

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

January 31, 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 Scott Kawasaki

**MEMBERS ABSENT**

Representative Vic Kohring  
Representative David Guttenberg

**COMMITTEE CALENDAR**

HOUSE BILL NO. 40

"An Act relating to voluntary land trades, purchases, and leases to enhance public access to certain streams for fishing, hunting, and recreational activities."

- MOVED CSHB 40(RES) OUT OF COMMITTEE

HOUSE BILL NO. 87

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

- MOVED CSHB 87(RES) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 40

SHORT TITLE: PUBLIC ACCESS TO FISHING STREAMS

SPONSOR(S): REPRESENTATIVE(S) GARA

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	RES, FIN
01/31/07	(H)	RES AT 1:00 PM CAPITOL 124

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
01/24/07	(H)	Heard & Held
01/24/07	(H)	MINUTE(RES)
01/31/07	(H)	RES AT 1:00 PM CAPITOL 124

**WITNESS REGISTER**

REPRESENTATIVE LES GARA  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 40.

RICKY GEASE, Executive Director  
Kenai River Sportfishing Association (KRSA)  
Soldotna, Alaska

POSITION STATEMENT: Testified in support of HB 40; testified in support of HB 87.

ED FOGELS, Acting Deputy Commissioner  
Anchorage Office  
Office of the Commissioner  
Department of Natural Resources (DNR)  
Anchorage, Alaska

POSITION STATEMENT: Provided information and answered questions regarding HB 40.

DICK MYLIUS, Acting Director  
Central Office  
Division of Mining, Land and Water  
Department of Natural Resources (DNR)  
Anchorage, Alaska

POSITION STATEMENT: Provided information and answered questions regarding HB 40; provided comments during discussion of HB 87.

MELANIE LESH, Legislative Liaison  
Office of the Commissioner  
Department of Natural Resources (DNR)  
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 40.

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

SUE STANCLIFF, Staff  
to Representative Mike Kelly  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Spoke on behalf of the sponsor of HB 87,  
Representative Kelly, and answered questions.

ROD ARNO, Executive Director  
Alaska Outdoor Council (AOC)  
Wasilla, Alaska  
POSITION STATEMENT: Spoke in support of reestablishing the  
Citizens' Advisory Commission on Federal Management Areas in  
Alaska.

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

#### **ACTION NARRATIVE**

**CO-CHAIR CRAIG JOHNSON** called the House Resources Standing  
Committee meeting to order at [1:01:15 PM](#). Representatives  
Roses, Edgmon, Kawasaki, Gatto, and Johnson were present at the  
call to order. Representatives Seaton and Wilson arrived as the  
meeting was in progress.

#### **HB 40 - PUBLIC ACCESS TO FISHING STREAMS**

[1:01:39 PM](#)

CO-CHAIR JOHNSON announced that the first order of business  
would be HOUSE BILL NO. 40, "An Act relating to voluntary land  
trades, purchases, and leases to enhance public access to  
certain streams for fishing, hunting, and recreational  
activities."

REPRESENTATIVE LES GARA, Alaska State Legislature, sponsor,  
explained that HB 40 would protect public access to fishing  
streams in the future. While Alaskans currently enjoy the best

public access to fishing streams of anywhere in the country, he warned that Alaska is poised to make the same mistakes as the other 49 states. He relayed how public access to Montana's great fishing streams is now largely prevented due to private landownership. Only people with money or special connections are now able to access Montana's famous fishing streams, he opined.

REPRESENTATIVE GARA noted that the Department of Natural Resources (DNR) and the Alaska Department of Fish & Game (ADF&G) already have the ability to purchase land and easements, so HB 40 does not give them any new power. He pointed out that the bill simply directs the DNR and the ADF&G to work together and focus their efforts on purchasing land or easements in those areas where public access will be lost in the future if the land is developed.

REPRESENTATIVE GARA highlighted several prized fishing areas in Alaska where public access will be lost when the privately owned, but currently undeveloped, riverbanks are developed: Anchor River and Deep Creek on the Kenai Peninsula; Montana Creek, Willow Creek, and Little Willow Creek above the Parks Highway; and the Salcha River located off the Richardson Highway. By directing DNR and ADF&G to focus on purchasing land and/or easements in areas like these, he said, HB 40 ensures that public access will be maintained when the land is developed in the future.

