

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

February 19, 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

SENATE BILL NO. 270

"An Act establishing November as Avalanche Awareness Month."

- MOVED SB 270 OUT OF COMMITTEE

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."

- MOVED CSHB 319(STA) OUT OF COMMITTEE

OVERSIGHT HEARING: WASTEWATER IMPACT OF CRUISE INDUSTRY REPORT

- HEARD [See 9:06 a.m. minutes for this date]

HOUSE BILL NO. 329

"An Act relating to retirement incentive programs for the public employees' retirement system, the judicial retirement system, and the teachers' retirement system; relating to separation incentives for certain state employees; and providing for an effective date."

- MOVED CSHB 329(STA) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 3

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund.

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 351

"An Act relating to the devices, including carbon monoxide detection devices, required in dwellings; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 270

SHORT TITLE: AVALANCHE AWARENESS MONTH

SPONSOR(S): SENATOR(S) GREEN

01/16/04	(S)	READ THE FIRST TIME - REFERRALS
01/16/04	(S)	STA
02/03/04	(S)	STA AT 3:30 PM BELTZ 211
02/03/04	(S)	Moved SB 270 Out of Committee
02/03/04	(S)	MINUTE(STA)
02/04/04	(S)	STA RPT 2DP 1NR
02/04/04	(S)	DP: STEVENS G, GUESS; NR: STEDMAN
02/06/04	(S)	TRANSMITTED TO (H)
02/06/04	(S)	VERSION: SB 270
02/09/04	(H)	READ THE FIRST TIME - REFERRALS
02/09/04	(H)	STA
02/17/04	(H)	STA AT 8:00 AM CAPITOL 102
02/17/04	(H)	Heard & Held
02/17/04	(H)	MINUTE(STA)
02/19/04	(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
02/03/04	(H)	Heard & Held
02/03/04	(H)	MINUTE(STA)
02/10/04	(H)	STA AT 8:00 AM CAPITOL 102

02/10/04 (H) Heard & Held
02/10/04 (H) MINUTE(STA)
02/19/04 (H) STA AT 8:00 AM CAPITOL 102

BILL: HB 329

SHORT TITLE: RETIREMENT INCENTIVE PROGRAM

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE

05/21/03 (H) READ THE FIRST TIME - REFERRALS
05/21/03 (H) STA, L&C, FIN
01/13/04 (H) STA AT 8:00 AM CAPITOL 102
01/13/04 (H) <Bill Hearing Postponed>
01/29/04 (H) STA AT 8:00 AM CAPITOL 102
01/29/04 (H) Heard & Held
01/29/04 (H) MINUTE(STA)
02/05/04 (H) STA AT 8:00 AM CAPITOL 102
02/05/04 (H) <Bill Hearing Postponed>
02/17/04 (H) STA AT 8:00 AM CAPITOL 102
02/17/04 (H) Heard & Held
02/17/04 (H) MINUTE(STA)
02/19/04 (H) STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

REPRESENTATIVE HUGH FATE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 319.

NANCY WELCH, Special Assistant
Anchorage Office
Office of the Commissioner
Department Of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Answered questions on behalf of the department during the hearing on HB 319.

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

POSITION STATEMENT: During discussion of HB 319, on behalf of the sponsor, answered a question from the committee.

REPRESENTATIVE LESIL MCGUIRE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As sponsor, responded to proposed amendments during the hearing on HB 329.

ACTION NARRATIVE

TAPE 04-18, SIDE A

Number 0001

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

SB 270-AVALANCHE AWARENESS MONTH

Number 0050

CHAIR WEYHRAUCH announced that the first order of business was SENATE BILL NO. 270, "An Act establishing November as Avalanche Awareness Month."

Number 0212

REPRESENTATIVE SEATON moved to report SB 270 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SB 270 was moved out of the House State Affairs Standing Committee.

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

Number 0466

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."

REPRESENTATIVE HUGH FATE, Alaska State Legislature, sponsor of HB 319, explained that a committee substitute had been drafted to incorporate some of the amendments the committee discussed at a previous hearing. Additionally, there was an amendment available to offer [Amendment 1, in committee packets].

Number 0698

CHAIR WEYHRAUCH moved to adopt the committee substitute (CS) for HB 319, Version 23-LS0477\I, Bullock, 2/14/04, as a work draft.

Number 0710

REPRESENTATIVE SEATON objected for discussion purposes.

Number 0736

REPRESENTATIVE FATE turned to Amendment 1 [to Version I], which read as follows [original punctuation provided]:

Page 3, lines 9-12

Delete all material and insert:

"(1) prepare a schedule of land offerings under this section and identify the parcels for disposal each year; the land offerings may not include mineral land selected by the state or lands identified by the department as having a high mineral potential; the department's identification of land having a high mineral potential shall be based on standards adopted by the department in regulations and shall include consideration of a geophysical surveyor [sic] geological evaluation, if any, that was conducted within 15 calendar years before the year for which the schedule is prepared; and"

REPRESENTATIVE FATE indicated that some of the language in the amendment was adopted from [the recommendations made by] the Alaska Mining Association, as well as by the Department of Natural Resources.

