

**ALASKA STATE LEGISLATURE**  
**HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE**

April 11, 2017

8:04 a.m.

**MEMBERS PRESENT**

Representative Zach Fansler, Co-Chair  
Representative Justin Parish, Co-Chair  
Representative Harriet Drummond  
Representative Dean Westlake  
Representative George Rauscher  
Representative Dan Saddler  
Representative David Talerico

**MEMBERS ABSENT**

Representative Jonathan Kreiss-Tomkins (alternate)  
Representative DeLena Johnson (alternate)

**COMMITTEE CALENDAR**

HOUSE BILL NO. 201

"An Act relating to municipal regulation of trapping; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 64

"An Act adopting the Uniform Environmental Covenants Act; relating to environmental real property covenants and notices of activity and use limitation at contaminated sites to ensure the protection of human health, safety, and welfare, and the environment; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 201

SHORT TITLE: MUNICIPAL REGULATION OF TRAPPING

SPONSOR(S): REPRESENTATIVE(S) JOSEPHSON

03/29/17	(H)	READ THE FIRST TIME - REFERRALS
03/29/17	(H)	CRA, RES
04/11/17	(H)	CRA AT 8:00 AM BARNES 124

BILL: SB 64

SHORT TITLE: UNIFORM ENVIROMENTAL COVENANTS ACT

SPONSOR(s): SENATOR(s) MICCICHE

02/17/17	(S)	READ THE FIRST TIME - REFERRALS
02/17/17	(S)	CRA, L&C
02/28/17	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
02/28/17	(S)	Heard & Held
02/28/17	(S)	MINUTE(CRA)
03/07/17	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
03/07/17	(S)	Moved SB 64 Out of Committee
03/07/17	(S)	MINUTE(CRA)
03/08/17	(S)	CRA RPT 2DP 2NR
03/08/17	(S)	DP: BISHOP, HOFFMAN
03/08/17	(S)	NR: MACKINNON, STEDMAN
03/14/17	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/14/17	(S)	Heard & Held
03/14/17	(S)	MINUTE(L&C)
03/16/17	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/16/17	(S)	Moved SB 64 Out of Committee
03/16/17	(S)	MINUTE(L&C)
03/20/17	(S)	L&C RPT 1DP 3NR
03/20/17	(S)	NR: COSTELLO, HUGHES, GARDNER
03/20/17	(S)	DP: STEVENS
03/27/17	(S)	TRANSMITTED TO (H)
03/27/17	(S)	VERSION: SB 64
03/29/17	(H)	READ THE FIRST TIME - REFERRALS
03/29/17	(H)	CRA, L&C
04/11/17	(H)	CRA AT 8:00 AM BARNES 124

**WITNESS REGISTER**

REPRESENTATIVE ANDY JOSEPHSON

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** As prime sponsor, presented HB 201.

NICHOLAS ("NICK") SPIROPOULOS, Attorney

Matanuska-Susitna (Mat-Su) Borough

Palmer, Alaska

**POSITION STATEMENT:** Testified and answered questions during the hearing on HB 201.

MEGAN ROWE, Staff

Representative Andy Josephson

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 201 on behalf of Representative Josephson, prime sponsor.

ALPHEUS BULLARD, Attorney  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 201.

JAN WRENTMORE  
Skagway, Alaska

**POSITION STATEMENT:** Testified in support of HB 201.

KNEELAND TAYLOR, Attorney  
Law Office of Kneeland Taylor  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 201.

AL BARRETTE  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 201.

BRUCE WEBER  
Skagway, Alaska

**POSITION STATEMENT:** Testified in support of HB 201.

KENNY BARBER  
Palmer, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 201.

HAZEL NELSON, Director  
Division of Subsistence  
Alaska Department of Fish & Game (ADF&G)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 201.

BRUCE DALE, Director  
Division of Wildlife Conservation  
Alaska Department of Fish & Game (ADF&G)  
Palmer, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 201.

CHERYL BROOKING, Assistant Attorney General (AG)  
Natural Resources Section  
Civil Division (Anchorage)  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 201.

MAJOR BERNARD CHASTAIN, Deputy Director  
Division of Alaska Wildlife Troopers  
Department of Public Safety (DPS)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 201.

SENATOR PETER MICCICHE  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As prime sponsor, presented SB 64.

KRISTIN RYAN, Director  
Division of Spill Prevention and Response  
Department of Environmental Conservation (DEC)  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the hearing on SB 64.

#### **ACTION NARRATIVE**

[8:04:48 AM](#)

**CO-CHAIR JUSTIN PARISH** called the House Community and Regional Affairs Standing Committee meeting to order at 8:04 a.m. Representatives Rauscher, Talerico, Westlake, Fansler, and Parish were present at the call to order. Representatives Saddler and Drummond arrived as the meeting was in progress.

#### **HB 201-MUNICIPAL REGULATION OF TRAPPING**

[Contains discussion of HB 40.]

[8:05:57 AM](#)

**CO-CHAIR PARISH** announced that the first order of business would be HOUSE BILL NO. 201, "An Act relating to municipal regulation of trapping; and providing for an effective date."

[8:06:10 AM](#)

REPRESENTATIVE ANDY JOSEPHSON, Alaska State Legislature, as prime sponsor, presented HB 201. He spoke of another bill he sponsored, HB 40, which was heard by the House Resources Standing Committee, on which he is co-chair and, he noted, on which some members of the House Community and Regional Affairs Standing Committee also sit. He related that during the hearing on HB 40, no one disputed there is evidence related to trapping occurring along public trails or that conflict has arisen as a result, but House Resources Standing Committee members did voice that they thought the matter should be addressed on a local level. He said there is nothing in Title 16 - the fish and game code - that prevents a municipality from regulating the practice of trapping within its boundaries. He indicated that Title 16 outlines trap identification requirements, signage [requirements], restrictions on types of traps, and prohibitions on setting them near places where people and pets can get injured; however, it does not issue an outright ban.

