

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

February 3, 2004
8:02 a.m.

MEMBERS PRESENT

Representative Bruce Weyhrauch, Chair
Representative Jim Holm, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Paul Seaton
Representative Ethan Berkowitz
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 414

"An Act relating to filling the vacancy in the office of United States Senator, and to the definition of 'political party.'"

- HEARD AND HELD

HOUSE BILL NO. 319

"An Act relating to the disposal of state land by lottery; and relating to the disposal, including sale or lease, of remote recreational cabin sites."

- HEARD AND HELD

HOUSE BILL NO. 241

"An Act relating to optional exemptions from municipal property taxes on residential property."

- HEARD AND HELD

HOUSE BILL NO. 297

"An Act relating to wildfires and other natural disasters."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 414

SHORT TITLE: U.S.SENATE VACANCY/DEF OF POLITICAL PARTY

SPONSOR(S): JUDICIARY

01/28/04 (H) READ THE FIRST TIME - REFERRALS
01/28/04 (H) STA, JUD
02/03/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: HB 319

SHORT TITLE: REMOTE REC.CABIN SITE SALES/LOTTERY SALE

SPONSOR(S): REPRESENTATIVE(S) FATE

05/14/03 (H) READ THE FIRST TIME - REFERRALS
05/14/03 (H) STA, RES, FIN
01/13/04 (H) STA AT 8:00 AM CAPITOL 102
01/13/04 (H) Heard & Held
01/13/04 (H) MINUTE(STA)
02/03/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: HB 241

SHORT TITLE: MUNICIPAL PROPERTY TAX EXEMPTION

SPONSOR(S): REPRESENTATIVE(S) CHENAULT

04/04/03 (H) READ THE FIRST TIME - REFERRALS
04/04/03 (H) CRA, STA
05/06/03 (H) CRA AT 8:00 AM CAPITOL 124
05/06/03 (H) -- Meeting Canceled --
05/08/03 (H) CRA AT 9:00 AM CAPITOL 124
05/08/03 (H) Moved Out of Committee
05/08/03 (H) MINUTE(CRA)
05/12/03 (H) CRA RPT 3DP 1NR
05/12/03 (H) DP: KOTT, WOLF, MORGAN; NR: CISSNA
01/13/04 (H) STA AT 8:00 AM CAPITOL 102
01/13/04 (H) <Bill Hearing Postponed>
01/20/04 (H) STA AT 8:00 AM CAPITOL 102
01/20/04 (H) Heard & Held
01/20/04 (H) MINUTE(STA)
01/27/04 (H) STA AT 8:00 AM CAPITOL 102
01/27/04 (H) Heard & Held
01/27/04 (H) MINUTE(STA)
02/03/04 (H) STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

REPRESENTATIVE LESIL McGUIRE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 414.

LEONARD JONES, Special Assistant
Division of Elections
Office of the Lieutenant Governor

POSITION STATEMENT: Addressed questions regarding the fiscal notes, during the hearing on HB 414.

REPRESENTATIVE HUGH FATE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As sponsor, presented HB 319 and answered questions.

JIM POUND, Staff
to Representative Hugh Fate
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 319 on behalf of Representative Fate, sponsor.

ACTION NARRATIVE

TAPE 04-11, SIDE A
Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 8:02 a.m. Representatives Holm, Seaton, Coghill, Lynn, Berkowitz, and Weyhrauch were present at the call to order. Representative Gruenberg arrived as the meeting was in progress.

HB 414-U.S.SENATE VACANCY/DEF OF POLITICAL PARTY

[Contains brief discussion of HB 307 and SB 166.]

Number 0180

CHAIR WEYHRAUCH announced that the first order of business was HOUSE BILL NO. 414, "An Act relating to filling the vacancy in the office of United States Senator, and to the definition of 'political party.'"

Number 0200

REPRESENTATIVE LESIL MCGUIRE, Alaska State Legislature, as sponsor, turned to page 2, [lines 4-9], which read as follows:

***Sec.3.** AS 15.40.200 is amended to read:

Sec. 15.40.200. Requirements of party petition.
Petitions for the nomination of candidates of political parties shall state in substance that the party desires and intends to support the named candidate for the office of United States senator or United States representative, as appropriate, at the special election and requests that the name of the candidate nominated be placed on the ballot.

REPRESENTATIVE McGUIRE indicated this is in response to an opinion issued by Superior Court Judge John Reese on November 3, 2003. She explained that Alaska State law says that a person has to receive 3 percent in a gubernatorial election to be considered a third party, or has to have received the requisite amount of signatures that would have qualified for that percentage.

REPRESENTATIVE McGUIRE noted that an "odd thing" happened in 2002: Diane Benson, a member of the Green Party, failed to gather 3 percent of the vote, and yet she was the gubernatorial candidate. Representative McGuire also noted that there were two other people running for U.S. Senate and U.S. Congress who both garnered over 6 percent [of the vote] "on the Green Party." She continued as follows:

Rightfully, I think, Jim Sykes filed suit, and basically said that his party's rights were being infringed and that, because they had received 6 percent in both of the other elections, ... it seemed arbitrary to make the gubernatorial election ... [the] election by which you had to have 3 percent.

So, Judge Reese agreed. And he came back and he said, "I enjoin any kind of the state law going into effect," meaning if the state law went into effect as it currently reads, Jim Sykes would not be allowed to ... file as a candidate or appear on the ballot as the United States Senate candidate for the Green Party.... And so, the court agreed, as I said before, and Judge Reese said basically, "It's enjoined until the legislature takes action, or at least through 2004."

Number 0450

REPRESENTATIVE McGUIRE stated that it is obviously the job of the House Judiciary Standing Committee to respond. She named the following three ways in which the 3 percent can be garnered: a gubernatorial election, a U.S. Senate election, and a U.S. House election.

