ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON FISHERIES
April 2, 2019
10:02 a.m.

MEMBERS PRESENT

Representative Louise Stutes, Chair
Representative Bryce Edgmon
Representative Chuck Kopp
Representative Jonathan Kreiss-Tomkins
Representative Geran Tarr
Representative Sarah Vance

MEMBERS ABSENT

Representative Mark Neuman

COMMITTEE CALENDAR

HOUSE BILL NO. 99
"An Act relating to the development and operation of a hydroelectric site at the Nuyakuk River Falls; providing for the amendment of the management plan for the Wood-Tikchik State Park; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 105
"An Act relating to claims against protection and indemnity insurance policies of vessel owners."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 99
SHORT TITLE: NUYAKUK RIVER FALLS: HYDROELECTRIC SITE
SPONSOR(s): REPRESENTATIVE(s) EDGMON

03/18/19	(H)	READ THE FIRST TIME - REFERRALS
03/18/19	(H)	FSH, RES
04/02/19	(H)	FSH AT 10:00 AM GRUENBERG 120

BILL: HB 105
SHORT TITLE: COMM FISHERMEN'S FUND:VESSEL OWNER CLAIMS
SPONSOR(s): REPRESENTATIVE(s) ORTIZ

03/25/19	(H)	READ THE FIRST TIME - REFERRALS
03/25/19	(H)	FSH, FIN
04/02/19	(H)	FSH AT 10:00 AM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE BRYCE EDGMON
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 99 as the prime sponsor of the bill.

ROBERT HIMSCHOOT, CEO/General Manager
Nushagak Electric and Telephone Cooperative
Dillingham, Alaska
POSITION STATEMENT: Presented a PowerPoint titled "Nuyakuk Hydroelectric."

CORY WARNOCK, Senior Licensing and Regulatory Consultant
McMillen Jacobs Associates
Ferndale, Washington
POSITION STATEMENT: Presented testimony during the discussion of HB 99.

REPRESENTATIVE DAN ORTIZ
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 105 as prime sponsor.

LIZ HARPOLD, Staff
Representative Dan Ortiz
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Answered questions on behalf Representative Ortiz, prime sponsor, during discussion of HB 105.

BOB KEHOE, Executive Director
Purse Seine Vessel Owners Association
Seattle, Washington
POSITION STATEMENT: Testified in support of HB 105.

CLAY BEZENEK
Commercial Fisherman
Ketchikan, Alaska
POSITION STATEMENT: Testified in support of HB 105.

FRANCES LEACH, Executive Director
United Fishermen of Alaska
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 105.

ACTION NARRATIVE

10:02:10 AM

CHAIR LOUISE STUTES called the House Special Committee on Fisheries meeting to order at 10:02 a.m. Representatives Stutes, Vance, Tarr, Kreiss-Tomkins, and Edgmon were present at the call to order. Representative Kopp arrived as the meeting was in progress.

HB 99-NUYAKUK RIVER FALLS: HYDROELECTRIC SITE

10:03:04 AM

CHAIR STUTES announced that the first order of business would be HOUSE BILL NO. 99, "An Act relating to the development and operation of a hydroelectric site at the Nuyakuk River Falls; providing for the amendment of the management plan for the Wood-Tikchik State Park; and providing for an effective date."

10:03:47 AM

REPRESENTATIVE BRYCE EDGMON, Alaska State Legislature, introduced HB 99 as prime sponsor. He explained the bill would provide a member-owned local power cooperative from the Dillingham area the ability to do feasibility and impact studies on a hydroelectric project in the Wood-Tikchik State Park. He indicated this was just the beginning phase of a long and involved process for a project that is estimated to cost well over $100 million. He said HB 99 would give the cooperative, in statute, permission to do the necessary studies, by making required changes to Alaska Statute Title 41.

10:06:20 AM

REPRESENTATIVE KREISS-TOMKINS asked for a primer history on how Elva Lake and Grant Lake ended up in Alaska Statute Title 41 and what the hydroelectric potential is at each of those sites.

CHAIR STUTES surmised that the requested information would be included in the upcoming presentation.

