

HOUSE FINANCE COMMITTEE
January 30, 2014
9:03 a.m.

9:03:23 AM

CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 9:03 a.m.

MEMBERS PRESENT

Representative Alan Austerman, Co-Chair
Representative Bill Stoltze, Co-Chair
Representative Mark Neuman, Vice-Chair
Representative Mia Costello
Representative Bryce Edgmon
Representative Les Gara
Representative David Guttenberg
Representative Lindsey Holmes
Representative Cathy Munoz
Representative Steve Thompson
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Representative Paul Seaton; Mike Monagle, Director, Division of Workers Compensation, Department of Labor and Workforce Development; Benjamin Brown, Commissioner, Commercial Fisheries Entry Commission(CFEC); Michelle Kaelke, Licensing Supervisor, Department of Fish and Game(ADFG);

PRESENT VIA TELECONFERENCE

Clay Bezenek, Self, Ketchikan; Mark Saldi, Fishermen's Fund, Skagway.

SUMMARY

HB 143 COMMERCIAL FISHING CREWMEMBER LICENSES

HB 143 was HEARD and HELD in committee for further consideration.

[9:03:37 AM](#)

Co-Chair Stoltze discussed the meeting's agenda.

#hb143

HOUSE BILL NO. 143

"An Act relating to crewmember fishing licenses."

[9:04:44 AM](#)

REPRESENTATIVE PAUL SEATON, presented HB 143 and indicated that it looked at the short-term 7-day crew member license. He related that the short-term crew license was instituted in 2005 and that the intent was to allow for non-Alaskans and Alaskans alike to experience commercial fishing for a short-term time period and not have to pay the full annual fee, as well as provide more economic opportunity for commercial fishermen to take people out on what were essentially charters to experience commercial fishing. The short-term crew license had a reduced single fee and had not been used very frequently; however, currently there was a very large growth in the number of short-term commercial fishing licenses that were being acquired by non-residents because they could be purchased sequentially. He explained that someone could buy a series of 7-day fishing licenses and that non-residents had become aware that if they had a 3-week fishery in Bristol Bay, they could buy three 7-day licenses and escape the higher non-resident annual license.

Representative Seaton related that part of the problem with the current 7-day crew license was related to a program called the Fishermen's Fund that helped with the medical costs for an injured fisherman. He explained that 39 percent of the fee from the commercial fishing licenses went towards the Fishermen's Fund and that in the case of the short-term, 7-day licenses, the contribution was only 39 percent of \$30 instead of 39 percent of \$200; however, people who bought the short-term licenses received the same medical coverage as those that paid the full fee of the long-term license. He reported that in 2012, there were 2317 non-resident 7-day licenses that paid in \$27,000 to the Fishermen's Fund; the fund paid out \$23,767 in that

year. He stated that currently, the Fishermen's Fund was secure, but there was an increase in the 7-day licenses that were paying in less, which could pose a problem.

Representative Seaton stated that the bill would leave the \$30 resident fee for 7-day commercial fishing licenses the same, but would follow the Alaska Supreme Court's decision regarding the Carlson Differential. He explained that the Carlson Differential allowed the state to charge more for non-residents because they did not pay all of the support that residents did in their license fees; the bill would charge an additional one-third of that decision. He added that 39 percent of the fee would also go towards the fishermen's fund and would cover it more successfully. He related that for years, there was an arbitrary fee and that the non-resident fee was 3 times the amount of the resident fee. He recalled a court case that addressed concerns regarding non-residents being over charged and the amount being arbitrary that had eventually reached the Alaska Supreme Court. The court had decided that you could charge more for non-residents because residents supported ADFG through the State of Alaska with more than just the fee; the Carlson Decision was calculated by the Office of Management and Budget (OMB) every year to determine how much more could be charged under the decision. He related that the bill added in one-third of the Carlson Differential to the fee of the short-term, non-resident commercial fishing licenses. He added that OMB could give a better explanation of how the Carlson Decision was calculated every year. He stated that the bill did not change resident fees and that all it did was address the problem of the short-term 7-day license.

