ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE
February 8, 2013
1:03 p.m.

MEMBERS PRESENT

Representative Eric Feige, Co-Chair
Representative Dan Saddler, Co-Chair
Representative Peggy Wilson, Vice Chair (via teleconference)
Representative Mike Hawker
Representative Kurt Olson
Representative Paul Seaton
Representative Geran Tarr
Representative Chris Tuck

MEMBERS ABSENT

Representative Craig Johnson

OTHER LEGISLATORS PRESENT

Representative Andrew Josephson

COMMITTEE CALENDAR

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."

- MOVED CSHB 77(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

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
02/01/13	(H)	Heard & Held
02/01/13	(H)	MINUTE(RES)
02/06/13	(H)	RES AT 1:00 PM BARNES 124
02/06/13	(H)	Heard & Held
02/06/13	(H)	MINUTE(RES)
02/08/13	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

WYN MENEFEE, Chief of Operations
Division of Mining, Land and Water (DMLW)
Department of Natural Resources (DNR)
Anchorage, Alaska
POSITION STATEMENT: During hearing of HB 77, answered questions.

ASHLEY BROWN, Assistant Attorney General
Oil, Gas & Mining Section
Natural Resources Section
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: During hearing of HB 77, answered questions.

CHARLES SWANTON, Director
Division of Sport Fish
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska
POSITION STATEMENT: During hearing of HB 77, answered questions.

ACTION NARRATIVE

1:03:54 PM

CO-CHAIR ERIC FEIGE called the House Resources Standing Committee meeting to order at 1:03 p.m. Representatives Hawker, Tuck, P. Wilson (via teleconference), Olson, Tarr, Seaton, Saddler, and Feige were present at the call to order. Representative Josephson was also present.

HB 77-LAND DISPOSALS/EXCHANGES; WATER RIGHTS

1:04:18 PM

CO-CHAIR FEIGE announced that the only 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."

1:04:41 PM

The committee took a brief at-ease.

1:05:54 PM

CO-CHAIR FEIGE directed attention to the committee packet, which includes responses from DNR regarding previous questions pertaining to HB 77. In response to Co-Chair Saddler, Co-Chair Feige pointed out that the committee packet does contain a list of the various water reservations terminology and the definitions for them. He then announced that the committee would entertain amendments.

1:07:21 PM

REPRESENTATIVE HAWKER moved that the committee adopt Amendment 1, labeled 28-GH1524\A.1, Bullock, 1/31/13, which read:

Page 7, line 28:
Delete "The"
Insert "**Unless the remainder of the purchase price is paid in full at the time of the sale, the** [THE]"

Page 8, line 4:
Delete "contracts"
Insert "**a contract that provides for installment payments** [CONTRACTS]"

Page 8, line 5:
Delete "for each sale"
Insert "[FOR EACH SALE]"

Page 8, line 7:
Delete "contracts"
Insert "**a contract** [CONTRACTS]"

REPRESENTATIVE TARR objected.

1:07:49 PM

REPRESENTATIVE HAWKER then moved an amendment to Amendment 1 such that on line 4 of Amendment 1 "**the**" would be changed to "**a**".

REPRESENTATIVE SEATON inquired as to the effect of the amendment to Amendment 1.

REPRESENTATIVE HAWKER related that the administration requested the amendment to Amendment 1 in order that the full context of the language would refer to the more neutral "a contract".

There being no objection, the amendment to Amendment 1 was adopted.

1:09:35 PM

REPRESENTATIVE HAWKER, speaking to Amendment 1, as amended, explained that the changes clarify in statute that the purchase price at the time of sale may be paid in full without utilizing an installment contract. Amendment 1, as amended, improves the quality of statute by clarifying the intent of the statutes.

1:11:42 PM

CO-CHAIR SADDLER related his understanding that the changes proposed to page 8, line 5, would have the net effect of deleting the language "for each sale".

REPRESENTATIVE HAWKER agreed that the net effect is to delete the language "for each sale". Therefore, the language would read: "set out in contract the period for the payment of installments". The "for each sale" is superfluous language that would no longer apply to someone who pays cash up front. In further response to Co-Chair Saddler, Representative Hawker stated that the amendment is editing the legislation, which itself edits statute.

1:14:04 PM

REPRESENTATIVE TARR removed her objection. There being no further objections, Amendment 1, as amended, was adopted.

1:14:18 PM

REPRESENTATIVE TARR moved that the committee adopt Amendment 2, labeled 28-GH1524\A.3, Bullock, 2/7/13, which read:

Page 21, lines 14 - 23:
Delete all material.

Renumber the following bill sections accordingly.

Page 22, lines 11 - 19:
Delete all material.

Renumber the following bill sections accordingly.

Page 23, line 2:
Delete "Section 45"
Insert "Section 43"

Page 23, line 3:
Delete "sec. 47"
Insert "sec. 45"

REPRESENTATIVE HAWKER objected.

1:14:34 PM

REPRESENTATIVE TARR explained that Amendment 2 ensures that the water rights granted before the water reservations have precedence over those reservations. There is a conflict regarding how the aforementioned will work, and thus Amendment 2 would allow individuals to apply for water reservations. If the stream needs an amount of water, that [amount of water] would be preserved, she further explained.

1:15:38 PM

The committee took a brief at-ease.

1:16:56 PM

CO-CHAIR FEIGE then inquired as to the administration's position on Amendment 2.

1:17:04 PM

WYN MENEFEE, Chief of Operations, Division of Mining, Land and Water (DMLW), Department of Natural Resources (DNR), responded that the administration does not support the change embodied in Amendment 2.

1:17:25 PM

REPRESENTATIVE TUCK inquired as to what would happen if that section was deleted.

MR. MENEFEE related his understanding that the proposed change in Amendment 2 would remove Section 40 in its entirety, which removed "or a person" from the water reservations, and deletes the transition language that was a result of having Section 40. Amendment 2 would return to the original language in statute such that "or a person" would be able to apply for a water reservation. In further response to Representative Tuck, Mr. Menefee clarified that without Section 40, existing law remains.

1:19:11 PM

REPRESENTATIVE HAWKER maintained his objection to Amendment 2.

A roll call vote was taken. Representatives Tuck and Tarr voted in favor of the adoption of Amendment 2. Representatives Hawker, Olson, Seaton, P. Wilson, Saddler, and Feige voted against it. Therefore, Amendment 2 failed by a vote of 2-6.

