

**ALASKA STATE LEGISLATURE**  
**HOUSE JUDICIARY STANDING COMMITTEE**

March 19, 2014

1:11 p.m.

**MEMBERS PRESENT**

Representative Wes Keller, Chair  
Representative Bob Lynn, Vice Chair  
Representative Neal Foster  
Representative Lance Pruitt  
Representative Max Gruenberg

**MEMBERS ABSENT**

Representative Gabrielle LeDoux  
Representative Charisse Millett

**COMMITTEE CALENDAR**

OVERVIEW(S):     FEDERAL OVERREACH IN ALASKA  
                  Citizens' Advisory Commission on Federal Areas

- HEARD

HOUSE BILL NO. 366

"An Act relating to reporting an involuntary mental health commitment to the National Instant Criminal Background Check System; and relating to relief from disabilities of a record of involuntary commitment and an adjudication of mental illness or mental incompetence."

- HEARD AND HELD

HOUSE BILL NO. 127

"An Act clarifying that the Alaska Bar Association is an agency for purposes of investigations by the ombudsman; relating to compensation of the ombudsman and to employment of staff by the ombudsman under personal service contracts; providing that certain records of communications between the ombudsman and an agency are not public records; relating to disclosure by an agency to the ombudsman of communications subject to attorney-client and attorney work-product privileges; relating to informal and formal reports of opinions and recommendations

issued by the ombudsman; relating to the privilege of the ombudsman not to testify and creating a privilege under which the ombudsman is not required to disclose certain documents; relating to procedures for procurement by the ombudsman; relating to the definition of 'agency' for purposes of the Ombudsman Act and providing jurisdiction of the ombudsman over persons providing certain services to the state by contract; and amending Rules 501 and 503, Alaska Rules of Evidence."

- HEARD & HELD

HOUSE BILL NO. 373

"An Act relating to conditions of release and probation in criminal cases; relating to ignition interlock devices in cases involving driving under the influence and refusal to submit to a chemical test; relating to limited drivers' licenses; requiring the commissioner of health and social services to establish programs for persons with conditions of release, with conditions of probation, and with certain limited licenses that require testing for controlled substances and alcoholic beverages; and providing for an effective date."

- BILL HEARING CANCELED

**PREVIOUS COMMITTEE ACTION**

BILL: HB 366

SHORT TITLE: INVOLUNTARY COMMITMENT

SPONSOR(S): REPRESENTATIVE(S) PRUITT

02/26/14	(H)	READ THE FIRST TIME - REFERRALS
02/26/14	(H)	STA, JUD
03/11/14	(H)	STA AT 8:00 AM CAPITOL 106
03/11/14	(H)	Moved CSHB 366(STA) Out of Committee
03/11/14	(H)	MINUTE(STA)
03/12/14	(H)	STA RPT CS(STA) NT 2DP 3NR 1AM
03/12/14	(H)	DP: KELLER, KREISS-TOMKINS
03/12/14	(H)	NR: GATTIS, HUGHES, LYNN
03/12/14	(H)	AM: ISAACSON
03/17/14	(H)	JUD AT 1:00 PM CAPITOL 120
03/17/14	(H)	Moved CSHB 366(STA) Out of Committee
03/17/14	(H)	MINUTE(JUD)
03/19/14	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 127

SHORT TITLE: OMBUDSMAN

SPONSOR(s): RULES BY REQUEST

02/18/13 (H) READ THE FIRST TIME - REFERRALS  
02/18/13 (H) STA, JUD  
03/12/13 (H) STA AT 8:00 AM CAPITOL 106  
03/12/13 (H) Heard & Held  
03/12/13 (H) MINUTE(STA)  
03/21/13 (H) STA AT 8:00 AM CAPITOL 106  
03/21/13 (H) <Bill Hearing Rescheduled to 3/26/13>  
03/26/13 (H) STA AT 8:00 AM CAPITOL 106  
03/26/13 (H) Heard & Held; Assigned to Subcommittee  
03/26/13 (H) MINUTE(STA)  
02/07/14 (H) STA AT 3:00 PM CAPITOL 120  
02/07/14 (H) Work Session on above Bill  
02/25/14 (H) STA AT 8:00 AM CAPITOL 106  
02/25/14 (H) Heard & Held  
02/25/14 (H) MINUTE(STA)  
02/27/14 (H) STA AT 8:00 AM CAPITOL 106  
02/27/14 (H) Heard & Held  
02/27/14 (H) MINUTE(STA)  
03/06/14 (H) STA AT 8:00 AM CAPITOL 106  
03/06/14 (H) Moved CSHB 127(STA) Out of Committee  
03/06/14 (H) MINUTE(STA)  
03/07/14 (H) JUD AT 1:00 PM CAPITOL 120  
03/07/14 (H) <Bill Hearing Canceled>  
03/10/14 (H) STA RPT CS(STA) NT 1DP 1NR 3AM  
03/10/14 (H) DP: LYNN  
03/10/14 (H) NR: GATTIS  
03/10/14 (H) AM: KELLER, KREISS-TOMKINS, HUGHES  
03/12/14 (H) JUD AT 1:00 PM CAPITOL 120  
03/12/14 (H) -- MEETING CANCELED --  
03/14/14 (H) JUD AT 1:00 PM CAPITOL 120  
03/14/14 (H) Heard & Held  
03/14/14 (H) MINUTE(JUD)  
03/19/14 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

STAN LEAPHART, Executive Director

Citizens' Advisory Commission on Federal Areas (CACFA)

Department of Natural Resources

Fairbanks, Alaska

**POSITION STATEMENT:** Presented an overview entitled "Federal Overreach in Alaska."

JIM POUND, Staff,

Representative Wes Keller

Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified as staff to Representative Wes Keller and explained the changes in the CS for HB 127.