[8:08:32 AM](#)

REPRESENTATIVE JOSEPHSON noted some experts available on line: Nicholas Spiropoulos, the borough attorney for the Matanuska-Susitna (Mat-Su) Borough, and Kneeland Taylor, an expert in this area of law. He said he thinks there is some dispute regarding the ability of local governments to regulate trapping. He said that in general he thinks most people would agree that it is better if the municipality owns the land in question. He noted that the Mat-Su Borough is larger than many East Coast states put together, and he presumed it would not want to regulate trapping far removed from public use trails. He related that the Mat-Su Borough has recently concluded that five or six public use trails could be regulated and trapping proscribed, because the land in question is owned by the borough.

REPRESENTATIVE JOSEPHSON said the fundamental problem is that traps are "sort of an exclusive use" - they often "come down" in spring or summer, but "when they're in the field, they occupy the field." He added, "They can sometimes do so, sort of, in concert with other uses, but often when those other uses concern dogs ... there are significant programs." He stated that he is offering HB 201 as an alternative for consideration, partly because of the aforementioned feedback from the House Resources Standing Committee.

[8:11:20 AM](#)

REPRESENTATIVE JOSEPHSON, citing a 1982 Attorney General opinion, stated that the law in this matter is murky. Local governments cannot preempt state authority, but they can use powers over land management and land management plans to do some regulation; however, they have to find "some sort of hook" in order to do so. He indicated that the same reasoning that does not allow a person to fire a gun in a city is what "gets them there." He indicated that it is because of the murkiness of the law that he has offered HB 201.

[8:12:26 AM](#)

REPRESENTATIVE SADDLER asked Representative Josephson for further clarification regarding the current powers that municipalities have to regulate their borders.

REPRESENTATIVE JOSEPHSON answered that he thinks it is "unclear that they can do that." He added, "The only attorney general opinion on this says that, as well." As a result, the views on the issue are broad. He said the Constitution of the State of Alaska says that to the maximum extent possible, local governments should have power over their own governing; however, there are competing interests where the Board of Game can broadly regulate state trapping. He said generally there is no trapping in the Municipality of Anchorage, but he does not know who would prevail if a state authority, such as the Board of Game, insisted there be trapping.

REPRESENTATIVE SADDLER questioned if the problem being addressed is that pets on or off leash are getting caught in traps.

REPRESENTATIVE JOSEPHSON responded that "there are always concerns with hazards where there's no pet in question." For example, there could be trap right next to a school yard, and "there would be nothing in the Mat-Su Borough to prohibit it." He concluded that it is not necessarily true that the issue is just a matter of pets; however, the issue that brings this bill to the forefront is that of repeated stories written by journalists, mostly about pets.

[8:15:47 AM](#)

NICHOLAS ("NICK") SPIROPOULOS, Attorney, Matanuska-Susitna (Mat-Su) Borough, stated that HB 201 would grant municipalities a power they do not specifically have at present. He said there are various classes of municipalities in Alaska. The Mat-Su Borough is a second class borough, which means that under Title

29 it has a specific list of powers. Anchorage, on the other hand, is on an opposite system wherein "if the power's not taken away, generally they'd have it; [it's] the difference between home rule and a general law municipality." He stated that HB 201 would add more power to the Mat-Su Borough to regulate trapping. He said the Mat-Su Borough's mayor and manager are engaged, but have not taken up this issue; therefore, he cannot say whether or not the borough would support the proposed legislation.

MR. SPIROPOULUS noted that the committee packet contains a marked up draft of a Mat-Su Borough ordinance. He indicated that the ordinance to regulated trapping on borough-owned land had since passed as 17-021, and he offered to send a final copy to the committee via e-mail. He clarified that the final version that passed has some differences in it.

[8:19:19 AM](#)

REPRESENTATIVE RAUSCHER asked how - considering that the Mat-Su Borough had already given itself the ability to regulate trapping on its land - HB 201 would benefit the borough.

MR. SPIROPOULUS reiterated that his client, the Mat-Su Borough, has not taken a position on HB 201; therefore, he cannot answer what it would do if HB 201 passed. He said the borough owns land and can designate what happens on that land, such as a fire station, school, or borough central offices. He gave examples to specify how, when there is combined state and local land, the ordinance applies to only the borough owned portion of it. He said the borough owns the lands on which the schools sit; therefore, trapping is prohibited on those lands.

MR. SPIROPOULUS, in response to Representative Rauscher, offered his understanding that under HB 201, municipalities would be able to regulate trapping on all land within a municipality, including private land.

REPRESENTATIVE RAUSCHER asked if the regulation of trapping includes the prevention of trapping.

MR. SPIROPOULUS directed attention to paragraphs (3) and (4), in Section 2, at the top of page 2, of HB 201, which read as follows:

(3) restrictions on the use of types of traps likely to cause injury or damage to persons or property, including domestic animals;

(4) prohibitions on the setting or placement of traps in areas or locations where they are likely to cause injury or damage to person, property, or nontargeted species.

MR. SPIROPOULUS said he interprets that language as granting municipalities the power to prohibit traps.

REPRESENTATIVE RAUSCHER asked Mr. Spiropoulos if he thinks the provisions under HB 201 would pertain to all classes of municipalities.

MR. SPIROPOULUS answered that the proposed change would be to Title 29, which for "municipality people" is the rule book on what municipalities can and cannot do. He said the definition of "municipality" is found under Title 29 and includes every city and borough [in Alaska].

[8:26:37 AM](#)

REPRESENTATIVE TALERICO made the assumption that the Mat-Su Borough had "the ability to do that on borough-owned land, because they had complete control." He questioned, "Does this fall into the area wide power provisions in Title 29?" He offered his understanding that home rule, first class, and second class municipalities must use a ballot measure and a vote of the people to enact area wide power provisions.

