ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE
February 1, 2013
1:02 p.m.

MEMBERS PRESENT

Representative Eric Feige, Co-Chair
Representative Dan Saddler, Co-Chair
Representative Peggy Wilson, Vice Chair
Representative Mike Hawker
Representative Craig Johnson
Representative Paul Seaton

MEMBERS ABSENT

Representative Kurt Olson
Representative Geran Tarr
Representative Chris Tuck

OTHER LEGISLATORS PRESENT

Representative Mike Chenault
Representative Andrew Josephson

COMMITTEE CALENDAR

OVERVIEW(S): ALASKA STAND ALONE GAS PIPELINE PROJECT UPDATE

- HEARD

HOUSE BILL NO. 78
"An Act establishing authority for the state to evaluate and seek primacy for administering the regulatory program for dredge and fill activities allowed to individual states under federal law and relating to the authority; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 77
"An Act relating to the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other disposals of state land, resources, property, or interests; relating to authorization for the use of state land by general permit; relating to exchange of state land; relating to procedures for certain administrative appeals and requests for reconsideration

to the commissioner of natural resources; relating to the Alaska Water Use Act; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 78
SHORT TITLE: REGULATION OF DREDGE AND FILL ACTIVITIES
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/18/13	(H)	READ THE FIRST TIME - REFERRALS
01/18/13	(H)	RES
01/22/13	(H)	FIN REFERRAL ADDED AFTER RES
02/01/13	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 77
SHORT TITLE: LAND DISPOSALS/EXCHANGES; WATER RIGHTS
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/18/13	(H)	READ THE FIRST TIME - REFERRALS
01/18/13	(H)	RES
01/30/13	(H)	RES AT 1:00 PM BARNES 124
01/30/13	(H)	Heard & Held
01/30/13	(H)	MINUTE(RES)
02/01/13	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

DAN FAUSKE, President
Alaska Gasline Development Corporation (AGDC)
CEO/Executive Director
Alaska Housing Finance Corporation (AHFC)
Department of Revenue (DOR)
Anchorage, Alaska
POSITION STATEMENT: Provided information and answered questions during the Alaska Stand Alone Gas Pipeline Project Update.

FRANK RICHARDS, Manager
Pipeline Engineering & Government Affairs
Alaska Gasline Development Corporate (AGDC)
Alaska Housing Finance Corporation (AHFC)
Department of Revenue (DOR)
Anchorage, Alaska
POSITION STATEMENT: Provided a PowerPoint presentation for the Alaska Stand Alone Gas Pipeline Project Update.

DARYL KLEPPIN, Manager
Commercial Team
Alaska Gasline Development Corporation (AGDC)
Alaska Housing Finance Corporation (AHFC)
Department of Revenue (DOR)
Anchorage, Alaska
POSITION STATEMENT: Answered questions related to Alaska Stand Alone Gas Pipeline Project Update.

LARRY HARTIG, Commissioner
Department of Environmental Conservation (DEC)
Juneau, Alaska
POSITION STATEMENT: On behalf of the governor, co-introduced HB 78 with Dan Sullivan, Commissioner of the Department of Natural Resources (DNR).

DAN SULLIVAN, Commissioner
Department of Natural Resources (DNR)
Anchorage, Alaska
POSITION STATEMENT: On behalf of the governor, co-introduced HB 78 with Larry Hartig, Commissioner of the Department of Environmental Conservation (DNR).

WYN MENEFEE, Chief of Operations
Division of Mining, Land & Water (DMLW)
Department of Natural Resources (DNR)
Anchorage, Alaska
POSITION STATEMENT: During hearing of HB 77, continued review of the briefing paper entitled "HB 77: Land Disposals/ Exchanges; Water Rights Briefing Paper" dated January 30, 2013.

ACTION NARRATIVE

1:02:16 PM

CO-CHAIR DAN SADDLER called the House Resources Standing Committee meeting to order at 1:02 p.m. Representatives Hawker, Johnson, Seaton, P. Wilson, Feige, and Saddler were present at the call to order. Representatives Chenault and Josephson were also present.

OVERVIEW(S): Alaska Stand Alone Gas Pipeline Project Update

1:02:40 PM

CO-CHAIR SADDLER announced that the first order of business is an overview and update of the Alaska Stand Alone Gas Pipeline Project.

1:03:58 PM

DAN FAUSKE, President, Alaska Gasline Development Corporation (AGDC), CEO/Executive Director, Alaska Housing Finance Corporation (AHFC), Department of Revenue (DOR), said some changes [in the Alaska Stand Alone Gas Pipeline Project] have occurred and predicted the committee will find the forthcoming information from Mr. Richards to be exciting and helpful.

1:04:38 PM

FRANK RICHARDS, Manager, Pipeline Engineering & Government Affairs, Alaska Gasline Development Corporate (AGDC), Alaska Housing Finance Corporation (AHFC), Department of Revenue (DOR), began his PowerPoint presentation by stating he will be providing an update on what AGDC has accomplished since its creation under House Bill 369, passed by the legislature in 2010 [slide 2]. The bill mandated that the Alaska Housing Finance Corporation (AHFC) develop a plan for an in-state pipeline project. The AHFC established a subsidiary, the Alaska Gasline Development Corporation (AGDC), to take on that project planning and execution. The project, called the Alaska Stand Alone Pipeline Project (ASAP), was mandated by the legislature to bring natural gas from Alaska's North Slope/Prudhoe Bay to Cook Inlet for distribution to residential and commercial uses at the lowest possible cost at the earliest possible time. He offered his appreciation for the legislature's support and related that in his State of the State address the governor talked about advancing the project to make sure Alaska's energy needs can be met in the near-term with a long-term energy source.

1:06:01 PM

MR. RICHARDS said to date AGDC has acquired 604 miles of right-of-way lease along the pipeline right, including the 37-mile-long Fairbanks lateral [slide 3]. The lease, issued by the State Pipeline Coordinator's office, is unconditional, meaning no additional work effort is necessary. The nearly 4,000-page Final Environmental Impact Statement (FEIS) was completed in November [2012] and a Record of Decision on the FEIS is expected soon from the U.S. Bureau of Land Management (BLM). This decision will identify the actions that BLM will be taking in the near-term for providing another 100 miles of federal right-

of-way for the pipeline. That leaves about 100 miles of right-of-way still to be acquired from Native corporations and other private landholders. To date, AGDC has advanced its tariff model, which was built in-house to allow AGDC to see overall impacts to the project from inputs and modifications. A facilities design firm was recently hired by AGDC to advance the gas conditioning facility on the North Slope and AGDC is moving forward with an aggressive summer field program. Additionally, the prefiled enabling legislation will be before the committee on [2/4/13].