BETH LEIBOWITZ, Assistant Ombudsman  
Office of the Ombudsman  
Legislative Agencies and Offices  
Juneau, Alaska

**POSITION STATEMENT:** Testified that the Ombudsman's Office does not object to CSHB 127.

KATE BUCKHARDT, Executive Director  
Alaska Mental Health Board  
Department of Health & Social Services (DHSS)  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of CSHB 127.

SHERRIE DAIGLE, Deputy Commissioner  
Central Office  
Division of Administrative Services  
Department of Corrections (DOC)  
Juneau, Alaska

**POSITION STATEMENT:** Testified that the Department of Corrections does not object to CSHB 127.

JEFF JESSEE, Chief Executive Officer  
Alaska Mental Health Trust Authority  
Department of Revenue  
Anchorage, Alaska

**POSITION STATEMENT:** Posed questions regarding CSHB 127.

LINDA LORD-JENKINS, Ombudsman  
Office of the Ombudsman  
Legislative Agencies and Offices  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions regarding CSHB 127.

#### **ACTION NARRATIVE**

[1:11:17 PM](#)

**CHAIR WES KELLER** called the House Judiciary Standing Committee meeting to order at 1:11 p.m. Representatives Lynn, Foster, Gruenberg, and Keller were present at the call to order.

OVERVIEW: FEDERAL OVERREACH IN ALASKA. Citizens' Advisory Commission on Federal Areas

1:11:27 PM

CHAIR KELLER announced the first order of business would be an overview of Federal Overreach in Alaska by the Citizens' Advisory Commission on Federal Areas (CACFA), presented by Stan Leaphart. Chair Keller noted several documents provided to the committee to read in members' spare time. These show some of the things that CACFA does, and they include civil law cases, the ANILCA [Alaska National Interest Lands Conservation Act] process, and the annual CACFA report. There is also a document from the Department of Law that enumerates Endangered Species Act actions [in Alaska], which he wants on the record, and a Department of Law packet on federal laws and litigations. He noted that Mr. Leaphart was involved in many of those issues.

1:14:48 PM

STAN LEAPHART, Executive Director, Citizens' Advisory Commission on Federal Areas, Department of Natural Resources (DNR), said that he has provided the committee with a lengthy PowerPoint presentation, a copy of CACFA's annual report, and transcripts from the group's federal overreach summit. He emphasized that federal overreach is an escalating problem for Alaskans due to an increase in the amount of restrictions on users of federal public lands, regulations affecting the use of lands, and federal preemption of the state's management authority, which is primarily over fish and wildlife. He reported that there are a number of instances where the Statehood Compact [provisions in the Alaska Statehood Act] is not being honored, and the built-in compromises in the Alaska National Interest Lands Conservation Act (ANILCA) are being ignored. "We think the situation is getting worse," he added. He related that even with the efforts of CACFA, the ANILCA program, and the Public Access Assertion and Defense (PAAD) Unit of the DNR, Department of Law (DOL), and the Governor's Office, Alaska continues to be overwhelmed by federal overreach issues, and it is time to look at new strategies.

MR. LEAPHART explained that CACFA was created in 1981 and operated until 1999. It was reestablished in 2007, and its mission is to determine the outcome of federal regulations and federal management decisions upon the people of Alaska. The group gets input from individuals and user groups, including air taxi operators, hunting guides, fishermen, and miners. He said

CACFA spends a lot of time reviewing and commenting on proposed management plans and regulations. He explained that the governor appoints half of the members to the commission, and the legislature appoints the other half, which includes two members of the legislature. Chair Keller is the chair of the CACFA, he noted.

In August 2013, CACFA offered a summit on federal overreach, which "looked at a whole slate of issues" and intended to improve the deteriorating relationship between federal management agencies and the people of Alaska. The speakers included Governor Parnell, the Attorney General, Alaska's Congressional Delegation, land users, and many people with experience on federal land management issues in Alaska. The summit attendees reviewed the Statehood Compact, Alaska Native Claims Settlement Act (ANCSA), and ANILCA.

[1:20:38 PM](#)

MR. LEAPHART related that the summit attempted to identify problems as well as possible solutions. The CACFA then planned to meet with federal agencies, but the federal workers had just been furloughed so Mr. Leaphart later met with the agencies himself. He noted that the commission has gotten some feedback from them regarding its summit and recommendations. In February, the CACFA met to discuss the summit results, and members prepared a spreadsheet depicting issues prioritized by importance and offering the manner in which each issue should be addressed. He stated that there are five million acres of land entitlements yet to be transferred to the state and 36 million acres to be surveyed and patented to the state. Alaska has more than 60 million acres of submerged lands and tide lands, and the state does not have clear title to many of those lands, he remarked, and there are threats to state jurisdiction over those navigable waters. Furthermore, there are issues on access, including R.S. [Revised Statute] 2477 rights-of-way and Alaska Native Claims Settlement Act 17B easements across Alaska Native corporate lands to access public lands. He referred to the "No More" [land withdrawal] clause in ANILCA, which is increasingly ignored by federal agencies. Guaranteed access for traditional uses and inholdings is being threatened, he said, and there is increasing preemption of state regulations for the management of fish and game. He noted that the Bureau of Land Management (BLM) recently announced implementation of a new policy regulating placer mining on BLM lands which will cripple small mining operations.

