

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 1, 2016

2:06 p.m.

MEMBERS PRESENT

Representative Benjamin Nageak, Co-Chair
Representative David Talerico, Co-Chair
Representative Bob Herron
Representative Craig Johnson
Representative Kurt Olson
Representative Paul Seaton
Representative Andy Josephson
Representative Geran Tarr
Representative Mike Chenault (alternate)

MEMBERS ABSENT

Representative Mike Hawker, Vice Chair

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 125(RES)

"An Act adding legislative nonvoting members to the board of directors of the Alaska Gasline Development Corporation."

- MOVED HCS CSSB 125(RES) OUT OF COMMITTEE

HOUSE BILL NO. 274

"An Act relating to extensions of certain state land leases; relating to the exchange of state land; and relating to the definition of 'state land.'"

- MOVED CSHB 274(RES) OUT OF COMMITTEE

HOUSE BILL NO. 266

"An Act relating to the authority of the Board of Game to adopt, amend, or repeal certain regulations."

- HEARD & HELD

HOUSE BILL NO. 213

"An Act requiring the commissioner of natural resources to make specific, detailed written findings before restricting or prohibiting a traditional means of access to state land, water, or land and water for a traditional outdoor activity; and

requiring certain public notice of a proposed restriction or prohibition of a traditional means of access to state land, water, or land and water for a traditional outdoor activity."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SB 125

SHORT TITLE: LEGISLATIVE MEMBERS OF AGDC BOARD

SPONSOR(s): SENATOR(s) COSTELLO

01/19/16	(S)	PREFILE RELEASED 1/15/16
01/19/16	(S)	READ THE FIRST TIME - REFERRALS
01/19/16	(S)	L&C, RES
02/02/16	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/02/16	(S)	Heard & Held
02/02/16	(S)	MINUTE(L&C)
02/04/16	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/04/16	(S)	Moved CSSB 125(L&C) Out of Committee
02/04/16	(S)	MINUTE(L&C)
02/08/16	(S)	L&C RPT CS 4DP SAME TITLE
02/08/16	(S)	DP: COSTELLO, GIESSEL, MEYER, STEVENS
03/02/16	(S)	RES AT 3:30 PM BUTROVICH 205
03/02/16	(S)	Moved CSSB 125(RES) Out of Committee
03/02/16	(S)	MINUTE(RES)
03/04/16	(S)	RES RPT CS 4DP 1DNP 1NR SAME TITLE
03/04/16	(S)	DP: GIESSEL, COGHILL, MICCICHE, COSTELLO
03/04/16	(S)	DNP: WIELECHOWSKI
03/04/16	(S)	NR: STOLTZE
03/23/16	(S)	TRANSMITTED TO (H)
03/23/16	(S)	VERSION: CSSB 125(RES)
03/25/16	(H)	READ THE FIRST TIME - REFERRALS
03/25/16	(H)	RES, L&C
03/30/16	(H)	RES AT 1:00 PM BARNES 124
03/30/16	(H)	Heard & Held
03/30/16	(H)	MINUTE(RES)
04/01/16	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 274

SHORT TITLE: STATE LAND; EXCHANGES; LEASE EXTENSIONS

SPONSOR(s): REPRESENTATIVE(s) MUNOZ

01/22/16	(H)	READ THE FIRST TIME - REFERRALS
01/22/16	(H)	RES
02/08/16	(H)	RES AT 1:00 PM BARNES 124

02/08/16 (H) -- MEETING CANCELED --
03/18/16 (H) RES AT 1:00 PM BARNES 124
03/18/16 (H) Heard & Held
03/18/16 (H) MINUTE(RES)
04/01/16 (H) RES AT 1:00 PM BARNES 124

BILL: HB 266

SHORT TITLE: BOARD OF GAME REGULATION PROPOSALS

SPONSOR(S): REPRESENTATIVE(S) WILSON

01/20/16 (H) READ THE FIRST TIME - REFERRALS
01/20/16 (H) RES
02/08/16 (H) RES AT 1:00 PM BARNES 124
02/08/16 (H) -- MEETING CANCELED --
04/01/16 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

TOM WRIGHT, Staff
Representative Mike Chenault
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of SB 125, explained changes in Version G.

MERRICK PEIRCE
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of SB 125, testified in opposition to the legislation.

CRYSTAL KOENEMAN, Staff
Representative Cathy Munoz
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 274, testified on behalf of the prime sponsor, Representative Munoz.

REPRESENTATIVE TAMMIE WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 266 as prime sponsor.

GLENN HAIGHT, Executive Director
Boards Support Section
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 266, discussed proposal policies.

KRISTY TIBBLES, Executive Director
Board of Game
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 266, discussed Proposal 207 and proposal policies.

WAYNE HEIMER
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of HB 266, discussed policy.

MARK RICHARDS, Executive Director
Resident Hunters of Alaska
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of HB 266, testified as to board procedures.

KAREN GORDON
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of HB 266, testified in support of the legislation.

MIKE TINKER
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of HB 266, testified in support of the legislation.

AL BARRETTE
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of HB 266, testified in support of the legislation.

STEVEN FLORY
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 266, testified in support of the legislation.

ROD ARNO, Executive Director
Alaska Outdoor Council
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 266, testified in support of the legislation.

RON SOMMERVILLE

Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 266, discussed policy.

ACTION NARRATIVE

[2:06:45 PM](#)

CO-CHAIR DAVID TALERICO called the House Resources Standing Committee meeting to order at 2:06 p.m. Representatives Olson, Josephson, Tarr, Chenault (alternate), Nageak, and Talerico were present at the call to order. Representatives Seaton, Johnson, and Herron arrived as the meeting was in progress.

SB 125-LEGISLATIVE MEMBERS OF AGDC BOARD

[2:07:33 PM](#)

CO-CHAIR TALERICO announced that the first order of business would be CS FOR SENATE BILL NO. 125(RES), "An Act adding legislative nonvoting members to the board of directors of the Alaska Gasline Development Corporation."

[2:07:54 PM](#)

CO-CHAIR NAGEAK moved to adopt the proposed House committee substitute (HCS) for CSSB 125(RES), Version 29-LS1240\G, Nauman, 3/31/16, as the working document. There being no objection, Version G was before the committee.

[2:08:25 PM](#)

TOM WRIGHT, Staff, Representative Mike Chenault, Alaska State Legislature, referred to Version G, Section 2, page 2, beginning line 4, and noted it adds the qualifications for board members. A small change is found on page 2, line 31, he advised, in that legislative members may not be appointed for a term longer than two years and is at the discretion of the President of the Senate and the Speaker of the House of Representatives. He explained that SB 125 incorporates HB 282.

[2:09:30 PM](#)

CO-CHAIR TALERICO asked for the documentation he had requested of Mr. Wright.

MR. WRIGHT responded that Co-Chair Talerico's staff is in possession of the Concurrent Resolution that the House Resources Standing Committee will have to introduce and serve as a title change in the event the bill is reported from the committee.

MR. WRIGHT referred to the 3/30/16 legal memorandum to Representative Mike Chenault from Emily Nauman that was attached to the draft committee substitute. [Mr. Wright began reading paragraph 3, on page 2, and when turning to the next page, turned to the top of page 4 and continued reading. Page 3 was not read.] He paraphrased as follows:

The department has fairly consistently opined that a legislator sitting on the executive branch board violates the separation of powers principle.

MR. WRIGHT explained the department is the Department of Law. He continued paraphrasing, as follows:

In regard to the state bond committee, the department found the State Bond Committee is within the executive branch performing executive functions. Accordingly, membership on the

MR. WRIGHT then turned to the top of page 4, [bypassing page 3] and continued paraphrasing, as follows:

AGDC [Alaska Gasline Development Corporation], however, is not an advisory council, as described above. Whether or not AGDC would be deciding upon and acting on a matter that is not debatable, there is no question that the corporation will be applying the law. However, it may be possible that a court could take the logic in the abovementioned opinion and apply it to sitting nonvoting legislative board members: the violation of separation of powers doctrine may be resolved in favor of the legislature because the legislators are serving in a nonvoting, essentially advisory capacity. And that position is supported in the bill which in every possible statute reiterates that decisions related to the execution of laws are left only to the voting members of the board. ... It's very possible that a court could find that a nonvoting legislative board member does not exert any special influence simply because of his or her position on the board. ... The only sure resolution is a decision by the Alaska Supreme Court.

MR. WRIGHT opined that Ms. Nauman certainly warns that there is a risk involved in placing nonvoting legislative members on the AGDC board, as the board is serving an executive branch function. However, she does not believe the risk is great enough that she'd advise removing the legislative board members from the bill.

[2:12:05 PM](#)

REPRESENTATIVE JOSEPHSON referred to a legal memorandum from Emily Nauman, dated 12/7/15, and noted that within her summary paragraph there is mention that a separation of powers issue had "likely" been raised, and now she writes it "may" violate separation of powers issues. He questioned why Ms. Nauman changed "likely" to "may."

MR. WRIGHT responded that Representative Josephson would have to ask Ms. Nauman why it was changed. He advised that the legal [memorandum] was not requested by Representative Chenault's office and reiterated that it was attached to the draft committee substitute. In most cases, he added, when there is a question of legality in a bill, a legal memorandum is attached and this is Ms. Nauman's latest iteration on this issue.

[2:13:01 PM](#)

REPRESENTATIVE JOHNSON asked the difference between the AGDC board and the Alaska Seafood Marketing Institute (ASMI) board.