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Co-Chair Stoltze related that some of his best friends were commercial fishermen and that they had brought up disparate contributions from the different gear groups to the Fishermen's Fund. He inquired if the bill was a chance to look at disproportionate rates in the Fishermen's Fund and further inquired if it was an issue. Representative Seaton responded that the issue was not one that had been addressed.

Co-Chair Stoltze inquired if it had been an issue within the industry. Representative Seaton replied that it may be an issue in the industry, but that the current bill only

addressed the problem of a low contribution by a 7-day license into the fund.

Co-Chair Stoltze understood, but observed that it raised other questions regarding the health of Fishermen's Fund and the contributions into it. He noted that sometimes people suggested things that could not be fixed and admitted that he was not a fisheries expert.

Representative Gara thought that the idea for the original bill was great, but noted that the sponsor of HB 143 had found a loophole in the current system. He observed that tourists or locals going out commercial fishing was intended as a recreational activity and wondered why the process that allowed someone to buy multiple licenses in sequence was not stopped. He offered that the abuse was in letting people renew the 7-day license. He thought that residents should not be costing the Fishermen's Fund money.

Representative Gara inquired why the 7-day crew license was not limited to one issuance per person and if locals that took tourists out recreational should pay enough money to compensate the Fishermen's Fund. Representative Seaton replied that the sponsors had looked at that, but that there had been objections to it.

Co-Chair Stoltze inquired who had raised the objections and noted that the committee wanted things on the record. Representative Seaton responded that he could not recall who exactly had voiced objections, but that Representative Gara's suggestion had also been his original idea.

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Co-Chair Stoltze thought that if someone did not think something was a good idea, they should come forward and say so. Representative Seaton reiterated that he could not recall exactly who had voiced objections, but that Representative Gara's suggestion had been his original position on the bill. He recalled that there had been concerns raised at the time that weather delays would affect some trips and that people would be unable get a license reissued if the time window had gone by. He stated that the bill had originally used a \$60 fee, but that it was an arbitrary number instead of fitting with the Carlson Decision. He stated that the bill's solution applied the Alaska Supreme Court's adjudicated and set-out framework in

a way that used the differential and did not increase resident fees. He related that although there was not a lot of use of the 7-day permit by residents, there was some use and that the sponsor did not want to cut out the possibility of expanding tourism for resident commercial fishermen. He discussed how several years prior, the television show "Deadliest Catch" had been taking tourists out to have them experience commercial fishing in both Southeast Alaska and in Cook Inlet.

Representative Gara thought that he would support the bill no matter how it was written, but that he liked the sponsor's original idea that did not allow for renewals. He added that there could be an extension in the case of weather delays and that the fee for the short-term license should be enough money to compensate the Fishermen's Fund. He thought that if the bill passed the committee, it would pass the House Floor as well.

Representative Holmes stated that Representative Gara had asked her question and that it had been answered.

Representative Edgmon stated that it was Representative Moses that had brought the original bill forward, but that it had originated in Bristol Bay. He thought that the idea for the bill was that during start or the end of the season, which tended to be the scratch times, a person could come out and learn the fishery and perhaps tie it in with tourism along the way. He added that the bill had received the moniker "dude fishing," which was not the intent of the bill.

Vice-Chair Neuman queried how the fees were set. Representative Seaton relayed that the original intent of the bill was a \$60 flat fee. He relayed that if the fee was high enough to make it not economic to buy multiple licenses, people would just buy the one-time annual non-resident fee; the fee was self-limiting regarding people using it as a workaround to pay less money. He stated that the bill provided an economic opportunity for tourist activity and took the economic incentive for true commercial fishermen to use the short-term commercial fishing license as a way not to buy their annual license. He noted that when the bill was first proposed, the fee was going to be doubled, but that there were concerns raised that the Alaska Supreme Court had already heard the issue. He related that the sponsors did not want to get into a

situation where they were arbitrarily setting the number and that they had used the Carlson Decision; the bill applied one-third of the Carlson Differential to the fee. The sponsors thought that the fee change would pass muster, kept the state out of potential litigation, provided adequate resources for the Fishermen's Fund, and kept all of the economic opportunity.

