

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

February 2, 2005

1:11 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Co-Chair
Representative Ralph Samuels, Co-Chair
Representative Jim Elkins
Representative Carl Gatto
Representative Gabrielle LeDoux
Representative Kurt Olson
Representative Paul Seaton
Representative Harry Crawford (via teleconference)
Representative Mary Kapsner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 76

"An Act relating to the Big Game Commercial Services Board and to the regulation of big game hunting services and transportation services; and providing for an effective date."

- MOVED HB 76 OUT OF COMMITTEE

HOUSE BILL NO. 107

"An Act providing for the award of full actual attorney fees and costs to a person aggrieved by unlawful obstruction or hindrance of hunting, fishing, or viewing of fish or game; amending Rules 79 and 82, Alaska Rules of Civil Procedure; and amending Rule 508, Alaska Rules of Appellate Procedure."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 76

SHORT TITLE: BIG GAME SERVICES & COMM. SERVICES BD

SPONSOR: REPRESENTATIVE SAMUELS

01/18/05	(H)	READ THE FIRST TIME - REFERRALS
01/18/05	(H)	RES, FIN

02/02/05 (H) RES AT 1:00 PM CAPITOL 124

BILL: HB 107

SHORT TITLE: ATTY FEES: HUNTING/FISHING INTERFERENCE

SPONSOR: REPRESENTATIVE RAMRAS

01/24/05 (H) READ THE FIRST TIME - REFERRALS

01/24/05 (H) RES, JUD

02/02/05 (H) RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

HENRY WEBB, Staff

to Representative Ralph Samuels

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 76 on behalf of Representative Samuels, sponsor.

PAT DAVIDSON, Legislative Auditor

Legislative Audit Division

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Explained the purpose and outcome of an audit regarding issues covered in HB 76.

RICK URION, Director

Division of Occupational Licensing

Department of Commerce, Community, & Economic Development

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 76.

PAUL JOHNSON, Guide

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 76.

BOBBY FITHIAN, Executive Director

Alaska Professional Hunters Association

Lower Tonsina, Alaska

POSITION STATEMENT: Testified in support of HB 76.

EMORY CHUCK WHEELER, Guide

Nome, Alaska

POSITION STATEMENT: Testified that HB 76 is an infringement on the guiding industry; questioned whether there would be money for enforcement.

MATT ROBUS, Director
Division of Wildlife Conservation
Alaska Department of Fish & Game
Juneau, Alaska
POSITION STATEMENT: Testified in favor of HB 76.

ROB HARDY, Guide
Nelchina Basin, Alaska
POSITION STATEMENT: Testified that HB 76 did not go far enough
in reducing user conflicts and in advancing user fees to help
fund ADF&G.

JIM POUND, Staff
to Representative Jay Ramras
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 107 on behalf of Representative
Ramras, sponsor.

LANCE NELSON, Senior Assistance Attorney General
Natural Resources Section
Office of the Attorney General
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Recommended text changes to HB 107.

JENNIFER YUHAS, Executive Director
Alaska Outdoor Council
Fairbanks, Alaska
POSITION STATEMENT: Testified in support of HB 107.

ACTION NARRATIVE

CO-CHAIR JAY RAMRAS called the House Resources Standing
Committee meeting to order at [1:12:52 PM](#). Representatives
LeDoux, Elkins, Crawford (via teleconference), Ramras, Samuels,
Seaton, Olson, and Gatto were present at the call to order.
Representative Kapsner arrived as the meeting was in progress.

HB 76-BIG GAME SERVICES & COMM. SERVICES BD

CO-CHAIR RAMRAS announced that the first order of business would
be HOUSE BILL NO. 76 "An Act relating to the Big Game Commercial
Services Board and to the regulation of big game hunting
services and transportation services; and providing for an
effective date."

[1:13:38 PM](#)

HENRY WEBB, Staff to Representative Ralph Samuels, clarified that HB 76 re-establishes the sunsetted Big Game Commercial Services Board which oversaw the professional hunting and transporting industry. Functions of this board are currently in the Division of Occupational Licensing. When the board was allowed to sunset in the early 1990s, the powers of the former board were watered down. Mr. Webb said that this bill is designed to "put some backbone back" into the oversight of the professional hunting industry. An audit report in 2003 and a request from the Board of Game were the incentives for this legislation.

