

ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE

February 16, 2022

1:05 p.m.

MEMBERS PRESENT

Representative Josiah Patkotak, Chair
Representative Grier Hopkins, Vice Chair
Representative Zack Fields
Representative Calvin Schrage
Representative Sara Hannan
Representative George Rauscher
Representative Mike Cronk
Representative Ronald Gillham
Representative Tom McKay

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 209

"An Act relating to emergency firefighters."

- HEARD & HELD

HOUSE BILL NO. 52

"An Act providing that operation of the Tutka Bay Lagoon Hatchery in Kachemak Bay is compatible with the functions of Kachemak Bay State Park; and providing for an effective date."

- MOVED CSHB 52 (RES) OUT OF COMMITTEE

HOUSE BILL NO. 287

"An Act making an appropriation for oil and gas tax credits; and providing for an effective date."

- MOVED HB 287 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 209

SHORT TITLE: EMERGENCY FIREFIGHTERS

SPONSOR(S): REPRESENTATIVE(S) CRONK

05/12/21 (H) READ THE FIRST TIME - REFERRALS
05/12/21 (H) RES, FIN
02/16/22 (H) RES AT 1:00 PM BARNES 124

BILL: HB 52

SHORT TITLE: TUTKA BAY HATCHERY

SPONSOR(s): REPRESENTATIVE(s) VANCE

02/18/21 (H) PREFILE RELEASED 1/8/21
02/18/21 (H) READ THE FIRST TIME - REFERRALS
02/18/21 (H) FSH, RES
04/29/21 (H) FSH AT 10:00 AM GRUENBERG 120
04/29/21 (H) Heard & Held
04/29/21 (H) MINUTE(FSH)
05/06/21 (H) FSH AT 10:00 AM GRUENBERG 120
05/06/21 (H) Heard & Held
05/06/21 (H) MINUTE(FSH)
05/18/21 (H) FSH AT 10:00 AM GRUENBERG 120
05/18/21 (H) Moved CSHB 52(FSH) Out of Committee
05/18/21 (H) MINUTE(FSH)
05/19/21 (H) FSH RPT CS(FSH) NEW TITLE 4DP 1NR
05/19/21 (H) DP: VANCE, STUTES, ORTIZ, TARR
05/19/21 (H) NR: STORY
02/07/22 (H) RES AT 1:00 PM BARNES 124
02/07/22 (H) Heard & Held
02/07/22 (H) MINUTE(RES)
02/11/22 (H) RES AT 1:00 PM BARNES 124
02/11/22 (H) Heard & Held
02/11/22 (H) MINUTE(RES)
02/14/22 (H) RES AT 1:00 PM BARNES 124
02/14/22 (H) -- MEETING CANCELED --
02/16/22 (H) RES AT 1:00 PM BARNES 124

BILL: HB 287

SHORT TITLE: A: OIL & GAS TAX CREDIT FUND APPROP.

SPONSOR(s): REPRESENTATIVE(s) RAUSCHER

01/21/22 (H) READ THE FIRST TIME - REFERRALS
01/21/22 (H) RES, FIN
02/09/22 (H) RES AT 1:00 PM BARNES 124
02/09/22 (H) Heard & Held
02/09/22 (H) MINUTE(RES)
02/11/22 (H) RES AT 1:00 PM BARNES 124
02/11/22 (H) Heard & Held
02/11/22 (H) MINUTE(RES)
02/14/22 (H) RES AT 1:00 PM BARNES 124
02/14/22 (H) -- MEETING CANCELED --

WITNESS REGISTER

SUE STANCLIFF, Staff
Representative Mike Cronk
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 209, answered questions on behalf of Representative Cronk, prime sponsor.

NORMAN MCDONALD, Fire Program Manager
Division of Forestry & Fire Protection
Department of Natural Resources (DNR)
Palmer, Alaska

POSITION STATEMENT: Testified in support of HB 209.

ALISON ARIANS, Special Projects Coordinator
Division of Forestry & Fire Protection
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: During the hearing on HB 209, answered questions.

CHARLES SINK
Chugachmiut;
Chair, Alaska Wildland Fire Coordinating Group
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 209.

REPRESENTATIVE SARAH VANCE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 52, answered questions as the prime sponsor of the bill.

CHRISTOPHER ORMAN, Assistant Attorney General
Natural Resources Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 52, provided information and answered questions.

MONICA ALVAREZ, Chief
Resource Assessment and Development Section
Central Office

Division of Mining, Land, and Water (DMLW)
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: During the hearing on HB 52, provided information and answered questions.

SAM RABUNG, Director
Division of Commercial Fisheries
Alaska Department of Fish & Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 52, provided information and answered questions.

ACTION NARRATIVE

[1:05:27 PM](#)

CHAIR JOSIAH PATKOTAK called the House Resources Standing Committee meeting to order at 1:05 p.m. Representatives Schrage, Gillham, Hannan, Rauscher, Hopkins, Cronk, Fields, McKay, and Patkotak were present at the call to order.

HB 209-EMERGENCY FIREFIGHTERS

[1:06:20 PM](#)

CHAIR PATKOTAK announced that the first order of business would be HOUSE BILL NO. 209, "An Act relating to emergency firefighters."

[1:06:37 PM](#)

REPRESENTATIVE CRONK, as prime sponsor, introduced HB 209. He spoke from the sponsor statement, which stated [original punctuation provided]:

HB 209 authorizes the Commissioner of the Department of Natural Resources to hire emergency firefighter [EFF] personnel using general fund appropriations.

By amending AS 41.15.030(b), allowing the use of general funds to pay EFF personnel, they would be able to perform nonemergency work, such as hazardous fuel reduction, fuel break development, fire prevention, habitat restoration or improvement activities in fire-prone areas. In addition, this would provide economic opportunities for Alaskans, to enhance public safety,

to empower rural Alaskans, to responsibly manage the state's natural resources, and to protect and save human lives.

Such nonemergency work could reduce the likelihood, intensity, and damage of wildland fires near populated areas and could bring significant reductions in the state's costs to fight future fires. Steady employment opportunities for mostly rural-based firefighting crews would strengthen local economies, family life, and enhance public safety. By employing EFF during non-emergency would provide training, fitness, and readiness for when a wildfire does occur. The number of EFF personnel that may be interested in applying for permanent DNR jobs would increase, which would help with recruitment.

[1:08:54 PM](#)

REPRESENTATIVE HANNAN asked whether the bill's focus on the use of general funds is because there is currently a prohibition in statute.

[1:09:47 PM](#)

SUE STANCLIFF, Staff, Representative Mike Cronk, Alaska State Legislature, on behalf of Representative Cronk, prime sponsor, replied that currently the statute does prohibit general funds from being used to hire non-emergency firefighters, and HB 209 would amend that and allow it to be used for that.

REPRESENTATIVE HANNAN asked whether there are any other funds that are currently restricted or whether the only prohibition is general funds.

MS. STANCLIFF responded that for state EFF there are not general funds, and no other funds are used unless there is an incident. Once there is an incident it depends on the land ownership - if it is on Bureau of Land Management (BLM) lands then it is federal, if it is within a municipality or tribal land then the landowner pays and contributes to those fees - but this is strictly general funds.