Number 0847

REPRESENTATIVE HOLM moved to adopt Amendment 1 [text provided previously].

The committee took a brief at-ease.

Number 0906

REPRESENTATIVE SEATON objected [for discussion purposes].

Number 0915

REPRESENTATIVE FATE turned the committee's attention to the fifth line of Amendment 1, where the words "survey" and "or" run together. He recommended a technical change to add a space in between. In response to a question by Chair Weyhrauch, he confirmed that another technical change was necessary to change "Page 3, lines 9-12" to read "Page 3, lines 10-14".

Number 1079

REPRESENTATIVE HOLM said he is curious as to "the overlay of lands claims and all of the things that are going on with the state that we still haven't solved." He asked, "Where is this going to fit in a time line?"

REPRESENTATIVE FATE responded that the cut-off date is 2009. He explained that if land is encumbered, it won't be offered for location. He indicated that in 2009, a new evaluation could be done of those lands that have become available.

Number 1160

REPRESENTATIVE SEATON inquired if there is a fiscal note.

REPRESENTATIVE FATE indicated that the fiscal note is an ongoing [process], and he said there are two other committees of referral for the bill. He reminded the committee that the people who make the application for the available land will also bear the expense of the appraisal and survey of the land. He said it's expected that the state will actually make money from this plan.

REPRESENTATIVE SEATON asked if, for example, the costs required for DNR to evaluate which lands will be made available [have been considered].

REPRESENTATIVE FATE responded that some administrative expensive, such as map-making, will be borne by the state. He indicated that the fiscal note being formulated is a good one.

Number 1296

REPRESENTATIVE GRUENBERG turned to Representative Fate's written response to the Alaska Conservation Voters [dated February 3, 2004 and included in the committee packet]. He said there are several financial assumptions included in that response. He stated that he would like to see, if possible, a revenue-neutral bill.

REPRESENTATIVE FATE reiterated that "this" actually will not be revenue neutral, but will be a positive source of revenue to the state. He said there is hard data that can substantiate that.

REPRESENTATIVE GRUENBERG clarified that his concern had been in hearing Representative Fate speak of expenses borne by the state [such as the map making].

REPRESENTATIVE FATE explained that those costs were included in "the expense side of both of our fiscal notes."

Number 1425

REPRESENTATIVE SEATON withdrew his objection to Amendment 1.

Number 1434

CHAIR WEYHRAUCH asked if there was any further objection to Amendment 1 [as technically amended]. There being none, Amendment 1, as amended, was adopted.

Number 1445

REPRESENTATIVE BERKOWITZ said it is his experience that there usually is some kind of "DNR-type easement along streambeds or lakes for access." He asked if that would be accommodated in the proposed legislation.

REPRESENTATIVE FATE replied that "it does," because there are other laws that deal with the mean high water and how far back a person's property can start "on that." There are stipulations that already are in law that require that setback to be so far from a high water mark, he said.

REPRESENTATIVE BERKOWITZ turned to page 3, [lines 30-31], which read as follows:

(1) the lake, river, or other navigable water frontage must be at least 300 feet and may not exceed 400 feet;

REPRESENTATIVE BERKOWITZ noted that [the language] doesn't say, "respecting other provisions of law." He added that it seems to trump those other provisions.

REPRESENTATIVE FATE responded that that's true. However, he offered the following example: If a person is on the Yukon River, he/she can only have fee-simple property at a certain point which is reflected by the survey. He explained that the specific point is the high water mark for any particular river.

Number 1590

NANCY WELCH, Special Assistant, Anchorage Office, Office of the Commissioner, Department Of Natural Resources (DNR), in response to remarks from Representatives Berkowitz and Seaton, stated that she does not believe HB 319 would change the statute, AS 35.05.127. She explained, "This is typical of any other land disposal that we've sold; ... even if you get water frontage, the state still reserves to it a public easement to and along public and navigable water bodies." Therefore, the landowner owns "to the ordinary high water mark," but does not get full use and benefit of that 50 or 100 feet, because of the easement that is reserved by the state.

REPRESENTATIVE SEATON asked if that easement is automatically applied, so that private citizens "have the use of that, without it being further designated," or if it is an easement for putting in a designated road or trail, for example.

MS. WELCH responded that it is not automatic; the state actually has to "find to what the width and use of that easement is." In certain cases, she said, it may not be desirable to have somebody build something because of instabilities of soils, for example. Each individual parcel will still require a finding, she said.

