

ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE

March 18, 2013

1:03 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 Kurt Olson
Representative Paul Seaton
Representative Geran Tarr
Representative Chris Tuck

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 158

"An Act authorizing the commissioner of natural resources to implement a hunting guide concession program or otherwise limit the number of individuals authorized to conduct big game commercial guiding on state land."

- HEARD & HELD

SENATE BILL NO. 27

"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

SENATE BILL NO. 21

"An Act relating to the interest rate applicable to certain amounts due for fees, taxes, and payments made and property delivered to the Department of Revenue; providing a tax credit against the corporation income tax for qualified oil and gas service industry expenditures; relating to the oil and gas production tax rate; relating to gas used in the state; relating

to monthly installment payments of the oil and gas production tax; relating to oil and gas production tax credits for certain losses and expenditures; relating to oil and gas production tax credit certificates; relating to nontransferable tax credits based on production; relating to the oil and gas tax credit fund; relating to annual statements by producers and explorers; establishing the Oil and Gas Competitiveness Review Board; making conforming amendments; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 158

SHORT TITLE: DNR HUNTING CONCESSIONS

SPONSOR(S): REPRESENTATIVE(S) COSTELLO

03/05/13	(H)	READ THE FIRST TIME - REFERRALS
03/05/13	(H)	RES, JUD, FIN
03/11/13	(H)	RES AT 1:00 PM BARNES 124
03/11/13	(H)	Heard & Held
03/11/13	(H)	MINUTE(RES)
03/13/13	(H)	RES AT 1:00 PM BARNES 124
03/13/13	(H)	Heard & Held
03/13/13	(H)	MINUTE(RES)
03/15/13	(H)	RES AT 1:00 PM BARNES 124
03/15/13	(H)	Heard & Held
03/15/13	(H)	MINUTE(RES)
03/18/13	(H)	RES AT 1:00 PM BARNES 124

BILL: SB 27

SHORT TITLE: REGULATION OF DREDGE AND FILL ACTIVITIES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/18/13	(S)	READ THE FIRST TIME - REFERRALS
01/18/13	(S)	RES, FIN
02/02/13	(S)	RES AT 10:30 AM BUTROVICH 205
02/02/13	(S)	Heard & Held
02/02/13	(S)	MINUTE(RES)
02/04/13	(S)	RES AT 3:30 PM BUTROVICH 205
02/04/13	(S)	Heard & Held
02/04/13	(S)	MINUTE(RES)
02/08/13	(S)	RES AT 3:30 PM BUTROVICH 205
02/08/13	(S)	Moved SB 27 Out of Committee
02/08/13	(S)	MINUTE(RES)
02/11/13	(S)	RES RPT 2DP 3NR

02/11/13 (S) DP: GIESSEL, DYSON
02/11/13 (S) NR: MICCICHE, BISHOP, FAIRCLOUGH
02/26/13 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/26/13 (S) Heard & Held
02/26/13 (S) MINUTE(FIN)
02/27/13 (S) FIN RPT 5DP 2NR
02/27/13 (S) DP: MEYER, KELLY, FAIRCLOUGH, BISHOP,
DUNLEAVY
02/27/13 (S) NR: HOFFMAN, OLSON
02/27/13 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/27/13 (S) Moved SB 27 Out of Committee
02/27/13 (S) MINUTE(FIN)
03/11/13 (S) TRANSMITTED TO (H)
03/11/13 (S) VERSION: SB 27
03/13/13 (H) READ THE FIRST TIME - REFERRALS
03/13/13 (H) RES, FIN
03/18/13 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

ROGER SKOGEN

Koliganek, Alaska

POSITION STATEMENT: Testified in support of HB 158.

NICK JOHNSON

Koliganek, Alaska

POSITION STATEMENT: Testified in support of HB 158.

ROBERT "BOBBY" LARSON, Sr.

Koliganek, Alaska

POSITION STATEMENT: Testified during the discussion of HB 158.

LARRY HARTIG, Commissioner

Department of Environmental Conservation (DEC)

Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of SB 27.

MICHELLE BONNET HALE, Director

Division of Water

Department of Environmental Conservation (DEC)

Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion of SB 27.

TOM CRAFFORD, Director

Office of Project Management & Permitting

Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion of SB 27.

RUTH HAMILTON HESSE, Senior Assistant Attorney General
Environmental Section
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of SB 27.

JAMES SULLIVAN, Representative
Legislative Organizer
Southeast Alaska Conservation Council (SEACC)
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to SB 27.

ACTION NARRATIVE

[1:03:23 PM](#)

CO-CHAIR ERIC FEIGE called the House Resources Standing Committee meeting to order at 1:03 p.m. Representatives Hawker, Johnson, Seaton, P. Wilson, Tarr, Tuck, Saddler, and Feige were present at the call to order. Representative Olson arrived as the meeting was in progress.

HB 158-DNR HUNTING CONCESSIONS

[1:03:47 PM](#)

CO-CHAIR FEIGE announced that the first order of business would be HOUSE BILL NO. 158, "An Act authorizing the commissioner of natural resources to implement a hunting guide concession program or otherwise limit the number of individuals authorized to conduct big game commercial guiding on state land."

[1:04:10 PM](#)

ROGER SKOGEN stated he is a 38-year resident of Koliganek, which is located 70 air miles northeast of Dillingham in the Bristol Bay area in Game Management Unit (GMU) 17B. He said he is a resident hunter and subsistence user, but not a guide. He testified in support of HB 158 or something similar to limit the number of outfitters in the area. Prior to 1988, one guide operated in an exclusive guide area on the upper Nushagak River

area. This guide managed the guide area and protected the wildlife resource, such that if he took a few moose out of one spot, he would move to another spot the next year to allow the population to rebound. He described the wildlife resource providing an abundance of moose, caribou, and black bear for local resident hunters, as well as for the outfitter. He highlighted that local residents use the local game for their [food sources].

MR. SKOGEN said that in 1988 under the Alaska Supreme Court's Oswichek decision, state land was opened up to an unlimited number of guides including the Nushagak River, with each one competing with the other guides and local residents for limited wildlife resource. In 1997, at the peak of the Mulchatna caribou herd, as many as 12 outfitter camps were scattered within a 10-mile stretch of river from King Salmon to the [Chulitna] River. He described the hunting as being totally out of control. Actually, little or no self-management happened due to the competition for the resources.

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MR. SKOGEN recalled that one outfitter took 25 moose two years in a row out of one area. Once the area was depleted he moved on to another area. As a result, the moose and black bear populations were harvested to a critical low and have not yet recovered. This represents a major concern to local resident hunters who depend on the resource for their livelihood. Further, it creates problems for guides who do not have the quality hunts due to the high traffic.

