

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 5, 2012

1:06 p.m.

MEMBERS PRESENT

Representative Eric Feige, Co-Chair
Representative Paul Seaton, Co-Chair
Representative Peggy Wilson, Vice Chair
Representative Alan Dick
Representative Neal Foster
Representative Cathy Engstrom Munoz
Representative Berta Gardner
Representative Scott Kawasaki

MEMBERS ABSENT

Representative Bob Herron

COMMITTEE CALENDAR

HOUSE BILL NO. 361

"An Act relating to the Alaska Land Act, including certain lease, sale, and other disposal of state land and materials; relating to production royalties from miners; relating to rights to use state water; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 361

SHORT TITLE: DISPOSALS OF STATE RESOURCES/ROYALTIES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/29/12	(H)	READ THE FIRST TIME - REFERRALS
02/29/12	(H)	RES, FIN
03/05/12	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

DAN SULLIVAN, Commissioner
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Presented HB 361 on behalf of the governor.

WYN MENEFEER, Chief of Operations
Central Office
Division of Mining, Land and Water
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Reviewed the objectives of HB 361 on behalf of the governor.

CAMERON LEONARD, Senior Assistant Attorney General
Natural Resources Section
Civil Division (Fairbanks)
Department of Law
Fairbanks, Alaska

POSITION STATEMENT: Answered questions regarding HB 361.

PAUL VERHAGEN, Staff
Representative Alan Dick
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 361.

ACTION NARRATIVE

[1:06:32 PM](#)

CO-CHAIR ERIC FEIGE called the House Resources Standing Committee meeting to order at 1:06 p.m. Representatives Dick, Kawasaki, Gardner, Foster, Munoz, Seaton, and Feige were present at the call to order. Representative P. Wilson arrived as the meeting was in progress.

HB 361-DISPOSALS OF STATE RESOURCES/ROYALTIES

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CO-CHAIR FEIGE announced that the only order of business would be HOUSE BILL NO. 361, "An Act relating to the Alaska Land Act, including certain lease, sale, and other disposal of state land and materials; relating to production royalties from miners; relating to rights to use state water; and providing for an effective date."

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DAN SULLIVAN, Commissioner, Department of Natural Resources, explained that HB 361 is one part of the process for dealing with the issue of broad permitting reform across a number of

fronts critical to the state. The administration's effort on permitting reform has strong bipartisan support; the bill is the beginning of a process and the administration is open to more ideas. Over the last year the Department of Natural Resources (DNR) has travelled the state asking for and encouraging input on permitting reform.

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COMMISSIONER SULLIVAN said the department has focused on five different areas with regard to permitting reform. The focus of HB 361 is to improve the agency's internal permitting structure so that it is efficient, timely, and certain, which will reduce the backlog. The department is working to enhance coordination within different state departments and with different entities and stakeholders throughout the state. The department has also sought input from the public about the permitting process, including input from localities, municipalities, industry, and non-governmental organizations. The department has held eight meetings throughout the state with different groups to get good ideas, some of which are reflected in HB 361. Another focus is improving coordination between state and federal government because even on state lands federal permitting issues have a strong nexus to what the state is trying to do. Additionally, there has been focus on anticipating and planning for permitting in the next phases of resource development that the state has yet to see, one example of this being the shale oil task force.

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COMMISSIONER SULLIVAN shared that the department is part of a national effort, with Alaska in many ways leading efforts that others are joining for addressing the problem of getting large- and small-scale resource development projects done in a timely manner. The large network of complex federal and state regulatory systems almost ensures the delay of any significant projects. The department's own backlog of 2,500 permits is an example and it is not helping the state's economic or job prospects. Other examples are the Kensington Gold Mine, the Shell Oil exploration wells, and timber sales. Broad bipartisan consensus has emerged across the U.S. that this big problem needs to be tackled. For example, last week The Economist carried a cover story entitled, "Over-Regulated America". Former president Bill Clinton wrote an article in Newsweek this past fall where he mentioned that a way to jumpstart the economy is to make the approval and regulatory process faster and more efficient. In today's Wall Street

Journal the governor of Massachusetts is making the cutting of red tape a huge focus of his state government efforts. Governor Brown of California has put out the "permittee's bill of rights".

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COMMISSIONER SULLIVAN posited that the federal government has a schizophrenic approach. President Obama issued an executive order to make energy development more efficient, yet agencies like the National Marine Fisheries Service did not seem to get that memorandum, so last week the state sent comments to the agency. Consensus is building on the recognition that overly burdensome regulations, or regulations that served a purpose 20 years ago, are strangling economic opportunity and inhibiting job growth across the U.S., which is also the case in Alaska.

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COMMISSIONER SULLIVAN said that while DNR thinks it important to focus on efficiency, timeliness, and certainty, the department does not want to cut corners. The state has some of the highest standards for environmental protection and stewardship and the department wants to keep them. He said HB 361 is one piece of a multi-pronged approach that the department looks forward to discussing with the committee.

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WYN MENEFEE, Chief of Operations, Central Office, Division of Mining, Land and Water, Department of Natural Resources (DNR), drew attention to the briefing paper in the committee packets outlining the objectives that HB 361 would accomplish. He said DNR's focus in this first round is to find things that will increase certainty, timeliness, and efficiency, as well as litigation-proofing certain aspects of the state's statutes.

