

HOUSE FINANCE COMMITTEE

March 25, 2015

1:24 p.m.

1:24:26 PM

CALL TO ORDER

Co-Chair Thompson called the House Finance Committee meeting to order at 1:24 p.m.

MEMBERS PRESENT

Representative Mark Neuman, Co-Chair
Representative Steve Thompson, Co-Chair
Representative Dan Saddler, Vice-Chair
Representative Les Gara
Representative Lynn Gattis
Representative David Guttenberg
Representative Scott Kawasaki
Representative Cathy Munoz
Representative Lance Pruitt
Representative Tammie Wilson

MEMBERS ABSENT

Representative Bryce Edgmon

ALSO PRESENT

Representative Cathy Tilton, Sponsor; Heath Hilyard, Staff,
Representative Cathy Tilton; Crystal Koeneman, Staff,
Representative Cathy Munoz; Tom Brookover, Acting Director,
Division of Sport Fish, Department of Fish and Game; Ben
Ellis, Director, Division of Parks and Outdoor Recreation
Director, Department of Natural Resources; Paul Johnson,
Guide, Gull Cove Alaska, Southeast Alaska; Representative
Munoz, Sponsor; Kristin Ryan, Director, Division of Spill
Prevention and Response, Department of Environmental
Conservation; Crystal Koeneman, Staff, Representative Cathy
Munoz; Ken Alper, Director, Tax Division, Department of
Revenue.

SUMMARY

HB 41 SPORT FISHING SERVICES

HB 41 was HEARD and HELD in committee for further consideration.

HB 158 REFINED FUEL SURCHARGE; MOTOR FUEL TAX

HB 158 was HEARD and HELD in committee for further consideration.

#hb41

HOUSE BILL NO. 41

"An Act relating to sport fishing services, sport fishing operators, and sport fishing guides; and providing for an effective date."

[1:34:53 PM](#)

REPRESENTATIVE CATHY TILTON, SPONSOR, relayed that the bill re-established the sport fishing guide and operator licenses which sunsetted on December 31, 2014. She added that HB 41 also amended the previously existing fee structure which ensured that the program was budget neutral. The 2014 sunset date was not an intentional policy decision by the previous legislature; but rather an inadvertent oversight that arose from a failure to act on another piece of legislation. The licenses benefitted the sport fishing guide industry and the general public.

Co-Chair Neuman asked for detail related to the licensing fees.

Representative Tilton answered that initially a graduated fee structure increase of \$50 per year instituted over a two year period until the fees doubled from \$100 to \$200 was proposed. However, the proposal would have left the board in a deficit position for two years. She relayed that Co-Chair Neuman and his staff recommended directly doubling the fee from \$100 to \$200 given the state's current fiscal situation. She believed that instituting the entire fee increase was "prudent."

Co-Chair Neuman interjected that a graduated fee increase over the next two years created a \$251 million deficit. He shared that in order to avoid a budgetary shortfall the sponsor agreed to work with his staff on the CS.

Representative Gattis asked whether the legislation affected the Matanuska-Susitna Borough (Mat-Su).

HEATH HILYARD, STAFF, REPRESENTATIVE CATHY TILTON, replied that HB 41 reestablished the licensure as it had been previously. He qualified that the legislation did not target the Mat-Su in any way. Every sport fish guide in the entire state was required to obtain the license.

Representative Gattis offered that she was not familiar with the bill. She noted that the bill applied to guiding in fresh, ocean, federal, and state waters. She asked for verification.

Mr. Hilyard replied in the affirmative. He detailed that any guided fishing services in the state was required to obtain the license regardless of what body of water or where the guide operated.

Representative Gattis reiterated that the license covered guiding and was not specific to any location in the state. She asked for confirmation.

Mr. Hilyard answered in the affirmative.

Representative Gattis relayed that the sport fishing guides in the Mat-Su emphasized the importance of gathering good data for the log book program and requested that more specific data would be required for log book entries.

Co-Chair Neuman asked whether the bill had provisions related to the guide log books.

Mr. Hilyard replied that perhaps an indirect relationship existed. He explained that the log book requirements were established in regulation. The fact that the bill re-established the licensure that inadvertently expired on December 31, 2014 was the manner the guide book requirement was interrelated; but the bill did not specifically address the log books.

