

HOUSE FINANCE COMMITTEE
March 24, 2022
9:08 a.m.

9:08:39 AM

CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 9:08 a.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair
Representative Kelly Merrick, Co-Chair
Representative Dan Ortiz, Vice-Chair
Representative Ben Carpenter
Representative Bryce Edgmon
Representative DeLena Johnson
Representative Andy Josephson
Representative Bart LeBon
Representative Sara Rasmussen
Representative Steve Thompson
Representative Adam Wool

MEMBERS ABSENT

None

ALSO PRESENT

Alexei Painter, Director, Legislative Finance Division; Tom Wright, Staff, Representative Steve Thompson; Representative David Nelson.

PRESENT VIA TELECONFERENCE

Marie Marx, Legal Counsel, Legislative Legal Services; Lt Paul Fussey, Alaska State Troopers, Department of Public Safety; Jason Brune, Commissioner, Department of Environmental Conservation.

SUMMARY

HB 281 APPROP: OPERATING BUDGET/LOANS/FUNDS

HB 281 was HEARD and HELD in committee for further consideration.

HB 282 APPROP: MENTAL HEALTH BUDGET

HB 282 was HEARD and HELD in committee for further consideration.

Co-Chair Foster reviewed the agenda for the meeting. The committee would continue the amendment process on the operating budget. He relayed the committee would pick up where it left off the previous day.

#hb281

#hb282

HOUSE BILL NO. 281

"An Act making appropriations for the operating and loan program expenses of state government and for certain programs; capitalizing funds; amending appropriations; making reappropriations; making supplemental appropriations; making appropriations under art. IX, sec. 17(c), Constitution of the State of Alaska, from the constitutional budget reserve fund; and providing for an effective date."

HOUSE BILL NO. 282

"An Act making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program; making capital appropriations and supplemental appropriations; and providing for an effective date."

[9:08:52 AM](#)

^AMENDMENTS

[9:08:53 AM](#)

Vice-Chair Ortiz shared that his staff Caroline Hamp had her baby early that morning.

[9:09:32 AM](#)

Representative Thompson began addressing the topic of Amendment L12 Replacement [note: the amendment had been

offered in the meeting the previous afternoon and had been held over to get more information. See minutes dated March 23, 2022, 1:41 p.m. for the full amendment]. He explained his desire to follow the law. He detailed there were a myriad of bonuses put in the budget unbeknownst to everyone. His goal was to address the issue. He shared that overnight his office had received 71 additional letters of agreement that the legislature had not seen [note: a subsequent correction was made that the document itself was 72 pages and did not contain 71 additional letters of agreement]. He emphasized that it was by law that the letters of agreement had to be presented to the legislature within 60 days of gaveling into session. He requested to ask a question of Legislative Finance Division Director Alexei Painter. He asked if Mr. Painter was aware of anything in the background documents of any appropriation bill that funded the bonuses at issue. He referenced bullet point II of an attorney general opinion [letter from the Department of Law dated March 23, 2022 related to bonuses for executive branch employees (copy on file)]. He asked if Mr. Painter was aware of retroactive funding.

ALEXEI PAINTER, DIRECTOR, LEGISLATIVE FINANCE DIVISION, answered that he was aware of a single item for bonuses within the Department of Transportation and Public Facilities (DOT). He believed it was mission critical incentive pay for certain locations. He relayed the item was a supplemental appropriation included in the committee substitute (CS). The Legislative Finance Division (LFD) did not receive any other related supplemental language.

Representative Thompson asked for verification that the letters were supposed to be given to the legislature by law.

Mr. Painter replied that it was his understanding, but he deferred to Legislative Legal Services.

Representative Thompson stated that many of the letters of agreement at hand did not deal with bonuses, most dealt with overtime and other items that were not of interest. He listed individuals available for questions.

[9:12:30 AM](#)

Representative Carpenter did not have the documents being referenced by Representative Thompson including an attorney

general opinion or letters of agreement. He requested the information.

Co-Chair Foster asked to hear from Tom Wright, staff to Representative Thompson.

TOM WRIGHT, STAFF, REPRESENTATIVE STEVE THOMPSON, relayed that he had received a document via email from Office of Management and Budget Director Neil Steininger the previous night. He clarified that the document did not contain 71 additional letters of agreement, it was 72 pages. He shared that at a quick glance he did not find any the committee was trying to address related to bonuses, retention bonuses, and financial incentives. He remarked that the conversation did not pertain to overtime. He pointed to lines 8 and 9 on page 1 [of Amendment L12 Replacement] and suggested the removal of the words "and other monetary terms" to clarify the amendment pertained to bonuses and financial incentives such as retention bonuses.

Co-Chair Foster asked if the amendment sponsor wanted to hear from Mr. Steininger or introduce a conceptual amendment.

Representative Thompson stated he would like to move in that direction.

Co-Chair Foster asked Representative Thompson to restate Mr. Wright's suggestion regarding the removal of language from the amendment.

Mr. Wright pointed to page 1, lines 8 and 9 and suggested the updated amendment language would read: "implement the payment of bonuses and/or financial incentives of the following agreements for the fiscal year ending June 30, 2023."

Representative Thompson explained the change would remove the words "monetary terms of the following agreements."

Co-Chair Foster asked if Representative Thompson was proposing a conceptual amendment to remove the words.

Representative Thompson wanted to remove "and other monetary terms."

Co-Chair Foster clarified conceptual Amendment 1 [to Amendment L12 Replacement] would remove the language "and other monetary terms" from page 1, lines 8 and 9.

Representative Josephson OBJECTED for discussion. He had heard different conceptual amendment language from Representative Thompson and Mr. Wright.

Co-Chair Foster believed Representative Thompson had just been reading the entire sentence. He asked Mr. Wright for clarification.

Mr. Wright answered that he had not had the chance to discuss the issue with Representative Thompson that morning. He had spoken with Marie Marx, Legal Counsel with Legislative Legal Services that morning who had suggested that the removal of "and other monetary terms" would further clarify the goal of the amendment [Amendment L12 Replacement].

[9:16:41 AM](#)

Co-Chair Foster clarified his understanding of the conceptual amendment, which would strike "and other monetary terms" from lines 8 and 9.

Mr. Wright agreed.

Representative Josephson highlighted the lengthy amount of time the committee spent on the amendment in two separate meetings the previous day. He stated the time spent on the amendment was approaching about 1.5 hours. He characterized the amendment as a moving goal post. He stated there were conflicting legal opinions on the topic. Additionally, the committee was trying to adopt a reform in the budget that he guessed had never been discussed by the legislature. He stated that it would take him another couple of hours to vet the amendment. He would prefer to just call the question on the amendment.

Co-Chair Foster highlighted the conceptual amendment currently before the committee.

Representative Josephson WITHDREW his OBJECTION to conceptual Amendment 1 to Amendment L12 Replacement. There being NO further OBJECTION, conceptual Amendment 1 to Amendment L12 Replacement was ADOPTED.

9:18:18 AM

Representative Wool agreed with Representative Josephson. He stated that the committee had begun addressing Amendment L12 Replacement the previous day. He recalled that Mr. Steininger had stated the previous day that he was anticipating new information sometime between the prior evening and the current morning. He stated there were conflicting legal opinions. He remarked that they all wanted to follow the law. He considered that perhaps the law under discussion had not been followed. He highlighted that the law on senior citizen property tax was not followed. He asked if the committee was going to offer an amendment on that issue. He knew many municipalities would love to get the money. He did not want to go down the "follow the law rabbit hole" because there were other laws that were not followed. He stated that bonuses had been included in previous budgets and had been paid. He considered that perhaps the issue was something to hash out at a later date. He had not seen the 71 pages that came in overnight [referenced by Representative Thompson and Mr. Wright].

Representative Edgmon CALLED the QUESTION on Amendment L12 Replacement as amended.

Representative Carpenter OBJECTED.

9:19:55 AM

AT EASE

9:20:56 AM

RECONVENED

Representative Edgmon WITHDREW his motion to call the question.

Representative Carpenter stated that they wrapped up the meeting the previous day with a question he had posed about whether the underlying CS was following the law without the amendment. He directed the question to Legislative Legal Services.

MARIE MARX, LEGAL COUNSEL, LEGISLATIVE LEGAL SERVICES (via teleconference), answered that one of the services offered by Legislative Legal was to identify issues and concerns to

help the legislature make informed decisions. Her memo had identified legal issues with the existing CS. She had opined on the way to proceed that had the least risk of litigation; however, it was up to the legislature to decide whether to proceed. She stated that some ways of moving forward had an increased risk of litigation.