MR. LEAPHART opined that the following are the main topics identified as requiring additional attention: the Statehood Compact; navigable waters and submerged lands; access; fish and wildlife management; resource and economic development; land management planning and policies by the federal agencies; and education and communication. He said that Alaska was granted 105 million acres of uplands at statehood and 60 plus million acres of submerged lands. He noted that CACFA identified a number of breeches of the Statehood Contract. He spoke of unresolved land entitlements, and he said there are millions of acres currently withdrawn under public land orders—some as long as 40 years ago—and that has impacted the state's ability to develop resources on federal lands. He noted that many of the ANILCA (d)(2) lands were put into a conservation system unit with special provisions, but many such provisions are not being honored by federal agencies.

MR. LEAPHART turned to recommendations of the CACFA "for the governor, for the legislature, the Department of Law, and for other state agencies to deal with these statehood compacts." He urged the governor to continue to actively assert the state's authorities and entitlements, and he suggested working with the Coalition of Western States. Other western states are facing the same issues as Alaska, he explained. He said the Alaska State Legislature can provide oversight and continue its work with the Council of State Governments. He related that the Department of Law has been proactive in litigating issues, and he noted that it may be worth revisiting the statehood compact case that was decided back in the 1990s.

[1:26:34 PM](#)

MR. LEAPHART reiterated that under the Equal Footing Doctrine and the Submerged Lands Act, the state was granted title to almost 60 million acres of submerged lands at statehood. The delay in clearing titles to the submerged lands disadvantages the state, he stated. Since statehood, fewer than 20 rivers have been determined to be navigable by the federal courts. Navigability must be determined on a case-by-case basis which is time consuming and expensive. He suggested that the state work with BLM to develop criteria for determining navigability of water bodies to speed up the process, rather than having to deal with each water body on a case-by-case basis. Applying National Park Service (NPS) water regulations to state waters within the boundaries of national park units is the basis for two on-going lawsuits. He noted concern that other federal agencies, such as

the United States Fish and Wildlife Service (USFWS), may adopt similar regulations that would extend their management authority over state waters within national wildlife refuges.

[1:28:44 PM](#)

MR. LEAPHART referred to Sturgeon and State of Alaska v. Masica, et.al., (AK Dist. Ct., 3:11-cv-HRH), wherein John Sturgeon challenged NPS water regulations as he was denied use of his hovercraft on state navigable waters within the Yukon-Charley Rivers National Preserve. Mr. Leaphart expressed that the NPS sometimes requires state agencies to secure federal permits in order to conduct fish and game management activities on navigable waters within parks and refuges. Under Sturgeon, a major point is the definition of public lands in Alaska and whether or not state submerged lands should be included in that definition. He remarked that ANILCA is clear, but federal agencies disagree with [CACFA's interpretation]. Therefore, the Alaska congressional delegation may have the opportunity to clarify the definition to ensure that federal management regulations are not applied to state lands and waters or ANCSA corporation lands within the conservation system units.

MR. LEAPHART noted there is a delay in clearing title to submerged lands and suggested that the state could attempt an expedited title process. He said the DOL is currently actively engaged with a number of [court] cases regarding quiet title on submerged lands. He remarked that the state has had good luck using a process called recordable disclaimer of interest, which is an administrative process outside of the court system. The process requires a tremendous amount of research and documentation to demonstrate a particular river or lake meets the criteria set up to determine navigability, but it generally works faster than the quiet title action. For example, the Salcha River in Central Alaska went through a process in approximately six months, but in some instances the process has taken two to three years. There are several applications that the state has filed, he stated, that have been pending for six or seven years. In some instances the process has worked well, but not in all cases, he noted. One delay is that each application has to be dealt with on a case-by-case basis, and he reiterated that standards should be developed.

[1:32:08 PM](#)

MR. LEAPHART stated that the largest issue CACFA deals with is access, including access to hunting and fishing areas,

inholdings within conservation units, mining claims, or recreational areas. He reminded the committee that Alaska has been involved in the R.S. 2477 issue since 1993, and over 1,000 trails have been researched. The Alaska State Legislature codified 659 of those trails in statute; unfortunately, the federal agencies generally do not recognize the validity of an R.S. 2477, and the current policy is that only a court can adjudicate an R.S. 2477 on federal land. The United States Geological Survey (USGS) is embarking upon a new mapping program for Alaska and most of the historic trails are no longer depicted on those maps, yet the federal Long Range Transportation Plan (LRTP) acknowledges that trails are an extremely important part of rural Alaska whether winter trails for access between villages or summer trails for hunting and fishing, he remarked. Unfortunately, the LRTP generally does not recognize state-claimed R.S. 2477 trails or rights-of-way. He opined that the Department of the Interior cannot adopt regulations regarding R.S. 2477 without the concurrence of Congress, and CACFA recommends that the Alaska congressional delegation take steps to amend the 1997 appropriations bill to allow that a recordable disclaimer of interest process is used for R.S. 2477. He indicated the DNR's Public Access Assertion and Defense Unit requires more resources, as it is difficult to deal with both R.S. 2477 issues and navigability issues. He believes that the federal agencies have latitude in recognizing the R.S. 2477, but they refuse to exercise it.

