

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5233 SCRA HB 16

85

possession of the premises against all the world, including the land owner, in which case it is a lease, or whether it merely confers a privilege to occupy at the sufferance of the owner, in which case it is a permit. Gage v. City of Topeka, 468 P.2d 232, 235 (Kan. 1970); Lordi v. County of Nassau, 246 NYS 2d 502, 505 (N.Y. App. Div. 1964); II R. Powell, The Law of Real Property, ¶ 222(4) (Rev. ed. P. Rohan 1981). Assistant Attorney General Thomas Meacham described the difference between a permit and a lease in an opinion of December 22, 1980. The primary characteristics of a permit or license are that it is non-assignable, is revocable at the will of the owner of the property, and that the occupancy of the licensee is limited to a specific purpose. See also, The Law of Real Property, supra.

The Division of Parks may enter into concession agreements... privilege of providing a service to the public which is in keeping with the character and purpose of a state park. Alfred, supra, at 1134; Collier v. Akins, 116 S.E.2d 121, 123 (Ga. App. 1960).

A concession is defined as follows:

"a privilege granted by a government, company, etc.; esp., a) the right to use land, as for a specific purpose . . . c) the right or a lease to engage in a certain activity for profit on the lessor's premises [a refreshment or parking concession] . . . d) the land, space, etc., so granted or leased."

Webster's New World Dictionary of the American Language (2d ed.)

Except as noted below, the term concession has no independent legal significance and may be either a lease or a permit, depending upon the terms of the agreement and the rights granted.

Memo To: William H. "Chip" Dennerlein,
Director, Alaska Division of Parks

January 22, 1982
Page 4 of 4

A few courts have given concessions an independent legal significance and have found that a non-revocable concession agreement was not a lease. These courts have defined a concession as an agreement to provide a service in a park for the benefit of the public which furthers park purposes. The cases require that the concessionaire's activities on park land be under the tight regulation and control of park officials.

In Collier v. Akins, 116 S.E.2d 121, 122 (Ga. App. 1966), the State Department of Parks entered into an agreement with an individual to operate a picnic area, camping area and hostel within a state park. The Georgia Department of State Parks had authority to enter into long-term concession agreements, but was prohibited from issuing leases. The court found that the agreement was a concession and not a lease because park property was turned over to the concessionaire for a specific park purpose and he was not free to deal with it as he saw fit.

In Gage v. City of Topeka, 468 P.2d 232 (Kan. 1970), the City of Topeka gave an individual the exclusive right for 60 months to build and operate a miniature train ride for public use in a city park. The right was terminable by thirty days' notice by either party. The city did not have authority to lease park property. The court held that the agreement was a license and not a lease, finding that the concessionaire did not have exclusive possession of the premises against the city but merely the exclusive right to operate the amusement ride for the public as the city dictated.

CONCLUSION

If the Alaska Division of Parks grants a concession in a state park or recreation area, it should do so by permit rather than by a lease. The concession should serve a specific park purpose and must be available for the use and enjoyment of the public. The right granted must be subject to a high degree of control by the state. The permit should be revocable at the will of the state and non-assignable.

BJM:jf

MEMORANDUM

State of Alaska

TO Chip Dennerlien, Director
Division of Parks
Department of Natural Resources
619 Warehouse Drive
Anchorage, Alaska 99501

DATE: January 12, 1981

FILE NO. A66-240-81

TELEPHONE NO.

FROM: WILSON L. CONDON
ATTORNEY GENERAL
By: Barbara J. Miracle *Cynis*
Assistant Attorney General
AGO - Anchorage

SUBJECT Helicopter Skiing in
a state park as a
concession.

Because of public comment received at the public hearing and at the offices of the Attorney General and the Division of Parks concerning the legality of helicopter skiing within the Chugach State Park, you requested an opinion from this office on January 9, 1981 whether the Division of Parks could allow helicopter skiing with a incompatible use permit as opposed to a concession contract.

Helicopter skiing conducted as a commercial activity within a state park must be treated as a concession.

11 AAC 12.300 states as follows:

PEDDLING. Engaging in the business of soliciting, selling, or peddling any liquids or edibles for human consumption, or distributing circulars, or hawking, peddling, or vending any goods, wares, services or merchandise in a state park is prohibited except as provided in 11 AAC 14.200. [Emphasis added]

Helicopter skiing conducted as a commercial activity is included under 11 AAC 12.300 as vending a service within a state park. Therefore it is prohibited except as provided in 11 AAC 14.200 which sets the procedures for concession contracts within state parks. 11 AAC 14.200 requires that concession contracts be let according to the contract procedures and provisions set by 11 AAC 14.010 through 130. These regulations require that the Director follow the bidding and award procedures of the state purchasing regulations adopted by the Division of Supply pursuant to Title 37. The Division of Parks is required to charge a concession rental under 11 AAC 14.210.

Park Concessions and User Fees

Issues to be resolved in Senate CRA Substitute

- 1) Are all moneys collected by a concessionaire state funds and thus required to be deposited in the general fund?
- 2) Are ~~revenues~~ ^{fees} collected by concessionaires ^{regulation adoption process} for activities listed in HB 16 sec. 41.21.026 (b) subject to the ~~above condition~~? If so, by redrafting the bill we should exempt concessionaire charged fees for campsites, cabins, sewage dump stations, boat ramp or tours of historic sites and set those fees through the concession contracting process. The concern here is that using the regulation adoption process for concessionaire fees is cumbersome and would not allow private business to respond to changes in market conditions or other factors. The concession contract will still require state review and approval of concessionaire rate structures. The rate for a concessionaire campsite should be similar to the state rate but may be different because of the subsidy that the state can provide.
- 3) It would help clear the air on what part of a concessionaire's gross receipts are to go to the general fund if AS 41.21.030 is amended to read:

All money received from the operation of parks and recreational facilities, including money the state receives as a consideration for a concession contract (including money from concessions), rentals or donations shall be deposited in the general fund of the state. (delete language in () and add underlined section)

- 4) Resident hire. See Terry Bannister's memo concerning the constitutional issues raised by this provision. It seems best to leave this provision in the bill even though there is a legal question.
- 5) DNR amendments. These seek to allow for simple campground concessions where the operator will not be developing new facilities or services but assumes responsibility and cost for operating existing state campgrounds. It was DNR's interest in not having to run these concessions through the extensive process established in Sec 41.21.028. However, realizing that this change triggered the question about dedicated funds and the depositing of all concessionaire revenues in the general fund, the department is willing to withdraw its proposed amendments in the interest of saving time and clarity in the bills purposes. DNR will accept having to run "simple" concessions through the section .028 process. We would also need the exemption of concessionaire fee rates for uses listed in 41.21.026 (b) or other non-ordinary uses or services as discussed in 1 above.

Offered: 3/6/87
Referred: Rules

5-0206L
Concern over open ended

Original sponsors: Navarre, Koponen,
Swackhammer, et al.

Kelly Cap fees in state? Don't want all fees from urban areas.

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 16 (Finance) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the levy and collection of fees
7 for the use of state park system facilities; relating
8 to contracts for services and facilities in the state
9 park system; and providing for an effective date."

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

11 * Section 1. AS 41.21 is amended by adding new sections to read:

12 Sec. 41.21.026. FEES FOR THE USE OF STATE PARK SYSTEM FACILI-
13 TIES. (a) The department may not, either directly or through another
14 person, charge or collect a fee for an ordinary use of a park unit or
15 the use of a restroom in a park unit.

16 (b) In addition to the prohibition in (a) of this section, the
17 department may not establish and collect fees for the use of a park
18 unit, except for

19 *2nd ✓* (1) rental of public use cabins or other overnight lodg-
20 ings;

21 *2. ✓* (2) overnight use of a developed campsite;

22 (3) special park use permits;

23 *2.* (4) noncompetitive and nonexclusive commercial use permits;

24 (5) use of a sewage holding tank dump station;

25 (6) guided tours of historic sites; and

26 *Concern* (7) use of an improved boat ramp in a park facility
27 developed principally for boat launching.

28 (c) The department shall establish the fees for uses under (b)
29 of this section by regulation. Before setting the fees, the

some areas that I use & no cap. funding.

1 department shall consider at public hearings

2 (1) the cost to the state of operating the facility or
3 managing the activity;

4 (2) the normal fees charged for similar facilities or
5 activities by governmental and nongovernmental entities;

6 (3) the cost of administering a fee collection program for
7 the facility or activity; and

8 (4) the public interest.

9 (d) In this section, "developed campsite" means a campsite
10 having access to the following public facilities:

11 (1) restrooms;

12 (2) a picnic table;

13 (3) an outdoor cooking facility; and

14 (4) an approved water source.

15 Sec. 41.21.027. MAINTENANCE AND COLLECTION CONTRACTS IN THE
16 STATE PARK SYSTEM. (a) The state may contract under AS 36.30 (State
17 Procurement Code) for

18 (1) the collection of fees charged for uses under AS 41.-
19 21.026(b); and

20 (2) park unit maintenance activities; "park unit mainte-
21 nance activities" means

22 (A) refuse collection;

23 (B) janitorial maintenance of facilities;

24 (C) litter pickup;

25 (D) painting;

26 (E) fireplace cleaning;

27 (F) sewage pumping;

28 (G) minor repair and replacement of facilities;

29 (H) snowplowing and road maintenance;

- 1 (I) brushing trails, picnic areas, and campsites;
2 (J) other normal park unit maintenance activities.

3 (b) The state may combine in a single contract the services
4 listed in (a)(1) and (2) of this section. *Insert DWR amend*

5 (c) A contract under this section is not subject to AS 41.21.-
6 028.


7 Sec. 41.21.028. CONCESSION CONTRACTS IN THE STATE PARK SYSTEM.

8 (a) The state may not enter into a concession contract under AS 36 to
9 provide services or to operate or construct facilities in a park unit
10 unless the commissioner finds that the proposed concession contract

11 (1) will implement the purposes of the park unit and is
12 authorized by the park management plan, if any, that applies to the
13 park unit;

14 (2) will enhance public use and enjoyment of the park unit
15 while maintaining a high quality environment and the opportunity for
16 high quality recreational experiences;

17 (3) will provide services or facilities that are not feasi-
18 ble or affordable for the state to provide directly;

19  (4) will not create ~~substantial~~ *unacceptable* adverse environmental
20 effects;

21 (5) is based on a need and desire of the public;

22 (6) recognizes and accommodates, at no cost, ordinary uses
23 in a park unit;

24 (7) requires the contractor to hire residents of the state,
25 to the extent available and qualified, when hiring persons to work in
26 the park under the contract;

27 (8) provides the state with a fair and equitable portion,
28 in money or services, of the contractor's receipts from the provision
29 of the service or the operation of the facility;

1 (9) provides that the department retains control over the
2 level of fees and the design and appearance of any facility to be con-
3 structed;

4 (10) ~~requires~~ ^{encourages} the contractor to accommodate visitors with
5 special circumstances, including handicapped persons, senior citizens,
6 and school children;

7 ~~(11) provides that during the term of the contract the~~
8 ~~commissioner shall regularly review and inspect the~~

9 (A) operation of the facility; and

10 (B) ~~contractor's provision of service to the public;~~

11 and

12 (1~~2~~) provides that the contract ~~shall~~ ^{may} be terminated if the
13 contractor fails to ~~protect park values and resources or fails to~~ ^{fulfill the stipulations of this section of the contract}
14 ~~maintain a high-quality environment and recreation experience.~~

15 ^{considerably w/a} → (b) Before bids or proposals are sought or contract negotiations
16 begun under AS 36.30 for a concession contract under (a) of this
17 section, the commissioner shall

18 (1) make a preliminary inquiry at the local level to
19 identify community concerns;

20 (2) if it is appropriate to proceed further, make a pre-
21 liminary decision that includes the findings required by (a) of this
22 section and

23 (A) an assessment of existing visitor uses that may be
24 affected by the activities of the contractor;

25 (B) an assessment of the potential conflicts or sig-
26 nificant effects on park wildlife, water, scenic values, or other
27 resources;

28 (C) an identification of the types of services or
29 goods that the contractor is to provide;

all leave alone

Covered in A?

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(D) the terms and conditions of the contract;

~~(E)~~ a determination of whether the contract activity would be more appropriately located on land outside of the park or on private land within the park; and

(F) the views and comments of the park advisory board, when one exists, for the park unit in which the activity is being considered;

(3) after making a preliminary decision under (2) of this subsection,

(A) seek public comment on the preliminary decision through reasonable public notice and, if facilities may be built under the concession contract, conduct public hearings;

(B) after considering the public comment obtained under this subsection, issue a final decision on whether or not the state will proceed into a concession contract award process.

(c) The commissioner shall provide for public review and comment before a concession contract under this section is renewed or extended.

(d) By the 15th day of each first regular session of the legislature, the commissioner shall make available to the legislature a report on the provision of services or operation of facilities under concession contracts under this section during the previous two fiscal years, including

(1) contract activities;

(2) new or expanded contracts whose estimated or actual gross receipts exceed \$25,000; and

(3) violations of contract standards.

(e) The commissioner may adopt regulations to implement this section.

*Mike Szymo
wants remove*

1 (f) The commissioner ~~may not enter into a concession contract~~
2 for the Alaska Chilkat Bald Eagle Preserve.

3 (g) In this section

4 (1) "concession contract" ~~does not~~ ^{MAY} include ~~a contract under~~ ^{insert DNR amendment}
5 AS 41.21.027;

6 (2) "facilities" ~~includes~~ ^{includes} campgrounds, boat launches,
7 lodges, food service operations, and gift shops.

8 Sec. 41.21.029. DEFINITIONS. (a) In AS 41.21.026 - 41.21.029

9 (1) "ordinary use" means a use that is not generally asso-
10 ciated with developed facilities, including fishing, hunting, walking,
11 swimming in a natural body of water, picnicking, or automobile parking
12 associated with another ordinary use; ^{boat launching M&M}

13 (2) "park unit" means a unit of the state park system.

14 * Sec. 2. AS 41.21.030 is amended by adding a new subsection to read:

15 (b) The commissioner of administration shall separately account
16 for fees and other money collected under AS 41.21.026 - 41.21.029 and
17 deposited under (a) of this section. The annual estimated balance in
18 the account may be used by the legislature to make appropriations to
19 the department to carry out the purposes of this chapter.

20 * Sec. 3. AS 28.10.411(e) and AS 41.35.045 are repealed.

21 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

PRESIDENT'S LETTER



JOHN LITTEN

With the 1986 AVA Convention still fresh in our minds, I would like to take this opportunity to applaud and personally thank Holland America Line, Westours, Convention Chairman Tom Tougas, Dale Fox and our office staff for putting together the most educational, prosperous and enjoyable convention in AVA history.

The AVA Board of Directors can be proud of our past year's accomplishments. They are a result of many intense meeting hours and represent a basic refinement of our policies and goals. A new slate of officers has been elected to work on the coming year and several committees are already at work. As your newly-elected president I am certainly looking forward to the challenge of the year ahead and will work to make 1987 a prosperous year for everyone in tourism.

