

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

February 18, 2008

3:34 p.m.

MEMBERS PRESENT

Senator Charlie Huggins, Chair
Senator Bert Stedman, Vice Chair
Senator Lyda Green
Senator Lesil McGuire
Senator Gary Stevens
Senator Bill Wielechowski
Senator Thomas Wagoner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 253

"An Act relating to the appointment of members of the Board of Game; and providing for an effective date."

MOVED SB 253 OUT OF COMMITTEE

HOUSE BILL NO. 165

"An Act relating to providing field accommodations for big game hunters."

MOVED HB 165 OUT OF COMMITTEE

SENATE BILL NO. 176

"An Act relating to active game management and to the airborne or same day airborne taking of certain game animals; making conforming amendments; and providing for an effective date."

MOVED CSSB 176(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 253

SHORT TITLE: BOARD OF GAME

SPONSOR(S): SENATOR(S) HUGGINS

01/28/08	(S)	READ THE FIRST TIME - REFERRALS
01/28/08	(S)	RES
02/16/08	(S)	RES AT 11:00 AM BUTROVICH 205
02/16/08	(S)	Scheduled But Not Heard

02/18/08 (S) RES AT 3:30 PM BUTROVICH 205

BILL: HB 165

SHORT TITLE: BIG GAME GUIDES AND TRANSPORTERS

SPONSOR(S): REPRESENTATIVE(S) LEDOUX

02/28/07 (H) READ THE FIRST TIME - REFERRALS
02/28/07 (H) RES
03/12/07 (H) RES AT 1:00 PM BARNES 124
03/12/07 (H) Heard & Held
03/12/07 (H) MINUTE(RES)
03/19/07 (H) RES AT 1:00 PM BARNES 124
03/19/07 (H) Moved Out of Committee
03/19/07 (H) MINUTE(RES)
03/21/07 (H) RES RPT 8DP 1NR
03/21/07 (H) DP: WILSON, ROSES, GUTTENBERG, EDGMON,
KOHRING, SEATON, GATTO, JOHNSON
03/21/07 (H) NR: KAWASAKI
05/01/07 (H) RETURNED TO RLS COMMITTEE
05/05/07 (H) TRANSMITTED TO (S)
05/05/07 (H) VERSION: HB 165
05/07/07 (S) READ THE FIRST TIME - REFERRALS
05/07/07 (S) RES, JUD
05/09/07 (S) RES AT 4:00 PM BUTROVICH 205
05/09/07 (S) Heard & Held
05/09/07 (S) MINUTE(RES)
02/18/08 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 176

SHORT TITLE: ACTIVE GAME MANAGEMENT/AIRBORNE SHOOTING

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

05/10/07 (S) READ THE FIRST TIME - REFERRALS
05/10/07 (S) RES, JUD, FIN
02/18/08 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

JODIE SIMPSON, Staff to Senator Charlie Huggins

Alaska State Legislature

State Capitol

Juneau, AK

POSITION STATEMENT: Presented SB 253 on behalf of Senator Huggins, sponsor.

JIM MARCOTTE, Director
Boards Support Section

Alaska Department of Fish & Game (ADF&G)
Juneau, AK

POSITION STATEMENT: Testified in support of SB 253 and answered questions.

REPRESENTATIVE GABRIELLE LeDOUX
Alaska State Legislature
State Capitol
Juneau, AK

POSITION STATEMENT: Sponsor of HB 165.

SUZANNE HANCOCK, Staff to Representative Gabrielle LeDoux
Alaska State Legislature
State Capitol
Juneau, AK

POSITION STATEMENT: Answered questions on HB 165.

RICK METZGER
Kodiak, AK

POSITION STATEMENT: Supported HB 165.

JIM PETERSON
Kodiak, AK

POSITION STATEMENT: Supported HB 165.

ROBERT FITHIAN, Executive Director
Alaska Professional Hunters Association
Lower Tonsina, AK

POSITION STATEMENT: Supported HB 165.

PAUL JOHNSON, Chair
Big Game Commercial Services Board

POSITION STATEMENT: Answered questions on HB 165.

DOUG LARSON, Director
Division of Wildlife Conservation
Alaska Department of Fish and Game
Juneau AK

POSITION STATEMENT: Present for questions on SB 176.

KEVIN SAXBY, Senior Assistant Attorney General
Department of Law
Juneau AK

POSITION STATEMENT: Answered questions on SB 176.

WADE WILLIS, representing himself
Anchorage AK

POSITION STATEMENT: Opposed SB 176.

VIC VANBALLENBERGHE, Wildlife Biologist
Anchorage AK

POSITION STATEMENT: Opposed SB 176.

PAUL JOSLIN, representing himself
Anchorage AK

POSITION STATEMENT: Strongly opposed SB 176.

VAL GLOOSCHECNKO, representing herself
Anchorage AK

POSITION STATEMENT: Opposed SB 176.

JERRY McCUTCHEON, representing himself
Anchorage AK

POSITION STATEMENT: Supported SB 176.

JOHN TOPPENBERG
Alaska Wildlife Alliance
Soldotna AK

POSITION STATEMENT: Opposed SB 176.

JOEL BENNETT, representing himself
Juneau AK

POSITION STATEMENT: Opposed SB 176.

ACTION NARRATIVE

CHAIR CHARLIE HUGGINS called the Senate Resources Standing Committee meeting to order at [3:34:03 PM](#). Present at the call to order were Senators Wagoner, McGuire, Green, Stevens, Stedman, and Chair Huggins.

SB 253-MEMBERS OF THE BOARD OF GAME

[3:34:10 PM](#)

CHAIR HUGGINS announced the consideration of SB 253. As the sponsor, he asked Jodie Simpson to present the bill.

JODIE SIMPSON, staff to Senator Charlie Huggins, explained that the statutory change brings the terms for the Board of Game members in line with those of the Board of Fisheries. This will prevent problems arising from the short timeframe for newly appointed members to prepare for the large regulatory board meeting held in early March every year. It also will reduce confusion among the public as to which board members to contact

regarding issues. Noting packets included a letter from the board chair requesting the changes, she said Mr. Marcotte of the Boards Support Section would testify and answer questions.