MR. WRIGHT answered the ASMI board has legislative members on the board, and he is unaware whether they are non-voting. Frankly, he continued, there is no statutory authority to put them on the board.

REPRESENTATIVE JOHNSON noted that a former member of the other body sits on that board, and he said that member brought the issue up to the ASMI board. It was treated as perfectly normal and acceptable and the board enjoys having the legislator there for that perspective. He asked whether the ASMI board is covered under a different body of law or there is some reason why it should stand out over the ADGC board.

[2:14:02 PM](#)

MR. WRIGHT drew attention to Ms. Nauman's 3/30/16 legal memorandum, page 4, footnote 14, which states in part [original punctuation provided]:

There are two nonvoting legislative members on the board of the Knick Arm Bridge and Toll Authority. There are two members of the legislature serving as ex officio nonvoting members of the board of directors of the Alaska Aerospace Corporation. There are two members from the legislature serving on the Alaska Commission on Postsecondary Education. There are two ex officio legislative members serving on the Alaska Health Care Commission. There are two non-voting members, serving ex officio, on the board of the Alaska Criminal Justice Commission. There are two legislators serving as ex officio non-voting members on the Alaska Tourism Marketing Board (which has the authority to "execute a destination tourism marketing campaign.").

MR. WRIGHT related that this is not an isolated example.

REPRESENTATIVE OLSON quipped that that would probably apply to the legislative alternate members on ASMI's board as well, and so it looks like he is out of a job.

MR. WRIGHT said he has no response.

[2:15:13 PM](#)

REPRESENTATIVE JOSEPHSON asked whether the 3/30/16 memorandum addresses the issue of whether an Alaskan could seek standing to undo the work of a commission or board by alleging there were improper members consistent with the opinion from Assistant Attorney General Jerry Juday.

MR. WRIGHT opined that he could not see a reason why a person could not file suit based upon this because anyone can file a lawsuit on anything. As Ms. Nauman's memorandum states, it may take a court decision to clarify this issue.

[2:16:30 PM](#)

REPRESENTATIVE SEATON referred to the issue of dual offices and the Alaska State Constitutional Article II, Section 5, which states that no legislator may hold any other office or position of profit under the United States or the State.

REPRESENTATIVE SEATON noted the position has been that position of profit is one term and office is another. With regard to the constitutional prohibition against holding dual offices, the committee would have to determine that a board member of an executive committee is not an office and case law says that those are offices. The common sense reading is that that is an office, he posited, and legislators are in office, and the constitution specifically prohibits legislators from holding dual offices. Whether that is voting or non-voting, it is not reliant on position of profit as profit modifies position not office. He inquired whether Legislative Legal and Research Services has provided any explanation on how a board member would not be an office.

MR. WRIGHT replied no.

[2:18:30 PM](#)

REPRESENTATIVE TARR moved to adopt Amendment 1, labeled 29-LS1250\P.1, Nauman, 4/1/16, which read:

Page 1, line 13:
Delete "and"

Page 2, line 2, following "senate":

Insert "; and
(5) one nonvoting member who is a member of the minority caucus from either the senate or the house of representatives appointed jointly by the president of the senate and the speaker of the house and who serves at the pleasure of the president of the senate and the speaker of the house

REPRESENTATIVE OLSON objected.

[2:19:08 PM](#)

REPRESENTATIVE TARR explained Amendment 1. She pointed to the unresolved issue of whether placing non-voting legislative members would create a situation where they have undue influence on the proceedings. She explained that the non-voting member would be one member from the minority caucus and it could be from either the House of Representatives or the Senate as it would be a joint appointment. The way the bill is written, one member from the House of Representatives would be appointed by the House of Representatives and one member from the Senate

would be appointed by the Senate, and this third member would be a joint appointment between the leaders in their respective bodies. This is important, she pointed out, because since early 2014, Senate Bill 138 has been a work in progress and leadership in the executive branch has changed, and the House of Representatives has the potential to change leadership every two years. Institutional knowledge on the legislative side builds in more stability because there are three legislators there, and it keeps both caucuses engaged which can be helpful in working through the issues, such as during the legislative special session last fall. There are varying opinions on how things should move forward and to the extent the legislature can keep as much communication happening throughout the process, the legislature will be better situated to make decisions and feel that everyone is in the know.

[2:21:08 PM](#)

REPRESENTATIVE SEATON referred to the Alaska State Constitution, Article III, Section 26, which states [original punctuation provided]:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

REPRESENTATIVE SEATON pointed out that the constitution gives appointment power to the governor, subject to confirmation, which is exactly as has been done with the ADGC board. He said his problem with this amendment is that now the committee is interjecting two other people, and is making appointments other than the governor that are not confirmed by the legislature to these offices.

[2:22:43 PM](#)

REPRESENTATIVE TARR further explained that there is conflicting information on whether these appointments can be considered appropriate. The issue is unresolved yet, she said, and she finds comfort that this practice has been in use for quite some

time and she has not seen it objected to in other areas. She said she has attended almost every ASMI board meeting as a non-voting member since joining the legislature and does not believe she has had undue influence on the process or decisions it made. After the special session she committed to try and attend as many of the AGDC board meetings, which was a challenge among her other responsibilities. The legislators stepping up acknowledge they will make time in their schedule to be a full participant. Also, she extended, there is value in keeping the legislature engaged in the process of what could be the most important capital project the state has ever seen.

[2:24:26 PM](#)

REPRESENTATIVE OLSON removed his objection to Amendment 1. There being no further objection, Amendment 1 was adopted.

CO-CHAIR TALERICO opened public testimony.

[2:25:19 PM](#)

MERRICK PEIRCE testified that SB 125 is unconstitutional and in the event it were constitutional the legislature's track record on the gasline has been consistently wrong, and is in contempt of the mandate Alaskans issued when they voted to create the Alaska Natural Gas Development Authority (ANGDA). He remarked that legal opinions on the separation of power issue are clear. He referred to a March 20, Department of Law memorandum and paraphrased as follows:

The appointment of two legislators to the board of directors of a public corporation, the executive branch of state government, is unlawful for two separate reasons. First, the appointments would contravene the prohibition against dual office holding set out in Section 5, Article II, of the Alaska Constitution. Second, the appointments would violate the separation of powers doctrine. Of course the same legal issue applies to House Bill 357, and legislators serving on the Board of Regents.

MR. PEIRCE explained that in 1980, Alaska voters rejected a constitutional amendment that would have allowed legislators more authority over, and maybe even involvement with, the Alaska Housing Finance Corporation Board. Several years ago, he recalled, Gene Therriault and Nancy Dahlstrom left the legislature to take jobs in the Parnell Administration, and

subsequently were both found to be in violation of Article II, Section 5, and had to resign their jobs because they didn't sit out the required one year. In the event a legislator has a burning desire to serve on the ADGC board there is a legal path such that the legislator must first resign his/her legislative seat and after one year ask the governor to consider appointing them to the ADGC board. Beyond the legal issues, he related, a few years ago Governor Frank Murkowski and Harry Noah brought to the public's attention how the legislature wasted over \$1 billion in various pipeline schemes. He referred to Governor Frank Murkowski's 9/20/13 written examples, and paraphrased as follows:

\$557 million has been expended in the last nine years on consultant fees and reports. In the last session the legislature authorized \$355 million for the in-state bullet line on top of the \$72 million from former years.

[2:27:35 PM](#)

MR. PEIRCE commented that, of course, it was a failure because that project never made any economic sense.

MR. PEIRCE continued paraphrasing Governor Frank Murkowski's 9/20/13 written examples, as follows:

The legislature committed \$332 million in grants and loans to the North Slope gas to truck North Slope gas to Fairbanks ... We still have the obligation to pay \$500 million to TransCanada of which \$260 million has been paid and an additional \$240 million is still owed.

MR. PEIRCE stated that by Governor Murkowski's tabulation the legislature has spent over \$1 billion and has nothing to show for it.

[2:28:06 PM](#)

MR. PEIRCE related that the most recent significant gasline involvement by the legislature was Senate Bill 138, and there are two significant failures with that policy. The pipeline routing has not proven to be constitutional because of the routing to Nikiski that likely results in a reduced netback for a more expensive project. It also violates federal law and federal law does have supremacy, such that any gasline routing

not resulting in the maximum netback to Alaska violates Article VIII. When considering that the proposed project to Nikiski is a longer more expensive routing than the one to Valdez, the more expensive the project, the less netback to Alaska. There are potentially 200 trillion cubic feet (Tcf) of North Slope gas, and if the project in Nikiski conservatively results in a \$0.25 million British thermal unit (MMBtu) higher cost, the loss to Alaska over the life of the project will result in tens of billions of lost revenue to Alaska and that is unconstitutional, he remarked. Further, he added, the route to Nikiski is also not consistent with federal law under the National Environmental Policy Act of 1969 (NEPA). Under previous gasline work and environmental impact statement (EIS) work as completed by the private sector, such as Yukon Pacific, the route to Valdez was found to be superior after completing the federally required alternative analysis. A fact that has been ignored by the legislature, as well as significant harm that results to Fairbanks from a pipeline routing that bypasses that community. By comparison, Governor Bill Walker has been consistently correct in advocating for a gasline to tidewater for liquefied natural gas (LNG) export, and it does not help to have the legislature to try to unconstitutionally inject itself into the executive branch functions. He acknowledged the legislature has a lot to deal with right now with issues clearly within the legislative branch functions, such as a \$4 billion deficit, and the legislature has great difficulty adjourning within 90 days as the voters asked.