REPRESENTATIVE McGUIRE said [the proposed legislation] would allow for a "snapshot in time" to be taken every two years, to decide whether or not there is still interest and still "the participation by that third party." She said:

We all understand the point: we basically have a two-party system in Alaska - the same as we do in [the rest of] the United States of America - and we don't want seven, eight, nine, ten third-party candidates the way they do in England, for example, cluttering up the ballot and, in some people's opinion, incurring an extra cost.

REPRESENTATIVE McGUIRE clarified that "we" want to know if there's really a coordinated effort behind [a] party - that people are still making a meaningful effort to contribute to it, to vote for it, and to be a part of it. She opined that [HB 414] is a good change to Alaska state law. She added, "I hope it stays this way forever, because I think we finally found a way to fix it."

REPRESENTATIVE McGUIRE said the decision was made to stick with the 3 percent threshold the way it has always been, because "we didn't have evidence or rationale for raising it or lowering it."

Number 0580

REPRESENTATIVE McGUIRE turned to how a U.S. Senator is chosen for Alaska. She paraphrased from the 17th Amendment to the United States Constitution, regarding Senate seat vacancies. She emphasized, "I think this clearly shows that the initiative is probably not going to be upheld." She mentioned an initiative with language identical to HB 414, which she said is currently under a legal challenge; the attorney general has challenged it based upon the 17th Amendment. She noted that the Trust the People group has responded, and "so we're awaiting that."

REPRESENTATIVE McGUIRE said that HB 414 is an attempt to solidify the law in "this" area. She noted that there are

currently over 50,000 in the state who believe that "this is the right thing to do." She added, "Those were the 50,000 that signed it, and then, of that, there were at least 28,000 that were certified - that were not duplicates, and that ... checked out." She told the committee that this bill is a product of talking to her constituents, her party members, and the "other" party members. She stated the following:

I think that the public doesn't understand this method of picking a United States Senator very well. What they understand is elections; they understand democracy and the ability to get out and vote. It's interesting to note that most of them don't realize that the history of appointing a Senator has, in fact, been a precedent; it has been the way that we've done business, going back to statehood.

REPRESENTATIVE McGUIRE turned to the issue of whether party affiliation comes into play. She explained that, up until 1967, a governor would appoint someone to fill a U.S. Senate vacancy who was of the same party as the person who created that vacancy. She noted that the law was changed that year, which made it possible for then Governor Walter Hickel to appoint [Republican] Ted Stevens to fill the vacancy of Democrat Bob Bartlett in 1968.

Number 0929

REPRESENTATIVE McGUIRE mentioned HB 307, which stipulated that the governor could appoint somebody to fill the vacated seat only if that seat had been vacated within 2.5 years, "toward the end of that person's term." She explained, for example, that if a Senator passes away with five years left in a term, that Senate seat would require a special election to fill. She remarked that [HB 307] bifurcated the issue between a special election model and an appointment model. She indicated that Governor Knowles vetoed [the bill]; however, the legislature overrode the veto, and HB 307 became law.

Number 1052

REPRESENTATIVE McGUIRE said the Twenty-Second Alaska State Legislature "came back with" SB 166, which imposed a 5-day waiting period, "which I think we all understand allowed Senator Murkowski to pick his replacement."

REPRESENTATIVE McGUIRE mentioned again a group called Trust the People. She noted that both Representative Harry Crawford and Representative Eric Croft are spokespeople "on the issue." That group began gathering signatures to place an initiative on the ballot to allow for a special election in the case of a vacancy for the United States Senate seat. Representative McGuire offered her belief that [that effort] was successful, but acknowledged that there is a legal challenge that has been brought by the attorney general of the State of Alaska and "responded to by trusted people, so it's in legal flux." [In a subsequent meeting, a representative from the Division of Elections clarified that the process had not been completed and, therefore, couldn't be certified by the Lieutenant Governor.]

REPRESENTATIVE McGUIRE stated that the second half of the bill has to be [addressed], because it would be "irresponsible for us not to." She opined that the judicial branch of the government is rightfully reaching out to the policy making branch of the government to ask it to reconsider "the way this is done." She told the committee members that if they know of a better way to address this issue, or if they think that responding to Judge Reese's opinion is wrong, she is willing to take suggestions. With respect to the first half of the bill, regarding [filling] a United States Senator vacancy, she said she welcomes the debate regarding whether there should be a special election for the entire amount [of the term] versus the 2.5 years now stipulated.

Number 1205

REPRESENTATIVE BERKOWITZ clarified for the record that Representative David Guttenberg was also [involved with the initiative issue].

REPRESENTATIVE BERKOWITZ asked Representative McGuire why she is introducing a bill to fill the vacancy in a U.S. Senator seat, when there's already one in the legislature.

REPRESENTATIVE McGUIRE replied that she doesn't think it's a secret that the majority makes the policies in the legislature, whether that majority be Republican or Democrat. "In fact," she added, "it's our obligation." She told Representative Berkowitz, "You spend a lot of time standing up on the floor criticizing that - rightfully so." She opined that the majority should be the driving engine and the policy-making body. She noted that it is often the case that a minority bill will be

introduced and will "sit right where it is first referred to in a committee." She added, "And I don't think that's a secret."

Number 1263

CHAIR WEYHRAUCH clarified that Representative Berkowitz has introduced a bill that is related to this issue. However, Representative McGuire had requested a hearing on [HB 414]. He told Representative Berkowitz that if he wants his bill heard in conjunction with [HB 414] that can be done.

REPRESENTATIVE MCGUIRE said that [being] the chair of the House Judiciary Standing Committee is a unique role, and she said she thinks there is "a place to respond to these types of things." She noted that the difference in her bill [compared to Representative Berkowitz's] is that it incorporates a response to Judge Reese's opinion.

