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1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR HOUSE BILL NO. 387

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public resources."

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

8 * Section 1. AS 41.35.070 is amended to read:

9 Sec. 41.35.070. PRESERVATION OF HISTORIC, PREHISTORIC AND
10 ARCHEOLOGICAL RESOURCES THREATENED BY PUBLIC CONSTRUCTION. (a) The
11 department [STATE ARCHEOLOGIST] shall locate, identify and preserve in
12 suitable records information regarding historic, prehistoric and
13 archeological sites, locations and remains. The information shall be
14 submitted to the heads of the executive departments of the state.

15 (b) Before public construction or public improvement of any nature
16 is undertaken by the state, or by a governmental agency of the state or
17 by a private person under contract with or licensed by the state or
18 governmental agency of the state, the department [STATE ARCHEOLOGIST]
19 may survey the affected area to determine if the area contains historic,
20 prehistoric or archeological values.

21 (c) If the department [STATE ARCHEOLOGIST] determines that his-
22 toric, prehistoric or archeological sites, locations or remains will be
23 adversely affected by the public construction or improvement, the
24 proposed public construction or improvement may not be commenced until
25 the department [IN COOPERATION WITH THE STATE ARCHEOLOGIST] has per-
26 formed the necessary investigation, recording and salvage of the site,
27 location or remains. All investigation, recording and salvage work
28 shall be performed as expeditiously as possible so that no state con-
29 struction project will be unduly impaired, impeded or delayed.

1 (d) If in the course of performing public construction or improve-
2 ments, historic, prehistoric or archeological sites, locations, remains
3 or objects are discovered, the department [STATE ARCHEOLOGIST] shall be
4 notified and its [HIS] concurrence shall be requested in continuing the
5 construction or improvement. Upon receipt of this notice, the
6 department [STATE ARCHEOLOGIST] shall survey the area to determine
7 whether the area contains historic, prehistoric or archeological data
8 which should be preserved in the public interest. The survey shall
9 be conducted as expeditiously as possible. If, as a result of the
10 survey, it is determined that (1) this data exists in the area, (2) the
11 data has exceptional historic, prehistoric or archeological signifi-
12 cance, and should be collected and preserved in the public interest,
13 and (3) it is feasible to collect and preserve the data, the department
14 [IN COOPERATION WITH THE STATE ARCHEOLOGIST] shall perform the neces-
15 sary work to collect and preserve the data. This work shall be per-
16 formed as expeditiously as possible.

17 (e) If the concurrence of the department [STATE ARCHEOLOGIST],
18 required under (b) and (c) of this section, is not obtained after 90
19 days from the filing of a request for its [HIS] concurrence to proceed
20 with the project, the agency or person performing the construction
21 or improvement may apply to the governor for permission to proceed
22 without that concurrence and the governor may take the action he con-
23 sidered best in overruling or sustaining the department [STATE
24 ARCHEOLOGIST].

25 (f) The costs of investigation, recording and salvage of the site
26 shall be reimbursed by the agency sponsoring the construction project.

27 (g) Notwithstanding (a) - (f) of this section, all actions [OF
28 THE ARCHEOLOGIST] to stop any project must first be approved in writing
29 by the commissioner of natural resources.

1 * Sec. 2. AS 41.35.080 is amended to read:

2 Sec. 41.35.080. PERMITS. The commissioner [, WITH THE ADVICE AND
3 CONCURRENCE OF THE STATE ARCHEOLOGIST,] may issue a permit for the
4 investigation, excavation, gathering or removal from the natural state,
5 of any historic, prehistoric or archeological resources of the state.
6 A permit may be issued only to persons or organizations qualified to
7 make the investigations, excavations, gatherings or removals and only
8 if the results of these authorized activities will be made available
9 to the general public through institutions and museums interested in
10 disseminating knowledge on the subjects involved. If the historic,
11 prehistoric or archeological resource involved is one which is, or is
12 located on a site which is, sacred, holy or of religious significance
13 to a cultural group, the consent of that cultural group must be
14 obtained before a permit may be issued under this section.

