

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

April 26, 2006

1:34 p.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Co-Chair  
Representative Jim Elkins  
Representative Carl Gatto  
Representative Gabrielle LeDoux  
Representative Kurt Olson  
Representative Paul Seaton  
Representative Harry Crawford  
Representative Mary Kapsner

**MEMBERS ABSENT**

Representative Ralph Samuels, Co-Chair

**COMMITTEE CALENDAR**

HOUSE BILL NO. 497

"An Act providing for the transfer of property at Clark Bay to the Inter-Island Ferry Authority."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 497

SHORT TITLE: TRANSFER CLARK BAY TERMINAL

SPONSOR(S): TRANSPORTATION

03/29/06	(H)	READ THE FIRST TIME - REFERRALS
03/29/06	(H)	RES, FIN
04/26/06	(H)	RES AT 1:00 PM CAPITOL 124

**WITNESS REGISTER**

JENNIFER BAXTER, Staff  
to Representative Jim Elkins  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Presented HB 497 on behalf of Representative Elkins, sponsor.

REPRESENTATIVE BILL THOMAS

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 497.

JOHN PEARSON, Volunteer

Project Planning and Coordination

Hyder Board of Trade, Inc.

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 497.

DICK MYLIUS, Director

Division of Mining, Land and Water

Department of Natural Resources

Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 497.

#### **ACTION NARRATIVE**

**CO-CHAIR JAY RAMRAS** called the House Resources Standing Committee meeting to order at [1:34:38 PM](#). Representatives Olson, Ramras, Elkins, Seaton, and Gatto were present at the call to order. Representatives Kapsner, Crawford, and LeDoux arrived as the meeting was in progress.

#### HB 497-TRANSFER CLARK BAY TERMINAL

CO-CHAIR RAMRAS announced that the only order of business would be HOUSE BILL NO. 497, "An Act providing for the transfer of property at Clark Bay to the Inter-Island Ferry Authority."

REPRESENTATIVE SEATON moved to adopt the committee substitute (CS) for HB 497 labeled 24-LS1740\Y, Kurtz/Bullock, 4/17/06 as a work draft. Hearing no objections, Version Y was before the committee.

JENNIFER BAXTER, Staff to Representative Elkins, presented the CS to HB 497, which will authorize the Department of Natural Resources (DNR) to transfer property at Clark Bay to the Inter-Island Ferry Authority for the operation of a terminal on Prince of Wales Island. The terminal will provide more efficient ferry service to Ketchikan, Prince of Wales Island and adjacent areas. It will implement the intent of the memorandum of agreement between Alaska and the Inter-Island Ferry Authority, she stated. The CS also includes authorization for DNR to transfer land to the Hyder Board of Trade, Inc. for marine and economic development initiatives. She stated that the Roanan Corporation

will work with the board of trade to acquire and develop unoccupied tidelands between its waterfront property and the Hyder causeway. She said "this area" is the same size that the board of trade seeks to have transferred. She pointed out that there is information in the packet about the [the board of trade] plans. She noted that if either the Inter-Island Ferry Authority or the Hyder Board of Trade Inc. ceases to exist, the lands will revert back to DNR.

REPRESENTATIVE ELKINS suggested addressing the Clark Bay land transfer first.

[1:39:13 PM](#)

REPRESENTATIVE BILL THOMAS, Alaska State Legislature, said he supports the CS of HB 497. He has communities that are dependent on the Clark Bay land transfer. He represents Hyder and told the committee that he asked that their request be included in the bill. He said the Department of Transportation & Public Facilities (DOT&PF) supports the Clark Bay transfer.

REPRESENTATIVE GATTO asked about AS 38.05.027 regarding the authority of the DNR commissioner to transfer lands after determining if it is in the best interest of the public. He surmised that a best-interest finding will be required.

[1:42:01 PM](#)

REPRESENTATIVE ELKINS said the land transfer is fulfilling a commitment to the Inter-Island Ferry Authority, and he does not know if a best-interest finding has been done.