1:20:12 PM

REPRESENTATIVE TARR moved that the committee adopt Amendment 3, labeled 28-GH1524\A.4, Bullock, 2/7/13, which read:

Page 22, lines 13 - 14:
Delete "The Department of Natural Resources shall return any applications and fees for applications"
Insert "Notwithstanding the amendment to AS 46.15.145(a) by sec. 40 of this Act, an application"

Page 22, line 15:
Delete "to persons"
Insert "by a person"

Page 22, lines 16 - 19:

Delete ". The commissioner of the Department of Natural Resources may refer applications that are no longer authorized to other state agencies for an independent evaluation and consideration of submission of a similar application to request a reservation to that agency"

Insert "shall be considered and acted on by the Department of Natural Resources under AS 46.15.145 until withdrawn by the applicant or a final determination is made"

REPRESENTATIVE HAWKER objected.

1:20:20 PM

REPRESENTATIVE TARR explained that Amendment 3 would allow those who have already applied for water reservations to be able to go through the process and the department would be allowed to make a decision. She noted that department documentation specifies that there are 35 outstanding applications.

1:21:18 PM

MR. MENEFEE related that the administration is opposed to Amendment 3.

REPRESENTATIVE SEATON informed the committee that he is opposing Amendment 3 not because he opposes the idea but because there is a better way in which to address it [via another amendment in the committee packet].

1:22:07 PM

REPRESENTATIVE TUCK asked if the department is seeking a better approach to this issue.

MR. MENEFEE answered that he believes there is another amendment that would address this more effectively.

REPRESENTATIVE TUCK commented that he did not want to pull the rug out from under those who have already started a fairly expensive permitting process. Therefore, he wanted to ensure that some grandfather rights are provided to those who have moved through the process per existing statute. He announced that he would support Amendment 3.

1:23:17 PM

REPRESENTATIVE TARR expressed hope that should no changes be made to this, the department will do a good job in contacting [those who have an outstanding application] as there are nongovernmental organizations (NGO) as well as several tribal entities who are the true Alaskans that have been here for several thousand years. She then pointed out that the earliest application was in 1992, and that there were also applications from 1993 and 2000. The Eklutna Village, for example, has been waiting a decade to hear about its application, which she imagined would be frustrating enough not to mention if HB 77 passes and the application [is deemed invalid]. Although the department has expressed concern to her regarding outside organizations having influence over Alaska projects, she refuted that in terms of tribal entities in the state.

CO-CHAIR SADDLER appreciated Representative Tarr's comments, but took some umbrage with the term "true Alaskans" referring to Alaska Natives because one of the beauties of Alaska and its constitution is that "we are all true Alaskans."

1:24:45 PM

REPRESENTATIVE HAWKER maintained his objection.

1:24:52 PM

A roll call vote was taken. Representatives Tarr and Tuck voted in favor of the adoption of Amendment 3. Representatives Hawker, Olson, Seaton, P. Wilson, Saddler, and Feige voted against it. Therefore, Amendment 3 failed by a vote of 2-6.

1:25:47 PM

REPRESENTATIVE TUCK moved that the committee adopt Amendment 4, labeled 28-GH1524\A.2, Bullock, 2/7/13, which read:

Page 21, line 15:
Delete "**or**"

Page 21, line 16:
Delete "[OR A PERSON]"
Insert "**,** or a person"

Page 21, line 19:
Delete "or"
Insert "**,** [OR]"

Page 21, line 19, following "times,":
Insert "**or indefinitely,**"

Page 22, lines 11 - 19:
Delete all material.

Renumber the following bill sections accordingly.

Page 23, line 2:
Delete "Section 45"
Insert "Section 44"

Page 23, line 3:
Delete "sec. 47"
Insert "sec. 46

REPRESENTATIVE HAWKER objected.

1:26:00 PM

REPRESENTATIVE TUCK said he was trying to grandfather those who have already applied for permits.

1:26:51 PM

MR. MENEFEE related that the administration is opposed to Amendment 4.

1:26:57 PM

REPRESENTATIVE HAWKER maintained his objection to Amendment 4.

1:27:10 PM

A roll call vote was taken. Representatives Tuck and Tarr voted in favor of the adoption of Amendment 4. Representatives Olson, Seaton, P. Wilson, Hawker, Saddler, and Feige voted against it. Therefore, Amendment 4 failed by a vote of 2-6.

1:27:55 PM

REPRESENTATIVE TARR moved that the committee adopt Amendment 5, labeled 28-GH1524\A.5, Bullock, 2/7/13, which read:

Page 6, line 24:
Delete "**substantially and**"

Page 9, line 31:
Delete "**A substantially and**"
Insert "**An**"

Page 11, line 5:
Delete "**substantially and**"

Page 11, line 25:
Delete "**A substantially and**"
Insert "**An**"

Page 18, line 6:
Delete "**, or substantially and**"
Insert "**or is**"

Page 18, line 15:
Delete "**substantially and**"

Page 19, line 3:
Delete "substantially and"
Page 19, line 5:
Delete "substantial and"

Page 19, line 7:
Delete "substantial and"

REPRESENTATIVE HAWKER objected to Amendment 5.

1:28:03 PM

REPRESENTATIVE TARR explained that she had difficulty finding any definition of "**substantially and adversely affected**" in statute. In reviewing court rules, the aforementioned standard is applied in each individual case, but there is not a set standard. Deleting "**substantially**" leaves "**adversely affected**" as the standard, which she characterized as clearer in terms of the outcome.

1:29:02 PM

REPRESENTATIVE SEATON noted that the forthcoming Amendment 9, which he will offer, is exactly the same as Amendment 5. He explained that the reason for either amendment is that it provides clarity.

1:30:03 PM

MR. MENEFEE related that the administration is opposed to Amendment 5.

1:30:08 PM

REPRESENTATIVE SEATON inquired as to how DNR would determine the cut-off line of "**substantially and adversely affected**".

MR. MENEFEE answered that DNR would use standard definitions of "substantial", which is defined in Merriam-Webster's New World Dictionary as "of having substance, real, actual, true, not imaginary, strong, solid". The Black's Law Dictionary defines "substantial" as "of real worth and importance belonging to substance, actually existing, real, not seeming or imaginary, not elusive, solid, true, veritable". The department believes that having the language in the legislation, helps to clarify that when one applies for an appeal that the appealer states that they are adversely affected and there is some backing to the appeal because it is real, true, and supportable.

1:31:38 PM

REPRESENTATIVE SEATON surmised then that a fisherman, for example, would not have to pass a threshold that 10 percent of his/her catch is from a stream with a water reservation. Rather, the fisherman would have to demonstrate from some sort of reasonable standard that they are going to be affected.

