

CS FOR HOUSE BILL NO. 576 (ITT)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE SPECIAL COMMITTEE ON INTERNATIONAL TRADE AND TOURISM

Offered: 4/27/92

Referred: Resources

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE HOUSE SPECIAL COMMITTEE ON INTERNATIONAL TRADE AND TOURISM

A BILL

FOR AN ACT ENTITLED

1 **"An Act providing protection for caves and cave resources."**

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

3 * **Section 1. FINDINGS AND POLICY. (a) The legislature finds that caves are uncommon geologic**
4 **phenomena, shaped by groundwater flow, that contain mineral formations that are rare and often occur**
5 **in forms of great beauty that are irreplaceable if destroyed or damaged. Other fragile resource values**
6 **also exist including archeological, cultural, paleontological, hydrological, and biological values.**

7 (b) **The legislature declares that**

8 (1) **significant caves are an invaluable and irreplaceable part of the state's natural heritage**
9 **and declares it the policy of the state that these caves and cave resources are deserving of protection and**
10 **conservation under state law;**

11 (2) **significant caves and cave resources have recreation and tourism potential as long as**
12 **adequate means of access, appropriate cave management techniques, and safety procedures are in place;**
13 **and**

14 (3) **protection, conservation, and recreation and tourism development of significant caves**

1 be conducted in a manner consistent with other resource development.

2 * Sec. 2. AS 41 is amended by adding a new chapter to read:

3 CHAPTER 26. PROTECTION OF CAVES AND CAVE RESOURCES.

4 Sec. 41.26.010. STATEMENT OF POLICY. It is the policy of the state that cave
5 resources be conserved and managed in a manner that protects and maintains, to the maximum
6 extent practicable, significant caves.

7 Sec. 41.26.020. MANAGEMENT ACTIONS. (a) The commissioner shall adopt
8 regulations to carry out the purposes of this chapter. The regulations must include

9 (1) the adoption of criteria for the identification of significant caves, and the
10 development and periodic revision of a master register of significant caves; regulations developed
11 under this subsection should include a classification system for significant caves based upon
12 factors that include accessibility, tourism potential, safety, and cultural and scientific significance;

13 (2) the regulation or restriction of the use of significant caves and cave resources
14 on state land, as appropriate;

15 (3) circumstances in which, for purposes of protection of caves and cave resources
16 on state land, the commissioner may enter into volunteer management agreements with scientists
17 interested in caves and cave resources and with persons interested in caves and cave resources
18 for recreational purposes;

19 (4) notwithstanding any other provision of law, for purposes of protection of caves
20 and cave resources on state land, providing for buffer strips around cave entrances and openings;

21 (5) for purposes of encouraging the reporting of finds of caves and cave resources,
22 providing a procedure for registering newly discovered caves and providing for the naming of
23 the caves by the discoverer.

24 (b) In implementing this chapter, including the adoption of regulations under (a) of this
25 section, the commissioner shall make reasonable efforts to foster and promote communication,
26 cooperation, and the exchange of information among state land managers, representatives of the
27 federal government, persons who use caves, including caving and speleological organizations,
28 bona fide educational and research institutions, and the general public.

29 Sec. 41.26.030. PERMITS FOR COLLECTION AND REMOVAL OF RESOURCES
30 FROM CAVES ON STATE LAND. (a) Under regulations adopted under AS 41.26.020(a)(2),
31 the commissioner may issue permits for the collection and removal of cave resources on state

1 land under the terms and conditions that the commissioner may impose by regulation. The
2 commissioner may issue a permit under this section only if the commissioner determines that the
3 proposed collection or removal activity is consistent with the purposes of this chapter and other
4 applicable provisions of law.

5 (b) A permit issued under this section must include information concerning the time,
6 scope, location, and specific purpose of the proposed collection or removal and the manner in
7 which the collection or removal may be performed.

8 (c) The commissioner shall

9 (1) revoke a permit issued under this section if

10 (A) the commissioner determines that the permittee has violated a
11 provision of this chapter, or regulations adopted under this chapter, or has failed to
12 comply with a term or condition of the permit;

13 (B) the commissioner imposes a civil penalty on the permittee under
14 AS 41.26.050; or

15 (C) the permittee is convicted of a violation of AS 41.26.060;

16 (2) withhold issuance of a permit under this section if the commissioner finds that
17 the prospective permittee has violated a provision of this chapter or regulations adopted under
18 this chapter or has failed to comply with a term or condition of a previous permit.

19 (d) A permit issued under this section may not be transferred.

20 (e) A permit may not authorize action by a permittee that constitutes an offense under
21 AS 41.26.060, but action by a permittee that has been specifically authorized by a permit issued
22 under this section does not constitute a violation of AS 41.26.060.

23 Sec. 41.26.040. CONFIDENTIALITY OF INFORMATION REGARDING CAVES. (a)
24 The commissioner may make information concerning the specific location of a significant cave
25 available to the public unless the commissioner determines that disclosure of information about
26 the location of a significant cave would create a substantial risk of harm, theft, or destruction of
27 the cave or its resources.

28 (b) Notwithstanding (a) of this section, upon receipt of a written request, the
29 commissioner may make information about a significant cave available to the representative of
30 an agency of the federal government or another state agency, to bona fide caving and
31 speleological organizations, such as grottos, or to a bona fide educational or research institution.

