

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 26, 2012

1:07 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

PRESENTATION(S): CANADA'S FEDERAL NORTHERN PIPELINE AGENCY

- HEARD

HOUSE BILL NO. 191

"An Act establishing a state department of agriculture and food and relating to its powers and duties; relating to the powers and duties of the Department of Environmental Conservation and the Department of Natural Resources; and providing for an effective date."

- HEARD & HELD

HOUSE JOINT RESOLUTION NO. 40

Commending the governor and the administration for aggressively working to enforce the rights of the state in R.S. 2477 rights-of-way; urging the governor and the attorney general to develop a working alliance with other western states to protect and enforce appropriation request to fund an aggressive effort by the state to resolve issues relating to R.S. 2477 rights-of-way, including possible litigation, and to continue to work to preserve the rights of the state in regard to R.S. 2477 rights-of-way.

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 191

SHORT TITLE: DEPARTMENT OF AGRICULTURE AND FOOD

SPONSOR(S): REPRESENTATIVE(S) THOMPSON BY REQUEST

03/11/11	(H)	READ THE FIRST TIME - REFERRALS
03/11/11	(H)	EDT, RES, FIN
03/15/11	(H)	EDT AT 10:15 AM BARNES 124
03/15/11	(H)	Heard & Held
03/15/11	(H)	MINUTE(EDT)
04/07/11	(H)	EDT RPT 3DP 1DNP 2NR
04/07/11	(H)	DP: THOMPSON, TUCK, FOSTER
04/07/11	(H)	DNP: GARDNER
04/07/11	(H)	NR: MUNOZ, OLSON
04/07/11	(H)	EDT AT 8:00 AM BARNES 124
04/07/11	(H)	Moved Out of Committee
04/07/11	(H)	MINUTE(EDT)
03/26/12	(H)	RES AT 1:00 PM BARNES 124

BILL: HJR 40

SHORT TITLE: RS 2477 RIGHTS-OF-WAY

SPONSOR(S): REPRESENTATIVE(S) KELLER

02/22/12	(H)	READ THE FIRST TIME - REFERRALS
02/22/12	(H)	RES, JUD
03/26/12	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

CHRYSTIA CHUDCZAK, Assistant Commissioner
Northern Pipeline Agency
Government of Canada
Ottawa, Ontario, Canada

POSITION STATEMENT: Provided a PowerPoint presentation on the Alaska Highway Gas Pipeline project in Canada.

FRANK RICHARDS, Deputy Federal Coordinator
Office of the Federal Coordinator
Alaska Natural Gas Transportation Projects
Anchorage, Alaska

POSITION STATEMENT: Answered a question during the presentation by the Northern Pipeline Agency.

LYNETTE BERGH, Staff

Representative Steve Thompson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 191 on behalf of the sponsor,
Representative Thompson.

JANE PIERSON, Staff
Representative Steve Thompson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB
191.

JOHN POIRRIER
Alaska State Grange
North Pole, Alaska

POSITION STATEMENT: Testified in support of HB 191.

MARIE RICE, Rancher
Kodiak, Alaska

POSITION STATEMENT: Testified in support of HB 191.

BRYCE WRIGLEY, President
Alaska Farm Bureau
Delta Junction, Alaska

POSITION STATEMENT: Testified in support of HB 191.

BRUCE WILLARD
Willard Farms
Homer, Alaska

POSITION STATEMENT: Testified in support of HB 191.

BILL BURTON
Kodiak Game Ranch;
President, Kodiak Farm Bureau
Kodiak, Alaska

POSITION STATEMENT: Testified in support of HB 191.

ED FOGELS, Deputy Commissioner
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding HB 191.

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

POSITION STATEMENT: Answered questions regarding HB 191.

REX WRIGLEY

Delta Junction, Alaska

POSITION STATEMENT: Testified in support of HB 191.

RUBY HOLLEMBAEK, Owner & Operator

Alaska Interior Game Ranch;

President, Alaska Diversified Livestock Association

Delta Junction, Alaska

POSITION STATEMENT: Testified in support of HB 191.

REPRESENTATIVE WES KELLER

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As the sponsor, introduced HJR 40.

KENT SULLIVAN, Assistant Attorney General

Natural Resources Section

Civil Section (Juneau)

Department of Law

Juneau, Alaska

POSITION STATEMENT: During hearing of HJR 40, provided information regarding R.S. 2477 rights-of-way.

ACTION NARRATIVE

[1:07:21 PM](#)

CO-CHAIR PAUL SEATON called the House Resources Standing Committee meeting to order at 1:07 p.m. Representatives Seaton, P. Wilson, Herron, Foster, Gardner, and Feige were present at the call to order. Representatives Munoz, Kawasaki, and Dick arrived as the meeting was in progress.

PRESENTATION(S): Canada's Federal Northern Pipeline Agency

[1:07:44 PM](#)

CO-CHAIR SEATON announced that the first order of business would be a presentation by Canada's Northern Pipeline Agency on the Alaska Highway Gas Pipeline project in Canada.

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CHRYSTIA CHUDCZAK, Assistant Commissioner, Northern Pipeline Agency, Government of Canada, said her presentation would touch upon three topics: the project and its challenges; Canada is ready, engaged, and leading; and next steps. She stated that the project will only proceed if it is commercially viable, the markets want it, and the producers successfully secure customers. Initiated in 1977, the project has faced the challenges of volatile global energy outlook and markets, complex social expectations that shape northern resource development, and ongoing pressures on public services to do more with less. The purpose of the project has remained to ship natural gas from the North Slope to the Lower 48 by the original route and with the original operational infrastructure. However, the context has changed along with advances in pipeline technology which allow more gas to be pushed more safely through smaller pipes at higher pressures. In addition, there are new environmental laws, regulations, and standards in Canada and elsewhere.