REPRESENTATIVE GARA went on to explain that under a 20-year-old state land disposal statute, the state retains public access to rivers when lands are disposed. However, no access was retained on state lands disposed before that law went into effect, nor was access retained on federal lands disposed under the Alaska National Interest Lands Conservation Act (ANILCA). He noted that private landownership along the aforementioned rivers came from ANILCA disposals.

REPRESENTATIVE GARA stressed there is nothing in HB 40 that expands the state's rights of eminent domain. He emphasized the bill's intent is to pursue voluntary land trades or purchases with willing landowners.

[1:06:49 PM](#)

CO-CHAIR GATTO commented that eminent domain pertains to the taking of private property for public use. Since HB 40 pertains to public use, he said he is concerned that the state could

declare eminent domain over river banks without taking the whole piece of property.

REPRESENTATIVE GARA pointed out that the eminent domain law of 2006 was specifically rewritten by the legislature to prevent such use of eminent domain for obtaining trail or recreational access. If a landowner is unwilling to sell, he emphasized, HB 40 requires the state to look for another parcel from a willing seller. In further response to Representative Gatto's concerns, he noted that the bill focuses on remote rivers, not small parcels of developed urban land along a riverbank. The purpose of the bill is to obtain public access before development has taken place. Once land is developed, he stressed, it is prohibitively expensive to buy back.

[1:10:36 PM](#)

REPRESENTATIVE WILSON inquired about an apparent conflict. She observed that on page 3, lines 28-29, subsection (e), it says in part "shall submit a plan to acquire public access", while the third paragraph of the sponsor statement says the commissioner of DNR is directed to take action "as funding is available".

REPRESENTATIVE GARA explained that HB 40 is essentially what he termed a "paper plan." He assured the committee that while the DNR and the ADF&G would be required to submit a plan, it does not force them to actually buy the land. If the legislature decides not to fund a plan, then the agencies cannot do it. He relayed that folks within the agencies have told him that creating a plan would be a helpful exercise because it requires them to look ahead and focus on identifying areas that will be important for public access in the future.

[1:12:07 PM](#)

REPRESENTATIVE WILSON expressed apprehension about requiring [the DNR and the ADF&G] to expend time and effort developing a public access plan that the legislature then chooses not to fund.

REPRESENTATIVE GARA explained that the bill's first fiscal note of \$58,000 pays for developing the initial plan. If the legislature does not fund purchasing the areas identified in the plan, then, he said, the plan would simply sit on the shelf. The agencies are not required to come up with a new plan every year. Representative Gara advised that due to an error on his part amendments to reduce the fiscal notes would be forthcoming.

1:14:08 PM

RICKY GEASE, Executive Director, Kenai River Sportfishing Association (KRSA), offered his organization's strong support of HB 40. He stated that the KRSA works in partnership with the ADF&G and the DNR on the Kenai River and other rivers on the Kenai Peninsula. The bill would promote upper division strategic planning and cooperation between the DNR and the ADF&G on these issues. Mr. Gease predicted that the Kenai River's trend of property prices doubling every couple of years will spread to Alaska's other river systems. The bill is timely, he said, because it would ensure public access and save money in the long run.

1:15:57 PM

ED FOGELS, Acting Deputy Commissioner, Anchorage Office, Office of the Commissioner, Department of Natural Resources (DNR), informed the committee that the DNR staff has reviewed the bill and the department agrees that the rivers listed in bill are very important to the state. He reported that these rivers receive intensive public use for recreational sportfishing and that there are significant amounts of private land along most of these rivers. The department believes there are currently access problems and that there will be more access problems along these popular rivers in the future.

MR. FOGELS directed attention to page 3, lines 21-24, subsection (c), regarding the words "amount of state land". He noted that some of the lands being acquired might be right-of-ways rather than absolute fee simple ownership. Therefore, the DNR believes "acreage of state land" would be a better phrase. That way, if a certain amount of acreage is acquired, then the DNR would be required to dispose of the same amount of acreage.

