

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

April 14, 2023

1:05 p.m.

**MEMBERS PRESENT**

Representative Tom McKay, Chair  
Representative George Rauscher, Vice Chair  
Representative Josiah Patkotak  
Representative Kevin McCabe  
Representative Dan Saddler  
Representative Stanley Wright  
Representative Jennie Armstrong  
Representative Donna Mears

**MEMBERS ABSENT**

Representative Maxine Dibert

**COMMITTEE CALENDAR**

HOUSE BILL NO. 120

"An Act relating to hunting, trapping, and fishing licenses for certain nonresident postsecondary students; and providing for an effective date."

- MOVED HB 120 OUT OF COMMITTEE

HOUSE BILL NO. 104

"An Act relating to expedited timber sales."

- MOVED CSHB 104(RES) OUT OF COMMITTEE

CONFIRMATION HEARING(S) :

Board of Game

Jacob Fletcher - Talkeetna

- CONFIRMATION(S) ADVANCED

Big Game Commercial Services Board

Michael Flores - Soldotna

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 98

"An Act relating to state ownership of submerged land underlying navigable water within the boundaries of and adjacent to federal areas; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 120

SHORT TITLE: HUNT/FISH LICENSE FOR NONRESIDENT STUDENT

SPONSOR(s): REPRESENTATIVE(s) TOMASZEWSKI

03/17/23	(H)	READ THE FIRST TIME - REFERRALS
03/17/23	(H)	RES, FIN
04/03/23	(H)	RES AT 1:00 PM BARNES 124
04/03/23	(H)	-- MEETING CANCELED --
04/05/23	(H)	RES AT 1:00 PM BARNES 124
04/05/23	(H)	-- MEETING CANCELED --
04/12/23	(H)	FIN REFERRAL REMOVED
04/12/23	(H)	BILL REPRINTED
04/12/23	(H)	RES AT 1:00 PM BARNES 124
04/12/23	(H)	Heard & Held
04/12/23	(H)	MINUTE(RES)
04/14/23	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 104

SHORT TITLE: EXPEDITED TIMBER SALES

SPONSOR(s): REPRESENTATIVE(s) CRONK

03/08/23	(H)	READ THE FIRST TIME - REFERRALS
03/08/23	(H)	RES
03/20/23	(H)	RES AT 1:00 PM BARNES 124
03/20/23	(H)	Heard & Held
03/20/23	(H)	MINUTE(RES)
03/24/23	(H)	RES AT 1:00 PM BARNES 124
03/24/23	(H)	Heard & Held
03/24/23	(H)	MINUTE(RES)
04/03/23	(H)	RES AT 1:00 PM BARNES 124
04/03/23	(H)	-- MEETING CANCELED --
04/14/23	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 98

SHORT TITLE: STATE OWNERSHIP OF SUBMERGED LAND

SPONSOR(s): REPRESENTATIVE(s) SADDLER

03/06/23 (H) READ THE FIRST TIME - REFERRALS  
03/06/23 (H) JUD, RES  
03/29/23 (H) JUD AT 1:00 PM GRUENBERG 120  
03/29/23 (H) Heard & Held  
03/29/23 (H) MINUTE (JUD)  
03/31/23 (H) JUD AT 1:00 PM GRUENBERG 120  
03/31/23 (H) Moved HB 98 Out of Committee  
03/31/23 (H) MINUTE (JUD)  
04/03/23 (H) JUD RPT 6DP  
04/03/23 (H) DP: C. JOHNSON, CARPENTER, EASTMAN,  
GRAY, ALLARD, VANCE  
04/14/23 (H) RES AT 1:00 PM BARNES 124

**WITNESS REGISTER**

JOHN ANDERSON, representing self  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of HB 120.

AL BARRETTE, representing self  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of HB 120.

MICHAELA ANDERSON, Staff  
Representative Frank Tomaszewski  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** On behalf of Representative Tomaszewski,  
prime sponsor, answered questions about HB 120.

ED KING, Staff  
Representative Tom McKay  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing on HB 104, reviewed the  
changes between the original bill version and the proposed  
committee substitute, Version U, on behalf of Representative  
McKay, co-sponsor of HB 104.

DAVE STANCLIFFE, Staff  
Representative Mike Cronk  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions about the proposed  
committee substitute, Version U, of HB 104 on behalf of  
Representative Cronk, prime sponsor.

REPRESENTATIVE MIKE CRONK  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing on HB 104, answered questions as prime sponsor of the bill.

JACOB FLETCHER, Appointee  
Board of Game  
Alaska Department of Fish and Game  
Talkeetna, Alaska

**POSITION STATEMENT:** Testified as appointee to the Board of Game.

MICHAEL FLORES, Appointee  
Big Game Commercial Services Board  
Division of Corporations, Business and Professional Licensing  
Department of Commerce, Community, and Economic Development  
Soldotna, Alaska

**POSITION STATEMENT:** Testified as appointee to the Big Game Commercial Services Board.

WAYNE KUBAT, Vice President  
Alaska Professional Hunters Association  
Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of the governor's appointees to the Board of Game and the Big Game Commercial Services Board.

MARK RICHARDS, Executive Director  
Resident Hunters of Alaska  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified during the confirmation hearings.

MARY JACKSON, Staff  
Representative Dan Saddler  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing on HB 98, addressed the sectional analysis on behalf of Representative Saddler, prime sponsor.

BRENT GOODRUM, Deputy Commissioner  
Office of the Commissioner  
Department of Natural Resources  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in favor of HB 98.

JIM WALKER, Chief  
Public Access Assertion & Defense Section  
Division of Mining, Land and Water  
Department of Natural Resources  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing on HB 98, provided a PowerPoint, titled "State Ownership of Submerged Lands House Resources - HB 98."

