

**ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE**

March 11, 2014

1:05 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Doug Isaacson, Vice Chair
Representative Eric Feige
Representative Lynn Gattis
Representative Craig Johnson
Representative Bob Lynn
Representative Jonathan Kreiss-Tomkins

MEMBERS ABSENT

COMMITTEE CALENDAR

HOUSE BILL NO. 371

"An Act providing for the Department of Transportation and Public Facilities to hold the surface estate of certain state land; relating to the transfer of certain state land and materials from the Department of Natural Resources to the Department of Transportation and Public Facilities for the construction or maintenance of the state highway system, state airports, and state public buildings and facilities; relating to the lease or sale of certain marine or harbor facilities; relating to the lease or disposal by the Department of Transportation and Public Facilities of rights-of-way, property interests, or improvements that are no longer required; relating to the grant of certain easements over submerged state land to the federal government; relating to the transfer of certain maintenance stations on the James Dalton Highway to the Department of Transportation and Public Facilities; relating to the conveyance of land for right-of-way purposes from the Alaska Railroad Corporation to the Department of Transportation and Public Facilities; and providing for an effective date."

- HEARD & HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 194

"An Act vacating a portion of the Copper Center - Valdez right-of-way; relating to rights-of-way acquired under former 43 U.S.C. 932 that cross land owned by a private landowner; and relating to the use of eminent domain to realign a right-of-way."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 371

SHORT TITLE: STATE LAND AND MATERIALS

SPONSOR(S): TRANSPORTATION BY REQUEST

03/10/14 (H) READ THE FIRST TIME - REFERRALS
03/10/14 (H) TRA, RES
03/11/14 (H) TRA AT 1:00 PM BARNES 124

BILL: HB 194

SHORT TITLE: RIGHTS-OF-WAY

SPONSOR(S): FOSTER

04/01/13 (H) READ THE FIRST TIME - REFERRALS
04/01/13 (H) TRA, RES
02/26/14 (H) SPONSOR SUBSTITUTE INTRODUCED
02/26/14 (H) READ THE FIRST TIME - REFERRALS
02/26/14 (H) TRA, RES
03/11/14 (H) TRA AT 1:00 PM BARNES 124

WITNESS REGISTER

REBECCA ROONEY, Staff
Representative Peggy Wilson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the sponsor of HB 371, the House Transportation Standing Committee, Representative Peggy Wilson, Chair.

JOHN BENNETT, Right-of-Way Chief
Northern Region
Department of Transportation & Public Facilities (DOT&PF)
Fairbanks, Alaska

POSITION STATEMENT: Testified during the discussion of HB 371.

SEAN LYNCH, Assistant Attorney General
Transportation Section
Department of Law
Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 371.

ED FOGELS, Deputy Commissioner

Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 371.

REPRESENTATIVE NEAL FOSTER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor of HB 194.

PAUL LABOLLE, Staff
Representative Neal Foster
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented a section-by-section analysis on behalf of the sponsor of HB 194, Representative Neal Foster.

JOE BOVEE, Vice-President
Land and Resources
Ahtna, Incorporated
Glennallen, Alaska

POSITION STATEMENT: Presented a PowerPoint presentation on [revised statutes] R.S. 2477 rights-of-way during the discussion of HB 194.

ACTION NARRATIVE

[1:05:36 PM](#)

CHAIR PEGGY WILSON called the House Transportation Standing Committee meeting to order at 1:05 p.m. Representatives Isaacson, Kreiss-Tomkins, Feige, Lynn, Gattis, and P. Wilson were present at the call to order. Representative Johnson arrived as the meeting was in progress.