MR. MENEFEE replied that Representative Seaton is correct in the sense that it is a reasonable standard in that one can support why he/she is adversely affected in a substantial manner. There is no definition or level in statute that specifies a number of reports. Mr. Menefee related that the department has to evaluate [claims] based on the information provided for each case.

1:33:06 PM

CO-CHAIR SADDLER stated his understanding that ["substantial" refers] to whether [the claim] is substantive, real or not. He then inquired as to the definition of "aggrieved" under which the department is currently operating.

1:33:43 PM

ASHLEY BROWN, Assistant Attorney General, Oil, Gas & Mining Section, Natural Resources Section, Department of Law (DOL), explained that although "aggrieved" is also applied and defined on a case-by-case basis, courts in Alaska have found it to mean adversely affected.

1:34:08 PM

REPRESENTATIVE TARR inquired as to whether it would be helpful to have "substantial" defined in statute.

MS. BROWN responded that "substantial" and "substantially" are words of common use and there is a dictionary definition, and therefore she is not sure it is necessary to define it further in statute.

1:35:45 PM

The committee took a brief at-ease.

1:36:27 PM

REPRESENTATIVE SEATON said that since "substantial" is not a particular level, but rather a demonstration of actual adverse effect, he will not support Amendment 5. Having to show that one is adversely affected in a nonspecific way, with some facts and evidence, is a reasonable standard.

1:37:12 PM

REPRESENTATIVE TUCK inquired as to whether this would streamline the process or would those who have been aggrieved be able to bring back an appeal based on the definition of "substantially and adversely affected."

MR. MENEFEE, regarding streamlining, opined that the changes suggested in HB 77 would provide better substantiated appeals that show a direct impact that it can address. However, if the question is in regard to how Amendment 5 would streamline the process, he said that it does not necessarily streamline [the process].

1:38:07 PM

REPRESENTATIVE TUCK inquired as to why the change if modern day language is merely being used to achieve the same purpose.

MR. MENEFEE explained that the regular connotation of the term "aggrieved" is that one does not like something and does not necessarily encourage the appellant to substantiate that charge or specify a direct relationship of how he/she might be affected. However, use of the language ["substantially and adversely affected"] encourages the appellant to bring forth information illustrating how they are affected. In further response to Representative Tuck, Mr. Menefee clarified that the language change is an attempt to communicate to the appellant what the department wants in order to appropriately address the appeal.

CO-CHAIR SADDLER surmised that the "substantially and adversely affected" standard tries to avoid the situation in which the only reason for the appeal is a "vague disquiet, disagreement." Therefore, he announced that he would not support Amendment 5.

REPRESENTATIVE TARR remarked that "substantially and adversely affected" could be applied as a fairly broad standard that would remove access to much of the process.

1:41:26 PM

REPRESENTATIVE HAWKER maintained his objection to Amendment 5.

1:41:33 PM

A roll call vote was taken. Representative Tarr voted in favor of the adoption of Amendment 5. Representatives Olson, Seaton, P. Wilson, Hawker, Tuck, Saddler, and Feige voted against it. Therefore, Amendment 5 failed by a vote of 1-7.

1:42:18 PM

REPRESENTATIVE TUCK moved that the committee adopt Amendment 6, labeled 28-GH1524\A.6, Bullock, 2/7/13, which read:

Page 9, lines 7 - 19:
Delete all material.

Renumber the following bill sections accordingly.

Page 22, line 16:
Delete "sec. 40"
Insert "sec. 39"

Page 23, line 2:

Delete "Section 45"
Insert "Section 44"

Page 23, line 3:
Delete "sec. 47"
Insert "sec. 46"

REPRESENTATIVE HAWKER objected.

1:42:31 PM

REPRESENTATIVE TUCK reminded the committee that the purpose of HB 77 is to streamline the permitting process. He then pointed out that the language on page 9, lines 7-19, grants a two-year extension on an existing lease. Representative Tuck emphasized the need for the leaseholder to be responsible for keeping track of their lease deadlines. He opined that the two-year extension would create more work rather than less work for the department.

1:44:05 PM

MR. MENEFEE related that the administration is opposed to Amendment 6. In response to Co-Chair Feige, Mr. Menefee explained that the lease extension is provided in cases in which [the leaseholder] is applying for a preference right for a sale or applying for a new lease, one that substantially changes the purpose or operation of the existing lease, on the same location. He then pointed out that AS 38.05.102 specifies that at the termination of a lease, the leaseholder may apply for a preference right to sell the land to them. Therefore, the two-year period is necessary so that the buildings or other improvements to the land can remain in a long-term lease type of agreement, giving long-term site control during the two-year period. This allows the continuation of the financing.

1:45:26 PM

REPRESENTATIVE HAWKER cautioned the committee to consider the [proposals in the] context in the entire body of language. While the legislation addresses allowing a one-time extension of up to two years, the full context of the statute specifies "if the director determines it to be in the best interest of the state and the extension is necessary to prolong the lease while the department considers ...". Representative Hawker opined that the proposal in HB 77 creates an administrative efficiency that protects the interest of the lessee and lessors.

Therefore, he expressed strong opposition to Amendment 6 that would compromise the rights and privileges of either party.

1:46:48 PM

REPRESENTATIVE TUCK surmised then that at the termination of the lease, the lessee can file for an extension of the lease.

MR. MENEFEE read AS 38.05.102, which states:

> Sec. 38.05.102. Lessee preference. If land within a leasehold created under AS 38.05.070 - 38.05.105 is offered for sale or long-term lease at the termination of the existing leasehold, the director may, upon a finding that it is in the best interest of the state, allow the holder in good standing of that leasehold to purchase or lease the land for its appraised fair market value at the time of the sale or long-term lease.

The implication is that one must wait for the termination and it cannot be done in advance. Furthermore, it takes up to two years to go through another formal best interest decision to ensure whether to allow or disallow the preference right.

1:48:11 PM

REPRESENTATIVE TUCK inquired as to why the department did not allow the leaseholder to file two years earlier.

MR. MENEFEE said that the leaseholder could be allowed to apply earlier, but pointed out that Section 10(f)(3) deals with substantially changing the lease. Sometimes it takes the full lease period for the leaseholder to maximize and refine the operation. He opined that [the language in Section 10] provides DNR the liberty to address the request when it comes in. In response to Representative Tuck, Mr. Menefee confirmed that the consideration process could start prior to the termination of the lease, but [an extension] could not be granted until its termination. However, from his experience, he related that there are enough instances in which there is a situation that causes it to be dealt with at the end of the lease.

