

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

February 24, 2020

1:05 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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: 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
04/29/19	(H)	Heard & Held
04/29/19	(H)	MINUTE(RES)
05/03/19	(H)	RES AT 1:00 PM BARNES 124
05/03/19	(H)	Heard & Held
05/03/19	(H)	MINUTE(RES)
02/10/20	(H)	RES AT 1:00 PM BARNES 124

02/10/20 (H) Heard & Held
02/10/20 (H) MINUTE (RES)
02/14/20 (H) RES AT 1:00 PM BARNES 124
02/14/20 (H) Heard & Held
02/14/20 (H) MINUTE (RES)
02/17/20 (H) RES AT 1:00 PM BARNES 124
02/17/20 (H) Heard & Held
02/17/20 (H) MINUTE (RES)
02/24/20 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE CHUCK KOPP
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking as the sponsor of HB 138, provided comments in support of and opposition to proposed amendments to the bill.

MARIE MARX, Attorney
Legislative Legal Counsel
Legislative Legal Services
Legislative Affairs Agency
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing of HB 138.

TREVER FULTON, Staff
Representative Chuck Kopp
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Kopp, sponsor of HB 138, explained the purpose of an amendment to the bill.

ACTION NARRATIVE

[1:05:30 PM](#)

CO-CHAIR GERAN TARR called the House Resources Standing Committee meeting to order at 1:05 p.m. Representatives Tuck, Hannan, Talerico, Spohnholz, Hopkins, Lincoln, and Tarr were present at the call to order. Representatives Rasmussen and Rauscher arrived as the meeting was in progress.

HB 138-NATIONAL RESOURCE WATER DESIGNATION

[1:06:10 PM](#)

CO-CHAIR TARR announced the only 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."

[Before the committee was the committee substitute for HB 138, Version K, adopted as a working document during the bill hearing on 2/10/20.]

[1:07:35 PM](#)

REPRESENTATIVE SPOHNHOLZ moved to adopt Amendment 1, labeled 31-LS0811\K.5, Marx, 2/13/20, which read [original punctuation provided]:

Page 2, line 2:

Delete "seven"

Insert "nine"

Page 2, lines 10 -11:

Delete "or Native Corporation"

Page 2, following line 11:

Insert new subparagraphs to read:

"(B) one member who represents a Native corporation in the state;

(C) one member who represents the general public;"

CO-CHAIR TARR objected for discussion purposes.

REPRESENTATIVE SPOHNHOLZ explained Amendment 1 would expand the membership of the [Alaska Outstanding Resource Water Advisory] commission so that the one seat currently representing a tribal entity, or a Native corporation, would represent a tribal entity, one additional seat would represent a Native corporation, and one additional seat would represent the general public. The amendment sponsors sought to respond to public testimony that Tier 3 water designation is important to tribal communities that may have competing interests with Native corporations, and to also expand membership of the commission to include one member of the public.

REPRESENTATIVE CHUCK KOPP, Alaska State Legislature, sponsor of HB 138, agreed Amendment 1 provided balance to the commission by creating separate seats for tribal entities, Native corporations, and a member of the public.

[1:10:24 PM](#)

CO-CHAIR TARR moved to adopt Conceptual Amendment 1 to Amendment 1, which read:

On line 12, following "public," add:

with the qualifications of a four-year degree in natural sciences, or five years relevant experience.

REPRESENTATIVE HOPKINS objected for discussion purposes. He agreed that the public member should have academic experience, considering the importance of the bill to Alaska's ecosystems, and urged that the public member hold an advanced degree.

[1:11:38 PM](#)

REPRESENTATIVE HOPKINS moved to adopt [a conceptual amendment to Conceptual Amendment 1], which read:

On line 12, following "(C)," add:

one member who holds a PhD in natural sciences or has five years relevant experience working for an environmental research entity.

The committee took a brief at-ease.

[1:13:01 PM](#)

REPRESENTATIVE HOPKINS moved to adopt [second conceptual amendment to Conceptual Amendment 1], which read:

On line 12, following "(C)," add:

one member who represents the general public, with the qualifications of holding a PhD in natural sciences or five years relevant experience working for an environmental research entity.

CO-CHAIR TARR objected for discussion purposes.

REPRESENTATIVE HANNAN expressed her concern that requiring a PhD restricts the number of qualified members who are available to serve on the commission and suggested holding an advanced degree in natural resources would suffice.