Co-Chair Neuman mentioned that he had worked on the log book issue in the past. He referred to special licensure conditions related the Kenai River Special Management Area. He remembered that staff working under a licensed guide were covered under the guide's license. He wondered whether there were restrictions on replacement guides working under

the same license if the established guide was hurt or unable to work for other reasons.

Mr. Hilyard answered that the Kenai River Special Management Area was managed under the Department of Natural Resources (DNR). He indicated that in addition to the general fishing guide license an operator on the Kenai was required to obtain a special permit from DNR. The special license had additional regulations that required a guide to attend a guide academy. He delineated that the "carve out" provision related to a waiver for the replacement of an assistant guide and authorized hiring someone who did not attend the guide academy for the remainder of the season. The guide academy only operated certain times each year but online options were being considered.

[1:45:57 PM](#)

Representative Kawasaki wondered why the bill did not contain a sunset date.

Mr. Hilyard responded that Section 15 of the bill did contain a sunset date for the licensure on page 10, line 28 of January 1, 2026.

Representative Kawasaki observed that typically a board was created along with professional licensure that provided input and management based on the expertise of its members. He asked whether creating a specific board for the guide licensure was ever considered.

Mr. Hilyard responded in the affirmative. He elaborated that previous legislation dealing with the fishing guide licensure attempted to establish a charter fishing guide board. He noted that in his previous capacity representing the Southeast Alaska sport fleet he advocated for creation of a board. During the 28th Legislative session a bill establishing a board along with the licensure extension was not passed and the licensure expired. He disclosed that the charter fishing industry was not generally supportive of a board.

CRYSTAL KOENEMAN, STAFF, REPRESENTATIVE CATHY MUNOZ, interjected that the costs associated with establishment of a board was extremely high so industry support for a board was unfavorable.

Representative Kawasaki asked if the Department of Fish and Game (DFG) regulated of the licensure.

Ms. Koeneman replied in the affirmative.

Representative Kawasaki relayed that someone with a sport fishing guide license was required to have a business license from the Department of Commerce, Community and Economic Development (DCCED), a fishing guide license, sport fish guide registration, a personal sport fishing license and tags, a current "six-pack license" issued by the Coast Guard, and vessel registration. He wondered what the startup costs for a fish guiding business was and whether the costs were prohibitive.

Mr. Hilyard responded that the costs varied greatly depending on the type of guiding and whether the species was managed by the state or federal government and took place in fresh or saltwater. He reported that in discussions with key charter groups around the state he determined that the groups were supportive of licensure and willing to pay up to double to maintain the licensure.

Representative Kawasaki was concerned about pricing people out of the market by adding a "seemingly redundant licensure." He referred to the DFG fiscal note. He noted that the total cost for the fiscal year, mostly for personal services was \$383 thousand. He noted that the license fees were expected to cover the costs. He wondered why five positions were needed to administer the license.

Ms. Koeneman replied that the positions already existing in DFG and represented the needs of the department for administering the license.

Representative Gara spoke to the definition of sport fishing vessel in the bill. He could not find a definition in the legislation and wanted to ensure that a sport fishing vessel could not include a recreational vessel.

Mr. Hilyard responded that a vessel would be considered a sport fish vessel and required proper licensing if the vessel used was engaged in guiding people for compensation.

Representative Gara reiterated that he did not see specific language in the bill and wanted to ensure that the bill was

not reinstating a former controversial program that required sport fishers to register their boats.

Ms. Koeneman referred to page 7, line 2 and read:

"sport fishing services" does not include

(A) an activity for which a sport fishing guide license is required; or

(B) booking and other ancillary services provided by a tour broker or agent to a sport fishing services operator.

Ms. Koeneman believed the passage defined sport fishing services related to the bill.

Representative Gara examined the bill and wondered where it defined sport fishing services as services for compensation.

Ms. Koeneman replied that the language was located on page 6, line 29 through page 7, line 1 and read:

(3) "sport fishing services" means the indirect provision of assistance, for compensation or with the intent to receive compensation, to a person engaged in sport fishing in taking or attempting to take fish or shellfish by a business that employs a sport fishing guide to provide sport fishing guide services...

Representative Gara asked for a guarantee that nothing in the bill required non-motorized boats to register.

Ms. Koeneman answered that if the operator was not providing a guide service for compensation then registration was not required. She emphasized that an uncompensated operator would not have to register.