[1:36:58 PM](#)

MR. LEAPHART related that access to inholdings is a key provision in ANILCA that guarantees an inholder the right of access into a conservation system unit, "and there have mixed results, mixed successes, with that." He reported that NPS uses a Right-of-Way Certificate of Access, and it has simplified the process, but there are still problems. "We think other agencies should probably utilize the same process, but none have adopted it" he stated. The Alaska congressional delegation should strengthen and clarify the guaranteed of right of access [ANILCA 1110(b)] and, he noted, there is a similar provision, ANILCA 1323, dealing with access across BLM and United States Forest Service (USFS) lands for inholders. He explained that within the USFS "Roadless Rule," Alaska was exempted for seven years, and it was then applied in 2008. This has affected the ability of the USFS to implement the existing Tongass National Forest Land Use Management Plan. He related that this has resulted in the creation of "roaded roadless" areas, which are areas with existing roads that cannot be used to harvest timber, and "we

see that as a real problem." He reiterated that 17(b) easements cross ANCSA corporation lands to provide access to state or federal public lands. He said that many of these easements are simply identified on maps with no "on-the-ground" locations and there is rare signage. He noted there is a provision that allows an easement to be vacated, but there is no requirement that a replacement easement be found. He said money is needed to locate and identify the trails on the ground. An example is the Broad Pass area near Cantwell where a number of easements show on the maps but are not usable by the public, he explained. He recommends requesting that the Alaska delegation review this issue and require that vacation of 17(b) easements not be performed unless an alternative can be provided.

[1:40:21 PM](#)

MR. LEAPHART pointed out that ANILCA Title XI is a process put in place to deal with undeveloped infrastructure in the state. He describes it as a very lengthy and complicated process that has been utilized for smaller projects, like the location of cell towers and communication sites. Another project is the Ambler Road, which provides access into the Ambler Mining District, south of the Noatak National Preserve and across the Gates of the Arctic National Park. It is ongoing and in its early stages, he explained. He noted the road from King Cove to Cold Bay, which is not a Title XI issue, but Title XI could be used to apply for the road; however, it would still require congressional approval. He said that the Sterling Highway upgrade has been stymied somewhat by the Title XI process. He stated, "One of the things we think could help with Title XI, particularly for what is known as special access, is access to public lands via snow machine, motor boat, airplane, and for subsistence purposes that we think the state should fund some statewide traditional access studies to document where access exists, what kinds of access, what people utilize the public lands for, and how they get there." Generally, federal agencies will not permit the continuation of access, particularly by a motorize means, unless it is determined to be traditional, he explained. Under ANILCA, the federal agencies planning requirements are to conduct access studies, "but, by and large, they have not done that," and CACFA is encouraging the federal agencies to move forward with access studies, he remarked.

[1:42:54 PM](#)

MR. LEAPHART expressed that fish and wildlife is a big issue. There are now restrictions on access for subsistence in the

Wrangell-St. Elias National Park and Preserve as part of the Nabesna District planning effort. It is CACFA's belief that subsistence should include active management of resources, and he related that subsistence users and non-subsistence users have said that dual management of fish and wildlife resources in the state is causing a lot of problems for people. He said that CACFA is asking the state and federal agencies, the Board of Game, the Board of Fisheries, and the Federal Subsistence Board to see if they can find a way to simplify regulations and the regulatory process to reduce overlapping regulations, which are confusing to the public. He submitted that federal agencies need to work more with the state regulatory process; they generally comment on state proposals but do not make many proposals directly to the Board of Game.

MR. LEAPHART noted that CACFA may hold a subsistence summit this summer as it is CACFA's understanding that under [Sam E. McDowell and A. Joyce McDowell, Appellants, v. STATE of Alaska, Appellee, No.S-9101], the state is not inclined to amend the Alaska State Constitution to comply with Title XIII of ANILCA, and the Federal Subsistence Board, which has been in existence for 23 years, is not likely to go away. Perhaps with those sideboards, he related, there should be middle ground regarding simplifying subsistence management on state and federal land for both subsistence and non-subsistence users.

MR. LEAPHART stated that the Endangered Species Act (ESA) is increasingly used by advocacy groups to restrict or challenge development proposals, and it affects both public and private land. He said that amendments should be made to the ESA to refine the listing process, minimize critical habitat designations, and establish better triggers for delisting. Of the 2,000 plus species that have been listed under the ESA, only about 2 percent have been deemed to be recovered—"so it seems to be a one-way list in spite of all the efforts that everybody puts into trying to deal with endangered species." He added that there is a huge push by states outside of Alaska to deal with the ESA. For example, the State of Oklahoma filed a lawsuit against the USFWS due to its use of the "sue and settle" tactics, wherein groups petition the USFWS to list a species and if the agency does not act favorably or in a timely fashion, the group files suit so the agency works out a settlement agreement. Unfortunately, he said, the discussion does not involve the states, industry groups, or private land owners, all of which could be potentially affected by the settlement agreements. Since 1990, Wildlife Guardians and the Center for Biological

Diversity have filed over 1,000 lawsuits under the ESA, and many of those have been settled under this "sue and settle" tactic.

MR. LEAPHART turned to the issue of federal preemption of state fish and wildlife regulations. Recent management regulations were adopted by the Board of Game, he said, and the NPS is now undergoing a rule-making process that will preempt the state regulations and disallow activities authorized under the state regulatory process. In some instances, the NPS implemented federal regulations without going through rule-making or holding the necessary public hearings, he expressed. There have been high-profile instances where state management proposals have run afoul of federal policies and management strategies, and he used the example of the Unimak caribou herd. He recommends that the DOL consider litigating instances where state regulations are preempted, and he encouraged federal agencies to work through the Board of Game and Board of Fisheries process. He mentioned the "park service compendium process," and said the NPS preempted state regulations for bear denning, and it expanded wolf and coyote seasons in some preserve areas. Recently, the USFWS preempted state regulations on hunting in the Kenai National Wildlife Refuge, he proffered.