[3:35:56 PM](#)

JIM MARCOTTE, Director, Boards Support Section, Alaska Department of Fish & Game (ADF&G), said ADF&G supports SB 253. He explained that the short time between when appointments typically are made in February - early in the legislative session - and the major board meeting that usually occurs in early March causes administrative problems. It is uncertain whether existing members will be reappointed and thus will have to prepare for that March meeting, and new appointees have little time, often just days, to prepare.

MR. MARCOTTE reported that a similar switch for the Board of Fisheries happened in 1996 and has worked well. It has given plenty of time for legislative review. Board members are seated starting July 1 and then are ready for the meeting cycle in fall, winter, and spring. It allows for new-member orientation, coordination with Department of Law staff, and so forth.

MR. MARCOTTE explained that currently, with Board of Game appointments made prior to the full legislative confirmation process, members may be looking over their shoulders to see how some actions play out politically. It would be better to have fully seated members as they take action during the March meeting. He said this change is administrative in nature, but recognizes the important role that the board has.

MR. MARCOTTE indicated packets also included the following: a chart of the transition period that allows current members to have terms which expire March 1, while terms for new appointees expire June 30; the current statute; a list of current Board of Game members; a summary of the board's two-year cycle, since it deals with different geographic areas of the state on a rotating basis; and an historical list of meeting dates and members.

[3:39:59 PM](#)

CHAIR HUGGINS asked why it took 12 years to do this. He also requested details on the unexpired terms.

MR. MARCOTTE replied that discussions of this issue have gone on for a couple of years and it was a matter of focus. As for unexpired terms, if a member leaves because of health or another reason, the replacement would continue only for the duration of

the original term. Thus the expiration of the terms would stay intact.

CHAIR HUGGINS mentioned failure to be confirmed.

MR. MARCOTTE agreed that has happened in the past.

CHAIR HUGGINS asked whether that is a change.

MR. MARCOTTE answered no. In further response, he said he couldn't think of any opposition to the bill.

CHAIR HUGGINS asked if it was Mr. Marcotte's brainchild.

MR. MARCOTTE responded that it was in collaboration with Kristy Tibbles, the Board of Game, and others in the department.

SENATOR STEVENS said it makes perfect sense to him. He asked what problems have arisen because members attend a meeting in March without legislative confirmation.

MR. MARCOTTE replied it's a twofold problem. First, the public perception is that the newly appointed member, not yet confirmed, doesn't have the full support of two branches of the government; it undermines that person's status as an acting board member. Second, if the member acts on proposals in March and is subject to confirmation following that, there is undue scrutiny of specific details or a single vote; that happened recently. It would be more appropriate to look at someone's overall ability to serve, rather than focusing on a single issue for which the member acted in good faith at the time.

CHAIR HUGGINS asked whether anyone else wished to testify; there was no response.

[3:44:04 PM](#)

SENATOR STEDMAN moved to report SB 253 from committee with individual recommendations and attached fiscal note(s). There being no objection, SB 253 was moved out of the Senate Resources Standing Committee.

The committee took an at-ease from [3:44:17 PM](#) until [3:47:26 PM](#).

HB 165-BIG GAME GUIDES AND TRANSPORTERS

CHAIR HUGGINS announced the consideration of HB 165.

[3:47:37 PM](#)

REPRESENTATIVE GABRIELLE LeDOUX, Alaska State Legislature, sponsor of HB 165, reminded members that it was heard last year and held in order to give the Department of Law (DOL) and Department of Public Safety (DPS) an opportunity to weigh in. She reported that DOL said the bill doesn't raise any issues for that department, and although DPS was notified of this hearing, there was no response; she surmised no news is good news.

REPRESENTATIVE LeDOUX recapped that in 1996 legislation was passed to define big game hunters, outfitters, and transporters and to provide regulations for licensing and other considerations. However, it had no provision for a person who simply wants to rent a cabin to people who may or may not be hunting.

REPRESENTATIVE LeDOUX pointed out that many rural Alaskans have cabins that are empty for part of the year and this bill allows them to rent their cabins without falling into any of the regulations found in the 1996 statute. Rural residents have few economic opportunities, and this provides one. She added that members of the Big Game Commercial Services Board have worked with her office to craft a bill that protects their interests while allowing others to do business. She deferred to Suzanne Hancock, who'd worked on the bill with the constituent whose e-mail brought this issue to their attention.

[3:49:55 PM](#)

SUZANNE HANCOCK, Staff to Representative LeDoux, noted the aforementioned constituent was on teleconference. She said others including outdoor groups have weighed in on behalf of individuals who wish to simply rent out a cabin without being present or providing accommodations or acting as an outfitter or guide.

CHAIR HUGGINS asked if anyone opposed this bill.

MS. HANCOCK replied this only takes care of cabins on private land and state and federal cabins on state and federal land; the one individual she heard from wanted the bill to be expanded to cover private cabins on leased land. The main reason that was decided against is because several groups such as the Big Game Commercial Services Board remembered that is what led to this law in the first place. In the 1980s some people falsely claimed to be outfitters and it sometimes involved leased property. Adding leased land would muddy a simple situation.

SENATOR WAGONER asked if the person who was renting out the cabins was a transporter or guide.

MS. HANCOCK answered no.

SENATOR WAGONER went on to ask if he had a business license and his business was renting cabins or hotel rooms, what current law prevents him from renting that cabin or hotel room to a hunter.

MS. HANCOCK offered to find out, saying it might take a minute.

CHAIR HUGGINS asked how renting out a cabin differs from renting out a motel room.

MS. HANCOCK responded that Mr. Metzger hadn't thought there was anything wrong with renting his cabin until the troopers showed up and said he wasn't supposed to do that.

[3:53:40 PM](#)

RICK METZGER, rural property owner from Kodiak Island, specified that he supports HB 165 and participated in developing HB 165. He explained that he hadn't been renting cabins for several years, because in November 2006 he was shut down by Kodiak enforcement. He was told because the word "usually" was removed from the definition of "field" in August 2006 and by renting a cabin in an area not associated with a city, town, or village, he was in violation of the definition of "field."