[1:58:03 PM](#)

Vice-Chair Saddler pointed to Section 15 on page 10, line 28 which read:

Sec. 15. Sections 5, 9, and 10 of this Act take effect January 1, 2026.

Vice-Chair Saddler ascertained that Section 5 required a guide to register a boat, Section 9 required the commissioner to write regulations, and Section 10 contained repealers. He wondered why the provisions would not take place until 2026.

Mr. Hilyard answered that the language was "confusing" and related to drafting language that referred to the repealers and when the repealers would take effect.

Representative Pruitt referred to Section 6 [starting on page 2, line 26] and noted that the provisions were the original that related to the program at expiration and asked whether anything new had been added from prior statute.

Mr. Hilyard replied that no new policy provision had been added except the graduated fee structure.

Representative Pruitt believed the sponsors had done what was needed to avoid using general funds to fill a budget gap related to license fees. He cited the fiscal note and deduced that the cost for "six" full-time positions would likely increase over the next six years along with other program costs. He wondered whether the sponsors would agree to establish a ceiling and empower the director or commissioner to raise fees to adequately cover the costs of the program in the future without having to seek legislative approval.

Ms. Koeneman answered that she was familiar with the licensing fee issue in her previous position with DCCED. She agreed that the situation was frustrating when licensing programs carried a deficit. She projected the fees proposed in HB 41 over a ten year period and surmised that the increase was sufficient to carry the program through the sunset date and created "certainty" for the guide businesses to know the established fee structure over a ten year period. She commented that adding a ceiling and authorizing the commissioner was a policy call for the committee.

Representative Pruitt noted that the ceiling worked for administering fees for state parks. Park administrators could raise fees without going through the legislative process.

Co-Chair Neuman related that his staff had collaborated with the sponsor to establish a fee schedule that would cover cost increases through FY 2026. He contended that a sport fishing guide with a registered vessel could not use the vessel for personal recreational use and asked for confirmation.

Mr. Hilyard replied in the negative. He thought that the scenario was legal as long as no compensation was exchanged for the service.

Co-Chair Neuman thought the answer was incorrect. He asked to hear from the department.

TOM BROOKOVER, ACTING DIRECTOR, DIVISION OF SPORT FISH, DEPARTMENT OF FISH AND GAME, concurred with Mr. Hilyard and replied that with regard to DFG requirements private or recreational use was allowed on a registered charter boat as long as compensation was not exchanged.

Co-Chair Neuman wondered whether the answer pertained to the Kenai River Special Management Area.

[2:08:15 PM](#)

BEN ELLIS, DIRECTOR, DIVISION OF PARKS AND OUTDOOR RECREATION DIRECTOR, DEPARTMENT OF NATURAL RESOURCES, responded that private use of a registered guide boat was prohibited on Sunday's, when guiding was banned on the Kenai River Special Management Area. However, use of a registered guide boat for private purposes was allowed the days guiding in the management area was permitted.

Representative Wilson asked whether private use was allowable on halibut fishing charter boats, which were under federal management.

Mr. Brookover did not know the answer.

Representative Wilson wondered what was considered compensation.

Mr. Brookover specified that the Board of Fish defined "compensation." He recounted the definition; "some small reimbursement of reasonable expenses." He indicated that the definition listed the expense items.

Representative Wilson referred to a constituent who reported that the halibut charter quota was more restrictive than the amount for personal use sport fishing. She judged that much of the required licensing and registration was in the interest of safety. She wondered whether fishing guides would rather take clients out under a private license due to the expenses related to charter licensing requirements, regulations, and catch limits.

Mr. Hilyard shared that he was familiar with the issue due to his previous capacity representing the sport fishing industry in Southeast Alaska. He concurred that disparity existed between guided and unguided fishing for halibut, where guided operators were limited to one fish. In Southeast, many of the guides were non-residents, however the issue was more problematic in the Interior, where more residents were involved. He mentioned his previous experience as a representative of the recreational fishing sector on the advisory panel of the North Pacific Management Council when the compensation issue and people circumventing the existing licensure requirements were "diligently" addressed. "The recreational users attempted to address the issue for years" but without consistent enforcement the issue was difficult to resolve.

Representative Wilson was more concerned that skirting the regulations may not necessarily be illegal based on the definition of compensation. She perceived that guided operators were "at a breaking point" due to the burden of regulation and catch limits.

Representative Gattis related personal experience and asked whether sharing of costs or expenses were legal based on the definition of compensation.