MR. MENEFEE discussed the first objective of HB 361, which would give the department more flexibility to use negotiated leases when possible, rather than a competitive bid process. This would not throw away the bid process, but would allow the use of a shorter, less exhaustive process for those times when the department has determined that there is no competition. He explained that in the competitive bid process of an auction, the department must prepare an auction brochure and go through extra steps, which increases time and cost to the applicant. This provision would raise the monetary caps on negotiated leases

[from \$5,000 to \$10,000], which would allow a few more negotiated leases to come under negotiation. The department would still have to do a final decision and public notice, but the auction procedure would not have to be set up and the lease amount for the tract could instead be negotiated.

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MR. MENEFEЕ, in response to Co-Chair Seaton, pointed out that the most current briefing paper is dated 3/5/12 [as opposed to 2/29/12]. He related that the department had discussed going up to 15 years [for the maximum time period of a negotiated lease], but then decided to leave it at 10 years. He further pointed out that this provision applies only to land leases, not oil and gas leases.

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CO-CHAIR SEATON appreciated this, saying it has been a problem for people having to go with a permit for leases because people can make significant expenditures, such as building fences, only to have the land taken away with 30-days-notice at any time during that five-year permit. However, a difficulty with the permit is that there is no public notice. He inquired how the department will ensure before it does a negotiated lease that there has been public notice and that there is not more than one interested applicant.

MR. MENEFEЕ replied that when the department does a disposal of interest it must follow the requirement in AS 38.05.945 for public noticing of the decision, and this would still apply to the proposed shorter process. The department must tell the public that it is going through this decision process by posting on its web site and by posting locally. The difference in how this would be done is that instead of noticing and then going through the process of preparing an auction for competitive bid, the department would in that first notice state that it has an application for a certain activity for a certain number of years and that the department is going through a decision process on this lease application. The notice will ask that anyone else interested in this particular parcel of land let the department know by a specified date. If there is a response, the department would then go through an auction procedure. If there is no response, the department would then go to direct negotiation with the applicant, which would save time.

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CO-CHAIR SEATON maintained that notice on the web site has not taken place for permitting, which has been a problem. He surmised that a lease would require notice be given versus the temporary use permit. He understood the negotiated lease would be limited to 10 years, not 30 years.

MR. MENEFFEE responded it is broken up into two parts. One part is that for directly negotiated it is the 10-year limitation. However, if there is no response of competitive interest from the public notice, then the lease can be for a longer term than 10 years.

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CO-CHAIR SEATON understood Mr. Menefee to be saying that the department would not go out for public notice if it is a 10-year lease, it would simply be a negotiated lease. But if the lease is for a longer term, then the department would go through a competitive notice process. He expressed his concern about a process that gives the department authority to do a competitive lease and then notify the public that it did this.

MR. MENEFFEE answered that the requirements for what DNR must do for a disposal of interest are in one part of statute that is not addressed in HB 361, so those would not change. The department would still have to notify the public for 30 days on both negotiated and competitive processes. The department would still have to go through a formal best interest finding for either process, which is required by law. The only real difference is the time saver and an additional notice that saves about 30 days by not having to produce an auction brochure for a competitive sale when there is no interest.

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COMMISSIONER SULLIVAN interjected that the notice issues are still there. The only change would be that if after notifying the department learns no one is interested, a competitive lease sale would not be useful because there is no competition. That is where this change would come in.

MR. MENEFFEE added that that would shave off about 30 days of time and money because the applicant must pay for public notice and a brochure must be prepared in an auction procedure. Three different things would not occur if after noticing it is found that no one else but the applicant is interested. There would

still be the public notice and the best interest decision, but it would shave time.

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CO-CHAIR SEATON asked what is being gained because it seems like the two processes are exactly the same if no one else is interested - one process being that the department could do a longer term lease for a 10-year negotiated sale that has no competitive interest and the other process being a \$10,000 limit negotiated lease.

MR. MENEFFEE responded HB 361 would provide that the short process could automatically be done for a negotiated lease that is under the proposed cap of \$10,000 and less than 10 years, which would mean not doing an auction, not preparing a brochure, and not soliciting further competition. The public would be notified about it, but it would not be done competitively and the department could go direct. The statutes already provide that the department can go direct as long as it is underneath the current cap of \$5,000 and under 10 years; the public is noticed that this is happening, but competition is not solicited for it. For example, under HB 361 an application for a 30-year lease worth \$20,000 would require that the department ask whether anyone else wants to do this at this location or use this land for something else. If someone does come back, then the department would do a full auction procedure and competitive process and the highest bidder would get it. In the event there is no interest, the department would do the longer term lease, but it would not have to go through the auction procedure. Conducting an auction procedure when no one else is interested spends a lot of time and money for no gain.

COMMISSIONER SULLIVAN pointed out that the threshold issue is competition. If there is a solicitation and there is interest, the department will then do what is in the interest of the state which is to have competitive bidding to get the highest bid. Currently, however, even if there is no competition, DNR must still go through the process of competitive bidding with brochures and so forth even though it is only for one entity, which is a waste of both the state's and the applicant's time and money.

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REPRESENTATIVE KAWASAKI, saying his question could be answered at a later time, inquired how many leases would be affected by the proposed change of raising the cap from \$5,000 to \$10,000.

