

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 1, 2011

1:05 p.m.

MEMBERS PRESENT

Representative Eric Feige, Co-Chair
Representative Paul Seaton, Co-Chair
Representative Peggy Wilson, Vice Chair
Representative Alan Dick
Representative Cathy Engstrom Munoz
Representative Berta Gardner
Representative Bob Herron
Representative Scott Kawasaki

MEMBERS ABSENT

Representative Neal Foster

COMMITTEE CALENDAR

CONFIRMATION HEARING(S): BOARD OF GAME

- CONFIRMATION ADVANCED

HOUSE BILL NO. 195

"An Act relating to the regulation and use of pesticides and broadcast chemicals."

- HEARD & HELD

HOUSE BILL NO. 144

"An Act requiring the Department of Natural Resources annually to deliver to the legislature and the governor a report on fishing stream access."

- MOVED CSHB 144(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 195

SHORT TITLE: PESTICIDES AND BROADCAST CHEMICALS

SPONSOR(S): REPRESENTATIVE(S) FEIGE

03/16/11	(H)	READ THE FIRST TIME - REFERRALS
03/16/11	(H)	RES

04/01/11 (H) RES AT 1:00 PM BARNES 124

BILL: HB 144

SHORT TITLE: REPORT ON FISHING STREAM ACCESS

SPONSOR(S): REPRESENTATIVE(S) GARA

02/07/11 (H) READ THE FIRST TIME - REFERRALS
02/07/11 (H) FSH, RES
02/24/11 (H) FSH AT 5:00 PM CAPITOL 120
02/24/11 (H) Moved Out of Committee
02/24/11 (H) MINUTE(FSH)
02/25/11 (H) FSH RPT 4DP 2NR
02/25/11 (H) DP: MILLER, KAWASAKI, AUSTERMAN,
THOMPSON
02/25/11 (H) NR: PRUITT, JOHNSON
04/01/11 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

NATHAN TURNER, Appointee
Board of Game
Nenana, Alaska

POSITION STATEMENT: Testified during his Board of Game confirmation hearing.

MIKE CRAWFORD, Chair
Kenai/Soldotna Advisory Committee
Soldotna, Alaska

POSITION STATEMENT: Testified during the Board of Game confirmation hearing for Mr. Nate Turner.

KRISTEN RYAN, Director
Division of Environmental Health
Department of Environmental Conservation (DEC)
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 195.

TOM BROOKS, Vice President
Engineering and Chief Engineer
Alaska Railroad Corporation (ARRC)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 195.

JENNIFER CURRIE, Assistant Attorney General
Environmental Section
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 195.

REPRESENTATIVE LES GARA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor of HB 144.

RICKY GEASE, Executive Director
Kenai River Sportfishing Association
Soldotna, Alaska

POSITION STATEMENT: Testified in support of HB 144.

ROBERT CHURCHILL, Member
Anchorage Fish and Game Advisory Committee
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 144.

ACTION NARRATIVE

[1:05:28 PM](#)

CO-CHAIR PAUL SEATON called the House Resources Standing Committee meeting to order at 1:05 p.m. Representatives Seaton, Feige, Wilson, Gardner, Munoz, and Dick were present at the call to order. Representatives Herron and Kawasaki arrived as the meeting was in progress.

[1:05:49 PM](#)

CONFIRMATION HEARING(S): Board of Game

[1:06:23 PM](#)

CO-CHAIR SEATON announced that the first order of business would be the confirmation hearing for Nathan Turner, Appointee to the Board of Game.

[1:07:30 PM](#)

NATHAN TURNER, Appointee, Board of Game, stated that he moved to Alaska in 1989 with his father, fulfilling his father's dream. He said his father had been running a dairy farm but saw an advertisement in Fur, Fish, and Game magazine for a trapline for sale in Alaska. He briefly explained the time his family took to ready themselves for a move from upstate New York to spend their first winter on the Kantishna River. At 17 he would live

his father's dream. He related that some people discouraged his father from attempting to make a living trapping, but his father did not believe them. He said he's spent the last 22 years devoting his life to that lifestyle.

[1:09:43 PM](#)

MR. TURNER related that his family has made a living primarily from the resources the land provides. He detailed the work, including cutting over 200 miles of trails, building cabins, and acquired permits for trapping cabins from several federal agencies. Most years they have run dog teams but are using snogos for the economics of it. He has built fish wheels and has done some commercial fishing, as well as subsistence fishing in Kantishna. The family made its living primarily from the land, which led to opportunities to guide. He started a second trapline after a few years, with one trapline located 85 miles west of Fairbanks and the other 160 miles west of Fairbanks. After a number of years, in 1996, he began working as an assistant guide in the Nowitna drainages. He worked the area for six years and began contracting with clients in 2002. He has worked with distant neighbors to assist them and also to provide local knowledge to those who come to Alaska to hunt.

[1:11:18 PM](#)

MR. TURNER expressed reasons for his interest in serving on the Board of Game. Several years ago people kept urging him to put his name in and he has felt humbled to be picked. His motive in serving has been to give back to the community. He strongly believes that people who rely on the resources for a livelihood should give back to it.

[1:12:39 PM](#)

REPRESENTATIVE GARDNER inquired, in terms of living off the land to trap and hunt whether he could describe some of the changes he has seen in the wildlife and people.

MR. TURNER answered yes, unfortunately. He recalled the early days during the homesteading communities. He estimated that fifty percent of the original ten percent is gone so fewer people are living that lifestyle. He explained that a tradition exists for traplines that he referred to as gentlemen's agreements. He reported that even some of the claimed areas are unused. He offered his belief that the weather is warmer, with less snow and moose season seems to be later.

