

HB

75

Alaska State Legislature

Juneau

State Capitol Bldg., Rm. 434
Juneau, AK 99811-1182
Phone (907) 465-4976
Fax (907) 465-3883
Toll Free 866-465-4976



Fairbanks

119 N Cushman, Ste 213
Fairbanks, AK 99701
Phone (907) 452-6084
Fax (907) 452-6096

Representative Mike Kelly *House District 7*

MEMORANDUM

To: Sen. Tom Wagoner – Senate Resources Committee
From: Rep. Mike Kelly, Member – House Finance Committee
Date: April 11, 2005
Re: Committee Hearing Request – CSHB 75(FIN)

.....

Attached you will find the most recent version of HB 75 - *"An Act relating to the powers and duties of the commissioner of fish and game, Board of Fisheries, and Board of Game in promoting and preserving fishing, hunting, and trapping in the state."* and a current sponsor statement along with excerpts from the Minnesota and Montana constitutions, several letters of support, and legal memorandums relevant to the bill. I appreciate your time, and look forward to presenting this bill to the Senate Resources Committee.

If I can provide any other relevant information or answer any immediate questions you might have, feel free to contact me directly at extension 4976.

Thank you.

Senate Resources

April 22, 2005

HB 75 Materials List

- Sponsor Statement: 1 page
- Explanation of Changes – H(RES) to H(FIN): 2 pages
- Legal Opinion: 4-04-05: 2 pages
- CS HB 75(FIN): 7 pages
- #1 Fiscal Note: 3-14-05: ADF&G: 1 page
- Law Letter to Rep. Seaton: 3-18-05: 2 pages
- Minnesota Constitution Article XIII: 1 page
- Montana Code Annotated 2003: 1 page
- State of Illinois 91st General Assembly Legislation: 2 pages
- AOC Letter: 3-14-05: 1 page

Alaska State Legislature

Juneau

State Capitol Bldg., Rm. 434
Juneau, AK 99801-1182
Phone (907) 465-4976
Fax (907) 465-3883
Toll Free 866-465-4976



Fairbanks

119 N Cushman, Ste 213
Fairbanks, AK 99701
Phone (907) 452-6084
Fax (907) 452-6096

Representative Mike Kelly

House District 7

Sponsor Statement

CSHB 75(FIN)

(24-LS0359\Y)

"An Act relating to the duties of the commissioner of fish and game, Board of Fisheries, and Board of Game in promoting and preserving fishing, hunting, and trapping in the state."

House Bill 75 clearly expresses the Legislature's desire to protect hunting as an integral part of Alaska's cultural heritage.

This bill was brought to the sponsor by a constituent and is modeled after a bill considered by the Michigan State Legislature in 2004. In addition, in recent years there have been moves in other states to include similar language in their respective constitutions. Similar language was added in Minnesota in 1998 and Montana in 2004.

Hunting, fishing, and trapping have always been a core component of our heritage and livelihood in Alaska and this sentiment is expressed in our Constitution in Article 8, sec. 4. HB 75 creates greater statutory clarity in directing the Commissioner of Fish and Game and the Boards of Fish and Game to adopt regulations and enforce existing statutes in a manner consistent with protecting Alaskans' rights to utilize our state's fish and game resources.

HB 75 will provide an additional protection from outside encroachment on our ability to responsibly harvest our fish and game.

Alaska State Legislature

Juneau
State Capitol Bldg., Rm. 434
Juneau, AK 99801-1182
Phone (907) 465-4976
Fax (907) 465-3883
Toll Free 866-465-4976



Fairbanks
119 N Cushman, Ste 213
Fairbanks, AK 99701
Phone (907) 452-6084
Fax (907) 452-6096

Representative Mike Kelly
House District 7

EXPLANATION OF CHANGES

CSHB 75(RES) v. CSHB 75(1/4)
(24-LS0359F) (24-LS0359Y)

Sec. 1

(Pg. 1, Lines 5-12)

The sponsor has included a legislative intent statement plainly stating the ongoing commitment to constitutional provisions for common use and sustained yield principles found in Article 8, secs. 3 & 4. The following sections have been appropriately renumbered to reflect this inclusion.

Sec. 2

(Pg. 1-4)

This section has been changed in two significant ways. First the sponsor has changed the structure of the section by placing the new language in the "Powers and duties of the commissioner" (*AS 16.05.050 (a)*) rather than in "Functions of the commissioner" (*AS 16.05.020*) as it appeared in the original version. Secondly, the phrase "In conjunction with" (*Pg. 4, Line 19*) has been removed from the original language at the request of the Department of Fish and Game.