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MS. CHUDCZAK noted that society's values have shifted toward sustainability, ecological support, and the introduction and use of Aboriginal knowledge. She said new global market pressures have been brought by the abundance of shale oil, Asian markets, and liquefied natural gas (LNG). She indicated that if the commercial decision is made, three groups of assets position Canada to move forward expeditiously. The first group of existing instruments includes the unique bilateral international treaty with the U.S. establishing the project, Canada's enactment of the Northern Pipeline Act which coordinates the planning and construction of the project, and Canada's granting to TransCanada certificates of public convenience for the entire project. The second group of assets relates to Canada being an experienced regulator having completed stage 1 of the project in 1982. Stage 1 involved a pipeline from Alberta to Saskatchewan and into British Columbia which met 750 highly prescriptive terms and conditions. The third group of assets includes the regulatory framework, in that Canada has a single-window model within the Northern Pipeline Agency which consolidates all federal Canadian authorities relevant to the project for making decisions, including the responsibility to consult with First Nations.

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MS. CHUDCZAK pointed out that although Canada is ready on the regulatory side, there is the challenge of how to address the environmental and socioeconomic information gaps that exist because the project was put on hold 30 years ago. Canada has decided to use the Northern Pipeline Act which provides for the creation of advisory councils to leverage TransCanada's updated environmental and socioeconomic information in a public review. Throughout the council process over the course of a year, the public will be able to express its views to help in defining, identifying, and filling those information gaps. This process will give Aboriginal people and others the chance to voice their ideas and concerns that will find a way into the regulatory decision making. A report will be sent to the Minister of Natural Resources on behalf of the government and the report will be factored into stage 2 of the regulatory process that will review and approve the conditions associated with TransCanada's plans and programs.

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MS. CHUDCZAK said getting through the regulatory process expeditiously means there must be strong working relationships with industry, the public, and government partners such as First Nations' governments, Yukon and British Columbia governments, and the U.S. and Alaska governments. She stressed that the Government of Canada has a special fiduciary relationship with First Nations and Aboriginal people, along with a moral and legal obligation to consult them on decisions affecting their interests and rights. On this project, the Northern Pipeline Agency is responsible for consultations on behalf of the Canadian government. As there are over 30 First Nations living along the pipeline corridor, some with settled land claims and some not, the law requires the agency to take Aboriginal interests into account when decisions are made about the project. The agency is also obliged to attempt to secure economic benefits and social opportunities for First Nations, which may involve providing capacity funding. Importantly, First Nations in Canada have helped to shape the regulatory process for natural resources projects, including integrating traditional knowledge in regulatory decision-making. This is an important way for First Nations to relay their first-hand experience and knowledge of the land to those making decisions on programs and plans, and to mitigate concerns. The second special relationship that the Government of Canada has is with the U.S. and Alaska. The treaty established for the project is seen as a way to ensure that jobs and growth are created equally on both sides of the border. Canada and the U.S. have markets

that are closely linked, a common and close energy relationship, and shared values with respect to open markets, a commitment to strengthening environmental protection, and growth through job creation.

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MS. CHUDCZAK continued, saying from Canada's perspective, it is leading in streamlining pipeline regulations, invoking modern business practices, and securing tangible outcomes, all of which create a model for future resource projects in Canada. The agency is modernizing with technology, and will bring tools and talent together to expedite the project in 2012. These practices will lead to the following six outcomes:

- Meet or exceed modern environmental and socioeconomic standards by using a collaborative, cohesive, and considered regulatory approach
- Respect for existing federal approvals
- Ensure safe pipeline design and construction through the regulatory process
- Strive for maximum socioeconomic benefit through strong and productive business relationships at the local, regional, and national government levels, and with First Nations.
- Meet Canada's duty to consult Aboriginal people through cooperation and collaboration
- Engage the public and industry through timely and predictable processes

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MS. CHUDCZAK acknowledged there is no way to predict the commercial direction of the project; however, Canada is preparing for the future in its regulatory process and activities, in its ongoing consultations with First Nations, in the modernization of its business, and in collaboration with other governments. This will ensure long-term growth and job creation, and will unleash North America's natural resource advantage.

[1:20:41 PM](#)

REPRESENTATIVE GARDNER inquired as to how the aforementioned bilateral treaty agreement between the U.S and Canada would expedite the project.

MS. CHUDCZAK explained the treaty contains two practical commitments. One commitment requires a senior official from each jurisdiction oversee the activities of the project. In Canada, that official is the commissioner of the Northern Pipeline Agency. The second major commitment is to consult, cooperate, and collaborate on regulatory matters; for example, the Northern Pipeline Agency has ongoing discussions and relationships with the U.S. Federal Energy Regulatory Commission (FERC).

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REPRESENTATIVE KAWASAKI asked how the Keystone XL Pipeline issue would generally impact this pipeline and others. In response to Ms. Chudczak's request for clarification, he further asked if there would be an impact on export and development at the federal level.

MS. CHUDCZAK said that from her prospective and responsibilities, there has been no impact.

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FRANK RICHARDS, Deputy Federal Coordinator, Office of the Federal Coordinator, Alaska Natural Gas Transportation Projects, said the distinct difference between the two projects is that the Keystone XL pipeline is an oil pipeline, and the environmental impact statement for that project is administered by the U.S. Department of State. Regulation of the proposed Alaska natural gas pipeline in the U.S. falls under the Alaska Natural Gas Pipeline Act, and the environmental impact statement is administered by FERC. Although these are two different processes, both follow National Environmental Policy Act guidance.

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CO-CHAIR SEATON understood that under the Northern Pipeline Act, rolled-in rates or tolls are presumed or required. He asked how rolled-in rates or tolls on expansions are regulated in Canada.

MS. CHUDCZAK said she was unsure and would provide an answer at a later time.

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REPRESENTATIVE P. WILSON recalled that the pipeline was initially considered in the U.S. 30 years ago, but nothing was done. She asked what has suddenly inspired Canada's interest, especially in light of the new opportunities for gas production in the Lower 48.

MS. CHUDCZAK replied that interest in the pipeline was driven by a commercial decision on the part of TransCanada. The Government of Canada is obligated under the treaty to be prepared to respond to TransCanada's compliance filings that are expected in October 2012.

