ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SRES 12722

Ian Laing

From: Afish-n-See/Kennedy's [afishnsee@alaska.com]
Sent: Tuesday, March 07, 2008 8:49 AM
To: Rep. Paul Seaton
Cc: cohosts@gmail.com; Molly Brann
Subject: In favor of HB 415

Representative Seaton,
I am a cross country skier and land owner who would benefit from the passing of HB 415. The protection to private land owners that this bill would provide would definitely encourage me to participate. I currently go to great measure to prevent trespassing on my land. Also as a skier who travels to Homer occasionally to ski I am aware that is a big issue there. Many fine trails could be expanded without huge cost if this bill passes.

Thank you for your help to pass HB 415,

Kathryn Kennedy
P.O. Box 39011
Ninilchik, Alaska 99639
907-567-3310
afishnsee@alaska.com

Ian Laing

From: Dianne Mahaffey [dmahaff@alaska.net]
Sent: Friday, March 10, 2006 9:01 AM
To: Rep. Paul Seaton
Subject: HB415

We want to commend you on your work to introduce and move forward HB415.

As long-time trail users in Alaska, we feel this is a very important piece of legislation.

Thank you for your efforts.

James R. & Dianne D. Mahaffey
9601 Midden Way
Anchorage, AK 99507

From: WEClark [W3CLARK@gci.net]
Sent: Tuesday, March 21, 2006 9:44 AM
To: Emily Stancliff
Subject: Voice support for HB 415

My name is Wayne G. Clar live at P.O. Box 164; Gustavus, Alask 9826 (Spring,summer,fall), and the winters in Douglas, Alaska 99824. Due to the fact I will be on a boat in transit to Gustavus on Weds. March 22, I will not be able to phone in my support for the HB 415 hearing.

As a retired teacher who taught outdoor classes, a wilderness guide, hunter, and hiker, I feel the bill addresses the needed description of liability to landowners enabling them to allow free access to their lands. This I feel, will help to encourage future growth of the state's recreational trails. Many trails around the state are used by scores individuals to see the beauty of our State, and to appreciate its resources. Any steps to enhance their use should be strongly supported. It is the free access to our waters, and great trail systems that bring many back to enjoy our wonderful outdoors here, and seems to be the things many remember when they return from their visits.

Therefore, I ask your support for HB 415.

Sincerely,

wayne g. clark

(907)-364-3226/ (907) 697-2335/ (907) 209-1441(c)

Ian Laing

From: Kelley G [kelleyg@gci.net]
Sent: Wednesday, March 22, 2006 5:26 PM
To: Rep. Paul Seaton; Rep. Harry Crawford; Rep. Mary Kapsner
Subject: HB 415A

To Whom it May Concern,

I am a member of the MatSu Sled Dog Council, Inc. a non-profit dedicated to education and preservation of dog mushing in Alaska, as well as a Yukon Quest and Iditarod musher. Trails are a critical part of the equation in the sport of dog mushing, which is the official state sport.
Due to the massive amount of development, especially in the MatSu, we are losing trails everyday. Even trails along public right of ways are in danger because of road development.
And in light of today's litigious society, many landowners are reluctant to allow historic or new passage across their properties, which further restricts and in many cases, cuts trails into unusable pieces.
Please give trail developers a powerful tool to maintain access and create new trails! Landowners should not be held liable for mishaps on a trail on their property! I am a property owner with a self-made trail that makes me nervous about allowing anybody else to use, and as firmly as I believe in trails, I have to consider whether the allowing access is worth the possibility of losing everything I own.

Please pass HB0415A!!

Sincerely,

Kelley Griffin
HC 35 Box 5355 Z
Wasilla, AK 99654
907-373-1126
Voter ID# 07408940
Voter Precinct - Knik/ Goose Bay

Liability And Recreational Use Statutes

posted December 11, 2000 by Jason Robertson

American Whitewater has prepared this table with substantial help from the International Mountain Biking Association (IMBA) and the American Association for Horsemanship Safety (AAHS) as a tool for understanding the differences between state recreational use statutes on a national basis. This table is a valuable tool; however it is not the final word on liability law in America. Exercise your own good judgement when using the material and verify the status of your state statutes independently with an attorney before relying on this data.

What are Recreational Use Statutes and how do they work?

Clarification of terms used in this table.

Credits and Appreciation.

STATE	YEAR PASSED	DUTY TO KEEP SAFE	DUTY TO WARN	ASSURANCE OF SAFETY	LIABILITY FOR MISCONDUCT WILFUL/ WANTON	PROTECTION LOST IF FEE CHARGED	Dev. land	Pub lands
Alabama								
Alabama Code §35-15-1	1965, 1981	No	No	No	Yes	No, if use of land is non-commercial	Y	Y
Alaska								
Alaska Stat. §09.65.200	1980	Not Specified	Not Specified	Not Specified	Yes	Yes		
Arizona								
Arizona Rev. Stat. Ann. §33-1551	1983	Not Specified	Not Specified	Not Specified	Yes	Yes	Y	Y
Arkansas								
Arkansas Stat.	1965,	No	No	No	Yes	Yes, but fees		

Ann. §18-11-301	1983, 1991					from land leased to public agency allowed
California						
California Govt. Code §2-2-3-2-846	1963, 1988	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Colorado						
Colorado Rev. Stat. §33-41-101	1963, 1970	Not Specified	Not Specified	No	Yes	Yes, but fees from land leased to public agency allowed
Connecticut						
Connecticut Gen. Stat. §52-557(f)	1971, 1990	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Delaware						
Delaware Code Ann. §7-VI-5901	1953	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Florida						
Florida State. Ann. §XXVIII-375.251	1963	No	No	No	Yes	Yes
Georgia						
Georgia Code Ann. §51-3-20	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Hawaii						
Hawaii Rev. Stat. §3-28-520-1	1969	No	No	No	Yes	Yes, but fees from land leased to

						public agency allowed
Idaho						
Idaho Code §36-16	1976, 1988	No	No	No	Not Specified	Yes
Illinois						
Illinois Ann. Stat. §745-65-1	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Indiana						
Indiana Code Ann. §14-22-10	1969, 1995, 1998	No, for recreation trails; not specified for other locations.	Not Specified	No	Yes	Yes
Iowa						
Iowa Code Ann. §XI-2-461(C)	1967	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Kansas						
Kansas Stat. Ann. §58-3201	1965, 1988	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Kentucky						
Kentucky Rev. Stat. Ann. §XXXVI-411-190	1968, 2000	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Louisiana						
Louisiana Rev. Stat. Ann. §9-III-V-2-2791 & 2795	1964, 1989	No	No	No	Yes	Yes

14

Maine						
Maine Rev. Stat. Ann. §14-1-7-159(A)	1979, 1995	No		No	Yes	Yes, but fees from land leased to public agency allowed
Maryland						
Maryland Nat. Res. Code Ann. §5-1101	1957, 1998	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Massachusetts						
Massachusetts Gen. Law Ann. §I-21-17(C)	1972	Not Specified	Not Specified	Not Specified	Yes	Yes, but voluntary payments are allowed
Michigan						
Michigan Comp. Laws Ann. §324.73301	1994	No	No	No	Yes	Yes, but may charge a fee for "U-Pick" crops & not lose immunity
Minnesota						
Minnesota Stat. Ann. §604(A)20	1961, 1994	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Mississippi						
Mississippi Code Ann. §89-2-1	1978, 1986	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Missouri						
Missouri §XXXVI-537.345	1983	No	No	No	Yes	Yes
Montana						
Montana Rev. Code Ann. §70-	1965, 1995	No	Not Specified	No	Yes	Yes