REPRESENTATIVE SPOHNHOLZ agreed with [the second conceptual amendment]; she said Alaska has three universities, staffed by academics with doctorates in natural sciences, available to serve on the commission. In addition, a highly-qualified public member would assure communities that the commission process is science-based.

REPRESENTATIVE RASMUSSEN agreed with Representative Hannan that a person with a four-year degree could be well-qualified in their field.

REPRESENTATIVE TALERICO agreed with Representative Hannan that the seat may be difficult to fill and keep filled.

[1:17:11 PM](#)

REPRESENTATIVE KOPP expressed support for Conceptual Amendment 1 as originally offered. He said requiring a PhD in a subject matter directly dealing with water would limit the number of those willing to serve on the commission to "a handful of people in Alaska." In addition, five years relevant experience working in an environmental research firm may not necessarily be meaningful experience.

[1:19:33 PM](#)

The committee took a brief at-ease.

[1:20:01 PM](#)

REPRESENTATIVE HOPKINS withdrew second conceptual amendment to Conceptual Amendment 1 and moved to adopt third conceptual amendment to Conceptual Amendment 1 which read:

On line 12, following "(C)," add:

one member who represents the general public, with the qualifications of an advanced degree in natural sciences or five years of relevant experience working for an environmental research organization.

CO-CHAIR TARR objected for discussion purposes.

REPRESENTATIVE HOPKINS explained the purpose of the conceptual amendment is to ensure the public member of the commission holds a four-year degree and also has specific qualifications, a research background and interest in natural sciences, and work experience relevant to the issue. In response to Representative Spohnholz, he clarified the public member would have an advanced degree or five years of work experience.

REPRESENTATIVE SPOHNHOLZ asked for a legal definition of relevant experience.

[1:22:52 PM](#)

REPRESENTATIVE RASMUSSEN noted the commission would include members from the Department of Environmental Conservation (DEC), the Department of Natural Resources (DNR), and the Alaska Department of Fish and Game (ADFG) - all of which are science-based departments - and thus would provide sufficient scientific background to the commission.

REPRESENTATIVE HOPKINS said his intent is that relevant work experience would include research into water and Alaska's environment and ecosystem. He stressed the public member would provide a scientific opinion and vote to the nine-member commission.

CO-CHAIR TARR removed her objection.

REPRESENTATIVE RASMUSSEN objected.

[1:25:17 PM](#)

A roll call vote was taken. Representatives Tuck, Hannan, Hopkins, Spohnholz, and Tarr voted in favor of the [third conceptual amendment to Conceptual Amendment 1]. Representatives Rasmussen, Rauscher, Talerico, and Lincoln voted against it. Therefore, the conceptual amendment was adopted by a vote of 5-4.

[1:27:10 PM](#)

The committee took an at-ease from 1:27 p.m. to 1:35 p.m.

[1:35:41 PM](#)

CO-CHAIR TARR moved to rescind the committee's action in adopting [the conceptual amendment to Conceptual Amendment 1]. There being no objection, it was so ordered.

[1:35:49 PM](#)

CO-CHAIR TARR withdrew Conceptual Amendment 1.

[1:35:57 PM](#)

REPRESENTATIVE SPOHNHOLZ moved to adopt [Conceptual Amendment 2] which read:

On line 12, [following (C)]:

one member who represents the general public and has an advanced degree in a natural science.

REPRESENTATIVE RASMUSSEN objected for discussion purposes. She expressed her belief one who has "experience in the field" should be considered as a candidate for a member of the commission; [Conceptual Amendment 2] eliminates options for great candidates who would participate in the important process of determining Tier 3 waters. She pointed out the message to youth would be that a college degree supersedes any relevant work or technical experience.

REPRESENTATIVE RAUSCHER stated his agreement with Representative Rasmussen.

REPRESENTATIVE HANNAN spoke in favor of [Conceptual Amendment 2]. She said [HB 138] creates a commission with an authority that not been exercised by the state; of the proposed nine-member commission only the general public seat is required to have a science background. She acknowledged commissioners, and other members, may have a science background, but it is not required, and some members may be appointed due to their life experience.