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CO-CHAIR SEATON thanked the presenters for their time.

HB 191-DEPARTMENT OF AGRICULTURE AND FOOD

[1:27:13 PM](#)

CO-CHAIR SEATON announced that the next order of business would be HOUSE BILL NO. 191, "An Act establishing a state department of agriculture and food and relating to its powers and duties; relating to the powers and duties of the Department of Environmental Conservation and the Department of Natural Resources; and providing for an effective date."

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CO-CHAIR FEIGE moved to adopt the proposed committee substitute (CS), Version 27-LS0458\B, Bannister, 2/7/12, as the working document. There being no objection, Version B was before the committee.

[1:29:11 PM](#)

LYNETTE BERGH, Staff, Representative Steve Thompson, Alaska State Legislature, informed the committee Representative Thompson sponsored HB 191 at the request of the Alaska Farm Bureau. As a businessman, Representative Thompson supports a strong and diversified Alaska economy, and the Alaska Farm Bureau sparked his interest in maintaining and broadening the agricultural economy of the state to provide a safe, long-term food supply. In the 1970s, Governor Jay Hammond established the following goals: broaden the economic base of the state through agricultural production; stabilize real food costs by increasing local food; provide alternative job opportunities through

expanded agriculture; and improve rural life by developing an economic base through agriculture. In addition, the current trend is to eat locally. Alaska has seen a surge in Farmer's Markets, Alaska's disease-free potatoes are in demand, Fairbanks has a garden-in-the-schools program, and greenhouses are showing potential for success. Representative Thompson sponsored HB 191 in order to hear about these and other ideas on how to enhance, maintain, and grow the health of agriculture in Alaska. At this time most states have a department of agriculture, with only the exceptions of Rhode Island and Alaska. The proposed bill is a work in progress, and she said Representative Thompson invited the committee to assist in strengthening agriculture in order to help all Alaskans.

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REPRESENTATIVE GARDNER inquired whether provisions regarding horticulture would be included in the bill.

[1:32:58 PM](#)

JANE PIERSON, Staff, Representative Steve Thompson, Alaska State Legislature, said horticulture is included in the bill as a component of farming.

CO-CHAIR SEATON noted on page 1, line 13 of the bill, horticulture is listed with other fields of the agricultural industry.

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MS. BERGH provided a sectional analysis beginning with Section 1, which amends AS 03.05.010, dealing with agriculture and food, to change the responsible commissioner to the commissioner of agriculture and food, add some responsibilities to the list of responsibilities, and exempt retail food establishments, food processing, and fish or fisheries product establishments from its coverage. Section 2 amends AS 03.05.011(a), which relates to certain powers over animals and animal products, and exempts retail food establishments from its coverage.

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REPRESENTATIVE KAWASAKI asked whether Section 1 pulls all of the responsibilities dealing with agriculture from the commissioner of the Department of Natural Resources (DNR).

MS. PIERSON replied yes.

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MS. BERGH, continuing the review of the sectional analysis, explained that Section 4 would amend statute such that the proposed Department of Agriculture and Food (DOAF) and its commissioner would be responsible for appointing or employing the state veterinarian for animal products over which DOAF has jurisdiction. Section 5 would make DOAF and its commissioner responsible for employing or appointing the state coordinator for noxious weed, invasive plant, and agricultural pest management.

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CO-CHAIR SEATON asked whether Section 4 is the only provision in which a power or duty is being taken from a department other than DNR.

MS. PIERSON answered no, explaining that the duties are mixed between DNR and DEC. Therefore, there are many [duties/responsibilities] that DOAF will take from DEC and DNR.

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MS. BERGH, returning to the sectional analysis, pointed out that Sections 6 and 7 amend the statute relating to elk farming. The sections would change the responsible commissioner to the commissioner of DOAF who shall provide the Alaska Department of Fish & Game (ADF&G) with copies of elk farming applications and licenses.

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CO-CHAIR SEATON asked if beyond merely providing the application and license to ADF&G, there is consultation in terms of when DOAF would issue a license.

MS. PIERSON offered to check that.

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MS. BERGH, continuing the sectional analysis, explained that Section 8 amends statute such that the fencing standards for elk will be established under DOAF. Section 9 places the power to regulate elk farming in DOAF.

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REPRESENTATIVE GARDNER surmised that currently the fencing standards for elk are regulated by DNR and HB 191 would change who regulates them but doesn't introduce a new responsibility.

MS. BERGH replied yes.

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MS. BERGH moved on to Section 10, which amends the statute for criminal penalties for violations of regulations under the chapter made by the DOAF and DNR. Section 11 establishes civil fines for violations of quarantines or embargos made by DOAF and DEC. Section 12 states that DOAF, DEC, or a court may impose civil fines authorized by the chapter. Section 13 redefines "animal" to exclude fish or fisheries products and adds new definitions to include "commissioner" and "department" as DOAF for the chapter. Section 14 directs the commissioner of DOAF to appoint an employee of DOAF as the director of the Board of Agriculture and Conservation to oversee the daily operations of the agricultural revolving loan fund (ARLF). Section 15 specifies that the commissioner of DOAF will establish the regulations for disposal of property acquired by the Board of Agriculture and Conservation in order to ensure that the property is disposed of in a manner that maximizes the return to the state. Section 16 amends statute such that DOAF is the department responsible for establishing and maintaining the plant materials center and Section 17 specifies that DOAF is one of the agencies that appoints the administrator of the plant materials center. Section 18 identifies the commissioner of DOAF as the commissioner to whom a district judge sends a copy of an order related to the establishment, addition, elimination, or dissolution of a controlled livestock district.

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REPRESENTATIVE P. WILSON related her understanding that currently invasive animal species are addressed by the Alaska Department of Fish & Game. She asked if that would remain the case or would DOAF address such issues.

MS. PIERSON answered that [per HB 191] invasive animal species would be addressed by DOAF, except for fish and fish products.

