

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

March 22, 2006

1:55 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  
Representative Mary Kapsner

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 415

"An Act relating to landowners' immunity for allowing use of land for a recreational activity; and providing for an effective date."

- MOVED HB 415 OUT OF COMMITTEE

CONFIRMATION HEARING(S)

Board of Game

Richard Burley - Fairbanks

Big Game Commercial Services Board

Robert Mumford - Anchorage

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 420

"An Act relating to riparian protection standards for forest resources and practices; and providing for an effective date."

- MOVED CSHB 420(FSH) OUT OF COMMITTEE

HOUSE BILL NO. 419

"An Act repealing the Board of Storage Tank Assistance, the underground storage tank revolving loan fund, and the tank cleanup loan program; repealing certain reporting requirements relating to underground petroleum storage tank systems; making conforming amendments; and providing for an effective date."

- MOVED HB 419 OUT OF COMMITTEE

CONFIRMATION HEARING(S)

Board of Game

Cliff Judkins - Wasilla

- CONFIRMATION(S) ADVANCED

**PREVIOUS COMMITTEE ACTION**

BILL: HB 415

SHORT TITLE: LIABILITY FOR RECREATIONAL LAND USE

SPONSOR(S): REPRESENTATIVE(S) SEATON

02/01/06 (H) READ THE FIRST TIME - REFERRALS  
02/01/06 (H) RES, JUD  
03/22/06 (H) RES AT 1:00 PM CAPITOL 124

BILL: HB 420

SHORT TITLE: FOREST RESOURCES & PRACTICES STANDARDS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/01/06 (H) READ THE FIRST TIME - REFERRALS  
02/01/06 (H) FSH, RES  
02/15/06 (H) FSH AT 8:30 AM CAPITOL 124  
02/15/06 (H) Moved CSHB 420(FSH) Out of Committee  
02/15/06 (H) MINUTE(FSH)  
02/17/06 (H) FSH RPT CS(FSH) 5DP  
02/17/06 (H) DP: HARRIS, WILSON, ELKINS, THOMAS,  
LEDOUX  
03/22/06 (H) RES AT 1:00 PM CAPITOL 124

BILL: HB 419

SHORT TITLE: REPEAL UNDERGROUND STORAGE TANK LAWS

SPONSOR(S): REPRESENTATIVE(S) COGHILL

02/01/06 (H) READ THE FIRST TIME - REFERRALS

02/01/06 (H) RES, FIN  
03/22/06 (H) RES AT 1:00 PM CAPITOL 124

**WITNESS REGISTER**

ANNE MARIE HOLEN, Assistant City Manager  
City of Homer  
Homer, Alaska  
POSITION STATEMENT: Testified in support of HB 415.

DAVID BRANN, Volunteer  
for trail construction and maintenance  
Homer, Alaska  
POSITION STATEMENT: Testified in support of HB 415.

MILLI MARTIN  
Homer, Alaska  
POSITION STATEMENT: Testified in support of HB 415.

DAVID SCHEER  
D & A Design  
Homer, Alaska  
POSITION STATEMENT: Testified in support of HB 415.

BRUCE HESS, Founding Member  
Coalition for Homer Open Space and Trails (CoHOST)  
Homer, Alaska  
POSITION STATEMENT: Testified in support of HB 415.

LINDSAY WINKLER  
Homer Soil and Water Conservation District  
Department of Natural Resources (DNR)  
Homer, Alaska  
POSITION STATEMENT: Testified in support of HB 415.

MARUS KILCHER  
Homer, Alaska  
POSITION STATEMENT: Testified in support of HB 415.

AL POINDEXTER, Executive Director  
Alaska Association of Conservation Districts  
Homer, Alaska  
POSITION STATEMENT: Testified in support of HB 415.

ROBERT ARCHIBALD  
Homer, Alaska  
POSITION STATEMENT: Testified in support of HB 415.

ROBERTA HIGHLAND  
Kachemak Bay Conservation Society  
Homer, Alaska  
POSITION STATEMENT: Testified in support of HB 415.