Ms. Marx communicated her opinion that the letters of agreement for union employees should be clearly referenced in the budget in terms of the legislature's intent to fund the items. She believed the comments by Mr. Painter during the current meeting showed there was nothing in the background documents or CS showing that the legislature was funding the union letters of agreement. She stated that for non-union employees whose salary was based in statute, it would take a substantive bill to allow the departments to pay out bonuses. She stated that historically there was an appropriation bill and a companion substantive bill authorizing departments to pay the bonuses. She stated there was no related provision in the current CS. She thought there was some risk that a person would sue and say public money was spent improperly; however, she did not believe it was a high risk. Her primary concern was that the legislature would continue to be left in the dark regarding future letters of agreement and bonus payments and that it would frustrate the legislature's power of appropriation.

Representative Carpenter opposed taking action to keep the CS at odds with Legislative Legal opinion.

[9:25:00 AM](#)

Representative Thompson provided wrap up on Amendment L12 Replacement as amended. He relayed that his office had discovered that millions of dollars in bonuses were being paid out but had not been identified to the legislature. He wanted to ensure the state was not spending millions of dollars in bonuses that the legislature was unaware of. He brought the issue forward to ensure the laws were being followed. He stated the legislature was the appropriating body and did not seem to be aware how much the state was spending on bonuses had not been identified [to the legislature] and approved [by the legislature]. His office had found that many of the bonuses were being paid by taking money from a vacant funded position. He did not believe the practice was correct. The goal of the amendment

was to ensure laws were followed and that future letters of agreement were identified to the legislature within 60 days of a new session.

Mr. Wright clarified that the numbers section was still part of the amendment.

[9:27:12 AM](#)
AT EASE

[9:38:32 AM](#)
RECONVENED

Co-Chair Foster clarified that conceptual Amendment 1 had been adopted.

Representative Josephson MAINTAINED the OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Rasmussen, Thompson, Carpenter, Johnson, LeBon
OPPOSED: Josephson, Wool, Edgmon, Ortiz, Merrick, Foster

The MOTION to adopt Amendment L12 Replacement as amended FAILED (5/6).

Co-Chair Foster stated the language section amendments had been completed. He stated there was another amendment by Representative Johnson related to the previous topic.

Representative Johnson WITHDREW Amendment H LAW 1 (copy on file).

[9:40:54 AM](#)

Representative Rasmussen MOVED to ADOPT Amendment DNR A Replacement (copy on file):

Department: Department of Natural Resources
Appropriation: Parks and Outdoor Recreation
Allocation: Pars Management and Access

Delete: (\$2,150.0) Vehicle Rental Tax 1200
Add: \$2,150.0 General Fund Program Receipts 1005

Add Intent: It is the intent of the legislature that the Alaska State Parks System increase user fees to offset reductions in Vehicle Rental Tax funding.

Explanation: Vehicle Rental Tax funding is subject to the reverse sweep. By increasing user fees, this removes the uncertainty of whether funding would be available and enables the Park System to become more self-sufficient. If DNR isn't able to make up that GF/PR amount in time by raising fees, a supplemental request may be necessary.

Representative Wool OBJECTED for discussion.

Representative Rasmussen explained the amendment increased the program receipt authority to look at updating some of the fees for park usage. She elaborated that in comparison to other states, Alaska's park fees were very low. The Department of Natural Resources (DNR) finance subcommittee had learned that the cost of public use cabins had increased from approximately \$100,000 to \$150,000. She highlighted the increasing cost of gas and fees associated with rising inflation. She thought it seemed like a natural time to make the increase to help the park system to become more self-reliant.

Representative Rasmussen elaborated that the amendment would add \$2,150,000 to program receipts, which reflected roughly 50 percent of the revenue the division brought in in FY 21. The division was on pace to collect \$200,000 more from the same period of July to January for FY 22. She explained the amendment would decrease the use of the vehicle rental tax by the same amount. She believed it was an area to allow parks to become self-sufficient and rely less on state general funds.

[9:43:23 AM](#)

Representative Wool asked if the vehicle rental tax fund was swept. He stated that the amendment would increase park user fees. He stated it was a policy call to increase the rate at campgrounds and such.

Mr. Painter clarified that the vehicle rental tax account was not a fund, it was an account. He explained that funds received revenue and had expenditures posted to them. In the current case, there was revenue identified as vehicle

rental tax revenue and expenditures identified as vehicle rental tax expenditures. However, the revenue and expenditures were not really the same money necessarily because it was all part of the General Fund. He elaborated that fund code 1200 identified revenue coming in as vehicle rental tax and expenditures going out; however, there was not a fund to hold the money in; therefore, the reverse sweep did not really play into the situation. There was not an account balance. He believed LFD had been portraying vehicle rental tax as a fund in the past, but as more research was done into the sweep, LFD found there should not be an account balance. Statute specified the legislature may appropriate the annual balance of the vehicle rental tax at the end of the year. The legislature had been appropriating the funds on a lag where the previous year's revenue was appropriated the following year. The governor's proposed FY 23 budget switched from funding prospectively to appropriating revenue as it came in. Regardless, there was not really a fund balance the sweep would impact; therefore, the sweep did not really have an impact because there was no fund.

[9:46:17 AM](#)

Representative Wool stated his takeaway that it was not a swept fund. He stated his understanding that vehicle rental tax came in and went out and did not sit in a fund available for sweeping at the end of the year. He remarked that vehicle rental tax had been used for tourism promotion, parks, and DOT. He believed the usage was at the discretion of the legislature. He did not understand the idea of the amendment to help the park system become more self-sufficient. He stated that the Division of Motor Vehicles (DMV) was self-sufficient because it brought in enough money to fund itself. Other agencies such as the Alaska Marine Highway System (AMHS) and the University of Alaska were not self-sufficient. He did not know about the parks and did not support raising rates "willy nilly." He did not understand or support the amendment.

Representative Rasmussen relayed that park fees had not been increased since FY 18 or FY 19. She informed committee members there were several parts of the state that currently did not pay any usage for their park maintenance. She believed there should be no disparity across the state as far as certain communities paying fees for their parking lots, while others did not. She pointed out that the state

was required to provide funding for the University. She remarked that AMHS was transportation. She stated that public money had to go to some of the programs, but the state did not have to fund parks. She believed parks added a very valuable component to communities and the overall quality of life in Alaska. She would hate to see having to cut a large amount from parks forcing them to close in the future. She supported gradually increasing park fees. She stated it had been over five years since fees had been increased and the department had not resumed assessing fees across the state. She supported collecting a bit more revenue. She stated that a parking fee increase by a couple of dollars was pretty insignificant. She stated raising parking fees by 50 percent to a fee of \$7 or \$8 was not a major burden on any individual Alaskan. She pointed out that tourists used state parks and public use cabins. She reasoned it was another area to capitalize a bit more on tourism. She highlighted if there was \$2 million more available for the vehicle rental tax, it was \$2 million more that could go to roads or advertising for more tourism.

Representative Carpenter asked if the issue had been discussed in another committee. He asked if the public had a chance to weigh in. He understood that the decision was in the legislature's purview, but he thought it appeared to be a larger policy call.

Representative Rasmussen answered the authority had been raised about four or five years back. She stated that none of the fees met the maximum fee that could be charged. She stated it had gone through a process and a fee increase was allowable, but the department had not done so. She thought the amendment was the only way she could see for the legislature to communicate it wanted parks to be funded but wanting eventually to preserve parks through self-reliance.

[9:51:12 AM](#)

Representative Carpenter asked for verification that the topic had not been discussed in the current legislature in any other committees.

Representative Rasmussen shook her head no.

Vice-Chair Ortiz recognized it was likely a good thing for parks to become more self-sufficient; however, he thought

the policy was worthy of discussion. He highlighted that when talking about public parks it was necessary to have policy discussion about whether raising fees would limit access to the parks for certain segments of the population. He believed it was worthy of discussion. He was uncertain how he felt about the amendment.

Representative Wool remarked on Representative Rasmussen's suggestion of raising parking fees 50 percent. He highlighted that the topic had not been discussed in subcommittee with the department. He used camping at a campground where he had noticed fees had increased over the years. He used a hypothetical example and stated that if the current fee was \$20 it would increase to \$30. He stressed it was a large increase, especially if someone was camping for 10 nights. He did not really understand the reasoning. He stated that the vehicle rental tax that had been used partially for parks would be freed up to do something else. He stated they did not know which rates would go up and where; there had not been an analysis of what the parks wanted. He did not think parks wanted to raise prices too high. He stated that part of the quality of life in Alaska was being able to camp and use trails, some of which was funded with public money. He stated that when a tourist came to Alaska and spent money on a rental car money came to the state and they may go camping and park at a park, which brought in more money. He did not think enough work had been done. He stated it seemed to be an arbitrary removal of the funds.

[9:54:05 AM](#)

Co-Chair Merrick had chaired the subcommittee. She stated there had been some discussion in the subcommittee about the topic. She stressed that the parks had seen a significant increase in usage during the pandemic. She highlighted an increased need in garbage clean up and facility maintenance on toilets and other things. The department had told the subcommittee that people wait up to rent cabins as soon as they became available online at midnight. She added that the cost of building the cabins had increased significantly. The hope was for more cabins to be built due to the high demand. She was an avid user of the parks and personally bought an annual parking pass through DNR.