HB 371-STATE LAND AND MATERIALS

[1:06:11 PM](#)

CHAIR P. WILSON announced that the first order of business would be HOUSE BILL NO. 371, "An Act providing for the Department of Transportation and Public Facilities to hold the surface estate of certain state land; relating to the transfer of certain state land and materials from the Department of Natural Resources to

the Department of Transportation and Public Facilities for the construction or maintenance of the state highway system, state airports, and state public buildings and facilities; relating to the lease or sale of certain marine or harbor facilities; relating to the lease or disposal by the Department of Transportation and Public Facilities of rights-of-way, property interests, or improvements that are no longer required; relating to the grant of certain easements over submerged state land to the federal government; relating to the transfer of certain maintenance stations on the James Dalton Highway to the Department of Transportation and Public Facilities; relating to the conveyance of land for right-of-way purposes from the Alaska Railroad Corporation to the Department of Transportation and Public Facilities; and providing for an effective date."

[1:06:56 PM](#)

REPRESENTATIVE ISAACSON moved to adopt a proposed committee substitute (CS) for HB 371, labeled 28-LS1545\N, Bullock, 3/10/14 as the working document. There being no objection, Version N was before the committee.

[1:07:21 PM](#)

REBECCA ROONEY, Staff, Representative Peggy Wilson, Alaska State Legislature, on behalf of the House Transportation Committee, Representative P. Wilson, Chair, explained the changes in the proposed CS, Version N. She reported that a companion bill is in the other body and the changes in Version N were made to conform to the other bill. She related that the title was shortened and she characterized the changes as being technical or cosmetic changes.

MS. ROONEY described HB 371 as a collaborative effort between the Department of Transportation & Public Facilities (DOT&PF) and the Department of Natural Resources (DNR). The purpose was to reduce ambiguity and streamline the rights-of-way processes between the two departments. This bill represents a "no cost solution" that will save time and resources for transportation projects. Additionally, it will reduce contracting requirements between DOT&PF and DNR when accessing road materials for

transportation projects. She noted a reciprocal removal of the 55-year limit on U.S. Forest Service (USFS) transportation easements and DNR's log transfer priority easements. Finally, under the bill, DNR would transfer two DNR sites to DOT&PF for use as maintenance stations and airstrips to accommodate recent resource development. She identified the sites as Franklin Bluffs and Happy Valley on the Dalton Highway.

CHAIR P. WILSON reiterated that this bill is an agreement between the two aforementioned departments to streamline the process when a right-of-way exchange is necessary.

[1:10:18 PM](#)

JOHN BENNETT, Right-of-Way Chief, Northern Region, Department of Transportation & Public Facilities (DOT&PF), stated that HB 371 will change the relationship between the DOT&PF & the DNR with respect to the acquisition, management, and disposal of lands necessary for airports, highways, and public facilities. He pointed out that 30 percent of the land in Alaska is owned by the state and managed by DNR. Thus, the DOT&PF's interaction with DNR for lands and materials is extensive. The bill sections repeat language for each of the DOT&PF's three areas of authority.

[1:11:21 PM](#)

MR. BENNETT said the bill clarifies that DOT&PF has the primary authority to manage the surface estates for the highway rights-of-way, airport properties and public facilities. That primary authority relates to existing rights-of-way and existing lands. First, this bill would help clarify the management authorities and roles of each department. Second, the bill would provide uniform language across all of the authorities for the disposal of land interests that the DOT&PF has deemed excess to its needs. This combination would work to solve some issues that adjoining landowners have when encroaching into the rights-of-way. Under the bill, the DOT&PF would have the unilateral authority to dispose of lands, which can help solve these landowner issues. Third, this bill would set up a new process for transferring land and land interests from the DNR managed

public domain into the DOT&PF. Essentially, this bill was modeled after a federal process the department uses with the Federal Highways Administration (FHWA) to assist the DOT&PF in appropriating land from the Bureau of Land Management (BLM) and the U.S. Forest Service. For example, when the department determines it needs right-of-way properties, the affected parties can go to the agency and tell them they have four months to comment or the FHWA will appropriate it directly. He pointed out the FHWA will actually issue the deed to the state. This bill would set up a similar process that will streamline the process of acquiring DNR managed lands. Furthermore, the DOT&PF would like to streamline and create a new process for acquiring sand and gravel materials for its projects. Under the current process one state [department] contracts with [another] state [department]. The DOT&PF enters into a material sales contract with Department of Natural Resources (DNR) that includes payment for materials. Typically these contracts have a limited term and a limited quantity of material. However, the authorizations often lapse and the department must request additional authorization to expand the quantity or the term. This process has created an administrative burden for both agencies especially since the state is requesting state-owned materials to construct state-owned infrastructure. The process under the bill would result in a more efficient process.