1:08:03 PM

MR. RICHARDS noted that the original project plan, presented to the legislature in 2011, was for a natural gas stream enriched with natural gas liquids (NGLs) [slide 4]. That plan would have required several substantial facilities on the North Slope for gas conditioning and deethanizing, additional compressor stations along the line, and a straddle plant in Fairbanks to pull out those natural gas liquids to provide utility-grade gas to Fairbanks, and ultimately delivering it to Cook Inlet with another NGL extraction facility. In late 2012, that plan was modified to one of delivering a lean utility-grade gas to residents, communities, and businesses, along the line so as to provide for economic opportunities where ever they need be. This [optimized] plan reduces the amount of compressor stations needed to flow up to 500 million cubic feet of gas a day, a limitation on AGDC that is based on the Alaska Gasline Inducement Act (AGIA). The pipeline diameter was increased from 24 inches to 36 inches, which lowered the pressure from 2,500 pounds per square inch (psi) to 1,480 psi and allows use of standardized pipe and commonly used pertinences. Additionally, this allows for more off-takes along the line for Alaskans and Alaskan businesses.

1:10:03 PM

MR. RICHARDS outlined benefits of the optimized project plan [slide 5], specifying that it reduces the risks considerably, including the risks during design, construction, and financing. Thus, AGDC feels it is meeting the challenge given it by the legislature to provide a project that will meet Alaskans' energy needs in the near-term at the lowest possible cost. The optimized plan also lowers the tariff, which is the cost of delivery of gas to consumers along the pipeline. The amount of footprint is also reduced, along with a subsequent reduction of environmental impacts. The optimized plan improves the

economics for the pipeline as well as for users along the pipeline. He reiterated that this project is not in competition with the AGIA project - it is a stand-alone project for in-state needs with the ability for a large commercial delivery.

1:10:58 PM

MR. RICHARDS said the process being used in delivery of AGDC's work product is known as the "stage gate process" [slide 6]. He explained that front-end loading (FEL) [progressively narrows uncertainty of cost and schedule]. When a project is started very little is known, but as the project is advanced the scope and engineering detail are narrowed down, thus providing for more specifics. Certain gates must be passed through to be able to advance the project. In the project plan delivered to the legislature in July 2011 the FEL 1 stage gate was passed through, taking the project to FEL 2 or the point of open season and AGDC was looking to the legislature for enabling legislation and funding. Today, AGDC is again before the legislature to say it can move and advance this [optimized] project through FEL 2 with the appropriate funding and legislation. The FEL 3 is the project sanction gate or the go/no go decision on this project because at that point AGDC would start ordering the steel and modules for construction and initiating the contracts to let for the actual construction.

1:12:18 PM

MR. RICHARDS drew attention to the upper chart on slide 7, noting that it was the schedule mandated to the project by House Bill 369 in 2010 and which called for completion of the project by the end of 2015. It was an 800 mile, $8 billion project to be completed in 5 years, but AGDC did not achieve this very aggressive schedule due to lack of funding and legislation. [Drawing attention to the bottom chart on slide 7], he said AGDC is currently in the FEL 2 phase, looking to advance the [optimized] project through an open season at the end of 2014 and ultimately through the bridge engineering to a project sanction at the end of 2015, and then ordering pipe and constructing the pipeline to provide first gas to Alaskans in 2019, with full gas transmission in 2020.

MR. RICHARDS moved to slide 8, reiterating that the open season, where shippers commit to providing gas delivery through the pipeline with contracts, will determine the commercial interest in the project. Project sanction would be in late 2015, allowing AGDC to procure the long-lead items in 2016, with

construction starting in 2017 and completing in 2019 and [full] gas available in 2020.

1:13:45 PM

MR. RICHARDS reviewed impacts to the tariff as a result of shifting from an enriched gas project to a lean gas project [slide 9]. The original 20-year tariff was changed to a 30-year levelized tariff. Cost estimates have been improved, going from 0 percent contingency to 10 percent for the pipeline where AGDC has advanced engineering. In the facilities portion, where the least amount of work has been conducted to date, the cost estimate contingency is 30 percent. The debt/equity ratio has been changed [from 70/30 to 75/25] and the rate of return on that debt [has been changed from 12 percent to 11 percent]. Additionally, AGDC has identified and used a 2.5 percent per year inflation based on the Philadelphia Federal Reserve published rate. The AGDC commercial team has developed a tariff model that allows the entering of variable inputs that will allow AGDC to clearly identify the benefits or negative aspects of various items.

1:14:53 PM

MR. RICHARDS compared tariffs between the 2011 project plan and the optimized project plan [slide 10], noting that the lower tariff of the optimized plan is due to removal of the straddle plant in Fairbanks which reduced the number of compressor stations. Under the 2011 plan the tariff to Fairbanks would have been $6.45 [per million British thermal units (MMBtu)] and to Anchorage $5.63; under the optimized plan the tariff to Fairbanks is $4.25-$6.00 and to Anchorage $5.00-$7.25. Addressing the cost drivers depicted on slide 10, he said if the capital cost of the project goes up $1 billion the tariff would increase $.50 [per MMBtu]. If the State of Alaska contributes $1 billion to the project, the tariff would be reduced by $.45. Reducing the rate of return would reduce the tariff by $.20 and increasing the bond length to 10 years would reduce the tariff by $.75. The cost of a 1-year delay on this $7.7 billion project would be the annual inflation of about $200 million.

1:16:22 PM

CO-CHAIR SADDLER asked why the cost was broken down for Fairbanks and Big Lake, but not the other four destinations.

MR. RICHARDS replied that AGDC was looking originally at the cost to the major population centers - Fairbanks/Fairbanks North Star Borough and the Cook Inlet basin through the Big Lake gate. The pipeline will terminate into the "ENSTAR system" and then the gas can flow to consumers already in that system.

1:16:59 PM

CO-CHAIR SADDLER surmised the effect on the tariff of the aforementioned changes is the same for both the Big Lake and Fairbanks destinations.

MR. RICHARDS understood this to be the case, but deferred to Mr. Daryl Kleppin for more detail.

DARYL KLEPPIN, Manager, Commercial Team, Alaska Gasline Development Corporation (AGDC), Alaska Housing Finance Corporation (AHFC), Department of Revenue (DOR), confirmed that that is correct, his understanding being the question is whether the return on equity, 11 percent, is for the entire capital spend on all portions of the pipeline.