[1:15:17 PM](#)

MR. WEBB stated that an identical bill died in committee last year. The re-created board will be made up of two licensed guides, two licensed transporters, one member selected by the Board of Game, one representing private landholders, and one representing the public. He said the board will be able to establish a code of ethics. Violations of federal law will come under oversight of the board, and the board will be allowed to implement training courses for assistant guides. The bill also raises civil penalties from \$1,000 to \$5,000, and it requires guides and transporters to obtain permission before entering private, state, or federal land to conduct business.

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MR. WEBB explained that guides will be limited to three guide-use areas within a calendar year, and the board is given the authority to amend the guide-use areas, allowing a guide additional areas if the areas are part of a predator control program. He said the board will also be allowed to adopt transporter-use areas.

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REPRESENTATIVE GATTO asked if HB 76 is the same bill from 2003.

MR. WEBB answered yes.

REPRESENTATIVE LEDOUX asked what the rationale is for only three guide areas.

MR. WEBB said it keeps people from switching around during the year.

REPRESENTATIVE ELKINS inquired if a guide selected three areas would the areas be exclusive to that guide.

MR. WEBB responded that guides would not be able to move out of selected areas but they would not be granted exclusive rights.

REPRESENTATIVE LEDOUX asked why that is important.

MR. WEBB said he would defer to the ADF&G. He added that many of the provisions in the bill have been worked out in detail by the department, the Division of Occupational Licensing, the Department of Public Safety, the Board of Game, and the guiding industry.

[1:20:54 PM](#)

REPRESENTATIVE SEATON asked if the \$5,000 fine is in line with civil penalties that other boards have the authority to impose.

MR. WEBB deferred the question to the Department of Occupational Licensing.

REPRESENTATIVE OLSON expressed that the transporter section has loose language, and he wondered if the reporting will be mandatory for transporters.

CO-CHAIR SAMUELS said it will be mandatory, and that the report is one of the points of the legislation.

REPRESENTATIVE SEATON wanted a definition of a transporter and if the language excludes people who transport hunters as a favor or for shared fuel costs.

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MR. WEBB referred Representative Seaton to the definitions beginning on page 20 of the bill.

CO-CHAIR SAMUELS said persons taking friends out and air taxis are not regulated under this legislation.

MR. WEBB pointed out that line 17 defines an air taxi.

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REPRESENTATIVE SEATON wanted re-assurance that friends or someone who is only compensated for fuel won't be considered a transporter.

CO-CHAIR SAMUELS said that the definition of a transporter is the same today as it is in the bill, and he added that "if I take you out in my cub to go caribou hunting and we split the cost of the gas, that is certainly not the intent" of the bill.

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PAT DAVIDSON, Legislative Auditor, Legislative Audit Division, told the committee that the purpose of the division's audit was threefold: 1) to determine the impact of not having a professional guide and transporter licensing board on the enforcement of guiding statutes, 2) to assess the appropriateness of the current fine limit, and 3) to assess the adequacy of the current reporting requirements for guides and transporters. She reported that current oversight is done by various land managers, such as the state, National Park Service (NPS), United States Fish and Wildlife Service (FWS), United States Forest Service (USFS), and Bureau of Land Management (BLM). All agencies have expressed a desire for a centralized regulatory board.

MS. DAVIDSON said client surveys showed that there are consumer protection issues with the industry. The audit division concluded that statutory changes to include best practices are warranted for consumer protection and safety. She said a re-established board would provide a more dynamic regulatory regime, and it would enhance professionalism in the industry. She recommended that a new board create competency requirements for licensure. Regarding fines, she said, the research found that they were once set at \$30,000, and currently they are limited to \$1,000. Big game hunts are expensive, she said, and the financial reward for the violation does not compare well to the fine if one gets caught.