[1:14:24 PM](#)

MR. BENNETT identified additional provisions that relieve the Alaska Railroad Corporation (ARRC) from the necessity to obtain legislative approval when the DOT&PF requires fee title from the ARRC. Currently, the DOT&PF can negotiate and appraise property just as it would with any private owner, but the ARRC must subsequently seek legislative approval. This requirement for additional legislative approval can add one to two years to the project delivery process, which the department believes results in unintended consequences. Additionally, one provision of HB 371 would transfer the Happy Valley and Franklin Bluffs Trans-Alaska Pipeline System (TAPS) campsites from the DNR to DOT&PF. Mr. Bennett pointed out that the DOT&PF applied for these properties twenty years ago. Although these camps provide an efficient delivery of maintenance services, additional resource

development along the corridor and the potential for a natural gas line makes it important for DOT&PF to acquire these sites now. However, these camp transfers have been hampered by competing municipal entitlement selections by the North Slope Borough (NSB). He deferred to the Department of Law (DOL) to discuss the issues related to these reciprocal easements.

[1:15:58 PM](#)

SEAN LYNCH, Assistant Attorney General, Transportation Section, Department of Law (DOL), stated that the Congress granted easements across the Tongass National Forest connecting towns in Southeast Alaska in exchange for the state granting the U.S. Forest Service easements across the state's submerged lands for log transfer facilities, access to USFS cabins, and recreational facilities. The easements were prepared and exchanged between the state and the federal government but because of the Department of Natural Resources (DNR)'s regulations the state easements to the federal government are limited to 55 years. In the reciprocal exchange, the USFS has limited the states' road and utility easements to the same 55 years. Section 16 [of HB 371] would allow the DNR's commissioner in a best interest finding to remove the 55-year limitation. Further, the USFS has assured the state that it will give an equal term of years, which would allow the extension of the state's easements across USFS lands.

[1:17:54 PM](#)

REPRESENTATIVE ISAACSON recalled that Section 16 was disputed by municipal governments. He asked whether the department has resolved the municipal disputes.

MR. BENNETT answered yes; he is correct that competing interests exist. The department applied for this authority 20 years ago, based on the assertion that the existing state land was more appropriately used for public purposes rather than to be allocated under the municipal entitlement program. He estimated between one-third and one-half of the land selected will still be available after the department has "carved out" lands needed to enclose airstrips, material sites, and the existing building

plants. He related this is based on a review of a graphic representation of the lands previously selected by the North Slope Borough (NSB). One reason this matter has not progressed is due to the competing interests. He maintained the DOT&PF believes the public's interest and use of this property is greater and more significant than municipal interests.

[1:19:42 PM](#)

REPRESENTATIVE ISAACSON said he understood that this could be construed as another method of obtaining municipal revenue sharing since the Dalton Highway serves a statewide interest, although one municipality obtains an extra advantage. For example, it would be similar to the City of North Pole claiming some facilities along the Richardson Highway to tax or gain revenue from the activities. He asked whether this is part of the consideration and to identify any disadvantages.

[1:20:33 PM](#)

MR. BENNETT agreed the North Slope Borough's intent is revenue generation. These sites would be very sought after since they were selected as TAPS sites for a good reason. He suggested the NSB would seek to select and receive title to these sites and lease them back to the state on an as-needed basis. However, the DOT&PF seeks to avoid these situations since it maintains that retaining the properties is in the public's best interest.