1:15:00 PM

REPRESENTATIVE GARDNER inquired as to whether he has seen changes in vegetation and if he would write a book.

MR. TURNER said he was not comfortable writing a book. He has marveled over the natural changes in habitat over the past five to ten years. He offered his belief that it seems like a natural change. He indicated that one area that had been good for trapping lynx is now inhabited by marten and vice versa. He related that the country has been healing through forest fires, too.

1:16:27 PM

CO-CHAIR FEIGE inquired as to what part of New York he was from.

MR. TURNER stated his family farm was ten miles north of Pennsylvania in the foothills of the Alleghany Mountains. He was unsure of the nearby cities in New York.

1:17:17 PM

CO-CHAIR FEIGE asked for his views on guide use areas.

MR. TURNER answered that he is proud of the state to be moving in this direction. He thinks it will be more necessary and will become more and more important in the future. He related that some people express concerns, but the demographics of hunter participation, with an 11 percent increase in state's population, shows an 18 percent increase in number of resident hunting licenses. He predicted that the issue would become more focused over time. He offered his belief that the first response of most Alaskans is to assume nonresidents are harvesting all the game and to eliminate nonresident hunting. He pointed out that eliminating nonresident hunting cannot be done without justification. He reviewed hunter success of nonresidents as minimal, yet nonresident hunters fund most of the costs of wildlife management. He thought that having a guide concession program will put policy ahead of the perception and bring stability to guiding in Alaska. He characterized the program as important.

1:19:35 PM

REPRESENTATIVE DICK inquired as to his opinion on sustained yield and predator control.

MR. TURNER stated that every concept has meaning and they are very loaded words. He offered his belief that predator control as well as ungulate control is mandated. He was unsure of exactly what Representative Dick wanted answered.

REPRESENTATIVE DICK said he was looking for a commitment that he would manage for sustained yield and use predator control, if necessary.

MR. TURNER answered yes. He pointed to his voting record on the Board of Game. He related that this is a board responsibility and noted the declining ungulate population in Alaska. He thought the issues were related to habitat as well as predator management. He viewed predator control as a tool. He understood some people hold concerns and he respects their opinions. He hoped the Board of Game would not set up a permanent predator control plan. He hoped the state would use predator control to fix situations but back off when not needed.

[1:22:12 PM](#)

REPRESENTATIVE DICK asked for his views on wounded warriors.

MR. TURNER answered he did not know much about that.

[1:22:25 PM](#)

REPRESENTATIVE MUNOZ asked for his personal observations on trophy hunting.

MR. TURNER answered that he has his own way of approaching guiding. He does not think about what the client's motive is for coming to Alaska. He focuses on his responsibility to educate the person about the wildlife. He has experienced that most people come because of the desire to be in wilderness. The experience equals their interest in taking animals. He reiterated that 50 percent of the people are interested in connecting with the land. He feels it is his responsibility to encourage that connection. He has not had very many hunters that say they came just for a trophy. He knows these hunters exist, but it might be that "birds of a feather flock together" since he does not advertise for hunting for trophy animals but advertises that people will come to one of the finest wilderness areas in the world.

[1:24:55 PM](#)

MIKE CRAWFORD, Chair, Kenai/Soldotna Advisory Committee, stated that he also serves as the President of Safari International on the Kenai Peninsula. He stated that he has observed Nate Turner's service on the Board of Game and he seems very knowledgeable about issues. He said he asks good questions and makes himself available to others for interaction. He commented that Mr. Turner lives the Alaska dream that many people wish they could participate. He offered his support for Mr. Turner's appointment.

[1:25:56 PM](#)

CO-CHAIR SEATON closed public testimony on the confirmation hearing.

[1:26:20 PM](#)

CO-CHAIR FEIGE stated that the House Resources Standing Committee has reviewed the qualifications of Nate Turner to the Board of Game.

CO-CHAIR FEIGE moved to advance the confirmation for the appointee referred to the House Resources Standing Committee, Mr. Nate Turner, and to refer Mr. Turner's name for consideration to the joint session of the House and Senate for consideration. Each member's signature on the committee's report in no way reflects the member's vote during the joint floor session. There being no objection, the confirmation was advanced.

[1:26:40 PM](#)

HB 195-PESTICIDES AND BROADCAST CHEMICALS

[1:26:59 PM](#)

CO-CHAIR SEATON announced that the next order of business is HOUSE BILL NO. 195, "An Act relating to the regulation and use of pesticides and broadcast chemicals."

[1:27:11 PM](#)

The committee took an at-ease from 1:27 p.m. to 1:30 p.m.

[1:29:53 PM](#)

CO-CHAIR FEIGE, prime sponsor of HB 195, presented the bill. He commented that the short title should read eliminating unnecessary regulation and saving the State of Alaska money. The State of Alaska has pages and pages of regulations related to pesticides and broadcast chemicals. These regulations assure that individuals, businesses, government agencies safely handle and apply these products. As of March 31, 2011, Alaska has 6,342 products registered under these regulations ranging from Lysol brand disinfectant products to fumigants with a skull and crossbones and word "DANGER" on the label. All of the products have the following in common: they are approved by the federal government and the State of Alaska for use in Alaska and have been tested under rigorous federal environmental protection standards. It is legal for citizens to purchase these products and use them according to instructions.

[1:31:16 PM](#)

CO-CHAIR FEIGE pointed out that individuals use the majority of the products. He explained that a different set of rules applies if someone wants to use these products on someone else's property on state land or uses state funds.