[1:31:54 PM](#)

RICK URION, Director, Division of Occupational Licensing, Department of Commerce, Community, & Economic Development. The bill is a good start for addressing the many problems in the commercial hunting industry. But, he said, the bill is lacking in enforcement, and he would like to work with the legislature as the bill moves along.

[1:33:25 PM](#)

REPRESENTATIVE LEDOUX asked why the legislation limits guides to three hunting units.

MR. URION responded that because wildlife is a limited resource, restricting hunters to three areas allows some control. Establishing the units before the hunts occur helps regulators know where people are and improves the quality of the hunt because guides can learn where other guides are.

REPRESENTATIVE ELKINS asked if the size of the fine is a deterrent to violations.

MR. URION said it depends on the "size of the person's wallet." Other fines are considerably higher, he said. A realtor was recently fined \$25,000.

REPRESENTATIVE SEATON requested a definition of transportation service, again wondering if friends can take friends hunting without being regulated.

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MR. URION said "we will make sure" that will not happen.

[1:36:45 PM](#)

PAUL JOHNSON, Guide, told the committee that guiding is a big industry economically, and it is particularly important in rural Alaska. He stressed that "it is time to move forward" on the bill. He explained how the limit of three hunting areas came to be in the 1970's, and that it is a very carefully determined "piece of the puzzle." He said this bill was put together with a task force, and it doesn't change the definition of who is a transporter. This has been a long process, he said, and we need to move forward. "It is the best thing for the residents of the state," he opined.

[1:40:15 PM](#)

REPRESENTATIVE GATTO asked about the bill's history.

MR. JOHNSON said that in different years the bill got held up in different places in the legislature.

BOBBY FITHIAN, Executive Director, Alaska Professional Hunters Association, Lower Tonsina, Alaska, has owned a family guiding business for twenty years. He stated that HB 76 is about giving proper stewardship to one of Alaska's earliest industries. He added that standards are weaker than at any time in history, and integrity has diminished. He stated that winners in the existing industry are the users who care little for wildlife and are only in the business for the money. He and his wife guide in order to share Alaska's wildlife, but at this point they don't see it as a viable business to transfer to their children. Mr. Fithian believes the bill is a significant start, and he supports it.

[1:44:36 PM](#)

CO-CHAIR SAMUELS asked how much a brown bear hunt costs.

MR. FITHIAN answered that industry standards range from \$9,000 to \$16,000.

REPRESENTATIVE GATTO asked Mr. Fithian why he can't pass his business to his son.

MR. FITHIAN responded that his three sons have been guides, but they recognize that there is no economic sustainability in the industry in the way it is currently being managed in the state.

REPRESENTATIVE GATTO said he was concerned that there was a legal block to prevent parents from passing on their business to their offspring, but "what you're saying is it is just not economic for a son to assume the work you are doing--and survive."

MR. FITHIAN said "the legal block is stewardship."

CO-CHAIR RAMRAS asked how the bill makes the business sustainable and viable to pass on to the next generation.

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MR. FITHIAN discussed the history of the guiding industry. He said there is no accountability on certain federally and privately managed lands and that licensing standards have relaxed. "One operator, many times, is using nine, or even twelve different" areas, he reported, and there is no limit to the amount of guides for the hunting units, creating situations where guides are "working over the top" of others. He said this

diminishes the clients' experiences, and over time they will "start taking their dollars some place else other than Alaska."

REPRESENTATIVE SEATON referred to written testimony from another guide requested that subsection (f) be taken out because he thinks the predator control allowance will cause problems. Representative Seaton asked how critical that provision is to Mr. Fithian.

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MR. FITHIAN replied that it is a complex question. He said that the bears that are sought for predator control are not the ones sought by non-resident hunters because they are often small bears, nocturnal bears, or sows with cubs. The additional hunting area allowed by the provision "does not create a big horizon for us." He said that "those of us that have tried" to find the bears "that are supposedly killing these animals--we're not finding them." He added that for guides who are given these extra areas, "it isn't going to be a winning economic boon." He warned that he thought the provision could become an abuse of the three-area system.

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REPRESENTATIVE SEATON asked if the provision will be ineffective.

