

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 20, 2002

1:05 p.m.

MEMBERS PRESENT

Representative Beverly Masek, Co-Chair
Representative Drew Scalzi, Co-Chair
Representative Hugh Fate, Vice Chair
Representative Joe Green
Representative Mike Chenault
Representative Lesil McGuire
Representative Gary Stevens
Representative Mary Kapsner
Representative Beth Kerttula

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 422

"An Act authorizing the commissioner of fish and game to issue complimentary sport fishing licenses and tags to September 11 emergency responders and their spouses; and providing for an effective date."

- MOVED CSHB 422(RES) OUT OF COMMITTEE

HOUSE BILL NO. 232

"An Act permitting state residents to purchase remote recreational cabin sites."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 422

SHORT TITLE:SPORT FISH LICENSES FOR 9/11 RESPONDERS

SPONSOR(S): REPRESENTATIVE(S)FATE

Jrn-Date	Jrn-Page		Action
02/13/02	2243	(H)	READ THE FIRST TIME - REFERRALS
02/13/02	2243	(H)	RES, FIN

03/20/02 (H) RES AT 1:00 PM CAPITOL 124

BILL: HB 232

SHORT TITLE: REMOTE RECREATIONAL CABIN SITE SALES

SPONSOR(S): REPRESENTATIVE(S) FATE

Jrn-Date	Jrn-Page		Action
04/05/01	0860	(H)	READ THE FIRST TIME - REFERRALS
04/05/01	0860	(H)	RES, FIN
04/06/01	0890	(H)	COSPONSOR(S): WILSON
04/11/01		(H)	RES AT 1:00 PM CAPITOL 124
04/11/01		(H)	<Bill Postponed>
04/20/01		(H)	RES AT 1:00 PM CAPITOL 124
04/20/01		(H)	Scheduled But Not Heard
01/23/02		(H)	RES AT 1:00 PM CAPITOL 124
01/23/02		(H)	Scheduled But Not Heard
02/01/02		(H)	RES AT 1:00 PM CAPITOL 124
02/01/02		(H)	Heard & Held Subcommittee assigned
02/01/02		(H)	MINUTE(RES)
02/06/02	2170	(H)	COSPONSOR(S): FOSTER
03/04/02		(H)	RES AT 1:00 PM CAPITOL 124
03/04/02		(H)	Scheduled But Not Heard
03/15/02		(H)	RES AT 1:00 PM CAPITOL 124
03/15/02		(H)	<Bill Postponed to 3/18/02>
03/18/02		(H)	RES AT 1:00 PM CAPITOL 124
03/18/02		(H)	-- Meeting Canceled --
03/20/02		(H)	RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

KEVIN BROOKS, Director
Division of Administrative Services
Alaska Department of Fish and Game
P.O. Box 25526
Juneau, Alaska 99811-5526

POSITION STATEMENT: Testified on HB 422; indicated the department supports the bill and appreciates the effort and the gesture to the rescue workers following the terrorist events of September 11, 2001.

RUDY VETTER
P.O. Box 78343
Fairbanks, Alaska 99707

POSITION STATEMENT: Testified in agreement with HB 422 and HB 232; also spoke about the administrative code of 1962 in

relation to HB 232, and suggested language contained in the bill would address issues pertaining to minerals, gas, and oil.

BOB LOEFFLER, Director
Division of Mining, Land and Water
Department of Natural Resources (DNR)
550 West 7th Avenue, Suite 1070
Anchorage, Alaska 99501-3579

POSITION STATEMENT: Testified that DNR has serious concerns with HB 232, which fundamentally changes the philosophy of state land sales and significantly increases the cost; suggested it would duplicate an existing land disposal program.

JERALD STAMSEL, Pilot
1177 Shypoke Drive
Fairbanks, Alaska 99701

POSITION STATEMENT: Testified in support of HB 232; offered his belief that people need more land.

CAROL CARROLL, Director
Division of Support Services
Department of Natural Resources
400 Willoughby Avenue, 5th floor
Juneau, Alaska 99801-1724

POSITION STATEMENT: Testified and answered questions regarding HB 232.

ACTION NARRATIVE

TAPE 02-17, SIDE A
Number 0001

CO-CHAIR DREW SCALZI called the House Resources Standing Committee meeting to order at 1:05 p.m. Representatives Scalzi, Masek, Fate, Green, Kapsner, and McGuire were present at the call to order. Representatives Kerttula, Stevens, and Chenault arrived as the meeting was in progress.

HB 422-SPORT FISH LICENSES FOR 9/11 RESPONDERS

[Contains discussion of SB 279, the companion bill]

CO-CHAIR SCALZI announced that the first order of business would be HOUSE BILL NO. 422, "An Act authorizing the commissioner of fish and game to issue complimentary sport fishing licenses and tags to September 11 emergency responders and their spouses; and providing for an effective date."