Our government relations team has already gotten a running start on one of our most important goals this year which is to improve the level of funding for the Division of Tourism. Part of our program to achieve this goal will be to rally the tourism advocates in the Alaska House and Senate and remind our newly elected state legislators of their campaign promises to support an \$8.2 million budget for the Division of Tourism.

Newly elected Governor Steve Cowper told AVA delegates at this year's convention that he also supports \$8.2 million for DOT. He wants economic growth to return to Alaska and knows tourism will only grow if properly nurtured and for that reason has pledged 100% support for our funding request.

It will be imperative that each and every Alaskan member of AVA take a leadership role in the grassroots support effort in the upcoming session. Your representatives and senators are not facing an easy job. They need to know you support their efforts on behalf of tourism and that tourism is alive and well and working in and for Alaska.

CALENDAR OF EVENTS

AVA Board Meeting Dates:
November 21, 1986 Seattle

AVAMC Meeting Dates:
December 2, 1986 Anchorage, Alaska
March 3, 1987 Juneau, Alaska
May 5, 1987 Fairbanks, Alaska
August 4, 1987 Seattle, Washington

Other Events:
December 5, 1986 — Anchorage AVA Legislative Reception, Clarion Hotel, 6:30 p.m.
December 16, 1986 — Pacific NW Chapter Christmas Party, Seattle Airport Hilton, 6 p.m.
February 6, 1987 — AVA Travel Auction — Details to come.

ALL AVA MEETINGS ARE OPEN TO THE PUBLIC.

Membership Passes Four Out of Five Resolutions

This year the Resolutions Committee, chaired by Capt. Jim Binkley, submitted five resolutions to the membership for action. After discussion by the membership four of the five were passed.

Resolutions passed by the membership form the basis of the association's future actions. Given below is a summary of the resolutions passed at this year's Annual Convention:

Resolution Commending the Staff of the Nieuw Amsterdam

Now, therefore be it resolved that AVA in this membership gathering extends its thanks and appreciation to the crew of the Nieuw Amsterdam and the staff of Holland America Line, Westours Inc. for a truly outstanding conference.

Resolution Supporting Authorization of Fees for Use of State Campgrounds and Public Use Cabins

Now, therefore be it resolved, that the Alaska Visitors Association requests that the Alaska Legislature authorize the levying of fees for the use of state campgrounds and public use cabins.

Resolution Supporting Maintenance Budget for State Parks

Now, therefore be it resolved that the Alaska Visitors Association supports a budget for the Division of Parks and Outdoor Recreation which allows for the adequate maintenance of our Alaska State Park System.

Resolution Supporting Relief for Placer Miners

Therefore be it resolved that the Alaska Visitors Association now appeals to all members of all political parties to join us in prevailing upon the new State of Alaska administration and Legislature to promptly enact whatever legislation is needed to avert the impending calamity which now hovers over our Great State.



ALASKA VISITORS ASSOCIATION

P.O. Box 10-2220, Anchorage, AK 99510
(907) 276-6663

The official newsletter of the AVA is published monthly for AVA members. Copy deadline is the 15th of each month.

President John Litten	Vice-President/Marketing Ral T. West	Treasurer Bob Berto	Vice-President/ Gov't Relations Bob Dindinger
Vice-Pres./Administration Gary Odle	Secretary Dennis Brandon	Executive Director Dale Fox	

Staff: Jeralyn Cox, Diane Wiseman, Roy Regalado, Kathy McKibben, Joe Dinneen
Newsletter Editor: Sara Juday



ALASKA VISITORS ASSOCIATION

Vol. 23, No. 9

Travel Alaska and the Yukon

November/December, 1986

AVA Honors Outstanding Service

This year the Alaska Visitors Association honored seven individuals and organizations for their outstanding contributions to the visitor industry in Alaska at the annual Awards Banquet held on the final night of the AVA Convention.

Gary Odle of Alaska Airlines served as master of ceremonies for the event and deserves his own award for keeping the ceremony right on schedule.

Mimi Feisst, who served two years

as president of the Pacific Northwest Chapter of AVA and coordinated Superfam 1985 was awarded the Alaskan Award. Don Rosenberg of Tour Alaska presented the award which was immediately greeted by a standing ovation for Ms. Feisst.

The Alaskan Award is presented to an individual, community, business or group not located in Alaska for outstanding assistance to the Alaska visitor industry.

The Community of Haines received this year's "Spirit of '98" Award in recognition for the community's high achievement in developing and servicing Alaskan tourists and tourism. Carl Heinmiller, a founding member of AVA, accepted the award on behalf of the community.

For the second year in a row, the Anchorage AVA Chapter was presented the AVA Chapter Award. The award recognizes the consistent quality of work of the Anchorage Chapter, Ann Seidl, secretary of the Anchorage Chapter for the past two years accepted the award on behalf of the Chapter.

"This really belongs to all members of the AVAMC," Dean Weidner said

(Continued on page 3)



1986 AVA Award Winners: Mimi Feisst, Dean Weidner, Martha Edwards, Kirk Lanterman, Ann Seidl for the Anchorage AVA Chapter and Carl Heinmiller for the community of Haines.

1986/87 AVA Officers Selected

Kirk Lanterman, the 1985/86 AVA President handed over the gavel to incoming president John Litten at the AVA Convention. Litten has been a member of the AVA Board of Directors since 1982 and was re-elected in August to serve another three-year term. He served as vice-president of administration last year.

Other incoming officers are:

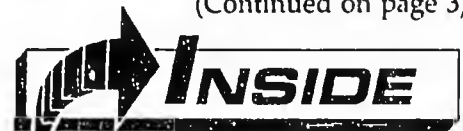
Gary Odle, vice-president of administration. Odle is director of market development for Alaska Airlines. He has served as AVA vice president of marketing for the past two years.

Bob Dindinger, vice-president of government relations. Dindinger is president of Alaska Travel Adventures in Juneau and is the immediate past chairman of the AVA Marketing Council.

Ral T. West, vice-president of marketing. President of Alaska West Associates in Anchorage, West has served as an officer of AVA for the past three years. She is also a member of the AVA Marketing Council.

Dennis Brandon, secretary. Brandon is vice president of marketing for Sheffield Enterprises. He has been a member of the AVA Board of Directors since 1982 and is a former president.

Bob Berto, treasurer. Berto is manager of Southeast Alaska Stevedoring Corp. in Ketchikan. First appointed to the AVA Board in 1985, Berto served as chairman of the AVA Travel PAC Fundraising Committee this year.



Resolutions Passed at this	
years convention	2
PAC Fundraising Sets Record . .	3
Sitka students wins top	
AVA scholarship	3
86 Convention Review	4
Convention Sponsors,	
Organizers Recognized	5
Chapter Corner, Marketing	
Moves, Government Watch . .	6
New Members/Travelog	7

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF



P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4989

Senate Community and Regional Affairs Committee

TO: Senate C&RA Members

April, 2, 1987

FROM: Senate C&RA Staff

A handwritten signature in black ink, appearing to be "MCA".

RE: HB 16 - Relating to the levy and collection of fees for the use of state park system facilities; relating to contracts for services and facilities in the state park system; and providing for an effective date

Included in this packet are two letters, a fiscal note, photographs, and a bill summary from DNR; a letter from the Susitna Recreational Camps, Inc.; a bill history and copies of the House journal dealing with floor amendments; an Alaska Visitors Association resolution supporting state campground fees; two memorandums from Rep. Brown; an AG's opinion on DNR's existing authority to concession contract; and copies of existing state regulations and federal laws dealing with concessions and contracting within parks.

In DNR's first letter they suggest two amendments to the bill. A representative of the Parks division will be at the hearing to explain this amendment and the bill as a whole.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS AND OUTDOOR RECREATION

3601 C STREET
ANCHORAGE, ALASKA 99503
PHONE: (907) 561-2020

MAILING ADDRESS:
P.O. BOX 7001
ANCHORAGE, ALASKA 99510

December 1, 1986

Honorable Arliss Sturgulewski
Alaska State Senate
2957 Sheldon Jackson
Anchorage, Alaska 99508

Dear Senator *Arliss Sturgulewski*

Each year, prior to the legislative session, I provide each legislator with a short summary of state park activities. I've also enclosed a few snapshots taken in our parks, recreation areas and historic sites this summer.

The 1986 fiscal year was our busiest ever, with 6.4 million visits to our 118 unit state park system; 1.5 million of these visits were by non-resident tourists. Use of the park system was up 14 percent over 1985. Our surveys show that Alaskans pursue outdoor recreation at twice the national average. This, combined with an ever-growing tourism industry, as well as new recreation facilities being provided, has continued to increase use of our accessible state park facilities: campgrounds, picnic areas, fishing access sites, visitor centers and historic sites.

Several new park facilities were built this year. A new visitor center was completed in Chugach State Park, near the Potter Marsh. Also in Chugach State Park, a new self-guiding nature trail was constructed adjacent to the Eagle River Visitor Center. Two new recreation areas were constructed in the Matanuska Valley area: the Kepler Bradley Lakes State Recreation Area was developed as was a refurbished and expanded park at Big Lake. Substantial work was finished on the Delta State Historic Park and a new campground on Tok River will be completed this Spring. The CIP budget for building new recreation facilities in FY'87 is about \$250,000.

Three years ago, anticipating declining state revenues and budget cuts, we embarked on major strategies to stretch our services. One was our VIP program -- Volunteers-in-Parks (see enclosed folder). In 1986, we recruited 483 volunteers who donated 56,000 hours of free labor as campground hosts, trail crews and visitor center staff. The other is our use of inmate, prison labor. We pay inmates \$5.00 per day and prisoners worked 33,000 hours this past year in park maintenance, light construction and vandalism repairs. A new economic strategy we are now using is non-profit corporations. We helped form three

December 1, 1986
Page 2 -

such organizations this year to stretch our ability to serve people and operate parks during lean times. We also utilize the Alaska National Guard's engineering battalions to build recreation facilities as part of their training exercises.

To utilize these economic strategies will require paid professional staff and unfortunately deep budget cuts are threatening some of these programs. Without our park rangers to recruit, train, supervise volunteers and inmates, many program gains will be lost. The division spends 82 percent of its budget on field operations. Since July 1, we've been cut 25 percent and with additional reductions ahead, we are forced to plan the closures of some recreation areas beginning in the Spring of 1987. Alaskans and our tourist visitors may find several locked gates next year.

We are optimistic over the increasing interest of lawmakers in the tourism industry; we hope that this interest includes keeping our parks, recreation areas and historic sites open for visitors. We appreciate your interest in state parks and if I can provide additional information, please contact me at 762-4505.

Sincerely,



Neil C. Johannsen
Director

enclosures

NCJ:clk

Arhiss,
We need a campground fee bill to
raise revenues. Can you help?

NEIL

1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: CSHB 16(Fin)
Publish Date: HOUSE 3/6/87

REQUEST:

Revision Date: March 4, 1987
Title: Fees for use of state park facilities
Sponsor: House Resources
Requestor: House Finance

Agency Affected: Natural Resources
BRU: Park Management
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		25	30	34	34	34
TRAVEL		18	8	3	3	3
CONTRACTUAL		20	15	10	10	10
SUPPLIES		3	2	2	2	2
EQUIPMENT		27	20	10	10	10
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		96	75	59	59	59
CAPITAL						
REVENUE		30	170	334	490	550

FUNDING: (Thousands of Dollars)

GENERAL FUND		96	75	59	59	59
FEDERAL FUNDS						
OTHER						
TOTAL		96	75	59	59	59

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY		1	2	1	1	1

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Neil Johannsen Phone: 465-2400
Division: Parks and Outdoor Recreation Date: 2-3-87

Approved by Commissioner: C. Williams for JMB Date: 3/5/87
Agency: Natural Resources

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

RECEIVED

MAR 05 1987

page 1 of 2

LEGISLATIVE FINANCE

Costs
FY88

personnel services \$28.0

- *increase existing Natural Res. Manager I position in charge of concessions and fees from 6 months to 12 months \$25.8
- *hire one seasonal Alaska Conservation Corps staff person or support a volunteer college intern through a \$15/day stipend cost is \$2.2

Travel \$18.0

- *statewide regulations hearings to adopt fee structure \$8.0
- *meetings & hearings on proposed concessions \$5.0
- *field inspections of concessions \$5.0

Contractual \$20.0

- *establish campground fee registration and payment systems at 20 campgrounds. \$1,000 per campground as follows:
 - signs \$200
 - Iron Ranger fee device \$350
 - lock device \$ 50
 - labor to install \$400

Supplies and Materials \$3.0

- *purchase of printed payment envelopes \$2.5
- *accounting and reporting forms \$0.5

Equipment \$27.0

- *install fee box device in park ranger vehicles to transport fees to park offices. Prevents tampering with funds 225 vehicles at \$680 per vehicle \$17.0
- *Safes and lock boxes for 10 area offices. Estimated cost is \$1.0 per office. \$10.0

Revenues
FY88

Fees:

Commercial Use Permits \$6.0 (120 at \$50 each)
Public Cabins \$5.0 (1986 level of revenues)

Concessions (Franchise Fee Payments)

Potter Section House \$10.5 (3% of \$350.0 gross receipts)
Rika's Roadhouse \$8.5 (3% of \$280.0 gross receipts)

estimated total revenue for FY88 is \$30.0

Future Revenues (campground fees are added and additional concessions and commercial use permits are established)

FY 89	\$170	FY 91	\$490
FY 90	\$334	FY 92	\$550

SUMMARY OF PARK FEES AND CONCESSIONS BILL
CS HB 16 (Final)

I) User Fees

Prohibits DNR from collecting fees for ordinary park uses including use of a restroom.

Prohibits DNR from from collecting fees (directly or through a contractor) except for:

- *rental of a public use cabin or other overnight lodging
- *use of a developed campsite
- *special park use permits
- *commercial use permits
- *use of a holding tank dump station
- *guided tours of a historic site

Provides criteria for the state to consider when adopting fees through the regulation process.

II) Contracting for Fee Collection

Authorizes DNR to contract for fee collection and routine park maintenance activities.