[2:30:03 PM](#)

REPRESENTATIVE JOSEPHSON noted that Mr. Pierce mentioned a 3/20/16 opinion and asked whether he meant a 3/30/16 opinion.

MR. PEIRCE replied that it is a 3/20/16, Department of Law memorandum addressed to Darwin Peterson, from Jerry Juday, Assistant Attorney General of Labor and State Affairs Section.

REPRESENTATIVE JOSEPHSON advised he does have that opinion.

[2:30:47 PM](#)

CO-CHAIR TALERICO closed public testimony after ascertaining no one further wished to testify.

[2:31:00 PM](#)

REPRESENTATIVE JOSEPHSON, relative to the Alaska Gasline Development Corporation board, expressed that this is an expression of legislative concern regarding the turnover on the board, the direction of the board's work, and what it does vis a vis the Department of Natural Resources, the Alaska LNG Project team, and the legislature's "gas team." He related he shares the concerns of a lack of expertise and lack of continuity; however, he will oppose this bill because it raises oath questions. Representative Josephson pointed to Ms. Nauman's 12/7/15 and 3/30/16 memorandums and noted they are decidedly different. He paraphrased from page 3 of Ms. Nauman's original memorandum, saying:

Effectively you haven't presented me with a question of non-voting members that may result in a different result.

REPRESENTATIVE JOSEPHSON then pointed to page 1 of the 12/7/15 memorandum and expressed concern that Ms. Nauman discusses whether profit modifies position, and she appears to take a different read on that. Representative Josephson paraphrased as follows:

Service in any office is prohibited -- in any office is prohibited regardless of whether the legislator receives compensation for that service.

[2:32:58 PM](#)

REPRESENTATIVE JOSEPHSON surmised that Ms. Nauman reads it as more of a prohibition. He offered concern with Ms. Nauman's 3/30/16 memorandum and paraphrased it as follows:

Legislative members are, however, allowed into ... under the bill as amended, the committee substitute Version P, would be allowed into executive sessions.

REPRESENTATIVE JOSEPHSON related that he tried to imagine being in a House Finance Committee room with just legislators and staff, and the legislators allowing executive branch officials to sit in on an executive session.

REPRESENTATIVE JOSEPHSON noted that this happens in other commissions and bodies. He said he reviewed Jerry Juday's 3/20/16 opinion together with Ms. Nauman's 12/7/15 opinion, and observed Ms. Nauman's uncertainty within her 3/30/16 opinion. He pointed out that he has particular concerns regarding the

comments made by Representative Seaton, and opined that even though ADGC could benefit from the wisdom of members from both bodies, he has concerns about whether this is proper.

[2:34:52 PM](#)

REPRESENTATIVE SEATON stated he opposes the bill due to the issue of dual office holding precluded by the Alaska State Constitution, and that the appointment powers are granted to the governor and not to other entities to make those appointments to executive bodies that have regulatory responsibility. He related he has reviewed the information and in a common sense manner concluded that this would create an unconstitutional action. He further related that he took an oath of office to support and defend the Alaska State Constitution, and as a member of a separate branch of government he cannot pass that off to have another branch of government to decide whether he is correct or wrong because he has to make that decision on his actions. That, he pointed out, would be saying he would have this action [pass out of committee] even though he believes it is unconstitutional and rather to have the courts decide whether he was right or wrong, in which case he may as well have not taken his oath. For those reasons he will vote against the bill and the issue of executive sessions especially if one signed an executive confidentiality form and was not able to share information with other legislators.

[2:37:09 PM](#)

REPRESENTATIVE TARR clarified that she would not be comfortable with doing something that was clearly described through the legal opinions as being unconstitutional. The challenging issue here is that they have given the committee more grey area than definitive answers. Following this bill, she commented, she will look into other examples. She noted a task force was formed last year in an effort to pass "Erin's Law" and "Bree's Law" that went through the same conversations with Legislative Legal and Research Services regarding the separation of powers. Similar to the two memorandums, the ex officio non-voting members are a way it can be accomplished in a constitutional fashion. She related that she takes her oath seriously and will continue researching the issue, if she is wrong she will vote accordingly. Although, at this time, given the information she has, she will continue to move it through the process, she said.

[2:38:33 PM](#)

REPRESENTATIVE JOHNSON recalled conversations about local hire being unconstitutional and yet the legislature decided that if it is going to fight on constitutional grounds that is a good place to fight. Therefore, the legislature picks its constitutional fights sometimes with the grey areas. He said he is comfortable with this, and that it is a constitutional ground he would like to fight on because the legislature needs input not only on this board but other boards previously mentioned. He said he supports the bill.

[2:39:13 PM](#)

REPRESENTATIVE OLSON commented that at least one to four times a year all of the bills that will either be a personal bill, House Labor and Commerce Standing Committee bill, or before the House Labor and Commerce Standing Committee, that has a legal opinion that it may be unconstitutional. Going back 12 years, he could not recall any of the bills going any farther than the first letter out of Legislative Legal and Research Services, he said.

REPRESENTATIVE HERRON referred to Ms. Nauman's memorandum and a footnote listing other authorities, corporations, commissions, and boards wherein there are non-voting members, and opined that it is either "we can or we can't." He remarked he would like the bill to move forward due to these other authorities, corporations, commissions, and boards, because the legislature has been doing this for a long time. He commented that possibly the legislature should not be doing it on those either.

[2:40:44 PM](#)

CO-CHAIR TALERICO stated he also took an oath of office and that he has been in both voting and non-voting seats. He maintained that non-voting members do not have horse power when decisions are made because they will not be part of the record of decision, which is a driver in these types of decisions because the non-voting member does not have decision-making ability. This, he said, makes him comfortable.

[2:41:46 PM](#)

REPRESENTATIVE CHENAULT pointed out that the bill may be unconstitutional or constitutional, and each member has his/her own opinion on that. He said the legislation stiffens up the requirements for the ADGC board members which is as important as any other part of the bill because the state and ADGC want the smartest and brightest people as board members. He related that

that issue passed in Senate Bill 138, and that is what he would like to continue. This legislation does put requirements on the members of the board to have the smartest and brightest people representing the State of Alaska on the ADGC board. He pointed out that there is no disrespect to the folks currently on the board who bring the right values to the board.

[2:43:14 PM](#)

CO-CHAIR NAGEAK moved to report HCS CSSB 125(RES), Version 29-LS1250\G, Nauman, 3/31/16, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE SEATON objected.

[2:43:50 PM](#)

A roll call vote was taken. Representatives Chenault, Johnson, Olson, Tarr, Herron, Talerico, and Nageak voted in favor of reporting HCS CSSB 125(RES), Version 29-LS1250\G, Nauman, 3/31/16, as amended, out of committee with individual recommendations and the accompanying fiscal notes. Representatives Seaton and Josephson voted against it. Therefore, HCS CSSB 125(RES) was reported from the House Resources Standing Committee by a vote of 7-2.

[2:44:41 PM](#)

The committee took an at-ease from 2:45 p.m. to 2:49 p.m.

HB 274-STATE LAND; EXCHANGES; LEASE EXTENSIONS

[2:49:03 PM](#)

CO-CHAIR TALERICO announced that the next order of business would be HOUSE BILL NO. 274, "An Act relating to extensions of certain state land leases; relating to the exchange of state land; and relating to the definition of 'state land.'"

[2:49:35 PM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 1, labeled 29-LS0234\E.1, Bullard, 3/24/16, which read:

Page 4, line 28, through page 5, line 3:

Delete all material and insert:

"* Sec. 10. AS 38.50.120(a) is amended to read:

(a) [THE COMMISSIONER MAY HOLD AS MANY PUBLIC HEARINGS AS IS CONSIDERED APPROPRIATE.] For an exchange of state land having an appraised or estimated fair market value of more than \$5,000,000, the director [THERE] shall hold [BE] at least two public meetings before the exchange is submitted to the legislature for approval. Meetings under this subsection may be held telephonically, except at least [THREE PUBLIC HEARINGS IN] one meeting shall be held in person in a municipality [OR MORE MUNICIPALITIES] close to the state land proposed for exchange [BEFORE IT IS SUBMITTED TO THE LEGISLATURE FOR APPROVAL].

CO-CHAIR TALERICO objected.

[2:49:49 PM](#)

REPRESENTATIVE SEATON explained Amendment 1. He said the change reviewed in the bill was moving from three meetings down to one meeting, and he opined that the public notice and public process was too small. Although, he continued, he can understand the problem and Amendment 1 relates to at least two meetings with one meeting in person, and the other meeting could be in person or telephonic. The amendment offers the additional benefit of a telephonic meeting as many rural areas do not participate because they have to drive 50 miles to reach the site of the public hearing. Therefore, Amendment 1 would assist the department in receiving information from different people and also make it cheaper to do so. He reiterated there would be one meeting in a regular public in-person meeting, but additional meetings could be telephonic if so desired by the commissioner.

[2:51:17 PM](#)

CRYSTAL KOENEMAN, Staff, Representative Cathy Munoz, Alaska State Legislature, advised that Representatives Munoz and Seaton worked together to address the public notice concern and to ensure that the constituency was well served.

REPRESENTATIVE HERRON described the amendment as definitive and that is what the committee needs.

[2:52:01 PM](#)

CO-CHAIR TALERICO removed his objection. There being no further objection, Amendment 1 was adopted.

[2:52:27 PM](#)

CO-CHAIR NAGEAK moved to report HB 274, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 274(RES) was reported from the House Resources Standing Committee.