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MR. MENEFEЕ addressed Co-Chair Seaton's question about what HB 361 would do in regard to public notice on permitting. He explained that permitting fits under another statute, AS 38.05.850, and that under current statute there is no public notice requirement for permitting, although DNR does put public notice out on most of its permits. However, certain permits are "immediate fast turnaround permits," such as DNR's over-the-counter permit for harvesting non-timber forest products like mushrooms. That is a land use permit and DNR does not go out with public notice because it has already told people it would do an over the counter in advance. So, while there are certain instances where the department does not do further public notice, it does use its web site and does post most everything there. In emergency instances such as a plane crash, the department has the flexibility to immediately authorize rescue people to cross state land with heavy equipment to get to the site, in which case there is no public notice. However, DNR may, after the fact, notify the public that it did authorize this. He clarified that the difference between leasing and permits is that leasing is a disposal of interest for which the legislature has mandated under statute that there be public notice. Nothing is said about permits because they are revocable at will and are of a shorter term of less than five years, although DNR has done public notice on permits anyway.

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REPRESENTATIVE GARDNER asked whether the terms and the amount are public record for those leases that come to fruition, whether negotiated or through auction.

MR. MENEFEЕ replied yes, anything DNR does as an authorization is a public record and anyone can get the actual permit or lease. That is important because the department's decisions are appealable and a person wishing to determine whether he or she agrees or disagrees with DNR's decision must be able to see what the stipulation and terms are.

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MR. MENEFFEE returned to his briefing on the bill's provisions, noting that the second objective or efficiency of HB 361 is to allow the department discretion in renewing land leases in good standing. The department would have the option - it would not be mandated - to decide whether it is the right thing to do a renewal in those cases where the person has met all terms and conditions, made all the payments, and did what was said would be done. A decision and public notice for the renewal would still be required by law, but the department would not have to go through a competitive process to extend the lease. He recalled a question brought up in an earlier committee meeting about whether DNR has requirements that people build what they say they are going to build. Some of DNR's older leases do not have such a provision, but now when DNR goes out for a lease it has a provision. For example, one provision is that if the lessee does not use the lease within two years in the way the lessee said it would be used, DNR can cancel the lease. Another provision is that to get a final lease the lessee must provide DNR with a survey after any proposed buildings are built. A timeline for this is included in the lease and penalties will be applied if this is not done according to the lessee's development plan.

COMMISSIONER SULLIVAN added that, in that way, these are analogous to oil and gas leases, but said these changes do not apply to oil and gas leases.

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CO-CHAIR SEATON requested Mr. Menefee to provide a list of these types of leases and asked whether this would apply to all leases except oil and gas.

MR. MENEFFEE replied that the provision would not be for all leases. Not included would be anything with forestry because that is done under different statutes. Oil and gas would not be included. A separate section deals with mining leases. Also, in the way stated in the bill, aquaculture would not be included. Included would be upland leases and tideland leases, such as docks. In further response to Co-Chair Seaton, he agreed to provide a list of what is included and a list of what is not included.

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MR. MENEFFEE moved to the third objective of HB 361, which would be to separate statutes that have been confusing to both the

public and to department staff. Timber sales and material sales are currently mixed together in one pot, although procedures for each of these are different. Under HB 361, there would be separate statutes for timber and separate statutes for material sales. The bill would also make things more expeditious for material sales by including provisions for the renewing of leases and direct negotiation on material sales when solicitation shows there is no competitive interest. Another issue is that, currently, when DNR sells multiple contracts out of the same materials site, it does individual decisions on each one of those contracts. Since the public has already been told that gravel will be taken out of such a site, HB 361 would allow for just one decision for that site. Additionally, HB 361 has a special purposes provision on material sales; for example, people wanting to take material out of a river for flood control where that material is actually contributing to the flooding and causing the state to have to do emergency response and road repair. This provision would allow for getting that material out at a price less than fair market value and would apply to communities, individuals, and commercial entities; a prime example of this issue is Seward.

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CO-CHAIR SEATON noted that [HB 89] is currently in the Senate, which looks at this same issue and would specifically require a minimum of 12.5 percent of net profits. He did not think that DNR currently has the authority to go to a net profit valuation versus the sale by quantity. He said he is unsure how broad an authority is being asked for under HB 361, such as providing that the material can be sold at less than fair market value and having the industry know what the net profit basis is when it comes to the department. He expressed his concern that apples and oranges are being mixed and that the impetus will be lost for getting bedload material available for removal at the 12.5 percent net profit royalty. He requested Mr. Menefee to comment on the definition of less than fair market value because he fears there will not be a definition until someone negotiates it with the department. He further noted that there were a lot of questions from DNR and the Department of Transportation & Public Facilities (DOTPF) about wanting engineering studies to prevent the undercutting of bridges and so forth.

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MR. MENEFEE responded that DNR does not see the 12.5 percent in HB 89 as conflicting with this provision in HB 361 because the

provision in HB 89 would be a more specific statute that specifically says what is to be done for commercial operations. When there is a more specific statute, that statute will rule the day. So, even if HB 361 provides for below fair market value, DNR would go with the more specific statute if there is one. He added that HB 361 would cover the fringes of what HB 89 does not cover. For example, HB 89 could not be used if an individual came to DNR wanting to take out material that would not be sold and a net profit could not therefore be calculated, but HB 361 would give the department the ability to do that at less than fair market value if the department deems it in the best interest of the state. The department would go through a decision process and would look to regulations to provide some guidance.