MR. SKOGEN said he would like to see guiding returned to something similar to the exclusive guide areas prior to 1988. He suggested it would result in fewer game management problems and would maintain an abundance of wildlife resources for all the parties involved.

MR. SKOGEN said HB 158 does not address the issue of transporters, but this issue needs to be addressed. He recalled that in 1997 to 2000s, transporters created a huge problem with thousands of drop-off hunters flooding the area near the caribou herd, which nearly decimated the Mulchatna caribou herd. He reiterated his support for HB 158.

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NICK JOHNSON offered his support of HB 158 because local subsistence hunters have difficulty competing with guides. He highlighted that the guides hunt in the [Nushagak], Mulchatna, and Nuyakuk Rivers. In closing, he said it is very difficult for local residents.

[1:09:02 PM](#)

ROBERT "BOBBY" LARSON, Sr. stated he is a resident, subsistence hunter and this bill would better manage the resources to sustain the area.

[1:09:25 PM](#)

CO-CHAIR FEIGE closed public testimony on HB 158.

[HB 158 was held over.]

[1:09:52 PM](#)

The committee took an at-ease from 1:09 p.m. to 1:10 p.m.

SB 27-REGULATION OF DREDGE AND FILL ACTIVITIES

[1:10:54 PM](#)

CO-CHAIR SADDLER announced that the next order of business would be SENATE BILL NO. 27, "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."

CO-CHAIR SADDLER pointed out that SB 27 is identical to HB 78, which the committee heard on February 1, 2013.

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LARRY HARTIG, Commissioner, Department of Environmental Conservation (DEC), introduced himself. He stated he previously testified on February 1, 2013, on HB 78, which is identical to SB 27. He recapped his testimony, noting he had presented reasons that the Clean Water Act (CWA) Section 404 permitting program is very important to Alaska. Additionally, Commissioner Sullivan specifically spoke to how it fits in with the administration's broader efforts to make permitting actions more

efficient and predictable. Lastly, he had briefly discussed the fiscal impact of HB 78.

COMMISSIONER HARTIG said the Section 404 permitting program (404) is one of two big Clean Water Act (CWA) programs, with the other being the Section 402, Wastewater Discharge permitting program (402) for which DEC recently obtained primacy. The 404 program is sometimes called the dredge and fill program or wetlands program. The 404 program pertains to the permitting of fill material being placed into U.S. waters, including wetlands. Since Alaska has 174 million acres or 65 percent of the nation's wetlands, this program is critical to the state. Basically, most large permitting projects require 404 permits.

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COMMISSIONER HARTIG stated that the 404 program is currently administered by the U.S. Army Corps of Engineers [Corps] with the U.S. Environmental Protection Agency's (EPAs) oversight, but the Clean Water Act specifically provides for state to take primary enforcement responsibility or primacy over that program.

COMMISSIONER HARTIG reviewed the steps that would be needed for the state to administer the program and obtain primacy. He explained the process to develop an application as rigorous as the 404 and to develop a program that contains the essential elements of the federal government's program. While the state doesn't change the rules, it can set its own priorities, determine what permits go first, and with the legislature's support obtain sufficient resources to give timely turnaround on permit applications. He anticipated, based on the Section 402 application, that it will take several years to develop the Section 404 application.

COMMISSIONER HARTIG related the EPA will review the Section 404 application and decide whether to grant the state primacy, similar to the Section 402 process. However, if the state does receives primary, it does not mean the state will issue all of the Section 404 permits in the state since a geographic limitation exists for the program. The DEC would not obtain primacy to issue 404 permits in which fill material is going into tidally-influenced waters, waters that are or could be used for interstate and foreign commerce, and wetlands adjacent to those waters. This means the DEC anticipates significant dialogue with the Corps and the EPA with respect to the interpretation and application of terms and to build a consensus

on exactly what areas of the state and permits within those areas that the state would take primacy.

1:16:05 PM

COMMISSIONER HARTIG pointed out two components of SB 27. First, one component is the aforementioned primacy for the permitting program. Second, the final component is for the state to work with the Corps to evaluate and issue state programmatic general permits. These permits authorize dredge and fill operations, but are more limited in terms of the nature of the activity that is being permitted, including those similar in nature with minimal cumulative impacts. Thus the DEC could issue one permit and different permittees could ask to be authorized under that general permit without having to pursue their own permit.

COMMISSIONER HARTIG recapped that the state has the opportunity not only to pursue primacy, but also to pursue efforts through the Corps for authority to administer the general permits. These two components of the bill are not mutually exclusive.

COMMISSIONER HARTIG said lastly the department discussed the importance of the 404 program to the state. Given the substantial wetlands in Alaska, many projects require Section 404 permits. The state has the ability to control its own destiny in terms of prioritizing permits. Delays to large permitting projects often result in substantial costs to the project. The ability to competently and quickly respond to permit applications is essential. Additionally, it's essential to have the permitting staff close to the permittees to answer questions, as well as to be held accountable to the legislature and the public, which are all critical elements to consider when building a responsive program.

1:18:15 PM

COMMISSIONER HARTIG turned to the fiscal impacts. Unfortunately, the department currently cannot provide details because it depends on the contingencies set by the Corps and what programmatic general permits will be developed. However, the department can provide information on the resources and costs to administer a program to evaluate the costs and benefits of primacy and prepare an application for a program since the DEC has done so with the Section 402 program application.

COMMISSIONER HARTIG related that by fiscal year 2016, the DEC anticipates it will know what the program would consist of and

the department will consult with the legislature prior to creating its 404 program.

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REPRESENTATIVE SEATON recalled the committee previously asked how many U.S. Army Corps of Engineers' staff or other federal staff currently work on 404 permits within Alaska.

COMMISSIONER HARTIG recalled the Corps has 49 staff located in Alaska, but was unsure how many of the agency's staff currently works on permitting. Many of the permits are in geographic areas that would be excluded from the program under primacy.

[1:20:28 PM](#)

MICHELLE BONNET HALE, Director, Division of Water, Department of Environmental Conservation (DEC), stated that the Corps has 49 employees and a budget of less than \$8 million for the agency's Section 404 permitting activity; however, she did not have a precise breakdown of the permitting activities. As the commissioner stated, the state does not know what percentage of the program the DEC would be able to assume from the Corps. Hence she was uncertain of the number of positions the state will need for the program. She felt relatively certain the staff would not be more than 49, but she was unsure how much less than 49 would be necessary to conduct the program. In response to Representative Tuck, she answered that the Corps estimated the backlog for permits is 50 or 50 plus applications.

