

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

April 5, 2019

1:04 p.m.

**MEMBERS PRESENT**

Representative Geran Tarr, Co-Chair  
Representative Grier Hopkins, Vice Chair  
Representative Sara Hannan  
Representative Ivy Spohnholz  
Representative Chris Tuck  
Representative Dave Talerico  
Representative George Rauscher  
Representative Sara Rasmussen

**MEMBERS ABSENT**

Representative John Lincoln, Co-Chair

**COMMITTEE CALENDAR**

PRESENTATION(S): U.S. ARMY CORPS OF ENGINEERS

- HEARD

HOUSE BILL NO. 27

"An Act relating to the manufacture, sale, distribution, and labeling of child-related products containing certain flame retardant chemicals; relating to an interstate chemicals clearinghouse; adding unlawful acts to the Alaska Unfair Trade Practices and Consumer Protection Act; and providing for an effective date."

- HEARD & HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 3

"An Act relating to the purchase and sale of state land; relating to discounts for veterans on state land purchases; and relating to the assignment of permanent fund dividends to purchase state land."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 27

SHORT TITLE: REGULATION OF FLAME RETARDANT CHEMICALS  
SPONSOR(s): REPRESENTATIVE(s) TARR

02/20/19 (H) PREFILE RELEASED 1/11/19  
02/20/19 (H) READ THE FIRST TIME - REFERRALS  
02/20/19 (H) RES, L&C  
04/03/19 (H) RES AT 1:00 PM BARNES 124  
04/03/19 (H) Heard & Held  
04/03/19 (H) MINUTE(RES)  
04/05/19 (H) RES AT 1:00 PM BARNES 124

BILL: HB 3

SHORT TITLE: STATE LAND SALE; PFD VOUCHER AND ASSIGN.  
SPONSOR(s): REPRESENTATIVE(s) RAUSCHER

02/20/19 (H) PREFILE RELEASED 1/7/19  
02/20/19 (H) READ THE FIRST TIME - REFERRALS  
02/20/19 (H) MLV, RES, FIN  
03/13/19 (H) SPONSOR SUBSTITUTE INTRODUCED  
03/13/19 (H) READ THE FIRST TIME - REFERRALS  
03/13/19 (H) MLV, RES, FIN  
03/14/19 (H) MLV AT 2:00 PM GRUENBERG 120  
03/14/19 (H) Heard & Held  
03/14/19 (H) MINUTE(MLV)  
03/26/19 (H) MLV AT 1:00 PM GRUENBERG 120  
03/26/19 (H) Moved SSHB 3 Out of Committee  
03/26/19 (H) MINUTE(MLV)  
03/27/19 (H) MLV RPT 4DP 2NR  
03/27/19 (H) DP: THOMR. PARSONSSON, JACKSON, TARR,  
RAUSCHER  
03/27/19 (H) NR: TUCK, LEDOUX  
04/03/19 (H) RES AT 1:00 PM BARNES 124  
04/03/19 (H) Heard & Held  
04/03/19 (H) MINUTE(RES)  
04/05/19 (H) RES AT 1:00 PM BARNES 124

#### **WITNESS REGISTER**

DAVID HOBBIE, Chief  
Regional Regulatory Division  
U.S. Army Corps of Engineers (USACE) - Alaska District  
Joint Base Elmendorf-Richardson, Alaska  
**POSITION STATEMENT:** Co-provided a PowerPoint presentation  
entitled, "POA-2017-271 Project Brief," dated 4/5/19.

SHEILA NEWMAN, Deputy Chief  
Regional Regulatory Division

U.S. Army Corps of Engineers (USACE) - Alaska District  
Joint Base Elmendorf-Richardson, Alaska  
**POSITION STATEMENT:** Co-provided a PowerPoint presentation  
entitled, "POA-2017-271 Project Brief," dated 4/5/19.

JEFF TUCKER, Past President  
Alaska Fire Chiefs Association  
Kenai, Alaska  
**POSITION STATEMENT:** Testified in support of HB 27.

PAMELA MILLER, Executive Director  
Alaska Community Action on Toxics  
Anchorage, Alaska  
**POSITION STATEMENT:** Testified in support of HB 27.

VI WAGHIYI  
Anchorage, Alaska  
**POSITION STATEMENT:** Testified in support of HB 27.

KATHERINE DUPLESSES  
Anchorage, Alaska  
**POSITION STATEMENT:** Testified in support of HB 27.

KELLY MCLAUGHLIN  
Gustavus, Alaska  
**POSITION STATEMENT:** Ms. Katherine Duplesses read the written  
testimony of Ms. McLaughlin in support of HB 27.

PAUL MIRANDA, Southcentral Vice President  
Alaska Professional Fire Fighters Association  
Anchorage, Alaska  
**POSITION STATEMENT:** Testified in support of HB 27.

JENNIFER GIBBONS, Vice President  
State Government Affairs  
External Affairs  
The Toy Association, Inc.  
Sacramento, California  
**POSITION STATEMENT:** Testified in opposition to HB 27.

ANDREW HACKMAN, Principal Lobbyist  
Serlin Haley LLP  
No city provided, Maine  
**POSITION STATEMENT:** Representing the Juvenile Products  
Manufacturers Association, testified in opposition to HB 27.

DARRELL BREESE, Staff

Representative George Rauscher  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** On behalf of Representative Rauscher, sponsor, answered questions regarding SSHB 3.

MARTY PARSONS, Director  
Central Office  
Division of Mining, Land and Water  
Department of Natural Resources (DNR)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions regarding SSHB 3.

ANNE WESKE, Director  
Permanent Fund Dividend Division  
Department of Revenue (DOR)  
Juneau, Alaska

**POSITION STATEMENT:** Answered a question regarding SSHB 3.

#### **ACTION NARRATIVE**

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**CO-CHAIR GERAN TARR** called the House Resources Standing Committee meeting to order at 1:04 p.m. Representatives Hannan, Talerico, Spohnholz, Hopkins, and Tarr were present at the call to order. Representatives Rasmussen, Rauscher, and Tuck arrived as the meeting was in progress.

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#### **PRESENTATION(S): U.S. ARMY CORPS OF ENGINEERS**

CO-CHAIR TARR announced the first order of business would be a presentation by the U.S. Army Corps of Engineers.

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DAVID HOBBIE, Chief, Regional Regulatory Division, U.S. Army Corps of Engineers (USACE) - Alaska District, co-provided with Ms. Sheila Newman a PowerPoint presentation entitled, "POA-2017-271 Project Brief," dated 4/5/19. Addressing slide 3, he reviewed the USACE's two authorities in regard to oversight and permitting activities or denial of the [proposed] Pebble Mine Project. First, he explained, Section 10 of the 1899 Rivers and Harbors Act gives the USACE authority and jurisdiction over work that is done in, under, above, or through navigable waters. Due

to some of the facilities for Pebble, USACE's Section 10 authority is invoked for the project. Second, he said, Section 404 of the Clean Water Act [authorizes the USACE to issue permits for] the discharge of fill material into waters of the U.S., which includes wetlands. As the lead agency [on the Pebble Mine Project], he continued, USACE must comply with other federal laws: the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Environmental Policy Act (NEPA), the National Historic Preservation Act, the Magnuson Stevens Fishery Conservation and Management Act, and the Marine Mammals Protection Act. All of these acts, he noted, will be evaluated under this action.

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CO-CHAIR TARR referenced a USACE presentation in 2013 that was provided to the Administrative Regulation Review Committee, in which an authority under Section 103 of the [1972] Marine Protection, Research, and Sanctuaries Act [also known as the Ocean Dumping Act] was discussed. She asked whether this act has any bearing on the environmental impact statement (EIS) for the Pebble Project.

MR. HOBBIE replied that the Pebble Project is not proposing anything that would invoke Section 103 of the aforementioned act and therefore it isn't listed.

MR. HOBBIE returned to slide 3 and said the USACE is the lead agency for this activity in large part because it has the largest scope of authority for any of the other federal agencies. Displaying slide 4, he said other federal decision makers for the Pebble Project are the U.S. Coast Guard (USCG) and the Department of Interior's Bureau of Safety and Environmental Enforcement (BSEE). He pointed out that the USCG's authority is strictly for the bridge over the Newhalen River and that the BSEE is involved because [a permit is required] for the right-of-way encompassing the proposed natural gas pipeline that would lie on the Outer Continental Shelf (OCS) of Cook Inlet.