MR. FITHIAN answered that "we have yet to see a benefit of additional guides selecting an intensive management area." He gave an example where guides that have hunted in a now-designated intensive management area are having difficulty finding the number of bears that they were able to find before the area was listed as such. He said that ADF&G might help answer Representative Seaton's question.

[1:53:49 PM](#)

CO-CHAIR SAMUELS said that the intent of the provision is to allow a guide to operate in one of the intensive management areas without having to give up the three areas the guide has already selected.

REPRESENTATIVE LEDOUX asked if any provision in the bill protected popular areas from being over selected.

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MR. FITHIAN said there currently are exclusive guide-use areas in NPS preserves, FWS refuges, and on some USFS lands, but it is a "free-for-all" on state lands. He said there is one place in the current bill where the board could address that. DNR could work with the board and develop an allocation system on state lands, but the bill doesn't require the board to do that.

[1:57:35 PM](#)

EMORY CHUCK WHEELER, Guide, Nome, sees HB 76 as an "enforcement bill only, unfortunately." He added that the new board should not set up a code of ethics because the Alaska Professional Hunters Association already has one. He believes that there are a "few bad apples," but he sees HB 76 as an infringement on the industry. He said the state will not get the money to enforce it. He said "all the brown shirts are now blue shirts," and their focus is on domestic violence and drugs. "We don't have any law enforcement for wildlife anymore," he said, and that there is no money in the legislation for enforcement.

[2:00:28 PM](#)

DICK ROHRER, Guide, Kodiak, encouraged the committee to pass the bill out of committee today. He said he has been a guide out of Kodiak for a long time.

[2:01:35 PM](#)

MATT ROBUS, Director, Division of Wildlife Conservation, Alaska Department of Fish & Game (ADF&G), said the details of this bill have been worked on by the legislature, ADF&G, the Division of Occupational Licensing, the Department of Public Safety, and, perhaps, DNR and that the Alaska Department of Fish & Game and the Board of Game are supportive. He said that since the sunseting of the previous board there have been user conflicts. The Board of Game has had trouble solving the complicated problems, he said, and creating the new board would allow the two boards to specialize in their areas of expertise and form a cooperative system.

[2:05:13 PM](#)

REPRESENTATIVE SEATON asked if Mr. Robus thought that the additional guide-use areas allowed under the predator control provision will be used, and if ADF&G wants it in the bill.

MR. ROBUS responded that the provision was one of several scenarios for reducing predators in areas where prey densities are depressed. The Board of Game liberalized brown bear hunting with a year-round season and liberal bag limits, with little, if any, effect on the ungulate herds. The trick, he said, is to attract more hunters to areas where bears are not particularly desired by them, and this incentive of a fourth area might help. He said there is no track record of it working, but he believes ADF&G would want to keep the provision in the bill.

2:08:02 PM

REPRESENTATIVE SEATON asked about aerial wolf hunting as related to this provision.

MR. ROBUS answered that such programs are not termed "hunting." The department does it through a permit system whereby people "become agents of the state to conduct control programs," so it would be unlikely that the department would issue permits for guided wolf hunts. He said that the economics of a bear hunt are higher than a wolf hunt and would be more successful.

REPRESENTATIVE SEATON asked if the provision would allow more than four areas for a guide.

MR. ROBUS said he didn't know.

CO-CHAIR RAMRAS asked if the former commercial guide services board was an effective tool when it did operate.

MR. ROBUS believed it was.

2:10:28 PM

REPRESENTATIVE GATTO asked Mr. Robus if he said that a predator control hunter was acting as an agent for the state.

MR. ROBUS said the department does not consider predator control to be hunting, so it is not regulated as hunting. He said it is a permit system which can be carefully controlled. The agents keep animals they take, but it is not a hunt. The pelt is the only compensation the agent receives.

2:11:39 PM

CO-CHAIR RAMRAS asked if someone would make a motion that HB 76 move from House Resources.

REPRESENTATIVE SEATON asked to have some committee discussion first, and then expressed his desire to make sure the written testimony gets put into the record. He also wanted clarification of the difference between a normal guided hunt under HB 76 and a permitted predator control operation.