1:17:40 PM

MR. KLEPPIN, responding to Representative Seaton, said a 30-year bond life is the current assumption, so adding 10 years would make it 40 years. In other words, if the pipeline had a useful life of 40 years, and AGDC was able to bond to that, the impact on the tariff [would be a decrease of $.75 per MMBtu].

1:18:27 PM

MR. RICHARDS, returning to his presentation, addressed the costs of ASAP [slide 11], reiterating that the overall cost of the project to the state is $400 million for advancing the engineering, the right-of-way, and the environmental process through the point of project sanction. That $400 million has not been accounted for in the tariff because under House Bill 369 it was considered a state contribution to advance the project through to a point of looking for a builder, owner operator, or other entity to construct the project. The benefit of this project is long term natural gas supplies for Alaskans. It would allow for home heating, power generation, and economic opportunity for the state. Project costs in 2012 dollars are approximately $7.7 billion for the lean gas case, compared to approximately $7.7 billion and an inflated rate for the rich gas case. At AGDC's current level of engineering, it is plus or

minus 30 percent given the engineering has only been advanced to approximately 10 percent. The current cost to consumers for ENSTAR gas is about $9.30 [per MMBtu]. The tariffs and costs that AGDC anticipates charging to Anchorage and Fairbanks residents are between $9-$11 for Anchorage in 2012 dollars and $8.25-$10 in Fairbanks in 2012 dollars, which are very good numbers for building a $7.7 billion project and delivering gas to a considerable population of the state at a reasonable rate. Each one-year delay of the project increases the cost by approximately $200 million a year, based on a 2.5 percent inflation rate.

1:20:44 PM

MR. RICHARDS said the amount of funding needed to move the project through sanction is approximately $328 million [slide 12]. If granted this funding, AGDC will be able to: keep the project on schedule, advance the engineering for both pipeline and facilities, conduct the regulatory permitting and agency engagement, and conduct the field investigations necessary for onsite information. Lower amounts or partial funding will mean a limit on those actions and delay of the project.

MR. RICHARDS reviewed the enabling legislation that AGDC has asked for throughout the project plan development [slide 13]. He said critical components of this legislation include: ability to enter into confidential agreements, allowing AGDC to have contract carrier status, and allowing AGDC the ability to determine ownership to be able to attract shippers, buyers, and the financing necessary for the project. Enabling legislation would allow AGDC to meet the intent of the original legislation, which is to deliver gas at the lowest possible rate at the earliest possible time.

1:22:14 PM

MR. FAUSKE added that this optimized plan has been tremendously well received by the governor's office and the general public. He related that people in Fairbanks were very excited about this tariff as the [previously proposed] straddle plant caused a great deal of confusion when trying to factor those costs through the project. Additionally, a lean gas scenario provides the enhancement that more people can join in the process.

1:23:25 PM

CO-CHAIR FEIGE, referring to the optimized project plan benefits on slide 5, inquired where the planned propane extraction plant would be located.

MR. RICHARDS replied the gas stream in this lean gas scenario would have a small amount of propane available for a developer wanting to pull out propane. However, it was not under AGDC's charter to provide for a propane extraction facility. In further response, he confirmed that the location for propane extraction could be anywhere.

1:24:25 PM

CO-CHAIR FEIGE asked whether AGDC has figured the cost of gas exported from a West Coast terminal in the U.S. that AGDC could be competing against in price.

MR. RICHARDS deferred to Mr. Kleppin.

MR. KLEPPIN responded that AGDC's July 2011 report included an analysis of whether the cost of gas piped from the North Slope would be competitive with imported liquefied natural gas (LNG). That analysis suggested the price of imported LNG would be around $16-$21 per MMBtu. So, yes, as seen by Mr. Richards' presentation, AGDC believes it could deliver the gas for a lower cost than imported LNG.

1:25:47 PM

CO-CHAIR FEIGE commented that that seems a little high, based on discussions about what Alaska could get for North Slope gas in other parts of the world. He inquired how AGDC arrived at that price to compete against.

MR. KLEPPIN reiterated that AGDC's analysis of LNG is included in its July 2011 report. He said that that LNG study looked at where LNG could be acquired as well as that the Alaska market is pretty small. The closest and cheapest place from which to bring LNG would be Sakhalin [Russia], so AGDC looked at the cost of gas and shipping rates from there. He allowed that the market has changed a bit over the two years since the study and said another look would be needed to determine whether that exact number is still valid.

1:27:10 PM

REPRESENTATIVE SEATON, referring to the first bullet on slide 11, requested clarification as to whether the tariff would recover for the state treasury the $400 million or would the $400 million be a state contribution to the project.

MR. RICHARDS answered that the gas royalty and taxes would be as the gas is purchased and the state receives those royalty and/or tax payments. This was something that AGDC felt would "be a future benefit to the state and it was not going to be included as a direct comparison between the $400 million initial spend".

1:28:12 PM

REPRESENTATIVE SEATON said he is not indicating which way it should be, but rather that he would like to be clear on whether the $400 million is going to be recovered or is a state contribution.

MR. FAUSKE pointed out that since the beginning of this project the $400 million has always been monies that the state must spend to get the project to an open season and have enough data and information collected so that companies would be willing to bid on it. This was not a cost that would be recouped through tariffs. As this project goes out into the future, royalties collected by the state would be the royalties that already exist for what the state's position on these gas sales would be. So, the $400 million is an upfront number to design and get a project creditworthy/construction worthy, as well as prepare it for the governor and the legislature to be able to make a decision at sanctioning time with a great deal of comfort.

REPRESENTATIVE SEATON said that is what he had assumed and therefore urged that slide 11 be changed because it might cause confusion that the $400 million will be recovered.

1:30:37 PM

REPRESENTATIVE SEATON, referring to slide [13], inquired how long the confidentiality of the confidential agreements would last before that information is available to the public.

MR. RICHARDS replied commercial entities wanting to work on a project are hopeful the information they share will be kept confidential. If AGDC is entering into a long-term contractual obligation with a shipper there may be competitive advantages in the shipper's work efforts, so the shipper will likely want AGDC to hold that information confidential.

REPRESENTATIVE SEATON requested that at some point in the future the committee have further discussion on the duration [of confidentiality] after a project goes through.

1:32:27 PM

CO-CHAIR SADDLER asked about AGDC's current funding status.

MR. RICHARDS responded that in fiscal year 2013, AGDC received a capital appropriation of approximately $21 million. Throughout the genesis of this project a total of $72 million has been appropriated.