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MR. HOBBIE moved to slide 5, a diorama of USACE's decision-making process. The USACE, he noted, is currently in the Public Review process, highlighted in green. He said USACE received the [permit] application in December 2017, the Notice of Intent was published in 2018, and scoping was done from April through

June 2018 during which nine public meetings were held. The draft environmental impact statement (DEIS) has been published, he continued, which is what is currently out for Public Review, which expires on May 30, 2019, and for which nine public hearings will be held in the same locations as the scoping meetings. So far, he added, five Public Review hearings having been conducted, mainly in the [southwest], and the four remaining hearings will be held in Anchorage, Homer, Dillingham, and Nondalton.

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REPRESENTATIVE HANNAN noted that 20 legislators signed a letter requesting a time extension for the Public Review process. She asked why the USACE is sticking to its short 90-day review period.

MR. HOBBIE responded that the USACE has yet to decide whether it will or will not grant an extension. The USACE currently has more requests to stay with the current timeline, but, he qualified, it is not a voting process although it is something that is taken into consideration. He pointed out that under regulation the USACE is only required to conduct Public Review for 45 days. Part of the rationale, he continued, is that the USACE has a public facing web site that is updated daily with live information. So, he said, the public has seen everything that the USACE has seen up to the publishing of the DEIS [except for] the comments that the USACE received after the DEIS. While the current comment period is 90 days, Mr. Hobbie added, the majority of the information has been available for much longer than that.

REPRESENTATIVE HANNAN interpreted Mr. Hobbie's answer as saying it is irrelevant how many people have asked [for an extension]. She said [those asking for an extension include]: Bristol Bay Native Corporation, Bristol Bay Economic Development [Corporation], Bristol Bay Native Association, United Tribes of Bristol Bay, Bristol Bay Regional Seafood [Development Association], Commercial Fishermen for Bristol Bay, and 20 members of the Alaska House of Representatives. She asked why the Donlin [Gold Mine] permit review was extended to six months while the Pebble Project's review is being held to 90 days, which she agreed is double the minimal requirement.

MR. HOBBIE answered he hoped he didn't come across as meaning that the people requesting an extension were irrelevant. Rather, he said, he was trying to relate that there are requests

to not extend and that is taken into consideration, but it is not the driver in totality. Regarding Donlin, he stated that the applicant requested USACE to extend the comment period.

REPRESENTATIVE HANNAN inquired whether an extension is automatically granted if the corporation that is the developer asks to extend it, but not automatic if citizens of the region ask for it.

MR. HOBBIE replied it is not automatically granted, it is something the USACE takes into consideration. He explained the applicant was requesting an extension because it needed to do additional fieldwork and data gathering. Because it knew that that information would be needed, he continued, the USACE determined that granting an extension was appropriate.

REPRESENTATIVE HANNAN stated she is seeking an answer as to how the people who live in the region can get more opportunity to participate in the review. She remarked that from an office, March through May might seem like a very long time, but for people living in Alaska it is a changing time of seasons with breakup, fishing being thought of, winter activities closing out, and spring hunting, and therefore it is a very short window of time. The local people have asked for an extension of time, she said, and it seems like they are being disregarded.

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SHEILA NEWMAN, Deputy Director, Regional Regulatory Division, U.S. Army Corps of Engineers (USACE) - Alaska District, responded to Representative Hannan by providing some background. She related that in spring 2017 the USACE asked all 31 Bristol Bay tribal communities what would work for them as far as when they would and would not be available to comment, and the communities told the USACE they would not be available as late as October and as early as May. In developing the strategy for community involvement specifically in those rural and tribal communities, she said, the USACE has in writing - from all the tribes that responded - where and when they would like to meet, and even what language they would like the communication to be in. So, she continued, the USACE developed the timeframes for these based specifically on community input.

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REPRESENTATIVE HOPKINS asked when in the timeline depicted on slide 5 did the cooperating agencies start providing their input and cooperation.

MR. HOBBIE answered, "From the beginning."

REPRESENTATIVE HOPKINS therefore surmised that input from the cooperating agencies began with the Department of the Army (DA) Permit Application submitted in December 2017.

MR. HOBBIE replied it took the USACE a few weeks to invite them, but that within a month all of the cooperating agencies were onboard with all of the same information that the USACE had.

REPRESENTATIVE HOPKINS inquired about the ways in which the questions and comments of the cooperating agencies have been absorbed into the DEIS and looked into. He further inquired whether there are any examples of when their concerns and questions were addressed in the DEIS.

MS. NEWMAN responded that the cooperating agency comments on the preliminary DEIS, before it was released publically, were all assessed and there is a comment analysis report specifically for those cooperating agencies comments publically available on the project web site.

REPRESENTATIVE HOPKINS said he didn't have the web site at his fingertips due to being in the committee meeting. He therefore requested an example of some of those comments that were addressed in the DEIS and not dismissed as not appropriate.

MS. NEWMAN answered she couldn't pull specific comments from her head, but said she would provide the exact location of the complete report once the presentation was done.

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REPRESENTATIVE HOPKINS referred to a June 29, 2018, letter from the United Fishermen of Alaska (UFA). He said the letter raised several dozen concerns, such as the effects of noise, dust, vibration and traffic of the shoreline plant, risks on local air quality from leaks from the natural gas pipeline system, and runoff through culverts and nonpoint sources from disturbed right of ways. He asked whether any of those concerns had been addressed and whether Ms. Newman was familiar with the letter.

MS. NEWMAN replied that many letters were received and since UFA is not a cooperating agency, she assumes the letter was a scoping comment. After scoping, she said, the USACE did incorporate specifically for some of those things and the comments it received. For example, she continued, stream flow reduction, impacts to groundwater, effects of climate variability, turbidity, dust, water temperature, sedimentation, and fish displacement were expressed during scoping and the scoping report is available on the web site. These technical questions by UFA and others were addressed in the EIS with some unique analytical elements. So, she added, the short answer is yes.

REPRESENTATIVE HOPKINS offered his understanding, then, that the concerns were brought in and addressed in the DEIS.

MS. NEWMAN responded correct.

REPRESENTATIVE HOPKINS requested the committee be provided with those scoping comments as well as the cooperating agency link.

MS. NEWMAN answered that those are all publically available on the Pebble Project EIS web site.

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MR. HOBBIE moved to slide 6 and resumed the presentation. He reviewed the State of Alaska approvals and permits and what actions the state would need to take for Pebble to move forward if the USACE were to grant a permit for the project. He pointed out that the USACE permit would be only for placement of fill material for the dam itself. The state, he said, would be the one responsible for how tall and thick the dam would need to be as well as other things such as what earthquake effects would need to be considered. The state has a tremendous amount of authority, more than does the USACE, he noted; there are things USACE doesn't have the authority to look at, but the state does.

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REPRESENTATIVE HANNAN requested clarification on whether the USACE does an assessment of the dam construction.

MS. NEWMAN replied that in the EIS the USACE assessed the placement of fill and what those impacts would be. She said the USACE also addressed the variables in the alternative with each of the three primary methods of tailings dam construction:

centerline construction, upstream construction, and downstream construction. She noted the applicant is proposing centerline construction and in one of the variables the applicant is proposing centerline and downstream construction. The USACE assesses the effect of a dam being present, she pointed out. It should not be confused with the stability of that dam as far as the state dam safety program would go to determine whether the structure is sound.

REPRESENTATIVE HANNAN offered her understanding that the USACE does not assess the impacts of a dam failure or downstream effects of a dam failure; the USACE assesses only the construction of the dam.

MS. NEWMAN responded, "Two separate issues." She said the USACE did a Failure Modes and Effects Analysis (FMEA), which is an analysis of the effects of a failure with the dam. This was something that was done for the first time with the Donlin. The USACE, she explained, brought in dam experts, including the State of Alaska's dam experts, and looked at a scenario of 55 percent tailings release from a breach in the structure. The USACE assessed the effects of that in the EIS. It is two different issues, she reiterated. One is about the stability of the structure itself, which the USACE will not assess, but the state dam safety program will. The second is an analysis that falls under the context of NEPA, but the USACE took the extra step of doing the Failure Modes and Effects Analysis.

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REPRESENTATIVE HANNAN requested an explanation of what a 55 percent dam failure is.

MS. NEWMAN answered that when looking at scenarios for tailings releases, any percentage can be picked from 0 to 100 percent. Given what the applicant is proposing as the method of construction and what is known about the terrain, she said, the dam experts determined that a 55 percent release of tailings was a reasonable amount to assess for the purposes of the EIS.

REPRESENTATIVE HANNAN asked whether Ms. Newman is aware of the Alaska Department of Natural Resources (DNR) communication in August 2018 to its dam assessment coordinator asking that the USACE do an assessment of a complete dam failure.