REPRESENTATIVE MCGUIRE recalled another bill introduced by Representative Harry Crawford, which she collaborated on. She continued as follows:

We ultimately realized that, for political reasons - particularly with respect to the other body - ... it would probably be politically expedient to have the majority person bring that bill across. [It's] no different than if the Democrats were in control on the other side, we might rethink how we do that. It's of no offense to you, and maybe I could just say great minds think alike.

REPRESENTATIVE BERKOWITZ responded that he wishes Representative McGuire would have spoken with him before introducing [HB 414].

REPRESENTATIVE MCGUIRE, in response to questions by Representative Berkowitz, confirmed that she has had opportunity to speak with [representatives of] Trust the People and their position on HB 414 is one of support. She noted that both Representatives Crawford and Croft have expressed concern with the bill's legal challenge. She indicated that it would require money. She said she thinks the 17th Amendment of the U.S. Constitution presents real challenges. She noted that Representative Crawford has said that he would have signed on as a co-sponsor, but the proposed legislation is a House Judiciary Standing Committee bill.

REPRESENTATIVE BERKOWITZ noted that Representative McGuire had previously said that there are opinions that the challenge based on the 17th Amendment will be upheld. He asked for the sources of those opinions.

REPRESENTATIVE MCGUIRE, in response to that and a follow-up question by Representative Berkowitz, clarified that she had not been citing an opinion but rather was offering an informal opinion.

Number 1435

REPRESENTATIVE MCGUIRE, in response to a question by Representative Gruenberg, confirmed that she doesn't have any other formal legal opinion. She indicated that there is a saying regarding what a fool a person would be to predict [the rulings of a judge]. She stated that she admires that Representatives Crawford and Croft are able to look beyond the politics of [the issue] and say they really believe that "this is the right way of doing it."

REPRESENTATIVE GRUENBERG asked if Representative McGuire doesn't think that Representatives Crawford and Croft also support the idea that a law like this should be able to be passed by initiative.

REPRESENTATIVE MCGUIRE said she has not discussed [that question with Representatives Crawford and Croft], but she stated that she would assume so. In response to a follow-up question by Representative Gruenberg, she confirmed that she supports the initiative process. She noted that it is primarily a product of the west coast and newer legislatures. For example, she remarked that Oregon has had more initiatives and referendums passed than any other state.

REPRESENTATIVE GRUENBERG asked Representative McGuire if she believes that "the people" should have the right by initiative to select the methods of filling in interim vacancies in the office of the U.S. Senator. He clarified, "I'm talking about not as a judge, but as a policy maker."

REPRESENTATIVE MCGUIRE responded that she has to take into account the law when she makes policy. She indicated that the 17th Amendment to the U.S. Constitution couldn't be clearer with respect to who has the authority; therefore, she would not feel comfortable saying that the initiative would be "the way to do it."

REPRESENTATIVE GRUENBERG asked if she believes the legislature could give the people the right to make this choice by an initiative.

REPRESENTATIVE McGUIRE replied that she thinks that could be done through a constitutional amendment, and she suggested perhaps that is something that Representative Gruenberg wants to consider.

REPRESENTATIVE GRUENBERG said he is talking about "a simple legislation." He asked, "Don't you agree that the legislature could simply pass a law that ... could delegate to the people the authority to fill the office by an initiative process?"

Number 1263

CHAIR WEYHRAUCH interjected that he understands the philosophic debate regarding this issue. He offered his understanding that Representative Bill Williams would have some initiative-related "things" coming up on the floor soon.

REPRESENTATIVE GRUENBERG explained that his questions "go to" the possibility of an amendment to the bill.

REPRESENTATIVE McGUIRE said she doesn't know what powers the legislature really can delegate. She offered her understanding, for example, that [the legislature] cannot delegate the power to appropriate.

Number 1800

REPRESENTATIVE SEATON said he appreciates Representative McGuire's bringing [HB 414] forward. He stated that he thinks if [the committee] agrees that it's good public policy, than it should go forward with it.

REPRESENTATIVE SEATON turned to the subject of certification of third parties. He noted that the term [limits] for governor, U.S. Representative, and U.S. Senator are [not the same]. He offered an example whereby there is an election in which only the Representative is up for election and the third party does not get 3 percent at that election; however, every four years there is a gubernatorial election where "they might get 3 percent...." He asked, "What is the certification process ... either at the four-year or the six-year election for the U.S.

Senate or for the governor, if the two-year election is between those and the third party does not get 3 percent at that time?"

REPRESENTATIVE McGUIRE responded that the short answer is "they wouldn't be certified." She indicated that [recertification would be allowed]. She invited Representative Seaton to "envision the scenario that we had before," in which "a third party would have to wait a full four years before even being considered again." She concluded, "And so, one of the nice things is, yeah, they might not be considered, ... as a result of that election, but in the next two years, hopefully they would get it."

REPRESENTATIVE SEATON asked, under the scenario "as outlined in the bill," if a third party doesn't have a candidate for the U.S. Representative election, "are they then decertified?"

REPRESENTATIVE McGUIRE responded that that is an interesting question. She said she doesn't know the answer, but will find out.

Number 1925

REPRESENTATIVE BERKOWITZ asked Representative McGuire if she thinks it's good public policy for the voters to be able to fill vacancies in the U.S. Senate.

REPRESENTATIVE McGUIRE answered yes; however, she stated that a lot of times there are things she thinks are good public policy that are unconstitutional.

REPRESENTATIVE BERKOWITZ asked Representative McGuire why, if she thinks it's good public policy, she voted against it "when the amendment was in front of the entire legislature a couple of years ago."