Representative Edgmon stated that every time he put his boat in the water, he had to pay a fee. He was concerned about the open-endedness of the amendment. He remarked that the fee was pretty modest and not egregious. He was concerned that the topic had not been thoroughly vetted. He highlighted that the amendment pertained to \$2.1 million in taxes. He thought the proposal should have gone through the subcommittee process or a separate bill. He recalled that around 2018 the Division of Parks had come forward with a goal to be self-sufficient with no undesignated general fund (UGF) revenue. The idea was the funding would be based on fees and other assessments. He did not know what had happened to the idea. He could not support the amendment because he did not have enough information to make the decision.

Representative Thompson had not followed things taking place with DNR and parks, but a notification letter had gone out from the division director announcing the closure of the Chena campground and boat launch by University Avenue in Fairbanks. He explained the site was one of the few places tourists driving motor homes or trailers could use for a fee. He had personally used the area and noted it was always full. He emphasized that tourists would not have a place to park or camp in Fairbanks. He informed the committee that the boat launch was used by many locals. He hated to see the closure take place. He did not know the answer or whether the amendment would help or not. He was disappointed a well-used boat launch and campground in Fairbanks would be closed.

Representative Wool had been disappointed to hear about the closure of the location in Fairbanks as well. He had heard in the news the location was closing due to unsavory behavior occurring in the park after hours. He stated that the approach had been to close the park in response to the activity. He did not support the approach. He stated it was not a funding issue. He referenced funding and increased use of cabins and increased cost. He did not support the deletion of one of the funding sources currently going to parks. He noted there was a bill going through the Senate that would increase vehicle rental tax revenue. He suggested perhaps some of that revenue could go towards the cabins.

[9:59:47 AM](#)

Representative Josephson surmised the amendment would make the vehicle rental tax account \$2.1 million richer and the General Fund \$2.1 million poorer. He asked if the statement was accurate.

Mr. Painter replied that the amendment proposed to use program receipts and would not impact the General Fund assuming there was added fee revenue to back that up. The amendment would decrease vehicle rental tax usage and whether that amount would be available or not depended on one's interpretation of how the fund was supposed to be used.

Representative Josephson asked what would become of the funds if the amendment passed.

Mr. Painter answered that the funds could be appropriated for another purpose; however, the governor's budget spent based on current year revenue and the statute specified the state should spend previous year's revenue. He explained that because of the pandemic, prior year revenue was lower than projections for future revenue. He elaborated that if the statutory guidance was followed, there would not be additional revenue to spend, whereas, not following statutory guidance and going with current year revenue, there was an additional \$2.15 million. He stated it was a policy call.

Representative Rasmussen provided wrap up on Amendment DNR A Replacement. She highlighted parking fees in other states compared to the \$5 charged in Alaska. She shared that Colorado charged \$10 per vehicle for parking, Utah charged \$10 per vehicle and one park in Utah charged a \$10 per person head charge. She stated that private campgrounds in Alaska cost \$80 to \$100 per night, while the parks campgrounds charged \$20 per night. She highlighted that it was not reasonable to expect the current level of services could be maintained when financial times became hard. She emphasized that the current high oil prices would not continue forever.

Representative Rasmussen wanted to ensure the state was keeping up with the times. She thought gradually increasing the fees was easier for the public to accept than an abrupt increase. The maximum the state could charge was \$10 [daily] and \$200 annually, but the state was currently charging \$60 for the annual fee. The maximum authority for

the boat launch fee was \$50 and the state was currently charging \$20. Parks were allowed to charge \$60 per night for camping and the current fee was \$20. Additionally, parks could charge \$200 for cabins per night and the current charge was \$100. She stated the amendment would give DNR flexibility to leverage higher fees. She asked for members' support to try to keep parks more sustainable.

[10:03:36 AM](#)

Representative Wool MAINTAINED the OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Rasmussen, Thompson, Merrick

OPPOSED: Wool, Carpenter, Edgmon, Johnson, Josephson, LeBon, Ortiz, Foster

The MOTION to adopt Amendment DNR A Replacement FAILED (3/8).

[10:04:31 AM](#)

Co-Chair Foster directed members to the supplemental capital amendment packet (copy on file).

Representative Johnson MOVED to ADOPT Amendment Supplemental Capital 1, 32-GH2686\R.1 (Marx, 3/16/22) (copy on file):

Page 71, following line 18:

Insert a new subsection to read:

"(c) The amount of the fees collected under AS 28.10.421(d) during the fiscal years ending June 30, 2022, and June 30, 2023, for the issuance of National Rifle Association license plates, less the cost of issuing the license plates, estimated to be \$18,708, is appropriated from the general fund to the Department of Commerce, Community and Economic Development for payment as a grant under AS 37.05.316 to the Alaska SCTP, nonprofit corporation, for maintenance of scholastic clay target programs and other youth shooting programs, including travel budgets to compete in national collegiate competitions for the fiscal years ending June 30, 2022, and June 30, 2023."

Representative Josephson OBJECTED for discussion.

Representative Johnson explained that the amendment was done almost annually. She detailed that it would appropriate money from the National Rifle Association (NRA) license plate into the Alaska Scholastic Clay Target Program (SCTP). She elaborated that the Alaska SCTP managed numerous shooting programs including district sanctioned high school clay target sports clubs and lettering ability with teams in Fairbanks, Mat-Su, Anchorage, Chugiak, Soldotna, Haines, Juneau, Sitka, Ketchikan, and Petersburg. Alaska SCTP had been instrumental in getting the NRA license plates issued and available to all Alaskans. She relayed that AS 28.10.421(d) allowed the appropriation of any fund balances in excess of the cost of issuing the plates. The estimated balance was \$9,450.20. The amendment enabled distribution for two years, which would bring the distribution in line with the other license plate disbursements in the budget, which had been suggested by Legislative Legal Services. The amendment would appropriate the balance of the Alaska SCTP for the maintenance of the scholastic clay target programs and other youth shooting programs; it included travel costs to national collegiate competitions. The legislature had appropriated other like-fund balances to other entities in the bill.

10:06:55 AM

Representative Carpenter was unfamiliar with the Alaska SCTP program. He asked if the programs ran in multiple locations or one location.

Representative Johnson replied that she was not an expert, but she did not recall certain ranges in particular. There were a variety of places throughout practicing locations.

Representative Josephson WITHDREW the OBJECTION. There being NO further OBJECTION, Amendment Supplemental Capital 1 was ADOPTED.

10:07:58 AM

Co-Chair Foster relayed there had been duplicate amendments related to oil tax credits in members' packets. He noted that Representative Rasmussen's amendment had passed

previously. He relayed that Representative Josephson was the sponsor of the other amendment.

Representative Josephson WITHDREW Amendment AA3, 32-GH2686\R.23 (Marx, 3/18/22) (copy on file).

Co-Chair Foster clarified the amendment number for the record. He reviewed the remaining amendments.

[10:09:58 AM](#)

AT EASE

[10:10:40 AM](#)

RECONVENED

Representative Wool WITHDREW Amendments H DOA 1 and H DOA 2 related to public broadcasting.

[10:11:30 AM](#)

Co-Chair Foster directed members to the capital amendment packet.

Representative Johnson MOVED to ADOPT Amendment Capital 1 (copy on file):

DEPARTMENT: Commerce
PROGRAM: Grants to Named Recipients
PROJECT TITLE: Alaska Search and Rescue Association

ADD: \$294.3 UGF 1004

EXPLANATION: Grant to Alaska Search and Rescue Association (ASARA) to train volunteer search and rescue personnel within its organization, such as Village and other recognized organizations. The Alaska Search and Rescue Volunteers have not received any other State of Alaska grants or training funding since 2014.

Co-Chair Merrick OBJECTED for discussion.

Representative Johnson explained the amendment that would add grant funding of \$294,300 to the Alaska Search and Rescue Association. She noted that someone from the troopers should be available online to answer questions. She noted the association was a volunteer organization that

worked with rescue dogs. The organization had not received any other state grant funds since 2014. She detailed that the organizations worked primarily at the request of the Alaska State Troopers. The amendment would help fund 25 dogs for the organization. She noted that the specialized group would get \$129,000. She provided some examples of training including initial incident response, search and rescue academy, first aid training, CPR, avalanche rescue, and canine training. The grant would go through the Department of Commerce, Community and Economic Development. She stated the grant was not uncommon, but it had not been funded in the past few years. She highlighted that the volunteers had not discontinued their work even without funding. She elaborated that the organizations received funding when on an active search and rescue mission, but they did not receive any state funding at any other time. She was available for any questions.