[1:21:18 PM](#)

REPRESENTATIVE ISAACSON asked whether the provisions in Section 16 will resolve the issue.

MR. BENNETT answered this language will declare that this property has been transferred to DOT&PF and is not immediately available for municipal entitlements. However, he envisioned that over time the use of the sites will no longer be necessary and the sites might be available for NSB selection or conveyance at a later date.

[1:22:09 PM](#)

REPRESENTATIVE KREISS-TOMKINS commented that this bill was read across the floor yesterday so he has not yet had an opportunity to review this somewhat complex bill. He hoped the committee will have more opportunity to ask questions beyond today.

CHAIR P. WILSON acknowledged that HB 371 is a simple yet complicated bill that will allow land transfers between the two departments. In further response to a question, she acknowledged the committee member's request for additional time.

[1:23:29 PM](#)

REPRESENTATIVE JOHNSON recalled some railroad acts allow the ability to transfer rights-of-way lands back to the adjacent landowners. He remarked he is never opposed to transferring lands to private landowners. He asked whether the land should be transferred to private landowners instead of to the state.

MR. BENNETT answered that [Section 16] is narrowly tailored to only relate to the relationship between the ARRC and the DOT&PF to allow the department to obtain fee title on certain railroad lands. He understood the rights-of-way being re-conveyed to adjoining landowners. However, he did not believe this is the situation being addressed today. This provision relates solely to properties the railroad owns or intends to own.

[1:24:42 PM](#)

REPRESENTATIVE JOHNSON remarked that at some point the railroad must not want the land or they wouldn't be interested in transferring it.

MR. BENNETT answered that it is not a question with respect to the railroad wanting to dispose of land but rather that the DOT&PF requires the ARRC's land for an airport or highway project. He clarified that the department identifies the need, appraises, and negotiates the land transfer, but the ARRC does not volunteer to sell it to the DOT&PF until that point.

REPRESENTATIVE JOHNSON suggested the ARRC is not in great financial shape right now so it may be in the ARRC's interest to lease the land instead of transferring it by a fee simple process.

MR. BENNETT acknowledged the point, but the DOT&PF tends to avoid leases since the term of the lease will end, yet the public funds for a new project may not be in place yet. This is the reason the DOT&PF seeks to purchase permanent right-of-way or land interests, whether it is through easements or fees. This provides the basis for future knowledge of when funds are needed.

[1:26:15 PM](#)

REPRESENTATIVE JOHNSON suggested that either the ARRC will seek funds or else the DOT&PF will seek more funds to lease lands from the ARRC. He was unsure whether it would be best for the legislature to [appropriate funds to] the ARRC or the DOT&PF. He questioned whether the DOT&PF has more opportunities to obtain federal funds. He said he has questions on the best way to ensure the future of the ARRC and the DOT&PF.

[1:27:09 PM](#)

CHAIR P. WILSON asked for further clarification that this isn't a special case since this is the process DOT&PF uses with respect to right-of-way acquisitions.

MR. BENNETT answered that the best public policy for acquisition, maintenance, and operations of public projects is to avoid recurring costs, which having a permanent interest in the rights-of-way accomplishes. He related his understanding that the ARRC supports this language.

[1:28:13 PM](#)

CHAIR P. WILSON related her understanding that under the bill the DOT&PF would purchase land from the ARRC.

MR. BENNETT agreed. He summarized that this provision would advance project delivery by not requiring legislative approval of the land transfer [between the ARRC and the DOT&PF].

[1:28:53 PM](#)

REPRESENTATIVE ISAACSON understood this would expedite projects in order to develop the state, but the bill does not extend rail lines or reconvey properties. For example, under the bill, if the state decided to build the railroad to Delta Junction or some other location the legislature would authorize the DOT&PF to negotiate the land needed for right-of-way acquisition. This could help speed up projects if the legislature has approved the right-of-way acquisition in advance.