[1:50:07 PM](#)

MR. LEAPHART recommended that the Alaska congressional delegation sponsor legislation clarifying the state's fish and wildlife management authority with respect to federal areas, particularly federal conservation system units, recognizing that the state has constitutional authority to manage resident fish and game. He suggested that the state could look at cooperative management efforts with USFWS on private land, which would primarily be ANCSA Corporations. He speculated that there may be Alaska State Constitutional restrictions or statutory restrictions regarding the aforementioned cooperative management, and CACFA is requesting that the governor, Alaska State Legislature, and DOL take a look at the issue. There has been a call for co-management of which CACFA has not taken a formal position as it would like to ascertain if cooperative management is feasible.

[1:51:31 PM](#)

MR. LEAPHART mentioned the 17(d)(1) withdrawals that were made in the 1970s. He said, "The reasons for those withdrawals have long ago passed; they were commitments made in response to the ... Alaska Land Transfer Acceleration Act to lift those (d)(1)

withdrawals," Unfortunately, he related, BLM told Congress it would like to complete its planning process for BLM lands, and in conjunction with that planning process, BLM would review the existing public land orders and make recommendations to the Secretary of the Interior for which [withdrawals] should be lifted. He noted that since the BLM commitment was made in 2006-2007, there have been four Resource Management Plans (RMP) completed by the BLM. He reported that the Bureau of Land Management made recommendations to lift 19 million acres of 17(d)(1) withdrawals, and yet not a single acre has been released. "What that means is that those lands are not available, and in some cases for state selection." He noted the most prominent example is the Dalton Highway Corridor Management Area (DHCMA) where there are two townships on either side of the corridor subject to Public Land Order 5150, and even though the state has "top filed" on those [lands], BLM cannot convey the lands until that public land order is lifted. In a recent letter from the Secretary of the Interior to Governor Parnell, the secretary indicated that BLM would have to complete its planning process before it could consider releasing those lands. Mr. Leaphart said that that planning process just started and is probably a 4-5 year process. It is CACFA's recommendation to encourage the Secretary to lift the public land orders as recommended in BLM's resource management plans.

MR. LEAPHART described the management of the Tongass National Forest as moving away from the "working forest" concept. He reiterated that the Roadless Rule has had a major impact on the ability of the Forest Service to meet its requirements under the existing plan, and the focus appears to be toward preservation rather than multiple-use of the forest. He related that Alaska is currently involved in challenging the Roadless Rule and its application in Alaska. He informed the committee that Senators Murkowski and Begich have sponsored legislation exempting Alaska from the Roadless Rule. Unfortunately the legislation has not moved far in the current Congress, but he was hopeful there would be a hearing within the next few months. He said that state agencies are to be strongly involved with the revision of the Tongass Land Use Management Plan, "which is supposed to be occurring." He noted there is a proposal to create a federal Tongass Advisory Committee chartered by the Secretary of Agriculture and said CACFA will work closely with it. He pointed out that the Chugach National Forest is revising its management plan as well; however, the Chugach does not have, and has never had, a very extensive timber program, but CACFA is interested in the revision of the plan. He said there has been an emergence of federal policies without any notice, with the

most infamous of those is the Wild Lands policy, which was implemented by Secretary of the Interior Kenneth Salazar in late 2010. John Katz, Alaska's advocate in Washington, D.C., was advised of the policy approximately two hours prior to the announcement was made, he remarked. He informed the committee that there have been policy changes implemented without much notice or public process on a local level, which include conducting studies for additional wilderness, national parks, and Wild and Scenic rivers.

1:56:49 PM

MR. LEAPHART highlighted that [federal] agencies issue draft management plans with a range, generally, of three to six alternatives; however, he is beginning to see the agencies adopt a final plan with an entirely new "hybrid" alternative that was not proposed in the draft and that the public had not reviewed. He offered the following examples: the National Petroleum Reserve Integrated Activity Plan, Denali Park Road Vehicle Management Plan, and the Nabesna Off-Road Vehicles Management Plan, where an alternative came out of the blue and took everyone by surprise. That trend will require a lot more oversight and monitoring, he opined. Mr. Leaphart identified serious energy concerns by small rural utilities and small power plants, as they are subject to the same regulatory requirements as a large power plant. He explained that most small utilities operate their generators with diesel, and they find it necessary to burn extra diesel because they are required to use low sulfur diesel which has fewer BTUs and costs more than regular diesel. Furthermore, even though there is less sulfur emitted using low-sulfur fuel, by burning more diesel, they create a greater amount of other types of emissions. He opined that the recent proposal by the Environmental Protection Agency (EPA) with regard to use of coal for power plants will be problematic in the years to come for the reopening of the Healy Clean Coal Project, the upgrade of the University of Fairbanks's power plant, and any new coal-fired power plant. "It's really going to be tough to meet the standards if those are adopted as proposed by the EPA," he noted.

MR. LEAPHART said that there may be an opportunity for the Alaska delegation to provide some regulatory relief for the small rural utilities. The cost of providing electricity to people in the villages is very high, he stated, and anything that could be done would be a benefit to the villages. He noted a problem that came up at the CACFA summit was with the National Petroleum Reserve of Alaska (NPRO). The areas that are

available for leasing in the Integrated Activity Plan are far away from the pipeline, and they are almost stranded without infrastructure, pipelines, and roads. Even though there have been lease sales, the Integrated Activity Plan makes it very difficult to develop those energy resources, and there may be an opportunity to correct that problem, he stated. He noted that BLM told CACFA that its new placer mining policy will likely require that even a small miner will have to hire a consultant in order to develop a plan of operations that will pass muster. In addition, once mining is completed, reclamation will be required and the cost could be prohibitive, he opined. He offered that there are approximately 200 mom-and-pop placer mines operating on BLM lands, and the number of those that will be lost has not been identified, but he expects it to be a considerable amount. However, he is working with BLM, which has put together a placer mining subcommittee to work with the industry, attempting to develop ways to implement this policy that will be achievable for the small miner. Within ANILCA, there is a requirement that federal agencies conduct regular mineral assessments of all federal lands in Alaska, and this occurred for about 20 years, "and then it just went away," he explained, but it had produced a lot of useful information for the industry about mineral resources in the state. Unfortunately, the specific budgetary item for the assessments was deleted and the Alaska congressional delegation is encouraged to fund the program as a separate line item and require the agencies to reinstate that program.