REPRESENTATIVE ELKINS said the bill deals with a ferry run that the state did not want to operate and turned over to a private entity. It then surpassed every passenger and vehicle ridership levels from Prince of Wales Island, he stated. "They got in the service business and provided a service to the people on Prince of Wales." Ketchikan Gateway Borough guaranteed the bonds for the first vessel, he said, and the federal government built a ship to service Wrangell and Petersburg. "They don't have a ferry terminal and this would fulfill that obligation."

The committee took an at-ease from 1:43 p.m. to [1:48:54 PM](#).

JOHN PEARSON, Volunteer, Hyder Board of Trade, Inc., said he is retired from being an economic development specialist with the Alaska Department of Commerce. He said the board is a 501c6

organization designed to spearhead sustainable economic activities in Hyder. He said Hyder is the eastern most community in Alaska and 164 miles by boat to Ketchikan. Primary access is the Cassiar Highway, and Hyder is neighbors with Stewart, British Columbia, Canada, he noted. It is an unincorporated community, and to incorporate the community needs an economic base. This bill provides a unique opportunity to create valuable jobs in Hyder and Ketchikan. The marine infrastructure is critical, he opined. Currently the state has a 1,700-foot-long island on a trestle into the Portland Canal that float planes use. He showed a photo and said the massive gravel deposits of the Salmon River include 7.5 million cubic yards of new gravel every year. It is plugging up the river, which "sits about nine feet above the community."

MR. PEARSON said the gravel is clean and of high quality, and the state would get royalties of \$1.50 per cubic yard. The project will inject significant money into the state. "The project is to secure two parcels of tideland." One is surveyed and used by the community, and the other is unsurveyed tideland. One piece is 0.4 acres, and the other is 1.9 acres, he stated.

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MR. PEARSON said the Roanan Corporation is a "major, major holder of land in Hyder." He said it has been a good corporate neighbor and will step to the plate and provide an equal amount of adjacent land to expand the project.

MR. PEARSON said Roanan is "heavy into mining and construction and built the majority of the Cassiar Highway." The board wants to attract the small cruise industry. There are small ecotour vessels, but homeland security requirements are getting stringent, he noted. The vessels require security but the state requires public access to the state float, which is about to collapse, he stated.

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MR. PEARSON said a float will be added to allow large traffic to come to Hyder. He is not pushing for ferry service, but "once fresh fish hits Hyder" it can be delivered to Chicago in hours. He said securing the two parcels will put the community in a position to show that rural partnerships can work. He noted that the Denali Commission and others will participate.

[2:00:01 PM](#)

REPRESENTATIVE ELKINS asked about the Roanan Corporation moving people [to Hyder].

MR. PEARSON said there will be about 100 new people coming into Hyder--very significant to a town of 130. There are massive mining operations in British Columbia, he said, and the port can handle the raw material going out. Hyder is one of two ports in the nation that is exempt from the Jones Act, which will be very significant to the movement of pipe to the gas line.

MR. PEARSON said Savannah, Georgia is also exempt from the Jones Act. Hyder was exempted because it was used by Canadian miners in the 1920s.

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CO-CHAIR RAMRAS read the fiscal note stating that these are small parcels with minimal fiscal impact, and the Division of Land, Mining, and Water staff will prepare the best-interest finding, which will include public review.

REPRESENTATIVE ELKINS said the head of the Roanan Corporation was in his office expressing great interest and that the future of Hyder is to become incorporated. "His goal is, when he gets his employees in there, to convince them to facilitate that matter, so that's another plus...for this community." He said DNR should be excited because of the gravel royalties. The corporation is willing to donate an equal amount of land to make this possible. He said [Hyder] decided to sell water, and Canadians from the neighboring community laid the water lines. He said Hyder children used to go to Stewart schools.

[2:05:39 PM](#)

REPRESENTATIVE GATTO asked about the land for a ferry terminal, "or is it just for a causeway?"

REPRESENTATIVE ELKINS said the tidelands will be filled and will be used to unload barges and dock ships. It will also be used to haul gravel out of the gravel pit, and Canadian ore will be shipped out from there, he added.