Sec. 3

(Pg. 4-6)

Like the previous section, there have again been two significant changes; one structural within the statute and one a language revision. First, the "preserve and promote" language has been restructured within the regulation making authority of the Board of Fisheries. Like the previous section, it removes the phrase "In conjunction with" (*Pg. 6, Line 17*) at the request of the Department of Fish and Game.

Sec. 4

(Pg. 6-7)

This section has been redrafted to conform with the changes as they apply to the Board of Fisheries. This section makes the same changes as the previous section, only they apply to the Board of Game in AS 16.05.255(a).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 4, 2005

SUBJECT: Questions relating to CSHB 75(FIN)
(Work Order No. 24-LS0359\I)

TO: Representative Mike Kelly
Attn: Heath Hilyard

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether CSHB 75(FIN) establishes a priority for consumptive uses of fish and game over nonconsumptive uses of fish and game or implicates the common use and sustained yield sections of the Alaska Constitution.

The short answer to your questions is no.

CSHB 75(FIN) amends the powers and duties of the commissioner of fish and game, the Board of Fisheries, and the Board of Game by adding authority to promote fishing, hunting, and trapping and to preserve the heritage of fishing, hunting, and trapping in the state. The commissioner and the boards are already responsible for the management of fish and game and the management of fishing, hunting, and trapping in the state. HB 75 would add responsibility for a related function, the promotion of fishing, hunting, and trapping and the preservation of the heritage of those activities in the state. Under HB 75, promoting and preserving fishing, hunting, and trapping would be neither the sole function of the commissioner and the boards nor the primary duty of the commissioner and the boards. Promoting and preserving fishing, hunting, and trapping would be only of the many powers and duties that the commissioner and the boards are responsible for under AS 16.05.050, 16.05.251, 16.05.255, and other statutes.

Nothing on the face of the bill creates a priority for fishing, hunting, or trapping or requires the commissioner and the boards to assign a priority to fishing, hunting, or trapping over other uses of fish and game. Furthermore, there is nothing in the language of the bill that diminishes, limits, or alters the existing authority of the commissioner and the boards in regard to consumptive and nonconsumptive uses of fish and game.

Thus, it is my conclusion that CSHB 75(FIN) does not establish a priority or even a preference for hunting, fishing, and trapping over other consumptive or nonconsumptive uses of fish and game.

Representative Mike Kelly

April 4, 2005

Page 2

CSHB 75(FIN) does not implicate the common use or sustained yield sections of the Alaska Constitution. The bill does not limit or otherwise affect entry into a fish or game user group, so common use is not an issue in regard to the bill. Also, the bill does not affect the responsibility of the commissioner and the boards to manage fish and game for sustained yield, so the sustained yield provision of the Alaska Constitution is not an issue. To the extent that the commissioner or the boards take action under the additional powers and duties conferred in regard to promotion and preservation of hunting, fishing, and trapping of fish and game, those actions will be subject to, and must be consistent with, all provisions of the Alaska Constitution, including the common use and sustained yield sections.

If I may be of further assistance, please advise.

GU:jad

05-185.jad

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-3697

March 18, 2005

Honorable Paul Seaton
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Re: HB 75

Dear Representative Seaton:

During hearings on HB 75, the Department of Law was asked to address, in writing, the effect, if any, that the bill's language would have on issues relating to brown bear hunting at McNeil River. Assuming that the current language remains unchanged, it is our opinion that the bill would have no effect on brown bear hunting at McNeil river State Game Sanctuary or McNeil River State Game Refuge, for the following reasons.

The relevant language in HB 75 requires the commissioner of ADF&G and the Board of Game to, "promote...hunting...and preserve the heritage of...hunting...in the state." HB 75, Sec.s 1 and 3. This language does not purport to override any other statutory language. Instead, it simply adds to the existing duties of the commissioner and board.

All hunting, including brown bear hunting, within McNeil River State Game Sanctuary is prohibited by statute. AS 16.20.162(b). Nothing in the bill alters this prohibition.

The hunting of brown bears within McNeil River State Game Refuge is expressly left to the Board of Game's discretion. AS 16.20.041(c). Any such hunting must be consistent with the refuge purposes, which include permanent protection of brown bear populations and maintaining and enhancing brown bear viewing opportunities in the area. AS 16.20.041(b). Because the Board is given discretion to prohibit or allow brown bear hunting, and it is required to foster the refuge purposes in its decision making, it follows that the Board retains the authority to completely ban brown bear hunting in order to accommodate viewing, as it has done. 5 AAC 92.520(d). Nothing in HB 75 purports to affect this discretion. While the bill requires the Board to promote hunting and preserve Alaska's hunting heritage, it contains no specific mandate to promote a certain type of