SENATOR WIELECHOWSKI cited AS 08.54.790, saying there is no "usually" associated with it. He asked where that ties in so that a person cannot rent out a cabin or house.

MR. METZGER referred to the outfitting portion of the "field" definition, saying it had some mention of facilities, but he didn't have it in front of him. Noting it got confusing and convoluted, Mr. Metzger added that he had a state business license and lots of correspondence from the Division of Occupational Licensing saying it was okay to rent the cabins until the time the troopers came and interpreted it differently. In response to Senator Wagoner, he said he isn't a transporter or big game guide, just a property owner. The violation was because he isn't in an area associated with a city, town, or village.

CHAIR HUGGINS apologized for the bureaucracy.

MR. METZGER added this was one opportunity for folks who live in desirable hunting areas to make a modest income from their property and he had lost that opportunity.

JIM PETERSON voiced support for HB 165, noting that he is one of the few people who live in Deadman Bay in the summertime and that he has known Rick Metzger since 1965. He said Mr. Metzger was providing a service so that modest-income people could rent a cabin and enjoy the beauty of southern Kodiak Island without hiring a guide. It brings joy to people and he saw nothing wrong with what he was doing.

[3:59:21 PM](#)

ROBERT FITHIAN, Executive Director, Alaska Professional Hunters Association, said his group supports the bill, which fixes a loophole that prevents people like Mr. Metzger from doing what is right.

REPRESENTATIVE LeDOUX, in response to Chair Huggins, noted she'd asked staff to distribute a letter that says the 1996 law changed the definition of "field" by taking out "usually." Although she didn't know whether including "usually" made a difference, she surmised because of the change in the law the Department of Public Safety (DPS) enforced it more stringently. Prior to that, Mr. Metzger could rent his cabins, but afterwards he couldn't because under the regulations this area is outside a city or a township.

SENATOR GREEN asked if the bill even covers Mr. Metzger, since language on lines 5-6 it says "with the intent to receive compensation, only accommodations to a big game hunter".

[4:02:55 PM](#)

REPRESENTATIVE LeDOUX referred to paragraph (9), which adds new language, "**excluding the provision of accommodations by a person described in AS 08.54.875**". She said this allows someone like Mr. Metzger to provide services without being considered an outfitter.

SENATOR GREEN again read from line 6 that said "the provisions of this chapter do not apply to a person providing for compensation...only accommodations to a big game hunter in the field as" and asked whether that was in essence a double negative.

SENATOR WIELECHOWSKI said he thought 08.54.720(a)(11) said "it is unlawful for a person without a current registered guide

outfitter license to knowingly outfit the big game hunt, provide outfitting services, and so on." The definition of "outfit" in AS 08.54.790(9) means "to provide for compensation, or with the intent to receive compensation, services, supplies or facilities to a big game hunter in the field."

Removing "usually" changed the definition of "field" slightly and he agreed with Representative LeDoux that it probably didn't matter. But the troopers interpreted that to mean if someone is "in the field", it is unlawful to do this and he thought the bill fixed the problem.

SENATOR GREEN asked where the bill fixes it for someone who isn't hunting.

[4:05:16 PM](#)

SENATOR STEVENS replied that situation is already okay.

SENATOR WIELECHOWSKI concurred, adding this bill only pertains to big game hunters.

SENATOR GREEN recalled, however, that the problem arose when a nonhunter was renting the cabin.

SENATOR STEVENS requested confirmation that a cabin can already be rented to someone who isn't hunting, but that the problem arises when the person is a big game hunter.

REPRESENTATIVE LeDOUX affirmed that, apologizing if she'd indicated otherwise. If it was a photographer, there'd be no problem, but it becomes a crime if someone has a gun with the intention of shooting something.

SENATOR GREEN asked if that applies even to a casual hunter, not a guide, outfitter, and so on.

REPRESENTATIVE LeDOUX said that is the way the law is being interpreted and enforced now.

SENATOR STEDMAN noted line 9 speaks to a waiver for state and federal cabins on state or federal land. He asked what the state policy is for renting state cabins to a big game hunter.

[4:06:26 PM](#)

MS. HANCOCK answered, because many times those cabins are rented to hunters, this language was meant to clarify that. She said

that a person shooting rabbits or deer can still be considered a big game hunter.

SENATOR STEDMAN asked if the state is renting cabins to registered guides.

MS. HANCOCK replied she didn't know. She also didn't know if a mechanism exists to allow the state to determine whether someone renting a state cabin is a licensed guide.

4:07:20 PM

PAUL JOHNSON, Chair, Big Game Commercial Services Board, said this goes back to 1990, when a task force was put together to define "transporters and guides" and it also defined "field or cabins" and what would be allowed. At that time it said through regulation, not statute, a person had to have a transporter or big game license to do those kinds of activities and probably Mr. Metzger's situation was not considered. It has nothing to do with things like photography; it's just if you're taking people out for big game hunting.

He further explained that the language was put back into statute when the board was sunsetted in 1996; prior to that, it was in regulation. When the Big Game Commercial Services Board was reauthorized last year that language was left in statute and not put in regulation, so the board couldn't act on it in dealing with Mr. Metzger.

MR. JOHNSON clarified that it wasn't that Mr. Metzger couldn't do what he was doing, but he would have had to get a transporter license, which Mr. Metzger felt was unnecessary. The board agreed and asked Mr. Metzger to work with a board member to assist in changing the statute. The bill is a solid compromise on who must have a transporter license and who doesn't and allows Mr. Metzger to do what he was doing.

4:10:50 PM

MR. JOHNSON said the reason the Department of Public Safety got involved is because when the board was restarted, it wasn't paying any attention to any of those rules and regulations from 1996 and when this statute came through, it came to the surface.

SENATOR GREEN asked why leased lands weren't included in the bill.

MR. JOHNSON replied that those issues all came up at the original 1990 task force when people interested in game wanted

to go in every direction. Therefore the department felt that people with leased land should have a \$250-transporter license and make annual reports so everyone would "have a feel" for what was going on. The board felt that was an intrusion upon private land owners and that they shouldn't be included in the process and he agreed that it would muddy the waters.