CO-CHAIR FEIGE related that commercial applicators are trained, tested, and certified by the State of Alaska before they can use pesticides. These certified applicators apply many of the same products available to the general public at retail stores, but must be more knowledgeable than the average consumer before they can use the product. These rules require the applicator to understand the information on the label, the formulation of the pesticide, hazards of using different products, the proper personal protective equipment, transportation, proper application and storage, security of the products and other items listed on the table of contents of the National Pesticide Applicator Certification Core Manual. This manual, over 200 pages in length represents only a portion of the rules. A person must obtain an additional certification to apply the product under specific circumstances such as right-of-way maintenance.

CO-CHAIR FEIGE offered his belief that this bill, HB 195, is not about risks that may be associated with applications of pesticides and broadcast chemicals. It is about placing unnecessary restrictions upon public agencies

CO-CHAIR FEIGE further related that the State of Alaska requires agencies to obtain a permit from the Department of Environmental Conservation (DEC) before they apply pesticides and broadcast chemicals on public land, or where public funds are used. The DEC permit requires collection of unnecessary information, delays application of the product, increases costs to the state and other government agencies, and does not increase safety related to product application. This permit is not required for application on private property by a commercial applicator. The Alaska Statute allows the DEC to create regulations that are specific to application of pesticides and broadcast chemicals on public land or with public funds. However, DEC created this permit procedure that is not risk-based and creates an unnecessary burden to itself and other state agencies.

CO-CHAIR FEIGE explained that HB 195 would repeal the authority of the DEC to regulate application of pesticides and broadcast chemicals on public land or with public funds in a different manner than it requires of commercial applicators working on private property.

[1:33:31 PM](#)

CO-CHAIR FEIGE related that public agencies will still be required to follow proper safety and licensing requirements and all other regulations for the application of pesticides or broadcast chemicals. He indicated the Alaska Railroad Corporation (ARRC) represents an impediment to the efficient application of pesticides in a timely manner and a significant, unnecessary, and costly process.

[1:34:06 PM](#)

CO-CHAIR FEIGE referred to a zero fiscal note from the Department of Transportation & Public Facilities (DOT&PF). This agency spends about \$5 million annually to cut vegetation alongside Alaska's highways. Due to delays in acquiring permits, the DOT&PF has been reduced to using mechanical means to address vegetation control. He recalled the Alaska Moose Federation testified before the legislature that cutting vegetation along roadways is the key to reducing moose/car collisions. He agreed that has been his experience in his district.

[1:34:57 PM](#)

REPRESENTATIVE MUNOZ related that she is an avid berry picker and picks along road corridors. She asked how the DOT&PF would inform the public if it broadly applies chemicals.

CO-CHAIR FEIGE offered his belief that it would be used in a fairly limited way. He was unsure that the pesticides themselves would be harmful. He deferred to the DOT&PF.

[1:36:01 PM](#)

CO-CHAIR SEATON asked for clarification on whether pesticides are also herbicides.

CO-CHAIR FEIGE answered yes.

[1:36:09 PM](#)

REPRESENTATIVE GARDNER inquired as to the source for the "Questions and Answers about Pesticides" in members' packets.

CO-CHAIR FEIGE agreed to provide the information.

[1:36:40 PM](#)

REPRESENTATIVE KAWASAKI asked for specific examples of instances in which DOT&PF has been prevented from using chemicals or when DEC has not been timely in permitting.

CO-CHAIR FEIGE deferred to the ARRC. He pointed out that DOT&PF does not use the permitting process since it is too time-consuming and use mechanical methods instead.

[1:37:29 PM](#)

REPRESENTATIVE P. WILSON asked how often the permits must be issued and if new ones must be issued each year.

CO-CHAIR FEIGE answered that the current regulations that this bill would repeal stipulates approximately a 60-day comment period for each permit application. He clarified that the requirements are extra requirements placed on public entities that are not required of commercial operators or private individuals who spray more chemicals than anyone else. In response to a question, he answered that the bill changes statutes not regulations.

[1:39:35 PM](#)

CO-CHAIR SEATON related his understanding that current statute requires agencies to submit an application for pesticide use on public lands, but permits are not required on private lands. He was not certain how that applied to Southeast Alaska. He recalled that herbicides or pesticide applications could drift over streams. He anticipated the agencies would address a number of issues that arise with respect to spraying chemicals.

[1:40:43 PM](#)

REPRESENTATIVE GARDNER has found that when the state "fixes" a problem it often does not address the root issue. She referred to the sponsor statement, which read, "The DEC permit requires collection of unnecessary information, delays application of the product, increases costs..." She inquired as to whether it would make sense to fix how the permitting is done rather than to remove the permitting requirement.

CO-CHAIR FEIGE responded that the permit under discussion is only applicable to public agencies. The regulations with respect to the pesticide application would still apply to the public entities as well as the commercial entities. In further response to Representative Gardner, he referred to the DEC and Environmental Protection Agency (EPA) regulations.

[1:41:59 PM](#)

REPRESENTATIVE KAWASAKI asked what the specific unnecessary pieces of information that causes delays in permitting.

CO-CHAIR FEIGE related his understanding the biggest problem has been that public agencies must go through an extended period of public comment and public review, which is costly and time consuming, as well as unnecessary.

[1:42:50 PM](#)

REPRESENTATIVE KAWASAKI inquired as to whether this was requested by the department.

CO-CHAIR FEIGE answered that the idea for the bill came up as a result of overview briefings by the DEC.

[1:43:09 PM](#)

REPRESENTATIVE P. WILSON asked for clarification on whether public agencies do not have to get permits, or if permits are not required when application of chemicals occurs on public lands.

CO-CHAIR FEIGE answered that HB 195 would repeal that section of statute which requires state agencies such as the ARRC and DOT&PF to acquire permits on state land when applying pesticides and broadcast chemicals to manage vegetation. The restriction would be removed and the agencies would be treated like any other commercial applicator.