MR. ROBUS explained that the aerial wolf control programs are conducted through a permit operation that is separate from HB 76. This bill would allow a guide into an extra area if he or she wanted to take a client into an intensive management area for a normal hunt. This would help bring more hunting pressure on the predators.

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ROB HARDY, Guide, Nelchina Basin, said he was a permitted gunner in the wolf control program, and he expressed his concern that the legislation does not do anything for subsistence users or to reduce conflict between users, or to reduce the "unprecedented expansion, congestion, and impact that the industry is having..." He added that "it also does virtually nothing to address dwindling resources and to slow the overwhelming growth of the industry." He recommended that the committee adopt alternative legislation or amendments to address these issues and to add "trophy fees" to provide additional funding to ADF&G which could be used for the development and enhancement of the resource. He believes the industry should pay for the privilege to access animals, and he proposed a user fee for each animal that is harvested that would be equal to or greater than the sum of the individual non-resident big game tag...

CO-CHAIR RAMRAS interjected and told Mr. Hardy that the committee had a copy of his written testimony and that Representative Seaton was making sure it got into the record.

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CO-CHAIR SAMUELS said that this bill does not do much, but it is a first step to fix the industry's problems. The bill gives authorities to a board that can concentrate on the issues that Mr. Hardy brought up. He said it is important for HB 76 to move forward so that the board it creates can move forward with the issues facing the industry.

[2:20:00 PM](#)

CO-CHAIR RAMRAS agreed that work will get done after "hopefully" re-establishing a big game board. Co-Chair Ramras unsuccessfully attempted to contact Mark Wagner by teleconference, and then closed public comment.

REPRESENTATIVE SEATON clarified that his question regarding transporters was answered.

[2:21:27 PM](#)

REPRESENTATIVE ELKINS moved to report HB 76 out of committee with individual recommendations and the accompanying fiscal notes.

[2:22:00 PM](#)

There being no objection, HB 76 [24-LS0332\G] was reported from the House Resources Standing Committee.

The committee took an at-ease from 2:22 PM to 2:28 PM.

HB 107-ATTY FEES: HUNTING/FISHING INTERFERENCE

CO-CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 107 "An Act providing for the award of full actual attorney fees and costs to a person aggrieved by unlawful obstruction or hindrance of hunting, fishing, or viewing of fish or game; amending Rules 79 and 82, Alaska Rules of Civil Procedure; and amending Rule 508, Alaska Rules of Appellate Procedure."

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JIM POUND, Staff of Representative Ramras, stated that HB 107 was created to address a growing concern that people have been obstructed from hunting, trapping, and wildlife viewing. He said that when an obstruction takes place under current law an offender can be charged in criminal court, and he or she can also be charged in a civil case by an aggrieved person. He stated that juries have awarded as much as \$200,000 to the aggrieved, but under the current system, full attorney fees and costs are not necessarily awarded. Mr. Pound opined that this has a "chilling effect" on people taking their cases to a civil court because they might end up paying their own attorney fees.

[2:31:13 PM](#)

REPRESENTATIVE SEATON asked if there are other circumstances in which all attorney fees are mandated to be paid.

MR. POUND responded that if a case goes beyond superior court, there may be a full award of attorney fees for the appeal.

REPRESENTATIVE SEATON clarified his question, and pointed out that this is a single statute which overrides Rule 82 of the Alaska Rules of Civil Procedure and wanted to know if it occurred elsewhere in the law.

MR. POUND said he is not sure, and he suspects Rule 82 was created because "there was a point in time when we were looking at attorney fees that may have been going beyond the call of what was considered reasonable, and this language may have been actually put into the court rules by the legislature to help cut that down, and I would suspect in certain civil cases that attorney fees may mount to a level of where they might be considered unreasonable. I don't believe in this particular instance of hunting, fishing, or trapping we're going to be dealing with that type of situation."

[2:33:31 PM](#)

REPRESENTATIVE ELKINS asked if a person was "calling up a moose" and another hunter shot the moose, would that be considered obstruction under this bill.