SENATOR GREEN asked if Mr. Metzger had been on leased land, the board wouldn't have had the same interest.

MR. JOHNSON replied probably; the board was mainly interested in how private land owners are treated versus people with leased land. Having leased lands included in the provisions would cause problems, he said, and federal lands have always had their public use cabins.

SENATOR GREEN asked who would be the typical owner of the leased land.

MR. JOHNSON replied the state.

SENATOR GREEN asked if it is okay to have a state cabin to lease but not a privately-owned cabin on state land.

MR. JOHNSON replied that most state/federal cabins can't legally be leased to people in commercial services.

[4:13:38 PM](#)

SENATOR GREEN asked if he risks being caught if he does rent one of those cabins.

MR. JOHNSON replied that he would risk being caught because his permit states specifically that is not allowed.

CHAIR HUGGINS said some people have cabins in preserves around a park and asked what that land status is.

[4:14:13 PM](#)

MR. JOHNSON replied for instance, that Dry Bay Unit 5 in Yakutat is on preserved land and the guide there has a guide license. If he wanted to transport off that land, he would need to get a transporter license. This unit has leased cabins on it and the commercial entities using them need to be licensed.

SENATOR McGUIRE said in 1990 the issue was abuse by the big game guides some of whom transported and guided without any control or regulation. The legislature tried to identify two pathways to

oversee that. She asked why, philosophically, the state would say someone who is leasing out a cabin on state land that has been in their family for 50 years has to have a transporter license; but seven miles away someone else who has had a privately owned cabin for two years would not have to have that transporter license.

[4:15:52 PM](#)

MR. JOHNSON replied philosophically it boils down to the fact that the state leases with DNR vary from 30, 60, 90 and 180 days and discusses whether the cabin is a tent platform. If one would look at an advertised activity on big game in Alaska, they would be amazed at how many people are trying to work around the state's present laws. For now, the concern is that people who have private lands can proceed without having to go through the state's bureaucracy.

[4:16:59 PM](#)

SENATOR WAGONER said he has a lease on state property along with a lot of other people and it's called a duck shack. He thought they were precluded in the lease from some uses, because it's primarily for seasonal use. Some commercial fishermen wanted to rent it from him, but they couldn't. He said the state would like to get rid of all the cabins on leased property.

[4:17:59 PM](#)

MR. JOHNSON commented that he also has a Forest Service cabin that has been in the family for many generations. But it will be burned down at the point of his son's death. The permit is very strict and doesn't allow him to use it for commercial purposes at all.

SENATOR MCGUIRE remarked that only 1 percent of all land in Alaska is in private ownership. She remembers going to a duck shack and it is sad that her child would not have that same opportunity.

SENATOR WIELECHOWSKI asked who this bill applies to.

MR. JOHNSON replied it is only for people who are in the commercial aspect of big game. If you are making money off of big game, the state wants to know what you are doing.

SENATOR WIELECHOWSKI asked what percentage of big game hunts involves Alaskans as opposed to people from outside Alaska.

MR. JOHNSON replied that it varies throughout the state. He understands from Mr. Metzger that over half of his clients are residents taking advantage of the permit draw in Kodiak for bear and deer. But in many areas of the state it is 100 percent non-residents.

[4:20:54 PM](#)

SENATOR STEDMAN went back to line 9 that deals with cabins on state and federal land saying that commercial guides can't rent those - in the Tongass for instance. He asked why the state and federal issues are in the bill.

MR. JOHNSON answered even though the federal government never followed them until 1990; the state statutes said if someone rented one, they were supposed to be a transporter. It was never enforced. He said the only one it was enforced upon was Mr. Metzger.

SENATOR STEDMAN asked if the definition of "state" was broad enough to include municipalities.

MR. JOHNSON replied yes; municipalities would be covered under the definition of "field."

[4:22:45 PM](#)

SENATOR GREEN asked if Senator Wagoner could take friends to his duck shack and could they shoot from there even if they don't bring the food and drink.

SENATOR WAGONER replied yes, but he can't receive money for it.

CHAIR HUGGINS asked if a transporter flew a hunter in to Mr. Metzger's lake-side cabin would this provision apply.

MR. JOHNSTON replied no - if the hunter was flown in and he was not compensating the pilot (under the definition of "compensation", which is more than in-kind).

CHAIR HUGGINS asked what if he paid a transporter to fly him out.

MR. JOHNSON replied if the transporter used a point-to-point rate, a transporter license would not be needed. But if the transporter was charging for his knowledge of where to take the hunter, then he would be selling a hunt and then he needs to have a transporter license. If the cabin belongs to Senator Wagoner who is not charging for its use, nothing is required.

They are trying to legitimize a situation like Mr. Metzger's where he is advertising and getting compensation for the use of a cabin.

[4:25:50 PM](#)

CHAIR HUGGINS asked what if the assistant guide were there that got off at the lake and stayed in the cabin to chase a brown bear with Senator Stevens.

MR. JOHNSON replied if the assistance guide was operating without a registered guide or master guide, there would be some complications.

CHAIR HUGGINS instructed assume all three were there.

MR. JOHNSON responded then the hunter has a contract with the registered guide and he would be good to go. He explained that Mr. Metzger was acting legally, but he needed to have a transporter license. This bill says that now he doesn't need to do that.

[4:26:55 PM](#)

SENATOR WIELECHOWSKI said it is virtually impossible to get a state cabin in Southcentral to recreate and asked if this would let big game hunters rent out state cabins.

MR. JOHNSON replied no; DNR doesn't allow that. Those cabins are for public use, not commercial use.

[4:27:37 PM](#)

SENATOR WAGONER moved to report HB 165 from committee with individual recommendations and attached fiscal note(s). There being no objections and HB 165 was moved out of the Senate Resources Standing Committee.

The committee took an at-ease from [4:28:25 PM](#) to [4:30:43 PM](#).

SB 176-ACTIVE GAME MANAGEMENT/AIRBORNE SHOOTING

CHAIR HUGGINS announced the consideration of SB 176.