[1:39:27 PM](#)

REPRESENTATIVE TALERICO agreed relevant experience may qualify members; for example, many Alaskans have work experience in matters of water control, and nonpoint source and point source discharges, and thereby understand the hydrology of water control.

REPRESENTATIVE KOPP urged the committee to accommodate all concerns by extending the language of the conceptual amendment to include "or five years relevant work experience in a natural science profession."

REPRESENTATIVE RASMUSSEN maintained her objection.

[1:42:09 PM](#)

A roll call vote was taken. Representatives Hannan, Hopkins, Spohnholz, Tuck, Lincoln, and Tarr voted in favor of [Conceptual Amendment 2]. Representatives Rasmussen, Rauscher, and Talerico voted against it. Therefore, [Conceptual Amendment 2] was adopted by a vote of 6-3.

[1:43:26 PM](#)

The committee took an at-ease from 1:43 p.m. to 1:45 p.m.

[1:45:21 PM](#)

REPRESENTATIVE RAUSCHER moved to adopt [Conceptual Amendment 3] which read:

On line 12, following "science," add:

or five years of relevant work experience.

CO-CHAIR TARR objected for discussion purposes.

REPRESENTATIVE SPOHNHOLZ asked for the meaning of relevant work experience.

REPRESENTATIVE RAUSCHER explained relevant work experience is on the job experience in an identified field.

REPRESENTATIVE SPOHNHOLZ suggested the work experience should specify in a field of natural sciences.

[1:46:55 PM](#)

The committee took an at-ease from 1:46 p.m. to 1:52 p.m.

REPRESENTATIVE RAUSCHER restated [Conceptual Amendment 3] which read:

On line 12, following "science," add:

or five years of relevant work experience in the field of natural sciences.

CO-CHAIR TARR asked whether there was objection to [Conceptual Amendment 3 to Amendment 1]. There being no objection, [Conceptual Amendment 3] was adopted.

CO-CHAIR TARR returned attention to Amendment 1, as amended.

REPRESENTATIVE HOPKINS questioned whether a definition of relevant work experience can be found, or is utilized, in statute.

[1:54:50 PM](#)

MARIE MARX, attorney, Legislative Legal Counsel, Legislative Legal Services, Legislative Affairs Agency, informed the committee she had not found a definition of relevant experience in statute; in absence of a definition, the Alaska Supreme Court has advised that when common terms are used in statute, words are given their common meaning, as can be found in a dictionary. However, to provide clarity, the committee could add a definition.

CO-CHAIR TARR removed her objection to Amendment 1, as amended. There being no further objection, Amendment 1, as amended, was adopted.

[1:56:08 PM](#)

CO-CHAIR TARR moved to adopt Amendment 2, labeled 31-LS0811\K.10, Marx, 2/20/20, which read:

Page 2, line, following "water.":

Insert "The department shall provide administrative support to the commission and, at the request of the commission, provide the scientific analysis necessary for the commission to make a decision under this section."

CO-CHAIR LINCOLN objected for discussion purposes.

CO-CHAIR TARR explained Amendment 2 clarifies that, if requested, the department will provide commission members assistance in their review of a nomination, and that the

department will provide administrative support to the commission.

[1:57:18 PM](#)

CO-CHAIR TARR moved to adopt Conceptual Amendment 1 to Amendment 2, which read:

On line 3:

delete "provide" and insert "assist with"

REPRESENTATIVE TUCK objected for discussion purposes.

CO-CHAIR TARR clarified the amendment to line 3.

[1:59:05 PM](#)

REPRESENTATIVE TUCK removed his objection and there being no further objection, Conceptual Amendment 1 to Amendment 2 was adopted.

REPRESENTATIVE KOPP expressed his support for Amendment 2, as amended, and pointed out the assistance from the department would come at the consensus of the commission and in a role not too prescriptive. Further, the commission will need administrative support from department staff.

[2:00:42 PM](#)

CO-CHAIR LINCOLN removed his objection to Amendment 2, as amended.

REPRESENTATIVE HOPKINS objected for discussion purposes.

REPRESENTATIVE HOPKINS questioned whether a consensus was required to request scientific analysis from the department; he expressed his belief an individual commission member should have access to department staff.

CO-CHAIR TARR explained her intent was to ensure access to the department could be requested by the commission when necessary.

REPRESENTATIVE KOPP agreed.

[2:02:58 PM](#)

REPRESENTATIVE HOPKINS removed his objection and there being no further objection, Amendment 2, as amended, was adopted.

