

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

January 23, 2006

3:27 p.m.

MEMBERS PRESENT

Senator Thomas Wagoner, Chair
Senator Ben Stevens
Senator Fred Dyson
Senator Bert Stedman
Senator Kim Elton
Senator Albert Kookesh

MEMBERS ABSENT

Senator Ralph Seekins, Vice Chair

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 107(FIN)

"An Act relating to unlawful obstruction or hindrance of hunting, fishing, trapping, or viewing of fish or game; and amending Rule 82, Alaska Rules of Civil Procedure, and Rule 508, Alaska Rules of Appellate Procedure."

HEARD AND HELD

HOUSE BILL NO. 269

"An Act relating to contribution actions relating to the release of a hazardous substance; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 107

SHORT TITLE: HUNTING/FISHING INTERFERENCE

SPONSOR(S): REPRESENTATIVE(S) 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
02/02/05	(H)	Heard & Held
02/02/05	(H)	MINUTE(RES)
02/09/05	(H)	RES AT 1:00 PM CAPITOL 124
02/09/05	(H)	Heard & Held

02/09/05 (H) MINUTE(RES)
 02/16/05 (H) RES AT 1:00 PM CAPITOL 124
 02/16/05 (H) Moved CSHB 107(RES) Out of Committee
 02/16/05 (H) MINUTE(RES)
 02/18/05 (H) RES RPT CS(RES) NT 3DP 1DNP 4NR
 02/18/05 (H) DP: OLSON, ELKINS, RAMRAS;
 02/18/05 (H) DNP: SEATON;
 02/18/05 (H) NR: GATTO, LEDOUX, CRAWFORD, KAPSNER
 02/18/05 (H) FIN REFERRAL ADDED AFTER JUD
 03/02/05 (H) JUD AT 1:00 PM CAPITOL 120
 03/02/05 (H) Heard & Held
 03/02/05 (H) MINUTE(JUD)
 03/04/05 (H) JUD AT 1:00 PM CAPITOL 120
 03/04/05 (H) Moved CSHB 107(JUD) Out of Committee
 03/04/05 (H) MINUTE(JUD)
 03/07/05 (H) JUD RPT CS(JUD) NT 3DP 3NR
 03/07/05 (H) DP: GRUENBERG, ANDERSON, MCGUIRE;
 03/07/05 (H) NR: DAHLSTROM, COGHILL, GARA
 03/15/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
 03/15/05 (H) Moved CSHB 107(FIN) Out of Committee
 03/15/05 (H) MINUTE(FIN)
 03/16/05 (H) FIN RPT CS(FIN) NT 2DP 6NR
 03/16/05 (H) DP: HAWKER, STOLTZE;
 03/16/05 (H) NR: WEYHRAUCH, CROFT, MOSES, KELLY,
 MEYER, CHENAULT
 05/08/05 (H) TRANSMITTED TO (S)
 05/08/05 (H) VERSION: CSHB 107(FIN)
 05/09/05 (S) READ THE FIRST TIME - REFERRALS
 05/09/05 (S) RES, JUD
 01/23/06 (S) RES AT 3:30 PM BUTROVICH 205

BILL: HB 269

SHORT TITLE: HAZARDOUS SUBSTANCE RELEASE LIABILITY

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

04/14/05 (H) READ THE FIRST TIME - REFERRALS
 04/14/05 (H) RES, JUD
 04/22/05 (H) RES AT 1:00 PM CAPITOL 124
 04/22/05 (H) Scheduled But Not Heard
 04/25/05 (H) RES AT 1:00 PM CAPITOL 124
 04/25/05 (H) Moved Out of Committee
 04/25/05 (H) MINUTE(RES)
 04/26/05 (H) RES RPT 4DP 2NR
 04/26/05 (H) DP: OLSON, LEDOUX, ELKINS, RAMRAS;
 04/26/05 (H) NR: GATTO, CRAWFORD
 04/27/05 (H) JUD AT 1:00 PM CAPITOL 120
 04/27/05 (H) Moved Out of Committee

04/27/05 (H) MINUTE(JUD)
04/28/05 (H) JUD RPT 6DP
04/28/05 (H) DP: KOTT, ANDERSON, DAHLSTROM, COGHILL,
GARA, MCGUIRE
04/30/05 (H) TRANSMITTED TO (S)
04/30/05 (H) VERSION: HB 269
05/01/05 (S) READ THE FIRST TIME - REFERRALS
05/01/05 (S) RES, JUD
01/23/06 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

JIM POUND

Staff to Representative Ramras
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Presented sponsor statement on CSHB 107(FIN).