Mr. Brookover answered in the affirmative. He noted that the issue recently had come before the Board of Fish because of the "subjectivity" of the definition. Fish and Wildlife Protection staff, board members, and the Department of Law (DOL) "scrutinized" the definition and more clearly demarcated the line between compensation and non-compensation.

Representative Guttenberg provided a scenario of a white-water guide whose client brings a fly rod along on a raft trip and fishes on his own. He wondered whether the guide was required to purchase a guide license.

Mr. Brookover answered that there were probably a number of examples that would be more or less clear; he believed some of the circumstances would have to be determined on a case-by-case basis centered on the definition of sport fishing guide services. He would defer to a wildlife trooper to determine the answer and DFG would confer directly with businesses and guides to discern whether fishing guide services had been provided.

Representative Guttenberg clarified that the determining factor was whether guiding services were provided.

Mr. Brookover replied in the affirmative. He related that some businesses provided services other than guiding.

Co-Chair Thompson OPENED public testimony.

[2:17:48 PM](#)

PAUL JOHNSON, GUIDE, GULL COVE ALASKA, SOUTHEAST ALASKA opposed the legislation. He shared that he participated in the fish guiding business for over 40 years. He voiced that "bare boats" took more of the resource than charter boats." He supported stewardship of the resource. He understood the purpose of reporting requirements for "necessary" information but felt that federal and state reporting requirements were complex and onerous. He had been ticketed for accidental and late reporting violations. He stressed that the issues regarding HB 41 and licensure were complex. The regulation requirements were pushing charter operators towards "bare boats and it was becoming a huge industry." He opined that the state was giving its resources away especially to non-residents. He voiced that he had four log books to fill out each day and spoke of the burden that placed on him and his clients and the complicated nature of the reporting. He questioned the need for reporting. He stressed the importance of taking time to figure out the issue and formulate a solution to make the reporting easier. He related personal experience regarding his boat being boarded four times in one day by various entities. He cautioned the committee to be careful of extending the licensure without further consideration. He wanted economic opportunity for the next generation and the licensing requirements more streamlined especially for rural residents. He restated the complexity of the issue. He supported paying [for licensure] and reporting but only for

necessary information and felt that the reporting requirements were excessive.

Representative Munoz asked for an explanation of the term "bare boats."

Mr. Johnson answered that bare boats took out-of-state clients out fishing, did not have to fill out log books, had GPS equipment, charged less than charter fishing boats, and provided services like fish cleaning and shipping. He remarked that charter operators had quotas and bare boats caught lots of fish. He perceived that most bare boats were owned by non-residents. He repeated the need for the committee to take time and wait for a year to clean up and "sort out" the issues with all parties involved.

[2:27:55 PM](#)

Representative Pruitt wondered why bare boats did not have to fill out the paperwork and were not subjected to the same regulations as charter boats.

Mr. Johnson answered that the bare boats did not have an active fish guide on board. He reiterated that the bare boats caught twice as much as charter boats.

Representative Pruitt asked what specifically the state guide licensure program did to inhibit his business.

Mr. Johnson answered that filling out the log book was burdensome and complex. He recommended making the reporting simple and electronic.

Co-Chair Thompson asked Mr. Johnson to provide his contact information to staff.

Representative Gara understood that not every charter operator was making a lot of money. He suggested that the bill limit the U.S. Coast Guard registration requirements to only the guides and vessels that were required to register under federal law.

Mr. Johnson noted that the bill was currently written in that way. He opined that the provision was problematic for residents of the Interior because it was difficult to determine whether Coast Guard registration was required. He indicated that the Coast Guard did not provide accurate

answers regarding registration requirements. He wondered why the state was enforcing "Coast Guard laws" anyway. He pondered the reason why insurance was required by DFG and felt that was the purview of DCCED.

Representative Gara discussed the insurance issue. He deduced that insurance protected the public from incompetent guides but guides making up to \$20 thousand a year could not afford insurance; therefore could not guide. He wondered how the legislature could "sort through the issue" of insurance.

Mr. Johnson answered that if there were problems that needed to be fixed create a law; if there was no problem don't create one. He stressed the importance of being careful when creating laws.

Vice-Chair Saddler asked what a "chase boat" was.

Mr. Johnson answered that a chase boat helped find fish or assisted the fishing boat operator.

Vice-Chair Saddler deemed that a chase boat was employed by a bare boat and provided the bare boat with services. He asked for clarification.

