

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 20, 2013

1:42 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

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."

- MOVED SB 27 OUT OF COMMITTEE

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. 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; and making conforming amendments."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

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
03/18/13	(H)	Heard & Held

03/18/13 (H) MINUTE(RES)
03/20/13 (H) RES AT 1:00 PM BARNES 124

BILL: HB 158

SHORT TITLE: DNR HUNTING CONCESSIONS

SPONSOR(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
03/18/13 (H) Heard & Held
03/18/13 (H) MINUTE(RES)
03/20/13 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

LARRY HARTIG, Commissioner
Department of Environmental Conservation (DEC)
Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the hearing on SB 27.

EDMUND FOGELS, Deputy Commissioner
Office of the Commissioner
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the hearing on SB 27.

CRAIG FLEENER, Deputy Commissioner
Alaska Department of Fish & Game (ADF&G)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 158.

EDMUND FOGELS, Deputy Commissioner
Office of the Commissioner
Department of Natural Resources (DNR)

Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion on HB 158.

CLARK COX, Natural Resources Manager
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 158.

ACTION NARRATIVE

[1:42:17 PM](#)

CO-CHAIR ERIC FEIGE called the House Resources Standing Committee meeting to order at 1:42 p.m. Representatives Seaton, Olson, P. Wilson, Tarr, Johnson, and Feige were present at the call to order. Representatives Tuck, Hawker, and Saddler arrived as the meeting was in progress.

SB 27-REGULATION OF DREDGE AND FILL ACTIVITIES

[1:42:36 PM](#)

CO-CHAIR FEIGE announced that the first 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."

[1:43:41 PM](#)

REPRESENTATIVE TARR moved to adopt Amendment 1, labeled 28-GS1750\A.2, Nauman, 3/19/13, which read, as follows:

Page 4, following line 23:

Insert a new bill section to read:

"* **Sec. 4.** AS 46.03 is amended by adding a new section to read:

Sec. 46.03.021. Dredge and fill permitting program report to the legislature. The commissioner, in coordination with the commissioner of natural resources, shall provide to the legislature, on or before December 31 of each year, an annual report of the cost of administering the state dredge and fill permitting program described in AS 46.03.020(14)."

Renumber the following bill sections accordingly.

REPRESENTATIVE JOHNSON objected for the purpose of discussion.

[1:43:51 PM](#)

REPRESENTATIVE TARR understood concerns about the potential costs for the Section 404 program. She stated it would take several years for the application to be completed. Amendment 1 requests the department provide an update to the legislature on the cost of the program.

REPRESENTATIVE JOHNSON asked the department to answer questions.

[1:45:17 PM](#)

LARRY HARTIG, Commissioner, Department of Environmental Conservation (DEC), stated he understood the importance of keeping the legislature apprised of expenditures. However, the administration doesn't see the need for Amendment 1. He said he has interpreted the Amendment 1 differently than presented by Representative Tarr. He understood Amendment 1 would require the department to provide an annual report of the cost of administering the state dredge and fill permitting program. However, the department would not administer the program for 5-10 years. Prior to expenditures occurring, the department would request the funding authority from the legislature. If the intent of Amendment 1 is to have the department provide a progress report, he responded that the department presents its budget. Further, to submit a report seemed a little premature until the information had been gathered, assessed, and evaluated. Otherwise, the legislature would receive a report with a lot of contingencies. Although he understood the need for accountability, he felt this was not necessary.

[1:47:18 PM](#)

REPRESENTATIVE P. WILSON inquired whether the commissioner is saying that the information would be provided anyway, just to the Finance Committee rather than the legislature as a whole.

COMMISSIONER HARTIG responded that is correct if the language is read to report at the beginning of the next calendar year. He elaborated that the program wouldn't be up and running, but the department reports details to the Finance committee on its activities.

REPRESENTATIVE JOHNSON offered his belief this would require reporting for the previous year, which he understood would be presented at the time the department requested funding for the future year. He did not see the necessity of the requirements in Amendment 1.

[1:49:05 PM](#)

REPRESENTATIVE SEATON expressed his concern that the fiscal note spans five years. He further expressed concerned that a process is being set up which would require \$2.5 million each year over the next four years. He suggested a report on the progress could be helpful and perhaps Amendment 1 should be changed to "progress on the analysis of the Section 404 primacy process." Otherwise, an open-ended \$2.5 million commitment exists.

[1:50:08 PM](#)

REPRESENTATIVE SEATON moved to adopt Conceptual Amendment 1 to Amendment 1, which would require the annual report to indicate any progress that has been made on implementing or analyzing implementation of the 404 permit.