REPRESENTATIVE McGUIRE responded that a person in the legislature is bound to grow and change his/her opinion. She said, "When it was first presented to me, I don't think I ever felt comfortable with it ... because I didn't really understand it very well." In the end, she revealed, she struggled with "how you would fill that vacancy between the time in which the person left and the special election occurred." She stated that it's something that still troubles her, and she said she thinks both the initiative and the language in [HB 414] could be improved.

REPRESENTATIVE McGUIRE noted a problem is that Alaska is a small state and the U.S. Senate is the place in which Alaska derives most of its power. She warned that a very real situation could occur where Alaska could be without representation for three months while waiting for a special election. She said, "I was persuaded by that, and I'm still persuaded by it ..., but I think that there is a way that you can do both, and I'm hoping that the great minds of the legislature can come together to do that."

REPRESENTATIVE McGUIRE said that her constituents let her know when she is wrong about an issue. She stated that they have said they would like the ability, through a special election, to be "able to weigh in." They feel, she related, that that is "the more democratic way of selecting [a] U.S. Senator." She indicated that [her constituents] think it's her job to figure out what to do in the mean time with the vacancy.

Number 2081

REPRESENTATIVE BERKOWITZ asked Representative McGuire if she thinks the Republicans were wrong to turn down the amendment.

REPRESENTATIVE McGUIRE responded that she can't speak for all Republicans. She added, "You're famous for doing that."

REPRESENTATIVE BERKOWITZ interjected, "Well, you spoke for me and all Democrats...."

REPRESENTATIVE McGUIRE told Representative Berkowitz that she doesn't want to quibble with him. She opined, "I think we all understand the chip that's on your shoulder today." She said she's sorry that Representative Berkowitz has not asked for a hearing for his bill from Chair Weyhrauch. She stated her assumption that if he cared that much about [his] bill, he would have done so.

REPRESENTATIVE BERKOWITZ responded as follows:

Representative McGuire, it's not about my bill. It's about getting you to do the right thing. It's about respecting the right of 50,000 Alaskans who attempted to go to the ballot and vote on this. It's about whether the legislature even retains the moral authority to vote on this issue now that 50,000 Alaskans have picked it up. It's about the cynical manipulation of the internal legislative political

process to circumvent the will of the people. That's what my outrage is about. And I think it's a consistent pattern where this issue's concerned. Let the people vote. Quit trying to steal their authority.

Number 2150

REPRESENTATIVE MCGUIRE asked, "Representative Berkowitz, do you think doing the right thing is potentially allowing the whole issue to go away on account of a legal challenge?" She added, "So that the process has never, in fact, changed at all." She said what ends up happening is "we end up right back where we were before."

CHAIR WEYHRAUCH intervened.

Number 2170

REPRESENTATIVE GRUENBERG noted that several years ago, an initiative regarding minimum wage was going to be on the ballot. He said the legislature "trumped that" by passing a similar bill. If a law passes by initiative, there's a prohibition against the legislature changing that [law] for several years. He offered his understanding that there cannot constitutionally be such a prohibition if the legislature passes a bill, because "we" can't bind future legislature. What the legislature did, he continued, was to trump the initiative and then repeal part of the bill the next year. That, he concluded, "clearly thwarted what might have been the will of the people." He added that he doesn't think that was good public policy.

REPRESENTATIVE GRUENBERG expressed his concern that if something were to happen [to Alaska's current U.S. Senator], and "we passed this law through this legislature," the next legislature could then "undo it in the next two years." Conversely, he noted that if "it were done by initiative," it would have "a much greater permanence." He said, "And I see that as being potentially a significant difference with the exact bill - but the way it's enacted. Don't you?"

REPRESENTATIVE MCGUIRE responded that she thinks there are problems "with that." She said there have been instances where the legislature has incorporated the substance of an initiative into law and come back and changed [that law]. She said she thinks "you give your word and ... you stay true to it." On that note, she told the committee that Representative Crawford

had asked her if she was introducing the bill so that she could come back later and change it. She said her response was to give him her word that that was not the reason she was introducing the bill and that she defends "this."

REPRESENTATIVE McGUIRE opined that those who put the initiative process into the Alaska State Constitution must have envisioned a legislative role. She explained that an initiative cannot appear on a ballot until after a full legislative session has met. She explained as follows:

That requirement really can only be in there for one reason, and that is the idea that we still are a representative democracy - not a direct democracy. We envision a role of direct democracy, but the representative democracy is still there. And so, that gives an opportunity for the legislature to consider those things that have been certified as initiatives.

Number 2403

REPRESENTATIVE McGUIRE opined, "I think that, as a legislature, when you have that many people speaking on a subject, if you don't come back and pay attention to it and try to incorporate it into policy, you're not doing your job."

Number 2424

CHAIR WEYHRAUCH remarked that he thinks the voter has the ultimate say on "who it is that is sitting here doing this."

Number 2454

REPRESENTATIVE GRUENBERG asked Representative McGuire if she would support a provision in the bill stating that "this portion of the bill, at least" would not be amended for two years, for example. He noted that this legislature can't bind the next, but it can state its policy, thereby making a promise by the body.

REPRESENTATIVE McGUIRE replied that she would support that.

CHAIR WEYHRAUCH said he does not know whether he would support that; he said he has never heard of such a precedence.

Number 2786

REPRESENTATIVE HOLM said he is confused. He offered his understanding that it has been proposed that the people who speak at the polls have less right to create policy in Alaska, by virtue of their representation, than the people who speak with an initiative. He asked for an explanation of "what road we're going down, in terms of whether or not we're trying to negate the ability of all legislatures to function at all." He offered an example of how segregation would have been affected [if it had been decided by initiative].

Number 2650

REPRESENTATIVE McGUIRE said this subject is a difficult one that many legal minds have reflected on, particularly in the last 20 years. Initiatives, she said, have been used to move the legislature in the right direction. Notwithstanding that, she remarked that any initiative process, if carried too far, could meet with disastrous results. She indicated that she thinks [the initiative process] has been used appropriately in Alaska. She said, "Where you started to see the dialogue in the beginning, I could see certain individuals trying to create this dichotomy - you're either for it or against it. I don't see it that way."