MR. PEARSON explained to Representative Gatto that the inter-island ferry is not associated with this project; "however, the facilities that we will build will be multi-use, so that we can handle resource barges, we can handle the [Alaska Marine Highway

System], we could handle the [indecipherable] if it is necessary, and small cruise ships." The ferry issue is important, he said, because a homeland security event in Seattle would impact Alaska's [ferry] access, so his facility would be built to AMHS specifications.

2:09:35 PM

REPRESENTATIVE GATTO said now the discussion is getting into homeland security and monstrous gravel resources.

DICK MYLIUS, Director, Division of Mining, Land and Water, said the bill requires that DNR transfer four parcels of land. Two parcels are subject to a management agreement between DNR and DOT&PF, and DOT&PF has a subsequent agreement with the ferry authority regarding the management of the facilities, but the facilities are still owned by DOT&PF. He said the legislature has been reluctant to transfer tidelands out of state ownership because the constitution requires the protection of public trust values of the tidelands. The state has generally felt that keeping tidelands in public ownership is the best way to protect public use, he said. Transferring tidelands is usually only to municipalities and with restrictions that are not included in this bill. The objectives can be met with leasing instead of transferring lands, he noted, so DNR opposes the transfer.

2:13:20 PM

MR. MYLIUS said the Clark Bay parcel could also be done through a lease, and the undeveloped parcel could be sold. If the bill goes forward, it should clarify if the commissioner is given authority to transfer the land or if the bill requires that it be transferred. He also asked about the price paid to the state. He said DNR would request public access and public trust rights for the land. He added that he would be happy to talk with the entities about options under existing statutes.

REPRESENTATIVE KAPSNER asked about the Salmon River being clogged up unless the gravel is removed. She surmised it would be in the state's best interest to take the gravel out.

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MR. MYLIUS said gravel can be removed. DNR sells gravel from state land, so if the gravel is on the tidelands, DNR could sell it "if somebody wanted to remove it."

REPRESENTATIVE KAPSNER asked if that is being done now.

MR. MYLIUS said gravel sales are market driven and nobody has come to DNR to express interest in the gravel.

REPRESENTATIVE SEATON, referring to the provision where the land reverts back to DNR if the ferry authority ceases to exist, asked if this is really an ownership transfer.

MR. MYLIUS said the bill would require a transfer and that clause is not uncommon. He expressed his concern that this transfer doesn't prohibit the new owners from selling the land to another entity.

REPRESENTATIVE LEDOUX noted that on page 2 the bill states that the land may not be transferred to another person.

MR. MYLIUS said that is for the transfer to the board of trade, and there is not a similar provision for the ferry parcel.

CO-CHAIR RAMRAS surmised that DNR opposes the bill as written.

MR. MYLIUS said yes.

[2:17:31 PM](#)

REPRESENTATIVE ELKINS said the bill could be amended to apply the same non-transfer standard for the Clark Bay property.

CO-CHAIR RAMRAS asked Mr. Mylius what would need to be addressed in order to make DNR comfortable with HB 497.

MR. MYLIUS said DNR needs to know if it is being directed to transfer the lands or if it has the authority to do it once a best-interest finding and public notice is done. The bill needs to clarify whether the state is selling the land at fair market value or giving it away for free. There must be provisions for protecting public access and public trust values of the land, he explained. Regarding the board of trade parcel, DNR would oppose any actual transfer of title because it would not go to a public entity. It would go against a state policy that has been intact since statehood. If it were a lease, there would be no need for legislation, he stated.

[2:20:38 PM](#)

REPRESENTATIVE SEATON asked if both transfers could be leases instead, and if that has been requested and then denied.

MR. MYLIUS said there have been no applications submitted for either parcel. There have been preliminary discussions with the Roanan Corporation, but "we haven't said no to anything."

[2:21:55 PM](#)

REPRESENTATIVE SEATON asked about the time frame for a lease.

MR. MYLIUS said it can take a couple of years, and it depends on how complete the application is when it arrives at DNR. There will be best-interest findings, public notice, and land surveys.

REPRESENTATIVE SEATON asked if the legislature could direct an expedited lease.

MR. MYLIUS said he doesn't know how legislative intent would expedite the process. Under state law the land cannot be sold to the board of trade, and the improved parcels cannot be sold to the Inter-Island Ferry Authority.

