

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 13, 2020

1:04 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

MEMBERS ABSENT

Representative Dave Talerico
Representative George Rauscher
Representative Sara Rasmussen

COMMITTEE CALENDAR

HOUSE BILL NO. 240

"An Act relating to pollutants; relating to perfluoroalkyl and polyfluoroalkyl substances; relating to the duties of the Department of Environmental Conservation; and relating to firefighting substances."

- 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

HOUSE BILL NO. 218

"An Act relating to salt water sport fishing operators and salt water sport fishing guides; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 240

SHORT TITLE: REGULATE PFAS USE; FIRE/WATER SAFETY

SPONSOR(S): REPRESENTATIVE(S) HANNAN

02/07/20 (H) READ THE FIRST TIME - REFERRALS
02/07/20 (H) RES, FIN
03/09/20 (H) RES AT 1:00 PM BARNES 124
03/09/20 (H) Heard & Held
03/09/20 (H) MINUTE(RES)
03/13/20 (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
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
02/24/20 (H) Heard & Held
02/24/20 (H) MINUTE(RES)
03/06/20 (H) RES AT 1:00 PM BARNES 124
03/06/20 (H) <Bill Hearing Canceled>
03/09/20 (H) RES AT 1:00 PM BARNES 124
03/09/20 (H) Heard & Held
03/09/20 (H) MINUTE(RES)
03/11/20 (H) RES AT 1:00 PM BARNES 124
03/11/20 (H) Heard & Held
03/11/20 (H) MINUTE(RES)
03/13/20 (H) RES AT 1:00 PM BARNES 124

BILL: HB 218

SHORT TITLE: SALT WATER FISHING: OPERATORS/GUIDES
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/27/20	(H)	READ THE FIRST TIME - REFERRALS
01/27/20	(H)	FSH, RES, FIN
02/06/20	(H)	FSH AT 11:00 AM GRUENBERG 120
02/06/20	(H)	Heard & Held
02/06/20	(H)	MINUTE(FSH)
02/13/20	(H)	FSH AT 11:00 AM GRUENBERG 120
02/13/20	(H)	Heard & Held
02/13/20	(H)	MINUTE(FSH)
02/20/20	(H)	FSH AT 11:00 AM GRUENBERG 120
02/20/20	(H)	Moved CSHB 218(FSH) Out of Committee
02/20/20	(H)	MINUTE(FSH)
02/21/20	(H)	FSH RPT CS(FSH) 5AM
02/21/20	(H)	AM: KOPP, VANCE, TARR, KREISS-TOMKINS, STUTES
03/13/20	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

RANDY KRAUSE, Fire Chief
Port of Seattle Fire Department
Seattle, Washington

POSITION STATEMENT: Testified in support of HB 240.

RENEE LANI, Spokesperson
American Chemistry Council
Washington, D.C.

POSITION STATEMENT: Testified in opposition to HB 240.

MELANIE LESH
Gustavus, Alaska

POSITION STATEMENT: Testified in support of HB 240.

PAMELA MILLER, Executive Director
Alaska Community Action on Toxins
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 240.

STEVE RISOTTO, Spokesperson
American Chemistry Council
Washington, D.C.

POSITION STATEMENT: Testified in opposition to HB 240.

GREG STREVELER, Retired Biologist
Gustavus PFAS Action Coalition

Gustavus, Alaska

POSITION STATEMENT: Testified in support of HB 240.

DAVID BERREY, Spokesperson

Wake Up Alaskans to the Toxic Environmental Reality (WATER)

North Pole, Alaska

POSITION STATEMENT: Testified in support of HB 240.

JOHN BINDER, Deputy Commissioner

Office of the Commissioner

Department of Transportation & Public Facilities

Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 240.

REPRESENTATIVE CHUCK KOPP

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As prime sponsor, answered questions during the hearing on HB 138.

MARIE MARX, Attorney

Legislative Legal Counsel

Legislative Legal Services

Legislative Affairs Agency

Juneau, Alaska

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

DOUG VINCENT-LANG, Commissioner

Alaska Department of Fish & Game

Juneau, Alaska

POSITION STATEMENT: Introduced HB 218 and answered questions.

RACHAEL HANKE, Legislative Liaison

Office of the Commissioner

Alaska Department of Fish & Game

Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis during the hearing on HB 218.

ACTION NARRATIVE

[1:04:38 PM](#)

CO-CHAIR JOHN LINCOLN called the House Resources Standing Committee meeting to order at 1:04 p.m. Representatives Tuck,

Hannan, Spohnholz, Hopkins, Tarr, and Lincoln were present at the call to order.

HB 240-REGULATE PFAS USE; FIRE/WATER SAFETY

[1:05:18 PM](#)

CO-CHAIR LINCOLN announced the first order of business would be HOUSE BILL NO. 240, "An Act relating to pollutants; relating to perfluoroalkyl and polyfluoroalkyl substances; relating to the duties of the Department of Environmental Conservation; and relating to firefighting substances."