[There was a motion to adopt HB 422 as the working document, but it was already before the committee.]

Number 0100

REPRESENTATIVE FATE, speaking as sponsor of HB 422, offered the following: On September 11 [2001] the United States experienced an unprecedented attack within its borders. This attack was not only on the United States, but also on the entire civilized world. Citizens of more than 80 countries from around the world died. Thus HB 422 authorizes the commissioner of the Alaska Department of Fish and Game (ADF&G) to issue up to 250 complimentary sport fishing licenses and salmon tags, as appropriate, per year to firemen, police, and emergency medical technicians (EMTs) who responded to the events on September 11, 2001, at the World Trade Center in New York and at the Pentagon in Washington, D.C.; he specified that spouses are included. He noted that this section would sunset December 31, 2003.

REPRESENTATIVE FATE characterized this bill as a small gift that the State of Alaska could make to those brave men and women who served the world so admirably in the shadow of these horrible events. He pointed out that other states had made "life contributions." For example, Iowa [donated] 1,500 quilts, Louisiana [donated] 3 fire trucks; North Dakota [donated] 17 tons of macaroni and cheese; Texas [donated] 26,000 grapefruits; Naples, Italy [donated] a 1-ton nativity scene; Hawaii [donated] free vacations; California [donated] a Manhattan-shaped bonsai forest; and Japan [donated] thousands of origami paper cranes, representing peace and goodwill. Representative Fate asked, "Mr. Chairman, is the State of Alaska to be outdone?" He offered two amendments that would conform with amendments made to the Senate companion bill [SB 279].

Number 0401

REPRESENTATIVE FATE moved to adopt Amendment 1 [original punctuation provided]:

Page 1, line 12, following "season":
Insert "before December 31, 2003,"

There being no objection, Amendment 1 was adopted.

Number 0495

REPRESENTATIVE FATE moved to adopt Amendment 2 [original punctuation provided]:

Page 1, line 10, following "who":

Insert ", at some time between September 11, 2001, and November 11, 2001, inclusive,"

Page 1, lines 11 - 12:

Delete "on September 11, 2001,"

There being no objection, Amendment 2 was adopted.

Number 0646

KEVIN BROOKS, Director, Division of Administrative Services, Alaska Department of Fish and Game, told the committee ADF&G supports [HB 422] and appreciates the effort and the gesture to the [rescue workers] during the terrible tragedies. He indicated the department had been working to "clean up" language in the [companion bill, SB 279]. Mr. Brooks pointed out that the Senate committee substitute (CS) had removed [unnecessary] language requiring the commissioner to adopt regulations. He said [the department] doesn't currently draft regulations for recreational licenses. Mr. Brooks recommended amending [HB 422] to coincide with the Senate CS. In response to Representative Fate, he said [ADF&G] appreciates the [effort towards consistency], which will help in administering it efficiently.

Number 0755

REPRESENTATIVE STEVENS inquired about distribution of the licenses.

MR. BROOKS explained that the department would distribute a letter to police and fire departments in New York [City] and Washington, D.C., and would set up a process so that someone in a supervisory capacity would have to certify the [rescue workers'] involvement with a written authorization. He added that the [rescue workers] would have to apply for the [license or tag] by mail or possibly online.

CO-CHAIR SCALZI asked if [a further] amendment would be required to be consistent with the companion bill.

MR. BROOKS turned attention to page 2, line 2, and suggested striking, "The commissioner shall expeditiously adopt

regulations as may be necessary to efficiently administer the issuance of licenses and tags under this section."

Number 0952

REPRESENTATIVE GREEN moved to adopt the foregoing as Amendment 3. There being no objection, Amendment 3 was adopted.

Number 0980

MR. BROOKS, in response to Representative Chenault, said the department envisions [issuing] a fishing license that would include a king salmon tag, which is the only one being sold through the centralized licensing agency for recreational fishing. In further response, he indicated a king salmon [tag] is required to fish in the state, regardless of the area. He indicated it is estimated [about 100 licenses would be used], and that the number of [licenses and tags in the bill] is to keep it a "relatively small size."

Number 1129

RUDY VETTER testified briefly via teleconference. He told the committee that he agreed with HB 422.

Number 1187

CO-CHAIR MASEK moved to report CSHB 422 [HB 422, as amended] out of committee with individual recommendations and the accompanying zero fiscal note; she requested unanimous consent. There being no objection, CSHB 422(RES) was moved out of the House Resources Standing Committee.

CO-CHAIR SCALZI called an at-ease from 1:20 p.m. to 1:22 p.m. [He turned the gavel over to Co-Chair Masek.]

HB 232-REMOTE RECREATIONAL CABIN SITE SALES

Number 1223

CO-CHAIR MASEK announced the final order of business, HOUSE BILL NO. 232, "An Act permitting state residents to purchase remote recreational cabin sites."