MR. FOGELS also pointed out that the "no net loss" concept embodied in the aforementioned subsection (c) is keyed into subsection (b), lines 15-20, of the same page. He emphasized that the public access fund is defined in statute as a fund in which monies come only from individuals or corporations, not from the state. Therefore, the DNR's interpretation is that the "no net loss" concept is specifically tied only to monies from individuals or corporations, and not from state funds.

1:18:47 PM

REPRESENTATIVE SEATON asked whether Mr. Fogels is suggesting that on page 3, line 16, the words "or other funding sources" be inserted after "AS 38.05.874".

MR. FOGELS clarified that the DNR's interpretation of the bill as currently written is that the "no net loss" concept would not apply if state funds are used to acquire [land for public access]. He said he did not wish to take a stand one way or another, but merely to point out this interpretation.

[1:19:48 PM](#)

CO-CHAIR GATTO queried whether the definition of "meander mile", as used on page 4, line 11, referred to the center of the stream or to one bank.

MR. FOGELS said, under the DNR's definition, a meander mile is measured along the bank at ordinary high water. Addressing a further question by Representative Gatto, he said the riverbank measurement would be taken along the same side of the river on which the property was located.

[1:21:07 PM](#)

CO-CHAIR JOHNSON, after ascertaining that no one else wished to testify, closed public testimony on HB 40.

REPRESENTATIVE KAWASAKI moved that the committee adopt Amendment 1, which read [original punctuation provided]:

Page 2, lines 4-5:

Delete "only include on the list land across which the owner voluntarily is willing to allow or negotiate public access."

Insert "exclude land from the list if the commissioner is notified that the owner is unwilling to allow or negotiate public access."

[1:22:00 PM](#)

REPRESENTATIVE KAWASAKI explained that Amendment 1 removes the requirement that the ADF&G commissioner take action before the program is actually funded. The fiscal note will be adjusted accordingly, he said.

[1:22:49 PM](#)

REPRESENTATIVE GARA further explained that Amendment 1 is intended to resolve the ADF&G's concern that the bill, as currently written, requires the agency to phone every owner prior to his or her land being listed in the plan. It is cheaper to first put together the list of places needing access protection and then, if money is appropriated, start negotiating with the landowners.

REPRESENTATIVE SEATON [although no objection was stated] said he was removing his objection.

[1:23:49 PM](#)

CO-CHAIR JOHNSON, after ascertaining that there were no further objections, announced that Amendment 1 was adopted.

[1:23:57 PM](#)

REPRESENTATIVE KAWASAKI moved that the committee adopt Amendment 2, which read [original punctuation provided]:

Page 2, lines 20-21:

Delete "except that land adjacent to the Kenai River that is downstream of Skilak Lake may not be added to the list."

[1:24:07 PM](#)

REPRESENTATIVE SEATON objected for discussion purposes.

REPRESENTATIVE KAWASAKI explained that last year's bill exempted the Kenai River downstream of Skilak Lake and this amendment removes that exemption.

[1:24:31 PM](#)

REPRESENTATIVE SEATON asked whether the change proposed by Amendment 2 was at DNR's request.

REPRESENTATIVE GARA noted that [in 2006] there was conflicting testimony between people who did and did not want more public access on the Kenai River. He emphasized that HB 40 is not focusing on the Kenai River, as indicated by the bill naming streams where there are higher public access problems. He stressed that while some people would like to garner more public boat launch areas on the Kenai River, [Amendment 2] would not

require that additional access be purchased. The amendment simply allows the ADF&G and the DNR to do so if the agencies determine it is a good use of public money.

REPRESENTATIVE SEATON removed his objection.

[1:26:04 PM](#)

CO-CHAIR JOHNSON asked whether there were any further objections to adopting Amendment 2. There being none, Amendment 2 was adopted.

[1:26:11 PM](#)

REPRESENTATIVE KAWASAKI moved that the committee adopt Amendment 3, which read [original punctuation provided]:

Page 2, line 8 after "prevents"

Insert: ",or may prevent in the future,"

Page 2, line 26:

Delete "may"

Insert "shall"

Page 3, line 11, after "to the waterways is"

Insert: "or may in the future be"

Page 3, line 21:

Delete "(b) of"

Page 3, lines 22:

Delete "acreage"

Insert "amount"

[1:26:24 PM](#)

REPRESENTATIVE WILSON objected, noted that the change proposed to page 3, line 22, of the bill is incorrect, and moved that that portion of Amendment 3 that proposes to alter page 3, line 22, of the bill be amended as follows:

Page 3, line 22:

Delete "amount"

Insert "acreage"

CO-CHAIR JOHNSON asked whether there were any objections to the amendment to Amendment 3. There being none, Amendment 3 was amended.