Number 2786

REPRESENTATIVE HOLM stated he is still concerned with whether or not [the legislature] is making decisions because they are the right decisions to make.

Number 2825

REPRESENTATIVE BERKOWITZ recalled three other instances that occurred during his time in the legislature where the Republican majority has overridden the will of the people: two wolf initiatives and a medical marijuana initiative. He said, "So you'll excuse me, Representative Holm and Representative McGuire, for being a little bit cynical about the ability of this majority to honor the direction the voters want to take it."

Number 2854

REPRESENTATIVE GRUENBERG turned to "the Green Party portion of the bill." He stated, on behalf of the Democratic Party and possibly the Green Party as well, that other parties, regardless of who they are, have a right to join together in a partially

open ballot. He asked Representative McGuire if she would support an amendment that would "allow that to occur."

Number 2926

REPRESENTATIVE MCGUIRE responded that because she wants [HB 414] to pass, she would not support adding that to the bill. She said she is not somebody who benefits from a closed primary, so she can see where it would benefit her; however, she also tries to support the opinions of the majority. She said, "From a political perspective, it would make this bill dead in the water."

Number 2967

LEONARD JONES, Special Assistant, Division of Elections, Office of the Lieutenant Governor, said he was present in regard to the fiscal notes.

TAPE 04-11, SIDE B

Number 2982

MR. JONES [told the committee that he has held his position for just 30 days]. He offered to answer questions.

Number 2966

REPRESENTATIVE SEATON referred again to page 2, regarding the issue of timing and recertification when elections are off-cycle. He clarified that he is trying to ascertain if "this is going to require every third party to have 3 percent of ... the U.S. House [of Representatives] election in all those cycles when there's not one of the other elections occurring." He added that he wants to know what the division's position would be if a third party that had garnered 3 percent in a gubernatorial election, for example, did not file or did not have a candidate run for the U.S. House [of Representatives].

MR. JONES said he would get back to the committee on that.

Number 2888

REPRESENTATIVE BERKOWITZ asked Mr. Jones to let the committee know the following: The cost of primaries, with the possible intent of doing an amendment that would cause political parties to pay for their own primaries, if that's what they want to do; and the cost of collecting and maintaining records about

individuals' political party affiliations. He said, "You've seen today what happens when partisan politics intrudes. I think it's hostile to the state's best interest." He noted that he has been "running a bill" for a number of years to eliminate political parties and to eliminate the state as a record keeper. He commented that perhaps Representative McGuire would join him in this effort. He said he want to know how much [the state] would save if [it no longer used the political party system].

MR. JONES agreed to accomplish that request.

CHAIR WEYHRAUCH stated his understanding that that would be a research request on a separate issue, other than [HB 414].

REPRESENTATIVE BERKOWITZ responded, "That would fit within the title."

Number 2805

REPRESENTATIVE COGHILL commented that he would like to see the committee [get the information requested]. He indicated that whether or not people have the right to "associate and pick their party affiliate members to represent them" is another debate. He said [HB 414] certainly is one bill that would allow those who have standing in the community to be on the ballot. He added, "So, I'd be in support of that."

Number 2787

CHAIR WEYHRAUCH closed public testimony. He announced that HB 414 was heard and held.

HB 319-REMOTE REC.CABIN SITE SALES/LOTTERY SALE

Number 2761

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 319, "An Act relating to the disposal of state land by lottery; and relating to the disposal, including sale or lease, of remote recreational cabin sites."

Number 2750

REPRESENTATIVE LYNN moved to adopt HB 319 for discussion purposes.

CHAIR WEYHRAUCH clarified that the motion had been made for Version H [the original bill version].

Number 2730

REPRESENTATIVE HUGH FATE, Alaska State Legislature, as sponsor, read his sponsor statement [included in the committee packet]. He clarified that, regarding those who will incur the cost of surveys and appraisals [in the second paragraph], the word "they" means those who buy the land. He noted that, while not specified in the sponsor statement, the economic trickle-down effect could be as much as "four times." He said, "Passage [of HB 319] will expand the opportunity to satisfy the dream of Alaskans by allowing them to secure, in fee simple, a favorite piece of property in a setting that epitomizes the reason that we live in ... this great state...."

REPRESENTATIVE FATE added that the bill would enhance the present Department of Natural Resources (DNR) programs, but does not take the place of them. He said it's a win-win situation; it not only gives an individual private, peaceable ownership [of land], but also stimulates local and state economy.

Number 2583

REPRESENTATIVE FATE referred to Article VIII, Section 9, of the Alaska State Constitution, and indicated that it gives the power to the legislature to provide the process under which lands may be sold. He noted that there is also a statute in law that allows for the sale of these lands. He stated that [HB 319] is a resource-based economic bill, which is based on fee-simple ownership - "the title to the land." Currently, he noted, most of Alaska's land is "nonproductive." Because of that, it is exempt from local taxation. Most of the land is not an asset to the state or to an individual. It becomes an asset under fee-simple ownership. He said he has heard newcomers and old-timers alike say that they wish they could "have a piece of Alaska."

Number 2452

REPRESENTATIVE FATE offered his understanding that this issue started out in the Twenty-Second Alaska State Legislature as HB [233] and was worked on by those in the mining industry, DNR, and the environmental community. The result of that continued work is the bill before the committee today, he said, including some amendments in the committee packet.

Number 2407

REPRESENTATIVE GRUENBERG turned to a page listing issues raised by the Alaska Conservation Voters [included in the committee packet]. He said he would like those [issues] addressed.

