

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

January 24, 2007

1:01 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Co-Chair
Representative Craig Johnson, Co-Chair
Representative Bob Roses
Representative Paul Seaton
Representative Peggy Wilson
Representative Bryce Edgmon
Representative David Guttenberg
Representative Scott Kawasaki

MEMBERS ABSENT

Representative Vic Kohring

COMMITTEE CALENDAR

HOUSE BILL NO. 87

"An Act reestablishing the Citizens' Advisory Commission on Federal Management Areas in Alaska; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 25

"An Act relating to landowners' immunity for allowing use of land without charge for a recreational activity; relating to landowners' liability where landowner conduct involves gross negligence or reckless or intentional misconduct; relating to claims of adverse possession and prescriptive easements, or similar claims; and providing for an effective date."

- MOVED HB 25 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 87

SHORT TITLE: CITIZEN ADVISORY COMM ON FEDERAL AREAS

SPONSOR(S): REPRESENTATIVE(S) KELLY

01/16/07	(H)	PREFILE RELEASED 1/12/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	RES, FIN

01/24/07 (H) RES AT 1:00 PM CAPITOL 124

BILL: HB 25

SHORT TITLE: RECREATIONAL LAND USE LIABILITY/ADV. POSS
SPONSOR(S): REPRESENTATIVE(S) SEATON, WILSON

01/16/07 (H) PREFILE RELEASED 1/5/07
01/16/07 (H) READ THE FIRST TIME - REFERRALS
01/16/07 (H) RES, JUD
01/24/07 (H) RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

REPRESENTATIVE MIKE KELLY
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 87.

SUE STANCLIFF, Staff
to Representative Mike Kelly
Juneau, Alaska
POSITION STATEMENT: Answered questions regarding HB 87.

TINA CUNNING, Special Assistant
State/Federal Issues
Office of the Commissioner
Alaska Department of Fish & Game
Anchorage, Alaska
POSITION STATEMENT: Answered questions regarding HB 87.

DEL ACKELS
Fairbanks, Alaska
POSITION STATEMENT: Speaking as a former member of the
Citizens' Advisory Commission on Federal Management Areas in
Alaska supported HB 87.

RICKY GEASE, Executive Director
Kenai River Sportfishing Association
Soldotna, Alaska
POSITION STATEMENT: Supported HB 87 and HB 25.

DAVE BRANN
Kachemak Nordic Ski Club
Homer, Alaska
POSITION STATEMENT: Supported HB 25.

KARYN NOYES, Conservation Director

Kachemak Heritage Land Trust
Homer, Alaska
POSITION STATEMENT: Supported HB 25.

LINDSAY WINKLER
Homer Soil & Water Conservation District
Alaska Association of Conservation Districts
Homer, Alaska
POSITION STATEMENT: Supported HB 25.

JACK MOSBY
Anchorage, Alaska
POSITION STATEMENT: Speaking as a past president of Alaska
Trails supported HB 25.

ANNE MARIE HOLEN, Assistant
to the City Manager
City of Homer
Homer, Alaska
POSITION STATEMENT: Supported HB 25.

JULIE ENGBRETSSEN
Anchor Point, Alaska
POSITION STATEMENT: Supported HB 25.

MILLIE MARTIN
Homer, Alaska
POSITION STATEMENT: Supported HB 25.

ROBERTA HIGHLAND
Homer, Alaska
POSITION STATEMENT: Supported HB 25.

ACTION NARRATIVE

CO-CHAIR CRAIG JOHNSON called the House Resources Standing Committee meeting to order at [1:01:35 PM](#). Representatives Johnson, Gatto, Wilson, Roses, Guttenberg, Edgmon, and Kawasaki were present at the call to order. Representative Seaton arrived as the meeting was in progress.

CO-CHAIR JOHNSON recognized that the House Resources Committee conducts its meetings in the Ramona Barnes Resource Room. He expressed his hope that [committee members] would rise to her level of professionalism.

HB 87 - CITIZEN ADVISORY COMM ON FEDERAL AREAS

1:03:24 PM

CO-CHAIR JOHNSON announced that the first order of business would be HOUSE BILL NO. 87, "An Act reestablishing the Citizens' Advisory Commission on Federal Management Areas in Alaska; and providing for an effective date."