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MR. MENEFEE read the provision in HB 361 [page 11, lines 26-31] regarding the disposal of materials under AS 38.05.872: "The commissioner may convey materials at less than fair market value to municipalities, other state and federal agencies, or other entities, and make other arrangements for land and materials as mitigation of a flooding area where excess material deposition significantly contributes to the flooding, consistent with a site-specific flood mitigation plan approved by the commissioner and determined to be in the best interests of the public." He said the department would have to write regulations that back that up and in those regulations for a site specific flood mitigation plan, the department would want to ensure that there is proof that the materials being deposited are actually contributing to the flood damage. The department would further look at the engineering aspect to ensure that such removal would not result in the washing out of a downstream bridge. With an approved site-specific mitigation plan, any subsequent sales that abide with that plan would be covered. He therefore thought that HB 361 would capture Co-Chair Seaton's intention, which is to ensure that it is sound engineering-wise and in the public interest; additionally, it would cover noncommercial takes of the material by a community or an individual.

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CO-CHAIR SEATON pointed out that the current price on the Kenai Peninsula is \$3.25 a [cubic] yard, but for a municipality the price is \$.50 a [cubic] yard. Also, adjacent landowners can take out gravel and store it on their land without charge. He

inquired whether a different statutory basis is needed to keep doing this.

MR. MENEFFEE clarified that if DNR issues a public and charitable material sale under the current statute of AS 38.05.810, and it is at less than fair market value, DNR can under regulation use the rate of \$.50 per cubic yard. So, it is correct that any municipality going through the process of getting a permit in place for a material sale can do that. However, a municipality or borough does not want to be saddled with that cost if an individual wants to take it out and, secondly, it must be for public purposes. Taking out material and putting it on someone's driveway becomes a beneficial use and therefore it does not fit under that statute; thus, DNR would have to issue a material sale directly with that individual and charge the higher rate because it would be used for beneficial purposes. If it is going to benefit the public in another way, DNR is trying to clarify that it can do that through a fair market value. The department sees that this can happen in other areas of the state besides Seward, so the department is looking for clarity that it can go at less than fair market value when the department's decision process shows that it will benefit the public.

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COMMISSIONER SULLIVAN noted that the issues in HB 361 are quite specific due to the department having great public servants who are experts in the work they perform and who are also very focused on what is required by statute. So, while something may seem to be a small specific issue, personnel are looking for ways that, from their experience, will make the process more effective to save the state money and to save time for the applicants, while also keeping in mind the state's interest. Although the changes in HB 361 are small, when each is aggregated in terms of efficiency and time it results in an overall macro-savings to the state. He welcomed any ideas from committee members about HB 361.

CO-CHAIR SEATON assured the commissioner and DNR staff that he is not opposed to these issues.

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REPRESENTATIVE GARDNER understood that under HB 361 any decision granting a waiver or allowing something to be done differently will have been determined to be in the public interest. The

rationale for that decision making will be part of the public record for people to review so that someone who disagrees will have access to the information and the decision will be well founded.

COMMISSIONER SULLIVAN concurred that this is correct.

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MR. MENEFEЕ returned to his briefing, moving to the fourth objective of HB 361 regarding temporary water use permits. He explained that a temporary water use authorization is not a permanent water right; it is a temporary water use that can be revoked or changed if something is amiss. Under temporary water use authorization, the department has some projects that last longer than five years, such as exploration, North Slope oil and gas projects, and ice roads. When someone has been using the same site and same volume, having the department go through the same permitting procedure again for that applicant is a longer process than is needed. This provision would shave some time, but environmental review would still be required and the applicant would need to be in good standing, meaning that the applicant must have abided by all the stipulations and terms of the permit.

CO-CHAIR SEATON understood that while temporary water use permits could be reissued it would not mean that they become a permanent fixture of automatic reallocation. Competing use objections could be raised and the water reallocated.

MR. MENEFEЕ confirmed this would be the case. He said that when considering the renewal of a temporary water use authorization, the department would look to see whether there is a competing interest. If there is, and the original company or individual is not fully utilizing that water and there is room for another user, the department would make that decision. Considerations would be on a case-by-case basis.

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REPRESENTATIVE P. WILSON asked whether this exact situation took place in Sitka.

MR. MENEFEЕ replied he is not familiar with the Sitka situation, but said that it very well might be.

REPRESENTATIVE P. WILSON related that someone [in Sitka] wanted to renew a water permit, but because DNR believed that someone else could use some of the water not being used, the renewal is still being looked at.

MR. MENEFEE responded that this is not limited to one or two cases; it has happened in many places around the state.

COMMISSIONER SULLIVAN added that this issue came up a number of times during the department's hearing process across the state.

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CO-CHAIR SEATON expressed his concern about the application being submitted at the five-year mark. Although this would not apply to mariculture leases, he noted that the permit period for such leases is 10 years, but the renewal application cannot be submitted before the end of those 10 years. If the department is backlogged and cannot address the renewal, the operation of a commercial lessee is therefore stopped. He asked whether there is anything in HB 361 that would allow all leases to be applied for before the end of the lease period to prevent a time crunch and regulatory bind.