MS. NEWMAN replied she is not aware of internal communications from the state's Department of Natural Resources.

REPRESENTATIVE HANNAN posed a scenario in which the Department of Natural Resources has requested the USACE to increase the percentage rate of failure assessment to 100 percent. She asked whether USACE would do that or whether it would be a judgment of USACE's engineers that 55 percent was the likely failure rate.

MS. NEWMAN responded that that failure rate was not taken into consideration. She said the reasonableness of the effects of a failure is what is analyzed in the EIS; it is not a dam safety program. An extrapolation could be done of the further effects of a greater release than 55 percent, she stated. The USACE is not required to do a Failure Modes and Effects Analysis; rather it was done because of the level of interest in this project. The State of Alaska, she pointed out, can choose to do whatever Failure Modes and Effects Analysis it likes.

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REPRESENTATIVE SPOHNHOLZ inquired whether 55 percent represents the amount that would be held back by the dam or the dam itself.

MS. NEWMAN answered that a 55 percent tailings release scenario doesn't necessarily mean total dam failure. It means that there is a breach in the core of the dam structure and tailings, which are nothing more than mine waste, will be flushed downstream. The USACE, she continued, looked at what would be the downstream effect of a tailings failure, a scenario the agency would characterize as being a low probability high consequence event. Scenarios were developed for the bulk tailings storage dam, pyritic tailings storage, and the water management prong. It is just the effects of the release to the downstream resources, she added, which is what the USACE is required to look at in the EIS.

REPRESENTATIVE SPOHNHOLZ asked what USACE's findings were for the effects of dam failure.

MS. NEWMAN replied that the USACE hasn't drawn any conclusions because the EIS is still in the draft stage, but the agency did identify there would be dilution of tailings, which could be just mine waste such as rock and soil flushed down the stream system. There was identification, she stated, of a certain distance downstream that there would be an effect. She said she couldn't provide specifics without the EIS in front of her, but suggested that a review of the Failure Modes and Effects Analysis would show the scenarios and what, at this time, USACE

believes the downstream effects would be. She added that the USACE may learn more when it goes through the public comment period on the DEIS and then at that point it can draw conclusions from the analysis.

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REPRESENTATIVE SPOHNHOLZ offered her understanding that the USACE is not required to assess the risk of dam failure, but that USACE chose to do that given the interest in this project. She asked why the USACE chose to do a Failure Modes and Effects Analysis versus a risk assessment, and offered her understanding that a Failure Modes and Effects Analysis is a little more conceptual in nature.

MS. NEWMAN responded that the USACE uses exactly what the state uses - DNR's permitting risk assessment tool. Given it is used by dam experts in the State of Alaska to determine probability of potential dam failures and the severity of consequences, she said, the USACE believed it was a good method to use in the EIS.

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REPRESENTATIVE SPOHNHOLZ stated that the EIS process is a very technical and detailed process to understand. She said she is concerned about the public's ability to grasp all of the information and be able to provide feedback in the time that is being described. Given information on the web site is updated daily, she surmised it would be very difficult for anyone who wasn't a paid professional to be able to provide meaningful feedback. She inquired whether this process is designed to facilitate professionals who are engaged in this project or is intended to have a broader discussion that involves people in the communities that are impacted.

MS. NEWMAN replied that she has been answering the committee's questions in a very technical manner. The purpose of the EIS, she said, is to identify and disclose to the public what the potential impacts of the project are. She explained that when she says "project" she is meaning what Pebble has proposed in its permit application. The information in the EIS is literally what is being proposed and what the USACE anticipates those effects to be. She said she is giving to the committee the thought process behind how the USACE developed those models and scenarios and that is not what the public is reviewing, unless they choose to. There are definitely members of the public who will want to dive into the baseline information, she noted. In

regard to the web site being updated daily, she explained it is the information from the public that is updated daily. That is something that the USACE is doing for the first time, she pointed out, and if legislators wanted to put comments on the web site the public would be able to see what legislators are saying, thereby allowing the public to think about what legislators are saying in relation to what they want to say themselves. She said that is different than the project information mentioned by Mr. Hobbie, which is the baseline data that has now been out there for over a year.

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REPRESENTATIVE RASMUSSEN referred to the decision-making process [outlined on slide 5] and asked how many environmental impact statements the USACE has completed in the past 12 months. She clarified to Mr. Hobbie that she is referring to the [Alaska] District and nationally, as a means for giving perspective to the USACE's level of professionalism.

MR. HOBBIE estimated that in the district, as both the lead and a cooperating agency, the USACE has completed approximately six. He offered his guess that nationally the USACE probably completes 20 environmental impact statements a year. He noted that these numbers are just for the regulatory program.

REPRESENTATIVE RASMUSSEN surmised the USACE must have a standard procedure developed for doing this work.

MR. HOBBIE responded that the process is spelled out via regulation, so the USACE cannot alter from the process itself. He said the regulations have been around for decades and thus the process is very well laid out. However, he noted, the technical aspect of evaluating the information that comes in is a bit of a different question and in answering that question he would say that between the {Alaska} District, the USACE's third party contractor, and the cooperating agencies, there is probably 500 years of experience combined. Therefore, he continued, he is comfortable saying yes to Representative Rasmussen's question.

REPRESENTATIVE RASMUSSEN asked whether, for the Pebble Project, the USACE has followed the standard process it typically follows, or has deviated from the process, or there is anything special about the project that wouldn't allow the USACE to follow the normal course that it has followed 20 times in the last year.

MR. HOBBIE answered that the process is identical but there may be some variables. For example, he said, because of the known controversy around this project there has been much more public engagement and involvement, including the public facing web site, real time updates of the public web page with comments, concerns, and information. So, the process is the same, he added, but the extent to which things are done may change.

REPRESENTATIVE RASMUSSEN offered her understanding that the Pebble Project has had more public engagement than a typical project.

MR. HOBBIE replied, "Yes."

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REPRESENTATIVE HANNAN asked what the other six district projects are that the USACE has done.

MR. HOBBIE responded that they are Donlin [Gold Mine], Alaska Stand Alone Pipeline (ASAP), Greater Mooses Tooth 1, Greater Mooses Tooth 2, the Nanushuk Project, and the Liberty Project.

REPRESENTATIVE HANNAN surmised the district Mr. Hobbie is referring to is only Alaska.

MR. HOBBIE answered, "That is correct."

REPRESENTATIVE HANNAN inquired whether Mr. Hobbie would say the Alaska District projects are substantially different than, or really similar to, the rest of the U.S.

MR. HOBBIE replied that there are probably more permits for large oil and gas extraction projects in Alaska than in other areas. In regard to mining, he said West Virginia has mountaintop mining. He related that he used to work in Florida where phosphate mining was a big deal. There is surface mining and there is gravel mining, he continued, and the techniques utilized for surface mining are very similar. He noted that Alaska has an abundance of aquatic resources, so projects in Alaska often impact more aquatic resources than in other areas. While states like Arizona and Wyoming are more arid than Alaska, he added, they are very similar type projects.

REPRESENTATIVE HANNAN surmised that compared to mines in West Virginia, Nevada, and Arizona, mines in the Bristol Bay area would be different in their analysis and needs.

MR. HOBBIE responded, "No, very similar; you might be looking at different resource impacts." For example, he related, he worked on a big project in Florida called Lake Bell, where the issue wasn't fisheries but drinking water for three million people in Miami. The resource was different, he said, but the overall process and extraction of the material were very similar.

REPRESENTATIVE HOPKINS noted the USACE has done projects in Alaska and around the country. He surmised the USACE has the ability to decide to dive deeper and look into additional points of interest or points that might be more controversial.

MR. HOBBIE replied he would need to have an example in order to provide an answer. The USACE cannot just say it wants a bunch of extra stuff because it wants it, he said, there has to be rationale justification for it.

REPRESENTATIVE HOPKINS clarified he isn't looking for a specific example, but is asking whether the USACE has the authority to be able to say that this is something more interesting or needs more information based on the EIS process.

MR. HOBBIE responded, "Not if it falls outside the scope of our authority."

REPRESENTATIVE HOPKINS said he isn't looking at the USACE going outside of what it is able to do. He offered his understanding that for other projects the USACE held off waiting for more information from others, like the state permitting process. For example, he continued, the Chuitna Project was held off until state permits could give further information.