[2:03:22 PM](#)

CO-CHAIR LINCOLN moved to adopt Amendment 3, labeled 31-LS0811\K.11, Marx, 2/20/20, which read:

Page 4, line 23:
Delete "."
Insert ";"

Page 4, following line 23:
Insert a new paragraph to read:
 "(3) "resident of the state" includes
 (A) an individual who establishes residency
under AS 01.10.055;
 (B) a corporation, company, partnership,
firm, association, organization, business, trust, or
society organized, incorporated, or headquartered in
the state;
 (C) a federally recognized tribe or tribal
entity in the state."

CO-CHAIR TARR objected for discussion purposes.

CO-CHAIR LINCOLN explained Amendment 3 clarifies who can bring a nomination forward by describing, in addition to an individual, a resident of the state includes a variety of organizations, corporations, federally recognized tribes, and tribal entities in the state.

REPRESENTATIVE RASMUSSEN asked how organizations prove they are headquartered in Alaska.

MS. MARX advised an entity could provide documentation regarding its address, records, and tax forms, and the commission would determine whether the requirement is met.

[2:05:31 PM](#)

REPRESENTATIVE RASMUSSEN inquired as to whether the commission would require an entity to be present in Alaska for at least one year.

MS. MARX said the amendment does not include the requirement of a set duration but only that the organization is organized, incorporated, or headquartered in the state.

REPRESENTATIVE RASMUSSEN surmised an entity could qualify and bring forward a nomination one day after it opened its door.

MS. MARX said correct.

CO-CHAIR LINCOLN directed attention to the statutory definition for residency, AS 01.10.055, which read [original punctuation provided]:

(a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

(b) A person demonstrates the intent required under (a) of this section

(1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and

(2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state.

CO-CHAIR LINCOLN said the residency requirement for an individual is at least 30 days.

MS. MARX noted in the amendment, as drafted, AS 01.10.055 applies only to an individual; subparagraphs (B) and (C) do not have durational requirements.

[2:08:47 PM](#)

The committee took an at-ease from 2:08 p.m. to 2:10 p.m.

CO-CHAIR TARR suggested the committee consider language to include durational requirements for subparagraphs (B) and (C).

MS. MARX said if the intent of the legislature is to include certain durational requirements of an entity, durational requirements can be incorporated by Legislative Legal Services if granted technical and conforming authority.

REPRESENTATIVE RASMUSSEN asked whether constitutional issues regarding residency requirements may arise; she provided examples of one-year residency requirements, such as for certain licenses issued by ADFG and the permanent fund dividend.

MS. MARX offered to review possible constitutional issues.

REPRESENTATIVE TUCK observed the commission would have responsibilities regarding the allocation of land, water, and other resources; he cautioned against nominations made by outsiders unfamiliar with Alaska and said he supported [the inclusion of durational requirements].

[2:15:02 PM](#)

REPRESENTATIVE HOPKINS agreed; however, he posited a group of individual Alaskans who organize may have to wait one year to forward a nomination for a Tier 3 waterway. He urged the committee to garner advice from Ms. Marx before proceeding in this regard.

CO-CHAIR TARR asked Ms. Marx whether a resident of the state would qualify to forward a nomination under subparagraph (A), (B), or (C).

MS. MARX explained paragraph (3), subparagraph (A) incorporates the residency requirement referenced in AS 01.10.055, which is by maintaining a principal residence in the state for 30 days. A residency requirement would have to be added to subparagraphs (B) and (C).

CO-CHAIR TARR surmised in Representative Hopkins' example, individuals who form a group would still qualify under subparagraph (A).

MS. MARX agreed a nomination submitted in an individual's name, who is a resident of the state, would qualify under subparagraph (A) and individuals would have to decide in which category to submit a nomination.

[There followed examples and a short discussion in this regard.]

[2:19:23 PM](#)

REPRESENTATIVE TUCK directed attention to Version K on page 2, line 26, which read:

(1) establish a process for a resident of the state to nominate water for designation as outstanding national resource water; the process must at a minimum require that the nomination be submitted to the commission in writing and include

REPRESENTATIVE TUCK directed attention to Version K on page 2, line 26, and pointed out a requirement of at least one-year residency could be included in [proposed new section 46.03.087 (e) (1), Version K].