Mr. Johnson affirmed the statement.

Representative Gattis related an example from a constituent and commented that other guides shared Mr. Johnson's experience. She determined that some of the requirements do not "fit real life."

Mr. Johnson described problems with trying to fill in required log book entries in an open skiff and claimed that with one minor violation the guide was barred from a fishery. He emphasized making regulations more "reasonable."

HB 41 was HEARD and HELD in committee for further consideration.

#hb158

HOUSE BILL NO. 158

"An Act relating to a refined fuel surcharge; relating to the motor fuel tax; relating to a qualified dealer license; and providing for an effective date."

2:38:23 PM

Co-Chair Neuman MOVED to ADOPT the proposed committee substitute (CS) for HB 158, Work Draft 29-LS0608\E (Nauman, 3/25/15). There being NO OBJECTION, it was so ordered.

REPRESENTATIVE MUNOZ, SPONSOR, thanked Commissioner Hartig and Senator Micciche for their work on the legislation. She discussed her involvement working on the Department of Environmental Conservation (DEC) finance subcommittee and her knowledge of the impending budget shortfall for the Division of Spill Prevention and Response (SPAR). She reported that the division projected a \$7 million shortfall by FY 2017. Currently, the division was financed with a five cent per-barrel surcharge on crude oil production. The funding was tied to declining oil production therefore, the balance declined overtime. She shared that she introduced legislation three years ago that increased the surcharge by two cents that was "met with a lot of resistance." She expounded that the oil industry had primarily funded the division since 1989 but the volume of actual oil spills tied to crude oil was only 4 percent. Oil production spills accounted for approximately 19 percent of the total volume of spills. The majority of spills occurred with refined fuels in the areas of aviation, marine, residential fuel tanks, and trucking accidents. Most of the spill activity occurred in non-regulated activities where it was difficult to determine the responsible party. Many of the responsible entities lacked the funds to cover the costs of cleanup.

Representative Munoz explained that HB 158 established a surcharge of one cent a gallon on refined fuel sold, implemented at the wholesale level. Aviation fuel was exempted due to restrictions in the federal Commerce Clause. Exemptions were also in place for state and federal agencies. Additional staff or resources were not necessary to implement fee collection since the same collection system would be used that collected existing gas, marine and aviation taxes. She concluded that HB 158 created a viable, long-term funding source for the state's core spill prevention and response activities.

Representative Wilson provided a scenario of a trucking company that had an accidental spill on the Dalton Highway. She wondered who the responsible party was.

Representative Munoz responded that the answer depended on whether the company was regulated or not. She deferred the question to Department of Environmental Conservation (DEC).

KRISTIN RYAN, DIRECTOR, DIVISION OF SPILL PREVENTION AND RESPONSE, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, replied that every spill was different. At times, the division had to expend its funds but every attempt was made to identify a responsible party. The responsible party was obligated by law to clean up the spill. The fund covered the state's cost to ensure proper clean-up of the spill. She communicated that the division engaged in clean-up if a responsible party was not identifiable or unable to pay.

Representative Wilson exemplified Flint Hills [Flint Hills Resources owned and operated the North Pole refinery] as an example. She related that her community had requested use of the funds but were forced to deal with the situation [sulfolane spill]. She wondered whether the bill would encompass a similar situation.

Ms. Ryan replied that currently the SPAR funds were used to regulate Flint Hills to ensure safe drinking water. Flint Hills had not reimbursed the state for the obligatory costs amounting to \$2 million. The state was in litigation with Flint Hills over cost recovery.

Representative Wilson voiced that she was asking specifically about the "clean-up portion." She remarked that clean-up had not taken place outside of the refinery. She asked for a better understanding of what was being covered in the bill. She thought that the bill made everyone responsible to pay for something they had not done.

Ms. Ryan responded that the division was requiring Flint Hills, as the responsible party, to address the clean-up issue. The division expected Flint Hills to comply with state statutes and clean-up to a satisfactory level. She conveyed that many spill incidents occurred where the responsible party was not known. She reiterated that DEC's statutory authority required the responsible party to clean-up to state standards.

Representative Wilson asked whether DEC standards for cleanup were more or less stringent than federal government standards.

Ms. Ryan replied that federal standards varied. She detailed that the federal government did not necessarily regulate "smaller" petroleum spills.

[2:50:18 PM](#)

Representative Wilson requested a copy of the state and federal standards.