[1:11:06 PM](#)

REPRESENTATIVE RAUSCHER thanked the sponsor for bringing forth HB 209. He asked whether the Department of Natural Resources (DNR) is in favor of the bill.

REPRESENTATIVE PATKOTAK stated that DNR will be speaking to the bill.

[1:12:06 PM](#)

REPRESENTATIVE HOPKINS thanked the sponsor for introducing the bill. He offered his understanding that the state cannot use federal money to maintain firebreaks but can use federal dollars to put in those firebreaks. He noted that the Division of Forestry has been working with local, private contractors to put in many of those firebreaks. He asked whether under the bill's current language these wildland firefighters would be able to work on projects putting in firebreaks that have federal dollars attached to them.

MS. STANCLIFF offered her understanding that they would be able to be utilized on different firebreaks, different mitigation, regardless of the land use; if an MOA is in place, state EFF would be able to do that.

REPRESENTATIVE HOPKINS stated he wants to make sure it isn't what type of land it is, but also what type of dollars are being used to do non-emergency work. He noted that the statute disallowing emergency firefighters from being able to do non-emergency firefighter work was established in the [1990s]. He inquired about the reason for putting in that language.

MS. STANCLIFF offered her belief that the primary reason was related to the employees. She spoke from the last paragraph of the sponsor statement, which states [original punctuation included]:

Based on the legislative history, amending AS 41.15.030(b)'s last sentence does not appear to yield any constitutional or legal problems. In 1996, the legislature added the last sentence of AS 41.15.030(b) to address concerns about conflicts with AS 39.25.195 of the Alaska Personnel Act; specifically, that short term non-permanent employees would become full time employees. However, in 2000, the legislature amended AS 39.25.195 to allow for long term nonpermanent employees. Due to this amendment, the apparent concerns expressed by the legislature in 1996

warranting the inclusion of the last sentence to AS 41.15.020(b) no longer exists.

MS. STANCLIFF continued her response. She said the other reason, per her personal history with the fire crews and the state budget, was the use of general funds and running short on monies as the state tightened its belt in the 1990s was to identify specifically with costs of fire, to rein it in.

[1:15:42 PM](#)

REPRESENTATIVE GILLHAM inquired about the fiscal note.

REPRESENTATIVE CRONK replied that there is a zero fiscal note. He deferred to DNR to explain the fiscal note.

[1:16:07 PM](#)

REPRESENTATIVE FIELDS stated that there have been challenges in recruiting and perhaps a paradigm shift where the state does not have the same sort of ability to do seasonal hiring, and HB 209 would fix that. In his region, he related, tree and brush lines are rising, and the bill responds to that reality; in addition, trails act as firebreaks. He surmised that HB 209 would improve the state's ability to capture some of these federal dollars to save lives and keep fires smaller.

[1:17:51 PM](#)

REPRESENTATIVE CRONK said he is hoping this will get more employment in Alaska's villages as well as interagency partnerships to use these people doing good work for Alaska. It will keep money in Alaska rather than spending lots of money to bring crews up from the Lower 48.

[1:18:52 PM](#)

NORMAN MCDONALD, Fire Program Manager, Division of Forestry & Fire Protection, Department of Natural Resources (DNR), testified in support of HB 209. He said the bill is a manifestation of Alaska's need to build capacity and face a rapidly increasing wildland fire challenge. The bill will help the division achieve its mission of fire prevention and suppression, providing safety to Alaskans statewide. It will also provide jobs and training for Alaskans, primarily those in rural communities.

MR. MCDONALD explained that removing the funding impediment in AS 41.15.030 will allow DNR to use already allocated general funds to pay EFF for non-emergency fire prevention work during periods of low fire activity in shoulder seasons both spring and fall. Benefits of this work include training of EFF employees in firefighting skills, improving the division's ability to put in fuel breaks around communities, and saving potentially tens of millions of dollars in fire suppression costs down the line.

MR. MCDONALD specified that while HB 209 allows general funds to be used for EFF in non-emergency tasks, the division is suggesting to only use funds that have already been appropriated for fuels reduction and prevention work, thus the zero fiscal note. In the last two years, the division has received \$17 million in hazard fuels reduction funds from the state and continues to receive more federal funds. The EFF work will continue to be limited to fire response and fire prevention related activities. The division's firefighting mission has increased dramatically as Alaska and the nation face more intense and longer fire seasons.

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MR. MCDONALD said the division's first primary mission is to protect Alaskans from wildland fire and build hazardous fuel breaks around communities to protect homes and businesses. The division currently does not have sufficient personnel to staff to Preparedness Level 3 (PL 3), a normal high fire danger day in Alaska. In the past, EFF crews supplemented the permanent and private sector force. The lack of consistent EFF crews has led to a drastic decline in their number from approximately 56 crews in 2010 to under eight in 2021, with the most notable loss of crews being in rural villages. Now critically understaffed, the division relies on importing Lower 48 crews, which is problematic because Alaska competes with every other state for these crews and is not always able to receive help. It can take as long as 72 hours to get Lower 48 crews deployed to an incident, whereas a quick, aggressive initial attack with local forces helps limit fire size, duration, and cost. Importing firefighters and support staff far exceeds the cost of using Alaska resources. For example, a 22-person Alaska crew on a fire assignment costs roughly \$6,500 a day while a Lower 48 crew costs nearly \$13,500 a day. Also, Lower 48 crews are unfamiliar with Alaska's fuel types and fire behavior while Alaskan crews know the most effective tactics for Alaska's landscapes. Rebuilding and creating a self-sufficient Alaskan firefighting force will reduce the likelihood, intensity, and damage of

wildland fires near populated areas and could significantly reduce the cost of fighting future fires.

MR. MCDONALD stated that the division's second primary mission is hazardous fuels mitigation, a pro-active fire prevention program that reduces fire risk around communities, and which is a cost effective and efficient method of fighting fire. Currently the division has 16 projects underway, five more are planned for 2022, and 16 more are in the planning stages for 2023 through 2025. More resources are needed for fuels projects, and these projects will give the division an opportunity to hire rural Alaskan crews. When a fire starts, they will be trained and ready to deploy to fires.

[1:24:22 PM](#)

MR. MCDONALD related that HB 209 will give the division a way to provide secure and stable jobs for rural Alaskans, which will assist in recruitment and retention of a wildland firefighting force. He said EFF resources will most benefit in rural communities where access to contracted resources, heavy equipment, and traditional fuels reduction workforce is limited. Without these EFF crews Alaska's rural communities may not receive the same level of protection as roadside communities.

MR. MCDONALD advised that HB 209 also dovetails perfectly with the division's request in the governor's budget to reinstate the Wildland Firefighter Academy, for which the budget was cut in 2016. Reinstating the academy will provide career training and jobs for new firefighters and support staff in rural and urban Alaska. Workforce development is the key to rebuilding Alaska's wildland firefighting capacity. Training firefighters in rural communities will help build the division's pool of recruits to work on fuels projects and fire suppression.