[8:27:47 AM](#)

REPRESENTATIVE JOSEPHSON responded that he does not know the answer, but he suggested either Mr. Spiropoulos or Mr. Taylor might.

[8:28:17 AM](#)

REPRESENTATIVE SADDLER asked if a local ordinance implemented to regulate trapping has ever been challenged in court.

REPRESENTATIVE JOSEPHSON deferred to [the available lawyers on line]. He noted that there are a handful of local governments that do regulate trapping: Kenai, Homer Juneau, Fairbanks, Seward, Petersburg, Nome, Valdez, Anchorage, Gustavus, and Yakutat.

REPRESENTATIVE SADDLER directed attention to the words "life and property" on [page 1, line 10], of HB 201. He asked the bill sponsor to specify whose life and whose property.

REPRESENTATIVE JOSEPHSON answered that he thinks life means human life and property would include animals.

REPRESENTATIVE SADDLER asked if HB 201 would allow a local government to bar trapping because it might "kill a fur-bearing animal."

REPRESENTATIVE JOSEPHSON deferred to his staff to respond.

8:30:30 AM

MEGAN ROWE, Staff, Representative Andy Josephson, Alaska State Legislature, on behalf of Representative Josephson, prime sponsor of HB 201, echoed Representative Josephson's statement that life means human life and property is personal property. In response to follow-up questions from Representative Saddler, she confirmed that personal property would include an animal, and HB 201 would allow a municipality to bar trapping of a fur-bearing animal if that fur-bearing animal was someone's property, but not if it was a wild animal and not someone's property. She added, "I don't think a municipality could use the reasoning that it's life; the 'life' in here is human life."

REPRESENTATIVE SADDLER directed attention to the term "nontargeted species" on page 2, line 5, of HB 201, which he described as "incidental bycatch," for example, if someone was out trapping for martin and caught a raccoon. He asked if HB 201 would give a municipality the right to regulate that, and he asked, "Isn't that the kind of power the Board of Game resorts to itself?"

8:32:05 AM

REPRESENTATIVE JOSEPHSON responded as follows:

I think what they're referring to is the subsection (c) where the departments may have to come in and eradicate pets that are rabid or wild animals that are rabid or [attend to] some other eradication problem.

REPRESENTATIVE SADDLER asked for clarification whether "nontargeted species" does not refer to incidental catch of

nontargeted, fur-bearing animals. He explained his concern is to figure out what authority would be given to municipalities under HB 201 that might be considered the authority of the Board of Game.

REPRESENTATIVE JOSEPHSON said he takes Representative Saddler's point about incidental catch and would have to give it some thought. He deferred to Ms. Rowe.

[8:33:14 AM](#)

MS. ROWE surmised that "nontargeted species" could "lend itself to the municipalities trying to limit bycatch." However, she noted that [within Section 2, of HB 201], the aforementioned language in [paragraph (4)] pertains to language in subsection (a), and subsection (a) would allow municipalities to regulate trapping "to protect life and property"; therefore, she concluded that if a municipality is trying to prohibit the trapping of nontargeted species, it would have to be for the purpose of protecting life and property.

[8:34:12 AM](#)

REPRESENTATIVE WESTLAKE read Section 2, subsection (a), paragraph (4), on page 2, lines 3-5 [text previously provided], and he asked how a trapper who sets a trap for lynx, which is normally set "high" but sometimes not, but gets wolverine or a wolf would be affected under that proposed language.

[8:34:53 AM](#)

ALPHEUS BULLARD, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, Alaska State Legislature, stated that the prevention of traps being set low to avoid getting a wolverine instead of a lynx is not the purview of local government, but is "clearly within the provenance of the [Alaska] Department of Fish & Game." He continued:

Those aren't the sort of local ordinances that would be allowed by this state law. What this state law would just codify is sort of the nature of municipal power to protect its local citizens and their property.

REPRESENTATIVE SADDLER asked whether "nontargeted species" should be removed from HB 201 in order to avoid conflict between

the proposed legislation and the existing authority of the Board of Game.

MR. BULLARD said he thinks the language needs to be read in context. He referred to the language on page 1, lines 9-10: "A municipality may regulate trapping to protect life and property". He then referred to the aforementioned language in paragraph (4). He offered an example of a person who has bird feeders in his/her yard, and he indicated that the municipality could "regulate the placement of traps" but would still have to protect life and property. He said he does not know if that language should come out of the bill, because "this isn't going to allow an ordinance that takes the local government into the provenance of" ADF&G. He said the responsibility of the state's fish and game is that of ADF&G, not the municipality.

REPRESENTATIVE SADDLER asked Mr. Bullard to confirm that he thinks ["nontargeted species"] should be removed from HB 201.

MR. BULLARD explained that when he drafted the language of HB 201, it was his legal understanding that that language would be conditioned, that any ordinance that was adopted would have to protect life and property. He said it is possible to take that language out, but the existing language is just codifying what first class boroughs and municipalities can do currently.

REPRESENTATIVE SADDLER repeated his question.

MR. BULLARD answered that the decision to remove "nontargeted species" or leave it in is up to the legislature.

REPRESENTATIVE SADDLER opined that the language should be deleted, because he offered his understanding that Mr. Bullard had said that "it's an improper impingement on the Board of Game's authority to regulate incidental take." He said he would offer an amendment to that effect when committee discussion took place.

[8:38:17 AM](#)

REPRESENTATIVE RAUSCHER asked Mr. Spiropoulos how big the Mat-Su Borough is currently.

[8:38:40 AM](#)

MR. SPIROPOULUS answered approximately 24,500 square miles.

REPRESENTATIVE RAUSCHER added, "Of control over trapping."

8:39:05 AM

REPRESENTATIVE SADDLER asked who makes the determination whether something is likely to cause injury.

