

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 29, 2019

1:00 p.m.

MEMBERS PRESENT

Representative John Lincoln, Co-Chair
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

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 43 (FIN)

"An Act extending the termination date of the Big Game Commercial Services Board; relating to a person's eligibility to hold a registered guide-outfitter license, master guide-outfitter license, class-A assistant guide license, assistant guide license, or transporter license; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 138

"An Act requiring the designation of state water as outstanding national resource water to occur in statute; relating to management of outstanding national resource water by the Department of Environmental Conservation; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 43

SHORT TITLE: EXTEND BIG GAME BOARD; OUTFITTER LICENSE

SPONSOR(S): SENATOR(S) WILSON

02/04/19 (S) READ THE FIRST TIME - REFERRALS
 02/04/19 (S) RES, FIN
 02/20/19 (S) RES AT 3:30 PM BUTROVICH 205
 02/20/19 (S) Heard & Held
 02/20/19 (S) MINUTE(RES)
 02/27/19 (S) RES AT 3:30 PM BUTROVICH 205
 02/27/19 (S) Moved SB 43 Out of Committee
 02/27/19 (S) MINUTE(RES)
 03/01/19 (S) RES RPT 4DP 1NR 1AM
 03/01/19 (S) DP: BIRCH, KIEHL, COGHILL, GIESSEL
 03/01/19 (S) NR: BISHOP
 03/01/19 (S) AM: REINBOLD
 03/13/19 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/13/19 (S) Heard & Held
 03/13/19 (S) MINUTE(FIN)
 03/29/19 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/29/19 (S) Heard & Held
 03/29/19 (S) MINUTE(FIN)
 04/09/19 (S) FIN AT 9:00 AM SENATE FINANCE 532
 04/09/19 (S) Moved CSSB 43(FIN) Out of Committee
 04/09/19 (S) MINUTE(FIN)
 04/10/19 (S) FIN RPT CS 3DP 4NR NEW TITLE
 04/10/19 (S) DP: VON IMHOF, MICCICHE, WILSON
 04/10/19 (S) NR: STEDMAN, SHOWER, WIELECHOWSKI,
 BISHOP
 04/17/19 (S) TRANSMITTED TO (H)
 04/17/19 (S) VERSION: CSSB 43(FIN)
 04/22/19 (H) READ THE FIRST TIME - REFERRALS
 04/22/19 (H) RES, FIN
 04/29/19 (H) RES AT 1:00 PM BARNES 124

BILL: HB 138

SHORT TITLE: NATIONAL RESOURCE WATER DESIGNATION

SPONSOR(S): REPRESENTATIVE(S) KOPP

04/17/19 (H) READ THE FIRST TIME - REFERRALS
 04/17/19 (H) RES, FIN
 04/29/19 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

SENATOR DAVID WILSON
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: As the sponsor, introduced CSSB 43(FIN).

HENRY TIFFANY IV, Chair, Registered Guide-Outfitter
Big Game Commercial Services Board
Division of Corporations, Business and Professional Licensing
Department of Commerce, Community & Economic Development (DCCED)
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding CSSB 43(FIN).

SARA CHAMBERS, Director
Division of Corporations, Business, and Professional Licensing
Department of Commerce, Community & Economic Development (DCCED)
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding CSSB 43(FIN).

KRIS CURTIS, CPA, CISA, Legislative Auditor
Division of Legislative Audit
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of CSSB 43(FIN), reviewed the division's 2018 audit report of the Big Game Commercial Services Board.

KURT WHITEHEAD, Master Guide-Outfitter
Klawock, Alaska

POSITION STATEMENT: During the hearing of CSSB 43(FIN), testified in support of extending the Big Game Commercial Services Board.

WAYNE KUBAT, Master Guide-Outfitter, Vice President
Alaska Professional Hunters Association (APHA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of CSSB 43(FIN).

MARK RICHARDS, Executive Director
Resident Hunters of Alaska (RHAK)
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of CSSB 43(FIN), testified in opposition to a five-year extension of the Big Game Commercial Services Board and suggested a two-year extension.

NATHAN TURNER, Trapper, Registered Guide-Outfitter
Fairbanks, Alaska

POSITION STATEMENT: During the hearing of CSSB 43(FIN), testified in support of a six-year extension of the Big Game Commercial Services Board and in support of the proposed master guide-outfitter qualifications.

VIRGIL UMPHENOUR, Master Guide-Outfitter

North Pole, Alaska

POSITION STATEMENT: Testified in support of CSSB 43(FIN).

REPRESENTATIVE CHUCK KOPP

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As the sponsor, introduced HB 138.

EARL CRAPPS, Section Manager

Division of Water

Department of Environmental Conservation (DEC)

Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding HB 138.

KEN TRUITT, Staff

Representative Chuck Kopp

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Kopp, sponsor, answered questions regarding HB 138.

NILS ANDREASSEN, Executive Director

Alaska Municipal League

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 138.

KIMBERLY STRONG, Tribal Council President

Chilkat Indian Village

Klukwan, Alaska

POSITION STATEMENT: Testified in opposition to HB 138.

JONES HOTCH Jr., Vice President

Chilkat Indian Village

Klukwan, Alaska

POSITION STATEMENT: Testified in opposition to HB 138.

SHANNON DONAHUE

Haines, Alaska

POSITION STATEMENT: Testified in opposition to HB 138.

JILL JACOB

Ketchikan, Alaska

POSITION STATEMENT: Testified in opposition to HB 138.

KIP KERMOIAN

Haines, Alaska

POSITION STATEMENT: Testified in opposition to HB 138.

BETSEY BURDETT

Ketchikan, Alaska

POSITION STATEMENT: Testified in opposition to HB 138.

JAN CONITZ

Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to HB 138.

DOUG WOODBY

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 138.

DEANTHA CROCKETT, Executive Director

Alaska Miners Association (AMA)

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 138.

JESSICA PLACHTA, Executive Director

Lynn Canal Conservation (LCC)

Haines, Alaska

POSITION STATEMENT: Testified in opposition to HB 138.

LOUIE FLORA, Director

Government Affairs

The Alaska Center

Homer, Alaska

POSITION STATEMENT: Testified in opposition to HB 138.

GUY ARCHIBALD

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 138.

SARAH DAVIDSON, Program Manager

Inside Passage Waters

Southeast Alaska Conservation Council (SEACC)

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 138.

HEATHER EVOY

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 138.

PHILLIP MOSER

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 138.

ACTION NARRATIVE

[1:00:47 PM](#)

CO-CHAIR GERAN TARR called the House Resources Standing Committee meeting to order at 1:00 p.m. Representatives Tuck, Hannan, Hopkins, Lincoln, and Tarr were present at the call to order. Representatives Rauscher, Rasmussen, Spohnholz, and Talerico arrived as the meeting was in progress.

SB 43-EXTEND BIG GAME BOARD; OUTFITTER LICENSE

[1:01:27 PM](#)

CO-CHAIR TARR announced the first order of business would be CS FOR SENATE BILL NO. 43(FIN), "An Act extending the termination date of the Big Game Commercial Services Board; relating to a person's eligibility to hold a registered guide-outfitter license, master guide- outfitter license, class-A assistant guide license, assistant guide license, or transporter license; and providing for an effective date."

[1:01:49 PM](#)

SENATOR DAVID WILSON, Alaska State Legislature, sponsor, stated CSSB 43(FIN) would extend the termination of the Big Game Commercial Services Board until 6/30/24, which is one year less than the six years recommended by the Division of Legislative Audit. He explained that the board consists of two licensed registered guide-outfitters, two licensed transporters, two private landholders, two public members, and one member from the Board of Game.

SENATOR WILSON related that an audit of the board conducted by the Division of Legislative Audit made three recommendations to improve the board: 1) the Division of Corporations, Business and Professional Licensing director should improve the management oversight to procedures to ensure that documentation is obtained, reviewed, and retained to support licensure; 2) the division's chief investigator should increase oversight to improve the timeliness of investigations; and 3) the Office of the Governor, Boards and Commissions director should work with the board to identify potential applications in a timely manner. In regard to the timeliness of investigations, he pointed out that multiple agencies are involved and only 37 cases are open as of today, with of those 13 being Alaska Wildlife Trooper cases over which [the division] has no control for the

timeliness. He stated it was recognized that more supervisory rapport is needed for more quality control.

SENATOR WILSON said the division has responded to the audit's recommendations by working to add supervisors in addition to the examiner, as well as working to improve training procedures. There is a new chief investigator, he continued, and two new senior investigators have been added to provide more quality assurance. He stated the division has heard the message from Legislative Audit and is working to hold investigations accountable for the paperwork.