REPRESENTATIVE HANNAN reminded the committee that HB 240 would set in statute standards for clean drinking water and assure that Alaskans who have been exposed to perfluoroalkyl and polyfluoroalkyl (PFAS) substances have options for blood monitoring.

[1:07:12 PM](#)

RANDY KRAUSE, Fire Chief, Port of Seattle Fire Department, paraphrased from the following written testimony [original punctuation provided]:

Thank you to the members of the House Resources Committee for allowing me to testify today.

My name is Randy Krause, and I serve as the Fire Chief for the Port of Seattle providing service to Sea-Tac International Airport. I am here to share my support for the bill before you, and to thank Committee Chair Tarr and sponsoring Representative Hannan for their leadership.

At the Port of Seattle, we have been actively involved with the industry to find a solution and are working with our partners at the Federal Aviation Administration to encourage the implementation of new fluorine-free firefighting foam.

While federal law currently requires the use of firefighting foam that includes PFAS chemicals, our airport director Lance Lyttle sent the FAA a letter in 2018 urging the FAA to aggressively pursue a fluorine-free option.

The 2018 FAA Reauthorization Act passed by Congress requires the evaluation and implementation of fluorine-free foam by the end of 2021.

Many of my peers at airports across the globe have already made the change to fluorine free foam and I personally have witnessed fluorine free foam used with great success and am confident the FAA will find a suitable alternative within the deadline.

We recognize that there is concern in the firefighting industry with the FAA meeting its 2021 deadline.

I, however, am confident the FAA will reach a solution and I am looking forward to being one if not the first airport in the United States to go fluorine free.

We do understand these types of bills have differing effects on various industries. It appears you have addressed some of the concerns we had in Washington state with this bill and we are happy to work with and help the sponsors as this moves forward.

Thank you, and with that I am happy to answer any questions.

CO-CHAIR TARR asked Mr. Krause how he could assist the bill sponsor.

MR. KRAUSE answered that through various organizations he has been searching for a suitable alternative for the firefighting industry at airports and soon will be involved in Federal Aviation Administration (FAA), U.S. Department of Transportation, testing fluorine-free products. The U.S. approach to finding a fluorine-free product has been tentative; however, Heathrow Airport Limited, Copenhagen Airport, and airports in Australia and all of the United Kingdom, have switched to fluorine-free foam, are comfortable with the product, and are excited because it is a biodegradable product with zero cleanup costs or impacts. Speaking from his experience, he said he offered his help to the fire chief at the Ted Stevens Anchorage International Airport and seeks to keep all those working in the firefighting industry apprised in this regard.

CO-CHAIR TARR noted the transition to alternatives by large international airports could serve as a model for Alaska.

MR. KRAUSE advised that FAA has a list of products that are approved for use at airports, none of which are fluorine-free foam; however, there is a new testing facility to test fluorine-free foam, and he and others are urging FAA to find suitable products soon. Internationally, the firefighting industry has completed a lot of testing and research; in fact, due to his experience with testing, he said he would switch to fluorine-free foam, certificated International Civil Aviation Organization (ICAO), United Nations, "level C foam" tomorrow, if approved by FAA. He acknowledged at this time fluorine-free foam is not as effective as aqueous film-forming foam (AFFF) concentrates; however, AFFF cannot be used in training in Washington, and training can make up for what he characterized as a three-second delay in extinguishment.

[1:14:25 PM](#)

CO-CHAIR LINCOLN opened public testimony on HB 240.

[1:14:50 PM](#)

RENEE LANI, Spokesperson, American Chemistry Council (ACC), said Section 1 of HB 240 seeks to ban AFFF, with one exemption. The American Chemistry Council is opposed to HB 240 for the following reasons: AFFF is the most effective foam to fight high hazard level flammable liquid fires in certain applications and has proven effectiveness in large-scale tank fires and other high hazard Class B fires due to its unique properties that have been reported nationally and are proven to protect firefighters. Fluorine-free foams provide an alternative in some applications, such as spill fires and smaller tank fires, but do not provide the same level of suppression and other capabilities. Certain international airports have chosen to switch to fluorine-free foams, but fluorinated foams are used in petrochemical facilities to manage high hazard fire risk. Ms. Lani pointed out that although HB 240 would allow continued use of PFAS foam by the oil and gas industry, there may be other circumstances in which the use of PFAS foam is necessary. She said any safe alternative identified by the state fire marshal must provide equivalent performance to AFFF formulations to ensure safety; AFFF protects life and property in Class B fires and should be used responsibly and discharges contained. She said ACC supports the ban on the use of AFFF in training and also supports the use of best management practices that reduce the discharge of foam in all uses. In fact, legislation in other states has required the use of best practices and banned the

release of PFAS foam into the environment, except in emergencies, and ACC supports this approach, rather than that of HB 240.

[1:18:38 PM](#)

REPRESENTATIVE TUCK asked Ms. Lani to clarify ACC's specific opposition to the bill.

MS. LANI explained ACC is generally opposed to [proposed new section] 46.03.350, use of firefighting substances, and instead recommends legislation related to the use of best practices, as has been passed in Virginia and Wisconsin, which prohibits the use of AFFF in training and limits some use in testing, but not the use of AFFF when needed. She acknowledged not all fire departments need AFFF because they respond to Class A fires.