RICHARD BURLEY, Appointee  
Board of Game  
Fairbanks, Alaska  
POSITION STATEMENT: Testified as appointee.

ROBERT MUMFORD, Appointee  
Big Game Commercial Services Board  
Anchorage, Alaska  
POSITION STATEMENT: Testified as appointee.

CHRIS MAISCH, State Forester  
Division of Forestry  
Department of Natural Resources (DNR)  
Anchorage, Alaska  
POSITION STATEMENT: Presented HB 420 on behalf of the governor.

RICHARD SMERIGLIO, Member  
Alaska Board of Forestry  
Seward, Alaska  
POSITION STATEMENT: Testified in support of HB 420.

KAREN LIDSTER, Staff  
to Representative John Coghill  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Presented HB 419 on behalf Representative  
Coghill, sponsor.

LARRY DIETRICK, Director  
Division of Spill Prevention and Response  
Department of Environmental Conservation  
Juneau, Alaska  
POSITION STATEMENT: Answered questions regarding HB 419.

CLIFF JUDKINS, Appointee  
Board of Game  
Wasilla, Alaska  
POSITION STATEMENT: Testified as appointee.

**ACTION NARRATIVE**

**CO-CHAIR JAY RAMRAS** called the House Resources Standing Committee meeting to order at [1:55:50 PM](#). Representatives Ramras, Samuels, Gatto, Olson, and Seaton were present at the call to order. Representatives Elkins, LeDoux, Crawford, and Kapsner arrived as the meeting was in progress.

HB 415-LIABILITY FOR RECREATIONAL LAND USE

CO-CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 415, "An Act relating to landowners' immunity for allowing use of land for a recreational activity; and providing for an effective date."

REPRESENTATIVE SEATON informed the committee that HB 415 seeks to allow public use of private land for recreational purposes with immunity to negligence granted to the landowner. He said there wouldn't be immunity for gross negligence or intentional or reckless conduct. He referred to letters of support from boroughs, the [Alaska] State Chamber of Commerce, the [Kachemak Heritage] Land Trust, the [Alaska] Soil and Water Conservation District, ski associations/organizations, and individuals. Currently, the recreational statute only applies to the inherent risks, but not to the land, which is nonspecific, he said.

[1:59:00 PM](#)

REPRESENTATIVE SEATON said HB 415 is strongly supported by people across the state, especially in his district.

CO-CHAIR RAMRAS stated that he doesn't anticipate contention and requested that testifiers be concise.

[2:00:30 PM](#)

ANNE MARIE HOLEN, Assistant City Manager, City of Homer, said she's testifying on behalf of Walt Wrede, city manager of Homer. She noted City of Homer resolution 0630, expressing strong support for HB 415 and said outdoor recreation is important to Homer's identity and economy. Most residents of Homer support trails development, but some landowners who would be interested in establishing public trails through their property are understandably nervous about liability. This bill addresses these concerns and clears up ambiguity in current law. She concluded, "HB 415 should be welcomed as an easy 'no-brainer' that will have a positive impact throughout the state."

DAVID BRANN, Kachemak Nordic Ski Club and trail volunteer, said he's a founding member of the Coalition for Homer Open Space and Trails (CoHOST). He said recreation plays a significant role in the state's economy, and trails are important for year-round residents and visitors. Demand for recreational opportunities is growing, he noted, but [landowners] have been reluctant to sign a conservation easement to protect them from liability because easements would be in perpetuity. This bill aids large landowners such as Native corporations as well as his neighbor who allows trails across his one-acre property. He said it also would provide more opportunity for trails in urban and suburban areas where many recreationists live.

[2:04:46 PM](#)

MILLI MARTIN said she serves on the [Kenai Peninsula Borough Assembly], but is representing herself. She mentioned the assembly's resolution 2006-027, which she sponsored. She would like to see the ski trails extended and to offer a trail across her own private property. She expressed her reluctance to do so until this bill passes. She said there's an opportunity on the southern Peninsula to extend trails from Baycrest to McNeil, which won't happen until there's protection for landowners who allow those trails across their land.

