

SENATE FINANCE COMMITTEE

April 3, 2013

9:09 a.m.

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CALL TO ORDER

Co-Chair Meyer called the Senate Finance Committee meeting to order at 9:09 a.m.

MEMBERS PRESENT

Senator Pete Kelly, Co-Chair
Senator Kevin Meyer, Co-Chair
Senator Anna Fairclough, Vice-Chair
Senator Click Bishop
Senator Mike Dunleavy
Senator Lyman Hoffman
Senator Donny Olson

MEMBERS ABSENT

None

ALSO PRESENT

Suzanne Armstrong, Staff, Senator Kevin Meyer; Daniel Sullivan, Commissioner, Department of Natural Resources; Cora Campbell, Commissioner, Department of Fish and Game; Wynn Menefee, Deputy Director, Division of Mining, Land, and Water, Department of Natural Resources; Ed Fogels, Deputy Commissioner, Department of Natural Resources.

SUMMARY

SB 18 BUDGET: CAPITAL

SB 18 was HEARD and HELD in committee for further consideration.

CSHB 77(RES)

LAND USE/DISP/EXCHANGES; WATER RIGHTS

CSHB 77(RES) was HEARD and HELD in committee for further consideration.

#sb18

SENATE BILL NO. 18

"An Act making appropriations, including capital appropriations and other appropriations; making appropriations to capitalize funds; and providing for an effective date."

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Co-Chair Kelly MOVED to ADOPT the proposed committee substitute for SB 18, Work Draft 28-GS1798\0 (Martin, 4/2/13).

Co-Chair Meyer OBJECTED for discussion.

SUZANNE ARMSTRONG, STAFF, SENATOR KEVIN MEYER, discussed the changes in the work draft. She stated that Section 1 contained FY 14 capital projects and grants. Section 1 included the FY 14 agency budget requests, grants to municipalities, grants to named recipients, and grants to unincorporated communities. She explained that Section 1 totaled \$702.889 million in unrestricted general funds (UGF), \$124.622 million in designated general funds (DGF), \$55.180 in other state funds, and \$923.431 in federal receipts. The total request in Section 1 was \$1.8 billion. She announced that Sections 2 and 3 were fund source roll-ups, which detailed agency and fund source for the appropriations made in Section 1.

Co-Chair Meyer queried the page number. Ms. Armstrong replied that Section 1 began on page 2.

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Ms. Armstrong stated that Section 2 was the fund source roll-up, and Section 3 was the fund source roll-up for Section 1. She explained that Section 2 began on page 64, and Section 3 began on page 68. She looked at Section 4, which began on page 70, and stated that it was the supplemental capital appropriations for July 1, 2012 ending June 30, 2013. She stated that Section 4 totaled \$137 million including \$114 million of UGF, \$22 million of other state funds, and approximately \$1 million in federal receipts. She stated that the fund source roll-up for Section 4 was on page 72 and 73, which were Sections 5 and 6. Section 7 began on page 74, which were the supplemental

operating appropriations for July 1, 2012 ending June 30, 2013. She stated that Section 7 was a reduction of \$16.591 million in total funds; of which \$14.955 million was UGF, \$578,000 was DGF, \$1.1 million was other state funds, and \$64,800 was federal receipts. Sections 8 and 9 were the fund source roll-ups for Section 7. Section 8 began on page 80 and Section 9 began on page 82. She explained that Section 10 was the language section, which began on page 83. Section 10 included items from the FY 03 supplemental capital. The total for the supplemental capital language section was \$59.5 million in total funds; with \$57.5 in UGF and \$2 million other state funds. He furthered that Section 10 also included FY 13 supplemental operating expenditures that totaled a reduction of \$59.9 million in UGF. Section 10 also included the fund capitalization found under Section 20 on page 87 line 26. She stated that approximately \$25 million would be applied to the Alaska Gasline Inducement Act (AGIA) reimbursement fund; \$2 million into the Emerging Energy Technology fund; \$3.4 million into the Disaster Relief Fund; \$10 million into a Knik Arm Bridge and Toll Authority (KABATA) reserve fund; and \$618,000 to the small municipal school fund, which was contingent on the passage of a bill that opened a criteria and renames the fund.

Ms. Armstrong looked at Section 21, which was the fund transfer section that began on page 88, line 6. She stated that the NPRA impact grant program was established in Section 23, and listed the projects beginning on page 88. The section also included reappropriations that had been requested by the administration for state agencies, and reappropriations that were requested by legislators. She stated that Section 43 provided a lapse extension for the Alaska Arctic Policy Commission to June 30, 2014. She stated that Section 14 established the contingency language for appropriations that were contingent on passage of legislation. She explained that Sections 48 through 51 were the effective date clauses.