REPRESENTATIVE HOPKINS asked whether subparagraphs (A), (B), or (C) include municipalities or political subdivisions of the state.

MS. MARX said, as drafted, Amendment 3 does not prohibit other entities who fit in similar categories as those identified; however, to ensure municipalities are included, she recommended they be added to the definition.

REPRESENTATIVE HOPKINS moved to adopt Conceptual Amendment 1 to Amendment 3 which read:

On line 12, following "state," add:

or municipality or political subdivision of the state;

REPRESENTATIVE RASMUSSEN objected for discussion purposes. She asked for the definition of a political subdivision.

MS. MARX offered to provide a definition of a political subdivision.

CO-CHAIR TARR questioned whether the addition of political subdivision could be included by the conforming authority granted to Legislative Legal Services.

MS. MARX advised that would be a substantive change that would exceed technical and conforming authority without an amendment request.

The committee took a brief at ease.

REPRESENTATIVE HOPKINS restated Conceptual Amendment 1 to read:

On line 12 following "state," add:

(D) a political subdivision of the state or municipality.

REPRESENTATIVE RASMUSSEN removed her objection. There being no further objection, Conceptual Amendment 1 to Amendment 3 was adopted.

REPRESENTATIVE RASMUSSEN asked whether subparagraph (A), which referenced AS 01.10.0055 30-day residency, would be in conflict with the addition of a one-year residency to proposed new section 46.03.087 (e)(1), Version K, that was suggested by Representative Tuck.

MS. MARX recommended the committee add the definition in Amendment 3, if adopted.

[2:29:50 PM](#)

CO-CHAIR LINCOLN returned attention to AS 01.10.055 [text previously provided]. He noted the statute directs "maintaining a principal place of abode in the state for at least 30 days ... or for a longer period if a longer period is required by law or regulation."

MS. MARX stated to avoid confusion about the committee's intent, she recommended the committee add its definition to "resident of the state" in paragraph (3) of Amendment 3. She acknowledged AS 01.10.055 allows a longer period of time if stated in the law.

[2:31:22 PM](#)

The committee took an at-ease from 2:31 p.m. to 2:33 p.m.

[2:33:45 PM](#)

CO-CHAIR TARR said Amendment 3, as amended, was set aside for further drafting.

REPRESENTATIVE HOPKINS suggested on Amendment 3, line 7, a change from "includes" to "means."

The committee took a brief at-ease.

[2:35:24 PM](#)

CO-CHAIR LINCOLN withdrew Amendment 3.

[2:35:55 PM](#)

REPRESENTATIVE HANNAN moved to adopt Amendment 4, labeled 31-LS0811\K.12, Marx, 2/20/20, which read:

Page 2, line 9:

Delete "governor"

Insert "governor and confirmed by a majority of the members of the legislature in joint session:"

CO-CHAIR TARR objected for discussion purposes.

REPRESENTATIVE HANNAN explained Amendment 4 would require that the members of the Alaska Outstanding Resource Water Advisory Commission would be subject to confirmation by the legislature.

REPRESENTATIVE RASMUSSEN expressed her support for Amendment 4, which would balance the influence of the governor.

REPRESENTATIVE SPOHNHOLZ surmised only the non-commissioner appointees would be affected.

REPRESENTATIVE HANNAN said yes.

CO-CHAIR LINCOLN observed Version K specifies each appointee from DEC, DNR, and ADFG would be the commissioner or the commissioner's designee.

CO-CHAIR TARR cautioned the amendment may mean that appointees have to tolerate high levels of scrutiny, as do other appointees to state boards and commissions, who are confirmed by the legislature. She said the [nomination advisory commission] is more technical, and less political, in nature.

REPRESENTATIVE TUCK directed attention to Version K, page 2, line 9, and clarified Amendment 4 does not affect commissioners

[of departments or their] designees but relates to the other members of the advisory commission.

REPRESENTATIVE HOPKINS pointed out the commission would not be a judicial or quasi-judicial board that makes decisions but would make recommendations to the legislature for review and final action. He asked to hear the bill sponsor's opinion on the amendment.

REPRESENTATIVE RASMUSSEN agreed the confirmation process can be chaotic for the governor and the legislature; however, the review of appointees through the committee hearing confirmation process would ensure the best appointees are seated on the commission.