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REPRESENTATIVE SEATON referred to a November 2005 letter noting that the state can enter into an agreement with the ferry authority to utilize the facilities.

REPRESENTATIVE ELKINS said all of Alaska's harbors were transferred to municipalities without a finding, "so I don't think that holds very much water." He said the intent of the legislation is to mandate the transfer of this land, "not the bureaucratic discretion that could take the rest of my lifetime, which I don't care to wait for." He said public agencies can't move as fast as Mr. Mylius is suggesting.

[2:25:12 PM](#)

REPRESENTATIVE GATTO asked about the term "authorize" on page 1 and asked if it is permissive or a requirement.

MR. MYLIUS said "authorize" usually means it is discretionary, but the following line doesn't sound discretionary, and the lack of clarity could lead to a future legal argument.

REPRESENTATIVE GATTO asked about replacing the language to read "may be transferred."

MR. MYLIUS said some sort of language like that should work.

REPRESENTATIVE KAPSNER said it could all be "shall" language to meet the intent of the sponsor.

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MR. MYLIUS said, in response to Representative Seaton, there is a fundamental concern about creating statutory authority to transfer land to the Hyder Board of Trade.

REPRESENTATIVE SEATON asked about an expedited process.

MR. MYLIUS said there is a small backlog of lease applications. The legislature could move an application to the front of the line, but other applicants might not be happy about it, he said. But it is difficult to speed up the mandatory public notice and statute appeal period. The surveys and appraisals are done by the private sector and take considerable time as well.

REPRESENTATIVE SEATON asked if the university land transfers are completed.

MR. MYLIUS said the agreement was for DNR to go out for a [request for proposal] to do the deed and title work. It will be a three-year process, he noted.

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REPRESENTATIVE GATTO asked if a survey and appraisal would need to be done for any land transfer or lease.

MR. MYLIUS said the survey would be required, but the appraisal requirement is not clear from the bill.

REPRESENTATIVE GATTO asked about running afoul of other statutes and ultimately bringing the process to a standstill.

MR. MYLIUS said there is no problem with transferring to the ferry authority, except DNR has no authority to transfer the improvements without legislative approval. The Hyder land transfer has constitutional issues.

[2:32:31 PM](#)

REPRESENTATIVE SEATON asked about the 2005 letter to Thomas Briggs from Malcolm Menzies. He asked if that problem goes away if the buildings are demolished or removed.

MR. MYLIUS said it sounds like that may be within the authority of DOT&PF.

REPRESENTATIVE SEATON asked if leases need to reflect fair market rates and how that would be determined for land to be filled.

[2:34:29 PM](#)

MR. MYLIUS said at Clark Bay there is authority to do a lease at less than fair market value because it is a public entity, so an appraisal wouldn't be an issue. The other parcel would be appraised as it currently is--undeveloped tidelands.

REPRESENTATIVE SEATON surmised that gravel from the Salmon River could be sold under current regulations.

MR. MYLIUS said selling state-owned gravel would not need to be part of this legislation.

REPRESENTATIVE ELKINS said, "I think you've given me every reason under the sun why we don't want to get involved with a lease--why I don't want to get involved with a lease--and I'm sure the people down there in Hyder don't. It would seem to me that you got to get off of your thumbs and get behind this project so you can start getting some income off of that gravel; you could get...up to \$10 million a year, instead of the way it's going. You're setting on your hands and trying to impede this development down there. Sometimes it is no wonder people shy away with wanting to do business with the State of Alaska."

REPRESENTATIVE SEATON said there has been no application for a lease for these projects. He doesn't want to blame DNR.

REPRESENTATIVE ELKINS said, "I do."

REPRESENTATIVE SEATON asked if his intention is to give the land away or to sell it at fair market value.

REPRESENTATIVE ELKINS said, "My intent was to transfer these lands to the entities without discretion, and tomorrow's not soon enough--at no cost."

[2:37:39 PM](#)

REPRESENTATIVE SEATON asked if he was amenable to a requirement that the land can't be sold or transferred.

REPRESENTATIVE ELKINS said yes, and the federal government sees the board of trade as a legal entity "down there to do business with." He said DOT&PF has also recognized it, and "that's a pretty weak call that DNR is taking."