MR. MCDONALD added that HB 209 will provide steady employment opportunities for rural-based firefighting crews who will strengthen local economies and enhance public safety in Alaska as well as the Lower 48 because EFF crews can be deployed at fires at the national level. Increasing the number of EFF crews will also increase the number of qualified applicants for permanent DNR positions. The bill aligns with the division's integrated plan to enhance public safety, create a sustainable workforce, and promote economic opportunities.

[1:26:19 PM](#)

ALISON ARIANS, Special Projects Coordinator, Division of Forestry & Fire Protection, Department of Natural Resources (DNR), addressed Representative Gillham's question about the fiscal note. She explained that it is a zero fiscal note because this is only applying to funds that have already been allocated. The fiscal year 2021 and 2022 appropriated \$17 million for fire risk reduction and fuel break activities with the intent of establishing a pro-active annual program to reduce wildfire risk near communities. That would in turn reduce undesignated general fund (UGF) expenses on fire suppression in the future. The division is faced with spending down the \$17 million with a combination of options, including private companies and EFF, but the division cannot use EFF non-emergency funds. No more funds are being asked for because the funds have already been appropriated.

MS. ARIANS addressed Representative Hopkins' question. She said the division is looking at lots more federal funds coming online because of the federal [2021 Infrastructure Investment and Jobs Act (IIJA)]. State general funds can be used as match to obtain far greater federal awards in the future, making good use of state funds.

MS. ARIANS spoke to how the division will fund this in the future. She specified that there will be federal funds and the division can carry over funds into the fuel reduction fund using the unobligated general fund balance that was already slated for the suppression activity component fund, from which the division received \$2 million in FY 22.

[1:29:00 PM](#)

REPRESENTATIVE FIELDS referenced the apocalyptic fires seen in the Pacific Northwest, which had crews from multiple states. He surmised that if Alaska does not build its own capacity in-state it faces the growing risk of being unable to get crews from the Lower 48 should a large fire in Alaska coincide with a [Pacific Northwest] mega-fire.

MS. ARIANS replied "absolutely," but deferred to Mr. McDonald to answer further.

MR. MCDONALD agreed that that is a very real concern. For example, he said, 2021 was a moderate season in Alaska but a busy season in the Lower 48 and the division was unable to get the crews it requested. In 2019, the division was able to import 5,200 firefighters from the Lower 48 because it was a

very slow season in the Lower 48. But, he warned, if Alaska has another season like 2019 and the Lower 48 experiences a season like it did in 2021, those resources will not be available, and the division will have some very tough decisions on what gets protected and what does not.

REPRESENTATIVE FIELDS noted the fire season in the Lower 48 is now approaching year-round. He asked whether some of Alaska's crews might be able to go work in the Lower 48 and sustain year-round employment, which might help with recruitment.

MR. MCDONALD answered that the division's support within the Lower 48 is contingent upon fire danger in Alaska being reduced to a level where that can be done. Alaska resources were in California into November [2021] and Alaska sent firefighters to the Lower 48 around Christmas. He agreed the fire season has turned to a fire year and said Alaska's fire season continues to start earlier in the spring and end later in the fall.

[1:32:10 PM](#)

REPRESENTATIVE HOPKINS noted HB 209 allows for utilizing these emergency firefighters during non-emergency firefighting times and tasks. He asked whether this would take money and opportunities away from local contractors that have been working on fuel breaks.

MS. ARIANS replied that the division would use all the resources possible to address this, and EFF is just one piece. She deferred to Mr. McDonald to elaborate.

MR. MCDONALD responded that the division does fuels mitigation utilizing a variety of resources. In Fairbanks, for example, private contractors with dozers and roller choppers are being used in maintenance. The crews shine at creating shaded fuel breaks where larger, healthier trees are left and the dead and down beetle-killed trees that create ground fires are removed. There are places where the right tool for [fuels mitigation] is a private contractor with heavy equipment, right places for bringing in professional fallers to do technical falling, and right places for EFF if HB 209 is passed.

[1:34:33 PM](#)

REPRESENTATIVE HANNAN asked how the crews would be funded in a scenario in which the \$17 million is spent over the next two

years but not all the firebreaks are cut, and then there is a rainy year during which the division wants to put crews to work.

MS. ARIANS addressed what will happen once [the current] fuels reduction fund runs out. She said rain does not affect whether the division can use the funds for fuels. She reiterated that the division received \$2 million in the fiscal year 2022 (FY 22) budget to add to the fuels fund for use in the future. She stated that the division will continue applying for federal funds to do fuel breaks whether it is rainy, or hot and dry and burning, because in the future those fuel breaks help to manage and prepare for fires so that they don't affect communities. Rolling over fire suppression funds to the fuels fund is a way that the division could in the future fund more state funds as a way of future-proofing the fuels fund.

REPRESENTATIVE HANNAN recognized there are seasons with many fires and seasons with few fires. She asked how often fire suppression money is left over at the end of a field season that can be rolled over into the fire fuels reduction fund.

MS. ARIANS deferred to Mr. McDonald to provide an answer.

[1:37:40 PM](#)

MR. MCDONALD confirmed it does vary from year to year. He said the use of unspent suppression funds is one of several options the division is looking at to continue the fuels funding. He pointed out that currently there is a huge push nationally for fuels and fuels reduction, and that this year and moving into the future there will be a lot of federal funds available to support that in every state. Alaska will compete with all the western states for this type of funding and the division has staff to do that. The state fund that the division has and will use in the future will go to leverage federal funding. Federal dollars cannot be used for maintenance of the existing fuels projects or fuels breaks that were completed over the last 20 years; it is the state's responsibility to do that. Maintenance is much cheaper than the initial implementation or development of those projects, so having state funds available to do this maintenance and keeping those fuel breaks viable is a very important piece to that funding.

REPRESENTATIVE HANNAN asked how many seasons of fuel reduction work could be funded with that fund during a low fire year and the use of all EFF crews.

MR. MCDONALD responded that right now the division's EFF crew is down to eight. He said the intent is to build to about 25 crews since returning to the former number of 50-70 crews is probably a stretch. Through a combination of HB 209, academy training, and some of the division's other programs, a 20-25 crew roster should be achievable and the right size for Alaska. More will be accomplished on fuels projects during slower seasons than during a season like 2019 where all hands were on deck all season for wildland fire. While more will be produced with 20 crews than with eight, he doesn't have an answer off the top of his head. He offered to come up with a scale of what 8 crews can produce versus 20.

REPRESENTATIVE HANNAN said that would be unnecessary as she was only asking in case Mr. McDonald already had an estimate.

[1:42:16 PM](#)

REPRESENTATIVE GILLHAM offered his understanding that federal funds could be used for the initial firebreak, but that state funds must be used for the maintenance.

MR. MCDONALD confirmed that federal funds cannot be used on maintenance of fuel breaks that were already started with federal funds; it is the state's responsibility for maintenance.

[1:43:03 PM](#)

CHAIR PATKOTAK opened public testimony on HB 209.

[1:43:29 PM](#)

CHARLES SINK, Chair, Alaska Wildland Fire Coordinating Group, related that the Alaska Wildland Fire Coordinating Group is an inter-agency policymaking group comprised of state, federal, and Native representatives. He further related that he has worked 20 years for Chugachmiut, a Native nonprofit that maintains a 20-person Type 2 fire crew with a 5-person fuel break crew. He said he has been integrally involved with trying to maintain the EFF crews and Native crews around the state, and that Chugachmiut's crews have worked on several fuel breaks.