[1:44:19 PM](#)

CO-CHAIR SEATON inquired as to whether the current regulations allow private applicators to apply chemicals on state lands and waters but the agencies cannot or that anyone applying herbicides or pesticides on state lands must have a state permit.

CO-CHAIR FEIGE indicated that these restrictions do not extend to private individuals. In further response to Co-Chair Seaton, he answered that he was unsure of any reason that a private person would apply pesticides and broadcast chemicals on state lands.

[1:45:20 PM](#)

REPRESENTATIVE MUNOZ understood that HB 195 would take away the department's requirement for permitting for this type of application. She inquired as to whether the departments can currently apply for permits.

[1:45:39 PM](#)

CO-CHAIR FEIGE agreed that the current statutes require a permitting process to apply pesticides or herbicides. This bill repeals that requirement. The SOA would be treated as any commercial applicator. In further response to Representative Munoz, he agreed that a private operator does not need a permit. He was unsure of instances in which a commercial operator would spray along the road right-of-way.

CO-CHAIR SEATON suggested the state DOT&PF and DEC would be able to answer that question.

[1:46:46 PM](#)

REPRESENTATIVE MUNOZ referred to the policy history of allowing widespread use of chemicals along the public right-of-way roadways. She offered her view that would open up a very controversial topic.

CO-CHAIR SEATON agreed the topic would create debate since chemicals such as Rotenone, which is a biological chemical used to kill fish.

[1:48:40 PM](#)

KRISTEN RYAN, Director, Division of Environmental Health, Department of Environmental Conservation (DEC), introduced her division as the one responsible for the Pesticide Control Program in Alaska, and corresponding regulations, 18 AAC 90.

CO-CHAIR SEATON asked Ms. Ryan to respond to previous questions.

MS. RYAN responded that currently the DEC requires a permit for the application of any pesticide to state land. This requirement tends to affect the ARRC and the DOT&PF. Additionally, a permit would also be required if someone is applying pesticides to water or by air.

[1:50:02 PM](#)

CO-CHAIR SEATON related his understanding the permit requirements for state water or land would apply to anyone, including private individuals or a public agency.

MS. RYAN answered yes.

CO-CHAIR SEATON related his understanding permitting would be required on private lands if an individual was applying by helicopter or other means.

MS. RYAN added also on water.

CO-CHAIR SEATON reiterated that anyone, including commercial operators, applying pesticides by air to land or water would need a permit.

MS. RYAN answered yes.

[1:50:52 PM](#)

MS. RYAN provided an example, noting that the Alaska Department of Fish and Game (ADF&G) has obtained several permits to apply Rotenone to lakes to kill invasive species, such as pike. The ADF&G must obtain a permit because they are a state agency but also because they are applying the chemical to water.

[1:51:15 PM](#)

REPRESENTATIVE KAWASAKI related that the sponsor statement indicates that the permit requires a lot of unnecessary information that could delay the application.

[1:51:46 PM](#)

MS. RYAN offered her belief that the timeframe varies significantly, but the more difficult ones can take time. She stated that the DEC was successful in issuing a permit to the railroad last year and that took over one year to process. She recalled that issuing ADF&G a permit for Rotenone application does not take as long since the agency has frequent applications for the same type of permit. She did not agree the information requires unnecessary information but the permit process raises a lot of questions that may be unnecessary, but the department must respond because the issues have been raised. The DEC relies heavily on the EPA to evaluate product safety. The EPA has the research and expertise and has performed extensive research and evaluations prior to pesticide sales. The DEC does not have staff toxicologists and relies on EPA's toxicologists to evaluate chemicals. She said that the EPA's evaluation is adequate to ensure the product's safety.

[1:53:39 PM](#)

REPRESENTATIVE KAWASAKI asked whether she was indicating the permit was not necessary.

MS. RYAN related that the DEC has several regulatory tools available. A permit should be used in those instances which the DEC believes represents the highest risk, thus, permits are the DEC's strongest tool to protect the environment. She related that decisions for permitting should be based on risk. Land ownership does not fall under the category of risk factors. Risk factors such as pervasiveness in the environment or ability to bioaccumulate in animals mean chemicals could potentially move beyond the target area. Thus, those factors are ones the DEC uses to determine when to place restrictions on chemicals through the registration process. She noted that EPA has

determined some chemicals persist longer in Alaska's colder environment than it has found in warmer climates. When products are registered in Alaska, the DEC places additional restrictions on the chemical use. She clarified that the additional restrictions affects everyone's use of those chemical products, not just someone obtaining a permit. She offered her belief that the best method to restrict pesticides is through registration since it impacts all uses.

[1:55:16 PM](#)

REPRESENTATIVE KAWASAKI related the sponsor statement indicates the bill would repeal the DEC's ability to regulate application. He asked for comments.

MS. RYAN answered that the DEC has not taken any position against the bill. She offered her belief that the way the bill has been drafted the DEC would still have adequate authority to require permits for higher risk applications such as those done on water or air. The DEC does not view HB 195 as preventing it from issuing permits on higher risk applications so it would continue to do so.

[1:55:55 PM](#)

REPRESENTATIVE KAWASAKI asked for further clarification. He related a scenario in which he is on public land, flies in to lake property, with a cabin 200 feet setback from a lake. He would like to apply an herbicide to make lake access easier. He inquired as to whether he would need a permit.

[1:56:31 PM](#)

MS. RYAN offered her belief that it would be a violation to apply pesticide to state land without the landowner's permission. She pointed out that private citizens cannot apply pesticides without permission by regulation.

MS. RYAN elaborated. She related a scenario that occurred in Kenai in which a person applied a product to kill algae on a private lake with several homeowners. The person was found to be in violation since the person failed to obtain a permit.