MR. BENNETT related an example in which the DOT&PF need to acquire substantial property on the Illinois Street project in Fairbanks. Since the rights-of-way acquisition required legislative approval it took one or two additional years to secure legislative permission. Although the DOT&PF can appraise property, and negotiate prices, the railroad cannot execute deeds for fee simple title without legislative approval.

[1:30:26 PM](#)

REPRESENTATIVE ISAACSON understood that the bill would help contain development costs and this bill also represents one of the best ways to save the railroad money.

MR. BENNETT acknowledged that one of the benefits would be to advance projects.

[1:30:53 PM](#)

REPRESENTATIVE ISAACSON asked whether the bill might create unintended consequences and for any downsides.

MR. BENNETT answered that he considered this provision of the bill to be the most benign. He offered his belief that this is essentially an unintended consequence of the enabling statutes for the railroad. He felt certain the legislature couldn't have

intended to delay projects between one state-owned entity and the DOT&PF.

CHAIR P. WILSON remarked that the projects in question have already received legislative approval, but the way the ARRC's statutes were written requires the railroad [or DOT&PF] must seek additional legislative approval.

MR. BENNETT agreed, noting typically these projects are major capital improvement projects.

[1:32:17 PM](#)

REPRESENTATIVE GATTIS remarked that this bill affects state property and does not relate to the state acquiring private property.

MR. BENNETT agreed. He said the portions that relate to the transfer of properties from DNR's public domain to the DOT&PF would be considered transfer of "state property" to "state property." The railroad was established as a state-owned corporation so it is treated a little differently.

REPRESENTATIVE GATTIS asked for further clarification that this is not affecting individual property rights.

MR. BENNETT agreed it does not affect individual property rights.

[1:33:19 PM](#)

REPRESENTATIVE JOHNSON recalled that at the time the railroad was transferred, the legislature wanted control over the transfer of any railroad land. He surmised this body still has an unwillingness to give up control. He remarked that "nothing is simple" with respect to the railroad.

CHAIR P. WILSON reminded members that this bill relates specifically to the DOT&PF and not with any private entity.

MR. BENNETT agreed.

[1:35:00 PM](#)

ED FOGELS, Deputy Commissioner, Department of Natural Resources (DNR), stated that DNR has worked with DOT&PF for many months on the bill and DNR does not have any issues with the bill. The fundamental concept embodied in HB 371 is similar to the DNR's efforts to improve its permitting processes and to eliminate duplicative bureaucracy and unnecessary processes. He asked why the state should have to contract with itself for materials if the DOT&PF needs to use materials within the right-of-way for its road projects. Under the bill, the DNR would still manage the subsurface rights and lands within the right-of-way for other uses while prioritizing by keeping DOT&PF's needs at the top. He suggested that HB 371 is one mechanism to eliminate repetitive work for both agencies.

[1:36:11 PM](#)

CHAIR P. WILSON asked whether HB 371 will save the state money.

MR. FOGELS answered yes.

[1:36:20 PM](#)

REPRESENTATIVE GATTIS remarked that time is money and she understood this bill will save time.

MR. FOGELS answered yes; that HB 371 will save staff time.

[1:36:45 PM](#)

CHAIR P. WILSON asked for an estimate of the average staff time that will be saved.

MR. FOGELS answered that the time savings is difficult to quantify. However, the DNR spends significant energy and time within the department to adjudicate material sales relating to roads or highway projects. He estimated that several staff spends most of their time on these issues which could be used to reduce the DNR's backlog somewhere else.

[1:37:53 PM](#)

CHAIR P. WILSON asked whether this staff could work on permitting in some other area.

MR. FOGELS agreed.

[1:37:59 PM](#)

REPRESENTATIVE JOHNSON asked whether the materials would primarily be gravel.

MR. FOGELS answered that the materials would be gravel, rock, and sand.

[1:38:18 PM](#)

REPRESENTATIVE JOHNSON asked whether private companies primarily hold these leases.