DAVID SCHEER, Partner, D & A Design, stated that his firm has been working on a number of projects in Homer that involve planning and development of large tracts of land. He noted that the majority of these projects are planned with significant areas of open space, trails, and wildlife corridors, but that it's a struggle to figure out how to allow public access to these private lands without opening his clients to financial liability. As a designer and developer, he said this bill would be a great design tool and would also increase the ability of property owners to decide the best use of their own land. He said it will also benefit the public. He added that this bill would not only allow cities to see an increase in public-use areas, even while economic growth and development infill vacant lands, but the private land open to public use also increases public recreation space with no additional burden on taxpayers.

[2:07:38 PM](#)

BRUCE HESS, Founding Member, Coalition for Homer Open Space and Trails, relayed that some of the subdivisions in Homer lack pedestrian amenities. He has researched the possibility of a trail serving part of his subdivision. He said the existing

statutes regarding immunity and liability don't adequately protect a private property owner. He said HB 415 would remedy that situation and make people much more comfortable in allowing trails and recreational use on private property.

[2:09:45 PM](#)

LINDSAY WINKLER, Homer Soil and Water Conservation District, Department of Natural Resources (DNR), stated that she's also representing herself as a landowner, and she's on the Alaska Trails Board. She said the Homer Soil and Water Conservation District is a division of DNR and one of the only public agencies that strictly represents private landowners. This bill provides the clarity that is missing from the other four statutes, and the language is standard and has been adopted by about 45 states. She said HB 415 doesn't threaten the landowner's private property rights because it specifically states that informal, noncommercial use doesn't constitute a basis for a prescriptive easement. She referred to Section 3(b)(1) and gross negligence, and in regard to liability, she characterized it as clear.

[2:11:42 PM](#)

MARUS KILCHER agreed with the preceding testimony. She owns several large properties in Homer and is trustee of the Kilcher family homestead. She expressed the Kilcher family's enjoyment from sharing its property with others for recreational use. She said her primary concern is liability, and this bill would make it easier on both the landowners and the public.

AL POINDEXTER, Executive Director, Alaska Association of Conservation Districts, said the association represents 12 conservations districts in Alaska. He commented that a primary benefit of this bill is relieving the anxiety of landowners regarding hunting on their land. His board supports this bill unanimously. "The bill allows neighbors to be good neighbors."

ROBERT ARCHIBALD stated that he has 35 acres outside of Homer and having trails on his property is a positive thing for skiing and other recreation. He added that without some sort of liability disclosure, his ability to allow trails on his land is limited. He said that he is in full support of this bill.

ROBERTA HIGHLAND, Kachemak Bay Conservation Society, informed the committee that the society has approximately 130 members.

She said that it strongly supports this bill. She relayed a dream for Homer to be connected by trails.

[2:15:02 PM](#)

REPRESENTATIVE SEATON moved to report HB 415 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 415 was reported out of the House Resources Standing Committee.

[2:16:26 PM](#)

CONFIRMATION HEARING(S)

Board of Game

CO-CHAIR RAMRAS announced that the next order of business would be to consider the appointment of Richard Burley to the Alaska Board of Game.

[Contains discussion of SB 85]

RICHARD BURLEY, Appointee, Alaska Board of Game, said he served on the board in the 1990s and would like to continue serving.

REPRESENTATIVE GATTO noted that Mr. Burley took flying lessons in 1961, and asked if he has flown the Dalton Highway. He said there is legislation, [SB 85], that may be before the committee, and he asked if there has been abuse of the highway that would require significantly more monitoring.

MR. BURLEY asked if he was referring to abuse of fish and game or the entire corridor system.

REPRESENTATIVE GATTO spoke of pending legislation to increase access along the Dalton Highway, and he surmised it will be used by hunters and recreationists. He asked if Mr. Burley has seen people poaching or herding animals along the Dalton Highway.

MR. BURLEY said he thinks there are reasons to open up the corridor, because the Dalton Highway is one of a few ways to access Alaska. He said he hasn't seen major infractions.

REPRESENTATIVE GATTO said that observation is important and asked if he has seen snow machines or other vehicles herding animals.