REPRESENTATIVE TUCK pointed out 46.03.350 would allow for PFAS use in the oil and gas industry; he questioned whether ACC seeks stronger or more restrictive language in the bill.

MS. LANI said subsection (a) is not broad enough. For example, Class C fires may also involve ethanol; therefore, industries other than the oil and gas industry need to have the option to use AFFF. Further, subsection (b) does not make clear what safe and effective means in all circumstances. She restated support for legislation passed in Virginia [document not provided].

[1:23:38 PM](#)

CO-CHAIR TARR inquired as to ACC's position on adverse health impacts related to the use of AFFF.

MS. LANI stated the chemical industry has always supported the use of best practices to manage any exposure to chemicals; the best practices she cited were developed by the Fire Fighting Foam Coalition, which is an association that represents the manufacturers of fluorine-free and fluorinated foam.

CO-CHAIR TARR restated her question specific to ACC's position on adverse health effects from exposure to PFAS chemicals.

MS. LANI said PFAS chemicals describe a very broad term of chemistry that poses varied hazards and profiles; the chemistry indicative of fluorinated foam currently manufactured is represented by perfluorohexanoic acid (PFHxA) that is not carcinogenic or mutant genic and does not have developmental or

reproductive toxicity. She urged for the use of best practices with all chemistries.

1:26:22 PM

REPRESENTATIVE HANNAN questioned whether PFHxA has any health impacts.

MS. LANI said she would provide citations demonstrating scientific support for PFHxA; she said she could not address the class of chemicals identified as PFAS. For example, fluoropolymer is not used in firefighting foam and cannot be absorbed by the body. She further explained the different chemistries known as PFAS are chemistries with specific characteristics, and she provided data specific to PFHxA, which is the chemistry of AFFF manufactured today.

REPRESENTATIVE HANNAN surmised PFHxA is not a chemical the bill seeks to regulate and is not currently used in the manufacture of AFFF.

MS. LANI restated PFHxA is currently used in AFFF.

REPRESENTATIVE HANNAN further asked whether PFHxA has no adverse health impacts or lasting environmental impacts.

MS. LANI remarked:

I think that the weight of the evidence has demonstrated that it has low risk. There are certainly -- I cannot say that there is not a study that does not suggest, you know, as with every chemistry. I have seen, you know, for instance, the CDC used to do NHANES biomonitoring tests for it in human blood, but they actually stopped testing for it because they weren't finding it in blood sampling that they do repeatedly. We've also seen low detection limits of it across all of the different water testing that's being done in the country right now, throughout the country. So, it presents low risk, that chemistry that's being used.

1:29:07 PM

REPRESENTATIVE HANNAN recalled Ms. Lani's earlier statement that the bill fails to provide exceptions for industries with high

risk for fire, in addition to the oil and gas industry, and asked what industries store a high concentration of ethanol.

MS. LANI offered to provide further information.

REPRESENTATIVE HANNAN stressed information that is pertinent to Alaska is needed to ensure fire safety in Alaska.

REPRESENTATIVE TUCK returned attention to [proposed new section] 46.03.050 [(b)], noting the state fire marshal would determine what is a safe and effective, alternative firefighting substance; he questioned ACC's opposition to subsection (b), and opined that the fire marshal should be trusted to protect firefighter and public safety.

CO-CHAIR TARR asked Ms. Lani to identify the alternative chemical with no health effects.

MS. LANI clarified the current chemistry used in AFFF is perfluorohexanoic acid, known as PFHxA. In further response to Co-Chair Tarr, she said she would provide additional information on PFHxA, which is a long chain chemistry.

[1:34:23 PM](#)

MELANIE LESH informed the committee she lives in Gustavus, which is located near the pristine waters of Glacier Bay National Park and Preserve. She said Alaskans are lucky to live in an isolated and beautiful state and there is irony in that for the past eighteen months it has not been safe for her to drink her well water; one of the benefits of HB 240 would be to provide blood testing for those who have had groundwater contaminated with PFAS chemicals. Her oncologist is concerned about the chemicals to which she has been exposed over 35 years living in Gustavus, but cannot provide testing. The bill would regulate the use of PFAS chemicals and also would provide plasma data for those who have been exposed. Ms. Lesh recalled testimony on 3/9/20 that revealed how important blood testing had been in the resolution of issues that were raised by contamination elsewhere.

REPRESENTATIVE TUCK asked how the residents of Gustavus learned of the contamination.

MS. LESH said the Department of Transportation & Public Facilities (DOT&PF) leases a parcel of land at the airport to businesses, and it was known for years that no one could drink

the water at the airport; that awareness prompted testing of the [toxic plume, which is a underground pattern of contaminant] and the realization that AFFF had entered the groundwater system.

REPRESENTATIVE TUCK surmised DOT&PF had recommended its lessees not use the water.

MS. LESH said the residents of Gustavus were not warned by DOT&PF but were aware, anecdotally, not to drink from the water fountain at the airport, so people began to think about their wells.

