

HB

24

SENATE COMMITTEE REPORT

DATE: 5/17/03

FURTHER:

DATE TURNED
IN TO OFFICE: 5-19-03

Resources Committee considered CS FOR HOUSE BILL NO. 24(JUD)

HB 24 AGREEMENTS ON MANAGEMENT OF FISH AND GAME

"An Act relating to intergovernmental agreements with the federal government regarding management of fish or game in the state."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
H. RES	3/7/03		✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Frank Ryan</i>	✓			
<i>John H. ...</i>	✓			
<i>Ralph Seckins</i>	✓			
CHAIR: <i>Scott Dyer</i>	✓			

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 24(RES)
(H) Publish Date: 3/10/03

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Agreements on management of fish ar BRU _____
Sponsor Representative Weyhrauch Component _____
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Jim Pound Phone 465-2338
Division: Resources Committee Date/Time 3/7/03 4:32 PM
Approved by: Representative Fate Date 3/7/2003
Agency: Co-Chair House Resources Committee

ALASKA STATE LEGISLATURE

Representative Bruce Weyhrauch

HOUSE DISTRICT 4

ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

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CS FOR HB 24 (JUD)

CO-MANAGEMENT AGREEMENTS GLACIER BAY NATIONAL PARK AND PRESERVE

- Under this bill, ADF&G could not enter into an agreement with the federal government if that agreement cedes jurisdiction of the state over management of our fish and game.
- This is particularly important now because federal law requires the federal government to have co-management agreements with the state regarding fisheries in Glacier Bay.
- HB 24 includes transitional language stating that any current intergovernmental agreement or severable portion of an agreement that was entered into before the effective date is voided on or after July 1, 2004.
- The intent is to prevent state government officials from ceding the state's management jurisdiction over fish and game resources by means of a contract without a full airing of the public policy implications through the legislature.

Updated: May 20, 2003

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ALASKA STATE LEGISLATURE

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CS for HB 24 (JUD)

Co-Management Agreements Regarding
Glacier Bay National Park & Preserve

Sectional Analysis

Section 1 of the bill amends AS 16.20.010 by adding a new subsection providing that no provision of AS 16 grants authority to the department or a board to enter into agreements with the a department or agency of the federal government that cedes state authority for the management of fish and game in the state to the federal government.

In this subsection, "management" means the regulation of the method, manner means, time, or place of taking fish or game or the regulation of the amount of fish or game that may be taken.

This subsection does not prevent the department or a board from entering into agreements with other federal agencies involving the Migratory Bird Treaty Act, Northern Pacific Halibut Act, Marine Mammal Protection Act, Magnuson-Stevens Fishery Conservation and Management Act, Endangered Species Act, or the Pacific Salmon Treaty Act.

Section 2 of the bill is a transitional provision providing for legislative review of current intergovernmental agreements by adding a new section to read:

STATUS OF EXISTING AGREEMENTS REGARDING MANAGEMENT OF FISH AND GAME IN THE STATE.

An agreement, or a severable portion of an agreement between the Department of Fish and Game, the Board of Fisheries, or the Board of Game and a department or agency of the federal government that was entered into before the effective date of this Act and that cedes any state authority for the management from the state to the federal government is void on and after July 1, 2004

Updated: May 3, 2003

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM

April 8, 2003

SUBJECT: CSHB 24(RES); Legislative approval of intergovernmental agreements with the National Park Service regarding management of fish and game in Glacier Bay National Park and Preserve (Work Order No. 23-LS0135\U)

TO: Representative Bruce Weyhrauch

FROM: George Utermohle
Legislative Counsel

You have inquired whether the requirement of CSHB 24(RES) for legislative approval of intergovernmental agreements between the Department of Fish and Game, the Board of Fisheries, or the Board of Game and the National Park Service regarding management of fish and game in Glacier Bay National Park and Preserve would violate the doctrine of separation of powers under the Alaska Constitution.

Alaska recognizes the separation of powers doctrine as inherent in the Constitution of the State of Alaska.¹ In Bradner v. Hammond, 553 P.2d 1, 5 (Alaska 1976) the Alaska Supreme Court observed:

In Alaska State-Operated School System v. Mueller, 536 P.2d 99, 103 (Alaska 1975), we observed that [those] who wrote our constitution followed the traditional framework of American government. The governmental authority of the State of Alaska was distributed among the three branches, the executive, the legislative and the judicial. Analyzing this tripartite form of government provided for Alaska, this court concluded, in Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947, 950 (Alaska 1975), that . . . it can be fairly implied that this state does recognize the separation of powers doctrine. Our recent opinion in Continental Insurance Cos. v. Bayless & Roberts, Inc., 548 P.2d 398, 410-11 (Alaska 1976), acknowledges that the underlying rationale of the doctrine of separation of powers is the avoidance of tyrannical aggrandizement of power by a single branch of government through the mechanism of diffusion of governmental powers. It is clear that the doctrine is not a common law concept; it is, however, a brooding

¹ "The separation of powers doctrine and its complementary doctrine of checks and balances are implicit in the Alaska Constitution." State v. Planned Parenthood of Alaska, Inc., 28 P.3d 904, 913 (Alaska 2001).