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REPRESENTATIVE TUCK asked whether the director could find out how long it currently takes applicants to obtain Section 404 permits from the Corps, noting the time for the state to process could vary. He wondered how the state would be able to reduce the permitting time by obtaining primacy.

MS. HALE agreed to request the staff information from the Corps.

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CO-CHAIR SADDLER asked for the source of the delay and whether it is from a delay in the permitting process or a delay in the National Environmental Policy Act of 1969 (NEPA) process.

MS. HALE offered to speak to some of the delays that are occurring in the permitting backlog. One thing has been that the Corps has experienced significant reductions in staff and budget, which has seriously impacted the agency's ability to issue permits. In terms of the delays in the NEPA process, she deferred to Mr. Crafford.

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TOM CRAFFORD, Director, Office of Project Management & Permitting, Department of Natural Resources (DNR), said he could not currently provide details, but pointed out that the 404 permit is basically "the" federal permit for most resource development projects, which means the Corps is the de facto lead agency for the NEPA process. Meanwhile, the Corps has experienced staff reductions, which means this is potentially a growing issue due to the agency's [reduced] capacity to handle the workload. Previously, the responsibility had fallen on the EPA to issue wastewater discharge permits under Section 402 of the Clean Water Act. He reminded members the state received a phased implementation of primacy for Section 402 permitting, which was completed last year.

[MS. HALE nodded yes.]

MR. CRAFFORD remarked that the state needs the Corps to shoulder an additional burden at a time when the agency is experiencing staffing and budget reductions.

[1:25:15 PM](#)

REPRESENTATIVE P. WILSON understood the federal cuts took place before sequestration.

MR. CRAFFORD agreed that the department heard about the budget cuts prior to sequestration. He added that the cuts and staff reductions have disproportionately been occurring at the higher levels within the organization, which represents an additional concern. Some senior staff that the department has regarded as being the most experienced U.S. Army Corps of Engineer's staff in Alaska have either retired or moved elsewhere.

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REPRESENTATIVE SEATON turned to the regional general permits, pointing out his district has 70 miles of gasline in Homer and an additional 9 miles to construct in Kachemak City. He asked

whether the state feels the general permits are not currently being issued. He related that, in his experience over the last two years, the general permits have been available. He understood that the reviews typically happen in the winter, and he recalled Homer and Kachemak City experienced a nine month process. He asked for further clarification.

MS. HALE stated that the way she envisioned the statewide general program permit would work will be to add to the general permits administered by the U.S. Army Corps of Engineers (Corps). However, the state and Corps could work together to issue a statewide programmatic general permit, with the state actually administering the permit. First, the joint process would provide the DEC the ability to learn the program by working with the Corps. Second, it would also help DEC administer the general permit and take advantage of some of the efficiencies that DNR and DEC have already implemented as part of the permit reform, for example, with some of the online permitting application systems.

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REPRESENTATIVE SEATON asked whether the state is currently unable to do this without having primacy. He recalled the general permit process in the Homer area, which seemed to work fairly well.

MS. HALE answered the way the statewide programmatic general program currently works, including the state's coordinated effort with the Corps, does not require the state to have primacy. She characterized it as being a two-fold approach. One, both agencies assume primacy for the program overall, while the agencies continue to plan to work with the Corps on issuing statewide general programmatic permits. Additionally, the state will have the potential opportunity to work with the Corps to develop statewide programmatic general permits for common activities such as addressing the backlog in placer mining permits and for shale oil permits, if shale oil takes off.

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REPRESENTATIVE SEATON understood the state does not have to have primacy to issue statewide general permits or regional general permits.

MS. HALE answered that the DEC is not currently proceeding with that issue right now, but it is part of the work which will occur if the bill passes.

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CO-CHAIR SADDLER clarified that under the bill the state DEC would be to pursue primacy as well as state programmatic general permitting program.

MS. HALE answered that is correct. The idea would be to pursue both at the same time, with significant benefits to pursue the statewide general programmatic permits at the same time as primacy. In the first place, it would benefit applicants, since they would have a shorter turnaround time on permits. Secondly, the DEC would have an opportunity to learn a lot about the program, which would also benefit the application process.

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MR. CRAFFORD added one important point to remember is that general permits, whether the permits are state general programmatic general permits, nationwide, or regional general permits, have an underlying premise is that the adverse impacts are individually and cumulatively minimal; however, while minimal is not a defined term, it is clear the general permits apply to a recurring type of activity, which is of a lesser level of impact. He stated that many large development projects will not be eligible for a general permit. Additionally, one real advantage of the general permits is they are applicable for lands the state could be eligible to receive primacy for and the lands that the federal government would have to retain primacy. Therefore the general permits are not geographically limited, which is one of the reasons why the state is simultaneously considering primacy and opportunities to assume these general permits under a state programmatic general permit.

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REPRESENTATIVE SEATON asked for a reference in the bill that identifies the authority the agency has to issue general permits or a reference to indicate the DEC does not currently have the authority to issue a general permit.

MS. HALE answered that DNR has the authority now to pursue statewide programmatic general permits. This bill would provide the DEC with the resources to do so.

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REPRESENTATIVE TARR recalled Dave Casey, Supervisor, Kenai and Juneau Field Offices, Regulatory Division - Alaska District, testified before the joint Administrative Regulation Review Committee that 62 percent of the Corps' permits are general permits, of which 85 percent are processed in less than 60 days. The remaining 37 percent pertain to individual permits, with 70 percent processed in less than 120 days. She did not recall Mr. Casey mentioning a significant backlog, but those were the time periods for permits to be issued on a completed application. She asked for clarification on where the backlog exists.

MS. HALE answered that the figure of 50 plus backlog is a figure she received in communication with the Corps; however, she acknowledged that she doesn't have the precise figures.

REPRESENTATIVE TARR related the Corps made over 1,100 decisions last year.

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MR. CRAFFORD added that over the past five years the Corps has averaged over 1,536 actions per year, which means for both general permits and individual permits. He explained that the summary statistics merit more attention because in the permitting process for the Section 404 permits, the actual application or submittal of a completed application precedes the approval. In fact, a substantial work is performed on what is deemed to be a completed application. He recalled reviewing some statistics dating back to 2008 that indicated approximately 700 days and \$277,000 are spent in obtaining a completed application, therefore, the statistics don't really reflect all of the time necessary to achieve a completed application.

MR. CRAFFORD indicated beyond that some of the real difficulties which have arisen have not been made in reference to the overall suite of permits, but rather to some specific projects that are of real significance to the state. For example, the CD-5 [ConocoPhillips Alaska, Inc.'s drill site inside the National Petroleum Reserve] experienced a delay of several years resulting in considerable costs.