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Co-Chair Meyer pointed out that the bill was a significantly smaller capital budget than what had been over recent years. He stressed that there was an attempt to maintain the guidelines to maintain the current assets, finish some of the phased projects, and look for various needed projects in various regions throughout the state.

Senator Bishop thanked Ms. Armstrong for her work.

Senator Olson asked what time the amendments should be submitted. Co-Chair Meyer replied that the amendments should be submitted the current day by 6:00 p.m.

Co-Chair Meyer noted that the total capital budget was approximately \$2 billion, and remarked that there was approximately \$1 million reduced from the governor's proposed budget. He pointed out that the previous year's budget was \$2.9 billion with a bond of approximately \$450 million. Ms. Armstrong added that the committee substitute had \$1.8 billion in total funds, with a reduction from the governor's proposed budget of \$108 million.

SB 18 was HEARD and HELD in committee for further consideration.

[9:24:48 AM](#)

AT EASE

[9:25:54 AM](#)

RECONVENED

#hb77

CS FOR HOUSE BILL NO. 77(RES)

"An Act relating to the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other disposals of state land, resources, property, or interests; relating to authorization for the use of state land by general permit; relating to exchange of state land; relating to procedures for certain administrative appeals and requests for reconsideration to the commissioner of natural resources; relating to the Alaska Water Use Act; and providing for an effective date."

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DANIEL SULLIVAN, COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES (DNR), introduced himself.

CORA CAMPBELL, COMMISSIONER, DEPARTMENT OF FISH AND GAME (DFG), introduced herself.

WYNN MENEFFEE, DEPUTY DIRECTOR, DIVISION OF MINING, LAND, AND WATER, DEPARTMENT OF NATURAL RESOURCES, introduced himself.

Commissioner Sullivan stated that there was a previous presentation on the efforts that the state had undertaken to make the permitting system more timely, efficient, and certain; and HB 77 was focused on those goals. He felt that the permitting reform and modernization was important, and would maintain the highest environmental standards. He specifically pointed out that the bill would uphold the highest standards specifically related to the protection of fish. He furthered that the goal of broader permitting reform and modernization was a goal that benefitted all Alaskans across various groups and individuals. He felt that DNR had a substantial backlog of permits, with some extending years backwards. He felt that the backlog was not helpful with regard to efficiencies, employment, and many other permit relating factors. He pointed out that permitting reform was a bipartisan effort that was occurring in various other states, and remarked that the bill would make certain changes that would result in a cumulative effect to serve the public better with more timely and cost effective decisions. He stated that HB 77 was a continuation of the effort that began the year prior with HB 361. He remarked that HB 361 had smaller, incremental changes that provided an important cumulative effect. He stated that DNR experts had conducted a review of the permitting system to ensure that it was efficient for applicants. He explained that the permitting reform had utilized input from the communities. He stressed that HB 77 reflected the DNR internal review and public input.

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Commissioner Sullivan highlighted the areas of importance that he felt the committee would find relevant. He looked at the issue of general permit activity. He remarked that the bill would give the DNR commissioner statutory authority to issue general permits on certain activities. He explained that general permits were often issued, so the bill would provide clear authority from the legislature written in statute. He stated that land exchange matters were often issues that could take years to permit. He stressed that it was important for land exchange processes to run more efficiently. He stressed that the land exchange permitting issues had historically taken years to resolve.

He pointed out that HB 77 focused on more flexibility with regard to land exchanges. He further pointed out appeal issues. He stated that HB 77 sought to reform the appeals and administrative review process by encouraging participants to be involved in the process throughout the appeal and administrative review process. It would also tighten the eligibility standards for those appeals. He pointed out that the statute would focus on amending water reservation statutes to have the application for water reservations apply to federal or state agencies, or political subdivisions of the state. He remarked that the water reservation aspect was the most controversial aspect of the bill. He referred to a letter that he had written to Representative Edgmon that outlined some of the components of the water reservation aspects of HB 77 (copy on file).