10:08:04 AM

ROBERT HIMSCHOOT, CEO/General Manager, Nushagak Electric and Telephone Cooperative (NETC), directed attention to slide 1 of a PowerPoint presentation, entitled "Logical Natural Location." He explained that Nuyakuk River flows over a natural glacial moraine which creates Nuyakuk Falls. The project would divert some of the river water around the falls for use in a hydroelectric plant. Mr. Himschoot moved to slide 2, "Power Production Location and Potential." He explained that the United Stated Geological Survey (USGS) has had a flow monitoring program at the Nuyakuk Falls since 1953, which is advantageous because that is over 60 years of data available for modeling what the possible hydroelectric power production from the falls might be. He said if they used 25 percent of the flow, the minimum power over the three lowest months would be 4.5 megawatts. The modeling showed that there is considerably more potential at high flow times. Modeling projections were stopped at 10 megawatts, but during high flow time there is potential for power up to 30 megawatts. He stated that 10 megawatts of power were enough power not only for Dillingham and Aleknagik, but for regional distribution as well. The natural flow production potential matches the seasonal demand, which is driven by salmon processing in the summer. He stated that Dillingham used approximately two megawatts of power during the winter, which jumped to five megawatts during the summer. He noted that with the addition of a new Icicle Seafoods processing facility, Dillingham would require closer to eight megawatts of power during the processing season.

10:12:06 AM

MR. HIMSCHOOT used slide 3, "Power Plant," and slide 4 [not titled] to show the possible affected area. He explained the falls occur at a splendid location in the river for a hydroelectric facility. There is a natural oxbow in the river above the falls which is perfect for the intake above the proposed power production facility. The intake would lead to a 1500-foot power channel which would flow into the power plant at the bottom of the falls. The water flow from the Nuyakuk River would be affected for approximately 3000 feet, the distance from the top to the bottom of the falls. At the base of the falls the water used for power production would be introduced back into the river, returning the river to its full flow rate. Mr. Himschoot said salmon traversing the falls would use the same passage that had always been used.

10:13:29 AM

MR. HIMSCHOOT moved on to slide 5, "Transmission System." His presentation showed a line drawing of the potential distribution of hydroelectric power if the project is successful. He explained that there would be enough electricity generated for six communities in the Dillingham area, and production may be enough for three more communities in the region. He said if electrical production was sufficient for all 9 communities, that would greatly increase the viability of the project. Another benefit to connecting all the communities would be the ability to bring broadband telecommunications to all of them while building the transmission lines.

10:14:25 AM

MR. HIMSCHOOT moved on to slide 6, "Considerations." He said the project would displace 1.5 million gallons of fuel annually. The estimated cost for the project and construction was $120 to $150 million. Mr. Himschoot explained the financial savings over a 40-year licensing period to the Nushagak Electrical and Telephone Cooperative would total $171 million. He told the committee that the slide show he'd just presented was an abbreviated version of the presentation shared to the community for outreach. He said, "We've tried to include as many people as possible to see if there would be anyone who would not be supportive of us moving forward." He answered Representative Kreiss-Tomkins' question by saying when the Wood-Tikchik State Park was established, enabling statutes recognized hydroelectric as one of the potential uses of the state park and called out two particular sites that had been identified in advance. He said those were Grant and Elva Lake. He continued his explanation by saying the cooperative was constantly looking for a path off of diesel and had evaluated both the Grant and Elva Lake sites but neither one of them turned out to be financially feasible. Mr. Himschoot said what the cooperative is trying to do is study the Nuyakuk Falls to see if the location is feasible, both environmentally and financially, for a hydroelectrical power facility.

10:18:36 AM

REPRESENTATIVE KREISS-TOMKINS expressed his understanding of the difficulty in finding non-diesel projects, then asked if the $120 million to $150 million project price included the transmission line infrastructure.

MR. HIMSCHOOT answered yes.

REPRESENTATIVE KREISS-TOMKINS asked how the electrical baseload would be affected if the project was to include the three communities that Mr. Himschoot mentioned could possibly be included in the project if the studies showed enough power generation.

MR. HIMSCHOOT answered that the amount of electricity produced, even in the low times, would be enough for those communities to avoid diesel generation.