[1:04:46 PM](#)

SENATOR WILSON provided a sectional analysis of CSSB 43(FIN). He said: Section 1, page 1, lines 6-8, would amend AS 08.03.010(c)(9) to extend the Big Game Commercial Services Board for five years, through June 30, 2024. Section 2, page 1, line 9, through page 2, line 16, would amend AS 08.54.605(a) to allow the board to immediately suspend a license for violations that already disqualify a person from receiving or renewing that license. Section 3, page 2, line 17, through page 3, line 7, would amend AS 08.54.610(b) to increase the minimum qualifications for a master guide-outfitter license, including a requirement to have a clean record for 15 years. Section 4, page 3, lines 8-17, would add new subsections to AS 08.54.710, which allow the board to revoke a master guide-outfitter license if a person's privileges are revoked or if the person is convicted of a violation. A person whose master guide-outfitter license is revoked under this provision can still be issued a registered guide-outfitter license if qualified. Section 5, page 3, line 18, would add an immediate effective date.

SENATOR WILSON stressed the board plays an important role in managing the activities of commercial game hunters in the interest of Alaska's wildlife resources. He reminded members that the bill addresses whether the board should continue its work and does not address the function of the board.

[1:06:40 PM](#)

CO-CHAIR TARR noted Section 1 is clearly the extension. She observed Section 2 would add the word "hold" to that section of statute. She asked whether she is correct in understanding that Section 2 isn't about the initial receiving or renewing of a license, but is about putting a restriction on someone who

already holds a license if the person has the problems identified in [paragraphs (1) and (2) of Section 2].

SENATOR WILSON replied yes.

[1:07:15 PM](#)

REPRESENTATIVE HANNAN inquired whether the bill addresses "real life" situations in which the board was unable to act or the audit found the board did not act appropriately, or whether the bill addresses situations that are speculative in nature.

SENATOR WILSON replied that during a hearing before the Senate Finance Committee it was learned that [a license holder] can continue to provide guiding services for over two and one-half years after being found guilty of a violation while going through the appeals process after a guilty verdict. Thus, he said, the board requested the authority to put a person's license on hold during adjudication of the appeals process.

REPRESENTATIVE HANNAN offered her understanding that there were real life examples that caused the board to ask for additional tools to "hold" a license and this provision would do that.

SENATOR WILSON responded yes, there have been several examples.

[1:09:11 PM](#)

REPRESENTATIVE HOPKINS brought attention to page 2, line 29, through page 3, line 1, of the bill, which state:

(3) submits a list to the department of at least 45 [25] clients for whom the person has personally provided guiding or outfitting services and the person receives a favorable evaluation from 30 [10] of the clients selected from the list by the department;

REPRESENTATIVE HOPKINS requested clarification as to what constitutes a "favorable evaluation."

SENATOR WILSON deferred to [Mr. Henry Tiffany] for an answer.

[1:09:58 PM](#)

HENRY TIFFANY IV, Chair, Registered Guide-Outfitter, Big Game Commercial Services Board (BGCSB), Division of Corporations, Business and Professional Licensing, Department of Commerce,

Community & Economic Development (DCCED), deferred to Ms. Sara Chambers since it is the division that reviews the license applications. He advised that the board extensively deliberated on the proposed changes within the bill and is in unanimous support of the proposed increase in the number of favorable recommendations. He further advised that the proposed increase in favorable recommendations would be a more standard number. He also noted that the proposed language in paragraph (4) of 15 years is also standard in other professions.

1:12:20 PM

SARA CHAMBERS, Director, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community & Economic Development (DCCED), explained that the vetting process for a registered guide who is applying for a master guide-outfitter license, includes providing a list of clients who are then contacted by the division for information pertinent to the applicant's proficiency in the field that would relate to the scope of what a guide-outfitter is allowed to do. She said registered and master guides are in charge of people's lives and thus must be in compliance with all applicable laws and regulations for hunting as well as land use, and the division asks clients to review their experience with that guide. She stated the board had an opportunity to review CSSB 43(FIN) and supports [the changes proposed in paragraph (3)].

1:14:29 PM

REPRESENTATIVE HOPKINS inquired as to a time period over which those 45 clients would have had to work with that guide.

MS. CHAMBERS answered she is unsure of whether there is a window of time. She said she and Mr. Tiffany go back and forth because she has the administrative part and he has the qualitative part. She said her understanding through working on this bill is that the timeframe would be during the life of the applicant's registered guide-outfitter license, so it would be a client who had contracted with the guide. She explained that the structure of guiding goes from an assistant guide to class-A assistant guide to a registered guide to a master guide-outfitter. The dividing line between the two assistants and the two contracting guides, she continued, is that [the contracting guide] is the boss and actually signs the contract with the client. So, she added, it would need to be within the life of the applicant's registered guide activity, but she is unsure if there is a window of time unless otherwise stated in the bill.

1:15:49 PM

MR. TIFFANY clarified that for a client to qualify as a name submitted for a master guide-outfitter application, the registered guide (at that point) doesn't necessarily have to have been a contracting guide for that individual client. He explained that there are many guides within Alaska, and some don't ever contract hunts; they work for other registered or master guides, but they may still choose to obtain a master guide license and it isn't wanted to hinder that. If the applicant has physically guided a client in the field, he continued, then that client's name would be applicable for the applicant to put on his/her application towards a master guide license. He offered his belief that there isn't any stipulation that it needs to be within a certain time limit of a couple of years because the number of clients divided by the number of years proposed comes to three clients a year, and most of the guides that either contract or guide clients for someone else have about three or more clients per year.

1:17:49 PM

REPRESENTATIVE HOPKINS offered his understanding that there is no window for the timeframe of those 45 people to give their evaluations; it could be any time in the last 40 years if that person has been a registered guide, but three clients per year is a logical number.

MR. TIFFANY confirmed there is no limitation. If it took the applicant 40 years to collect the right number of names, then so be it, he said, or if it took fewer years that is alright also.

REPRESENTATIVE HOPKINS asked whether the division contacts all 45 clients. He further asked whether that is standard for the division providing other types of occupational licenses.

1:18:50 PM

MS. CHAMBERS replied the division solicits that information for a variety of license types and depends upon how the [related] statute is written. She said the division has quite a few license types that require some sort of evaluation. For example, she continued, for healthcare or mechanical professions evaluations are solicited from supervisors or others who have worked closely with the applicant in a similar capacity. So,

she added, it is unusual because it is somewhat subjective, but it is pertinent and relative to that type of work.

1:19:58 PM

REPRESENTATIVE HANNAN stated that the proposed increases in the number of clients that must be submitted [from 25 to 45] and number of favorable evaluations [from 10 to 30] is a huge jump given the small number of clients per year and the 20-40 year span of time in the applicant's career. She submitted that given the length of time, some of those clients are no longer alive and many are foreign nationals, and therefore it would be a huge increase in the burden for both the applicant and the division to contact all those clients and receive 30 favorable evaluations. She further submitted that this would narrow things so much that hardly anyone would qualify.

SENATOR WILSON responded that the master guide-outfitter title is a prestigious and high standard for guides, and the title carries additional privileges for guides as well as additional responsibilities to clients. He said it needs to be ensured that these folks are the top ethical guides who will follow the guidelines and regulations and therefore setting the bar higher for obtaining the master guide-outfitter license was wanted.

1:22:22 PM

MS. CHAMBERS agreed and explained that master guide is somewhat of an honorary title because the registered guide can perform the same guide/outfitting duties as a master guide. She related that when reviewing this the division asked the same questions of whether it seemed reasonable and deferred to the board. She continued:

It is not prohibiting anyone from gaining a higher level of economic opportunity because the master and the registered guides can do the same things. But the master guide does have that value added, as Senator Wilson said, that it is a title recognizing that you are at the very top of your game. It doesn't get, in the United States, any more exclusive in the guiding industry than that. But it is not a tier where we might look at trade issues and restriction of trade by saying this is really hard to get and it might serve only an elite few, which is preventing everyone here from being able to earn the same living. They're on

the same par, at least as far as their economic opportunities are concerned.

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REPRESENTATIVE HANNAN noted that the previous requirement was 10 out of 25 clients over a 12- to 15-year period and that the bill would increase the look back period from which clients could be submitted and would triple the number of positive responses. She questioned whether the fiscal note of \$35,000 [Identifier SB043CS(FIN)-DCCED-CBPL-04-09-19] would be sufficient to fund the investigation of an additional 20 positive evaluations on every application. She further questioned whether the guides who are potentially qualified to apply for this feel that they can produce those names and have current contact with clients. Representative Hannan said she wants to ensure that this big leap in numbers is being done for the right reasons and not just because there were some people with lower licenses who were bad actors, which would be a separate issue. She agreed [master guides] are the best of the best and therefore should not get poor evaluations. She asked whether the board, the industry, and the department think the proposed thresholds are manageable.