[4:30:45 PM](#)

DOUG LARSON, Director, Division of Wildlife Conservation, Alaska Department of Fish and Game, said he was present for questions on SB 176.

KEVIN SAXBY, Senior Assistant Attorney General, Department of Law, said he has been assigned to the Board of Game since 1992. The bill was produced to keep a commitment to a number of interested legislators back in the Murkowski administration to harmonize the existing intensive management law and same-day airborne law. The two laws are contradictory. It has been suggested that the bill is an attempt to circumvent current litigation, and that is not true. The bill predated the current litigation, but the ongoing legal challenges since 2003 have highlighted the weakness in these two statutes, and how difficult it is for game managers to follow both laws. This is the first comprehensive effort submitted to the legislature from the people who have to obey these two statutory mandates.

[4:33:11 PM](#)

MR. SAXBY said Sections 1 and 2 don't make any substantive changes. Sections 3 to 5 are substantive. They rewrite the intensive management law. "We are simplifying what is currently a relatively complex and circuitous process down to its bare essentials - down to essentially three steps."

He said the first step is that the board must identify the game populations to be managed intensively and set harvest and population objectives. The second is to meet those objectives at all times, and to continue to manage it intensively for abundance. The third step is if the objectives are not being met, the board must take positive action, including active management if it becomes necessary.

Section 3 sets up the obligation to identify the deer, caribou, and moose populations that are important to manage for a high level of human use. It requires the board to set the objectives. This is already required under existing law, but this bill was "putting it front and center." He expects that the identifications that the board has already made over the years would be ratified if this bill passes.

He said that Section 4 requires the department to manage for abundance, and if objectives are not being met, the board must take action.

[4:35:46 PM](#)

SENATOR WIELECHOWSKI noted that Sections (e), (f) and (j) were deleted and asked if that was changed a couple of years ago.

MR. SAXBY replied that the original versions of (e), (f) and (j) were adapted in 1994/95 and amended in 1998. What they are looking at is the 1998 version.

SENATOR WIELECHOWSKI said the current law talks about the Board of Game adopting regulations to provide for intensive management programs and sets out three scientific principles and asked in what situations those scientific principles would not be utilized.

[4:37:11 PM](#)

MR. SAXBY replied that Senator Wielechowski over-simplified a little bit. Sections (e) and (f) have two separate triggers under existing law for intensive management; the first trigger is if the game population is depleted.

SENATOR WIELECHOWSKI said he understood that and asked what is wrong with the current statute that lays out three things the board has to look at relying on science. What's wrong with the current principles that we have?

MR. SAXBY replied that those goals are not scientific principles - science is only one of the criteria under (f). It also has whether it would be detrimental to subsistence uses.

SENATOR WIELECHOWSKI said you are taking that out.

MR. SAXBY said this mandates intensive management unless one of those three criteria are met. Those aren't standards to be met to allow intensive management; those are the only grounds under which you can avoid intensive management.

[4:38:35 PM](#)

SENATOR WIELECHOWSKI asked why Alaska wouldn't want a program that is achievable as in current statute. Why get rid of that provision?

MR. SAXBY replied they don't want a check list, because every time you create a checklist, "you create an opportunity for people to argue that you haven't jumped through proper hoops."

The simplification language simply says that the board has to take whatever action it deems appropriate, and there is no scientific standard in the existing law; it's just a checklist.

SENATOR WIELECHOWSKI asked him for an example of when they would not want feasibly achievable utilizing recognized and prudent management techniques. Give an example.

MR. SAXBY said, "You're not quite reading it right."

SENATOR WIELECHOWSKI said he is reading exactly from the statute.

MR. SAXBY said the statute requires adopting intensive management unless it is not scientifically achievable. It is very difficult to prove something is not scientifically achievable; so that obligates mandatory intensive management in virtually every situation. They are actually reducing that standard, but not the scientific standard. That standard doesn't say: you may do it if it's scientifically achievable; it says: you must do it unless it's not scientifically achievable.

SENATOR WIELECHOWSKI said he would rephrase the question. Section 3 deletes from the intensive management statute the provision that intensive management programs apply only to depleted moose and caribou populations or those with low productivity. He asked, "Why would you want to apply intensive management programs, like predator control, to populations that are not depleted or those with high productivity?"

[4:40:56 PM](#)

MR. SAXBY replied, "Because if it's a population that's important to manage for high levels of human harvest, it is always important to do so." A good example would be Unit 20a moose; those moose are not depleted, but they are over their objectives. But it is necessary to reduce the population in order to avoid overgrazing the range. Even though it isn't depleted it is still important to management it intensively or actively.

SENATOR WIELECHOWSKI said Section 3 also deletes the provision that intensive management programs must be feasibly achievable utilizing recognized and prudent active management techniques and asked why that is taken out.

[4:41:46 PM](#)

MR. SAXBY answered, "We're not removing any... all we're doing is simplifying it down to its bare essentials. And that's only one of the two triggers." The trigger if it's depletion is in Section (e); Section (f) has another trigger which is when the board acts to significantly reduce the taking of the species -

then it is obligated to undertake intensive management as well. There is no requirement in that case for it to be scientifically achievable. The two are being meshed into a single trigger - that being if objectives aren't being met, then the board has to take action.

SENATOR WIELECHOWSKI asked if it would be possible under these changes, that there would be an imprudent active management technique. In other words, current law requires that it be feasibly achievable and utilizing recognized and prudent active management techniques. Would it be a violation of this proposed language to use imprudent or unrecognized active management techniques.

[4:43:17 PM](#)

MR. SAXBY replied "I don't think so."

SENATOR WIELECHOWSKI asked if they would then be giving the board unfettered discretion to do imprudent active management techniques.

MR. SAXBY replied that he didn't think the board has ever used its discretion to do that.

SENATOR WIELECHOWSKI stated that they were giving the board unfettered discretion.

MR. SAXBY responded that this law gives the board more discretion, but not in the area that Senator Wielechowski was positing. They are getting more discretion to take a broader approach to active management rather than being forced into it every time they reduce a season or a bag limit. "Now they won't be forced into it." They will be able to look at a broader range of activities. That is the whole underlying intent here.