1:36:19 PM

The committee took an at-ease from 1:36 p.m. to 1:37 p.m.

HB 78-REGULATION OF DREDGE AND FILL ACTIVITIES

1:37:50 PM

CO-CHAIR FEIGE announced that the next order of business is HOUSE BILL NO. 78, "An Act establishing authority for the state to evaluate and seek primacy for administering the regulatory program for dredge and fill activities allowed to individual states under federal law and relating to the authority; and providing for an effective date."

1:38:07 PM

LARRY HARTIG, Commissioner, Department of Environmental Conservation (DEC), on behalf of the governor, co-introduced HB 78 with Dan Sullivan, Commissioner of the Department of Natural Resources (DNR). Mr. Hartig said HB 78 would allow DEC and DNR to explore and assess the pros and cons of the state pursuing primacy of the Section 404, [Clean Water Act], dredge and fill program. The bill would provide a two-step process: first, an evaluation phase and, then, authority to the two agencies to pursue primacy. He clarified, however, that the legislature would still be the gatekeepers because after the assessment period the agencies would be back to the legislature at least once, which would be to get the budget for a program should that assessment say the state should pursue this. The agencies may also be back to the legislature prior to that for additional authorities because, as the assessment explores the pros and cons of taking on the program, the state would be building its application - building the state capacity - by identifying any

gaps with existing state law that would have to be filled for the state to have a complete application.

1:39:36 PM

COMMISSIONER HARTIG said his presentation today will define the Section 404 program, outline the process for putting together and filing an application with the Environmental Protection Agency (EPA), and discuss the anticipated pros and cons of acquiring primacy of this program. Commissioner Sullivan will talk about how the administration views primacy in the bigger context - how it fits in with some of the other objectives that the state administration and legislature are pursuing - and will give examples of what happened recently on some 404 permits and how things might have happened differently had some of the decision making been made at a local level.

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COMMISSIONER HARTIG explained there are two large permitting programs in the federal Clean Water Act: Section 402, the wastewater discharge permitting program, and Section 404, the dredge and fill program. The state received primacy for the 402 program in 2008 and received final authority to run the last phase of that program in November [2012]. For the 404 program, the U.S. Army Corps of Engineers issues permits for projects that want to place fill material into surface waters of the U.S., which includes lakes, ponds, shorelines, and wetlands. He pointed out that Alaska has 65 percent of the nation's wetlands, which partially explains why the state should be one of the first in line to pursue primacy. Types of projects that would need 404 permits include large mine or oil and gas projects, as well as small projects such as home or school foundations. Anytime construction occurs on a wetland or fill material placed in surface waters, chances are that a 404 authorization will be necessary.

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COMMISSIONER HARTIG explained that the 404 program is not there just to issue permits because wetlands have a lot of value. Therefore, the state should be interested in pursuing primacy on this program to ensure that those values are protected and realized in the state. Wetlands provide runoff control, settle and filter potential contaminants in runoff, and provide valuable habitat for certain species. Alaska is fortunate in that it has only lost about 1 percent of its wetlands as

compared to other states that have lost 50 percent or greater. It is important to protect these wetlands and manage them at a local level so as to have some decision-making control over this program.

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COMMISSIONER HARTIG also pointed out that the 404 program is a detailed, science-based program. Some of the analyses that are performed to determine whether to issue a permit and what terms under which it might be issued require identifying the least environmentally damaging practicable alternative (LEDPA), which he likened to a mini National Environmental Policy Act of 1969 (NEPA) analysis. Under the program a 404(b)(1) analysis is performed that considers the potential long- and short-term effects that a proposed discharge or fill material might have in both the disposal areas and around it. Again, the goal of the 404 permitting program is to review how to avoid or minimize impacts to these valuable aquatic resources, including wetlands. Under the existing 404 program in the federal government, the U.S. Army Corps of Engineers issues the permits with the aforementioned analysis but the EPA retains oversight and actually has veto authority over the U.S. Army Corps of Engineers. The EPA would maintain oversight and have veto authority with 404 permits that DEC/DNR would issue even with primacy, which is the same with the permits DEC issues for wastewater discharge.

1:45:31 PM

COMMISSIONER HARTIG explained that it is a two-stage process with HB 78. First, there would be review of what a state program would look like, cost, and take to staff the program and then evaluate the potential benefits of the program before seeking additional resources from the legislature to implement the program. He then turned attention to some of the requirements that would have to be part of the application, which is analogous to the application done for the 402 program. The application is lengthy as it includes a formal request by the governor, a detailed description of the program as the state will run it, a statement by the attorney that the state program as proposed is consistent with the federal program, a negotiated memorandum of agreement with both the EPA and U.S. Army Corps of Engineers in terms of how everyone will work together, a description of staffing and the budget, and copies of all applicable statutes, regulations, and guidance documents. Therefore, the entire program has to be built prior to

submitting the application, which means the legislature would have a clear picture of the entire program including the budget, personnel, and program details. He anticipated that there would be a component of permit fees and all the interested parties would be able to review the program and comment on it prior to hiring personnel and forwarding the application. Commissioner Hartig acknowledged the rumors in the capitol building that HB 77 is Pebble Mine legislation, but refuted those rumors.

1:49:34 PM

REPRESENTATIVE HAWKER surmised then that this is a two-stage process under which DEC would have the authority to build the resources within the state in order to administer and operate a primacy program and then return to the legislature seeking resources to implement and pursue the official primacy designation.

COMMISSIONER HARTIG responded that is partially correct. The fiscal note starts out with five positions at DEC in fiscal year 2014 (FY14) that would perform the study and build the application. The number of personnel would increase [the next year] to a total of eight people, which would not be enough people to run the program. He noted that at DNR the number of positions would start at three and increase to five. He predicted that in 2016, DEC would return to the legislature with the number of people necessary to run the program at which time DEC would make a fiscal note request and the position control numbers (PCNs).

REPRESENTATIVE HAWKER remarked that this is just the tip of the iceberg in terms of growing government and it is a policy call as to whether it is worth it. He then reviewed his understanding that for this proposal in DEC there would be five personnel in FY14 that would increase to eight in FY15 and in DNR there would be two personnel in FY14 that would increase to four in FY15.

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COMMISSIONER HARTIG informed the committee that during this assessment period, DEC would review another aspect of primacy. With regard to taking the entire authority to issue 404 permits from the U.S. Army Corps of Engineers, there are geographical limitations such that the U.S. Army Corps of Engineers under the federal Clean Water Act has to retain authority on certain wetlands. Those wetlands would be the tidal influenced areas

and the adjacent wetlands as well as interior waterways that are or may be used in interstate or international commerce. Therefore, one cannot review the federal government's costs for the program in Alaska today and equate that to what the state might pay.