MR. MENEFEE answered that under the land leases there would be no problem with someone applying in advance; DNR would encourage them to come in before the lease expires. The department would send them a letter before the end of the lease, as it normally does, asking whether the lessee wishes to do this further, which would give the department enough time so no one is out there unauthorized. The department wants to give itself enough time to process the paperwork to get the permit in place before the other one expires. The five-year mark is to let the lessee know that the maximum temporary water use authorization is five years and as this is approaching it is the appropriate time to reapply. It would be fine if it was done at four and a half years, the point is that it needs to be done before it expires. For temporary water use authorizations the typical processing time is a maximum of about two to four weeks, although sometimes it takes longer if the department knows the applicant does not need the authorization for a while. Because it is a short turnaround time for temporary water use authorizations, it is unusual when the department cannot get an authorization out in time. While there is a backlog for many things, this area is not one of them, so it is unlikely that someone would have to stop their construction to wait for reauthorization of a temporary water use permit.

COMMISSIONER SULLIVAN interjected that this is still something DNR is trying to address and the scenario described by Co-Chair Seaton is something the department does not want to have happen.

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CO-CHAIR SEATON understood that specific legislation is being considered to get around the mariculture land title lease, but said doing this would still not be allowed until the end of the term. He said he would appreciate the department looking into whether a statutory provision needs to be changed so that the renewal could be done within a year of the end of the term.

COMMISSIONER SULLIVAN allowed the co-chair has made this request this before and apologized for the department not addressing it. He said the department will look at the statutory provision that applies to this issue.

MR. MENEFEЕ agreed this is something for which the department can find the right language to. He said the department will look at this to figure out a way in which it is clear that the department does not have to wait until the end [of the lease to renew a permit].

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MR. MENEFEЕ turned to the fifth objective of HB 361, which would provide "litigation proofing". He related that the Department of Law found that some statutes are not in full agreement or have added to confusion, which could potentially put the state at risk for litigation and delay projects. The department realized it needed to clarify all the statutes that deal with public auction and sealed bids, and this provision of HB 361 would bring them into consistency. Sections 1-4 and 7-9 of the bill all deal with the same thing and would make the statutes consistent so that they are legally sound.

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MR. MENEFEЕ discussed the sixth objective of HB 361 regarding public notice requirements. He said this provision would not change a huge amount of what DNR does, but the department is trying to transition into putting an emphasis on the electronic posting of public notices on the state public notice web site. People would know that this is the place to go to find out about all of the state's activities. For people who do not use

computers, the department would still post notices in local newspapers and post offices.

CO-CHAIR FEIGE inquired whether a notice is tied to a geographic area so that a citizen could define a geographic area.

MR. MENEFEЕ replied the department has evaluated this, but presently a citizen cannot designate that e-mails be sent to him or her; however, the ability to send notices to citizens based on specific geographic areas may become possible in the future. Currently, a citizen must look at the [web] site, which is designed so that a recognizable location is included in the title, such as the name of a specific bay and not just the latitude and longitude.

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MR. MENEFEЕ continued his briefing, saying that the seventh objective of HB 361 is about royalty exemption for small-production miners. He explained that small-production miners, such as placer miners, already have exemptions and usually these miners do not pay royalty because their exemptions cover the amount of gold that they have taken. However, these miners are still required to go through an audit, which is a lot of paperwork for coming to the same conclusion that a royalty is not owed. Recognizing this, the department is suggesting that the exemption be put into statute. The miner would still have to file how much is produced, but would not have to do the royalty portion. Where that exemption would start would probably be in regulation, but the department must do some more research to figure out the right spot for drawing a line for where people do not have to pay a royalty. The idea is to save time for both department staff and the small-production miners.

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CO-CHAIR SEATON asked whether DNR is working on this in conjunction with the Department of Revenue (DOR). He related that the committee earlier heard a bill that would do this and both DNR and DOR objected saying that even though a net profit of \$40,000 is allowed before royalty payment is required, the departments still wanted the filings. He surmised DNR has concluded that [small-production miners] would not have to make a filing. He further inquired whether DOR has agreed not to require filings if the net profit is below \$40,000.

MR. MENEFEЕ responded that the aforementioned bill [HB 298] relates to the mining license tax and HB 361 relates to royalties. He related that Ms. Johanna Bales of DOR confirmed in an earlier conversation today that there is no problem with this part of the bill. He noted that this provision would not modify the mining license tax, which is controlled by and filed through DOR.

MR. MENEFEЕ added that to make it easier for both DOR and the miner, the eighth objective in HB 361 would provide that people filing their royalty could file in the same year as their mining tax, whether that is a calendar year or fiscal year; this would mimic what DOR does under the mining license tax. Thus, HB 361 would provide that no extra work be done when the state is not bringing in income, while at the same time making it easier on the miner.

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MR. MENEFEЕ concluded his briefing by pointing out that the ninth objective of HB 361 would allow the extension or renewal of a submerged land mining lease, similar to the provisions for temporary water use authorization and renewal of land leases. He noted that the state's only submerged land mining leases are off the Nome area and the lease time period is for 20 years. The leases require that there be production and this provision of the bill would allow extension of the lease for those lessees who are producing and who are in good standing with the state. He explained that the amount of acreage in these leases varies in size, from 40 acres to 2,000 acres, so it is logical that the lessee will not get through the whole acreage within the 20-year time period and will want to continue the work.