8:39:24 AM

REPRESENTATIVE JOSEPHSON responded that he thinks that would be a determination made by a local authority. He said he thinks it may not be easy to codify what would cause injury and what would not. In response to a follow-up question, he said he has not seen a standard definition anywhere else in state law.

8:40:28 AM

REPRESENTATIVE DRUMMOND noted that the proposed legislation uses the term "may" not "shall" in regard to giving municipalities the ability to regulate trapping. She then asked where in the bill is there language permitting the regulation of trapping on private property.

REPRESENTATIVE JOSEPHSON answered that the permission to regulate would be within a municipality's boundaries, which would include private holdings. He said there are people who think "that can't possibly stand," but he said even though a home is a proverbial castle, homes are regulated whether or not the homeowner is aware of the regulations. Many codes apply to the homeowner.

REPRESENTATIVE DRUMMOND said she agrees. She said she envisions someone being upset with his/her neighbor and setting a trap for the neighbor's dog on the lawn, and since that area is easily accessible to children and other small creatures, that would not be permissible behavior in a municipality.

REPRESENTATIVE JOSEPHSON said that begs the question about purists who believe that if a dog is off leash, then the dog owner is violating law, but there is no law that states, as a matter of policy, that the ultimate loss of the dog's life is an acceptable price. He said Representative Drummond's example is one that has been known to happen.

REPRESENTATIVE DRUMMOND said she believes it has.

REPRESENTATIVE JOSEPHSON advised that anyone who thinks [HB 201] is a solution in search of problem need only to do an on-line search for trapping and trails in Alaska to get many results. He said, "This is an ongoing problem, and it's not going to go away." He echoed Representative Drummond's observation regarding the optional nature of HB 201, and he said he thinks the proposed legislation "approaches those things that, under Title 29, local governments can legitimately do as local governments, without infringing on the Board of Game's prerogative."

[8:45:40 AM](#)

REPRESENTATIVE SADDLER asked the bill sponsor to share his personal views on where and when trapping should be allowed.

REPRESENTATIVE JOSEPHSON said he personally thinks there should be lots of trapping availability in the state of Alaska, but not on federal lands where federal land managers think it is not in the public's best interest. He added that his opinion is "not prevailing in that respect" and President Donald Trump just "signed something that runs counter to that." He said he thinks there is a lot of interest from dog mushers, whose animals are impacted by [trapping], as well as dog walkers, cross country skiers, backpackers, and other trail users. He said he thinks there is an imbalance, because "the traps sort of control the turf when they're placed." He said he would like traps to be moved off publicly maintained trails by 100-200 feet, but he noted that the House Resources Standing Committee disagreed with him. He reiterated that the House Resources Standing Committee does think local governments need more authority related to trapping, which is the impetus for HB 201.

[8:48:42 AM](#)

CO-CHAIR PARISH opened public testimony on HB 201.

[8:48:46 AM](#)

JAN WRENTMORE related that the City of Skagway grappled with the issue of trapping. She recollected that the city passed an ordinance in 2015 to regulate for public safety within borough boundaries. She opined that HB 201 is an excellent bill, because it would offer clarification to what many communities are already doing, which is regulating where trapping can happen. She said the community in Skagway dealt with set-backs in certain areas and designated a huge rural area, in which set-

backs from trails were much smaller. She related that in Skagway "trapping is prohibited within 50 yards of any public street, road, right-of-way, or highway, or established marked trail within the boundaries of the Skagway Borough, unless the area is designated 'rural trapping area.'" She noted that the ordinance in Skagway defines the large rural tracts of land where the set-back is only 25 yards.

MS. WRENTMORE explained that the old-timers in Skagway always set their traps far from town; the necessity for the ordinance came about when two or three "guys" decided to trap in public parks, along trails, and in the cemetery. She said she likes HB 201 for the control it would give municipalities, because she said only the people in those municipalities know, for example, where the favorite trails are. She said ADF&G was not helpful, because it does not understand "the recreational side of it" and instead just wants to manage game populations. She concluded that HB 201 would give municipalities the ability to figure out what works for their communities and what areas would be of concern.

[8:52:01 AM](#)

KNEELAND TAYLOR, Attorney, testified in support of HB 201 as legislation necessary to address the murkiness surrounding the authority of municipalities in regulating the placing of traps. He said he wrote legal opinions on this matter on behalf of a group in the Mat-Su Borough that was pushing for an ordinance, which ultimately was enacted. He said he also served on a Board of Game subcommittee about 15 years ago that looked at the placing of traps near trailheads near Anchorage. He noted that he supported HB 40, and he echoed Representative Josephson's remarks that the feedback on that legislation was that [the regulation of trap setting] should be a local matter. He indicated that those who have seen traps set at trailheads and right alongside trails would like to see those traps set back. He said this is a long-standing problem, and clarity would be helpful to those who would like to see restrictions placed.

[8:55:19 AM](#)

REPRESENTATIVE WESTLAKE asked how the proposed legislation would change what is presently possible.

MR. TAYLOR answered that municipal governments in Alaska express authority to regulate the placing of traps near trailheads, along trails, and in other public, populated areas, such as

schools. He said it is not now presently clear that the municipalities have that authority. He echoed Representative Drummond's previous observation that HB 201 would, through the use of the word "may", allow municipalities to set limits on trapping - it would not require them to do so. He indicated that without this provision, the groups with which he has associated find themselves involved in litigation, and the proposed legislation would give them a fighting chance in any conflict between federal or local authority.

8:57:27 AM

REPRESENTATIVE SADDLER asked Mr. Taylor for his general view on trapping in Alaska.

MR. TAYLOR answered that he would like to see restrictions on trapping in densely populated areas and trapping along densely populated trails and at trailheads. He said he does not oppose all trapping in Alaska. He added, "A long time ago I entertained some of those views, but I've gotten older and wiser and changed those views."