1:39:30 PM

PAMELA MILLER, Executive Director, Alaska Community Action on Toxics (ACAT), informed the committee ACAT is a statewide environmental health, research, and advocacy organization. She paraphrased from written testimony dated 3/5/20 and included in the committee packet [original punctuation provided]:

We appreciate your leadership in sponsoring SB 176 and HB 240, respectively. Alaska Community Action on Toxics (ACAT) strongly supports these bills. We urge passage by the Senate and House Resources Committees and full legislature during the current session. PFAS contamination represents a significant threat to drinking water sources and public health throughout Alaska. This requires urgent action from the legislature to prevent further harm, ensure safe drinking water supplies for contaminated communities and responsible clean up, and measures to monitor and protect the health of affected community members and first responders.

In September 2019, ACAT released a report: Threats to Drinking Water and Public Health in Alaska: The Scope of the PFAS Problem, Consequences of Regulatory Inaction, and Recommendations (www.akaction.org). For this report, we reviewed hundreds of pages of documents obtained through public record requests and conducted a thorough review of the peer-reviewed scientific literature. In Alaska, the dispersive use of AFFF (aqueous film forming foam) on military bases and airports has contaminated the drinking water of communities from the North Slope to southeast Alaska. To date, PFAS have been discovered at over 100 individual sites (mostly "AFFF source areas") in

nearly 30 locations. The State of Alaska has identified 33 airports where AFFF is known or suspected to have been released into the environment. Of these, only 13 have been investigated to date. Ten Alaska communities have PFAS in their drinking water at levels deemed unsafe by the U.S. Environmental Protection Agency (EPA) and it is likely that the number of communities with contaminated water will grow as more sampling is conducted throughout the state.

PFAS are highly toxic at exceedingly low levels of exposure. This is a significant public health concern given the latest science that shows health effects including: kidney and testicular cancer, high cholesterol, thyroid disruption, ulcerative colitis, pregnancy-induced hypertension, immune system effects, and effects on mammary gland development and breastfeeding duration. Firefighters suffer higher rates of cancer than the general U.S. population and are at risk from occupational exposures to PFAS. A new study of women firefighters showed that they face high exposures to toxic PFAS chemicals.

We look forward to working with members of the legislature to ensure that the bills are as protective as possible for the health of all Alaskans. Based on current scientific evidence, we recommend a class-based approach to setting water standards for PFAS because many PFAS chemicals share similar toxicological properties and adverse health endpoints, often at extremely low exposure levels. The goal should be to set a maximum contaminant level of zero for the class to provide a proper margin of safety for vulnerable infants and children and to protect public health from the class of PFAS chemicals that are extremely persistent, highly mobile, and linked with adverse health effects at exceptionally low levels of exposure. A combined limit of 2 ppt (for PFOA, PFOS, PFNA, PFHxS, PFHxA and PFBS, with a separate level of 5 ppt for GenX) is reasonable given that with current technology, removal of PFAS is feasible at that level. Other states are taking a more class-based and health protective approach.

In order to prevent further contamination of drinking water sources and other water bodies, we also urge you

to explicitly prevent the discharge or use for training purposes of class B firefighting foam that contains PFAS chemicals, and that the legislation include a ban on the use of PFAS in firefighting foam such as those that have been supported by firefighters and enacted in such states as Washington, Colorado, and New Hampshire. On March 5, 2020, the Washington State Legislature overwhelmingly approved the strongest state ban in the country to phase out toxic PFAS chemicals in firefighting foam and eliminate important exemptions. We believe that this is a precedent that the Alaska State Legislature should follow.

Thank you for your consideration.

[1:44:04 PM](#)

STEVE RISOTTO, Spokesperson, American Chemistry Council, said although ACC agrees with the testing of drinking water sources in Alaska, and in minimizing potential PFAS contamination by the use of AFFF, ACC does not support HB 240. He directed attention to [HB 240, proposed new Section 1] and said it is inappropriate for a legislative body to establish drinking water standards for PFAS, because establishing water quality standards requires a comprehensive review of available scientific and technical information, by regulatory authorities, through a formal rulemaking process. He pointed out the levels proposed in the bill are based on levels that have been proposed in Michigan, and Alaska should instead review EPA's PFAS Action Plan issued in 2019, and EPA's recent announcement to move ahead to establish drinking water standards for PFOA and PFOS, which are two substances for which EPA issued lifetime health advisories. In 2016, EPA established health-based guidelines for PFOA and PFOA at 70 parts per trillion in drinking water, based on water consumption, exposure among sensitive populations, and exposure to other sources. Turning to the blood testing provision in the bill, Mr. Risotto said widescale blood testing should only be conducted if based on analytical methods and followed by an objective interpretation of results. Further, the PFAS testing specified in the bill cannot provide information on historic exposure in individuals or assist in predicting health effects and, thus, would accomplish no purpose. Turning to the liability provision in the bill, he said ACC also has concerns about how the bill assigns liability.