III) Park Concessions

Prohibits DNR from entering into concession contracts unless the contract will:

- *implement the purposes of a park and is authorized in a management plan, if any
- *enhance public use and enjoyment of a park and maintains a high quality environment and recreational opportunities
- *be for services or facilities that are not feasible or affordable for DNR to provide directly
- *not create substantial adverse environmental effects
- *be based on a clear need or desire of the public
- *recognize and accommodate, at no cost, ordinary uses in a park unit
- *require the contractor to hire residents of the state, to the extent qualified and available
- *provide the state with a fair and equitable portion of the contractor's receipts
- *provide that DNR retains control over fees and the design of facilities
- *require contractors to accommodate special visitors such as handicapped persons, senior citizens and school children
- *provide for regular inspections by DNR of the facilities and services
- *provide that the contract will be terminated if the contractor fails to protect park values and resources or fails to maintain a high quality environment and recreational opportunities

Before bids or proposals are sought or a contract negotiated DNR must:

- *inquire with local residents to identify community concerns

If DNR decides to proceed further, DNR shall make a preliminary decision that includes the findings required above and:

- *assesses existing visitor use in the park area
- *assesses potential conflicts with wildlife, water, scenic values and other resources
- *identifies the kinds of services to be provided
- *establishes general contract terms and conditions
- *determines if the activity would be more appropriately located outside the park or on private lands within the park
- *views and comments of the park advisory board, if any

After making the preliminary decision, DNR shall:

- *seek public comment on the preliminary decision and, if facilities are to be built, hold public hearings

After considering public comment, issue a final decision on whether or not DNR will enter into a concession contract award process.

DNR must allow public review and comment prior to renewal or extension of a contract.

DNR must report every two years to the Legislature on the status of park concessions.

DNR may adopt regulations for concessions.

DNR may not enter into a concession contract in the Alaska-Chilkat Bald Eagle Preserve.

Ordinary uses are defined as those uses not generally associated developed facilities including fishing, hunting, walking, swimming, picnicking, or automobile parking associated with another ordinary use.

The law applies only to units of the state park system.

The state shall separately account for funds collected through user fees and other moneys collected under the provisions of the bill and separately account for them. The annual estimated balance may be used by the legislature to fund park programs.

AS 20.10.411(e) and AS 41.35.045 are repealed.

The Act takes effect July 1, 1987.

prepared by DNR/Parks 3/4/87



SUSITNA RECREATIONAL CAMPS, INC.

MONTANA CREEK CAMPGROUND

MILE 96.5 PARKS HWY.

816 OCEANVIEW DRIVE ANCHORAGE, ALASKA 99515

(907) 345-5764

FA

MAR 10 1987

March 4, 1987

Senator Arliss Sturgulewski
P.O. Box V
Juneau, Ak 99811

Dear Senator Sturgulewski,

I am writing regarding CS HB 16. I support the overall concept of the bill; however, there are some provisions in the bill which I find objectionable. I hope that when this bill reaches the Senate you will consider those objections regarding day use of state parks and recreation facilities without charge. It is my understanding that the underlying principle behind charging user fees is to help offset the cost of maintaining our state parks. Picnickers, fishermen, hikers, etc., who use the facilities for a day are as likely as an overnight camper to leave litter or require cleanup of some type. It is not logical, fair, or equitable to charge user fees only to overnight campers, and I believe that doing so will leave the State open to some type of litigation.

Also, in the past, technically day use parks (no camp spots, no tables, no tent pads) have been used as overnight camp sites by self-contained motorhomes. Those sites have charged no user fees and have effectively made the State a competitor to private camp enterprises who charge user fees. A good example is our own campground still under development at Montana Creek, Mile 96.5 of the Parks Highway. Upon learning that we did charge user fees, many motorhomes would cross the creek to park without charge in the State's "Montana Creek Recreational Site." If day parks are not to charge user fees, then some mechanism should be instituted that restricts use of these areas to day use only.

It is in the best interest of the State and its citizens that good legislation be passed. We feel that the above points are important for you to consider before voting. Please feel free to contact me if I can answer any further questions or be of any assistance. I would also appreciate it if you would let me know your position on the above points. Thank you for your consideration.

Sincerely,

Joe B. Mathis
Vice President

QUESTIONS TO CONSIDER ON HB 16

by Rep. Kay Brown

1. Is concession contracting in State Parks a good idea?

Considerations/Pro:

- provides DNR flexibility and means to do things otherwise not possible with budget cuts
- allows DNR to keep facilities open through private financing
- provides opportunity for certain services otherwise inappropriate for state to provide (such as food and lodging)
- clarifies existing DNR authority

Considerations/Con:

- contractors may gain too much political influence over park management decisions
- park objectives may be compromised by profit motives
- commercialization of state parks may occur

Proposed CS (Finance):

- provides concession contracting authority with safeguards

2. Should private capital be used to construct facilities in public parks (as distinguished from provision of services)?

Considerations/Pro:

- facilities can be constructed (eg, boat launch, x-country/down hill ski resort, lodge)
- tourism attractions can be developed

Considerations/Con:

- commercialization of parks
- creation of strong financial and/or political interests in parks

Proposed CS (Finance):

- allows construction of facilities but requires extensive public involvement

3. Is all this public process in the proposed CS necessary?

Considerations/Pro:

- safeguards against bad development experienced elsewhere (eg, Yosemite, Yellowstone)
- ensures public involvement

Considerations/Con:

- may defer or slow down concession development
- increases state administrative costs


Proposed CS (Finance): expands public review process before concession contracts are granted or facilities are constructed.

Kay Brown

Alaska State Legislature House of Representatives

MEMORANDUM

TO: Representative Mike Navarre

FROM: Representative Kay Brown 

DATE: February 23, 1987

SUBJ: HB 16 - Park User Fees and Concessions
and Current Statutory Authority

During the discussions on House Bill 16 there has been some confusion regarding *current* statutory authority for DNR to charge fees and contract out concessions and whether this bill would have the effect of adding concession contracting to present authorities.

In order to clarify current law and better understand the implications of House Bill 16, I have asked for an Attorney General's Opinion on this issue. As indicated by the opinion, DNR already has statutory authority to concession contract. The authority to simply collect fees is also provided under current laws but conditioned by certain provisions.

Please find a copy of the opinion attached.

attachment

cc: House Finance Committee members
Representative Koponen
Representative Cotten

MEMORANDUM

State of Alaska

TO: House Finance Committee
Attn: Eric Meyers

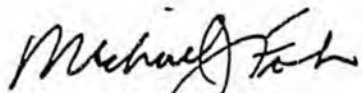
DATE: February 23, 1987

FILE NO:

TELEPHONE NO: 276-3550

THRU: Grace Berg Schaible
Attorney General

SUBJECT: CSHB No. 16



FROM: Michael J. Frank
Assistant Attorney General

This memorandum responds to your request for an outline of the existing authority the Department of Natural Resources, through the Division of Parks and Outdoor Recreation, ^{1/} has to charge fees for use of park facilities and to contract for "concessions and rentals".

I. CONTRACTS FOR THE OPERATION OF "CONCESSIONS AND RENTALS".

Under AS 41.21.020 DNR "shall"

- (4) control, develop and maintain state parks and recreational areas;
- (5) provide for the care, control, supervision, development, . . . and maintenance of public recreational land, and make necessary arrangements, contracts or commitments for the improvement and development of land acquired under AS 41.21.010 - 41.21.040.
(Emphasis supplied.)

The foregoing statute was passed in 1959 (ch. 158 SLA 1959), as was AS 41.21.030. The latter statute reads in full:

All money received from the operation of parks and recreational facilities, including money from concessions, rentals, or donations shall be deposited in the general fund of the state.
(Emphasis supplied.)

1/ AS 41.21.040, passed as part of ch. 158 SLA 1959, gave the DNR commissioner authority to create a separate division in DNR to "perform functions relative to parks and recreational facilities specified in AS 41.21.010 - 41.21.040. . . ."

AS 41.21.020 and 41.21.030 have provided the legal authority to DNR to adopt the existing concession contract regulations (see attached) at 11 AAC 14.200 et seq. While the two statutes are certainly are not as clear in granting contracting authority as they might be, it seems obvious from them that the 1959 Legislature anticipated that there might be contractors operating concessions or rentals ^{2/} in State parks.

For your information I am also enclosing existing National Park Service "concession" contracting laws, 16 U.S.C. §§ 20 et seq., and regulations, 36 C.F.R. Part 51.

II. FEES.

Currently DNR only has express statutory authority to "establish and collect fees for guided tours through historical sites". AS 41.35.045 (1986 Michie Suppl.).

Prior to 1978, DNR did charge fees for entry into and use of a state park or campground. DNR did so via 11 AAC 12.310, a regulation which allowed the division of parks' director to set fees for use of a state park facility and which established an annual \$10.00 vehicle entrance fee to state parks.

In 1978, however, the Legislature nullified this regulation, in effect, by passing AS 28.10.411, governing motor vehicle registration (license tag) fees. Subsection (e) of AS 28.10.411 reads:

Notwithstanding any other provision of law, fees paid for registering a vehicle . . . shall include all fees required for entry and use of a state park or campground.

Since the "nullification" was in a motor vehicle registration statute, it's not exactly clear how broad the 1978 Legislature

2/ Neither the word "concessions" nor "rentals" is defined in AS 41.21. At common law "concession" was a term "ordinarily applied to the grant of specific privileges by a government". Black's Law Dictionary 361 (4th Ed. 1968). In the context of especially protected lands -- like parks -- the use of the word "concession" is very apt in that it implies that being allowed to operate a commercial venture on such lands is an extraordinary privilege to grant someone.

intended AS 28.10.411(e) to be. If, for example, a backpacker had no vehicle registered in Alaska and walked into and used a state park campground, could the backpacker legally be charged a campground user fee?

In any event, the 1986 Legislature resolved any ambiguities, perhaps unintentionally, with the passage of AS 37.10.050(a). That statute prohibits a state agency from charging "for the provision of state services unless the charge is authorized by statute". Although it's not exactly clear what "state services" includes, it seems apparent that entrance fees at campgrounds and other comparable direct levies on park visitors are prohibited. A concessioner's sale of natural history books might, however, not be.

III. CONCLUSION

From an attorney-to-client standpoint, the existing statutes are in a sufficient muddle to make it difficult for our office to give unambiguous legal advice to DNR when contracting and fee questions arise. Thus, if the Committee should desire further help with the drafting of CSHB 16, our office would be eager to assist it.

MJF:amh

cc: Ron Lorensen, Esq.
Art Peterson, Esq.

of any default on the part of the contractor in observance or performance of any of the conditions or covenants of the contract is not a waiver of the forfeiture provision or any other provision of the contract. (Eff. 1/13/73, Reg. 44)

Authority: AS 41.21.020
AS 41.21.040

ARTICLE 2. CONCESSION CONTRACTS

Section

- 200. Concession contracts
- 210. Concession rental
- 220. Cancellation by the state
- 230. Improvements by concessionaire
- 240. Chattels and personal property
- 250. Removal of personal property
- 260. Renewal of concession contracts

11 AAC 14.200. CONCESSION CONTRACTS. A concession contract may be obtained under the procedure, and is subject to the conditions, in 11 AAC 14.010 through 11 AAC 14.130. The director may enter into a contract with a qualified person to construct, maintain, or operate a concession in a state park. A fee schedule established in a concession contract may be subject to annual review and approval by the director. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.21.020
AS 41.21.040

11 AAC 14.210. CONCESSION RENTAL. The rental charged by the division shall be one of the following:

- (1) percentage of the annual gross receipts;
- (2) guaranteed annual minimum or percentage of the gross, whichever may be the greater;
- (3) annual rental; or
- (4) a combination of the above. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.21.020

11 AAC 14.220. CANCELLATION BY THE STATE. If the concession is terminated or forfeited during its term, the state shall pay the concessionaire the value of his interest in fixed improvements unless the termination is due to

concessionaire default or request. The value of the interest is calculated by the straight-line depreciation method less any amount due the state at the time of contract termination. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.21.020

11 AAC 14.230. IMPROVEMENTS BY CONCESSIONAIRE. The concession contract may provide for the construction of fixed improvements or additions to real property. Each improvement or addition to real property shall become the property of the state without cost upon expiration of the contract. The cost of an improvement shall be the principal determinant of the length of the concession contract in order to insure the concessionaire a reasonable return on the original investment in the improvement during the term of the contract. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.21.020

11 AAC 14.240. CHATTELS AND PERSONAL PROPERTY. The concessionaire shall remove chattels and personal property within 30 days of the notification to vacate. If the personal property is not removed within the 30 days the director may forfeit the property. (Eff. 1/13/73, Reg. 44)

Authority: AS 41.21.020
AS 41.21.040

11 AAC 14.250. REMOVAL OF PERSONAL PROPERTY Nothing in these regulations may be construed to deny the concessionaire the right to sell, remove, or otherwise dispose of any personal property used in the conduct of the concession granted under these regulations. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.21.020

11 AAC 14.260. RENEWAL OF CONCESSION CONTRACTS. A concession contract for a term of less than 10 years may contain a clause granting the concessionaire the option to renew the contract for a period of time, not to exceed the original term of the contract. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.21.020

ARTICLE 3. GENERAL PROVISIONS

Section 300. Definitions

11 AAC 14.300. DEFINITIONS. In this chapter

(1) "director" means the director of the division of parks, Department of Natural Resources or his authorized agent;

(2) "division" means the division of parks within the Department of Natural Resources;

(3) "state park land or water facilities" means all lands and waters dedicated as public recreation lands and waters or facilities constructed or operated in conjunction with state parks and waters for the purpose of augmenting recreational opportunities. (Eff. 8/1/68, Reg. 27; am 1/13/73, Reg. 44)

Authority: AS 41.21.020

CHAPTER 15. TRAILS AND FOOTPATHS GRANT PROGRAM

Article

- 1. Jurisdiction and Procedure
- 2. General Provisions

ARTICLE 1. JURISDICTION AND PROCEDURE

Section

- 10. Jurisdiction
- 20. Qualification
- 30. Application
- 40. Allocation of funds
- 50. Project agreement

11 AAC 15.010. JURISDICTION. The division of parks will administer the trails and footpaths grant program established by AS 41.20.355. (Eff. 3/12/76, Reg. 57)

Authority: AS 41.21.020
AS 41.21.040
AS 41.21.364

11 AAC 15.020. QUALIFICATION. Applicants eligible under AS 41.21.864 may establish qualification for grants under this program by adopting a comprehensive trail plan that includes

(1) evidence of the applicant's legal authority to participate in the grant program and to operate and maintain recreation facilities;

(2) a summary of all trails needed during the coming five-year period, a forecast of all funding needs, and a ranking of projects described in the order of the applicant's priorities;

(3) a five-year schedule of trail acquisition, development, and maintenance, which reflects priorities based on need and considers the extent of funding available under other federal, state, and local aid programs and donations of rights-of-way, easements, and volunteer labor;

(4) evidence of citizen input in the preparation of the applicant's comprehensive trail plan;

(5) evidence of coordination between this plan and the long-range program for local service

Cross References

Administration of real estate acquired by United States in payment of debts arising under internal revenue laws, see section 7506 of Title 26, Internal Revenue Code.
Distraint on real estate, see section 6331 et seq. of Title 26.
Purchase of lands sold on execution by United States, see section 3715 of Title 31, Money and Finance.

Notes of Decisions

Property transferred for payment of debts
Sale and disposal of transferred property 2

1. Property transferred for payment of debts

There can be no doubt that this section regulating the duties of former Solicitor had a reference to existing laws in some of the states, which authorize the debtor to set off his real estate on execution, and in other cases where he surrenders all his property to the United States on which he is released, but all the provisions are not limited to these cases and some of them are general and apply to cases of "trusts created for the benefit of the United States in payment of debts due them". U.S. v. Lane, C.C.Ind.1844, 3 McLean, 365 Fed.Cas. No. 15,559.