**ACTION NARRATIVE**

[1:05:58 PM](#)

**CHAIR TOM MCKAY** called the House Resources Standing Committee meeting to order at 1:05 p.m. Representatives Armstrong, McCabe, Rauscher, Saddler, and McKay were present at the call to order. Representatives Patkotak, Mears, and Wright arrived as the meeting was in progress.

**HB 120-HUNT/FISH LICENSE FOR NONRESIDENT STUDENT**

[1:06:45 PM](#)

CHAIR MCKAY announced that the first order of business would be HOUSE BILL NO. 120, "An Act relating to hunting, trapping, and fishing licenses for certain nonresident postsecondary students; and providing for an effective date."

[1:06:52 PM](#)

CHAIR MCKAY opened public testimony on HB 120.

[1:07:28 PM](#)

JOHN ANDERSON, representing self, testified in support of HB 120. He related that 10 years ago as a student at the University of Alaska Fairbanks (UAF), he and other students in his fraternity went on a fishing trip, but several [non-resident] students couldn't go because they couldn't afford the cost of a one-day or three-day fishing license. He said HB 120 could help build stronger organizations and links to Alaska regardless of whether the students stay in or leave Alaska. If the students stay, he added, it builds Alaska's workforce and economy.

[1:10:52 PM](#)

AL BARRETTE, representing self, testified in support of HB 120. He qualified that he is providing his own opinion, not that of the Board of Game, of which he is a member. He said [nonresident students] spend a lot of time in Alaska and help fund the state's education system, and allowing them to participate in hunting, trapping, and fishing at a resident fee will benefit the students and the state. He related that the State of Alaska and non-governmental organizations in Alaska are participating in a national program called Recruitment, Retainment, and Reactivation ("R3"); he submitted that HB 120 would help promote hunting, fishing, and trapping within Alaska.

[1:12:31 PM](#)

CHAIR MCKAY closed public testimony on HB 120 after ascertaining that no one else wished to testify.

[1:12:51 PM](#)

MICHAELA ANDERSON, Staff, Representative Frank Tomaszewski, Alaska State Legislature, on behalf of Representative Tomaszewski, prime sponsor, answered questions about HB 120 that were asked at the [bill's previous hearing]. She explained that someone falling below the poverty line already gets a well reduced fee on their license. However, she continued, someone dependent on their parents and not falling under low income is when the \$5 and free license exemption would activate. Regarding large game hunting, she advised that HB 120 would not make someone a resident; the bill deals strictly with licenses and does not deal with tags, stamps, or other regulations. She further advised that for large game muzzle loading the student would still have to go through muzzle loading training and for bear hunting the student would have to be guided. Ms. Anderson pointed out that these students would not qualify for dipnetting because they aren't a resident. She specified that these students would fall under the same salvage laws as any resident or nonresident hunter who isn't a student, meaning nonresident students would have to pack out and utilize any animal that they shoot.

[1:14:44 PM](#)

REPRESENTATIVE ARMSTRONG asked if the sponsor had considered nonresident high school exchange students since the license age is 16 and Alaska receives numerous exchange students.

MS. ANDERSON replied that there was no discussion of that, but the sponsor would like to have that conversation. She added that [applicants for this exemption] would have to sign a certificate certifying they are a student. If stopped by law enforcement, she continued, the person would have to go through the route of proving they are a student or dealing with the consequences [if they aren't a student].

REPRESENTATIVE TOMASZEWSKI stated he is willing to look at the Representative Armstrong's suggestion before HB 120 goes to the floor.

REPRESENTATIVE ARMSTRONG said she would schedule a meeting with the sponsor.

[1:16:18 PM](#)

The committee took a brief at-ease.

[1:16:57 PM](#)

REPRESENTATIVE SADDLER inquired about the number of full-time and part-time students in the university system. He said he is wondering how extending this nonresident postsecondary student license would affect the demand on Alaska's fish and game resources.

REPRESENTATIVE TOMASZEWSKI responded that Anchorage has about 1,200 and Fairbanks about 700 enrolled nonresident, full-time students. Responding further, he said he doesn't have the number of part-time nonresident students.

MS. ANDERSON stated she would get those numbers from the university and provide them to the committee.

[1:18:16 PM](#)

REPRESENTATIVE RAUSCHER moved to report HB 120 out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, HB 120 was reported out of the House Resources Standing Committee.

[1:18:47 PM](#)

The committee took an at-ease from 1:18 p.m. to 1:21 p.m.

**HB 104-EXPEDITED TIMBER SALES**

[1:21:56 PM](#)

CHAIR MCKAY announced that the next order of business would be HOUSE BILL NO. 104, "An Act relating to expedited timber sales."

REPRESENTATIVE RAUSCHER moved to adopt the proposed committee substitute (CS) for HB 104, Version 33-LS0474\U, Bullard, 4/12/23, as the working document.

CHAIR MCKAY objected for the purpose of discussion.

[1:23:05 PM](#)

ED KING, Staff, Representative Tom McKay, Alaska State Legislature, reviewed the changes between the original bill version and the proposed committee substitute, Version U, of HB 104 on behalf of Representative McKay, a co-sponsor of the bill. He explained that Version U makes a few additions to the bill to clarify the distinction between expedited timber sales and the salvage sales already in existing law. He spoke from the document in the committee packet, titled "House Bill 104, Expedited Timber Sales, Summary of Changes from Version B to U," which read as follows [original punctuation provided with some formatting changes]:

Change 1: A new bill section 2 was added to exempt salvage sales from the best interest finding requirement. Note: public notice is still required per the state constitution (Art. 8, Sec. 10).  
(Page 1, line 10 through page 6, line 4)

Change 2: New bill sections 4 and 5 were added to exempt salvage sales and expedited sales from the forest land use plan and five-year sale schedule requirements.  
(Page 6, lines 9 - 22)

Change 3: A new bill section 6 was added to create a new subsection under AS 38.05.115 (terms and conditions of sales) which lengthens the default term for timber sales subject to a forest land use plan to 25 years unless a shorter term is requested or required.  
(Page 6, line 23 - 30)

Change 4: New bill sections 7 and 8 were added to clarify the difference between salvage sales and expedited timber sales.