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CO-CHAIR SADDLER referred to some information in members' packets indicates one of the benefits to the state is that activities would not automatically trigger a National Environmental Policy Act of 1969 (NEPA) process. He asked for the average length of time for a wetlands dredge and fill permit.

MR. CRAFFORD responded he did not really have a specific answer because the NEPA process is really an open-ended process. When specific steps occur, specific opportunities and durations for comment periods are triggered; however, the actual NEPA process takes as long as it takes. He offered his belief that the durations for different projects would vary in accordance with the complexity of the project.

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CO-CHAIR SADDLER asked for an approximate timeframe.

MR. CRAFFORD, generally speaking, answered that the NEPA process is on the order of three years for a large development project.

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REPRESENTATIVE SEATON understood it takes a fairly long time to obtain the submitted data to achieve a completed application. He asked whether the state can reduce the timeframe.

MR. CRAFFORD answered no. He suggested that the intent of the bill is to evaluate and determine whether the state could provide those efficiencies. In essence, those are the types of questions the state would seek to answer through this process.

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CO-CHAIR SADDLER requested the wetlands primacy placed in context of where the state stands in terms of taking over federal air and water quality.

MS. HALE offered to address the question from a water quality aspect. The DEC recently received primacy for the fourth and final phase of the Section 402 wastewater discharge permitting program. However, it has been a little more than a decade since the state began applying for that program. In October 2008, the DEC received the first phase and the final three phases occurred over the years. She described the process as an incredible learning process for the state and perhaps for the EPA, as well.

She said the state has the experience in applying for and taking on the Section 402 program, which puts the state in a good position for pursuing the Section 404 program.

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CO-CHAIR SADDLER asked why this would put the state in a good position.

MS. HALE answered that the experience of taking on a program of this magnitude is a daunting task. She explained that to apply for the program requires the state to write a very complete program description and to outline the program in great detail, plus to then implement the program, including hiring and training staff. Having just gone through that process and having transformed the program from a fledging program to the mature one it is today, prepares the agency to take on another big program, both in the application and in the actual program implementation.

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REPRESENTATIVE TARR read from the Alaska Oil and Gas Association (AOGA) letter in members' packets, "State primacy of dredge and fill permitting, however, may pose administrative and financial barriers unique to Section 404 assumption." Additionally, the letter goes on to state, "The requirement that states assume the entire dredge and fill program all at once can result in a complex, lengthy and expensive process with no certainty that EPA will approve the request." She also recalled an article from the Alaska Journal of Commerce, during the time when state was trying to take over the National Pollutant Discharge Elimination System (NPDES) Permit Program, referenced the cost to the permit applicants. The article indicated that the DEC has estimated on average the costs for the permits would increase by 80 percent. For example, if a company or municipality now pays \$1,000 for the state certification the federal permit costs will increase to \$1,800. She asked whether the situation would be similar and if so, to estimate any cost increases.

MS. HALE responded that it is very hard to tell at this point what the cost would be, but she thinks that would be part of the process, although she anticipated there might be some increase in costs if the DEC is performing the bulk of the work rather than certifying projects; however, without going through the evaluation process, it is difficult to project.

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REPRESENTATIVE TARR asked whether it would be an extraordinary situation to consider that costs could rise similarly by 80 percent.

MS. HALE supposed that was possible; however, she was unsure of what it will take to issue the permits so she couldn't project the cost to do so.

CO-CHAIR SADDLER recalled information in members' packets - although he couldn't specify the location - which indicates that while the individual permit application process might cost more, the net result for streamlining and shortening the process would result in less cost for the applicant. Even though the permitting fees would increase, the overall cost of the process would be lower.

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CO-CHAIR SADDLER added that a question arose with respect to the end result of the evaluation process if the state prepares the complicated application as to whether the EPA is obligated to grant the state primacy.

COMMISSIONER HARTIG returned to the previous question. He indicated one of the savings the department anticipates would be achieved by not having to go through NEPA or the Endangered Species Act (ESA) consultation. He stated that some reasons exist to indicate there would be actual cost savings; for example, obtaining permits more quickly translates into not losing a construction season, which can result in substantially lower costs. When it comes down to the decision point and asking for the positions and funding to move forward, he anticipated that industry will have evaluated the process and if the industry disagrees with the department, they will let the legislature know. However, he suspected the industry will support the change.

COMMISSIONER HARTIG addressed the next question by stating that when the state was granted primacy for the Section 402 program, it went through an appeal to the Ninth Circuit Court of Appeal. Just prior to Alaska receiving primacy, the State of Arizona also received primacy. What the state learned is that if the state's application is complete, EPA does not have discretion; however, there is a lot of due deference given to the agency to

determine whether an application is complete and if the program is a comparable program. Although it's written that the EPA shall approve an application that is complete, it gets back to a judgment call as to when the application is complete.

1:47:02 PM

RUTH HAMILTON HESSE, Senior Assistant Attorney General, Environmental Section, Department of Law (DOL), agreed with Commissioner Hartig, that there are nine criteria by which EPA reviews an application for the Section 402 program and if the state - any state - satisfies the criteria, they are entitled to approval of their program. She characterized that some Section 402 criteria would pertain to the approval of Section 404 program; however, there is a lot of back and forth between the state and federal agency as to whether the federal agency is comfortable that sufficient information is in the state's application to satisfy the criteria. While there is some discretion, ultimately, if the state provides the information that satisfies the criteria, the federal agencies are supposed to approve it.

1:48:28 PM

CO-CHAIR SADDLER understood the Clean Water Act envisions or intends for the state to take over the program. He asked for clarification on efforts by the federal government to encourage states to take on wetlands permitting.

COMMISSIONER HARTIG said he has not heard any concerted effort by the Corps to get states to take on the Section 404 program. He further said it doesn't surprise him that they are not lined up to get in; in particular, for Western states with big resource projects since they don't have a lot of wetlands. Thus it makes sense to him that Alaska would be among the first states to take over primacy of the program. He indicated he considers the federal agency's reaction to date since they've only known for a couple months that the state is considering primacy. He offered his belief that the federal agencies have been helpful in assisting the state to evaluate what it would take. For example, he has a conference call scheduled on Friday with DNR, DEC, an assistant attorney general, and the regional administrator of the EPA, the head of the U.S. Army Corps of Engineers in Alaska, and their senior program staff to review what would be entailed in the application process. While he does not see a national effort to get states to take over

primacy, he has seen a collaborative effort thus far in the federal agency reaction to the state's potential application.

MS. HESSE added that several states have considered taking on the program and have evaluated it in varying degrees of detail. She thought there is ample opportunity for several states to have had dialogue with the federal agencies on the Section 404 program.