[1:50:47 PM](#)

CO-CHAIR FEIGE objected for the purpose of discussion. He said he is unsure of the sponsor's intent; however, the bill would authorize the department to investigate whether or not the state should assume primacy of the 404 program. He didn't think requesting an annual report about the cost to administer the state dredge and fill permitting program seemed to correspond.

REPRESENTATIVE TARR stated that Amendment 1 is intended to provide a progress report, as stated by Representative Seaton. She said the committee has been reviewing the fiscal notes for the next four years, without knowing the costs to actually administer the program. She also said the legislature could consider authorization of funding for positions necessary to prepare the application; however, if primacy of the 404 program will mean hiring 40 new staff members, given the current budget situation, the legislature might decide now is not the time to do so. Therefore, it might not be wise to consider continuing with the applications. The purpose of Amendment 1 is to receive a progress report. In fact, looking back at the department's work on primacy for 402, at some point the department had to submit the number of positions. Besides preparing the

application, the department will need to administer the program and she could see the value to also obtain a fiscal impact for administering a program.

[1:53:52 PM](#)

REPRESENTATIVE TARR agreed with the Conceptual Amendment 1. She also said on line 7 to add "projected cost" so it would read, "...annual report of the projected cost of administering the state dredge and fill permitting program ... ", which is what she was intending. This would provide the legislature with a full picture of the 404 process.

[1:54:11 PM](#)

CO-CHAIR FEIGE suggested Representative Tarr and Representative Seaton work on the conceptual Amendment.

[1:54:28 PM](#)

The committee took an at-ease from 1:54 p.m. to 2:00 p.m.

[2:00:44 PM](#)

REPRESENTATIVE SEATON referred to Amendment 1, line 7. He made a motion to revise Conceptual Amendment 1, which would read, "Annual report of the progress in the development of assuming the state dredge and fill permitting program described in AS 46.03.020 (14) and the estimated cost of administration of the program."

[2:01:34 PM](#)

REPRESENTATIVE JOHNSON asked whether a motion was on the floor for a previous Conceptual Amendment 1 that needs to be withdrawn prior to proceeding.

REPRESENTATIVE SEATON suggested he merely wished to clarify the language for Conceptual Amendment 1 to Amendment 1.

CO-CHAIR SADDLER objected for discussion purposes. He understood the intent is to allow the department to indicate progress on the 404 primacy. He did not want to use an estimate for the one-year process as the basis for not proceeding with further evaluation. He clarified he understood it would be a progress report and not a final decision point. Further, how

accurate an estimate needs to be, he suggested leeway given that it's a new process.

2:02:52 PM

REPRESENTATIVE SEATON responding to Co-Chair Saddler, answered yes, this would be a written progress report on the development of the 404 permitting process to the legislature. He assured members it is not his intention that the report must be complete; rather, the department would submit a progress report that includes any known estimates.

REPRESENTATIVE TARR echoed that Conceptual Amendment 1 to Amendment 1 is not intended to prevent the application from going forward, but would provide an opportunity to obtain additional information for the decision-making process.

2:03:55 PM

COMMISSIONER HARTIG allowed this body can ask DEC to come back before it at any point. He expressed several concerns. First, that any amendment will require the bill to go back to the other body, yet the information is available to the legislature at any time. Second, the DEC anticipates by 2015 it will have a good idea of what primacy would entail and any costs and benefits so essentially the effect of the amendment is to provide one additional report prior to the DEC coming before the legislature. Basically, the DEC would receive funding on July 1, but will report at the end of the calendar year on five-months of activity. Realistically, the legislature will receive a solid report on the costs and benefits two years out. However, if the legislature really wanted additional information, the DEC could present the committee with an update at any time it so desires. Finally, while he did not think the reporting concept is wrong, his concerns stem from the practicality.

2:05:36 PM

REPRESENTATIVE SEATON said he did not see any provision in the bill that would requires a final report to the legislature in 2015. In fact, he noted the fiscal note extends to 2019. Even though it's true that the department can come before the committee, it's quite different to have a presentation than a written report that details what has been accomplished to date. Anyway, as often happens, projects are delayed and Conceptual Amendment 1 would be in place to require an annual progress

report. Nothing in the amendment affects the program, but it assumes the fiscal note is "real" and the process is planned to extend through FY 2019. In conclusion, once the final report is complete, the reporting would discontinue since the state will have assumed primacy.

[2:06:59 PM](#)

REPRESENTATIVE TUCK remarked that he did not think it is too much of a burden to ask for a written report given the amount of funding involved. Further, the justification to seek primacy is absent; instead, the arguments are anecdotal. Further, given the fiscal constraints, the 404 permitting primacy may not always be a priority [for the department]. Thus it would help to have accurate information to study to ensure that the state is making a good investment and moving in the right direction. He offered his support for Conceptual Amendment 1 to Amendment 1.