MR. SINK noted that the number of EFF crews has gone down from about 70 in the 1990s to the current number of eight. One of the many reasons for that, he explained, is that when developing wildland fire crews and fuel break crews is the consistency of being able to work. Being unable to maintain longer-term

employment resulted in the loss of workforce and the falling apart of village crews. Training is key because developing a 22-person fire crew takes consistency and training together to make that work.

MR. SINK addressed the use of private mechanical contractors that use machines to help maintain fuel breaks. He said Chugachmiut does a combination of mechanical work that it hires out privately along with fire crews that do the handwork portion that goes along with the mechanical work. Chugachmiut has enjoyed a lot of success over the 22 years that it has been involved in wildland firefighting. Chugachmiut has trained a lot of firefighters that now run crews or work in the agencies and participate productively in wildland firefighting in the natural resource field. Mr. Sink shared that in his 2004 study of workforce development of EFF crews he found that one two-week deployment of a wildland firefighter group from a very small village had an impact of 10-15 percent of the total gross revenue for those small Native communities.

[1:47:12 PM](#)

CHAIR PATKOTAK, after ascertaining that no one else wished to testify, closed public testimony on HB 209.

CHAIR PATKOTAK announced that HB 209 was held over.

HB 52-TUTKA BAY HATCHERY

[1:47:56 PM](#)

CHAIR PATKOTAK announced that the next order of business would be HOUSE BILL NO. 52, "An Act providing that operation of the Tutka Bay Lagoon Hatchery in Kachemak Bay is compatible with the functions of Kachemak Bay State Park; and providing for an effective date." [Before the committee was the proposed committee substitute (CS) for HB 52, Version 32-LS0327\D, Bullard, 2/4/22, ("Version D"), adopted as the working draft on 2/7/22.]

[1:48:21 PM](#)

REPRESENTATIVE SCHRAGE moved to adopt Amendment 1 to HB 52, Version D, labeled 32-LS0327\D.1, Bullard, 2/12/22, which read:

Page 1, lines 1 - 2:
Delete **"Tutka Bay Lagoon and"**

Page 4, line 20, through page 6, line 3:

Delete all material and insert:

"* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to read:

REPORT TO LEGISLATURE; DEPARTMENT OF FISH AND GAME AND DEPARTMENT OF NATURAL RESOURCES. The Department of Fish and Game, in cooperation with the Department of Natural Resources, shall provide a written report to the legislature on the effects of the Tutka Bay Lagoon Hatchery on the state's fish and game, fish and game habitat, and land. The Department of Fish and Game and the Department of Natural Resources shall deliver the report to the senate secretary and the chief clerk of the house of representatives not later than January 1, 2026, and shall notify the legislature that the report is available.

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REPORT TO LEGISLATURE; DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT. The Department of Commerce, Community, and Economic Development shall provide a written report to the legislature on the economic viability of the Tutka Bay Lagoon Hatchery. The Department of Commerce, Community, and Economic Development shall deliver the report to the senate secretary and the chief clerk of the house of representatives not later than January 1, 2026, and shall notify the legislature that the report is available."

Renumber the following bill section accordingly.

Page 6, line 4:

Delete "Except as provided in sec. 5 of this Act, this "

Insert "This"

[1:48:23 PM](#)

CHAIR PATKOTAK objected for the purpose of discussion.

[1:48:28 PM](#)

REPRESENTATIVE SCHRAGE explained Amendment 1. He stated that after public testimony and the bill presentation he has some

concern over acting on the Tutka Bay Lagoon Hatchery at this time since there are 10 years to resolve this issue. Amendment 1 strikes the language exempting the hatchery from the park and requests that the Alaska Department of Fish and Game (ADF&G), along with the Department of Natural Resources (DNR), conduct a study on the issues around the hatchery that were outlined in the bill presentation and in testimony, such as the disposal of fish and the potential impact on the lagoon, the predatory creatures coming in to eat the carcasses and other wildlife, and the concerns about pink salmon and their influx on that area and on king runs. Amendment 1 also includes having the Department of Commerce, Community, and Economic Development (DCCED) look at the economic feasibility of the Tutka Bay Lagoon Hatchery given the strong concerns that were outlined by so much of the public testimony. The amendment asks for some more information given that there are 10 years before this issue must be resolved. The amendment does adopt the [three] parcels [of land] into the park given they are already being managed as such and there is such a large degree of public support for that.

[1:50:33 PM](#)

REPRESENTATIVE SARAH VANCE, Alaska State Legislature, prime sponsor of HB 52, stated she opposes Amendment 1 because it guts the purpose of the bill, which is to solve the legal land disposal issue. She expressed concern that the amendment would cause either unfunded mandates or a fiscal note for the research. She said she supports looking into the future for research in Kachemak Tutka bays for the effects of the entire system because the effects of the salmon are not the only issue.

[1:52:08 PM](#)

CHRISTOPHER ORMAN, Assistant Attorney General, Natural Resources Section, Civil Division (Juneau), Department of Law (DOL), stated that legally, Amendment 1 would remove the carve-out for the hatchery. As a result, the hatchery would remain within legislatively withdrawn lands and therefore the disposal problem would remain. While there would be reports, there would still be a disposal problem, and pursuant to the disposal problem, there would be a legal exposure to the state, meaning the possibility of lawsuits and challenges pursuant to the hatchery and hatchery operations as far as being an unconstitutional disposal.

[1:53:21 PM](#)

MONICA ALVAREZ, Resource Assessment and Development Section Chief, Central Office, Division of Mining, Land, and Water (DMLW), Department of Natural Resources (DNR), concurred with Mr. Orman that the disposal problem would still exist and be an exposure for the department. She said DNR supports HB 52 because the department sees it as the necessary mechanism to drive the two significant legal problems: the disposal of legislatively withdrawn lands and the 1978 Interagency Land Management Assignment (ILMA) between DNR and ADF&G.

MS. ALVAREZ addressed the disposal of legislatively withdrawn lands. She pointed out that land disposal law has developed over the last 20 years and activities that [DNR] once thought permissible are now being analyzed under a different lens. Accepting conditions as they have always been with the hatchery is no longer an option given the legal challenges the department now faces. The Alaska Supreme Court has made it clear that functionally irrevocable agreements are a disposal of interest and the functionally irrevocable test set up under the court focuses on the likelihood of revocation instead of a contract's actual language. An example in this instance is that in January 2021, DNR was informed by DCCED that the Cook Inlet Aquaculture Association (CIAA) had to continue to operate the hatchery to secure a return on its loan. This is the type of financial interest that makes ADF&G's revocation of this agreement with CIAA unlikely. The 2016 deed of trust and security assignment of the lease, where these legislatively withdrawn lands are used as collateral for a \$922,000 loan, further establishes the unlikelihood of revocation here as ADF&G has assured DCCED that the hatchery operations will continue for that return on a loan.