MR. FOGELS answered that DNR has material sales contracts for materials sites with multiple contracts between the private sector and DOT&PF on some sites. He agreed the department would need to sort this out but new sites would be under the DOT&PF and the DNR would work with the DOT&PF on any preexisting contracts.

[1:39:04 PM](#)

REPRESENTATIVE JOHNSON emphasized that he'd like to avoid the situation with a private company bidding on a state job but the state has a "sweetheart deal" for the materials. He suggested it has been proven that the private sector projects cost less than the state to accomplish. He summarized that he would like to avoid the state taking away private jobs due to a "sweetheart deal" on material costs.

MR. FOGELS said DNR views it that third party contractors will work on the projects regardless. This bill would only eliminate the DNR component from the chain. The DOT&PF would administer

third-party contracts to perform road construction and use materials.

[1:40:29 PM](#)

REPRESENTATIVE JOHNSON maintained his goal to ensure that this bill doesn't establish a DOT&PF bureaucracy that can overcharge a private contractor for materials so the contractor doesn't have any chance to win the bid. He would further like to ensure that everyone is on equal footing. Currently, the private sector performs quite adequately so he doesn't want to sacrifice private industry jobs, he said.

MR. FOGELS offered to review the materials process with DOT&PF and report back to the committee.

[1:42:32 PM](#)

REPRESENTATIVE KREISS-TOMKINS referred to Sections 2, 4, and 10, specifically in Section 4, lines 15-17 of the bill, which allows the department the ability to dispose of land. He asked whether that means the DOT&PF will receive revenue for the land sale.

MR. FOGELS answered that Section 4 refers to DOT&PF's statutes. He related that DNR has mechanisms for land sales, including a land disposal income fund. He was unsure of the DOT&PF's mechanisms, but speculated that the funds may go to back to the general fund.

[1:43:47 PM](#)

REPRESENTATIVE KREISS-TOMKINS said he is interested in an established protocol to ensure that DOT&PF will not need to set up a process that DNR already does well.

MR. FOGELS answered that DNR's authority is for land sales to the public. This provision relates to little remnants of land leftover from projects such as highway realignment, such as a sliver of right-of-way land is not used. Currently, DOT&PF can't dispose of the aforementioned sliver of land so the land reverts back to DNR who must then dispose of it. The current

process adds unnecessary time and bureaucracy. It's clear that this bill would eliminate the bureaucracy and allow the DOT&PF to directly handle the remnants, he said.

[1:45:00 PM](#)

REPRESENTATIVE FEIGE referred to Section 4 of HB 371 and asked whether any implied priority exists. He read paragraph (1), which read, in part, "transfer the land, property interests, or improvements to the Department of Natural Resources, if requested by the commissioner of natural resources; or" He asked whether this language implies that DNR would have the first right of refusal or if DOT&PF can dispose of the land as it sees fit without any priority.

MR. FOGELS answered that the intent is for the DNR's commissioner to agree to take the land back before the land is transferred. The DNR wants to be part of the decision to ensure the department agrees to the land transfer.

[1:46:14 PM](#)

CHAIR P. WILSON pointed out this language is also in Section 2, 4, and 10.

MR. FOGELS agreed.

[1:46:23 PM](#)

REPRESENTATIVE FEIGE suggested that an instance may arise in which the DNR might want the land, but the DOT&PF may decide to sell it to someone else. He asked whether this section should be structured with a clear priority to allow DNR the first right of refusal on land transfers.

[1:46:52 PM](#)

CHAIR P. WILSON read subsection (b) [, which read, in part, "... shall notify the commissioner of natural resources" on any transfer of land or disposal of land so she envisioned the commissioner would know in advance.

MR. FOGELS agreed, but the provision also requires the DNR to "request" the land.

REPRESENTATIVE FEIGE questioned whether the DNR automatically would receive any requested land or if it is still up to DOT&PF. He asked whether the first right of refusal language should be stronger.

MR. FOGELS deferred to the bill drafter or the Department of Law to respond.