MS. CHAMBERS answered that the department does not anticipate a problem with the increase in its administrative workload. She deferred to Mr. Tiffany to speak to the board's discussion, which included master guides, in the vetting of those numbers.

1:26:13 PM

MR. TIFFANY concurred that a master guide license is, more than anything, an honorary title. He said it does not allow, from an economic standpoint, an individual to necessarily do anything more than a registered guide can do, except that master guides can advertise themselves and carry themselves with that title. In its discussions the board understood this, he related. He explained that a total of 45 names submitted with 30 favorable recommendations over a 15-year period is very feasible because an applicant must have been a registered guide for at least 15 years and that would be guiding 3 clients a year. He added that many guides take 10-15 clients in one year. He stated the board doesn't think it is onerous or a burden on applicants who want to obtain the title because they have proven under these proposed changes that they have been exemplary in the profession for a long time with no violations. He pointed out that the board was in unanimous agreement on that and doesn't feel it is terribly burdensome. He related that one of the board members

is currently a registered guide and getting close under the current regulations to being eligible to apply for his master guide license. He said this board member fully understands that this would prolong the time it takes him to apply for a master guide license and yet this board member voted in full support of these changes.

REPRESENTATIVE HANNAN said she is fine with the answer.

[1:28:43 PM](#)

REPRESENTATIVE TUCK offered his understanding that under current law, AS 08.54.720(a), a licensed master guide does not lose his/her title as a master guide if he/she commits an offense.

SENATOR WILSON confirmed Representative Tuck's understanding.

REPRESENTATIVE TUCK stated his support for [CSSB 43(FIN)] because it would provide conditions under which a master guide title can be lost. He observed that Section 4, subsection (1), would provide that a master guide-outfitter who lost his/her license could still be issued a registered guide-outfitter license and, he surmised, would have to wait 15 years before he/she could get back the title of master.

SENATOR WILSON replied yes.

[1:30:45 PM](#)

REPRESENTATIVE SPOHNHOLZ inquired whether the evaluations could be completed via a written or online survey instead of an interview.

MS. CHAMBERS responded she will check with staff, but is pretty sure the clients are contacted in writing. She said it would make her a little anxious to believe that someone's license depends upon verbal note taking, so she is certain there is a written record of that, but she doesn't know specifically what that looks like.

REPRESENTATIVE SPOHNHOLZ offered her understanding that a letter is sent out to which clients respond in writing, rather than the clients being called and interviewed.

MS. CHAMBERS answered yes; clients respond in writing.

[1:32:26 PM](#)

KRIS CURTIS, CPA, CISA, Legislative Auditor, Division of Legislative Audit, Alaska State Legislature, directed attention to the document in the committee packet entitled, "A Sunset Review of the Department of Commerce, Community and Economic Development, Big Game Commercial Services Board (board)," dated 9/14/18, Audit Control Number 08-20114-19. She explained that the purpose of a sunset audit is to determine whether a board or commission is serving the public's interest in whether it should be extended. She stated the audit found that this board is serving the public's interest by conducting meetings in accordance with applicable laws, by amending regulations to improve the occupations under its purview, and by supporting changes made by the Department of Law to improve the timeliness of the disciplinary process. Additionally, she said, the audit found that this board had eliminated the deficit of over \$1 million that was reported in the 2015 sunset audit. She noted the audit also concluded that the board licenses were not consistently supported by adequate documentation, a high number of investigations had unjustified periods of inactivity, and three board positions were vacant for an extended period. She said the audit recommended a six-year extension for this board.

MS. CURTIS turned to page 8 of the audit, Exhibit 2, Licensing Activity, and reported that as of May 2018 there were a total of 1,219 active licenses, a 20 percent reduction when compared to the 2015 sunset audit. She related that, according to the board chair, this decrease is due in part to guides retiring and a decreased interest in the profession. Additionally, she said, the chair reported that there were fewer transporters because many changed operating as air taxis to avoid the transporter's reporting requirements and fees - there were 151 licensed transporters as of April 2015 compared to 90 as of May 2018, a 40 percent reduction in the number of transporters.

MS. CURTIS moved to page 10 of the audit, Exhibit 3, Schedule of Revenues and Expenditures, and said the board had a surplus of [\$132,224] at the end at fiscal year 2018 (FY 18). She noted this is significant given the board's deficit of [\$1,120,051] at the end of FY 15.

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MS. CURTIS stated the audit contains three recommendations for improvement. She said Recommendation No. 1, page 14 of the audit, is that the director of the Division of Corporations, Business, and Professional Licensing (DCBPL) should improve

management oversight procedures to ensure required documentation is obtained, reviewed, and retained to support licensure. She noted the audit tested 25 new licenses and found errors in 14 of them. She drew attention to the errors listed on page 14 and pointed out that the more serious errors were missing background checks and a lack of adequate investigatory review. She related that, according to the DCBPL management, turnover in the staff that supported the board contributed to the errors. She added the audit also noted a lack of supervisory review.

MS. CURTIS said Recommendation No. 2, page 15 of the audit, is that DCBPL's chief investigator should increase oversight to [improve] the timeliness of investigations. She noted the audit tested 22 investigations that had been open for over 180 days during the audit period and found periods of unjustified inactivity for 20 of the 22. She related that, according to the chief investigator, periods of inactivity were due in part to inadequate resources to investigate the high caseload and supervisors not adequately monitoring the cases.

MS. CURTIS said Recommendation No. 3, page 16 of the audit, is that the Office of the Governor, Boards and Commissions director should work with the board to identify potential applicants in a timely manner. She noted that from July 2015 through May 2018, two board positions were vacant for six months due to a lack of interested applicants, and the board position occupied by a member of the Board of Game was vacant for eight months because the Office of the Governor was not notified of the vacancy. She related that, according to Boards and Commissions staff, the transporter and private landholder board positions are difficult to fill due to a lack of qualified candidates.

MS. CURTIS drew attention to the agency responses found on page 25 of the audit. She related that the DCCED commissioner agrees with Recommendations No. 1 and 2 and has taken action to resolve both recommendations. Addressing page 27 of the audit, she further related that the Office of the Governor has responded to Recommendation No. 3 and agreed to fill vacancies in a timely manner. She stated that page 29 provides the BGCSB chair's response to Recommendation No. 3 in which the chair agreed to work with the Office of the Governor to fill vacancies in a timely manner and stated that all the board positions were filled at that time.

[1:37:00 PM](#)

REPRESENTATIVE TUCK requested the date of the previous audit.

MS. CURTIS replied May 2015.

REPRESENTATIVE TUCK inquired whether this current audit found the same issues that were identified in 2015.

MS. CURTIS turned to page 13 and pointed out the four prior recommendations from the 2015 audit. She stated [auditors] felt that most of the 2015 recommendations were addressed, especially the \$1 million deficit [third recommendation]. She said the first recommendation had to do with support to the board, and while [auditors] felt the support did improve they identified a new problem with the license documentation, so that is considered a reiteration of a prior recommendation. She advised that the problems with prior applications [identified in the fourth recommendation] were dealt with. But, she continued, the problem of timeliness of investigations [second recommendation] has not been addressed.

REPRESENTATIVE TUCK asked who conducts the investigations.

MS. CURTIS responded that DCBPL conducts the investigations. The board stays out of the investigative process as it performs a semi-judicial role in ruling on an investigation's results once the ruling is brought to the board.

REPRESENTATIVE TUCK offered his understanding that many investigation positions from various departments are moving to the Department of Law (DOL). He asked how this would affect efforts to resolve the backload that is had.

MS. CURTIS answered:

I don't think we know right now the impact of that. There has been an Administrative Order [No. 306, dated 2/13/19] to consolidate the investigative process within the Department of Law. It is my understanding this board is included in that process. I know that there has been some discussion to have an audit on that process, looking at the consolidation, how that impacts timeliness, efficiency, and I believe there's work right now to draft an audit request.

[1:39:38 PM](#)

REPRESENTATIVE HANNAN inquired about the idea of taking all the investigators from all of the agencies and consolidating them in

the Department of Law. She asked whether the audit that is being requested is of the process of the new consolidated investigations prior to them being done, or if it will be given some time and then be audited for whether it is a more efficient way to do it.

MS. CURTIS replied that she suggested "at least three years."