MS. NEWMAN answered that the USACE is still constrained by its authority. She explained Chuitna was a surface coal mine, and coal mining is the only type of mining that has its own federal law - the Surface Control Mining and Reclamation Act. So, she continued, the only reason that that occurred was because the Army, nationally, has a memorandum of understanding (MOU) with the Office of Surface Mining saying that [the USACE] will operate that way for surface coal mining. No such thing exists for gold, phosphate, or copper, she said.

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REPRESENTATIVE HOPKINS posed an example of the USACE wanting to look more into impacts on the salmon streams. He asked whether the USACE would have the authority to ask for more information from the project's developers.

MR. HOBBIE replied that if the USACE believes it lacks information to perform a reasonable analysis or an analysis, then, yes, it could ask for additional information. He said that in many areas the USACE looks to the state to help understand whether the USACE has everything it needs to do a complete analysis. With this regard, he continued, the USACE would want to look heavily upon the state since the state has the preponderance of expertise regarding fisheries in the state.

REPRESENTATIVE HOPKINS offered his understanding that the Pebble Partnership has not yet put forth its state permit applications.

MR. HOBBIE responded he doesn't know because he doesn't track state permitting.

REPRESENTATIVE HOPKINS offered his understanding that [the Pebble Partnership] is going through the DEIS and will be doing the state permitting process afterwards. He inquired whether the USACE believes it currently has all the information it needs and doesn't have any additional questions for what might come out in the state permitting process.

MR. HOBBIE answered that the state is cooperating with the USACE on this project, so if the state tells the USACE it is lacking some analysis the USACE would look heavily into that. But, he added, if the state needs the information for the state's permitting, that has no impact on the USACE's evaluation.

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REPRESENTATIVE RASMUSSEN offered her understanding that the USACE is an independent audit that is based on the regulations the Corps has to follow, and the state has its own permitting process that it has to follow. She offered her further understanding that everything the USACE does is science based.

MS. NEWMAN replied the USACE has factual determinations in rules and must evaluate an application based upon those criteria.

REPRESENTATIVE RASMUSSEN inquired whether the criteria the USACE must follow have any social aspect from the public testimony.

She offered her opinion that she would like a project to be based on the financial feasibility, which she knows the USACE doesn't do, or the science behind it, or factors that don't include emotion.

MS. NEWMAN responded that the USACE's decision on a permit application falls into two broad categories. One category, she said, is the factual determinations that are made under the 404(b)(1) analysis [of the Clean Water Act] and if an applicant's proposed discharge complies with those 404(b)(1) guidelines then that portion of the requirement is met. The other category, she continued, is the public interest review, and 21 public interest factors go into that, including things like socioeconomics. The cultural resources, the land use and management and subsistence type determinations, are in that portion of the USACE's Record of Decision. But, she pointed out, when the USACE talks about whether something is in the public interest, it is talking about the national interest because the federal government is not just looking at whether this proposal is good for one state, it is whether the proposal is within the public interest of the nation.

[1:45:25 PM](#)

MS. NEWMAN resumed the USACE's PowerPoint presentation. Turning to the process requirements outlined on slide 7, she stated that under the USACE's regulations this is a standard permit and for any applicant a general standard permit usually occurs within less than 120 days. The USACE, she continued, determined that this particular permit application requires an EIS level of analysis and that is 105 days. She explained she is making this distinction because, as far as an authorization, it is still a standard permit. She pointed out that the USACE made the permit application publically available back in 2018. There is no requirement for the USACE to do that, she said, and the agency doesn't do that for other applications, but did it because of the level of interest for this particular application. She noted the USACE originally had a 30-day opportunity for the scoping period but expanded it to 90 days, and that it will be 90 days for the DEIS.

MS. NEWMAN moved to slide 8 regarding public engagement. She said that due to the level of public interest the USACE has done a number of "extra-curricular" things. The application and the baseline material were put on a public facing web site, thereby providing the public with a year-plus to look at it. She pointed out that there are no requirements for the USACE to do

that and the agency hasn't ever done that for any other applications. Scoping was conducted and meetings were held in nine locations, she noted, again not a requirement of the process but something the USACE chose to do given the level of interest. She further pointed out that the DEIS was made available 10 days prior to the start of the 90-day public comment period. The USACE has held routine media roundtables, she noted, and newsletters have been sent to folks. The USACE has made sure that there are multiple avenues for people to comment, she added. These measures are above and beyond what the USACE is required to do, which is to put a notice out there.

MS. NEWMAN displayed slide 9 regarding the public facing web site and stated the USACE has done a lot of firsts for this project. For example, she said, a geo-reference tool was put on the web site so members of the public can pin their comments to a specific location. The USACE has made comments available to everyone regardless of where they have come from, whether they are cooperating agency comments or an individual's neighbor, she added. These comments can be seen in real time since the USACE keeps the site updated every day.

[1:48:36 PM](#)

REPRESENTATIVE TUCK referred to slide 7 regarding the process requirement of a standard permit being [less than] 120 days. He requested some examples of non-standard permits.

MS. NEWMAN answered that there are no non-standard permits. The USACE makes issuances that are either general permits or just standard permits.

REPRESENTATIVE TUCK inquired about the difference between a standard and a general permit.

MS. NEWMAN replied that general permits generally take less than 60 days and are for any suite of type of activities - anything from maintenance to exploration and surveying to minor discharge of fill material. There is a whole suite of them, she said, and she believes the USACE is up to 52 general permits now.

MS. NEWMAN returned to the presentation and addressed slide 10 regarding Alaska Native tribes. She said that specifically because of where this project is located, the USACE reached out to all 31 Bristol Bay region tribes about 10 months before the USACE had the application to ask the tribes how best the USACE could communicate with them for going through this process. She

offered her belief that 14 tribes responded and said they were very specific about what their availability and lack of availability was, where they wanted to meet, and how they wanted to communicate. The USACE developed its strategy for tribes and engagement based on their direct input to the agency, she pointed out. The USACE has kept up its commitment to give the tribes real time transparent information in a way that they could receive it because of the lack of connectivity in some of the rural communities. For example, she continued, a lot of the information has gone to them via thumb drives, disks, and hard copies, and there have been lots of meetings in communities. She further noted that since many of these tribes are sovereign nations there have also been many government-to-government consultations.

[1:50:51 PM](#)

CO-CHAIR TARR noted this is the third hearing on the Pebble Project, the first being with the project proponents and the second being with project opponents or people with concerns. It was heard in the second hearing, she related, that travel over tribal lands would be required in some areas, but that there isn't willingness at this time to provide such access. She asked how the USACE evaluates this or whether it falls outside the USACE's operations.

MR. HOBBIE responded that the USACE has heard this on the news but has nothing in writing from anyone saying that access would be required over these lands and would be restricted. He said that if in the end the USACE determined to grant a permit authorization the agency would look at the least environmentally damaging practicable alternative (LEDPA) [slide 5]. Practicable would be the key piece, he continued, because if the land was not available then there is no longer a practicable alternative and it may limit the ability for Pebble to look at certain alternatives if it is unable to cross the land. However, he added, the USACE's permit is not authorized for real estate interest at all and that is something Pebble would have to acquire. He said that if the USACE had in writing from the appropriate people who owned the appropriate land that they wouldn't authorize this, then yes, those alternatives might become moot at that point.

CO-CHAIR TARR offered her understanding that all four alternatives have the land crossings. She inquired whether the USACE's receipt of such a communication would have any impact on

this part of the process or whether it would be part of what the USACE would incorporate into its final Record of Decision.

MS. NEWMAN answered that each of the three action alternatives has a portion that crosses corporation land, or Alaska Native Claims Settlement Act (ANCSA) corporation land, or village corporation land. So, she said, it would come into play in the USACE's determination of which alternative is practicable at that point in time.

[1:53:27 PM](#)

REPRESENTATIVE TUCK offered his understanding that the USACE hasn't received [notice] of any restrictions to access the lands. Given the EIS process is a long and expensive process, he asked why the USACE wouldn't first ensure that there is access before taking on this endeavor.

MR. HOBBIE replied that the USACE doesn't have the authority. In further response to Representative Tuck, he stated that the USACE's permits do not give any real estate rights or interests and the USACE has no authority to compel an applicant to prove it has access to land.

MS. NEWMAN resumed the USACE's presentation. Turning to slides 11-13, she provided an overview of the applicant's proposal. She said the transportation corridor for the proposed project includes a road from the mine site to the north side of Lake Iliamna with an ice-breaking ferry, then down another transportation corridor to Amakdedori Port and a gas pipeline over to Anchor Point on the Kenai Peninsula. The mine site itself, she noted, is a typical surface mine complete with tailings facilities, open pits, and water management ponds.