REPRESENTATIVE P. WILSON surmised these leases are for the dredging of gold.

MR. MENEFEЕ answered that gold dredging is occurring on these offshore submerged mine leases. While there are multiple ways and different types of equipment for dredging, only a small portion of the acreage can be dealt with at one time and so only several acres of the lease can be dredged per year. Additionally, ice scour during winter storms can move things around over the years, so dredging of the same area may be done again in another year. He noted that the department can choose to go to competition if there is competitive interest in that mining lease.

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CO-CHAIR SEATON drew attention to page 2 of HB 361 dealing with the Board of Agriculture and Conservation and a provision that would [grant first option to purchase or lease agricultural land to the adjacent landowner or adjacent lessee] for the amount of the high bid received at public auction or by sealed bid. He pointed out that under this proposed provision an adjacent landowner would not have to bid because he or she would have first option to take someone else's sealed bid, which would not be in the best interest of the state as far as receiving the best bid. He said if he is correct in his interpretation of this proposed provision he would like it to be changed, but if he is wrong he would like an explanation of the provision.

MR. MENEFFEE replied that this provision would not change much other than the sealed bid part. He agreed Co-Chair Seaton is correct in the sense that the adjacent person would have the right to match the high bid. This person would still have to participate; however, he allowed, this person could conceivably put in a low sealed bid to be participatory. He said he will therefore get back to the committee with an answer on exactly how this would work because he does not normally handle the agricultural leases. The department will clarify this provision to ensure that the state will receive the highest bid possible if there is competition.

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CO-CHAIR SEATON noted that the idea of modifying this statute is to arrive at a process that works best for the state as well as residents. It would be difficult if a person worked hard to put together a business plan and went to the auction in sealed bid fashion only to have that work thrown away because a person adjacent to that land could simply match that sealed bid. While he understood why people would like to have "first dibs", he maintained it was not in the best interest of the state. He urged that while considering modification of this piece of statute, DNR develop the rationale for why it would want to keep this provision, especially under a sealed bid situation.

MR. MENEFFEE requested that Mr. Cameron Leonard of the Department of Law be given the opportunity to address the aforementioned.

CAMERON LEONARD, Senior Assistant Attorney General, Natural Resources Section, Civil Division (Fairbanks), Department of Law, allowed that Co-Chair Seaton's point is well taken under

the [proposed] statute as written, because an adjacent landowner or several adjacent landowners would have the option to purchase at the highest bid. He pointed out that there are acreage limits for this proposed provision and this could not be done on a parcel exceeding 320 acres. He did not know how often, in practice, it would come up that an independent bidder who did not have land adjacent would want to acquire agricultural parcels of less than that size. He said he would get back to the committee with an answer.

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CO-CHAIR SEATON commented that this is public policy being broached. Attempts are being made to get agricultural land near towns for young farmers so that the state can grow its next generation of young businessmen. However, he maintained, this could be precluded under the aforementioned provision.

COMMISSIONER SULLIVAN specified that DNR is looking from the broader perspective of trying to provide clarity on the ability to use sealed bids. He conceded, however, that the changes to this particular provision might raise another issue with regard to the prerogative rights of an adjacent owner that were not present prior to the adding of this [proposed] language for sealed bids. He said the department will therefore get back to the committee on this issue as it is something the department may have missed.

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CO-CHAIR FEIGE moved to discussion of the bill after ascertaining that no one in the audience wished to testify.

CO-CHAIR SEATON offered his appreciation for HB 361, saying it will streamline things for Alaskans and the state.

CO-CHAIR FEIGE announced that he did not intend to move the bill out of committee today.

[2:20:04 PM](#)

REPRESENTATIVE DICK moved to adopt Amendment 1, labeled 27-GH2717\A.3, Bailey, 3/5/12, which read [original punctuation provided]:

Page 8, following line 17:

Insert a new subsection to read:

"(f) Notwithstanding (b) - (e) of this section, for the purpose of creating incentives for the development of peat as a heat or energy source, the director may negotiate the sale of peat to individuals, organized or unorganized communities, tribal governments, or private profit or nonprofit organizations. Under this subsection, the director shall provide,

(1) for personal use by an individual or for testing or product development, not more than 20,000 cubic feet of peat free of charge; or

(2) for users requiring more than 20,000 cubic yards, the required amount of peat at 20 percent of the appraised fair market value."

REPRESENTATIVE P. WILSON objected for discussion purposes.

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REPRESENTATIVE DICK said Western Alaska has a tremendous energy concern. Several people in this area have been looking at the option of peat, some for as long as 15 years, but they have always bumped into a wall, which is that the appraised fair market value of peat makes it not pencil out. He understood, however, that one person was able to establish a fair market value for peat along the road system. He qualified that he is not saying peat is going to work in Alaska, but said there is a tremendous possibility for heating schools and other buildings and it will remain unknown whether this is possible unless people are given the option to try. There are a lot of startup costs. Powering the Donlin Creek Mine with peat has been researched. The intention of Amendment 1 is that for personal use or for testing or product development, not more than 20,000 cubic feet of peat be given free of charge, which would give someone the chance to get started. For users requiring more than [20,000 cubic yards], Amendment 1 would provide the peat at 20 percent of the appraised fair market value. He requested Mr. Menefee to speak to the issue of appraised market value because the problem is determining a value when the product has not been sold in Western Alaska before. The idea is not to give away state resources, he said, but to see if peat is possible and, if so, to ensure that the people doing it can make a decent profit.