(Page 6, line 31 through page 7, line 19)

Change 5: A new bill section 9 was added to encourage more high-value wood production in Alaska.

(Page 7, line 20 through page 8, line 7)

Change 6: The language from bill section 3 of version B (now bill section 10) was adjusted by:

1. Changing the terms and conditions to better reflect the sponsor's intent (page 8, lines 13 - 19)
2. Adding prevention of habitat degradation as a condition in which an expedited timber sale may occur (page 8, lines 25 - 26)
3. Including language to make clear that the new provisions may [sic] not be used to reduce the sale of higher quality timber (page 9, lines 3 - 4)

Change 7: Adds an immediate effective date to avoid the loss of this summer season (page 9, line 10)

MR. KING pointed out that Change 1 itself is located on page 4, lines 29-30, and the rest of the provisions in the new Section 2 are existing law. Regarding Change 4, he clarified that salvage sales in general refer to timber that has already been killed by beetles or fire, whereas expedited timber sales are preemptive measures for fire risk or infestation spread. Mr. King noted that Change 5 is what would allow for the seven-year sales for negotiated sale for high-value wood, a request by some members of the industry to support financing efforts. He elaborated that Change 6 is recognizing that expedited timber sales are preventing fire and infestation spread and thereby saving the [state] money, so the price collected from those timber sales should reflect the savings to the state.

[1:26:42 PM](#)

REPRESENTATIVE MCCABE drew attention to page 7, line 26, and asked why seven [years] was chosen instead of something greater. He said loggers are having a horrible time getting financing for equipment because the timber sale is seven years but the loan on a piece of equipment is 30 years.

MR. KING responded by drawing attention to page 6, lines 23-30. He noted that line 25 states that the period of a contract for

timber sales is 25 years unless [a shorter period] is requested or required by the commissioner. He deferred to Mr. Stancliffe to explain AS 38.05.123, which is the seven-year sale provision that is being spoken to by Representative McCabe.

[1:27:43 PM](#)

DAVE STANCLIFFE, Staff, Representative Mike Cronk, Alaska State Legislature, stated that in working with the Department of Law, the administration, the Division of Forestry, Alaska Forest Association, and small-time operators, seven years was set as a minimum because banks turn their heads at anything less than that.

[1:28:16 PM](#)

REPRESENTATIVE ARMSTRONG inquired about how the decision would be made for expedited timber sales due to threat of fire, for example whether the decision is made during active fires and [if not], how it is known what could possibly become burnt.

MR. KING deferred to the department to provide an answer.

MR. STANCLIFFE answered that [the prime sponsor] lives in an area where timber becomes either boards and cabin logs, or the timber gets burned. He said mature timber stands that are fire prone would become under the expedited classification, thereby feeding an enterprise that needs the timber and protecting against fires for public safety.

[1:30:13 PM](#)

REPRESENTATIVE RAUSCHER asked whether the prime sponsor supports the proposed CS.

[1:30:47 PM](#)

REPRESENTATIVE MIKE CRONK, Alaska State Legislature, as prime sponsor of HB 104, confirmed he supports Version U.

[1:31:10 PM](#)

CHAIR MCKAY removed his objection to the motion to adopt the proposed committee substitute (CS) for HB 104, Version 33-LS0474\U, Bullard, 4/12/23, as the working document. There being no further objection, Version U was before the committee.

[1:31:54 PM](#)

REPRESENTATIVE RAUSCHER moved to report CSHB 104, Version 33-LS0474\U, Bullard, 4/12/23, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 104(RES) was reported out of the House Resources Standing Committee.

[1:32:33 PM](#)

The committee took an at-ease from 1:32 p.m. to 1:34 p.m.

**CONFIRMATION HEARING(S) :**  
**BOARD OF GAME**  
**BIG GAME COMMERCIAL SERVICES BOARD**

[1:34:25 PM](#)

CHAIR MCKAY announced that the next order of business would be consideration of the appointees to the Board of Game and the Big Game Commercial Services Board.

[1:35:29 PM](#)

The committee took an at-ease from 1:35 p.m. to 1:36 p.m.

[1:36:05 PM](#)

CHAIR MCKAY invited Mr. Jacob Fletcher, appointee to the Board of Game, to provide his statement.

[1:37:17 PM](#)

JACOB FLETCHER, Appointee, Board of Game (BOG), Alaska Department of Fish and Game (ADF&G), stated he is up for reappointment to the board, having previously served one term. He outlined his various sources of employment: owner of a big game guiding business that predominantly operates on Kodiak Island in the spring and fall; holder of a federal guide use area on the Kenai National Wildlife Refuge; jet boat operator during the summer months on the Susitna and Talkeetna rivers for Mahay's Jet Boat Adventures of Talkeetna; snowmachine operator for a snowmachine tourism business; and occasional guide and trainer at Dallas Seavey's kennel in Talkeetna. He noted that as a packer, an assistant, and a registered guide for over 20 years, he is familiar with the way that game regulations are

implemented in the field. He added that he will continue to look out for Alaska's wild game and residents.

1:39:31 PM

REPRESENTATIVE MCCABE requested Mr. Fletcher's thoughts on allowing disabled veterans and older people to use motorized or electric bicycles in nonmotorized hunt areas. He further asked whether the Board of Game would consider suggesting certain nonmotorized areas for this type of use.