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Commissioner Sullivan stated that there were three types of water authorizations. He explained that the water reservation, which was the only focus in the bill. He stated that the water reservation set a specific amount of water to be retained in a water body to ensure whether that water is used to maintain healthy fish populations, or water reservations could be used for other public purposes such as navigability, recreation, or water quality. The other two types of water authorizations that were not part of the bill were temporary water use permits and water rights. With regard to the amendments suggested in HB 77, it only affects the statutory responsibilities of DNR with regard to water reservations. He stressed that the bill did not change any provision relating to DFG's authority. He stated that the goal of the proposed change, with regard to water reservations, was not to stop the placement of water reservations on Alaskan water bodies or to diminish the protection of fish habitat. Rather, the goal of HB 77 was to ensure that water reservations were issued to and held in perpetuity by public agencies for the protection of public resources. He remarked that HB 77 would not prevent private organizations, individuals, or tribes from pursuing waters reservations; rather it would require them to work with a public entity to submit the application to DNR. He remarked that DFG already had an extensive process of working with the groups. He emphasized that DNR and DFG were very focused on the water reservation issue, because of the support from the legislature to reduce the permit backlog.

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Commissioner Campbell explained that her goal was to provide information about the role that DFG played and its permitting authority specifically regarding water use. She also stated that she would discuss the process that DFG used to partner with nongovernmental agencies that were interested in securing water reservations. She reiterated that HB 77 amended the DNR statutes in a very specific and limited way. That is to limit the application for reservations of water for maintaining in stream flows to federal or state agencies, or political subdivisions of the state. She stressed that the bill did not affect DFG's title 16 responsibilities and authorities. She also pointed out that HB 77 did not affect the role of DFG in DNR's water permitting decisions. She explained that DFG was guided by title 16 to protect fish resources. Under DFG's authority, it required a fish habitat permit for water removal from fish bearing waters to ensure that there was water for fish passage and proper protection of fish habitat. She explained that DNR statutes that were not affected by the bill required DNR to work with DFG to evaluate the impacts to fish and their habitat when DNR issued any type of water authorization. She stated that DFG reviewed every proposed activity that involved taking water to determine if the activity was located within fish-bearing waters. The review was conducted in order to determine if the activity allowed for free passage of fish and proper protection of fish habitat. She stressed that DNR placed the restrictions and conditions on water rights after DFG had conducted its review.

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Commissioner Campbell stressed that the existing processes and protections would not be affected by the passage of HB 77. She reiterated that the statutory requirement for DNR to work with DFG would remain in place; and DFG separate permitting authority under title 16 would remain intact. She remarked that a water reservation was not the only method to ensure protection of fish and fish habitat. She stated that both DNR and DFG had a responsibility to protect fish habitat through the permitting process, regardless of whether a reservation was in place on any particular stream.

Commissioner Sullivan stated that he would be willing to answer any questions from the committee.

Senator Bishop surmised that there were two parts to the water reservation aspect of the bill. One related to DNR and one related to DFG. He queried what might happen if a tribal entity came to DFG to obtain a water reservation. He assumed that DFG would assist the entity with stream gauging, water flow rates, and the application process. Commissioner Campbell replied in the affirmative, and that DFG would assist in the data gathering in order to further apply at DNR.

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Senator Olson remarked that the permitting issue was frustrating to the private sector. He wondered how DNR planned to ensure that the safeguards were in place, while streamlining the permitting process. Commissioner Sullivan replied that bill's purpose was to ensure that the backlog of applications was dealt with in a timely manner. He stressed that the bill's intent was to balancing the protection of the public and protection of the environment. He pointed out that there were many aspects of the bill that may not seem like significant changes to the current system, but incrementally the changes would result in more efficiency. He furthered that the safety issue that Senator Olson had referred to was a great lesson to the state, and stressed that the federal government's permitting was an issue as well.

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Senator Olson surmised that there were currently 33 entities that were approved by DNR. Commissioner Sullivan replied that there were 33 water reservations in the past three years, and most of those were to DFG.

Senator Olson deduced that the majority of the 33 water reservations went to another department in the state. Commissioner Sullivan responded that the majority of the water reservations went to DFG for fish habitat protection. He furthered that DNR had been working hard to alleviate the backlog, which allowed for the administering of more permits.

Senator Olson commended the DNR for their work on the backlog of applications.

Co-Chair Meyer wondered if the biggest concern about the bill was that it did not adequately protect fish in the streams and waters. Commissioner Sullivan replied that there was a lot in the bill that was not controversial, but that the debate had focused on the water reservation aspect.

Co-Chair Meyer wondered if Commissioner Campbell agreed with Commissioner Sullivan. Commissioner Campbell replied in the affirmative.

Senator Olson noted that the controversy was over who was included and who was excluded from applying for the permit. Commissioner Sullivan replied that the water reservation controversy was related to who could apply for the reservation.

Vice-Chair Fairclough queried how Alaska compared to other states regarding its allowance for water rights. Commissioner Sullivan believed that Alaska was the only state that did not currently do what the bill proposed.

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ED FOGELS, DEPUTY COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES, stated that the bill was part of a broader effort. He discussed the Sectional Analysis (copy on file).