15 * Sec. 3. AS 41.35.090 is amended to read:

16 Sec. 41.35.090. NOTICE REQUIRED OF PRIVATE PERSONS. Before any
17 construction, alteration or improvement of any nature is undertaken
18 on a privately owned, officially designated state monument or historic
19 site by any person, he shall give the department [AND THE STATE
20 ARCHEOLOGIST] three months notice of intention to construct on, alter
21 or improve it. Before the expiration of the three-month notification
22 period, the department shall either begin eminent domain proceedings
23 under sec. 60(b) of this chapter or undertake or permit the recording
24 and salvaging of any historic, prehistoric or archeological information
25 considered necessary.

26 * Sec. 4. AS 41.35.100 is amended to read:

27 Sec. 41.35.100. EXCAVATION AND REMOVAL OF HISTORIC, PREHISTORIC
28 OR ARCHEOLOGICAL REMAINS ON PRIVATE LAND. Before any historic, pre-
29 historic or archeological remains are excavated or removed from private

1 land by the department [OR THE STATE ARCHEOLOGIST], the written
2 approval of the owner shall first be secured. When the value of the
3 private land is diminished by the excavation or removal, the owner of
4 the land shall be compensated for the loss at a monetary sum mutually
5 agreed on by the department and the owner or at a monetary sum set
6 by the court.

7 * Sec. 5. AS 41.35.120(1) is amended to read:

8 (1) the director of the Alaska State Museum [STATE ARCHEOLO-
9 GIST];

10 * Sec. 6. AS 41.35.120(3) is amended to read:

11 (3) three persons with professionally relevant backgrounds
12 appointed from each of the following fields: history, [ANTHROPOLOGY,
13 PALEONTOLOGY,] architecture [, GEOLOGY,] and archeology [, AND NATURAL
14 HISTORY]; and

15 * Sec. 7. AS 41.35.180(2) is amended to read:

16 (2) cooperate with the Department of Natural Resources [AND
17 THE STATE ARCHEOLOGIST] in formulating and administering a statewide
18 historic sites survey under the National Historic Preservation Act of
19 1966, Public Law 89-665 (80 Stat. 915);

20 * Sec. 8. AS 41.35.200(b) is amended to read:

21 (b) It is unlawful for a person to [KNOWINGLY] possess, sell,
22 buy or transport within the state, or offer to sell, buy or transport
23 within the state, historic, prehistoric or archeological resources
24 taken or acquired in violation of this section or 16 U.S.C. 433.

25 * Sec. 9. AS 44.37 is amended by adding a new section to read:

26 Sec. 44.37.040. DUTIES OF DEPARTMENT WITH RESPECT TO HISTORIC
27 PRESERVATION AND ARCHEOLOGY. The Department of Natural Resources shall

28 (1) sponsor, engage in and direct fundamental research into
29 the archeology of the state and encourage and coordinate archeological

1 research and investigation undertaken in the state;

2 (2) cooperate with the Historic Sites Advisory Committee
3 in performing their functions under AS 41.35;

4 (3) ensure that historic, prehistoric and archeological
5 resources are properly reported by persons or agencies engaged in public
6 construction work and protect sites and objects of significance dis-
7 covered at state sites or discovered during the course of public con-
8 struction and encourage the protection of sites and objects discovered
9 during the course of any other construction work;

10 (4) investigate reported historic, prehistoric or archeo-
11 logical resources and appraise them for any future excavation, preserva-
12 tion and interpretation;

13 (5) serve as a central clearinghouse for information on all
14 historic, prehistoric and archeological resource excavation in the
15 state.