CO-CHAIR FEIGE, in response to a question, clarified the committee is on [Conceptual] Amendment 1 to Amendment 1.

[2:08:00 PM](#)

CO-CHAIR SADDLER maintained his objection.

[2:08:07 PM](#)

A roll call vote was taken. Representatives Seaton, P. Wilson, Tarr, Tuck, Johnson, Olson, Saddler, and Feige voted in favor of Conceptual Amendment 1 to Amendment 1. Therefore, Conceptual Amendment 1 to Amendment 1 was adopted by a vote of 8-0.

[2:09:25 PM](#)

CO-CHAIR FEIGE stated that Amendment 1, as amended, is before the committee.

REPRESENTATIVE JOHNSON maintained his objection.

REPRESENTATIVE JOHNSON explained that he voted for the Conceptual Amendment to Amendment 1 since it would give more guidance than the original amendment. However, he characterized the whole bill as a report. To begin with, it seemed to him that Amendment 1 asks the department to do the legislature's job. When the department comes before the legislature in a [Finance] subcommittee, this is the type of information the

committee needs to consider. The subcommittee can always make recommendations to the finance committee with respect to funding. Additionally, the department could better spend its time evaluating the process rather than writing reports. Further, it doesn't make any sense to him to obtain a five-month report. In conclusion, the committee just needs to do its job, he said.

[2:10:47 PM](#)

REPRESENTATIVE SEATON offered his support for Amendment 1, as amended, stating it's important to obtain sufficient information in order to do the job. Moreover, to defer to the subcommittee, which is a much smaller group not focused on the natural resources aspects would mean the focus will be on the fiscal implications, not on the resource policy decision-making process. Also, the committee would need to specifically request updates on the 404 permitting. Amendment 1 would ensure that in future years no matter what the committee membership, a report will come back to the committee, which is why he supports Amendment 1.

[2:12:14 PM](#)

REPRESENTATIVE TUCK stated that unlike the 402 permit process which was phased in, the 404 permit would be a "hard decision all at once," which is why it's prudent for the legislature to have ongoing information to make a solid decision. Also, having the report would allow the legislature a better opportunity to evaluate the 404 permitting primacy process. He offered his support for Amendment 1.

[2:12:41 PM](#)

CO-CHAIR SADDLER said Amendment 1 seems to short-circuit the process. Again, the whole purpose of the bill is to authorize the departments to evaluate and formulate information. Certainly, the commissioners can provide progress reports at any time. Previously, the committee heard testimony on another bill that good project management entails planning only once and it is a costly process to revisit planning. He recalled from water and air quality permitting processes that the DEC has the expertise to move forward with the 404 permitting. In the meantime, the legislature has the opportunity at this point as well as for the final sanction of the 404 primacy. He said he was not likely to support Amendment 1.

COMMISSIONER HARTIG clarified that the DEC's fiscal note is for \$1.4 million, which includes the DNR costs via the reimbursable services agreement (RSA). He pointed out he heard other figures being used.

EDMUND FOGELS, Deputy Commissioner, Office of the Commissioner, Department of Natural Resources (DNR), said he did not have anything more to add in terms of the department's position on Amendment 1.

[2:14:23 PM](#)

REPRESENTATIVE SEATON read from the fiscal notes [DEC, fiscal note 1, Water Quality dated 1/11/2013], for FY 15, at \$1,854.3 for eight new employees; DNR, Administration & Support [fiscal note 2, dated 1/14/2013], for FY 15 at \$566.7 with four new employees. He said that combined, the fiscal impact is close to \$2.5 million. He asked for further clarification.

COMMISSIONER HARTIG said he believes the fiscal notes are being wrongly interpreted. He clarified the intent of the fiscal note is to begin in FY 14 with \$1.434.7. He explained the fiscal note such that DEC would have add five fulltime positions in FY 14 and add three more in FY 15. In FY 14 the personal services line is for \$495.4 which is in the form of an RSA to DNR, and the amount increases to \$883.5 in FY 15. The DNR would add two new positions in FY 14 and two more positions in FY 15 for a total of four new positions.

[2:16:30 PM](#)

REPRESENTATIVE SEATON read from the DNR fiscal note, which in FY 15, indicates personal services at \$425.6 and a total of \$566.7. He said he was unsure of how this corresponds. Once more, the overall fiscal impact represents a lot of money when the legislature is struggling to avoid adding to the state's operating budget base. He anticipated a report on the \$2 million to determine if the [404 primacy] makes sense.

[2:17:59 PM](#)

REPRESENTATIVE P. WILSON understood that as DEC proceeds, any additional funding requests and authorization will have to come before the legislature.