16-301						
Nebraska						
Nebraska Rev. Stat. §37-730	1965, 1998	No	No	No	Yes	Yes, except can charge group rates & not lose immunity
Nevada						
Nevada Rev. Stat. §41.510	1963, 1995	No	No	No	Yes	Yes
New Hampshire						
New Hampshire Rev. Stat. Ann. §XVIII-212-34	1961, 1982	No	No	No	Yes	Yes, but may charge a fee for "U-Pick" crops & not lose immunity
New Jersey						
New Jersey Stat. Ann. §13-1 (B)B-15-133	1968, 1984	No	No	No	Yes	Yes
New Mexico						
New Mexico Stat. Ann. §17-4-7; §66-3-1013; §16-3-9	1973	No	Not Specified	No	Yes	Yes, but fees from land leased to public agency allowed
New York						
New York Gen. Oblig. Law §9-103	1963	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
North Carolina						
North Carolina Gen. Stat. §113 (A)-6-95	1987 Trails Act, 1993	Not Specified	Not Specified	Not Specified	Not Specified	Only applies to trails & not other uses of land
North Dakota						
North Dakota Cent. Code §53-	1965, 1993	No	No	No	Yes	Yes, but fees from land

08-1						leased to public agency allowed
Ohio						
Ohio Rev. Code Ann. §XV-33-18	1963, 1995	No	Not Specified	No	Not Specified	Yes
Oklahoma						
Oklahoma Stat. Ann. Title §76-10	1965, 1994	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Oregon						
Oregon Rev. Stat. §105.672	1971, 1995	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Pennsylvania						
Pennsylvania Stat. Ann. §68-11-477	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Rhode Island						
Rhode Island Gen. Law §32-6-1	1978	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
South Carolina						
South Carolina Code Ann. §27-3-10	1962	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
South Dakota						
South Dakota Comp. Laws Ann. §20-9-11	1966, 1990	No	No	No	Yes	Yes, but nonmonetary gifts up to $100 allowed

Tennessee						
Tennessee Code Ann. §11-10-101	1988	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Texas						
Texas Stat. & Codes §4-75.001	1965, 1999	No	Not specified	No	Yes	No. Revenue from charges may not exceed 2x prop. taxes
Utah						
Utah Code Ann. §57-14-1	1971, 1997	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Vermont						
Vermont Stat. Ann. §10-020-441 & §12-5791	1967, 1993	No	Not Specified	No	Yes	Yes
Virginia						
Virginia Code §29.1-509	1950	No	No	No	Yes	Yes, but may charge fees to maintain the land & not lose immunity
Washington						
Washington Rev. Code Ann. §4-24.200	1967, 1997	Not Specified	Not Specified	Not Specified	Yes	Yes, but may charge for cutting firewood & not lose immunity
West Virginia						
West Virginia Code §19-25-1 Also see West Virginia's Whitewater Responsibility	1965	No	No	No	Yes	Yes

Act §20-3b-1 to 5						
Wisconsin						
Wisconsin Stat. Ann. §895.52	1963, 1995	No	No	No	Not Specified	No, so long as total revenues don't exceed $2000 annually
Wyoming						
Wyoming Stat. Ann. §34-19-101	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed

CLARIFICATION OF TERMS:

YEAR PASSED: When was the recreational use statute passed or modified?

DUTY TO KEEP SAFE: Does the owner owe a duty of care to keep their premises safe for entry and use by others for recreational purposes?

DUTY TO WARN: Does the owner owe any duty to warn visitors of hazardous conditions, structures, or activities on their property to persons entering for recreational purposes?

ASSURANCE OF SAFETY: Does the owner who gives permission to another for recreational activities on their property thereby extend any assurance that the premises are safe?

LIABILITY FOR MISCONDUCT WILFUL/WANTON: Does the statute limit the landowner's liability for wilful or malicious failure to guard or warn against known dangerous conditions, uses, structures, or activities?

PROTECTION LOST IF FEE CHARGED: Does the statute limit the landowner's liability for injuries suffered in any case where access permission is granted for commercial enterprise or profit? In other words, does the landowner lose their protection under the statute if they charge an access fee?

CREDITS:

American Whitewater collected the majority of this data via private research, correspondence, and assistance from the following sources:

REPRESENTATIVE PAUL SEATON

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ALASKA STATE LEGISLATURE
House District 35

MEMORANDUM

TO: Senate Resources Chair Huggins

FROM: Representative Paul Seaton Paul

DATE: March 5, 2007

RE: HB 25

I am submitting this memo to respond in detail to the questions that came up during the discussion of HB 25 in Senate Resources on Friday March 2nd.

Adverse Possession

HB 25 protects a landowner by not allowing an adverse possession or a proscriptive easement claim against the landowner on the basis of allowing free recreational use of his or her land. Senator Wagoner brought up the point that adverse possession was already covered to include recreational use in existing statute. While the passage of AS 09.10.030 in 2003 notably limited the basis for adverse possession claims, the effect it would have on permissive recreational use is unclear. AS.09.25.052 states "the uninterrupted adverse notorious use...of private land for...public access purposes, including...trails, by the public...for a period of 10 years or more, vests an appropriate interest in that land" (see attached statute). The courts have not yet interpreted how adverse possession applies since the passage of AS 09.10.030. The court could decide to apply an adverse possession or proscriptive easement claim under either AS 09.25.052 or AS 09.10.030 with different outcomes. For example, without the adverse possession language in HB 25 a user could claim adverse possession after 10 years of use. However the previous land owner could come back at any time in the future and re-claim the land granted to the user. HB 25 provides clarity to both parties and assures landowners that they will not have to give up or lose control of a portion of their land in the future if they allow recreational use. I have included a legal memo addressing adverse possession from last session (please note it references HB 415, identical legislation to HB 25 introduced last session).

http://www.RepPaulSeaton.com
Email: Rep_Paul_Seaton@legis.state.ak.us

Airstrip liability

Chairman Huggins brought up the question of the liability level for a private airstrip near a home or structure. Existing statute AS 09.65.093 covers aircraft runways, airfields, and landing areas. Under AS 09.65.093 a private owner or operator of an airstrip is not civilly liable unless gross negligence or recklessness or intentional misconduct can be proven, which is the same standard HB 25 proposes for free recreational use of other private land (see attached statute). However, if the airstrip is abandoned – not being maintained as an airstrip - the outcome is less clear. AS 09.65.200 "Tort immunity for personal injuries or death occurring on unimproved land" specifically includes (c) (2) an abandoned aircraft landing area. Therefore, the standard for the private landowner is "gross negligence or reckless or intentional misconduct." However, if the old strip is mowed as a lawn or field or is close to a building this could place the landowners property into the improved land classification for which the liability standard would be simple negligence, unless protected by HB 25.

Indirectly Allow

Attorney Michael Schneider raised the concern that the term "indirectly allow" used in the bill granted broad and inappropriate immunity. The House Judiciary Committee debated at length about the term "indirectly" and came up with no appropriate substitute. The intent of the legislation is to cover landowners who have no objection to their land being used for recreation but may not have knowledge of every instance or have given expressed consent (written or verbal) to each user. Removal of the term "indirect" would create a burden to give that written or verbal permission to each user. After extensive conversations with legislative legal and discussion among the three lawyers on House Judiciary, it was determined that the term "indirectly allow" was appropriate in order to maintain the integrity of the bill. Furthermore, the terms "directly or indirectly" are used very frequently in Alaska Statute (192 times in 35 out of 47 titles). Please see the attached memo that was provided to House Judiciary for examples.

You will also notice that p.2 lines 15-17 explicitly removes any potential conflict with liability release agreements to ensure that this broader immunity does not limit the liability provisions in written waivers.

Please feel free to contact my office if you have any additional concerns about HB 25 or wish to discuss the items in this memo further.

Sec. 09.45.052. Adverse possession.

(a) The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more, or the uninterrupted adverse notorious possession of real property for 10 years or more because of a good faith but mistaken belief that the real property lies within the boundaries of adjacent real property owned by the adverse claimant, is conclusively presumed to give title to the property except as against the state or the United States. For the purpose of this section, land that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, is land owned by the state.