1:53:08 PM

COMMISSIONER HARTIG then related that DEC would pursue at the same time another aspect of authority that is less than primacy. There are state programmatic general permits that may be issued for activities that would happen with enough regularity to issue a statewide general permit covering multiple parties rather than individual permits for individual parties. The impact of such projects would be relatively minimal and the state could take over the authority to implement and enforce those permits from the federal government. The assessment phase would include which types of permits might benefit projects, such as a shale gas project, that would have multiple projects in the state that would need 404 permits. Whether the state could work with the U.S. Army Corps of Engineers jointly to issue those permits and then take over the management and enforcement of those permits, which could be accomplished with or without full primacy, is something the department would assess during the same time as primacy.

1:54:29 PM

CO-CHAIR FEIGE related his understanding that the U.S. Army Corps of Engineers, given its 404 authority, already issues general permits.

COMMISSIONER HARTIG clarified that there are a number of different types of general permits and these [404 permits] would be fairly low impact type projects. He noted that [404 permits] have not been issued in Alaska for the types of projects he just described. The assessment phase could consider whether more could be done with general permits, which would save the U.S. Army Corps of Engineers, the state, and the project proponent money and time because it is much easier to go through the general permit process than the entire permitting process for an individual permit.

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REPRESENTATIVE SEATON related that as Homer has worked on building the natural gas line distribution system it has been

working with the U.S. Army Corps of Engineers on a regional general permit. Therefore, he opined that the benefit being discussed is already available when working with the U.S. Army Corps of Engineers for regional general permits. He asked if there is any reason why those general permits have not or cannot be pursued similar to what is occurring in Homer on the wetlands. He asked whether that can be pursued currently.

COMMISSIONER HARTIG replied no. There is authority for DEC to work with the U.S. Army Corps of Engineers and others to determine where there are opportunities in the state to do general permits like this under federal law. He clarified that as part of this work, DEC would perform a targeted assessment to determine what other opportunities there are. He said that the term permit reform evokes thoughts of efficiencies and priorities, which he believes will be discussed with [HB 78]. He predicted there will be discussions determining the priorities for the state in terms of resource development and how to use the 404 program more efficiently while saving state and federal funds. Although the department has the authority, the department has not performed a complete assessment. Perhaps, a complete assessment should be done, he remarked.

1:57:40 PM

COMMISSIONER HARTIG pointed out that this idea of 404 primacy is not new and goes back about 15 years. About 10 years ago, 404 primacy was considered, but the decision was to pursue 402 primacy first. It took about five years to put together the application and about five more years of phase-in to get the program. That experience will be helpful with the 404 primacy. Furthermore, the federal government budget is declining and Alaska has a hard time competing for the available federal dollars. He emphasized the need to make set priorities and be timely with the permitting program in Alaska.

1:59:11 PM

COMMISSIONER HARTIG turned to HB 78, stating it will perform an assessment/evaluation that will provide a very clear picture of the program. At the same time, the department will evaluate the programmatic general permits and capacity building. The advantage of capacity building is that DEC will work with the U.S. Army Corps of Engineers to write the permits. Even if the department ultimately does not take the program, it will learn more about the 404 program. In Alaska, when a project results in the destruction of wetlands, mitigation has to occur.

Typical mitigation means that wetlands lost are restored or impacted wetlands are enhanced. That has not really occurred very much in Alaska, rather there has been preservation of existing wetlands that might otherwise been developed. Since there is little private land in Alaska, there is not much opportunity for mitigation. Therefore, perhaps the department could work with the U.S. Army Corps of Engineers regarding mitigation options that make more sense in Alaska. Commissioner Hartig reiterated that [HB 78] will provide the opportunity to learn more about the 404 program, inform others about Alaska's needs, and spotlight the U.S. Army Corps of Engineers program.

2:01:51 PM

DAN SULLIVAN, Commissioner, Department of Natural Resources (DNR), provided the committee with a copy of his 1/22/13 PowerPoint presentation to the Senate State Affairs Standing Committee regarding federal overreach into resource development in Alaska. One of the significant concerns with the state's relationship with the federal government involves regulatory activities. For large projects, he highlighted the following trends related to primacy: delay on significant projects with regard to federal regulatory activities and permits; a lack of input from the state despite the fact that the state is the other sovereign entity [and has some of the best experts in the world] with respect to these issues. The permitting issues the federal government takes in Alaska have an enormous impact for the future of the state's citizens. Referring to slide 8 of the PowerPoint entitled, "Federal Overreach into Resource Development in Alaska," he highlighted the mention of primacy as an approach to address federal overreach. This fits within the idea of broad-based regulatory reform and modernization for more timely, efficient, and certain permitting as well as a way in which to address some of DNR's significant concerns with the state's relationship with the federal government. As mentioned by Commissioner Hartig, the CD-5 permit by ConocoPhillips Alaska, Inc. (ConocoPhillips) was a 404 permit through the U.S. Army Corps of Engineers to enable ConocoPhillips to move into National Petroleum Reserve-Alaska (NPR-A) to expand its oil and gas operations. The aforementioned would be an important and strategic development for the state and ConocoPhillips. State agencies, the North Slope Borough, the U.S. Army Corps of Engineers, and various other stakeholders spent many years coming together, so almost everyone in Alaska was surprised when that permit was denied because of a veto by the EPA and the U.S. Fish & Wildlife Service. Although many, including legislators,

federal agencies, the state, and the governor worked to reverse the decision, it was time wasted, he said.

2:06:16 PM

CO-CHAIR FEIGE inquired as to how many years that particular development was delayed.

COMMISSIONER SULLIVAN replied it took two years to get it reversed, and thus he would say the delay was two years.

CO-CHAIR FEIGE asked whether there is any way to estimate how much money that has potentially cost the state or deferred to a later date.

COMMISSIONER SULLIVAN opined that once the project is online the amount of oil it produces will be known, although he acknowledged that some of the oil will come from federal lands. Strategically, this development is important because it is the first development focused on production in the NPR-A. Although he could not provide an estimate at this point, he stressed that a two-year delay on that project was not in the state's best interest.

2:07:21 PM

REPRESENTATIVE JOHNSON asked whether primacy would have stopped the EPA and the U.S. Fish & Wildlife Service from vetoing the permit.