16 * Sec. 10. AS 41.20 is amended by adding new sections to read:

17 ARTICLE 10. HATCHER PASS RECREATION AREA.

18 Sec. 41.20.360. DECLARATION OF PURPOSE. The purpose of secs. 360
19 375 of this chapter is to dedicate lands and waters within the Hatcher
20 Pass Recreation Area to recreational uses while at the same time
21 recognizing the value to the people of the state of the existing
22 mineral and agricultural industry in the area. It is the intent of
23 the legislature that mining be undertaken on state lands in the Hatcher
24 Pass Recreation Area only under lease and that mining and agricultural
25 activity outside the mineral zone designated in sec. 370(b) of this
26 chapter be permitted if it is done in a manner compatible with recreation
27 use.

28 Sec. 41.20.365. DESIGNATED LAND AND WATER RESTRICTED TO USE. Those
29 lands and waters lying inside the following described boundary are

1 designated as the Hatcher Pass Recreation Area subject to the uses
2 specified in sec. 370 of this chapter: Beginning at the NW corner of
3 the SW 1/4 of the SW 1/4 of Section 31, T20N, R2W, S.M., thence north
4 along the township line a distance of one and three-fourth miles, more
5 or less, to the SW corner of Section 19, T20N, R2W, S.M.; thence east
6 along the south line of said section a distance of one-half mile, more
7 or less; thence north along the centerline of said Section 19, a
8 distance of one-quarter mile, more or less, to the NW corner of the
9 SW 1/4 of the SE 1/4 of said Section 19; thence east along the S 1/16
10 line a distance of one-quarter mile, more or less, to the NE corner of
11 said SW 1/4; thence north along the east 1/16 line a distance of one-
12 half mile, more or less, to the SW corner of the NE 1/4 of the NE 1/4
13 of Section 19, T20N, R2W, S.M.; thence north northeasterly along the
14 existing ridge line a distance of four and one-quarter miles, more or
15 less, to the SW corner of Section 28, T21N, R2W, S.M.; thence north
16 northwesterly along said ridge line a distance of one and one-quarter
17 miles, more or less, to the south 1/4 corner of Section 20, T21N, R2W,
18 S.M.; thence northeasterly along said ridge line a distance of two and
19 one-quarter miles, more or less, to the NE corner of the NW 1/4 of the
20 SE 1/4 of Section 15, T21N, R2W, S.M.; thence east southeasterly along
21 said ridge line a distance of ten miles, more or less, to the NW
22 corner of the SW 1/4 of the SW 1/4 of Section 29, T21N, R1E, S.M.;
23 thence northeasterly along the ridge line a distance of four and one-
24 quarter miles, more or less, to the north 1/4 corner of Section 23,
25 T21N, R1E, S.M.; thence east southeasterly across the Bartholf Creek
26 Valley a distance of one and one-half miles, more or less, to the NE
27 corner of the SE 1/4 of the NE 1/4 of Section 24, T21N, R1E, S.M.;
28 thence east southeasterly along a ridge line a distance of four miles,
29 more or less, to a point known as "Montana Peak" located in the NE 1/4