Number 1295

CO-CHAIR MASEK referred to list of changes included in the bill packet and asked Representative Fate if those changes are [incorporated in the new proposed committee substitute (CS)].

REPRESENTATIVE FATE, speaking as the sponsor of HB 232, answered in the affirmative.

Number 1369

REPRESENTATIVE STEVENS moved to adopt the proposed CS, version 22-LS0791\T, Kurtz, 3/15/02, as the working document. There being no objection, Version T was before the committee.

REPRESENTATIVE FATE indicated the subcommittee assigned at the hearing on 2/01/02 had developed some solutions. He thanked the Department of Natural Resources (DNR), and Bob Loeffler and Carol Carroll specifically, for the fine work on the bill. Mentioning the [complexity of the bill] and [disagreement with the department], Representative Fate indicated the subcommittee had tried to accommodate the nominating areas; that language was not clear in the original version. He indicated one of the biggest problems DNR had with the bill was [administration of the program].

REPRESENTATIVE FATE explained that the "preference rights" issue was retained in [Version T] but entails a individualized best interest finding only on the preference part; the hope is that the best interest finding could be applicable to a larger area. For example, somebody who has been on that property three years would have a preferential right. Or a miner who has been on the property for years but who still doesn't own any of the surface [rights] - only the subsurface rights - would have that opportunity, as long as the miner has been actively mining for two years out of a five-year location on that property.

REPRESENTATIVE FATE offered his belief that although the [new provisions] could place a burden on DNR, the popularity of the [program] would more than pay for itself. He indicated the hope that the bill would [generate money to pay for other land disposal programs] and be another tool for the state to use. He suggested [HB 232] and the present program are compatible and reinforce each other.

Number 1582

REPRESENTATIVE FATE said [HB 232] provides that the commissioner and the department would identify rights-of-way into the

properties, which could be [burdensome] but also could be a "well-hidden" advantage for Alaska because the state has "sorely needed programs" that need to identify access but that don't have it. He mentioned other changes he thought would be beneficial to the department. Presently, for example, the department only requires a 5-percent down [payment] on land sales, which has been raised to 20 percent [in the bill]. He again suggested the money would be needed for [HB 232] and also for [DNR's] own land sales.

REPRESENTATIVE FATE mentioned problems because people pay the 5-percent down payment and feel there is nothing vested and therefore "trash" a place and walk away; he remarked, "That's the last thing that in this piece of legislation we want to see." Highlighting other aspects of the bill, he said the commissioner would always have authority to deny applications. The commissioner would identify three years in advance that an area would be nominated, which would ameliorate a "land rush" because people could have time to prepare. Separation would remain the same, but is worded differently for administrative purposes. The program would be for Alaskans; the permanent fund dividend [database] would be used to verify an applicant's eligibility. He reiterated his appreciation for the work Carol Carroll and Bob Loeffler had done.

Number 1780

BOB LOEFFLER, Director, Division of Mining, Land and Water, Department of Natural Resources, testified via teleconference, saying he appreciated the cooperative nature Representative Fate had shown and the opportunity to [voice] DNR's concerns. He explained that [DNR] has serious concerns with [HB 232], which fundamentally changes the philosophy of state land sales and significantly increases the cost. Since Alaska became a state in 1959, the state has never had the ability to negotiate individual sales with individual people. For example, land offered for sale is offered to everybody in the state; it cannot be offered to just one person, with some very specific exceptions that are preference rights, which are highly circumscribed in statute and which [DNR] has reasonably little discretion on. Mr. Loeffler said he believed that's how it should be. Furthermore, if the state is going to offer land for sale, it should be offered to all Alaskans. However, [HB 232] authorizes DNR to do private land sales, in three [parts of the bill].

MR. LOEFFLER indicated [the bill] is specific with regard to who is eligible to negotiate with the state for the [land], and would exclude other Alaskans [from the process]. He turned attention to Section 3, [page 3] line 5, which read in part, "Sales under this section may be at public or private sale." Mr. Loeffler noted, "That is a general authorization for a person to walk in [off] the street, and I negotiate with them but nobody else." He suggested [line 5] is fundamentally different from the policy established [at] statehood. He further suggested [he doesn't have the ability to negotiate exclusively with one individual and not another]. He again offered his belief that when he sells the state's resources, all Alaskans should have equal opportunity.

Number 1940

MR. LOEFFLER turned attention to Section 4, subsection (g) [page 3, beginning on line 20], which he said would allow him to negotiate "any land anywhere" under the bill if the [applicant] can [verify] three consecutive years of recreational use. For example, if someone had snowmobiled or camped on the land for three years, that person could negotiate exclusively with [DNR] and nobody else would get the opportunity, although [DNR] is required to do a best interest finding. He told members, "I don't believe that's correct."