MR. BURLEY said he has not observed it, but that doesn't mean it hasn't happened.

REPRESENTATIVE KAPSNER asked how long it takes to fly the Dalton Highway.

MR. BURLEY said from 1.5 hours to 3 hours, depending on the type of airplane.

[2:21:11 PM](#)

CO-CHAIR RAMRAS said he has known him for a long time and he thanked him for his contributions to the community and state.

REPRESENTATIVE SEATON moved to advance the name of Richard Hurley, appointee to the Board of Game, to the joint session for consideration. Hearing no objections, it was so ordered.

[The returned attention to the confirmation hearings on the Board of Game later in the hearing.]

[2:22:10 PM](#)

#### Big Game Services Board

[Contains discussion of SB 85]

ROBERT MUMFORD, Appointee, Big Game Services Board, said he worked for fish and wildlife protection with the state troopers for 18 years. He is retired and interested in serving on this board.

REPRESENTATIVE GATTO asked if Mr. Mumford has seen abuse during his patrols around the Dalton Highway.

MR. MUMFORD said he has sent emails in opposition to SB 85. He lived and worked in that area for many years, and his major concern is ATV use on the north side and the scaring it would leave in the tundra. He said he hasn't seen much herding of game, because there isn't much use of that area except by snow machines in the winter. He has seen people running wolves down with snow machines.

REPRESENTATIVE GATTO asked if running wolves down is illegal.

MR. MUMFORD said it can be, and he was never able to make a case against someone, although he has seen tracks in the snow where

it happened. Because of weather, "it's hard to catch a day that you can actually fly and track one of these guys down." There is legal use of snow machines too, he noted.

[2:25:59 PM](#)

REPRESENTATIVE GATTO asked about ATVs south of Atigun Pass.

MR. MUMFORD said that is not as much of an environmental impact--if it is regulated. Otherwise the territory would be torn up "so bad," and it is impossible to remove the scars.

REPRESENTATIVE GATTO asked if an ATV was a single individual on a four-wheeler or a track vehicle.

MR. MUMFORD said he is talking about both. "I'd say no ATV-use, just a single person on an ATV--that tundra is pretty fragile."

[2:27:04 PM](#)

CO-CHAIR SAMUELS said the Big Game Commercial Services Board was created to set ethical standards for guides and to resolve the conflicts between guides and transporters, especially in the Northwest Arctic Borough. He asked how he would address both the ethical standards for guides, "to make sure that some of the local folks out in western Alaska can get and keep those jobs, and the conflict between the guides and the transporters."

MR. MUMFORD said ethical standards need to be specific, attainable, and definable. He said he would like to read the tenets of the Alaska Professional Hunters Association and see if they could be adopted. He said he believes heavily in ethical standards and breaking them should come with a cost. Many resident hunters use transporters, and they should have priority over non-resident hunters, he added.

[2:29:29 PM](#)

CO-CHAIR SAMUELS moved to advance the name of Robert Mumford, appointee to the Big Game Commercial Services Board, to the joint session for consideration. Hearing no objection, it was so ordered.

[2:29:59 PM](#)

HB 420-FOREST RESOURCES & PRACTICES STANDARDS

CO-CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 420, "An Act relating to riparian protection standards for forest resources and practices; and providing for an effective date."

CHRIS MAISCH, State Forester, Division of Forestry, Department of Natural Resources (DNR), explained that CSHB 420(FSH) amends the Forest Resources and Practices Act for Region II, which is Southcentral Alaska. The bill establishes standards for forestry activities, supports a healthy timber and fishing industry, protects fish habitat and water quality, incorporates the best science available, and maintains one-stop shopping for compliance with federal laws for the forest industry. Mr. Maisch informed the committee that HB 420 is the result of two years of work by an array of interests, and it has broad support. He characterized HB 420 as consensus legislation. The science and technical committee, which first developed the science around the issue, Native corporations, industry, the environmental community, and other interested parties were at the table to develop the final recommendations as specified in the legislation. The Board of Forestry then reviewed and adopted these recommendations, which are in the legislation before the committee today. Mr. Maisch said the legislation has a zero fiscal note. The House Special Committee on Fisheries reported out a committee substitute that fixed a technical point on page 5, line 27, such that subsection (a), which was inadvertently omitted, was inserted.