2. Sale and disposal of transferred property

The General Counsel [formerly the Solicitor of the Treasury] by virtue of this section and former section 302 of this title, had charge of, and, with the approval of the Secretary of the Treasury, power to rent or sell, lands acquired in satisfaction of judgments on bonds of internal revenue collectors. 1878 16 Op.Atty.Gen. 144.

There is no imaginable reason why a trustee having power to sell lands should not have power to sell movables and incorporeal rights, and the policy of this section demands it; at any rate, the General Counsel [formerly the Solicitor of the Treasury] is charged with the administration of said trusts and he may do, therefore, under this section, whatever any other trustee would be allowed to do in a court of chancery. 1842, 4 Op.Atty.Gen. 135.

§ 302. Repealed. Oct. 31, 1951, c. 654, § 1(95), 65 Stat. 705

Historical Note

Section, R.S. § 3749, related to the renting or selling of unproductive lands, or other property of the United States acquired under judicial process or otherwise in the collection of debts. See sections 483 and 484 of this title.

§ 303. Repealed. Aug. 5, 1947, c. 493, § 2, 61 Stat. 774

Historical Note

Section, Acts July 28, 1892, c. 316, 27 Stat. 321; May 29, 1928, c. 901, § 1(29), 45 Stat. 988, related to lease of property not required for public use by Secretary of Army. See section 2667 of Title 10, Armed Forces.

§ 303a. Repealed. Oct. 31, 1951, c. 654, § 1(96), 65 Stat. 705

Historical Note

Section, Act Mar. 3, 1879, c. 182, § 1, 20 Stat. 183, related to leasing, by the Secretary of the Treasury, of unoccupied and unproductive property of the United States under his contract and annual reports. See sections 483, 484 and 492 of this title. The provision requiring the submission of annual reports had been previously repealed by Act Aug. 7, 1946, c. 770, § 1(49), 60 Stat. 770.

§ 303b. Lease of buildings by Government; money consideration

On and after June 30, 1932, except as otherwise specifically provided by law, the leasing of buildings and properties of the United States shall be for

money consideration only, and there shall not be included in the lease any provision for the alteration, repair, or improvement of such buildings or properties as a part of the consideration for the rental to be paid for the use and occupation of the same. The moneys derived from such rentals shall be deposited and covered into the Treasury as miscellaneous receipts. (Act June 30, 1932, c. 314, § 321, 47 Stat. 412.)

Cross References

Application of this section to—
Lease housing and veterans' housing leases by Secretary of Housing and Urban Development, see section 1544 of Title 42, The Public Health and Welfare.
Lands and improvements administered by National Park Service, privileges, leases, etc., for visitor facilities, see section 20f of Title 16, Conservation.
Lease of real or personal property by secretaries of military departments, see section 2667 of Title 10, Armed Forces.
Leases for maintenance and repairs by grantees notwithstanding this section—
Park visitors' accommodations, see section 303c of this title.
Veterans' Administration leases for assistance to medical schools, see section 5070 of Title 38, Veterans' Benefits.
Veterans' Administration leases in general, see section 5022 of Title 38.
Union Station Building leases for model intermodal transportation terminal, see section 1653 of Title 49, Transportation.

Library References

United States 58(1).
U.S. United States §§ 75 to 79.

Notes of Decisions

Collection of sums for alteration, repair, or improvements
Concession contract between General Services Administration and Guest Services, Inc., included clause requiring that percentage of Guest Services, Inc. gross profits be credited to reserve used for replacement of government property, did not violate this section, in light of historically unique nature of agreement. 1985, 64 Op.Comp Gen. 217.

§ 303c. Maintenance and repair of Government Improvements under concession contracts

Privileges, leases, and permits granted by the Secretary of the Interior for use of land for the accommodation of park visitors, pursuant to section 20f of Title 16, may provide for the maintenance and repair of Government improvements by the grantee notwithstanding the provisions of section 303b of this title, or any other provision of law.

Pub. L. 87-608, Aug. 24, 1962, 76 Stat. 4051

Library References

United States 74.
U.S. Title 16, § 20f.

§ 304. Disposal of lands acquired by devise

The General Services Administration is authorized to take custody, for disposal as excess property under the Federal Property and Administrative Services Act of 1949, as amended [40 U.S.C.A. § 471 et seq.], of such lands as have been or may hereafter be acquired by the United States by devise.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 90-209, see 1967 U.S. Code Cong. and Adm. News, p. 2354.

§ 19l. Tax exemptions; contributions toward costs of local government; contributions, gifts, or transfers to or for use of United States

The Foundation and any income or property received or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto. The Foundation may, however, in the discretion of its directors, contribute toward the costs of local government in amounts not in excess of those which it would be obligated to pay such government if it were not exempt from taxation by virtue of the foregoing or by virtue of its being a charitable and nonprofit corporation and may agree so to contribute with respect to property transferred to it and the income derived therefrom if such agreement is a condition of the transfer. Contributions, gifts, and other transfers made to or for the use of the Foundation shall be regarded as contributions, gifts, or transfers to or for the use of the United States.

Pub.L. 90-209, § 8, Dec. 18, 1967, 81 Stat. 657.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 90-209, see 1967 U.S. Code Cong. and Adm. News, p. 2356.

§ 19m. Liability of United States

The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation.

Pub.L. 90-209, § 9, Dec. 18, 1967, 81 Stat. 657.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 90-209, see 1967 U.S. Code Cong. and Adm. News, p. 2356.

§ 19n. Annual reports to Congress

The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to Congress an annual report of its proceedings and activities, including a full and complete statement of its receipts, expenditures, and investments.

Pub.L. 90-209, § 10, Dec. 18, 1967, 81 Stat. 657.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 90-209, see 1967 U.S. Code Cong. and Adm. News, p. 2359.

CONCESSIONS FOR ACCOMMODATIONS, FACILITIES, AND SERVICES IN AREAS ADMINISTERED BY NATIONAL PARK SERVICE

§ 20. Congressional findings and statement of purpose

In furtherance of sections 1 and 2 to 4 of this title, as amended, which directs the Secretary of the Interior to administer national park system areas in accordance with the fundamental purpose of conserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress hereby finds that the preservation of park values requires that such public accommodations, facilities, and services as have to be provided within those areas should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that the heavy visitation will not unduly impair these values and so that development of such facilities can best be limited to locations where the least damage to park values will be caused. It is the policy of the Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas.

Pub.L. 89-249, § 1, Oct. 9, 1965, 79 Stat. 969.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 89-249, see 1965 U.S. Code Cong. and Adm. News, p. 3189.

Cross References

Uniform application of sections 20 to 20g of this title to all areas of national park system when not in conflict with specific provisions applicable to an area, see section letter of this title.

Library References

Woods and Forests $\text{C}\text{8}$.

U.S. Woods and Forests H 11, 12.

§ 20a. Authority of Secretary of Interior to encourage concessioners

Subject to the findings and policy stated in section 20 of this title, the Secretary of the Interior shall take such action as may be appropriate to encourage and enable private persons and corporations (hereinafter referred to as "concessioners") to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service.

Pub.L. 89-249, § 2, Oct. 9, 1965, 79 Stat. 969.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 89-249, see 1965 U.S.Code Cong. and Adm.News, p. 3189.

Notes of Decisions

Bus tours or sightseeing services—
Generally 3
Certificate of convenience and necessity 4
Monopoly 5
Engaging in or soliciting business without permit 6
Exclusiveness of Secretary's authority 2
Responsibility for providing facilities and services 1

1. Responsibility for providing facilities and services

The Secretary is responsible for maintaining national parks and for providing facilities and services for their public enjoyment through concessionaires or otherwise. *Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Commission*, Dist.Col.1968, 80 S. Ct. 351, 393 U.S. 186, 21 L.Ed.2d 331.

2. Exclusiveness of Secretary's authority

Congress, in creating Washington Metropolitan Area Transit Commission, did not disturb exclusivity of control by Secretary over Capitol Mall either by extinguishing entirely his power to contract for transportation services or by burdening his concessionaire with two separate agencies engaged in regulating precisely same aspects of its conduct. *Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Commission*, Dist.Col.1968, 80 S.Ct. 351, 393 U.S. 186, 21 L.Ed.2d 331.

3. Bus tours or sightseeing services—Generally

Secretary was free to enter contract with concessionaire to conduct bus tours on Capitol Mall, and is free to exclude traffic from Mall altogether or to exclude any carrier licensed or instructed by Washington Metropolitan Area Transit Commission. *Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Commission*, Dist.Col.1968, 80 S.Ct. 351, 393 U.S. 186, 21 L.Ed.2d 331.

Five Shuttle Corp. v. Washington Metropolitan Area Transit Commission, Dist.Col.1968, 80 S.Ct. 351, 393 U.S. 186, 21 L.Ed.2d 331.

4. — Certificate of convenience and necessity

Concessionaire under contract with Secretary to conduct bus tours of Capitol Mall could operate without certificate of convenience and necessity from Washington Metropolitan Area Transit Commission. *Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Commission*, Dist.Col.1968, 80 S.Ct. 351, 393 U.S. 186, 21 L.Ed.2d 331.

5. — Monopoly

Even if transit system's franchise would protect mass transportation on Capitol Mall from uncertified competition, and even if provision giving exclusive transportation rights protected charter or sightseeing services, it did not follow that system had monopoly over sightseeing on Capitol Mall. *Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Commission*, Dist.Col.1968, 80 S.Ct. 351, 393 U.S. 186, 21 L.Ed.2d 331.

Transit system's franchise did not give it absolute monopoly of sightseeing service on Capitol Mall and did not protect system against competition from concessionaire acting under contract with Secretary. *Id.*

6. Engaging in or soliciting business without permit

Secretary in promulgating regulation prohibiting engaging in or soliciting business in park areas except in accordance with permit or contract with United States does not exceed statutory authority granted to him. *U. S. v. Carter*, D.C.Ariz.1972, 339 F.Supp. 1391.

§ 20b. Protection of concessioner's investment—Contract terms; compensation for loss of investment

(a) Without limitation of the foregoing, the Secretary may include in contracts for the providing of facilities and services such terms and conditions as, in his judgment, are required to assure the concessioner

of adequate protection against loss of investment in structures, fixtures, improvements, equipment, supplies, and other tangible property provided by him for the purposes of the contract (but not against loss of anticipated profits) resulting from discretionary acts, policies, or decisions of the Secretary occurring after the contract has become effective under which acts, policies, or decisions the concessioner's authority to conduct some or all of his authorized operations under the contract ceases or his structures, fixtures, and improvements, or any of them, are required to be transferred to another party or to be abandoned, removed, or demolished. Such terms and conditions may include an obligation of the United States to compensate the concessioner for loss of investment, as aforesaid.

Profit commensurate with capital invested and obligations assumed

(b) The Secretary shall exercise his authority in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on his operation as a whole commensurate with the capital invested and the obligations assumed.

Reasonableness of concessioner's rates and charges

(c) The reasonableness of a concessioner's rates and charges to the public shall, unless otherwise provided in the contract, be judged primarily by comparison with those current for facilities and services of comparable character under similar conditions, with due consideration for length of season, provision for peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary.

Determination of franchise fees; reconsideration every five years or oftener

(d) Franchise fees, however stated, shall be determined upon consideration of the probable value to the concessioner of the privileges granted by the particular contract or permit involved. Such value is the opportunity for net profit in relation to both gross receipts and capital invested. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving the areas and of providing adequate and appropriate services for visitors at reasonable rates. Appropriate provisions shall be made for reconsideration of franchise fees at least every five years unless the contract is for a lesser period of time.

Pub.L. 89-249, § 3, Oct. 9, 1965, 79 Stat. 969.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 89-249, see 1965 U.S.Code Cong. and Adm.News, p. 3189.

§ 20c. New or additional services; preferential rights; operations by single concessioner

The Secretary may authorize the operation of all accommodations, facilities, and services for visitors, or of all such accommodations, facilities, and services of generally similar character, in each area, or portion thereof, administered by the National Park Service by one responsible concessioner and may grant to such concessioner a preferential right to provide such new or additional accommodations, facilities, or services as the Secretary may consider necessary or desirable for the accommodation and convenience of the public. The Secretary may, in his discretion, grant extensions, renewals, or new contracts to present concessioners, other than the concessioner holding a preferential right, for operations substantially similar in character and extent to those authorized by their current contracts or permits.

Pub.L. 89-249, § 4, Oct. 9, 1965, 79 Stat. 970.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 89-249, see 1965 U.S. Code Cong. and Adm. News, p. 3189.

§ 20d. Renewal preference for satisfactory performance; extensions; new contracts; public notice

The Secretary shall encourage continuity of operation and facilities and services by giving preference in the renewal of contracts or permits and in the negotiation of new contracts or permits to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary. To this end, the Secretary, at any time in his discretion, may extend or renew a contract or permit, or may grant a new contract or permit to the same concessioner upon the termination or surrender before expiration of a prior contract or permit. Before doing so, however, and before granting extensions, renewals or new contracts pursuant to the last sentence of section 20c of this title, the Secretary shall give reasonable public notice of his intention so to do and shall consider and evaluate all proposals received as a result thereof.

Pub.L. 89-249, § 5, Oct. 9, 1965, 79 Stat. 970.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 89-249, see 1965 U.S. Code Cong. and Adm. News, p. 3189.

§ 20e. Concessioner's possessory interest in concession property; limitations; compensation for taking; determination of just compensation

A concessioner who has heretofore acquired or constructed or who hereafter acquires or constructs, pursuant to a contract and with the

approval of the Secretary, any structure, fixture, or improvement upon land owned by the United States within an area administered by the National Park Service shall have a possessory interest therein, which shall consist of all incidents of ownership except legal title, and except as hereinafter provided, which title shall be vested in the United States. Such possessory interest shall not be construed to include or imply any authority, privilege, or right to operate or engage in any business or other activity, and the use or enjoyment of any structure, fixture, or improvement in which the concessioner has a possessory interest shall be wholly subject to the applicable provisions of the contract and of laws and regulations relating to the area. The said possessory interest shall not be extinguished by the expiration or other termination of the contract and may not be taken for public use without just compensation. The said possessory interest may be assigned, transferred, encumbered, or relinquished. Unless otherwise provided by agreement of the parties, just compensation shall be an amount equal to the sound value of such structure, fixture, or improvement at the time of taking by the United States determined upon the basis of reconstruction cost less depreciation evidenced by its condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value. The provisions of this section shall not apply to concessioners whose current contracts do not include recognition of a possessory interest, unless in a particular case the Secretary determines that equitable considerations warrant recognition of such interest.

Pub.L. 89-249, § 6, Oct. 9, 1965, 79 Stat. 970.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 89-249, see 1965 U.S. Code Cong. and Adm. News, p. 3189.