REPRESENTATIVE KAWASAKI thought that may be different under the bill.

[1:58:02 PM](#)

CO-CHAIR SEATON recalled past debates about pesticides being applied around schools. He inquired as to whether this bill would remove the necessity for a permit and if the individual school district would be responsible for applying pesticides when it determined the necessity to do so.

MS. RYAN answered this bill would not affect schools since schools do not currently need permits. The regulations are specific to state property and schools are city property. However, the DEC's regulations apply to schools because the students are viewed as a more vulnerable population. The DEC requires schools to have an Integrated Pest Management Plan (IPM), which all pesticide users should have in place that evaluates alternatives. She indicated that schools utilize the IPMs to plug cracks to prevent rodent entry or use bait stations to prevent student exposure to chemicals. She clarified that the DEC does not issue permits.

[1:59:41 PM](#)

CO-CHAIR SEATON inquired as to whether roadside areas, roadside pullouts and shoulders would be affected by the bill.

MS. RYAN answered that the bill eliminates some vague statutory authorities which have been confusing. She offered her belief that the DEC has interpreted statutes to mean that permits are required for applications on state land, and the DEC interprets state land to mean DOT&PF rights-of-way, ARRC rights-of-way, the DNR Plant Materials Center in the Matanuska-Susitna Valley. She indicated those as three entities required to obtain permits.

[2:00:35 PM](#)

REPRESENTATIVE MUNOZ asked whether the permitting process requires any public notice of pesticide or herbicide application.

MS. RYAN responded that it does. She indicated that it requires a substantial public process, which accounts for some of the permit application delay. She recalled that regulations were adopted after legislation passed several years ago that requires public notice of pesticide applications in public areas. For example, if the spraying occurs on a community soccer field, a public notice would be required to be posted up to 24 hours after spraying, indicating that the area has been sprayed with pesticides. That requirement would still exist if HB 195 were

to pass. She stated the key is that the statute defines public area. She reiterated that in locations in which the public accesses an area, a statutory mandate currently exists that the public be notified prior to pesticide application. However, the statutory requirement for noticing would not apply on private land.

[2:01:51 PM](#)

REPRESENTATIVE MUNOZ inquired as to what notice requirements exist in rights-of-way areas where there is historical use of berry picking.

MS. RYAN offered to review the language and consult with an attorney, but she said she thought that it read, "areas frequented by the public." She offered her belief that it could be interpreted to mean areas that the public commonly uses. She suggested the language is a little vague and could be clarified in statute.

[2:02:37 PM](#)

REPRESENTATIVE MUNOZ referred to the DOT&PF analysis in the fiscal note which implies that DOT&PF would use a lot more pesticide along roadways if this bill were to pass. She asked if the perceived onerous permitting process deters DOT&PF from applying for permits.

MS. RYAN answered that the DOT&PF was successful in 1988 in receiving a permit but not since then.

[2:03:18 PM](#)

CO-CHAIR SEATON inquired as to whether conditions in the permit made it onerous or if it was the length of time for the public process and "agitation" that deterred the department from applying for permits.

MS. RYAN indicated that it was the latter option.

[2:03:46 PM](#)

REPRESENTATIVE P. WILSON related her understanding that the discussion pertains only to state land and not to water or air applications.

MS. RYAN nodded yes.

REPRESENTATIVE P. WILSON reiterated that the bill would pertain to state land and state agencies.

MS. RYAN answered yes.

REPRESENTATIVE P. WILSON inquired as to whether fees and costs are associated with the permits.

MS. RYAN related that the agencies could provide their perspective. She indicated that it has cost the Department of Environmental Conservation (DEC) \$70,000 to justify its actions. She related that the department has not completed the adjudication process yet but are nine months into the process.

[2:04:39 PM](#)

REPRESENTATIVE P. WILSON recalled earlier testimony that the ARRC received a permit in 1988 and asked how long it took to obtain that specific permit.

MS. RYAN said she did not know.

[2:05:12 PM](#)

REPRESENTATIVE P. WILSON surmised it must have been "awful" since the ARRC has not applied for a subsequent permit.

MS. RYAN agreed.

[2:05:21 PM](#)

REPRESENTATIVE P. WILSON stated the ARRC must remove vegetation for safety issues, such as fire control. She offered that other means of vegetation control exist such as cutting, which has to be done repeatedly throughout the season.

[2:05:57 PM](#)

REPRESENTATIVE P. WILSON said she did not understand why a permit must be applied for every two years since the permit purpose is for the same purpose.

[2:06:35 PM](#)

MS. RYAN stated the ARRC would need to go through the entire process again. The current permits are for two years but a

regulation change has expanded permits to five-year permits, although none have yet been issued under the new regulation. The department must initiate the process by making an application again, the process must start again, and DEC must justify it all over again. She offered her belief that some ground would be gained but it doesn't seem so. The DEC has been "fighting" the same challenges as during the original permit.

[2:07:35 PM](#)

REPRESENTATIVE P. WILSON inquired as to whether this creates extra work for the departments.

MS. RYAN offered her professional opinion that the permits do not add value to protecting the environment and human health, which are the department's overall objective.

REPRESENTATIVE P. WILSON related her understanding that the permitting process does not add public protection but creates work for the department and for the ARRC or other state agencies.

MS. RYAN reiterated her view that based on land ownership the process does not add value to protecting the environment and human health. She stated that the permits should be based on risk, and risk should be determined on application method and product use not land ownership, which is not a risk factor.

[2:08:29 PM](#)

REPRESENTATIVE P. WILSON understood that DEC would rather permit the pesticide than to require state agencies to hold a permit.