Number 2215

REPRESENTATIVE SEATON turned to page 3, line 14, [of the bill], which read as follows:

(e) The space between remote recreational cabin sites offered under this section may not be less than 660 feet in any direction.

REPRESENTATIVE SEATON asked if the intent of the bill is to make a patchwork of private ownership which is not contiguous. He asked why there is so much space in between the sites.

REPRESENTATIVE FATE replied that this started out with a larger separation to preserve the remoteness of the site. He said DNR pointed out that that could be problematic. He indicated that changing from 2.5 acres to 5.0, helps [in platting the land], as well as provides adjoining acreage. He stated that 660 feet really provides a more remote site, which is the [aim] of [HB 319].

REPRESENTATIVE FATE listed some types of land that are available, including land with several lots together. However, what is not available currently is [land for] a remote cabin site. He clarified [the bill would provide] that if the state wants to "select an area, once a nomination is made, ... they can then select a broader area within that area." He said [the legislation] doesn't encourage the congestion that sometimes occurs in a (indisc.) area.

REPRESENTATIVE FATE, in response to a follow-up question by Representative Seaton, explained that the change to five acres is in the language of an amendment [still to be] offered.

REPRESENTATIVE SEATON asked if the same philosophy is being used in regard to rivers and lakes, [requiring] that the frontage must be at least 300 feet and not exceed 400 [feet], and that there must be one quarter mile from another parcel with river frontage.

REPRESENTATIVE FATE answered that it is the same, "except for lakes." He explained that the computation regarding lakes was made based on how much water it takes to safely [land and take off in a float plane].

REPRESENTATIVE SEATON said he is still trying to get "the feeling of the distribution of a lot." Regarding the 660-foot separation, he asked what provision there is for access. For example, he asked if [the bill] would give provisions for road building or "anything else."

REPRESENTATIVE FATE responded that the state would not guarantee rights of way or fire fighting for a remote site. He mentioned that there was a tremendous amount of research done on identifying RS2477s. He stated that these [parcels] are remote sites and, as such, it would be up to the applicant to provide the transportation to them, to develop them, and to protect them. He said the state would be waived from those liabilities.

Number 1948

REPRESENTATIVE COGHILL asked what discussion would have to happen between DNR and the person buying a remote parcel regarding how that person [stakes out a piece of property].

REPRESENTATIVE FATE replied that in the past, the surveys and appraisals have been done at a cost to the state; however, [under this legislation] the people would pay for those surveys themselves. He noted some exceptions, such as land that is picked up through lotteries.

REPRESENTATIVE COGHILL noted that the language in the bill stipulates size of land. He said, for example, if he went out to nominate a parcel of land and wanted to share a lake with someone, he would want to ensure that he didn't nullify his application by "getting ... 20 feet over." He said he is wondering what the working process is on that nomination, regarding how much latitude DNR [would have] "to move it," and what would have to happen, for example, if he has already "brushed it."

REPRESENTATIVE FATE responded, "We have added personnel in there to do that." People may not know, for example, whether their land is overlaid by a native allotment or whether there's a military operation area (MOA) on it. There would need to be a status map made available, so that people can actually look to see if the land is open for entry.

Number 1664

REPRESENTATIVE SEATON asked if there is any language in the bill that requires that a configuration [of a parcel of land] be within certain parameters.

REPRESENTATIVE FATE answered, "On riverbanks and on lakes, yes." He said he cannot recall a limitation inland. He mentioned 300 feet for shoreline frontage.

REPRESENTATIVE SEATON asked if that means a person could have a pear-shaped small valley, for example.

REPRESENTATIVE FATE surmised that as a practical matter, the department would probably provide regulations. He offered an example. He indicated it would limit "the amount of fudging in the [staking] of ground."

Number 1545

REPRESENTATIVE SEATON noted that "this" calls for 660 feet in any direction, as well as "a distance from another recreational cabin site." He offered an example of a house on the Kenai River that is not certified as a recreational cabin site. He offered his understanding that the proposed language [of the bill] wouldn't prevent nominating a piece [of land] on the riverfront adjoining someone else's house.

REPRESENTATIVE FATE said that's correct. He said, "Nomination is not automatic; this still gives the prerogatives to the commissioner to approve or disapprove that after the nomination.

REPRESENTATIVE SEATON said the land could still border with a native allotment. He asked if it is correct that "the distances" are only from recreational sites and not from other pieces of property.

JIM POUND, Staff to Representative Hugh Fate, answered on behalf of Representative Fate, sponsor. Regarding the example of the Kenai River cabin, he said it must be in a 660-foot buffer zone. He stated that he is not really certain, even on the Kenai River, that there would be a situation where there would be a remote recreational cabin where there is already a residence. He surmised that that land would be in private hands already.

Number 1360

REPRESENTATIVE SEATON noted that Caribou Hills and Caribou Lake, for example, hold both private and state lands, and there are recreational cabins "all over the Caribou Hills." He explained that he is trying to figure out whether [HB 319] has a buffer between "existing," or whether it is "just between recreational (indisc.)."

Number 1327

CHAIR WEYHRAUCH began discussion of Amendment 1, which read as follows:

Page 3, line 2:
Delete "12"
Insert "24"

Page 3, line 5, following "private sale":
Insert "under (g) of this section"

Page 3, lines 9 - 12:
Delete all material and insert:
"(1) prepare a schedule of land offerings under this section from lands that were not selected by the state for mineral values, except for lands having a proven high mineral potential based on a geophysical survey or geological evaluation completed not more than 15 years before the offering, and identify the parcels for disposal each year; and"

Page 3, lines 21 - 30:
Delete all material and insert:
"(g) A person may nominate a parcel for disposal under this section and request a right of first refusal. If the commissioner accepts the nomination of a parcel for disposal, the commissioner may also provide for disposal of additional parcels in the surrounding area, subject to (d)(1) and (f) of this section."