COMMISSIONER HARTIG said the short answer is yes, that it would come before the legislature in terms of budget request for

personnel costs. Additionally, he anticipated requesting statutory changes as the DEC continues to work with the federal agencies. On the 402 primacy, the DEC requested two bills, in addition to budget requests. Again, he anticipated the 404 process would be similar.

[2:19:21 PM](#)

REPRESENTATIVE P. WILSON said she does not think Amendment 1 is necessary. She anticipated the DEC would be before the legislature and viewed additional reporting as onerous.

REPRESENTATIVE JOHNSON maintained his objection.

[2:19:55 PM](#)

REPRESENTATIVE TARR pointed out that statutory changes might not have fiscal implications. She recalled the budget subcommittee process as not allowing for significant detail. She did not expect the report required under Amendment 1 would be a lengthy report that would require a significant amount of staff time, but rather would consist of an executive summary progress report that would be informative, perhaps prepared in an afternoon. She identified her frustration with the bill is due to the missing information. She wished she had some overall estimates today to help determine whether the [404 primacy] is the right move. Certainly, given some of the conversations with respect to fiscal constraints means the legislature will have some tough decisions to make. This information would assist the legislature in its decision-making process.

[2:21:28 PM](#)

CO-CHAIR FEIGE stated the question is whether Amendment 1, as amended, should be adopted.

[2:21:58 PM](#)

A roll call vote was taken. Representatives Tarr, Tuck, Seaton, and Feige voted in favor of Amendment 1, as amended. Representatives Johnson, Olson, Hawker, P. Wilson, and Saddler voted against it. Therefore, Amendment 1, as amended, failed by a vote of 4-5.

[2:23:00 PM](#)

CO-CHAIR SADDLER moved to report SB 27 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE SEATON objected for the purpose of discussion. He stated that only two other states have undergone Section 404 primacy. In fact, every other state has rejected it. Virginia studied the 404 primacy and reported on it in December 2012. He recalled that their stakeholders had objected based on the cost benefit analysis. Equally important, the cost to industry would be less under the federal program than anticipated under the state program. Further, the applicants must bear the costs; however, the state must also acquire substantial staff to process permits, which is the reason Virginia's stakeholders did not support it. In any case, the statewide programmatic general permits were found to provide almost all the benefits without the costs associated with the assumption of the 404 primacy. Finally, in Alaska, the DEC already has the ability to issue statewide programmatic general permits. He preferred the agency do so rather than go down this "rabbit trail" that could result in hiring 49 new state employees and spending substantial time and costs to obtain the 404 primacy for dredge and fill permits. He suggested that effort could better be spent on statewide programmatic permits, which will allow for coordination on federal waters. This bill will not move the state forward or allow input on the dredge and fill permits. For these reasons, he opposes passage of SB 27.

2:27:00 PM

REPRESENTATIVE JOHNSON offered his belief that Alaska is a resource development state and its future rests with resource development. He stated his biggest concern is a fear that the federal government may grind to a halt. Granted, some people don't want to see any development in Alaska. Further, it's difficult to obtain permitting due to staff and costs. However, Alaska must be prepared to "step into the breach" or resource development will not happen. He thought that this may be the first "arrow" the state will be absorbing, but the further along the path the state is the better it will be. He surmised the legislature will view the \$4 million as the best investment it has made. In any case, he predicted it wouldn't take much resource development to make up the cost. For these reasons he offered his support for SB 27, stating the state needs to control its own destiny every chance it can. He concluded by offering his wholehearted support for the state to take control of its destiny.

[2:28:54 PM](#)

REPRESENTATIVE HAWKER echoed Representative Johnson's comments. He said the language in the bill is permissive. This bill would permit the executive branch of state government to pursue the 404 primacy, to review and study it to determine whether it is the best course of action for the state. In fact, this bill does not establish a 404 permit program. It does not mandate that the state adopt a program. For all the reasons Representative Johnson mentioned, this appropriating body ought to investigate this avenue or the legislature will never know [if it should have pursued the 404 primacy]. He offered his support for SB 27 because he agrees the legislature should be considering its future. He emphasized that once a decision is made to implement a program - if it is made - it will still require an appropriation and funding. At the end of the day, the legislature still holds the purse strings. It is not "our last bite at the apple" but will move a very important, very sound, and very wise process forward.