[1:47:33 PM](#)

CO-CHAIR TARR agreed with the need for an objective review of blood testing data; however, she questioned how blood testing would fail to differentiate between historic exposure and current exposure. She expressed her understanding blood testing would provide information about adverse health impacts but is too expensive for an individual to afford. Speaking from her own perspective, Co-Chair Tarr advised residents are rightly concerned about their health and the health of their families, and she elaborated.

MR. RISOTTO restated there is no way to tie a specific level to a specific health affect; an individual sample of blood would not provide an historic profile and is very limited in its ability to answer questions.

REPRESENTATIVE HANNAN inquired as to whether a series of blood tests, over a span of time, would indicate the source of one's exposure and differentiate between background exposure and direct consumption.

MR. RISOTTO said the Centers for Disease Control and Prevention (CDC) have been testing for PFOA, PFOS, and other substances, and testing has shown a steady decline in blood levels for PFOA and PFOS; he explained that exposure from dental floss and cooking pans is from a polymer that is unlikely to transfer into the blood of an individual because of the size of the molecule and its insolubility.

REPRESENTATIVE HANNAN questioned whether blood samples taken over a period of three years, from children exposed to AFFF, would fail to reveal health risks and changing levels of exposure.

MR. RISOTTO acknowledged blood testing would reveal the level of exposure but would not give an indication of likely health effects due to a lack of data.

REPRESENTATIVE TUCK inquired as to whether ACC supports blood testing of responders to a fire but not of residents who are exposed through drinking water in a community.

MR. RISOTTO agreed it would be useful to obtain a baseline on the level of exposure accumulated by first responders.

CO-CHAIR LINCOLN asked Mr. Risotto to recommend a useful testing regime.

MR. RISOTTO said testing the water drinking water would reveal community exposure; the CDC has fairly extensive data on many of the products.

1:55:51 PM

GREG STREVELER said he has lived in Gustavus for 50 years and is a retired Department of Natural Resources consultant and biologist. He said his work and his joy in life are his interest in the beauty, connectivity, and health of the Gustavus ecosystem. Mr. Streveler said he serves as a chemist for the Gustavus PFAS Action Coalition group, due to his background in organic chemistry, and he warned levels of PFAS contamination in Gustavus will come to reflect those of other places, which is a real issue. He pointed out in the bill the list of chemicals, and their cutoff concentrations, includes chemicals about which much is known; as more becomes known, the allowable parts per trillion concentrations are lowered. He directed attention to the bill on page 2, lines 7-10, which read:

(b) For purposes of (a) of this section, the limit of perfluoroalkyl substance or polyfluoroalkyl substance contamination in water is the lesser of

(1) the limit established by the department in regulation; or

(2) the following limits:

MR. STREVELER said the abovementioned provision is important because he is convinced - as testing continues - allowable concentrations will decline, and the bill correctly sets limits now, and also gives the department flexibility to reduce the limits if there are scientific reasons to do so.

REPRESENTATIVE TUCK asked how the community of Gustavus became aware of the problem with its drinking water.

MR. STREVELER explained he became aware after the National Park Service, U.S. Department of the Interior, tested the well that provides water to Gustavus School, and the test was positive.

2:00:15 PM

DAVID BERREY, spokesperson for Wake Up Alaskans to the Toxic Environmental Reality (WATER) said Fairbanks is ground zero for this issue and residents have had toxic levels in their wells for many years. Mr. Berrey said the chemical companies refuse

to take responsibility for contamination, and EPA has been talking about studies and action for 20-30 years, so states must force responsibility onto the chemical companies. Alaska has no chemical industry, but North Pole is contaminated with sulfolane. Fairbanks has plumes from Eielson Air Force Base, the training center at the airport, and Fort Wainwright, and its high water table is contaminated with extremely high counts of PFOS and PFOA. Mr. Berrey said small changes made to chemicals have led to false claims of safety by the chemical companies, but they know there are just as many problems. He remarked:

It's unconscionable what they're doing to us. It's up to you to do something to protect us. We need to have our blood tested in our area to show that we're astronomically high in these chemicals. There's no endemiological studies being done; there's no way to find the data to begin with. We need help. We're looking to you to help us.

[2:03:34 PM](#)

CO-CHAIR LINCOLN, after ascertaining no one further wished to testify, closed public testimony on HB 240.

CO-CHAIR TARR recalled in last year's capital budget there was funding for testing and cleanup of PFAS contamination, and intent language directing DOT&PF to test for all PFAS chemicals, not only PFOS and PFOA; a subsequent report from DOT&PF indicated \$165,000 has been spent and she asked for an additional update on ongoing work.

[2:05:14 PM](#)

JOHN BINDER, Deputy Commissioner, Office of the Commissioner, Department of Transportation & Public Facilities, informed the committee it took DOT&PF and DEC several months "freeing up that money" in the capital appropriation, but the delay did not inhibit the actions of the departments. Testing is continuing, and DOT&PF has responded appropriately where tests are positive. The reimbursable services agreements (RSAs) are in place to access the capital funds and activities are well underway.

CO-CHAIR TARR asked for written details on where testing has occurred, and the results, to inform the committee on the status of remediation and whether additional funds are necessary.