[1:50:51 PM](#)

REPRESENTATIVE P. WILSON said the DEC's fact sheet of benefits states that not taking primacy has consequences as the state tries to build up its infrastructure and put citizens to work. She asked the commissioner to elaborate.

COMMISSIONER HARTIG responded that he thinks the fact sheet refers to a propensity of wetlands in the state and the number of large projects in the state that will trigger Section 404 permitting, as well as NEPA and ESA consultation. Consequently there are costs in terms of the complexity and potential delays if issues are not handled expeditiously and efficiently. Thus a lot is at stake in Alaska in terms of development of its natural resources to ensure that the state has a good well-performing Section 404 program. Due the declining federal budgets, especially given the potential for less support for big resource development projects in Alaska, the concerns over the Section 404 program become greater. Under the original CWA, the state wanted to run its programs. At this juncture, it seems like the state should at least take this opportunity to carefully consider whether the current path of federal primacy is the best recourse for the state. . He recommended the state consider [the bill], given the need for more responsible resource development in Alaska. He expressed confidence that the state has the ability to take on the 404 permitting effort and do a more efficient job over the long term.

[1:53:11 PM](#)

REPRESENTATIVE TARR recalled from the U.S. Army Corps of Engineers' presentation in another committee, that even if the state were to take over Section 404 permitting, the Corps would still retain the jurisdiction for tidal waters in adjacent wetlands, navigable waters in the adjacent wetlands, and navigable waters under Section 10 [of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)]. She wanted to consider the cost/benefit analysis since that would account for a substantial

amount of wetlands in the state and wondered if it would be worth spending \$10 million on an application. Further, considering the DEC's 404 primacy, the state would add 18 new positions, one of which wasn't funded this year, but is absorbed by the department. She asked why this would be a good priority for the department at this time.

MR. CRAFFORD responded that is why the process has been structured as it is in this bill. He characterized this as being an evaluation at this time. Accordingly, in terms of primacy, the DEC would need to determine costs and positions required and present the legislature with a fully fleshed out program so the legislature could make an informed decision on whether the Section 404 primacy is really worth it. Again, at this point it is an evaluation to determine if the state wants to pursue primacy.

[1:55:14 PM](#)

CO-CHAIR SADDLER asked to quantify the amount of wetlands in Alaska that is tidally influenced and could be used for interstate or foreign commerce.

MR. CRAFFORD responded the answer is unknown right now; however, a disproportionate number of permits are in the coastal areas due to the population. Considering the area the state could assume primacy, it's important to consider the permitting workload. To a degree, that's part of the evaluation, which is to figure out the scale.

CO-CHAIR SADDLER referred to a letter in members' packets from the Alaska Oil and Gas Association (AOGA) dated February 4, 2013 that states "We applaud the administration's spoken objective to also pursue shared general permitting responsibility in navigable waters." He asked whether state programmatic general permitting authority would apply to coastal non-assumable waters, subject to interstate and foreign commerce.

MR. CRAFFORD answered indeed it would if the state received state programmatic general permitting authority as that would not be geographically limited. Thus it would apply to lands for which the federal agencies would have retained primacy as well lands would be eligible for primacy in the state.

CO-CHAIR SADDLER understood these are answers obtained from the evaluation process.

[1:57:08 PM](#)

REPRESENTATIVE SEATON referred to a December 2012 study entitled, "Study of the Costs and Benefits of the State Assumption of the Federal [Section] 404 Clean Water Act Permitting Program." This report from the Virginia Department of Environmental Quality reads, "Currently only two States have assumed the § 404 program within their borders and this is due mainly to the prohibitive costs and complexities involved with the assumption process." He related when stakeholders were polled they believed the cost outweighed the potential benefits. He asked whether DNR has reviewed the feasibility study. In response to a question, he reiterated the excerpt from the study.

CO-CHAIR SADDLER asked for a copy for committee members.

REPRESENTATIVE SEATON agreed to provide it to members. [provided soon thereafter in committee].

[1:58:55 PM](#)

MR. CRAFFORD responded he is aware of the document and that the state of Virginia recently went through a similar process. The DNR is in the process of evaluating the similarities and differences between other state's experiences and Alaska's circumstances. In fact, Deputy Commissioner Lynn Kent [DEC], is traveling to a conference of the Association of State Wetlands Managers. The degrees that the state experienced in terms of state primacy will be one of the topics discussed. He offered his belief one of the organizers is the architect of the aforementioned report.

MR. CRAFFORD further anticipated that the bulk of wetlands in Virginia would be in the coastal areas the state would not be eligible to obtain primacy. To a great extent, wetlands in Alaska are more widely distributed within Interior Alaska. He anticipated that would be a major difference between Virginia and Alaska.

[2:00:39 PM](#)

REPRESENTATIVE SEATON referred again to the Virginia document, and read, "Virginia's existing SPGP [general permit] provides many of the benefits identified as potential benefits of Section 404 assumption without the costs associated with assumption." Specifically, in lieu of assuming Section 404, Virginia is

suggesting it has the ability to proceed with the statewide permit assumption, just as Mr. Crafford suggested the state would have the ability to proceed with the statewide general permits.

[MR. CRAFFORD nodded yes.]

[2:01:16 PM](#)

REPRESENTATIVE SEATON turned to the definitions and pointed out the Corps states that "ephemeral streams" fall under the category of non-navigable and not relatively permanent tributaries and following the U.S. Supreme Court decision in *Rapanos v. U.S.* [547 U.S. 715 (2006)] and *Carabell v. United States* [Army Corps of Engineers 391 F.3d 704 (2004)] fall under federal jurisdiction when they have a significant nexus to traditional navigable waters. This means that streams which do not even flow year round, primarily runoff, will still be under federal jurisdiction according to those two U.S. Supreme Court decisions. Therefore the amount of territory affected might be smaller than anticipated.

[2:02:09 PM](#)

CO-CHAIR SADDLER said his experience with wetlands issues is that there are a lot of attorneys involved. He related his understanding that one of the benefits to having the state assume primacy is such questions would be decided in state jurisdictions rather than federal jurisdictions.

MS. HESSE responded the *Rapanos v. U.S.* [547 U.S. 715 (2006)] that Representative Seaton referenced is still being teased out today in terms of the guidance with respect to the two major opinions. In essence, deciding what would be considered federal waters may not be as "cut and dried" for the state's primacy program, in terms of what would be tidally influenced navigable waters. Thus the evaluation the state would be embarking upon would be to look at the two tests and some of the issues over the next two to four years. She characterized it as a difficult case to grapple with and many attorneys will disagree as to how it should be applied and interpreted.