[2:30:25 PM](#)

REPRESENTATIVE TUCK offered his belief that some of the comments made would also be good arguments for Coastal Zone Management, which the state did have control over at one time. In fact, the state was able to make decisions "in our own backyards" on projects that were moving forward. He worried that the trend has been going the other way instead of taking control of the state. While he isn't opposed to taking control, right now he doesn't feel like the committee has enough information to justify spending so much money [on the 404 primacy]. Besides, the state doesn't have information on the federal backlog and how much of the federal backlog the state could control or reduce even if the state does have the 404 primacy. Moreover, the U.S. Army Corps of Engineers still has the authority it will continue to retain so it can override the state at any time. At this time, he couldn't support the bill because he needs more information. Finally, the state is not exercising statewide programmatic general permits, which could reduce part of the backlog, and is the first step the state should take. The department has the authority to issue statewide programmatic general permits and it should do so. "Taking such a big bite into growing state government" and doing something the federal government is already doing doesn't make sense, he said.

[2:32:03 PM](#)

CO-CHAIR SADDLER commented he wondered what the state's founding fathers would have thought if it had been said it would be cheaper to let them manage the fish traps. Specifically, with the amount of wetlands the state has, Alaska is a special case. With the critical nature of permitting wetlands dredge and fill activities in Alaska, as well as the importance it is to the primary revenue generator, it seems prudent to "give a hard look" at the benefits and costs of assuming wetlands primacy under Section 404. First, the state has undergone this process successfully for water quality and air quality. Second, it would result in fewer departments for coordination purposes. Third, it would result in Alaska-based decisions, which would not be less strict than the federal standards. Fourth, Alaska courts would adjudicate disputes, and finally, the mitigation measures would be Alaska-designed measures. Granted, the state will be giving the departments significant funding to perform a difficult job, but the [departments] anticipate "good answers" and "good information" to inform the legislature as it moves forward. For these reasons, he offered his support for SB 27.

[2:33:21 PM](#)

REPRESENTATIVE TARR remarked that unfortunately the committee did not hear from the [U.S. Army Corps of Engineers] but nearly 80 percent of the Corps' individual permits are granted within 120 days and less than "one percent of one percent" of all permits has been denied. Therefore, the idea that the Corps' program is not working is questionable. She recalled the Alaska Oil and Gas Association letter [dated February 4, 2013], which read, "And while a majority of the nation's wetland are in Alaska, many of these may be non-assumable by the State under the Clean Water Act's geographical limitations and would remain subject to federal jurisdiction and duplicative Corps permitting." Furthermore, the legislature did not receive answers about where this process would apply. Although she spent time on their website, she couldn't find many areas this bill would apply. Even the CD-5 example brought up several times would not have been impacted by this bill since it would still be under federal jurisdiction. Generally, she wished that the committee had more information on where this would apply. She pointed out the individuals in the Alaska U.S. Army Corps of Engineers office making these decisions are Alaskans, they understand Alaska's issues and development, which is why she surmised the success rate is so high. Besides, she didn't think the system is broken. While she could have supported the bill with the amendment since it would give the legislature more information as the state moves forward, she said she is not

comfortable with the expenditure with so much uncertainty about the commitment.

[2:35:23 PM](#)

COMMISSIONER FOGELS asked to respond to some of the points raised. First, whether a problem exists: yes there is a huge problem, such that a federal agency controls permitting on one of the most important sectors of our lands. On the contrary, it is not about the Corps' backlog. Even if the Corps had a zero backlog, the state should be looking at the costs and benefits of assuming the 404 primacy. In fact, this is about Alaskans having control, with Alaska's agencies having control over permitting of natural resource development in Alaska, and having those challenges resolved in Alaska and not in Washington D.C. In terms of the concerns about limited wetland exclusions, it is a big issue, he said.

[2:36:12 PM](#)

COMMISSIONER FOGELS emphasized the committee must understand the DNR/DEC will go into this 404 process with a strong position that the state will receive primacy over most of the wetlands in Alaska. In fact, the EPA has in past guidance documents basically agreed. He read from a 1980 document specifically addressed to primacy for states. He read, "By assuming the 404 program, states will gain clear jurisdiction on most of the nations' lakes, small rivers, streams, and inland wetlands." Consequently, the state believes it will gain jurisdiction over most of the wetlands in Alaska, which is very significant.

COMMISSIONER FOGELS, with respect to the state programmatic general permits and the reason to pursue primacy, the answer is simple. The state programmatic general permits represent a different tool for a different purpose; however, primacy is a different tool. He stressed that wetlands permitting in Alaska is very complex and primacy is only one tool. He highlighted that this bill's fiscal note will allow the state to pursue the opportunity to seek the other tools, as well as primacy. At the end of the day, if the state decides not to "go for primacy" the state will still have hopefully acquired some of the other tools and the state will benefit greatly.