1:49:43 PM

REPRESENTATIVE TUCK asked whether the one-time renewal for up to two years can only happen once for a particular lease. He then

asked whether a renewal of a lease would be allowed for another two-year one-time extension.

MR. MENEFEE clarified that a renewal is not the same as a re-issue. The lease statute specifies that a renewal is one-time renewal that allows renewal for a period not to exceed the same period of the original lease term. A re-issue is a new decision on the lease and is a new lease; it does not renew or continue the old lease. Therefore, he interpreted Section 10 to mean that the extension could be used at the end of a first lease or a re-issued lease.

1:51:30 PM

REPRESENTATIVE TARR recalled Mr. Menefee's testimony regarding a scenario in which there are substantial changes at the end of a lease, which seems to contradict extending the lease. A lease with substantial changes at the end of it should be reviewed prior to applying a two-year extension to it.

MR. MENEFEE offered the following hypothetical example in which there is a lease for commercial recreation mining, but it is actually changed to a golf course and other aspects not included in the original application. He noted that the department receives a development plan specifying what the applicant intends to do and they are approved per their development plan and whatever the department modifies on it. Although it would be conceivable to say that the leaseholder should not do substantial changes, but the leaseholder may be in the process of relating that the business plan has changed. In such a situation, the public has to be informed how the land will now be used and a re-issue occurs.

1:53:47 PM

REPRESENTATIVE TARR asked whether Mr. Menefee had an example of a smaller mining operation that became quite large under the previous terms of the lease and the lease was extended for two years.

MR. MENEFEE said he was not sure exactly what Representative Tarr was saying. He clarified that his prior example was one in which a leaseholder could change their operation and the department would have to extend in order to go through the process of deciding whether that was appropriate.

1:54:17 PM

REPRESENTATIVE TARR pointed out that example was one in which the change was to a totally different business plan. She clarified that she is referring to an example in which the leaseholder did not have the funding originally necessary, but has since brought in investors and can develop a broader project.

MR. MENEFEE replied it is conceivable that there is a lease for which the plan was to develop four structures for lodging on the property and then [upon termination of the lease] the leaseholder wants to build a lodge that has other amenities beyond what was originally presented to the public. In such a situation, there would be a re-issue process.

1:55:31 PM

REPRESENTATIVE TUCK opined that in situations in which at the end of a contract there are substantial changes, those need to be brought to the public. He further opined that he would rather the legislation be written such that the applicant provide his/her application two years earlier.

1:56:27 PM

REPRESENTATIVE HAWKER maintained his objection to Amendment 6.

1:56:33 PM

A roll call vote was taken. Representatives Tarr and Tuck voted in favor of the adoption of Amendment 6. Representatives Seaton, P. Wilson, Hawker, Olson, Saddler, and Feige voted against it. Therefore, Amendment 6 failed by a vote of 2-6.

1:57:19 PM

REPRESENTATIVE TARR moved that the committee adopt Amendment 7, labeled 28-GH1524\A.7, Bullock, 2/7/13, which read:

> Page 11, lines 9 - 11:
> Delete "[THE DECISION OF THE COMMISSIONER UNDER THIS SUBSECTION MAY BE APPEALED TO THE SUPERIOR COURT.]"
> Insert "The decision of the commissioner under this subsection may be appealed to the superior court."

REPRESENTATIVE HAWKER objected.

1:57:27 PM

REPRESENTATIVE TARR explained that Amendment 7 ensures that there would be access to appeal to the Superior Court as there was some confusion with Legislative Legal Services regarding whether that right is maintained in the existing legislation.

1:58:07 PM

MR. MENEFEE related that the administration is opposed to Amendment 7. Upon consultation with the Department of Law, the department was informed that Amendment 7 would insert redundant language because AS 44.37.011 provides the capability to go to court. There is the right to go to court, but it is not necessary to state it in this provision.

1:58:45 PM

REPRESENTATIVE SEATON said he is very supportive of ensuring there is an appeal process. If the aforementioned is already provided in statute, then he finds the legislation appropriate as it is laid out for this matter. Representative Seaton clarified that his vote against Amendment 7 is not a vote against having the commissioner's decisions appealed because he believes that to be crucial.

1:59:43 PM

REPRESENTATIVE TARR emphasized that in her discussions with Legislative Legal Services, it was not interpreted the same way and the suggestion was to put forth this amendment.

2:00:31 PM

MS. BROWN agreed with Mr. Menefee. She then directed attention to Section 31, which amends AS 44.37.011. She directed further attention to page 18, lines 19-22, which is language from existing statute that read: "The commissioner's decision made upon reconsideration or the commissioner's failure to act on the **request** [PETITION] for reconsideration is a final administrative order for purposes of filing an appeal of the administrative decision to the court."

2:01:18 PM

REPRESENTATIVE HAWKER maintained his objection to Amendment 7.

2:01:25 PM

A roll call vote was taken. Representatives Tarr and Tuck voted in favor of the adoption of Amendment 7. Representatives Olson, Hawker, P. Wilson, Seaton, Saddler, and Feige voted against it. Therefore, Amendment 7 failed by a vote of 2-6.

2:02:12 PM

REPRESENTATIVE SEATON moved that the committee adopt Amendment 8, labeled 28-GH1524\A.8, Bullock, 2/7/13, which read:

Page 1, line 11:
Delete "and irreparable"

REPRESENTATIVE HAWKER objected.

2:02:21 PM

REPRESENTATIVE SEATON opined that there needs to be a balancing act and the commissioner's decision should be made based on harm that would occur to state land or resources. However, the qualifier of "irreparable" goes far beyond what should be in statute because having the standard of "significant and irreparable harm" would allow [general permits] to be issued more easily.

2:03:50 PM

CO-CHAIR FEIGE inquired as to how Amendment 8 would work in a situation in which a tree is cut. Such a situation could be characterized as "significant harm," although since the tree can grow back it is not necessarily "irreparable harm."

REPRESENTATIVE SEATON related his belief that the harvest for renewable resources would not be considered "significant harm." He clarified that what he is addressing is a situation in which the side consequences can be very significant and damage other resources of the state.

2:05:27 PM

REPRESENTATIVE P. WILSON pointed out that mining [leases] specify that at the end [of the lease] there is a reclamation process in which everything is returned to how it was initially.

Without the ["irreparable harm"] language, [the leaseholders would not be able to do reclamation].