MR. POUND responded that this "has to do with people clearing trap lines" and people walking in front of an animal to protect it from being shot, "that is how the determination of obstruction would be. Same thing with wildlife viewing where people will try to chase off the wildlife..."

REPRESENTATIVE ELKINS said it happened in Fairbanks, "the guy went to court and spent a lot of money... He ended up being prosecuted by the state over it because he got a little bit excited, but he won the case against the state."

MR. POUND said that that case established a precedent for what is and is not an obstruction.

REPRESENTATIVE LEDOUX asked how big of a problem obstruction is.

MR. POUND answered that it does not occur often. He said there are people with "radical attitudes" who have decided they are going to manage fish and game, and they are doing it through

protest. He said one concern is that a person will get shot. He cited a theoretical example of a tourist spending money to watch wildlife and the tourist is hindered by another person. He said the tourist could go through a criminal process, but "to take it to civil, it's going to cost money out of [his] individual pocket to do so. And it is something that is starting to grow."

[2:37:04 PM](#)

CO-CHAIR RAMRAS asked if it is fair to say that people practicing civil disobedience in the wild may harm themselves.

MR. POUND said "there's always a possibility when you get out into the wild of being harmed." He added that the bill gives the individual who is being obstructed another avenue to gain full compensation from the loss.

REPRESENTATIVE CRAWFORD said a few years ago he and a hunting partner were moose hunting and his partner shot a moose, and it walked off and died in the someone's private yard. The landowner would not let them retrieve the moose. Would that be obstruction under this bill? Representative Crawford asked.

MR. POUND said he would yield that question to an attorney.

[2:39:06 PM](#)

LANCE NELSON, Senior Assistant Attorney General, Natural Resources Section, Office of the Attorney General, Anchorage, said he wanted to discuss Section 2 and Section 3 of HB 107 which address two court rule amendments: Rules 79 and 82. He said the Department of Law doesn't believe those sections are necessary for this bill because "Section 1 provisions are a substitute rather than procedural and thus we believe [are] within the independent power of the legislature." He said Rule 82 begins by saying "except as otherwise provided by the law." So it would not require a rule change. He said that the "two thirds vote requirement" of Article IV of the state constitution would not apply.

[2:41:51 PM](#)

CO-CHAIR RAMRAS asked if Section 2 and Section 3 are unnecessary.

MR. NELSON replied in the affirmative.

REPRESENTATIVE SEATON asked if getting attorney fees without any reasonable standard appears in other sections of the law.

MR. NELSON said there is a "common law provision by the supreme court" to award full cost of attorney fees in cases brought by a public interest litigant who prevails in an action against the state. He said this would "probably" be applied similarly.

[2:42:55 PM](#)

REPRESENTATIVE SEATON asked if language regarding reasonableness of attorney fees is not applicable for HB 107 as well as for public interest litigation.

MR. NELSON answered that trial courts believe they have the authority to review the attorney fees claims of successful litigants and eliminate fees that aren't substantiated. "I would predict that Section 1 provisions would be applied the same way--that completely unreasonable or undocumented or unsubstantiated claims under HB 107" would be questioned and reviewed. But, he added, generally the courts have been very generous.

[2:44:46 PM](#)

JENNIFER YUHAS, Executive Director, Alaska Outdoor Council, expressed her support for the legislation. She stated that current statute does not guarantee a citizen will be awarded attorney fees, and this bill will bring about a necessary correction to an oversight. She said obstruction cases are rare, but this legislation would be a deterrent "to those wishing to obstruct the lawful use of fish and game resources." She asked for speedy passage of the bill. She added that a representative of the Alaska Wildlife Conservation Association asked her to relate his support of HB 107.

[2:46:34 PM](#)

CO-CHAIR RAMRAS closed public testimony.

REPRESENTATIVE LEDOUX said she supports the bill but wondered if it would be fair to provide attorney fees to whoever is the winner of the lawsuit to protect against frivolous lawsuits.

[2:47:59 PM](#)

REPRESENTATIVE LEDOUX said she would like to offer that as a conceptual amendment.