[2:52:53 PM](#)

The committee took an at-ease from 2:52 p.m. to 2:56 p.m.

HB 266-BOARD OF GAME REGULATION PROPOSALS

[2:56:25 PM](#)

CO-CHAIR TALERICO announced that the final order of business would be HOUSE BILL NO. 266, "An Act relating to the authority of the Board of Game to adopt, amend, or repeal certain regulations."

[2:56:38 PM](#)

REPRESENTATIVE TAMMIE WILSON, Alaska State Legislature, as prime sponsor of HB 266, noted she attended the Board of Game meeting a few weeks ago wherein "Proposal 19" came before the board. The board chose to reject Proposal 19; therefore, she is presenting HB 266.

[2:57:22 PM](#)

The committee took an at-ease from 2:57 p.m. to 2:59 p.m.

[2:59:10 PM](#)

CO-CHAIR NAGEAK moved to adopt the proposed committee substitute (CS) for HB 266, Version 29-LS1205\N, Bullard, 3/31/16, as the working document. There being no objection, Version N was before the committee.

[2:59:34 PM](#)

REPRESENTATIVE WILSON advised that the changes are based on discussions during the Board of Game meeting, and the Alaska Department of Fish & Game's concerns. She paraphrased from the sponsor statement, which read as follows [original punctuation provided]:

The clear intent of our constitutional framers and early legislators was to include the public in the process of managing and allocating our game resources. Alaska is unique, for example, among all states for operating a system of game advisory committees (ACs).

Unfortunately, this intent toward public participation has in recent years been frustrated by a commingling of the functions of the board of game with the Department of Fish and Game, the result of which has been public exclusion.

The legislature is empowered in Art. 8, Sec. 2 of the Alaska Constitution with managing and allocating all resources, including game. The legislature has in turn statutorily delegated that management authority by creating the Department of Fish and Game in the executive branch to manage fish and game resources.

The legislature also delegated the allocation authority by creating the Board of Game, but they did not put this board in the executive branch, but in the legislative branch.

Current statute and regulation require proposals for the allocation of game resources to be submitted by a published deadline before the board meeting. Members of the public, advisory committees (AC), the department, and the board can submit such proposals. Typically, these proposals are published well ahead of the meeting for the interested public to scrutinize, and if they deem necessary, offer input.

The problem that has developed is that the board, using department staff for support, are developing proposals outside of the public purview. While individual members of the public and ACs must submit their proposals in advance of board meetings, the board and department staff can work on proposal language with no notice to the public. This language is often adopted as board regulation without the public having opportunity to engage in its development.

HB 266 will solve this problem and put the public back in control of the process of managing and allocating our game resources just as our framers intended.

3:01:42 PM

REPRESENTATIVE WILSON outlined the changes to the original bill made by Version N, and paraphrased the following sectional analysis, which read as follows [original punctuation provided]:

Sec. 1- AS 16.05.255 (a): In the original version of the bill, (a)(8) of the current statute was amended by removing "prohibiting the live capture, possession, transport, or release of native or exotic game or their eggs"; this language was added back into the CS, resulting in no change to the current AS 16.05.255 (a)(8).

Adding back in the language was made in response to a concern by the department.

Sec. 2- AS 16.05.255 (c): In the CS, the frequency of the requirement that the Board of Game shall solicit proposals to amend, adopt, or repeal regulations was changed to "at least once a year" from "at least twice a year" in response to a concern by the department that doing so twice per year would result in increased costs.

Sec. 3- AS 16.05.255: In the CS, several changes were made to the requirements for public notice for a board member's proposal as follows:

- The requirement for public notice of a board member's proposal was lowered from 65 days to 60.

- A new subsection (B) was added to allow an exemption to the 60-day requirement if the board finds in writing that a board member's proposal to adopt, amend, or repeal a regulation is necessitated by a court ruling or order. This exemption was added in response to concerns raised by the Department of Law, as well as the Chairman and other members of the Board of Game regarding the board's flexibility to respond to court decisions.

Additionally, language changes were made in the CS to section (1) for clarification purposes: no substantive changes were made with the new language. Several of

the language changes were made at the request of the department.

3:02:50 PM

REPRESENTATIVE WILSON related that Section 3 is an issue in that the advisory committee contains people from "your community." People are elected during a meeting of their peers, they serve on these boards, listen endlessly during all of the different board meetings, weigh in on the packets of which are usually over 100 different proposals from all over the state, and offer their opinion as to how it would or would not affect their areas. In order to testify during the Board of Game meetings the person must appear in person because they cannot appear telephonically.

REPRESENTATIVE WILSON referred to Section 3, page 3, line 4, of Version N, and she advised the bill discusses proposals, and stressed that it would be able to take care of anything coming from the courts. She said she understands that 60 days is the norm for other proposals, so the proposed language would change that from 65 days to 60 days. She highlighted that the 60-day notice requirement would not apply if the following exceptions exist [as written on lines 9-25, which read as follows]:

(1) at least three members of the board support the proposal and the board

(A) provides advisory committees and interested person the opportunity to make recommendations or comment on the proposal; and

(B) makes written findings that

(i) the proposal requires the board's expedited consideration because of conservation concerns or significant regulatory problems;

(ii) the subject matter of the proposal would not be before the board for one calendar year but for the board member's proposal; and

(iii) the proposal is in the best interests of the public; or

(2) the proposal is to

(A) adopt an emergency regulation or order under AS 44.62.250; or

(B) adopt, amend, or repeal a regulation that the board finds in writing is necessitated by a court ruling or order.

[3:05:11 PM](#)

CO-CHAIR TALERICO turned to Section 3, page 3, and surmised that there is a mechanism for the board if it does bring a proposal within less time than the 60 day notice requirement, such that three board members must sign off having provided opportunities for the advisory committees and interested people to make recommendations. Thereby, he said, allowing the board to review a proposal in less than the 60 day notice requirement.

REPRESENTATIVE WILSON agreed.

REPRESENTATIVE JOSEPHSON asked Representative Wilson to explain Proposal 19.

REPRESENTATIVE WILSON explained that Proposal 19 "pretty much" mirrors this bill. She related that the proposal was brought before the Fairbanks Advisory Council, it was taken to the Board of Game, she testified in support of the proposal, and the Board of Game decided against because it did not want to tie their own hands and rejected the proposal.

[3:06:39 PM](#)

REPRESENTATIVE JOSEPHSON inquired whether part of the impetus for HB 266 was a response to Proposal 207, regarding scoping sheep from the air. He advised he has seen emails from the Mat-Su Local Advisory Council and emails regarding the upcoming confirmation hearings relative to the Board of Game's concern about people doing same day [hunting] or locating sheep en route to a hunting site.

REPRESENTATIVE WILSON responded, "That was what broke the camel's back." She stated there were previous proposals, but that was probably one of the most contentious proposal. Also, she related, since that time a "sheep working group" was put together behind closed doors until enough people found out about it and they tried to make it a regular committee. She reiterated that the concern is about taking Alaskan resources and making sure there is a process that everyone must go through, and not just the public.

[3:07:52 PM](#)

REPRESENTATIVE HERRON asked the reason the Board of Game offered for refusing to adopt the proposal.

REPRESENTATIVE WILSON related one reason was because "we didn't do the same to the Board of Fish," although there is a proposal before the Board of Fisheries. Also, the Board of Game asked that next time the boards meet jointly, so they included all relevant proposals. The Board of Game did ask her, at the board meeting, whether she would be replacing them if "we went forward with this," and she advised she would give the Board of Fisheries the same opportunity as was given the Board of Game, she said. The other reason was that the Board of Game received comments from the Department of Law and others, asking why it would want to, basically, narrow the scope of things it could and could not do. Honestly, she opined, the answer should have been that the Board of Game goes through the same public process as everyone else. She advised there is actually an [agreement], not as tight as this is, between the two boards. Although, she commented, even with the agreement between the boards that they wouldn't have board generated proposals, Proposal 207 came after that and they didn't abide by their own rules.

[3:09:13 PM](#)

REPRESENTATIVE HERRON noted that the board decided not to consider the proposal, and asked whether the practice is to, at least, give a cursory reason. He asked whether Representative Wilson did not receive a reason other than the Board of Game didn't like it.

[3:09:38 PM](#)

REPRESENTATIVE WILSON answered that after she testified she did not receive a communication back from the board, although the proposal was from the Fairbanks Advisory Council. She offered that after she testified at the meeting, there was a discussion about some type of amendment but no amendments were offered at that time, and the proposal was rejected.

REPRESENTATIVE HERRON inquired as to whether there is, or is not, a mechanism where any proposal brought to the Board of Game can be set aside without explanation.

REPRESENTATIVE WILSON replied that the board did discuss it, similar to legislative committee meeting discussions, and it voted the proposal down and it did not provide findings.

[3:10:35 PM](#)

REPRESENTATIVE JOSEPHSON related he has attended Board of Game meetings and testified many times, and offered appreciation for the essence of Representative Wilson's testimony [today] in terms of compliance with transparency and open meetings. He then used the example of freedom of association such that four likeminded people in Fairbanks meet at a coffee house to hammer out ideas on the regulation of black bear baiting, he asked whether the public should be privy to their latte.