MR. LOEFFLER also expressed concern that [Version T] would require at least five years of use by the [nominating] person, including two years of active mining under a mining claim, and that would give the person the right [to the parcel] at the discretion of DNR. He cautioned members, "I believe this will make our mining laws not for mining, but this will make our mining laws a subterfuge to ... gain land that other Alaskans won't get." Mr. Loeffler indicated active mining areas are typically closed to settlement because conflicts over lands between fee ownership and a mining district are significant.

MR. LOEFFLER pointed out that [Version T] would provide that in those areas closed to the general public, miners and no one else would have access to the land; he remarked, "I just don't think that's right." Mr. Loeffler explained that his first objection is that [HB 232] changes the fundamental thrust of how the state disposes of its resources, which to his belief has been consistent since statehood. Second, he believes [Version T] raises that cost because it provides a maximum number of staking authorizations that the department may issue, which would be two times the number of square miles in a staking area.

MR. LOEFFLER offered that [DNR] has a "workable" remote parcel program that is in the first year of use and is very popular; it offers 295 authorizations. He remarked, "We're quite proud of it." He said he'd gone through the authorizations that [DNR] has approved through borough platting laws and figured out how many [authorizations DNR] could have offered if [HB 232] had been in place. Currently, 512 authorizations have been approved: 295 for last year and some for the coming year. He said [DNR] would also "do others" that hadn't been approved for the coming year. Under the maximum guidelines, [DNR] would have been able to offer 213 [authorizations out of] 512. The [bill] therefore decreases the density by about half. He reminded the committee that the numbers are approximate, depending on what [DNR] offers, and shouldn't be taken literally.

MR. LOEFFLER suggested the department would have to find twice as many [parcels under HB 232, Version T], which would significantly raise the cost. Additionally, the land sale program makes money for the state, but remote lands makes less than the "reoffer program," which he called "the real money maker." He cautioned that the [proposed] program is in danger of costing more than the return would be to the state. He suggested [HB 232] privatizes land sales, rather than allowing all Alaskans to compete, and it raises the cost.

MR. LOEFFLER pointed out that [subsection] (h) stipulates that a purchaser can't make improvements until half the total purchase price has been paid. The department has 20-year contracts on some [parcel] sales, and [subsection (h)] would prevent the purchaser from building on the parcel for 10 years. He remarked, "While I appreciate the sentiment, I don't think that's necessary."

MR. LOEFFLER also pointed out that the [bill stipulates] an appraisal and a survey would be completed within 12 months; he told members, "We don't think that's possible on remote sales." In previous systems, he reported, people have had 10 years [to complete the appraisal and survey], which [DNR] is "really tightening ... up now." Mr. Loeffler further explained that staking is done one year; surveying is done the next year; once [DNR] approves the survey, the appraisal is done the third year; and [DNR] also provides a fourth year "just in case something goes wrong." He expressed doubt that an [appraisal and survey] could be completed in 12 months.

Number 2214

REPRESENTATIVE GREEN asked if [HB 232] would impede future development for resources.

MR. LOEFFLER replied:

If we didn't locate them properly, it would. If ... we allowed you to stake land in a place where development was likely to occur, I think the example of "True North (ph)" clearly shows it has the potential to impede ... development. Certainly, if you stake the location of Pogo road, the same would be true, although the bill does give me discretion to disapprove it.

REPRESENTATIVE GREEN suggested that directional drilling [for oil or gas] would not be as big an issue as mining.

MR. LOEFFLER concurred.

Number 2286

CO-CHAIR SCALZI asked: If the state wanted to create a mine lease where parcels were located, would it have to buy back those sites through eminent domain and compensate the land owner?

MR. LOEFFLER answered that [DNR] tries not to allow people to stake land where expected development would be impeded. He said [DNR] would do an evaluation and wouldn't allow [people to stake land] in areas with active mining districts, "except for [subsection] (g) of this bill."

CO-CHAIR SCALZI asked if there is an obligation to ensure that access is available by land to the [parcel] sites.

MR. LOEFFLER replied that [DNR] goes through borough platting requirements, but the boroughs have [authorized] fly-in access for sufficiently dispersed areas.

CO-CHAIR SCALZI asked if any state laws would be violated in regard to access.

MR. LOEFFLER answered no.

Number 2398

REPRESENTATIVE CHENAULT asked how many acres of land had been returned to the private sector since statehood.

MR. LOEFFLER said [DNR dispensed] roughly less than 10,000 parcels from 1980-1999, at an average of 460 a year, mostly in the early 1980s. Over the last two years, the rate of offerings had been drastically increased, and [DNR] [is offering] a lot more this year and next year.

REPRESENTATIVE CHENAULT asked whether [HB 232] would impede or help with the process of returning land to the private sector.

MR. LOEFFLER offered his belief that [DNR] has a "very workable" remote cabin program; he expressed pride in it. The program is much more efficient, he said, noting that DNR has offered 295 authorizations this year and that more are expected for the coming year. He said the impediment to offering land has always been that it takes money to do so. Mr. Loeffler offered his belief that [HB 232] increases the cost of land offering and would be an impediment to transferring land to the public.