[2:38:06 PM](#)

COMMISSIONER HARTIG, with respect to some of the comparisons to Virginia and other states that have not pursued the 404 primacy,

related the deputy commissioner is currently attending a conference underway in Washington D.C. state wetland administrators and the U.S. Army Corps of Engineers. The topic of this conference is how to obtain primacy and numerous states are actively pursuing this. This isn't something that "everyone else" looked at and rejected. He pointed out that states like Virginia have considerably less wetlands than in Alaska. He surmised that fewer permits are being sought in Virginia than in Alaska so this tool would have less value to Virginia. This bill considers what Alaska needs, but not from the perspective of Virginia or Oregon. He concluded that Alaska should not compare itself to other states.

CO-CHAIR FEIGE said he does not care how other states do it. The legislature's job is to look at what's best for Alaska and the question of whether or not to seek the 404 primacy is a worthy question to consider. He acknowledged a number of options have been raised in testimony, which have advantages and disadvantages. However, Alaska is a resource development state and projects are part of Alaska's future. In conclusion, he said that the status of 404 permitting program will have an impact on those projects.

[2:40:21 PM](#)

REPRESENTATIVE SEATON maintained his objection.

[2:40:24 PM](#)

A roll call vote was taken. Representatives Hawker, Johnson, Olson, P. Wilson, and Feige voted in favor of reporting SB 27 out of the House Resources Standing Committee. Representatives Tarr, Tuck, and Seaton voted against it. Therefore, SB 27 was reported out of the House Resources Standing Committee by a vote of 5-3.

[2:41:18 PM](#)

The committee took an at-ease from 2:41 p.m. to 2:44 p.m.

HB 158-DNR HUNTING CONCESSIONS

[2:44:30 PM](#)

CO-CHAIR FEIGE announced that the next 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."

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CO-CHAIR FEIGE stated a proposed committee substitute has been prepared that combines three separate amendments committee members have asked to have considered.

REPRESENTATIVE P. WILSON moved to adopt the proposed committee substitute for HB 158, labeled 28-LS0444\U, Bullard, 3/20/13 as the working document.

CO-CHAIR FEIGE objected for the purpose of discussion.

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CO-CHAIR FEIGE asked sponsors of the three previous amendments [not yet offered] to discuss the pertinent section of the proposed committee substitute, Version U. He stated the change in Section 1, adds paragraph (11), which read, "**(11) implement commercial concession programs on state land.**" This would provide authority for the DNR to implement commercial concession programs on state land, which is to accommodate big game guiding and transporters.

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CO-CHAIR FEIGE explained that Section 2 would add the big game commercial services to subsection (b). He asked Representative P. Wilson to address this provision.

REPRESENTATIVE P. WILSON referred to page 3, lines 3-11, of Version U, and argued that it is important consider both the land and the wildlife resources. She did not want DNR to change the land use automatically, but rather to consider whether wildlife resources are sustainable in a unit or area and identify any user conflicts. In the event that the wildlife resources are sustainable and user conflicts do not exist, it would not be necessary to make any changes to the GMU.

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REPRESENTATIVE TUCK asked for clarification on the version, Co-Chair Feige identified as Version U.

CO-CHAIR FEIGE, in response to a question, referred to page 3, lines 3-11.

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REPRESENTATIVE TARR asked whether the language on page 2 was necessary to incorporate the relationship with the commissioner of the Alaska Department of Fish & Game (ADF&G).

CO-CHAIR FEIGE referred to page 2, line 28, of the proposed committee substitute (CS) for HB 158, Version U. He said this language is intended to slightly broaden the language to include guides and transporter concession programs.

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REPRESENTATIVE JOHNSON referred to page 3, lines 12-19, to subsection (c) of Version U. He said that the committee has heard testimony that a certain number of guides are allowed to operate in areas. He explained the concern was that if a guide was assigned three areas, it would exclude other guides from the area. This change also would consider the federal concession holdings held by individual guides and limit guides to a combined total of three concession areas. The overall effect would be to add to the number of guides who will have access to state resources.

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CO-CHAIR FEIGE referred to page 3, lines 20-24, to subsection (d), which adds definitions for "concession permit" and "game management unit." He also referred to page 3, lines 25-31, which lays out the section related to the big game transporter concession program.

CO-CHAIR FEIGE referred to page 4, line 11, which would establish an effective date for the transporters that would start one year after the DNR implements the big game guide commercial concession program. This would allow the department one year to develop the transporter program after the department established the big game guide concessions. This recognizes that perhaps implementing the entire program at once might be "too big of a bite" and separating it into two sections seemed more appropriate.

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REPRESENTATIVE TARR referred to page 1 [line 7] and to language that reads "may" instead of "shall". She understood the intent of the bill is to give the department the authority. She noted that proposed AS 38.05.023 (a) would give the DNR the authority to adopt a concession program, but the language also reads, "may" [which means optional.] She asked whether the department will follow through on the commitment to implement the provision or if the language should be changed to read "shall" to give the DNR explicit direction.