[10:15:29 AM](#)

Co-Chair Merrick remarked that several people had asked her about the capital budget item in the operating budget. She clarified that the CS for HB 281 had "capital appropriations" in the bill title; the item would be a capital appropriation in the operating budget. She supported the item.

Co-Chair Merrick WITHDREW the OBJECTION.

Vice-Chair Ortiz OBJECTED for discussion.

Vice-Chair Ortiz observed that one of his communities was a part of the organization, but another of his communities had an active search and rescue program and was not on the list. He asked why some groups may choose to join the organization and others did not.

Representative Johnson replied that she did not have the information. She stated the funding was for the Alaska Search and Rescue Association. She did not know why some groups chose to join and others did not. She added that the members she knew had a close relationship with the troopers and worked to be called out by the State of Alaska and were not really independent of the state.

Vice-Chair Ortiz WITHDREW the OBJECTION.

Representative LeBon remarked that the association was the ground-based version of the Civil Air Patrol. He could imagine a coordinated activity between the two entities. He noted that the amendment seemed to have a very specific dollar amount. He asked if it was formula driven.

[10:18:06 AM](#)

Representative Johnson answered that it was not formula driven, but it was for a specific project. The project would include basic search and rescue for villages and village members at about \$165,000. She elaborated that \$129,300 was for specialized search and rescue training for canine and avalanche. She had the information broken out by organization and could provide it if members were interested.

Representative Carpenter was curious how the balance of the general funds was distributed among the 22 members.

Representative Johnson offered to have copies made of the list for members.

[10:19:27 AM](#)

AT EASE

[10:22:51 AM](#)

RECONVENED

Co-Chair Foster invited the Alaska State Troopers to answer questions.

LT PAUL FUSSEY, ALASKA STATE TROOPERS, DEPARTMENT OF PUBLIC SAFETY (via teleconference), introduced himself.

[10:23:35 AM](#)

Representative Johnson restated a question by Vice-Chair Ortiz and asked Mr. Fussey to respond.

Mr. Fussey answered that Alaska Search and Rescue Association members paid to join and it was up to individual groups to decide whether to join. He could not speak for each group as to why they chose not to join.

Representative Johnson remarked that the membership list was long, and she did not believe her list was exhaustive.

She asked if Mr. Fussey knew how many organizations were on the list.

Mr. Fussey replied in the negative.

Representative Carpenter asked about the value was of being on the list. He asked if it indicated to the troopers, as coordinators, that a group was located in a specific area and willing to assist in search and rescue.

Mr. Fussey answered that he reached out to and asked for help from different groups and organizations that were not Alaska Search and Rescue Association members. He explained that joining the association gave members access to training and the National Search and Rescue Association.

Representative Carpenter asked for the cost to join the organization.

Mr. Fussey replied that he did not have the information.

[10:25:33 AM](#)

Vice-Chair Ortiz referenced a backup document associated with the amendment (copy on file) that specified there were approximately 25 certified and deployable canines in the state. He asked if there was any connection between the organizations having access or using dogs in their search and rescue versus areas without access to dogs.

Mr. Fussey replied that the different search canine groups were deployable around the state. He explained that if they were located in Southeast, Fairbanks, Kodiak, or Southcentral, the dog teams were deployable around the entire state for different search and rescue associations. He expounded that the dogs had been taken to searches in Unalaska, Kotzebue, and other locations around the state.

Representative Johnson provided wrap up on the amendment. She quoted from the Alaska State Troopers annual report: "

"With a commissioned count of less than 300 troopers, AST depends heavily upon the professional volunteer search and rescue organizations. There are roughly 48 volunteer organizations statewide. These volunteers drop what they are doing to answer the call for help

that often interrupts regular - day jobs and family life."

Representative Johnson relayed that the amendment request equated to approximately \$100 per volunteer per year in training. He found it to be one of the least expensive, best returns for the state's money. She shared there were plenty of avalanches around Hatcher Pass and there were emergencies that took place all throughout the state that could not always be serviced by troopers.

Vice-Chair Ortiz WITHDREW the OBJECTION.

Representative Carpenter OBJECTED.

A roll call vote was taken on the motion.

IN FAVOR: Thompson, Wool, Edgmon, Johnson, Josephson, LeBon, Ortiz, Rasmussen, Merrick, Foster
OPPOSED: Carpenter

The MOTION PASSED (10/1). There being NO further OBJECTION, Amendment Capital 1 was ADOPTED.

[10:29:04 AM](#)

Representative Josephson WITHDREW Amendment H DOA A related to bonuses for the Public Defender Agency and Office of Public Advocacy.

Co-Chair Foster directed members to the additional amendments packet.

Representative Josephson MOVED to ADOPT Amendment H FCS 1 (copy on file):

H FCS 1
Family and Community Services
Juvenile Justice

This amendment restores three positions that supervise and teach anger management skills to at-risk children from across Alaska who are enrolled in the Anchorage School District Step-Up program. Step Up provides an academic option for students who are expelled or long-term suspended from ASD for aggressive behaviors such as fighting, assault and weapons offenses. To maintain

the Step-Up program after these state positions were cut in FY22, ASD diverted funds from a grant that was intended for training district staff in nonviolent crisis intervention, school safety and suicide prevention. That grant will expire at the end of FY22.

1004 Gen Fund (UGF) 336.4

Representative LeBon OBJECTED.

Representative Josephson explained the amendment with a prepared statement:

The amendment restores the state contribution to operation of the Step-Up program, which is an educational program for teenagers who have been expelled or long-term suspended for aggressive behavior such as fighting, assault, and weapons offences. The nature of these students' behavioral issues and the likelihood they would eventually end up in the juvenile justice system or the adult correctional system without a program like Step-Up are the reason the Division of Juvenile Justice traditionally shared a portion of program costs with the Anchorage School District. The state assisted with the lease for space where the program is located, and the Division of Juvenile Justice provided three staff to supervise and to teach anger management skills. In FY 22, these three positions were eliminated from the department budget. To continue Step-Up for the current school year, the school district had to divert funds from a grant intended to train district staff in nonviolent crisis intervention, school safety, and suicide prevention. That grant will expire at the end of FY 22. This amendment continues the pattern of the state sharing the cost of Step-Up program intervention and the negative trajectory of these teenagers' lives.

[10:32:27 AM](#)

Representative LeBon referenced language in the amendment that it applied to at-risk children from across Alaska who are enrolled in the Anchorage School District (ASD) Step-Up program. He asked if there could be Fairbanks School District students enrolled in the program.

Representative Josephson answered that there could be if the youths were in the custody of Juvenile Justice and housed in Anchorage. He cited the McLaughlin Youth Center as an example.

Representative LeBon asked for verification that the program was not embedded in the ASD and the clientele was in a juvenile detention center.

Representative Josephson answered that Step-Up was largely an ASD program, but kids in trouble often ended up in Anchorage.

Representative LeBon asked if the ASD paid for a portion of the program in its budget.

Representative Josephson answered affirmatively. He explained that ASD had to shift funds to cover its "skin in the game." The amendment was designed to restore the state's share. He stated that essentially the municipality would still be a participant in the program.

[10:35:12 AM](#)

Vice-Chair Ortiz asked for verification that the Step-Up program was not offered anywhere other than Anchorage.

Representative Josephson believed that was correct. He clarified that ASD's portion of the cost went to the payment of teachers in the program.

Representative LeBon MAINTAINED the OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Josephson, Ortiz, Rasmussen, Merrick, Foster

OPPOSED: Carpenter, Johnson, Thompson, LeBon, Wool

The MOTION to adopt Amendment H FCS 1 FAILED (5/5).

Representative Edgmon was absent from the vote.

[Note: the motion on the amendment was subsequently rescinded and the amendment was adopted at approximately 10:48 a.m.]

[10:37:11 AM](#)

AT EASE

[10:47:00 AM](#)

RECONVENED

Co-Chair Foster noted there were some time constraints for members.

Representative Josephson MOVED to RESCIND action Amendment H FCS 1.

There being NO OBJECTION, it was so ordered.

Representative Josephson MOVED to ADOPT Amendment H FCS 1 (copy on file) [see 10:29 a.m. for amendment detail].

Co-Chair Merrick OBJECTED for discussion.

Representative Josephson reread his statement about the Step-Up program.

Co-Chair Merrick WITHDREW her OBJECTION.

Representative LeBon OBJECTED.

A roll call vote was taken on the motion.

IN FAVOR: Edgmon, Ortiz, Josephson, Rasmussen, Wool, Merrick, Foster

OPPOSED: Carpenter, Johnson, LeBon, Thompson

The MOTION PASSED (7/4). There being NO further OBJECTION, Amendment H FCS 1 was ADOPTED.

[10:50:45 AM](#)

Representative Rasmussen requested to address Amendment H DEC 1.

[10:51:00 AM](#)

AT EASE

[10:51:12 AM](#)

RECONVENED

Co-Chair Foster directed members to the numbers section amendment packet (copy on file).