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Vice-Chair Neuman inquired if the fee covered all the administrative costs to the state. He wanted to make sure that funding would not be taken out of ADFG or the Department of Labor and Workforce Development in order to cover the costs. Representative Seaton replied in the affirmative.

Co-Chair Stoltze appreciated the discussion of tourism being part of fishing and noted that in some regions of the state, sport fish related tourism far exceeded the economic value of commercial fishing. He thought that there was common ground recognizing the tourism impact and that the discussion needed to be broadened to all aspects of user groups.

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CLAY BEZENEK, SELF, KETCHIKAN (via teleconference), testified in support of HB 143 and expressed appreciation that the bill was being heard. He believed that Cook Inlet might be the only area in the state where the economics of tourism in sport fishing superseded commercial fishing. He reported that the Alaska Seafood Marketing Institute (ASMI) had released a good economic value of the seafood industry that was done by the McDowell Group. He thought that the bill was well written.

Co-Chair Stoltze related that the sponsor was planning on making some changes to how the bill was written. Mr. Bezenek stated that he supported Representative Seaton and his efforts, and pointed out that the sponsor was responding to concerns of resident commercial fishermen.

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MARK SALDI, FISHERMEN'S FUND, SKAGWAY (via teleconference), supported HB 143. He stated that the original concept of

the bill was "dude fishing" for tourism, but that the 7 day commercial fishing license was being more and more used in the Bristol Bay area; the increased use in the bay was resulting in more claims to the Fishermen's Fund. He related that the Fishermen's Fund had discussed other options for closing the loophole, but that he liked the option that was in the bill. He pointed out that the bill would raise more revenue for the state and increase the contribution to the Fishermen's Fund.

Co-Chair Stoltze inquired if there had been any dissent among the Fishermen's Fund regarding the disparate payments between the different user groups or regions. He further inquired if the user groups were happy with the amount they were paying into the fund and if it was viewed as equitable. Mr. Saldi replied that he was unsure what the question was exactly.

Co-Chair Stoltze clarified that there were participants that paid into the Fishermen's Fund across the different areas, regions, and user groups across the state. He inquired if there was a complete consensus among all the users in the regions that everyone was paying a fair and equal amount.

Representative Munoz noted that it looked like there were 1466 7-day non-resident crew member licenses in 2010. She inquired if Mr. Saldi knew how many claims were being made against the Fishermen's Fund by the non-resident crew members in a given year. Mr. Saldi replied that he did not have the numbers in front of him and that he had called in to support the bill. He stated that the Fishermen's Fund did keep really good statistics on injury claims by area for each fishing district. He offered that the fund could supply the statistics for the committee.

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MIKE MONAGLE, DIRECTOR, DIVISION OF WORKERS COMPENSATION, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, related that the division administered the Fishermen's Fund and offered that he had the answer to Representative Munoz's question. He thought that in the last 5 years, 5 was the highest number of claims in a given year from a non-resident 7-day crew licensee.

Mr. Monagle responded to an earlier question from Co-Chair Stoltze regarding possible disparate contributions by the different user groups and stated that while the Fishermen's Fund was funded by crew-member licenses, it was also funded by limited entry permits; he thought that the question pertained to the fees that the CFEC charged for the permit holders, depending on the type of fishery. He offered that the question was not about a direct contribution to the Fishermen's Fund, but regarded the permitting fee structure, which depended on the type of commercial fishery.

Co-Chair Stoltze inquired if there were fisheries that paid a higher amount by region. Mr. Monagle replied that the amount that came to the Fishermen's Fund was pretty constant and flat at 39 percent; however, the CFEC did determine that each fishery paid a different permit fee price. He thought that someone from ADFG or the CFEC might be able to answer the question better.

Co-Chair Stoltze noted that his question was one that constituents and friends had asked him to raise when the issue came up and that he did not feel adequate answering the question. He recalled that the same type of issue was raised during the ASMI assessments and relayed that Bristol Bay had paid the bulk of the assessment for that fishery; he thought that there was even legislation at the time intended to give Bristol Bay a larger portion of the ASMI board. He concluded that this was not the first time an issue "like this" had arisen within fisheries discussions and felt that he could not provide his constituents with a clear answer.