(b) Except for an easement created by Public Land Order 1613, adverse possession will lie against property that is held by a person who holds equitable title from the United States under paragraphs 7 and 8 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958).

(c) Notwithstanding AS 09.10.030, the uninterrupted adverse notorious use of real property by a public utility for utility purposes for a period of 10 years or more vests in that utility an easement in that property for that purpose.

(d) Notwithstanding AS 09.10.030, the uninterrupted adverse notorious use, including construction, management, operation, or maintenance, of private land for public transportation or public access purposes, including highways, streets, roads, or trails, by the public, the state, or a political subdivision of the state, for a period of 10 years or more, vests an appropriate interest in that land in the state or a political subdivision of the state. This subsection does not limit or expand the rights of a state or political subdivision under adverse possession or prescription as the law existed on July 17, 2003.

LEGAL SERVICES

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MEMORANDUM March 27, 2006

SUBJECT: Effect of AS 09.65.202(d) on adverse possession or prescriptive easement issues (HB 415 (Work Order No. 24-LS1446\I))

TO: Representative Paul Seaton
Attn: Ian Laing

FROM: Dennis C. Bailey
Legislative Counsel

You have asked me to summarize the effect of AS 09.65.202(d), part of HB 415, on adverse possession or prescriptive easements. That section provides:

> (d) Except as provided for under AS 09.45.052(d), land use allowed by a land owner for recreational activity without charge may not form the basis of a claim for adverse possession, prescriptive easement or a similar claim.

Following our discussions yesterday, I drafted an amendment clarifying that the limitation applies only to activity occurring after the effective date of the act, not to recreational activity which may have happened in the past.

Adverse possession is addressed in AS 09.45.052.

> **AS 09.45.052. Adverse possession.** (a) The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more, <u>or the uninterrupted adverse notorious possession of real property for 10 years or more because of a good faith but mistaken belief that the real property lies within the boundaries of adjacent real property owned by the adverse claimant</u>, is conclusively presumed to give title to the property except as against the state or the United States. For the purpose of this section, land that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, is land owned by the state.
>
> (b) Except for an easement created by Public Land Order 1613, adverse possession will lie against property that is held by a person who holds equitable title from the United States under paragraphs 7 and 8 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958).
>
> (c) Notwithstanding AS 09.10.030, the uninterrupted adverse

notorious use of real property by a public utility for utility purposes for a period of 10 years or more vests in that utility an easement in that property for that purpose.

(d) Notwithstanding AS 09.10.030, the uninterrupted adverse notorious use, including construction, management, operation, or maintenance, of private land for public transportation or public access purposes, including highways, streets, roads, or trails, by the public, the state, or a political subdivision of the state, for a period of 10 years or more, vests an appropriate interest in that land in the state or a political subdivision of the state. This subsection does not limit or expand the rights of a state or political subdivision under adverse possession or prescription as the law existed on July 17, 2003.

The underlined language in subsection (a) was added in 2003, and placed restrictions on the availability of adverse possession.

A prescriptive easement claim is similar to a claim for adverse possession. A prescriptive easement is a claim for a right to use property, while adverse possession is a claim for an ownership right.[1]

AS 09.45.052(d) is referenced in the draft bill as an exclusion. Paraphrased, it states, that adverse possession is available to the state or a political subdivision for listed projects and that that the adverse possession or prescriptive rights of the state or a political subdivision are not limited or expanded by the enactment of the 2003 revisions.

AS 09.10.030 is the companion statute to AS 09.45.052. It addresses adverse possession by limiting the time available for bringing an action for recovery of real property or possession of it to 10 years. AS 09.10.030 was also modified in 2003 by adding new subsection (b). AS 09.10.030 states:

(b) An action may be brought at any time by a person who was seized or possessed of the real property in question at some time before the commencement of the action or whose grantor or predecessor was seized or possessed of the real property in question at some time before commencement of the action, and whose ownership interest in the real property is recorded under AS 40.17, in order to

(1) quiet title to that real property; or

---

[1] Obtaining rights in another's property by prescription is similar to obtaining rights by adverse possession. "Both doctrines permit acquisition of property rights through the passage of time, if certain conditions are met, but prescription is applied to servitudes while adverse possession is applied to possessory estates." Thus, the focus in a prescriptive easement claim is on "use," whereas the focus in an adverse possession case is on "possession." *Interior Trails Pres. Coalition v. Swope*, 115 P.3d 527, 529 (Alaska 2005)

(2) eject a person from that real property.

This subsection arguably consumes the general rule by allowing a person to bring an action to recover possession at any time if the person previously had possession of a recorded interest in the land. My research shows that the effect of AS 09.10.030(b) has not been interpreted at the appellate level of the Alaska courts, but it has notably limited the doctrine of adverse possession in Alaska.

If HB 415 passes, and assuming that it included the amended language limiting its effect to after the effective date of the bill, recreational activity under the provisions of the bill could not be used as the basis of a claim. Thus, as we discussed, if a person had an adverse possession claim based on recreational use that required additional time to mature after the effective date of the act, in my judgment, that right would be barred by the effect AS 09.65.202(d), if enacted by HB 415.

If I may be of further assistance, please advise.

DCB:ljw
06-158.ljw

Sec. 09.65.093. Civil liability relating to aircraft runways, airfields, and landing areas.

(a) Except as provided in (c) of this section, a person who without compensation constructs, maintains, or repairs an aircraft runway, airfield, or landing area may not be held civilly liable, except for an act or omission that constitutes gross negligence or recklessness or intentional misconduct, for the injury to or death of a person or for damage to an aircraft, resulting from the use of the runway, airfield, or landing area to take off, land, park, or operate an aircraft.

(b) A person who is the owner or operator of an aircraft runway, airfield, or landing area is not civilly liable, except for an act or omission that constitutes gross negligence or recklessness or intentional misconduct, for the injury to or the death of a person or for damage to an aircraft, resulting from the use or attempted use of the runway, airfield, or landing area to take off, land, park, or operate an aircraft while the runway, airfield, or landing area is

(1) marked as closed by placement of a large "X" on the runway, in accordance with Federal Aviation Administration guidelines; and

(2) listed or charted, and designated as closed in the appropriate aeronautical charts and publications published by the Federal Aviation Administration.

(c) The immunity from civil liability under (a) of this section does not limit the liability of an owner or operator of an aircraft runway, airfield, or landing area to a provider of flight services or its passengers under contract with the owner or operator.

Alaska State Legislature

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Representative_Paul_Seaton@legis.state.ak.us

REPRESENTATIVE Paul Seaton
District 35

MEMORANDUM

TO: House Judiciary Committee

FROM: Representative Paul Seaton

DATE: February 2, 2007

RE: The use of "directly" and "indirectly" in Alaska Statute

In House Judiciary on February 1, 2007 the concern was raised that the terms "directly or indirectly" are not commonly found in Alaska Statute. In a Folio word search of "Alaska Statutes – Text Only", I came up with 192 hits for the term "directly or indirectly." The following titles are all the places where the statement "directly or indirectly" is found in Alaska Statute. Please note that out of 47 titles, only 12 do not include the term "directly or indirectly" I have also included a number of samples of Alaska Statute where "directly or indirectly" can be found for your reference. To make locating the terms easier, directly is in all caps [DIRECTLY]

Alaska Statues where "directly or indirectly" is found:

TITLE 2. AEROUNAUTICS

TITLE 5. AMUSMENTS AND SPORTS

TITLE 6. BANKS AND FINANCIAL INSTITUTIONS

TITLE 8. BUSINESS AND PROFESSIONS

TITLE 9. CODE OF CIVIL PROCEDURE

TITLE 10. CORPORATIONS AND ASSOCIATIONS

TITLE 11. CRIMINAL LAW

TITLE 12. CODE OF CRIMINAL PROCEDURE

TITLE 13. DECENDENTS', ESTATES, GAURDIANSHIPS, TRANSFERS AND TRUSTS

TITLE 14. EDUCATION, LIBRARIES AND MUSEUMS

TITLE 15. ELECTIONS

TITLE 16. FISH AND GAME

TITLE 17. FOOD AND DRUGS

TITLE 18. HEALTH, SAFTEY AND HOUSING

TITLE 19. HIGHWAYS AND FERRIES

TITLE 21. INSURANCE

TITLE 23. LABOR AND WORKERS' COMPENSATION

TITLE 24. LEGISLATURE

TITLE 25. MARITAL AND DOMESTIC RELATIONS

TITLE 27. MINING

TITLE 28. NAVAGATIONL, HARBORS AND SHIPPING

TITLE 31. OIL AND GAS

TITLE 32. PARTNERSHIP

TITLE 34. PROPERTY

TITLE 35. PUBLIC BUILDING, WORKS AND IMPROVMENTS

TITLE 37. PUBLIC FINANCE

TITLE 38. PUBLIC LAND

TITLE 39. PUBLIC OFFICERS AND EMPLOYEES

TITLE 42. PUBLIC UTILITIES AND CARRIERS

TITLE 43. REVENUE AND TAXATION

TITLE 44. STATE GOVERNMENT

TITLE 45. TRADE AND COMERCE

TITLE 46. WATER, AIR, ENERGY AND ENVIRONMENTAL CONSERVATION

TITLE 47. WELFARE, SOCIAL SERVICES AND INSTITUTIONS

Examples of the use of "directly or indirectly" in Alaska Statute:

Sec. 02.15.260. Definitions.

(16) "utility" includes a corporation, company, individual, or association of individuals, or a lessee, trustee, or court-appointed receiver, that owns, operates, manages, or controls a line, plant, pipeline, or system for furnishing, producing, generating, transmitting, or distributing power, electricity, communications, telecommunications, water, gas, oil, petroleum products, coal or other mineral slurry, steam, heat, light, chemicals, air, sewage, drainage not connected with airport drainage, irrigation, or similar products including publicly owned fire and police signal systems and street lighting systems that DIRECTLY or inDIRECTLY serve the public or a segment of the public; "utility" also includes a corporation, company, individual, or association of individuals, or a lessee, trustee, or court-appointed receiver that owns, operates, manages, or controls a system for furnishing transportation of goods or persons by means of a railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline, or a similar means;

Sec. 05.10.130. Participation in purse or conducting sham contest.
A person or a member of any group of persons or corporation promoting wrestling or boxing exhibitions or contests who participates DIRECTLY or inDIRECTLY in the purse or fee of a manager of a boxer or wrestler or a boxer or a wrestler, and a licensee who conducts or participates in any sham or fake boxing contest or sparring match or exhibition, forfeits the license granted under this chapter and the commission shall declare the license cancelled and void and the licensee may not thereafter receive another license.

Sec. 08.98.250. Definitions.
In this chapter,

(1) "accredited veterinary school" means a veterinary college or division of a university or college that offers the degree of Doctor of Veterinary Medicine, or its

equivalent as determined by the board, and conforms to the standards required for accreditation by the American Veterinary Medical Association;

(2) "animal" means any animal other than a human being including mammals, birds, fish, and reptiles, wild or domestic, living or dead;

(3) "board" means the Board of Veterinary Examiners;

(4) "department" means the Department of Commerce, Community, and Economic Development;

(5) "practice of veterinary medicine"

(A) means for compensation to

(i) diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury, or other physical or mental condition, including the prescription or administration of a drug, biologic apparatus, anesthetic, or other therapeutic or diagnostic substance;

(ii) use a manual or mechanical procedure for testing for pregnancy or correcting sterility or infertility; or

(iii) render advice or recommendation with regard to any matter listed in (i) or (ii) of this subparagraph;

(B) means to represent, DIRECTLY or inDIRECTLY, publicly or privately, an ability or willingness to do any act in (A) of this paragraph for compensation;

(C) means to use a description, title, abbreviation, or letters in a manner or under circumstances tending to induce the belief that the person using it or them is qualified or licensed to do any act in (A) of this paragraph whether or not for compensation;

(D) does not include, whether or not for compensation,

(i) practices related to artificial insemination and the use of a title, abbreviation, or letters in a manner which induces the belief that the person using them is qualified to perform artificial insemination;

(ii) the practices of a farrier done in the performance of the farrier's profession;

(iii) standard practices commonly performed on farm or domestic animals in the course of routine farming or animal husbandry, when performed by an owner or the owner's employee unless ownership of the animal is transferred for the purpose of avoiding application of this chapter or the primary purpose of hiring the employee is to avoid application of this chapter;

(6) "veterinary technician" means a person who performs functions delegated by a veterinarian licensed under this chapter.

CORPORATIONS AND ASSOCIATIONS

Sec. 10.06.990. Definitions.
In this chapter, unless the context otherwise requires,

(1) "acknowledged" means that a document is accompanied by a certificate of its acknowledgment as provided in AS 09.63.010 - 09.63.130;

(2) "affiliate" means a person that DIRECTLY or inDIRECTLY through one or more intermediaries controls, or is controlled by, or is under common control with, a corporation subject to this chapter;

.13.990. Definitions.

In this chapter,

Sec. 11.56.590. Jury tampering.

(a) A person commits the crime of jury tampering if the person DIRECTLY or inDIRECTLY communicates with a juror other than as permitted by the rules governing the official proceeding with intent to

(1) influence the juror's vote, opinion, decision, or other action as a juror; or

(2) otherwise affect the outcome of the official proceeding.

(b) Jury tampering is a class C felony.

.....

(c) An individual, or one acting DIRECTLY or inDIRECTLY on behalf of that individual, may not solicit or accept a contribution

(1) before the date for which contributions may be made as determined under AS 15.13.074(c); or

(2) later than the day after which contributions may not be made as determined under AS 15.13.074(c).

Please contact me if you have any questions.

Staff contact, Katie Shows x2028

REPRESENTATIVE PAUL SEATON

SESSION ADDRESS
State Capitol Building
Juneau, Alaska 99801-1182
(907) 465-2689
Fax: (907) 465-3472
1-800-665-2689

INTERIM ADDRESS
345 W. Sterling Highway
Homer, Alaska 99603
(907) 235-2921
Fax: (907) 235-4008
1-800-665-2689

ALASKA STATE LEGISLATURE
House District 35

Senator Huggins, Chair
Senate Resources Committee

April, 2 2007

Dear Sen. Huggins,

I have received correspondence dealing with technical legal questions and standards from a couple of trial lawyers. Several of these issues were addressed in House Judiciary such as the terminology and judicial application of "direct and indirect" and applicability of the legislation only with specific written permission for a user to recreate on private land. Requiring written agreement defeats the general purpose of the HB 25. I provided to the committee an analysis of the terminology discussion and legislative legal opinion on March 5, 2007.

There was also a question raised by the trial lawyers about the meaning of "gross negligence" within the context of Alaska civil law. I have pointed out that the "gross negligence" standard is the standard currently incorporated into Alaska Statutes covering landowners' liability on unimproved land, abandoned airstrips, and operating private airstrips. I have included with this memo a legal opinion with the definition of gross negligence and its application.

The trail lawyers also disagreed with the "duties of a landowner" section (Section 09.65.202(1-3). Please reference the state by state comparison chart showing that 45 other states address this liability in a similar manner I provided in the bill packet.

Thank you for your consideration of these matters.

Sincerely,

Paul Seaton

Rep. Paul Seaton

cc: Members of the Senate Resources Committee

http://www.RepPaulSeaton.com
Email: Rep_Paul_Seaton@legis.state.ak.us

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 March 21, 2007

SUBJECT: Defining "gross negligence" (HB 25, Work Order No. LS0174\A)

TO: Representative Paul Seaton
Attn: Katie Shows

FROM: Dennis C. Bailey DCB
Legislative Counsel

You have asked for a definition of or case law interpreting "gross negligence."