MR. POUND said "the passage of who receives what is normally handled by the courts." Rule 508 has to do with affirmation of judgment, and he read: "In all cases of affirmance of a judgment or any order or decision of the superior court, costs shall be allowed to the appellee or respondent unless otherwise ordered by the court." Mr. Pound said that the awarding of fees is handled through the existing court rules.

REPRESENTATIVE LEDOUX understood that the awarding of fees is normally subject to Rule 82 which also allows for attorney fees for a defendant, and, she said, Rule 82 allows for payment of partial attorney fees--they are not normally actual fees unless the statute would provide for actual attorney fees.

MR. POUND stated that the statute would give actual attorney fees and costs, and he added that Rule 82 specifically states that the award is for the prevailing party.

REPRESENTATIVE SEATON said Mr. Nelson told the committee that it is not a procedural question, which would be covered by Rule 82. He said the bill is establishing a "substantive provision" that actual full attorney fees would be awarded and only to the person aggrieved of the violation. Representative Seaton agreed with Representative LeDoux because Rule 82 will no longer apply. He said the bill needs to be balanced.

REPRESENTATIVE LEDOUX said she read the bill to say that the plaintiff can get full attorney fees, and the defendant would be subject to Rule 82.

[2:52:21 PM](#)

REPRESENTATIVE SEATON pointed out that HB 107 overrides reasonableness in statute, and takes away the court's latitude to adjust for reasonableness.

MR. NELSON agreed that Representative LeDoux is correct that persons who bring a case and are successful in proving they were aggrieved by a violation of AS 16.05.790 would be able to cover full actual attorney fees, and if they were not successful the other person would be limited by Rule 82.

CO-CHAIR RAMRAS asked that if a committee substitute deleted Sections 2 and 3, would the defendant still be entitled to Rule 82.

MR. NELSON said yes.

[2:54:32 PM](#)

REPRESENTATIVE LEDOUX asked for clarification of Representative Ramras' question.

CO-CHAIR RAMRAS responded that "the A.G. is saying that Section 2 and Section 3 may not be necessary for HB 107. So I think that what we're going to try and do today is pass HB 107 out, we'll review it, and could be that when we get to Judiciary we'll just delete Section 2 and Section 3..."

REPRESENTATIVE KAPSNER interjected saying that was not a good idea. "I think that we have a duty...to pass out the best piece of legislation that we can," she said.

REPRESENTATIVE LEDOUX asked if Section 2 were eliminated, then would Rule 82 not apply to the defendant.

REPRESENTATIVE SEATON said he thought Mr. Nelson was saying that the committee is doing substantive law, and it has no effect on Rule 82. The only reason to eliminate Sections 2 and 3 is to make it consistent with other legislation.

REPRESENTATIVE LEDOUX said she understood that, but it doesn't address the concern of the disparity of the plaintiff and defendant's rights.

The committee took an at-ease from 2:57 PM to 2:59 PM.

[2:58:41 PM](#)

REPRESENTATIVE ELKINS asked if HB 107 would apply to commercial fishing.

CO-CHAIR RAMRAS said he believes it applies only to hunters, trappers, and wildlife viewers.

REPRESENTATIVE KAPSNER pointed out that "fishing" is in the title.

REPRESENTATIVE LEDOUX said that since it applies to commercial fishing, she is concerned about the seining industry in which people are "corking each other off," and she said she hates to see one being able to get actual attorney fees and the other not.

REPRESENTATIVE CRAWFORD went back to his example and asked if he could get full attorney fees if he won a lawsuit and if the person defending his property rights could only get 30 percent.

REPRESENTATIVE KAPSNER asked Mr. Nelson if private property rights supersede this legislation.

MR. NELSON answered that he didn't think it applied to people who post their property with no trespassing or no hunting signs. Once a hunter shoots an animal it becomes his or her property which makes it more complicated, he said, and normally someone would be entitled to go on to private land to retrieve his or her property.

[3:02:46 PM](#)

CO-CHAIR RAMRAS announced that HB 107 would be held over.

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:03 p.m.