SENATOR WIELECHOWSKI said as he reads this, the board will be able to do anything it wants, even if it is not scientifically based.

MR. SAXBY replied that they should understand that the board already had all that authority to do intensive management. The law was adopted to force the board to do it in specific instances because it hadn't been active enough. The board's authority to conduct intensive management in any situation where it thinks it's warranted. The standards are being changed for when the board is absolutely obligated to do it.

[4:45:22 PM](#)

SENATOR GREEN said she thought they were overlooking the broad authority of the Board of Game and what it is charged to do overall. "You would not repeat that you will act sensibly, reasonably, prudent, good management, good biological material in each and every chapter. That's the overriding principle of what they do." That is why the members are reviewed, interviewed, voted upon and then can be removed.

CHAIR HUGGINS said that is an excellent point.

[4:46:02 PM](#)

MR. SAXBY added that the board does a number of very controversial things like adopt Tier 2 hunts when there is not a harvestable surplus to provide for all subsistence uses. None of those other statutes have a check list like the intensive management law. "Apparently the legislature trusts the board to make very controversial decisions in other situations about this."

[4:46:38 PM](#)

SENATOR GREEN asked on page 2, line 20, Section 4, about populations not meeting established objectives and the board shall adopt regulations. She asked if the adoption is delayed until after the disaster occurs, so that it can be tailored to that particular hunt area versus a statewide policy on identifying low objectives on meeting the guidelines and population figures.

[4:47:19 PM](#)

MR. SAXBY replied each set of regulations will be tailored. The very first step is to identify the specific populations that this law requires intensive management of. That is only a subset of moose and caribou populations. The board has only identified half of the moose deer and caribou populations in the state as being important to manage for high levels of use. Do the objectives are set for each of those populations and if those are not being met (either over or below), you would be required to take steps under this bill.

He said:

For the first time we're applying the mandate throughout the lifespan or the lifecycle of the herd in question. In other words, it isn't just when it is depleted that you act to meet your objectives. It's also when it's overpopulated that you have to meet

your objectives. If it is important to manage it for high levels of human use, it is always important to manage it for high levels of human use.

SENATOR WIELECHOWSKI referred to deleting section (f) which says "this subsection does not apply if the board determines that intensive management would be ineffective based on scientific information, inappropriate due to land ownership patterns, or against the best interests of subsistence uses." He asked if they aren't giving the Board of Game unfettered discretion to create an intensive management program that is ineffective based on scientific information, or inappropriate or against subsistence uses.

MR. SAXBY replied that the board is being given the discretion to find that it isn't appropriate for more than those three listed reasons. He reminded them that the intensive management law requires intensive management unless one of those three conditions is met. By taking those conditions out, the board is required to do something, but it isn't necessarily required to, for example, adopt a wolf control program unless it can find one of those three conditions is met. Instead it has more discretion to decide when or what action is appropriate. It isn't limited to only three reasons to avoid intensive management.

SENATOR WIELECHOWSKI said the constitution requires that wildlife be managed on the sustained yield principle. The legislature is the body that has the constitutional obligation to oversee the management of Alaska's wildlife. This turns all of that responsibility over to a board saying go ahead and do what you want. It doesn't have to be based on science, or the best interest of subsistence uses. It can be based on inappropriate use of land ownership patterns. What concerned him is that it is a drastic change to give the board unfettered discretion and going away from scientific principles. There is no accountability. He asked if any other board has that same discretion.

[4:51:01 PM](#)

MR. SAXBY replied that the board already has the discretion he is talking about. The intensive management law does not limit the board's ability to conduct intensive management. It only limits the occasions when it is *required* to do intensive management. The board has the authority under general authorities to adopt laws that include predator control, for example (before Sections (e),(f), (g) and (j)). The Board of Fisheries has the same broad authority.

MR. SAXBY said the intensive management law is not a grant of authority and this bill isn't a grant of authority either. That authority exists elsewhere in statutes. The underlying assumption of this bill is that the legislature still intends to require the board in certain circumstances to adopt intensive management programs. That being the case, they are trying to meet that requirement and make it a more defensible requirement. "This is not an additional grant of authority."

MR. SAXBY said Section 5 reduces the definitions to just two. It eliminates the problematic ones. There was problematic "harvestable surplus" and "sustained yield" definitions. Both of which were contradictory with current governing principle of game management or with existing case law. The term "intensive management" is being changed to "active management", because active management is generally viewed by game managers as a broader term encompassing more than predator control or habitat manipulation. The current definition has "intensive management" defined as active management anyway, so the middle term is just being cut out.

They are retaining the definition of "providing for a high level of human harvest," because that is the core of the mandate. Sections 6 and 7 are just conforming changes, but Sections 8 -10 are the same-day airborne law.

[4:54:05 PM](#)

SENATOR WIELECHOWSKI asked if under Section 4 the board will be required to make written findings justifying its decisions.

MR. SAXBY answered when the board adopts a predator control implementation plan, it adopts written findings; but if it sets objectives under Section 3, those go into regulations, so they are in writing, too. When the board identifies populations those go into regulations, so those are in writing.

SENATOR WIELECHOWSKI asked if those determinations in Sections 3 and 4 would be required to be based findings must be based on science.

MR. SAXBY replied that it will be required to base those on the total record before it, just like all other decisions. Every time a proposal comes before the board, the department presents the best available data and the best available science that it has. Members of the public testify and opposition groups testify. The board is required to consider all of that

information under the Administrative Procedures Act and then make a reasoned decision based on all of that information. That requirement won't change.

SENATOR WIELECHOWSKI asked if they will be required to use science.

[4:55:34 PM](#)

Mr. Saxby said they will be required to use whatever information comes to them. They need to use all.

SENATOR WIELECHOWSKI stated that Section 5 defines providing for high level of human harvest by hunter demand and asked if that includes hunter demand from outside hunters or just residents or both.

MR. SAXBY replied that it includes all hunter demand as is required under existing law.

SENATOR WIELECHOWSKI said if you get 12,000 requests for the Nelchina herd which is obviously more demand than supply, does that mean you eliminate all the predators.