REPRESENTATIVE JAY RAMRAS

Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 107 and HB 269.

MR. BRECK TOSTEVIN

Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Supported HB 269.

GEORGE LYLE

Justin Rudd
Anchorage AK

POSITION STATEMENT: Supported HB 269.

ACTION NARRATIVE

CHAIR THOMAS WAGONER called the Senate Resources Standing Committee meeting to order at [3:27:58 PM](#). Present were Senators Albert Kookesh, Ben Stevens, Bert Stedman, Fred Dyson, Kim Elton and Chair Thomas Wagoner.

CSHB 107(FIN)-HUNTING/FISHING INTERFERENCE

CHAIR THOMAS WAGONER announced CSHB 107(FIN) to be up for consideration.

JIM POUND, staff to Representative Ramras, delivered the sponsor statement. He related that CSHB 107(FIN) corrects an error in law that addresses a growing concern about individuals and groups who were obstructing hunting, trapping and wildlife viewing in Alaska. When an obstruction takes place, the offender can be charged with criminal activity; he can also be charged in a civil case by the aggrieved person. Juries have awarded as much as \$200,000 in these aggrieved civil cases. Currently, reasonable attorney fees and costs are not necessarily awarded, which has a chilling effect, as this cost is directly passed on to the plaintiff rather than the defendant. HB 107 allows the court to authorize reasonable and actual attorneys fees when it comes to the prevailing party in either case.

[3:32:57 PM](#)

CHAIR WAGONER commented that he read about a lawsuit against the state because a helicopter caused a fish to jump out of a seine.

MR. POUND responded that a lawsuit was brought against a Fish and Wildlife Protection officer whose helicopter was too low according to the individual resident, and the helicopter scared away the game. A similar case had to do with fish in a commercial fishery. Language was added to this bill to prevent that from happening in the future saying that a law enforcement officer, in the line of duty, is not obstructing hunting, trapping or wildlife viewing.

[3:34:52 PM](#)

SENATOR BERT STEDMAN asked how viewing wildlife is separated from hunting and trapping in multi-use areas.

[3:35:33 PM](#)

MR. POUND clarified that language on page 1, line 6, states to: "intentionally obstruct or hinder another person's lawful hunting" and a snow machine causing an animal to move in a multi-use area wouldn't be considered intentional.

[3:36:44 PM](#)

SENATOR BEN STEVENS asked why commercial fishermen are excluded on page 2, lines 20-22.

MR. POUND replied that Representative Seaton didn't want this law to include commercial fisheries when working in close

proximity to each other, like in Bristol Bay. One of the fishermen could try to use this language to fend off another.

3:37:59 PM

SENATOR ELTON asked if the punishment of a snow-machiner is greater under these provisions or under the provisions of simply hunting or fishing where they are not supposed to be hunting or fishing.

MR. POUND replied that he hadn't considered that scenario, but an action like that could possibly be based on someone operating a snow machine in a restricted area.

SENATOR ELTON suggested that there could be multiple actions against a snow-machine operator.

MR. POUND replied that there could be multiple infractions under existing statute right now.

3:40:20 PM

SENATOR STEDMAN asked how one differentiates between wildlife viewers and hunters in multiuse areas.

MR. POUND replied that this collision is already addressed in some ways in existing statute. The arresting officer decides who gets charged.

SENATOR STEDMAN asked if this bill would make litigation more likely.

MR. POUND replied that it would lead to more litigation only because it allows the award of full attorneys fees, which has not been the policy in the past.

SENATOR STEDMAN commented that this bill might enhance this issue especially in multiple use areas where you might be fishing in a stream where someone may want to photograph the same fish.

MR. POUND replied that that is the intent. This issue arose mainly from trappers with trap lines that had been cut maliciously.

SENATOR BEN STEVENS noted that the definition of full attorneys fees has gone back and forth from reasonable and actual to 90 percent. He asked in what other instances is the prevailing party entitled to full attorney fees.

MR. POUND replied in eminent domain issues.

SENATOR BEN STEVENS asked if this action would be brought in criminal or civil court.

MR. POUND replied that both criminal and civil actions are available to the Department of Public Safety, but this applies to civil.