REPRESENTATIVE HANNAN offered her understanding that it wouldn't be known for three years. She expressed her concern that a prior recommendation from a previous audit is still an ongoing issue. She continued:

If this board in five more years has an audit that again raises that there is a problem with the investigation, but this time we've sort of structurally shifted and ... we won't know whether that backlog is created by it being an ongoing problem, these are complex things to investigate, or whether it was because we've shifted how we've investigated them. ... It's not that I'm encouraging them to be held harmless, but it seems to be an area of concern for an industry that is profitable but complex, and seasonal in nature, migratory in practice, and then we are trying to make sure that investigations of things that may span legal boundaries, because again many of the clients who might be called as a witness in an investigation of bad actors in the field could be foreign nationals. So I could certainly see why these are complex investigations to carry forward and I'm wondering whether the department has had the opportunity to share all of those concerns in a global and specific way as these dialogues about consolidating investigators to the Department of Law have happened.

MS. CHAMBERS responded that those details would be worked out in FY 2020. She said the taskforce to implement the Administrative Order for consolidating all the investigations under the Department of Law would begin in early 2020 and that questions would be asked of this particular board, the other 43 licensing entities managed by [the Division of Legislative Audit], as well as all the rest around the state. She stated she expects a discussion to work out safeguards and tracking mechanisms. She said the administrative order is a plan that will be thorough, and it is possible that [the Division of Legislative Audit's] investigators may become Department of Law employees. They will

retain the same knowledge, background, and experience that benefit from oversight through the Department of Law, she advised. There are a variety of ways that this could look, but this is just the beginning of the process, she added.

[1:43:14 PM](#)

REPRESENTATIVE HANNAN addressed Ms. Curtis and urged [the aforementioned problem] be footnoted now because auditors are probably the best at footnoting something and remembering where it is and coming back to it. She continued:

This has been in two audits, yet I don't know if you have any specificity of where the problems and the timeline to produce those investigations have been that can be shared with the Department of Law so it doesn't have to be relearned by a new lawyer trying to figure out how to investigate a licensure issue that is in [an] unusual industry. ... Each of our investigative jurisdictions [is] unique, but I think this one is not only unique it's quirky. ... I would just urge that we make sure we've footnoted that so when we return to this in five years we don't go, "A third audit where the investigation backlog is overwhelming," and think that we've somehow been flawed in it because I think it is one of those places where it's going to be a weird thing for the Department of Law. ... The legal violations they're going to have straight up dialed in ... if they've been working on fish and game issues and violations. But I think that the guide industry, it's that intersect of a lot of different elements of commerce that are really unique, and I want to make sure we remember that when we hold someone to task five years from now about not doing it right.

[1:44:51 PM](#)

REPRESENTATIVE HOPKINS asked how the board accumulated a \$1.1 million deficit in fiscal year 2015.

MS. CURTIS replied that in general terms it may have involved not raising fees timely, as well as incorrectly allocating indirect costs over the years. She deferred to Ms. Chambers to answer further.

MS. CHAMBERS advised that circa 2012 DCCED discovered inadequate checks and balances in its accounting systems and DCBPL was allowed to provide incorrect information externally to its boards and to the public. It was accounted for correctly in the old state accounting system, she continued, but all the numbers and reports given to and utilized by the boards were not tied to the accounting system. When this was discovered, she explained, DCBPL worked with its administrative services to rectify that and an exhaustive search through all data was done to find out where each licensing program actually stood. She said some were actually doing better than what they were being told and some were not, and the Big Game Commercial Services Board was in the "very, very not" category. Much to its credit, she continued, the board at that time committed to doing whatever it took to get things done. She explained that the division spent a few years working hand-in-hand with the board assessing how often fees were being increased appropriately and whether there were fees that were not being captured to cover the administrative workload that the statute requires. Particularly in the time period between those two audits, she noted, work was done to calibrate those fees and now they are in a reasonable surplus. She advised that this program and all the division's licensing programs are being checked every year with the division's fee analysis tool. The division is in close contact with the board, she added, because the board doesn't want to go through that again and neither does the division.

[1:48:17 PM](#)

REPRESENTATIVE HOPKINS surmised the increased user fees since 2015 are paying for the new positions talked about by the bill sponsor to address the backlog of complaints and concerns.

MS. CHAMBERS confirmed that licensing fees pay for all of the division's costs and noted that those positions are shared with the other programs as well. She pointed out that the 2018 audit covered a span of three years, so the information is now four years old. Since the beginning of the audit, she said, the division has put in a variety of improvements, safeguards, and additional resources to address the issues that were raised in the audit.

MS. CHAMBERS continued and stressed that the audit findings are against the division and not against the board itself, which is a body of volunteers appointed to govern. The licensing and investigative issues are the responsibility of the division, she pointed out. She said that, to date, the division has:

narrowed down double-checks with the new senior investigators for all the division's programs; reduced the licensing workload for this program; closed 22 cases so now only 39 cases are open; and double-checked every 60 days or so that there is adequate documentation in the division's case file. She noted the audit did not find that investigations were performed poorly or that the board wasn't doing its job. She advised the audit found that division staff did not document lapses when things were over with the troopers or with the Office of Special Prosecutions. The division has taken that very seriously, she added, because it is a poor reflection on the division when the audit isn't clean.

[1:51:00 PM](#)

REPRESENTATIVE TUCK stated that the audit's concerns are about investigations as well as oversight and monitoring of the cases. He noted that currently DCBPL supervises the cases. He read aloud from AS [08.01.050(a)(19)], administrative duties of department, which states, "provide inspection, enforcement, and investigative services to the boards and for the occupations listed in AS 08.01.010 regarding all licenses issued by or through the department". He said the statutes are very specific on who investigates and who oversees those investigations and opined that the governor's Administrative Order is really an Executive Order because it changes statutes. Given this order to put all investigations under the Department of Law, he asked who is now responsible for the oversight, supervision, and monitoring of those investigations.

MS. CHAMBERS responded that the task force would work out these questions prior to executing the Administrative Order. She said she has taken note of Representative Tuck's statements.

[1:54:01 PM](#)

[CO-CHAIR TARR opened public testimony.]

[1:54:37 PM](#)

KURT WHITEHEAD, Master Guide-Outfitter, testified he has been a guide in Alaska since 1995 and has worked for good outfitters and bad outfitters. He stressed the importance of the Big Game Commercial Services Board. He explained that an applicant applying for a registered guide license is tested before a panel of master guides and/or registered guides and oral testing reveals the applicant's competence. He urged the committee to

reauthorize the board because it provides oversight and the necessary oral testing. Without the board, he said, there would be no more oral testing and an applicant would only take a multiple-choice test.

1:57:08 PM

WAYNE KUBAT, Master Guide-Outfitter, Vice President, Alaska Professional Hunters Association (APHA), testified that the APHA represents Alaska's important and historic guide industry and has been in existence for nearly 50 years. He said the APHA supports state's rights and is working to maintain Alaska's right to manage game species in accordance with state law. He stated he is very familiar with CSSHB 43(FIN) and that there is misleading information circulating about the Big Game Commercial Services Board (BGCSB). He said the guide industry pays its own way and is net positive for the state. He pointed out that guided non-resident effort is less than 3 percent of the total big game hunting effort, and in 2015 accounted for \$55.2 million new dollars and with multipliers accounted for \$87.2 million in total economic activity, with a lot of it occurring in rural areas. He advised that guide numbers are decreasing, not increasing, which was mentioned in the audit.

MR. KUBAT addressed the issue of complaints about the board not taking action in certain cases. He related that at the meetings he has attended the board's binder shows the actions it has taken, and while it may not be all cases, the board is putting a dent in them. He said the guide industry needs a voice that knows the truth and can represent guides fairly, and the Big Game Commercial Services Board is that voice. He further stated that the board is an important piece of the puzzle toward maintaining the long-term health and viability of the guide industry. He urged the passage of CSSB 43(FIN).

1:59:35 PM

MARK RICHARDS, Executive Director, Resident Hunters of Alaska (RHAK), testified he is representing RHAK's 2,000 members in asking the committee to reject the [proposed] five-year extension of the Big Game Commercial Services Board and to instead extend it for only two years. He noted the board has been audited every three years since its reinstatement in 2005 and every audit has outlined the same problem regarding the ability to investigate cases in a timely manner along with an ongoing backlog of cases, which doesn't provide confidence that

things will change. He opined that a shorter extension period would give the board incentive to resolve its issues.