1:03:49 PM

REPRESENTATIVE MIKE KELLY, Alaska State Legislature, sponsor of HB 87, explained he would like to reestablish the Citizens' Advisory Commission on Federal Areas (CACFA) because it "served us well when it was in place." He pointed out that in the past when people had problems with [federal government land managers], CACFA was an effective way for people to communicate with the state and get help when appropriate. Representative Kelly expressed concern that currently citizens must go directly through an appeal or a "fix the squawks process" that is strictly on the federal side and it does not work very well.

1:05:14 PM

REPRESENTATIVE GUTTENBERG requested examples, both good and bad, of how CACFA worked previously.

REPRESENTATIVE KELLY provided an example of trappers north of the Yukon who must deal with different federal refuge managers and management styles - from a style of "let them do what they've been doing for a hundred years" to a micro-management style of "this is where you can park your truck and nowhere else." The commission would be a way for citizens to come before a body to speak about the problems they are having. He pointed out that legislators are not part of any official panel that can actually have some affect.

1:07:11 PM

REPRESENTATIVE WILSON inquired as to why [CACFA] was disbanded.

REPRESENTATIVE KELLY said that Governor Knowles defunded CACFA. He expressed his belief that federal managers currently have an advantage over Alaska's citizens and that this is not what he heard in the promises made as part of the Alaska National Interest Lands Conservation Act (ANILCA).

1:08:01 PM

REPRESENTATIVE SEATON inquired as to how local fish and game advisory committees interacted with the previous [CACFA] and whether they would integrate their activities [if CACFA was reestablished].

REPRESENTATIVE KELLY pointed out that this is mostly about what the [federal government] does with regard to the management of [federal] conservation units. He then deferred to his staff for further response.

REPRESENTATIVE SEATON asked whether [CACFA] would interact with, or replace, or consider action related to the new federal subsistence regulations.

REPRESENTATIVE KELLY explained that, just like the advisory boards and the game boards, CACFA would interact with and have access to the federal advisory boards as part of the commission's ability to work with and problem solve. In further response to Representative Seaton, Representative Kelly affirmed that this would be the case depending upon the particular [conservation] unit. For instance, if someone complained about a difficulty he/she was having, CACFA would be able to try resolving the difficulty, regardless of whether [federal or state managers] control that particular area.

[1:10:19 PM](#)

CO-CHAIR GATTO, referring to the list of previous commission members in CACFA's 1997 Annual Report, inquired as to whether there is a connection between those names and recommendations for new commission members.

REPRESENTATIVE KELLY responded, no. Although some of the former members of CACFA might be good candidates, those names merely represent the folks who used to be on the commission. He stressed that there was no attempt in the bill to influence the commission's make-up.

[1:11:36 PM](#)

CO-CHAIR GATTO pointed out that the fiscal note for HB 87 is indeterminate. He then related his assumption that commission members would only receive \$400 a day per diem and \$400 a day during travel, plus travel expenses, but no salaries or retirement.

[1:11:55 PM](#)

SUE STANCLIFF, Staff to Representative Mike Kelly, Alaska State Legislature, confirmed that the commission members are subject to the per diem and travel reimbursements, but not to the Alaska Public Employees' Retirement System or Teachers' Retirement System.

[1:12:28 PM](#)

REPRESENTATIVE GUTTENBERG noted his support of the requirement that commission members be representative of the diversity of users and uses on federal land in the state. However, previous commission members were primarily urban. Therefore, he asked how the diversity requirement was defined for the original members of CACFA.

REPRESENTATIVE KELLY declined to comment because he did not know most of the previous members. He noted it would be up to the governor and the legislature to ensure the members reflect the appropriate users and uses.

[1:14:18 PM](#)

CO-CHAIR GATTO directed attention to the language on page 2, line 13, subsection (e), that says: "who are not members of the legislature." Since three of the commissioners listed in CACFA's 1997 Annual Report were past members of the legislature, he inquired as to why it was desirable to allow former legislators to be commission members but not currently serving legislators.

[1:15:47 PM](#)

MS. STANCLIFF clarified that current legislators are appointed to the commission as specified on page 2, lines 3-8, subsections (d) and (e): "The speaker of the house will appoint two members from the house..." and "The president of the senate shall appoint two members from the membership of the state senate...."

MS. STANCLIFF then presented the history of the original CACFA by paraphrasing from the following written remarks [original punctuation provided]:

The Citizens' Advisory Commission on Federal Areas was established in 1981 by the Alaska State Legislature to provide assistance to the citizens of Alaska who are

affected by the management of federal lands within the state.