REPRESENTATIVE TALERICO agreed with Representative Hopkins that most members of commissions [confirmed by the legislature] are not in an advisory capacity but serve in a decision-making process, and individuals who serve in a traditional advisory capacity are usually not subject to confirmation.

[2:42:52 PM](#)

REPRESENTATIVE HANNAN referred to a legal memo advising that appointees to commissions and boards that have adjudicatory or allocative authority, such as the Board of Game and the Board of Fisheries, must be confirmed, as do licensing boards, which have adjudicatory authority [document not provided]. She said the [Alaska Outstanding Resource Water Advisory Commission] is in-between: it does not have direct authority but is part of a Tier 3 designation process that is allocative of a natural resource. In addition, the legislative confirmation of appointees would add legitimacy to the designation process.

REPRESENTATIVE RAUSCHER recalled previous testimony that the legislature does not have to follow the [Tier 3 water designation process].

REPRESENTATIVE HANNAN said [after passage of HB 137] the legislature would not designate outstanding natural resource water.

CO-CHAIR TARR disagreed, noting constituents would still be able to bring a bill directly to their legislator for introduction.

REPRESENTATIVE SPOHNHOLZ opined the commission is neither adjudicative nor allocative; in fact, the legislature could

ignore its recommendations. The purpose of the commission is to provide another method to vet and process nominations; those who oppose creating the commission state the commission is unnecessary, unlike the Regulatory Commission of Alaska, for example.

REPRESENTATIVE KOPP directed attention to [the Alaska State Constitution, article 3, section 26] which read:

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

REPRESENTATIVE KOPP said the constitution makes clear when appointees to boards and commissions are subject to confirmation. He observed Alaska has 136 boards and commissions, most of which are not subject to legislative confirmation; of 136, 28 are of an advisory nature and all but the Alaska Commercial Fishermen's Fund Advisory and Appeals Council and the Alaska Royalty Oil and Gas Development Advisory Board, both of which have duties beyond those of an advisory body, are not subject to legislative confirmation. He agreed boards with licensing or adjudicatory authority are subject to confirmation; however, the Alaska Outstanding Resource Water Advisory Commission created by HB 137 would be fundamentally advisory in nature, and he cautioned there is legal precedent that Amendment 4 may be unconstitutional. Representative Kopp stressed the legislature retains final authority above the commission and expressed his opposition to the amendment.

[2:50:50 PM](#)

REPRESENTATIVE HANNAN withdrew Amendment 4.

[There followed discussion related to the committee's action on amendments and on forthcoming amendments.]

[2:54:29 PM](#)

CO-CHAIR LINCOLN moved to adopt [Amendment 5, identified on the audio recording as Amendment 11], labeled 31-LS0811\K.20, Marx, 2/21/20, which read:

Page 3, line 5:

Delete "nonpoint source"

Page 4, lines 18 - 23:

Delete all material and insert:

"(j) In this section, "commission" means the Alaska Outstanding Resource Water Advisory Commission."

CO-CHAIR TARR objected for discussion purposes.

[2:54:46 PM](#)

TREVER FULTON, staff, on behalf of Representative Kopp, sponsor of HB 138, explained [Amendment 5, K.20] addresses a drafting oversight. The sponsor of the bill did not intend to exclude point source activities from what is considered in the "nomination package"; in fact, point sources would be a factor reviewed by DEC in a Tier 3 waterbody designation, and removing nonpoint source activity from the criteria section of the bill would thereby include point source and nonpoint source activities. In addition, the amendment removes the definition of nonpoint source activities.

CO-CHAIR TARR surmised the amendment would broaden the definition of activities.

MR. FULTON said correct.

REPRESENTATIVE TUCK asked for clarification.

MR. FULTON directed attention to Version K, on page 3, line 5, which read:

(E) a discussion of any nonpoint source activity to be conducted in the foreseeable future that may affect water quality;

MR. FULTON further explained the removal of [subparagraph (E)] would open the discussion to include both point and nonpoint source activities; nonpoint source is also referred to in the

bill in the definition section on page 4, which would also be removed.

2:57:03 PM

CO-CHAIR TARR removed her objection and there being no further objection, [Amendment 5, K.20] was adopted.

[HB 138 was held over.]

2:59:53 PM

The committee took a brief at-ease.

3:00:55 PM

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:00 p.m.