 seconds West**
 18 **24.38 feet; thence North 01 degree 27 minutes 45 seconds East 1.85 feet;**
 19 **thence on a 126.92 foot radius curve to the left through a central angle of**
 20 **72 degrees 04 minutes 30 seconds a distance of 159.57 feet, the chord of**
 21 **which bears North 34 degrees 34 minutes 30 seconds West 149.27 feet;**
 22 **thence North 70 degrees 25 minutes 15 seconds West 119.52 feet; thence**
 23 **on a 208.11 foot radius curve to the right through a central angle of 62**
 24 **degrees 04 minutes 00 seconds a distance of 225.48 feet, the chord of which**
 25 **bears North 39 degrees 23 minutes 15 seconds West 214.61 feet to the**
 26 **South line of "Mud Bay Road"; thence North 86 degrees 46 minutes 30**
 27 **seconds East, on said line of "Mud Bay Road," 230.54 feet; thence South**
 28 **70 degrees 25 minutes 15 seconds East 90.95 feet; thence on a 326.92 foot**
 29 **radius curve to the right through a central angle of 71 degrees 57 minutes**
 30 **00 seconds a distance of 410.55 feet, the chord of which bears South 34**
 31 **degrees 30 minutes 45 seconds 384.10 feet; thence South 01 degree 27**

1 minutes 45 seconds West 1030.62 feet to the South line of said survey;
2 thence North 88 degrees 31 minutes 45 seconds West 175.38 feet to the
3 point of beginning;

4 (B) approximately .92 acres in Tract "D," C. McRae
5 Subdivision according to Plat 77 - 12, Haines Recording District, described
6 as: begin at the Southwest corner of said Tract "D" which is also the
7 Southwest corner of the North one-half of the Southwest one-quarter of the
8 Northwest one-quarter of Section 32, Township 31 South, Range 60 East
9 of the Copper River Meridian, which bears North 01 degree 26 minutes 00
10 seconds West (Alaska State Plane Grid Bearings) 660.00 feet from the one-
11 quarter corner on the West line of said section and South 01 degree 26
12 minutes 00 seconds East 660.00 feet from the North one-sixteenth corner
13 on the West line of said section, run thence North 01 degree 26 minutes 00
14 seconds East, on the West line of said section, 347.81 feet to the
15 Northeasterly line of Chilkat State Park Roadway; thence South 32 degrees
16 56 minutes 15 seconds East 70.04 feet to a point of curve; thence Southerly
17 on a 0 degrees 58 minutes 58 seconds curve to the right (Radius = 5,829.65
18 feet) through an arc of 03 degrees 23 minutes 12 seconds (344.58 feet), the
19 cord of which bears South 31 degrees 14 minutes 45 seconds East 344.53
20 feet, to the South line of said tract and the South line of the North one-half
21 of the Southwest one-quarter of the Northwest one-quarter of said section;
22 thence North 88 degrees 34 minutes 00 seconds West 225.56 feet to the
23 point of beginning;

24 (C) approximately 3.44 acres in Tract "E," C. McRae
25 Subdivision according to Plat 77 - 12, Haines Recording District, described
26 as: begin at the Northwest corner of said tract which is also the one-sixty-
27 fourth corner on the West line of said section which bears North 01 degree
28 26 minutes 00 seconds East (Alaska State Plane Grid Bearings) 660.00 feet
29 from the one-quarter corner on the West line of Section 32, Township 31
30 South, Range 60 East of the Copper River Meridian and South 01 degree
31 26 minutes 00 seconds West 660.00 feet from the North one-sixteenth

1 corner of said section, run thence South 88 degrees 34 minutes 00 seconds
2 East, on the North line of said tract which is also the South line of the
3 North one-half of the Southwest one-quarter of the Northwest one-quarter
4 of said section, 225.56 feet to a point on the Easterly line of Chilkat State
5 Park Roadway; thence Southerly on a 0 degrees 58 minutes 58 seconds
6 curve to the right (Radius = 5,829.65 feet) through an arc of 01 degree 46
7 minutes 48 seconds (181.10 feet), the chord of which bears South 28
8 degrees 39 minutes 39 seconds East 181.10 feet, to a point of tangency;
9 thence South 27 degrees 46 minutes 15 seconds East 268.21 feet to a point
10 of curve; thence on a 14 degrees 16 minutes 06 seconds curve to the right
11 (Radius = 401.56) through an arc of 40 degrees 06 minutes 37 seconds
12 (281.12 feet), the chord of which bears South 07 degrees 43 minutes 00
13 seconds East 275.41 feet to the South line of said tract which is also the
14 South line of the Southwest one-quarter of the Northwest one-quarter of
15 said section; thence North 88 degrees 15 minutes 00 seconds West, on said
16 South line, to the Westerly line of Chilkat State Park Roadway; thence
17 Northerly on a 28 degrees 25 minutes 34 seconds curve to the left (Radius
18 = 201.56 feet) through an arc of 50 degrees 59 minutes 51 seconds (179.40
19 feet), the chord of which bears North 02 degrees 15 minutes 15 seconds
20 West 173.54 feet to a point of tangency; thence North 27 degrees 46
21 minutes 15 seconds West 268.21 feet to a point of curve; thence on a 01
22 degree 01 minute 04 seconds curve to the left (Radius = 5,629.65 feet)
23 through an arc of 02 degrees 50 minutes 00 seconds (278.39 feet), the
24 chord of which bears North 29 degrees 11 minutes 15 seconds West 278.37
25 feet to the West line of said section; thence North 01 degree 26 minutes 00
26 seconds East 14.72 feet to the point of beginning.