Section 1 adds a new subsection (c) to AS 38.05.020 to allow the Commissioner the ability to issue a general permit for activity on state land if the activity is unlikely to result in significant and irreparable harm to state land or resources except for land covered in: fish and game habitats (AS 16.20), the Alaska Surface Coal Mining Control and Reclamation Act (AS 27.21), forest resources (AS 41.17) and parks and recreational facilities (AS 41.21).

Section 2 removes the reference to the additional requirement that the director of the division of Mining, Land and Water shall consult with other departments during the negotiation of a land exchange (AS 38.50.090), as this provision is deleted in Section 43 of the bill. This provision is replaced in

Section 22 with the addition of language referring to decision and review procedures established in AS 38.05.035(e).

Section 3 allows the director to execute a contract for the sale, lease, or other disposal of land or an interest in land without commissioner approval if the annual rental is not greater than \$10,000 (rather than \$5,000). This section also clarifies that the director of DMLW may provide a preliminary written best interest finding and public notice for non-oil and gas related land disposals.

Section 4 clarifies that only a person who is substantially and adversely affected by a final written best interest finding related to the sale, lease, or disposal of land may appeal a director's decision. It also adds that the applicant may also appeal the decision.

Section 5 clarifies that it is considered a denial if the Commissioner does not act on a request for reconsideration 30 days after issuance of the final written finding.

Section 6 states in an administrative appeal to court, a court can only deal with points presented to the commissioner in the appeal or request for reconsideration.

Sections 7 through 9 amend statutes to allow land and property sales to be purchased by contract or by payment in full up-front. Sections 8 and 9 remove references to AS 38.05.065(b) related to sale of land by lottery, which is repealed in Section 43 as the newly created Section 7 now includes all land sales.

Section 10 adds a new subsection (f) to AS 38.05.070 that allows a one-time extension by the director of DMLW for a period of up to two years for an existing land lease if in the best interest of the state. This section allows leases to remain active while DMLW adjudicates a request to renew the lease, a request to purchase the leased land under a preference right under AS 38.05.102 or where the lessee plans to substantially change the operation to the point where

a new best interest finding and decision must be issued under AS 38.05.035(e).

Section 11 amends AS 38.05.075(a) so that only a bidder who is substantially and adversely affected by the issuance of a determination of highest bidder in a lease sale may appeal for a review of the determination.

Section 12 amends language related to prequalification of bidders for a lease to make the time constraints more easily understood.

Section 13 amends AS 38.05.075(h) so that only a person substantially and adversely affected by the department's prequalification decision may appeal or request reconsideration no later than 5 days after the decision is released.

Section 14 clarifies that only an applicant substantially and adversely affected by the department's decision related to leases for fisheries development may appeal or request reconsideration no later than 20 days after the decision is issued. This section also clarifies that appeals to DNR and superior court would now be addressed under AS 44.37.01 and therefore the sentence providing appeal to superior court is deleted.

Section 15 and 16 relate to aquatic farming leases. Section 15 removes the reference to lease renewals as Section 16 adds a new subsection related specifically to renewal of aquatic farm leases. Section 16 allows the director of DMLW to issue a one-time renewal, for a period of up to ten years in duration, of an existing aquatic farm lease if it is determined to be in the best interest of the state. Section 16 also provides that the director may extend aquatic farm leases for up to two years while a renewal application is pending or where the lessee plans to substantially change the purpose or operation of an existing lease such that a new best interest finding and decision must be issued under AS 38.05.035(e).

Section 17 amends AS 38.05.185(a) to allow the director of DMLW to make a preliminary written decision for a mineral order or leasehold location

order regarding availability of land to mineral leasing or entry. This conforms to amendments made in Section 19.

Section 18 amends AS 38.05.300(a) to allow the director of DMLW to make a preliminary written decision regarding the classification or reclassification of state land. This conforms to amendments made in Section 19.

Section 19 amends the public notice statute AS 38.05.945(a) to include public notice for various preliminary decisions or final decisions if a preliminary decision is not issued. This section clarifies that all mineral orders and leasehold location orders are subject to public notice requirements of AS 38.05.945, not just mineral closing orders.

Section 20 clarifies the definition of "state land" includes shoreland and tideland in AS 38.05.965(21). Previous definition included "shore" and "tide."

Section 21 adds a definition to include that "public auction" includes a public oral outcry auction and a public online auction.

Sections 22 through 27 give DMLW more flexibility in its authority to exchange land or interest in land when it is in the best interest of the State. Section 22 is modeled after AS 29.65.090 which provides for exchanges between DNR and boroughs and municipalities. Subsequent sections make conforming amendments.