MR. MAISCH reminded the committee there have been three other bills that have passed that were consensus efforts using the same model and scientific and implementation processes.

REPRESENTATIVE SEATON inquired as to any changes between this and the current Forest Practices Act.

[2:33:30 PM](#)

MR. MAISCH explained that under HB 420 there are increased buffer widths on streams in Region II. He mentioned a chart entitled, "Existing riparian management standards by region and land owner" that specifies the current standards and the proposed changes. It shows the differences by region and landowner. He said currently there is a 100-foot buffer immediately adjacent to anadromous or high-value resident fish water streams. The legislation will increase the buffer size on Type II-A and II-B streams to 150 feet. On the outside bends of the dynamic rivers where there is much erosion and the retention

of woody debris is important for habitat purposes, the buffers are wider. Type II-C streams are smaller, nonglacial, fixed streams of clear water and have a 100-foot no-cut buffer. There is a 50-foot no-cut buffer on the Type II-D streams.

[2:36:06 PM](#)

MR. MAISCH clarified that the legislation would increase the buffer widths on some streams and decrease it on Type III streams by 50 [feet], which is based on the science and implementation group's recommendation. He said there are no other significant differences between current law and this bill.

[2:37:02 PM](#)

MR. MAISCH, in response to Representative Gatto, explained that the language on page 9, lines 9-12, means that the Type II-D water body doesn't refer to the Kenai River but rather to its side channels that are three feet or less in width. He said the Kenai River would be considered a Type II-A water body.

[2:38:35 PM](#)

MR. MAISCH, in response to Representative Gatto, specified that the number in the type refers to the region while the letter refers to the channel characteristics.

REPRESENTATIVE GATTO asked then if the legislation is to protect streams more or less than they have been in the past.

MR. MAISCH said HB 420 provides additional protections to the water bodies in Region II. He said science has found that there is large woody debris recruitment into these stream types that are beneficial for fish habitat and water quality. This legislation targets retaining best management practices to encourage the forest products industry to continue to place a high priority on habitat.

REPRESENTATIVE GATTO pointed out that the Matanuska River is beating the banks to death. He then asked if this legislation covers the Matanuska River.

MR. MAISCH replied yes, and specified that the Matanuska River is a glacial stream that is dynamic. Although such a river isn't necessarily protected, the buffers are left in place. He explained that as the buffer erodes, trees will fall into the channel and become part of the habitat component. Therefore, in

these large glacial streams there is a wider buffer on the active eroding bank. Although at some point the erosion might pass through the buffer and reach the actual harvest unit, he characterized it as a compromise such that public and private lands can continue to be managed for forest practices while retaining the important habitat criteria necessary.

[2:41:09 PM](#)

REPRESENTATIVE GATTO asked about [logging] restrictions between a house and a river even though the bank is moving toward the house and the trees are destined to erode away.

MR. MAISCH said that there are many examples of rivers in Alaska that are aggressively eroding. Trees that fall in help armor the bank because they often remain attached to the root wad. The trees provide more protection than a stump on the bank. Furthermore, those trees also become important habitat for fish.

REPRESENTATIVE SEATON suggested that it would be helpful to have a side-by-side comparison of current and new regulations.

[2:43:03 PM](#)

RICHARD SMERIGLIO, Member, Alaska Board of Forestry, said he has seen improvement in riparian protection in the northern and coastal regions, and HB 420 is the final piece that will result in riparian protection for the entire state. Both the timber industry and Alaska Conservation Voters support HB 420, which he attributed to the excellent process of the Division of Forestry. He said the fish resource in this region of Alaska is enormous, and therefore the habitat merits protection. This legislation, which he urged the committee to forward, will allow logging while protecting habitat.

REPRESENTATIVE GATTO asked if HB 420 is supported by the Alaska Outdoor Council (AOC).

MR. SMERIGLIO said that he is not aware of AOC's support.