CHAIR WEYHRAUCH noted that Amendment 1 would delete [subsection] (g) on page 3 entirely. He asked if that [decision to delete subsection (g)] was based upon the input from the Alaska Miners Association.

REPRESENTATIVE FATE reiterated that concerns had been expressed by environmental groups, miners groups, and DNR, and he indicated that those concerns are addressed [in Amendment 1].

Number 1240

CHAIR WEYHRAUCH asked Representative Fate if he would like to "offer this amendment at this time."

REPRESENTATIVE FATE said yes.

CHAIR WEYHRAUCH objected for purposes of discussion.

CHAIR WEYHRAUCH, in response to remarks by Representative Gruenberg, clarified that the committee was addressing Amendment 1 in parts, but was not treating those parts as separate amendments.

REPRESENTATIVE FATE explained the changes that Amendment 1 would affect.

CHAIR WEYHRAUCH clarified that the input from the Alaska Miners Association was in the form of a letter in the committee packet, dated January 23, 2004.

Number 0989

REPRESENTATIVE GRUENBERG stated that the Alaska Miners Association makes a good case in its letter for adding "and geologic evaluation" to the bill. Amendment 1, he noted, actually adds the phrase "or geological evaluation". He said he thinks the "or" is better.

REPRESENTATIVE GRUENBERG turned the committee's attention to page 3, lines 10-11 of the bill, and read the phrase "having a low mineral potential". He noted that Amendment 1 uses the words "except for lands having a proven high mineral potential", which he said "flips it around." He said he feels more comfortable with the current language in the bill.

REPRESENTATIVE FATE responded that "low mineral potential" can be [ambiguous]. He suggested it could mean "one color in a pan" or "ten colors in a pan." He said [the language in Amendment 1] achieves the same thing through an evaluation. He added that it also sets some sort of standard of high potential. He explained, "If it's high potential, then that land sometimes should not be selected for a remote cabin site." In response to a request for a definition of "color in a pan," he said that gold plate itself is "just called a color."

REPRESENTATIVE GRUENBERG, regarding the word "proven", surmised that the sponsor is assuming that DNR would, by regulation, define the term "high proven mineral potential". He said he does not want it to be a vague delegation that is without standard. In response to a question by Representative Fate, he clarified that he wants to know how that phrase will be administered by the department.

CHAIR WEYHRAUCH suggested that someone from DNR could address that concern later.

REPRESENTATIVE FATE said it seems to him that "the nomenclature 'low' is more prone to litigiousness than 'high', which does set a standard...."

REPRESENTATIVE GRUENBERG said his question would then focus more on the word "proven".

Number 0589

MR. POUND stated his assumption that, between the geophysical and the geological evaluation, there are already established standards in place. He indicated his understanding that "a proven high" is almost a technical term in the mineral [world].

Number 0538

REPRESENTATIVE SEATON referred to the portion of Amendment 1 that would add language at page 3, lines 9-12 of the bill [text provided previously]. He noted that the word "except" was used. He offered his understanding that the [lands] that are "excepted from this" are those that have high mineral potential, and are available for remote cabin sites.

REPRESENTATIVE FATE told Representative Seaton that that language means just the opposite.

REPRESENTATIVE SEATON repeated the language in question again. He said, "So, the exception is for those that have a high mineral potential from those that were not selected for mineral value. I don't think that's what we mean, but that's what I believe it says."

Number 0383

CHAIR WEYHRAUCH noted that the language in question differs a bit from the language of the Alaska Miners Association. He added his belief that the drafter of the amendment may have missed something in the translation.

REPRESENTATIVE GRUENBERG said that, with all due respect, he doesn't think that most judges or lawyers would [interpret] the language as Representative Seaton did. Instead, they would say there are two different categories of lands that would not be available [as land offerings]: one category would be comprised of lands that have been selected as having mineral values, and the other would be comprised of lands that have a high mineral potential. He added that he is not sure he understands the difference; however, he thinks the drafter was attempting to exempt both of those.

Number 0248

CHAIR WEYHRAUCH said it's not that clear.

Number 0203

REPRESENTATIVE SEATON stated that if Amendment 1 is to be adopted, he wants that language made clearer.

REPRESENTATIVE FATE said he would accept a conceptual amendment for purposes of clarification.

Number 0129

MR. POUND turned to the last portion of Amendment 1, which he said would allow a first right of refusal to someone who nominates a parcel [for disposal]. It would be up to "the commissioner, through the director" to grant that first right of refusal.

The committee took a brief at-ease at 9:34 a.m.

TAPE 04-12, SIDE A

Number 0001

MR. POUND noted that the last portion of Amendment 1 would also address a need for technical clarification by referencing [subsection] (d), [paragraph] (1).

Number 0099

REPRESENTATIVE SEATON stated his understanding that this portion of Amendment [1] would delete the language requiring a person to provide an affidavit to the commissioner showing at least three consecutive years of recreational use [of the parcel], and replace it with language that would allow a person just to nominate a parcel and request first right of refusal, without showing any use of the land at all.

MR. POUND said that's correct.

Number 0163

CHAIR WEYHRAUCH gave an example of three different people who each have visited the same spot, but at different times of the year. Furthermore, if HB 319 passes, they each could nominate that parcel for disposal and request a right of first refusal. He asked how that situation would be dealt with. He asked if [the commissioner] would just throw up his/her hands and open the land to public market.

MR. POUND responded that that would certainly be his/her option. He said it is important to note that all the parcels must involve a public notice process.

CHAIR WEYHRAUCH suggested the possibility that if it is up to the discretion of the commissioner to grant the right of first refusal, then somebody might say of [the person who was granted that right] that he/she had a lobbyist get the commissioner to grant that right, which might result in litigation over whether it was a good use of discretion.