Representative Rasmussen MOVED to ADOPT Amendment H DEC 1 (copy on file):

H DEC 1

Environmental Health

Assume Primacy of Hazardous Waste Management Under Resource Conservation and Recovery Act, Subtitle C

Offered by Representatives Rasmussen and LeBon

The Alaska Department of Environmental Conservation (DEC) will assume primacy to operate a Resource Conservation and Recovery Act (RCRA) Subtitle C program within its Environmental Health division as a section of the Solid Waste Management program. DEC already manages RCRA Subtitle D in Alaska. The Subtitle C program will include permitting of treatment, storage, and disposal facilities, inspections of facilities that generate hazardous waste, data collection and reporting, tracking hazardous waste generation in Alaska, compliance assistance, and corrective action management.

RCRA Subtitle C includes requirements related to hazardous waste management covering facilities that generate hazardous waste, transporters, treatment facilities, storage facilities, disposal facilities, and used oil handlers.

Alaskans will benefit from in-state management of this program as DEC staff will be able to provide a significantly greater level of technical and compliance assistance to facilities in the public and private sector that generate hazardous waste than is currently provided by the EPA. This assistance will better prevent the mishandling of hazardous waste thus protecting public health and Alaska's environment.

1004 Gen Fund (UGF) 830.0

Vice-Chair Ortiz OBJECTED.

Representative Rasmussen explained that the amendment would allow the Department of Environmental Conservation (DEC) to assume primacy over the Solid Waste Management Program. She relayed that DEC already managed the Resource Conservation and Recovery Act (RCRA) Subtitle D in Alaska. The amendment

would add the state's management of Subtitle C. She reviewed information in the amendment explanation above. The amendment had been brought forward by the administration and was supported by AGC [Association of General Contractors] and several other industry groups who believe permit streamlining and increased local control at the state level would assist their industries.

[10:53:07 AM](#)

Representative Josephson was told that most states had primacy over hazardous and nonhazardous substances; however, he believed he would vote against the amendment. He was very concerned about DEC as a department. He discussed that a past long-term SPAR director had resigned after a dispute with upper management over what he assumed was fighting for the division. He highlighted that the division had lost around 22 employees during the current administration, some of whom were talented engineers who were not easy to replace. He stated that when he had asked the administration it had sounded fairly unconcerned or indifferent about the issue and had suggested eliminating the positions. He did not have faith in the department's management. He opposed the amendment.

Representative Wool asked for verification that the amendment did not pertain to air quality issues and only applied to waste disposal. He stated there was talk about micronuclear power in parts of Alaska. He asked if nuclear waste would be hazardous waste. He asked if the state would have primacy over nuclear waste under the amendment.

Representative Rasmussen deferred to the department.

JASON BRUNE, COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL CONSERVATION (via teleconference), answered that nuclear waste was a hazardous substance handled by the Nuclear Regulatory Commission (NRC). He stated there was legislation addressing the topic with microreactors currently.

Representative Wool wanted to ensure the amendment did not impact the management of air quality.

Commissioner Brune confirmed it would not.

[10:56:22 AM](#)

Vice-Chair Ortiz asked how the amendment would impact the state financially.

Commissioner Brune replied that the increment was \$830,000 UGF for six full-time positions. Upon receipt of primacy, federal funding was available to states with primacy at an amount estimated to be \$400,000. The department anticipated the process would take two years and the ongoing commitment would be \$430,000 UGF and \$400,000 federal receipts.

Representative LeBon shared that he had signed on as a co-sponsor of the amendment. He shared that in the examination process for commercial banks in Alaska, there was a federal examination through the FDIC [Federal Deposit Insurance Corporation], but the State of Alaska also examined banks. He noted that negotiating with the state bank examiners was much easier and more efficient than dealing with the federal entity. He relayed that having the state on board during an examination was to the benefit of the banking community. Additionally, when he had served on a school board, there had been the state high school qualifying exam and the federal No Child Left Behind program. He shared that it had been much easier to dealing with the state. He viewed the amendment as a step towards state responsibility. He supported the amendment.

[10:59:29 AM](#)

Representative Edgmon was wary of bringing on new programs and hiring more people. He noted that in combination with another amendment that would add 28 new employees, the two amendments would result in 34 employees. He remarked it was currently hard to hire or retain employees. He stated it was the fourth year of an administration that may or may not come back for another term. He stated the underlying intent of the amendment was commendable; however, he was concerned about putting a program in place that may not be fully staffed up. He asked if the department had a high degree of confidence it would be able to fill the positions. He wondered how long it would take to get the program up and running.

Commissioner Brune thought it was a fair question about retention and being able to get the positions filled. He detailed that DEC had a number of recent positions for environmental program specialists and there had been a

significant number of applicants for the positions. The department believed it would be able to fill the positions for RCRA and 404 primacy in an expeditious manner. He addressed Representative Edgmon's question about how long it would take to obtain primacy. He relayed the department estimated the timeframe at two years to complete the application working cooperatively with the Environmental Protection Agency (EPA). He relayed the EPA was very supportive and the programs were designed to be assumed by the states. He thought the two-year timeframe for state control over the program was an achievable target. He added that in the 1980s, the legislature had added statutes telling DEC to pursue primacy of RCRA. In 2014, the legislature directed DEC to pursue primacy of the 404 program. He stated the department was following the request of the legislature in putting the process forward.

[11:02:24 AM](#)

Representative Carpenter asked how many areas DEC currently exercised or managed primacy.

Commissioner Brune answered that the department had assumed primacy over the Clean Air Act in 1972, Safe Drinking Water Act in 1978, and the Clean Water Act National Pollutant Discharge Elimination System (NPDES) in 2012. The state had part of RCRA primacy for some time. The amendment pertained specifically to RCRA Subtitle C. The state had current primacy over four federal programs. He highlighted that the programs were designed to be assumed by the state.

Representative Carpenter stated that the previous speaker had expressed concerns about growing additional programs and he shared the concerns. He asked what impacts Alaskans may see if DEC assumed primacy over RCRA Subtitle C.

Commissioner Brune also had concern about growing government, but he believed it was appropriate for the state to have oversight over the programs. He believed the state program would be accountable to Alaskans, legislators, and the administration. He elaborated that it would be less costly, result in timely and more coordinated permitting processes and provide additional protection for the environment. Currently, the EPA had one half of one position located in Anchorage that worked on RCRA. He expounded there were a number of inspectors who parachuted in from Seattle. The department was proposing to work on

the program on a daily basis in conjunction with the regulated community to ensure hazardous waste was handled appropriately and that questions could be answered. He shared that the previous week, the North Slope Borough was fined \$6.5 million by the EPA for a RCRA violation. The administration believed the state needed to not focus on fining, but focus on environmental protection and working with the regulated community to ensure hazardous wastes were handled. He believed it was a good investment for the state to make.

[11:05:55 AM](#)

Representative Carpenter asked what industry could expect in regard to the permitting process. He asked if permits would be quicker and/or less costly.

Commissioner Brune replied that the permitting process would be quicker and more responsive with more knowledge of Alaska. He elaborated there would be less emphasis on parachuting in and fining entities. There would be a focus on day-to-day compliance assistance and working with permitted entities to ensure they were being protective of human health and the environment and allowing their operations to proceed.

Representative Carpenter asked about the current appeal process when industry had an issue with an EPA ruling or fine. He asked what the process would look like with the state assuming primacy.

Commissioner Brune responded that currently when entities were fined by the EPA, they had the opportunity to appeal and ultimately take it to court. He stated that like other programs where Alaska had primacy, the process was similar. The state's hope was to avoid giving fines by working with entities on a day-to-day basis. He noted there were reasons and situations where entities would need to be fined but developing relationships with permit holders would help reduce the number of fines and compliance issues. He stated it would make permit holders be more protective of the environment and have a better relationship. He thought state primacy would help significantly.

[11:08:27 AM](#)

Vice-Chair Ortiz asked how many positions in DEC were unfilled currently. He asked if the department was looking to fill positions in other areas.

Commissioner Brune answered there was currently a 7 percent vacancy factor at DEC. He shared that he had an emphasis on growing staff, improving retention, and addressing issues that existed when he took the position. He shared there had been a 25 percent turnover rate when he had started the job. He put an emphasis on ensuring timely, science-based, legally defensible permits. He put a focus on training and development. He was committed to DEC employees. He added that the department's annual turnover rate had reduced to 17 percent. He remarked that the number was still not something he was proud of, but stressed it was significant that during the year of the "great resignation" that the number had dropped from 25 percent to 17 percent. He emphasized that the department was still working daily to improve the number.

Vice-Chair Ortiz believed 48 states had assumed RCRA primacy. He pointed out that the current administration was in its fourth year. He asked why RCRA primacy had not been pursued before the current session.