[1:27:59 PM](#)

REPRESENTATIVE WILSON removed her objection to Amendment 3, as amended.

[1:28:07 PM](#)

CO-CHAIR JOHNSON objected to Amendment 3, as amended, for the purpose of discussion.

REPRESENTATIVE GARA directed attention to page 2, line 8. He acknowledged that private ownership is not currently limiting public access to most waterways, but that this is likely to be different in the future. By adding "or may prevent in the future" the bill would be addressing future problems that will likely occur. He continued that this is the same explanation for amending page 3, line 11.

REPRESENTATIVE GARA then directed attention to page 2, line 26. He opined that the commissioner of the DNR should listen to the public in coming up with a list of places deemed priorities for regaining public access. Therefore, "shall" should be substituted for "may".

[1:29:38 PM](#)

CO-CHAIR JOHNSON asked if requiring [the commissioner to consider public comment prior to submitting the list to the legislature] would add to the fiscal note.

REPRESENTATIVE GARA responded that he did not believe so. He emphasized his desire for a public comment process without litigation over a list. The bill provides that once the commissioner hears the public comment and makes decisions, the decisions cannot be appealed. Although, he said, if it was determined in the future that the DNR failed to do its job well, this provision could be changed.

[1:30:13 PM](#)

DICK MYLIUS, Acting Director, Central Office, Division of Mining, Land and Water, Department of Natural Resources (DNR), in response to questions, offered his belief that the ADF&G's

fiscal note has already factored in the cost of providing public involvement. Additionally, he said, he did not think changing "may" to "shall" would affect the fiscal note or create a liability because the bill only says the commissioner of the DNR shall "consider" public comments. Further, he noted, the bill prevents the listing of unwilling sellers.

[1:32:02 PM](#)

CO-CHAIR GATTO said he felt the words "in the future" in Amendment 3, as amended, were unnecessary given the preceding words "or may prevent".

REPRESENTATIVE GARA agreed. Responding to a suggestion that "preventing" be substituted for "prevents" in the portion of Amendment 3, as amended, that proposes to change page 2, line 8, Representative Gara said he felt it would create the risk of a judge interpreting the statute incorrectly. He then directed attention to the change proposed in Amendment 3, as amended, to page 3, line 21, and said deleting "(b) of" would achieve Mr. Fogels's goal.

[1:34:44 PM](#)

REPRESENTATIVE SEATON questioned whether deleting "(b) of" would then allow [the DNR] to use other funding sources besides the public access fund.

REPRESENTATIVE GARA explained that the public access fund was set up only as a means for the state to receive private money, and HB 40 allows the commissioner to use these monies to purchase lands. He clarified that under current law the commissioner may also use general fund (GF) money to purchase land.

REPRESENTATIVE GARA pointed out that language on page 3, lines 21-24, subsection (c), addresses a concern that there be no net loss of private property from the tax rolls. This subsection provides that private land cannot be purchased for public access without the commissioner disposing of the same amount of state land for private use in the same fiscal year. The way the bill is currently written, Representative Gara noted, this "no net loss" concept applies only if money comes out of the public access fund, but not if the money comes out of the GF. By deleting "(b) of", the "no net loss" concept applies regardless of where the money comes from.

1:37:25 PM

REPRESENTATIVE SEATON presented a hypothetical example involving the building of a road along a river for the purpose of recreational use. Would that be considered public access, he asked, and would it mean the DNR could not obtain access along that road unless the same amount of acreage was released that same year? Could HB 40, he queried, constrain obtaining other access.

REPRESENTATIVE GARA said he doubted there could be a year in which the amount of road built along a river could exceed the amount of state land put up for disposal. However, he said, the bill could be amended to exempt access obtained along such a road corridor.

1:39:08 PM

MR. MYLIUS added that he did not see any problems arising because the DNR generally offers up to 5000 acres of land a year. He said he doubted that that much private land would need to be acquired, especially if the DNR was primarily acquiring easements along the shoreline.