8:58:36 AM

AL BARRETTE testified in opposition to HB 201. He opined that using interpretive terminology is dangerous. He commented that local governments make up a large portion of the state. He said almost every municipality or borough has subsistence areas within their boundaries, and HB 201 would infringe on subsistence activities. He said the Fairbanks North Star Borough does not have policing powers, so he does not know how this could work. He said he has been told by Alaska State Troopers that they do not enforce ordinances, which is why, for example, they do not write a ticket for someone who has his/her dog off leash in violation of a municipality's ordinance.

MR. BARRETTE noted that a 1982 attorney general's opinion stated that the Board of Game did not have the authority to "regulate safety," but in about 1983 the legislature adopted new language in AS 16.05.255 (11), which allows the Board of Game to adopt regulations for "taking game to ensure public safety". He noted that Creamer's Field in Fairbanks is within the municipal boundary and allows trapping through the Board of Game, and under HB 201, that could be taken away by a municipality.

MR. BARRETTE warned that the proposed "cookie cutter, one-size-fits-all" legislation should not be supported, because it is "the wrong way to go."

[9:01:25 AM](#)

CO-CHAIR FANSLER asked why Mr. Barrette thinks that the result would be a cookie cutter situation for the entire state when clearly the bill proposes that each municipality would be able to choose whether or not to regulate and which regulations would serve each community. He said he could worry that the outcome would be the opposite, wherein "you could be going from municipality to municipality and not have any idea of what the trapping laws are in that region."

MR. BARRETTE responded that he thinks Co-Chair Fansler could be correct in his estimation and perhaps his own use of the term "cookie cutter" was wrong. He said a trap line running through two municipalities could have two sets of regulations affecting the trapper. He also reiterated his concern that the regulations on setbacks or the size of traps could restrict subsistence trapping. He said as a trapper, he sometimes sets a trap for one species but unintentionally catches a nontargeted species, and [under HB 201], an assembly could decide to restrict his ability to trap based on the likelihood of nontargeted species being caught in the trap.

[9:04:20 AM](#)

REPRESENTATIVE JOSEPHSON pointed out that from unit to unit there already are different regulations from the Board of Game. Further, there are subunits within each game unit that have separate regulations in terms of methods and means. He said the idea that "we couldn't possibly tolerate this" because a borough might want regulation while [an adjacent] borough wants another "rings hollow a little bit."

[9:05:11 AM](#)

REPRESENTATIVE SADDLER asked for clarification regarding the citation Mr. Barrette had given.

MR. BARRETTE said he had cited [paragraph] (11) from the aforementioned statute. He said a person could probably argue that "public safety" means human safety and not that of private property.

REPRESENTATIVE SADDLER pointed to the phrase "likely to cause injury" on page 2, line 4, of HB 201, and he asked Mr. Barrette if he is aware of anywhere in Alaska statute where a standard has been established regarding [the meaning of] "likely to cause injury".

MR. BARRETTE responded that he has not seen that in statute.

[9:07:05 AM](#)

BRUCE WEBER testified that three to four years ago, it was brought to his attention that someone was setting traps at the end of the road in the subdivision in which he lives. He said he researched to find out what kind of regulations the state or municipality had for the placing of traps and was surprised to discover there were none. He then began a campaign to get the municipality of Skagway to adopt regulations outlining where trapping should and should not be. He clarified that his purpose had not been to end trapping, because he believes there are places where trapping should occur; however, he also believes there are lots of places where trapping should not occur. Mr. Weber said he thinks the number of municipalities and boroughs that have adopted legislation delineating where trapping should and should not occur is an indication of the need for HB 201.

[9:09:58 AM](#)

KENNY BARBER testified in opposition to HB 201. He said he thinks it is wrong to give municipalities the right to close trapping on private lands, which is what he - having just heard about the proposed legislation today - understands would happen under HB 201. Further, he said he thinks "this whole thing is getting blown out of proportion stating that people are trapping close to their homes." He said, "Some of it might be, but I think some of it has to do with dogs, in general." Regarding safety, he said he does not know of any person who has been caught in or harmed in a trap in Alaska, "unless it was a trapper himself who messed up." He questioned how the Board of Game would "control this thing from getting out of hand." He concluded, "It doesn't make much sense to me."

[9:11:29 AM](#)

REPRESENTATIVE RAUSCHER said Mr. Barber brought up a point that he would like addressed by someone from Alaska Department of Fish & Game.

[9:12:33 AM](#)

REPRESENTATIVE JOSEPHSON noted that Ms. Rowe had reminded him that "likely to cause injury" does "ring a bit with the common law on recklessness," and that may be a good place to investigate the term.

[9:13:06 AM](#)

MS. ROWE offered her understanding that a definition of reckless, along with the phrase "likely to cause injury", could be found in Title 11, under criminal law. She added, "I think that's why we chose that language is because it's been defined in common law and it's defined in statute."

[9:13:35 AM](#)

REPRESENTATIVE RAUSCHER remarked on the many regulations [the state] has regarding the many traditions of trapping, and he said he would like to know what ADF&G's position is on HB 201.

[9:14:29 AM](#)

HAZEL NELSON, Director, Division of Subsistence, Alaska Department of Fish & Game (ADF&G), stated that while she does not have all the answers for the committee, she would say that "we probably have concern about the language" to the extent that she anticipates there would be, under HB 201, "confusions that would have to be clarified."

[9:17:22 AM](#)

BRUCE DALE, Director, Division of Wildlife Conservation, Alaska Department of Fish & Game (ADF&G), stated that the department does not have a position on HB 201 at this time; however, there are some questions as to who would enforce the proposed legislation. He pointed out that many of the municipalities' regulations are actually Board of Game regulations. He mentioned Anchorage, Fairbanks, Skagway, and Kenai. In response to Representative Rauscher, offered his understanding that the ability [of municipalities] to regulate their own land is what has already been established, but "they can't regulate all lands within municipal boundaries." He suggested the Department of Law could provide a more detailed response.