[2:44:39 PM](#)

REPRESENTATIVE ELKINS moved to report CSHB 420(FSH) out of committee with individual recommendations and the accompanying fiscal notes. Hearing no objections, it was so ordered.

HB 419-REPEAL UNDERGROUND STORAGE TANK LAWS

2:45:34 PM

CO-CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 419, "An Act repealing the Board of Storage Tank Assistance, the underground storage tank revolving loan fund, and the tank cleanup loan program; repealing certain reporting requirements relating to underground petroleum storage tank systems; making conforming amendments; and providing for an effective date."

KAREN LIDSTER, Staff to Representative John Coghill, Alaska State Legislature, presented HB 419 on behalf of Representative Coghill, sponsor. She paraphrased from the sponsor statement, which read [original punctuation provided]:

In 1990 the Alaska Legislature passed HB 220 to credit a state UST [Underground Storage Tank] Program and a Storage Tank Assistance Fund in order to assist tank owners that were required to meet the deadlines set in the US Environmental Protection Agency (EPA) Underground Storage Tank Program.

In 1999, the year after EPA's deadline, the program began to phase out and was formally ended by the Legislature on June 30, 2004.

A loan program to assist owners with completing cleanup was established by SB 128, passed in 1999. The Storage Tank Assistance Fund was converted to the Underground Storage Tank Revolving Loan Fund in 2002.

The original legislation, HB 220, also created the Board of Storage Tank Assistance to oversee state grants and loans. The Board is no longer needed since the grant program has been terminated and no loan applications have been received.

SB 128 established a June 30, 1999 sunset date for the board. Subsequent bills extended that date to June 30, 2007.

HB 419 will modify the end date for the board in order to be consistent with the end date for formal termination of the loan program. Additionally the bill lists out the statutes that relate to the board, the reporting, regulations, fees, revolving loan fund,

loan program, definitions, uses of the fund, the respective administrative codes, the orderly completion of the boards obligations, and renumbering instructions related to those statutes repealed.

MS. LIDSTER said the legislation that helped the tank owners with the EPA regulations was extremely successful. The loan program wasn't used, and therefore HB 419 would provide for the orderly termination of the board and the loan program.

[2:48:32 PM](#)

CO-CHAIR RAMRAS noted that Representative Coghill is trying to perform general housekeeping measures throughout the session. He asked if HB 419 is part of that effort.

MS. LIDSTER replied yes.

REPRESENTATIVE SEATON referred to AS 46.08.025, which is included in the committee packet and related his understanding that "these are all going to be satisfied with this." He then pointed out that there is some performance bond money, and asked if that is returned to the state or the companies.

LARRY DIETRICK, Director, Division of Spill Prevention and Response, Department of Environmental Conservation, said the only money remaining are the fees charged for new tank installation. The 1,000 or so tanks left in the program amount to roughly \$35,000 per year. To date, those fees are deposited into the loan fund being terminated. Therefore, when the program is terminated, those fees will continue to be collected, but will be deposited into the general fund.

[2:50:44 PM](#)

REPRESENTATIVE SEATON surmised then that there is not money from performance bonds or other financial responsibility held in escrow pending satisfactory performance of a privately financed response action as specified in AS 46.08.024(a)(3)(A).

MR. DIETRICK replied, "That is correct."

[2:51:05 PM](#)

REPRESENTATIVE ELKINS moved to report HB 419 out of committee with individual recommendations and the accompanying fiscal notes. Hearing no objections, it was so ordered.

[2:51:52 PM](#)

CONFIRMATION HEARING(S)

Board of Game

CO-CHAIR RAMRAS returned to the confirmation hearings of the Board of Game and announced that the final order of business would be to consider the appointment of Cliff Judkins to the Alaska Board of Game.

CLIFF JUDKINS, Appointee, Alaska Board of Game, said he has been reappointed to the board by the governor for another term.

REPRESENTATIVE SEATON moved to advance the name of Cliff Judkins, appointee to the Board of Game, to the joint session for consideration. Hearing no objection, it was so ordered.

[2:53:14 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at [2:54 PM](#).