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FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

No. 9

Bill Version: CSSB 35 (FIN)

(S) Publish Date: 3-21-97

Revision Date: 3-14-97

Dept. Affected: Natural Resources

Title: Management of Parks and Recreational Areas

BRU: Parks & Rec Management

Sponsor: Senator Green

Components: Parks Management

Requestor: Senate Finance

Serial # 452.0

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL						
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REVENUE						
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Prepared by: SENATE FINANCE COMMITTEE

  
SENATOR DRUE PEARCE, COCHAIR

  
SENATOR BERT SHARP, COCHAIR

Date: 3/14/97

Phone: 465-4993

Date: 3/14/97

Phone: 465-3004

# FISCAL NOTE

No. 8

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO.**

Bill Version: CS SB 35 (RES)

(S) Publish Date: 2/21/97

Revision Date: \_\_\_\_\_ Dept Affected: Natural Resources  
 Title: An Act restricting the Board of Fisheries, Board BRU: Resource Development  
of Game, ADF&G and DNR from...traditional access Component: Mining Development  
 Sponsor: Senator Green  
 Requestor: (S)FIN Component Serial No. 442

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY98	FY99	FY00	FY01	FY02	FY03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ none

**POSITIONS**

POSITIONS	FY98	FY99	FY00	FY01	FY02	FY03
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

Under 11 AAC 86.145, a mining operator may restrict public access to a site only with the approval of the Division of Mining and Water Management, and only "to protect public safety" or to "prevent unreasonable interference" with the miner's rights. The proposed law appears to invalidate the ability of the state to allow this restriction to public access. Thus, it could force the Usibelli Coal Mine to let the public drive through its active mining areas, even during blasting operations (a violation of federal law). It might require the operator of Fort Knox to allow snowmobiles, dog mushers, pedestrians, and cars to compete with its 150-ton haul trucks for use of the road. While companies could ask for public access restrictions, the restriction would require legislative approval.

Please see continuation page.

Prepared by: Jules V. Tileston, Director *[Signature]* Phone: 269-8800  
 Division: Mining and Water Management Date: 19-Feb-97  
 Approved by Commissioner: *[Signature]* Date: \_\_\_\_\_  
 Agency: Natural Resources

**Fiscal Note, continued: CSSB 35 (RES)**

The bill has little effect on the operations of the Division, but it could have a significant but difficult to calculate cost to mining operators – and thus an affect to the Alaskans employment and income, and to state royalties and rents. The cost to mining operators could increase due to increased insurance costs, increased management costs, decreased efficiency. In addition, the inability to restrict public access to operating mines could decrease the current attractiveness of the state to new mining development.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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March 24, 1997

The Honorable Bert Sharp  
Alaska State Senate  
Co-Chair Senate Finance Committee  
Capitol Room 516  
Juneau, AK 99811

Dear Senator Sharp:

The Department of Natural Resources did not present testimony at the Senate Finance Committee hearing on SB 35. However, the department believes that information on this bill is important for the committee to consider as this bill approaches a floor session.

The sponsor of the bill is understandably concerned that her constituents are being denied full use of state parks by administrative actions which close park areas to certain activities which have traditionally been allowed. The action by the Division of Parks which initiated this bill was the 1995 release of draft regulations on Denali State Park. This draft proposal was not popular with the public due to the administrative inclusion of Blair Lake as an addition to Denali State Park and subsequent closure of aircraft landings on the lake. This draft proposal was withdrawn in response to public displeasure.

SB 35 would eliminate the Division of Parks discretion to close areas as described above without coming to the legislature for approval. However, it also removes the division's discretion to close any area for reasons of public safety or resource protection for over 90 days without the approval of the legislature. This approval must come in the form of a bill or resolution. Further, if the areas are reopened in the next year and then closed again, we need to take that second or subsequent closure to the legislature again for approval leading to a very confusing and convoluted process. There is every danger that a bill of this type would get held up in the process and fail to pass both bodies of the legislature. If that happened, the division would have to keep open areas that may be very dangerous to the public.

The department understands the sponsor's desire to curtail closures for aesthetic or social values. However, we do not understand nor think it wise to remove the department's discretion to close areas for longer than 90 days for reasons of public safety or resource protection.



The Honorable Bert Sharp

3/24/97

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In discussions with the Department of Law, it came to our attention that this method of dealing with closures for public safety reasons potentially removes the state's discretionary function immunity and opens opportunities for litigation.