MS. RYAN answered yes. She explained the registration process would be a better method to ensure that pesticides are safely used. She suggested an even better tool for protecting the public would be to use certified applicators since certified applicators adhere to rigorous standards for certification and re-certification. She reiterated that certification and registration process for products are the strongest tools the DEC has to ensure that these products are used in a safer manner.

[2:10:20 PM](#)

CO-CHAIR FEIGE directed attention to the bill. This bill would makes three changes to existing statute. He explained that

Sections 1 and 2 would conform the statutory citations in two sections by deleting a paragraph in proposed Section 3 of the bill. He referred to proposed Section 3, on page 3, line 8, which deletes AS 46.03.320(a)(2), which removes the DEC permit authority. Section 4 would clarify the definition of a public place in AS 46.03.320(c) on lines 22-23. Section 6 is part of the "real meat of the bill." He referred to page 4, line 11, which repeals the public pesticide program under AS 46.03.330. The program regulates the distribution, application, or use of pesticides and broadcast chemicals in any state project or program or by a public agency under the jurisdiction of the state.

[2:12:53 PM](#)

CO-CHAIR SEATON suggested the statutes could be copied for members.

CO-CHAIR FEIGE referred to the second element that seems to cause a lot of problems for the agency is the requirement for public notice. He said it requires the department to conduct a public hearing if a hearing is requested by the governing body of an effected borough or city or by a petition signed by at least fifty residents. He reiterated this provision sets out the process to hold a public hearing.

[2:13:57 PM](#)

REPRESENTATIVE GARDNER referred to Section 4, of HB 195 to the definition of "public place." She inquired as to whether the portion of government office or facility that is accessible to the general public does not suggest blueberries alongside a road, but rather implies a public building. She offered her belief that the public's awareness of spraying chemicals that may impact blueberries is still out there. She then referred to Section 3 that removes a paragraph in Section 2, does not seem to only apply to land. This provision being removed would regulate and supervise the distribution, application, or use of pesticides and broadcast chemicals in any state project or program or by a public agency under the jurisdiction of the state.

[2:15:06 PM](#)

MS. RYAN agreed. She explained that when the statute being amended in Section 4 was drafted several years ago, the intent was to notify the public in plazas and parks. A right-of-way

would be a new interpretation of that and the DEC would look to the legislature for guidance on whether the provision should be expanded. With respect to the second question, there is nothing in the statute that requires the DEC to permit aerial or water applications. Removing this provision would not change the permitting. Instead, she referred to page 3, line 12 of HB 195, to paragraph 3, which read "regulate or prohibit the use of pesticides and broadcast chemicals for sale or distribution." She said this language gives the department broad and flexible authority to regulate. She reiterated that the DEC has used this authority to require permits for aerial and water application.

[2:16:47 PM](#)

CO-CHAIR SEATON related his understanding that the bill would remove permits required for state land. He asked whether the committee would need to insert language to clarify that the DEC would require a permit for aerial or water application.

MS. RYAN said she did not believe additional language would need to be added, but it is the committee's decision whether to give DEC a stronger mandate. She related that the DEC currently uses existing statutes to require permitting and the interpretation of those statutes would not change. She reiterated that if HB 195 passed or did not pass the DEC would continue to permit water and aerial application. The bill would eliminate references to pesticide application on public land or using funding by public agencies. She commented that the DEC has had difficulty interpreting those provisions.

[2:18:14 PM](#)

CO-CHAIR SEATON inquired as to whether it would be easier to pass the bill if the bill specifically stated that land and water does require a permit.

CO-CHAIR FEIGE clarified that permits are currently required for aerial and water application, even if the application were done by a public agency.

MS. RYAN affirmed the permits are required for aerial and water application.

CO-CHAIR FEIGE offered his belief that the committee does not need to add any additional language.

CO-CHAIR SEATON said that although the agency uses the language on its own volition, with passage of HB 195, nothing in the statute would specifically outline the requirement permit for water or broadcast chemicals. He speculated public testimony would be substantial if the bill language does not clearly specify that permits would still be required for aerial and water applications. He understood the DEC would still have the authority to do so. He deferred to the sponsor.

[2:20:57 PM](#)

REPRESENTATIVE GARDNER asked for the parties' name in the lawsuit that challenged the permitting process that took over a year.

MS. RYAN answered that the Alaska Community Action on Toxics, working with Trustees for Alaska, and a newer organization out of Talkeetna, the Alaska Wilderness Survival.

[2:21:34 PM](#)

CO-CHAIR SEATON asked for clarification if this bill passed that nothing removing the requirement for a permit would automatically stop an existing lawsuit.

MS. RYAN deferred to the Department of Law.

[2:22:34 PM](#)

REPRESENTATIVE P. WILSON referenced a handout in members' packets "DOC body page" and asked which provisions would be deleted by the bill.

CO-CHAIR FEIGE answered that Article 5, which encompasses AS 46.03.320 and 46.03.330. In further response to Representative P. Wilson, he referred to page 3, line 8 of HB 195, which removes the language.

[2:23:59 PM](#)

The committee took an at-ease from 2:23 p.m. to 2:27 p.m.

[2:27:14 PM](#)

TOM BROOKS, Vice President, Engineering and Chief Engineer, Alaska Railroad Corporation (ARRC), stated the ARRC believes this bill would remove impediments to the beneficial use of

herbicides on the Alaska Railroad. He referred members to information in members' packets from the ARRC on vegetation control programs. He offered to briefly address why the ARRC needs to use herbicides on the Alaska Railroad. The two most compelling reasons are the need for track inspectors to visually inspect the track. Vegetation impairs the visual inspection of fasteners between the rail and ties and the ties themselves to ensure integrity of the track.