10:20:25 AM

REPRESENTATIVE KOPP said the project had enormous potential and shared some information about other successful hydroelectric projects with which he was familiar. He mentioned the potential for a fish processing plant in Levelock and how excited he was about the benefits from the hydroelectric project that could result.

10:22:01 AM

CHAIR STUTES shared that Kodiak was 99.7 percent renewable energy. She said the reasonable cost of electricity was an economic driver for the community, bringing in fish processors due to the low cost of electricity.

10:23:08 AM

REPRESENTATIVE VANCE asked whether Mr. Himschoot had a breakdown of projected cost per home in the area, and whether he had projections for utility costs per household if the project was to succeed.

MR. HIMSCHOOT answered that much of what Representative Vance asked would be determined through the studies and design process for the project. He said based on the known current costs and projected estimated costs, the household energy costs would not increase. He expected to be able to find grants and other funding that would drive the project cost down. He explained that all the modeling for the project was based on a 40-year license from the Federal Energy Regulatory Commission [FERC]. He added that 40 years is a very short term for hydroelectricity, but in the long term the region will benefit from a mature hydroelectrical facility with lower rates.

REPRESENTATIVE VANCE acknowledged that choosing Bradley Lake was one of the wiser decisions made by the state. She said it was impressive that this project did not need a dam and that it maintained 75 percent of the natural water flow for fish habitat and passage. She expressed her hope that this project would move forward.

10:27:17 AM

CORY WARNOCK, Senior Licensing and Regulatory Consultant, McMillen Jacobs Associates, shared his background and explained he had been working with NETC for the past year, exploring the initial feasibility of the Nuyakuk Falls hydroelectric project. He said he'd been hearing some concerns in regard to HB 99 potentially allowing for the expedited development of the project prior to fully exploring the feasibility of the project. He said he was available to answer procedural questions and add clarity with respect to the intent of the bill versus the onerous and requisite FERC licensing process that would need to take place. He explained one phase of the FERC licensing process is to collect existing baseline natural resource data, then to go through a process with state and federal agencies to determine additional study needs.

CHAIR STUTES asked for clarification about the FERC process. She explained that she wanted to make sure HB 99 would not circumvent any of the steps required by anyone in the process.

MR. WARNOCK replied the bill would allow the cooperative to begin the study development and implementation processes necessary to inform the FERC process; it would in no way circumvent or avoid it.

CHAIR STUTES asked for an estimate of the timeframe involved in getting a FERC permit.

MR. WARNOCK answered five to seven years based on no significant issues associated with legislation or other external influences.

10:31:03 AM

REPRESENTATIVE KREISS-TOMKINS commented he'd heard the words "onerous," "burdensome," and "time-consuming" in the description of the FERC process, and he asked Mr. Warnock to elaborate on what is entailed in the FERC permitting process.

MR. WARNOCK answered there are a series of phases; the first phase is what the cooperative is in now. He told the committee that the cooperative had applied for and received a preliminary permit from the FERC, which would grant them access to the site for a feasibility study. He went on to explain the initial permit granted the cooperative three years to perform the feasibility and exploration phase requirement. At the end of the three years the cooperative would have to show enough progress to be granted an additional two-year extension. Following the baseline data acquisition, there is a five-year window for all the stakeholders to determine and complete studies that govern whether the completion of the project would be more beneficial than detrimental overall. He explained that once the studies are completed, all the stakeholders would reconvene and determine whether the project should move forward. The stakeholders then would develop terms and conditions that they would like to see in the FERC license. Mr. Wardnock said that at this point the cooperative would file a final license application with FERC, those terms and conditions from stakeholders would be applied, then FERC would do a full comprehensive review to determine if the project was viable. If FERC determined it was viable, then a license would be issued.

10:34:29 AM

REPRESENTATIVE TARR asked if there were any sites closer to Dillingham that could work better for a hydroelectric facility.

MR. HIMSCHOOT said the search that led to the Nuyakuk River Falls site was from a comprehensive search of the area.