REPRESENTATIVE WILSON responded that if the members of the board, whatever amount it is so they don't get into ethics violations, or individuals want to meet, which is what the advisory councils do, and come up with a proposal that is absolutely fine. The issue here, she pointed out, is when the proposal does not come up, and it's not in the book that goes out months prior so everyone has time to send comments in or to testify. When something comes up in the board meeting with no way of any type of public comment and it is passed, depending on the cycle, it could be a year or so before anything can be done opposing it because it cannot be done immediately. She explained that this legislation is about making sure the board conducts its system in the same manner as an advisory council, or as a legislator submitting a proposal. She expressed that the board needs to follow the process also.

[3:12:25 PM](#)

REPRESENTATIVE JOSEPHSON clarified that he didn't mean members of the Board of Game, he meant citizens, and surmised that Representative Wilson's intent was not to prohibit lay citizens or say they cannot collude to fashion a proposal.

REPRESENTATIVE WILSON answered absolutely not, they have to follow the process now and submit the proposal to the Board of Game.

REPRESENTATIVE JOSEPHSON asked whether things are dropped on the table in addition to the proposal packet by, for example, the Alaska Department of Fish & Game or working groups. He asked whether she was discussing issues not vetted and that the public was not privy to 30 days in advance.

REPRESENTATIVE WILSON replied that from what she has seen and heard, it is taking a proposal and changing it to such an extent it is no longer recognizable as the original proposal. She continued that the Board of Game doesn't actually put a new proposal in. The Board of Game substantially changes a proposal

that people testified on, and rather than voting it up or down, the board take a proposal that has been submitted in that area, she explained.

[3:13:50 PM](#)

REPRESENTATIVE SEATON surmised that in one sense the discussion has been about a proposal made in the booklet, and in the other sense the Board of Game amends, adopts, or repeals a regulation without 60 days' notice. He asked Representative Wilson that if the board takes a proposal on the table that has had public testimony, and amends that proposal to a significant degree, that she intends this bill to read that the board cannot pass it because it wouldn't have had 60 days on a board generated amendment proposal.

[3:15:09 PM](#)

REPRESENTATIVE WILSON responded correct, the board would have to take that proposal back to the advisory councils and have it go through the same process as any other proposal would.

REPRESENTATIVE SEATON asked the clear boundary of the extent to which a submitted published proposal can be amended by the Board of Game before it falls into the parameter that it isn't quite enough of what was in the proposal book on the same subject, without going back through another 60 day process and hearing it the next year.

REPRESENTATIVE WILSON deferred to the witnesses.

REPRESENTATIVE SEATON clarified that he is trying to understand the boundary of the amount of modification the language proposes in this bill; the legal bounds of amending before it is considered a new proposal.

CO-CHAIR TALERICO advised there are people in the audience from the Alaska Department of Fish & Game.

REPRESENTATIVE JOSEPHSON noted the bill sponsor provided an Alaska trial court summary judgment decision under Kenneth Manning and The Fish and Wildlife Conservation Fund v. State Department of Fish & Game and Ahtna Tene Nene, Case No. 3KN-09-178CI, pages 14-16, and he pointed to the list of authorities outlining the amount of deviation that can be taken before there is not sufficient notice.

[3:18:13 PM](#)

GLENN HAIGHT, Executive Director, Boards Support Section, Alaska Department of Fish & Game (ADF&G), explained that while the Boards Supports Section works closely to facilitate the board process, it is the section's job as well to make sure the advisory committees can complete their jobs. When an advisory council has concerns about the process their concern matters to the section of which it works on regularly.

[3:18:18 PM](#)

MR. HAIGHT thanked the sponsor for changing the fiscal note from two calls to one call which effectively reduces the extra expense, and advised a revised fiscal note will be submitted. He explained there are four different ways for which boards accept and develop proposals [in-cycle proposals, agenda change requests, emergency petitions, and board generated proposals]. He referred to the "in-cycle proposals" and advised that both the Board of Game and Board of Fisheries are on a three year cycle, they take the same region and species on a three year cycle. For example, he said, next year the Board of Fisheries will take on Upper Cook Inlet, Lower Cook Inlet, Kodiak, and statewide King and Tanner crab, and the public gets used to that pattern. Prior to that time, the board opens a call for proposals and people have a deadline to submit and, he offered, the deadline for next year is in two weeks for the following meetings cycle. He continued that the proposals come in, the section reviews the proposals and has them published timely to meet the legal requirements of the Administration Procedures Act (APA) which factors into all of the proposal procedures. Subsequently, he said, the proposals are scheduled for the meeting cycle and then heard.

[3:20:17 PM](#)

MR. HAIGHT explained that a common manner to submit a proposal to the board is through "agenda change requests." He described the three year cycle as fairly clunky and it doesn't let urgent issues come before the board quickly. Therefore, there is a mechanism for people to bring requests and essentially ask the board to take up an out-of-cycle subject during the next meeting cycle because it is urgent. The boards have criteria to review and should the board determine it does meet that criteria, they will schedule it for a meeting, and that is done in time to meet the 30 day legal notice requirement in the APA.

MR. HAIGHT advised there are also "emergency petitions" and compared these to emergency regulations seen in the Administration Procedures Act (APA), anyone can submit an emergency petition at any time under strict criteria, such as conservation concerns or potential loss of significant economic value.

MR. HAIGHT related that the fourth manner is "board generated proposals" which are essentially proposals adopted at a board meeting. He explained it is not essential that it comes from a board member, but that it deals with subjects not considered or thought about beforehand. He noted, it may create more opportunity, deal with an enforcement issue, or a conservation concern, but it is an issue the board feels is urgent to take up. Mr. Haight stated there a policy within the committee packet that boards need to consider when they take up a board generated proposal.

[3:21:56 PM](#)

MR. HAIGHT pointed to the fourth item the board must consider, which read, "Will there be reasonable and adequate opportunity for the public to comment," and the board must consider that before taking up the issue. In terms of characterizing board generated proposals, he said, some subjects are technical and simple and not controversial, and some are important. A board can recognize this and know it needs to allow for extended time for review and comment, and this is a decision a board must weigh when faced with these. He suggested another way to look at this is that some board generated proposals are taken in-cycle; the board will pick up a subject that is currently in-cycle but has not been proposed. When a board does that, legally a board can take action on it at that meeting, although it then comes back to whether it is technical or substantial, he said. In the event it is a big deal, a board will typically not take action and will extend the time out depending on the subject. In the event a board takes up a subject that is out-of-cycle, meaning it hasn't noticed it, they do need to meet the Administration Procedures Act (APA) requirements, go out for 30 days and schedule it at a later meeting. The board can't take action on an out-of-cycle proposal that has not been legally noticed, he said.

MR. HAIGHT addressed Representative Seaton's earlier question and noted the discussion was regarding, when a board has a proposal and amends it, sometimes it will provide substitute language. He continued that sometimes proposals are conceptual,

sometimes they are in regulation but are not complete, or sometimes the board hears something from the public and wants to amend the proposal, and the board will create substitute language. He agreed it is concerning if [the process] got to a point where the board was not able to amend the proposal in front of them and pass it, and the public would see a delay of many proposals, which is an issue.

[3:23:57 PM](#)

MR. HAIGHT offered examples of some of these things in action, as follows: In 2015, at the Southeast Fin Fish meeting, the section's regulation specialist noted a bankrupt hatchery operator was specifically named in regulation and; therefore, no one else could come in and perform enhancement work in the area. The issue was noted, discussed, and the board generated a proposal to put a generic firm in [regulation] so any qualified operator could work in the area. There was no controversy at the meeting and it appeared important to do, so the board passed it there, he said. That is an example of efficient use of the board process in that it saw the problem, solved it there, and did not wait three years. Mr. Haight then offered an example of a proposal taken out-of-cycle such that, last year at the Southeast Shell Fish meeting in Wrangell the board proposed changes for method and means for Kuskokwim Upper River fish wheel handling. He said, it was not in-cycle, so the board scheduled it for the March statewide meeting where more people from that area could come in and participate.

[3:25:32 PM](#)

KRISTY TIBBLES, Executive Director, Board of Game, Alaska Department of Fish & Game (ADF&G), commented that Proposal 207 was one of four board generated proposals that came up during the last meeting cycle, two others were the result of court decisions. She explained that Proposal 207 was a compilation of ideas concerning sheep hunting that Chairman Ted Spraker brought forward at the board's January 8, 2016 work session. She noted the board had expected to deal with numerous sheep proposals that meeting cycle. The board's meetings for that year were one day work session the day prior to its Southeast region meeting in January. Approximately one month later the board had another regulatory meeting for the Central Southwest region, and a month later had its South Central region meeting which, she noted, was fairly condensed and that within 60 days it had its three meetings. In order to make a decision of the board it must be made at their meeting. Chairman Spraker brought forward

Proposal 207 and asked whether the board would like to schedule the proposal as a board generated proposal to solicit comments. Issues were included that were not on the proposals before them, but it was all concerning sheep hunting. The board did schedule the proposal for consideration at the February meeting, and 30 day public notice was provided for that meeting in accordance with the APA. Subsequently, she advised, the board received public comments and seven advisory committees, and noted that the board also scheduled the proposal for the March meeting to continue public comment, where it took its final action. She explained that during this meeting cycle the board had one board generated proposal, an issue Bruce Weyrauch brought forward to the board through the agenda change request policy concerning the ability to take Eurasian Collared-Doves. The board discussed that issue in a teleconference and felt it did not meet the standard for the agenda change request policy, but that it needed to be addressed this year. This year it had just a single meeting, it was 60 days prior to the time of receiving that agenda change request so it created a board generated proposal to act on that topic.