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CO-CHAIR FEIGE asked how the peat would be harvested.

REPRESENTATIVE P. WILSON responded that she has a constituent in Petersburg who burns peat taken from the lot in town on which his home sits. He cuts bricks of peat, dries them in stacks that are laid across his yard and covered with tarps, and has now heated his house for several years with the peat. He is making a basement to his house by cutting the peat from underneath the house. She said the process is amazing and works for this man. While she did not know whether this would work in colder areas of the state, she said it sure works in Petersburg. In response to Co-Chair Feige, she said the hole for digging out the peat is 10 feet deep and moving out.

REPRESENTATIVE DICK added that last year he considered a bill to do this, but because it is such a small item it seems that HB 361 is a natural place for such a provision. He asserted that this provision speaks to a very real need and the state will never know if peat will work financially or environmentally unless it is explored.

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CO-CHAIR FEIGE asked whether Mr. Menefee would like to comment.

MR. MENEFEЕ first addressed Co-Chair Feige's question of how peat is harvested, explaining that it can be done individually by using a shovel knife like what has been used in Ireland for years. Commercially it can be harvested by equipment that rolls up the peat like a sod roller does. There is a lot of peat in Alaska, he said, with some bogs as deep as 5,000 feet.

MR. MENEFEЕ, addressing Amendment 1, said as written it would give the department the ability to go below fair market value for peat. Because of the clarification that peat is considered material the department would be able to sell it at material prices normally and therefore at appraised fair market value. However, the problem with peat is that it is very difficult to do an appraised fair market value. The one appraisal in Alaska was done by the University of Alaska and the university had to go to Finland to find the value of peat in those places where it is harvested. He suggested that if the committee chose to adopt Amendment 1, it may want to base the value off of DNR's regional representative sales price for material rather than appraised fair market value. This is because the applicant must pay to do an appraised fair market value and that will cost a lot because it will be an international appraisal, not a local appraisal. In a regional representative sales price, DNR would estimate

material cost and would base the reduction of value off of that price.

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MR. MENEFFEE, regarding personal use of the peat or testing or product development, said that it does not seem to sync with the 20,000 cubic feet because that amount seems like a lot of cubic feet for product development; however, he did not know whether he was correct in this regard. He also pointed out that paragraph (1) of the amendment is written in cubic feet and paragraph (2) is written in cubic yards, which means there is a substantial gap between 20,000 cubic feet and 20,000 cubic yards. He did not know whether this gap was intentional, but said DNR would not know what it is supposed to do in between these numbers.

REPRESENTATIVE DICK informed the committee that the first number is supposed to be yards [not feet].

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MR. MENEFFEE provided a visual representation of the volume by noting that a normal dump truck carries about 10 cubic yards. Thus, [20,000 cubic yards] would be [2,000] dump trucks of peat that would be given free of charge for product testing and development.

REPRESENTATIVE DICK provided another visual representation of volume by noting that [20,000 cubic yards] would be 0.15 miles by 0.15 miles by 1 yard deep. He said a decent pellet machine costs \$100,000 because the cheap \$5,000-\$10,000 machines out of China do not last. He reiterated that he does not want to give away state resources, but wants to make it possible for someone to get started and find out whether it can happen and this is where he came up with the number of 20,000 cubic yards. He added that if the 20,000 cubic yards stays in the ground the state receives nothing anyway.

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REPRESENTATIVE MUNOZ, in regard to personal use, asked how much peat would be needed per year to heat a typical a home.

PAUL VERHAGEN, Staff, Representative Alan Dick, Alaska State Legislature, did not know but said he will get back to the committee with an answer.

REPRESENTATIVE P. WILSON related that her aforementioned constituent in Petersburg told her it took more peat than cords of wood per year because peat is not as efficient as wood.

REPRESENTATIVE DICK commented that the Petersburg person is using blocks of peat in a stove as opposed to pellets of peat in a pellet stove which burn much more efficiently. He said he brought up Amendment 1 for the sake of conversation and receiving comments from the committee. He offered to withdraw the amendment until he has answers to the questions.

CO-CHAIR FEIGE suggested the amendment be set aside for later consideration once the questions have been answered.

[2:33:03 PM](#)

REPRESENTATIVE GARDNER inquired whether anyone else in the state besides the gentleman in Petersburg is researching peat. She said this could end up being a huge amount of peat if lots of organizations and businesses start getting into it.

MR. VERHAGEN responded that quite a few people have expressed interest and the biggest interest that he is aware of was expressed by Donlin Creek Mine, which had a study done by the university. While there was plenty of peat to run the mine, the investors were not enthusiastic about a nontraditional energy source and opted for another source. Because of what has happened in Tok there are now quite a few other communities working with biomass, such as Fort Yukon and Tanacross. Numerous school districts in the state are now looking to do the same thing as the school district in Tok did. He related that last year Galena contacted him to say it would like to get rid of 30,000 cubic yards of peat that was dug up during excavation for a new building. However, this year Galena decided to use that peat for its own biomass project, which is why Amendment 1 includes the opportunity for tribes, communities, or any entity to begin this experiment.