MR. RICHARDS stated the other body amended the bill, in part, in response to RHAK's complaints about guides continuing to hold a guide license after numerous violations. The amended bill, he continued, would change parts of the Title 8 statutes to make it somewhat easier for the board to revoke or suspend a guide license and RHAK agrees with those changes. He said there might be parts of the Title 8 statute the committee is unaware of. He maintained the guide industry has been very successful over the decades in monopolizing anything to do with making money from hunters and that this is how "outfitter" got tacked onto guide and now a guide is known as guide-outfitter. He again urged the committee to amend the bill to a two-year extension.

[2:02:55 PM](#)

REPRESENTATIVE TUCK observed that RHAK's 4/25/19 letter in the committee packet states that nothing has changed in terms of the caseload and that the process has not been streamlined. He inquired whether RHAK has suggestions on how to streamline the process. He recalled Ms. Curtis stating there are problems with being able to investigate and adequately monitor the cases.

MR. RICHARDS answered that only one investigator is attached to this board and one investigator alone cannot handle all the cases. He said the board does not have money to hire another investigator and opined that the way the board resolved its debt issue is problematic because it moved to consent agreements rather than taking guides to administrative court hearings that are costly. So now, he continued, guides with violations are basically given a slap on the wrist, a minimal probationary period, and are allowed to continue to hold their guide license. It is a Catch-22 here, he advised, in that trying to resolve the investigative issues and the caseloads has resulted in something that is allowing guides to continue guiding with violations.

[2:04:37 PM](#)

NATHAN TURNER, Trapper, Registered Guide-Outfitter, testified he works primarily as a trapper, has been a hunting guide for 22 years, a registered guide for 19 of those years, and is serving his ninth year on the Board of Game. He stated he is speaking today as a hunting guide. He said he supports extending the Big Game Commercial Services for a full six years and that he also

supports the [bill's proposed changes] to master guide-outfitter qualifications.

MR. TURNER said the board has clearly acknowledged the financial problems and investigative backlog and that it continues to work diligently on the areas that it can through board actions and authority. But, he added, as has been presented a lot of the issues are beyond the board. He stated the board takes these issues very seriously. He related that for most of the years the board has been operating again, he has sat in the meetings and the subcommittee meetings and participated in the guide testing and has been impressed with the sincerity of individual board members and the tone and tenure of the meetings. He urged that, regardless of the length of extension that is chosen, consideration be given at the end of the extension to remove the sunset provision. He said the administrative problems being faced today are nothing compared to what would happen if this board was to sunset, as was evidenced when it was sunset before and the problems in the field led to the board's re-creation.

MR. TURNER stated he supports the [proposed] changes to master guide-outfitter qualification. He said he has been qualified since 2012 but hasn't submitted an application because of his belief that the bar is [currently] so low it doesn't equate with his understanding of what a master of any trade should be. As currently exists, he opined, a guide doesn't need to be outstanding in any manner; a guide simply needs to be in business long enough and will qualify to be called a master. He said his belief that when another guide sees the title "master," he/she should be impressed.

[2:08:02 PM](#)

REPRESENTATIVE TUCK recalled Mr. Turner's statement of being a guide for 22 years and a registered guide for 19. He asked how a person becomes an unregistered guide.

MR. TURNER explained he was an assistant guide first to earn his qualification to become a registered guide.

[2:08:29 PM](#)

VIRGIL UMPHENOUR, Master Guide-Outfitter, testified he served three terms on the Board of Fisheries and afterwards served eight years as chairman of the Fairbanks Fish and Game Advisory Committee. He said Alaska is well known throughout the country for its boards of fish and game and its Big Game Commercial

Services Board. He maintained that the other states are jealous of Alaska's system of public process for how the state's fish, game, and hunting resources are managed. Allowing this board to sunset would be a slap in the face to all wild resource users in Alaska, he said. He pointed out that Alaska is much different than other states in that regular individuals can put forth proposals to change the regulations, the proposals are published through a board process, and at the board's meetings the public participate in the discussion about changing the regulatory process. Getting rid of it would be going backwards, he said.

VIRGIL UMPHENOUR noted he is a master guide-outfitter and has been guiding for 33 years, his son is also a master guide-outfitter, and his daughter is an assistant guide. Guides pay their own way, he continued, in that non-residents pay a non-resident fee in addition to their license and this fee pays 73 percent of the Division of Wildlife Conservation's budget, and sport fish licenses pay for the majority of the Division of Sport Fish's budget.

MR. UMPHENOUR pointed out the board doesn't have anything to do with the investigation process. The investigator works for the department, he said, so any problems are the department's problem, not the board's problem. The board does not supervise the investigator, he continued, and the board has gotten the investigator to quit so many frivolous investigations that don't amount to anything.

[2:12:25 PM](#)

CO-CHAIR TARR closed public testimony after ascertaining no one else wished to testify.

CO-CHAIR TARR announced that CSSB 43(FIN) was held over.

HB 138-NATIONAL RESOURCE WATER DESIGNATION

[2:13:12 PM](#)

CO-CHAIR TARR announced that the final order of business would be HOUSE BILL NO. 138, "An Act requiring the designation of state water as outstanding national resource water to occur in statute; relating to management of outstanding national resource water by the Department of Environmental Conservation; and providing for an effective date."

[2:13:41 PM](#)

The committee took an at-ease from 2:13 p.m. to 2:15 p.m.

2:15:32 PM

REPRESENTATIVE CHUCK KOPP, Alaska State Legislature, sponsor, introduced HB 138. He testified the bill would clarify that the designation of Outstanding National Resource Waters, also known as designated Tier 3 waters, would be accomplished by the legislature through statute. He said the Alaska constitution places the responsibility for significant land and water use decisions in the hands of the legislature. He read from Article VIII of the constitution, Section 7, Special Purpose Sites, which states: "The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people." He also read from Article VIII, Section 2, General Authority, which states: "The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people."

REPRESENTATIVE KOPP said a good example of this constitutional mandate in practice is the 118 state legislatively designated areas in Alaska, which includes refuges, sanctuaries, critical habitat areas, special management areas, forests, parks, recreation areas, preserves, public use areas, recreation rivers, and recreation mining areas, which total nearly 12 million acres. Each of these areas, he stated, was designated by legislative approval, not an agency executive approval process. He said Alaska's voters have clearly spoken on what they believe the ultimate authority should be with land and water use designation process. This was seen in 2014, he specified, when voters approved the Bristol Bay Forever Initiative by a margin of nearly 4:1, which gave the legislature the final say in whether to allow the development of large scale mining projects in the Bristol Bay Area. He said HB 138 would simply continue this strong precedent of ensuring significant land and water use decisions, in this case Tier 3 waterbody designation, resides in the hands of the legislature.

REPRESENTATIVE KOPP stated that Tier 3 designation bestows the highest level of water quality protection under the federal Clean Water Act - such waters are deemed the highest ecological and recreational importance. He related that in 1983 the

Environmental Protection Agency (EPA) defined Tier 3 waters to be exceptional ecological and recreational significance and that their water quality be maintained and protected from degradation in perpetuity. He said the EPA further mandated that each state establish a process for designating these Outstanding National Resource Waters. Alaska doesn't currently have a process, he continued, and the EPA has asked the state to identify a formal process for designating Outstanding National Resource Waters. He said this puts the state at risk of violating the Clean Water Act and opens up the possibility for the EPA imposing its own designation process, which it has no interest in doing. He related that in a 2018 letter to former Department of Environmental Conservation (DEC) commissioner Larry Hartig, the EPA wrote it supports Alaska's efforts to develop a designation process and that it has no interest in doing that for the state.

REPRESENTATIVE KOPP stated that defining a designation process would provide conservationists and developers alike a measure of certainty in how to go about this designation. He said HB 138 would solve this problem by codifying in statute a designation process that is consistent with how lands and waters across the state would be designated for conservation by legislative approval rather than by department or agency decision. This designation is an important tool for protecting human and environmental health, he continued. He maintained it is a significant policy decision because it would restrict a wide range of activities on state waterbodies as well as on adjacent lands that have waters flowing across them into those waterbodies. He said large-scale resource development projects located near Tier 3 watersheds would therefore be impacted by Tier 3 designation and so would road and building construction, motorboats, recreational activities, seafood processing, municipal wastewater discharge, residential and commercial septic systems, storm water discharge, landfills, timber harvesting, and gravel quarries. He opined that such widespread impacts effectively make Tier 3 designation a de facto land use decision and as such the final decision for Tier 3 designation properly resides in the hands of the legislature, which HB 138 would do. He further opined that HB 138 would provide certainty for conservationists and developers alike on the designation process of Outstanding National Resource Waters. Representative Kopp said the bill isn't lengthy, it just says that this should be done in statute by the legislature.