CO-CHAIR FEIGE asked to return to that question after adopting the proposed committee substitute, Version U.

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REPRESENTATIVE SEATON referred to page 3, lines 3-11, and asked whether this means the ADF&G will change the number and types of concessions that DNR must allocate. He understood the program is a DNR program; however, this subsection directs that the commissioner of fish and game "shall" determine the number and type of concessions that may be provided in each game management unit (GMU). He assumed the ADF&G's determination would be based on the fluctuating biomass of the resource. He further asked whether additional testimony is needed to determine the interaction between the DNR's guide concession program (GCP) and the ADF&G's control over the number and types of permits it must issue.

CO-CHAIR FEIGE offered his belief that the intent is for DNR to manage the land and how land is allocated. The number of concessions allowed would also depend on the carrying capacity, which is determined by the ADF&G. He suggested this is something the department addressed when they formulated the GCP program, which is formalized by this language. This specifies that the legislature expects ADF&G to provide the information to DNR for the proposed guide concession program (GCP).

CO-CHAIR FEIGE referred to page 3, line 9, which requires the ADF&G to review this every five years. This also matches the timeframe for the concession review, he said.

REPRESENTATIVE SEATON said the committee has not heard from the DNR on the coordination between DNR and ADF&G.

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CRAIG FLEENER, Deputy Commissioner, Alaska Department of Fish & Game (ADF&G), prefaced his comments by stating he hasn't had an opportunity to thoroughly consider this bill version since he just received it about an hour ago. He suggested one area to be careful about would be [on page 3, lines 3-9, subsection (b)(2)], which discusses the commissioner of ADF&G. The department has long stayed away from concept of allocation of resources since this responsibility has been up to the Board of Game. He highlighted one problem is whether it would place the ADF&G and its staff in the business of allocation and how many guides will be able to harvest. Probably, it would be good to get the DNR's perspective on this as well; however, it seems as if the amount of work would likely require significant staff time. Further, one of the things that the ADF&G is careful about is the relationship between the "on the ground" staff and hunters or guides throughout the state. If the "on the ground" staff help determine the numbers and types of concessions, it could jeopardize those relationships. Clearly the ADF&G does want to work with the DNR on determining the proposed concession areas. He suggested it might be necessary to include language such as "DNR consulting with the Department of Fish and Game and the Board of Game to determine population levels and harvestable surplus." This has been the process the ADF&G has used until now, which might work a little better.

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EDMUND FOGELS, Deputy Commissioner, Office of the Commissioner, Department of Natural Resources (DNR), agreed that the DNR and ADF&G have not had much opportunity to discuss Version U. He said that the DNR worked closely with the ADF&G in the process of preparing maps and proposed allocations. Since the DNR does not have expertise in wildlife management, it has relied on the ADF&G to provide the expertise. Since concessions will be reviewed every five years, he envisioned the agencies will work closely at that time during the review process. Again, the DNR has not had enough time to consider the merits of the proposed committee substitute.

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CLARK COX, Natural Resources Manager, Department of Natural Resources (DNR), echoed what Mr. Fleener said, that DNR's mission is related to land access and the land use. These [GCP] figures were determined based on the use patterns and the appropriate number of guides and hunters in an area, not on game

allocation. He suggested that the DNR & ADF&G could spend more time on the program as a whole.

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REPRESENTATIVE P. WILSON expressed her concern that DNR has not taken all of ADF&G's recommendations. She referred to page 3, line 6, to paragraph (1), and suggested if it was removed, she would still want the [decision] to be weighted toward ADF&G.

REPRESENTATIVE P. WILSON concurred that the DNR and ADF&G are working together; however, she remained concerned about the wildlife resources. Clearly, ADF&G controls the harvest levels and how much is available in each game management unit (GMU). Therefore, the DNR must listen closely to what ADF&G says, to make sure it is sustainable. She mentioned she has a constituent who works as a guide in an area and while he said [wildlife management] problems didn't exist, it seemed as though the GCP still made significant changes. Thus, she has some concerns about [the GCP plan.]

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REPRESENTATIVE SEATON shared the concern, but said the question is whether the ADF&G's commissioner or the Board of Game (BOG) would have the authority to determine allocation. He said he wasn't opposed to the changes, but wants to ensure the amendments are correctly crafted.

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REPRESENTATIVE TARR referred to page 3, lines 12-19. She asked whether any reason exists to prevent the DNR from limiting the number of state concessions based on federal concessions held. In response to a question, she wondered if the DNR has the authority to do so.