COMMISSIONER SULLIVAN said he could not say, adding that there is still federal oversight on these even when the state assumes primacy. However, he emphasized that by assuming primacy the state has a much better chance of controlling its destiny on some of these permitting issues while maintaining [the state's] high standards.

2:08:12 PM

COMMISSIONER SULLIVAN related that on almost every major 404 environmental impact statement (EIS) permitting process that the U.S. Army Corps of Engineers and others undertake, some state agency applies for cooperating agency status that is typically coordinated through Office of Project Management & Permitting (OPMP). Despite that notion of cooperating agencies, the state has not been included in the actual participatory role when decisions are made, such as was the case in CD-5, the Tanana

River bridge, Point Thomson, and the Izembek EIS. Primacy is not complete disentanglement with the federal government and oversight, but it makes the state a decision maker. He noted that the Clean Water Act contemplates primacy for states and two have obtained primacy. In the last four years, amorphous administrative executive branch declarations of policy have been put forth. There have been instances in which those policies in Washington, D.C., have influenced [decisions], such as with wildlands. Although there has been about a 20 percent reduction in the staff of the U.S. Army Corps of Engineers, the department is hopeful that there will be a number of resource development projects throughout the state. The pace of the regulatory and permitting issue can be frustrating because it is a recipe for delay when the state increases responsible resource development projects at the same time the U.S. Army Corps of Engineers makes significant cuts to its staff. The aforementioned is another important reason for the state to seek primacy. In conclusion, Commissioner Sullivan opined that the primacy issue and HB 78 are important in terms of the broader perspective of having more efficient, timely, and certain permitting, and having another tool to address federal overreach or federal regulatory delay. As mentioned by Commissioner Hartig, it is a long process, but it is well worth starting.

2:12:25 PM

REPRESENTATIVE SEATON requested the departments provide the committee with maps as this moves forward, particularly since he understands that even if the state obtains primacy, the U.S. Army Corps of Engineers retains jurisdiction over all tideland ebb and flow and anything that could be used in interstate commerce waters, navigable waters, and adjacent wetlands. He inquired as to where primacy would provide the state authority versus what is maintained by the federal government.

COMMISSIONER HARTIG pointed out that identifying those areas would be part of the discussion with the U.S Army Corps of Engineers. He then pointed out that there is not a geographic limitation for the programmatic general permits as they could apply to the navigable waters and adjacent tidelands.

COMMISSIONER SULLIVAN added that it could also have a positive impact on the state's ability to control its own destiny, such as promoting shale oil development. He did not believe it would cover some of the things Representative Seaton mentioned, but rather would be the territory of the state.

2:14:59 PM

REPRESENTATIVE SEATON requested the departments to provide the committee with the number of U.S. Army Corps of Engineers personnel working on 404 permits in Alaska so as to get a handle on the number of additional personnel the state would need.

COMMISSIONER HARTIG said that he would have to [determine] what the state would get with primacy. He mentioned that he has spoken with the two states that have primacy with regard to how they staffed up. Again, the amount of staff would be dependent upon the interpretation as to what the state would get and how much the state would want to pursue.

2:15:52 PM

REPRESENTATIVE HAWKER requested, if the chair desires, an extended fiscal note that would explain the ultimate, all-in costs after 2016 of implementing the 404 program. He further requested, if the chair desires, that an extended fiscal note reflect necessary inflation in human services costs.

CO-CHAIR FEIGE requested the commissioners follow up on that. He further requested, acknowledging that it will require a fair amount of speculation, the impact on the Alaska economy as a benefit of [obtaining primacy for 404 permits].

[HB 78 was held over.]

2:17:27 PM

The committee took an at-ease from 2:17 p.m. to 2:19 p.m.

HB 77-LAND DISPOSALS/EXCHANGES; WATER RIGHTS

2:19:26 PM

CO-CHAIR FEIGE announced that the final order of business is HOUSE BILL NO. 77, "An Act relating to the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other disposals of state land, resources, property, or interests; relating to authorization for the use of state land by general permit; relating to exchange of state land; relating to procedures for certain administrative appeals and requests for reconsideration to the commissioner of natural resources; relating to the Alaska Water Use Act; and providing for an effective date."

2:19:43 PM

WYN MENEFEE, Chief of Operations, Division of Mining, Land & Water (DMLW), Department of Natural Resources (DNR), began by addressing the question from the prior hearing regarding whether mineral estate can be conveyed through exchanges. He specified that mineral lands cannot be conveyed per Section 6(i) of the Alaska Statehood Act. If the mineral estate is conveyed to other entities, the state forfeits the land to the federal government. However, the mineral estate can be conveyed back to the federal government. For clarification, Mr. Menefee explained that a long-term lease for the AS 38.05.102 preference right would be over 10 years. Two statutes combine to provide that right, which is not a mandatory preference right, but is an option after 10 years.

2:21:30 PM

MR. MENEFEE, returning to the briefing paper, directed attention to point 5, which addresses aquatic farm leases, which are 10-year leases that can be renewed. Currently, leases can be renewed when an individual is in good standing for one term, not to exceed the time of the original lease term. Therefore, this proposal would include aquatic farm leases such that an individual with a 10-year aquatic farm lease could obtain another 10-year lease if that individual is in good standing. Moving on to point 6, which addresses temporary water use authorizations, he stressed that temporary water use authorizations are not a water right. A temporary water use authorization is temporary, revocable, modifiable, and does not provide any long-term right to that water. Therefore, temporary water rights are used for development projects throughout Alaska, such as for oil and gas, mining, construction, and Department of Transportation & Public Facilities maintenance of roads. Current statute specifies that a temporary use authorization can be issued for up to five years, but the division has observed that some projects take over five years. In the case of a project that still needs water at the five-year mark, DMLW reevaluates and moves through the same process such that it is vetted through the Department of Fish & Game (ADF&G) to ensure no other water rights or habitat will be impacted. Upon completion of that process, another temporary water use authorization not to exceed five years is issued. Mr. Menefee informed the committee that there has been discussion regarding whether to challenge that, and therefore this proposal would clarify that the division can issue another temporary water use

authorization to the same individual for the same location for another five years. Basically, it is a new adjudication process.

2:23:46 PM

CO-CHAIR SADDLER inquired as to whether there is any absolute cap on the amount of time that leases for aquatic farms or temporary water use can be extended.