BENJAMIN BROWN, COMMISSIONER, COMMERCIAL FISHERIES ENTRY COMMISSION(CFEC), stated that the CFEC did a transfer every year to the Fishermen's Fund from part of the revenues it collected for limited entry permits, which were different than crew-member permits. He explained that CFEC issued permits to skippers on boats that were based on the value of the permit. The value of permit was assessed by analyzing the sales of the permits if there were enough sales; if there were not enough sales, the permit renewal fee was based on the value of that fishery from earnings. He explained that he did not bring the current year's memo with him, but that on January 15, 2013, CFEC had transferred \$132,740 to the Fishermen's Fund; this reflected \$77,000 from resident fishermen and \$55,000 from

non-resident fishermen. He added that he could provide the most recent Fishermen's Fund transfer information in follow up for the committee, but pointed out that it was a fairly constant number that did not fluctuate greatly from year to year.

Mr. Brown continued to address Co-Chair Stoltze's question and related that there was no methodology in the way the fees were currently collected and transferred to try and equalize them across different fisheries, permit types, or areas of the state; additionally, doing so would be a big project to undertake.

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Co-Chair Stoltze inquired if the Fishermen's Fund was run with criteria similar to workers' compensation such as risk assessment or whether it was more on a progressive tax scale. Mr. Brown replied that there were 3 governmental agencies issuing permits and licenses, as well as administering the fund and offered that this might be part of the reason that there had not been an assessment of whether or not the Fishermen's Fund was being run like workers' compensation; furthermore, CFEC did not run the fund, but only provided money to it. He relayed that he was hesitant to offer analysis regarding how the Fishermen's Fund was run.

Representative Wilson inquired why there were so many agencies involved in the fund and inquired if the state was paying extra money each time another agency collected funds for the Fishermen's Fund. She further inquired if it would be easier if one division or agency dealt with the fund. Mr. Brown replied that he was not sure if there was any enhanced cost or significant additional staff time used to collect the money and turn it over. He did not think 3 agencies being involved augmented the state's cost in collecting the money and making sure that there was money in the fund. He related that the question that the Co-Chair Stoltze had asked was how the Fishermen's Fund was managed in comparison with workers compensation; however, the question pertained to after money had flowed into the fund. He did not know that having different agencies collecting the money made it harder for decisions to be made regarding how money was paid out to fishermen who had claims.

Representative Wilson inquired if Mr. Brown would be opposed to having only one agency collecting for the Fishermen's Fund. Mr. Brown responded that that it would be difficult to break out the collection of the portion a permit renewal fee that would go to the Fishermen's Fund because fishermen would have to pay their renewal to 2 different places; he offered that this would transfer the burden to the commercial fishermen who were renewing the permit. He observed the CFEC did not have objection to the suggestion as a matter of policy, but that someone might have to write two checks; additionally, he was unsure if this would increase administrative efficiency.

Representative Wilson observed that she could get further financial clarification from the Department of Labor and Workforce Development during the subcommittee process.

Co-Chair Stoltze wondered if the renewal issue would raise any problems for CFEC. Mr. Brown stated that the issue had arisen when it had been erroneously stated that the data regarding the 7-day crew licenses was CFEC data; however, the data was not from CFEC. He furthered that because of the misconception that CFEC was issuing the 7-day licenses, the agency had been drawn into the conversation; however, CFEC did not issue the licenses and did not have an opinion regarding placing limitations on the number of renewals. He thought that Representative Gara's and Representative Holmes' question was a very good one, but reiterated that CFEC did not have an opinion on the issue.

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Co-Chair Stoltze wondered if there were any issues that Mr. Brown wanted to comment on regarding the Carlson Case. Mr. Brown replied that the Carlson Case had resulted in a mandate from the Alaska Supreme Court that the state was not allowed to overcharge non-residents for limited entry permits. He pointed out that charging 3 times more to non-residents was considered arbitrary and that the Alaska Supreme Court had unanimously stated that under the Federal Privileges and Immunities Clause, non-residents had a right to come and work in Alaska and could not be punished for not being Alaskans. He reported with the Carlson Decision, every 3 years OMB completed a painstaking analysis regarding all of the state revenues that non-residents should not have the benefit of. He pointed out that non-residents were not Alaskans, did not get a dividend, and

should not get the benefit of those oil dollars that were paying for services to manage commercial fisheries.