The common law definition of "gross negligence," as expressed, in pertinent part, in *Black's Law Dictionary*, Seventh Edition is:

> 1. A lack of slight negligence or care. 2. A conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party, who may typically recover exemplary damage.--Also termed reckless negligence; wanton negligence; hazardous negligence.

The Alaska pattern jury instruction defining gross negligence reads:

> 3.14 GROSS NEGLIGENCE DEFINED
>
> I will now define gross negligence for you. A person was grossly negligent if: (1) that person's act or failure to act created an unreasonable risk of harm to another; and (2) if either that person had knowledge of facts that would disclose to a reasonable person that the act or failure to act involved a high degree of probability that the harm would occur, or the person knew that the act or failure to act involved a high degree of probability that the harm would occur.

To qualify as gross negligence or recklessness, the conduct must involve a risk of injury or death substantially greater in amount than that which is necessary for negligence. See *Restatement (Second) of Torts* sec. 500 comment g at 590 (1965) (regarding recklessness); *Storrs v. Lutheran Hospital and Homes Society of America*, 661 P.2d 632, 634 (Alaska 1983) (regarding gross negligence); *Bunting v. U.S.*, 884 F.2d 1143, 1147 (9th Cir. 1989) (regarding gross negligence).

Ordinary or simple negligence is a failure to act as a reasonable person would in the same circumstances. Simple negligence often results from incompetence or failure to take

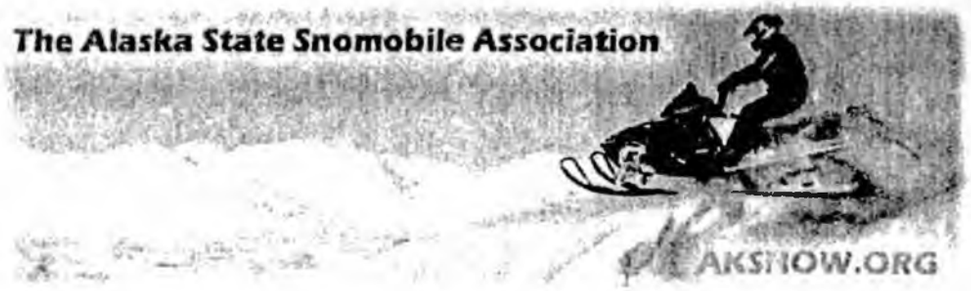
precautions that are ordinarily taken it that situation. In contrast, gross negligence is an act or omission that creates an unreasonable risk of harm and includes a high degree of probability that the harm will occur. *Leavitt v. Gillaspie*, 443 P.2d 61 (Alaska 1968).

I am sending you a copy of the *Storrs* case and the *Leavitt* case (see text marked on pgs. 2 - 3).

If I may be of further assistance, please advise.

DCB:med
07-193.med

Enclosure



I appreciate the opportunity to comment on the Alaska State Snowmobile Association's position of support for HB 25. As the umbrella organization that coordinates over 1600 members of local snowmobile clubs, we appreciate Rep Seaton's addressing of an issue that has presented itself as an impediment to access of developing parcels of land throughout Alaska. While these occasions have been infrequent up to now, the problem is certain to increase both in frequency as well as impact as the State of Alaska maintains the rate of growth in both settlement of land as well as recreational use of public property.

Lands being currently developed in our less populated areas many times include sections of recreational trails that are enjoyed by several types of enthusiasts, including but not limited to snowmobilers. Many times these sections of trails are leading from a parking location to a destination accessible only by the trail system. Whenever there are unresolved questions of liability for landowners allowing free recreational access, the most common reaction by the landowner is to protect his interest in the most effective way available. Unfortunately for access, this generally means prohibiting the very use that he or she utilized for development of this property.

Routes that have traditionally allowed thru passage to areas beyond the private landowners holdings become more difficult or impossible. Giving private landowners protection from frivolous or nuisance claims that could possibly lead to adverse possession of the holdings. This protection goes a long ways toward development of healthy and mutually beneficial relationships between private landowners and recreationists.

In conclusion, the Alaska State Snowmobile Association supports this legislation and offers our appreciation to Representative Seaton for sponsoring it.

Kevin Hite
President
Alaska State Snowmobile Association
www.aksnow.org
907-522-6373 Home
907-529-0106 Mobile

City of Homer

City Manager
491 East Pioneer Avenue
Homer, Alaska 99603
907-235-8121, X-2222

Fax:(907) 235-3148 E-mail: wwrede@ci.homer.ak.us Web Site: www.ci.homer.ak.us

March 2, 2007

Dear Senate Resources Committee Members:

I am writing on behalf of the City of Homer to urge your support for HB 25, sponsored by Representative Paul Seaton. This bill, which passed easily in the House last month, encourages recreational use of private lands by protecting landowners who allow free public access for recreational purposes. The Homer City Council passed a resolution supporting this legislation and hopes to see a bill passed and signed into law this session.

In Homer, outdoor recreation is at the heart of our identity as a community and contributes millions of dollars to the local economy. Hiking and skiing trails are popular here but expansion of the area trail system is hampered by concerns of private landowners about legal liability, as there is currently no protection offered in state law for landowners who allow recreational use on properties where any kind of development has taken place. (Most other states do offer liability protection such as that offered in HB 25.)

HB 25 will provide clarity to state statute and protection for well-meaning landowners without giving cover to those who are reckless or grossly negligent. From our perspective, it provides a common sense solution for everyone involved and helps promote activity that is healthy, wholesome, and at the heart of what makes Alaska "the Great Land." We will be most grateful if you pass the bill out of Senate Resources Committee this afternoon.

Sincerely,

CITY OF HOMER

Walt Wrede
City Manager

Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
committee name

Committee on HB 25 Rec. Land Use Liability, dated 3-2-07
bill # / subject — public hearing date

I support HB 25.

Signed: Pamela E. Breakfield
Testifier

Representing (optional)

35335 Hager Blvd Soldotna, Ak 99669
Address

907 262-1329
Phone number

Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
committee name

Committee on HB 25 Rec. Land Use Liability, dated 3-2-07
bill # / subject public hearing date

Please pass HB 25 to help save some of our trails. Our club used to groom over 200 miles of trails and now grooms only 67 miles. HB 25 will help to get back some of these trails for our use legally rather than trespassing.

Signed: Howard T. Davis
Testifier

Caribout Hills Cabin Hoppers
Representing (optional)

PO Box 395 Clam Gulch, AK 99568
Address

262-5124
Phone number

Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
committee name

Committee on HB 25 Rec. Land Use Liability, dated 3-2-07
bill # / subject public hearing date

Dear Legislators,

I support HB25 Recreational Land Use Liability. I feel that it is necessary to keep access available for future generations to enjoy. Please support this bill, for your kids and mine.

Thank you, Jeff Breakfield

Signed: Jeff Breakfield
Testifier

Representing (optional)

35335 Hager Blvd., Soldotna, Ak 99669
Address

907-262-1329
Phone number

Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
committee name

Committee on HB 25 Rec. Land Use Liability, dated 3-2-07
bill # / subject public hearing date

I want to express my support for HB25. I think this bill is necessary for our future generations to have access to the recreational areas. I enjoy taking my grandchildren to the Caribou Hills for recreation when they visit. This is not only for winter time but also in the summer time. I know that the Caribou Hills Cabin Hoppers club does an excellent job of maintaining the trails. I have helped in the summer reseeding of areas along trails. I also volunteer during the winter for the Tustamena 200 sled dog race. I am a volunteer ham radio operator to provide communications from check points along the trail.

Thank you for giving me the opportunity to express my thoughts. I feel this bill is very important for future generations to be able to enjoy this wonderful area.