[1:47:53 PM](#)

REPRESENTATIVE FEIGE asked whether the DNR would want the first right of refusal.

MR. FOGELS answered that he did not think it would be an issue. Again, the lands in question are lands used for transportation purposes and typically the remaining land would entail small remnants. He envisioned that the department would offer to sell the land to an adjacent landowner.

[1:48:39 PM](#)

CHAIR P. WILSON related an instance in which the DOT&PF straightened a road and removed a curve, which left a sliver of land it didn't need for the road project. She didn't imagine anyone would want the piece, but she recalled the land was given to the borough. She read subsection (b), in part, "If the department determines that land, property interests, or improvements are no longer necessary, the department shall notify the commissioner of natural resources of the determination and may" At that point the department may transfer or dispose of the land yet the DOT&PF must still notify the DNR, she said.

[1:50:00 PM](#)

REPRESENTATIVE JOHNSON acknowledged the bill's intention is to give the DNR first right of refusal, but he pointed out some

instances in which condemnation has occurred. Under the bill, land that had been condemned would revert to the DOT&PF instead of to the original property owner.

MR. FOGELS thought that it would be best to have the Department of Law present. Still, as he reads subsection (b), it requires the DOT&PF to notify the commissioner of natural resources of the determination and the department may transfer the land to DNR or dispose of the land by sale, lease, vacation, or exchange. Therefore, the DOT&PF has the choice, he said.

REPRESENTATIVE JOHNSON suggested that if the department condemned the land, the DOT&PF should not have any choice if the land is not used. Instead, he maintained that in those instances the land should be offered to the private party.

[1:51:50 PM](#)

REPRESENTATIVE FEIGE interpreted Section 1 to give the department the choice. The language requires the DNR to request the land if the department wants it, but it is up to the DOT&PF.

REPRESENTATIVE JOHNSON disagreed. Regardless of the interpretation, if land is condemned and not used the commissioner should not have a choice to decide. Instead, the private owner should have the choice to buy the land back, he said.

[1:52:41 PM](#)

CHAIR P. WILSON suggested there are circumstances in which land is condemned since the private party did not want to pay the taxes. Thus, instances occur in which the party no longer wishes to continue to make payments [and doesn't want the land.]

[1:53:05 PM](#)

REPRESENTATIVE JOHNSON agreed. However, an agreed buyout represents different situation than a condemnation procedure. He maintained that the private party should have the first right of refusal and not a commissioner.

CHAIR P. WILSON agreed. She offered her belief that the department probably already has rules it follows but it's important to find out.

[1:54:11 PM](#)

REPRESENTATIVE FEIGE referred again to [Section 4] paragraph (1) [on page 3, lines 12-14], which indicates the DOT&PF may transfer the land, but the department cannot arbitrarily do so since the DNR must first request the land. Paragraph (2) would allow for the disposal of the land. He maintained his question on whether DNR should have an automatic preference and if the language implies a preference. For example, if DNR requests the land, should the land automatically be transferred or is it still up to the DOT&PF commissioner to decide.

[HB 371 was held over.]

HB 194-RIGHTS-OF-WAY

[1:56:15 PM](#)

CHAIR P. WILSON announced that the final order of business would be the SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 194, "An Act vacating a portion of the Copper Center - Valdez right-of-way; relating to rights-of-way acquired under former 43 U.S.C. 932 that cross land owned by a private landowner; and relating to the use of eminent domain to realign a right-of-way."

[1:57:46 PM](#)

REPRESENTATIVE NEAL FOSTER, Alaska State Legislature, Juneau, Alaska, as prime sponsor, stated that the goal of HB 194 is to preserve public access via the [Revised Statute] R.S. 2477. He explained that the bill would minimize the negative effects on private landowners with respect to R.S. 2477 rights-of-way. He related R.S. 2477s are rights-of-way that include public trails, roads, and highways. He emphasized that this bill won't prevent the public from using public transportation routes to travel from points "A" to "B" but will limit usage to "point to point"

transportation and emergency stopping. Many of the R.S. 2477 trails go through private lands, he said. He expressed concern that if rest stops, pullouts, and campgrounds are constructed along these routes, it would open public access and use of the surrounding private lands.