MR. FLETCHER replied that the BOG absolutely would be interested in that. He related that occasionally, disabled people testify at BOG meetings, and recently the BOG approved a proposed moose hunt for disabled folks in Kincaid Park in Anchorage.

1:41:28 PM

REPRESENTATIVE PATKOTAK related that various [caribou] herds are dwindling in Game Management Units (GMU) 23, 26A, 26B, and 26C, and that the advisory committee [has recommended] scaling back the take for the subsistence preference. He requested Mr. Fletcher's opinion on whether the commercial take should also be scaled back.

MR. FLETCHER responded that abundant animals are easy to manage, whereas management of animals that are dwindling is difficult. He said he relies on the local input and the advisory committees work hard. He stated that whenever animals are dwindling, commercial use must also get scaled back.

1:44:19 PM

REPRESENTATIVE RAUSCHER related that as the state has begun to create hunts where only local clientele can apply for the hunt, he has received letters saying that Alaska's game is for everybody and there should be an equal opportunity for everyone to participate. He requested Mr. Fletcher's opinion on this issue. He clarified that he is talking about the community harvest hunt.

MR. FLETCHER answered that after the different community harvest hunts were implemented, not all user groups were 100 percent satisfied. He said he hopes the user groups will come together during the process of refining those hunts to make them more agreeable to all user groups.

CHAIR MCKAY invited Michael Flores, appointee to the Big Game Commercial Services Board (BGCSB), to provide his statement.

[1:46:24 PM](#)

MICHAEL FLORES, Appointee, Big Game Commercial Services Board (CSB), Division of Corporations, Business and Professional Licensing; Department of Commerce, Community, and Economic Development, stated that he is currently on the board as a marine transporter. He said he is a bush pilot, big game guide, marine transporter, fishing guide, a delegate to the International Pacific Halibut Commission, and a member of the governor's Alaska Bycatch Review Task Force. He said the Commercial Service Board has dealt with a lot of changes. He related that at last month's Board of Game meeting, the Afognak Native Corporation spoke about being overrun with transporters, so the Commercial Services Board is looking into that. He further related that the CSB is considering looking into whether there are too many transporters in Alaska or whether it is the public trying to fill their freezers for the winter.

CHAIR MCKAY opened public testimony on the confirmation hearing for the governor's appointees to the Board of Game and the Big Game Commercial Services Board.

[1:48:52 PM](#)

REPRESENTATIVE PATKOTAK reiterated that the Fish and Game Advisory Committee has forwarded recommendations to scale back the subsistence take for the declining [caribou] herds in GMUs 23, 26A, 26B, and 26C, which is his district. He requested Mr. Flores' opinion on whether the commercial take should also be scaled back.

MR. FLORES replied that it appears the Kodiak Fish and Game Advisory Committee and the villagers think there is a problem with too much harvest. As for marine transporters, he said a lot of animals are harvested off the beach, and this year the Board of Game voted to reduce the nonresident harvest to one buck only while keeping the harvest limit for locals at three for Kodiak. He related that the Commercial Services Board saw 22 new transporters sign up for licenses last year and 12 have signed up so far this year. He noted that there were 27 fewer registered guides last year, probably due to closing of the areas referred to by Representative Patkotak. He pointed out that there is no limit on transporters but there is on guides

because guides must test to become licensed in Alaska whereas transporters do not.

[1:51:55 PM](#)

WAYNE KUBAT, Vice President, Alaska Professional Hunters Association (APHA), testified in support of the reappointment of Mr. Michael Flores to the Big Game Commercial Services Board (CSB). He said Mr. Flores has been an engaged member of the board, brings unique experiences to the board process, has been accessible to the public, and is willing to listen to all sides of an issue so he can make the best decision possible.

[1:53:06 PM](#)

MARK RICHARDS, Executive Director, Resident Hunters of Alaska (RHAK), related that RHAK works on prioritizing Alaska resident hunter opportunities. He stated that RHAK has decided to remain neutral to Mr. Jacob Fletcher's appointment to the Board of Game. He further stated that RHAK's position continues to be that the Board of Game's current makeup is unbalanced in favor of commercial hunting interests. He pointed out that Mr. Fletcher is currently one of the five licensed guides and one retired guide on the seven-member board and if reappointed Mr. Fletcher will be one of four guides on the seven-member board. For perspective, he specified that less than one percent of the more than 100,000 Alaska residents who purchase a hunting license each year are licensed guides. He noted that while Mr. Fletcher's answer to Representative Patkotak's question was that commercial hunting should be scaled back, Mr. Fletcher voted against RHAK's proposal to the Board of Game to limit nonresident sheep hunters in GMU 19C, which has a declining sheep population.

[1:56:59 PM](#)

MR. KUBAT resumed his testimony. He stated that the APHA supports reappointment of Mr. Jacob Fletcher to the Board of Game. He said Mr. Fletcher lives full time in rural Alaska and knows firsthand of the importance of Alaska's wildlife resources to rural communities. He added that Mr. Fletcher brings unique experiences from across the state to the board process, is accessible to the public, and is willing to listen to all sides of an issue and make the best decision he can.

[1:58:06 PM](#)

CHAIR MCKAY asked Mr. Fletcher whether he will consider the need for balance between all users of wildlife in Alaska.

[1:58:43 PM](#)

MR. FLETCHER replied yes. In further response to Chair McKay, he stated that [Representative Patkotak's] question was about caribou and Mr. Richards' testimony was about sheep. He stated he fully believes in the full-curl rule of management, meaning a ram that is full curl or eight years old, is a ram that can be taken, and a harvestable surplus will remain on the hill each year. He offered his belief that [in the area referenced by Mr. Richardson] only one sheep has been taken in the winter subsistence hunt in a long time. He added that in his opinion it is two different subjects.