Signed: Dale L Hershberger
Testifier

Citizen (Caribou Hills Cabin Hoppers club member)
Representing (optional)

PO Box 616 Sterling, Alaska 99672
Address

907 262 7988
Phone number

HB

87

SENATE COMMITTEE REPORT

DATE: 5/3/07

FURTHER: Finance

DATE TURNED IN TO OFFICE: 5/7/07

Resources Committee considered CS FOR HOUSE BILL NO. 87(FIN) am

HB 87 CITIZEN ADVISORY COMM ON FEDERAL AREAS

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

and recommends:

[ ] be **replaced** with [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] adopt **previous** [ ] **SCS** or [ ] **CS** _____ (_____)

[ ] attached amendment(s)

[ ] adopt _____ Letter of Intent

[ ] further referral to _____ Committee

SENATE BILL:
[ ] Same Title
[ ] New Title

HOUSE BILL:
[ ] Same Title
[ ] Technical Title Change
[ ] New Title w/ SCR #_____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
LEG	2/7			✓	2
DNR	4/12	✓			4

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Wielechowski			✓	
	WAGONER			✓	
	Williams	✓			
	Stedman	✗			
	McGuire	✓			
	Green	✓			
CHAIR:					

ALASKA STATE LEGISLATURE

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

State Capitol, Room 119
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878

Senate Resources Committee

Butrovich – Room 205

Monday, May 7, 2007
3:30 p.m. – 5:30 p.m.

AGENDA

+ **HB 87 CITIZEN ADVISORY COMM. ON FEDERAL AREAS**
  Testimony: Time Limit May be Set

+ **HB 220 PROHIBIT COMPUTER ASSISTED HUNTING**
  Testimony: Time Limit May be Set

+ **SB 57 MARINE PARKS ADDITIONS/HUNTING ALLOWED**
  Testimony: Time Limit May be Set

+ **SJR 4 NATURAL GAS FOR STATE RESIDENTS**
  Testimony: Time Limit May be Set

+ **HJR 4 KENAI/KASILOF SUBSISTENCE PRIORITY**
  Testimony: Time Limit May be Set

BPH/S

ALASKA STATE LEGISLATURE

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Fax (907) 452-6096

REPRESENTATIVE MIKE KELLY
HOUSE DISTRICT 7

Member
House Finance Committee
Legislative Budget & Audit

MEMORANDUM

To: Senator Charlie Huggins, Chair, Senate Resources Committee

From: Representative Mike Kelly Mike

Date: May 3, 2007

Re: Committee Hearing Request – CSHB 87 "An Act reestablishing the Citizens' Advisory Commission on Federal Areas in Alaska"

I respectfully request that CSHB 87 "An Act reestablishing the Citizens' Advisory Commission on Federal Areas in Alaska" be scheduled for a hearing at your earliest convenience. Attached you will find a copy of CS HB87 (FIN), Sponsor Statement, Fiscal Note, and letters of support.

The Citizens' Advisory Commission on Federal Areas (CACFA) was first established in 1981 to provide assistance to the citizens of Alaska who are affected by the management of federal lands within the state. The Commission was terminated in 1999 when funding was not allocated by former Governor Knowles. It is important that the Commission be reestablished to assure that land management decisions are consistent with both statutory language and Congressional intent and in protecting the interests of Alaska's citizens.

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 or contact Sue Stancliff at extension 4936.

Thank you.

ALASKA STATE LEGISLATURE

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Fax (907) 452-6096

REPRESENTATIVE MIKE KELLY
HOUSE DISTRICT 7

Member
House Finance Committee
Legislative Budget & Audit

Sponsor Statement

CS House Bill 87

An Act reestablishing the Citizens' Advisory Commission on Federal Areas in Alaska

The Citizens' Advisory Commission on Federal Areas was first established in 1981 to provide assistance to the citizens of Alaska who are affected by the management of federal lands within the state. The Commission was terminated in 1999 when funding was not allocated by the administration. The need for the Commission arose primarily from the passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980.

Of the 239 million acres in Alaska which remain under Federal management, there are more than 150 million acres with conservation restrictions in refuges, parks, and wilderness. In addition, there have been significant changes in the management directions for all Federal public lands throughout the country. Even lands with no specific statutory conservation restrictions are subject to a steadily increasing number of administrative designations and withdrawals that can result in reductions in public uses, including hunting, fishing, trapping, timber harvest, mineral extraction, grazing, and other resource use opportunities on the Federal public lands.

The commission, through this enabling legislation, is charged with the responsibility of researching issues and determining the impact of federal statutes, regulations and management decisions on the citizens of Alaska in order to minimize or resolve potential conflicts. The commission assists individual citizens in wading through federal land management requirements in order to conduct the activities allowed on the federal lands.

The commission was, and will again be effective in assuring that federal land management decisions are consistent with Congressional intent and protect the interests of Alaska's citizens.

CS FOR HOUSE BILL NO. 87(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 5/1/07
Offered: 4/13/07

Sponsor(s): REPRESENTATIVES KELLY, Foster, Stoltze, Thomas, Ramras, Dahlstrom, Lynn, Coghill, Fairclough, Neuman

SENATORS Therriault, Dyson

A BILL

FOR AN ACT ENTITLED

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 41.37 is amended by adding new sections to read:

Sec. 41.37.160. Citizens' Advisory Commission on Federal Management Areas in Alaska. The Citizens' Advisory Commission on Federal Management Areas in Alaska is established in the department. In the exercise of its responsibilities, the commission shall consider the views of citizens of the state and officials of the state.

Sec. 41.37.170. Membership and officers. (a) The commission is composed of 12 members appointed in accordance with this section.

(b) The membership of the commission shall represent each region of the state to give the commission a reasonable geographic balance among regions of the state.

(c) The governor shall appoint six members of the commission.

(d) The speaker of the house of representatives shall appoint one member of

the commission from the membership of the state house of representatives and two members who are residents of the state who are not legislators.

(e) The president of the senate shall appoint one member of the commission from the membership of the state senate and two members who are residents of the state who are not legislators.

(f) Each member of the commission serves at the pleasure of the appointing authority.

(g) The commission shall select a presiding officer of the commission from its membership. The commission may elect other officers.

Sec. 41.37.180. Qualifications of members. The members of the commission appointed by the governor under AS 41.37.170(c) and members appointed under AS 41.37.170(d) and (e) who are not members of the legislature shall be representative of the diversity of users and uses of federal land in the state.

Sec. 41.37.190. Term of members of the commission. (a) A member of the commission appointed by the governor serves for a term of four years or until a successor is appointed and qualifies.

(b) A member of the commission appointed from the legislature serves for the person's term of office as a legislator or until a successor is appointed and qualifies.

(c) Except as provided in (b) of this section, a member of the commission appointed by the speaker of the house or president of the senate serves for four years or until a successor is appointed and qualifies.

Sec. 41.37.200. Compensation, expenses, and per diem. (a) A member of the commission who is a legislator or a full-time employee of the state or of a municipality of the state shall suffer no loss of compensation from the state or a municipality of the state as a result of service to the commission.

(b) A member of the commission is entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

Sec. 41.37.210. Staff of the commission. The commission may employ staff and contract for services relating to matters within its authority. Staff employed under this section are responsible to the commission.

Sec. 41.37.220. Duties of the commission. (a) The commission shall consider,

research, and hold hearings on the consistency with federal law and congressional intent on management, operation, planning, development, and additions to federal management areas in the state.

(b) The commission shall consider, research, and hold hearings on the effect of federal regulations and federal management decisions on the people of the state.

(c) The commission may, after consideration of the public policy concerns under (a) and (b) of this section, make a recommendation on the concerns identified under (a) and (b) of this section to an agency of the state or to the agency of the United States that manages federal land in the state.

(d) The commission shall consider the views, research, and reports of advisory groups established by it under AS 41.37.230 as well as the views, research, and reports of individuals and other groups in the state.