The Commission was repealed in 1998 after Governor Knowles removed funding even-though the legislature approved the sunset extension to 2003.

MS. STANCLIFF pointed out that HB 87 is different than the legislation creating the original CACFA in that it removes the sunset and takes the notion away that CACFA is a temporary commission. Because the issues that CACFA will be addressing will be ongoing for decades to come, HB 87 establishes CACFA as a permanent commission.

MS. STANCLIFF then continued with the original CACFA's history by paraphrasing from the following written remarks [original punctuation provided]:

The need for the Commission arose primarily from the passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980.

The changes in land status which resulted from the creation and expansion of conservation system units increased the potential for conflict between Alaskans' traditional uses of these federal lands and the mandates in ANILCA.

The commission is charged with the responsibility of researching issues and determining the impact of federal statutes, regulations and management decisions on the citizens of Alaska in order to minimize or resolve potential conflicts.

The commission had been effective in assuring that land management decisions are consistent with both statutory language and Congressional intent, and in protecting the interests of Alaska's citizens.

It was the intent of the Twelfth Legislature that the commissioners should be Alaskans directly affected and impacted by the establishment, operation and management of federal land in Alaska. To achieve this objective it was believed that the commissioners of the Citizens' Advisory Commission should not be state officials such as commissioners or the departments' top staff. Further intent stated that the Governor,

Speaker of the House and President of the Senate appoint non-governmental related persons to the maximum extent possible.

[1:19:37 PM](#)

MS. STANCLIFF noted that CACFA was originally established in Title 41 and upon review she determined that is where the CACFA provisions should be placed since Title 41 deals with public resources. Ms. Stancliff then called attention to the CACFA 1997 Annual Report being referenced by committee members. She noted it was included in the committee's information packet to provide an idea of what [CACFA] did and the decisions the commission made.

[1:20:31 PM](#)

REPRESENTATIVE ROSES inquired as to what issues led to the belief that CACFA needed to be reinstated.

MS. STANCLIFF explained that, in [Representative Kelly's] office alone, several people have called with issues regarding mining, trapping, fishing, hunting, and recreating. In fact, because of the level of harassment from federal officials, people have left their trap lines or removed themselves from the area. One case was taken to court and won, but it still did not deter [federal officials]. She informed the committee of a case involving a mining claim in the 40 Mile area where an R.S. 2477 crosses a wild and scenic river corridor, yet no access is provided across the river. Ms. Stancliff reiterated the need for there to be "someone who could advocate for the public" because state legislative offices do not have the expertise to intercede in cases involving federal laws.

[1:22:40 PM](#)

REPRESENTATIVE WILSON asked if there would be a way to provide balance so that both rural and urban people were on the commission.

MS. STANCLIFF pointed out that the qualifications section of the statute requires a diversity of users and the diversity of the users are statewide. In further response to Representative Wilson, Ms. Stancliff highlighted that the previous members of CACFA from Fairbanks were probably like Representative Kelly who hunts and fishes in the northern areas of Alaska such as the Nowitna Refuge. Therefore, although such members reside in

Fairbanks, they would have been representative of the northern portion of the state.

1:24:41 PM

CO-CHAIR GATTO questioned whether it is legal for HB 87 to make reference to statutes that had been repealed.

MS. STANCLIFF emphasized that that is why the bill's title says "reestablish" and assured the committee that [Legislative Legal Services] had been consulted and reference to repealed statutes is fine.

1:26:39 PM

REPRESENTATIVE SEATON advised that dealing with the renewal of commissions is the legislature's way of making sure the commissions are being effective. He then asked if there is any listing of commissions with no sunset dates or is CACFA going to be unique.

MS. STANCLIFF responded that she did not know of any other commissions or boards without sunset dates. However, she opined that there will forever be conflicts in Alaska between state land holders and federal lands. Furthermore, the 2009 date for land exchanges makes this all the more critical. This legislation would provide the public with a place to go, an ombudsman for the public.

REPRESENTATIVE SEATON commented that he views sunset dates as a way for the legislature to ensure a commission's effectiveness and make any needed changes. He indicated that he is more comfortable with sunset dates.