REPRESENTATIVE RAUSCHER asked, "So, then, have they been given the power to do this through fish and game?"

MR. DALE answered, "No, that ... would have to be through statute in the legislature. The Board of Game, of course, can regulate any lands in the state."

REPRESENTATIVE RAUSCHER clarified his question as follows:

I guess I'm a little confused on how some communities do have the ability to regulate this and have done so, and some say they can't because they don't have that ability.

[9:20:02 AM](#)

CHERYL BROOKING, Assistant Attorney General (AG), Natural Resources Section, Civil Division (Anchorage), Department of Law (DOL), responded to Representative Rauscher's query by explaining that some municipalities have adopted ordinances that are not particularly valid, and she said she does not know "what level of enforcement that they ... have." She said that is similar to state statute that the court has ruled as invalid but which is still on the books. Conversely, there are examples of when the Board of Game has adopted regulations. For example, there were certain areas in the City & Borough of Juneau that were heavily used by "a variety of different users" who came to the Board of Game with a proposal to regulate where traps could be set in these heavily used trail areas. With that type of consensus, the Board of Game adopted state regulations, and the municipal regulations on the books mirror the ones adopted by the Board of Game. So, right now the municipalities do not have the authority to regulate hunting or trapping, "but like the Mat-Su Borough did, the borough regulated whether or not traps can be placed or where they can be placed on borough-owned land."

MS. BROOKING stated that HB 201 is "a little bit different," because it would allow municipalities to regulate all trapping - not just the placement of traps - within their boundaries, including on state, federal, and borough boundaries. She added that HB 201 appears to include university and railroad lands, although she admitted she is not clear on that.

REPRESENTATIVE RAUSCHER questioned, "So, are we giving permission for ... the ability to do federal land also?"

CO-CHAIR PARISH said, "Ms. Brooking?"

MS. BROOKING responded, "Yes."

[9:22:28 AM](#)

CO-CHAIR PARISH, after ascertaining that there was no one else who wished to testify, closed public testimony on HB 201.

[9:22:46 AM](#)

REPRESENTATIVE SADDLER asked Ms. Nelson how AS 16.05.255(11) has been interpreted as to the right of the state to regulate taking of game for police purposes to ensure public safety.

MS. NELSON deferred to DOL.

REPRESENTATIVE SADDLER rephrased his question to inquire whether the aforementioned statute has ever been applied and enforced.

[9:24:06 AM](#)

MS. BROOKING answered yes, the Board of Game responds to all proposals, and the overriding goal and directive of the Board of Game is "to regulate for the conservation, utilization, and development of the resource," and in doing that the board can also address public safety concerns. She said the board addresses issues of overuse and conflict, which can involve public safety concerns. The board also has regulations that allow the taking of an animal in defense of life and property, which is also a public safety concern.

REPRESENTATIVE SADDLER asked if the board ever regulated the taking, use, or management of non-game animals under the public safety authority.

MS. BROOKING answered that the board does not regulate non-game animals; domestic animals are outside of the board's authority.

[9:26:12 AM](#)

REPRESENTATIVE TALERICO said, "When we do something like this, we put it into Title 29. I don't see this as being an actual power, and I would assume that the municipalities would have to adopt the power in order to engage this, which would be public safety. I don't think it fits under land regulation or solid waste or education. So, is this a standalone thing? Would they

have to adopt another power?" He said he was thinking of home rule and first and second class boroughs. He offered his understanding that there may need to be a vote of the people and that [new regulations adopted] must fit somewhere within borough code. He asked if the land use power would have to "fit under public safety" or if it could be "put in land use regulation."

[9:27:31 AM](#)

MS. BROOKING answered that the proposed bill, as written, seems to be "within the public safety power." She said it is unclear whether a borough would need to "adopt that or somehow have that power." She said HB 201 seems to apply to all cities, municipalities, and boroughs, regardless of their class. She concluded that she does not really have an answer to Representative Talerico's question.

[9:28:07 AM](#)

REPRESENTATIVE WESTLAKE read an excerpt of an article written by The East Idaho News on March 22, regarding an incident when a boy was playing with his dog and touched a pipe sticking out of the ground. What he touched was a cyanide trap set to catch coyotes, and the trap emitted sodium cyanide, which killed the boy's dog and required the boy to wash his eyes before he could run home for help. The incident occurred just 10 minutes from the boy's home. Representative Westlake asked, "Is there a way we can stop certain traps like this?"

MS. BROOKING responded that she was not familiar with that particular incident but does not believe that type of trapping is allowed in Alaska. To a follow-up question, she said under current law, anyone can make a proposal to the Board of Game. She noted that there is a regulatory cycle to consider for submitting proposals.

[9:30:59 AM](#)

REPRESENTATIVE DRUMMOND relayed that the Municipality of Anchorage is roughly 2,000 square miles and includes the bulk of Chugach State Park, which is roughly 780 square miles. Of the 738,000 people who live in Alaska, 300,000 of them live in Anchorage; and the square mileage of Anchorage is three-tenths of one percent of the area of the state. She asked if her assumption is correct that if HB 201 becomes law, ADF&G would still have jurisdiction in Chugach State Park, which borders the Municipality of Anchorage.

[9:32:55 AM](#)

MAJOR BERNARD CHASTAIN, Deputy Director, Division of Alaska Wildlife Troopers, Department of Public Safety (DPS), stated that the division is a state law enforcement agency responsible for statewide enforcement of hunting, fishing, and trapping regulations. He emphasized that DPS does not have a position on HB 201 other than as it may relate to enforceability. He said the troopers enforce state law - they do not enforce city or municipal code. He said that is important, because some boroughs and municipalities are large areas that fall outside of city limits, so the enforcement falls to the police agency responsible for the area within the city limits. Outside the city limits, for example, in a borough, the enforcement falls to a borough enforcement officer for wildlife or any type of wildlife complaints. He said some boroughs have [borough enforcement officers] while others do not. He indicated that the borough officers would be the ones responsible for municipal codes placed on the areas outside of city limits.