(e) The commission shall establish internal procedures for the management of the responsibilities granted to it under this chapter.

(f) The commission shall report annually to the governor and the legislature within the first 10 days of a regular legislative session.

(g) The commission shall cooperate with each department or agency of the state or with a state board or commission in the fulfillment of their duties.

(h) All hearings of the commission are subject to AS 44.62.310. Hearings of the commission held under this section shall be noticed as provided in AS 44.62.190 and 44.62.200, and the hearings shall be conducted in accordance with the provisions of AS 44.62.210.

Sec. 41.37.230. Advisory groups of the commission. (a) The commission may establish advisory groups in the state.

(b) The commission shall invite nominations for the membership on the advisory groups and shall consider the nominations in making its appointments to the groups.

(c) The membership of each advisory group shall be broadly representative of individuals involved in activities affected by the establishment or management of units of federal land within the state.

Sec. 41.37.240. Suit. The commission may request the attorney general to file

suit against a federal official or agency if the commission determines that the federal official or agency is acting in violation of an Act of Congress, congressional intent, or the best interests of the state.

Sec. 41.37.250. Agency cooperation. Each state department, agency, board, and commission shall cooperate with the commission in the fulfillment of the duties of the commission under AS 41.37.220.

Sec. 41.37.260. Definition. In this chapter, "commission" means the Citizens' Advisory Commission on Federal Management Areas in Alaska.

*** Sec. 2.** AS 41.37.160, 41.37.170, 41.37.180, 41.37.190, 41.37.200, 41.37.210, 41.37.220, 41.37.230, 41.37.240, 41.37.250, and 41.37.260 are repealed June 30, 2014.

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION. Notwithstanding AS 41.37.190(a), as enacted in sec. 1 of this Act, the terms of the first members of the Citizens' Advisory Commission on Federal Management Areas in Alaska appointed by the governor under AS 41.37.170, as enacted in sec. 1 of this Act, are as follows: (1) two members shall be appointed for a four-year term; (2) two members shall be appointed for a three-year term; (3) one member shall be appointed for a two-year term; and (4) one member shall be appointed for a one-year term. The governor shall specify the term of office of each member appointed subject to this section.

*** Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

Representative Mike Kelly

May 8, 2007

Dear Senator Huggins,

Thank you for passing HB 87 Citizens' Advisory Commission on Federal Areas (CACFA) from the Senate Resources committee.

"The need for this commission is crucial and it is immediate."
--Alaska Miners Association

I invite you to join as a co-sponsor of this important legislation.

Thanks again,

Mike

Rep. Mike Kelly

May 7, 2007
Senate Resources Bill Packet

Enclosures: Fiscal Notes in inside packet

1. **CSHB 87 – Citizens' Advisory Commission on Federal Areas** .....4 pages
2. CSHB 87 Sponsor Statement .....1 page
3. Letters of Support .....5 pages

[redacted]

Talking Points – HB87 CACFA

- The Citizens' Advisory Commission on Federal Areas was established in 1981 to provide assistance to the citizens of Alaskan who are affected by the management of federal lands within the state.

- The Commission was repealed after Governor Knowles removed funding, even though the legislature approved the sunset extension to 2003.

- Mission is to provide assistance to the public affected by the management or sometimes mismanagement of federal lands within the state.

- The Commission had been effective in assuring that land management decisions were consistent with both statutory language and Congressional intent. They became known as effective problem solvers.

- Responsible for researching issues and determining the impact of federal statutes, regulations and management decisions on the citizens of Alaska.

- Even lands with no specific statutory conservation restrictions are subject to steadily increasing administrative designations and withdrawals that can result in reductions in public uses, including hunting, fishing, trapping, timber harvest, mineral extraction, grazing, access and other resource use opportunities on the Federal public lands.

- Responsible public access and traditional uses on the federal lands are just as important to citizens and communities throughout the state today as they were when the Commission was originally created.

- The Public needs the assistance the Commission previously provided. Without help, Who do they contact? Some will contact the congressional delegation staff. Some may contact the federal agency. Others may contact a state official. These folks only engage intermittently and often don't know the federal land management regulations or Federal managers.

- The commission's executive director researches federal rules and so can best advise whether and how to request that the federal land manager reconsider a previous decision or confirm that the information was correct or advise on how to clear up a misunderstanding.

Statement by Supporters

Minerals Commission

The economic constitutional rights of private property owners, including owners of valid mining property in-holdings within National Parks in Alaska must be recognized, protected and respected.

We find that a number of federal land issues are becoming problems and continue to be problems year-after-year.

Fairbanks North Star Borough

"... a percentage of Alaska's land remains owned and regulated by the federal government. For us to ignore the need for citizen representation as decisions are made that affect our use of that land is wrong."

Alaska Miners Association

"...commission provided valuable input regarding actions by the federal land management agencies and was in a sense a reservoir of information on the actions, proposals and promises made by federal agencies.

"The need for this commission is crucial and it is immediate. Actions by federal agencies continue to erode away the rights and promises that have been made to the State of Alaska and to the citizens of the state."

Kenai River Sport-fishing Association

"...commission should be restablished to assure that federal land management decisions are consistent with both statutory language and congressional intent, and protecting the interests of Alaska's citizens."

Alaska Outdoor Council

"AOC supports the passage of HB87 - Alaska's future lies in the land."

Examples of the Commission's effectiveness

The development of the Kodiak plan

- There was a strong leaning by planners to proceed with extreme limitations on the public use of those cabins.
- *The inclement weather and bears make those cabins invaluable.*
- They attempted to eliminate these cabins on the refuge.
- It was not an issue the State would deal with.
- The Commission raised the issues and the original decisions are "sticking".

Trapping Cabins

- Protected under ANILCA; the federal managers have a history of wanting to eliminate those cabins.
- The Commission worked with trappers to cut through red tape.

Commission was effective in Title 1 of ANILCA boundaries adopted under the Alaska Lands Act

- The National Park Service did not publish their boundaries after four years.
- The Commission brought the issues forward and was successful in having the boundaries mapped.

CS FOR HOUSE BILL NO. 87(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 5/1/07
Offered: 4/13/07

Sponsor(s): REPRESENTATIVES KELLY, Foster, Stoltze, Thomas, Ramras, Dahlstrom, Lynn, Coghill, Fairclough, Neuman

SENATORS Therriault, Dyson

A BILL

FOR AN ACT ENTITLED

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** AS 41.37 is amended by adding new sections to read:

Sec. 41.37.160. Citizens' Advisory Commission on Federal Management Areas in Alaska. The Citizens' Advisory Commission on Federal Management Areas in Alaska is established in the department. In the exercise of its responsibilities, the commission shall consider the views of citizens of the state and officials of the state.

Sec. 41.37.170. Membership and officers. (a) The commission is composed of 12 members appointed in accordance with this section.

(b) The membership of the commission shall represent each region of the state to give the commission a reasonable geographic balance among regions of the state.

(c) The governor shall appoint six members of the commission.