MR. MENEFEE explained that for aquatic farms there is a one-time renewal for another 10 years, after which it must be a competitive process. For temporary water use authorizations, there is no cap on the number of times the authorization can be reissued. He highlighted that there is a difference between "reissue" and "renew". Renewal refers to a [lessee] in good standing for a project that has not changed. However, reissue is a process by which the division considers [the lease new] and considers all aspects of it. Basically, the division is adjudicating from the beginning even though the division knows the project [and lessee] has been there before. For example, for a 15-year project three separate water use authorizations could be issued for that project.

CO-CHAIR SADDLER surmised then that practically speaking there is no limit on how many times one can renew.

MR. MENEFEE clarified that although there is no limit for temporary water use authorizations, each time the division reviews what other needs there are for the water and what other water rights there are. Furthermore, there is no right inferred from obtaining multiple temporary water use authorizations in the past.

2:25:46 PM

REPRESENTATIVE SEATON requested further explanation of the notation in point 6 that temporary water use authorizations "are mainly used by exploration projects and construction projects that are not conducive to permanent water rights".

MR. MENEFEE explained that companies can apply for a water right from the outset [of a project]. With a full water right companies have to apply and then they have two years to perfect that water right at which point "it stays with it". For example, a project that needs water rights at various periods throughout the project and does not need a long-term water

right. He clarified that water is needed temporarily at one location and then another location. Water rights, on the other hand, are typically used when water is needed from a location continuously.

2:27:20 PM

REPRESENTATIVE P. WILSON informed the committee that the Sitka Sound Science Center has [had a temporary water use authorization] for some time. However, now the U.S. Forest Service has expressed the need for the water. She then asked whether the U.S. Forest Service has priority for the stream.

MR. MENEFEE answered that in Alaska water rights are on a first come first served basis, and thus a priority right is based on the date of the application. Temporary water use authorizations have nothing to do with that, he said. For instance, in a situation in which an entity has a temporary water use authorization and another entity applies for the water right, the entity applying for the water right would be first in line. Usually those companies that believe they might have to compete for the water or they believe they need to protect the water may apply for a water right. Again, whoever applies for the water right first is considered first.

2:29:08 PM

CO-CHAIR FEIGE asked whether a water right is revocable.

MR. MENEFEE explained that after one first applies for a water right permit that applicant must prove and perfect the use of it prior to certification of that water right. With regard to whether the water right can be revoked after certification, Mr. Menefee said he would have to provide that answer later.

2:30:15 PM

CO-CHAIR SADDLER asked whether a temporary water use permit has been superseded or boxed out by an application for a water right.

MR. MENEFEE said that he did not know, but offered to find out.

2:30:36 PM

MR. MENEFEE, returning to the review of his briefing paper, directed the committee's attention to point 7, which addresses

water reservations. A water reservation specifies the amount of water flow to protect and the remaining amount of water flow can be used to appropriate through temporary water use authorizations or water rights, but the amount of protected water flow cannot be used. One can apply for a water reservation for navigation, habitat, recreation, and water quality. Currently, anyone can apply for a water reservation after fulfilling all the obligations an agency would, including the data necessary to prove the need for a water reservation. Unlike a water right for which an application is the priority, the priority for a water reservation is not established until the in-stream flow reservation is proven by the state as needed and granted, and then it returns to the priority right. Alaska is the only state in the nation that allows a person to apply for and hold a water reservation, which this proposal changes. The change is being requested so that when there is an application for a water reservation, it is based in sound science and good information, routed to the applicable agencies, and would not allow an individual to apply and hold a water reservation.

2:33:36 PM

CO-CHAIR FEIGE pointed out that flow rates can fluctuate, and therefore he inquired as to who gets priority if the flow decreases to the point that there is no surplus after all the water reservations and rights are utilized.

MR. MENEFEE clarified that a granted water reservation is protected over other rights and the other rights must defer to the water reservation. The water reservation is a priority right, which is why it is important to have good data to support why a water reservation is a priority.

2:34:54 PM

REPRESENTATIVE SEATON asked whether the legislation allows a person to petition the agency to apply for a water reservation, such as is the case in Idaho.

MR. MENEFEE replied that is correct. A person can [petition] a water reservation by approaching an agency and mixing the data from the person with that of the agency. If the agency believes protection of the water is a priority, then it will submit an application.

REPRESENTATIVE SEATON surmised then that as the legislation is structured there is an obligation to the agency to consider such a petition.

MR. MENEFEE confirmed that the agency has an obligation to consider a petition, but not to submit an application.

2:36:04 PM

CO-CHAIR SADDLER related his understanding that temporary water use permits and water reservations are not percentages of flow but rather raw numbers of gallons per second.

MR. MENEFEE said that is correct.

2:36:18 PM

MR. MENEFEE, returning to his briefing paper review, directed the committee's attention to point 8. He explained that there are six hydrologic units in the state, which were established by the U.S. Geological Survey (USGS). Existing statute specifies that one who takes water from one hydrologic unit to another hydrologic unit, including filling a water bottle from one unit to the next, is guilty of a misdemeanor. However, the division only wants to address [the transfer/removal] of significant amounts of water. The definition of a "significant amount of water" is specified in regulation and is what is currently permitted. Therefore, the proposal in HB 77 is to specify that it will address moving significant amounts of water between hydrologic units by permitting it. In response to Co-Chair Feige, Mr. Menefee informed the committee that the definition of "significant amount of water" can be found in the 11 AAC 93.035 (b)(1)-(4), Requirement to apply for the use of a significant amount of water, which read:

> (b) A person shall file an application for a water right under 11 AAC 93.040 or for a temporary water use authorization under 11 AAC 93.220 before
>
> (1) the consumptive use of more than 5,000 gallons of water from a single source in a single day;
>
> (2) the regular daily or recurring consumptive use of more than 500 gpd from a single source for more than 10 days per calendar year;

(3) the non-consumptive use of more than 30,000 gpd (0.05 cubic feet per second) from a single source; or

(4) any water use that may adversely affect the water rights of other appropriators or the public interest.

2:38:26 PM

MR. MENEFEE, returning to the briefing, moved on to point 9 that addresses appeals. The suggested change is to affect standing and burden of proof in appeals. Currently, some people will await an appeal on certain types of authorization decisions and not participate in the process. The goal is encourage public participation and do so during the process. The change is such that if the division has provided at least 30 days of public notice and the public has been informed that it needs to participate, one must participate in order to appeal at the end. The aforementioned allows the division to address and mitigate an individual's concerns and issues during the process while still maintaining the right to appeal if the individual continues to disagree with the division's decision. Mr. Menefee emphasized that the aforementioned is the standing aspect. With regard to the burden of proof aspect, existing statute allows an individual who is aggrieved [to file an appeal], which he opined provides an emotional connotation that an individual just does not like a project. The goal with the proposed change in HB 77 is for the individual to show that he/she is substantially and adversely affected [by a decision].