[2:28:45 PM](#)

MR. BROOKS related another reason pertains to the area near the tracks. Inspectors inspect the trains at stops or in the railroad yards. Keeping the area free of vegetation provides the best footing for employees conducting the inspections. The federal regulator also sends track safety inspectors to inspect the Alaska Railroad. The federal inspectors have remarked for a number of years on the increased vegetation on the Alaska Railroad and more recently have indicated the vegetation has not been acceptably controlled. He referred members to a letter on the DOT&PF website. He summarized the letter as suggesting that "we better get our act together." The ARRC has taken this letter very seriously.

[2:30:02 PM](#)

MR. BROOKS stated that in 2009, the ARRC applied for a permit to apply a limited application of a product typically known as "Roundup." He clarified that the ARRC has wanted to use the product in Seward and in the track between Seward and Indian near Anchorage. He referred to photographs that demonstrate the "before" and "after" application. He explained that the herbicide has been applied on eight-foot wide swaths, which is approximately the length of the ties. The photographs indicate the effectiveness.

[2:31:27 PM](#)

MR. BROOKS related that the Federal Railroad Administration (FRA) subsequently sent inspectors in 2009, and found over 700 locations in which the vegetation was found to be unacceptable. The inspectors issued violations on about 100 of the locations and have threatened fines for up to \$16,000 per violation. The ARRC has been concerned because of the need to have railroads as well as the financial implications. The ARRC would like to move forward with herbicides to supplement its vegetation control program.

[2:31:51 PM](#)

MR. BROOKS indicated that while DEC has been "great to work with" that the overall process with DEC has been difficult. He offered his belief that the department has been working to produce a defensible permit due to anticipated opposition and potential litigation. The ARRC successfully received a permit last April but were immediately taken through the DEC adjudication process over whether a stay should be granted during the appeal. The ARRC prevailed at the DEC level, and in Superior Court and Alaska Supreme Court. The ARRC was able to apply herbicides in July 2010 in those limited areas between Seward and Indian. However, the ARRC remains in the adjudication process and anticipates it will be back in court over the original permit. In the meantime the ARRC has applied for two additional permits to address vegetation in the Anchorage, Healy, and Fairbanks railroad yards.

[2:33:39 PM](#)

MR. BROOKS referred members' to materials in their packets that outline costs to date, which have been \$334,000 for the initial permit and legal and internal costs continue to accrue as the process evolves, he said.

[2:34:00 PM](#)

CO-CHAIR SEATON asked whether the ARRC would proceed directly to court in litigation if it did not have to defend a permit.

MR. BROOKS offered that a privately held railroad in Alaska can go to Wal-Mart and buy pesticide and apply it without a permit. The private railroad could be held for damage for misapplication of the herbicide, for example, if the pesticide migrated outside the area it was applied.

[2:35:07 PM](#)

REPRESENTATIVE GARDNER recalled specific areas the ARRC has applied to use herbicides. She inquired as to whether herbicides would be the first choice to control vegetation in the event the Alaska Railroad did not need to secure a permit.

MR. BROOKS answered that he would expect to see the ARRC use the herbicides much more widely. He offered his belief that the use

of herbicide provides an important tool and would be used where needed but as conservatively as possible.

2:36:19 PM

CO-CHAIR SEATON referred to a handout previously mentioned labeled, "Questions and Answers" page which is located on the following website:

http://www.grounds-mag.com/mag/grounds_maintenance_questions_answers_pesticides/.

2:37:51 PM

CO-CHAIR SEATON opened public testimony on HB 195 and indicated his intent to leave public testimony open.

2:38:35 PM

JENNIFER CURRIE, Assistant Attorney General, Environmental Section, Department of Law, introduced herself.

2:39:02 PM

REPRESENTATIVE P. WILSON inquired as to whether this bill would eliminate the need for permits to apply pesticide on state land. She inquired as to whether cities and boroughs are required to comply.

MS. CURRIE answered that the statute does not require anyone to obtain a permit. As previously mentioned, Article 5, AS 46.03.320 (a)(2), requires people who use herbicides or broadcast chemicals to do so with the authorization of the DEC. Thus, eliminating provision two that discusses state land would not actually eliminate the current regulatory requirement for a permit as outlined in AS 46.03.320(a)(3), which reads: "regulate or prohibit the use of pesticides and broadcast chemicals." In order to eliminate the need for a permit on state land the DEC would rely on legislative history and intent.

CO-CHAIR SEATON suggested the sponsor may wish to consider this.

2:41:00 PM

CO-CHAIR SEATON recalled that Ms. Ryan previously testified that the DEC relies on the EPA to have chemicals certified, permitted, and for certified applicators. He inquired as to whether all state agencies currently only use certified

applicators. He explained that the problem of having employees who may or may not know the full implications of applying chemicals could be avoided by requiring certified applicators. He suggested that may bypass the need for permitting but still ensure controls. He inquired as to whether the DEC has the ability to require certification of state employees.

[2:42:45 PM](#)

MS. RYAN explained that the current regulations require certification in several instances including application near schools, as well as any pesticide applied in a public place. Anyone applying pesticides commercially must be certified. She related that nothing in current regulations require state applicators must be certified. She recalled that the ARRC does do so as part of their permit application. She offered her belief that nothing in statute or this bill would prohibit the DEC from doing so. She suggested it would be helpful to obtain guidance from the legislature on this.

[2:43:51 PM](#)

CO-CHAIR SEATON reiterated this approach may appease the public and satisfy the agencies.

REPRESENTATIVE P. WILSON noted that the Alaska Railroad has an overview scheduled in March and read from materials, "The herbicide aqua master is applied by a licensed contractor using low-volume, low pressure equipment to direct the herbicide only where it is intended."