[2:03:43 PM](#)

CO-CHAIR SADDLER asked for the effect of locally impacted communities to comment if the state assumed primacy, and whether

they would have a larger or smaller opportunity to weigh in on development activities.

COMMISSIONER HARTIG responded that question came up in the state's 402 primacy effort. The DEC worked closely with the EPA to hold discussions with tribes and develop a communication protocol for tribes and rural Alaska. The DEC was awarded a national grant to put in place a pilot program for enhanced communication developed with a series of villages on the Yukon River. Thus the DEC took this effort seriously and he assumed the same thing for the 404 program effort. The goal would be to have comparable if not better communication with rural stakeholders, including the tribes.

[2:05:11 PM](#)

REPRESENTATIVE HAWKER asked whether he could discuss the fiscal note.

CO-CHAIR SADDLER asked to hold the question.

[2:05:29 PM](#)

REPRESENTATIVE TARR referred to testimony prepared by the [DEC] for the Senate Finance Committee, which compared the fiscal impacts between the 402 and the 404 process. She read, as follows [original punctuation provided]:

One difference in the two paths to primacy is that DEC was already operating a robust wastewater permitting program and the existing 29 positions were transferred to the 402 program. While DEC and DNR have significant experience on large projects with the 404 program, the current DEC investment is about 3-4 FTE spread over approximately 7 employees."

REPRESENTATIVE TARR said it is difficult for her to make a determination on whether [the 404 process] is even worth the evaluation since it would cost several million dollars without having some direction about the anticipated fiscal impact of a program. She asked whether this could be part of the discussion with Representative Hawker's questions on the fiscal note.

CO-CHAIR SADDLER recapped the question is whether it's worth it.

REPRESENTATIVE TARR agreed, especially if the department doesn't have positions it can transfer to the [404 program]. She

wondered what type of permanent commitment would be made in terms of staffing levels since the federal government could take the program back, which could cause further delays [in permitting].

CO-CHAIR SADDLER believed the actual costs are indeterminate.

2:07:26 PM

REPRESENTATIVE HAWKER recalled the 2/1/13 committee meeting indicated this is a two-stage process. He characterized this as the germinal and exploratory work to consider how a program might be administrated. However, the fiscal note does not represent an all-encompassing cost of the program put in some time after 2016. The fiscal note for SB 27 does state that some costs will be offset by program receipts. While he recalled the fiscal note is a research rather than a program implementation, he previously asked for an estimate about the cost after 2016 for truly implementing the program, but has not received it. He asked for an estimate based on prior experience.

REPRESENTATIVE P. WILSON requested clarification on the fiscal note.

REPRESENTATIVE HAWKER stated his aforementioned comments were general comments about the fiscal notes and the process within the DEC; however, the lead fiscal note is from the DEC, water quality. Furthermore, the department anticipates ongoing, long-term commitments from DNR and potentially the Department of Law to continue to operate the program. He expressed an interest in the long-range cost.

2:10:22 PM

REPRESENTATIVE HAWKER referred to fiscal note 1 from DEC, Water Quality [dated 1/11/2013]. One thing that caught his attention is that the personal services expenses level to FY 19, funded by a [Reimbursable Services Agreement (RSA)] adds an additional new [personal] services required for DEC/DNR, of approximately \$1.3 million. He expressed concern that the personal services funding does not increase, yet it is not likely staff costs would stay the same over six years. He suggested that some type of escalator clause be included. He characterized his concerns as being "truth in budgeting." Incidentally, the services analysis on page 2 of the fiscal note does not match the figures for services in FY 14 and FY 15, which are \$879.5 and \$908.2,

specifically, but the analysis accounts for \$849.0 and \$850.0. He asked for an explanation of the discrepancy.

MS. HALE offered to research this and report back to the committee.

[2:12:32 PM](#)

REPRESENTATIVE HAWKER turned to fiscal note 2 for DNR [dated 1/14/13]. He referred to page 2 of the DEC fiscal note to the \$361.0 RSA to DNR, which is fine, as is page 3 of the DEC's fiscal note listing \$566.7, which is matched by the DNR fiscal note. However, the DOL fiscal note does not show the interagency receipt authority for the \$187.5 RSA. Since the DOL fiscal note is a zero fiscal note, it implies that DOL will be able to accommodate the DEC and the fiscal note will be basically transferring spending authority to the department. He wondered why there isn't an increase in the DOL's interagency receipt authority to match the DEC fiscal note.

MS. HESSE offered to try to answer the question even though she is not adept at the fiscal note policy.

CO-CHAIR SADDLER referred to page 2 of DOL fiscal note analysis, which indicates the DOL has sufficient interagency receipt authority for the proposed \$187.5 agreement.

REPRESENTATIVE HAWKER interpreted the fiscal notes as written as giving the DOL an additional \$187.5 to spend "as they wish."

MS. HESSE answered the DOL would not be "looking to pad the agency's budget" through this process. She explained the intent is similar to the 402 program in which the services the DOL rendered, not to add discretionary budget. She said the DOL reviewed the DOL's effort with the 402 program and estimated that to evaluate the 402 program and prepare a package to apply for the 404 program. If necessary, the DOL could amend the fiscal note.

REPRESENTATIVE HAWKER asked the DOL to consider amending the fiscal note to reflect the agency acknowledging the receipt. He asked whether the money disappeared.

MS. HESSE answered no, it did not. She will get back to the committee

[2:18:48 PM](#)

CO-CHAIR SADDLER asked whether the \$187.5 per year would provide legal services as DEC goes through the primacy application preparation, but not necessarily to provide a legal defense if an appeal is filed.

MS. HESSE believed it does not, but said she will check.

COMMISSIONER HARTIG stated the appeal would be an appeal of EPA's decision so DOL would be the party responding. The state at most would look at intervening in the case, while the EPA would have the "laboring oar."

[2:19:38 PM](#)

CO-CHAIR SADDLER asked whether any financial assistance is provided by the EPA for states, such as Alaska, for taking over primacy.

MS. HESSE responded there are some grant funds available. She deferred to the DEC.

COMMISSIONER HARTIG deferred to Ms. Hale.

MS. HALE answered the EPA has a grant program, called the Wetlands Program Development Grant Program, which includes work which might be done to submit an application, but is more broad than that so it also would apply to a lot of states that are not applying for 404 primacy. For instance, it would include things like developing a wetlands program plan, but also work that includes "up to submitting an application for 404." She said it is competitive among different states, but the DEC is currently in the process of applying for the grant.

[2:21:42 PM](#)

REPRESENTATIVE TARR inquired whether other department priorities will be pushed aside and how this proposal fits in overall priorities.