Number 2497

CO-CHAIR SCALZI asked if there is a way to make [HB 232] workable so that miners with legitimate claims could obtain rights to the property. He also asked whether there are stringent guidelines available so that people wouldn't use [HB 232] as a ruse.

MR. LOEFFLER offered his belief that the "self-initiating" mining law is the foundation of the mining industry. He added, "I don't believe there is any way to say it - that I will give land to miners and other Alaskans - that will not endanger that law, and that remains fair to Alaskans."

REPRESENTATIVE KERTTULA asked [if there was a program that gave] preference for recreational use for nominating or giving land out to other types of users.

MR. LOEFFLER said there was no other program.

REPRESENTATIVE GREEN offered hypothetical examples regarding whether development could occur on a remote cabin site.

MR. LOEFFLER mentioned leases and noted that people's expectations of remoteness typically get in the way of such a lease.

REPRESENTATIVE GREEN asked whether, through subterfuge, the bill could provide access to land or maybe "forced access to land" for development that wouldn't be possible without the bill.

MR. LOEFFLER said:

We have the ability to lease land for that kind of development now, and I would hope we would use it aggressively. And we have the ability, if you want land and suggest that we sell it under [the] remote recreation cabin program, for us to sell it. One of the innovations of this bill that we disagree with is that if you suggest it, we then would sell it only to you and not offer it to other Alaskans. And that, plus the additional cost is, frankly, my main worry.

REPRESENTATIVE GREEN posed another hypothetical example:

If by doing this, as opposed to saying I would like to go into this area and see about developing that, and there may be ten or twelve people that want to compete on that, have I created a problem with ten of these special remote [cabin] sites in there - in my favor - somehow?

MR. LOEFFLER indicated it may be possible but said he was unsure.

Number 2753

JERALD STAMSEL, Pilot, testified via teleconference. Mr. Stamsel told the committee he was in agreement with HB 232. He offered his belief that [the citizens] of this country need more land. He spoke about his adult children and the difficulties of purchasing remote land for recreational purposes. He said, "It's about time we had something like [HB 232]. And I think it's a good job, and it's a great deal for this country, and we need it bad, and I am in agreement."

Number 2805

RUDY VETTER testified via teleconference, informing the committee that he was in agreement with HB 232. He acknowledged it would have some complications that need to be "worked out as usual." Mr. Vetter suggested [language in] the bill would "take care of anything" pertaining to minerals, gas, and oil. He also

suggested the administrative code of 1962 covered [minerals, gas, and oil]. He referred to a bill passed when "the legislature was forming some of the laws" and referenced "administrative code number seven." He said:

Anyone that might accidentally or purposely place themselves upon [a] mineralized zone is subject to the fact that they will be paid adequate compensation, as determined by the commissioner, for their property. In other words, they cannot go in there and tie a piece of potential oil, mine, gas, or other natural resources up.

MR. VETTER turned attention to page 3, subsection (g), and said, "I take exception about the fact that you're only offering this to one specific person." He identified the key word in subsection (g) as "before", because it specifies that "before offering the parcel for disposal to the public, the commissioner may offer the parcel to the person nominating the parcel for disposal." He suggested some considerations and conflicts have to be worked out.

MR. VETTER told members, "We need more land." He indicated miners are especially in need of more land because they are "producing" a natural resource at no cost to the government. Mr. Vetter mentioned the development of Fort Knox and True North and his endeavors as a miner in the past. He spoke about [minerals as] "true money" in comparison to paper [money] and referred to the recent Enron [accounting scandal that resulted in the loss of millions of dollars to investors and employee retirement funds]. Mr. Vetter reiterated his support for HB 232 and added that most people won't find this land to be free because it requires work under any circumstances.

TAPE 02-17, SIDE B
Number 2990

REPRESENTATIVE FATE responded to testimony that suggested HB 232 was not fair to all Alaskans and did not provide the same opportunity. He reported that he knew of people who had tried to [acquire land] under the present lottery system who felt they were treated unfairly and didn't have an opportunity because they "weren't lucky enough to get their name drawn out of the hat." He suggested HB 232 would make it possible for every Alaskan to [acquire remote recreational sites], that it is fair, and that the nominating process ensures control by the commissioner.

REPRESENTATIVE FATE reflected on his experience as a miner and noted that a person [wouldn't put forth the time] to mine property for two years, which is extremely cost-intensive, and have the property for five years just to "prove up on a piece of property" to get two and a half acres in the wilderness. He mentioned that HB 232 is a change in philosophy and indicated [it would provide all Alaskans with an equal right to remote recreational sites] as long as the [site] wasn't encumbered by a Native allotment, village corporation, other fee-simple property, or previously staked mining property. He added that [HB 232] provides protections.