Vice-Chair Saddler wondered what the equivalent of a \$0.01 per gallon tax on refined fuel was relative to how many cents per gallon of crude oil.

Representative Munoz answered that \$0.01 per gallon surcharge on crude oil generated approximately \$1.4 million and the surcharge on refined fuel was expected to generate approximately \$9 million.

Vice-Chair Saddler pointed to page 4 of the legislation. He questioned why the proposal to eliminate the tax on alcohol blended fuel generated by woody or seafood waste was included.

CRYSTAL KOENEMAN, STAFF, REPRESENTATIVE CATHY MUNOZ, answered that the language was a "technical clean-up" which removed the provision in Section 3 and Section 4 at the request of Legal Services and referred to the gasohol program which became obsolete on June 30th, 2004.

Co-Chair Neuman noted that currently a \$0.08 motor fuel tax was in effect. He asked whether the proposed surcharge for SPAR was in addition to the motor fuel tax.

Representative Munoz replied in the affirmative. She detailed that the \$.01 fee was referred to as a surcharge because certain entities were exempted from the fees besides state agencies, the military, and international aviation.

Co-Chair Neuman cited page 2, line 19 of the bill and read:

(2) the tax on motor fuel used in and on watercraft of all descriptions is five cents a gallon;

Co-Chair Neuman thought that the \$.08 a gallon applied to all motor fuel sold including for marine use. He asked for clarification.

Representative Munoz answered that the tax was not assessed at the pump; it was assessed at the wholesale distribution point.

Ms. Koeneman added that the tax on watercraft was five cents a gallon when filling up at the marina; however when filling up at a gas station for marine use a claim for reimbursement for three cents a gallon can be submitted.

Co-Chair Neuman referenced subsection (b) on page 6, starting on line 11:

(b) The entire amount of the motor fuel tax levied by this chapter shall be refunded to the purchaser on that part of the motor fuel used in a foreign country on which the tax has been paid when the fuel is sold and delivered in the state for non-highway use in a foreign country.

Co-Chair Neuman deduced that the motor fuel tax may also be reimbursed if you purchased fuel in Alaska and drove to Canada. He asked whether the statement was correct.

Representative Munoz deferred the question to the Department of Revenue.

Co-Chair Neuman did not think that many people applied for reimbursement and felt that it was a regulatory burden for the state to process the claims.

Ms. Ryan replied that the provision was an existing statute of the motor fuel tax and the legislation was not proposing any changes to the tax.

Representative Munoz was unsure what governing statute dealt with the provision; federal or state.

Co-Chair Thompson expressed doubt that anyone would fill out a form for reimbursement under the circumstances.

KEN ALPER, DIRECTOR, TAX DIVISION, DEPARTMENT OF REVENUE, clarified that HB 158 included the underlining language of the existing motor fuel tax statute and added conforming language vis-à-vis what was applicable or exempted from the one cent a gallon surcharge for SPAR. He requested that Co-Chair Neuman repeat the question.

Co-Chair Neuman deduced that subsection (b) on page 6, allowed for refund of the motor fuel tax on fuel purchased in Alaska and used while driving in Canada.

Mr. Alper replied that the provision was part of a broader series of potential refunds set in statute. He explained that at times a distributor of fuel sold a mixed load of fuel and paid the \$.08 tax on the entire load. Depending on the end use, a user could apply for a tax refund from the refund program, which was paid out "sometimes in very small denominations." He confirmed that a person could purchase motor fuel in Alaska and drive into Canada and request a refund for the fuel used while in Canada. He guessed that the refunds were rarely requested.

Co-Chair Neuman pointed to page 2, lines 6 through 8 and read:

- (6) fuel sold for use in jet propulsion aircraft operating in flights
 - (A) to foreign countries; or
 - (B) that continue from foreign countries

Co-Chair Neuman related that the contingency plans for Cook Inlet that applied to fuel brought into Ted Stevens International Airport were complex. He understood that the fuel used at the international airport was brought in by tanker from outside of Alaska. He hypothesized a scenario where a barge or tanker with fuel destined for the airport accidentally spilled fuel in Cook Inlet. He deduced from the language that the spilled fuel would have been exempt from any surcharge for cleanup. He wondered why the exemption was included in a fund designated for the clean-up of catastrophic fuel spills.