REPRESENTATIVE SEATON mentioned recreational plots that would be out along a river or lake. He asked if it is correct that if the state doesn't "come in with a specific finding on that parcel," the public could be prevented from transiting along the bank of that stream, or around the margin of that lake.

MS. WELCH said that is correct.

Number 1768

REPRESENTATIVE GRUENBERG turned again to a sentence at the bottom of page 3 of [Representative Fate's] response to the Alaska Conservation Voters. The sentence read as follows:

Rules and regulations restricting the size of borough land sites within a borough are applicable on borough owned land.

REPRESENTATIVE GRUENBERG stated his interpretation of that sentence is that the laws regarding the regulation within a borough are governed by the local government law, and would trump "this bill." He asked if that is correct.

Number 1831

JIM POUND, Staff to Representative Hugh Fate, Alaska State Legislature, testifying on behalf Representative Fate, sponsor of HB 319, responded as follows for the record:

Borough, if it is more restrictive than state, traditionally does trump state law.

Number 1849

MS. WELCH, in response to a question by Representative Holm, confirmed that the fiscal note is \$433,000.

REPRESENTATIVE HOLM pointed to the analysis which states that the fiscal note assumes that there would be 150 applications. He said it seems inconceivable that there would be \$3,000-worth of state costs per application. He asked Ms. Welch to define "why that would be."

Number 1963

MS. WELCH explained that the way the bill is currently drafted, an individual decision would be required on each parcel. That decision would include a best interest finding and public notice. She continued as follows:

And so, it's very similar to our existing preference-right statute, [for] which we receive an application, and then we have to adjudicate each land offering - as opposed to the current remote parcels program where we have gained a lot of efficiencies by batching certain areas and we do one best interest finding for the full area; we do one land appraisal; we do one survey. And we contract for those, but the applicant is still required to pay for the appraisal and the survey. So, that's where a lot of the cost comes in to play, is

the amount of staff time that is required to process each individual application.

REPRESENTATIVE HOLM asked if it would make sense that "that would be a part of the cost to the landholder."

MS. WELCH replied that she doesn't think that [HB 319] addresses that the cost associated with actually offering the parcel is attached to the landowner. She noted that the state already has a law on the books that says [the department] can charge a deposit to individuals for processing. In that case, she said, there will be some revenues to the state, but she stated she thinks the interest in the program would "drop drastically."

Number 2000

REPRESENTATIVE BERKOWITZ said he serves on the DNR subcommittee [of the House Finance Committee]. He noted that DNR "took a substantial hit last night," which he opined seems to compromise DNR's ability to conduct its core businesses. He asked Ms. Welch if she would consider that the bill, as proposed, as something at the core of "what you do," or if she would "put it farther down the hierarchy of DNR responsibilities."

MS. WELCH stated her belief that one of the department's core responsibilities is to do land sales. She said she thinks [the department] will have to look for efficiencies, as it has done in the past, to try to reduce its overhead. She concluded, "And so, with the huge budget crunch to us and the cost ... per parcel to process, I just don't see this as being high priority for the state."

REPRESENTATIVE BERKOWITZ thanked the folks at DNR for their continued efforts.

Number 2087

REPRESENTATIVE FATE mentioned historic data from the department's own records. He expressed that that, plus the department's willingness to go to bat, has been helpful.

Number 2140

REPRESENTATIVE SEATON referred to Amendment 1, which the committee had previously adopted. He mentioned page 2 of the fiscal note and asked, "Which one of those is that incorporated into - that geological and geophysical information?"

MS. WELCH answered that the fiscal note "does not reflect that at all," because the fiscal note was created for the original bill version. One of the reasons the word "or" [language from Amendment 1] was requested was to "lower the standard, if you will, for what would be required." She explained that a geophysical survey is a much greater requirement than a geological evaluation. She noted that most of the land use plans reflect a high or low mineral potential. She said, "So, I don't believe there will be a substantive cost to determine that through ... [a geological] evaluation, as opposed to a survey."

Number 2237

REPRESENTATIVE WEYHRAUCH asked if the term "meander mile" is a term of art.

Number 2249

MR. POUND offered his understanding that "meander mile" is a term used in regard to water.

CHAIR WEYHRAUCH gave the example of a home that sits along a river and asked if the measurement would be from the bank on which the home sits. He asked if [the measurement would involve] the middle of the river, or the far side of the river, for example.

REPRESENTATIVE FATE explained that the meander line is actually the shoreline contour. He offered an example of a peninsula with a base length of only 200 feet, but with a meander mile [out along the peninsula and back] that could well be a mile.

Number 2287

REPRESENTATIVE BERKOWITZ, on that point, expressed concern regarding a mandatory minimum of a 300-foot waterfront. In an oxbow situation, he said, 300 feet may not be feasible. He asked what kind of accommodation would be available if 300 feet were not consistent with the geography.