2:06:19 PM

MR. MENEFEE related that the administration is opposed to Amendment 8. He highlighted the need to remember that a general permit is not the end all. A general permit is issued when there is a certain activity that can fit a certain parameter and if the activity fits, then a general permit is issued. However, if something does not fit under a general permit, it does not prohibit the department from authorizing it. He clarified that using the "irreparable harm" standard does not mean that the commissioner cannot still make a decision through delegated authority to authorize the action. Mr. Menefee reminded the committee that there is a public process through which the public is informed of the type of activity that is authorized by the general public. Furthermore, the public has an opportunity to appeal the department's decision, if it so chooses. Therefore, Mr. Menefee opined that [the proposed statute] provides the appropriate balance.

2:07:51 PM

REPRESENTATIVE SEATON pointed out the distinction between a general permit, which could be statewide, and a specific-permitted project. A specific-permitted project will have hearings, public notice on that particular activity whereas a general permit will allow operations to be conducted anywhere the general permit covers. Therefore, he opined that the standards for a general permit should be much more closely aligned with preserving not having significant harm to state land and resources. Any time those activities [of a general permit] that would be of significant harm want to go forward in a specific area, the activity should have a specific permit because it will be very concentrated.

2:09:39 PM

CO-CHAIR FEIGE requested that Mr. Menefee elaborate on the definition of a general permit as he has a different interpretation of what a general permit covers and is issued.

MR. MENEFEE, referring to land use permits, clarified that hearings are not held for those and, in fact, it is not required to be noticed to the public, although the department does provide notice. In terms of Representative Seaton's comments,

Mr. Menefee specified that when making a decision on a general permit, it is a decision saying that in the future a certain use will be allowed so long as it follows the prescribed stipulations and such. Each subsequent use of that general permit will not be noticed unless it has lasted 10 years. The original notice is still good for those permits continuing on under a general permit, whereas the notice for a land use permit would occur at the time of the application. In further response to Co-Chair Feige, he said that when general permits are created, the public is informed as to how it will be authorized and the general permit is authorized to an individual. There could be general permits without notification, such as the generally allowed uses in regulation for which individuals are allowed to perform different things on state land without notifying the department. Therefore, there are different levels of general permits. He then informed the committee that a general permit can be prescribed to a very specific location. For example, there could be a general permit for a stream crossing that is allowed at a specific area because there are no bedding areas for salmon. On the other hand, the area [of a general permit] may specify a broader area, such as Southcentral Alaska, because it typically has the same ecosystem. Furthermore, there could be a statewide general permit, such as for the non-timber forest products for which there is enough guidance that it does not matter the location in the state. Mr. Menefee stated that there are varying geographic references in a general permit based on how specific the department can get with regard to what is being allowed.

2:13:27 PM

CO-CHAIR SADDLER inquired as to how the commissioner would apply the "irreparable harm" standard and the timeline of it.

MR. MENEFEE replied that there are variable levels of application. The definition of "irreparable" for Merriam-Webster's Dictionary says "not reparable, irremediable," which means that if what is being damaged/destroyed cannot be fixed, but he noted that there is a "reasonableness" that has to be applied.

CO-CHAIR SADDLER remarked that he had some concerns with this [language], but now has some comfort with the definition of "irremediable."

2:14:54 PM

REPRESENTATIVE SEATON opined that what is being discussed is "significant" harm. He said he did not believe that having a timber sale is significant harm to state resources. Although there has been discussion of a reasonableness standard, he reminded the committee that these are statutes that will apply to the current and future commissioners. He reiterated that an "irreparable harm" standard should not be placed in statute and have that type of authority for a general permit. From his understanding, general permits are issued when one does not want to go through all the permitting on each activity but rather the general permit speaks to generally allowing an activity when there is not significant harm. In conclusion, Representative Seaton opined that the standard of significant harm is appropriate for general permits.

2:16:43 PM

REPRESENTATIVE HAWKER maintained his objection to Amendment 8.

2:16:48 PM

A roll call vote was taken. Representatives Tarr, Seaton, and Tuck voted in favor of the adoption of Amendment 8. Representatives Hawker, Olson, P. Wilson, Saddler, and Feige voted against it. Therefore, Amendment 8 failed by a vote of 3-5.

2:17:37 PM

REPRESENTATIVE SEATON said he would not offer Amendment 9, labeled 28-GH1524\A.9, Bullock, 2/7/13, included in committee members' packets.

2:17:50 PM

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

2:19:33 PM

REPRESENTATIVE SEATON moved that the committee adopt Amendment 10, labeled 28-GH1524\A.16, Bullock, 2/7/13, which read:

> Page 22, lines 13 - 19:
> Delete all material and insert:
> "TRANSITION: TRANSFER OF CERTAIN PENDING APPLICATIONS FOR RESERVED WATER. At the request of an applicant whose application is pending on the

effective date of this Act and who is no longer authorized to reserve water under AS 46.15.145(a), as amended by sec. 40 of this Act, the Department of Natural Resources shall transfer the pending application to an entity identified by the applicant that is authorized to reserve water under AS 46.15.145(a), as amended by sec. 40 of this Act. The entity receiving the application shall notify the Department of Natural Resources within two years after receiving the application as to whether the entity intends to pursue the reservation of water as requested in the application. If, within two years, the Department of Natural Resources does not receive notice that the entity intends to pursue the same or a smaller reservation or if the entity notifies the Department of Natural Resources that the entity will not pursue the reservation in the application, the Department of Natural Resources shall consider the application void and refund the application fee to the original applicant. If the entity receiving the application continues to pursue the reservation of water as requested in the application, the Department of Natural Resources shall consider the application, and, if a certificate of reservation is issued, the certificate will carry the priority date of the original application. The Department of Natural Resources may not bar an entity to which the department transfers an application under this section from pursuing the reservation of water that is described in the application."

REPRESENTATIVE HAWKER objected.

2:19:46 PM

REPRESENTATIVE SEATON moved that the committee adopt Conceptual Amendment 1 to Amendment 10, which would insert on line 4 of Amendment 10, following "WATER." the language "Within one year," and would on lines 19-21 of Amendment 10 delete the language "The Department of Natural Resources may not bar an entity to which the department transfers an application under this section from pursuing the reservation of water that is described in the application." There being no objection, Conceptual Amendment 1 to Amendment 10 was adopted.

2:21:25 PM

REPRESENTATIVE SEATON explained that Amendment 10 allows the transfer of a permit within the general parameters of that permit to a qualified agency that is established in HB 77. This is meant to preserve rights and avoid harming people already in the [application process].

2:22:49 PM

REPRESENTATIVE HAWKER pointed out that the language in the amendment refers to an eligible entity versus agency.