Commissioner Brune answered that it had not been an issue raised when he had first started. As he had learned about the lack of EPA effort, he determined the state needed Alaskans overseeing the process. He wanted to make sure things were done right and the environment was protected. He stated that one half of one position based on overseeing hazardous waste for the EPA was not appropriate. He would have made the proposal three years earlier if he had known about the issue.

[11:12:21 AM](#)

Vice-Chair Ortiz asked if Commissioner Brune was saying he had not been aware of the RCRA process and how states had assumed primacy in the area.

Commissioner Brune clarified that he was aware that states could assume programs like RCRA, he had not been aware of the lack of EPA staffing towards the effort. He had not been aware there had only been one half of one EPA position overseeing the program. Additionally, he had been unaware people from Seattle with no understanding of Alaska were

the ones coming to inspect entities for RCRA violations. He had not been aware of the lack of focus, and he wanted to put the focus on RCRA. He believed DEC would do a far superior job.

Vice-Chair Ortiz asked about the experience of other states in relationship to the particular area. He asked if litigation was common associated with RCRA permitting. He wondered if the state could expect the cost of added staff in addition to added litigation cost.

Commissioner Brune thought it was a fair question. He stated it would be naïve to think there would be no added litigation costs when taking over management of a program like clean air, clean water, and safe drinking water. He relayed there were situations that occurred where the department was doing its best to enforce protection of human health and the environment. He elaborated that RCRA did not have a significant amount of litigation involved, but he believed there would be some. The department would do its best in daily conversations with the regulated community to try to ensure litigation did not occur; however, there were times when there were bad actors that had to be brought to the courts to ensure compliance and protection of human health and the environment.

[11:15:11 AM](#)

Representative Johnson supported the amendment with some concern. She thought it was important to be aware and cautious. She stressed that the department needed to be committed because the issue was not to be taken lightly. She highlighted that even if DEC had primacy, it did not mean the EPA could not hop in anytime it felt necessary to impose action. She noted there was often times no protection for the company or municipality in question. She emphasized it was a huge responsibility for a state to take on. She underscored the importance of caution. She indicated to Commissioner Brune she would vote in support of the amendment because she had some confidence in his ability to get the primacy up and running and in his ability to manage the department. She pointed out that it was a long-term issue. She reiterated that state primacy was a major responsibility the state would take on as a state and for companies and municipalities. Additionally, she cautioned that when the state gave RCRA advice, it had better be good advice.

Commissioner Brune responded that the message was delivered and heard. He stated that the relationship the state and EPA had as co-regulators of the program would be similar to other areas where Alaska had primacy. He elaborated that as co-regulators it was necessary to discuss things. He expounded that the EPA would have to give DEC a heads up if the federal agency planned to parachute in. He characterized the current relationship with the EPA as fantastic. He was proud of the relationship.

Co-Chair Foster recognized Representative David Nelson in the room.

Representative Wool highlighted the air quality PM 2.5 issue in Fairbanks. He asked if the EPA had stepped in to address the air quality issue at any time in the past. He knew it had been a threat in the past that if the state did not fix the issue the federal government would step in.

Commissioner Brune answered that the EPA had the authority to step in. He relayed that the state's implementation plan was currently before the EPA and the EPA had approved certain components. The federal programs were passed by Congress and delegated to states. The EPA could come in to ensure programs were properly administered, resourced, and enforced. The department believed its proposal for air quality in Fairbanks addressed and improved air quality. The department was committed to working with the EPA to ensure it accepted the proposal.

Representative Wool asked when DEC had taken over primacy for air quality.

Commissioner Brune answered that DEC had taken over primacy for air quality in 1972. He added that DEC was celebrating its 50th anniversary in the current year. He relayed that air quality was the first program DEC had taken primacy of.

[11:20:20 AM](#)

Representative Wool asked if there had ever been any threat to the primacy where people had said DEC was not doing a good enough job.

Commissioner Brune answered that there had not been a threat to the state's primacy during his tenure with the

department. He believed the state needed to ensure it was adequately resourcing the programs. He elaborated that during his first year with the department, the EPA had advised the department it did not have enough enforcement staff or inspectors. Consequently, he had put together a budget proposal to increase the number of inspectors, which had been passed by the legislature. He relayed that DEC made corrections when suggested by the EPA and public to ensure state oversight was maintained because state oversight was far better than federal oversight.

Representative Wool asked if the air quality program had ever been threatened to go back to the federal government.

Commissioner Brune responded that if the department had not put a program forward, the EPA would have put a federal implementation plan forward. He believed the EPA had been waiting for a state plan for the better part of six years to eight years. He relayed that within his first year with the department, DEC had submitted the proposal. The threat of sanction had been removed as a result of the submittal.

[11:21:54 AM](#)

Representative Josephson referenced Commissioner Brune's testimony that the EPA recently told the department that it did not have enough inspectors. He noted that Commissioner Brune had used a second word that may have been enforcement. He asked about the second word Commissioner Brune had used.

Commissioner Brune answered, "Enforcement, that is correct."

Representative Josephson asked why that had been the case.

Commissioner Brune answered that it had been under the prior administration, and he could not speak to the reasoning. He relayed that when he had been told of the need, the department had put together the budget proposal and the problem had been fixed. He elaborated that the department had beat the number of required inspections the previous year and the EPA was ecstatic with the progress DEC had made.

[11:23:04 AM](#)

Representative Rasmussen provided wrap up on the amendment. She had distributed letters of support to committee members from various industries. She noted the group of supporters was broad. She asked for members' support.

Vice-Chair Ortiz MAINTAINED the OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Johnson, LeBon, Rasmussen, Thompson, Wool, Carpenter, Merrick

OPPOSED: Josephson, Ortiz, Edgmon, Foster

The MOTION PASSED (7/4). There being NO further OBJECTION, Amendment H DEC 1 was ADOPTED.

[11:24:38 AM](#)

AT EASE

[11:31:29 AM](#)

RECONVENED

Co-Chair Foster stated there were a couple of other items related to primacy that would be taken up for consideration.

Co-Chair Merrick MOVED to ADOPT Amendment H DEC 3 (copy on file).

H DEC 3

Department of Environmental Conservation
Water

Offered by Representatives: Merrick, Rasmussen

The Alaska Department of Environmental Conservation (DEC) will assume primacy of Section 404 of the Clean Water Act (CWA), which is the primary federal law governing pollution control and water quality of the Nation's waterways.

Section 404 of the CWA regulates the use of dredged or fill material into the waters and wetlands of the United States (WOTUS) and requires the U.S. Army Corps of Engineers (USAGE) to issue a Section 404 permit before dredged and fill material may be discharged in WOTUS.

404 permit applicants in Alaska already must obtain a Section 401 water quality certification from DEC, which requires the Department to review the project, analyze its potential water quality impacts and solicit public and agency comments. DEC assumption of the 404 program would provide a streamlined permitting procedure, greater certainty to the regulated community, conservation of resources of both the applicant and regulator, and greater control over the development of natural resources while complying with federal law.

1004 Gen Fund (UGF) 4,904.0

Vice-Chair Ortiz OBJECTED.

Co-Chair Merrick noted that Representative Rasmussen was a cosponsor on the amendment. She explained the amendment with a prepared statement:

Reinstating this funding will give Alaska greater control in developing our natural resources, while complying with federal law. The legislature gave the Department of Environmental Conservation statutory authority and funding for this program in 2013 and they started implementing primacy before funding was cut during statewide budget reductions. DEC assumption of the 404 program would remove state and federal overlap and streamline permitting, provide greater certainty to the regulated community, conserve resources of both the applicant and regulator, and give Alaska greater control in developing our natural resources. This is all while complying with federal law and without adverse impact on the environment.

Although this initially is going to require some general funds, the intent is to move to a fee for service concept where the applicant's fees will cover the cost of issuing their permit. This is a two-year process, so the department is requesting three positions in the FY 22 supplemental, 25 positions in FY 23, and the additional 4 positions in FY 24. There is some misconception that 404 only deals with mining permits and yes mining is one of the industries that applies for these permits, but state agencies also, like DOT, need these permits for many of their projects.

Instate permitting would be responsive to Alaska's short construction season where entire seasons can be missed if a permit application sits on the desk of an EPA regulator in Seattle. I was surprised to learn that 65 percent of the nation's wetlands are in Alaska, so every infrastructure project impacting wetlands including roads, bridges, and singular residential development projects, need a 404 permit. I also want to clarify that this funding does not give the state 100 percent oversight of the 404 permitting process. Projects such as the Pebble Mine, would still require the Army Corps of Engineers involvement and also, state issued permits would still be subject to a veto by the EPA. Because of that, I feel it is in our state's best interest to assume primacy over the 404 program. A state run 404 program would reduce the uncertainty resulting from shifting national policies.

[11:35:15 AM](#)

Vice-Chair Ortiz requested to hear from the DEC commissioner.