Ms. Koeneman thought that the exemption was included because of the federal Commerce Clause, which prohibited collecting a tax from a carrier originating in another country, refueling at Ted Stevens International Airport and

continuing on to another country. She expressed uncertainty about the tanker spill in Cook Inlet.

Co-Chair Thompson referred to previous testimony and thought that the owner of the tanker vessel was the responsible party and money from the SPAR fund would not be expended.

Co-Chair Neuman restated the scenario and questioned whether the vessel owner was the responsible party if the fuel was destined for the international airport and if that was the case, wondered why the SPAR fund was necessary.

Mr. Alper added that the legislation was not inclusive of the entire statute that defined the existing exemptions to the motor fuel tax. He observed that the provision Co-Chair Neuman cited was a "subset" of the exemptions. He relayed that the SPAR surcharge was intended for a larger segment of refined fuel sold than what applied to the motor fuel tax so exemptions on the surcharge were limited to "fuels where there may be a constitutional issue" or exemptions that could not be avoided, included in Section 2 of the bill.

Co-Chair Thompson requested information regarding what the fund had paid for and why. He questioned why responsible parties were not reimbursing the fund.

[3:06:01 PM](#)

Co-Chair Neuman requested more information about the exemptions listed in Section 2.

Representative Gara asserted that a bill needed to pass because the SPAR fund was in fiscal crisis. He did not necessarily agree with the bill; but felt that it was necessary. He commented that SPAR funds were expended when the responsible party did not immediately address the clean-up. He emphasized that the state always pursued reimbursement from the responsible party and typically collected the funds. He restated that the reason for the fund was to avoid litigation with the responsible party before clean-up occurred. The fund was established subsequent to the Exxon Valdez oil spill to guarantee an immediate response to oil spills. He wished that the surcharge was more equitably distributed to the entities that actually caused spills. He understood that there was

no easy solution. He asked for verification that currently out of the \$0.05 per barrel tax on crude oil, four cents was appropriated to prevention and one cent was appropriated to response.

Representative Munoz answered in the affirmative. She detailed that when the response fund reached \$50 million the \$0.01 was suspended.

Representative Gara ascertained that spill prevention was the most expensive part of the SPAR program. He asked what the costs were to regulate companies to ensure spill prevention plans were in place. He asked for a ranking of the most expensive to the least expensive costs.

Ms. Ryan clarified that the prevention account responded to many spills. She elaborated that the \$50 million response account was an emergency fund for large spills and was not encumbered on a regular basis; maybe once or twice a year. The prevention account supported the entire division and was utilized for 90 percent of the smaller spills. The trigger for expenditure from the response account was "an eminent or serious threat."

Representative Gara wondered what percentage of the prevention account costs were attributed to oil industry regulation regarding cleanup contingency plans.

Ms. Ryan specified that the division was essentially divided into three units: planning, response, and, contaminated sites. The planning unit was responsible for all of the contingency plan work; predominantly for the oil industry. The oil spill contingency plans were much more complicated and "robust" due to higher associated risk. However, in terms of numbers, contingency plans for refined fuel products were greater.

Representative Gara asked for the costs associated with the highest amount of dollars spent from the prevention fund.

Ms. Ryan replied that the largest percentage of prevention work and dollars spent was related to the oil industry. She continued that the second SPAR unit was spill response, which was predominantly refined fuel related by a variety of industries. The third unit was the contaminated site unit that dealt with long term mitigation of sites that were not cleaned up. Seventy percent of the contaminated

site work was related to refined fuel spills by a variety of entities.

Representative Gara referred to the oil spill prevention contingency work done by the department. He questioned what portion of the money designated to spill prevention went to oil spill prevention contingency plans and clean-up.

Ms. Ryan answered that if the activity was restricted to the oil industry the costs would be approximately \$3 million to \$4 million out of \$5 million.

Representative Gara spoke to refined fuels. He noted that motor vehicles used refined fuels but motor vehicle users were not producing spills. He discerned that out of 730,000 Alaskans very few were generating the cost to the division. He wondered what types of businesses generated the most cost for response to refined fuel spills.

Ms. Ryan replied that the answer was highly variable depending on where the spill occurred, what was spilled, and whether the responsible party had the resources to clean-up. Regulated entities had clean-up contractors in place due to contingency response but for many spills the division guided the responsible party through the process or actually performed the clean-up. She stated that oil was the hardest and most expensive spill to clean up but the majority of the spills were related to refined fuel. She contended that everyday Alaskans were frequently involved in spills. The division dealt with "homeowners, vessels, trucks on the highway, villages," etc.