[3:28:28 PM](#)

MS. TIBBLES related that the year prior, the board had a board generated proposal wherein the Wildlife Troopers wanted the board to address the potential problem of the use of drones to spot big game. The board passed the agenda change request process and believed it could do a board generated proposal, schedule it 30 days to give public notice, and then take action on the proposal.

[3:29:10 PM](#)

REPRESENTATIVE SEATON drew attention to Manning and State v. First Nat'l Bank of Anchorage, 660 P.2d 406, 425 (Alaska 1982) wherein the court held that the informative summary requirement was satisfied where the notice consisted merely of broad topics that would be considered. In the event the topic of sheep hunting is noticed, and the courts found that that is adequate notice to amend proposals, he asked whether that is what this bill will change. For example, he queried, if the topics are listed, such as king salmon fishing on the Kuskokwim River, the board meets and wants to talk about methods and means of king salmon fishing on the Kuskokwim River which is a broader topic. He asked whether this legislation would prevent that from being a board generated proposal because it is amending beyond the exact topic as was advertised. He reiterated that he would like

to know the parameters of amendments that can be there, under the language of the bill and not the intent.

[3:31:01 PM](#)

MR. HAIGHT answered that in reading the proposed committee substitute [Version N], it appears there is one provision wherein the proposal is not required to meet the notice requirement if three members support it. He surmised it is possible to take up some board generated proposals fairly quickly, as long as they are not conservation issues. He referred to the aforementioned Section 3, on page 3, lines 14-19, of Version N, to the proposed subsection (1),(1)(B)(i) and (ii), [which would amend AS 16.05.255] and which read as follows:

(i) the proposal requires the board's expedited consideration because of conservation concerns or significant regulatory problems; and

(ii) the subject matter of the proposal would not be before the board for one calendar year but for the board member's proposal; and

MR. HAIGHT related that the subject matter would not be before the board so the board could not take in-cycle proposals with this bill, and stressed he could be incorrect.

[3:31:59 PM](#)

REPRESENTATIVE SEATON noted the requirement that it is sent out to the advisory committees.

MR. HAIGHT agreed, and referred to AS 16.05.255(1)(1)(A), which read:

(A) provides advisory committees and interested person the opportunity to make recommendations or comment on the proposal; and

MR. HAIGHT pointed out that [AS 16.05.255(1)(1)(A)] suggests there is a notice, but he was unsure how that would actually be implemented, and was unsure what opportunity means. He opined it probably has a lot to do with how difficult the issue being addressed is in terms of providing opportunity and how to implement that.

REPRESENTATIVE SEATON related that his intent is to ensure there is good public notice, but also to ensure the board is not handcuffed and cannot act on proposals other than the strict proposal before it. He related that it appears it is illegal to amend if it does not have the support of three board members, but it becomes legal if there are three or more members supporting it.

[3:33:39 PM](#)

MR. HAIGHT referred to the open meetings act, which is the majority or more than three. As a rule of thumb, he said, there cannot be four board members working on something and discussing it as it needs to be an open meetings, although three members could.

[3:33:58 PM](#)

REPRESENTATIVE SEATON concluded that the discussion is not about being at a meeting, amending a proposal that has the support of at least three members of the board. He related that he could understand some of the language if a proposal is generated to send off to the public, but if the members are at a meeting and the notice does not apply ... he said he needs more information on how the provision is read.

MR. HAIGHT opined there is a difference in terminology and that a board generated proposal is not an amendment to an existing proposal. In the event that is going to be what it is, it needs to be defined because if that is the case, what is the degree to which something switches from an amendment to a board generated proposal is important to capture. By way of example, he noted, at the Upper Cook Inlet meeting the board dealt with controversial issues, having received upwards of 10-15 proposals on an issue, and these proposals were not in agreement with each other. In working through the public process and through the committees it came up with a solution not to everyone's liking, and it wasn't like the proposal in front of them, it was a combination of things. He noted that it is quite possible, in this context, if that becomes a board generated proposal it wouldn't be acting on that amendment at that meeting. Currently, it is called "substitute language" but they would not be allowed to act on that at that meeting, he said.

[3:36:07 PM](#)

REPRESENTATIVE SEATON requested clarification whether Mr. Haight meant that under this language the board wouldn't be able to act on it at that meeting, or rather does he mean that under the current way it works it wouldn't be able to act on the substitute language.

MR. HAIGHT clarified that it is under the language of the proposed committee substitute, although that is his sense and he could be wrong.

[3:36:28 PM](#)

REPRESENTATIVE JOSEPHSON asked what merit Mr. Haight and Ms. Tibbles find in HB 266 relative to questions of due process and transparency.

MR. HAIGHT responded a policy has been in place for a couple of years, put together by the joint boards, due to concern about board generated proposals due to a controversy over previous actions. In terms of a position, he commented that Ms. Tibbles and he will remain neutral on these type of things, this is a public process, the board process is public, and that is the correct avenue to develop these things. He said he can only offer examples of how it works, and the cases before them, since this policy has been in place, appears there has been adequate time for advisory committees to respond. He pointed out that the sheep proposal is a big issue here, seven advisory committees responded and provided on time written comments to the meetings before the proposals were acted upon.

[3:38:19 PM](#)

REPRESENTATIVE JOSEPHSON noted a lot of press around mass resignations from local [committees] due to frustration because they put a lot of hard work into proposals, make a recommendation, and the board rejects the recommendation saying "we're outta here." Not that that happened every day, he clarified, and quiered whether there was something to the assertions this bill speaks to, or whether that is just the way it has to be.

MR. HAIGHT answered he has reviewed reports from the board dating back to the early 1980s, and the advisory committees have always felt they haven't been listened to. He opined it is something that needs to be addressed, be cautious of, and make certain the advisory committees have adequate resources and time to respond. The example Representative Josephson cited was the

Anchorage Advisory Committee and, he opined, the same feeling is consistent with the Fairbanks Advisory Committee. Interestingly, with those committees, unlike others, they are within an urban population with representative users that go all over the state, and are providing comments and recommendations for places outside of their area, he explained. Oftentimes, by that very nature, a board may be addressing an issue and there will be dueling advisory committee responses. He recalled at the Upper Cook Inlet meeting approximately eight advisory committees responded to that meeting and on most subjects were split 4 to 4. He said he does not know what a board is to do other than take all of the good advice it can and attempt to reach a conclusion, and this is always a concern for advisory committees. These advisory committees do work hard and sometimes fairly do not feel appreciated, he acknowledged.

[3:40:32 PM](#)

REPRESENTATIVE JOSEPHSON noted that within Board of Game packets published there are Alaska Department of Fish & Game (ADFG) proposals, and asked whether any of those proposals are impromptu, last minute, presented with insufficient notice, lack of due process, or questionable amendments going far beyond the scope of the original idea. He asked whether there has not been any criticism on the presentation of ADFG's own proposals, and not the merits of the proposals.

MS. TIBBLES replied that the department submits proposals by the proposal deadline, it utilizes the change request policy, and attends the meetings to assist with substitute language at the meeting. Although, there may be occasions during the meetings where the department brings up an issue to the board, but nothing comes to mind, she said. With regard to the board generated proposals, those are bigger issues and the recent ones were not at all brought forward by the Alaska Department of Fish & Game during the last few years, she said.

CO-CHAIR TALERICO opened public testimony.

[3:42:39 PM](#)

WAYNE HEIMER related that he worked for the Alaska Department of Fish & Game, in Dahl Sheep specifically, for 25 years, and within the last 20 years has observed and participated in the Board of Game's business as a civilian. Over his many years of observation, he concluded that the Board of Fisheries process is creeping into the Board of Game, and commented that it may be

appropriate in fisheries management for the Board of Fisheries to be the manager, but game are not fish and the process needs to be a bit different. He said, it appears everyone wants the ability to manage things as though it had instream salmon. In speaking to his many years working within the Alaska Department of Fish & Game he could not recall any issue that was so important it couldn't have waited and gone through the process, he remarked. Although, there was a time or two when the caribou were about to be eaten by the wolves and they couldn't get the commissioner to declare an emergency so the divisions could work on it. As far as Section 3, AS 16.05.255(1) [page 3, lines 3-25], he opined that the answer to all of the concerns about amendments and when to alter a proposal could be simply dealt with by telling the Board of Game it does not need to introduce anything, it doesn't need to amend anything, it can act on what has come to them through proper channels and that will solve a lot of problems.

[3:44:30 PM](#)

REPRESENTATIVE JOSEPHSON referred to Mr. Heimer's statement regarding not amending anything, and remarked that it appeared stifling. He offered a scenario of the board having near consensus with the need to tweak something, and asked what he meant by not amending something.

MR. HEIMER responded, "Exactly that" because he could not recall any situation in his experience that has been so critical it couldn't have waited. He then opined that the Board of Game does not need the authority to amend a proposal because issues are not ever that critical. An example might be taking an action to prohibit the threat of the possible use of drones which would affect conservation and development of wildlife resources, which is the Board of Game's job, he said.

[3:45:51 PM](#)

REPRESENTATIVE SEATON surmised that if there are four quite different proposals dealing with sheep, Mr. Heimer's suggestion is that if the board does not see a proposal it likes exactly as written without an amendment, it should put off any action until it next considers that topic.

MR. HEIMER responded that is his suggestion.

[3:46:22 PM](#)

CO-CHAIR TALERICO noted that he believes he is familiar with Mr. Heimer and that he was a sheep biologist over 25 years.

MR. HEIMER said, "That's correct."