2:23:26 PM

MR. MENEFEE related the administration's support for Amendment 10 as amended.

2:23:52 PM

REPRESENTATIVE HAWKER withdrew his objection. There being no further objection, Conceptual Amendment 10, as amended, was adopted.

2:24:20 PM

REPRESENTATIVE TUCK moved that the committee adopt Amendment 11, labeled 28-GH1524\A.11, Bullock, 2/7/13, which read:

Page 1, line 8:
Delete "a new subsection"
Insert "new subsections"

Page 1, following line 13:
Insert a new subsection to read:
"(d) The commissioner may reject an application for a permit for a project the commissioner determines is not technically feasible, or is not economically feasible."

REPRESENTATIVE HAWKER objected.

2:24:36 PM

REPRESENTATIVE TUCK explained that Amendment 11 intends to prevent any backlogging of speculative permitting. Prior testimony has related that part of the backlog can be attributed to those who seek permits for speculative projects that are not viable. Amendment 11 attempts to provide the department with

the ability to filter those out and address viable projects that are technically and economically feasible.

2:25:36 PM

CO-CHAIR FEIGE inquired as to the specific types of permits Amendment 11 targets because one seeking potential mineral development first needs to determine whether there is a mineral resource of sufficient size to economically justify a mine and seek investors. Secondly, exploration has to occur for which certain permits have to be obtained. He asked if Representative Tuck is saying that exploration permits should not be allowed because a mine is not on the horizon.

REPRESENTATIVE TUCK related his understanding that there are different levels of exploration. He recalled testimony that an Oklahoma firm applied for and obtained permits, which increased the value of its stock, all the while there was no intention of moving forward and the company left the state with the mess. Amendment 11 is meant to prevent the aforementioned that procedurally bogs the [division] down for the purposes of speculation.

CO-CHAIR FEIGE inquired as to how the company left a mess if it did not do anything.

REPRESENTATIVE TUCK clarified that he was not the one that testified about this case.

2:27:50 PM

MR. MENEFEE informed the committee that the administration does not support Amendment 11.

2:27:59 PM

REPRESENTATIVE SEATON remarked he is unsure how the department would have the ability to determine whether [a project] is economically feasible when one applies for a permit, although he agrees that there are some permits the department could determine are not technically feasible. Since the standard is not appropriate for the department to make that determination, he expressed reluctance with [Amendment 11].

2:28:59 PM

CO-CHAIR FEIGE related his understanding that the department permits activities and establishes specific conditions for those activities, which he characterized as the nature of the permitting system.

MR. MENEFEE responded that is correct, recalling that only for a common carrier pipeline does the department have to determine the fit, willing, and able ability. For just about everything else, the department does not perform an economic feasibility study to ensure the company is sound enough to carry out what it says it will do. The restrictions are on what they have to do and the conditions of the land once the project has concluded. If the company does not succeed, it is obligated to take it out, which is why there is bonding.

2:30:01 PM

CO-CHAIR FEIGE surmised then that the bonding requirements provide a level of insurance to the state's interest, if the permittee does not follow the conditions of the permit, besides the penalties of law. The bonding requirements would provide a monetary avenue to recover or finance any remediation.

MR. MENEFEE noted his agreement.

2:30:30 PM

REPRESENTATIVE TUCK recalled prior testimony that the remediation did extend past the bond of the particular project. He noted that he left it to the department to determine what is technically and economically feasible as such definitions are in statute elsewhere. He mentioned a possible [determination to be] the certification of an ore body, which also provides investors some level of confidence with regard to moving forward. He then offered that [the feasibility of a project] could be determined by whether there is financial backing, such as investors that have certified [the project] through their process. Again, he reiterated his desire to leave it to the department to determine that and provide the ability for the department to reject frivolous permits. He then asked whether Amendment 11 provides something the department would use and would view as helping its procedures.

MR. MENEFEE characterized [the proposal in Amendment 11] as an encumbrance because a determination as to whether an ore body is good enough takes exploration and sometimes extensive exploration. Mr. Menefee emphasized that the department

authorizes more than just mining activities. Therefore, if Amendment 11 became part of statute, the department would have to determine, for example, if a proposed lodge is economically feasible that it will succeed. He said that AS 38.05.020 governs practically everything the department does, and thus would increase the department's workload, require advanced expertise, and it may not be possible if some people were not able to go out and do some things under authorization to determine whether they can succeed or not.

2:32:35 PM

CO-CHAIR FEIGE commented that the act of obtaining permits does require investment on the part of the applicant and has value. The fact that the stock price increases as a reflection of the value is not necessarily the committee's concern. As Mr. Menefee stated, it seems impossible to determine whether [a project] would payout or not.

2:33:30 PM

REPRESENTATIVE TUCK restated that the intent of Amendment 11 is to streamline the system and avoid cheating the system. The hope was to free resources in order to help those projects that really are viable. Therefore, based on the department's comments, Representative Tuck withdrew Amendment 11.

2:34:10 PM

REPRESENTATIVE TUCK moved that the committee adopt Amendment 12, labeled 28-GH1524\A.12, Bullock, 2/7/13, which read:

Page 1, line 11:
Delete "and"
Insert "or"

REPRESENTATIVE HAWKER objected.

2:34:24 PM

REPRESENTATIVE TUCK explained that Amendment 12 attempts to ensure that under general permitting, the department continues to consider significant harm and is allowed to keep the irreparable harm [requirement] as well.

2:35:05 PM

MR. MENEFEE stated that the administration is opposed Amendment 12. The existing language of HB 77 specifies that a general permit would not be issued for an activity that resulted in both "significant and irreparable harm." Changing the language to "significant or irreparable harm" would mean that [a general permit could not be issued] for an activity if either significant harm or irreparable harm. The department believes the proposed threshold in HB 77 is appropriate.

2:35:51 PM

REPRESENTATIVE TUCK expressed the need to ensure that there is concern about significant harm as well as irreparable harm. He further expressed the need to provide protection at the lowest common denominator.

2:36:16 PM

REPRESENTATIVE HAWKER maintained his objection to Amendment 12.

2:36:22 PM

A roll call vote was taken. Representatives Seaton, Tarr, and Tuck voted in favor of the adoption of Amendment 12. Representatives Olson, P. Wilson, Hawker, Saddler, and Feige voted against it. Therefore, Amendment 12 failed by a vote of 3-5.