1:29:35 PM

REPRESENTATIVE EDGMON observed that HB 87's fiscal note analysis says the "commission was housed in the Department of Natural Resources (DNR) from FY 1987 through FY 1999," but that page 1 of the bill, line 8, subsection (b) says "The commission is an advisory agency of the executive branch of the state but is not allocated to a principal department...." He asked if this is consistent with the previous CACFA.

MS. STANCLIFF affirmed that it is consistent. She related her understanding was that the previous commission was under the

governor's office and then moved to the physical location of the Department of Natural Resources' office in Fairbanks.

1:30:39 PM

REPRESENTATIVE EDGMON referred to the various requirements for commission appointments, member qualifications, and terms of members outlined on page 2, lines 2-21. He expressed concern that HB 87's current structure is a hodgepodge of appointments that creates a lot of coming and going. Since continuity on boards is important, he asked if the sponsor could tighten up the commission's composition, while still representing the diversity it was intended to represent.

MS. STANCLIFF noted that the language [to reestablish CACFA] was taken as it was written when CACFA was repealed. Appointments of members of the legislature are not overlapping, they are only a four-year term. Diversity would be ensured through appointments made by the governor and the legislature. Ms. Stancliff disagreed with the characterization that the CACFA membership was a "hodgepodge," stating it was through careful consideration that a legislator not serve for longer than he/she is in office and not have an undue impact on the commission.

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REPRESENTATIVE EDGMON said he did not disagree with Ms. Stancliff, but pointed out the list of previous commission members had no one from Southwest Alaska which is one of the larger impacted areas.

CO-CHAIR GATTO noted his agreement with Representative Edgmon that previous commission members did not appear to represent a cross-section of the state.

REPRESENTATIVE WILSON noted that page 1, line 14, subsection (b) specifies that CACFA "shall represent each judicial district". However, she pointed out that some of those districts are fairly large.

1:35:03 PM

REPRESENTATIVE ROSES directed attention to page 4, line 6, regarding lawsuit. He asked if reestablishing CACFA could push the burden on the state to file suit on behalf of an individual who was dissatisfied with results obtained by the commission. In other words, does it put the state in the position of being

sued by the individual, or does it become the state's responsibility to handle on behalf of the citizens of Alaska.

MS. STANCLIFF emphasized that the commission has the authority to bring a lawsuit to the attorney general (AG) because the constitution requires the state to protect and defend its citizens. The authority to sue is granted because otherwise there is no real ability to stand up for the citizens.

REPRESENTATIVE ROSES clarified that his question is whether total responsibility is put on the state to file suit on behalf of a disenfranchised individual. He further asked if the state is put in a position of being sued by the disenfranchised individual because the state refused to file the suit.

MS. STANCLIFF deferred to Ms. Cunning.

[1:37:15 PM](#)

TINA CUNNING, Special Assistant, State/Federal Issues, Office of the Commissioner, Alaska Department of Fish & Game, recalled that there was only one case actually taken up by the AG into the federal court system on behalf of the citizens of Alaska. That case was in regard to cabin regulations adopted by the National Park Service. For a case to be carried by the state on behalf of citizens, it would have to meet the criteria of Alaska's Department of Law and attorney general. "So, no," she advised, "The full burden of representing citizens would not fall to the state."

[1:38:04 PM](#)

REPRESENTATIVE ROSES asked Ms. Cunning whether she knew of any instances in which individuals bringing cases before the commission were dissatisfied with the results and they then filed a lawsuit against the state claiming inadequate representation.

MS. CUNNING replied no. The commission was very successful in working cooperatively to resolve issues on behalf of the citizens, she opined.

[1:38:48 PM](#)

REPRESENTATIVE GUTTENBERG recalled that the previous commission held hearings in affected communities. He inquired as to how

responsive the commission was to the issues raised in those hearings.

MS. CUNNING commented that while the hearings were held by the commission, the real work was done by the executive director and the executive director's staff. Having become experts in federal law and policies, it was the staff who advised the public on how to seek resolution for themselves or the staff worked directly with the federal agency on the citizens' behalf to resolve the issue. Ms. Cunning recalled that only one particular issue did not reach a positive solution.

[1:41:19 PM](#)

REPRESENTATIVE GUTTENBERG continued regarding the commission's responsiveness to the wishes of affected local communities. He specifically referred to the commission's endorsement of a proposal for private construction of a railroad and general access into the northern portion of Denali National Park despite the long time, and nearly unanimous, opposition from members of the nearby community whom he represents.