MS. ALVAREZ addressed the ILMA. She specified that when the legislature withdrew these lands in 1970 it mandated that the lands be managed solely by DNR, it did not authorize other agencies to manage Kachemak Bay State Park lands. In 1978 when DNR issued the ILMA to ADF&G, it did so without legislative authorization. Additionally, when the legislature adopted various hatchery statutes in 1976 and 1988 under AS 16.10, the legislature did not include amendment to Kachemak Bay State Park enabling legislation the land and waters being managed by DNR. So, returning these lands to the public domain, making them general state lands, provides ADF&G and DNR the flexibility to resolve these issues.

MS. ALVAREZ reminded the committee that DNR and ADF&G submitted a letter in support of HB 52, and both agencies agree that it provides a means for curing these legal issues. If these lands

remain legislatively withdrawn, the tools are way more limited to resolve the issues.

1:57:37 PM

CHAIR PATKOTAK drew attention to an email from DCCED that states DCCED anticipates a zero fiscal note from Amendment 1.

1:57:47 PM

SAM RABUNG, Director, Division of Commercial Fisheries, Alaska Department of Fish & Game (ADF&G), stated that ADF&G owns the hatchery in question and operates the hatchery on state park lands through an ILMA that was thought to be proper at the time it was issued. Also at the time, the state voted on bonds to build and invest in this hatchery. He said ADF&G [operated the hatchery] until the point where it contracted out the operation to a private contractor to operate it on behalf of the state at no cost to the state, which is where it is at now. He said ADF&G agrees with Ms. Alvarez that Amendment 1 does nothing to cure the paperwork issue with land use. As well, he added, the ADF&G and DNR commissioners have submitted a joint letter in support of HB 52 as written.

1:59:04 PM

REPRESENTATIVE FIELDS said he questions the validity of the legal arguments just heard. Regarding Ms. Alvarez's argument that the hatchery must be left in place to earn money to pay back a loan, he contended that the hatchery is not making money, so the loan isn't going to be repaid when [the state] is loaning more money to this hatchery and taking on more financial liability. That the land disposal problem is solved here by carving out this land from the state park is also illogical, he submitted. This is a hatchery in state park land and the park plan says it is incompatible with the state park. Carving out the land is not solving a problem so much as just changing the use of the land that is inconsistent with what the legislature did when the park was created.

MR. RABUNG responded that nobody has said this hatchery does not pay its bills; it is viable, pays its bills, and is current on all its loan payments. He said the contract between ADF&G and the operator states explicitly that either party can end the contract with 180 days' notice. The contractor will be allowed to continue to harvest cost recovery fish until any fish the contractor produces stop returning, which is two years for pink

salmon and three or four years for sockeye. That is the only commitment. Regarding the lease agreement mentioned by Ms. Alvarez, he said there is no lease agreement but there is from DCCED an assurance that, were the operator to default on its loans, DCCED would be allowed to enter the property to recover any collateral assets. He stated he thinks it is called a deed of trust and it is an assurance that DCCED has the legal authority to enter the property to recover any assets that are securing the loan. The facility itself and the land it sits on do not secure the loans and cannot secure the loans. He pointed out that the legislature created both the park and the hatchery.

[2:00:17 PM](#)

MR. ORMAN addressed Representative Fields's comments. He stated that the financial success, and whatever that may mean for the hatchery, is a separate issue. The question of whether there is a disposal here and whether there is a functionally irrevocable agreement between CIAA and ADF&G is relatively clear. The 2016 documents, the deed of trust, and the security assignment, established that there is an agreement that is now sitting out there for a loan of \$922,500 by CIAA that is using state land because it is a deed of trust, meaning an interest in state land, in legislatively withdrawn land, to allow CIAA to build capital improvements. So, DCCED is holding an interest in legislatively withdrawn lands, and those legislatively withdrawn lands that cannot be disposed of are now providing the collateral for that loan.

MR. ORMAN, regarding the functionally irrevocable test, pointed out that functionally irrevocable is not about the language in the contract and not even necessarily about the intentions of all the parties or what the parties had hoped for. The question is whether the agreement between CIAA and ADF&G will be revoked tomorrow. Is it truly what one would call a revocable at-will agreement, like a permit? The answer is no because of the interest that DCCED holds here. The deed of trust adds to the investment and DCCED's interest to ensure that the hatchery continues to operate. One can also turn to the language within the agreement between CIAA and ADF&G that allows CIAA to receive 180 days' notice before termination of the agreement and provides a mechanism for CIAA to be repaid for the capital improvements that CIAA paid for.

[2:05:01 PM](#)

MR. ORMAN added that functionally irrevocable seems foreign because it is not necessarily about the contract. It is suddenly about what the investment interests are and what happens with those interests and since that prevents, then, the revocation of the agreement. He said ADF&G clearly disagrees with that analysis; ADF&G disagrees with DNR who manages these lands and the view that there is clearly a revocable problem here with the agreement with CIAA. In completing the analysis, Mr. Orman explained, his job as a lawyer is to determine if exposure exists for the state and if the possibility exists for that exposure to lead to lawsuit, and that is what has happened here. In reviewing these issues, the determination has been made that there is a disposal problem for these legislatively designated lands. How this body or anyone chooses to cure that disposal problem is clearly a policy question. The deed of trust allows DCCED to come onto the property to operate the hatchery if necessary for return of that investment. Also based on the language in that agreement, DCCED is allowed to potentially sub-lease and sell those lands if necessary to receive a return on that. That is illegal, he continued, and maybe that doesn't happen, but the language is there, and it is in a recorded document; there is a deed of trust that clouds the title on these lands.

[2:07:11 PM](#)

MS. ALVAREZ stated that the [Kachemak Bay State Park management] plan listed the hatchery as incompatible for two reasons. First, the hatchery is viewed as incompatible with the park purposes listed in the statute. Second, DNR recognizes the disposal of interest issue, and the hatchery is listed as incompatible in the portion of the plan that park staff uses when permitting activity. So, DNR would certainly not want another hatchery permitted in the future and recognizes that there are issues with this hatchery. Listing the hatchery as incompatible was a recognition of the state disposal case law development over the years and what DNR has come to know now as compared to in the past with the original state park plan.

[2:08:31 PM](#)

REPRESENTATIVE FIELDS spoke to the issue of DCCED's exposure. The right way to remedy that, he asserted, is not to liquidate state park land but to protect the state from further exposure from a financially risky investment.

MR. ORMAN reiterated that there is a disposal problem here and solving the disposal issue is ultimately a policy decision. He specified that there are legislatively withdrawn lands where a hatchery is being operated, and that is inconsistent with AS 41.21.131, the enabling statute that establishes the park. It is inconsistent with the case law that started in 2000 with Northern Alaska Environmental Center (NAEC) and continued most recently in August 2020 with the Southeast Alaska Conservation Council (SEACC) decision. Many decisions were made in the 1970s, whether about university lands or mental health trust lands. It has now been realized that maybe those weren't the best decisions and that there are legal problems. Once these things are discovered, they must be figured out.