MR. BINDER agreed to provide a summary.

REPRESENTATIVE HOPKINS asked what action is taken when contamination is found, in excess of DEC regulations, at a site or in a community.

MR. BINDER explained that before a site is tested, DOT&PF coordinates a workplan with DEC; when results are positive at a certain level, DOT&PF determines a source of clean water and, with DEC and the Division of Risk Management [within the Department of Administration], determines a long-term solution.

REPRESENTATIVE HOPKINS asked what is happening in Gustavus.

MR. BINDER said additional testing in Gustavus has identified affected sites; there are several options for a long-term water source, including water treatment and capturing rainwater in a cistern. Each community is evaluated individually to determine the best long-term solution.

[2:09:46 PM](#)

REPRESENTATIVE HOPKINS inquired as to other sites in the process of mitigation, in addition to Gustavus and Fairbanks.

MR. BINDER said seven locations out of thirty-three suspect sites have been tested. Working with DEC and the Department of Natural Resources (DNR) to garner information such as well depths, groundwater flows, locations of private wells, and other factors, DOT&PF categorized airports into levels of risk; nine airports are at highest risk, and all but Iliamna and Aniak have been tested. Because most of the suspect plumes surround airports in rural areas, private wells are contaminated and require individual solutions. If a [clean] public water source is available, a connection to public water is generally the preferred long-term solution, in fact, Fairbanks International Airport provided water from the city water supply.

REPRESENTATIVE SPOHNHOLZ asked how many more sites would be tested this year.

MR. BINDER was unsure of how many in addition to Iliamna and Aniak.

REPRESENTATIVE SPOHNHOLZ asked for an estimate on the cost of testing the remaining sites. She surmised long-term solutions are to identify a new source of water and asked whether removal of the contaminated plume would be an option.

MR. BINDER agreed to provide a written estimate of costs. The department estimates \$10 million would be needed to test all of the remaining sites, and there would be additional costs to respond to positive results. He said "forever chemicals" in water are extremely difficult, if not impossible, to remove from the ground, and treating the soil saturated with water is a difficult challenge.

REPRESENTATIVE SPOHNHOLZ questioned whether soil could be removed and replaced.

[2:15:04 PM](#)

MR. BINDER further explained once the chemicals are in the groundwater, even if the soil is removed and treated, after rain, the groundwater will re-contaminate the clean soil; however, he said removing and treating the soil may be possible in some circumstances. He related that at Fairbanks International Airport, a contractor is experimenting with carbon injection into the plume to treat or prevent further contamination, although results will be unknown for some time.

REPRESENTATIVE HANNAN asked why DOT&PF began testing in Gustavus.

MR. BINDER stated awareness followed projects at Eielson Air Force Base and in Fairbanks. The Department of Environmental Conservation requested testing at Gustavus, and he expressed his understanding the near location of an airport to residential wells raises the risk and concerns about this issue.

[2:18:08 PM](#)

CO-CHAIR LINCOLN announced that HB 240 was held over.

HB 138-NATIONAL RESOURCE WATER DESIGNATION

[2:18:14 PM](#)

CO-CHAIR LINCOLN announced the next 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 proposed committee substitute (CS) for HB 138, Version K,

adopted as a working document during the bill hearing on 2/10/20.]

CO-CHAIR LINCOLN handed the gavel to Co-Chair Tarr.

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The committee took an at-ease from 2:18 p.m. to 2:21 p.m.

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CO-CHAIR TARR explained forthcoming amendments.

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CO-CHAIR LINCOLN moved to adopt [Amendment 10, K.22, labeled 31-LS0811\K.22, Marx, 3/3/20, identified on the audio recording as Amendment 12], which read [original punctuation provided]:

Page 2, line 26:

Delete "resident of"

Insert "qualified nominator in"

Page 4, line 23:

Delete "."

Insert ";

Page 4, following line 23:

Insert a new paragraph to read:

"(3) "qualified nominator" 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;

(D) a municipality, an unincorporated village, or another unit of local government in the state."

CO-CHAIR TARR objected for discussion purposes.

CO-CHAIR LINCOLN explained [Amendment 10, K.22] expands and clarifies who could nominate a waterbody for Tier 3 designation. The original version of the bill limited the nominator to a

resident of the state; however, the amendment would change any reference to a resident of the state to a reference to a qualified nominator and defines that a qualified nominator includes a resident of the state, varied organizations, corporations, and other entities, a federally recognized tribe or tribal entity in the state, and a municipality, a local government, or an unincorporated village. He noted the length of residency of a nominator was discussed but was not included in the amendment.

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REPRESENTATIVE CHUCK KOPP, Alaska State Legislature, sponsor of HB 138, expressed support for the amendment.

CO-CHAIR TARR removed her objection and there being no further objection, [Amendment 10, K.22] was adopted.

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REPRESENTATIVE HANNAN moved to adopt [Amendment 11, K.15, labeled 31-LS0811\K.15, Marx, 2/20/20, identified on the audio recording as Amendment 7], which read [original punctuation provided]:

Page 4, lines 9 - 11:

Delete "does not constitute a final agency decision or action, and the recommendation or action is not subject to appeal, including appeal or review under AS 44.62 (Administrative Procedure Act)."