REPRESENTATIVE FATE turned attention to the fiscal note and said:

We haven't received the fiscal note yet, even with this, because of ... the nature of the committee substitute. We ran our own ... fiscal note on this, and the break-even point was 80 people, if they do their own survey and appraisal, which this provides for; they don't have to - the commissioner can say no, it's close enough ... in a block that we'll do it. So, it's ... cost-effective; it's not going to be a cost to the State of Alaska if you go in and survey and have your own appraisal done. It doesn't cost the state a darn thing.

Number 2852

REPRESENTATIVE FATE mentioned researching the cost of state land, which he said ranges from about \$700 to \$4,000 an acre. He estimated it takes about eighty people to locate land to offset the cost to the State of Alaska, provided that those people do their own surveying and appraisals. He indicated that the increased cost in the original bill was because, according to his reading, it required seven people to do the mapping, which would call for an increase in personnel.

REPRESENTATIVE FATE referred to the bill packet and [unspecified] statements that [indicate mapping would take one person an hour and a half, provided there was global positioning satellite (GPS) information]. Mentioning other statements indicating it would only require one hour, he pointed out that even if mapping required two people, it would be far less than seven. He acknowledged that small changes may need to be made

to the bill, but said it is a good first step and a good bill to get remote sites to people in Alaska.

Number 2782

REPRESENTATIVE FATE talked about raising the cost in remote land parcels and how the State of Alaska has literally made town sites, which he suggested have been cheaper to survey and to appraise parcels that are lumped together. However, he said, they cease to be remote parcels and instead become remote sites with all kinds of parcels. He said that's not what many people want; they want a remote parcel at least one-half mile away from their neighbors, instead of 200-300 feet away. He mentioned other requirements that keep [sites] remote. Representative Fate suggested [HB 232] doesn't endanger anything and won't impede mining. He mentioned that [HB 232] was a "hold-over" from the previous year and said:

As a matter of fact, we worked on that aspect of this piece of legislation, and we worked very hard to satisfy the mining industry, and we've had many conversations with Steve Borell, who's the executive director of the Alaska Miners Association, until we've come to this point where it's, I think, acceptable to them. And so it's not a dodge now, all of the sudden, to hear that it isn't acceptable because of the nature that might impede mining on mineralized ground.

Number 2720

REPRESENTATIVE FATE said the commissioner has the option of not nominating the [site] if it is mineralized. He also mentioned protections in the [bill] in regard to subsurface rights; he referred to Section 2, subsection (a).

Number 2673

CO-CHAIR SCALZI mentioned that the Kenai Peninsula Borough had to inherit some mining-selected sites that were under state lease. Under state law, people were allowed to put up a temporary shack, but instead they built \$100,000 homes. He said the leases ran out; [the borough] tried to negotiate sales palatable to the buyer but couldn't come to agreement, and the homeowners were forced to move the homes. He expressed concern about the intent of people trying to acquire sites and related it to the aforementioned incident. Representative Scalzi asked

for an explanation of the problem with continuing the lease program.

Number 2592

REPRESENTATIVE FATE said there's nothing wrong; however, the lease program is not a fee-simple program, whereas this is. He spoke to Co-Chair Scalzi's concerns and reiterated the protections provided in the bill. He referred to True North and said the bill was gone through thoroughly; there is nothing that can prevent a [legal] suit. He said warnings can be posted that the land is subject to mineralization and mining; however, if a person wants to build there, he/she cannot be stopped. He indicated that if the site is nominated, the commissioner can stop [building from occurring]. He described this as a deterrent and a way of control so that people can't build in these areas.

REPRESENTATIVE FATE reiterated that people cannot be stopped from filing lawsuits, although it costs both parties a tremendous amount of money. He emphasized his belief that protections are provided in Section 2, subsection (a), and through the commissioner's power to reject applications. He said, "We tried to write in as much protection as we possibly could within this piece of legislation."

CO-CHAIR SCALZI compared HB 232 to other legislation, noting that site selection is done by DNR. He said it takes the individual out of it, which is a good part of the process, but creates the problem of negotiating with one individual. He mentioned remedying the situation to create a more open process, such as an auction.

REPRESENTATIVE FATE said it's "nonnegotiation" and that the protection in [the bill] is instated. There's a best interest finding on preference rights. If two or more people want [the same site] and have had use of the property, the commissioner would do a best interest finding with regard to the preferences relating to the property. In response to Co-Chair Scalzi, he indicated the reason for getting away from an auction or lottery system is because people don't get the property they want.

CO-CHAIR SCALZI asked if the public trust doctrine would be satisfied by having the commissioner make the determination.

REPRESENTATIVE FATE said the commissioner could make that determination under the best interest finding.

CO-CHAIR SCALZI reiterated the question.

REPRESENTATIVE FATE said, "I think so."