MR. ORMAN continued his response and spoke to the ILMA. He pointed out that when creating Kachemak Bay State Wilderness Park, the legislature included a provision allowing for stream rehabilitation. He said this shows that when the legislature is setting aside and creating these kinds of lands, in this circumstance creating a scenic park, it can mandate how the lands are going to be maintained, who will maintain them, and the purposes for which they can be used. In summary, he said, he agrees with ADF&G that the core problem starts with the ILMA, because there was no authority allowing the ILMA and DNR to let another state agency to manage these lands. Once the hatchery was in place, all these other problems snowballed from there.

[2:12:19 PM](#)

CHAIR PATKOTAK requested Mr. Orman to qualify from the legal point of view that HB 52, as written without the amendment, mitigates the liability for a lawsuit.

MR. ORMAN answered that HB 52, as written without the amendment, would return these hatchery lands to public domain land. This would cure the disposal problem, he explained, because with the lands now being public domain land the only issue as far as disposal in this context would be public notice. All the cases that were cited talked about disposal of general state land and that state sales provide sufficient public notice prior to the disposal. If these lands that are removed from the park become general public domain lands, then at that point the only real issue that remains would be the opportunity to provide public notice. All of which is to say that if these are removed from the park it allows for the agencies to manage these lands how they ostensibly would want to manage them and removes the

exposure that currently exists because legislatively withdrawn lands cannot be disposed of by the executive branch.

2:14:00 PM

REPRESENTATIVE FIELDS stated he understands that narrow perspective on legal issues. But, he contended, the broader legal issue is that the purpose of this bill is to perpetuate a hatchery that has financial exposure questions for the state itself and is sustained by salmon enhancement tax paid by about 1,100 Cook Inlet fishermen, where pinks in Cook Inlet are between 1.4 percent of ex-vessel value for the drift fleet and 2.1 percent for the setnet fleet. There are about 17 seiners for whom these pinks are some 45 percent of ex-vessel value. Over 1,100 people paying taxes to sustain this hatchery where a very small number of people get a significant share of plurality of their ex-vessel value from the pink fishery. Testimony was heard from tourism operators about the value of Kachemak Bay in terms of the tourism resource. Tutka Bay is the least developed of the bays; it has tourism value in that sense. It is hard to show, Representative Fields argued, that HB 52 provides for the maximum benefit as per the constitution, and that is the broader legal problem had with the bill. The bill is designed to perpetuate a financially risky hatchery that benefits a tiny number of purse seiners at the expense of over 1,000 drift and gill netters, tourism operators in Homer, and the public at large with an interest in the state park.

2:16:01 PM

MR. RABUNG pointed out that the pink salmon produced at Tutka Bay Lagoon Hatchery are also the cost recovery mechanism that supports the Lower Cook Inlet lakes sockeye program. Leisure, Hazel, and Kirschner Lakes, and Tutka Bay Lagoon are all release sites for those sockeye salmon where commercial and noncommercial common fisheries occur. Without those pinks paying the bill, that program goes away; that is a piece of the equation that needs to be on the table. Further, CIAA's program is an integrated program, so cost recovery that comes from one location funds projects in other locations. Hidden Lake sockeye on the Kenai River system is one of those projects that produces between 40,000 and 80,000 sockeye a year for the common property fishery. Pike control, Elodia control, and beaver dam notching are CIAA projects done on the Matanuska-Susitna and these projects funded with those pink salmon. So, it is not as simple as saying 17 seiners are the only beneficiaries; it's part of a portfolio. Investigation of CIAA can be done by talking with

the association and looking at its paperwork, which is posted online. However, Mr. Rabung stated, that is not at issue here; what is at issue is ADF&G's hatchery. The department can get a different operator, but it is still the disposal of land issue. The one thing that DNR and ADF&G agree on is that the state has invested in this hatchery; it has been operated by both ADF&G and the private sector since the late 1970s, and state bonds built it. It has only recently come to light that the agreement for the land use is in question, and that is what this bill remedies. It is not about the hatchery itself; it is about remedying the land use, curing that obligation and legal jeopardy for the state, and the provision within HB 52 that allows the land to revert to park land if ADF&G ceases to operate the hatchery and remediates the site. From ADF&G's perspective, it seems like a win-win.

[2:19:08 PM](#)

REPRESENTATIVE FIELDS argued that differentiation must be made between the function of the pink hatchery and the function of collecting sockeye eggs which are then reared at Trail Lakes. The collection of those eggs is a less facility-intense operation. This is not the only hatchery and most of them do a lot better at cost recovery. If collecting sockeye eggs is going to continue at Tutka Bay, the real question is, What is the most efficient, lowest risk way to the state to do that and is there a pink hatchery to support it? He said he thinks that that is a very dubious argument financially. He continued with a second part to his question and asked whether the other array of hatcheries should be used as part of that ecosystem. He maintained that sockeye eggs could be collected at Tutka Bay Lagoon without a pink hatchery.

[2:20:17 PM](#)

REPRESENTATIVE VANCE stated that Mr. Rabung addressed a lot of the issues. She pointed out that the 2.8 percent fisheries enhancement tax is self-imposed by the fishermen who have a vote on that and can make changes at their discretion, so it is not being imposed upon them. The fishermen find that this tax and the hatcheries in the portfolio are beneficial to them as commercial fishermen as well as to the community. She related that she has had commercial fishermen tell her that they are glad they support personal use fisheries for the community to be able to harvest food for their families. This is not just about the hatchery, she continued. This is about the entire region being able to meet everyone in the middle, and she said she

believes HB 52 does that specifically with the "reverter" language, which provides that if the hatchery does not continue, the lands carved out from the lagoon would go back into the state park. Legislators have a duty to do what is best for the people but also a fiscal responsibility for the state, she said, and HB 52 does that.

[2:21:48 PM](#)

REPRESENTATIVE HANNAN inquired whether there are fiscal notes from the agencies to comply with Amendment 1's report request.

MR. RABUNG replied that ADF&G has not done the analysis. He said the amendment's language is vague and it would depend on how detailed a study was done. A ballpark figure for a fisheries biologist, travel, and support would be in the range of \$100,000-\$130,000 a year. He advised that ADF&G's budget has been cut to the bone and is at the point where any additional cuts will mean reductions in fishery opportunity. Definitely, funding would be needed to take on this work.

MS. ALVAREZ replied that DNR also has not had the opportunity to do the analysis. She said she thinks there will be a fiscal note but cannot put a figure on it at this time.

[2:23:45 PM](#)

REPRESENTATIVE HANNAN asked if any nearby properties outside the existing state park boundaries have been identified by DNR and ADF&G as being adequate for a hatchery, or if the carve-out is the only land resolution that has been pursued.

MS. ALVAREZ answered that there were discussions with ADF&G, but it is not something that DNR looked to in terms of the options available to the department. She said CIAA has another hatchery facility in Port Graham that was started up during the time the plan was being developed, and it is her understanding that there are issues with that facility. But, she continued, that is beyond the scope of what DNR was trying to address during the plan process.

MR. RABUNG replied that by statute and ADF&G guidance there is very strict guidance on where a hatchery is allowed to be put, and there are no available locations in the vicinity where ADF&G could permit a new facility. He advised that the Port Graham facility was built by the Port Graham Corporation on Port Graham land; it was repossessed by DCCED, and CIAA bought the facility

from DCCED. It is very limited on water and could not take up the program. So, no, there are no other locations, he stated, this is it. If the land use agreement between DNR and ADF&G goes away, then this hatchery goes away, and the sockeye production in Lower Cook Inlet lakes ends.