§ 20f. Use of non-monetary consideration in leases of government property

The provisions of section 303b of Title 40, relating to the leasing of buildings and properties of the United States, shall not apply to privileges, leases, permits, and contracts granted by the Secretary of the Interior for the use of lands and improvements thereon, in areas administered by the National Park Service, for the purpose of providing accommodations, facilities, and services for visitors thereto, pursuant to sections 1 and 2 to 4 of this title, as amended, or sections 461 to 467 of this title, as amended.

Pub.L. 89-249, § 7, Oct. 9, 1965, 79 Stat. 971.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 89-249, see 1965 U.S. Code Cong. and Adm. News, p. 3189.

§ 20g. Record keeping; audit and examination; access to books and records

Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concession contract have been and are being faithfully performed, and the Secretary and his duly authorized representatives shall, for the purpose of audit and examination, have access to said records and to other books, documents, and papers of the concessioner pertinent to the contract and all the terms and conditions thereof.

The Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of five (5) calendar years after the close of the business year of each concessioner or sub-concessioner have access to and the right to examine any pertinent books, documents, papers, and records of the concessioner or subconcessioner related to the negotiated contract or contracts involved.

Pub.L. 89-249, § 9, Oct. 9, 1965, 79 Stat. 971.

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 89-249, see 1005 U.S. Code Cong. and Adm. News, p. 3189.

YELLOWSTONE NATIONAL PARK

§ 21. Establishment

The tract of land in the States of Montana and Wyoming, lying near the headwaters of the Yellowstone River and described as follows, to wit, commencing at the junction of Gardiner's River with the Yellowstone River, and running east to the meridian passing ten miles to the eastward of the most eastern point of Yellowstone Lake; thence south along said meridian to the parallel of latitude passing ten miles south of the most southern point of Yellowstone Lake; thence west along said parallel to the meridian passing fifteen miles west of the most western point of Madison Lake; thence north along said meridian to the latitude of the junction of the Yellowstone and Gardiner's Rivers; thence east to the place of beginning, is reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring ground for the benefit and enjoyment of the people; and all persons who locate, or settle upon, or occupy any part of the land thus set apart as a public park, except as provided in section 22 of this title, shall be considered trespassers and removed therefrom.

R.S. § 2474.

Historical Note

Derivation. Act Mar. 1, 1872, c. 21, § 1, 17 Stat. 32.

Cross References

Change of boundaries see section 21a of this title.
 Liability on or further extension or establishment of national parks in Wyoming see section 451a of this title.

Library References

Woods and Forests 

C.J.S. Woods and Forests 1551, 12

§ 21a. Revision of boundaries; contiguous national forests; jurisdiction of forests

The boundary of the Yellowstone National Park is changed so as to read as follows:

Beginning on the present north boundary line of Yellowstone National Park at its intersection with the hydrographic divide immediately north of Pebble Creek, approximately at park boundary monument 29 east; thence following said divide around the head of the drainage of Pebble Creek to its intersection with the present east boundary line of Yellowstone National Park, at a point near park boundary monument 54 north; thence southerly along said boundary line to its intersection with the hydrographic divide between Soda Butte and Cache Creeks, at a point near park boundary monument 51 north; thence easterly along said hydrographic divide to its intersection with the crest of the Absaroka Range; thence southerly along said crest to its intersection with the main hydrographic divide between Little Lamar River and the North Fork of Shoshone River, passing over Republic and Hoodoo Peaks; thence westerly along said divide passing over Notch Mountain to its intersection with the present east boundary line of Yellowstone National Park, at a point near park boundary monument 26 north; thence continuing westerly along said divide, now between the headwaters of Lamar River and Jones Creek; headwaters of Sedge, Bear, Cub, and Clear Creeks, and the headwaters of Jones and Crow Creeks, and between Crow Creek and Middle Creek, to its intersection with the present east boundary line of Yellowstone National Park, approximately at park boundary monument 18 north, passing over Pyramid and Cathedral Peaks, Mount Chittenden, and Avalanche Peak, thence southerly along said boundary line to its intersection with the hydrographic divide immediately south of Middle Creek, approximately at park boundary monument 15 north; thence westerly along said divide, now between a southern tributary of Middle Creek, headwaters of Beaverdam, Trappers, and Mountain Creeks, and the headwaters of Canfield and Eagle Creeks, to its intersection with the present east boundary line of Yellowstone National Park, at a point near park boundary monument 5 north, passing over Reservation and Atkins Peaks, Mount Schurz, Mount Humphreys, and Eagle Peak; and

Beginning on the present west boundary line of Yellowstone National Park at its intersection with the left bank of Gallatin River be-

which shall be available for inspection in the Office of the Site Manager, the locations within these park areas that are available for the sale or distribution of printed matter. Locations may be designated as not available only if the sale or distribution of printed matter would:

(i) Cause injury or damage to park resources; or

(ii) Unreasonably impair the atmosphere of peace and tranquility maintained in commemorative areas; or

(iii) Unreasonably interfere with interpretive, living history, visitor services, or other program activities or with the administrative functions of the National Park Service; or

(iv) Substantially impair the operation of public use facilities or services of concessioners or contractors.

(4) The permit may contain such conditions as are reasonably consistent with protection and use of the park area.

(5) No permit shall be issued for a period in excess of 14 consecutive days: *Provided*, That permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(6) Persons engaged in the sale or distribution of printed matter under this section shall not conduct activities from other than a stand in the locations designated, or hawk or call out from the stand. Each stand shall bear a sign identifying the sponsor, in a form approved by the Unit Manager.

(7) The sale or distribution of printed matter without a permit, or in violation of the terms or conditions of a permit, is prohibited.

(8) Any permit may be revoked under any of those conditions, as listed in paragraph (b)(2) of this section, which constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made, to be followed by written confirmation.

Persons engaged in the sale or distribution of printed matter under this section shall not obstruct or impede pedestrians or vehicles, harass park visitors with physical contact, misrepresent the purposes or affiliations of those engaged in the sale or distribution, or whether the printed matter is available without cost or donation.

(Sec. 3 of the Act of August 25, 1916, 39 Stat. 535, as amended (16 U.S.C. 3); 8 D.C. Code 108 and 245 DM (34 FR 13879), as amended)

[44 FR 50936, Oct. 3, 1979, as amended at 44 FR 39882, Oct. 10, 1981]

PART 51—CONCESSION CONTRACTS AND PERMITS

Sec.

51.1 Authority.

51.2 Policy.

51.3 Definitions.

51.4 Solicitation and award of concession contracts and permits where no right of preference exists.

51.5 Solicitation and award of concession contracts and permits or extensions or renewal of concession contracts and permits, where a right of preference exists.

51.6 Preferential right for additional services where a right to additional services and facilities exists by specific contract provisions.

51.7 Sale, assignment, or encumbrance of concession contracts, permits, and assets.

AUTHORITY: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 3 *et seq.*, particularly, the Concessions Policy Act of 1965, 16 U.S.C. 20 *et seq.*

SOURCE: 44 FR 62095, Nov. 1, 1979, unless otherwise noted.

§ 51.1 Authority.

Concession contracts and permits are awarded by the Director on behalf of the Secretary pursuant to the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 3 *et seq.*, particularly, the Concessions Policies Act of 1965, 16 U.S.C. 20 *et seq.* All concession contracts and permits are subject to the requirements of this Part 51.

§ 51.2 Policy.

It is the policy of the Secretary, as mandated by law, to permit conces-

sions in park areas only under carefully controlled safeguards against unregulated and indiscriminate use so that heavy visitation will not unduly impair park values and resources. Concession activities in park areas shall be limited to those that are necessary and appropriate for public use and enjoyment of the park areas in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the park areas.

§ 51.3 Definitions.

The following definitions shall apply to this Part 51:

(a) "Concession Contracts" and "Concession Permits" (or "contracts" and "permits") are agreements between the Director and a concessioner whereby the concessioner agrees to provide certain public accommodations, facilities or services within a park area under the administration of the Director. Concession Permits are generally utilized where the authorized concession operations are not expected to gross more than \$100,000 annually, where the term of the permit is less than five (5) years, where no possessory interest is to be granted to the concessioner, and where no preferential rights to additional services are authorized. In other instances, Concession Contracts are utilized.

(b) "Right of Preference" refers to the right of existing satisfactory concessioners to a preference in the renewal or negotiation of a new contract or permit covering substantially the same accommodations, facilities and services as provided by the concessioner under the terms of its existing contract or permit. Prior to the expiration or termination of a contract or permit a determination shall be made based on annual evaluations, as to whether or not the concessioner is entitled to a preference in the renewal of its contract or permit. An unsatisfactory rating, results in the loss of the right of preference.

(c) "Preferential Right" refers to the right to provide new or additional services and facilities which may be granted to a concessioner by Concession Contract as the Director may con-

sider necessary for the accommodation and convenience of the public.

(d) The term "Director" refers to the Director of the National Park Service or his authorized representatives.

(e) The term "Secretary" refers to the Secretary of the Interior or his authorized representatives.

§ 51.4 Solicitation and award of concession contracts and permits where no right of preference exists.

(a) Where no right of preference exists, the Director shall issue a prospectus soliciting proposals describing the concession operation to be authorized, the material terms and conditions of the proposed Concession Contract or Permit, and the principal factors considered in selection. Public notice of the availability of the concession opportunity shall be published in the FEDERAL REGISTER and/or at least once in local or national newspapers or trade magazines, as appropriate, and will be distributed to interested parties and organizations. The prospectus will be made available upon request to all interested parties and will allow a minimum of sixty days for proposals to be submitted unless a written determination is made that a shorter period is necessary because of exceptional circumstances. All proposals received shall be evaluated by the Director, and the proposal considered best by the Director on an overall basis shall be selected as the basis for negotiation of the Concession Contract or Permit.

(b) The principal factors to be considered in selection of the best proposal shall be (1) the experience and related background of offerors, (2) the offeror's financial capability, and (3) conformance to the terms and conditions of the prospectus in relation to quality of service to the visitor. Secondary factors shall include franchise fee offered and other factors as may be specified.

(c) The Director may solicit from any applicant additional information, or written or verbal clarification of a proposal, and may extend the solicitation period in his discretion. The Director may choose to reject all proposals received at any time and resolicit

...and the solicitation altogether in his discretion when in the best interest of the Government. Any material information made available to any applicant by the Director must be made available to all applicants, and will be available to the public upon request.

(d) Negotiation of a final contract and permit with the selected applicant shall commence promptly. Material amendments to the proposed terms and conditions of the Concession Contract or Permit, as described in the prospectus, may be negotiated only after resolicitation of the concession opportunity for an appropriate period of time by amendment to the prospectus and re-advertising. After negotiation of Concession Contracts with anticipated gross receipts in excess of \$100,000 or five (5) years or more in duration, such contracts shall be forwarded to the Senate Committee on Energy and Natural Resources and the House Committee on Interior and Insular Affairs for a 60-day waiting period prior to award. The Director may, in his discretion, terminate negotiation of a Concession Contract or Permit at any time prior to execution by the Government and resolicit or cancel the solicitation when in the best interest of the Government.

(e) The terms and conditions of the solicitation must represent the requirements of the National Park Service and not be developed to accommodate the capabilities or limitations of any particular party.

(f) Upon a written determination that exceptional circumstances warrant waiver of the procedures described in this subsection and that it is in the public interest to protect visitor or park resources or otherwise, the Director may negotiate a Concession Contract or Permit with any qualified party without public notice or advertising.

§ 51.5 Solicitation and award of concession contracts and permits or extensions or renewal of concession contracts and permits, where a right of preference exists.

The procedures described in § 51.4 shall apply to the solicitation, negotiation and award of extensions, renewals, or replacement of contracts or per-

mits by a new contract or permit where an existing concessioner has a right of preference except as follows:

(a) A fact sheet rather than a prospectus will be developed by the Director and will describe the existing concessioner's right of preference as well as the material terms and conditions under which the National Park Service proposes to negotiate a new concession contract or permit with the existing satisfactory concessioner.

(b) The concessioner with the right of preference shall be required to submit a proposal in response to the fact sheet. If, after evaluation of all proposals received, a proposal other than that of the existing concessioner is determined to be the best proposal, the existing concessioner shall be given an opportunity to meet the terms and conditions of the best proposal. If the existing concessioner does so and its proposal, as amended, is in the judgment of the Director, at least substantially equal to the best proposal, the existing concessioner shall be selected for negotiation of the contract or permit. If not, the contract or permit will be negotiated with the party that submitted the best proposal.

(c) The requirement for public notice and evaluation of proposals received may not be waived.

§ 51.6 Preferential right for additional services where a right to additional services and facilities exists by specific contract provisions.

Where the Director seeks to authorize new or additional accommodations, facilities and services of generally the same character as provided by an existing satisfactory concessioner in a park area, and such concessioner by Concession Contract has a right to provide such additional services, the Director shall develop a description of the new or additional services and the terms and conditions upon which they are to be provided without reference to any private party and give the existing concessioner a reasonable opportunity to review such description to determine if it wishes to provide the services. If so, the Director shall authorize the additional services by

amendment to the concessioner's contract. If the existing concessioner does not agree to provide the additional services upon the terms and conditions described, the Director shall authorize additional services to be provided by a new concessioner under substantially the same terms and conditions and pursuant to the procedures of § 51.4 hereof.

§ 51.7 Sale, assignment, or encumbrance of concession contracts, permits, and assets.

(a) Concession Contracts and Permits or operations authorized thereby or controlling interests therein may not be transferred, sold, or assigned, or assets thereof encumbered in any manner, including stock purchases, mergers, consolidations or reorganizations, except with the written approval of the Director. Transfers, sales, assignments, or encumbrances consummated in violation of this requirement shall be considered null and void by the Director and a material breach of the contract or permit.

(b) The term "controlling interest," as used herein means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner so as to permit exercise of managerial authority over the actions and operations of the concessioner or election of a majority of the Board of Directors of the concessioner, and, in the instance of a partnership, limited partnership, joint venture or individual entrepreneurship, beneficial ownership of the capital assets of the concessioner so as to permit exercise of managerial authority over the actions and operations of the concessioner.

(c) Prior to consummating any transfer, sale, assignment or encumbrance of a controlling interest, the concessioner will request approval of the Director in writing and provide the following information:

(1) All instruments proposed to implement the transaction;

(2) An opinion of counsel from the buyer to the effect that the proposed transaction is lawful under all applicable Federal and State laws;

(3) A narrative description of the proposed transaction and the operational plans for conducting the operation;

(4) Statement as to the existence of any litigation questioning the validity of the proposed transaction;

(5) Description of the management qualifications and financial background of the proposed transferee; and

(6) A statement as to whether the proposed sale constitutes a controlling interest and the particulars thereof as described in paragraph (b) of this section; and

(7) Such other information as the Director may require.