Number 2345

REPRESENTATIVE KERTTULA asked if a best interest finding is done only at the preference point and whether it is upfront.

REPRESENTATIVE FATE said the best interest finding has to be done on the nominated area.

REPRESENTATIVE KERTTULA asked whether a conflict would be solved with another best interest finding if two people nominated the same area.

REPRESENTATIVE FATE said that would be the commissioner's responsibility.

REPRESENTATIVE KERTTULA asked how the best interest finding would be conducted.

REPRESENTATIVE FATE responded that he couldn't answer that, but said the commissioner would have to make the decision.

MR. LOEFFLER suggested, if more than one person wanted a parcel, the only fair way would be through an auction if the [site] had been surveyed, or a lottery if it had not.

REPRESENTATIVE KERTTULA asked if that would be a best interest finding.

MR. LOEFFLER answered that the best interest finding would have to be done before the property was offered for sale in a preference-right type of offering, auction, or lottery.

REPRESENTATIVE KERTTULA asked what would be done if two people had the same preferences for the same [site].

MR. LOEFFLER replied that he'd have to put it up for auction or lottery.

CO-CHAIR SCALZI remarked that Representative Fate is assuming [DNR] would have to develop criteria for a judgment on who

better qualifies for a parcel and is using "best interest finding" as a term to help the commissioner determine which applicant is more suited. He asked whether [DNR had a way to determine if one person should be awarded a site over another person].

MR. LOEFFLER offered his belief that the bill doesn't give him the direction to determine whether one person is more deserving than another. He said, "If multiple Alaskans want it, I have a responsibility to serve them all equally." He reiterated that if more than one person wanted a [site], he would be forced to go through a lottery or an auction.

Number 2157

REPRESENTATIVE FATE called attention to an [unspecified] communication from Mr. Loeffler that Representative Fate said conveyed the following, "By authorizing or directing DNR to do private land sales, we have to do individual preference-right-type best interest findings." Representative Fate added, "That's where I got my information to make the statements I did."

REPRESENTATIVE KERTTULA suggested [it wouldn't apply] if two people had the same preference - for example, a husband and wife with the same qualifications who were divorcing and both wanted the same site.

REPRESENTATIVE FATE replied that going back to a lottery or an auction isn't acceptable and does away with the whole concept of the bill. He suggested [HB 232] is the fairest method, so that people don't have to take the chance of a lottery or for those who don't have the money to bid high on property.

REPRESENTATIVE MCGUIRE asked Mr. Loeffler if he could address the issues without using a lottery or auction.

MR. LOEFFLER answered no. He elaborated:

I do not see a way for me to say I think berry pickers are less deserving than snowmobilers, who are more deserving than skiers, who are less deserving than miners. And I can't see saying people who have been here 16 years are more deserving than people being here 15 years, or parents more deserving than people with grandchildren. So those are determinations of value that I don't believe are for me to make.

REPRESENTATIVE McGUIRE asked whether, after the initial best interest finding had been made, [a preference] such as "first in time, first in right" [could be used in making the final determination].

MR. LOEFFLER replied, "If the bill gave me that direction, then that is, of course, what I would do."

REPRESENTATIVE FATE indicated Representative McGuire's suggestion was in the original [bill language], but that "we basically got talked out of it by the department."

REPRESENTATIVE McGUIRE suggested [the bill] be two-tiered.

REPRESENTATIVE KERTTULA responded that the subcommittee had already considered that, but it could possibly lead to inequity [or] a res nullius problem.

Number 1890

CO-CHAIR MASEK asked Representative Fate if there was a way to reach his goal with the bill and satisfy the state process.

REPRESENTATIVE FATE indicated he didn't see one currently. He reiterated earlier statements and said he anticipated that if the bill passed, it would ultimately be amended at some point. He said he envisioned the program would be utilized more in staking private land for a fee simple and would "fill up" that land fund much more readily than suspected. He said he'd based this off of the number of people who'd expressed support for the bill, which he estimated to be over 100. He spoke about [the first-come, first-served] problem and whether it was serious or not. He indicated he was in favor of moving the bill and spoke about resolving the problems.

Number 1726

REPRESENTATIVE GREEN called attention to line 5 [Section 3, which amends AS 38.05.600(a), page 3], which read, "Sales under this section may be at public or private sale." He compared a public sale to an auction and asked what protections are available for the person who wants to acquire the [site] but doesn't want the sale to be open to the public.

REPRESENTATIVE FATE responded:

I can't remember, except "public sale" was a result of two or more people wanting the same parcel. But if you do that - open it up to a public sale - then, to be fair, you have to open it up to a public sale. The private sale takes care of itself: that's where the individual stakes the ground, goes through the procedure of appraisal, surveying, whether or not it's adjudicated that he does it. And this, again, is in the bill. Or the commissioner has the authority to have it done by the state, which ever be cheaper.