REPRESENTATIVE FATE said he thinks in that situation it would be up to the commissioner to determine whether or not that land would be selected.

Number 2386

REPRESENTATIVE SEATON said there currently are considerations for two timber sales - one for a laminated veneer plant in Seward and the other for a chipping operation that would operate in Point Possession, near Valdez. He asked if remote cabin sites were sprinkled throughout the area in which the state was trying to have a timber sale, how complicated would that [become] in relation to the timber sale, and would the person who reserved the right to the pieces of land be reserving the timber rights on the land as well, until [that land] was finalized as private property?

Number 2438

MS. WELCH responded that she doesn't believe that [HB 319] actually changes classifications, and land use classifications that have already been determined to be for timber or forestry as the primary use would remain so. She stated her assumption that those would not be allowed to be sold from the state. Therefore, she concluded, the lands being considered for "these value-added type industries" are those that have already been classified as forestry, or within the state forest.

REPRESENTATIVE SEATON asked Ms. Welch to confirm that her understanding is that the bill would not allow any of the lands within either the forest or the state forestry timberland to be selected for recreational cabin sites.

MS. WELCH answered that's correct. She said, "It does not refer to [AS] 38.04.065, which is the land use planning statute, as saying that it doesn't apply to that. So, my assumption is that it's like any other land program; ... it has to be classified in some type of settlement category in order to be sold, or we would have to devise a land use plan in order to do so."

Number 2500

REPRESENTATIVE SEATON asked Representative Fate if that is also his understanding. He continued as follows:

Basically, if that's the case, then all of the Tanana Valley and the Mat-Su [Matanuska-Susitna] Valley - even the west side of the Susitna - would be off-limits to this program. Was that the intent of the bill?

Number 2525

REPRESENTATIVE FATE replied that the intent of the bill is to allow the commissioner and the director of the Division of Lands and Water [in the Department of Natural Resources] to designate "those areas." He added, "And it states in the bill ... those lands that are already encumbered, and that would be an encumbrance." He said, "So, we want to make land available, but we also want to make sure that we don't impede the development of the state of Alaska.

Number 2576

MS. WELCH, in response to a question from Representative Gruenberg, offered her understanding that "meander mile" is a term of art that makes sense, but is not defined in statute or regulation.

REPRESENTATIVE GRUENBERG asked if that term should be defined in the bill, or if the committee should specifically state on the record that it would like [DNR] to define it in regulation.

MS. WELCH replied that either would be fine. She offered her understanding that "the meander" would be on the ordinary high water mark line; therefore, it would be useful to define "that." In response to a question from Representative Gruenberg, she said the definition could be made in regulation if it's not defined [by the legislature] in statute.

REPRESENTATIVE GRUENBERG stated that he wants it clear for the record that it is the intent of the committee that that term specifically be defined in a regulation.

CHAIR WEYHRAUCH, in response to a question from Representative Gruenberg, concurred that a motion was not necessary in regard to the statement of intent.

Number 2644

REPRESENTATIVE GRUENBERG turned to the last line of the previously adopted Amendment 1 [to Version I], [regarding the department's identification of high mineral potential land including surveys being] "conducted within 15 calendar years before the year for which the schedule is prepared;". He referred to a letter (included in the committee packet), which is dated February 16, 2004, and is from the Alaska Miners Association, Inc., signed by Steven Borell. He pointed to the second sentence in the last paragraph of page 1 of the letter, which read as follows:

Given that geophysical technology continues to improve, it is important that relatively modern surveys are utilized without the requirement for a survey immediately before a land offering.

REPRESENTATIVE GRUENBERG suggested that a survey could fall just outside of the 15-year limit described in the language of the bill and still be considered "relatively modern"; therefore, he suggested that the language should be loosened a little bit.

Number 2778

MS. WELCH responded that 15 years is probably a time frame with which the department can work. She said she would expect that most of the mineral evaluations have been done within the last 15 years, in regard to land use plans.

REPRESENTATIVE GRUENBERG said he understands that that may apply now, but he asked if that would always be accurate. He stated, "I'm concerned that you'll find that - particularly with budgetary constraints - you're not going to always be having surveys that are 15 years old, yet they're entirely adequate."

MS. WELCH said she understands Representative Gruenberg's concern. She continued as follows:

I would expect that - before we would change a classification from something that had been previously classified as low mineral potential to a land disposal category, in order to offer that for sale - ... we would have to conduct some kind of geologic evaluation. Otherwise, for the lands that are already classified as "settlement" we don't normally do that, because we expect that we've already gone through an analysis of what's of highest and best use for the property.

Number 2808

CHAIR WEYHRAUCH noted that [HB 319] would be heard by the House Resources Standing Committee where this issue could be considered in more detail.

REPRESENTATIVE GRUENBERG indicated that he was satisfied with that.