REPRESENTATIVE SEATON explained to Co-Chair Ramras that there is a difference in opinion between DNR and the sponsor. The lease of Clark Bay wouldn't need a survey or appraisal because it is a public entity. There is a constitutional problem to transfer land to the board of trade. The sponsor's intent is to provide the lands free of charge.

[2:39:45 PM](#)

REPRESENTATIVE ELKINS said there is a private corporation that will donate land, and if anything went wrong, the land would go back to the state. "Something is being paid if you look at it from that standpoint," he said.

CO-CHAIR RAMRAS said he is excited that a remote community can add 100 jobs and add quality of life to people, so "I am always going to side on that side." He said he is with Representative Elkins and will work on it tomorrow. He said there is consensus to work through this for the benefit of the Hyder community. He asked what approach the committee needs to take in order to modify the bill and stay within constitutional boundaries.

[2:42:57 PM](#)

REPRESENTATIVE SEATON said the bill should be broken into two sections, because the only constitutional problem is with the Hyder lands. He noted that Representative Elkins said that land from the Roanan Corporation would revert to the state if "something happens," but that is not in the bill. If that is the intent, then that should be added, he said.

[2:44:05 PM](#)

REPRESENTATIVE ELKINS said he ask the corporation tomorrow.

REPRESENTATIVE GATTO said he doesn't know if the committee can overrule the constitution, particularly regarding access.

CO-CHAIR RAMRAS said, "We're going to try [very] hard."

REPRESENTATIVE GATTO said, "If you have a way around it, I am dying to hear it." He said he was referring to transferring state property that isn't for the benefit of the public, and guaranteeing access. He thinks leasing the land instead of transferring it "has merit."

MR. MYLIUS said DNR can do a lease under existing authority with the ability to deal with public trust concerns. For the Clark Bay lands, the lease can be for less than fair market value, he noted. He said DNR has not received any applications from either entity.

REPRESENTATIVE SEATON said a letter of intent can move the leases to the head of the line, but with a survey it could be a longer process.

CO-CHAIR RAMRAS asked when the corporation wants to come in with a workforce of 100 people to increase the vitality of Hyder.

[2:46:46 PM](#)

MR. PEARSON said the first people will be on site next month, but "they will not be focusing on this particular...they've got other things they need to do."

CO-CHAIR RAMRAS asked if time is of the essence.

MR. PEARSON said, "What we would like to do is in 2008 be in a position to start doing construction."

REPRESENTATIVE GATTO asked if the legislature can direct DNR to enter into a lease agreement and name the parties.

[2:47:41 PM](#)

MR. MYLIUS said DNR has that authority. "They just need to apply."

REPRESENTATIVE GATTO asked how the legislature could direct DNR to enter into talks.

MR. MYLIUS said the message is clear, but without an applicant, DNR can't do anything. It takes some commitment on their part; there would need to be a development plan with some idea of what they are planning to do. DNR has received nothing, he stated.

[2:49:19 PM](#)

REPRESENTATIVE GATTO said he has seen a plan. If an application were submitted would it go to the bottom of the pile? He asked how the committee could get DNR to deal with it quickly.

MR. MYLIUS said the normal process is first in, first up. Some applications are for pipedreams and some things are ready to go, "so the guy with the checkbook usually gets moved to the front of the line."

REPRESENTATIVE SEATON asked if the committee needs to indicate that the Clark Bay lease should be less than fair market value.

MR. MYLIUS said that would qualify under statute already.

[2:51:34 PM](#)

REPRESENTATIVE SEATON asked if Hyder became incorporated, would DNR be able to work with them.

MR. MYLIUS said yes, under a different statute.

REPRESENTATIVE SEATON asked if access is required on the uplands and tidelands.

MR. MYLIUS said the issue is access along and to the tidelands for navigation "and such." If Hyder became a community, DNR could convey title to the municipality.

[2:52:56 PM](#)

CO-CHAIR RAMRAS asked Representative Elkins if he has enough guidelines to craft "something for us."

[HB 497 was held over]

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at [2:54 PM](#).