Section 28 revises the statute to exclude the requirements of AS 38.05.305(e) for alterations of platted boundaries if all owners approve and no public easements or rights-of-way are affected.

Sections 29 through 33 amend statutes to allow only either an applicant or a person who is substantially and adversely affected, rather than aggrieved, to appeal or request reconsideration of DNR decisions. Section 29 clarifies when the requirements of AS 44.37.011 is applicable. Section 32 clarifies that a person has 20 calendar days after the issuance date of a final department decision in which to file an appeal

or request for reconsideration. Section 33 adds new subsections to define what it means to be adversely affected and outlines additional requirements in the DNR administrative appeal process.

Section 34 would allow people to carry small quantities of water from one hydrologic unit to another without violating the law.

Sections 35 through 37 make minor wording revisions related to water statutes that preserve the original intent of the statute.

Sections 38 and 39 continue the changes made to statutes related to appeals including a requirement that a person be "adversely affected" as defined in Section 39 in order to appeal a decision regarding a proposed sale or application for appropriation or removal of water.

Sections 40 and 41 amend water reservation statutes to limit the application for reservations of water to federal or state agencies, or political subdivision of the state. Section 41 removes the requirement that the commissioner review all reservations of water at least once every ten years and provides that the commissioner may review reservations of water at any time.

Section 42 amends AS 46.15.155(a) to clarify that the commissioner may issue one or more new temporary water use permits for the same project.

Section 43 repeals certain statutes that have been modified in other sections of this bill related to land sale contracts, land exchanges, and water reservations.

Section 44 provides one year for applicants with pending applications who do not meet the new qualifications established in Section 40 to request the commissioner of DNR to transfer their pending applications to an entity of their choice that is authorized to reserve water. If, within two years, the entity notifies the Department that it will not pursue the reservation or does not indicate whether it intends to pursue the same or smaller reservation, DNR

will return the application fee to the original applicant. If the entity pursues the reservation of water, DNR will consider the application and if a certificate of water is issued, the priority date will be retained.

Section 45 allows the Department to adopt regulations necessary to implement changes to take effect after July 1, 2013.

Section 46 instructs the Revisor to change the heading of AS 44.37.011.

Section 47 establishes an immediate effective date for Section 45.

Section 48 establishes an effective date of July 1, 2013 for the remainder of the act.

Mr. Menefee looked at the briefing paper. He felt that a briefing paper would cover more points of the bill.

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AT EASE

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RECONVENED

Mr. Menefee explained the document "CS HB 77 (RES): Land Disposals/ Exchanges; Water Rights Briefing Paper; for the Senate Finance Committee; March 13, 2013" (copy on file):

In 2010, the Governor of Alaska and the Department of Natural Resources (DNR) embarked on an initiative to improve the State of Alaska's permitting processes in order to advance the public interest by ensuring projects are permitted in a timely, predictable and efficient manner while safeguarding the environment.

During the 2012 Legislative session, the Governor introduced HB 361, which included the highest priority changes related to leasing and disposal programs that would help reduce the permitting burden on the applicant and free more time for staff to work on processing applications. The Division of Mining, Land and Water (DMLW) in DNR has identified additional statutory changes that would help streamline

permitting requirements for the public to use and enjoy Alaska's land and resources.

The bill would accomplish the following primary objectives:

1) Gives the Commissioner the ability to issue a general permit for activity on state land if the activity is unlikely to result in significant and irreparable harm to state land or resources. (Section 1)

- Standardizes the permitting of certain types of activities on state land so that the agency may issue individual permits for that activity without being required to adjudicate each permit separately.

- Although there is arguably the authority in statute to do general permits, it is not explicitly called out.

- As part of the Governor's Permitting Efficiency Initiative, the department will be doing general permits for certain activities that can have standardized authorizations.

2) Give the Division more flexibility in its authority to exchange land or interests in land when it is in the best interest of the State. (Sections 22, 23, 24, 25, 27 and 43)

- Enables DNR to resolve land management issues with other entities, such as a government agency, a native corporation or other organization, on a timelier basis.

- Currently, the process for a land exchange takes years to occur and is rarely successful due to the complexity of the current process, the long lead times to complete some of the current statutory requirements, and unique timing requirements involving public noticing, survey, and appraisal. Continuation of the current approach will result in unresolved land ownership patterns and the inability to make state land patterns more efficient.

- Existing statutes (AS 29.65.090) include a land exchange provision between DNR and boroughs and municipalities, which takes only months and have always been successful. This change in statute is patterned after this approach.