CHAIR KELLER said he is impressed with the nice job that CACFA commissioners are doing.

[2:04:21 PM](#)

MR. LEAPHART continued his presentation by reiterating the "No More" clause. He explained that ANILCA basically says, "we have created these new parks, these new refuges, designated these new wilderness areas, and mandated additional studies, [and] we think the time has come to be done with those." He expressed that the agencies have followed that idea in the last 25 years, but recently the USFWS and NPS decided to revisit the entire wilderness question for the purpose of possibly recommending additional wilderness acreage in Alaska within parks and refuges. He informed the committee that BLM, as part of its planning process, performs Wild and Scenic river studies, which he believes is a violation of the "No More" clause. Alaska has been studied extensively for the last 40 years, and "enough is enough," he expressed.

MR. LEAPHART said there are new areas of concern. Alaska Senator Cathy Giessel offered a resolution that called into question whether Beringia should be supported or opposed, and CACFA testified to not allow the agreement with Russia to move forward. He said that World Heritage sites have caused problems in the past. Another concern is Landscape Conservation Cooperatives, which were put in place by the Secretary of the Interior to look at climate change. "But they don't just look at federal lands," he stated, they are conducted by the USFWS and they look at whole regions and include state and private lands. It is something that should be watched, he warned. Rapid Ecoregional Assessments (REAs) conducted by BLM is a similar program and overlaps with the Landscape Conservation Cooperatives in some places. He said regional mitigation strategies are the "same sort of thing." Furthermore, there are an increasing number of layers of initiatives and programs that look at essentially the same issues, like climate change, he noted. He explained that Congress is concerned and asked the Department of Interior to review its programs and report on the efforts and results of programs being implemented. There is a lot of money and effort being spent on them, and Congress is rightfully concerned, he opined.

MR. LEAPHART proposed that when it is beneficial to the state, the state should seek out cooperative agency status for various planning efforts, which is also available to local governments and tribal entities. The drawback is that the planning process is very time consuming and labor intensive, and many local entities do not have the resources. He stated that there are ways to entice federal agencies to not conduct additional wilderness reviews with regard to the "No More" clause. He described the process as the "budget hammer," and he gave the example that Congress advised BLM to not spend any more money on implementing the Wild Lands policy and sidetracked the process.

[2:09:03 PM](#)

MR. LEAPHART remarked that the provision for local hire in ANILCA has worked well and offers an exemption to federal agencies to hire local people with specialized local knowledge and skills to assist in managing new parks and refuges. It worked well for 28 years, he noted, and then someone in Washington DC decided that it was not being handled properly, so the program was sidetracked—a program that provided hundreds of jobs every summer for Alaskans, often in areas without other job opportunities. Working with the Alaska delegation and the

federal land agencies, the practice was "put back on track," but the delegation should keep a close eye on it, he noted.

MR. LEAPHART noted another recommendation from the overreach summit, and that is to encourage federal agencies to work with stakeholder groups to find voluntary solutions to problems. For example, there have been so much flightseeing over Denali National Park, the NPS was getting complaints. The Secretary of the Interior formed a Denali Overflights Committee, which is strictly voluntary and includes people from various industries, including air taxi and flightseeing operators, environmental organizations, the Federal Aviation Administration (FAA), and the military. By working together, they developed a series of recommendations and strategies to deal with noise and flightseeing problems, and, yet, not a single regulation has been implemented. He encouraged more of those kinds of voluntary efforts.

MR. LEAPHART said that CACFA has asked that federal agencies follow up with its commitments to clean up hazardous materials on conveyed lands. He noted a legislative resolution to that effect that has been signed by the governor. The summit concluded that the deteriorating relationship between the state and the federal government and the public and the federal government is due to the lack of effective communication. He said the Alaska Land Use Council, created by ANILCA, was a pretty effective body, in spite of its problems, because it brought key players to the table on a regular basis, and it dealt with planning and regulatory issues—"a lot of good work came out of that," but it was only set up to run for ten years. He noted that there is very little institutional knowledge remaining with the federal agencies because of turnover. New people come to Alaska on a regular basis to manage these areas, and they are not particularly familiar with the areas or with the compromises built into ANILCA, he opined. Another issue is that the public is absolutely overwhelmed with the amount of planning activity and the sheer size of the planning documents that are produced. He said there were close to 20,000 pages of planning documents in 2012.

[2:15:43 PM](#)

CHAIR KELLER referred to the comment that the public is overwhelmed by the plans and emphasized that one of the roles of CACFA is to listen to the public. He noted that legislators often hear from impassioned, angry, and frustrated people that have some kind of struggle in getting access to their cabin or

to [trails] they are used to traveling on. He pointed out that Mr. Leaphart and legislators write letters often challenging the planning documents that come out of the agencies, and sometimes the agency responds and will talk with legislators, which is good; they interact and sometimes there are concessions and sometimes not. He noted that many of the federal agencies are responsive, and some, like the EPA, do not [participate].