Number 2814

REPRESENTATIVE SEATON expressed concern regarding a [previous] statement that there wouldn't be automatic public access along streams and rivers, unless they are delineated "by a certain width and development of those right-of-ways." He asked if that is incorporated in the fiscal note.

MS. WELCH replied that that is part of DNR's analysis. She clarified that [DNR] has to do a best-interest finding for the parcels. Part of that best-interest finding would be to determine what to reserve along the water bodies.

REPRESENTATIVE SEATON said he is concerned that there is no requirement that "foot traffic by the public is automatically reserved." He asked if there is some way that could be accomplished.

Number 2873

REPRESENTATIVE FATE stated his understanding of the intent of the bill is that when a person gets entitled to fee-simple [land], he/she only gets entitled to that portion that goes to the high-water mark. He said, "The rest is reserved to the public domain or where that high water comes from, and so that is public access." He explained, "Being state ground, they would have to designate that as being off-limits to the public for some reason; it wouldn't be precluded because the new ... fee-simple owner of that property in some way stopped people from going over that public land. They don't own that land up to that high-water mark."

REPRESENTATIVE SEATON clarified that his concern is not just in regard to where there is a long distance between the high-water and low-water marks in the streambeds. He noted that many streams have deep banks where the public would have to [walk] on the area adjacent to the stream, while not walking in the stream or "whatever the bank consideration is." He stated his understanding that Ms. Welch had said that "unless there's a specific finding and a specific designation, and a width of a right-of-way that are reserved in these peaceable transfers, it would not be automatically there." He continued as follows:

I'm concerned that the legislature does not, by accident, come in and create situations where the bank configuration is such that the public would be precluded because all of the area above the high-water

mark - which is what can be transited - is going to be private property with a fence down to the high-water mark.

REPRESENTATIVE SEATON said he doesn't think that's the sponsor's intent.

TAPE 04-18, SIDE B

Number 2991

REPRESENTATIVE FATE responded that it is basically the state's option to make that determination. The proposed legislation simply deals with what happens to the fee-simple land. He stated, "Once it's fee simple - when it becomes ownership - that does not extend, as we've said, to that option that the state can certainly exercise, which usually is to open that up to public access." He said that by the very nature of giving fee simple to the property owners, it wasn't the intent of the bill to preclude anyone from public access to those areas that were not owned by individuals "under fee simple."

Number 2912

REPRESENTATIVE SEATON offered an example of an area with a bluff. He said a person could be walking along the upper part of the bluff and there really isn't a large distance between high water and low water where he/she can transit. He suggested that unless there is a requirement in the bill that says the state shall maintain access for foot traffic along the 300-400 feet of a river bank [where a person owns fee-simple land], there is the possibility of DNR not going through and designating on each parcel a certain width and place of passage. He said that would mean possible impact to pedestrian traffic in the backcountry.

REPRESENTATIVE FATE said that issue had been considered, but "that curtails options of DNR in the state of Alaska." He reiterated that the commissioner still has the final authority.

Number 2832

REPRESENTATIVE FATE, in response to questions from Representative Holm, confirmed that a person could not own contiguous land sites on a river; the bill is designed to offer remote recreational sites, not subdivisions. He also confirmed that a meander mile would be a mile as it goes back and forth along a river's edge, for example.

Number 2760

REPRESENTATIVE HOLM said he shares Representative Seaton's concern. He said, "When you're up against the bank on the other side, there's no way to go down along the river bank." He mentioned taking the best fishing sites and saying that's somebody's remote site. He said, "I want the state to be able to at least have access for all the property behind the river, as well; to access the river." He explained, "I'm concerned that we don't have the contiguous portion, so that we don't block, if you will, the properties behind the river or not adjacent to a river or adjacent to a lake, so they can have access to that resource."

REPRESENTATIVE FATE said he has not concerned himself with this issue as much as Representative Holm has, for a simple reason: "Most of those are accessible by boat or float plane."

REPRESENTATIVE HOLM said he is concerned about rendering in the future.

REPRESENTATIVE FATE responded that, in the future, if somebody built a cabin right on the cliff, the high-water mark then would be on the cliff. He stated his understanding that Representative Holm had said that a person wouldn't be able to access the shoreline because it was so steep.

REPRESENTATIVE HOLM said most rivers in the Interior of Alaska have a accreted side and a side that's being cut out. He said a person can't get to the riverbank because the water's right there. That is the bank that is used for traversing. He clarified his concern is that there is not a situation where people go down the stream and all of a sudden are unable to continue unless they go all the way around "some remote parcel" to be able to continue down the stream [bank].

REPRESENTATIVE FATE said it is an historic high-water mark that is taken at the time of a survey, and accretion or flooding could change the area. He stated that these are questions that really can't be answered, because of the very nature of change of those streams.