3) Amend statutes to allow all land and property sales to be purchased by contract instead of by payment in full up-front. (Sections 7, 8 and 9)

- Currently, DMLW issues contracts for any customer requesting financing for any purchase of state land; however, this practice could be subject to a legal challenge because the law only mentions sales at auction. If successful, a challenge would force DMLW to require all land purchases, except for those by auction, to be paid in full at the time of purchase, which would significantly lower land sales as most people would be unable to fully finance the cost up-front. An estimated one-third of all land sold is by auction. This puts two-thirds of the state's sales at risk if the state cannot finance the purchase. The monetary loss is estimated at over \$2 million a year.

- This revision clarifies DMLW's ability to issue installment contracts or accept payment in full up-front to a majority of land sales sold through preference right cases; Public and Charitable cases; Initial Over-the-Counter Sales; Over-the-Counter sales; and Remote Recreation Cabin Sites.

4) Allow the director of the Division of Mining, Land and Water to extend, one-time, for a period of up to two years in duration, an existing land or tidelands lease if it is determined to be in the best interest of the state. (Sections 10 and 16)

- Allows leases to remain active for two years while DMLW adjudicates a request to purchase the leased land under a preference right under AS 38.05.102 or where the lessee plans to substantially change the operation to the point where a new best interest finding and decision must be issued under AS 38.05.035(e).

- Preserves the lessee's rights from being extinguished while the state is actively working to issue a new lease or move to a purchase contract.

- This statute change covers both regular leasing (e.g. shoreland, tideland, or submerged land) and aquatic farm and hatchery site leases.

5) Allow the director of the Division of Mining, Land and Water to renew, one-time, for a period of up to ten years in duration, an existing aquatic farm lease if it is determined to be in the best interest of the state. (Sections 15 and 16)

- Allows leases to be renewed for up to another ten years if the lease operations remain the same and the lessee is in good standing with the state.

- Preserves the lessee's rights from being extinguished at the end of the lease and provides the department with the flexibility to maintain a productive aquatic farm in place rather than having to offer a new lease through a competitive process.

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Mr. Menefee looked at point 6:

6) Clarify that the commissioner may issue one or more new temporary water use permits for the same project. (Section 42)

- Under current statutes, a Temporary Water Use Authorization (TWUP) permit may be authorized "...for a period of time not to exceed five consecutive years..."

- The proposed change would clarify that successive Temporary Water Use Authorizations may be applied for, adjudicated and issued for the same project.

- TWUPs are not permanent water rights. The division may change or revoke TWUP as necessary to protect water right holders or the public interest, and TWUPs are mainly used by exploration projects and construction projects that are not conducive to permanent water rights because the water use is of a temporary nature and because water sources, water uses, water use quantities and water use locations frequently change.

Senator Hoffman wondered if the provision would give individuals temporary water authorization. Mr. Menefee responded that the provision did not change anything about who could apply for temporary use authorizations, therefore anyone could apply for a temporary use authorization.

Senator Bishop surmised that the APMA was only good for five years, because the temporary water use authorization was only good for five years. Mr. Menefee replied that his question was one aspect of the issue.

Senator Hoffman wondered there was a process by which the temporary water authorization could become more permanent. Mr. Menefee responded that there were two different types of authorizations: temporary water use authorizations and water rights. He stressed that both authorizations were independent from each other. He stressed that an application for a temporary water use authorization gave no long term vested interest or long term priority right.

Senator Hoffman wondered what would happen if a person applied for a permanent water permit, that might usurp a temporary water use permit. Mr. Menefee replied that temporary water use authorizations were subject to other appropriators.

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Mr. Menefee highlighted point 7:

7) Amend water reservation statutes to limit the application for reservations of water related to maintaining instream flow to federal or state agencies or political subdivisions of the state and reduce the mandate to re-evaluate water reservations (Section 40 and 41)

-This revision would prevent non-agency entities from being able to apply for the reservation of water; this does not affect holders of, or applicants for, standard water rights, temporary water use permits or water removals

-A "person" was added to the statute to allow miners to apply for and receive a water reservation for sanitary and water quality purposes; usually associated with mixing zones. However, no applications for these reservations have ever been filed. Mining interests can still receive TWUPs or water rights for sanitary and water quality purposes from the department

-No other state allows private persons to reserve and hold reservations to public water;

-The removal of the word "person" does not preclude an organization or individual from working with a municipal government, state or federal agency, so that the agency can apply for a reservation. In this manner, the appropriate policy level review and criteria for each agency or governmental entity are used. In addition, these agencies will be able to identify the funding and technical expertise needed to perfect these applications

-As of December 31, 2012, there were 371 applications pending for instream water reservations. Out of those, 35 are applications that have been applied for by a person (non-agency). Within one year, if requested by an applicant who is no longer authorized to apply, DNR shall transfer pending applications to an entity identified by a state, Federal agency or a political subdivision of the state. If, within, two years, DNR does not receive notice that an entity intends to pursue the same or smaller reservation, then the application and fee will be returned to the original applicant. If a certificate of reservation is issued, the certificate will carry the priority date of the original application.