[1:55:50 PM](#)

CO-CHAIR TARR pointed out that the committee didn't get to talk about the transportation corridor in the prior two meetings. She asked whether the USACE, under its evaluation and authority, is looking at the least damaging alternative. She said the committee has heard that travel across the lake can be very dangerous, more like ocean travel than lake travel, and asked how this is factored in for the practicality. She further offered her understanding that this transportation corridor is a new part of the proposal.

MS. NEWMAN responded that the USACE must analyze what the applicant proposes, and this is what the applicant is proposing to do in its application. She said the development alternatives include a difference in the transportation corridor - another alternative transportation route would be along the north side of Lake Iliamna and over into a port site in Iniskin Bay. Safety is one consideration of the 21 public interest factors that the USACE reviews, she explained. When evaluating all of the alternatives to make a LEDPA determination, she continued, the USACE must be cognizant that the alternatives meet the applicant's purpose and need. To have a functioning mine site and bring minerals to market requires the transportation corridor and the mine site.

MS. NEWMAN returned to the presentation and discussed the extent of the USACE's jurisdiction outlined on slide 14. She said many, many things will go on with the mine, but the things that the USACE can actually authorize or not authorize are listed on the slide. These are the only things within the whole endeavor that fall within the USACE's authorities, she added. These authorities are the work within the navigable waters and the discharged fill material, basically earthen materials, into wetlands. She explained that at the end of this process, if the USACE does decide to issue a permit, the only things it will issue a permit for are the things listed on slide 14.

MS. NEWMAN moved to slide 15. She noted the interdisciplinary team is required under NEPA and includes the USACE and a team of independent scientific experts from AECOM covering every resource area that USACE analyzes, plus the cooperating agencies that joined the USACE in writing the DEIS.

MS. NEWMAN displayed slide 16 and summarized the presentation. She said the USACE's analysis is constrained by its authorities. The USACE, she continued, has taken unprecedented steps for public engagement and made a special effort with its engagement of rural communities and tribes. She said the regulatory division of the USACE does not have a vested interest whether this project does or does not happen. At the end of this process, she noted, the USACE will provide a minimum of 30 days after release of the Final EIS (FEIS) before making a decision.

CO-CHAIR TARR inquired whether the USACE would be available for additional follow-up or if the committee submitted questions.

MR. HOBBIE answered that Ms. Newman will be going to Washington, DC, in a week, and the USACE will be conducting four more

hearings over the next two weeks. So, he continued, timing is currently difficult with regard to having this type of interaction. Right now, is the comment period, he added, so if the committee has comments it should submit them. Any questions should be submitted in writing, he said, and the USACE would do its best, although he couldn't guarantee answers in one or two days. He encouraged the committee members to attend the remaining public hearings.

[2:00:52 PM](#)

CO-CHAIR TARR requested committee members to state any further questions they might have.

REPRESENTATIVE TUCK recalled an earlier statement that the USACE looks heavily to the state for data information. He asked whether the state's process occurs consecutively, concurrently, or before the USACE's process.

MR. HOBBIE replied concurrently.

REPRESENTATIVE TUCK asked whether the state is keeping up with the USACE.

MR. HOBBIE responded there hasn't been a challenge with the state thus far. At one time the state was short for some technical expertise from fisheries, he said, but the USACE gave an extension and the state met it.

REPRESENTATIVE HANNAN pointed out that there have been no prior questions or information, even from the mine, about the 1,900-foot-long causeway wharf or the 122 miles of natural gas pipeline that would cross two bodies of water.

REPRESENTATIVE HOPKINS asked whether the USACE has taken any steps to verify that there is an economic viability for a 20-year mine. He further asked that given the size of the ore body with the potential for a 70- or 80-year mine plan, why the USACE is not looking at reasonable, foreseeable expansions of the project and evaluating it on a larger scale which is highly likely in the future.

CO-CHAIR TARR stated the committee might follow-up with the USACE on some of the aforementioned issues.

**HB 27-REGULATION OF FLAME RETARDANT CHEMICALS**

[2:03:18 PM](#)

CO-CHAIR TARR announced that the next order of business would be HOUSE BILL NO. 27, "An Act relating to the manufacture, sale, distribution, and labeling of child-related products containing certain flame retardant chemicals; relating to an interstate chemicals clearinghouse; adding unlawful acts to the Alaska Unfair Trade Practices and Consumer Protection Act; and providing for an effective date."

[2:03:38 PM](#)

CO-CHAIR TARR continued with the public testimony on HB 27 [that was opened on 4/3/19].

[2:03:40 PM](#)

JEFF TUCKER, Past President, Alaska Fire Chiefs Association, testified in support of HB 27. He stated the association fully supports the bill in its current form and has supported other forms in the past. He related that on a national basis firefighters are experiencing a great increase in cancers caused by the materials currently being fought in fires. Banning these types of materials, he continued, would be a great step towards helping to protect firefighters and the folks that firefighters serve. He urged that the bill be passed.

[2:05:55 PM](#)

PAMELA MILLER, Executive Director, Alaska Community Action on Toxics, testified in support of HB 27. She related that on March 19 [2019] the Anchorage Assembly unanimously passed a substantially similar law called the Protecting the Health of Children and Firefighters Ordinance. Passing HB 27 would protect the health of people throughout the state, she added.

MS. MILLER said flame retardants are hazardous and can cause lifelong harm. Babies and toddlers have higher exposures than adults, she noted, and these chemicals have disproportionately negative health effects on children. The scientific evidence is very clear, she continued. Flame retardant chemicals are associated with serious adverse health effects, including cancers, neurodevelopmental, and reproductive harm.

MS. MILLER stated that flame retardants do not provide proven fire safety benefits and fire safety standards can be met without them. Flame retardant chemicals make products more

toxic while in use, she said, and more toxic if they catch fire. Flame retardants increase the risk of cancer and other diseases in firefighters because they make fires more toxic. She noted that firefighters are exposed to flame retardants at levels two to three times higher than the general population and they experience increased risk of a number of cancers. For example, she continued, the breast cancer rate among women firefighters is six times the national average, as demonstrated in the study of San Francisco firefighters. The Consumer Product Safety Commission, she reported, determined that organohalogen flame retardants are associated with adverse health effects, such as reproductive impairment, neurodevelopmental harm, endocrine disruption, cancer, and immune disorders.

MS. MILLER said states are taking the lead on these issues because necessary change isn't happening at the federal level. She related that there are 40 adopted policies on flame retardants in 13 states and 28 policies are being considered now in 17 states.

MS. MILLER pointed out that health care for firefighters with cancer can cost more than \$1 million per person, not to mention the pain and suffering of their families and community. Death for firefighters and first responders has a huge social cost, she added, plus there are the death benefits that can and should be provided to survivors. Inaction will cost the taxpayers in the long run, she continued. Alaska has the opportunity to lead and build on the foundation of law now passed in Anchorage as well as other states, she said in conclusion.

[2:10:02 PM](#)

VI WAGHIYI testified in support of HB 27. She stated she is a tribal citizen of the Native village of Savoonga and is speaking today as a mother and grandmother on behalf of her children, grandchildren, and future generations. She related that there is strong support for the bill in her community and other communities in the region, and letters of support have been submitted. She said Kawerak, Inc. submitted a letter of support and is the regional Native nonprofit representing and serving 20 communities in her region.

MS. WAGHIYI continued as follows:

Community-based research has shown high levels of these flame retardant chemicals in our homes, traditional foods, and in the blood of our people. We

are disproportionately exposed and have some of the highest levels of these and other persistent chemicals of any population on the planet because of our place in the Arctic. We are suffering health disparities such as cancers, thyroid disease, and developmental health harms. Our children are vulnerable to exposure and toxic health effects of these chemicals. This requires urgent action to enact protective measures such as HB 27. The federal government is not taking responsibility, so it is up to you to ensure legislation is enacted to phase out harmful and unnecessary flame retardant chemicals from our children's products and furniture. I want to protect the ability of our children to learn our songs, traditions, and stories. Please pass HB 27.

[2:12:32 PM](#)

KATHERINE DUPLESSES testified in support of HB 27. She said she grew up in a proposed Superfund site in Green Bay, WI, and she has lived all over the world from California to South Africa and now Anchorage is her home. By training, she continued, she is an ecologist and conservation biologist and most importantly in the topic she is the mother of a two-year-old daughter. She stated she has an acute understanding of children and toxins and she would like to see HB 27 pass. Given the evidence is overwhelming, she said she was shocked that this issue is still being talked about. These are known carcinogens, she stressed, and HB 27 should be passed.