Insert "is a final agency decision and may be appealed to the superior court under the Alaska Rules of Appellate Procedure."

CO-CHAIR TARR objected for discussion purposes.

REPRESENTATIVE HANNAN explained the amendment states clearly that a recommendation or action of the commission, related to a nomination that has been submitted to the commission, is a final agency decision that may be appealed to the superior court under the Alaska Rules of Appellate Procedure. She said the commission's decisions related to a Tier 3 water nomination should be subject to a high level of scrutiny through an appeals process.

CO-CHAIR LINCOLN expressed opposition to the amendment because it is clear a recommendation of the commission is not a final

decision; the designation requires that legislative action be the final decision. He suggested the amendment complicates the designation process, encourages litigation against the state, and is contrary to the purpose of the bill, which is to have the legislature evaluate and designate Tier 3 waters with the support of the commission.

REPRESENTATIVE TUCK asked whether there is a way for someone to adjudicate the designation process.

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MARIE MARX, attorney, Legislative Legal Counsel, Legislative Legal Services, Legislative Affairs Agency, said the bill states a recommendation by the commission is not a final agency action subject to review or appeal, which is the intent of the legislature; however, a court can always consider the legality of a decision. She restated [the bill] indicates the recommendation should not be subject to review except in limited circumstances, such as a decision or legislation that is unconstitutional, arbitrary, or capricious.

REPRESENTATIVE TUCK gave an example of a designation process that was followed and asked if, after the legislature passed a bill introduced by the governor, the decision would be subject to review or appeal.

MS. MARX said the legislature has the constitutional power to pass or not pass legislation, which cannot be infringed upon by the court system.

CO-CHAIR TARR asked whether adoption of the amendment would change the commission from an advisory commission.

MS. MARX restated the commission appears to be a purely advisory body that lacks the ability to enforce or administer law; the commission is intended to gather information and provide a recommendation to the governor and the legislature. She said she could not find a similar advisory body in existing statute that has a process for the review of the opinion of the advisory body. Some advisory bodies also have the ability to enforce or administer the law; for example, the Office of the Ombudsman, Legislative Agencies and Offices, investigates and issues recommendations but it is a different type of agency. In addition, bodies such as the Alaska Health Care Commission (defunded), Department of Health and Social Services, or the Alaska Tourism Marketing Board (disbanded), Department of

Commerce, Community & Economic Development, were also advisory and did not have a mechanism in place for review. Ms. MARX explained advisory bodies do not have a mechanism for review because they do not issue decisions that affect the rights of a person or that governs the conduct of the public. In fact, if the commission declines to forward a recommendation to the governor or the legislature, a nominator can submit its nomination directly to a legislator. In this manner, the commission is unique and without precedent for review or appeal. In further response to Co-Chair Tarr, she agreed if a nominator could not submit a nomination directly to a legislator, that would change the nature of the commission.

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REPRESENTATIVE SPOHNHOLZ questioned whether the fact that three department commissioners serve on the commission affects the advisory manner of the commission.

MS. MARX referred to an opinion from the attorney general dated 7/19/16 that discussed components of advisory agencies and determined that the role of an advisory committee is to gather information, make recommendations and, in some cases, prepare advisory opinions or write reports. Further, advisory committees do not administer or enforce the law. She said she would provide the aforementioned written opinion to the committee.

REPRESENTATIVE TUCK directed attention to Version K on page 4, line 12, which read:

If the commission recommends that a nominated water be designated as outstanding national resource water, the governor shall prepare and submit a bill consistent with the recommendation of the commission.

REPRESENTATIVE TUCK asked whether a nominator would have justification for a lawsuit should the governor not submit a bill to the legislature.

MS. MARX opined it is the duty of the executive branch to execute the law passed by the legislature, therefore, a person could sue, although she did not cite supporting case law. In further response to Representative Tuck, she said were a governor to delay action, the duties of the executive branch would flow through to the next administration.

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REPRESENTATIVE HOPKINS directed attention to Version K on page 3, lines 11-13, which read [in part]:

(2) determine, by an affirmative vote of a majority of the members of the commission, whether a nomination meets the requirements established under (1) of this subsection;

REPRESENTATIVE HOPKINS asked whether [paragraph (2)] may warrant an appeal by a nominator because the commission's decision would stop or advance a nomination.

MS. MARX remarked:

I think this is enough of a grey area that I do not know if a court would find that decision - either saying a nomination is complete, or a nomination is not complete - a final agency action. I think if you, if the legislature, as a matter of policy, says "We don't want it to be a final agency action" a court may give deference to that. ... A court can always decide if the, if the agency [acts] arbitrarily, capriciously, or didn't follow its own laws, a person could sue and say, "Listen, they didn't even follow their own statute ... make them at least follow, due process requires you [to] follow them, follow the law"

MS. MARX cautioned the finding is an unknown due to the unique process of the commission, which is to vote on whether a nomination by a member of the public is complete, and whether to forward a nomination.