REPRESENTATIVE JOHNSON recalled holding discussions with the legislative bill drafter and concluded that the state has the authority to limit concessions on state lands. However, if a guide already has federal concessions, this provision would allow the state to limit state concessions, accordingly. In fact, he offered his belief that the federal and state concession decisions are independent decisions.

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REPRESENTATIVE TARR said she is unaware of whether the information is public. She asked whether the state can request the applicant to list any outstanding federal applications or any federal concessions that can be awarded.

REPRESENTATIVE JOHNSON stated that it would be up to the department to regulate. He surmised the information would be public information.

MR. FOGELS offered his belief that the information is public as which guides can operate in specific areas. He deferred to Mr. Clark.

MR. COX said the department has been working closely with the federal agencies and the information has been made available. He offered his belief that this language would not limit someone who holds three state concessions from securing federal concessions, permits, or licenses on Native lands or federal lands after they obtain the three state concessions. Therefore, the guide could still hold more than three guide concessions if the guide obtained the state concessions first.

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REPRESENTATIVE JOHNSON said the language clearly states that the guide cannot hold more than three concession permits. He offered his belief that the guide would lose a state concession permit if the guide later gained federal permits. He suggested that obtaining additional federal concession permits could lead to jeopardizing losing all permits.

MR. COX agreed.

REPRESENTATIVE JOHNSON suggested that would be a pretty risky business.

MR. COX pointed out that permits on Native Corporation lands would not be public information.

CO-CHAIR FEIGE replied that the proposed committee substitute (CS) for HB 158 doesn't address Native Corporation lands and it doesn't need to either.

REPRESENTATIVE JOHNSON said it was not his intention to regulate private landowner activities.

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REPRESENTATIVE SEATON referred to page 3, line 26, which read, "... commissioner may implement a concession program" He recalled the committee discussed changing it to "shall". He expressed concern that it may take DNR more than one year to fully implement a program. He also referred to the language [on page 3, line 27] related to "individuals who provide transportation services to big game hunters in the field," which could be boat operators or air taxi operators. He suggested "may" is appropriate since the committee has not heard from air taxi operators so it seemed more appropriate to allow additional time.

CO-CHAIR FEIGE agreed.

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REPRESENTATIVE TUCK, with respect to transporter services, asked whether any licensing requirements or business licenses are necessary before an operator is allowed to transport passengers. He further asked whether DNR has the authority to regulate the activity.

CO-CHAIR FEIGE answered that transporters fall under the Big Game Commercial Services Board's (BGCSB) authority.

REPRESENTATIVE SEATON asked whether that would also include air taxis.

CO-CHAIR FEIGE answered that air taxis have an exemption if the transportation is "incidental" to their business. He suggested the committee may wish to review the definition.

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REPRESENTATIVE TARR returned to the discussion by Representative Johnson with respect the number of concession permits that could be issued. It sounded as though an issue exists in terms of the total number of state and federal concession permits. She related a scenario in which in which a guide obtained three state concession permits and subsequently obtained three federal permits, which would mean the guide could potentially have six concessions but not be up for concession permit review for five years. She wondered if this provision could potentially be abused.

REPRESENTATIVE JOHNSON offered his belief that if a guide subsequently obtained federal permits he/she would be in violation of the state permits. He pointed out the language indicates the guide cannot hold more than three concession permits and anything done to circumvent that would be in violation of the application.

CO-CHAIR FEIGE surmised it would be a simple matter to indicate the concession permit the guide wanted to drop in the event a federal concession permit was subsequently awarded. The state concession permit could then be reallocated by the department.

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REPRESENTATIVE TARR asked whether the DNR have an easy way to access this information.

MR. FOGELS replied yes; that this kind of information is transparent. He thought it would be more than a high risk since the industry would know who held the concession. Additionally, he also thought it would be possible to put in a stipulation on the application.

REPRESENTATIVE JOHNSON offered his belief that the situation would be a self-policing circumstance.

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CO-CHAIR FEIGE removed his objection.

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REPRESENTATIVE TUCK objected. He said he would rather keep the old version of the bill than to keep the language as is.

CO-CHAIR FEIGE said that is not part of the question.

REPRESENTATIVE TUCK offered his support for the original bill and to address amendments individually.

REPRESENTATIVE JOHNSON suggested that it would be easier to keep the amendments in the bill and address the language in the proposed committee substitute.

REPRESENTATIVE TUCK removed his objection.

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CO-CHAIR FEIGE, in response to Representative Tarr, agreed the committee would take further testimony.

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REPRESENTATIVE SEATON supported adopting the proposed CS so people can comment on it and the committee can review it.

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There being no further objection, Version U was adopted as the working document.

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[HB 158 was held over.]

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ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:17 p.m.