[2:22:23 PM](#)

REPRESENTATIVE TUCK remarked that it is unknown what the statute is going to be. He therefore asked why not come up with a bill that defines the process because, then, "boom, we're done."

REPRESENTATIVE KOPP replied that the logical outflow of HB 138 is that the administration would still have a duty as DEC to document petitions brought forward for Tier 3 designations and the legislature would know about it when the administration brings forth a bill that would be introduced by the House or Senate rules committees by request of the governor. That is how those are done now, he continued, so the question would come before that body in a manner in which the body is accustomed to seeing it.

REPRESENTATIVE TUCK offered his understanding that a process is not being defined, it is just being said that the procedure is to follow the bill when the designation of a body of water or river is wanted.

REPRESENTATIVE KOPP responded yes, file a bill and get legislative approval.

[2:24:01 PM](#)

REPRESENTATIVE HANNAN asked whether the governor could already do that. She further asked whether this governor or a previous governor has done that with any of the five nominations for [Tier 3 designation].

REPRESENTATIVE KOPP answered that the five currently outstanding requests may go as far back as Governor Parnell. He related that former DEC commissioner Larry Hartig wrote two separate memos, one to DEC and one to the legislature, in which the commissioner recommended an approval process where these decisions were made by the legislature. He said Commissioner Hartig further stated in the memo that until a process was established the commissioner did not feel the state was in a position to show it was complying with the federal Clean Water Act as having a way to resolve these Tier 3 designations.

REPRESENTATIVE HANNAN inquired as to why [DEC] hadn't forwarded the nomination of the Kuktuli [River] [located in Bristol Bay] for Tier 3 designation given it has been pending for 10 years.

REPRESENTATIVE KOPP replied it is because this bill has not passed yet. He said Governor Walker filed Senate Bill 163

[Twenty-Ninth Alaska State Legislature], but it didn't pass so now he is continuing that.

REPRESENTATIVE HANNAN asked how many states have a designation process and how many have it limited to strictly a legislative decision, as opposed to a hybrid of the Board of Water making a recommendation and then the legislature acting on it.

REPRESENTATIVE KOPP deferred to DEC. He said there is a mix of statute, board or commission, or executive agency decision, but he doesn't know how those are broken down.

[2:26:48 PM](#)

EARL CRAPPS, Section Manager, Division of Water, Department of Environmental Conservation (DEC), answered Representative Hannan's question. He said the division doesn't have those broken down, but does have a summary of the different state processes. He explained that the process itself is not specified via federal regulation; it is up to each state individually to determine that process. He said each state does it differently - some are legislative, some are through a board, and some are a specific agency within the state that makes the designation.

REPRESENTATIVE HANNAN inquired whether there are any other states where that decision is exclusively legislature with no other board or department process preceding that.

MR. CRAPPS replied he would research it and get back to the committee with an answer.

[2:28:00 PM](#)

CO-CHAIR TARR stated she would be interested in receiving documentation from Mr. Crapps. She noted she has some documents regarding some western states. For example, she said, Arizona has processing criteria and regulations, Nevada is a little different, New Mexico is in regulation, and Oregon is policy-processing criteria combined in anti-degradation policy regulation.

[2:28:33 PM](#)

REPRESENTATIVE SPOHNHOLZ asked what the EPA considers to be an adequate definition to meet the Clean Water Act standards. She further asked whether having it in regulation is enough.

MR. CRAPPS responded that the EPA does not specify. He said [Alaska] currently has in place a policy that says these nominations are to be taken to the legislature for designation and the EPA has indicated that this policy is adequate to meet an interpretation of the Clean Water Act.

REPRESENTATIVE SPOHNHOLZ concluded Mr. Crapps is saying that [the State of Alaska] already has something in regulation that meets the definition of the EPA's criteria to meet the Clean Water Act standards.

MR. CRAPPS answered correct and said last year [DEC] promulgated air degradation regulations and also posted [the department's] policy for Tier 3, which indicates that these nominations be taken to the legislature. The EPA, he continued, has indicated that that is acceptable.

REPRESENTATIVE SPOHNHOLZ asked whether there has ever been a Tier 3 waterway designation in the state of Alaska.

MR. CRAPPS replied no, not to this day.

REPRESENTATIVE SPOHNHOLZ offered her understanding that there are currently five nominations on the books, but so far, the administration hasn't seen fit to bring any of them forward to the legislature.

MR. CRAPPS responded correct; five are being held and have not been brought forward any further.

REPRESENTATIVE SPOHNHOLZ said it sounds like the state already has in place the process that is being recommended in HB 138. She inquired why the sponsor thinks this process that is currently in regulation and that meets the EPA's clean water standards should be put in statute.

[2:30:45 PM](#)

REPRESENTATIVE KOPP replied [Tier 3] designation is a political question because it is so far reaching and is the highest designation of any water body use. He said it is so high that the state of California, which is probably far more restrictive environmentally than Alaska, has only applied it to two water bodies. He related that there are none in Nevada, Washington, Idaho, or Alaska and offered his belief that there is one in Oregon. This is a higher standard than drinking water, he said,

the reason being that some aquatic life is more sensitive to copper than are humans. Its subsequent impact affects large adjoining land areas, he continued. He said the question is, "Do we want these types of sweeping decisions made by an administrative agency or do we want to have these discussions before a legislative body where we can talk about it collectively and express our collective will if we think this special use designation is what we want and hear from the people rather than maybe get an internal agency report on their thoughts on the matter?" Every administration changes, he added, along with its preferences and wishes and this bill would bring this highest-level question before the legislature.

[2:32:55 PM](#)

KEN TRUITT, Staff, Representative Chuck Kopp, Alaska State Legislature, specified that part of the answer is the timing of the regulations. He stated the regulations were done in consort with Senate Bill [163], which would have done what HB 138 [is proposing] to do, and the regulations got into effect before the bill got passed. There is currently an ambiguity, he continued, because those regulations point to the legislature and there is nothing currently in statute that says the legislature will do this. So, he said, HB 138 would complete a process that was started by DEC in consort with the legislation of a prior administration.

REPRESENTATIVE SPOHNHOLZ stated that it sounds like regulations are already in place that put into effect what is described in HB 138. So, she continued, there may not be a problem that needs solved, unless the effort is to ensure there wouldn't be citizen initiatives that create a Tier 3 water designation. She asked whether the intent is to try to prevent a citizen's initiative from creating a Tier 3 water designation.

REPRESENTATIVE KOPP replied he is unsure what the constitutional implications are with natural resources. He said the courts use bright line tests for whether a resource can be done through the initiative box and therefore he doesn't know if this could be done through an initiative. But, he continued, DEC considers this designation to be so far reaching that once a nomination for Outstanding National Resource Water is made it basically goes around most of the tools used by DEC to regulate water quality standards for normal water quality designations and DEC prefers this policy call be made by the legislature. He deferred to DEC to answer further.

MR. CRAPPS clarified that the recently promulgated regulations deal only with how Tier 3 water will be managed once it is designated. He explained that what he spoke to earlier is DEC's policy, which is not in regulation. The policy itself is just a department policy, he continued, and it says the nominations will be submitted to the legislature for designation.

[2:36:51 PM](#)

NILS ANDREASSEN, Executive Director, Alaska Municipal League, testified in support of HB 138. He spoke as follows:

As you know, municipal powers, especially for boroughs, can include planning and zoning, transportation, ports and harbors, sewer and water, solid waste management, road maintenance, and flood protection and mitigation. Each of these relate back to Tier 3 designation. The role of local government is extensive as it relates to community development, public safety, and public welfare. Local decision-making takes into account extensive public input and directly involves residents in a review of that development's impacts on lands and waters within city or borough boundaries. The designation of Tier 3 waters by an agency would impact local control and decision-making, which otherwise would involve residents and locally elected officials in a dialogue about the sustainability of community development and locally determined approaches to the mitigation of negative impacts. Designation may adversely impact municipal wastewater treatment plants, for instance, or storm water permitting. Alaska's constitution is clear in assigning to the legislature the responsibility for the administration of the state public domain and, further, the reservation of the public domain for special purposes. In our review of HB 138 we believe that the legislative role in Tier 3 designation maintains the separation of powers between the executive and legislative branches, is consistent with constitutional intent and, further, that the legislative process mirrors that found locally - the inclusion of Alaskans in a process that is overseen by elected officials. We commend to the legislature the importance of the role that local governments have in this process. Clearly the conservation and protection of Alaska's waters is a meaningful discussion for all Alaskans, just as important as Alaska's community and

economic development. Clarifying the legislature's role in Tier 3 designations isn't making a choice between the two, but provides a platform for the careful negotiation that must take place with respect to both.