MS. CUNNING stated she could not provide a gauge on issues such as the northern access route because the Alaska Department of Fish & Game's involvement is limited to its responsibilities. However, she did note that in the last years of CACFA, it was poorly funded and thus she was not certain how able it was to conduct hearings in local areas.

[1:43:29 PM](#)

REPRESENTATIVE SEATON asked how the Alaska Department of Fish and Game (ADF&G) envisioned the interaction, or the overlapping authority, of this commission with the federal subsistence advisory board.

MS. CUNNING noted that there was a five-year overlap between establishment of federal subsistence advisory boards and defunding of the [previous] commission. During that overlap, the focus of CACFA and its executive director was primarily on federal land management, not the allocation of fish and wildlife on those lands.

[1:45:23 PM](#)

REPRESENTATIVE SEATON expressed concern that the new commission's focus could be totally dependent on who is the

executive director or on the commission members' ideas. With federal subsistence regulations being so contentious, he said he feared that CACFA could actually become a competing state agency to the local fish and game advisory board process or the federal subsistence board process.

[1:46:52 PM](#)

DEL ACKELS, speaking as a former member of CACFA, informed the committee he had served on the commission over a fifteen-year period through four governors. He stated that the commission's main goal was the ANILCA process that radically altered what the state could do on federal lands. He pointed out that it was the [commission] who filed the navigability lawsuit against the [federal government], resulting in the State of Alaska receiving ownership of riverbeds.

MR. ACKELS opined that there would not be an overlap with subsistence issues. He pointed out that the previous commission was more directed at the broader issues on how [federal subsistence] would impact the State of Alaska. He related that the previous commission conducted overviews of the 72 management plans that were in place at the time, including the 9 major park plans.

MR. ACKELS turned to the makeup of the commission, which he said was very diversified. In fact, at one time over half of the commission's membership was rural and not urban, he opined. With regard as to how the commission should be set up, Mr. Ackels emphasized that the commission should not be beholden to any agency. The aforementioned is what caused its demise. Problems began, he said, when the commission was moved from the Office of Management & Budget (OMB) to DNR. Mr. Ackels related that CACFA was the only group that could file lawsuits which made it effective. However, the Alaska Land Use Council, a parallel entity, became ineffective because it had no way of backing up its recommendations with any type of legislation to stop things from happening.

MR. ACKELS recalled the previous commission's problems with funding because once the commission was placed in DNR, CACFA's funding was zeroed out each fiscal year. The initial budget of CACFA in 1981 was about \$530,000. From 1984 on the funding began to deteriorate. Once the budget fell to less than \$200,000 a year it became a burden to do its work.

MR. ACKELS stressed his belief that the commission is vitally important. "We're not looking at just certain user groups and how it will affect certain user groups," he said. "What we're looking at is what the state's going to be in the future." He mentioned that several public land orders (PLOs), although obsolete, are still in place. He gave details on the PLO of the Dalton Highway as one example of an issue that will affect both user groups and the state.

MR. ACKELS suggested funding the commission in blocks of five to ten years or indefinitely so that it is not beholden to DNR, ADF&G, or anybody else. He recommended that, if the commission was based out of OMB, it be with the understanding that the commission's directions and activities do not change when governors change.

MR. ACKELS acknowledged people's fears and said that CACFA will not interfere with subsistence unless it involves navigable riverbeds. He expressed concern that the upcoming 2009 fast-track bill could limit state and inholder access to federal lands by creating new conservation system units. Mr. Ackels concluded by emphasizing that the AG's office is very important and that someone from the AG's office always attended the [previous] commission's meetings.

1:58:22 PM

RICKY GEASE, Executive Director, Kenai River Sportfishing Association, noted that the Kenai Peninsula is a mixture of federal and state lands along with private property. He opined that a commission is important for ensuring that management agencies adhere to federal regulations. Mr. Gease pointed out that the state has filed requests for reconsideration because the federal subsistence board has been inconsistent and has not followed federal subsistence policies and procedures as directed. Mr. Gease stressed that it would be nice for people to have a place to go to express their feelings and have those issues be researched. Because there are a lot of land use issues coming up on the Kenai Peninsula, Mr. Gease offered his wholehearted support for a commission.

2:00:38 PM

CO-CHAIR JOHNSON closed public testimony and announced that HB 87 would be held for further consideration.