Mr. Brown continued to speak to the Carlson Decision and related that the most recent 3-year calculation by OMB was on October 1, 2012; this calculation had yielded the current \$190 per year single charge. He added that if you had 4 permits as a non-resident, then the charge was only paid once; this was what was permissible. He stated that the \$190 charge was in turn referred to in AS 16.05.480(i) to help determine the allowable non-resident differential for an annual crew license. He reported that the current version of HB 143 would take one-third of the non-resident differential and add it on to the 7-day commercial crew license fee as a means to fairly charge a non-resident for what ought to be contributed to the public coffers to make sure that they were not receiving benefits that they were not entitled to.

Mr. Brown expressed potential legal concerns regarding the current version of the bill and related that one-third of the annual fee was 4 months; he opined that if a person bought a 7-day crew license with the one-third differential added on and was not getting the value for it, they could raise an argument that it was an overcharge. He related that the sponsor wanted a bill that was not going to lead to a lawsuit. He stated that earlier in the week, the State of California had lost on summary judgment for overcharging on non-resident licenses and that it was contacting the State of Alaska regarding advice on the matter; the non-resident licenses in California had been between 2 to 3 times as much for non-residents. He added that the State of California's case was heard in a federal court and warned that the Alaska State Legislature should be careful to adopt a number for the surcharge that was the least likely to lead to litigation.

Co-Chair Stoltze noted that U.S. Senator Maria Cantwell had been "inspecting the fishing colonies" on a couple of trips earlier in the year.

Mr. Brown surmised that the House Finance Committee was correctly scrutinizing that the proposed differential was not too little, but was also not so high as to give a non-resident an argument that they were being overcharged.

Co-Chair Austerman inquired how the one-third language in the bill related to the re-evaluation every 3 years. He further queried if the one-third would change over time because of the re-evaluation. Mr. Brown replied in the affirmative and stated it would be a fluid number that was benchmarked to that determination being made in statute under AS 16.05.480(h). He pointed out that the number would change over time and that if it was right amount, it would probably remain the same.

Co-Chair Austerman was still unclear regarding whether the one-third was a constant or if the ratio might change over or time. Mr. Brown replied that the one-third differential was in the language of the bill, but that the figure that it was a one-third of is what would change with the recalculation of the differential.

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Representative Holmes acknowledged that CFEC did not have a position on the underlying issue, but thought that given the discussion on the Carlson Case, it might be better to limit the renewals. She thought that trying to determine the fee by the value or the cost of the short-term license might bring up Carlson Case issues and opined that the license might be limited to 1 issuance with a weather exemption or a determination of days actually spent on the water. She thought that the committee might have to play around with Representative Seaton's original idea.

Co-Chair Stoltze noted that he was leaning towards Representative Seaton's original idea for the bill, but that it would be the will of the committee that would decide the issue. Representative Holmes agreed.

Co-Chair Stoltze stated that he wanted to talk to Mr. Monagle again regarding the bill and also wanted some advice from Representative Edgmon due to the amount of fishing in his district.

Representative Holmes stated that there was a fiscal note in front of the committee and that she would like to discuss it with the ADFG. She observed that the note's analysis explained the change in revenue line well, but requested an explanation of the services line. She mentioned that the services costs that increased in the out years and inquired how the costs were arrived at.

MICHELLE KAEELKE, LICENSING SUPERVISOR, DEPARTMENT OF FISH AND GAME, replied that the costs were based on the 15 percent commission that the department provided to its vendors. She pointed out that the overall gain in revenue would be \$139,000 and that 15 percent of that on an annual basis was \$20,900. She stated that on the first fiscal year, which was FY15, the department had calculated the behavior of when licenses were purchased from January through June of the fiscal year and had calculated "about a 15 percent sale; so that's 3.1 percent of 29.9 percent."