[2:39:51 PM](#)

CO-CHAIR TARR opened public testimony on HB 138.

[2:40:11 PM](#)

KIMBERLY STRONG, Tribal Council President, Chilkat Indian Village, testified in opposition to HB 138. She related that her community is one of three that are proposing Tier 3 status for the Chilkat River. She stated she is concerned about the process being brought forth because it would depend on somebody else and the administration in office. She maintained that putting the process for Tier 3 designation into the legislative body would result in the decision process becoming a political battle. She pointed out that she would not have enough funds to fly to Juneau to testify in front of legislators [unlike] mining companies or other companies that want to have resource extraction that could irreparably damage the river that provides five species of salmon for the people of the Chilkat Valley.

MS. STRONG stated that Tier 3 designation should be a process where environmental experts make the decision as to whether this is needed to protect the waterway. She related that in the past DEC was asked whether it had done water quality testing in the Chilkat River and DEC said it had not because there were too many waterways in Alaska for the department to test. So, she continued, the Chilkat River goes untested for water quality. She reiterated she would rather it not be a political process and instead be a process that DEC decides.

[2:43:08 PM](#)

JONES HOTCH, Jr., Vice President, Chilkat Indian Village, testified in opposition to HB 138. He noted Chilkat Indian Village is a federally recognized Indian tribe. He urged that the bills in the House and Senate not be passed. He pointed out there would be no appeal process and therefore DEC should be the one that handles the nomination and selection.

[2:44:06 PM](#)

SHANNON DONAHUE testified in opposition to HB 138. She said she lives at the mouth of the Chilkat River, which has been nominated for Tier 3 protection because of its exceptional ecological and cultural significance. She stated that people and all living things in the Chilkat Valley depend on this river for sustenance. She said HB 138 would deny Alaskans their right to protect their most valued waterways by implementing a complicated political process for designation through the legislature, making it nearly impossible to achieve the protections that people have a right to as Alaskans and as Americans. Meanwhile, she pointed out, mines and mineral exploration companies go through a simple permitting process if they want to degrade these waters. She said this makes no sense because everyone in Alaska depends on the state's clean, life-giving waterways, yet it is easier to get permission to pollute the waterways than to protect them.

MS. DONAHUE stressed that Tier 3 designation should be a transparent, reasonable, nonpolitical process based on clear criteria, and ecological, cultural, or recreational values, and the will to protect Alaska's waterways. She urged that the entire review and designation process remain with the DEC. She further urged that HB 138 be killed and the right of Alaskans be defended to protect their waters and their homes.

[2:45:35 PM](#)

JILL JACOB testified in opposition to HB 138. She said it is critical the authority for designating Tier 3 water remain with the DEC and the process remain an administrative equal to that of permitting water. She stated that it is astonishing Alaska does not yet have a Tier 3 waterbody. She noted that Lake Tahoe in California is a Tier 3 waterbody and that it hasn't stopped people from swimming, drinking, or anything else. She offered her understanding that HB 138 would remove the option for a public ballot to designate Tier 3 water and would also provide the way for a governor to veto a Tier 3 water designation. Alaska has the last remaining healthy wild salmon on the planet other than a few places in Russia, she said, so there is a need to start protecting Alaska's waterbodies with the highest possible protection. She added that no amount of economic development is worth the state's safe drinking water or fish.

[2:47:16 PM](#)

KIP KERMOIAN testified in opposition to HB 138. He reported that at a 3/20/17 meeting in Juneau, focal groups were formed to

specifically address the process that the state of Alaska should employ to nominate and designate Outstanding National Resource Waters. He said the meeting attendees were two representatives for conservation organizations, two for commercial fishing, eleven for government, sixteen for industry, five for Alaska Natives, two for the Upper Lynn Canal Fish and Game Advisory Committee, and five undeclared representatives. Of importance, he noted, is that one point of consensus was that none of the focal groups expressed support for a legislative path to Tier 3 designation; the opinion otherwise was split between an all DEC option or some combination of a DEC and a Tier 3 advisory board.

MR. KERMOIAN stated that like those at the workshop, he does not support a legislative option. He expressed his opinion that it should be DEC along with an advisory board and it should be evaluated for a specific nomination path and recommended to the DEC by this board at least with stakeholders and a body of other people involved. He said inviting the legislature to make this determination politicizes this process and it should be left to natural resources and scientists, people of expertise in the field. He pointed out that for Tier 3 these experts would be evaluating exceptional, important, unique, and sensitive ecological waters. He added that the transient political nature of how things go would not lend itself well to this process. He said corporations can apply for a process to grade water and HB 138 and SB 51 would eliminate the ability for residents and the public to do the same.

[2:50:10 PM](#)

BETSEY BURDETT testified in opposition to HB 138. She offered her belief that this process should stay in the realm of DEC and some kind of advisory board. She noted that legislators are replaced every few years, as is the governor, and she would like to keep it on an administrative level with experts that know about the environment. She disagreed that this designation is a land use decision and said it is about clean rivers. Given many of these rivers already have things going on, she added, it isn't like it is being taken off the grid.

[2:51:28 PM](#)

JAN CONITZ testified in opposition to HB 138. She stated that while the bill sounds like a simple change, it isn't - it's a sweeping change. She said HB 138 would take away the rights of ordinary Alaskans, and over time would result in great harm to Alaska's mostly pristine waters by taking away the right of

people who know these waters to take steps to protect them. She pointed out that unique about Alaska compared to all other states, is the direct dependence of so many Alaskans on clean and unspoiled waters. Those with direct connection to the land and water, she continued, have close-up firsthand knowledge of the waterways that need protection and they know about the risks of not taking care of those waters.

MS. CONITZ said all Alaskans currently have the right to nominate waters critically important as Outstanding National Resource Waters. The designation protects waters from long-term pollution and degradation by simply not allowing dumping of waste into them, she continued, and would not preclude ordinary existing uses of the water. But, she stated, HB 138 would remove the right of ordinary Alaskans to take the first step to protect the water that they depend on and care about. The bill would turn efforts to reasonably protect clean water over to a political process, which would probably in practice be nearly impossible to prevail. She pointed out the legislature can at this time designate Tier 3 waters if it chooses to, but evidently it has not, and so there is no point in passing HB 138 to give the legislature more authority. She reiterated that HB 138 would take away the authority and the rights of ordinary Alaskans and would allow further degradation of Alaska's clean waters. She urged the bill not be passed.

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DOUG WOODYBY testified in opposition to HB 138. He said he began working for the Alaska Department of Fish and Game in the mid-1970s and retired a few years ago as a chief fisheries scientist. He noted he conducted research and management work all around the state and is opposed to HB 138 for a number of reasons. The primary reason, he continued, is because it would make the designation of these exceptional waters a political process when it should be based on best scientific expertise. He said that based on the bill's sponsors, it is clear that many are extractive industries. Alaska currently has no waters designated under this special designation, he stated, and it appears that HB 138 is a thinly veiled attempt to make that almost impossible, which is why he opposes it.

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DEANTHA CROCKETT, Executive Director, Alaska Miners Association (AMA), testified in support of HB 138. She spoke as follows:

The Clean Water Act requires all states to maintain a process for Tier 3 water designation. This is for water that's described as having exceptional recreational or ecological significance or waters that are within parks and refuge, so truly special scenarios of water protection above what the State of Alaska already does. Tier 3 waters effectively cannot have any new or any expanded activities that have the potential to change the water quality in any way. So this would apply even in situations where the activity meets existing water quality standards and fully protects the fish and the water and any other uses. A designation would result in significant restrictions on land and water users and cause significant adverse and social and economic impacts. Because a designation applies to a Tier 3 tributary or a Tier 3 water, it would prohibit development in entire watersheds comparable to de factor wilderness. And for that reason we believe ... the authority to designate should lie solely with representatives of Alaskans, which is the legislature.

With regard to the designations, they've got the potential to become tools for anti-development interests to block or delay projects. It's evident in the five nominations before DEC currently, which specify mining, oil and gas, federal land planning, and Alaska Native corporation land selections as threats to waterbodies. But it's clear that a designation goes a lot farther. Tier 3 designation could impact a lot of other users, non-development users that the sponsor outlined in his introduction. ... That is why you will see in your packet a letter authored by 15 diverse organizations that understand the impact of a Tier 3 designation to all Alaskans. And we believe that given the significant adverse and watershed-wide land and water use impacts that a Tier 3 water should be designated only by a vote to the legislature. This is consistent with the constitution, the existing process for setting aside areas of state land from development, and existing DEC policy. And for those reasons we urge you to support this bill.