MR. SAXBY answered no, because of carrying capacity and a great many other factors matter as well the board has to set both population and harvest objectives. The definition just lists the factors that the board needs to consider when doing that. It doesn't mean that hunter demand is the only controlling factor. Biological capabilities of the herd and habitat and historic hunter demand are important, too.

[4:56:53 PM](#)

MR. SAXBY said Section 8 takes the existing same-day airborne law and for the first time meshes it with the intensive management law. As historically worded, they have been at cross purposes. It adds brown bears to the class of protected animals. Currently there is no prohibition against hunting brown bears the same day as airborne. They have been added to that prohibition because they are slow breeders and deserving of that protection. Wolverines and brown bears are added into the exceptions if it is necessary.

MR. SAXBY explained, "I guess our thinking has been that the essence of the same-day airborne law has always been a general prohibition on same-day airborne hunting, coupled with an exception for predator control when necessary." The standards have varied over the years. The exception for when it is

necessary to mesh with the intensive management law is being changed. So if the board determines that its objectives aren't being met and active management is necessary, it may then adopt a predator control program. The other exception is if it is conducive to the health of a predator population, for instance, the lice infestations in moose.

SENATOR WIELECHOWSKI asked if he said this law will protect brown bears.

MR. SAXBY replied yes, for the first time.

SENATOR WIELECHOWSKI asked if a person can aerial shoot brown bears now.

MR. SAXBY answered no, because there is a regulation that forbids it, but it is not in statute.

SENATOR WIELECHOWSKI said you can't aerial-shoot brown bears now and asked if you could under the proposal.

MR. SAXBY replied only in the case of a predator control program.

SENATOR WIELECHOWSKI said let's be realistic with the public.

You are not protecting brown bears with this. You're putting it in statute that they are protected and then in another section you're saying you can go out and aerial shoot them. Let's be up front with the public about what we're doing here.

5:00:06 PM

MR. SAXBY differed saying there is no statutory prohibition against taking brown bears from the air for any reason.

SENATOR WIELECHOWSKI said there are regulations against it, and he was attempting to override those with a statute by allowing them to be shot in another section. "That's not protecting brown bears, Mr. Saxby."

MR. SAXBY responded that regulation currently allows brown bears to be taken from the area in a predator control program. So, the general prohibition is in regulation as well as the exception.

CHAIR HUGGINS asked him to continue with his testimony.

MR. SAXBY stated that Section 9 adds another exception and explained that the general prohibition doesn't apply to a department employee in taking wolves, wolverines or brown bears. It includes taking nuisance wildlife and to protect public safety. A public employee flying out to kill an animal would be illegal. Section 10 makes it clear that dart guns are not included. The remaining sections are transition dates.

[5:01:54 PM](#)

WADE WILLIS, representing himself, said he is amazed that the Department of Law thinks this will help the Board of Game institute predator control programs. "That's just a stunning twist and an obvious smoke screen." Meshing regulations into a single trigger reduces game management to the opinions of the members of the Board of Game; they would need science or proof to verify predator control is needed.

The department, for the first time, will be allowed to kill bears for the first time. Aerial shooting of bears has never been in the law or available to the Board of Game. This issue is the most highly contentious issue in Alaska where it has been voted on three times. He said 57,000 people signed the last initiative. Further he said, the Board of Game represents 15 percent of Alaska residents, 85 percent of which do not hunt. Not one representative on the Board of Game is from that 85 percent that doesn't hunt.

MR. WILLIS accused, "You are giving unfettered access to this contentious issue to a special interest group, the hunters.) You cannot protect the wildlife of this state or manage it in that way. This bill is not a simplification of the regulations, but an attempt to remove all the essential elements of the public, the courts and scientific community's ability to require that intensive management techniques, especially aerial predator control are carefully supported by scientific data and the public.

[5:05:06 PM](#)

VIC VANBALLEMBERGHE, Wildlife Biologist, Anchorage, said he is a former three-term Board of Game member and that he strongly disagreed with the notion that SB 176 is an improvement to current intensive management and the same-day air-borne hunting statutes. The guidelines that would be deleted by this bill were placed in statute by previous legislators after a good deal of input from biologists, DOL, and interested parties. This bill deletes those in one fell swoop. Those guidelines have been characterized as a checklist to guide the board in adopting intensive management programs.

He suggested if they are going to amend existing statute, the state should add to the checklist, not delete it or subtract from it. It is not as if the board has been restrained in adopting intensive management programs by those guidelines. He said the state already has five active programs to reduce bears and wolves to increase prey.

MR. VANBALLENBERGHE said the most objectionable thing he finds is SB 176 is the provision in Section 8 that modifies the airborne shooting act such that the board would no longer need information from the Alaska Department of Fish and Game. It is important language and should be restored. He added, "Of course we would want to document that reducing predation would solve the problem."

[5:08:29 PM](#)

ANDREA VEACH, representing herself, said Alaskans have twice voted in 1996 and 2000 against aerial shooting of wolves by the public. The voters have been disregarded by the legislature and the board. Native subsistence hunters did not traditionally depend on aerial elimination of their competition to gain an advantage and she asked why they think that is necessary now. If anything has changed, it's that there are more hunters expecting more than the land can provide.

MS. VEACH said historically the predator most dangerous to the environment in the balance of nature is man, and we need to be managed. The human population is now 6.5 billion; wolves and bears can be counted in the thousands. Where will the wolves go when the human population reaches 9.3 billion, she asked and said "This is our challenge and that should be our priority."

Most of the world has decimated their wildlife and it is now time to accommodate it. The Board of Game sees the animals as something to kill and consume and the state needs a Board of Wildlife to mitigate that single narrow view. In Denali, seeing human visitors appreciating this smallest opportunity to see animals.

[5:11:33 PM](#)

MS. VEACH concluded that SB 176 could be called appeasing outside hunters.