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CO-CHAIR SEATON asked whether the responsibility to address invasive plant species would be transferred to DOAF.

MS. PIERSON said she will get back to the committee with regard to invasive plant species, as it was not addressed in the legislation because it isn't part of Title 3.

CO-CHAIR SEATON questioned whether the definition of "fish" under Title 3 would include aquatic plants and animals or would it include what's commonly considered commercial fish and fisheries products.

REPRESENTATIVE KAWASAKI related his understanding that aquatic plants are regulated under ADF&G.

MS. PIERSON told the committee that the intent was for ADF&G to maintain the oversight of [aquatic plants], but she offered to check to be sure that is the case.

REPRESENTATIVE P. WILSON mentioned that there was an invasive species in a harbor near Sitka to which the Division of Sport Fish responded. Although it's the division's responsibility, the staff isn't accustomed to such issues and responded poorly, she opined. Therefore, she expressed interest in moving the responsibility of invasive species elsewhere.

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MS. BERGH, returning to the sectional analysis, directed attention to Section 19, which identifies the commissioner of DOAF as the person to whom one applies for a brand mark. Section 20 specifies that DOAF is responsible for determining whether apiary inspectors are qualified. Sections 21-24 amend statute such that DOAF is the responsible department for bees and beekeeping. Section 25 amends the definitions for commissioner and department to DOAF. Section 26 establishes the role of DOAF in assisting in the development and implementation in the farm-to-school program. Section 27 provides the commissioner of DOAF the power to regulate food except for fish and fisheries products. Section 28 specifies the duties of the commissioner of DOAF to regulate fish and fisheries products, including seafood raising and processing, and to inspect retail food establishments. Sections 29 and 30 direct DOAF to adopt regulations relating to definitions and standards for agricultural food and to establish a mobile canned agricultural food products inspection service. Sections 31 and 32 place the

duty to regulate hormone labeling in milk under DOAF. Sections 33 and 34 amend statute to make changes to conform to the new division of responsibilities between the departments. Section 34 also makes stylistic and clarifying changes. Sections 35 and 36 separate the responsibilities for the sales and labeling of frozen meat, fish, and poultry between DOAF and DEC.

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REPRESENTATIVE DICK requested further clarification regarding Sections 35 and 36.

MS. PIERSON offered to provide information to the committee after she is able to review Title 17.

REPRESENTATIVE DICK related his thought that DOAF would be more amenable to getting the sales and labeling in motion while DEC would seem to be more reluctant in that area.

MS. PIERSON responded that she doesn't disagree with Representative Dick's thought.

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CO-CHAIR SEATON interjected that the aforementioned may be because DOAF hasn't taken over the food safety inspections. Some cooperation between the departments may be necessary.

MS. PIERSON agreed, adding that food is currently covered by both DNR and DEC.

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REPRESENTATIVE KAWASAKI related his understanding that there will be no diminishment of the current regulations or health and safety standards established by DNR and DEC. He surmised that this legislation basically takes statutes from DEC and statutes from DNR and more appropriately places them within DOAF.

MS. PIERSON stated her agreement with Representative Kawasaki.

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MS. BERGH, continuing her sectional analysis, explained that Section 44 allows DOAF to adopt regulations for efficient enforcement of its respective portions of AS 17.20.180. Section 45 amends AS 17.20.200(a) such that it limits the food covered

in the subsection to fish and fisheries products over which DEC has responsibility. Section 46 adds an inspection equivalent to AS 17.20.200(a) to cover DOAF's access and inspection authority. Section 47 amends statute to add DOAF as a department that may issue reports. Section 48 limits the food-related subjects over which DEC has jurisdiction to fish, fisheries products, and retail establishments. Section 49 adds an information dissemination equivalent to AS 17.20.200(a) to cover DOAF's information dissemination authority. Section 50 amends statute that relates to DEC's power to detain or embargo fish or fish products that are dangerous or fraudulent. Section 51 gives DOAF the power to detain or embargo agricultural food that is adulterated or misbranded in a manner that's dangerous or fraudulent. Section 52 adds DOAF to the list of departments that can petition for condemnation of a food. Section 53 allows DOAF to destroy adulterated or misbranded goods under its purview and Section 54 provides DOAF the oversight of relabeling of misbranded food items under its purview. Section 55 provides DOAF oversight of destruction of contaminated food items under its purview. Section 56 gives DOAF the ability to apply to the superior court for injunctions against persons violating provisions of the chapter. Section 57 amends statute to limit the food-related acts to fish, fisheries products, and retail food establishments. Section 58 adds an enforcement action equivalent to AS 17.20.290(b) to cover DOAF's enforcement action authority. Section 59 amends AS 17.20.315(c) to give DOAF the power to impose civil fines for serious violations of the chapter. Section 60 amends statute to state that nothing in the chapter requires DOAF to report minor violations. Section 61 makes changes to conform the section to the new division of responsibilities between the departments. Section 62 adds definitions to AS 17.20 for "agricultural food." Section 63 is a conforming change. Section 64 amends statute such that DOAF food inspection receipts are in a specific category of program receipts and reflects the change in the division of responsibilities under AS 17.20. Section 65 amends statutes that relate to the clearing and draining of agricultural land such that the statute changes the responsibility to DOAF. Section 66 lists the new DOAF as a principal department of the state. Section 67 removes agriculture and soil conservation from DNR's responsibility. Section 68 limits the application of certain provisions because DOAF will be performing some activities in the same general categories as DEC. Section 69 amends statute relating to DEC's powers such that it limits the application of certain provisions to reflect DEC's new food and animal-related responsibilities under AS 03.05 and AS 17.20. Section 70 adds a new chapter to establish the new DOAF.