Commissioner Brune provided remarks on the amendment. He expressed the department's excitement about the program. He reviewed that Section 404 of the Clean Water Act oversaw the discharge of dredged or fill materials into waters and wetlands. The department believed primacy over 404 would provide greater streamlined permitting and greater certainty to the regulated community. The amendment would impact projects of all sizes and most construction and development projects require 404 permits. He elaborated that the [primacy] implementation process would take two years; DEC was putting currently putting together its application and working with the regulated community to understand impacts throughout the process as the application to the EPA and Corps of Engineers was developed. The department was requesting an increment of \$4.9 million UGF for 28 full-time positions. The statutory authority had been passed in 2013. The department would be looking at a fee-for-service process, which had not yet been finalized and could require legislative approval. He stated it was similar to what the department had done with the NPDES [National Pollutant Discharge Elimination System] program and air program where some regulatory oversight expenses were passed on to the regulated community.

Vice-Chair Ortiz referenced the previous amendment where 48 states had taken over RCRA primacy and Alaska was one of the two that had not. In contrast, he believed only two states had taken over 404 primacy. He thought there must be a good reason for that. He asked how taking over 404 primacy was going in Florida.

Commissioner Brune clarified that there were currently three states with 404 primacy including New Jersey, Michigan, and Florida. He expounded that Florida had worked with the Corps of Engineers and EPA in developing what areas would be assumable by the state. There were two states that came to mind when thinking about wetlands: Florida and the Everglades and Alaska. He detailed that Alaska had 175 million acres of wetlands, which was nearly twice the wetlands in the Lower 48. He believed Alaska should have oversight over its wetlands. Florida had received 404 primacy at the end of 2020.

Commissioner Brune elaborated that the EPA had been sued by some environmental organizations over whether Florida should have been granted primacy. He underscored that when states assumed primacy they were required to be as rigorous as the federal requirements but could be more so. There were concerns from the organizations that brought the lawsuit that Florida's program was not as rigorous as the federal government's; the lawsuit was currently in the courts. He had spoken with the commissioners from New Jersey, Michigan, and Florida during the process and DEC had worked closely with the EPA as it was contemplating whether to put the application forward. He stated that the EPA was enthusiastic and was willing to help. The EPA had offered grants to DEC and DEC had applied; the department had not yet received the funds because it had not yet been given authority by the legislature to move forward.

Commissioner Brune had learned in conversations with the states with 404 primacy that it was a much more efficient program with coordination between the 402 NPDES program and the 404 program. He noted that a 401 certification was not required. He added that instead of having three governmental entities involved there was only one entity involved. The other states had talked about the cost and time savings with no reduction to environmental protection. He believed the other 47 states may not have sought 404 primacy because wetlands may not have significant impacts on their states. He emphasized that Alaska held two-thirds

of the nation's wetlands. He stated it was and should be a priority for Alaska. He added it was such a priority that the legislature passed statutory authority for the department in 2013.

[11:41:43 AM](#)

Vice-Chair Ortiz stated that the amendment sponsor had indicated state 404 primacy would help streamline and make it easier to permit projects. He stated it implied there had been difficulty with the process up to the current point. He asked if there had been specific areas where the state had been unable to secure permits through the EPA and Army Corps of Engineers. He asked if there were projects currently being held up.

Commissioner Brune answered that from a timeliness perspective and allocation of resources when a state had oversight of the program, the state could allocate additional resources if there were higher priority projects. He added that the state would obviously want to ensure it was meeting timelines. He highlighted that the permitting process could take a very long time. For example, the Sterling Highway reroute had taken over 30 years. The federal government did not have to prioritize to the state's level of prioritization. He shared there were small developers in Alaska wanting to build homes in areas where the mitigation impacts were so expensive based on what the Corps of Engineers had told them, they did not go forward with the projects. He stated that it was impacting small and large companies.

[11:43:53 AM](#)

Vice-Chair Ortiz asked if there were any specific problems where the state had tried to permit projects in the name of better use of resources and economic development.

Commissioner Brune did not have any specific projects. He stated that generally it was important it was understood that the state cared about its wetlands and wanted to have oversight over wetlands and projects going forward. He had heard concerns about the time and mitigation put forward by the Corps of Engineers and the lack of coordination between states and the federal government. He thought it would be smart for the state to assume primacy over the program from an accountability perspective.

Vice-Chair Ortiz stated that the amendment sponsor had included Pebble Mine in her comments. He asked if there would be any added authority for the state in relation to the project if it assumed 404 primacy.

Commissioner Brune answered that the Pebble Project, as it was currently submitted, would require Corps of Engineer permits regardless. He explained that ports, harbors, and navigable waters were not assumable by states. He elaborated that oversight by the EPA and Corps of Engineers would remain and the 404 C opportunity would remain in place. Additionally, with respect to the Pebble Project, the Bristol Bay Forever initiative had been passed, giving the legislature the final say.

[11:46:49 AM](#)

Vice-Chair Ortiz asked if the state had any more authority or ability to have a say in what happened with Pebble Mine if it assumed 404 primacy.

Commissioner Brune answered the state had 401 and 402 permits already, which it had oversight over. He confirmed that the state would oversee the permitting process for lands it assumed if it obtained 404 primacy. He stated there would be components of a project and it would depend on what went into the application for primacy in terms of which areas would be assumed by the state and which were maintained by the federal government. There would be things the state had added oversight of. He reiterated that the EPA and the Corps of Engineers would maintain their oversight over the proposed Pebble Mine project.

Vice-Chair Ortiz stated that the amendment would bring a large growth of government including \$4.9 million in beginning costs and 28 new positions. He emphasized that a significant amount of litigation went to the EPA and Army Corps of Engineers and the state would assume the costs if it took over primacy. He recognized the state currently had more financial flexibility; however, it was not that long ago where the state had been far from that situation. He pointed out that the previous year, the subcommittee had attempted to give the DEC more staff to help it do a better job following through with its SPAR [Spill Prevention and Response] responsibilities. He underscored that the item had been vetoed. He cited the expense of the increased

positions and litigation and did not understand the timing of the current proposal.

[11:50:28 AM](#)

Representative Rasmussen highlighted there was a letter in support of primacy over 404 and RCRA from the Alaska General Contractors. She detailed that the organization represented over 600 contractors and suppliers statewide. She stated the letter highlighted the benefit of allowing Alaskans to permit Alaskan projects. She asked how many other states had wetlands.

Commissioner Brune replied that every state had wetlands, but some states had more than others. He relayed that Alaska had two-thirds of the nation's wetlands. He elaborated that every state had some oversight and effort through the Army Corps of Engineers.

Representative Rasmussen asked if any other states experienced similar seasons and temperatures like Alaska's Arctic and the need for ice roads.

Commissioner Brune answered that Alaska was what made the United States an Arctic nation. Alaska dealt with issues that other states did not have. He added that many states had already impacted significant amounts of their wetlands. He highlighted that at one point there had been 200 million acres of wetlands in the Lower 48, but only 100 million acres remained. He remarked that the state had a responsibility to take care of its wetlands because they provide significant ecological functions, but it also had the responsibility to mitigate any impacts from projects appropriately.

Representative Rasmussen asked for the average 404 permitting time for Alaska and how it compared to other states.

Commissioner Brune replied that the timeline for nationwide permits required to follow certain stipulations could be immediate to decades; it depended on the complexity of the project.

Representative Rasmussen stated that Alaska was very unique and there were projects with a limited window. She elaborated that missing a window could delay a project by a

year. She remarked that with the rising cost of materials and labor the construction workforce could not afford the delay. She spoke to the importance of state oversight of permitting as Alaskans understood the state's unique challenges and the needs of its ecosystems. She supported the amendment.

[11:54:19 AM](#)

Representative LeBon had witnessed frustration from banking customers about the difficulty of maintaining permits on wetlands. He stated that customers had been extremely frustrated by the delay caused to projects when waiting for a permit from the Army Corps of Engineers. He supported the amendment.

Representative Edgmon addressed the government to government consultation with tribes. He believed if the amendment passed, there would continue to be tribal consultation; however, it would not be the same as having EPA in charge. He asked for comment by Commissioner Brune.

Commissioner Brune answered that when the department had the NPDES program go forward it had to commit to work and consult with tribes. The department had been following the commitment and had a tribal liaison in the Division of Water. He emphasized the importance of the issue and had brought a tribal liaison position into the commissioner's office as well. The department was committed to working with tribes, regional and village corporations, and other stakeholders in the process. He added that the EPA would also require that the state work with tribes as part of its application process.

[11:56:32 AM](#)

Representative Edgmon focused on the area of fees. He asked who would pay for the program in the future. He if it would go through the Department of Transportation and Public Facilities (DOT) and whether there would be a fiscal implication to the state. Alternatively, he wondered whether the fee would go to the private sector entity involved. He highlighted that many of the projects would be state focused and not from the private sector.