1:39:34 PM

REPRESENTATIVE ROSES voiced his concern that replacing acre for acre does not necessarily mean replacing value for value as it pertains to property tax rolls.

REPRESENTATIVE GARA responded that the importance of public access to fishing streams is, in his opinion, great enough to stand on its own even if a thousand dollars' worth of taxable property were lost in the process. He agreed with the importance of a state policy requiring that land taken back into the public domain be replaced with other land being put into private ownership. Rewording the bill to require equivalent value would end up with a lot of appraising. Given the significant amount of land put up for disposal each year, it would be an unlikely problem, he opined.

1:41:59 PM

REPRESENTATIVE ROSES clarified that he is merely questioning the rationale. He said he feels it is important to make a distinction that equal acreage is not equal value. He agreed

with Representative Gara that the value of public access far outweighs the loss in revenue.

[1:42:53 PM](#)

REPRESENTATIVE EDGMON requested clarification regarding page 3, lines 28-29, subsection (e). Does "shall submit a plan" mean the ADF&G shall make available a plan? Would the plan be in-house at the ADF&G and the DNR, he asked, and not be submitted to the legislature or some outside entity.

REPRESENTATIVE GARA responded that the bill requires the ADF&G and the DNR to come up with a planning document. The departments may or may not present it to the legislature, but he hoped they would. By forcing the departments to come up with a plan, he stressed, it makes them think through the problem. It would be the commissioners' decision as to whether presenting the plan to the legislature was a priority for that year.

[1:44:14 PM](#)

CO-CHAIR JOHNSON directed the committee's attention back to Amendment 3, as amended.

[1:44:44 PM](#)

REPRESENTATIVE SEATON [although he had not stated an objection] said he was removing his objection.

CO-CHAIR JOHNSON removed his objection to Amendment 3, as amended.

[1:44:56 PM](#)

CO-CHAIR JOHNSON asked whether there were any further objections to adopting Amendment 3, as amended. There being none, Amendment 3, as amended, was adopted.

[1:45:17 PM](#)

REPRESENTATIVE EDGMON suggested the committee consider whether or not it wants to require submission of the plan to the legislature.

REPRESENTATIVE GARA surmised that it probably would not be a separation of powers issue and therefore the committee could make it be a requirement.

[1:45:59 PM](#)

MR. FOGELS said he is unsure whether the DNR has an opinion as to whether submitting the plan to the legislature should be a requirement, but he said he did not think it would matter one way or the other.

[1:46:26 PM](#)

REPRESENTATIVE WILSON inquired whether the DNR would come to the legislature automatically if the bill stayed as currently written.

MR. FOGELS stated that his interpretation of the bill is that the DNR would be required to present the plan to the legislature, and it would be his intention to do so regardless.

[1:47:01 PM](#)

REPRESENTATIVE WILSON recommended the committee specifically state its intent one way or the other.

[1:47:35 PM](#)

REPRESENTATIVE SEATON queried as to whether the DNR and the ADF&G submitted annual reports to the legislature. He said he is concerned that the departments not be required to submit the plan as a separate report if it could be incorporated elsewhere.

MR. FOGELS stated that the DNR submits several reports to the legislature every year, but he is unsure if this particular report could be incorporated into any of the others. In further response to Co-Chair Johnson, he said he guesses the plan could probably be incorporated. However, without the list of required reports at his fingertips, he is unable to say for certain, and suggested that it may be cleaner to submit a separate report.

[1:48:59 PM](#)

CO-CHAIR GATTO asked for clarification about whether submitting a document to the legislature meant a report would go to each individual member or a single report would go to the speaker.

MELANIE LESH, Legislative Liaison, Office of the Commissioner, Department of Natural Resources (DNR), reported that several of the DNR's divisions have statutory requirements to submit

reports to the legislature. Each report has different due days in statute, and she will often combine a division's reports into one document. She explained that she makes 60 copies of each report and delivers them to the Senate president's office and the House speaker's office for distribution.

[1:51:23 PM](#)

REPRESENTATIVE SEATON inquired as to whether HB 40's February 1 report date would fit in with any of the other report date requirements.

MS. LESH affirmed that it would.

