

HB

24

SENATE COMMITTEE REPORT

DATE: 5/8/03

FURTHER: Resources

DATE TURNED
IN TO OFFICE: 5/17/03

State Affairs 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.	5/1/03		✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
CHAIR: <i>[Signature]</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
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CS FOR HB 24 (JUD)

CO-MANAGEMENT AGREEMENTS GLACIER BAY NATIONAL PARK AND PRESERVE

The committee substitute, adopted by the Judiciary Committee, states that nothing in AS 16 authorizes the department of Fish and Game or a board to enter into an agreement with a department or agency of the federal government that cedes state authority for the management of fish and game in the state of Alaska to the federal government.

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 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.

Rep. Bruce Weyhrauch
Contact: 465-3744

Updated: May 3, 2003

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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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).

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. 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

April 8, 2003

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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

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THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

*7500 Alaska Stat. § 16.20.010

WEST'S ALASKA STATUTES
TITLE 16. FISH AND GAME
CHAPTER 20. CONSERVATION AND
PROTECTION OF ALASKAN
WILDLIFE
ARTICLE I. STATE GAME REFUGES

*Current through 1999 1st Reg. Sess. and 2nd Sp.
Sess.*

§ 16.20.010. Legislative recognition

(a) The legislature recognizes that

(1) the state has jurisdiction over all fish and game in the state except in those areas where it has assented to federal control;

(2) the state has not assented to federal control of fish and game in

(A) those areas that were set apart as National Bird and Wildlife Refuges while the state was a United States territory; and

(B) Glacier Bay National Park and Preserve or the navigable waters within or adjoining the park and preserve;

(3) special recognition of the value to the state and the nation of areas of unspoiled habitat and the game characteristic to it will be demonstrated by designating as state game refuges those federal lands that were National Bird and Wildlife Refuges or Ranges at the time that Alaska achieved statehood.

(b) In recognition of the fact that the state has not assented to federal control of fish and game in Glacier Bay National Park and Preserve or the navigable waters within or adjoining the park and preserve, that the power to control the management of fish and game within the boundaries of the state is an incident of state sovereignty, and that the federal government cannot commandeer the lawmaking processes of the states to compel the state to enact and enforce a federal regulatory program, an agency, employee, or agent of the state may not expend

funds to adopt or enforce the implementation of the federal regulatory program or a part of the program for control of fish and game in the park and preserve or the navigable waters within or adjoining the park and preserve that is in conflict with a state statute or regulation regarding management of fish or game within the park or preserve. This subsection does not prohibit an agency, employee, or agent of the state from

(1) taking action necessary to protect life or property;

(2) commenting on proposed federal statutes or regulations;

(3) collecting data relating to claims of economic harm arising from the closure of the park and preserve to commercial fishing; or

(4) participating in or cooperating with a federal program established under 16 U.S.C. 703--712 (Migratory Bird Treaty Act); 16 U.S.C. 773--773k (Northern Pacific Halibut Act of 1982); 16 U.S.C. 1361--1421h (Marine Mammal Protection Act); 16 U.S.C. 1531--1544 (Endangered Species Act); 16 U.S.C. 1801--1883 (Magnuson-Stevens Fishery Conservation and Management Act); 16 U.S.C. 3631--3644 (Pacific Salmon Treaty Act of 1985).

*7501

Amended by Laws 1999, c. 56, §§ 2, 3, eff. Sept. 2, 1999.

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

Laws 1999, c. 56, § 1 provides:

"FINDINGS. (a) The legislature finds that

"(1) sustained yield management of fish and game in accordance with the mandate of the Constitution of the State of Alaska assures the maintenance of healthy populations of fish and game and provides the opportunity for a wide range of uses of the fish and game resource;

"(2) the State of Alaska recognizes the value of Glacier Bay National Park and Preserve, one of our nation's crown jewels;

"(3) the State of Alaska has demonstrated competence by state managers in assuring healthy, viable populations of fish and game within the park and preserve, with no deleterious

effects on the resources or the aesthetic appeal of the area, and the State of Alaska desires to continue to do so;

"(4) current uses of the park and preserve, including limited and controlled commercial and subsistence uses, constitute integral parts of the park and preserve and reflect precisely the purposes for the executive withdrawal that created the original Glacier Bay National Monument.

"(b) The legislature further finds that

"(1) the State of Alaska is the only entity responsible for and capable of assuring the sustained yield management of fish and game throughout the entire state;

"(2) the multitude of federal entities that have authority to provide for the management of fish and game in Alaska have jurisdiction over only a patchwork of land and water in Alaska and operate under a variety of legal mandates regarding fish and game;

"(3) only the State of Alaska bears the public trust responsibility of providing a single, comprehensive scheme

of sustained yield management of fish and game to compensate for diverse management objectives pursued by the many federal agencies;

"(4) the State of Alaska has consistently demonstrated a greater sensitivity than the federal agencies to sound conservation principles, which, for example, resulted in a dramatic recovery of Alaska's fisheries following statehood in 1959 after a lengthy period of misguided federal management;

"(5) the State of Alaska is committed to continuing its public trust responsibility for the navigable waters within Glacier Bay National Park and Preserve;

*7502 "(6) it is not in the best interest of the State of Alaska to acquiesce in and assist in federal takeover of fisheries management in the park and preserve in the face of pending litigation challenging federal preemption of state management."