Section 71 amends statute to add DOAF to the agencies enforcing AS 17.20 and that are subject to the general administrative adjudication provisions of AS 44.62.330- 44.62.630. Section 72 amends statute to change DOAF to be the agency identified as subject to the general administrative adjudication provisions of AS 44.62.330-AS 44.52.630 concerning the Alaska grain reserve program. Section 73 repeals certain laws and per Section 74 those repeals are effective immediately under AS 01.10.070(c). Section 75 is the effective date of July 1, 2014, except as provided in Section 74.

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CO-CHAIR SEATON requested a synopsis and a list of the statutes being repealed.

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REPRESENTATIVE P. WILSON observed that many fiscal notes accompany HB 191 and requested a total of the amount of funds being taken from one department to another.

MS. PIERSON offered to provide the committee with a side-by-side.

[1:55:29 PM](#)

REPRESENTATIVE KAWASAKI pointed out that the sponsor statement specifies that the intent of HB 191 is to use the current Division of Agriculture's budget for the proposed DOAF.

MS. PIERSON confirmed that would be the idea.

[1:56:16 PM](#)

CO-CHAIR SEATON, referring to page 27, line 21, asked whether the soil and water conservation districts would be under the DOAF rather than under DNR as is currently the case.

MS. PIERSON replied yes. In further response to Co-Chair Seaton, Ms. Pierson said that at this time there have not been conversations with the districts or district organizations regarding this matter.

[1:57:16 PM](#)

CO-CHAIR SEATON, referring to the new subsection added to AS 17.20.230 in Section 51, asked if the ability/authority in that provision currently exists and is being moved from DEC or DNR.

MS. PIERSON related her belief that because DEC would retain some of the powers [specified in the proposed new subsection in Section 51, the proposed new subsection] adds DOAF. However, she expressed the need to review Title 17 and provide information on that to the committee.

CO-CHAIR SEATON expressed the need to identify those things that are renaming and changing authority between departments, repealing statutory powers, or creating new statutory powers.

[1:59:20 PM](#)

CO-CHAIR SEATON, referring to page 21 of HB 191, inquired as to why the sponsor didn't include aquatic farms in agriculture.

MS. PIERSON responded that the sponsor felt it was best to leave aquatic farms with ADF&G and have DOAF address mostly land-based agriculture. In further response to Co-Chair Seaton, Ms. Pierson recalled that [maintaining aquatic farming in ADF&G] was [desired by] the Farm Bureau.

[2:01:04 PM](#)

JOHN POIRRIER, Alaska State Grange, began by relating support for HB 191. He opined that in general HB 191 wouldn't add any more government, but rather would consolidate existing functions into a single entity. The aforementioned, he further opined, is an action necessary to move the state toward self-sufficiency in terms of the ability to feed the state's citizens long term. The DOAF would be better able to attract more people into the industry. The whole idea of agriculture relies heavily on passing an agriculture business down to the next generation. The hope is to create more opportunities for those seeking employment in the agriculture industry, which he said he believes HB 191 will move in that direction. By elevating [the Division of Agriculture] to a department level, it would provide it more visibility and a more balanced approach to managing agriculture in Alaska. As was mentioned earlier, there are only two states in the nation without an agriculture department. He highlighted that of those two states, one is the largest geographic state and one the smallest geographic state.

[2:04:24 PM](#)

MARIE RICE, Rancher, told the committee that she has been involved in ranching and agriculture in Alaska since 1963. She then informed the committee that she has become involved with sustainability. In fact, this is her third year with hoop houses. By the end of 2012, the goal is to have 300 hoop houses in the Kenai/Kodiak area. There have been some difficulties getting a nonagricultural community to develop some codes, and therefore they need help. The DOAF would provide an entity that would more clearly define agriculture. The geographic challenges in Alaska support the need for organizing and helping people grow their own food. Ms. Rice noted that the Alaska Native Claims Settlement Act (ANCSA) took a lot of land out of agricultural production, and therefore she expressed interest in working with Native Alaskans to create a viable use of their land. In conclusion, Ms. Rice stated support for HB 191 and recalled that when the Department of Agriculture was reduced to a division there was concern that the agricultural emphasis would be somewhat lost, which was the case.

[2:07:44 PM](#)

BRYCE WRIGLEY, President, Alaska Farm Bureau, remarked that for the last 30 years agriculture has been [stagnant]. He acknowledged that in some of his prior testimony he has been fairly critical of DNR and the Division of Agriculture because as important as oil and gas is there is only so much time for planning and agriculture often is a footnote in the reports. The importance of agriculture to Alaska isn't necessarily measured by the value of its economic contribution to the state's economy but rather in the security and the rural development it can provide. While he understands the role of DNR in administering the state's oil and gas resources, it's important to understand the importance of food itself. He recalled disruptions to the transportation system that have resulted in food shortages on the shelf. In looking to the future and learning from the past, nothing has changed the role or importance of transportation. The only way that Alaska can have a food security system is through agriculture. Therefore, it's important for a department to be organized to administer the role of agriculture in the state. He noted that about 95 percent of the food eaten in Alaska is imported, which is a great risk as well as a great opportunity. Therefore, there needs to be a long-term plan for developing a food security system for Alaska that will accommodate 700,000 for a period of time.

[2:12:02 PM](#)

MR. WRIGLEY suggested that DOAF be tasked with developing and implementing a long-term plan for sustainable food independence. Such a plan would benefit everyone in the state not just the farmers in the state. He informed the committee that the Department of Revenue reports that in fiscal year 2010 \$4.6 billion was brought in from oil production revenue. In comparison, Alaskans spend \$2.5 billion in food, most of which goes out of the state and stays out of the state. If 30 percent of that \$2.5 billion money stayed within the state and turned over in the economy, the multiplier effect would result in \$4 billion worth of economic activity that doesn't occur today. Mr. Wrigley emphasized the need to look beyond the last drop of oil in the pipeline and determine methods and processes to keep the state's economy going. He suggested that \$4 billion in economic activity is a start.

[2:13:48 PM](#)

MR. WRIGLEY addressed why one would want a Department of Agriculture and Food as opposed to a division is related to access. When the governor sits down with his/her commissioners, there is no commissioner for agriculture yet there are so many aspects of agriculture that could assist with the development of other planning processes in the various departments. Again, the DNR commissioner does not have the time to deal with agriculture given the hours of his/her time taken up by oil and gas issues.