[1:52:00 PM](#)

CO-CHAIR GATTO moved that the committee adopt Conceptual Amendment 4, adding "to the legislature" after the word "submit" on page 3, line 29. There being no objection, Conceptual Amendment 4 was adopted.

[1:53:21 PM](#)

REPRESENTATIVE WILSON moved to report HB 40, as amended, out of committee with individual recommendations and the accompanying [fiscal notes]. There being no objection, CSHB 40(RES) was reported from the House Resources Standing Committee.

HB 87 - CITIZEN ADVISORY COMM ON FEDERAL AREAS

[1:54:11 PM](#)

CO-CHAIR JOHNSON announced that the last 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."

[1:55:35 PM](#)

REPRESENTATIVE WILSON moved to adopt the proposed committee substitute (CS) for HB 87, Version 25-LS0306\L, Bullard, 1/31/07, as the working document. There being no objection, Version L was before the committee.

[1:55:45 PM](#)

SUE STANCLIFF, Staff to Representative Mike Kelly, Alaska State Legislature, sponsor, on behalf of Representative Kelly, summarized the 1/25/07 legal opinion prepared by Legislative Legal and Research Services. The opinion clearly states, she said, that since the Citizens' Advisory Commission on Federal Management Areas in Alaska acts only in an advisory capacity and makes no final decisions affecting anyone's rights; the opinion does not envision the state being held liable because of the commission's actions.

MS. STANCLIFF, on the issue of the prior commission's funding history, said that Legislative Legal and Research Services prepared a history which shows the commission began in 1987 with two staff [and an annual budget of \$209,800] and ended in 1999 with a staff of one and a budget of \$86,300. She further noted the committee's packets include letters of support from the Alaska Outdoor Council and the Kenai River Sportfishing Association.

[1:58:11 PM](#)

REPRESENTATIVE MIKE KELLY, Alaska State Legislature, sponsor, detailed the changes encompassed in Version L. The number of commission members, as outlined in proposed AS 41.37.170, has been reduced from 16 members to 12 and this reduction could have a positive impact on the fiscal note, he commented. He then directed attention to page 2, proposed AS 41.37.190, and noted that all terms are now four years. He also pointed out that the transitional language on page 4 provides for staggering of the terms in order to preserve the commission's historical perspective. Version L also establishes a sunset date of June 30, 2014, which is intended to give the commission sufficient time to get up and running, he advised.

[2:00:46 PM](#)

CO-CHAIR JOHNSON asked whether Version L addresses the committee's concerns about the commission's regional make-up.

REPRESENTATIVE KELLY responded that both he and Tina Cuning believe the original language is adequate and allows for a commission that is responsive to and reflective of the different users and uses. Also, the original language helps ensure diversity because of its reference to the four judicial districts. He expressed concern about getting tied up by being too specific.

[2:02:32 PM](#)

REPRESENTATIVE SEATON pointed out that on other commissions the seats are designated so that when re-appointments are made and the people change, the diversity remains. He opined that given the seven year timeline, it is especially important to ensure diversity.

[2:03:54 PM](#)

CO-CHAIR JOHNSON said he is unsure whether the committee understands the users and uses that would be dealt with by the commission.

[2:04:26 PM](#)

REPRESENTATIVE WILSON inquired whether the users would be trappers, hunters, fishermen, and/or other users.

REPRESENTATIVE KELLY noted that in addition to the aforementioned, there are miners and many others, so trying to be specific will result in missing some. Additionally, he pointed out, it is unknown today what changes in uses might occur in the future.

[2:06:45 PM](#)

REPRESENTATIVE KELLY, in response to a question, said that commission members appointed by the legislature will be appointed by the speaker of the House and the Senate president.

[2:08:52 PM](#)

CO-CHAIR GATTO moved adoption of [Conceptual Amendment 1], to delete from page 2, line 24, after "by", the words, "a member of". There being no objection, Conceptual Amendment 1 was adopted.

REPRESENTATIVE KELLY, in response to comments, reiterated his belief that it would not be a good idea to make the bill too specific with regard to membership make-up.