REPRESENTATIVE HOLM reiterated his concern. He gave an example of someone moving along a stream while fishing and coming to a spot where he/she cannot pass someone's property. He said, "The high-water mark doesn't fit in here, because when you're on the

cutting side of the river, there is no high-water mark; the high-water mark is maybe underneath where the bank is." He indicated that if a person cannot get to the bank, he/she cannot get to the high-water mark. He synopsised, "We don't care if somebody owns to the bank; we just want to make sure that somebody has an opportunity to walk along the bank."

Number 2582

REPRESENTATIVE FATE responded that the only situation in which he has actually seen a nonexistent high-water mark is where there is an actually rock formation in the cliff form. He explained, "When you have alluvial deposits, ... you will have a high-water mark up on that bank where you have that cut bank that you've described, that keeps cutting into that"

REPRESENTATIVE HOLM stated that he respectfully disagrees.

REPRESENTATIVE FATE clarified that he was talking about the high-water mark. He mentioned taking "setback" requirements into consideration.

MR. POUND noted that, for the most part, there are riparian standards of 50-100 feet on all navigable waters in the state of Alaska. That land cannot be developed. He said he believes there is an access clause to navigable waters in Alaska that "supercedes its existing statute language," and therefore guarantees access to navigable waters and requires that the land right next to the water cannot be developed. He said he suspects a fence would be considered development.

REPRESENTATIVE HOLM said, "That works for me."

Number 2409

REPRESENTATIVE SEATON said he is confused by hearing one person say that there is guaranteed public access along the stream banks even if there is fee-simple [land] right to the bank, while hearing Ms. Welch say that there is no public access unless each specific parcel is laid out with [certain specifications]. He emphasized that he needs clarification from DNR on the issue.

[HB 319 was brought back before the committee after the oversight hearing on this same date.]

Number 2347

CHAIR WEYHRAUCH called an at-ease at 9:03 a.m. in order to prepare for the oversight hearing regarding wastewater impact of the cruise industry report.

[The minutes for the oversight hearing can be found under the 9:06 a.m. minutes for this date. See tape 04-20.]

TAPE 04-19, SIDE A

Number 0001

CHAIR WEYHRAUCH reconvened the House State Affairs Standing Committee at 9:32 a.m. after an at-ease that followed the overview.

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

CHAIR WEYHRAUCH announced that the committee would return to 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 0065

MR. POUND noted that he provided the committee with a [two-page handout included in the committee packet], which shows both AS 38.05.127, "Access to navigable or public water", and AS 38.05.128, "Obstructions to navigable water". He stated his belief that this information should answer the majority of the concerns of Representatives Seaton and Holm.

Number 0105

REPRESENTATIVE GRUENBERG offered a hypothetical example of a river with one good fishing site on it that a lot of people use. He asked what would prevent one person from basically "locking that up and keeping everybody else from using it."

MR. POUND indicated that, based upon the previously mentioned statutes, a person may not deny that access. He returned to his example of someone putting up a fence and said that would be obstructing access to navigable water, which is a misdemeanor.

Number 0252

REPRESENTATIVE FATE concurred with Mr. Pound's comments.

REPRESENTATIVE GRUENBERG said that answers his question.

Number 0310

REPRESENTATIVE SEATON asked Ms. Welch to clarify if, under the terms of the fee-simple sales and integral with the sales, AS 38.05.127 would require that public access be maintained along all the water bodies [that are between] 300-400 feet.

Number 0380

MS. WELCH said that's correct. She reiterated that before [DNR] can do any kind of land disposal, it has to do a finding that the waters are public or navigable.

Number 0422

REPRESENTATIVE FATE stated for the record his appreciation of the effort his staff has made on behalf of the bill.

Number 0470

CHAIR WEYHRAUCH closed public testimony.

Number 0490

REPRESENTATIVE GRUENBERG moved to report CSHB 319, Version 23-LS0477\I, Bullock, 2/14/04, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 319(STA) was reported out of the House State Affairs Standing Committee.

HB 329-RETIREMENT INCENTIVE PROGRAM

Number 0536

CHAIR WEYHRAUCH announced that the last order of business was HOUSE BILL NO. 329, "An Act relating to retirement incentive programs for the public employees' retirement system, the judicial retirement system, and the teachers' retirement system; relating to separation incentives for certain state employees; and providing for an effective date."

[Before the committee was the proposed committee substitute (CS) for HB 329, Version 23-LS1109\H, Craver, 1/28/04, adopted as a work draft on 1/29/04.]

[The committee took an at-ease from 9:38 a.m. to 9:42 a.m.]

Number 0623

CHAIR WEYHRAUCH moved to adopt Amendment 1, a handwritten amendment that read as follows [original punctuation provided, with some formatting changed]:

Pg 8.