2:37:07 PM

REPRESENTATIVE TUCK moved that the committee adopt Amendment 13, labeled 28-GH1524\A.13, Bullock, 2/7/13, which read:

> Page 1, line 6, following "**Act;**":
> Insert "**requiring the commissioner of fish and game to apply for the reservation of sufficient water to maintain a specified instream flow or level of water in certain rivers, lakes, and streams;**"
>
> Page 1, following line 7:
> Insert a new bill section to read:
> "*** Section 1.** AS 16.05.871 is amended by adding a new subsection to read:
> (e) The commissioner shall apply for the reservation of sufficient water under AS 46.15.145 to maintain a specified instream flow or level of water

in the rivers, lakes, and streams that are specified by the commissioner under (a) of this section."

Page 1, line 8:
Delete "**Section 1**"
Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Page 22, line 16:
Delete "sec. 40"
Insert "sec. 41"

Page 23, line 2:
Delete "Section 45"
Insert "Section 46"

Page 23, line 3:
Delete "sec. 47"
Insert "sec. 48"

REPRESENTATIVE HAWKER objected.

2:37:30 PM

REPRESENTATIVE TUCK explained that Amendment 13 is an attempt to protect the state's anadromous fish regardless of whether anyone applies to do so per Section 40. He related his understanding that the Alaska Department of Fish & Game publishes a book that lists the streams in Alaska. Amendment 13 would have the department request water reservations for those fish that may be impacted on those streams.

2:39:46 PM

CHARLES SWANTON, Director, Division of Sport Fish, Alaska Department of Fish & Game (ADF&G), said the administration opposes Amendment 13. "The Anadromous Waters Catalog" currently holds 17,897 individual records of anadromous waters in the state, including 16,200-plus rivers, 1,500 lakes, and 69 smaller water bodies. The aforementioned represent over 75,000 million miles of stream reaches. Each year about 322 new listings are added to the catalog. Mr. Swanton stated that this particular request would represent about 16,000-82,000 water reservations.

2:40:50 PM

REPRESENTATIVE SEATON posed a scenario in which someone applies for temporary water use or water extraction at a level that would be detrimental to the fish in the stream, and asked whether ADF&G would receive notice of that. Furthermore, would ADF&G apply for a water reservation on that particular project, he asked. He then requested that the DMLW review the priorities for water reservations and rights.

MR. SWANTON said that the question would better be answered by the Division of Habitat. However, he offered, "In essence, when those sorts of activities are taking place with regards to water a permit water extraction of those sorts of things are issued taking into consideration, are those water needs of the fish that are in that particular water body. So that's how it's handled on a more short-term basis." The water reservation aspect is a longer process that involves about three years of data collection.

2:43:24 PM

REPRESENTATIVE SEATON restated his question regarding whether there is a priority time that a water withdrawal would supersede the necessity for a water reservation for fish.

MR. MENEFEE clarified that for a temporary water use authorization or temporary water right, the department has to obtain comments from the Department of Environmental Conservation (DEC) and ADF&G as well as other governing agencies in order to understand the impact of the temporary water use withdrawal on fish habitat. Basically, the temporary water use authorizations would be issued with restrictions in order to protect that. Therefore, if the fish need a certain amount of water, there would be restrictions to ensure that no more than that amount of water necessary for the fish is taken. Likewise, when granting a water right, statute requires the department to consider the effect on fish and game resources and public recreational opportunities. Mr. Menefee confirmed that a water reservation is a tool to ensure that there is a sufficient quantity of water, but individually under the water rights and the temporary water use authorizations the same thing can be addressed individually as water is taken from the source.

2:45:26 PM

REPRESENTATIVE TARR, referring to page 2, Scenario 2, of Mr. Menefee's letter to the committee dated February 7, 2013, opined that the response seems to contradict his testimony that water

rights have to determine the effect with ADF&G and other public uses.

MR. MENEFEE specified that a water reservation is a form of a water right, and therefore both go under the doctrine of prior appropriation. The doctrine of prior appropriation means that the first thing appropriated has the greater right, and thus the first in line has the better right. If a water right in a water body is authorized and later someone comes forth with a water right application, the division could only issue the water reservation up to the remainder of the water that exists after the water right is fulfilled. Although the division does not issue by percentages, he offered that if 100 percent of the water body is flowing water and then an initial water right comes in for 30 percent of that water, a request for an 80 percent water reservation could not be issued; however, a water reservation of only 70 percent could be issued because that is all that is remaining in that water body. Per statute, the prior existing rights have to be addressed and a water reservation cannot obviate those prior rights.

2:47:43 PM

REPRESENTATIVE TARR then inquired as to how the department would address a scenario in which a previously existing water right would not afford the issuance of a water reservation in the amount necessary to preserve the needed instream flow for a healthy salmon run.

MR. MENEFEE answered that DMLW would seek to issue a water reservation in the greatest amount possible of the appropriable water left. Still, a prior existing right cannot be violated. He added that his staff was hard pressed to recall even one instance in which DMLW has had to reduce the amount of a water reservation or a temporary water use authorization by another right. Typically, with Alaska waters, both a water reservation and a water right and a temporary water use authorization can be fulfilled.

2:49:34 PM

REPRESENTATIVE TARR asked whether any of the pending unprocessed water reservations would fall into the category of having existing rights that are in conflict with the reservation applications.

MR. MENEFEE replied that he did not know, but said DMLW could research that. Such information would require reviewing every application in terms of how much was requested and determine if there was another water right. He then posed a scenario in which a water reservation application has not been certificated. If there was an application for a water right in that same water body, DMLW would have to evaluate whether [the pending water reservation application] would be in conflict with a later application for a water right.

2:51:04 PM

REPRESENTATIVE TUCK surmised that under the existing process anyone can file a water right or a water reservation for any stream. If someone files for a water right, a water reservation of any sort is not activated unless a government entity or division or a person applies for that water reservation. Once the water reservation is set, it holds a right that the person is not using him/herself but rather is there for the four specified purposes [in AS 46.15.145(a)(1)-(4)]. He then surmised that a water reservation would not preempt an existing water right, and asked if that is correct.

MR. MENEFEE replied yes.

2:52:11 PM

REPRESENTATIVE TUCK then explained that Amendment 13 attempts to have a method to consider how much water should be present for fish. He clarified that he did not mean for [the passage of Amendment 13] to result in ADF&G having to apply for a water reservation for every stream in the state. He expressed the need to have a mechanism by which ADF&G can file for a water reservation when a water right is filed for those streams in the catalog. He acknowledged that Amendment 13 does not accomplish all that, but he expressed interest in finding a solution.

2:54:22 PM

REPRESENTATIVE HAWKER maintained his objection to Amendment 13.