[1:59:57 PM](#)

CHAIR MCKAY moved to advance the confirmation of Jacob Fletcher, Board of Game, and Michael Flores, Big Game Commercial Services Board, to the joint session for consideration. He reminded the committee that signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointee, and the nominations are merely forwarded to the full legislature for confirmation or rejection.

[2:00:27 PM](#)

The committee took an at-ease from 2:00 p.m. to 2:03 p.m.

**HB 98-STATE OWNERSHIP OF SUBMERGED LAND**

[2:03:16 PM](#)

CHAIR MCKAY announced that the final order of business would be HOUSE BILL NO. 98, "An Act relating to state ownership of submerged land underlying navigable water within the boundaries of and adjacent to federal areas; and providing for an effective date."

[2:03:54 PM](#)

REPRESENTATIVE SADDLER, as prime sponsor of HB 98, introduced the bill to the committee. He said HB 98 seeks to end the federal government's decades-long, unjust denial of a fundamental right of Alaska's statehood: control of navigable

waters in Alaska and the lands beneath them, regardless of whether they are in federal conservation units or not. He continued to paraphrase from the document in the committee packet, titled "HB 98 Sponsor Statement," which read as follows [original punctuation provided]:

The 1959 Statehood Act transferred 105 million acres of federal land to Alaska. In addition, the U.S. Constitution and federal law also made the state owner of navigable waters and the lands beneath them at the instant of statehood.

Navigable waters are the lakes, rivers and streams that supported, or could have supported, in-state travel at the time of Statehood. They provide travel routes, recreational access, hunting opportunities, aquatic habitat and more, and represent corridors of commercial travel critical to Alaska's prosperity. All other states assumed undisputed control of such lands and waters inside their borders upon joining the Union.

Despite their obligation to do so, federal authorities have dragged their heels in granting Alaska clear title to its submerged lands. Instead, they've forced the state to prove the navigability of waterways on a case-by-case basis at a rate that would take hundreds of years to conclude.

Enough is enough. HB 98 simply but confidently declares Alaska's title to the beds of navigable waters, including those within federal parks, wildlife refuges, forests and other conservation units, unless specifically withdrawn before Statehood. It identifies and enumerates water bodies within federal areas in which the State has a title interest. And it directs the Department of Natural Resources to make progress reports to the Legislature on its continuing effort to delineate navigable waters in federal areas in Alaska.

The need for this bill is dramatized by the case of Alaska hunter John Sturgeon, who fought and won two U.S. Supreme Court decisions clarifying that Alaskans have the right to use navigable waters inside federal areas, and that federal regulations do not trump state ownership, even in conservation units created by the

Alaska National Interest Lands Conservation Act in 1980.

REPRESENTATIVE SADDLER noted that the Tongass National Forest is one of those federal forest units withdrawn before statehood.

[2:07:03 PM](#)

MARY JACKSON, Staff, Representative Dan Saddler, Alaska State Legislature, on behalf of Representative Saddler, prime sponsor of HB 98, pointed out that Section 9 is the detailed list of waterways and comprises 83 of the bill's 88 pages. She turned attention to the sectional analysis, titled "HB 98 Sectional Analysis" [included in the committee packet], which read as follows [original punctuation provided]:

**Section 1** - Amends uncodified law by adding a new section to describe the purpose of the bill.

**Section 2** - Amends AS 38.04.062(a) to Page 2, line 1, revises the phrase "at the time" to become "on the date", and adds the clause ', including submerged land underlying navigable water listed in AS in AS 38.04.063 that is within the boundaries of and adjacent to federal areas.' Provides clarity that the State owns all submerged lands under navigable from the date of statehood, including lands within the boundaries of sand adjacent to federal lands. AS 38.04.062(a) declares that 'the state owns all submerged land underlying navigable water to which title passed to the state at the time the state achieved statehood under the equal footing doctrine or 43 U.S.C. 1301 - 1315 (Submerged Lands Act of 1953).'

**Section 3** - Amends AS 38.04.062(d) by (Page 2, line 10), revising the phrase "at the time" to become "on the date", and adds the following sentence: 'The commissioner shall conduct ongoing research to identify submerged land underlying navigable water within the boundaries of and adjacent to federal areas to determine state title to corresponding submerged land underlying navigable water.'

**Section 4** - amends AS 38.04.062(c) by revising the phrase "at the time" to become "on the date".

**Section 5** - amends AS 38.04.062(d) by referencing the list of navigable waters described fully in new AS 38.04.063 and revises the phrase "at the time" to become "on the date".

**Section 6** - Amends AS 38.04.062(e) by inserting the clause '(b) or (c) of (new section 3 and 4).' Subsection (e) operates as a disclaimer for determinations of navigability by the DNR commissioner, providing that they do not create an interest in real property, may not be recorded, and do not constitute final agency action. Because the proposed edits to AS 38.04.062 create new obligations for the DNR commissioner concerning navigable waters in SA HB 98 3/15/23: maj federal areas, which may include navigability determinations made because of administrative or judicial proceedings, '(b) or (c) of' was inserted before 'this section' to distinguish the commissioner's non-binding determinations from determinations that have binding effect.