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MR. WRIGLEY acknowledged that HB 191 has an indeterminate fiscal note, which can be of concern. However, he expressed concern that an agency that doesn't want the legislation to move forward could submit an exorbitantly high fiscal note knowing the legislation won't move forward because of it. He reiterated that the legislation seeks direction in terms of planning and access. Therefore, he indicated that the cost of this legislation won't be several million dollars, although he acknowledged that a new commissioner would have to be hired. He then questioned the cost of not doing something.

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MR. WRIGLEY recalled reading that people are held back more by their lack of imagination than by their circumstances. He then expressed concern that within the bureaucracy the same ideas

keep circulating as solutions although they haven't worked for 30 years. It's the lack of imagination that keeps the problem from being solved. As long as people believe there is no solution, they seek an exit plan rather than a solution. However, Mr. Wrigley opined that there is a solution and the state can have a secure food supply. Currently, Alaska grows something from all of the food groups in the nutrition pyramid. Alaska can already grow a balanced diet in Alaska, it just isn't done enough. In conclusion, Mr. Wrigley emphasized that Alaska can't keep maintaining the status quo if it is serious about increasing the state's self-reliance such that there is a food security system for the state that guarantees people safe and affordable food when transportation is interrupted.

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REPRESENTATIVE FOSTER recalled that Mr. Wrigley mentioned agriculture in terms of food security and potential for rural development. He inquired as to potential examples of those.

MR. WRIGLEY said that Tim Meyers in Bethel is a good example of a remote rural area that can benefit from an agricultural project, albeit small. Mr. Meyers is growing fresh food that is sold in the local stores. Although there are only two million farmers, nationwide agriculture has always been a big job creator as agriculture accounts for about 14 percent of all jobs. Agriculture isn't just about growing/raising the food, it's also about processing and selling it.

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REPRESENTATIVE KAWASAKI agreed that the administration hasn't put in a lot of time on agriculture and thanked Mr. Wrigley for his time working on this issue. He then inquired as to why agriculture should be a separate department as it would add to a bureaucracy that's already fairly large.

MR. WRIGLEY pointed out that the most important functions of government or life are shelter, food, and water. However, the state isn't providing food. He highlighted the issue of access recalling when the Port of Anchorage froze in 1989 and the grocery store shelves were bare. He then highlighted the aftermath of Hurricane Katrina when it took two weeks to get food into an area with an emergency plan and that was located only 100 miles away from food sources. Alaska, on the other hand, is much farther away from its food sources. Therefore, the question is what Alaska would do when something interrupts

the transportation system, which will inevitably happen. He then expressed confidence that there is the opportunity to establish processes to address [the potential interruption in the transportation system that would impact Alaska's food source].

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BRUCE WILLARD, Willard Farms, informed the committee that he has been involved in agriculture, beef cattle commercially in Homer since 1959. As has been mentioned, agriculture seems to take a back seat. For people to become involved in agriculture takes money. He indicated the need for a secure market for one's product and for the state to be behind [agriculture]. In terms of the beef industry, he highlighted that for years the rumor has been that the slaughter house is going to close, which doesn't entice folks to enter the beef industry. Furthermore, there are many people who have been waiting for years for leases. For example, after holding the Fox River Valley lease in Homer for 40-50 years, Mr. Willard could only obtain a one-year renewal once it came up for renewal. Mr. Willard emphasized the need for a department of agriculture so there is only one place for people [in agriculture] to go.

[2:28:31 PM](#)

BILL BURTON, Kodiak Game Ranch; President, Kodiak Farm Bureau, agreed that the leases are a large problem. He recalled transitioning from the federal [leases] to the state [leases] when he went without a lease for nine years, which makes it very difficult to get a [loan]. A department of agriculture would make a huge difference in this regard, particularly since DNR is more interested in oil leases. A long-term lease would make a huge difference in terms of livestock. He then turned attention to the bear predation of cattle and noted that in the Lower 48 ranchers are reimbursed for predation. While he clarified that he isn't advocating for the aforementioned necessarily, he went into game ranching because of the bear predation on his cattle. Mr. Burton asserted that Kodiak and the Aleutian Islands are outstanding locations to raise livestock, which are sorely needed in Alaska. Also, there's the capability to produce much more livestock in Alaska than is currently being produced. Although ANCSA took quite a bit of the ranch lands in Kodiak, potential remains in Kodiak and elsewhere. Mr. Burton reiterated the difficulty with obtaining leases.

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CO-CHAIR SEATON interjected that the hope is to address the long timeframes with leases by placing more staff in DNR to deal with the leases and permits.

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MR. BURTON, in conclusion, remarked that the current DNR is one of the most agriculture-minded the state has had, but that could change with a different administration. Therefore, having a separate department of agriculture would address many of the problems.

[2:34:23 PM](#)

CO-CHAIR SEATON asked whether DNR has a position on HB 191 and whether it would elevate agriculture in Alaska.

[2:34:43 PM](#)

ED FOGELS, Deputy Commissioner, Department of Natural Resources, related that DNR doesn't have a position on HB 191. However, he stated that DNR has put a lot of effort into the agriculture and has made some progress, but allowed that establishing a department of agriculture would certainly elevate the visibility of the agricultural industry.

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CO-CHAIR SEATON noted that HB 191 wasn't introduced to knock DNR, but rather to help enhance the position of agriculture in the state. Speaking to Ms. Ryan, Co-Chair Seaton asked whether DEC sees anything in Version B that would compromise [the health of agriculture] or the cooperation between the various regulatory bodies.