2:54:29 PM

A roll call vote was taken. Representatives Tarr and Tuck voted in favor of the adoption of Amendment 13. Representatives Seaton, P. Wilson, Hawker, Olson, Saddler, and Feige voted against it. Therefore, Amendment 13 failed by a vote of 2-6.

2:55:07 PM

REPRESENTATIVE TUCK moved that the committee adopt Amendment 14, labeled 28-GH1524\A.14, Bullock, 2/7/13, which read:

Page 21, line 15:
Delete "**or**"

Page 21, line 16, following "States":
Insert "**, or a Native entity in the state that is on the list of Indian entities that are recognized and eligible to receive services from the United States Bureau of Indian Affairs, Department of the Interior, published in 67 Federal Register 46328-01 on July 12, 2002**"

REPRESENTATIVE HAWKER objected.

2:55:30 PM

REPRESENTATIVE TUCK explained that Amendment 14 would insert language allowing a Native entity to file for a water reservation.

2:56:11 PM

MR. MENEFEE related the administration's opposition to Amendment 14. He informed the committee that there is a general policy in terms of how tribal entities and federally recognized tribes are treated throughout statute; treating those groups inconsistently in statute would create a challenge. Should such a change be deemed necessary, it should be a general across-the-board change. Furthermore, because of the sovereign status of federally recognized tribes, sovereign immunity and other issues that are quite complex have to be addressed when dealing with authorizations. Therefore, the administration does not believe the change embodied in Amendment 14 is appropriate.

2:58:11 PM

REPRESENTATIVE SEATON asked whether the department considers a tribe "a person."

MR. MENEFEE answered that would be the definition because anything that is not a federal agency, a state agency, or political subdivision of the state would fall under "a person."

Therefore, "a person" would include Native corporations and federally recognized tribes.

2:59:01 PM

REPRESENTATIVE TUCK stated that currently, Native entities can file. Of the list of 35 [applicants] that have not had their permits passed, some are from Native entities. He asked if the reason some of these permits are not passed is because there are other locations [in statute] where the Native entities cannot do it.

MR. MENEFEE replied, "No, that is not the reason." There are 438 water reservation applications and the division has had challenges with staffing to address those. Currently, DMLW is in the process of ramping up the processing of water reservations because it is part of the backlog. In the last two years, 32 of the 62 existing water reservations in the state were authorized.

3:00:26 PM

REPRESENTATIVE TUCK said Amendment 14 would basically allow [DMLW] to do what it is already doing and he would like to provide Native Alaskans the opportunity to preserve their areas and be able to have the opportunity to file for a water reservation.

3:01:00 PM

REPRESENTATIVE TARR pointed out that eliminating 35 of the 438 water reservation applicants amounts to less than 10 percent of the total. She then questioned whether it would be more effective to review the 90 percent of outstanding applications if part of the issue is efficiency of the process.

MR. MENEFEE clarified that the other [403] applications for water reservations are from agencies, which typically come from the Bureau of Land Management (BLM), the U.S. Fish & Wildlife Service, and [the Alaska Department of Fish & Game]. These are applications that do not fall under the "person" category.

3:01:51 PM

REPRESENTATIVE TARR questioned then why something is not being done to make it more efficient with those applications.

Specifically, she inquired as to whether there are opportunities that could make it a more efficient process.

MR. MENEFEE related his belief that if there is supportable, sound information from which the division can make the decision, the division can go through a water reservation decision just as it is explained in statute. The division has not been able to "shave off" the procedure [specified in statute] because they are good considerations for a water reservation. What is laid out in statute requires a lot of data gathering, which is occurring and as time passes more of those [water reservation applications] will be processed.

3:02:59 PM

REPRESENTATIVE SEATON expressed concern with the absence of [a reference to a "Native entity"]. He reminded the committee that under federal law there are subsistence rights for fish and game and there is nothing more critical to fishing activities than having adequate water preserved for that. He expressed further concern that this is almost requiring federal overreach to take over water reservations in streams because Native tribes are not being allowed to have the basis of that subsistence right to preserve or even apply for water reservations. Representative Seaton informed the committee that he would be supporting Amendment 14, although not particularly for its exact language.

3:05:14 PM

REPRESENTATIVE OLSON asked whether the committee has been contacted regarding Amendment 14.

CO-CHAIR FEIGE responded that he did not believe so.

REPRESENTATIVE OLSON said he has not been contacted about Amendment 14.

CO-CHAIR FEIGE said he has not either, and then inquired as to whether other members have been contacted about Amendment 14.

REPRESENTATIVE HAWKER said he has not either.

REPRESENTATIVE TARR interjected that she has been contacted about Amendment 14.

3:05:45 PM

REPRESENTATIVE HAWKER reminded the committee that the underlying proposal of HB 77 proposes to limit the applications for these reservations to political subdivisions of the state or the United States. He expressed concern that Amendment 14 creates preferential rights amongst Alaskan citizens as individuals, which is territory that should not be entered into lightly. There has been a long-term debate in Alaska regarding granting statutorily preferential rights amongst individual Alaskans. He said he is not willing to go into this matter with an amendment to a larger piece of legislation, as the matter merits consideration on its own.

3:06:59 PM

CO-CHAIR FEIGE presumed that tribal entities that exist within the state still have the ability to request through DNR that governmental divisions request the reservations.

MR. MENEFEE noted his agreement.

3:07:30 PM

REPRESENTATIVE SEATON agreed, but stressed that the tribal entities will not request [a water reservation] from a state agency but rather a federal agency, which is permitted in HB 77. There are federal guarantees of subsistence rights, he noted. This legislation removes tribal entities from being able to apply for water reservations and Amendment 14 does not add them in but rather ensures they are not removed.

3:08:50 PM

REPRESENTATIVE TUCK reiterated that Amendment 14 attempts to allow Native entities to continue to apply for water reservations.

3:09:04 PM

REPRESENTATIVE HAWKER maintained his objection to Amendment 14.

3:09:11 PM

A roll call vote was taken. Representatives Tarr, Tuck, and Seaton voted in favor of the adoption of Amendment 14. Representatives Hawker, Olson, Saddler, and Feige voted against it. Therefore, Amendment 14 failed by a vote of 3-4.

3:10:06 PM

CO-CHAIR FEIGE, upon determining no one wished to testify, closed public testimony.

3:10:37 PM

CO-CHAIR SADDLER moved to report HB 77, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 77(RES) was reported from the House Resources Standing Committee.

3:11:03 PM

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:11 p.m.