[3:44:34 PM](#)

CHAIR WAGONER said the required distance between drift gillnet gear and set net gear is different in Bristol Bay than in Prince William Sound and Southeast; and the committee needed to look at the phrase, "an action related to commercial fishing". He explained that many times ADF&G would refuse to become involved when there is an estimation of distances between gear types. It would be hard for a set netter to go to civil court and testify that someone was a certain distance from his gear without a criminal procedure having been taken first.

MR. POUND replied that he thought one fisherman could bring an action against another fisherman through an administrative action since a lot of their activities are governed by regulations.

SENATOR ELTON asked if language on page 2, lines 4 and 5, would allow a Southeast gillnetter to have a private action against a Princess cruise ship or a tug and barge if, in fact, his net was run over by one of them.

MR. POUND replied that he would have to look that up.

SENATOR DYSON responded that he thought yes.

[3:48:13 PM](#)

SENATOR BEN STEVENS commented that it seemed that the intent is to prevent a third party from intervening in the action, not to prevent those individuals who are engaged in commercial fishing.

MR. POUND replied that he understands this would prevent a commercial fisherman from bringing an action against another commercial fisherman.

CHAIR WAGONER commented that he didn't know why Representative Seaton would want to take that stance. All kinds of actions among commercial fishermen could result in a civil action.

[3:50:37 PM](#)

SENATOR DYSON assumed the purpose of this bill is to keep activists, who don't like hunting, fishing and trapping, from interfering with it. He suspected the sponsor did not want to delay action on a valuable bill because of its impacts on commercial fishermen.

MR. POUND responded that he was correct.

[3:51:57 PM](#)

SENATOR BEN STEVENS agreed with Senator Dyson, but pointed out that it wasn't the sponsor who inserted the clause about commercial fishing.

SENATOR DYSON summed up the question asking if insertion of the phrase on page 2, line 28 didn't clear up the intent.

CHAIR WAGONER announced that CSHB 107(FIN) would be held for further discussion.

HB 269-HAZARDOUS SUBSTANCE RELEASE LIABILITY

CHAIR THOMAS WAGONER announced HB 269 to be up for consideration.

REPRESENTATIVE JAY RAMRAS, sponsor of HB 269, said he introduced HB 269, "So we can maintain a cleaner environment and proceed in an expeditious manner to do so."

[3:55:58 PM](#)

SENATOR BERT STEDMAN asked how contamination liability is followed from one previous owner to the next if disclosure doesn't happen.

JANE PIERSON, staff to Representative Ramras, answered that presently there is confusion as to when a lawsuit can be undertaken against another potentially responsible party. There is joint and several liability, but the actual time the action can be taken is what was clouded in the Aviall decision, which said you can go against another responsible party, at such time as a suit has been brought by the state or you have entered into an agreement with the state and not at the beginning of the cleanup. This bill says from the time the state determines there is an environmental cleanup issue and that it will be undertaken by a private party, that party can then go against other

potentially responsible parties to assist in the financial aspects of the cleanup.

[3:58:02 PM](#)

SENATOR ELTON asked if Section 1 under findings and purpose is necessary to the bill.

MS. PIERSON answered that it was probably going to be deleted in the Judiciary Committee.

[3:59:05 PM](#)

MR. BRECK TOSTEVIN, Department of Law (DOL), stated that the Administration, Department of Law and Department of Environmental Conservation supported HB 269 mostly because it insures that the voluntary cleanup system that is in place in Alaska goes forward. It gets rid of inefficiencies associated with requiring the state to sue people so they can collect from other responsible parties.

[3:59:52 PM](#)

CHAIR WAGONER asked if this applies to the case in Sterling if an additional insurance company is involved.

MR. TOSTEVIN replied yes and that wouldn't change the insurance situation.

GEORGE LYLE, Justin Rudd Law Offices, said he represented the number of property owners who have property with hazardous substances who have received potentially responsible party notices from the DEC and who are now facing difficulties in trying to get other potentially responsible parties to share in the cost of the cleanup. Usually the current owner of the property gets stuck with the cost first. He supported HB 269 explaining that since the Aviall decision, settlements that were pending were withdrawn because the other party said, "You can no longer come after me until the state sues you first." It is an unnecessary burden to make the state sue people in order for them to have an opportunity to get contribution from others who are responsible for the problem to begin with.

[4:02:38 PM](#)

SENATOR STEDMAN stated that he wanted the severability issue answered.

CHAIR WAGONER stated that HB 269 would be held for further work and adjourned the meeting at [4:03:25 PM](#).