-Of the 61 issued certificates for Water Reservations, all are issued to government entities (DNR, ADF&G, and BLM). No certificates for Water Reservations have ever been issued to "persons" in the state of Alaska.

- The commissioner is currently required to review all reservations of water every ten years to determine whether the statutory purpose for which the reservation was issued still apply to the reservations. Due to the number of existing and future reservations, and the limited resources available to the department, this is beyond the capacity of the department.

Senator Olson wondered how many permits were affected in order to revise a business plan, because of the current bill. Mr. Menefee responded that once a person obtains a certificate for a water right, it was a perpetuity authorization for the water right. Therefore, nothing in the bill would change the perpetuity right. He furthered that temporary water use authorizations were different from water rights, because it was written in statute that any other authorization would not diminish the current water right.

Senator Olson surmised that individuals who had water rights for small personal use would not be affected by the bill. Mr. Menefee replied that if the individuals obtained the authorization that was required by law, those individuals' water rights would not be affected.

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Senator Olson noted that the state regulated all water, but wondered about the creeks that dry up during the summer time. Mr. Menefee responded that all water appropriation for beneficial, regardless of whether it is from a temporary or full-time stream was required. He furthered that there was a balance of significant amount of water written in regulation.

Senator Olson wondered if the water rights also referred to subterranean rivers and wells. Mr. Menefee replied in the affirmative. Mr. Fogels furthered that DFG would work with DNR to be sure that the fish habitats were protected, regardless of the size of the water body.

Mr. Menefee explained that there was a habitat permit required, if the individual wanted a use permit for a fluctuating water body.

Senator Bishop wondered if the water right permits that were used by one business could drive another business to go under. Mr. Menefee responded that Senator Bishop's concern could occur, if one business had a temporary use permit and the other business had a permanent water right permit. He furthered that there was an eight-point decision that DNR was required to perform. One of the points was the effect of the loss of alternative uses of water that might be made within a reasonable amount of time.

[10:24:07 AM](#)

Co-Chair Kelly understood that the water in Alaska was reserved for fish and game in the Alaska constitution. Mr. Menefee responded that the water was reserved for the people for public use. The reservation referred to the fish that were referred to the people, and the constitution clarified that fish could not be impounded for personal use through a water right. He furthered that the fish were for the public.

Co-Chair Kelly surmised that the streams were reserved for public uses, with the first priority being the fish. Mr. Menefee responded in the contrary, and clarified that the constitution did not say that the highest and most important use was fish.

Co-Chair Kelly looked at the commentary on the constitution, which stated that an appropriation of water, except for public water supply, shall be limited to state purposes and subject to preferences of beneficial uses, concurrent or otherwise as prescribed by the legislature and to the general reservation of fish and wildlife. Mr. Menefee stated that the fish were for the public, so a water reservation could not be used to impound fish for personal use.

Co-Chair Kelly understood that the water was reserved for public use, and the fish were protected by reservation, so the use was limited by the ability for fish to thrive in the stream. Mr. Menefee responded that the reservation in the constitution was different than the application for the

reservation. He stressed that the constitution stated that the waters were reserved for the public use, but the state was required to determine how it is appropriated.

Co-Chair Kelly remarked that water was reserved for the fish. He surmised that if someone wanted to use the stream that someone had the right to use the stream, on a first come first serve basis, for beneficial use, to the point that it does not encroach on the general reservation for fish. Mr. Menefee responded in the negative.

10:29:20 AM

Mr. Menefee explained that the laws gave provision that say there could be another priority over fish, if it is in the state's best interest.

Co-Chair Kelly surmised that there was a state's best interest and a general reservation of fish and wildlife. He furthered that the next interest was water rights. Mr. Fogels stated that the reservation issues was DNR's assignment, the constitution reserves the water for use by the public. He stressed that DNR made the appropriations and determinations.

Co-Chair Kelly stressed that the reservation was for the best interest of the state, and was generally reserved for fish and wildlife. Mr. Menefee agreed, and explained DNR must make an interest decision of whether to appropriate or whether to reserve.

Senator Dunleavy stated that he would wait to offer his question.