[2:14:24 PM](#)

KELLY MCLAUGHLIN provided written testimony in support of HB 27, which was read to the committee by Ms. Duplesses:

Children and firefighters may seem an odd pairing, but firefighters and children share one frustrating quality: they're often overlooked. Children cannot advocate well for themselves, they rely on adults in their lives to do it for them. Firefighters are the most under-acknowledged public servants, evidenced by the fact that we rely heavily on volunteers to serve us in the life-threatening situation we hope never to face. I'm calling today to advocate for both.

Children are just one of the victims of the damaging effects of flame retardants. Their tiny bodies uptake

and therefore accumulate the damaging chemicals faster than adults. But damage is often not seen directly or until later in life and can be devastatingly life altering. I am extremely sensitive to this topic due to a recent discovery that my drinking water well is contaminated by a similar group of chemicals that are used in firefighting foam and are very toxic. My children have been exposed despite my diligence in choosing a car, car seats, clothing, cookware, and toys without flame retardants.

Many, even most, people are not aware of the toxic nature of many common products and the burden of safety should never have to fall on consumers. All products on the market should be of toxic-free chemicals. These chemicals are pervasive and action must be taken to regulate them. It is unconscionable that in the false name of public safety my family suffers.

Further cementing my allegiance to this cause came Monday night, April 1<sup>st</sup>, ironically. There was a house fire two streets down from me. Our local volunteer firefighters left their houses at about 10:30 p.m. and fought a battle that few of us thankfully ever see. They worked on adrenalin through the night, taking breaks in shifts to stave off exhaustion. Most of them got home at about 4:30 a.m. Some of them got an hour or two of sleep. Then they got up and got their kids to school, they went to work, then when they were done with a full day's work they didn't go home, they went back to the fire hall and to the scene to debrief. These people do more work with less gratitude than even mothers, I think. We owe them the removal of toxic chemicals from the long list of dangers they face while they volunteer their time to keep us safe.

Fire retardants don't increase safety for firefighters or for those potentially caught inside. They off-gas toxic chemicals in our homes, cars, daycare centers, and work places. They release toxic gases as they burn. There is no upside. I am in strong support of this bill, HB 27, the Toxic-Free Firefighters and Children Act.

CO-CHAIR TARR noted the groundwater of Gustavus is contaminated with [perfluoroalkyl substances (PFAS)].

[2:18:36 PM](#)

PAUL MIRANDA, Southcentral Vice President, Alaska Professional Fire Fighters Association, testified in support of HB 27. He noted the association represents 500 professional firefighters across the state and that he is an 8-year firefighter paramedic with the Anchorage Fire Department. He thanked Co-Chair Tarr for introducing the bill and the committee for hearing the bill, which his association fully supports.

MR. MIRANDA pointed out that cancer is a big concern for firefighters, with data showing that firefighters experience cancer at much higher rates than the public. Study after study, he related, has concluded that organohalogen flame retardant chemicals are a leading cause of cancer in firefighters. Used throughout today's households in furniture and other materials, organohalogen flame retardants release toxic cancer-causing chemicals when they burn, such as dioxins and furans. Firefighters, he said, are then exposed to large amounts of these carcinogens through absorption and inhalation during fire fighting operations. Recent studies, he added, have shown that firefighters have three times the level of these harmful chemicals in their systems after a fire.

MR. MIRANDA stated that eliminating organohalogen flame retardants would be a step in the right direction and would go a long way in providing a less toxic atmosphere for firefighters and reducing their exposure to these toxins. He expressed the association's support for passage of HB 27.

[2:20:44 PM](#)

CO-CHAIR TARR asked whether Mr. Miranda was involved in, or advocated for, the Anchorage ordinance.

MR. MIRANDA replied he wasn't involved in its development, but he advocated for it on behalf of the Alaska Professional Fire Fighters Association.

CO-CHAIR TARR inquired whether people breathed a sigh of relief when the Anchorage ordinance was passed. She further inquired whether the association has ideas about what the impact would be if HB 27 were passed.

MR. MIRANDA responded that firefighters have a much higher rate of cancer than the general public. So, he said, anything that can be done to help reduce that is the step in the right direction and firefighters would be appreciative of that.

[2:22:00 PM](#)

REPRESENTATIVE HANNAN inquired whether Mr. Miranda has looked at HB 27 and thought about it in parallel with the Anchorage ordinance. She further inquired whether there are any major differences between them in the ban and how it is applied.

MR. MIRANDA answered he would have to look closer as far as any specific differences in the Anchorage ordinance, but his understanding is that it is quite similar.

REPRESENTATIVE HANNAN noted that HB 27 focuses on children's products or products affiliated with households that have children in them. She asked whether the Anchorage ordinance is also that narrow or covers a broader swath of consumer products.

MR. MIRANDA offered his belief that the Anchorage ordinance may be a broader swath of consumer products, including furniture and other things. He said he would look at that and get back to the committee with an answer.

[2:23:36 PM](#)

REPRESENTATIVE RASMUSSEN stated her understanding that HB 27 does cover furniture.

CO-CHAIR TARR confirmed HB 27 includes upholstered furniture.

REPRESENTATIVE HANNAN inquired about electronics.

CO-CHAIR TARR replied that the difference is HB 27 includes electronics while the Anchorage ordinance does not. She said she would follow up further with committee members in this regard.

[2:24:21 PM](#)

JENNIFER GIBBONS, Vice President, State Government Affairs, External Affairs, The Toy Association, Inc., testified in opposition to HB 27. She explained that The Toy Association is the trade association for manufacturers, importers, and retailers of toys and youth entertainment products sold in North

America and represents more than 950 companies. She said The Toy Association shares the committee's interest in assuring that children's products are safe; safety is the number one priority for the industry.

MS. GIBBONS stated she opposes HB 27 because it would apply to any component of a product, even to its electronic component. Toy manufacturers typically do not add flame retardant to toys, she said, but some of these substances may be present in certain components of toys, such as electronic circuit boards and assemblies, which are inaccessible to children but critical to the electrical safety of the products in which they are used. Electronic devices, she explained, are in constant contact with an electrical current and this risk is currently being addressed in electronic devices by using flame retardant chemicals. A consistent and reliable alternative for flame retardants in this application has yet to be found, she said, and without a viable alternative parts could present an increased flammability risk in the event of certain electrical faults. She pointed out that to date no other state or local jurisdiction, including Anchorage, has passed flame retardant laws that would be under use in inaccessible or electronic components in children's products.

MS. GIBBONS said another major concern with HB 27 is that it requires the labeling of products to state that the product does or does not contain flame retardant chemicals. So, she noted, even those products that have never had, or never will have, flame retardants present would still be required to have a label. The bill would require manufacturers to create, and retailers to carry, a product that is designed to only be sold in Alaska. She advised that a massive and costly undertaking in creating new labeling for the state of Alaska may not be possible for some businesses and could result in products no longer being offered for sale in the state. Ms. Gibbons urged that the committee not move forward with HB 27.

[2:26:55 PM](#)

CO-CHAIR TARR, regarding inaccessible electronics, noted that while something isn't supposed to be accessible to a child, kids often take things apart. She said she has gone back and forth about how to address this piece of the bill due to the concern that kids are likely to tinker with [a toy], along with their hand-to-mouth behavior. She requested Ms. Gibbons to define inaccessible. She inquired, for example, whether the electronic

unit inside a teddy bear that plays a song would be considered inaccessible to a child.

MS. GIBBONS replied the association would consider something to be inaccessible during reasonable and foreseeable use and abuse of a product and there are several standards that [the industry] has to test for in order to not have a part be inaccessible and create a small-part hazard for a child. If it meets those tests, she continued, [the association] would consider it inaccessible.

CO-CHAIR TARR requested Ms. Gibbons to provide a copy of the aforementioned standard.

MS. GIBBONS agreed to do so and noted it is ASTM F963, a safety standard for toys that is mandatory under the Consumer Product Safety Improvement Act of 2008.

[2:29:40 PM](#)

ANDREW HACKMAN, Principal Lobbyist, Serlin Haley LLP, representing the Juvenile Products Manufacturers Association, testified in opposition to HB 27. He said the association represents everything from strollers to bassinets to car seats and is the industry that helps bring children into the home and care for those children after they have been born. He stated the association is opposed to HB 27 as currently drafted.