[9:34:48 AM](#)

CO-CHAIR PARISH announced that HB 201 was held over.

**SB 64-UNIFORM ENVIROMENTAL COVENANTS ACT**

[9:35:04 AM](#)

CO-CHAIR PARISH announced that the final order of business would be SENATE BILL NO. 64, "An Act adopting the Uniform Environmental Covenants Act; relating to environmental real property covenants and notices of activity and use limitation at contaminated sites to ensure the protection of human health, safety, and welfare, and the environment; and providing for an effective date."

[9:35:27 AM](#)

SENATOR PETER MICCICHE, Alaska State Legislature, as prime sponsor, presented SB 64. He said the proposed legislation fits the description of legislation that would "streamline and remove obstacles that inhibit business commerce in the transfer of property." He said SB 64 would help in that capacity without reducing expectations for public health, safety, and a healthy environment. The proposed legislation would create The Uniform Environmental Covenant Act, which would "protect the buyer and

seller of contaminated property, while allowing the fullest and best use of the property until the contamination reaches safe levels." He said that under SB 64, [entering into the environmental covenant] would be voluntary. He said it is specifically recordable interest in real estate that will be tracked in the Department of Environmental Conservation's (DEC's) database, which results in a zero fiscal note, because that database already exists. He said [the covenant] is "specific to the risks at a particular site and restricts activities that could result in exposure while allowing other uses to occur."

SENATOR MICCICHE relayed that in his district there is a beautiful piece of property that has been contaminated, and the "Mom and Pop" who own it cannot afford the cleanup; however, there are interested parties who could [buy the property and] easily afford the cleanup. Under SB 64, the contamination would be recorded on the property deed; the new owner could purchase the property and have it cleaned up to the Department of Environmental Conservation's (DEC's) current standards; DEC would then release the covenant from the piece of property. He said the process would protect both seller and buyer. He reiterated that it would be a voluntary process. He said, "This eases the sale through a formal recording on the deed itself."

SENATOR MICCICHE related a second story wherein buyers bought property in Anchorage and were unaware that it was contaminated; they "did some dirt work" and inadvertently spread the contamination across their property and into the abutting properties and are now responsible for paying for the cost of the cleanup. If the provisions of SB 64 had been in place, the buyers could have been made aware of the contamination, may have still chosen to buy the property and pay \$20,000 for the cleanup instead of potentially millions of dollars.

SENATOR MICCICHE said there are many pieces of property that could benefit under SB 64. Currently there are thousands of contaminated sites in Alaska. He related that the only opposition to SB 64 is from the federal government, which owns 51 percent of the contaminated sites in the state. He mentioned the "Legacy Well" - nicknamed "Travesty Wells" by the legislature - and said, "We believe they should live up to the same environmental expectations of the residents of this state."

[9:39:40 AM](#)

REPRESENTATIVE RAUSCHER asked if there is any regulation currently in place that requires contamination to be declared, if that regulation is statewide or within local jurisdictions, and whether contamination currently must be disclosed to potential buyers.

SENATOR MICICCHE answered that if a property owner is unaware of contamination, he/she is not required to disclose it. He said, "This is once contamination has been identified on your property." He deferred further response to Kristin Ryan from DEC.

[9:40:52 AM](#)

REPRESENTATIVE WESTLAKE expressed appreciation to Senator Micciche for SB 64.

[9:41:10 AM](#)

REPRESENTATIVE SADDLER said he has a constituent who "has the same kind of situation." He asked whether there would be a cost to create a covenant and whether there would be any [exceptions] related to types of contamination.

[9:41:44 AM](#)

SENATOR MICCICHE responded that any contamination for which DEC requires cleanup would be covered under SB 64. He said his personal interest is in regard to transferring of property to the next owner; the proposed legislation would allow the new owner "to take on the liability of that contamination if they choose to do so." He said sometimes contamination reaches safe levels over time. For example, a person who owns an old filling station where the contamination was contained underground could operate a new business there with certain restrictions - perhaps not a daycare, but certainly an auto parts store. The owner could choose to have the contamination cleaned up later in order to lift the restrictions and operate whatever business he/she may choose. He added, "It allows a lot of flexibility for both the buyer and seller."

REPRESENTATIVE SADDLER offered a hypothetical situation wherein the owner of the property gets a covenant that states the contamination would cost \$50,000 at most to clean up, but then the new owner finds out the cleanup will cost \$5 million. He asked, "Does this extinguish any obligation or liability on the original seller or are there any limitations or sideboards?"

SENATOR MICCICHE deferred to DEC but surmised a determination would be made on a case-by-case basis. He offered his understanding that with an environmental covenant, the buyer can "take on a proportion of liability depending on the transaction and until it's satisfied ...."

REPRESENTATIVE SADDLER asked if the cost for recording a covenant would be no more than the cost of recording "a carpenter's lien or anything else."

SENATOR MICCICHE answered, "I'm not sure if there's any cost."

[9:44:57 AM](#)

KRISTIN RYAN, Director, Division of Spill Prevention and Response, Department of Environmental Conservation (DEC), stated that SB 64 is needed by the department in order to transfer property that has been contaminated "back into commerce." She said property that has been contaminated is considered "blighted and untouchable," and it is difficult to get loans on such property. The proposed legislation would reduce the restrictions on the property "to the specific uses that we're concerned about, allowing all other uses to occur." She said DEC has found that in other states [that have passed similar legislation], buyers, sellers, and lenders are more comfortable undertaking sale transactions of [contaminated property]. She advised a version of the uniform law has been adopted in most states, with about 7 states, including Alaska, still working on getting the law passed. She said, "There's some testimony from the uniform law organization that explains why they proposed this and why it's been working so well in other states."