10:36:15 AM

MR. WARNOCK added to Mr. Himschoot's comments by saying that from a biological perspective, the proposed site is fairly unique because of the small footprint the project would encompass. The amount of area for viable rearing or spawning of the resident and anadromous salmonids that exist in the system would not be impacted. From an engineering and natural resource perspective, the falls site is appealing.

CHAIR STUTES asked for a ballpark idea for cost of the project through the FERC permit being issued.

MR. WARNOCK answered that there are a lot of variables, but the project estimates are $6 million for natural resources studies; regulatory services for engineering feasibility would be in the

range of $10 million to $20 million. He recognized the range was broad but said it would be refined, and he, hoped minimized as they learned more.

10:39:06 AM

REPRESENTATIVE KREISS-TOMKINS asked a two-part question, the first part being what the anticipated impact on anadromous fish was; then what sort of summer and winter studies would be needed to get through the FERC process.

MR. WARNOCK said he could definitely address the studies part of the question. As an example of site-specific needs, he said there would be geotechnical work done in the first year of the study program. That would include analysis of the substrate being used for development of the project to determine what it can withstand in terms of the force of the river and the amount of infrastructure that would be added. From a natural resource perspective, he said one of the first and highest priority studies would be the Nuyakuk Falls. Overall, he said there would be minimal impact to habitat; however, the falls themselves would be an area called a "bypass reach" or area of the river where water would be moved around to develop power. He stated, "We would be looking at the flow through those falls to ensure that safe, effective, and timely passage of both upstream migrating adults and downstream migrating juveniles was maintained throughout the entire year." Mr. Warnock related another unique feature of the project is that these falls, at certain times of year that coincide with upstream migration of certain anadromous species, create a velocity barrier that can prohibit upstream migration. He said removing some of those (indisc.) flows over the falls at certain times of the year would provide "more safe, timely, and effective passage than natural conditions currently allow."

MR. WARNOCK said those are the primary, upfront studies, but because there is not a lot of existing data for the remote location, there would also be a period of studies that would "more globally and comprehensively investigate the project area for species presence" and composition, and to determine the water quality. He said, "All of that would ... coalesce into a model or a series of models during the data analysis phase, which again would be cross-referenced with project design to determine how natural conditions would be, if at all, impacted by project operations."

10:43:49 AM

REPRESENTATIVE KOPP asked whether the project was owned cooperatively with any other companies, because he had seen Naknek Electric was also pursuing a FERC permit for the same or similar project.

MR. HIMSCHOOT replied that he believed there was a misunderstanding, then explained the Naknek Electric resolution was in support of the Nushagak Cooperative's efforts. He explained that the project would certainly need to be a regional project, but it was too early in the planning stages to know how the cooperation between the regional electrical companies might work.

REPRESENTATIVE KOPP explained that he had just misread the information.

10:46:12 AM

REPRESENTATIVE KREISS-TOMKINS asked for an explanation to make sure he understood what "velocity barrier" meant.

MR. WARNOCK said he used the term velocity barrier to define a natural condition where water flow coming over a barrier such as a waterfall impeded the upstream movement of adult anadromous fish.

10:48:12 AM

REPRESENTATIVE EDGMON commented that this project had a myriad of steps and stages and was comparative, on a smaller scale, to the gas line project in the complexity of the overall process. He then asked Mr. Himschoot if at any time in the exploratory phase the cooperative would be compelled to recognize the project wasn't feasible, and if so, what would happen.

MR. HIMSCHOOT answered that Mr. Warnock had given a description of the process. He said some of the more critical studies were going to be done early in the process, specifically those studies that had a "go/no go" bearing on the project. He continued by explaining that if any of those studies came back indicating the project was not feasible, the cooperative would evaluate the decision to move forward or not.

REPRESENTATIVE EDGMON commented that this was a speculative project for a small cooperative and would be a long-term

process. He added that given those factors the cooperative would have to err on the side of caution.

10:51:33 AM

CHAIR STUTES announced that HB 99 was held over.

HB 105-COMM FISHERMEN'S FUND:VESSEL OWNER CLAIMS

10:51:43 AM

CHAIR STUTES announced that the final order of business would be HOUSE BILL NO. 105, "An Act relating to claims against protection and indemnity insurance policies of vessel owners."