CO-CHAIR SEATON agreed some agencies may voluntarily comply but he was unsure whether all the agencies would use certified applicators.

MS. RYAN pointed out that the requirement for an integrated pest management plan can be a useful tool for anyone applying pesticides on a regular basis. She advised that this is required at schools as a means of reducing pesticide use.

[2:45:40 PM](#)

CO-CHAIR SEATON asked for any suggested recommendations from the DEC.

[2:46:05 PM](#)

REPRESENTATIVE GARDNER inquired as to whether the plan is formally approved by the DEC or if the school district can just say it has a plan.

MS. RYAN answered that the DEC does not currently have an approval process but several venues write plans. She offered that extensive material is available on the EPA's website and the agency will provide technical assistance.

[2:46:42 PM](#)

[HB 195 was held over.]

HB 144-REPORT ON FISHING STREAM ACCESS

[2:46:46 PM](#)

CO-CHAIR SEATON announced that the final order of business would be HOUSE BILL NO. 144, "An Act requiring the Department of Natural Resources annually to deliver to the legislature and the governor a report on fishing stream access."

[2:47:06 PM](#)

REPRESENTATIVE LES GARA, Alaska State Legislature, stated that the importance of public access to fishing streams is important to Alaska's citizens ranging from dipnetting to subsistence fishing. Easements are granted in some instances but not in all cases. As the state continues to be developed HB 144 provides a mechanism to encourage the Department of Natural Resources (DNR) to identify areas of public access that are in jeopardy of loss. He characterized this bill as a prod to the DNR. It asks the department what it did last year and what it plans to do next year to maintain or enhance important public access areas. He pointed out that separate from this bill would be the process to acquire easements. He reiterated that this bill would prod the department to remember that part of their statutory mandate is to plan and enhance public access to fishing streams for Alaska's citizens. The bill is supported by the major sport fishing groups, including the Outdoor Council, the Alaska Fly Fishers, Women's Flyfishing, and the Kenai River Sportfishing Association.

[2:49:03 PM](#)

REPRESENTATIVE GARDNER, regarding the mandate to supply access, asked whether the mandate currently exists or if it is being added.

[2:49:17 PM](#)

REPRESENTATIVE GARA explained a requirement exists for land disposed after the mid-1970s to allow access to and along a stream. However, land disposed before that time or in other ways is not subject to those rules. He listed Montana Creek and Willow Creek in the Matanuska-Susitna Valley, the Anchor River and Deep Creek on the Kenai Peninsula, and perhaps the Salcha River in Fairbanks as important streams to the people living near them but may not have provisions to maintain access during development.

[2:50:19 PM](#)

REPRESENTATIVE P. WILSON referred to line 9, of HB 144, which read, "...detailing the department's efforts during the previous year to maintain or enhance access to and along fishing streams." She inquired as to what "maintain" means.

REPRESENTATIVE GARA answered that maintained means whether an access had been sold.

[2:51:25 PM](#)

CO-CHAIR SEATON referred to page 1, line 8, of HB 144 to the language "report." He inquired as to whether the sponsor would oppose deleting "a report" and insert, "and post on the department's Internet website, an electronic report."

REPRESENTATIVE GARA answered that he would not object and suggested an e-mail notification be sent to all legislators. He understood the need to save paper.

CO-CHAIR SEATON related his understanding that electronic reporting would be acceptable to the bill's sponsor.

[2:52:07 PM](#)

CO-CHAIR SEATON opened public testimony on HB 144.

[2:52:19 PM](#)

RICKY GEASE, Executive Director, Kenai River Sportfishing Association, stated that the Kenai River Sportfishing Association (KRSA) is a non-profit 501 (c)3 organization. One of the program areas entails habitat protection and angler access to fishing streams across Alaska. He offered his belief that HB 144 was really a simple bill and requires that the DNR report. The KRSA fully supports this bill. He further stated that the sport fishing community supports the bill.

[2:53:12 PM](#)

ROBERT CHURCHILL, Member, Anchorage Fish and Game Advisory Committee, stated that he has served on the Anchorage Fish and Game Advisory Committee as well as the Alaska Department of Fish and Game. He previously served a term on the Board of Game and as President of the Alaska Fly Fishers on several occasions. He has had contact with many Alaskans. He expressed concern to maintain public access, which has become more and more restricted in the Lower 48. He reviewed some previous research done by the Institute of Social and Economic Research (ISER) in 1999. He stated that the industry was a \$540 million industry when the population was 630,000. Since then the population has grown to 710,000, or a 15 percent increase. He indicated that public access is important in all forums, whether it is subsistence, sport fish, or photographers. He reiterated that public access is a critical concern. He concluded that every organization that he has contacted has been extremely excited about this bill as it would reduce user conflict. He pointed out that streams are more and more crowded. He encouraged passage of the bill. As Mr. Fogels has testified this can be done without cost to the state, he said.

[2:55:45 PM](#)

CO-CHAIR SEATON, after first determining no one else wished to testify, closed public testimony on HB 144.

[2:55:59 PM](#)

CO-CHAIR SEATON made a motion to adopt a Conceptual Amendment 1, labeled 27-LS0220\B1, Kane, 3/29/11, which read as follows

Page 1, line 8:

Delete "a report"

Insert ", and post on the department's Internet website, an electronic report"

He explained that this amendment is a conceptual amendment to ensure that the legislators and governors receive the report electronically, as well as it being posted to the website.

There being no objection, Conceptual Amendment 1 was adopted.

REPRESENTATIVE MUNOZ expressed her support for HB 144.

[2:57:38 PM](#)

REPRESENTATIVE MUNOZ moved to report HB 144, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, the CSHB 144(RES) was reported from the House Resources Standing Committee.

[2:58:11 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:58 p.m.