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JESSICA PLACHTA, Executive Director, Lynn Canal Conservation (LCC), testified in opposition to HB 138. She said her organization's 300 active members are speaking with her as she testifies opposing HB 138 and SB 51. She related that LCC supports the Village of Klukwan, which nominated the Chilkat River for Tier 3 protection. She continued:

Clean water is not a partisan issue. Anyone who has ever fed a child or caught a fish knows that clean water is a basic human right. Alaska is blessed with abundant clean water and despite its small population Alaska is also the biggest water polluter in the country. It can do better than that. The state of Alaska has been out of compliance with the Clean Water Act for over 20 years. But [Alaskans] are demanding the right to protect our clean waters and healthy salmon runs before rampant industrialization makes our way of life history. Support for subsistence is built into the state constitution; it should not be easier to pollute public waters in the state of Alaska than it is to protect them. Opponents of protection argue that Tier 3 designation would be bad for business. Tell that to Florida, which has 41 designated Tier 3 waterways and a robust economy. We are counting on you legislators to resist corporate pressure and do the right thing. Let communities protect the waters they rely on using sound science, not corporate pressure and not politics for the yardstick. It's that simple. There is an alternate Tier 3 bill waiting in the wings, one that makes it easier to protect the water we all rely on for our health, our wealth, and our future generations. Wait for it. Please oppose HB 138 and SB 51. Three hundred of us here in Haines ask you to join us and oppose these destructive backward bills. And please let us protect the Chilkat River.

[3:00:36 PM](#)

LOUIE FLORA, Director, Government Affairs, The Alaska Center (TAC), testified in opposition to HB 138. He stated:

We believe the state's top cop for water quality regulations, DEC, has the ability, expertise, and clear legal authority to establish a science based nomination process for high value waters for Tier 3 water as required under the federal Clean Water Act.

We believe administration of Tier 3 for waters of high ecological or recreational value can be rendered under the existing anti-degradation policy incorporated in the existing DEC water quality standards program. ... DEC does not need additional legal authority to designate Tier 3 waters; it just needs to adopt a process for doing that. Moving legislative designation of Tier 3 waters will result in an entirely political process for any discussion on the science based merits, and the Tier 3 designation will be steamrolled by politics and money. And DEC has the water quality expertise and the ability to regulate water quality [and] should be the entity to make the protective determinations.

MR. FLORA addressed the argument that HB 138 is necessary because Tier 3 designations are too big of a policy call for DEC. He said this to be a strange argument in that EPA is currently moving ahead with certification of an Alaska water quality regulation promulgated by DEC in 2006 that allows pollution-mixing zones in salmon spawning areas statewide. He pointed out that this 2006 regulation has far reaching implications for salmon habitat and for salmon user groups statewide and was carried out administratively. Yet, he continued, with HB 138 it is being said that to protect very specific and geographically limited waters of exceptional ecological value the burden is too great for an administrative process. He said the argument that the agencies should not independently make determinations to protect certain waters ignores the statute that allows citizens, organizations, and state agencies to make in-stream flow or water quantity reservations through an administrative process overseen by DNR. These reservations, he noted, are made quite often by the Alaska Department of Fish and Game to protect fish habitat and it's all without legislated confirmation or approval.

MR. FLORA stated HB 138 is unnecessary and should not be moved from committee. He said DEC should, within its clear authority, create a regulation that satisfies the federal Clean Water Act requirement that states have a process for citizens to nominate specific high value waters for protection from additional degradation.

[3:03:32 PM](#)

GUY ARCHIBALD testified in opposition to HB 138. He stated he is representing himself but works as staff scientist for the

Southeast Alaska Conservation Council (SEACC). He said some of the talking points in the sponsor's statement are imperfectly informed, such as the statement that the State of Alaska currently has no formal process for designating a Tier 3. He drew attention to the [7/26/18] letter in the committee packet from the EPA to Mr. Andrew Sayers-Fay [Director, Division of Water, DEC] and noted the letter mentions that EPA is approving the Tier 1 and Tier 2 because DEC still has in place the interim antidegradation guidance that outlines three different ways to designate Tier 3. One of those ways, he said, is through the triennial review process where any resident of the state can nominate a Tier 3 and DEC is supposed to move that along.

MR. ARCHIBALD said nobody argues that the legislature does not have the authority to designate a Tier 3. He stated the legislature can act on those at any time and has always been able to do that. So, he continued, if this bill is not a bill to form a designation process, then it must be asked, What is it? He said it's clear that HB 138 is designed to take a public process out of it so that the public process does not have an administrative process or even an appeal process judicially to form a Tier 3. In regard to statements that protecting the water is so far reaching and has so many other effects, he pointed out that contaminating water has effects as well - on other landowners, communities, and people's ability to make a living through the fishing industry. He maintained it is not a land use decision because landowners adjacent to the state's public waters have no inherent right to pollute those waters.

CO-CHAIR TARR inquired about the three ways [that DEC has to designate a Tier 3].

MR. ARCHIBALD replied that the Alaska Department of Law (DOL) has done an opinion on this, but has not made it public. He related that the Department of Law told him it was attorney-client privilege. He suggested the committee ask for it.

[3:06:36 PM](#)

SARAH DAVIDSON, Program Manager, Inside Passage Waters, Southeast Alaska Conservation Council (SEACC), testified in opposition to HB 138. She said her position with SEACC provides her the opportunity to travel throughout Southeast Alaska, speak to communities about water challenges and opportunities, and listen to their concerns, needs, and interests. She continued:

Of the many concerns I've heard, those relating to the future of wild Alaskan salmon stocks have come up the most, a concern that I imagine is shared by many in this room. As stressors in the ocean ecosystem increase, our streams and rivers become even more critical to the survival of salmon and the communities that rely on them. Currently most Alaskan waters are clean enough to catch fish and eat without significant health hazards. This is one of the few places on earth where this is the case. That alone makes Alaska unique and fuels our two largest economic drivers in this region - fishing and tourism. We should be doing everything we can to protect that special quality and the waterways that make that possible. Instead HB 138 makes it even more difficult than it already is to protect our clean waters and leads us down the same path from which other states in our country are still struggling to recover after decades of industrial pollution. It should be no more difficult to protect Alaskan waters than it is to pollute them. Not only does HB 138 make this process political rather than scientific by removing authority from DEC, it also removes the opportunity of Tier 3 designation by a public initiative. The same agency that has the scientific expertise to implement a Tier 3 designation should also have the authority to designate them through an administrative and science based process. This is not my perspective alone. It is shared by over 150 people who signed our petition calling for a Tier 3 designation process equally as administrative and streamlined as the permit process to degrade our waters. Any short-term gains made by the passing of HB 138 will be undermined by the long-term detriment to our clean water, our healthy fish, and our resilient communities. HB 138 hurts all of us. ... I call on each representative on this committee to have the will and the courage to prioritize clean water for those yet to come by defeating this bill.

[3:09:20 PM](#)

HEATHER EVOY testified in opposition to HB 138. She stated she is Tsimshian from the Eagle Clan. She noted she works as the Indigenous Engagement Lead for the Southeast Alaska Conservation Council (SEACC), but is speaking today on behalf of herself as an Alaska Native whose ancestors have been here for 10,000-plus years. She said that for almost 10 years DEC has sat on the

five Tier 3 nominations, all of which have come from an Alaska Native tribe, not corporations. In regard to the argument by proponents of a legislative-only Tier 3 process that Tier 3 is just a tool for special interest groups, she pointed out that tribes are not special interest groups any more than any other government entities.

[3:10:53 PM](#)

PHILLIP MOSER testified in opposition to HB 138. He stated that passing the bill would be a blow to the voice and wellbeing of citizens like him. He said he finds it outrageous that the proponents of smaller government and less regulation have a talking point that only applies to industry and capital, but when citizens have a tool to advocate for themselves and their health and the waters on which they rely, proposals are made to add more and more bureaucracy to stop them. He stated DEC is set up precisely to work through Tier 3 water issues and can respond to community advocacy well; shunting Tier 3 designation to the state lawmaking process would result in losing a straightforward fact based investigative process to political stalling.

MR. MOSER asked why business can apply to the DEC with a six-page application to engage in long-term pollution of Alaska's best waters while its own citizens trying to protect those same waters upon which they rely and live on are considered a threat. Regardless of whether the bill passes, he said, the evidence already says Alaska's waters have many stressors and everything possible needs to be done to uphold Alaska's waters as the cleanest and best waters for its own citizens. He noted Tier 3 designations do not apply to existing uses of those waters, and offered his belief that the argument that it could be onerous to people if this legislation isn't passed is much overstated.

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[HB 138 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 3:13 p.m.