REPRESENTATIVE HOPKINS asked Ms. MARX to explain the Alaska Rules of Appellate Procedure.

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MS. MARX said there are hundreds of Rules of Appellate Procedure that tell the court how to review an agency's decision, such as how much deference is granted to an agency, and that set out the procedures and standards for reviewing an agency decision.

CO-CHAIR TARR gave an example of an appeal and asked whether members of the commission, including members who are

commissioners of departments, would be named parties in a lawsuit. She suggested individuals may be deterred from service on the commission.

MS. MARX said generally the parties to an appeal to a decision by an agency are the party that is appealing and the agency; individual members of an agency body are not named parties in an appeal.

REPRESENTATIVE KOPP observed the Alaska Judicial Council, Alaska Court System, determines whether a judicial nomination packet is complete and votes to forward the nomination to the governor, and [is a committee that] has garnered litigation. Regarding [Amendment 11, K.15], he said the amendment changes the nature of the advisory commission and pointed out the nominator is already protected from nefarious activity by the commission and the commission is balanced. He cautioned against prolonging the designation of a Tier 3 water by an appeal process and said the amendment also changes the nature of the bill.

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REPRESENTATIVE TUCK opined the original intent of the bill was to make [the designation of Tier 3 water] more of a scientific decision and less of a political decision, and he agreed an appeal through judicial action would provide an opportunity for a decision based on facts; however, he said he did not want the commission to be responsible for an absolute decision, and he could not support the amendment because it would make a change to the commission and its duties.

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REPRESENTATIVE HANNAN withdrew [Amendment 11, K.15].

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CO-CHAIR TARR stated Legal Legislative Services was authorized to make technical and conforming changes during the drafting of a committee substitute for HB 138.

[HB 138 was held over.]

HB 218-SALT WATER FISHING: OPERATORS/GUIDES

[2:52:41 PM](#)

CO-CHAIR TARR announced the final order of business would be CS FOR HOUSE BILL NO. 218(FSH), "An Act relating to salt water sport fishing operators and salt water sport fishing guides; and providing for an effective date." [Before the committee was CSHB 218(FSH).]

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DOUG VINCENT-LANG, Commissioner, Alaska Department of Fish & Game (ADF&G), informed the committee the Sport Fish Business Owner/Guide License was passed [in the Twenty-third Alaska State Legislature] and remained in effect through 12/31/14. In the Twenty-Ninth Alaska State Legislature, salt water licenses were reinstated with a 2018 sunset and ADF&G seeks to establish the licenses in statute in perpetuity. License fees are used to pay for collecting logbook data - which has been collected by ADF&G from salt water sportfishing businesses and guides since 1998 - that is critical to upholding the state's obligations to the Pacific Salmon Treaty and the International Pacific Halibut Commission. The data is also provided to the North Pacific Fishery Management Council for the management of federal fisheries in order to avoid duplicative reporting mechanisms, which are an undue burden on the charter fishing industry. In addition, logbook data is utilized by the Board of Fisheries, ADF&G. The original version of the bill included freshwater and salt water components; however, due to opposition from freshwater guides, the freshwater component was removed from the bill. Thus, [CSHB 218(FSH)] addresses the state's treaty obligations and the critical need for the collection of salt water data to manage salt water fisheries, which would be paid for by the licensing program.

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RACHAEL HANKE, Legislative Liaison, Office of the Commissioner, Alaska Department of Fish & Game, paraphrased from the following sectional analysis [original punctuation provided]:

Sectional Analysis HB 218:

Salt Water Guide Licensing (version A)

Section 1 Establishes license fees for saltwater guides and operators.

- Guide license - \$200
- Operator license - \$400
- Operator and guide combined license - \$400

Section 2 Adds new Article to AS 16.40 that

- AS 16.40.262 - provides stipulations for the salt water operator license and defines the license type;
- AS 16.40.272 - provides stipulations for the salt water guides and combined license and defines both license types;
- AS 16.40.282 - establishes reporting requirements for salt water guides and operators;
- AS 16.40.292 - establishes penalties for violations the chapter; and
- AS 16.40.301 - defines "salt water sport fishing guide" and "salt water sport fishing guide services".

Section 3 Adds salt water sportfishing operator and guide license to AS 25.27.244(s)(2) which defines "license".

Section 4 Effective date of January 1, 2021.

CO-CHAIR TARR surmised the effective date is on a calendar year basis because the bill would not be implemented in the upcoming season.

COMMISSIONER VINCENT-LANG confirmed that is correct.

REPRESENTATIVE TUCK questioned whether [the licensing program] was at one time in statute.

COMMISSIONER VINCENT-LANG confirmed it was.

REPRESENTATIVE HANNAN inquired as to the sunset date of the "logbook statute."

MS. HANKE answered in 2018. In further response to Representative Hannan, she said ADF&G estimates there are over 800 salt water sportfishing guides, and approximately 600 businesses, and offered to provide the number of freshwater guides.

[HB 218 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 3:01 p.m.