MR. HACKMAN related that the association's manufacturers have proactively worked to eliminate flame retardants where they have been mandated in the past. In California under Technical Bulletin 117, he said, the association worked with the Bureau of Appliance Repair and Home Furnishings to eliminate the requirement that juvenile products be subject to flame retardant requirements. He further noted that the association was actively involved in person in several work sessions in Anchorage in helping inform discussions and come up with an element that struck a reasonable balance. He stressed the importance of some of the provisions incorporated into the Anchorage ordinance that specifically impact the association's industry. Car seats, he explained, are mandated to meet very stringent flame resistance performance standards that are administered by the National Highway Traffic Safety Administration. Flame retardants, he said, must be incorporated into those products to meet those federal standards. Conditions in a vehicle fire are very different, he continued, and there are sources of ignition that are particularly flammable, and the

federal government has taken a very strong position that this standard is required.

MR. HACKMAN said his association shares The Toy Association's concern about including inaccessible electronic components. He pointed out that particularly in infant products the child cannot reasonably and foreseeably come into contact with those components. He related that the association has researched what materials are typically used and the materials listed in HB 27 are not typically used in the association's products. However, he noted, the Underwriters Laboratories (UL) has standards that require certain performance applications that at times necessitate the use of flame retardants.

MR. HACKMAN noted the Anchorage ordinance had no requirements in any jurisdiction requiring labeling for juvenile products, a provision the association supported. He said the association's members estimated it would cost \$50,000-\$80,000 per product to create a specific label for Alaska, which outweighs the entire sales of that product category in the state of Alaska.

MR. HACKMAN encouraged the committee, if it moves HB 27 forward, to look hard at the compromise that was drafted and passed in the Anchorage ordinance. He said the association was actively involved in those discussions and appreciates that the city took those actions.

CO-CHAIR TARR asked whether the Juvenile Products Manufacturers Association supported the ordinance that was passed in Anchorage.

MR. HACKMAN replied that the association removed its opposition and indicated to those city council members who had questions for the association that it supported the inclusion of those provisions.

CO-CHAIR TARR said she looks forward to working with Mr. Hackman to address the association's concerns.

[2:34:39 PM](#)

CO-CHAIR TARR closed public testimony and held over HB 27.

**HB 3-STATE LAND SALE; PFD VOUCHER AND ASSIGN.**

[2:34:56 PM](#)

CO-CHAIR TARR announced the final order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 3, "An Act relating to the purchase and sale of state land; relating to discounts for veterans on state land purchases; and relating to the assignment of permanent fund dividends to purchase state land."

[Before the committee was the SSHB 3, introduced and referred to the House Special Committee on Military and Veterans' Affairs, committee of first referral, on 3/13/19.]

[2:35:36 PM](#)

REPRESENTATIVE RAUSCHER, sponsor, explained SSHB 3 would allow utilization of [a person's] permanent fund dividend (PFD) year after year to help cover the payments on the purchase of state land. The state disposes of land in various ways each year and one of them is through a bidding process, he noted. Payment for the land can be outright or through payments. He said the bill would also give a 33 percent advantage to veterans for utilizing in the purchase of state land. Three veterans are co-sponsors of the bill, he added.

[2:37:38 PM](#)

REPRESENTATIVE HANNAN referred to Section 2 and requested a definition of veteran for use of the benefit proposed in the bill. She further asked whether the definition is for as little as 90 days served in the U.S. military.

DARRELL BREESE, Staff, Representative George Rauscher, Alaska State Legislature, answered questions regarding SSHB 3 on behalf of Representative Rauscher, sponsor. He confirmed the definition is 90 days and said the definition can be found on page 2, lines 4-8, which states: "on active duty in the **United States armed forces for** [U.S. ARMED FORCES] at least 90 days, unless tenure was shortened due to a service connected disability or due to receiving an early separation upon return from a tour of duty overseas, and has received an honorable discharge or a general discharge under honorable conditions." That definition, he explained, is what is currently in statute for eligibility for the 25 percent discount that veterans are currently eligible for.

REPRESENTATIVE HANNAN asked how that compares to other veterans' benefits that the state offers; for example, whether 90 days is a standard threshold.

MR. BREESE responded that he didn't know and would get back to the committee with the answer.

2:38:48 PM

REPRESENTATIVE RASMUSSEN inquired whether there is a cap on the discount; for example, no matter how much the property costs a veteran would get a discount exponentially.

MR. BREESE replied that existing statute currently offers a 25 percent discount to veterans. Section 4 of the bill would, in addition to that, provide a one-third discount. Section 3 of the bill, page 2, starting on line 9, would limit the veteran to using one discount at a time - the 25 percent and 33 percent discount discounts could not be combined - [and each discount] could only be used once in a lifetime. The limit is set at 33 percent, so if the price of the property were \$10 the veteran would pay \$6.66.

CO-CHAIR TARR offered her understanding that if a veteran wished to purchase two pieces of property, he/she could purchase one of the properties at a 25 percent discount and the other at a 33 percent discount so long as the veteran signed up with the mechanism that it be paid through the PFD. So, she continued, there would be an opportunity for a veteran to potentially purchase two pieces of property that a discount is applied to, although one would have to be paid for with a cash payment plan and to receive the other the veteran would have to assign his/her PFD toward payment.

MR. BREESE thanked Co-Chair Tarr for clarifying his comments and agreed she is correct.

2:40:51 PM

REPRESENTATIVE TUCK stated he doesn't interpret Section 4 as saying that. He said he interprets Section 4 as meaning that if a veteran has already purchased land prior to 8/1/19 using the 25 percent [discount], then the veteran can purchase an additional piece of property at 33 percent [discount], and that from 8/1/19 onward it would only be the 33 percent [discount]. He asked whether his interpretation is incorrect.

MR. BREESE responded his understanding is that the 25 percent discount offered under Section 1, which is currently in existing statute, remains unchanged and that a veteran is still eligible to purchase that property at 25 percent off. If willing to

assign one's PFD, the limitation is only on land purchased after 8/1/19. So, he continued, if one purchased land prior to 2019 as a veteran, he/she can't then apply the one-third discount to that purchase. The intention is that the one-third discount is not until after 8/1/19.

CO-CHAIR TARR requested Mr. Marty Parsons of the Department of Natural Resources (DNR) to provide clarification regarding the 8/1/19 date and how it applies to the two discount options.

[2:42:33 PM](#)

MARTY PARSONS, Director, Central Office, Division of Mining Land Water and Mining, Department of Natural Resources (DNR), replied his understanding is that after 8/1/19 would be the first opportunity to use the one-third discount of pledging the PFD.

CO-CHAIR TARR offered her understanding that the existing program of a 25 percent discount would remain unchanged.

MR. PARSONS stated that that is his understanding. He said he doesn't see anywhere in the bill there that is sunset.

REPRESENTATIVE TUCK restated his understanding as being that Section 1 allows a veteran to take advantage of the 25 percent [discount] and Section 4 would allow the purchase of new land after 8/1/19, regardless of whether [a purchase prior to 8/1/19] had been taken advantage of. [A veteran] could take advantage of the one-third discount, he continued, as long as he/she [assigned] his/her permanent fund dividend, but it would not be an option if the PFD weren't used.

MR. BREESE responded that Representative Tuck's understanding is correct. The one-third discount, he said, is only applicable if all or a portion of [the veteran's] PFD is assigned to help pay off the purchase of the land. He added that Section 4, subsection (g) on page 2, lines 20-21, implies that both discounts are in existence, because it is stated that the [25 percent and the 33 percent] discounts cannot be combined in one purchase.

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REPRESENTATIVE TUCK posed a hypothetical scenario of himself as a veteran making his first purchase of land after 8/1/19 in which he gets the 33 percent discount because he used his PFD as collateral or payment. He offered his understanding that at a

later time he could use Section 1 to purchase another piece of land at a 25 percent [discount].

MR. BREESE answered, "That is the intention of the legislation, correct."

REPRESENTATIVE TUCK, regarding the aforementioned hypothetical scenario, asked whether he could use his PFD for that purchase as well or would be restricted from doing so. He further asked why it would be wanted to restrict people from using their PFDs to pay for lands.

MR. BREESE replied that the one-third discount for veterans purchasing land is a once-in-a-lifetime opportunity and the 25 percent discount is also a once-in-a-lifetime opportunity. He explained that Section 5 of the bill would allow anyone, veteran or non-veteran, to use their PFD to pay off the purchase of the land. So, yes, if Representative Tuck in the aforementioned scenario purchased the land with a 25 percent discount, he could still assign his PFD for payment under Section 5, assuming the entire dividend hasn't been assigned to pay off the one-third purchase. The dividend would have to be divided up, he said, in order to use it for the purchase of both properties.

REPRESENTATIVE TUCK asked why the provision for purchasing land at the one-third discount requires that the veteran's PFD be assigned for payment.