(d) Prior to the sale, transfer, assignment or encumbrance of anything other than a controlling interest, the concessioner must have notified the Director in writing and must have received acknowledgement from the Director. Information as to why it is not a controlling interest and identification of the transferee must be submitted with the required notification. Failure to comply with this provision shall make the subject sale or transfer null and void and constitute a material breach of the Contract or Permit.

(e) The Director may choose not to approve a proposed sale, transfer, assignment or encumbrance in his discretion or may place appropriate conditions on any approval as are necessary to protect the public interest. Concession Contracts and certain Concession Permits contain provisions which limit the purposes for which they may be encumbered. Such limitations are incorporated by reference herein as an element of the Director's review of such transactions.

PART 60—NATIONAL REGISTER OF HISTORIC PLACES

Sec.

- 60.1 Authorization and expansion of the National Register.
- 60.2 Effects of listing under Federal law.
- 60.3 Definitions.
- 60.4 Criteria for evaluation.
- 60.5 Nomination forms and information collection.

FROM: Harold M. Brown
Attorney General
By: Michael J. Frank
Assistant Attorney General

SUBJECT: Kenai River sport
fishing guide
regulations
Our File No. 166-223-86

By memorandum to our office dated November 4, 1985, you asked us to answer a number of questions with respect to the regulation of sport fishing guides on the Kenai River. The questions and our answers are as follows:

"(1) Does the Department (of Natural Resources) have the constitutional and statutory authority to limit the number of Kenai River guides?

(2) If the Department has the authority to limit guides, what statutory and regulatory mechanisms are available to the Department in implementing such a limitation?"

We believe the Department does have authority to limit the number of Kenai River sport fishing guides. However, any limit chosen must be placed in regulations.

In creating the Kenai River Special Management Area ("KRSMA"), through passage of ch. 74, SLA 1984 (AS 41.21.500 - 41.21.514), the legislature expressly delegated to the Department of Natural Resources the responsibility for oversight and protection of state lands and waters in the KRSMA. This delegation of responsibility was well within the legislature's constitutional powers to "provide for the utilization, development and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people". Alaska Const., art. VIII, § 2. See also id., § 7 (legislative authority to provide for the administration of special use areas set out); id., § 14 (legislative authority to regulate use of the navigable waters of the state set out).

In AS 41.21.506(b)(2), the Commissioner of the Department of Natural Resources is directed to "establish a registration, licensing, or comparable procedure for professional fishing guides and such additional fishing guide controls as the Commissioner considers necessary", for the KRSMA. Therefore, whether "controls" should include a limit on the number of

fishing guides using the Kenai River is expressly left to the exercise of your discretion. The controls must be reasonably related to the statutory purposes of the KRSMA, of course, and to be effective must be adopted as regulations. See AS 41.21.506(b).

"(3) Can the Department give established fishing guides (those with permits in 1985, for example) preferential treatment when awarding the limited number of permits?"

Assuming you decide to limit the total number of fishing guides in the KRSMA, we do not believe that AS 41.21.506(b)(2) clearly gives you authority to grant preferential treatment to guides who were permitted to operate in the 1985 season, or who operated on the Kenai River in seasons prior to 1985.

There is nothing in the legislative history of AS 41.21.500 - 41.21.514 or in the language of AS 41.21.506(b)(2) to suggest that the legislature intended one of your options for "controls" to be a system of grandfather rights or other preferential treatment to limit entry to a previously determined closed class of individuals. A clear legislative direction for such a system is needed, in our view, because of the Alaska Constitution, article VIII, section 3's guarantee that "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use." 1/

Because of the "common use" reservation, any intentional grant of a preference to commercially exploit the state's natural resources must be carefully reasoned and legislatively crafted with narrow specificity in order to survive constitutional attack. When such intentional preferences to state natural resources have been authorized in the past, the legislature has done so only upon findings that important public purposes will be served, and only through carefully delineated

1/ The Alaska Constitution, article I, section 1 and article VIII, section 17 equal protection and equal entitlement guarantees may also be independent restrictions on the particulars of any system that might otherwise satisfy article VIII, section 3. This memorandum does not further discuss these guarantees since as we understand it no specific proposal for limiting the number of guides has yet been formulated.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

fishing guides using the Kenai River is expressly left to the exercise of your discretion. The controls must be reasonably related to the statutory purposes of the KRSMA, of course, and to be effective must be adopted as regulations. See AS 41.21.506(b).

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There is nothing in the legislative history of AS 41.21.500 - 41.21.514 or in the language of AS 41.21.506(b)(2) to suggest that the legislature intended one of your options for "controls" to be a system of grandfather rights or other preferential treatment to limit entry to a previously determined closed class of individuals. A clear legislative direction for such a system is needed, in our view, because of the Alaska Constitution, article VIII, section 3's guarantee that "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use." 1/

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1/ The Alaska Constitution, article I, section 1 and article VIII, section 17 equal protection and equal entitlement guarantees may also be independent restrictions on the particulars of any system that might otherwise satisfy article VIII, section 3. This memorandum does not further discuss these guarantees since as we understand it no specific proposal for limiting the number of guides has yet been formulated.

statutory standards. See, e.g., AS 08.54.010 - 08.54.240 (provisions for establishing standards and a methodology for hunting guide quota determinations); AS 16.43.010 - 16.43.990 (provisions for limiting entry into Alaska's commercial fisheries). This legislative attention to detail establishes an important historical benchmark for judging other statutes which might be construed to allow for preferential natural resource allocations to a particular class of citizens for the purposes of commercial exploitation.

Sport fishing guides, of course, use the Kenai River fishery for economic reasons, just as commercial fishermen use the fishery for the same reasons. 2/ The legislature did not in AS 41.21.500 - 41.21.514, however, make findings or delineate standards for preferring existing guides on the Kenai River over potential guide entrants into the fishery, as it has so carefully done for commercial fisheries through AS 16.43. Absent such legislative findings and standards, it would seem difficult to justify an administratively invented system designed to prefer existing river guides, when non-preferential regulations might be used to control the number of guides and thereby to protect the river. Cf. State v. Ostrosky, 667 P.2d 1184, 1191 (Alaska 1983) (discussion of the argument for "the least possible impingement on the common use reservation" made in the context of the commercial fishing limited entry statutory scheme).

The lack of legislative findings and legislatively created standards seems particularly telling in the KRSMA fishing guide context, given the recent history of the passage of AS 41.21.500 - 41.21.514. During the first session of the legislature previous to the one in which the KRSMA was created, Kenai area Representative Hugh Malone introduced House Bill No. 435. This bill would have added provisions to AS 08.54, the authorizing statutes for the hunting Guide Board, to add "salmon fishing guides" to the Guide Board's regulatory purview. The Guide Board already had authority to regulate the number and areas where hunting guides are permitted to do business, and to establish preferences among guides for certain areas. The bill

2/ The obvious practical distinction between guiding and commercial fishing operations -- that guides don't catch the fish but sell a service to others who do -- makes the comparison incomplete. We believe, however, a court would look at the equivalence of the economic result of the two types of fishing activities as dispositive.

did not pass. The failure of a bill to pass is generally a poor indicator of legislative intent. However, it does put relatively contemporaneous bills that do pass in historical context -- and the context here would suggest the legislature did not intend to do more than give the Commissioner authority to control guides which would be complementary to the Board of Fisheries' allocation powers over the fish resource 3/ without creating a preferential limited entry system.

While we have so far discussed only the "common use" reservation of the Alaska Constitution, article VIII, section 3, the Alaska Constitution's article VIII, section 15 also may be implicated in any control system. Article VIII, section 15 as ratified by the voters provided:

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State.

In 1972 by constitutional amendment an additional sentence was added to section 15:

This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

The amendment was proposed and adopted to get over constitutional problems in setting up a scheme for preferentially treating established commercial fishermen and limiting future entry into the state's commercial fisheries. See generally, State v. Ostrovsky, 667 P.2d 1184 (Alaska 1983).

The pre-amendment language of article VIII, section 15 was derived by the Alaska Constitutional Convention delegates

3/ The Board of Fisheries exercises conservation related authority over Kenai River fishing. See, e.g., 5 AAC 56.036. While the Department of Natural Resources was given direction in AS 41.21.500 - 41.21.514 to take steps to conserve the habitat resources of the KRSMA, it was given non-conservation goals as well, such as to protect the Kenai River's aesthetics in order to preserve its recreational potential.

from the so-called White Act. 4/ See Attorney General Op. No. 9, April 8, 1960. The history of the White Act is reviewed in Hynes v. Grimes Packing Co., 337 U.S. 86, 69 S.Ct. 968 (1949) (holding that the Secretary of the Interior could not grant an exclusive right of commercial fishing to Karluk, Alaska, reservation Natives any more than he could to non-Native fishing companies). There is no indication in the history of the White Act or article VIII, section 15 that thought was given to exploitation of Alaska's fish resources by sport fishing guides -- the primary concern was about commercial fishing and the fish canning industry. Nonetheless, a constitution is framed so as to be a living document, capable of a reading that can adjust to changes in conditions and circumstances unanticipated at the time of enactment. Warwick v. State, 548 P.2d 384, 391 (Alaska 1976). Accordingly, we expect a court would be sympathetic to an argument that article VIII, section 15 applies to any attempt to allow a fishery to be exploited by a select group of sport fishing guides, even though it is a guide's clients, not the guide, who fishes. Since AS 41.21.500 - 41.21.514 does not expressly contain the requisite legislative findings under article VIII, section 15, or reflect them clearly in legislative history, we believe any preferential limited entry system administratively wrought under AS 41.21.506(b)(a) would be constitutionally suspect.

CONCLUSION

While you have authority derivative of AS 41.21.506(b)(2) to establish, through regulations, sport fishing

4/ Act of June 6, 1924, ch. 272, § 1, 43 Stat. 464, amended by the Act of June 18, 1926, ch. 621, 44 Stat. 752 (codified in part as amended at 48 U.S.C. § 222). The codified section reads in pertinent part:

[E]very such (fishing) regulation made by the Secretary of the Interior shall be of general application within the particular area (in Alaska) to which it applies, and that no exclusive or several right of fishery shall be granted therein, nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of the Interior. (Emphasis supplied.)

guide "controls," exercise of that authority to limit the number of guides to some preferred group may well be beyond your statutory authorization, and suspect on constitutional grounds.

This does not mean that you cannot set minimum standards in issuing guide permits. You might, for example, use authority granted in AS 41.21.020 and 41.21.040 to publicly offer a limited number of concession contracts for guiding on the river, on a first come - first served, high bid, raffle, or other basis. But see State v. Ostrosky, 667 P.2d 1184, 1192 n. 9 (Alaska 1983) (disadvantage of commercial fishing raffle system discussed), and id., 1196-97 (Rabinowitz, J., dissenting) (advantages of reversion of commercial fishing permits to the state and their redistribution by public raffle discussed). Contract applicants or bidders might reasonably be required to show evidence of liability insurance, safe and adequate fishing equipment, guiding experience, and so forth before becoming eligible for one of the limited number of concession contracts, as was done in 1985 for the permits issued. ^{5/} And certainly AS 41.21.506(b)(2) gives you adequate leeway to establish a system whereby some applicants are given an advantage over others based on their willingness to agree to guide in a manner you deem especially advantageous to the goals of AS 41.21.500 - 41.21.514. For example, an applicant willing to guide from a non-motorized vessel might legitimately be given easier access to a contract or permit if you were to decide non-motorized guiding would more likely protect the river or preserve the recreational experience for river users.

In short, the options available to you under AS 41.21.506(b)(2) are many. To the extent we can be of assistance in helping you craft ones that will survive judicial scrutiny, we will be more than happy to continue to be of assistance to your office during the regulatory process.

MJF:amh

^{5/} Of course, in determining what might be the minimum qualifications for an applicant or bidder, care must be used not to invent qualifications that could be construed as mere artifices to channel contracts (or permits) to a pre-selected group. For example, lengthy residency qualifications are generally suspect.



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Committee on Finance

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: House Finance Committee

FROM: Representative Kay Brown

DATE: March 5, 1987

SUBJ: Draft CS HB 16 (Finance)
Park User Fees and Concessions

RECOMMENDATION:

- ① proposed C.S.
(attach #5)
- ② consider amendment
presented to Sub
Committee,
- ③ fiscal note
(attach #6)

Please find attached a copy of a draft CS HB 16 (Finance) prepared by the subcommittee for your consideration.

To summarize briefly, the bill as originally introduced provided authority to the Department of Natural Resources to levy and collect fees for the use of park facilities. During the Resources Committee review of the bill the Department requested that additional language be added to the bill to provide concession contracting authority. Language to this effect was included in the bill and referred to the Finance Committee.

During a Finance subcommittee work session on the Resources CS (see Attachment 1, work session agenda), substantial concerns were raised by members of the Finance Committee regarding the potential adverse impacts of concessions in State parks, especially in light of the Lower 48 experience with commercial developments in federal and state parks.

While there appears to be universal support for giving the Department clear authority to engage in simple fee collection, views on concession contracting in State parks are widely divergent. Some of the major issues are outlined in Attachment 2. In an attempt to clarify the status of the Department's

existing authority, the subcommittee requested an Attorney General's opinion, which concluded that the Department already has broad statutory authority to engage in concession contracting (Attachment 3). Thus, the focus and emphasis of the subcommittee's effort has been to develop statutory language to guide the Department when undertaking concession contracting.

As indicated by the sectional analysis (Attachment 4), the draft Finance CS provides the Department of Natural Resources three basic mechanisms to pursue fee collections and provide additional services through concession contracting:

1) Sec. 41.21.026 allows the Department to collect fees for certain activities directly;

2) Sec. 41.21.027 allows the Department to engage in limited contracting for specific maintenance and fee collection purposes; and

3) Sec. 41.21.028 allows the Department to concession contract the operation of services and construction of facilities provided the Commissioner finds that the concessions will serve the public interest.

The subcommittee has made a substantial effort to accommodate a spectrum of opinion and concern on this bill. I believe that the proposal now before you will accomplish the desired goals of providing the Department of Natural Resources with clear authority to levy and collect fees and engage in concession contracting while also prescribing specific procedures to assure appropriate public involvement in the decision-making process.

Attachments

AGENDA

February 24, 1987 5:00 pm
House Finance Committee Room
Work Session: House Bill 16 - Park User Fees and Concessions

I. Introduction: Representative Brown

II. Al Meiners/DNR-Parks

A. Present DNR Authority and Practices

- 1) fees collected and current restraints
- 2) contracts/concessions and applicable constraints
- 3) examples of fee programs/concessions/contracting examples (current):
 - public use cabins
 - Potter Section House
 - Ak Natural History Assoc (non-profit)
- examples (in progress):
 - Rika's Road House
 - helicopter flight seeing in Chugach St Pk
 - Outdoor Education Camp in Chena St Rec Area

B. The need for new Legislation

III. Evolution of HB 16 to CS HB 16: Representative Cotten (Ned Farquhar)

IV. Discussion of Policy Questions/Issues

Major questions to be addressed include:

1. What are the advantages/disadvantages of concessions in State Parks?
2. What are the distinctions to be made between "contracting" and granting "concessions"?