Representative Bruce Weyhrauch

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omnipresence by virtue of its conceptually central role in the structure of American constitutional government.

Article III, sec. 1, Constitution of the State of Alaska, provides that "[t]he executive power of the State is vested in the governor." Article III, sec. 16, Constitution of the State of Alaska, further provides that:

The governor shall be responsible for the faithful execution of the laws. He may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions. This authority shall not be construed to authorize any action or proceeding against the legislature.

In the Bradner case (cited above), the legislature sought to compel that certain state officers, other than commissioners of principal departments and members of regulatory and quasi-judicial boards, be subject to legislative confirmation. The Alaska Supreme Court struck down the requirement for legislative confirmation of those officers because the requirement was a violation of the doctrine of separation of powers. The Alaska Constitution states in art. III, secs. 25 and 26 which officers of the executive branch were subject to legislative confirmation. The legislature did not have the power to expand the number or type of executive officers that were subject to confirmation beyond those set out in the Alaska Constitution.

In a number of instances the Alaska Supreme Court has reviewed challenges to legislative action affirming or rejecting actions undertaken by the executive branch. In most cases, the requirement for legislative approval was upheld, but in the A.L.I.V.E. Voluntary case, the Alaska Supreme Court struck down the legislative veto of regulations adopted by the agencies of the executive branch. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980). The court reached its conclusion that the legislature had exceeded its constitutional authority because the legislature had chosen to veto regulations by means of a concurrent resolution. The court found that the legislature could annul regulations, which were themselves law, only by the enactment of law. The legislative process for the adoption of legislative resolutions did not comport with the constitutionally mandated procedures for the enactment of law and thus was ineffective in repealing regulations. "While the power to void agency regulations could be exercised by either the legislature or by an agency, when the legislature exercises such power it must do so while acting as a legislature." Id. at 778. The A.L.I.V.E. Voluntary case did not hold that the legislature could not annul regulations of executive branch agencies, instead it merely held that the legislature may do so only by law.

In the Baxley case, legislative approval of amendments of oil and gas leases issued by the Department of Natural Resources was upheld in spite of challenges on a number of constitutional grounds. Baxley v. State, 958 P.2d 422 (Alaska 1998). In the Public Employees Local 71 case, the court enforced a statute that required legislative approval

Representative Bruce Weyhrauch

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by law of the monetary terms of a collective bargaining agreement under AS 23.40.215. Public Employees Local 71 v. State, 775 P.2d 1062 (Alaska 1989); also, Public Safety Employees Association v. State, 895 P.2d 980 (Alaska 1995); and University of Alaska Classified Employees Association v. University of Alaska, 988 P.2d 105 (Alaska 1999). In each of the cases mentioned in this paragraph, just as in CSHB 24(RES), statutory authority was conferred on an agency of the executive branch to negotiate certain agreements subject to legislative approval by law before the agreements could take effect.

Though A.L.I.V.E. Voluntary, Baxley, and the collective bargaining agreement cases are supportive of the authority of the legislature to make actions of executive branch agencies subject to legislative approval, none of the cases involved a specific separation of powers challenge. There is a lingering possibility that the court could reconsider its acceptance of the requirements for legislative approval in these cases, in light of the separation of powers doctrine, and find that such requirements do violate the separation of powers doctrine.

Where, as in CSHB 24(RES), the legislature proposes to withhold discretionary authority to enter into certain intergovernmental agreements, circumscribing the authority of the Department of Fish and Game and the boards of fisheries and game, to ensure compliance with objectives consistent with the legislature's perception of the statement of policy under article VIII, section 1 and the general authority provided under article VIII, sections 2, 3, and 6 for management of state land and natural resources by the legislature, it hardly seems that the legislature is engaged in action constituting a violation of separation of powers. It is by statute that the legislature determines and prescribes the nature of an executive agency's duties and, unless the enactment is arguably contrary to a constitutional provision, a statutory grant of authority to the agency does not thereafter keep the legislature from providing for reasonable regulation and oversight of the agency's actions by law.

In conclusion, the history of the separation of powers doctrine in this state cautions that legislative oversight and regulation of the discretion bestowed on executive branch agencies may exceed the legitimate bounds of legislative authority but, at the same time, does not describe where the boundary between legitimate legislative oversight and regulation and excessive legislative interference in matters of the executive branch lies. Until the Alaska Supreme Court considers a separation of powers challenge to a requirement for legislative approval of executive branch actions, there will be no meaningful guidance as to whether the legislature can require the Department of Fish and Game and the boards of fisheries and game to submit intergovernmental agreements to the legislature for approval. However, given the available judicial precedent in the state, I cannot say that CSHB 24(RES) exceeds the scope of legitimate legislative oversight and regulation of executive branch agency actions.

If I may be of further assistance, please advise.

GU:med

03-375.med