[3:46:49 PM](#)

MARK RICHARDS, Executive Director, Resident Hunters of Alaska, advised he was speaking for the Resident Hunters of Alaska and would like to get the committee back on track about what this bill does and does not do, and why it was posited by Representative Wilson. He referred to the 3/23/16 letter from the Resident Hunters of Alaska, and noted that it offers background on why this legislation is necessary. He explained that during the January 15, 2015 work session, Chairman Ted Spraker and Vice Chairman Nate Turner posited two board generated proposals (Proposals 207 and 208) related to sheep hunting that contained ideas never before expressed by the public. The next month there were approximately 30 sheep proposals before them. He reiterated that the joint boards developed four criteria for board generated proposals and Proposals 207 and 208 did not meet any of the four criteria as they were outside the public process and disenfranchised the public. One month later at the Region 4 sheep town hall meeting, 167 members of the public were present and given the opportunity to testify except, he said, before testifying Chairman Spraker advised the public to focus their testimony specifically on board generated Proposals 207 and 208. Thereby, he said, the board generated proposals completely discounted all public proposal before the board that came through during the correct process. He pointed out that Representative Wilson's legislation will have absolutely nothing to do with the board making amendments to proposals before them as that is the board's purview. A member can offer an amendment and the Board of Game votes on it, and the Resident Hunters of Alaska have no problem with that. Although, the Resident Hunters of Alaska do have a problem with the board generating proposals that fall outside of its own criteria, subverts the public process, and disenfranchise the public. He explained that this legislation is an unfortunate necessity due to the Board of Game going out of control and attempting to do things outside of the public process.

[3:49:56 PM](#)

KAREN GORDON spoke in support of HB 266 and advised she is in agreement with the previous testifier. The committee substitute

is necessary to provide needed parameters for the Board of Game to maintain its statutory role as regulator and not try to be a manager as that job belongs to the department. She related that the board failed to abide by its own criteria in creating Proposals 207 and 208, against overwhelming testimony by the advisory committees and the public on those proposals. Yet, she commented, the Board of Game pushed them anyway and when the board chooses to create its own proposals it takes the process out of the hands of the public. The board needs to take proposals and not make them and for that reason, she asked that Section 3, AS 16.05.255(1)(1), page 3, line 9 be changed from three members of the board to unanimous consent. She referred to language in Section 2, [which would amend AS 16.05.255(c)], on page 2, lines 28-31, which read:

If the **board** [BOARD OF GAME] denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall, in addition to the requirements of AS 44.62.230, provide a written explanation for the denial to the sponsor not later than 30 days after the board

MS. GORDON paraphrased that if the board does not agree or does not adopt a proposal provided by the public or the advisory committee it is required to provide a written reason. She commented that to her knowledge the board has not done that ever. In general, she related, she is against board generated proposals in that the board does not seem to abide by them even when it has criteria. She said she appreciates this legislation with the one change regarding unanimous consent.

[3:52:39 PM](#)

REPRESENTATIVE JOSEPHSON recalled that recently Proposal 207 was affirmed by the board because recently the board was asked to reconsider, voted to reconsider the proposal, and the board reaffirmed that proposal. He asked whether that information helps her to feel better that the board revisited this contentious issue.

MS. GORDON answered no, because the board created this proposal against overwhelming public testimony. She opined that it is important and incumbent upon the board to take that into consideration, it didn't do that, and it ignored both written and public testimony on both proposals.

REPRESENTATIVE JOSEPHSON referred to her comment regarding the need for unanimity on page 3, line 9, and advised the board can only act on a proposal in-cycle and that wildlife changes vastly, and he asked whether the board needs to intervene in an emergency. He asked whether the board should be allowed to do that even when there is not unanimity.

MS. GORDON replied that this is not about emergencies but rather board generated proposals, proposals the board thinks up itself, and she pointed out that that question is not pertinent to this discussion.

REPRESENTATIVE JOSEPHSON clarified that it appears that it is at page 3, line 22.

[3:55:35 PM](#)

MIKE TINKER noted he is speaking on behalf of himself, he has been with the Fairbanks Advisory Committee for well over 20 years, and he has worked on this issue for many years. He related that on and off there have been similar problems with the boards, and in the event the Board of Game had followed its written procedure there would not be this issue today. He pointed to page 2 page 15, and deleting the words "sport hunting and subsistence" thereby moving solely to regulating hunting, and noted there is no definition in statute on sport hunting. He said there are separate procedures for emergencies, are taken up separately, and do not get into the board generated proposal arena at all. He related that the real dichotomy here is that the public and the volunteer advisory committees put a huge amount of emphasis on the process. The board does not accept anything unless the procedure is followed to the letter, and supporters of the legislation are asking that the board hold itself to the same standard.

[3:58:10 PM](#)

CO-CHAIR TALERICO offered his understanding that the department has the ability to have emergency regulations.

MR. TINKER replied absolutely. These emergencies are a bit different with fish and game than they are in statute as far as holding them to a minimum like that. Although, he explained when a conservation concern comes up for an individual species or in a given area, there are four or five avenues where those concerned can ask for emergency consideration. There is criteria to meet, the data is provided, and the board is asked

to take it up as an emergency situation. He asked the committee to keep in mind that, as in other regulatory processes, an emergency order is only good for a few months.

[3:59:34 PM](#)

AL BARRETTE noted he is a long time advisory committee member in Fairbanks, in a short period of time he will be a Board of Game member, and that he has a lot of expertise in this field. He attended the 2013 joint board meeting wherein the joint boards created four criteria to ensure the public and the advisory committees that the boards would not generate a proposal without going through the process steps. That only lasted one or two years on the Board of Game side with Proposals 207 and 208. Furthermore, he opined, the board believed Proposal 207 would help do things. Except, he commented, the Board of Game didn't allow enough vetting of that proposal to understand that there are at least eight resident sheep hunts ending after August 10th, wherein a person is lawfully allowed to use an aircraft for spotting sheep. The Board of Game then passed a sheep youth hunt this year that starts before August 10, 2016, and use an aircraft for spotting sheep, he said. Now, he commented, there is a certain time an aircraft cannot be used for spotting sheep, and a certain time a person can and still harvest the sheep. He related that that is the problem with trying to push things too fast, not vetting, and not understanding the effects of what is being attempted.

[4:01:59 PM](#)

STEVEN FLORY advised he is a former member of the Anchorage Advisory Committee, and a former member of the Wild Sheep Chapter in Alaska. He advised he has been involved in the crux of a lot of this, including the resignation of seven members of the Anchorage Advisory Committee over actions taken by the Board of Fisheries, followed one year later by six resignations from advisory committees due to actions of the Board of Game. This legislation is sorely needed, it doesn't go far enough, and it doesn't address enough issues, which is the House Resources Standing Committee's job, because the legislature has authority over fish and game resource policies. Previous legislatures set up a working system but the system was subverted, destroyed, and distorted and it no longer functions as it was intended. He described this as the first step in fixing a broken system.

REPRESENTATIVE SEATON referred to prior testimony and the suggestion that the board only take proposals from advisory

committee and the public, the board should not be able to amend the proposals in any manner, and in the event that was not sufficient the board should do it at the next meeting. He asked whether his position is that the board should not be able to amend proposals that come before them in the booklet.

4:04:15 PM

MR. FLORY replied he does not believe HB 266 does that, although he does believe there is nothing so pressing in any of the regulations that they must go in immediately, and in fact most of the time they don't go into effect for a full year later. In fact, he remarked, if the Board of Game wishes to amend something it should send it back to the advisory committees for additional recommendations, and he noted that the advisory committees are there to give [recommendations] to the board. The problem, he pointed out is that the Board of Game is functioning as its own advisor and the board is not interested in what the advisory committees or public has to say.

4:05:49 PM

ROD ARNO, Executive Director, Alaska Outdoor Council, advised he represents the statewide Alaska Outdoor Council with 48 individual clubs, and it supports this legislation. He commented that within his 35 years of policing the Board of Game he has never seen so much strife specifically among hunters, specifically, being divided over the issue of the way this has proceeded on Dahl sheep proposals. The board packet contains all of the proposals, of which there were 35 sheep proposals, and he stressed that it is important the public take the proposals in their entirety. When the chairman came to Juneau for the work session and proposed these two proposals, it set back the entire process of the advisory committee's participating in the process and coming up with a plan to address the 35 proposals. It is a continuing problem and, he stated, the advisory committees and public are being disenfranchised because currently the board is heavily influenced by commercial users, as well as trophy hunting non-governmental organization (NGO). Previously, he said, the board was more balanced with more representatives addressing the Alaskan public, and because sheep is a trophy issue this problem has elevated as high as has. In the event the board had looked at it and addressed its policy, this legislation would not have been necessary because the policy is clear on the criteria it jointly developed with the Board of Fisheries for developing board generated proposals. The purpose of this legislation is

to have it in statute in the event there is recourse should this issue arise again, he said.

4:09:41 PM

REPRESENTATIVE SEATON requested a summary of the four criteria and Mr. Arno handed him a copy.

CO-CHAIR TALERICO noted it appears Mr. Arno is the historian for the Board of Game meetings and asked for a description of changes he has seen.