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Co-Chair Stoltze inquired who the vendors of commercial crew licenses were. Ms. Kaelke replied that ADFG had 1,000 vendors throughout the state that sold fishing gear; the vendors included gas stations and mom and pop stores.

Co-Chair Stoltze inquired if Ms. Kaelke was referencing crew licenses. Ms. Kaelke responded that she was referencing crew and sports fishing licenses.

Representative Munoz inquired how the vendors were compensated and further inquired if the compensation was proportioned by the amount of sales that a vendor had. Ms. Kaelke replied that the vendors had to report back to ADFG on a monthly basis when they sold licenses; the vendors kept the commission, but the department still reported it as an expense. She explained that it was an expense to ADFG because it was commission that it paid out; however, the vendors keep it before it was sent.

Representative Holmes noted that in the current year, she had purchased her resident hunting and fishing license in Auke Bay and that the business that sold it to her received 15 percent of the fee; however, the prior year, she had purchased her resident hunting and fishing license directly from ADFG. She inquired if there was no commission for licenses that were purchased online from ADFG. Ms. Kaelke responded in the affirmative.

Co-Chair Stoltze inquired if the commission was 50 percent of the assessment. Ms. Kaelke replied that the commission was 15 percent.

Co-Chair Stoltze stated that he had misheard and thought that the commission was 50 percent of the license fee. He was unsure if 15 percent was the right amount, but noted that it was probably cheaper than having state employees conducting the work.

Vice-Chair Neuman pointed to the fiscal note and assumed that the 15 percent revenue increase meant that more people were participating in the program. He thought that the program sounded great and inquired if the 15 percent was an assumption that there was a growth in the number of people using the 7-day licenses. He observed that the fiscal note went all the way out to 2020 with no increase and stated that the term inflation proofing was used a lot to cover administrative costs. He inquired if it was expected that with the growth in the business and the fees that were currently collected, which were statutorily stated in the bill's proposal, would continue to cover the department's administrative costs out to 2020. Ms. Kaelke replied in the affirmative and added that the department's administrative fees would be covered.

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Co-Chair Stoltze recalled a prior bill that he had not supported that had a \$9 assessment for building hatcheries. He opined that the committee would be screaming about paying an extra 15 percent or even a point or 2 on the state's bonds, but noted that the bill was scraping off 15 percent over a pretty large amount; he expressed concern about taking this amount off the top of a bonded and indebtedness issue. He offered that the committee would not tolerate a 15 percent rake on a bond package because it was fighting over 1 or 2 points of better interest rate.

Representative Edgmon inquired if a non-resident or resident commercial fisherman could use their smart phone to renew or buy the license with ADFG. He was unsure how someone would get ashore every 7 days in Bristol Bay. Ms. Kaelke replied in the affirmative.

Co-Chair Austerman thought that Co-Chair Stoltze's question was a good one for the finance subcommittee to delve into.

[9:54:09 AM](#)

Co-Chair Stoltze CLOSED public testimony.

Co-Chair Stoltze noted that there were many issues to look at regarding the bill.

Representative Seaton explained that the licenses could be bought sequentially in advance and from different vendors. He stated that when the sponsors had looked at limiting the number of licenses that could be purchased, the problem was that licenses that were purchased from vendors left a paper trail that made it impossible to track and limit the number licenses. He stated that if the committee wanted to make it so that the licenses could only be purchased electronically, then there would be a way of limiting the number of licenses. He related that the intent of the legislation was to fix a problem where people have utilized the 7-day crew license to avoid paying the non-resident annual commercial fishing license; furthermore, the sponsor wanted to achieve this in a way that was economic and allowed the licenses to be used for other economic development. He concluded that the fees were the way the sponsor had found to make it uneconomic to abuse the system.

Co-Chair Stoltze noted that the committee supported the goal of stopping the abuse in the current system.

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Representative Holmes recalled purchasing her resident hunting and fishing license online the prior year and noted that the process was not cumbersome, but was quick and easy.

HB 143 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

[9:57:45 AM](#)

The meeting was adjourned at 9:57 a.m.