Commissioner Brune answered there would be a full process DEC would put forward to work with the regulated community

to develop a fee program if the department decided to use a fee program. He relayed that DOT and other state entities received a significant number of permits from the Corps of Engineers. He compared the situation to the way DEC currently received money from DOT for its air permitting program. He stated it was yet to be developed and there would be significant dialogue with the regulated community before an official proposal came forward.

Representative Edgmon stated that the 404 Section of the Clean Water Act was inherently litigious where there were lawsuits, especially involving bigger projects, that were almost part of the cost of doing business. He considered what the problem was that the amendment proposed to fix. He recognized it sounded great to have streamlining impacts, to reduce overlapping impacts, and have local knowledge; however, he pointed to the Pebble Mine project that was one proposed project involving larger scale resource development. He asked if there was not some advantage in having the EPA involved in terms of litigation and saving the state money. He wished he was more knowledgeable about the issue, but he sensed there was advantage to the EPA's involvement.

Commissioner Brune answered it was incumbent that project proponents put good proposals forward to make them litigation proof. He stated it was highly likely that the EPA and Corps of Engineers would remain in the process in the instance of Pebble Mine and other large projects. He stated the opportunity for litigation existed for any permits. He stated that the department's sideboards were set by the legislature and Congress. He relayed it was up to his team to ensure permits approved or not approved would withstand the courts as well.

Representative Edgmon found it interesting that the three letters in support delivered to members just prior to considering the amendment had no reference to fees or a problem that needed to be fixed. He remarked there appeared to be convincing arguments about the need to speed up smaller development projects and help DOT to do its work; however, he remained unconvinced that the amendment was not about large-scale resource development.

[12:01:20 PM](#)

Representative Josephson referenced his remark on the prior amendment that there were 22 fewer SPAR positions and at some point, the department, under Commissioner Brune's guidance, requested to have the positions removed. He asked for the accuracy of his statement.

Commissioner Brune replied that there had been financial issues in the SPAR division that from a sustainability perspective he had elected to cut five to seven positions for the first two years. He stated he had worked closely with Representative Josephson on a bill to try to bring sustainability to SPAR. He had worked with the SPAR director and communicated if the division needed additional staff, he would go to bat for the division. Currently, the SPAR director believed the existing staff was sufficient to meet the division's requirements.

Representative Josephson asked for verification that the previous director did not believe that.

Commissioner Brune could not speak for the former director.

Representative Josephson stated that, "She was one of your most important section employees." He was not asking Commissioner Brune to speak for the former director. He asked if the former director had told Commissioner Brune that she was concerned about the removal of positions, the failure to retain employees, and the unit.

Commissioner Brune relied absolutely. He had shared the concerns. He stated the division had a large vacancy rate with around 30 unfilled positions. He was not prepared to ask for additional positions if the existing positions were not being filled. He stated there had been morale issues with losing one in four people on an annual basis. He stressed the department had worked to improve the turnover. He stated that if and when the department needed additional positions, he would go to bat for SPAR. He was supporting an increase to the refined fuel surcharge in order to bring sustainability to SPAR. He believed he and the former director had shared the same concerns. He stated that the department had no choice but to propose the cuts because there had not been sustainability through the existing funding streams for SPAR. He added that the department was in a different situation at present and had not proposed any cuts in the current year. He looked forward to years of

sustainability thanks to Representative Josephson's legislation if it passed.

[12:04:26 PM](#)

Representative Josephson appreciated Commissioner Brune's support for the legislation. He asked for verification that under the current administration, DEC had issued new rule making as to spill prevention response in the Prince William Sound.

Commissioner Brune replied the department was through its regulatory process for spill prevention and response and Article 4; however, it would have no relation to the 404 program.

Co-Chair Merrick noted that SPAR was not part of the amendment.

Co-Chair Foster understood Representative Josephson was trying to make a point; however, he asked him to tighten up his questioning.

Representative Josephson relayed that the watchdog for Prince William Sound was very unhappy about the rule making under Title 4 that the commissioner had just spoken of. He stated there was a three-page list of concerns over the matter. He highlighted there was a law specifying DEC was supposed to have ocean rangers on ships, but the department did not have ocean rangers on ships.

Representative LeBon asked for a point of order.

[12:05:53 PM](#)

AT EASE

[12:06:08 PM](#)

RECONVENED

Representative LeBon stated they were way off topic. He called for the question on the amendment.

Representative Josephson requested a couple of follow up questions.

[12:06:43 PM](#)

AT EASE

12:09:03 PM

RECONVENED

Co-Chair Foster stated he would allow Representative Josephson to finish with two additional questions.

12:09:21 PM

AT EASE

12:09:33 PM

RECONVENED

Representative LeBon WITHDREW his motion to call for the question.

Co-Chair Foster let Representative Josephson make concluding remarks.

Representative Josephson stated they had just spoken about regulations impacting the safety of the waters in Prince William Sound. He highlighted there was an ocean ranger law without ocean rangers. Additionally, there were large tank inspections, which he believed were now passive. He asked why the legislature should believe the positions [under the amendment] would not be cut like SPAR's positions had been cut. He asked why he should believe the positions would be filled.

Commissioner Brune answered that he had gone to bat for the Division of Water when he had been told additional employees were needed and the positions had been filled. He would do the same thing for the 404 program.

Representative Josephson referenced that Commissioner Brune had stated that the current secretary under the federal Biden administration was enthusiastic about the department's attempt to take over 404 primacy.

Commissioner Brune answered that he could not say the secretary was personally enthusiastic; however, the employees in Region 10 whom the department had worked with had gathered teams to help DEC with its efforts and were enthusiastic in anything they could do to help and had been great to work with.

Representative Josephson commented that the Clean Water Act had been signed into law in 1972. He remarked there were three states with 404 primacy, which he believed spoke volumes. He directed a question to the amendment sponsor. He had been told there were expenses outlined in the amount of \$250,000 for anticipated litigation. He asked the amount he cited was accurate.

Co-Chair Merrick answered that no one had talked to her about litigation fees. She did not know where the number came from.

Co-Chair Merrick provided wrap up on the amendment. She confirmed that only three states had 404 primacy; however, Alaska had over two-thirds of the nation's wetlands. She believed it spoke to the reason Alaska needed primacy more than any other state. She addressed concerns voiced about administrations in the future. She had confidence that any administration would make environmental conservation a priority. She remarked that Alaska had a proud history of developing its state cleaner, safer, and more environmentally sound than anywhere else in the world. She believed it would continue. She thought Alaskans should be masters of their own destiny and have Alaskans ensuring its projects were permitted in a timely and environmentally friendly manner.

[12:13:28 PM](#)

AT EASE

[12:17:07 PM](#)

RECONVENED

Vice-Chair Ortiz MAINTAINED the OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Johnson, LeBon, Rasmussen, Thompson, Carpenter, Merrick

OPPOSED: Josephson, Ortiz, Edgmon, Foster

The MOTION PASSED (6/4). There being NO further OBJECTION, Amendment H DEC 3 was ADOPTED.

Representative Wool was absent from the vote.

Representative Rasmussen requested to address the next amendment related to primacy.

Co-Chair Foster directed members to the supplemental operating budget amendment packet.

12:19:00 PM

Representative Rasmussen MOVED to ADOPT Amendment Supplemental Operating 1 (copy on file):

DEPARTMENT: DEC
APPROPRIATION: Water
ALLOCATION: Water Quality, Infrastructure Support & Financing

ADD: \$750,000 UGF (1004)

EXPLANATION: The Alaska Department of Environmental Conservation (DEC) will assume primacy of Section 404 of the Clean Water Act (CWA), enacted in 1972, which is the primary federal law governing pollution control and water quality of the Nation's waterways. The Act's objective is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. DEC assumption of the Section 404 program would provide a streamlined permitting procedure, greater certainty to the regulated community, conservation of resources of both the applicant and regulator, and greater control over the development of its natural resources while complying with federal law.

Representative Josephson OBJECTED.

Representative Rasmussen explained the amendment was a supplemental request to enable the state to begin the process to gain Section 404 primacy. The amendment would fund three positions to do interagency work at a cost of \$750,000.

Representative Josephson MAINTAINED the OBJECTION.

Co-Chair Foster stated that the amendment would allow the 404 program to begin earlier.

A roll call vote was taken on the motion.

IN FAVOR: LeBon, Rasmussen, Thompson, Carpenter, Johnson, Merrick

OPPOSED: Josephson, Ortiz, Edgmon, Foster

The MOTION PASSED (6/4). There being NO further OBJECTION, Amendment Sup Op 1 was ADOPTED.

Representative Wool was absent from the vote.

HB 281 was HEARD and HELD in committee for further consideration.

HB 282 was HEARD and HELD in committee for further consideration.

Co-Chair Foster relayed his plan to finish the budget amendment process during the afternoon meeting.

#

ADJOURNMENT

[12:21:43 PM](#)

The meeting was adjourned at 12:21 p.m.