4:10:25 PM

MR. ARNO specified that on the hunting side of the Board of Game, not the Board of Wildlife, the regularly participating individuals in the process have better harvesting and clearly, are not worried about the conservation. This is about who is harvesting the resource and the availability of harvestable resources, wherein the Board of Game directs the managers that it needs more harvestable surplus and directs them to more actively manage. Looking at it with those players on that, what happens is when commercial interest gets so strong on the members of the board there is a slant and that slant is always away from the advisory committees, he said. Particularly on the issue of Proposal 207, in that there were three board meetings and overwhelmingly the testimony opposed Proposal 207, and the reason being that there was not a conservation problem and, that the FAA already made what Proposal 207 did illegal. The added stipulations put on that only negatively affected resident hunters because commercial hunters have the opportunity, time, and wherewithal to get their camps out and know where the sheep are. Nonetheless, he noted, a resident hunter may only have two weeks off to plan that time, and if they have an aircraft they would go out and search for an area to hunt sheep. Those Alaskan residents were more negatively affected by this than the commercial user, and they were not being heard by this board. A situation has been created that is causing more than just the policy the joint boards adopted in 2014, he said.

4:12:51 PM

REPRESENTATIVE JOSEPHSON referred to testimony stating that the board's ruling was against a great number of testifiers, and related he has seen this happen frequently in the legislature. He offered a scenario of 90 percent of the public testifying on behalf of "X" issue, and the powers that be going in the other

direction. He queried Mr. Arno as to whether it is his view that that action is prohibited or whether the Board of Game can disregard the great propensity of the testimony and determine it sees the issue in a different way. Representative Josephson asked whether that is the issue.

[4:13:57 PM](#)

MR. ARNO responded, "No, that's not the issue."

REPRESENTATIVE JOSEPHSON advised that when he reviewed Proposal 207, there was a description regarding out-of-state versus Mr. Arno's constituency parallel, except, Mr. Arno testified there really isn't a sheep conservation issue. Even so, Representative Josephson stated he has repeatedly read there is a huge statewide sheep conservation issue and asked whether the state has a bounty of sheep with no issue.

MR. ARNO responded that the Alaska Department of Fish & Game advised there was not a conservation problem with Dahl sheep in Alaska, because the department has repeatedly specified at each meeting, including the March meeting, that there was not a conservation concern.

[4:15:11 PM](#)

REPRESENTATIVE SEATON surmised that the first consideration is whether it is in the public's best interest. He asked whether Mr. Arno was saying that the Board of Game did not address that, or that Mr. Arno just disagreed with the board's finding that it was in the public's best interest.

MR. ARNO answered that the Board of Game did not address any of the four [criteria] when it adopted its board generated proposals.

REPRESENTATIVE SEATON further surmised that the Board of Game did not look at the urgency, the current process, or anything like that.

MR. ARNO replied correct.

[4:16:02 PM](#)

RON SOMMERVILLE advised that he worked for the Alaska Department of Fish & Game (ADF&G) as a biologist for 25 years, and served on the Board of Game for 6 years. Alaska has frequently been

touted as having the most democratic regulatory process in the United States because its citizens have a phenomenal amount of influence on the regulatory process with 80 plus advisory committees. He expressed concern that the testimony previously offered is the result of major changes, the point is that both fish and wildlife have gone to three year cycles and the results are now being seen. The advisory committees are upset because they are not only not being heard, and are only heard once every three years on issues important to them. Speaking as a Juneau resident, he said he is a member of the Territorial Sportsman and previously they commented on issues in the Brooks Range, but now it avoids statewide issues because it doesn't have the time or manpower to deal with it. His perspective, he said, having served on the Board of Game, the board can set its own agenda and even though it has a three year cycle, it can throw things into the middle of an agenda anytime it believes there is a big issue. He then related a classic example, "Cook Inlet ... I mean it is three cycle Cook Inlet? Never happen. If it doesn't come up every year everybody gets upset including legislators because of their constituents are beating up on them."

[4:18:53 PM](#)

MR. SOMMERVILLE advised he is on a sheep working group attempting to come up with a unanimous decision that might help the board, and when reviewing a proposal he asked himself whether it does harm, and noted it does not affect the boards or departments emergency authority, which is spelled out in statute. This proposal has to do with transparency and he related that when people get upset with the process then the product becomes secondary, and opined that is not being attacked here just because people did not like the product. The issue here is that from the beginning people became angry because [the board] was not following the rules, and speaking as a former board member, and chairman, board members always try to do the best they can to make sure the public is satisfied with due process, he explained. He said he does not agree that the board should not be allowed to amend regulations because when going through all of the proposals, there may be 8-10 proposals dealing with one subject and they will be combined into a particular proposal with bits and pieces of possibly all proposals. He reiterated that to have a proposal go back through a three year cycle again would be unreasonable and he disagrees with some of the previous testimony on that issue.

[4:20:48 PM](#)

REPRESENTATIVE JOSEPHSON said he agrees with Mr. Sommerville's statement that when people feel the process has been interfered with, the product does not merit the same attention. Mr. Sommerville stated he is on the sheep working group and the documents say that that working group has been under attack because it acted similar to a subcommittee, there wasn't sufficient transparency, and it was working behind the scenes.

MR. SOMMERVILLE advised he has not attended all of the meetings but did go to the last meeting, and offered that the moderator tried to get to some consensus points they could agree upon, and almost everyone agreed there is no conservation problem. Alaska has a declining sheep population but that is not necessarily a conservation problem, except in the area of subsistence, hunters are only harvesting full curl rams. The state does not have a conservation problem although it may have an allocation problem and that is what is driving this. He related that the state has a situation wherein non-residents want to hunt sheep and if it is determined to be one sheep every four years, it doesn't affect the non-residents but it does affect Alaskan residents. The process has become so convoluted that people no longer trust the Board of Game and he worries because Alaskans have tried to build a system that will withstand a long period of time, he remarked.

[4:23:18 PM](#)

REPRESENTATIVE TARR, with regard to the complexity of the issues and the inability to participate outside of a person's immediate region, offered an idea of separating the jurisdiction of the board and asked whether that would be a useful exercise.

[4:23:52 PM](#)

MR. SOMMERVILLE replied that he would have to look at that because some issues must be addressed on a statewide basis in that consistency is part of it. For example, he said, the intensive management program established four or five criteria when it first started in "19," recognizing that many people in the state were opposed to it as well as in support of it, such as a reasonable chance of success, reasonable amount of money to operate the program, members must be able to follow through, and other criteria. He stressed that it should not be done on a case-by-case basis and should be applied on a statewide basis. There have been proposals to break up the Board of Fisheries or the Board of Game into regions or whatever and, he pointed out, some of that would work but this probably isn't the best time to

talk about spending that kind of money. He reiterated that he worries about the three year cycles, and that the staff has explained to him all of the reasons for it and it kind of makes sense, but he believes they will alienate the advisory committees and they will start to fade away. Even though they complain about dealing with fish and wildlife at the same time, when you do it over a three year period some of the people will disappear, he related.

[4:25:20 PM](#)

REPRESENTATIVE SEATON noted he did serve on an advisory committee in Homer for years and understands the advisory committee's frustrations with the boards not following their directions, especially when the harvest is in the local area and the board considers all of the advisory committees' opinions across the state. He surmised that there were three meetings about 30 days apart, and asked whether there was not sufficient public notice in that timeframe, and whether the seven advisory committees sent in their written comments timely. He said he would like to determine if that notice process over a series of meetings is inadequate because he was unsure whether the discussion is about process. It appears, he noted, that people are unhappy with the decision and the lack of consideration of the responses the advisory committees produced to the board.

MR. SOMMERVILLE deferred to Mr. Arno for an answer.

[4:27:14 PM](#)

MR. ARNO stressed the need to look at all of the proposals in total. He reiterated that the advisory committees started deliberating on the proposal during fall. Then during the January work session and 30 days before the meeting, a notice was sent out by board support advising, "Here, we got these." He remarked, "But that threw their whole process of participation. So, that was the part about being disenfranchised." He said subsequently the chairman advised, on the record, that guides called and asked for these proposals. He pointed out that is the issue of being disenfranchised. He quipped that if he had known of the loophole, he would have called the chairman and told him what he wants put in. The last time [the advisory committee] deliberated on Proposal 207 was a year later. The people of Alaska who are elected to those advisory committees feel disenfranchised by the process, he said.

[4:28:48 PM](#)

REPRESENTATIVE SEATON concluded that the timing of the notice was not the problem, but rather there was not adequate consideration of the proposals that had originally been published and the comments from the advisory committees.

MR. ARNO responded yes, to the point that the individuals who put comments in and participated in the advisory committees looked at the issue of the board not going through the criteria for the generated proposal. He remarked that it wasn't that there was an insufficient way to deal with the concerns of conflict between users, they had all submitted their own proposals to go into the packet for everyone to review. Subsequently, when it got to the end of it they commented on not only their proposals but other people's proposals as to how to relieve the conflict. He related that by putting this legislation into statute it will give the public a bigger hammer to point out whether or not the board looked at the criteria before choosing to submit a board generated proposal.

REPRESENTATIVE SEATON, in referring to the 60 day notice instead of 30 day notice, he remarked that when doubling the notice time it could affect the process that would go forward, and it appears that other elements need to be corrected other than the 30- to 60-day notice.

MR. ARNO agreed that that is one piece of it.

[4:31:10 PM](#)

CO-CHAIR TALERICO held over HB 266.

CO-CHAIR TALERICO commented that over the years he has dealt with the frustrations of the Middle Nenana River Fish & Game Advisory Committee in that it sometimes has been told it needs to comply with three other advisory committees in order to make a decision to move forward with board proposals. An adjustment to policy is not placing blame on the department or anyone else, it is something the committee needs to determine as to whether or not that would be the best direction to move forward. The bill would be heard at the next committee meeting, he advised.

[HB 266 was held over.]

[4:32:27 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 4:32 p.m.