Representative Gara wanted to know what industries or classes of people were the most expensive to the division.

Co-Chair Thompson hoped the requested report would provide the information.

Ms. Ryan replied that the division was required to provide a biannual report to the legislature that itemized every expense of the fund and would provide the January 2015 report to the committee.

Representative Munoz listed some of the sites and percentages related to products spilled between FY 2010 and FY 2014.

Ms. Koeneman noted that the information was in the member's committee packets and included a breakdown of contaminated sites.

Representative Gara was interested in the costs of clean-up not the number of gallons.

Representative Munoz noted that she would work with the department to get the information.

[3:18:22 PM](#)

Representative Guttenberg referred to the Commerce Clause. He wondered what entities and activities were exempted from the surcharge due to the Commerce Clause.

Representative Munoz replied that the activity occurring in state was subject to the surcharge. The international aviation exemption applied to international flight.

Ms. Koeneman interposed that the federal government stepped up and was responsible for the spill if a "federal spill" occurred. Any response money that would potentially come from the SPAR fund would be covered by the federal government.

Representative Guttenberg provided a scenario of an accident involving a plane skidding off the runway. He wondered who would be charged for the spill clean-up; the federal government or the airline.

Ms. Koeneman answered that international airports had the capacity to clean-up the spills and covered the costs. The airport recouped the fees from the airline.

Representative Pruitt wondered why the exemption still applied to commercial shipping carriers when the international flight originated in another country fueled up in Anchorage and continued on to another destination within the United States. He relayed that the domestic carriers characterized the exemption as unfair. He asked for a follow up.

Ms. Koeneman replied that she would provide the information.

Representative Pruitt asked for clarification about the qualified dealer provision under Section 19 of the bill.

Mr. Alper responded that most of the tax payers had licensing provisions in statute but currently motor fuel tax payers did not. He apologized for using the bill as a vehicle for correcting an "inconsistency in statute" by creating a statutory licensing provision for the state's motor fuel tax payer base.

Representative Pruitt wondered why the department felt that they had to establish licensing. He believed the requirement created a burden on the businesses.

Mr. Alper answered that the dealers were already licensed. There was no additional burden or requirement; it was strictly a technical cleanup.

Representative Pruitt reported that the legislation would initially generate \$12 million and increase by 2 percent each year. He stated that in FY 2016 there was a projected \$7 million shortfall but in FY 2015 a \$1.9 million shortfall was projected. He alluded to a \$5 million surplus and questioned how the additional funding would be used.

Mr. Alper replied that the fiscal note had been drafted to a prior bill version. A revised version would appropriate \$9.5 million rather than \$12 million due to additional exemptions in the current CS. The decision about how to expend the surplus would be at the "will of the legislature."

Representative Pruitt replied that currently the intent was to put the excess into the SPAR fund. He was concerned with creating additional excess revenue that could be used as a "slush fund" and wondered whether consideration was given to cap or divert the funds into the general fund when it reached a specified amount.

[3:27:59 PM](#)

Representative Munoz replied that currently in FY 2015 the shortfall was anticipated to be \$800 thousand. In FY 2016, a settlement of \$5 million from a contaminated federal site in Aniak was expected. The projected shortfall would be \$1.7 million in FY 2016 due to the settlement. The projected shortfall in FY 2017 was \$7 million and was

expected to continue into the future. She agreed that if another settlement was reached the legislature had the prerogative to adjust appropriations to the fund accordingly.

Ms. Koeneman interjected that DEC did not anticipate any other large settlements in the near future and reminded the committee that the decline in oil production reduced the amount in the fund.

Representative Pruitt wanted to clarify that the funds could potentially be appropriated to the general fund.

Vice-Chair Saddler wondered why a surcharge on refined fuel was chosen versus adding to the per barrel crude oil fee.

Representative Munoz replied that she had previously tried the approach on two occasions and failed both times. She indicated that resistance was due to the belief that the oil companies were already paying for the majority of the divisions work and searched for a solution that shared the costs over the broader population of users.

HB 158 was HEARD and HELD in committee for further consideration.

Co-Chair Thompson discussed the schedule for the following day.

#

ADJOURNMENT

3:31:26 PM

The meeting was adjourned at 3:31 p.m.