[5:12:08 PM](#)

PAUL JOSLIN, retired Wildlife Biologist, Anchorage, said he strongly opposes SB 176, because it would make legal the same-

day shooting of wolves, bears, and wolverines on a whim. Looking at ADF&G information would no longer be required and department employees wouldn't be able to adhere to a management plan. Airborne shooting is highly controversial, so common sense would be to make sure you have a solid case before you do it. This bill will do the opposite. It will allow the Board of Game to engage in predator control with only flimsy justification, and the key words are "conducive to achieving the objectives." Reasonable certainty is not needed, just a mere hunch.

VAL GLOOSCHECNKO, Biologist, federal agency, said she is on her own time and backs up previous testimony in opposition to SB 176. The changes proposed are not housekeeping items; they are drastic. It would open the door to increase killing wolves, wolverines and bears statewide without necessity or science. This is outside the pale of any wildlife management principles.

5:15:48 PM

MS. GLOOSCHECNKO said the Wildlife Society met recent and had several presentations unanimously against this. She concluded that this bill is not scientifically defensible. Wildlife belongs to all Alaskans.

JERRY McCUTCHEON said he has watched this "stuff" for 60 years. Gone are the days of bands of sheep and herds of caribou roaming the foothills of Mt. McKinley - sheep so numerous and thick they would not move out of the way of oncoming dog teams of the trappers and miners. Sheep in front of the dogs would jump up on the backs of other sheep and fill back in as the dogs passed. Imagine a dog team totally surrounded by sheep. It was spectacular, but he never got to see it. No one else will.

Every time he met up with Carl Logsfeld, who was a dog team driver and later a miner, in a bar, he would insist on telling him the trail on which the dog races were held was not the real Iditarod. The real one went through McKinley Park. The Park Service took man out of the hunting and trapping equation and wolves slowly destroyed those great bands of sheep and herds of caribou to the point that there is little or nothing left. The wolves then resorted to killing and eating each other or left the park to go where there was still game. Because the state killed wolves from airplanes, there were more wolves and more game when the wolves were aerially hunted. He is a firm believer in aerial wolf hunting and "none of this land-and-shoot crap."

MR. McCUTCHEON said, "It's not about fair chase; it's about predator control. No wolf hunting or bear hunting by ADF&G. Just

raise the bounty until the state has an active community of aerial hunters."

[5:19:21 PM](#)

JOHN TOPPENBERG, Alaska Wildlife Alliance, Soldotna, said he wanted to address one aspect of this bill, the application of any requirement that biological science be a part of the decision-making process. He disagreed with Mr. Saxby's interpretation and characterizations saying the Board of Game often gives minimal deference to available science. It has implemented programs that have caused mainstream scientists serious concern. The research data compiled by ADF&G is available to any interested scientist. Scientific organizations opposed to the existing programs include the National Research Council and the American Society of Mammalogists; others scientists are against these extreme programs as well.

MR. TOPPENBERG said this bill would not only eliminate the need to consider the inadequate scientific standards the board must now give passing consideration to, but it would also eliminate any requirement that predators are the cause of the decline or low prey numbers. This regressive legislation should be opposed by anyone supporting moderate scientific wildlife management concepts and that recognize that healthy populations of both predator and prey are necessary for healthy ecosystems.

[5:20:56 PM](#)

JOEL BENNETT, former Board of Game member for over 12 years, Juneau, said he has been an active licensed hunter for the 39 years he has lived in Alaska. He was the organizer and sponsor of each of the initiatives in 1996 and 2000 and he is presently co-sponsoring the third ballot initiative on the same subject that has been certified for a vote next August.

MR. BENNETT said he wanted to focus on what he considers the guts of the bill in Section 8. It makes large scale changes and the current airborne hunting laws the state has been operating with. He was very surprised that Mr. Saxby didn't describe what was being deleted from that statute, and that is the whole key. He said the plan has to be based on information provided by the ADF&G and has to tie in a causal way predation either by wolves or bears as an important reason the objectives aren't achieved. If they don't know that wolves or bears are causing the problem, why would they be shooting them? Maybe habitat is the problem, not bears or wolves.

His initiative has 57,000 signatures and the common thread is that the board needs some kind of minimal standard so that the department bases its predation control, especially through airborne methods, on bona-fide serious biological problems. The initiative uses the same language that passed in 1996 by almost 60 percent of Alaskans. It also says it has to be based on adequate scientific data, a key element. It also says it has to be conducted by department personnel, because that is the most responsible humane and efficient way to do these programs. They also say it should be confined to the smallest geographic area as possible. "We think that's what the public really would support and go along with in terms of predator control."

MR. BENNETT said this bill actually takes that standard and modifies to the point that there is no standard at all.

[5:24:48 PM](#)

SENATOR WIELECHOWSKI directed his question to the Department of law and asked if it's the administration perspective that if Section 8 or any part of this bill passes that it will have an impact on the ballot initiative.

MR. SAXBY replied the administration wants this bill to stand or fall on its own merit whether it impacts the ballot initiative or not.

CHAIR HUGGINS asked if the governor supports these changes.

MR. LARSON replied yes.

SENATOR WIELECHOWSKI asked if the constitutional provision on sustained yield applies to predators.

MR. LARSON answered yes.

[5:26:35 PM](#)

SENATOR WAGONER said he has been told that black bears kill more new born moose calves on the Kenai Peninsula than any other predator and the second highest predators are feral dogs. He didn't think the bill went far enough in listing the predators that are really to blame for the decrease in the moose population.

MR. LARSON responded the current law as well as the proposal allows black bears to fall within those species that could be managed by predator control activities.

[5:27:54 PM](#)

MR. LARSON also noted that the effective date of July 2007 should say July 2008.

CHAIR HUGGINS announced conceptual Amendment 1 that corrected the effective date on page 5, line 25. There were no objections and it so ordered.

SENATOR STEDMAN moved to report CSSB 176(RES) from committee with individual recommendations and attached fiscal note(s). There being no objection, CSSB 176(RES) was moved out of the Senate Resources Standing Committee.

SENATOR WIELECHOWSKI said he wanted to hear more about removing the scientific aspects of this issue in the next committee.

There being no further business to come before the committee, Chair Huggins adjourned the Senate Resources Standing Committee meeting at [5:30:09 PM](#).