[2:26:44 PM](#)

REPRESENTATIVE SCHRAGE recalled it being mentioned that [CIAA] is current on its payments but observed from a CIAA profit and loss statement that a profit was turned in only two of the last 10 years. He further observed that those profits are vastly overwhelmed by the losses in the other eight of the 10 years. He inquired about the viability of the hatchery and how that would be used for cost recovery.

MR. RABUNG responded that it comes back to the portfolio effect; CIAA operates many projects and has several sources of revenue. The cost recovery from the pinks and sockeye is one piece. It is also important to note that by law these are nonprofits and not supposed to turn a profit; their mission is to provide fish for the common property and pay their own way. He said CIAA is in good standing with DCCED as far as its debt. He offered his belief that CIAA's total combined corporate debt is around \$14 million and said CIAA makes its annual loan payments from all its revenue sources combined.

MR. RABUNG related that he has spent his career managing these programs and understands how they work. His prior position was as Aquaculture Section chief and before that, he was the Private Nonprofit (PNP) Hatchery Program coordinator for ADF&G. Every one of the 26 hatcheries operating in Alaska uses pinks and/or chums as their cost recovery fish to pay for all their other programs. Sockeye, coho, and chinook do not pay for themselves; they all are paid for by the pinks and chums which are the bread-and-butter fish that pay the bills. It's an intricate portfolio and each organization is a little bit different, but they are all nonprofits run by boards of directors made up of the permit holders who voted to tax themselves to operate these. Their operations and finances are available for anyone to look at. Regarding HB 52, Mr. Rabung said ADF&G is interested in continuing to operate this hatchery either by itself or at no cost to the state through a PNP contractor. Twelve of the department's hatcheries are contracted to the private sector and this hatchery is one of them.

[2:30:10 PM](#)

REPRESENTATIVE SCHRAGE stated that in having an accounting background he can appreciate a portfolio and one company under an umbrella organization subsidizing the efforts and activities of another sub-corporation. He asked whether it would not be expected for a hatchery to turn a profit if it predominantly rears pink salmon as its cost recovery fish. He further asked whether any other hatcheries are turning a profit under their umbrella or whether all are producing a loss.

MR. RABUNG reiterated that nonprofits cannot produce a profit. They can be viable and can build reserves but cannot produce a profit. The boards of directors of these hatcheries are made up primarily of commercial fishermen. The feedback mechanism if a hatchery starts generating more cost recovery than it needs is that the fishermen on its board would rather catch those fish themselves. So that is the mechanism to ensure the common property fishery maximizes. On average statewide, the PNPs contribute roughly 80 percent of their returns to the common property harvest and the other 20 percent goes to cost recovery and brood stock. That is a good return on investment and certainly better than when ADF&G operated it and didn't conduct cost recovery; it was funded by general funds up until that point. The department has contracted out hatchery operations since the late 1980s/early 1990s when the statute was passed, allowing ADF&G to do so. Each of those facilities has paid its own way; they are not supported by general funds or any other funds from the state. There is a revolving loan fund that the hatcheries can access to get through lean times, and CIAA has gone through some lean times but is in good standing on its loan payments. Mr. Rabung said he understands the revolving loan fund has generated significant revenue from the interest rate that is applied, so it has been a good return on investment for the state. Pieces of the revolving loan fund have been carved out and used for other projects. The CIAA's board of directors comprises permit holders who pay the salmon enhancement tax, a voluntary tax that they voted to impose on themselves. The CIAA board has chosen to continue to operate this program and keep it as a piece of CIAA's portfolio, but [CIAA's finances] are not the topic of this bill.

[2:34:08 PM](#)

REPRESENTATIVE SCHRAGE remarked that he and Mr. Rabung have a different understanding of how nonprofits function. With 10 years before this comes to a head, he said he doesn't understand why not take the time to better understand this fishery, its

function within the Kachemak Bay area, as well as the impact on it to the local wildlife and others that have been expressed by citizens of the area. Public testimony has been very divided on this issue, and he is trying to understand why not hit the brakes and take the time to understand this issue better. He inquired about the exposure to the state because of this ILMA and the justification for taking this seemingly very controversial position during this legislature.

MR. ORMAN answered that he does not have the number for a dollar amount. To the best of his knowledge, this concern about a disposal here, came to being around 2016-2017 and was mentioned in part of the plan and the plan process for DNR, Division of Mining, Land and Water. Regarding the disposal issue and the legal exposure, he would foresee that someone would sue about the hatchery based on comments that DNR has received and comments that he has heard, including during the testimony pursuant to this bill, he thinks the public is aware of the legal problems here and the exposure. With all that he has said to the committee today, he has arguably provided a road map in some ways for a potential complaint if somebody wanted to file that. The legal problems are clear. So, when talking about the exposure, if someone filed a lawsuit, he questioned whether the lawsuit would be successful. It is his job to look at this and determine whether that possibility exists, and he believes it exists here. Mr. Orman said he believes it is a kind of a disposal problem pursuant to this hatchery, and the problem is two-fold. One, the ILMA is separate and the problem with the ILMA pertains to a potential violation of AS 41.21.131 and the legislative mandate for who is supposed to be managing these lands. Two, the disposal is more specific and pertains to the agreements that exist here, the debts, the loans, the financial interests, and the desire for CIAA to continue to operate this hatchery to secure a return on those loans on that debt. He noted that the security assignment by ADF&G and the deed of trust that was filed by DCCED were recently put into BASIS. The deed of trust is until 2066, so the understanding would be that CIAA would ostensibly continue to operate this hatchery in some way to allow for the full return of the \$922,500 loan. He does see strong exposure for the state. [Part of the urgency] is that this is a strong legal problem and therefore trying to find a solution to resolve that would be best.

[2:39:05 PM](#)

CHAIR PATKOTAK inquired about the probability of the hatchery having to shut down with the success of a lawsuit.

MR. ORMAN replied that if someone filed a lawsuit challenging the ILMA and asserting that there is a disposal of lands here, he thinks the necessary result of that potential disposal and of that litigation would be ending hatchery operation. He said he cannot see that if somebody was successful in suing the state here and presented the argument the way he thinks it would be presented, they would lead anywhere but hatchery operations ending in this location.

[2:40:05 PM](#)

CHAIR PATKOTAK requested Ms. Alvarez to provide initial capital costs from the state to open the hatchery, and the overall worth of the fish produced, to provide an understanding of the financial fallout from closing the hatchery if a lawsuit were to be successful.

MS. ALVAREZ concurred with Mr. Orman's statements and said she doesn't know the financial impacts because DNR isn't in the business of managing hatcheries. She said DNR supports HB 52 because it provides a legislative solution to these disposal problems and an alternative to having the hatchery shut down. She deferred to ADF&G to answer questions about hatchery operations and their costs.

[2:41:39 PM](#)

REPRESENTATIVE SCHRAGE noted that the discussion has been about the legal exposure to not curing this land disposal issue. He asked whether there is any legal risk that the legislature would be sued for passing HB 52.