**Section 7** - amends by revising the phrase "at the time" to become "on the date".

**Section 8** - Adds new subsections (h) - (j) to AS 38.04.062 that creates an obligation on DNR to report annually to the legislature. Subsection (h) requires the commissioner to submit an annual report to the legislature by the first day of each regular session identifying navigable waters within the boundaries of and adjacent to federal areas that are not listed in AS 38.04.063(b) and any modifications or changes to navigable waters within the boundaries of and adjacent to federal areas that have been previously identified and listed in AS 38.04.063(b) Subsection (i) provides that the commissioner's failure to include or identify navigable waters in accordance with the requirements of AS 38.04.062 does not relinquish any state right in the submerged lands underlying those navigable waters. Subsection (i) is intended to preserve the state's rights to submerged lands. Subsection (j) provides that a navigability determination of the commissioner is based on evidence consistent with the definition of 'navigable water' at AS 38.04.062(g) and consideration of the factors listed in AS 38.04.062(j) (1-4).

**Section 9** - Amends AS 38.04 by adding a new section AS 38.04.063 concerning state ownership of submerged within federal areas. This section makes clear that since statehood, that the State owns, claims, occupies, possesses, manages, and controls all submerged lands underlying navigable waters listed in (b) of this new section of statute, except as provided under AS 38.04.062(f). It further identifies navigable waterbodies that are currently known within the boundaries of and adjacent to federal areas. This section was drafted to model existing AS 19.30.400 which codifies state claims of rights-of-way granted under former 43 U.S.C. 932 (Revised Statute 2477). Page 4 to page 87.

**Section 10** - Amends AS 38.04.910 by adding new paragraphs for definitions, renumbering existing definitions, and adding proposed definitions for 'federal areas,' 'mean high water,' 'mean high water line,' 'ordinary high water mark,' and 'submerged land.'

**Section 11** - repeals existing 38.04.06(g) which is current definition.

**Section 12** - Amends the uncodified law of the state to add a new section providing that Section 9 of the bill is retroactive to January 3, 1959. This bill will require a special vote of two-thirds of the members of each house because the proposed retroactive effective date for this section varies from the standard language providing for an effective date 90 days after enactment.

**Section 13** - Provides for an immediate effective date under AS 01.10.070(c).

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BRENT GOODRUM, Deputy Commissioner, Office of the Commissioner, Department of Natural Resources (DNR), testified in favor of HB 98. He explained that oftentimes the federal government does not take a position on the ownership of submerged lands and does not say that it explicitly has ownership interest, thereby denying the State of Alaska the ability to bring a quiet title action in federal court because such an action requires a case or controversy. He said HB 98 would flip the script by

codifying the navigable water bodies in federal areas as navigable-in-fact for title purposes. The federal government, he continued, would be put on formal notice that the State of Alaska owns these submerged lands and intends to manage these water bodies even though they flow through post-statehood federal conservation system units (CSUs). The burden would then be on the federal government, he specified, to gather data and to find resolution if it disagrees with the state's position. Federal CSU enforcement officers, he added, wouldn't be to carry out federal action or enforcement by saying that an affirmative decision or determination hasn't been made. He referenced two unanimous U.S. Supreme Court decisions on that point in the matter of Sturgeon v. Frost.

MR. GOODRUM pointed out that the state has waited 64 years for federal authorities to determine the navigability of the state's water bodies. He said the current status quo of uncertainty and ambiguity of ownership, management, and control of the state's navigable water bodies is not in the state's or anyone's best interest. The time is now for the State of Alaska to flip the script, he opined, and to decisively identify and codify the state's navigable rivers and lakes.

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The committee took a brief at-ease to deal with sound system technicalities.

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REPRESENTATIVE PATKOTAK inquired about the administration's intended end consequence for vessel traffic through navigable waters and the potential for political subdivisions of the State of Alaska to take some degree of permitting authority for access to navigable waters.

MR. GOODRUM related the state's belief that under the equal footing doctrine, all navigable waters within the state rightfully vested with the state as of 1959, but to date the federal government hasn't acknowledged the state's ownership rights. Ownership rights, he explained, give the state the ability to manage the resources beneath those submerged lands as well as the activity above them regarding transportation. He related that when Mr. Sturgeon was using his hovercraft on the Nation River, a river that had already been determined navigable in a federal court, Mr. Sturgeon believed he was on state land and therefore state regulations applied as opposed to U.S.

National Park Service regulations that prohibited hovercraft from operating within [national] parks. Mr. Goodrum further related that the water body Mr. Sturgeon was on was an inholding within a [national] park.

REPRESENTATIVE PATKOTAK asked whether the intent with passage of HB 98 is that subdivisions like a municipality or borough can assume the authority that the state is assuming if it's within their first-class status or not.

MR. GOODRUM responded that he believes the intent of HB 98 is to verify that the State of Alaska is the rightful entity, and the state would be the one determining what types of access would be appropriate on those water bodies.

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REPRESENTATIVE MCCABE requested the definition of "navigable waters" under the provisions of HB 98.

MR. GOODRUM answered that court rulings have defined navigable water as those on which customary and ordinary vessels [could navigate] for travel, trade travel, or commerce within the state as of statehood. He deferred to Mr. Jim Walker to provide further definition.

MR. GOODRUM, in further response to Representative McCabe, confirmed that the crux of HB 98 is to expedite the ability to declare a body of water navigable so that everyone knows whose water it is and there isn't another court case like that of Mr. Sturgeon's.