1 A written request submitted under this subsection must
2 (1) describe the specific site or area for which information is sought;
3 (2) explain the purpose for which the information is sought; and
4 (3) include assurances satisfactory to the commissioner that adequate safeguards
5 will be taken to protect the confidentiality of the information in order to ensure protection of the
6 cave from destruction by vandalism or from unauthorized use.

7 Sec. 41.26.050. CIVIL REMEDIES. (a) For the violation of a provision of this chapter
8 on state land, of a regulation adopted under this chapter, or of the provisions of a permit issued
9 under AS 41.26.030, the commissioner may enter an order levying a civil penalty. Each violation
10 constitutes a separate offense.

11 (b) A civil penalty levied under this section may not exceed \$10,000 for each offense.
12 In levying a civil penalty, the commissioner shall set the amount of the penalty imposed under
13 this section after taking into account appropriate factors, including the seriousness of the
14 violation, the economic benefit resulting from the violation, the history of violations, and other
15 matters that the commissioner considers appropriate.

16 (c) Before issuing an order under this section, the commissioner shall provide the person
17 written notice and the opportunity to request a hearing on the record within 30 days.

18 (d) In connection with proceedings under (a) and (b) of this section, the commissioner
19 may issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of
20 evidence, and may request the attorney general to bring an action to enforce a subpoena.

21 (e) A person aggrieved by the levy of a civil penalty under this section may file an
22 appeal with the superior court for judicial review of the penalty under AS 44.62.560.

23 (f) If a person fails to pay a civil penalty within 30 days after entry of an order under
24 (a) of this section, or if the order is stayed pending an appeal, within 10 days after the court
25 enters a final judgment in favor of the commissioner of an order appealed under (e) of this
26 section, the commissioner shall notify the attorney general and the attorney general shall
27 commence a civil action to recover the amount of the penalty.

28 Sec. 41.26.060. CRIMINAL PENALTIES. (a) A person may not knowingly

29 (1) destroy, disturb, mar, or harm the surfaces of a cave, natural material found
30 within the cave, or cave resource;

31 (2) disturb or alter the natural condition of a cave;

1 (3) remove, deface, tamper with, or disturb a cave resource or material found
2 within a cave;

3 (4) burn within a cave a material that produces smoke or gas that is harmful to
4 an organism in the cave; however, this paragraph does not prohibit acetylene gas emissions
5 generated by a carbide lamp used as a source of light by a person using the cave;

6 (5) kill, injure, disturb, or otherwise interfere with cave life, or interfere with or
7 obstruct the free movement of cave life into or out of a cave;

8 (6) deposit or leave litter, as defined in AS 46.06.150, or solid waste, as defined
9 in AS 46.03.900 in a cave; or

10 (7) enter a cave carrying an aerosol or other kind of container having paint, stain,
11 or another coloring material.

12 (b) A person who violates this section is guilty of a class A misdemeanor.

13 (c) Crimes under this section are in addition to any other crimes provided by law.

14 (d) This section does not apply to actions taken by the department or an employee or
15 agent of the department, authorized by the commissioner to improve the accessibility of or within
16 a cave, the protection or use of cultural or scientific features or values, or to provide for the safe
17 use of caves.

18 Sec. 41.26.100. DEFINITIONS. In this chapter,

19 (1) "cave"

20 (A) means a naturally occurring void, cavity, recess, or system of
21 interconnected passages beneath the surface of the earth or within a cliff or ledge, whether
22 or not accessible by a natural entrance;

23 (B) includes a lava tube, cavern, and a natural pit, grotto, and rock
24 shelter;

25 (C) does not include a mine, tunnel, pit, or other manmade underground
26 excavation;

27 (2) "cave resource" means

28 (A) life forms that normally occur in, use, visit, or inhabit a cave or
29 subterranean water system within a cave;

30 (B) historic, prehistoric, or archaeological resources, as that term is defined
31 by AS 41.35.230, located within the cave; and

1 (C) a natural mineral formation or deposit occurring in a cave, or a natural
2 subsurface water and drainage system within a cave, and includes

3 (i) the natural relief features on the walls, ceiling, and floor of a
4 cave, and the structural or geological components of the cave; and

5 (ii) a natural mineral formation or deposit occurring in a cave,
6 commonly composed of calcite, epsomite, gypsum, aragonite, celestrite, and other
7 similar materials.

8 * Sec. 3. AS 44.19.058 is amended by adding a new subsection to read:

9 (b) In addition to its other duties and powers, the board shall name newly discovered
10 caves after the name provided by the discoverer of the cave as provided in regulations adopted
11 by the commissioner of natural resources under AS 41.26.020.

12 * Sec. 4. DEVELOPMENT AND ADOPTION OF INITIAL REGULATIONS. The commissioner
13 of natural resources shall adopt the initial regulations under AS 41.26.020 and prepare the initial master
14 register of significant caves under AS 41.26.020(a)(1) no later than two years after the effective date of
15 this Act.

16 * Sec. 5. REPORT. Before February 1, 1998, the commissioner of natural resources shall report to
17 the Alaska State Legislature on the master register of caves to be compiled under AS 41.26.020, added
18 by sec. 1 of this Act, the extent to which those caves are available for the development of tourism and
19 tourism related activities, and the recommendations of the commissioner concerning future state actions
20 in regard to the protection and development of caves and cave resources in the state.