[2:17:20 PM](#)

MR. LEAPHART, with regard to education, remarked that CACFA is encouraging the Governor's Office and state agencies to develop educational programs regarding ANILCA, ANCSA, and the Statehood Compact to put into high schools and universities. He referred to the Summary Section of his PowerPoint presentation and described a map depicting federal lands in Alaska. He explained that it depicts the total amount of Alaskan acreage managed by federal land management agencies and federally designated wilderness acreage by agency. He spoke of the high percentage of federal lands and wilderness in the State of Alaska, and he summarized the issues he spoke of. He said CACFA issues a monthly email newsletter to approximately 1,000 people, including legislative offices, to advise of the various federal agency activities for planning and regulations—we try to keep the public advised. At the same time, the public is not always afforded an optimal opportunity to participate, which has been a problem since ANILCA passed, and CACFA continually works on that issue, he related. He advised the committee that the issues and recommendations contained within CACFA's PowerPoint presentation should be considered seriously, in spite of any difficulties. He said that ANILCA said "no more" and CACFA says "no more." He gave credit to Susan Smith, commission member, for the PowerPoint presentation.

[2:21:45 PM](#)

CHAIR KELLER noted that the Alaska House of Representatives has already passed the extension on the sunset [clause] for CACFA. He said he is grateful for the DOL.

[2:22:35 PM](#)

#### **HB 366-INVOLUNTARY COMMITMENT**

CHAIR KELLER announced that the next order of business would be HB 366, "An Act relating to reporting an involuntary mental health commitment to the National Instant Criminal Background Check System; and relating to relief from disabilities of a

record of involuntary commitment and an adjudication of mental illness or mental incompetence."

[2:22:41 PM](#)

The committee took a brief at-ease.

[2:24:00 PM](#)

CHAIR KELLER said the committee will not move the bill as he wants to make sure "all of the dust is cleaned off it."

REPRESENTATIVE MAX GRUENBERG moved that the committee rescind its action in passing CSHB 366(STA) out of committee on March 17, 2014.

CHAIR KELLER objected.

[2:24:17 PM](#)

REPRESENTATIVE LANCE PRUITT explained that [Amendment 1] deletes the Department of Health and Social Services (DHSS) as it does not maintain the subject records, so it is unnecessary to have the department in the bill.

CHAIR KELLER removed his objection. There being no further objection, CSHB 366(STA) was again before the committee.

[2:25:13 PM](#)

REPRESENTATIVE PRUITT moved to adopt Amendment 1, labeled 28-LS1172\P.1, Strasbaugh, 3/12/14, which reads:

Page 4, lines 27 - 28:

Delete "and the Department of Health and Social Services"

CHAIR KELLER objected.

REPRESENTATIVE PRUITT verified that Amendment 1 deletes the Department of Health & Social Services from HB 366.

CHAIR KELLER announced there being no objection, Amendment 1 was adopted. [The previous objection was treated as withdrawn.] CHAIR KELLER announced that HB 366(STA) would be held over.

[2:26:09 PM](#)

REPRESENTATIVE PRUITT responded to Representative Gruenberg that he would be working on two of [CSHB 366] fiscal notes for Friday's meeting.

### HB 127-OMBUDSMAN

[2:26:30 PM](#)

CHAIR KELLER announced that the final order of business would be HB 127, "An Act clarifying that the Alaska Bar Association is an agency for purposes of investigations by the ombudsman; relating to compensation of the ombudsman and to employment of staff by the ombudsman under personal service contracts; providing that certain records of communications between the ombudsman and an agency are not public records; relating to disclosure by an agency to the ombudsman of communications subject to attorney-client and attorney work-product privileges; relating to informal and formal reports of opinions and recommendations issued by the ombudsman; relating to the privilege of the ombudsman not to testify and creating a privilege under which the ombudsman is not required to disclose certain documents; relating to procedures for procurement by the ombudsman; relating to the definition of 'agency' for purposes of the Ombudsman Act and providing jurisdiction of the ombudsman over persons providing certain services to the state by contract; and amending Rules 501 and 503, Alaska Rules of Evidence." [Before the committee was CSHB 127(STA).]

[2:26:39 PM](#)

CHAIR KELLER explained that the Ombudsman's Office is in the legislature, and HB 127 is a bill "about who we are." Within HB 127 were points of tension, "so we, basically, went back and took out the parts that we feel are controversial." He advised that the committee substitute is "streamlined" and has a chance of passing through the House and Senate before the end of this session. He remarked that during the interim the Ombudsman's Office will be reviewed on a deeper level.

[2:27:52 PM](#)

The committee took a brief at-ease.

REPRESENTATIVE PRUITT said the committee is working on the E Version from the State Affairs [Standing Committee], and "we did

amend it with Amendment 1 on Monday, and Amendment 2 was withdrawn."

[2:32:22 PM](#)

JIM POUND, Staff, Representative Wes Keller, Alaska State Legislature, stated that "we are proposing to clean up this language so that the best parts of the bill can be advanced." Therefore, the proposed committee substitute deletes Sections 3-5, on page 2 of the bill, which refers to the association with the Administrative Regulation Review Committee. It also deletes Sections 10, 11, and 13.

[2:34:42 PM](#)

REPRESENTATIVE PRUITT clarified for the committee that this substitute is Version D.

REPRESENTATIVE GRUENBERG asked about Version E1, which the committee had adopted.

REPRESENTATIVE PRUITT explained that because Sections 3-5 are deleted, Amendment 1 from the prior meeting is eliminated.

[2:36:24 PM](#)

The committee took a brief at ease.

[2:36:38 PM](#)

REPRESENTATIVE PRUITT moved to adopt CS for HB 127, labeled 28-LS0088\D, Gardner, 3/19/14 as the working document.