MR. POUND replied that the aspect of litigation would be up to interpretation.

CHAIR WEYHRAUCH remarked that it happens a lot [that people love the same parcel of land]. He questioned whether it would be better [for the commissioner] to say, "We're going to just open this to a bid," in order to get away from the perception of unfairness or inside dealing, for example.

Number 0420

REPRESENTATIVE FATE said that it's completely discretionary, but "they can make that decision." He added, "If that situation arose, then this piece of legislation allows for that."

Number 0455

CHAIR WEYHRAUCH asked about a possible situation where a corporation takes kayak trips and uses the same parcel over and over. He noted that there are places like that - for example, tent sites.

REPRESENTATIVE FATE answered, "The applicant will determine that." He clarified that the commissioner will make the determination based on the application. He indicated that there are probably ways to make the process a fair one.

Number 0615

CHAIR WEYHRAUCH stated that it's easy to see how growing ecotourism companies could start staking [land] all over the place, to the exclusion of the intent of the bill, which he said he thinks is to allow an individual who has grown up here to "get a piece of Alaska."

Number 0600

MR. POUND referred to AS 38.05.035, which he said is existing statute addressing the issue of state land and individuals who have erected a building on the land and is using the land for bona fide business purposes for five or more years, either under a federal permit, or without the need for a permit. He indicated that there's a separate process for commercial [land use]. He concluded, "We're not dealing with that particular statute - it's already in place."

Number 0709

REPRESENTATIVE GRUENBERG noted that [HB 319] does not have a referral to House Judiciary Standing Committee; therefore, he suggested that it is within this committee's jurisdiction to deal with the issue of fairness.

Number 0762

REPRESENTATIVE SEATON said he sees no limitation on the number of sites that can be applied for, or that they have to be applied for by an individual. He said it seems to him that Princess Tours could solicit from the commissioner every quarter mile down the river where that company takes tours. He stated that if the purpose of the bill is to "get it into economic development hands," then the commissioner would "almost be directed to grant those." He said that this seems to be allowed

under this proposed legislation, even if it's not the intent of it. He suggested that the sponsor change that.

REPRESENTATIVE FATE replied that this is another tool to add to those the department already uses to dispose of land. He said the intent of the bill is certainly not to "create individuals who run around selecting land all over the country." He said he suspects that that would be looked at askance by the commissioner.

Number 0939

CHAIR WEYHRAUCH said there's nothing that would prohibit someone from going around and asking to buy the land from other individuals and then eventually consolidating those sites under a corporate shell.

MR. POUND said he certainly thinks that the 660-foot buffer would be a disincentive to a commercial venture. He also noted that there is language in existing statute regarding requirements for a buffer anywhere from 50 to 100 feet from the riverfront.

Number 1029

CHAIR WEYHRAUCH said he would like the committee to adopt Amendment 1, and then subsume it into a committee substitute. Then he would like representatives from DNR to look at the committee substitute and reevaluate the fiscal note that accompanied the original bill.

REPRESENTATIVE GRUENBERG stated that he would not object to that, with the understanding that the committee has still not dealt with his question regarding the proven high mineral potential.

Number 1101

REPRESENTATIVE GRUENBERG noted that the Alaska Miners Association had mentioned an airstrip in the last part of its letter. He said he noticed that the sponsor didn't accept that group's proposal.

MR. POUND said the sponsor felt that a 25-acre lot has the potential to make it a commercial venture. If said, "If you're landing an aircraft out there, we'd tend to prefer it be a floatplane"

Number 1200

CHAIR WEYHRAUCH stated that this proposed legislation would give the private sector access to own land. He asked if there is already such a program and what the hold-up would be. He said, "Certainly the legislature has dealt with this ... over and over"

REPRESENTATIVE FATE mentioned taking people to see lottery lands, and those people saying that they wouldn't purchase the land at any price. He confirmed that programs do exist; however, even though "you don't select what you would like to select yourself." The proposed legislation is an effort to get more land to people who would pay for the surveys. The state then reaps the harvest of the economy that it's stimulating, while the individual gets fee-simple ground. He added, "He gets fee-simple ground before, but a lot of times it's not the kind of ground that he wanted."

Number 1350

CHAIR WEYHRAUCH asked if there was any objection to adopting Amendment 1. There being no objection, Amendment 1 was adopted. Chair Weyhrauch announced that Amendment 1 would be incorporated into a committee substitute.

REPRESENTATIVE SEATON asked for confirmation that the portion of the amendment that he had previously expressed concern over would be rewritten.

CHAIR WEYHRAUCH answered, "Conceptually."

REPRESENTATIVE FATE agreed, and he added that [he and his staff] would continue to work with the Department of Natural Resources.

Number 1400

MR. POUND turned to page 3, line 31, under [subsection] (h), which read:

(h) A parcel sold under this section may not exceed two and one-half acres.

MR. POUND proposed [Amendment 2] as follows:

Page 3, line 31

Between "exceed" and "acres"
Delete "two and one-half"
Insert "five"

Number 1460

CHAIR WEYHRAUCH asked if there was any objection to Amendment 2. There being none, Amendment 2 was adopted.

[HB 319 was heard and held.]

HB 241-MUNICIPAL PROPERTY TAX EXEMPTION

Number 1500

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 241, "An Act relating to optional exemptions from municipal property taxes on residential property."

CHAIR WEYHRAUCH reminded the committee members that before them was the committee substitute (CS) for HB 241, Version 23-LS0851\D, Cook, 1/22/04.

Number 1521

REPRESENTATIVE SEATON moved Amendment 1 [to HB 241. Amendment 1 was taken up and clarified in the next meeting].

CHAIR WEYHRAUCH announced that [HB 241] was heard and held.

ADJOURNMENT

Number 1576

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:58 a.m.