3. The concession language in CS HB 16 does not grant any fundamentally new authority to grant concessions; the bill does put explicit constraints on concession practices ("side boards"). Deletion of the concession language in CS HB 16 would still leave DNR with broad authority to pursue concessions but without any explicit guidance on issues relating to compatibility with park values, etc.

4. How should "ordinary uses" such as swimming, fishing, picnicking, etc. be treated?

5. Should HB 16 be limited to fees only as originally introduced? Should this bill, or another, address the issues surrounding concessions?

Original sponsors: Navarre, Koponen,
Swackhammer, et al.

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 16 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the levy and collection of fees
7 for the use of state park system facilities; relating
8 to contracts for services and facilities in the state
9 park system; and providing for an effective date."

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

11 * Section 1. AS 41.21 is amended by adding new sections to read:

12 Sec. 41.21.026. FEES FOR THE USE OF STATE PARK SYSTEM FACILI-
13 TIES. (a) The department may not, either directly or through another
14 person, charge or collect a fee for an ordinary use of a park unit or
15 the use of a restroom in a park unit.

16 (b) In addition to the prohibition in (a) of this section, the
17 department may not establish and collect fees for the use of a park
18 unit, except for

- 19 (1) rental of public use cabins or other overnight lodg-
20 ings;
- 21 (2) overnight use of a developed campsite;
- 22 (3) special park use permits;
- 23 (4) noncompetitive and nonexclusive commercial use permits;
- 24 (5) use of a sewage holding tank dump station; and
- 25 (6) guided tours of historic sites.

26 (c) The department shall establish the fees for uses under (b)
27 of this section by regulation. Before setting the fees, the depart-
28 ment shall consider at public hearings

- 29 (1) the cost to the state of operating the facility or

1 managing the activity;

2 (2) the normal fees charged for similar facilities or
3 activities by governmental and nongovernmental entities;

4 (3) the cost of administering a fee collection program for
5 the facility or activity; and

6 (4) the public interest.

7 (d) In this section, "developed campsite" means a campsite
8 having access to the following public facilities:

9 (1) restrooms;

10 (2) a picnic table;

11 (3) an outdoor cooking facility; and

12 (4) an approved water source.

13 Sec. 41.21.027. MAINTENANCE AND COLLECTION CONTRACTS IN THE
14 STATE PARK SYSTEM. (a) The state may contract under AS 36.30 (State
15 Procurement Code) for

16 (1) the collection of fees charged for uses under AS 41.-
17 21.026(b); and

18 (2) park unit maintenance activities; "park unit mainte-
19 nance activities" means

20 (A) refuse collection;

21 (B) janitorial maintenance of facilities;

22 (C) litter pickup;

23 (D) painting;

24 (E) fireplace cleaning;

25 (F) sewage pumping;

26 (G) minor repair and replacement of facilities;

27 (H) snowplowing and road maintenance;

28 (I) brushing trails, picnic areas, and campsites;

29 (J) other normal park unit maintenance activities.

1 (b) The state may combine in a single contract the services
2 listed in (a)(1) and (2) of this section.

3 (c) A contract under this section is not subject to AS 41.21.-
4 028.

5 Sec. 41.21.028. CONCESSION CONTRACTS IN THE STATE PARK SYSTEM.

6 (a) The state may not enter into a concession contract under AS 36 to
7 provide services or to operate or construct facilities in a park unit
8 unless the commissioner finds that the proposed concession contract

9 (1) will implement the purposes of the park unit and is
10 authorized by the park management plan, if any, that applies to the
11 park unit;

12 (2) will enhance public use and enjoyment of the park unit
13 while maintaining a high quality environment and the opportunity for
14 high quality recreational experiences;

15 (3) will provide services or facilities that are not feasi-
16 ble or affordable for the state to provide directly;

17 (4) will not create substantial adverse environmental
18 effects;

19 (5) is based on a need or desire of the public;

20 (6) recognizes and accommodates, at no cost, ordinary uses
21 in a park unit;

22 (7) requires the contractor to hire residents of the state,
23 to the extent available and qualified, when hiring persons to work in
24 the park under the contract;

25 (8) provides the state with a fair and equitable portion,
26 in money or services, of the contractor's receipts from the provision
27 of the service or the operation of the facility;

28 (9) provides that the department retains control over the
29 level of fees and the design and appearance of any facility to be

1 constructed;

2 (10) requires the contractor to accommodate visitors with
3 special circumstances, including handicapped persons, senior citizens,
4 and school children;

5 (11) provides that during the term of the contract the
6 commissioner shall regularly review and inspect the

7 (A) operation of the facility; and

8 (B) contractor's provision of service to the public;

9 and

10 (12) provides that the contract shall be terminated if the
11 contractor fails to protect park values and resources or fails to
12 maintain a high-quality environment and recreation experience.

13 (b) Before bids or proposals are sought or contract negotiations
14 begun under AS 36.30 for a concession contract under (a) of this
15 section, the commissioner shall

16 (1) make a preliminary inquiry at the local level to
17 identify community concerns;

18 (2) if it is appropriate to proceed further, make a pre-
19 liminary decision that includes the findings required by (a) of this
20 section and

21 (A) an assessment of existing visitor uses that may be
22 affected by the activities of the contractor;

23 (B) an assessment of the potential conflicts or sig-
24 nificant effects on park wildlife, water, scenic values, or other
25 resources;

26 (C) an identification of the types of services or
27 goods that the contractor is to provide;

28 (D) the terms and conditions of the contract;

29 (E) a determination of whether the contract activity

1 would be more appropriately located on land outside of the park
2 or on private land within the park; and

3 (F) the views and comments of the park advisory board.
4 when one exists, for the park unit in which the activity is being
5 considered;

6 (3) after making a preliminary decision under (2) of this
7 subsection,

8 (A) seek public comment on the preliminary decision
9 through reasonable public notice and, if facilities may be built
10 under the concession contract, conduct public hearings;

11 (B) after considering the public comment obtained
12 under this subsection, issue a final decision on whether or not
13 the state will proceed into a concession contract award process.

14 (c) The commissioner shall provide for public review and comment
15 before a concession contract under this section is renewed or ex-
16 tended.

17 (d) By the 15th day of each first regular session of the legis-
18 lature, the commissioner shall make available to the legislature
19 report on the provision of services or operation of facilities under
20 concession contracts under this section during the previous two fiscal
21 years, including

22 (1) contract activities;

23 (2) new or expanded contracts whose estimated or actual
24 gross receipts exceed \$25,000; and

25 (3) violations of contract standards.

26 (e) The commissioner may adopt regulations to implement this
27 section.

28 (f) The commissioner may not enter into a concession contract
29 for the Alaska Chilkat Bald Eagle Preserve.

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(g) In this section

(1) "concession contract" does not include a contract under AS 41.21.027;

(2) "facilities" includes campgrounds, boat launches, lodges, food service operations, and gift shops.

Sec. 41.21.029. DEFINITIONS. (a) In AS 41.21.026 - 41.21.029

(1) "ordinary use" means a use that is not generally associated with developed facilities, including fishing, hunting, walking, swimming in a natural body of water, picnicking, or automobile parking associated with another ordinary use;

(2) "park unit" means a unit of the state park system.

* Sec. 2. AS 41.21.030 is amended by adding a new subsection to read:

(b) The commissioner of administration shall separately account for fees and other money collected under AS 41.21.026 - 41.21.029 and deposited under (a) of this section. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the purposes of this chapter.

* Sec. 3. AS 28.10.411(e) and AS 41.35.045 are repealed.

* Sec. 4. This Act takes effect July 1, 1987.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Revision Date: March 4, 1987
 Title: Fees for use of state park facilities
 Sponsor: House Resources
 Requestor: House Finance

Bill Version: CASHB 16 (Finance)
 Publish Date: _____

Agency Affected: Natural Resources
 BRU: Park Management

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		28	30	34	34	34
TRAVEL		18	8	3	3	3
CONTRACTUAL		20	15	10	10	10
SUPPLIES		3	2	2	2	2
EQUIPMENT		27	20	10	10	10
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		96	75	59	59	59
CAPITAL						
REVENUE		30	170	334	490	550

FUNDING: (Thousands of Dollars)

GENERAL FUND		96	75	59	59	59
FEDERAL FUNDS						
OTHER						
TOTAL		96	75	59	59	59

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY		1	2	1	1	1

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Neil Johannsen
 Division: Parks and Outdoor Recreation

Phone: 465-2400
 Date: 2-3-87

Approved by Commissioner: C. Johnson for JMB
 Agency: Natural Resources

Date: 3/5/87

Distribution (by preparer):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)
 Senate Secretary

Fiscal Note Information
for CSHB 16 (Finance)

Costs
FY88

personnel services \$28.0

- *increase existing Natural Res. Manager I position in charge of concessions and fees from 6 months to 12 months \$25.8
- *hire one seasonal Alaska Conservation Corps staff person or support a volunteer college intern through a \$15/day stipend cost is \$2.2

Travel \$18.0

- *statewide regulations hearings to adopt fee structure \$8.0
- *meetings & hearings on proposed concessions \$5.0
- *field inspections of concessions \$5.0

Contractual \$20.0

- *establish campground fee registration and payment systems at 20 campgrounds. \$1,000 per campground as follows:
 - signs \$200
 - Iron Ranger fee device \$350
 - lock device \$ 50
 - labor to install \$400

Supplies and Materials \$3.0

- *purchase of printed payment envelopes \$2.5
- *accounting and reporting forms \$0.5

Equipment \$27.0

- *install fee box device in park ranger vehicles to transport fees to park offices. Prevents tampering with funds 225 vehicles at \$680 per vehicle \$17.0
- *Safes and lock boxes for 10 area offices. Estimated cost is \$1.0 per office. \$10.0

Revenues
FY88

Fees:

Commercial Use Permits \$6.0 (120 at \$50 each)
Public Cabins \$5.0 (1986 level of revenues)

Concessions (Franchise Fee Payments)

Potter Section House \$10.5 (3% of \$350.0 gross receipts)
Rika's Roadhouse \$8.5 (3% of \$280.0 gross receipts)

estimated total revenue for FY88 is \$30.0

Future Revenues (campground fees are added and additional concessions and commercial use permits are established)

FY 89	\$170	FY 91	\$490
FY 90	\$334	FY 92	\$550

INVENTORY OF EXISTING & POTENTIAL COMMERCIAL ACTIVITIES,
USER FEES AND CONCESSIONS.

Park Unit or Subunit	U e y p e	U g o o n	Area	SC a a a b i c b	BL o a a a a a a	Potential fee ground	Existing Commercial Use	Concession Contracts	Potential Concessions	Park Plans	Advisory Board	Notes
Birch Lake	SRS	NR	YOK		18	Y			CAMPGROUND AND PARKING AREA (EST 1989)	NONE	Fairbanks Area	
Clearwater	SRS	NR	YOK		18	Y				Current Site Plan	None	
Deadean Lake	SRS	NR	YOK		16	Y	1 Tour Bus Company			Current Site Plan	None	
Delta	SRS	NR	YOK		22	Y				Current Site Plan	None	
Donnelly Creek	SRS	NR	YOK		12	Y				Current Site Plan	None	
Bagle Trail	SRS	NR	YOK		40	Y				Current Site Plan	None	

Park Unit or Subunit	Y p e	B e g i n	Area	Camp- sites	Boat rental fee	Potential Camp- ground	Existing Commercial Use	Concession Contracts	Potential Concessions	Park Plans	Advisory Board	Notes
Fielding Lake	SRS	NR	YOK	7		Y				Current Site Plan	None	
Lakeview	SRS	NR	YOK	8		Y			Campground Operation	Current Site Plan	None	
Moon Lake	SRS	NR	YOK	15		Y			Campground Operation	Current Site Plan	None	
Yok River	SRS	NR	YOK	10		Y	Y		Campground Operation	Current Site Plan	None	
Quartz Lake	SRA	NR	YOK	16		Y	Y	1 Boat Rentals	Boat Rentals	Current Site Plan	None	
Big Delta	SHP	NR	YOK	N/A				1 Operation of Park Roadhouse, Tour, Restaurant, sales	Community Theatre	Draft Master Plan Current Site Plan	Big Delta SHP Advisory Board	

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Park Unit or Subunit	Y e p e	N e i n	Area	C a m p s i t e s	P o t e n t i a l f e e c a m p g r o u n d	Existing Commercial Use	Concession Contracts	Potential Concessions	Park Plans	Advisory Board	Notes	
Harding Lake	SRA	NH	PBX	89	Y	Y		BOAT RENTALS FIELD SWMS & EQUIP.	Current Site Plan	Fairbanks Area Advisory Board		
Chena River	SRS	NH	PBX	59	Y	Y		Camp Operation Youth Hostel	Current Site Plan	Fairbanks Area Board		
Salcha River	SRS	NH	PBX		Y				Current Site Plan	Fairbanks Area Board		
Upper Chataouika River	SRS	NH	PBX	25		Y			Current Site Plan	Fairbanks Area Board		
Chena River Bouhap Campground Red Squirrel Picnic Area Lower Chena Dome Trlhd Upper Chena Dome Trlhd Torn Trail	SRA SRA SRA SRA SRA SRA	NH NH NH NH NH NH	PBX PBX PBX PBX PBX PBX		Y Y Y Y Y Y		CAMP SCHOOL	Outdoor Education Facility at Twin Bears Camp	CAMP RENTALS	Current 1981 Management Plan	Fairbanks Area Board	

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Park Unit or Subunit	Map Sheet	Area	Map Sheet	Map Sheet	Potential Use	Existing Commercial Use	Concession Contracts	Potential Concessions	Park Plans	Advisory Board	Notes
Lower Chatanika River	SRA	NR	FBX						Current site plans	Fairbanks Area Board	
Chatanika Picnic Area	SRA	NR	FBX								
Chatanika Pond	SRA	NR	FBX								

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Park Unit or Subunit	SP	SC	CNU	Area miles ²	Camp- in miles	Potential Camp- site fee	Existing Commercial Use	Concession Contracts	Potential Concessions	Park Plans	Advisory Board	Notes
Wood-Tikchik	SP	SC	CNU					SPORT FISH GUIDES		1987 MGMT. P.L.A.	ADVISORY BOARD EST. 1987	
Chugach	SP	SC	CNU					BACKCOUNTRY GUIDES	SEMINAR & PUBLIC NT S.R. VISITOR CENTER	1980 MGMT. P.L.A.	ADVISORY BOARD EST. 1980	
Eklutna Campground	SP*	SC	CNU	50		Y		RIVER FLOWY TRIPS (CATTLE RIV.)	HELICOPTER FLIGHT TRIP			
Thunderbird Falls Trlhd	SP*	SC	CNU			Y			TOWNS BUSES			
Eagle River Campground	SP*	SC	CNU	50		Y		TOWNS BUSES	CPD. OPERATIONS			
Rayle River Visitor Ctr	SP*	SC	CNU									
McHugh Creek Picnic Area	SP*	SC	CNU									
Bird Creek Campground	SP*	SC	CNU	25		Y			CPD. OPERATIONS			
Old Johnson Trail	SP*	SC	CNU									
Prospect Heights Trlhd	SP*	SC	CNU									
Upper Hoffman Trlhd	SP*	SC	CNU									
Old Alps Trlhd	SP*	SC	CNU									
Letter Section House	SNS	SC	CNU					SITE OPERATION (TANK / FOOD) GIFTS/PRAISES	TOWNS BUSES	CURRENT SITE PLAN	ADVISORY BOARD EST. 1987	