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KRISTIN RYAN, Director, Division of Environmental Health, Department of Environmental Conservation, pointed out that under Version B the state veterinarian's office would be moved from the Division of Environmental Health within DEC to the proposed DOAF. The state veterinarian oversees several programs for the production of animal products, primarily milk and cheese, for human consumption. The legislation also removes the ability of the Division of Environmental Health to regulate agricultural foods and provides that authority to the new proposed

department, while leaving retail food and seafood in the Division of Environmental Health. Ms. Ryan identified the processing of non-agricultural food as an area that's missing from the legislation. The Division of Environmental Health permits about 170 food processors in Alaska, the majority of which are non-agriculturally based foods. Such foods aren't covered under DEC or the proposed DOAF.

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REX WRIGLEY said he is in favor of the reinstatement of the [proposed DOAF] because farmers can realize what's needed better since it's their livelihood. He highlighted that throughout civilizations food has been one of the first things considered. Therefore, [there should be a department] governing food.

[2:43:17 PM](#)

RUBY HOLLEMBAEK, Owner & Operator, Alaska Interior Game Ranch; President, Alaska Diversified Livestock Association, summarized her written statement, which was included in the committee packet, as follows [original punctuation provided]:

The Alaska Department of Agriculture and Food would work with officials on the local, state and federal level to benefit all Alaskans involved in the agriculture industry. When Alaska regains their Department of Agriculture, they would regain control of their own budget. No industry can be supported as an afterthought. That is what Alaskan agriculture has become over the last 2.5 decades, an afterthought.

"In a report prepared (February 15, 2010) for President Barack Obama and Secretary of the US Department of Agriculture, Tom Vilsack, and based on forums conducted by State USADA Alaska Farm Service Agency Danny Consenstein and Alaska State Director USDA Rural Development Jim Nordlund the following facts were derived from meetings held across Alaska (Fairbanks, Kotzebue, Juneau and Anchorage) to provide input on what works and what does not work when it comes to job creation and retention, especially in rural Alaska. Three areas for potential job growth emerged from all four meetings:

- Food Systems
- Renewable energy/energy efficiency

- Rural Infrastructure

I see an Alaska Department of Agriculture and Food being able to provide economic growth in food and agriculture for our state in jobs with money being reinvested in Alaska. I see it working closely with the Department of Economic and Community Development with efforts of increasing the industry, not for industry sake but for making our state stronger by providing agricultural endeavors that look at food, fiber and fuel. My husband and I operate a game ranch with bison and elk. A Department of Agriculture would work with ranches such as ours, to increase the red meat industry for our state. A reinstatement of a Department of Agriculture would promote revitalization for Alaska's livestock industry. Not only would producers provide red meat, they would also provide jobs for Alaskans. Alaskan agriculture would head up endeavors such as alternative fuels like barley burner stoves, straw pellet stoves and biomass possibilities. This department would define and nurture economic opportunity, including technology development, in the food, fuel and fiber sectors. A department would support growth in Alaskan agriculture by serving as an advocate at the local, state and federal level; defining and nurturing economic opportunity and enhancing the stewardship of natural resources on agricultural land. We are truly a renewable resource.

It's also about food security. Maybe a person walking around Alaska wearing an FAA (Future Farmers of America) jacket doesn't get the same head turning as a jacket from a petroleum based company, but it should. It should be a real head-turner. Agricultural producers for our state would influence job creation, security and economic development. It would increase regional and local food security. It would support economically efficient and ecologically sustainable agriculture. Family friendly farming are not dirty words. We might get dirty farming but we are very friendly.

All other states except the largest and smallest (Alaska & Rhode Island), have a cabinet level department for agriculture. We had one too until, I believe the early 1960's, just prior to the oil pipeline. We are special, not having a cabinet level

department of agriculture is not a good way to be special. North Dakota now surpasses us as an oil producing state, the boom has come and gone once again. It is time to apologize to farmers, ranchers, producers and agriculture operators around the state for putting them on the back burner as an economical viability, for taking their industry out of a cabinet level status and placing them as a division under DNR. Our forefathers never intended that. They knew that Alaska needed agriculture. They knew it was imperative as a state, to be able to feed, clothe and keep themselves warm was just as important as any gold that was sought after.

It is time to reinstate the Alaska Department of Agriculture. It is time to support the Alaska Department of Agriculture and Food, HB 191.

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CO-CHAIR SEATON then announced that HB 191 would be held over.

HJR 40-RS 2477 RIGHTS-OF-WAY

[2:48:22 PM](#)

CO-CHAIR SEATON announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 40, Commending the governor and the administration for aggressively working to enforce the rights of the state in R.S. 2477 rights-of-way; urging the governor and the attorney general to develop a working alliance with other western states to protect and enforce the states' interests in ensuring access using rights-of-way authorized by R.S. 2477; urging the governor and the attorney general to support the State of Utah and the southern counties of Utah in a lawsuit against the federal government concerning R.S. 2477 rights-of-way, including filing an amicus brief in support of Utah; urging the governor to dedicate state resources to establish, protect, and enforce the state's interests in R.S. 2477 rights-of-way and to preserve state rights-of-way against encroachment by the federal government; urging the governor to reestablish a federalism section in the Department of Law and sections in the Department of Natural Resources and the Department of Fish and Game to support the preservation of the state's rights and powers in compact cases; and urging the governor to prepare an appropriation request to fund an aggressive effort by the state to resolve issues relating to

R.S. 2477 rights-of-way, including possible litigation, and to continue to work to preserve the rights of the state in regard to R.S. 2477 rights-of-way.

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REPRESENTATIVE WES KELLER, Alaska State Legislature, began by explaining that R.S. 2477 stands for Revised Statutes 2477 1866, which basically says that [the state] can obtain right-of-way across federal land because the federal government wants to encourage development. Representative Keller specified that the intent of HJR 40 is to commend the governor and the Department of Law (DOL) for the progress made while recognizing the things that still need to be done. He highlighted that there is time sensitivity with R.S. 2477s because as the state's older citizens die, the information necessary to verify the R.S. 2477s is lost.