Delete Sec. 8 & renumber accordingly

Amend title to delete "the judicial retirement system,"

REPRESENTATIVE HOLM objected [for discussion purposes].

CHAIR WEYHRAUCH stated that there was previous testimony [at a prior hearing] that "the judiciary was put in because it was based on a previous version of the bill." He said, "There was no testimony before the committee that that was necessary. It seemed to adjust one person, and I'm not sure if the sponsor objected to deleting that one person. It just dealt with the administrative director of the court system."

Number 0690

REPRESENTATIVE LESIL McGUIRE, Alaska State Legislature, as sponsor of HB 329, stated that she has no objection.

CHAIR WEYHRAUCH noted that "that" would also require that the title be changed to delete the judicial retirement system, because that would no longer be affected by the Retirement Incentive Plan (RIP) bill.

MS. McGUIRE answered correct.

Number 0695

REPRESENTATIVE HOLM removed his objection.

CHAIR WEYHRAUCH asked if there was any further objection to Amendment 1. There being none, Amendment 1 was adopted. In response to a question from Representative Seaton, he clarified the adopted Amendment 1.

Number 0740

CHAIR WEYHRAUCH moved to adopt Amendment 2, a handwritten amendment that read as follows [original punctuation provided, with some formatting changed]:

Pg 2 line 16
after system, "and"

line 18
after section, "and"

CHAIR WEYHRAUCH noted that during the last hearing on HB 329, there was testimony that [paragraphs (1), (2), and (3), in subsection (b), page 2] were to be cumulative as opposed to alternative requirements. Amendment 2 would make that change.

Number 0770

REPRESENTATIVE BERKOWITZ stated that he wants to make certain that [Amendment 2] comports with the legislative style manual.

CHAIR WEYHRAUCH replied, "To the extent that it needs to be tinkered with by legislative drafting, they have my permission."

Number 0800

CHAIR WEYHRAUCH asked if there was further objection to Amendment 2. Hearing no objection, he announced that Amendment 2 was adopted.

Number 0850

CHAIR WEYHRAUCH moved to adopt Amendment 3, a handwritten amendment that read as follows [original punctuation provided, with some formatting changed]:

Add New Sec. 13 & renumber accordingly.

13. Implementation of this RIP shall not impair any existing beneficiary of PERS or TERS [sic], nor diminish any benefit any current beneficiary of PERS and TERS [sic] expects to receive as a beneficiary.

Number 0859

REPRESENTATIVE HOLM objected.

CHAIR WEYHRAUCH noted that Amendment 3 addresses the concern that those who are presently in the system wouldn't have their benefits diminished if a RIP bill is adopted.

Number 0929

REPRESENTATIVE GRUENBERG [moved to adopt] a conceptual amendment to Amendment 3, which read as follows, [original punctuation provided]:

The boards of the public employees retirement system and the teachers retirement system shall have the authority to suspend further enrollment in the retirement incentive programs authorized by this act upon a determination that further enrollment would have a significant negative effect on the actuarial soundness of the system.

REPRESENTATIVE GRUENBERG mentioned he wants to ensure the integrity of the existing [Public Employees' Retirement System (PERS)] and [Teachers' Retirement System (TRS)], and also the university [retirement system].

CHAIR WEYHRAUCH objected for discussion purposes.

Number 0958

REPRESENTATIVE GRUENBERG said he would like to add a couple of words to the conceptual amendment to Amendment 3 as follows:

After the words "public employees retirement system"
Insert ", university retirement system,"

Number 1062

REPRESENTATIVE McGUIRE stated that she is not aware of a separate retirement system for the university.

CHAIR WEYHRAUCH opined that the university is covered under "this program the board of regents adopted, beginning on Section 4, on page 5."

REPRESENTATIVE McGUIRE offered her understanding that "they're covered under TRS or PERS."

CHAIR WEYHRAUCH concurred.

Number 1073

REPRESENTATIVE SEATON related his belief that the university does have a separate retirement system that it has adopted, which is an "opt pay" that is "paid in and paid out when they leave." He compared it to a 401(K) retirement system. The employees have one month after employment to opt in to the PERS system or to the university retirement system. He clarified that it's a defined contribution program, rather than a defined benefit program.

Number 1109

REPRESENTATIVE BERKOWITZ stated, "It seems to me if you're going to do this, then you need to make a ... conforming title amendment."

REPRESENTATIVE GRUENBERG said, "Absolutely. He suggested that could be "a second amendment to the amendment."

Number 1142

CHAIR WEYHRAUCH asked if there was any objection to [Representative Gruenberg's amendment to the conceptual amendment to Amendment 3, adding the university retirement system]. There being no objection, it was so ordered.

Number 1168

CHAIR WEYHRAUCH asked if there was any objection to the conforming conceptual title amendment [suggested by Representative Berkowitz]. There being none, it was so ordered.