(d) The speaker of the house of representatives shall appoint one member of

1 the commission from the membership of the state house of representatives and two
2 members who are residents of the state who are not legislators.
3 (e) The president of the senate shall appoint one member of the commission
4 from the membership of the state senate and two members who are residents of the
5 state who are not legislators.
6 (f) Each member of the commission serves at the pleasure of the appointing
7 authority.
8 (g) The commission shall select a presiding officer of the commission from its
9 membership. The commission may elect other officers.
10 **Sec. 41.37.180. Qualifications of members.** The members of the commission
11 appointed by the governor under AS 41.37.170(c) and members appointed under
12 AS 41.37.170(d) and (e) who are not members of the legislature shall be representative
13 of the diversity of users and uses of federal land in the state.
14 **Sec. 41.37.190. Term of members of the commission.** (a) A member of the
15 commission appointed by the governor serves for a term of four years or until a
16 successor is appointed and qualifies.
17 (b) A member of the commission appointed from the legislature serves for the
18 person's term of office as a legislator or until a successor is appointed and qualifies.
19 (c) Except as provided in (b) of this section, a member of the commission
20 appointed by the speaker of the house or president of the senate serves for four years
21 or until a successor is appointed and qualifies.
22 **Sec. 41.37.200. Compensation, expenses, and per diem.** (a) A member of the
23 commission who is a legislator or a full-time employee of the state or of a
24 municipality of the state shall suffer no loss of compensation from the state or a
25 municipality of the state as a result of service to the commission.
26 (b) A member of the commission is entitled to per diem and travel expenses
27 authorized for boards and commissions under AS 39.20.180.
28 **Sec. 41.37.210. Staff of the commission.** The commission may employ staff
29 and contract for services relating to matters within its authority. Staff employed under
30 this section are responsible to the commission.
31 **Sec. 41.37.220. Duties of the commission.** (a) The commission shall consider,

research, and hold hearings on the consistency with federal law and congressional intent on management, operation, planning, development, and additions to federal management areas in the state.

(b) The commission shall consider, research, and hold hearings on the effect of federal regulations and federal management decisions on the people of the state.

(c) The commission may, after consideration of the public policy concerns under (a) and (b) of this section, make a recommendation on the concerns identified under (a) and (b) of this section to an agency of the state or to the agency of the United States that manages federal land in the state.

(d) The commission shall consider the views, research, and reports of advisory groups established by it under AS 41.37.230 as well as the views, research, and reports of individuals and other groups in the state.

(e) The commission shall establish internal procedures for the management of the responsibilities granted to it under this chapter.

(f) The commission shall report annually to the governor and the legislature within the first 10 days of a regular legislative session.

(g) The commission shall cooperate with each department or agency of the state or with a state board or commission in the fulfillment of their duties.

(h) All hearings of the commission are subject to AS 44.62.310. Hearings of the commission held under this section shall be noticed as provided in AS 44.62.190 and 44.62.200, and the hearings shall be conducted in accordance with the provisions of AS 44.62.210.

Sec. 41.37.230. Advisory groups of the commission. (a) The commission may establish advisory groups in the state.

(b) The commission shall invite nominations for the membership on the advisory groups and shall consider the nominations in making its appointments to the groups.

(c) The membership of each advisory group shall be broadly representative of individuals involved in activities affected by the establishment or management of units of federal land within the state.

Sec. 41.37.240. Suit. The commission may request the attorney general to file

suit against a federal official or agency if the commission determines that the federal official or agency is acting in violation of an Act of Congress, congressional intent, or the best interests of the state.

Sec. 41.37.250. Agency cooperation. Each state department, agency, board, and commission shall cooperate with the commission in the fulfillment of the duties of the commission under AS 41.37.220.

Sec. 41.37.260. Definition. In this chapter, "commission" means the Citizens' Advisory Commission on Federal Management Areas in Alaska.

*** Sec. 2.** AS 41.37.160, 41.37.170, 41.37.180, 41.37.190, 41.37.200, 41.37.210, 41.37.220, 41.37.230, 41.37.240, 41.37.250, and 41.37.260 are repealed June 30, 2014.

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION. Notwithstanding AS 41.37.190(a), as enacted in sec. 1 of this Act, the terms of the first members of the Citizens' Advisory Commission on Federal Management Areas in Alaska appointed by the governor under AS 41.37.170, as enacted in sec. 1 of this Act, are as follows: (1) two members shall be appointed for a four-year term; (2) two members shall be appointed for a three-year term; (3) one member shall be appointed for a two-year term; and (4) one member shall be appointed for a one-year term. The governor shall specify the term of office of each member appointed subject to this section.

*** Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE

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REPRESENTATIVE MIKE KELLY
HOUSE DISTRICT 7

Sponsor Statement

CS House Bill 87

An Act reestablishing the Citizens' Advisory Commission on Federal Areas in Alaska

The Citizens' Advisory Commission on Federal Areas was first established in 1981 to provide assistance to the citizens of Alaska who are affected by the management of federal lands within the state. The Commission was terminated in 1999 when funding was not allocated by the administration. The need for the Commission arose primarily from the passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980.

Of the 239 million acres in Alaska which remain under Federal management, there are more than 150 million acres with conservation restrictions in refuges, parks, and wilderness. In addition, there have been significant changes in the management directions for all Federal public lands throughout the country. Even lands with no specific statutory conservation restrictions are subject to a steadily increasing number of administrative designations and withdrawals that can result in reductions in public uses, including hunting, fishing, trapping, timber harvest, mineral extraction, grazing, and other resource use opportunities on the Federal public lands.

The commission, through this enabling legislation, is charged with the responsibility of researching issues and determining the impact of federal statutes, regulations and management decisions on the citizens of Alaska in order to minimize or resolve potential conflicts. The commission assists individual citizens in wading through federal land management requirements in order to conduct the activities allowed on the federal lands.

The commission was, and will again be effective in assuring that federal land management decisions are consistent with Congressional intent and protect the interests of Alaska's citizens.

ALASKA MINERS ASSOCIATION, INC.

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April 27, 2007

Honorable Mike Kelly
Alaska State House
Capitol Building
Juneau, AK 99801

RE: House Bill 87, Citizens' Advisory Commission on Federal Areas

Dear Representative Kelly,

The Alaska Miners Association supports House Bill 87 which would reestablish a Citizens' Advisory Commission on Federal Areas. This Commission will fill an important need in our state where 59% of the land area is held by the federal government and an even greater percentage is affected by what is and is not done on the federal lands.

For many years after passage of the Alaska National Interest Lands Conservation Act (ANILCA) such a commission was in place. That commission provided valuable input regarding actions by the federal land management agencies and was in a sense a reservoir of information on the actions, proposals and promises made by federal agencies.

The need for this Commission is crucial and it is immediate. Actions by federal agencies continue to erode away the rights and promises that have been made to the State of Alaska and to the citizens of the state. In some cases these actions are due to ignorance of the past. In other instances the actions add questionable new conditions and restrictions and grab for more power. There is therefore need for a Commission like the one being proposed that will, at the very least, expose these actions to the light of public scrutinty.

We urge that this bill be passed and enacted at the earliest possible date.

Sincerely,

Steven C. Borell, P.E.
Executive Director

Alaska Outdoor Council

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January 29, 2007

Representative Carl Gatto, Co-Chairman
Representative Craig Johnson, Co-Chairman
House Resources Committee
State Capitol Building
Juneau, Alaska 99811

Representatives,

The Alaska Outdoor Council (AOC) supports the passage of HB 87 – Re-establishing the Citizens' Advisory Commission on Federal Areas in Alaska.

The AOC is a statewide group of 2,500 members and 45 clubs for a collective membership of 10,000 Alaskans. Our members enjoy the Alaskan outdoor lifestyle and traditions that are so unique to our state. As you know, the federal government owns and manages millions of acres of land in Alaska. Many of our members have historically used those lands for the taking of fish, game, and other resources as well as for outdoor recreational enjoyment.

Since the passage of ANILCA, in addition to other subsequent federal legislation and administrative rule-making, a number of conflicts have arisen between Alaskans and their federal government. In its former life, the Citizen's Advisory Commission was effective in defining those conflicts so our state policymakers could address them. AOC believes that recent decisions by federal bureaucrats to redefine the balance of power between our state and federal government necessitate a response by the legislature to empanel, and empower, Alaskans.

Alaska's future lies in the land. What will keep future generations here if we can not access federal lands to hunt, fish, trap, drill, dig, recreate, and yes, just view the landscape? With these issues of land ownership, management, and control, so vitally important, it is equally important that we have someone to focus solely on such issues. Please re-establish the Citizen's Advisory Commission on Federal Areas in Alaska as that entity.

Sincerely,

Rod Arno, Executive Director