1 of Section 27, T21N, R2E, S.M.; thence northeasterly along said ridge
2 line a distance of two and one-quarter miles, more or less, to the NE
3 corner of the SE 1/4 of the NW 1/4 of Section 24, T21N, R2E, S.M.;
4 thence southeasterly along said ridge line a distance of two and one-
5 half miles, more or less, to the SE corner of Section 29, T21N, R3E,
6 S.M.; thence south southwesterly along a ridge line a distance of six
7 and one-half miles, more or less, to a point known as "Eska Mountain",
8 said point being located near the center of Section 32, T20N, R3E, S.M.;
9 thence southwesterly along a descending ridge line a distance of four
10 and one-half miles, more or less, to the E 1/4 corner of Section 14, T19N,
11 R2E, S.M., said point being the west bank of "Moose Creek"; thence
12 southwesterly along the west bank of "Moose Creek" a distance of three-
13 fourths mile, more or less, to the S 1/4 corner of said Section 14,
14 T19N, R2E, S.M.; thence west along the south section line a distance
15 of two and one-half miles, more or less, to the NE corner of Section 20,
16 T19N, R2E, S.M.; thence south along the east line of said section a
17 distance of one mile, more or less, to the SE corner of said section;
18 thence west along the south section line a distance of four miles, more
19 or less, to the NE corner of Section 27, T19N, R1E, S.M.; thence south
20 along the east line of said section a distance of one mile, more or less,
21 to the SE corner of said section; thence west along the south section
22 line a distance of three miles, more or less, to the SE corner of Sec-
23 tion 30, T19N, R1E, S.M.; thence south along the east line of Section 31,
24 T19N, R1E, S.M. a distance of one mile, more or less, to the SE corner
25 of said Section 31; thence west along the south section line a distance
26 of thirteen miles, more or less, to the SW corner of Section 31, T19N,
27 R2W, S.M.; thence north along the township line a distance of five miles,
28 more or less, to the NW corner of Section 7, T19N, R2W, S.M.; thence
29 east along the north line of said section a distance of one-quarter mile,

1 more or less; thence north along the west 1/16 line of Section 6, T19N,
2 R2W, S.M. a distance of one-quarter mile, more or less; thence east
3 along the south 1/16 line of said section a distance of one-quarter
4 mile, more or less; thence north along the centerline of said Section 6
5 a distance of one mile, more or less, to the south 1/16 line of
6 Section 31, T20N, R2W, S.M.; thence east along the south 1/16 line a
7 distance of one-fourth mile, more or less, to the east 1/16 line of
8 said section; thence north along said east 1/16 line a distance of
9 one-half mile, more or less, to the north 1/16 line of said section;
10 thence west along said 1/16 line a distance of one-half mile, more or
11 less, to the west 1/16 line of said section, more or less; thence
12 south along the west 1/16 line of said section a distance of one-half
13 mile, more or less, to the south 1/16 line of said section; thence
14 west along said 1/16 line a distance of one-fourth mile, more or less,
15 to the point of beginning.

16 Sec. 41.20.370. USES PERMITTED. (a) The land classification map
17 for the Hatcher Pass Recreation Area on file with the Department of
18 Natural Resources and numbered HP-1 is adopted as the official classi-
19 fication map for the Hatcher Pass Recreation Area. Changes to this map
20 are effective only upon approval by the commissioner of natural resources.

21 (b) Within the area designated as mineral zone, mining is recog-
22 nized as the primary use of the lands, waters, and roads, and any
23 recreational development undertaken may not interfere with mining
24 activities. When, in his judgment, mining activity reaches a point
25 where public entry into the area would be hazardous, the commissioner
26 may restrict public entry into the area, including restricting travel
27 on portions of the state highway system located in the area.

28 (c) Within the remainder of the area, public recreation and scenic
29 preservation are recognized as the highest and best surface uses and

1 any other development may be undertaken only in a manner that is com-
2 patible with these values and upon approval by the commissioner of
3 natural resources.

4 (d) After the effective date of this Act, private land and existing
5 claims and leases within the area specified under sec. 365 of this
6 chapter are restricted to the type of uses to which they were put before
7 the effective date of this Act, including but not limited to previous
8 mining and agricultural activity or to public or private recreational
9 uses which are approved by the commissioner of natural resources.

10 (e) Rights to mineral deposits in the area specified in sec. 365
11 of this chapter may only be obtained by a mineral lease under AS 38.05.
12 205.

13 Sec. 41.20.375. PURCHASE AUTHORIZED. The commissioner of natural
14 resources may acquire, by purchase in the name of the state, title to
15 or interest in real property lying within the boundaries of the Hatcher
16 Pass Recreation Area. The state may not acquire by eminent domain
17 privately owned land for inclusion in the Hatcher Pass Recreation Area.

18 * Sec. 11. AS 44.37.190 is repealed.
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