REPRESENTATIVE ROSES related concern with the indeterminate fiscal note and asked that a figure for making it a viable commission be brought to the committee. He also requested a legal opinion regarding whether the state could be put into an adverse position should a citizen believe the commission failed to act in serving that citizen's purpose.

REPRESENTATIVE GUTTENBERG requested a funding history of the former CACFA.

CO-CHAIR JOHNSON agreed with getting a legal opinion, but shared his philosophy that the House Resources Standing Committee should deal with the resource aspect of bills and let the House Finance Committee use its expertise to deal with the financial aspects.

HB 25 - RECREATIONAL LAND USE LIABILITY/ADV. POSS

[2:03:58 PM](#)

CO-CHAIR JOHNSON announced that the next order of business would be HOUSE BILL NO. 25, "An Act relating to landowners' immunity for allowing use of land without charge for a recreational activity; relating to landowners' liability where landowner conduct involves gross negligence or reckless or intentional misconduct; relating to claims of adverse possession and prescriptive easements, or similar claims; and providing for an effective date."

[2:04:12 PM](#)

REPRESENTATIVE SEATON, sponsor of HB 25, explained that the intent of HB 25 is to provide landowners comfort in allowing free public use of their land for recreation without fear of being sued should someone get hurt. The aforementioned is achieved by raising the standard of care that a landowner owes for allowing someone to use their land. The bill provides immunity from suit unless there is gross negligence, intentional misconduct, or reckless endangerment. The bill also provides that permission does not have to be explicit - if a landowner does not prevent somebody from using his/her land, then the landowner is implicitly letting them use it for free for recreation. However, running barbed wire across a trail would not give a landowner immunity under this bill. Representative Seaton noted that Alaska has handled immunity for recreational uses through trail easements, which are limited to 50 feet wide. He pointed out that landowners have no immunity if easements are

over 50 feet wide. He further pointed out that such easements have to be picked up by the state or municipal government. However, state and municipal governments are reticent to acquire easements because of surveying costs and other things.

REPRESENTATIVE SEATON emphasized that HB 25 pertains only to free public use. This bill does not cover those who charge a fee. There is an Alaska statute that gives some protections to people operating commercial land uses like ski slopes. This bill does not cover the aforementioned group or municipalities or governments. He stressed that HB 25 also protects landowners from adverse possession or prescriptive easement claims by someone using the property for recreation.

[2:09:20 PM](#)

REPRESENTATIVE SEATON noted that material in the committee's packet provides a breakdown of what is happening in other states in this regard and shows that HB 25 is consistent with practices in many other states. He informed the committee that the House Resources Standing Committee considered and passed an identical bill last year and that the bill was unanimously passed by the House of Representatives.

[2:10:40 PM](#)

REPRESENTATIVE GUTTENBERG asked if Representative Seaton was satisfied that the language on page 1, line 9, covers the entire range of protections that is being sought.

REPRESENTATIVE SEATON affirmed that he thought it did, in particular because of the reference to indirect permission.

[2:11:38 PM](#)

CO-CHAIR GATTO inquired about cases in which a landowner posts his/her land against trespassing, yet someone trespasses and is hurt. Under existing statutes, could the homeowner be sued, he asked.

REPRESENTATIVE SEATON commented that the legal liability is very murky. There is a statute that allows for unimproved land, but the question is what constitutes unimproved land. Under existing law and HB 25 [a landowner] can be sued. However, statutorily under HB 25 a suit would have to be for gross negligence, reckless, or intentional conduct rather than simple negligence.

[2:13:20 PM](#)

CO-CHAIR GATTO asked if it is considered charging [a fee] when a landowner collects a fee for someone to come onto the land to pick potatoes or cut firewood.

REPRESENTATIVE SEATON referred to page 2, line 22, and pointed out that Representative Gatto's example would not give the landowner immunity because it wasn't for free recreational use of the private land. In further response to Co-Chair Gatto, Representative Seaton confirmed that HB 25 deals solely with recreational use and raising the standard under which a suit could take place and be effective. A commercial venture on one's land is covered by totally different statutes.

CO-CHAIR JOHNSON announced his intention to move HB 25 from committee.