COMMISSIONER HARTIG answered that is a good question because adding anything to the department brings rise to how it will affect things during a declining revenue scenario. His view is that the state will solve its fiscal problem with resource development. Because the state doesn't have manufacturing or large population growth, economic growth will come from natural resource development. Of the critical permits over 30 years,

this is certainly one of them. Additionally, the 404 process for a particular project can influence other companies to decide whether to move forward with another project. He said without examining it solely from the DEC's perspective, he thinks that the 404 process becomes more magnified. Granted, just viewing from a DEC perspective he becomes more worried. He anticipated the project would be supported by general fund, but also by permitting fees. From the state's perspective, he thinks 404 permitting primacy should have a pretty high priority. The state should take a "really solid look at it" and consider the best path forward in terms of the state's future development. He said, "From a DEC perspective, I guess I'm willing to take my chances is the way I'd put it. We'll keep advocating for the priorities. We'll try to look for efficiencies within the department and put those priorities in front of the legislature and ask you guys to make the hard decision."

2:24:30 PM

REPRESENTATIVE TUCK said he does not have enough information to decide if there is a problem. After all, the state is considering spending millions of dollars just to see if there is a problem [with Section 404]. He was unsure if complaints about the process exist. In any event, the problems with the CD-5 [ConocoPhillips Alaska, Inc.'s drill site inside the National Petroleum Reserve (NPR)] may have been a sole problem, which might also have been fixed with changes to permitting. Likewise, the state removed the coastal zone management recently and he has concerns about growing government. Besides, without knowing the backlogs or how long it takes to go through the process, and being able to forecast the process, it is difficult to know if this [404 process] should be considered. It would be helpful to have concrete evidence presented to see how the state can be more effective.

REPRESENTATIVE P. WILSON said Southeast Alaska experiences permitting problems all the time. She receives numerous calls in this regard.

MR. CRAFFORD shared Representative Tuck's concerns. Granted, there is a lot the state doesn't know at this time. He has been involved in the coordination of the permitting process for numerous projects. The Department of Natural Resources, Office of Project Management and Permitting (OPMP) has project coordinators involved with oil and gas, alternative energy, and mining over a wide spectrum of projects. He reiterated that the 404 permit is the lead federal permit and the Corps is the de

facto NEPA lead federal agency. During the NEPA process the DNR is a cooperating agency, which means the DNR's member does not have a "full seat" at the table. A frustration is that once the NEPA process is completed, "the door is shut." The federal agency then makes permitting decisions behind the closed door, which is precisely the table the DNR would like to be present at to help assure the best interests of Alaska, and Alaska specific technical information is included. Absent the greater role, the state feels it is at a disadvantage and unable to fully participate.

[2:28:19 PM](#)

CO-CHAIR FEIGE observed that CD-5 represents an example of resource development delays and he anticipated other issues will arise. However, CD-5 is the gateway to NPR-A and further development there will provide revenues to the state. To have significant delays on significant projects because the state lacks control over the 404 permitting process translates into perhaps a couple of billion dollars. He asked whether this is a fair observation.

MR. CRAFTORD concurred, saying part of the evaluation process is to determine what it might be worth to the state. He said, "These are big ticket issues. And I think it behooves the state to take a serious look at what those advantages might be and what it might cost to make an informed decision."

[2:30:12 PM](#)

CO-CHAIR SADDLER inquired how long the evaluation process was for seeking primacy for water quality.

MS. HALE answered the evaluation process for primacy occurred several times, but at the time the process was approved probably spanned a five-year period. She described this as including the evaluation, the back and forth with EPA, and determining whether to move forward. Additionally, probably the process was preceded by a couple of years of work group efforts, she said. Even so, it's a longer process than the one outlined in SB 27, in part, because the DEC did not have the experience it now has, which gives the agency the confidence to proceed with the evaluation. In response to a question, she agreed the DEC has gained knowledge in the process.

[2:31:38 PM](#)

REPRESENTATIVE SEATON fully understood the impact of delays, but maintained that the types of large projects would still fall under federal purview because of navigable waters. He wondered whether it's worth investing \$14 million and 12 new employees, since the statewide general permit process currently used is available. After all, Virginia felt like it obtained most of the benefit through the aforementioned process without the expenses. In any case, wouldn't it be better for the DEC step up its statewide general permitting process instead of spending four years in the process of considering Section 404 primacy.

COMMISSIONER HARTIG suggested there is a misconception that the programmatic general permits under discussion are for projects with a common impact, similar to placer mining in the Interior or shale gas projects at wetland sites. These projects look alike, but have the same impacts, which must be individually and cumulatively minimal. Still, that's quite a distinction from the other types of projects such as CD-5, which are relatively unique and have a large impact relative to the other types. Thus more general permits is not a panacea, but are used to maximize efforts while pursuing the primacy authority to issue individual 404 permits for the larger and more unique projects.

[2:35:05 PM](#)

REPRESENTATIVE P. WILSON commented it is important the state be able to do some general permits because in her district projects permitting has held up small projects for years, such as driveway culverts or building houses. She said something must be done because it's so frustrating and costly.

REPRESENTATIVE SEATON concurred, citing an example of 80 miles of gas pipelines on the Kenai Peninsula. Granted, the state needs to concentrate efforts on statewide general permits. However, for large projects which invariably impact navigable waters, the Corps would still retain primacy. Therefore, he was unsure how the 404 permitting would solve any problem since navigable waters or ephemeral streams are likely to be present.

COMMISSIONER HARTIG answered that during the first year the DEC will work with the Corps to parse out how many of the permits would be excluded from primacy and how many would be within the area in which primacy would apply. However, to leap towards saying, "we know the answer to that right now" is scary because "we don't know the answer right now." It would take some effort for the agencies to provide an estimate to the legislature. He

anticipated that it would likely be closer to a decision in FY 2016.

[2:38:53 PM](#)

CO-CHAIR SADDLER asked for the future decision points for the legislature in the event the SB 27 is passed by the legislature.

COMMISSIONER HARTIG answered the legislature controls the budget so it will have opportunities. He anticipated the DEC should have information at the end of fiscal year 2015, in terms of the types of permits, the jurisdiction, the types of permits, as well as having held discussions with the Corps on general programmatic permits. At that point, the departments would be back before the legislature with an assessment of what resources are necessary for the next step, which is to build up the program. Naturally, this would be based on whether the decision is that the 404 primacy process will benefit the state and should move forward.

[2:40:27 PM](#)

REPRESENTATIVE TARR recapped the 402 process, such that the work group started in 2003 and the application was completed in 2008, which wasn't fully implemented until 2012. It seems the process took a decade. She asked whether the department anticipates a work group would need to be convened since that work hasn't already been done.