MR. BREESE responded that the primary focus of the permanent fund is that [a PFD] be given to everyone in Alaska who wants one. It's a way of securing the [land] purchase because for most of the state land sales the purchase is financed by the state, he said. Using the PFD for payments is made easy because it only requires the checking of a box. It is convenience, he added, and it is also for encouraging veterans to buy land in Alaska.

REPRESENTATIVE TUCK surmised that if he were to miss the PFD application deadline, he would not have the 33 percent [discount] available to him.

MR. BREESE confirmed that the 33 percent discount could not be used if [a veteran] did not apply for, or was not eligible for, a PFD.

REPRESENTATIVE TUCK asked what would happen if his full PFD was garnished.

MR. BREESE deferred to the Department of Revenue (DOR) to answer the question.

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ANNE WESKE, Director, Permanent Fund Dividend Division, Department of Revenue (DOR), responded to Representative Tuck's question. She explained that, if a garnishment occurs, usually the first priority is a garnishment, not a voluntary contribution, or, in this case, an assignment. So, the funds would go to the garnishing agency, she said, and then DNR would be notified that no funds would be processed on [DNR's] behalf. That means it would fall on DNR to collect if DNR had already pre-credited this individual or it would fall on DNR to contact the individual that the funds didn't come DNR's way due to a garnishment.

REPRESENTATIVE TUCK stated he doesn't know why it would be wanted to put a condition on the one-third discount for veterans based on whether they file for a PFD. He said he understands why it would be wanted to provide the ability to pay for lands using permanent fund dividends.

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REPRESENTATIVE HANNAN asked how many veterans have currently taken advantage of the current discount of 25 percent. She further asked for the ratio of the number of parcels for sale each year and the number of veterans who took advantage of them.

MR. PARSONS answered that roughly an average of 17 veterans per year take advantage of the current 25 percent discount. Last year, he said, 80 parcels were sold under the state land sales program and 14 or 15 veterans took advantage of it.

REPRESENTATIVE HANNAN inquired whether payments to the state for most land sales are monthly payments or annual payments in which a person's PFD would achieve the payment.

MR. PARSONS replied there are multiple payment options under which a purchaser can contract with the state - annual, monthly, and quarterly - for which the purchaser signs a contract.

REPRESENTATIVE HANNAN posed a scenario of \$3,000 for the PFD in 2019 and asked whether that amount would cover the annual payment for the average parcel purchased by a veteran.

MR. PARSONS responded it depends, because land across the state varies widely in its value. The land is sold at fair market value, he explained, which is determined through an appraisal. Land in Interior Alaska might sell for \$13,000 or \$14,000 for a five-acre parcel, while a smaller parcel in Southeast Alaska might sell for \$30,000 or \$40,000. There are cases where \$3,000 could cover the entire payment for the year, he said, but in most cases, it would cover a portion of it.

MR. BREESE drew attention to page 2 of the DNR fiscal note, which states: "Over 19 years of tracking the 25 percent veterans discount, veterans have purchased an average of 14 parcels of state land a year." He also noted that according to the fiscal note the average price per parcel is \$18,300.

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REPRESENTATIVE SPOHNHOLZ inquired whether an "eligible veteran" as described under Section 1 of the bill must be an Alaska resident.

MR. BREESE deferred to Mr. Parsons for an answer, but noted that Section 1 doesn't say an eligible veteran must be an Alaskan.

MR. PARSONS replied that the initial auction under which these lands would be sold are for Alaska residents.

REPRESENTATIVE SPOHNHOLZ offered her understanding that the one-third discount and being eligible for a PFD isn't a matter of determining that only Alaskan residents are using this benefit.

MR. BREESE replied that page 1, lines 13-14, state, "has been a state resident for a period of not less than one year immediately preceding the date of sale". Therefore, he said, [the veteran] would have to be an Alaska resident.

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REPRESENTATIVE RASMUSSEN asked whether the closing costs for these sales are typically negotiated or whether there is a standard breakdown of who pays what for the closing costs.

MR. BREESE deferred to Mr. Parsons for the answer.

MR. PARSONS responded that [the land sales program] doesn't have a closing cost. He said the purchaser puts down a bid deposit

when the land is purchased and if the purchaser goes into a state contract those payments get rolled into the contract.

REPRESENTATIVE RASMUSSEN inquired whether a title is involved with these land sales.

MR. PARSONS answered that the unique thing about Alaska land sales is that the title remains with the state and does not pass to the purchaser until the purchaser has completely paid off the purchase obligation.

REPRESENTATIVE RASMUSSEN asked how the purchaser has anything to show for the money he/she has put into the purchase if there is nothing in title on record.

MR. PARSONS replied that unique to Alaska's land sales program is that there is not equity that the purchaser gains until such time as the purchaser has paid off the entire contractual obligation. The title remains with the state, he said, and is not patented to the purchaser until the purchaser has completely paid off the contract.

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REPRESENTATIVE RASMUSSEN asked who pays the recording costs and other fees for the change in title once the purchaser has paid off the contract.

MR. PARSONS responded that, in receiving the title, there is a cost of \$250 to the purchaser for the processing of documents and issuing the patent.

REPRESENTATIVE RASMUSSEN noted there isn't a set amount for the PFD and asked whether there is something in place that the purchaser must pay a certain [minimum] amount each year.

MR. BREESE answered that under the bill the purchaser can assign his/her PFD to pay all or a portion of the payment due to DNR, so the PFD could cover the full payment or only a small portion of the payment that is remaining.

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REPRESENTATIVE RASMUSSEN said her concern with the verbiage is that it doesn't set a minimum payment. She suggested this could be covered via an amendment so as to ensure that the state is protected. She inquired about the point at which the state

would foreclose for nonpayment, for example if a purchaser's PFD was garnished.

MR. BREESE replied that this is not a garnishment, but an assignment of the PFD. He deferred to Mr. Parsons to answer about penalties for late or nonpayment.

REPRESENTATIVE RASMUSSEN clarified she was speaking to a purchaser not receiving his/her PFD because it was garnished, and the purchaser was therefore unable to pay.

CO-CHAIR TARR asked Mr. Parsons about the timeline for when a contract would become null and void for nonpayment.

MR. PARSONS responded it varies. He said the division normally works hard with its customers to get them back on track, so they don't lose their interest in the land. Normally after 90 days, he continued, the division begins a letter writing campaign to get the purchaser back into compliance. Then there is a series of several months during which the division walks through different types of notices until getting to the point where the division writes the purchaser a letter stating that the division directors have decided that the purchaser's contract is void and the purchaser has 30 days to pay the remaining balance or the contract will be cancelled. The division tries very hard not to cancel contracts and take back properties, he added.

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REPRESENTATIVE RASMUSSEN surmised there is nothing in statute that says at a certain point in time the state must take back the land. She said she appreciates the division working with people, but she is concerned because this is a business.

MR. PARSONS answered the division works very hard with its customers because it is a very generous program as far as the ability to enter into contractual obligations. He noted the state has taken steps over the past several years where it had an egregious contract holder that it couldn't bring back into compliance and the contract was cancelled and the state took back the land. The division tries to make that the exception as opposed to the rule. He said the division understands that the real estate is a business and the division can cancel the contract any time after an individual has been determined to be in default.

REPRESENTATIVE TALERICO inquired whether the sponsor's intent is for people to be able to use the PFD, and the PFD only, to pay off the land purchase regardless of its cost.

REPRESENTATIVE RAUSCHER answered that that wasn't quite in his intent.

REPRESENTATIVE TALERICO recalled that he introduced a similar bill, but it was incredibly complicated, and those complications were probably why it didn't advance very far. He said he likes the simplicity of SSHB 3 and surmises the general idea of the bill is that there would be less cash flow out of state coffers as well as the ability to provide someone with equal or greater value for his/her permanent fund [dividend].

REPRESENTATIVE RAUSCHER replied he had many reasons for the bill. "It is just moving in computer numbers more than handwritten checks and contracts and payments and non-payments and default payments and all this other stuff," he said, "so it did have an ease of that; I appreciate that." He said he realizes after listening to Representative Tuck and the answers he was given that it probably wasn't his intent to have both of them sitting side-by-side utilized. He said he will be offering a friendly amendment to page 2, line 10, to replace "and" with "or" and that way [a veteran] can use the program he/she sees fit, if such an amendment is possible.

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CO-CHAIR TARR opened public testimony on SSHB 3. After ascertaining no one wished to testify, public testimony was closed.

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[HB 3 was held over.]

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#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:07 p.m.