C R
✓ Commissioner
Deputy Fish
Deputy Game
Spec Asst Fish
Spec Asst PSC
X Legis Liaison
Info Officer
Admin
Boards
X CF
SF
Sub
X WC
CFEC
EVOS
X File

RECEIVED

MAR 18 2005

DEPT. OF FISH & GAME

Honorable Paul Seaton
Alaska State Legislature

March 18, 2005
Page 2

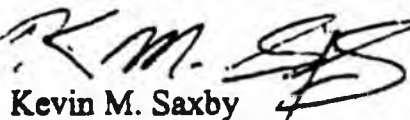
hunting, or preserve hunting in a certain area. Moreover, it is worth noting that hunting other than brown bear hunting has always been allowed within McNeil River State Game Refuge. AS 16.20.041 and 5 AAC 92.520(d). The bill gives no indication that the current situation is at issue.

For all of the above reasons, we conclude that the generalized mandate to promote and preserve hunting in HB 75 would not override the specific statutory provisions discussed above.

Sincerely,

SCOTT J. NORDSTRAND
ACTING ATTORNEY GENERAL

By



Kevin M. Saxby
Assistant Attorney General

cc: Kevin Jardell
David Marquez
Wayne Regelin

Sec. 10. **SEAT OF GOVERNMENT.** The seat of government of the state is in the city of St. Paul. The legislature may provide by law for a change of the seat of government by a vote of the people, or may locate the same upon the land granted by Congress for a seat of government. If the seat of government is changed, the capitol building and grounds shall be dedicated to an institution for the promotion of science, literature and the arts to be organized by the legislature of the state. The Minnesota Historical Society shall always be a department of this institution.

Sec. 11. **STATE SEAL.** A seal of the state shall be kept by the secretary of state and be used by him officially. It shall be called the great seal of the state of Minnesota.

Sec. 12. **PRESERVATION OF HUNTING AND FISHING.** Hunting and fishing and the taking of game and fish are a valued part of our heritage that shall be forever preserved for the people and shall be managed by law and regulation for the public good. [Adopted, November 3, 1998]

[Next Article](#)

[Previous Article](#)

[Constitution Home](#)

Send comments regarding this site to:
webmaster@house.leg.state.mn.us

Updated on

State of Illinois
91st General Assembly
Legislation

[\[Search \]](#) [\[Legislation \]](#)
[\[Home \]](#) [\[Back \]](#) [\[Bottom \]](#)

[\[Introduced \]](#)

[\[Engrossed \]](#)

[\[House Amendment 001 \]](#)

91_SB0163enr

SB163 Enrolled

LRB9102634DHmg

1 AN ACT concerning recreational hunting and trapping.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Department of Natural Resources Act is
5 amended by changing Section 1-15 as follows:

6 (20 ILCS 801/1-15)

7 Sec. 1-15. General powers and duties.

8 (a) It shall be the duty of the Department to
9 investigate practical problems, implement studies, conduct
10 research and provide assistance, information and data
11 relating to the technology and administration of the natural
12 history, entomology, zoology, and botany of this State; the
13 geology and natural resources of this State; the water and
14 atmospheric resources of this State; and the archeological
15 and cultural history of this State.

16 (b) The Department shall obtain, store, and process
17 relevant data; recommend technological, administrative, and
18 legislative changes and developments; cooperate with other
19 federal, state, and local governmental research agencies,
20 facilities, or institutes in the selection of projects for
21 study, cooperate with the Board of Higher Education and with
22 the public and private colleges and universities in this
23 State in developing relevant interdisciplinary approaches to
24 problems; evaluate curricula at all levels of education and
25 provide assistance to instructors; and sponsor an annual
26 conference of leaders in government, industry, health, and
27 education to evaluate the state of this State's environment
28 and natural resources.

29 (c) The Director, in accordance with the Personnel Code,
30 shall employ such personnel, provide such facilities, and
31 contract for such outside services as may be necessary to

SB163 Enrolled

-2-

LRB9102634DHmg

1 carry out the purposes of the Department. Maximum use shall
2 be made of existing federal and state agencies, facilities,
3 and personnel in conducting research under this Act.

4 (d) In addition to its other powers, the Department has
5 the following powers:

6 (1) To obtain, store, process, and provide data and
7 information related to the powers and duties of the
8 Department under this Act. This subdivision (d)(1) does
9 not give authority to the Department to require reports
10 from nongovernmental sources or entities.

11 (2) To cooperate with and support the Illinois
12 ~~Governor's~~ Science and Technology Advisory Committee and
13 the Illinois Coalition for the purpose of facilitating
14 the effective operations and activities of such entities.
15 Support may include, but need not be limited to,
16 providing space for the operations of the Committee and
17 the Illinois Coalition.