To me, it's must more efficient and effective, but we did try and accommodate DNR on this, because they felt that in some instances it was less costly and maybe more efficient for them to do it. And I didn't deny that, but we did leave open room, at least, for that individual who staked that ground to ... pay the cost of his own appraisal and his own survey.

So, to answer your question specifically, that ... public sale would come about in the event that there were two or more people that wanted the same piece of ground. Once that public sale came about, though, you'd have to open it up for all people that were interested, and then it would become more or less an auction, ... in that specific circumstance - but it's not an option for parcels or a parcel such as done at the present time; there's a differentiation.

REPRESENTATIVE GREEN offered his belief that "sale" would indicate others could be there, as opposed to having an agreement between the state and one individual. He asked, "How would they know before they decided to make it a private or a public sale?"

REPRESENTATIVE FATE explained that a private sale would consist of the applicant's staking the ground, having the site surveyed, and going through the process. If there were no contest, a sale would take place between that individual and the state.

REPRESENTATIVE GREEN asked how it would be known that somebody else is interested in that [site]. If the commissioner grants a private sale, does he/she [provide public] notice of the sale?

REPRESENTATIVE FATE suggested somebody would say, "I have also staked this parcel, ... and I find that somebody else staked it, and I'd like it too."

Number 1457

CAROL CARROLL, Director, Division of Support Services, Department of Natural Resources, told the committee the best way to know if there is a parcel that somebody had staked would be through the best interest finding. If an individual wants to nominate a parcel, it would require that the department provide public notice and take comments. She indicated DNR has to do a best interest finding on any [land] disposals.

REPRESENTATIVE KERTTULA offered, "So, what you're saying is, really, you'd never be able to do a private sale, and because this says "may be at", it just isn't going to be an issue."

MS. CARROLL replied that if there were no other public comments that disagreed or reflected another person's interest, [DNR] could do a sale to the individual; she added, "We just will not do it in the dark." She reiterated that public notice would be given because it is a land disposal sale.

Number 1358

REPRESENTATIVE KERTTULA indicated that if the language had gotten so specific, then it would no longer be discretionary. She mentioned that there are [court] cases relating to use of the word "may," which require the department to do something because of the way [the language] is set out. She suggested the language in [HB 232] may be to that point.

MS. CARROLL said the department had not looked at the language.

REPRESENTATIVE KERTTULA surmised that the department's intent would not be to do the truly private sale in this particular section [Section 3].

MS. CARROLL reiterated that [DNR] would need to do a best interest finding.

REPRESENTATIVE GREEN referred to a drawing and asked about the number of sites that can be staked within a certain area.

MS. CARROLL responded that there are limitations on how many people can stake in certain areas. In further response, she suggested it was Representative Fate's intention to ensure that [the sites] are remote, so there aren't "subdivisions" in those areas.

REPRESENTATIVE FATE concurred. He indicated preferences were included because of existing cabins on the "meander line" of the river that are closer than one-half mile. He said those cabins wouldn't be removed just because they don't comply with the half-mile separation. However, a new entry for a site would comply with the setback criteria.

CO-CHAIR MASEK noted that the bill would be going to the House Finance Committee if moved, and suggested Representative Fate would continue to work on the bill during that time.

Number 0945

REPRESENTATIVE MCGUIRE moved to report HB 232 [version 22-LS0791\T, Kurtz, 3/15/02] out of committee with individual recommendations and the accompanying zero fiscal note. She said she had faith that Representative Fate recognized the bill had problems that would be addressed before it went to the floor.

Number 0895

REPRESENTATIVE KERTTULA objected. She indicated the subcommittee had worked hard on trying to resolve the issues. However, Alaska and the public lands in the state are based on the public trust doctrine and maintaining equal access for people. She expressed concern about ramifications in other areas and added, "I'm afraid that no matter what we do, we're always going to wind up at that blockade." She contended that the problems should be addressed in the current committee, but conveyed respect for the sponsor's intentions of helping people who traditionally have been going to an area for years.

Number 0777

REPRESENTATIVE FATE mentioned concerns about timing. He said there is one contentious [issue] and that he didn't think the department would ever be fully satisfied because of the existing [land disposal] program, which he believed [HB 232] would augment. He remarked, "Even if it were left ... the way it were, it would be better than what we've ever had before, which is exactly zero."

REPRESENTATIVE GREEN agreed the problem was one for the current committee to address, and said it would be a mistake to send it to another committee. He inquired about the sponsor's [intentions].

CO-CHAIR MASEK suggested holding the bill over to address the problem.

REPRESENTATIVE FATE indicated his intention to have the bill reviewed from a legal standpoint. He again mentioned his concern about timing.

Number 0570

REPRESENTATIVE McGUIRE withdrew her motion to move the bill.

REPRESENTATIVE FATE reiterated his intention to resolve the problem. [HB 232 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:37 p.m.