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REPRESENTATIVE KAWASAKI directed attention to page 2, line 14, which is a "WHEREAS" provision that addresses the number of rights-of-way already in statute. He noted that Department of Natural Resources (DNR) has identified 67 additional R.S. 2477s. He then inquired as to how the R.S. 2477 process doesn't work.

REPRESENTATIVE KELLER pointed out that just because rights-of-way are identified in statute doesn't mean they are recognized by the U.S. Department of Interior and the U.S. Forest Service. Therefore, the state has to adjudicate. He then suggested that the state needs to put more resources behind the existing process in order to have accurate records. Representative Keller then recommended that the DOL representative would be better to answer Representative Kawasaki's question.

[2:52:11 PM](#)

REPRESENTATIVE KAWASAKI inquired how much money has been put toward this issue so far. He recalled that the committee was told that up to \$8 million of general funds was attached to this year's budget [for R.S. 2477s].

REPRESENTATIVE KELLER stated that litigation and adjudication costs money. The recent expansion of the attorney is an example of the funds appropriate in the past. He related his understanding that \$600,000 has been set aside for R.S. 2477s.

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KENT SULLIVAN, Assistant Attorney General, Natural Resources Section, Civil Section (Juneau), Department of Law, told the committee that he is the attorney that has been assigned and dedicated to the R.S. 2477 issues. Since his hire in December, he has attempted to revamp the R.S. 2477 prosecution strategy in order to resolve claims more quickly and push things forward more efficiently than has occurred in the past. To that end, Mr. Sullivan and a representative from DNR traveled to Utah, which has aggressively pursued R.S. 2477s, to learn from its successes and failures. In fact, in the next three or so months Utah will file 23 different cases on approximately 18,000 separate R.S. 2477 plans. Furthermore, Utah has had about 10-20 years of experience in the litigation of R.S. 2477 plans. He said that the trip to Utah has proven helpful. For example, he has helped DOL put together a prosecution strategy such that Alaska will put forth its best cases first because Alaska doesn't have much precedent on R.S. 2477s. Therefore, it's very important in moving forward that Alaska establish strong and favorable precedent from the beginning. He noted that he has identified such cases and is seeking approval to move forward on litigation now. Furthermore, the intent is to attempt a multi-faceted approach rather than only using litigation to resolve R.S. 2477 claims. For instance, he is reviewing confirming public access rights through Title 5 of the Federal Land Policy and Management Act of 1976 (FLPMA). Since the passage of FLPMA and R.S. 2477 has been repealed there has been reluctance to do that because under FLPMA the rights-of-way aren't perpetual and could only be granted for 25 years at a time. The department also wants to use the recordable disclaimer of interest process the state has been using for navigable waterways. Although the Bureau of Land Management (BLM) has been reluctant to use the aforementioned process for R.S. 2477s in the past, the hope is that the pressure on the federal government in Utah will result in a repositioning of that stance. Mr. Sullivan further stated that DOL wants to review having these rights-of-way confirmed by the land planning process of the federal government, which has been successful in some cases in Utah.

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MR. SULLIVAN explained that DOL is attempting to supplement DNR's R.S. 2477 files. When the initial set of roads were identified and codified by the legislature as R.S. 2477s, the real effort was identifying them and ensuring that certain minimum criteria were met in identifying them as R.S. 2477s.

The focus wasn't on what it would take to prosecute a claim all the way through litigation. He emphasized that there's a lot that goes into a file to successfully prosecute something in court, and therefore the files need to be supplemented. One of the things needed is the identity of witnesses and witness testimony. These witnesses are going to be individuals who have knowledge of use and existence of these roads prior to 1969. Therefore, there needs to be public outreach in order to identify these people and place the information in the files. Lastly, there needs to be a process to lock-in the testimony in order to use it. The aforementioned can be accomplished by petitioning the court to do pre-litigation depositions.

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MR. SULLIVAN then informed the committee that DOL is currently involved in R.S. 2477 litigation in a case filed by Ahnta, Incorporated out of Copper Center. The case is in state court and the state hopes to achieve promising results. As was mentioned earlier, DOL is considering initiating litigation very shortly in federal court on some of the best case examples that have been identified. Mr. Sullivan related his understanding that in the past there was a Statehood Defense Unit within DOL and that unit existed as a separate budgetary component within the department through fiscal year 2010. At the time the agency was subsumed within DOL, that unit had five attorneys that dealt with navigability, R.S. 2477s, the Endangered Species Act, and subsistence program issues. He highlighted that such issues were dealt with before the creation of the unit as well as after the creation of the unit. Although the only difference was that there was the identity of a separate unit within DOL that received a separate budgetary component, it was discovered that having a separate unit placed constraints in terms of supervision and management and wasn't the most efficient use of time. Therefore, in fiscal year 2010 the unit was dissolved and the functions and litigation is being handled by the Natural Resources Section within DOL. For example, his position deals with state's rights through R.S. 2477s and there is ongoing litigation with regard to access through navigable waters in the national parks.

[3:04:47 PM](#)

CO-CHAIR SEATON directed attention to the language on page 3, lines 22-24, which urges the governor to reestablish a federalism section within DOL. However, he recalled that Mr. Sullivan said that was determined not to be the most efficient

way to do things. Therefore, he inquired as to Mr. Sullivan's thoughts.

MR. SULLIVAN said that DOL is still reviewing that it and may provide comments on that point later. He clarified that he merely wanted to provide the committee with some history regarding that particular component.

CO-CHAIR SEATON then requested DOL's comments on that section in a timely manner because the committee wants to bring the resolution before it again soon.

[3:07:03 PM](#)

REPRESENTATIVE MUNOZ suggested that that the language in the "**FURTHER RESOLVED**" located on page 3, lines 22-27, be removed and the resolution moved forward.

[3:07:33 PM](#)

CO-CHAIR SEATON pointed out that this is an introductory hearing of only 15 minutes. He reminded the committee that he doesn't intend to forward the resolution today. He then suggested that Representative Munoz could work with the sponsor on the provision. With that, HJR 40 was held over.

[3:08:39 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:08 p.m.