[2:16:22 PM](#)

DAVE BRANN, Kachemak Nordic Ski Club, reported that in his 30 years of experience as a volunteer constructing and maintaining ski trails, the biggest deterrent to recreational trail development has been reluctance of private landowners to have trails cross their property due to liability concerns. Mr. Brann related support for HB 25 because of its simplicity and clarity to encourage private landowners to allow recreational use. Mr. Brann concluded by encouraging the committee to support and report out HB 25.

[2:18:33 PM](#)

KARYN NOYES, Conservation Director, Kachemak Heritage Land Trust, expressed strong support for HB 25. Kachemak Heritage Land Trust works on trail and public access issues across the Kenai Peninsula. Private landowners are often concerned about liability in allowing the public to access their land and yet these landowners do support trail development and use. By decreasing liability to landowners, a more comprehensive trail network can be created and this will enhance recreational opportunities for both visitors and residents.

[2:19:23 PM](#)

LINDSAY WINKLER, Homer Soil & Water Conservation District, Alaska Association of Conservation Districts, related her

organization's support for HB 25. All 11 districts in the Alaska Association of Conservation Districts - from Delta down to Kodiak - supported last year's [identical] bill. The association's support is driven by the clarity the bill provides to landowners and the standard language that is used across the country, she said. Furthermore, the bill specifically states that this informal, noncommercial use does not constitute a basis for prescriptive easement against a landowner.

[2:20:37 PM](#)

JACK MOSBY, Alaska Trails, pointed out that Alaska Trails, an all-volunteer group, conducted numerous trails training classes throughout the state. The number one issue raised in all of those classes was liability, he related. The organization wholeheartedly supports passage of HB 25, he said.

[2:21:30 PM](#)

RICKY GEASE, Executive Director, Kenai River Sportfishing Association, affirmed his organization's support of HB 25. He then asked if the definition of "recreational activity" would include personal uses. He then related a situation on the Kenai River in which there is commercial and private ownership that would like to provide access to various users. He asked if HB 25 would cover this situation. In response to Co-Chair Johnson, he agreed to discuss the matter with the sponsor.

[2:23:30 PM](#)

ANNE MARIE HOLEN, Assistant to the City Manager, City of Homer, testified on behalf of Homer's City Manager who was attending other meetings. She related that in 2006 the Homer City Council strongly endorsed last year's [identical] bill. Outdoor recreation is an important part of Homer's identity and local economy. Ms. Holen noted that HB 25 addresses the concerns of landowners who support trails but are nervous about liability. It provides protection for well-meaning landowners without offering protection to those who are reckless or grossly negligent. From the City of Homer's perspective, HB 25 is a common sense solution for everyone involved.

[2:24:43 PM](#)

JULIE ENGBRETSSEN supported HB 25 as a way for property owners to allow recreation on their lands without undue liability. The Kenai Peninsula Borough does not have trails powers and cannot

accept trail easements. In unincorporated areas, the state is the only entity that can accept easements and this is a cumbersome process that takes time and money. She remarked that it is important to protect Alaskans' quality of life and it is reasonable for the state to provide protections for property owners that allow for recreational use.

[2:25:50 PM](#)

MILLIE MARTIN said she concurred with all that had been said before her. She advised that a resolution supporting HB 25 will soon be coming before the Kenai Borough Assembly. She related that she is one of the private property owners who wants to designate ski trails across her land. The current statutory provisions, she opined, do not provide adequate protection as it only provides tort immunity if the land is unimproved. She referred to litigation in which the University of Alaska was denied immunity for a sledding hill on its property.

[2:27:28 PM](#)

CO-CHAIR GATTO ascertained that the university ruling was because the court considered the sledding hill improved property.

MS. MARTIN said that was correct. Therefore, she surmised that the court would consider any kind of an improved ski trail an improvement and thus she appreciated HB 25.

[2:28:21 PM](#)

ROBERTA HIGHLAND noted her strong support for HB 25. She explained that she and her husband allow people to use trails on their land and this bill would relieve concerns about litigation.

[2:28:51 PM](#)

CO-CHAIR JOHNSON closed public testimony.

[2:29:41 PM](#)

REPRESENTATIVE ROSES informed the committee that he has a conflict of interest because he owns some recreational property in Kachemak Bay. There being no objection, Representative Roses would be required to vote.

[2:30:52 PM](#)

REPRESENTATIVE WILSON moved to report HB 25 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, HB 25 was reported from the House Resources Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at [2:31:33 PM](#).