Search this disc for cases citing this section.

6800

S 501

One Hundred Sixth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday,
the twenty-fourth day of January, two thousand*

An Act

To address resource management issues in Glacier Bay National Park, Alaska.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Glacier Bay National Park Resource Management Act of 2000".

SEC. 2. DEFINITIONS.

As used in this Act—

(1) the term "local residents" means those persons living within the vicinity of Glacier Bay National Park and Preserve, including but not limited to the residents of Hoonah, Alaska, who are descendants of those who had an historic and cultural tradition of sea gull egg gathering within the boundary of what is now Glacier Bay National Park and Preserve;

(2) the term "outer waters" means all of the marine waters within the park outside of Glacier Bay proper;

(3) the term "park" means Glacier Bay National Park;

(4) the term "Secretary" means the Secretary of the Interior; and

(5) the term "State" means the State of Alaska.

SEC. 3. COMMERCIAL FISHING.

(a) IN GENERAL.—The Secretary shall allow for commercial fishing in the outer waters of the park in accordance with the management plan referred to in subsection (b) in a manner that provides for the protection of park resources and values.

~~THE MANAGEMENT PLAN.—The Secretary and the State shall cooperate in the development of a management plan for the regulation of commercial fisheries in the outer waters of the park in accordance with existing Federal and State laws and any applicable international conservation and management treaties.~~

(c) SAVINGS.—(1) Nothing in this Act shall alter or affect the provisions of section 123 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1999 (Public Law 105-277), as amended by section 501 of the 1999 Emergency Supplemental Appropriations Act (Public Law 106-31).

(2) Nothing in this Act shall enlarge or diminish Federal or State title, jurisdiction, or authority with respect to the waters of the State of Alaska, the waters within Glacier Bay National Park and Preserve, or tidal or submerged lands.

(d) STUDY.—(1) Not later than one year after the date funds are made available, the Secretary, in consultation with the State,

the National Marine Fisheries Service, the International Pacific Halibut Commission, and other affected agencies shall develop a plan for a comprehensive multi-agency research and monitoring program to evaluate the health of fisheries resources in the park's marine waters, to determine the effect, if any, of commercial fishing on—

(A) the productivity, diversity, and sustainability of fishery resources in such waters; and

(B) park resources and values.

(2) The Secretary shall promptly notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives upon the completion of the plan.

(3) The Secretary shall complete the program set forth in the plan not later than seven years after the date the congressional committees are notified pursuant to paragraph (2), and shall transmit the results of the program to such committees on a biennial basis.

SEC. 4. SEA GULL EGG COLLECTION STUDY.

(a) ~~STUDY.—The Secretary, in consultation with local residents,~~ shall undertake a study of sea gulls living within the park to assess whether sea gull eggs can be collected on a limited basis without impairing the biological sustainability of the sea gull population in the park. The study shall be completed no later than two years after the date funds are made available.

(b) RECOMMENDATIONS.—If the study referred to in subsection (a) determines that the limited collection of sea gull eggs can occur without impairing the biological sustainability of the sea gull population in the park, the Secretary shall submit recommendations for legislation to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as are necessary to carry out this Act.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

Alaska State Legislature



Representative Bruce Weyhrauch

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FOR IMMEDIATE RELEASE: May 7, 2003
CONTACT: J.D. Wallace, House Majority Press Secretary
(907) 465-5369

House Protects State Management of Fish and Game Agreements with Federal Agencies Cannot Give Up State Control

(JUNEAU) – The Alaska House of Representatives unanimously approved House Bill 24 by a vote 34 to zero on Wednesday. Sponsored by the Representative Bruce Weyhrauch (R-Juneau) and Representative Jim Whitaker (R-Fairbanks), HB 24 allows the Department of Fish and Game, the Board of Fisheries, or the Board of Game to enter into management agreements with federal agencies; however, these agreements cannot cede authority to a federal agency. If any agreement allows a federal agency to override the established authority of the state's fish or wildlife enforcement, that contract will be void after July 1st, 2004.

"Enforcement of hunting and fishing regulations is a big responsibility in Alaska, and that requires cooperation between our state and federal agencies," Weyhrauch said. "However, the state must ensure that it maintains the authority of its own boards and departments over state resources."

"Cooperation between state and federal law enforcement is a crucial part of successful government," Whitaker said. "Maintaining the proper jurisdiction of state fish and wildlife is just as important."

HB 24 moves to the Senate.

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Broadcasters' Note: Actualities available at 1-800-478-6540 or www.akrepublicans.org.