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JIM WALKER, Chief, Public Access Assertion & Defense Section (PAAD), Division of Mining, Land and Water (DMLW), Department of Natural Resources (DNR), provided a PowerPoint presentation, titled "State Ownership of Submerged Lands House Resources - HB 98," [hard copy included in the committee packet]. He said he would like to phrase the issue of why these navigable waters are so important. He addressed slide 2, "The Navigable Waters Issue," which read as follows [original punctuation provided]:

- Alaska holds an estimated **800,000 miles of navigable rivers**
- Alaska holds an estimated **30 million acres of navigable lakes**

- Alaska owns the submerged lands beneath every navigable-in-fact river and lake, and beneath tidally influenced waters in the state, unless a valid pre-statehood withdrawal EXPLICITLY defeats state title
- In Federal Conservation System Unit areas created in Alaska post-statehood, the submerged lands beneath navigable-in-fact and tidally influenced waters **are State-owned lands**

MR. WALKER maintained that in most federal areas it is the State of Alaska, not the Federal Government, that owns the submerged lands under navigable waters and tidally influenced waters. He spoke to slide 3, "Federal Areas Where the State of Alaska Owns Submerged Lands," which read as follows [original punctuation provided]:

- **National Park Service:** Noatak National Preserve (NPr), Kobuk Valley National Park (NP), Bering Land Bridge NPr, Denali National Park and Preserve (NPP) (ANILCA additions), Wrangell-St. Elias NPP, Glacier Bay NPP, Katmai NPP, Kenai Fjords NP, Gates of the Arctic NPP, Lake Clark NPP, Yukon-Charley Rivers NPr, etc.
- **U.S. Fish and Wildlife Service:** Becharof National Wildlife Refuge (NWR), Innoko NWR, Izembek NWR, Kanuti NWR, Kenai NWR, Kodiak NWR, Koyukuk NWR, Nowitna NWR, Selawik NWR, Tetlin NWR, Togiak NWR, Yukon Delta NWR, Yukon Flats NWR, etc.
- **U.S. Forest Service:** Tongass National Forest, Chugach National Forest
- **Bureau of Land Management:** Beaver Creek Wild and Scenic River (WSR), Birch Creek WSR, Fortymile River WSR, Gulkana River WSR, Unalakleet River WSR, Delta River WSR, etc.

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MR. WALKER discussed slide 4, "Status of Efforts to Clear Title 1959 to Present," which read as follows [original punctuation provided]:

The federal government acknowledges Alaska's clear title to its submerged lands beneath navigable-in-fact and tidally influenced rivers and lakes in only:

- **9 percent** of 800,000 river miles of submerged lands under state-owned rivers
- **16 percent** of 30,000,000 acres of submerged lands under state-owned lakes

MR. WALKER, in reference to the importance of state ownership, said it will take hundreds of years at this rate [for the federal government to acknowledge the State of Alaska's ownership]. He spoke to slide 5, "Sturgeon vs. Frost 136 S. Ct. 1061 (2016) & 139 S. Ct. 1066 (2019)," which read as follows [original punctuation provided]:

**U.S. Supreme Court rules unanimously: federal regulations do not supersede SOA ownership and management of navigable waters in ANILCA CSUs**

MR. WALKER addressed the bubble chart on slide 6, "Statehood Defense of Navigable Waters Involves Many Interrelated Assertions of State Ownership and Authority." He related that DNR and the Department of Law (DOL) are working together attempting to fulfill the promises of statehood, which include the equal footing doctrine and other federal law that say the state owns these submerged lands. He specified that the state has intensified [quiet title] litigation against federal authorities and has intensified management action and state mapping of navigable waters. He submitted that legislatively codifying state ownership of submerged lands in federal lands is key to expediting state ownership.

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REPRESENTATIVE RAUSCHER inquired about who currently owns the submerged lands under man-made lakes or ponds.

MR. WALKER replied that free-flowing water impounded to create a pond or lake is never owned privately, the water is owned by the people of Alaska pursuant to the public trust doctrine. However, he continued, when impounding water and creating a larger footprint of submerged land, that submerged land doesn't necessarily belong to the State of Alaska. The water itself belongs to the public, he advised, but whether the submerged land is in public or private ownership is going to depend on case specific information.

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MR. WALKER resumed DNR's presentation for HB 98. He spoke to slide 7, "Proposed Codification Legislation Overview," which read as follows [original punctuation provided]:

1. Codifies State of Alaska (SOA) ownership, management and control of navigable waters and submerged lands within federal areas not covered by a valid pre-statehood withdrawal explicitly defeating state title
2. Lists specific navigable waters and submerged lands in federal areas statewide belonging to SOA
3. Enshrines foundational elements of relevant caselaw to guide in navigability determinations
4. Establishes annual reporting requirement to legislature

MR. WALKER discussed slide 8, "Proposed Codification Legislation," which read as follows [original punctuation provided]:

1. Codifies SOA ownership, management and control of navigable waters and submerged lands within federal areas not covered by a valid pre-statehood withdrawal explicitly defeating state title
  - **Underscore state ownership, management and control** of lands owned by the state since statehood
  - **Clarify and educate:** Clearly enumerates the extent of state management authority within federal boundaries
  - Increases public understanding and aids in management
  - Correlates with publicly maintained records and maps
  - **Reflect reality:** Accurately depicts land ownership and state boundaries with ongoing quality control

MR. WALKER expounded that the first phase - codifying the state's ownership - clarifies for the public, federal agencies, and state adjudicators as to exactly what the state owns. This educational aspect of the legislation, he said, will make the

job easier and more efficient for the state's adjudicators for permit applications and will clarify in the public's mind whether a person needs to apply to the state for a permit or whether it falls within federal jurisdiction. This bill, he added, will reflect reality on what is navigable within federal areas and plants the state's flag onto state-owned lands.

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MR. WALKER paraphrased from slide 9, "Proposed Codification Legislation," which read as follows [original punctuation provided]:

2. Lists specific navigable waters and submerged lands in federal areas statewide belonging to SOA

- **First phase:** All NPS and USFS areas statewide plus Tetlin National Wildlife Refuge
- **Second phase:** Remaining USFWS refuges
- **Third phase:** All BLM lands
- **Fourth phase:** Ongoing process of clarification, modification and amendment

Framework for proposed statute is based upon RS 2477 Right-of-Way codification project in 1990s [AS 19.30.400].