REPRESENTATIVE GRUENBERG objected. He noted that there were several agency representatives present who have been very patient and who, he believes, did not want to be included in the bill. He requested that they be given an opportunity to state whether or not they have an objection to being excluded from CSHB 127.

[2:37:51 PM](#)

BETH LEIBOWITZ, Assistant Ombudsman, Office of the Ombudsman, responded that the proposed committee substitute is not necessarily the Ombudsman's first choice, but it "gets the core of the bill handled," and so the office has no objections at this time.

[2:38:39 PM](#)

REPRESENTATIVE BOB LYNN questioned if there should be a separate bill in the future "to put some of this stuff back in."

[2:39:04 PM](#)

MS. LEIBOWITZ responded that currently the Ombudsman's Office does not now have a plan to submit legislation; that would be a future policy decision on the part of the Ombudsman.

[2:39:19 PM](#)

REPRESENTATIVE LYNN requested that the Ombudsman's Office advise the committee if the Ombudsman intends to request legislation or if "we should do that, so we can speed this bill along as it is."

[2:39:30 PM](#)

MS. LEIBOWITZ related that assuming the "streamlined" version of HB 127 [becomes law] the Ombudsman's Office could then discuss the possibility of having additional legislation.

[2:39:56 PM](#)

REPRESENTATIVE GRUENBERG questioned the purpose of deleting the word "state" in Section 3.

[2:40:44 PM](#)

MS. LEIBOWITZ offered that in almost every provision of the Ombudsman Act, the Ombudsman's authority and jurisdiction is discussed in terms of what the Ombudsman shall do with an agency, and then agency is defined. AS 24.55.160(a)(4) is the only provision referring to a state agency versus simply an agency, and she noted this is a non-issue as long the Ombudsman deals only with state departments. The Ombudsman has jurisdiction over municipalities and school boards if they opt into the Ombudsman's jurisdiction, "so, having a reference to 'state' agency where everywhere else in the statute refers to the ombudsman's ability to investigate agencies creates an inconsistency for us," she explained.

[2:41:48 PM](#)

REPRESENTATIVE GRUENBERG stated he supports the inclusion of Section 3, eliminating the word "state."

[2:42:17 PM](#)

KATE BUCKHARDT, Executive Director, Alaska Mental Health Board, Department of Health & Social Services, stated that the Alaska Mental Health Board is now in a position to support the proposed committee substitute for HB 127 because the revised definition of "agency" is removed. She thanked the committee.

[2:43:00 PM](#)

SHERRIE DAIGLE, Deputy Director, Central Office, Division of Administrative Services, Department of Corrections (DOC), stated that the Department of Corrections does not object to removing Sections 10-11 and supports the House Judiciary Standing Committee's decision 100 percent.

[2:44:03 PM](#)

JEFF JESSEE, Chief Executive Officer, Alaska Mental Health Trust Authority, Department of Revenue, questioned the ability of the Ombudsman to obtain confidential records that are confidential under federal law. He noted that when HB 127 was heard in the House State Affairs Standing Committee he was concerned about a possible interpretation by the Ombudsman regarding Section 3 [AS 24.55.160(a)(4)], lines 9 and 13, page 2. "Notwithstanding other provisions of law" may be being interpreted as including federal law and not just state law, and that needs to be clarified. He said he reviewed the National Ombudsman Association's web site and its model legislation for state ombudsmen around the country, and he noticed a significant difference between that language, the language in HB 127, and in the current statute. Within the national model statute this item would read "notwithstanding other provisions of state law" and not just "law" in general, he noted. [Alaska's current statute refers] to records of every state agency including confidential records, whereas the model statute reads "including records made confidential by state law," he submitted. He noted that this statute does not allow the Ombudsman to supersede HIPPA or 42 CFR, which are the primary federal laws regarding confidentiality. Moreover, even if the current interpretation of the Ombudsman is that it cannot get access to federally protected records, it is important to modify Section [3] to make that absolutely clear, he offered.

MR. JESSEE added that the Ombudsman's reports are prepared on a calendar year basis, and he suggested a fiscal year basis. He offered that the real value of the Ombudsman's Office is its ability to take individual cases and discern systemic problems that the legislature may want to address. [The fiscal year] will allow the legislature, in advance of the legislative session, to review whether the Ombudsman's Office had identified issues the legislature may want to take action on, he remarked. For example, the Ombudsman web site offers the calendar year 2012 report but not calendar year 2013 report, which would be most relevant to the legislature, he opined. He pointed to the procurement provision, Section 6, page 3, lines 9-10, and stated that although the legislature is attempting to mirror the legislative council's procurement language, "I would suggest that you think thoughtfully about whether the Ombudsman needs this authority over construction." It is his understanding that construction is not part of the Ombudsman's core mission.

[2:49:33 PM](#)

LINDA LORD-JENKINS, State of Alaska Ombudsman, explained that the calendar year basis was adopted in 2000, which is consistent with the case load management system and it was not her policy decision. With regard to access to the calendar year 2013 annual report, the report will come out this year, and it has been her practice to personally deliver the annual report to all of the legislators early in the legislative session, she stated. She said personal considerations have kept her from doing that this year. When she returns to Alaska she will finish the annual report and deliver it to the legislature, she explained. She acknowledged that Mr. Jessie is correct as the Ombudsman has no interest in handling construction matters, but it does have occasional procurement issues and this is its way of addressing those matters.

[2:53:50 PM](#)

REPRESENTATIVE GRUENBERG suggested working with Ms. Lord-Jenkins, Mr. Jessee, Mr. Pound, and other interested parties to "come up with something." He removed his objection.

[2:53:58 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:53 p.m.