[2:11:23 PM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council (AOC), stated the AOC's support for reestablishing the Citizens' Advisory Commission on Federal Areas in Alaska. He described

his participation on behalf of the AOC in a number of federal public processes dealing with access, the [U.S.] Bureau of Land Management (BLM), and resource management plans around the state for federal refuges, parks, and wild and scenic rivers. He noted the AOC was an intervener in a lawsuit blocking recreational access in the Nabesna Road area. The AOC is also an intervener with the state on navigable waters issues. Mr. Arno said he has participated in game management issues, and has provided public comment on hunting closures of the Kenai's Skilak Lake Loop area, as well as bear hunting in the McNeil River area. Additionally, the AOC has participated before the Federal Subsistence Board on the "rural/non-rural determination." In all of these cases, he stressed, it would have been nice to have had this commission to help the citizens of Alaska.

[2:13:45 PM](#)

RICKY GEASE, Executive Director, Kenai River Sportfishing Association (KRSA), presented his organization's support of HB 87. He explained that the KRSA interacts with the federal government regarding fishery conservation concerns and access issues on the Kenai Peninsula.

[2:14:14 PM](#)

REPRESENTATIVE WILSON asked Mr. Arno whether he felt comfortable with how the bill is worded regarding the diversity of users and uses.

MR. ARNO stated that based on his experience with the prior commission, it seemed that the different users of public land were represented. Responding further to Representative Wilson, he said he believes the language is identical to that of the original authorizing legislation.

[2:15:02 PM](#)

CO-CHAIR GATTO asked Mr. Arno whether he thought the state could really have any influence over federal management of federal lands. He also asked for Mr. Arno's opinion regarding a hypothetical situation in which the federal government were the one with an advisory commission before the state.

MR. ARNO cited a case on navigable waters as an example that the only way to get the attention of federal land managers is in court. The commission could tell the legislature and the

administration when it will be necessary to file suit in court. Another example he cited involved environmental organizations suing to block access in the Nebesna Road area of Wrangell-St. Elias National Park & Preserve. It would have been nice to have the state intervene in that suit, he remarked; unfortunately, litigation [seems to be] the only way to get the attention of federal land managers. Additionally, he said, it would be fine with him if the shoe were on the other foot and the federal government had an advisory committee before the state.

[2:17:59 PM](#)

CO-CHAIR GATTO expressed his belief that a commission assembling information would be much more credible than an individual person.

[2:18:35 PM](#)

CO-CHAIR JOHNSON asked about the issue of the commission's make-up and the need for designating specific user groups as opposed to the language currently in the bill.

[2:18:54 PM](#)

TINA CUNNING, Special Assistant, State/Federal Issues, Office of the Commissioner, Alaska Department of Fish & Game (ADF&G), noted that she has been involved in the implementation of the Alaska National Interest Lands Conservation Act (ANILCA) since its passage in 1980.

DICK MYLIUS, Acting Director, Central Office, Division of Mining, Land and Water, Department of Natural Resources (DNR), said there are both pros and cons to having specific language regarding the commission's makeup. He indicated that some of the various advisory committees advising the DNR, primarily those for parks, do have very specific requirements for make-up. For example, the Wood-Tikchik State Park Management Council requires that specific villages be represented on the [council]. In those areas where it is for a specific area like a park, he said he thought it had worked very well. Since some commissions have general guidelines like [HB 87] and some have very specific ones, he said he finds it hard to say whether one way works better than the other. But, he said, he felt that if the language were too specific it could create problems.

[2:21:15 PM](#)

MS. CUNNING added that the appointments are made by the governor, the Senate president, and the speaker of the House. In her opinion, she relayed, that alone ensures that there will be a wide variety of representation. The four judicial districts will also be looking at it to make sure the user groups are represented.

[2:21:49 PM](#)

CO-CHAIR JOHNSON closed public testimony on HB 87.

[2:22:06 PM](#)

CO-CHAIR GATTO asked Representative Kelly whether he is aware of any lawsuits brought against the federal government as a result of action taken by the commission.

REPRESENTATIVE KELLY said he is unaware of any such lawsuits. He went on to explain that the beauty of the commission is that it resolves problems without having to file suits. A commission composed of Alaskans, ensures that the state's residents are treated fairly according to the law. It may well prevent lawsuits, he emphasized, rather than triggering them.