MR. WALKER elaborated that in the second phase, the list of specific navigable rivers will become longer if HB 98 is passed. He related that five members of his team have been studying aerial imagery, prior navigability reports prepared by federal authorities, and looking at historical records of usage to assess where the navigable waters are within federal areas. So far, he said, the team has completed its studies of National Park Service (NPS) and U.S. Forest Service (USFS) areas, as well as one U.S. Fish and Wildlife Service (USFWS) refuge. If the bill is passed, he continued, [PAAD] hopefully will have concluded its work on USFWS refuges and will come before the committee next session to ask for the addition of the navigable rivers found in those refuges. Mr. Walker stated his hope that the following year [PAAD] would again come before the committee to ask for the addition of the navigable waters and tidally influenced waters within U.S. Bureau of Land Management (BLM) areas statewide. Afterwards, he specified, DNR would have ongoing responsibility to come back to the legislature with corrections and updates to the list within statute. He added that DNR would maintain an online digital map that uses the

bill's proposed framework which is based upon RS 2477 right-of-way so the public and agencies would be able to see exactly what the state owns.

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MR. WALKER displayed slide 10, "State-Owned Navigable Waters Federally-Acknowledged to Date," a map of rivers and federal areas in Alaska. He explained that the rivers shown in blue represent places where there is a grievance, and the federal government has acknowledged state ownership. The rivers depicted in pink represent the rivers for which the federal government has yet to decide, he further explained, so until such time as it appoints a determination, the federal government is continuing to act like these rivers are not navigable.

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MR. WALKER addressed the map on slide 11, "State-owned Navigable Waters after proposed codification." He explained that the map depicts [all the navigable waters] currently included within the [proposed] statute, such that many of the pink areas have become blue. He said [PAAD] undertook its own navigability assessments by applying the standards in federal law to determine which waters are truly navigable-in-fact and tidally influenced.

MR. WALKER proceeded to the map on slide 12, "Noatak and Kobuk Valley National Parks Federally-Acknowledged Navigable Waters." The federal government, he noted, has acknowledged state ownership of the Kobuk River [shown in blue] as it runs through Kobuk Valley National Park (shown in green). The federal government, he continued, has also acknowledged partial state ownership of the Noatak River [shown in blue and purple] as it runs the Noatak National Preserve (shown in tan). He drew attention to the confluence of the Noatak and Aniuk Rivers, shown in [purple], and advised that the federal government says this area is not navigable despite being approximately 300 feet wide and flowing at a rate of over 3,000 cubic feet per second. He said the State of Alaska will file litigation in this regard later this year or in early 2024.

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MR. WALKER specified that HB 98 looks at the waters depicted in pink on the map and which [PAAD] will assess [for navigability]. He moved to slide 13, "Noatak and Kobuk Valley National Parks Navigable Waters After Codification," and said that under HB 98

each of the waters depicted in blue would be owned, managed, and controlled by the State of Alaska.

CHAIR MCKAY remarked that that is a stunning difference.

MR. WALKER reviewed slide 14, "Proposed Codification Legislation," which read as follows [original punctuation provided with some formatting changes]:

3. Enshrines foundational elements of relevant caselaw to guide in navigability determinations

**Susceptibility criteria to guide DNR in making navigability determinations includes, but is not limited to:**

- o Watercraft Type: Round raft, Canoe, Jon boat, Jet boat<sup>1</sup>
- o Susceptibility: Documented modern day use is sufficient<sup>2</sup>
- o Navigability doesn't require a clear channel, two-way traffic, or historical evidence if the river is susceptible to navigation<sup>3</sup>

<sup>1</sup>Alaska v. Ahtna, Inc., 891 F. 2d 1401 (9th Cir. 1989) (Gulkana River)

<sup>2</sup>Alaska v. United States, Case No. 3:12-cv-00114-SLG (D. Alaska 2016) (Mosquito Fork (Fortymile) River)

<sup>3</sup>PPL Montana, LLC v. Montana, 132 S. Ct. 1215 (2012); Utah v. United States, 403 U.S. 9 (1971); United States v. Utah, 283 U.S. 64 (1931)

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MR. WALKER paraphrased from slide 15, "Proposed Codification Legislation," which read as follows [original punctuation provided]:

1. Enshrines foundational elements of relevant caselaw to guide in navigability determinations

- Section Ten:
  - o **Define geographical scope of legislation**
    - Post-statehood federal area
  - o **Define key navigability terms for purposes of legislation including**
    - Mean high water
    - Mean high water line

- Navigable water
- Ordinary high-water mark
- Submerged land

MR. WALKER referenced Representative Patkotak's earlier question and said HB 98 specifically covers only federally owned lands managed by federal authorities. The bill, he added, does not address Native corporation lands or private property in any way.

MR. WALKER addressed slide 16, "Proposed Codification Legislation," which read as follows [original punctuation provided]:

4. Establishes annual reporting requirement to legislature

**Charges DNR with responsibility to conduct ongoing navigability research to determine state title to submerged lands within relevant federal areas**

- Ensures non-exhaustive codified list best reflects reality
  - Ensures public facing document is accurate
- Further refinement and fine tuning as our quiet title litigation continues
- Provides leadership to federal authorities and a path forward to settle ambiguity so that land management benefiting the public will follow

MR. WALKER concluded his PowerPoint presentation with slide 17, "Proposed Legislation," which read as follows [original punctuation provided]:

Alaska's ownership of Submerged Lands beneath navigable-in-fact and tidally influenced rivers and lakes is one of the fundamental promises of Statehood.

It's been 64 years. It is time for the Federal Government to keep its promise to the State of Alaska. HB98 is a **bold** step in that direction.

CHAIR MCKAY announced that HB 98 was held over.

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**ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:43 p.m.