COMMISSIONER HARTIG responded that the state was starting with an unknown when it began the 402 process, which was also true for the EPA Region 10 since it was a pretty new experience for them, too. He came in as the commissioner in 2007, and he recalled the EPA discovered over 200 deficiencies with the application. He further recalled the department quickly got that reduced to a handful and approached the legislature for statutory changes necessary for primacy. Collectively, the EPA and the state agreed to phase in the primacy. Currently, he anticipates shortening up the timeframe. In terms of a work group, he envisioned a parallel process being used, one in which public input could be obtained; however, he does not see that as adding time to the project.

[2:43:11 PM](#)

CO-CHAIR SADDLER opened public testimony on SB 27.

[2:43:37 PM](#)

JAMES SULLIVAN, Representative, Legislative Organizer, Southeast Alaska Conservation Council (SEACC), stated he has been listening to the proceedings on this bill. It seems to him that the commissioners of DEC and DNR keep mentioning all the unknowns. One of the difficulties is there is a great deal that is known. In fact, it would be easy access the Corps' website and obtain a listing of every navigable river in the state that falls under Section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403). Although he wouldn't want to deface the committee room map, this information could be superimposed on it. He pointed out numerous references have been made for huge delays on CD-5. He emphasized that the Colville River, which is where the substantial delays happened, was due to the Corps denial to allow a bridge to be built across the Colville River.

MR. SULLIVAN pointed out the Colville River very clearly falls under the rivers and harbors act so state would still have been unable to start the work on CD-5. Certainly, this is important information to note prior to spending \$7 million per year to run the program. "You don't buy a truck and drive it off the lot until you look under the hood and see if you've got the engine you've paid for," he said. He expressed concern the legislature is going in the wrong direction and moving very quickly on this, in particular, since the commissioner mentioned a conference call on Friday. Perhaps some information could be obtained.

[2:46:02 PM](#)

MR. SULLIVAN discussed what the department learned through the 402 process. First, it's important to note that the 402 permitting process allows for a phasing in process. Even though the 402 primacy just happened this past year, the DEC was issuing permits - at some scale - very early on. Second, the 404 process is an all or nothing prospect. It seems as though staff is being put in place, yet permits will not be issued for 5 to 10 years.

MR. SULLIVAN said the state could spend millions of dollars on issuing the permits, yet, "we're never gonna be the boss of this program." The state will always need approval through the EPA. EPA will always have a veto authority on every permit that is issued through 404. He found this to be disconcerting. He understood the frustration; however, he could not think of

anything more frustrating than spending \$7 million to put dozens of people in place, yet, the EPA can say no.

MR. SULLIVAN the delays have been very anecdotal with little evidence of what the actual delays have been. The Corps has a Juneau office so direct contact can be made. The general permits seem to have been done very efficiently, with over 85 percent of general permits completed in 60 days. He wondered if spending \$7 million would increase it to 89 percent, which he did not think would be the best use of funds. "I think we're putting the cart before the horse," he said. He suggested the importance of viewing a map, which would more clearly highlight what the state would obtain.

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CO-CHAIR SADDLER closed public testimony on SB 27 after ascertaining no one else wished to testify.

[2:49:33 PM](#)

REPRESENTATIVE TARR referred to the two phases, which would authorize the ability to make the application. She asked what level of confidence the commissioner has that the application will be successful since only two other states have done this. The worst outcome would be to spend millions on the application only to have the application denied. She further asked what gives the commissioner confidence.

COMMISSIONER HARTIG strongly objected to the concept that this would be wasted effort if the state failed to obtain the 404 primacy. From the state's perspective, it would evaluate whether to obtain primacy and file an application. He said the state would not be going after the 404 primacy if the department did not think the state would get it, which is a view he believed is shared by the state's team. Likewise, putting a spotlight on the whole 404 permitting program - both the general and the individual permits - highlight the question of whether the state can do better or if it is the best that can be done. In any case, asking those questions will be beneficial to everyone. Yet, no one is currently asking those questions. Hence, bringing that attention and finding out the weaknesses in permitting - whether it is the state or the federal government - is a good thing, especially in times of declining revenue. In essence, he said he views the 404 primacy as a worthy effort.

COMMISSIONER HARTIG said the likelihood of obtaining primacy depends on the quality for the state's application as well as the willingness of the federal agencies to work with the state. Thus far the state's experience has been with the 402 process and now the beginning of the 404 primacy process is for open collaboration from the federal agencies. He anticipated "give and take" and "back and forth" efforts as the agencies evaluate the opportunities and the best way to proceed; however, he has no reason to believe that the [administration] wouldn't be able to put together an application which will be successful.

[2:52:31 PM](#)

REPRESENTATIVE JOHNSON remarked he could not help but laugh at someone's comment about spending time and effort only to have the permit denied. To begin with, he thinks of all the people who have tried to build houses, culverts, or CD-5, only to have their permits denied. Indeed, if the state can attempt to take some control over [permitting], it would give him comfort. Of course, businesses attempt to operate in Alaska every day not knowing whether their permits will be issued or denied. He offered his belief the [legislature and administration] owe it to the citizens and the government to take as much control as possible for Alaska's future. In essence, this is just one way to do it.

[2:53:37 PM](#)

CO-CHAIR FEIGE, referencing to a letter to the Senate Finance Committee [in members' packets] mentioned 49 positions and an annual budget for the Corps of \$8 million. He asked whether the commissioner is aware of any plans by the federal government to scale back or if the possibility exists the agency will lose positions and lose the ability to process permits.

COMMISSIONER HARTIG replied that, as previously mentioned by Mr. Crafford, the DEC and DNR have two concerns. First, the Corps has been experiencing declining budgets; and second, the agency has lost key permitting people. Hence, the state has observed a loss of capacity on several fronts. At the same time, the state has also seen a growing need for 404 permitting in the state. He acknowledged it isn't a good situation. Whether the state is in a better position to handle this or if the Corps is or if the agencies can collectively work on permitting needs is something that needs to be explored.

[2:55:22 PM](#)

REPRESENTATIVE SEATON recalled several references to a presentation to the Administrative Regulation Review committee by the Corps. He requested the co-chairs ask the Corps to testify directly to the committee. The committee has been discussing permits that "are happening or not happening" and apparently information including pie charts are available, which could be of benefit to the committee to review.

CO-CHAIR SADDLER offered to make the request.

REPRESENTATIVE TARR reported that under the current program "less than one percent of one percent" of the permits has been denied. Basically, very few denials are taking place, she said.

[2:56:48 PM](#)

CO-CHAIR SADDLER held over SB 27.

[2:56:53 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:57 p.m.