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Park Unit or Subunit	SR Type	SR Area	SR Sites	SR Ch Ground	Potential Use	Existing Commercial Use	Concession Contracts	Potential Concessions	Park Plans	Advisory Board	Notes
Captain Cook	SR	SR	SR			MULTIPLE GUIDES, SCUBA CLASSES			CONCRETE SITE W/TC PLANS	None	
Duslop Creek	SR	SR	12								
Stoney Lake Swim Beach	SR	SR	10								
Swanson River Landing	SR	SR	1								
Discovery Fronte Area	SR	SR									
Discovery Campground	SR	SR	57								
Overlook Point	SR	SR	16					CONCRETE SITE W/TC PLANS	CONCRETE SITE W/TC PLANS	None	
Johnson Lake	SR	SR	11			TRAIL GUIDES, SCUBA CLASSES			CONCRETE SITE W/TC PLANS	None	
Clas Gulch	SR	SR							CONCRETE SITE W/TC PLANS	None	
Mini Ichuk	SR	SR	35			WATER PUMP GUIDES			CONCRETE SITE W/TC PLANS	None	

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Park Unit or Subunit	Site Type	Area	Camp- sites	Camp- ground	Potential Commercial Use	Concession Contracts	Potential Concessions	Park Plans	Advisory Board	Notes
Deep Creek	SRA	SC	REN		Y	SPORT FISH GUIDES ICE/FIREWOOD SALES	AREA OPERATION	CURRENT SITE PLAN	None	
Starinski	SRS	SC	REN	13	Y			CURRENT SITE PLAN	None	
Anchor River	SRA	SC	REN	18	Y	SPORT FISH GUIDES		CURRENT SITE PLAN	None	
Anchor River	SRS	SC	REN	4				CURRENT SITE PLAN	None	
Kachemak Bay	SP	SC	REN	8		FISH GUIDE, MICHIGAN BACCHINITE GUIDES, BUT TONKS, HELI SKI, LEAD TRIPS, WASTE TAXI		DRAFT PLAN (FINAL BY 1988)	Knowledge held by a certain 100 person	
Parsons Lake	SRS	SC	REN	11	Y			CURRENT SITE PLAN	None	

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Park Unit or Subunit	SP	SC	NAT	Area	Camp- sites	h ground	Potential fee	Commercial Use	Concession Contracts	Potential Concessions	Park Plans	Advisory Board	Notes
Denali	SP	SC	NAT										
Seattle Coal Creek Trlhd	SP	SC	NAT										
Ala Veterans Memorial	SP	SC	NAT										
Byers Lake Campground	SP	SC	NAT	66			Y						
Troublesome Creek Trlhd	SP	SC	NAT										
Troublesome Creek Picnic	SP	SC	NAT										
Denali Viewpoint	SP	SC	NAT										
Nancy Lake	SRA	SC	NAT		4								
Winter Trlhd	SRA	SC	NAT										
Lulak Nature Trail	SRA	SC	NAT										
Canoe System Trlhd	SRA	SC	NAT	15									
South Holly Campground	SRA	SC	NAT	98			Y						
Big Lake North	SRS	SC	NAT	6			Y	Y					
Big Lake South	SRS	SC	NAT	11			Y	Y					

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existing
Commercial Use

RIVER TRIPS,
MOUNTAIN GUIDES

HOUSE & VISITOR CENTER
NEW RIVER TRIPS
ACARRY RIDER

CURRENTLY UNDER
PLANNING PHASE

ADVISORY BOARD
ESTABLISHED

DEPT 1 TRAILS
PHASE
EST 1987 PHASE

CAMP RENTAL

CURRENTLY UNDER
PLANNING

NONE

CURRENTLY UNDER
PLANNING

NONE

Park Unit or Subunit	SRS Code	SC Code	MAT Code	Area Sales	11 12	Y N	Potential Use	Existing Commercial Use	Concession Contracts	Potential Concessions	Park Plans	Advisory Board	Notes
Monte Lake	SRS	SC	MAT	11		Y					CURRENT SITE PLAN	NONE	
Peep Lake	SRS	SC	MAT	11		Y	Y				CURRENT SITE PLAN	NONE	
Pea Mountain	SRS	SC	MAT	11			Y				NONE	NONE	
Long Lake	SRS	SC	MAT	9		Y					NONE	NONE	
Hataniska Glacier	SRS	SC	MAT	12			Y				CURRENT SITE PLAN	NONE	
Montana Creek	SRS	SC	MAT							AREA OPERATION	CURRENT SITE PLAN	NONE	

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Park Unit or Subunit	SR Le	SC	COP	12	14	Potential Use	Existing Commercial Use	Concession Contracts	Potential Concessions	Park Plans	Advisory Board	Notes
Firepine Creek	SRS	SC	COP	12					CAMPFIRE OPERATION		NONE	
Spurred Creek	SRS	SC	COP	14							NONE	
Long Creek	SRS	SC	COP	10	Y				CAMPFIRE OPERATION		NONE	
Washington Glacier	SRS	SC	COP		Y					CURRENT SITE PLAN	NONE	
Lake Louise	SRA	SC	COP	16	Y	Y		CABIN RENTALS		CURRENT SITE PLAN	NONE	

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Park Unit or Subunit	Y y p e	R e i o n	Area	Camp- in sites	Y Y	Y Y	Existing Commercial Use	Concession Contracts	Potential Concessions	Park Plans	Advisory Board	Notes
Puskin River	SRS	SC	ROD	18	Y	Y	WFT RACE SHORT FISH ENDS			CURRENT SITE PLAN	KODIAK AREA SP AD BOARD	
Pasayshak	SRS	SC	ROD				SHORT FISH ENDS			CURRENT SITE PLAN		
Shuyak Island	SP	SC	ROD	4						DRAFT MANAGE- MENT PLAN	KODIAK AREA SP AD BOARD	
Fort Abercrombie	SBP	SC	ROD	11			TWELVE BUSES		MUSEUM OPERATIONS	CURRENT MANAGEMENT PLAN	KODIAK AREA SP AD BOARD	

Area	SP	SE	NMS	12	Y	Y	Existing Commercial Use	Concession Contracts	Potential Concessions	Park Plans	Advisory Board	Notes
Chilkat	SP	SE	NMS	12	Y		TOUR BUSES			CURRENT SITE PLANS	NONE	
Chilkat Bald Eagle	SFR	SE	NMS				TOUR BUSES, RIVER TRIPS, NATURAL HISTORY TOURS			CURRENT MANAGEMENT PLAN	ALASKA CHILKAT BALD EAGLE PRESERVE AD BOARD	
Mosquito Lake	SRS	SE	NMS	11	Y	Y				NONE	NONE	
Chilkoot Trail	ST	SE	NMS							NONE	NONE	
Oliver Inlet	SMP	SE	JNO							NONE	NONE	
Shelter Island	SMP	SE	JNO									
Saint James Bay	SMP	SE	JNO									
Sullivan Island	SMP	SE	JNO									
Chilkat Islands	SMP	SE	JNO									

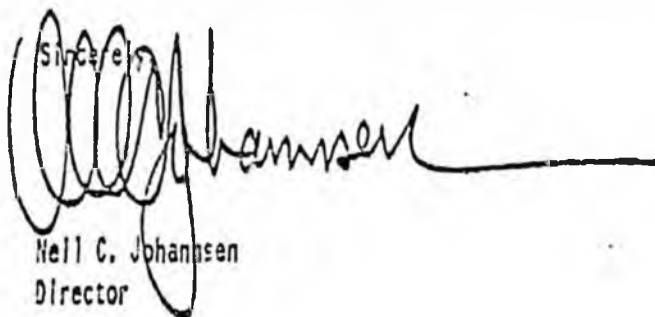
January 27, 1987

The division also intends to continue its efforts to be sensitive at all times to the needs of "special populations" such as the handicapped, senior citizens, school and community groups. We also plan an annual pass similar to the federal "Golden Eagle" pass.

5. Why should the revenues collected be spent on managing the Alaska State Park System?

Visitors to park units are more willing to pay fees when they know that the revenues will be spent on maintaining and operating the parks. It does "cost money to make money" and the division expects to incur additional expenses in initiating, operating, and maintaining the fee collection systems. These costs should be more than offset by the revenues collected. Park staff, volunteers, and other cooperating groups also have more incentive to create an effective fee collection system when the revenues collected are directly related to improvements in their park units.

Thank you for your interest in and support of Alaska State Parks. If you have any further questions, please feel free to contact me.

Sincerely,

Neil C. Johansen
Director

CC: Sponsors
Committee Members
Commissioner's Office
Mike Bradner

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801
PHONE: (907) 465-2400

OFFICE OF THE COMMISSIONER

January 23, 1987

The Honorable Adelheid Herrmann, Co-Chairwoman
The Honorable Sam Cotten, Co-Chairman
House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representatives Herrmann and Cotten:

Subject: HB 16 which relates to the levy and collection of fees for the use of state park facilities.

Response: The Department of Natural Resources strongly supports the concept of charging a fee for the use of developed state park or recreation area campsites.

Background: The Alaska State Park System is the only one in the nation that does not levy user fees for its facilities. Within Alaska, the U.S. Forest Service, National Park Service, Fish and Wildlife Service, Bureau of Land Management, and several municipalities all charge fees for campground use.

While the department currently charges fees for overnight use of cabins and for special or commercial use permits for parks and recreation areas, a motor vehicle statute AS 28.10.411(e) (copy enclosed) effectively prevents us from charging campsite fees for any vehicle registered in Alaska.

Recommendations: We recommend several additions to this bill to accommodate the realities of operating park and recreation areas with a reduced budget. Our proposed amendments would also allow continuation of existing park fee programs that may otherwise "sunset" this year as a result of last year's procurement bill (HB 696).

1. Expand the list of facilities for which fees can be charged to include public use cabins or other overnight lodging rentals, special park use permits, and non-competitive and non-exclusive commercial use permits. We currently charge fees for these uses but will be prevented from doing so on July 1, 1987, unless

these charges are specifically authorized by statute. We would prefer that a limitation on the dollar amount of fees not be included in the bill. Fees could be established by regulation, in consideration of the public interest.

2. Add a new section to allow concessionaires who contract with the department for operation of park or recreation areas to charge fees for day-uses as well as camping. There are some park campground facilities that could be successfully operated by the private sector if fees for boat launching, parking for access to boat launching facilities, lodging, food and other goods and services could be charged. The following language would achieve that purpose:

Notwithstanding the provisions of subsection (a) above, concessionaires operating park facilities under contract with the state may levy fees for activities including but not limited to: use of boat launch facilities, picnic areas, parking for access to water-based recreation opportunities, overnight lodging, food, gifts and other goods or services.

3. Add a new section to allow collected park fees to be appropriated to the department to help fund park and recreation area operations. The following language would establish this park "program receipts" authority for the department:

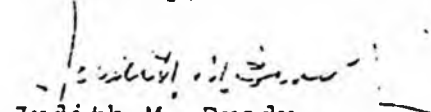
Revenues collected by the state under this subsection shall be deposited in the general fund. The commissioner of administration shall separately account for revenues collected and deposited by the commissioner under this subsection. The annual estimated balance in the account may be appropriated by the Legislature to the Department of Natural Resources to carry out the purposes of AS 41.21.020.

Conclusion: Enacting a park fee bill will allow those who use costly park facilities to help pay for their maintenance and development. In addition, allowing the state to charge camping or recreational use fees will eliminate the unfair competition that now exists with private campground owners who must charge fees to stay in business.

January 23, 1987

I have enclosed a draft park fee bill which incorporates the ideas contained within HB 19 and the department's recommendations into one. I have also provided a briefing paper related to this draft bill. Please let me know if I may provide additional information about park user fees.

Sincerely,


Judith M. Brady
Commissioner

Enclosures

cc: Spncors
Committee Members
Neil Jchannsen
Mike Bradner

DATE: January 20, 1986

TO: Representative Ron Larson

FROM: Larry Bussone

SUBJ: Comparison of House Bills 16 and 19 (park user fees)

Following is a comparison of House Bill No. 16 ("their bill"), sponsored by Representatives Navarre, Koponne, Swackhammer, Brown, and Goll, and House Bill No. 19 ("your bill"), sponsored by Representatives Ellis, Menard, and Larson.

(1) Both bills propose amending AS 41.21 to provide for park user fees.

(2) The placement of the proposed amendments varies. Both place the amendment within "Chapter 21. Parks and Recreational Facilities." and "Article 1. Administration." Their bill proposes the amendment at AS 41.21.023, which would be between "AS 41.21.020. Duties of Department of Natural Resources." and "AS 41.21.025. Zoning of private land within state parks." Your bill places the amendment at AS 41.21.050, which is at the end of Article 1.

(3) Their bill proposes that "The department . . . establish and collect fees for the overnight use of state park developed campsites." Your bill proposes that "The commissioner may, by regulation, establish a fee for the use of an improved campsite within a state park or recreation area" and later provides for developing procedures for collecting fees. I assume that the "department" and the "commissioner" are essentially the same. Both provide for the collection of fees. Their bill establishes fees for "the overnight use of state park developed campsites"; yours establishes fees for "an improved campsite within a state park or recreation area." I don't know if there is an important difference between the two, or if one is preferential to the other.

(4) Both bills call for the establishment of fees through regulations. The major difference between the bills is that their bill calls for considering four factors when setting fees: (a) the cost to the state of operating the facility; (b) the fees charged for the use of a similar facility by a nongovernmental entity; (c) the cost of

administering a fee collection program for the facility; and (d) the public interest. Your bill simply says that the fee may not exceed \$5 per vehicle per day.

(5) Their bill defines "developed campsite" and "state park"; yours does not.

(6) Their bill calls for the repeal of AS 28.10.411(e) ("Notwithstanding any other provision of law, the fees paid for registering a vehicle under AS 28.10.421(b)(1), (2), (5), (6) or (d) shall include all fees required for entry into and use of a state park or campground.") and AS 41.35.045(b) ("The exemption from fees in AS 28.10.411(e) is not applicable to this section." [The section establishes fees for guided tours through historical sites.]). Yours does not.

(7) Their bill calls for an immediate effective date under AS 01.10.070(c). Your bill calls for an effective date of July 1, 1987.