18 (e) The Department is authorized to make grants to local
19 not-for-profit organizations for the purposes of development,
20 maintenance and study of wetland areas.

21 (f) The Department has the authority to accept, receive
22 and administer on behalf of the State any gifts, bequests,
23 donations, income from property rental and endowments. Any
24 such funds received by the Department shall be deposited into
25 the Natural Resources Fund, a special fund which is hereby
26 created in the State treasury, and used for the purposes of
27 this Act or, when appropriate, for such purposes and under
28 such restrictions, terms and conditions as are predetermined
29 by the donor or grantor of such funds or property. Any
30 accrued interest from money deposited into the Natural
31 Resources Fund shall be reinvested into the Fund and used in
32 the same manner as the principal. The Director shall maintain
33 records which account for and assure that restricted funds or
34 property are disbursed or used pursuant to the restrictions,

SB163 Enrolled -3- LRB9102634DHmg

1 terms or conditions of the donor.

2 (g) The Department shall recognize, preserve, and
3 promote our special heritage of recreational hunting and
4 trapping by providing opportunities to hunt and trap in
5 accordance with the Wildlife Code.

6 (Source: P.A. 89-445, eff. 2-7-96; revised 12-2-98.)

7 Section 10. The Wildlife Code is amended by changing
8 Section 3.8 as follows:

9 (520 ILCS 5/3.8) (from Ch. 61, par. 3.8)

10 Sec. 3.8. Migratory waterfowl areas; geese.

11 (a) On any property operated under a Migratory Waterfowl
12 Hunting Area Permit (Commercial) where the principal use is
13 to take wild geese, it is the permit holder's duty to ensure
14 all of the following but only during Canada goose season:

15 (1) That no person takes wild geese except from a
16 blind or pit.

17 (2) That no person establishes or uses any blind or
18 pit for the taking of wild geese within 200 yards of any
19 other blind or pit or within 100 yards of the boundary of
20 the property on which the blind or pit is located.

21 (3) That no person establishes or uses any blind or
22 pit for the taking of wild geese within 200 yards of any
23 wildlife refuge boundary or public road right-of-way
24 adjacent to any State or Federal waterfowl refuge. If a
25 blind or pit has been established for more than 10 years
26 and it was believed by both the landowner and the
27 Department during that time to meet the minimum yardage

Sec. 10. SEAT OF GOVERNMENT. The seat of government of the state is in the city of St. Paul. The legislature may provide by law for a change of the seat of government by a vote of the people, or may locate the same upon the land granted by Congress for a seat of government. If the seat of government is changed, the capitol building and grounds shall be dedicated to an institution for the promotion of science, literature and the arts to be organized by the legislature of the state. The Minnesota Historical Society shall always be a department of this institution.

Sec. 11. STATE SEAL. A seal of the state shall be kept by the secretary of state and be used by him officially. It shall be called the great seal of the state of Minnesota.

Sec. 12. PRESERVATION OF HUNTING AND FISHING. Hunting and fishing and the taking of game and fish are a valued part of our heritage that shall be forever preserved for the people and shall be managed by law and regulation for the public good. [Adopted, November 3, 1998]

[Next Article](#)

[Previous Article](#)

[Constitution Home](#)

Send comments regarding this site to:
webmaster@house.leg.state.mn.us

Updated on



Alaska Outdoor Council

PO Box 73902
Fairbanks, AK 99707-3902
(907) 455-4AOC (4262)
aoc@alaska.net
www.alaskaoutdoorcouncil.org

March 14, 2005



Honorable Mike Kelly
Honorable Jay Ramras
Alaska State Legislature
Juneau, AK 99811
By FAX 465-2070 to House Resources Committee

Dear Representatives Kelly and Ramras:

Thank you for introducing HB 75, Rep. Kelly, and for your support, Rep. Ramras.

I applaud your work draft proposal of 2/24/05 and committee substitute for HB 75. Promoting and preserving the various legal forms of hunting and trapping in Alaska is properly a function of the State, through the Department of Fish & Game (ADF&G) and the Board of Game.

When I have in the past urged the ADF&G to advocate hunting and trapping, I have been told that the Department of Law advised ADF&G not to, because there was no clear statutory direction to do so.

The importance of hunting and trapping to Alaskan values and lifestyles and to sound, scientific sustained yield management demands clear direction, to help ensure that the State is able to fulfill its constitutional responsibilities.

Your bill provides that direction. Thank you for introducing it and, in the proposed Committee Substitute, broadening its scope to include all hunting and trapping. I respectfully ask the Committee and the Legislature to pass this proposed Committee substitute for HB 75.

Please include my letter in the House Resources Committee record.

Sincerely,


Richard H. Bishop
President

cc: The Honorable Governor Frank Murkowski

The official State Association of the NRA