Number 1185

REPRESENTATIVE SEATON commented that the committee is running fast. He said, "A defined contribution program does not have any of the actuarial significance that a defined benefit program has, and so, including this in here is going to be confusing, because they don't apply." He requested that that be removed.

Number 1213

REPRESENTATIVE GRUENBERG [moved] to rescind the action to include the university retirement system. There being no objection, it was so ordered.

REPRESENTATIVE BERKOWITZ indicated that the conforming title amendment be stricken, because [it's no longer necessary].

REPRESENTATIVE GRUENBERG [moved] to rescind the committee's action [in adopting the conforming title].

CHAIR WEYHRAUCH said, "So rescinded."

Number 1232

REPRESENTATIVE GRUENBERG [renewed his motion] to adopt his conceptual amendment [to Amendment 3, text provided previously].

Number 1249

CHAIR WEYHRAUCH asked, "If I removed my objection to the amendment to the amendment, is there further objection?" [No objection was stated, and the conceptual amendment to Amendment 3 was treated as adopted.]

Number 1270

REPRESENTATIVE HOLM removed his objection to Amendment 3 [as amended].

CHAIR WEYHRAUCH asked if there was any further objection to Amendment 3, as amended. There being none, Amendment 3 [as amended] was adopted.

Number 1300

CHAIR WEYHRAUCH moved to adopt Amendment 4, a handwritten amendment that read as follows [original punctuation provided, with some formatting changed]:

Page 2, line 4
After "appropriate"
add "and subject to the requirements of section 13,"

Number 1315

REPRESENTATIVE HOLM objected.

CHAIR WEYHRAUCH explained that Amendment 4 refers to the adopted Amendment 3. He said it "brings it back into the beginning of the bill."

REPRESENTATIVE HOLM offered his recollection that the word "should" was used at one time.

Number 1399

REPRESENTATIVE GRUENBERG proffered that that was "something that Fate Putman suggested," but it was not actually amended. He said he would be prepared to address that after finishing with Amendment 4.

Number 1421

REPRESENTATIVE HOLM removed his objection to Amendment 4.

Number 1430

CHAIR WEYHRAUCH asked if there was any further objection to Amendment 4. There being none, Amendment 4 was adopted.

Number 1500

REPRESENTATIVE GRUENBERG turned to the amendment to which Representative Holm had previously referred. As suggested by Mr. Putman during a previous hearing of the bill, Representative Gruenberg offered Amendment 5 as follows:

On page 2, line 5
After "employer"
Delete "need not"
Insert "should"

On page 2, line 6
Between "would" and "be"
Delete "otherwise"

Number 1545

CHAIR WEYHRAUCH objected.

Number 1553

REPRESENTATIVE HOLM asked if there would be a fiscal impact. He stated, "I'm concerned that we take an employer - in this case the school districts and whatever - and we say they should extend the incentive plan without knowing what the impact of that's going to be."

Number 1560

REPRESENTATIVE BERKOWITZ opined that the decision that the House State Affairs Standing Committee has to make is whether it believes that Representative Gruenberg's proposal is better policy; the House Finance Committee will determine whether [the state] can afford that better policy.

Number 1580

REPRESENTATIVE SEATON said he thinks [Amendment 5] would significantly change the character of the bill. He indicated that it would be a change from gaining efficiencies for the system by allowing some rehires, for example, to almost a legislative mandate to [extend the incentive plan] to all employees, by using the word "should". He said he thinks it would create legal challenges because of the uncertain interpretation of the word "should". He stated his opposition to Amendment 5.

Number 1666

REPRESENTATIVE MCGUIRE said she also opposes [Amendment 5] for many of the reasons that Representative Seaton just stated. She emphasized that one of the important aspects of crafting [the bill] was in ensuring that the RIP would be completely voluntary and could be used as a managerial tool to help save money where appropriate. She reminded the committee that "any plan ultimately has to go through the Department of Administration." If the plan doesn't meet savings criteria, it will never go through, she warned. She said, "In point of fact, I've maintained from the beginning [that] this ought to be a zero fiscal note, especially with your amendments now."

Number 1720

REPRESENTATIVE BERKOWITZ stated that "it's just all ... instructive language, so we're arguing about nothing." He encouraged the committee to bring the bill to a vote.

Number 1773

A roll call vote was taken. Representatives Berkowitz and Gruenberg voted in favor of Amendment 5. Representatives Lynn, Holm, Seaton, Coghill, and Weyhrauch voted against it. Therefore, Amendment 5 failed by a vote of 2-5.

Number 1800

REPRESENTATIVE GRUENBERG moved to report [CSHB 329, as amended, out of committee with individual recommendations and the accompanying fiscal notes]. There being no objection, CSHB 329(STA) was reported out of the House State Affairs Standing Committee.

ADJOURNMENT

Number 1820

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:00 a.m.