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CO-CHAIR FEIGE asked whether peat falls within the current definition of biomass.

MR. VERHAGEN answered he has confirmed with Mr. Menefee that it does. There were some suggestions that modifications be made to the definition, but at this point peat is in that definition.

REPRESENTATIVE MUNOZ offered her appreciation for the amendment, saying she thinks this could be something very useful. She suggested going with only the amendment's first paragraph, excluding the volume amounts so that it would be up to DNR to determine the appropriate amounts for the various users.

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CO-CHAIR SEATON stated the committee should look at the Department of Revenue in addition to the Department of Natural Resources because the mining license tax, [administered by DOR] currently applies to sand, gravel, and marketable earth, so that tax would apply to peat. He said he does not know if there is a royalty issue. He inquired whether there is a way to look at biomass energy projects globally; for example, whether using willow, barley, or timber for biomass might be better than peat in one area, but vice versa in another.

COMMISSIONER SULLIVAN replied this is a good question because peat is only one of a number of other sources that Alaska has in great supply for potential energy use by Alaskans. He said the department is currently looking at wind and staff is charged with ensuring that the state gets the best value for its resources. However, the flip side is that when there are markets or resources, particularly a new resource or a broad public use source like wind-generated power that goes into utilities, staff is trying to get a good deal for the state, but the users of that resource are the citizens of the state, and this creates a conundrum that must be dealt with. He said the department will look at the amendment with regard to offering suggestions or making clarifications. He further noted that through its Division of Forestry, DNR has been very involved in what is going on with biomass in Tok and other places.

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REPRESENTATIVE P. WILSON advocated setting a limit in some way should the committee want to use this for development because there will come a point at which it is developed and an industry could be made out of it.

COMMISSIONER SULLIVAN agreed that the amendment would spur development while setting a limit.

REPRESENTATIVE DICK advised he is not meaning to sabotage HB 361 by adding so much detail that it makes it hard to get it through

the legislature, but reiterated that this issue seemed to be a natural fit with the bill. He said willow has already been piloted and is a winner, but he is unaware of anyone moving forward with pelletized peat, which is why he would like to create an incentive for the pelletizing of peat.

[2:42:38 PM](#)

CO-CHAIR FEIGE set Amendment 1 aside for further consideration when HB 361 is again before the committee.

COMMISSIONER SULLIVAN offered appreciation for the committee's consideration of HB 361, saying that the bill fits with a number of other bills currently moving through the legislature. He said bringing the department's permitting system in line will help promote economic opportunity in the state.

CO-CHAIR FEIGE complimented the work of DNR staff on HB 361. He said the cumulative effects of the little tweaks in the bill will have a positive effect on the way the State of Alaska does business and the way the state is perceived as a place to do business.

[2:44:30 PM](#)

CO-CHAIR SEATON related that the Anchorage Daily News recently had an article about the state considering hunting rights for private landowners in Alaska. The proposal would grant a property right for private landowners to use or sell hunts and would involve a new landowner permit. He asked whether the regulation changes being talked about would advance, or in any way incorporate, special landowner rights to resources that currently belong to all of the public.

MR. MENEFEER responded he is unfamiliar with this proposal, but said there is nothing in HB 361 that would affect a right that is given to someone through a fish and game statute; HB 361 is strictly in regard to things that would be authorized by DNR.

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CO-CHAIR SEATON said he wants to make sure that HB 361 would not incorporate anything that would make new rights to landowners of currently considered state resources. While he did not think the bill would, he wanted it on the record that that is not the bill's intention.

COMMISSIONER SULLIVAN noted that this is the first he has seen the article and he has not been briefed on the issue. However, he continued, the issue in the article is not related to what is being proposed in HB 361.

MR. MENEFEE added that there could be other laws or ordinances that base qualifying criteria on whether someone is a landowner; that does not affect DNR's regulations on whether the department sells land to someone. The department's regulations are completely separate - the game resources in the state of Alaska are not managed by DNR at all. Those regulations are strictly through the Alaska Department of Fish & Game.

[2:48:02 PM](#)

CO-CHAIR SEATON said he realizes that but wanted to ensure there was no connection.

COMMISSIONER SULLIVAN answered that DNR is looking at the issues of permitting reform, efficiency, timeliness, and certainty. Much of HB 361 is about the efficient use of staff time and state money and doing that in conjunction with other state agencies, including the Alaska Department of Fish & Game. Thus, many of the ideas are not just a DNR focus but also a focus of other agencies. He said he is unaware of any connection between the aforementioned and the permitting issues in HB 361.

CO-CHAIR SEATON said he would appreciate DNR letting the committee know at the next hearing on the bill if there is something that conjoins the two.

REPRESENTATIVE P. WILSON understood Commissioner Sullivan to be saying that DNR is looking at ways to save time and money and other departments are doing the same.

COMMISSIONER SULLIVAN confirmed that this is correct.

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[HB 361 was held over.]

[2:50:35 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:51 p.m.