MR. ORMAN answered that, as he reads the legislation as drafted without Amendment 1, the purpose would be to remove the hatchery from Kachemak Bay State Park and as a result, those lands would be public domain lands. He said he believes that this cures the disposal problem. He further said he believes it is well within the legislature's authority to adjust the boundaries under Article 8, Section 7, which provides the legislature the authority to set aside lands and special purpose sites. Also, he continued, the legislature has the authority to adjust those boundaries and to determine what the boundaries of the park should look like.

REPRESENTATIVE SCHRAGE offered his understanding that eggs can be collected with a very limited footprint and rearing done at

Trail Lakes, then continuing to stock the other surrounding areas. He asked whether it can be said definitively that sockeye production would cease and inquired about what would prohibit the continuation of sockeye production.

MR. RABUNG replied that there are two things. One is that the land would still be occupied. A pipeline comes from the creek to feed the lensing bags, and somebody must be on site for collecting the fish and then holding them in the lensing bags for several months until the egg-take occurs. The facilities would have to either be brought in and out or the existing facility utilized, which is on the land that is part of the ILMA, so that issue remains. The second part is a question of financial support. The only entity permitted to do this work is CIAA, and CIAA funds the work itself. He questioned how CIAA would continue to do the work if it loses its funding mechanism.

CHAIR PATKOTAK commented that it would be safe to say that, regardless of what fish are being hatched, operating the hatchery is still incompatible with the park land, which is the whole purpose of the bill.

[2:46:11 PM](#)

CHAIR PATKOTAK removed his objection to the adoption of Amendment 1 to Version D. He asked whether there was further objection. He noted that someone [unidentified and inaudible] had objected.

[2:46:30 PM](#)

A roll call vote was taken. Representatives Fields, Hopkins, Hannan, and Schrage voted in favor of Amendment 1. Representatives McKay, Cronk, Rauscher, Gillham, and Patkotak voted against it. Therefore, Amendment 1 to HB 52, Version D, failed to be adopted by a vote of 4-5.

[2:47:11 PM](#)

REPRESENTATIVE HOPKINS moved to report CSHB 52, Version 32-LS0327\D, Bullard, 2/4/22, out of committee with individual recommendations and the accompanying fiscal notes.

[2:47:25 PM](#)

REPRESENTATIVE FIELDS objected. Taking land out of the state park, he opined, needs to be done as a last resort if there is

no other option, and only if it is clearly compatible with the overwhelming will of the public. In this case, it was the public process on the park plan that determined this particular use was incompatible. To second guess that, he would have to see overwhelming public opinion from the region, but very mixed opinion was heard before the committee. Additionally, he has not seen the case made that red salmon cannot be reared, which is the use that most people in the region support, namely the China Poot fishery. He maintained that it has not been demonstrated that reds cannot be reared here without rearing pinks here. He said an important question is whether the egg collection of those reds would be more compatible with the state park plan compared to eggs plus a pink hatchery. It is a high bar to withdraw those lands, Representative Fields continued. It is important to consider all uses when looking at the resource of the park in the bay, not just each type of fishery but also the other economic benefits in the area. Public comment included a lot of local tourism businesses in opposition to the bill because of the economic impacts, which is an important thing to take into consideration. Given the [10-year] time horizon, he does not see a reason to rush to pick one thing that seems incompatible with the public will as expressed through a state park plan and incompatible with most of the public testimony seen by the committee. For these reasons, he said, he will be voting no.

[2:49:49 PM](#)

REPRESENTATIVE HANNAN stated she has grave concern about [the legislature] changing the boundaries of this long-standing state park at this juncture. The only precedent for removing lands from a prior created state park was for a gasline easement anticipating a major economic infusion to Alaska. Since that easement has never had to be exercised, the public has had no loss of use of that land as if it were still part of Denali State Park. This circumstance is entirely different, she continued, and some of the committee's discussions are shaded with fish politics, which she wants to separate from the land use. The problem as presented is that there is an exposure and liability. But, she opined, she doesn't know that this is a solution that gets to a place that she is comfortable with regarding Kachemak Bay State Park. However, Representative Hannan continued, having hatcheries in Lower Cook Inlet is clearly a significant economic driver. She would like to pursue looking at another hatchery in another location, which she does not believe has been fully explored. She said she is going to

vote no on the bill because the carve-out from the state park is a significant precedent and is separate from the fish politics.

[2:51:42 PM](#)

REPRESENTATIVE SCHRAGE said he doesn't necessarily oppose the carve-out and the hatchery very well may be viable and serve the best interest of the state. However, from the testimony and listening to DNR and ADF&G, he opined, he doesn't know that the case has been made that this meets Alaska's constitutional requirement that the state's lands and waters be managed for the best interest of the people. There are 10 more years to find more information; there are lists of studies that are currently ongoing. If ADF&G and DNR thought the cost was the prohibitive factor here, he doesn't know that that means action should be taken blindly because the cost cannot be afforded. Over the 10-year horizon, more can be learned about the impact of this hatchery, the financial viability of it, and the interplay between the pink salmon, the cost recovery, and CIAA's other operations. Representative Schrage further stated he doesn't know that a proper case has been made that due diligence has been done for ensuring that this is truly in the best interest of the people, which public testimony before the committee highlights. There are pages and pages of legitimate concerns over the impact on other wildlife and how this impacts state policy. He stressed that he doesn't want his vote to be interpreted as being against this bill or against continuing hatchery operation or against carving out this portion of the park for the use of the hatchery. However, he thinks this is rushed and action should not be taken at this time, so he is going to vote no on the bill.

[2:53:27 PM](#)

REPRESENTATIVE FIELDS maintained his objection to the bill.

[2:53:34 PM](#)

A roll call vote was taken. Representatives Gillham, Rauscher, Cronk, McKay, and Patkotak voted in favor of moving CSHB 52, Version 32-LS0327\D, Bullard, 2/4/22, out of committee with individual recommendations and the accompanying fiscal notes. Representatives Schrage, Hannan, Hopkins, and Fields voted against it. Therefore, CSHB 52(RES) was reported out of the House Resources Standing Committee by a vote of 5-4.

[2:54:22 PM](#)

The committee took an at-ease from 2:54 p.m. to 2:56 p.m.

HB 287-A: OIL & GAS TAX CREDIT FUND APPROP.

[2:56:40 PM](#)

CHAIR PATKOTAK announced that the final order of business would be HOUSE BILL NO. 287, "An Act making an appropriation for oil and gas tax credits; and providing for an effective date."

[2:56:59 PM](#)

REPRESENTATIVE RAUSCHER, as prime sponsor, stated that HB 287 is important because he believes the state needs to pay its debts, needs to keep the promises it makes, and needs to follow its statutes. [The legislature] needs to support the state as far as being able to work with its investors, and it should be known in the future that the state is going to keep its promises. He urged committee members to vote yes for HB 287.

[2:57:50 PM](#)

REPRESENTATIVE HOPKINS moved to report HB 287 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 287 was reported out of the House Resources Standing Committee.

[2:58:36 PM](#)

The committee took a brief at-ease.

[2:58:54 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:59 p.m.