[2:23:32 PM](#)

REPRESENTATIVE ROSES said he appreciated the opinion from Legislative Legal and Research Services, but remains concerned about creating a disparity, and the position it could put the state in if the commission advises the attorney general to file a suit in one case but not in another. In this regard, he added, the testimony from [the AOC and the KRSA] that "it would have been nice to have help" on the two lawsuits makes him feel worse rather than better. He supports the concept, he explained, but still has difficulty with the lawsuit provision of [Section 41.37.250].

[2:24:34 PM](#)

REPRESENTATIVE KAWASAKI asked whether the sponsor would object to removing the suit provision of [Section 41.37.250], since it seems obvious that commissions have an opportunity to recommend a course of action to any department. He noted he had never seen "that word" in any statute pertaining to any other commission.

REPRESENTATIVE KELLY responded that he would have a problem removing [Section 41.37.250]. He said that specifically stating in the bill that the commission has the power to recommend legal action to the attorney general puts more teeth into it.

[2:25:57 PM](#)

REPRESENTATIVE WILSON surmised that the commission would be able to recommend suit regardless of whether the language pertaining to suits is included in the bill.

REPRESENTATIVE KELLY acknowledged that since the bill does not prevent suits, it could be construed to mean that the commission could recommend suits. However, he pointed out that the commission is strictly advisory because it cannot bring or file a lawsuit – it can only make the recommendation.

[2:26:43 PM](#)

REPRESENTATIVE WILSON noted that the aforementioned legal opinion does not say anything about lawsuits.

REPRESENTATIVE KELLY concurred that the opinion illustrates that the commission is strictly advisory, that it cannot bring or file an action.

[2:27:11 PM](#)

CO-CHAIR JOHNSON agreed that the ability to recommend a lawsuit gives the commission some teeth and brings people to the table. He said he felt it would be unwise to take that provision out of the bill.

[2:27:58 PM](#)

CO-CHAIR GATTO asked if the fiscal note is still indeterminate.

REPRESENTATIVE KELLY said it is.

MS. STANCLIFF informed the committee that there would be a new fiscal note based on Version L which reduces the number of commission members. She also noted, however, that the decision regarding the number and location of commission staff has not yet been made and so the fiscal note remains indeterminate.

REPRESENTATIVE KELLY said he did not know whether a solid number for the fiscal note could be determined at this time, but

remarked that parameters have now been set for arriving at a more solid number.

[2:29:21 PM](#)

CO-CHAIR JOHNSON suggested that a fiscal note could be extrapolated by reviewing the history of the previous commission.

[2:29:36 PM](#)

REPRESENTATIVE KAWASAKI questioned whether there really is no other commission, no other department, and no other person in the Department of Law or the ADF&G, that actually reacts to federal issues within the state. He has a problem, he stressed, with establishing more commissions when there are already commissions for too many things that could be dealt with in-house.

MS. STANCLIFF responded that there are currently no other departments, agencies, divisions, or entities that are representing the public on federal issues. There are ANILCA coordinators in the DNR and the ADF&G, but they are there for the state, not the general public. She explained that citizens are not familiar enough with the ANILCA to be able to interpret federal regulations. She said she believes Alaska's citizens are being harassed [by federal land managers] and that is why reestablishing the commission is important.

[2:31:45 PM](#)

REPRESENTATIVE KAWASAKI asked if this meant that had he been a user with questions or comments over the past several years without the commission, would he not have had a way to talk to someone in the commissioners' offices.

MS. STANCLIFF said no. The public has had to call the legislature, but legislative staff does not have the expertise to interpret federal regulations. She cited a case that she dealt with in her office that took over two years to resolve, but that a commission could have resolved the case in a month because of its expertise.

[2:32:56 PM](#)

REPRESENTATIVE EDGMON observed that the real question is not whether the commission serves a valid purpose, but whether the

state can afford another commission while departments are being asked to make budget cuts.

[2:33:48 PM](#)

CO-CHAIR JOHNSON disagreed. He suggested the committee deal only with the bill's resource aspect and let the House Finance Committee deal with the financial aspect.

[2:34:18 PM](#)

REPRESENTATIVE WILSON moved to report the proposed CS for HB 87, Version 25-LS0306\L, Bullard, 1/31/07, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 87(RES) 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 [2:34:34 PM](#).