MS. RYAN related that the U.S. Department of Defense (DoD) has asked to be exempted, but DEC thinks DoD should be held to the same standards as everyone else. Ms. Ryan told Representative Saddler that DEC would take on the responsibility of filing a covenant and is allowed to do so at no cost; therefore, there would be no cost to the owner of the property for putting the restriction in the title. She said DEC currently does this work and puts the information in its database, but the database is not always accessed [by the public]; the proposed legislation would ensure that the people involved are aware [of the contamination] when they do title searches.

[9:47:20 AM](#)

CO-CHAIR FANSLER referred to the story [shared by the prime sponsor] regarding [the purchase of contaminated land in Anchorage where the contamination was inadvertently spread to other properties]. He offered his understanding that the owner was under no obligation to clean up the contamination but later, when the owner spread the contamination, he/she was under obligation to clean up the contamination. He asked for an explanation. He further questioned why the original owner of the land was not obligated to clean up the contamination.

[9:48:13 AM](#)

MS. RYAN responded that under statute, the current owner is responsible for the contamination of his/her land. If the owner is not the cause of the contamination but "inherited it for some reason," his/her recourse is to pursue the original contaminator through a court of law. She continued:

A good example is the Flint Hills Refinery. We recently settled with Koch Brothers, which is the current owner of the refinery, but a lot of that contamination probably occurred when William owned the property. We are continuing a legal fight ... now joined with the Koch Brothers against William to have them contribute to the remedy.

MS. RYAN offered details related to the aforementioned situation given by the prime sponsor, as follows:

We were aware of contamination; they closed the gas station down - this was on Tudor [Road]; they took out the tanks and the petroleum contaminated dirt around the tanks; but there was enough petroleum that had leached over to the foundation of a building, and ... there would be no way to get that without removing the foundation of a building. So, we said, "You can leave that, but if you ever take that building out, you need to deal with that dirt appropriately." And what happened is the property was transferred several times; that was not communicated to the new purchaser; they pulled the foundation out; they spread the dirt in the process of that. So, they are now the responsible party in our minds, because they're the ones that moved the dirt. ... Had they known, they would have not moved it everywhere. ... And they can go to court after the original responsible party, if

they choose to do so. But ... the way our statutes work: they're the ones that we regulate.

CO-CHAIR FANSLER surmised that there are situations wherein contaminations happen and don't get cleaned up, and he inquired whether there are "alternatives given in that situation."

MR. RYAN responded that there are approximately 2,000 contaminated sites currently in Alaska - about half of which are on federal property. For about 1,000 of those sites, DEC has decided - for a variety of reasons - that "they don't have to clean it all up." The department puts restrictions on the property "to protect the future." For example, as Senator Micciche described, perhaps a daycare cannot be built on a particular site or, Ms. Ryan suggested, a well built on a contaminated refinery site. She said those restrictions are called institutional control and vary depending on the type and location of the contamination. The decision to not clean up contamination is a joint decision made by DEC and the responsible party. She emphasized that the department's ultimate goal is for contaminated sites to be cleaned; however, there are situations in which that may not be reasonable.

MS. RYAN, in response to a follow-up question, said the proposed legislation, if enacted, would not apply retroactively to the 2,000 already recorded sites. She said there may be some sites for which the division would want to establish covenants on a case-by-case basis. She indicated that there are some owners of sites on the North Slope who are interested in [the proposed legislation] for protection of their liability when property is transferred in the future. She said the department wants to prevent future situations in which people are unaware that the land they have inherited is contaminated.

CO-CHAIR FANSLER asked for confirmation that Ms. Ryan means that the department could deal with all 2,000 contaminated sites retroactively but would not, because it would be too time consuming.

MS. RYAN answered yes, and she added that the department does not have the resources to do that. She stated, "If the responsible party wants it, of course we'll honor that; but I don't see us ... taking them all on."

[9:53:38 AM](#)

REPRESENTATIVE SADDLER asked if the environmental covenant would be "an unrestricted allowance of liability" or include terms [of limitation].

MS. RYAN answered, "That would ... have to be negotiated between ... the sales transaction; it would not be part of the covenant; the covenant has no monetary interest whatsoever."

[9:54:30 AM](#)

REPRESENTATIVE RAUSCHER asked Ms. Ryan to explain the process of "getting off of this registry."

MS. RYAN said DEC would be "treating it like a permit." She explained that there would be an appeal process. If a future buyer decides the covenant is "no longer necessary in restricting some use that they're interested in," then he/she would propose to DEC that the covenant be modified or removed. She explained that she used the term "permit" because if DEC does not agree with the proposal, then the buyer could appeal that decision to the commissioner, as is done with other permit decisions. She said as a last-case scenario, the person could take DEC to court. In response to a follow-up question, she confirmed that of the 2,000 already existing contamination sites that are not on federal land, some are on privately owned land. She said home heating oil tanks are problematic. She said she does not know the percentage, but estimated it would be only about 5 percent.

[9:56:12 AM](#)

REPRESENTATIVE DRUMMOND asked if the initialism "IC" stands for institutional controls.

MS. RYAN answered, "Correct."

[9:56:25 AM](#)

REPRESENTATIVE SADDLER asked if the programs in other states have been working well or if there have been any legal battles resulting.

MR. RYAN responded that the one benefit of Alaska having waited to put forth such legislation is that it can first learn from the mistakes made by other states. She advised that the model code was put out in 2003, so "it's been over 10 years that people have been working on this," and the organization that

proposed the model code is saying [Alaska's] version is probably the best one. She concluded, "Yes, it's working in other states; the version that we're proposing has ... been effective in accomplishing the goals that we're talking about."

[9:57:30 AM](#)

CO-CHAIR PARISH opened public testimony. After ascertaining that there was no one who wished to testify, he closed public testimony on SB 64.

CO-CHAIR PARISH announced that SB 64 was held over.

[9:58:41 AM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 9:59 a.m.