2:40:19 PM

REPRESENTATIVE SEATON posed an example of a fisherman who in the past harvested fish in Cook Inlet. If a project was proposed that would significantly impact a watershed, would the fisherman have to genetically illustrate that a certain portion of the fish he caught came from the impacted watershed in order to meet the suggested standard, he asked.

MR. MENEFEE said he could not provide a definitive answer for every situation as that would be pre-determining the appeals. However, he offered that the division would expect the fisherman to relate how the fisherman is impacted, which could be as simple as pointing to fish documentation that fish cycle around Cook Inlet and come from the various streams. Most likely, the division will not move into the scientific burden of proof of genetic sampling. Still, he opined that there would be the

desire to be presented with evidence as to why the individual believes he/she is substantially and adversely impacted.

REPRESENTATIVE SEATON opined that this matter will require more review as HB 77 would seem to shift the burden of proof of impact to the individual, which is of concern.

2:42:51 PM

CO-CHAIR SADDLER inquired as to the degree of participation an individual would have to put forth during the public review process to be eligible to appeal.

MR. MENEFEE clarified that the division would merely require that those who want to appeal at the end to have brought up the concern earlier, even just once. Furthermore, the requirement requires that the division tell the public that it has this opportunity and must take advantage of the opportunity in order to file an appeal and the notice has to be at least 30 days. Those authorizations that do not require 30 days' notice would not be included in this.

2:43:51 PM

MR. MENEFEE, continuing review of his briefing paper, directed attention to point 10. He explained that existing law specifies that only mineral closing orders are subject to public notice requirements. However, the goal is to ensure that the public is aware of any changes to the mineral entry, and thus HB 77 proposes to include mineral orders and leasehold location orders not just mineral closing orders to the actions that limit the use of the mineral estate on state lands of which the public should be made aware. Moving on to point 11, Mr. Menefee informed the committee that in the unorganized borough of the state DNR is the platting authority. Therefore, DNR has to make decisions regarding subdivision of land. This legislation would allow DNR to make decisions without public notice for alterations of platted boundaries when [the owners approve] and no public easements or rights-of-way are impacted. Currently, public notice has to be advertised for which the owner is required to pay. Furthermore, the owner has to wait 30 days. Historically, the division has found that no one comments on such matters as there is no public interest impacted, just the individual's land.

2:45:45 PM

REPRESENTATIVE SEATON inquired as to how these public easements impact stream rights-of-way. He further inquired as to whether any land with a stream or lake automatically has a public easement or does this mean the subdivision cannot restrict the public right-of-way.

MR. MENEFEE clarified that there are not easements on all streams and lakes; the [AS] .125 "to and along" easement is only in place when state lands are disposed. On the general stream located on federal land or that went from the federal government to a private individual that homesteaded, the state does not have a reservation as an easement along those water bodies. Since the state does not have any ownership interest, the department cannot place a "to and along" easement on the land. As that unorganized borough, the department could say an easement is necessary. The aforementioned, however, only comes into play when state land is disposed.

REPRESENTATIVE SEATON recalled that under that statute, any time there was an action by the state, an easement had to be placed along any streams or rivers. He asked whether the platting or subdivision would create that because platting and subdividing seems to be a state action.

MR. MENEFEE agreed to provide the committee an answer.

2:47:57 PM

CO-CHAIR FEIGE highlighted that there is a difference between a stream and a navigable waterway. He asked if ownership crosses navigable waterways or are areas platted such that the edge of the plat is the edge of the assumed right-of-way due to the navigability of the waterway.

MR. MENEFEE pointed out that there are two different types of navigability. First, state navigability in Title 38 is used to determine action when the state disposes of something. This navigability is a fairly low navigability standard. He pointed out that the state owns all the public water, whether navigable or not. There is public trust doctrine that allows the public to have rights to be able to use the water. Second, under federal navigability, the state owns the beds of the water. If the state already owns the beds of the water, when it is subdivided it would already be subdivided because [the state owns the bed of the water]. Therefore, that would not be an issue. The issue would arise when the owner owns the land [and the beds of the water].

2:49:48 PM

MR. MENEFEE, returning to the briefing document, continued with point 12 that re-defines public auction to include the online auctions. Point 13 relates the proposal of HB 77 to allow the division the option to perform preliminary decisions for non-oil and gas related decisions. The proposal would clarify AS 38.05.035, which merely specifies that for non-oil and gas decisions the division is required to perform a written decision. The change would also address the fact that the division performs preliminary findings and then final findings and sometimes only performs one finding and avoid charges that the division is not following the process. He noted that performing preliminary findings are actually more inclusive of the public. Point 14 encompasses miscellaneous minor statutory revisions that provide minor working revisions to make statutes more readable and understandable while also clarifying statutory intent.

2:51:58 PM

REPRESENTATIVE SEATON, referring to Section 44, asked if the change retroactively cancels actions that have been in the adjudicatory process or on appeal, which may include those who are in the aggrieved status. He inquired as to how Section 44 will work without retroactively dismissing actions that are being appealed.

MR. MENEFEE explained that current water reservations statute specifies that a person may hold a water reservation, but the proposed change would mean that no person can hold a water reservation. He then informed the committee that 438 water reservations have been applied for, of which 35 are from persons and the remainder are from agencies. Therefore, if this language is accepted by the legislature, the division would not be able to issue water reservations to applicants who are persons. However, those applications would be referred to the applicable agencies, which would decide whether to apply for the water reservation or not.

2:55:13 PM

REPRESENTATIVE SEATON opined that this proposal appears to retroactively and significantly change how things work since the agency is not required to continue the persons' applications that have already been submitted. Requiring that the

commissioner convert the existing applications by persons to an agency application would at least keep the public process intact.

MR. MENEFEE remarked that the agency may or may not agree that the applications by persons are worthwhile. To mandatorily convert these applications without evaluating each of them would mean the agency supports the application, although it may or may not.

REPRESENTATIVE SEATON clarified that he was not proposing a mandate for the agency to grant the application but rather a mandate to submit and consider the application. Again, canceling the applications by persons seems to retroactively change the public process, which he characterized as problematic.

2:57:31 PM

CO-CHAIR FEIGE requested a list of the names of the persons who would be impacted by passage of HB 77.

MR. MENEFEE agreed to do so.

2:57:55 PM

CO-CHAIR FEIGE then announced that HB 77 would be held over.

2:58:10 PM

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2.58 p.m.