The following are the types of closures over 90 days that the legislature will be required to either approve or disapprove each year. In addition, in the second year all closures of any type will need to come before the legislature for approval even if less than 90 days.

#### **Danger due to wildlife**

Bishop Creek Campground (Captain Cook SRA) closed for the season-danger of bears

Annual closure of Troublesome Creek trail in Denali State Park due to a high incidence of grizzly bears feeding on salmon in a heavily forested area.

**Disasters**-while the disastrous event is usually over with quickly (oil spills, floods, landslides), it frequently takes Parks longer than 90 days to repair. If the closure is not adopted by the legislature, and Parks was unable to post the area closed, the state could be held liable for not signing a dangerous site as closed. Examples:

Perseverance Trail washed out last fall and has been closed since. Trail work is planned for this summer. Closure is longer than 90 days. A local high school runner ignored the trail closure signs and fell to his death.

Indian Oil Spill in 1993 (37,000 gallons of jet fuel) caused Parks to close 14 acres for the duration of the clean-up and mediation process. This is on-going

Fall 1995 flooding caused extensive damage to the Eklutna Lakeside Trail, including culvert and bridge wash-outs. It took 18 months to repair this damage, during which the trail was closed.

Damage to Bing's Landing on the Kenai River caused closure of much of the river bank pending work that is scheduled for this summer.

#### **Lack of maintenance budgets**

Parks has permanently closed park units for management reasons, usually a combination of declining budget and increasing expenses due to vandalism or location. In the past few years Moose Creek SRS, Tolsona Creek SRS, Centennial Lake SRS, and Anchor River SRS have been closed for these reasons. Each of these closures would need to come before the legislature in addition to any of the Parks that would be closed for budgetary reasons during FY 98. These closures for budgetary reasons will be very controversial and would require legislative approval or disapproval.

The Honorable Bert Sharp

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**Parties and vandalism**-Teenagers and vandalism have caused numerous parks near urban centers to be closed either in the evenings or for the season. These are beyond 90 days and would need legislative approval.

Upper Huffman Trailhead--open only in the winter for snowmobile use. Closed in the summer because of partying.

McHugh Creek closed at 10 PM in the summer and closed all winter to deter partying and vandalism.

Potter Creek Trailhead closed during the winter to prevent vandalism.

Bird Creek Valley closed one-half mile of access road to displace teen partying site.

All Sitka parks are closed at 11 PM in cooperation with local law authorities.

**Over-use**--areas that receive so much use that the resource is damaged and needs immediate response.

Streambank closures on fishing streams to protect salmon rearing habitat on the Kenai River and at Deep Creek.

Glenn Alps Trailhead in Chugach State Park due to erosion and vegetation damage.

Vegetation damage--in the spring when the snow cover shrinks snowmobiling is closed.

### **Winter Closures**

75 campgrounds closed for the winter are longer than 90 days and would require annual legislative approval.

Day use areas in Chugach, Mat-Su, Kenai and Kodiak areas are similarly closed each season.

**Conflicts** between boating and swimmers causes us to close or restrict boating within swimming areas. Typically Parks defines a speed limit through creation of a no-wake zone. Examples are big Lake North and South, Nancy Lake, and Captain Cook.

**Construction closures** due to refurbishment of facilities, Parks will close a facility for longer than 90 days for public safety reasons to keep the public out of a construction zone.

The Honorable Bert Sharp

3/24/97

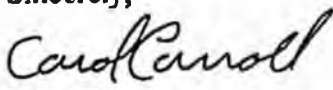
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The original SB35 had simply a restriction on administratively expanding park units without legislative approval (in response to Blair Lake) and an annual report of those areas where traditional recreational access was restricted and the reasons for closure. The overwhelming majority of such closures are for public safety and resource protection. The report would allow the legislature the opportunity to annually review the closures and take action against those they feel are inappropriate. This process would take far less of the legislature's time than taking affirmative action on routine public safety and resource protection closures.

Returning to the original intent of the bill would allow public safety or natural resource closures to remain active and would avoid any liability questions. We urge a return to the original intent of the bill.

Thank you for this opportunity to provide additional information.

Sincerely,

  
for John Shively  
Commissioner

Distribution:

Senator Phillips  
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Senator Pearce  
Senator Adams  
Senator Donley  
Senator Torgerson