10:52:26 AM

REPRESENTATIVE DAN ORTIZ, Alaska State Legislature, as prime sponsor of HB 105, said that the proposed legislation was heard in a prior session and was based on the Fishermen's Fund which was created in 1951. The fund provided the treatment and care of Alaska's licensed and commercial fishermen who were injured while fishing, on shore or offshore, in Alaska. It was created by fishermen, for fishermen, from a portion of every fishermen's license fee. He explained that in 2010 the legislature amended the fishermen's funds statutes to allow a vessel owner to file a claim against the fund for 50 percent of the owner's protection and indemnity insurance deductible from the fund. A vessel owner could file a claim if an injured crew member filed a claim against both the fishermen's fund and the vessel owner's insurance. He told the committee the idea behind this was that the fishermen's fund was essentially a payor of last resort. If a vessel owner carries protection and indemnity insurance to fully cover a crew member's medical expenses in the event of an injury, then there would be a reduced burden on the fishermen's fund. Representative Ortiz said HB 105 would allow a vessel owner to fully recover the protection and indemnity deductible from the fund up to the amount of $5000. He reiterated the fishermen's fund is self-funded by the fishermen.

10:55:12 AM

REPRESENTATIVE KOPP asked if there had been any modeling of claims in order to know what was paid out of the fishermen's fund over a period of time.

REPRESENTATIVE ORTIZ shared what the fund had paid out on deductibles between 2014 and 2017. He said the sustainability of the fund would remain intact and overall performance of the fund would be the same if HB 105 passed. He shared that the fund managers are responsible for making sure the fund is sustainable, and they support the bill.

10:57:38 AM

REPRESENTATIVE VANCE asked how much money was in the Fishermen's Fund and what the annual contribution to the fund was.

10:57:58 AM

LIZ HARPOLD, Staff, Representative Dan Ortiz, Alaska State Legislature, explained that the current value of the fund is $11.7 million, and the ten-year average value of the fund had been around $11.5 million. She continued her answer by sharing that about $1.1 million goes into the fund annually. In further response to Representative Kopp's question, she stated that last year there were 110 crew member claims that were filed in 2018 and paid out for a little over $500,000 total. In 2017, there were 924 crew member claims, with a value paid out of just over $731,000. She explained that crew member claims are quite a bit higher than vessel owner claims; therefore, shifting the financial burden to the vessel owner's insurance would help protect the fund.

10:58:49 AM

REPRESENTATIVE KREISS-TOMKINS asked for clarification whether the fiscal note was correct because it seemed like a small price to pay.

MS. HARPOLD expressed agreement that the fiscal note of $16 thousand was a small price for a great benefit.

11:00:06 AM

CHAIR STUTES opened invited testimony on HB 105.

11:00:27 AM

BOB KEHOE, Executive Director, Purse Seine Vessel Owners Association, told the committee his organization managed three fishermen-owned marine insurance pools, and profits created by the pools were distributed back to the pool members to help

control the cost of liability insurance. He continued his testimony by saying the Purse Seine Vessel Owners Association supported the bill and thanked Representative Ortiz for sponsoring the bill.

11:03:11 AM

CLAY BEZENEK, Commercial Fisherman, reported that he had served on the Fishermen's Fund Board in the past. He explained that in 2009 the board introduced similar legislation to the current bill. He testified in support of HB 105.

11:05:54 AM

FRANCES LEACH, Executive Director, United Fishermen of Alaska, said that United Fishermen of Alaska would like to be on the record in support of HB 105, and on behalf of the organization she thanked Representative Ortiz for bringing the bill forward. She said the bill provided additional incentive for owners to purchase liability insurance for crew members in order to cover the full cost of an injured crew member's medical care in the event of an injury, rather than relying on the fishermen's fund.

11:07:19 AM

CHAIR STUTES opened public testimony on HB 105. After determining that no one wished to testify, she closed public testimony.

11:07:41 AM

CHAIR STUTES announced that HB 105 was held over.

11:08:27 AM

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Fisheries meeting was adjourned at 11:08 a.m.