Senator Hoffman queried examples of when a reservation could be issued that did not pertain to fish, but rather the best interest of the state. Mr. Menefee responded that the statutory construction stated that DNR must consider the fish and wildlife habitat, but it did not say that DNR was mandated to put it as a priority.

Co-Chair Kelly wondered if the use of a stream was a reservation or a right. Mr. Menefee responded that the use of a stream was a "right." He furthered that a reservation was a form of a "water right." He explained that a reservation was to keep the water in place and a water right was to take the water out. Mr. Fogels furthered that

DFG could apply for a water reservation to keep the base level for even a small number of fish.

[10:35:28 AM](#)

Senator Bishop stressed that DFG and DNR were each required to sign off on the reservation and water right. That was the main issue.

Senator Olson stressed that there was a complicated situation with the federal government protecting the natives. He felt that the bill made the process more complicated, because there were resources that were not under state management. If DNR had power over the water, he wondered if the resources still belonged to the natives. Mr. Fogel explained that the intent of the bill would ensure that the reservation was held for the public.

[10:37:05 AM](#)

Senator Olson stated that the federal government did not look at the resources that way, especially pertaining to subsistence for the natives. Mr. Fogels did not have enough information to comment on Senator Olson's concerns.

Co-Chair Kelly stated that the constitution did not protect subsistence rights for only natives, but it protected subsistence rights for all Alaskans.

Senator Dunleavy remarked that there was no mention of the federal government, so he wondered if there would be a layer of the federal government permitting process. He pointed out that there could even be an issue when moving water around on private property. Mr. Fogels responded that the bill would not affect the federal permitting regimes such as wetlands processes. He said that there was a separate bill that dealt with the federal permitting process.

Senator Dunleavy surmised that if both bills passed, the overall permitting process would be much more streamlined. Mr. Fogels responded that the bills would make permitting much more efficient.

[10:40:11 AM](#)

Senator Dunleavy wondered who the individual would deal with if both bills passed the state or the federal government. Mr. Fogels responded that streams would be dealt with through the state, and wetlands would be dealt with through the federal government.

Senator Hoffman noted something in point number 7, and noted that there was the addition of a miner's ability to apply for a water right. He furthered that there was also a removal of the word, "person." He wondered how the legislation would be reserved primarily for the people. He specifically wondered why the word, "person", was removed. Mr. Menefee responded the "person" referred to who could apply for a water reservation. He explained that it did not prevent the state from reserving to the benefit of all people.

Senator Hoffman wondered if the bill applied to individuals who build wells on their personal property. Mr. Menefee replied that when someone drills a well, they were dealing with water rights, so they would not be affected.

Senator Olson looked at Section 40, dealing with political subdivisions of the state. He wondered if that was the transition language. Mr. Menefee replied that he thought the transition language was in Section 44. He explained that Section 40 was where the word "person" was removed as an applicant.

Senator Olson wondered if the state considered tribal governments as one of the political subdivisions. Mr. Menefee responded in the negative.

Senator Olson asked if communities who did not have access to state or federal government offices, and only had access to tribal offices would be excluded from the bill. Mr. Menefee responded that the bill did not make a statement regarding whether the tribal office could represent a people. He furthered that the tribal government could collect data and apply for a reservation.

[10:45:27 AM](#)

Senator Olson felt that the circuitous route was cumbersome, so the small communities were excluded from the bill. Mr. Fogels responded that DNR would work closely with

tribal organizations, should they come forward with a proposal for a reservation. He stressed that the reservation was a public resource, held by a public entity, with a definitive geographic boundary that had representation for all Alaskans within that area.

Senator Olson expressed concern, because Alaska was the only state with this kind of system. He felt that other states recognized political subdivisions, and worked on a government to government relationship. He felt that tribal entities were put at a disadvantage with the bill. Mr. Fogels responded that DNR was working towards streamlining in stream flow reservations. He stressed that DNR had done more in the three years prior than had ever been accomplished since statehood. He pledged to work with any entity with good reason to apply for a reservation.

Senator Olson wondered if DNR would be opposed to amendment that took out the word "person" and added the word "tribal organization" to the bill. Mr. Fogels replied that DNR did not believe that it would be a workable solution to add tribes to the list.

Senator Olson surmised that DNR would oppose that amendment. Mr. Fogels responded that he could not take an official position. He furthered that DNR would not recommend that amendment.

Senator Olson felt that the bill did not go far enough to rectify the situation for the communities that had no federal or state agencies.

CSHB 77(RES) was HEARD and HELD in committee for further consideration

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ADJOURNMENT

10:50:16 AM

The meeting was adjourned at 10:50 a.m.