[1:59:11 PM](#)

PAUL LABOLLE, Staff, Representative Neal Foster, Alaska State Legislature, provided a section-by-section analysis of HB 194. Section 2, subsection (a) would reduce the R.S. 2477 rights-of-way from 100 feet to 60 feet to balance landowner property rights with the access rights of the state. Subsection (b) would limit the use of R.S. 2477 to transportation purposes. He briefly discussed the history, such that R.S. 2477s stem from the Mining Act of 1866. Section 8 of that act would establish that rights-of-way are for construction of highways. Alaska statutes related to the state highway system identify the purpose as for vehicular transportation. This section would clarify how R.S. 2477 should be used. Subsection (c) would set up the conditions for secondary easements to inspect, repair, maintain, and improve a right-of-way. It would also set up guidelines for dispute resolution. Subsection (d) would allow realignment of rights-of-way through the existing eminent domain statutes and subsection (e) defines routine maintenance and repair.

[2:01:12 PM](#)

MR. LABOLLE said that Section 1 will vacate a specific R.S. 2477 right-of-way which is overlapped by a [43 U.S.C. 1616(b)] easement created during the Alaska Native Claims Settlement Act (ANCSA), which is similar to R.S. 2477 rights-of-way easements.

[2:02:22 PM](#)

The committee took an at-ease from 2:02 p.m. to 2:04 p.m.

[2:04:15 PM](#)

REPRESENTATIVE FOSTER commented that this issue is a private landowner issue and is not limited to Native corporations.

[2:05:02 PM](#)

JOE BOVEE, Vice-President, Land and Resources, Ahtna, Incorporated (Ahtna), began his presentation by explaining R.S. 2477 is an obscure civil war mining statute that grants rights-of-way across unreserved federal lands, primarily in the Western states and territories and Alaska. The map shows the public lands in Alaska prior to 1971 [slide 1].

[2:05:40 PM](#)

REPRESENTATIVE ISAACSON asked whether all lands in Alaska were either state or federal lands prior to 1971.

MR. BOVEE answered that 99 percent of the land was under federal or state ownership.

[2:06:19 PM](#)

REPRESENTATIVE ISAACSON pointed out it was difficult to distinguish lines on the map in members' packets.

CHAIR P. WILSON agreed.

MR. BOVEE turned to legal definitions obtained from the state's website. He said that R.S. 2477 was a congressional grant of rights of way which provided, "The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." The Department of Natural Resource's website indicates that the word "highway" was historically used to refer to foot trails, pack trails, sled dog trails, crudely built wagon roads, and other corridors for transportation. The term "highway" is defined in state statutes AS 19.59.018 (8), as follows:

"highway" includes a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage [structure and other

similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;].

MR. BOVEE explained that the process to assert an R.S. 2477 is far from consistent and has been the subject of litigation between the state and private landowners and the federal government in North America. In 1998, the Alaska legislature instructed that while providing for the public's right to use these historic access easements, "every effort should be made to minimize the effect on private property owners."

[2:07:39 PM](#)

MR. BOVEE stated that DNR has identified 669 R.S. 2477 trails in Alaska. For example, DeBarr Road in Anchorage and Farmers Loop Road in Fairbanks began as R.S. 2477 trails. Additionally, numerous foot trails are R.S. 2477 trails, many of which may not be visibly identifiable on the ground. He reported that over 142 R.S. 2477s are located on Ahtna land alone.

MR. BOVEE pointed out the Ahtna lands overlaid on an Alaska map. The next slide, entitled "Private Lands Present" shows private and public lands, with private land ownership in blue, and federal or state ownership depicted in yellow. The R.S. 2477 trails are shown by black lines.

[2:08:51 PM](#)

CHAIR P. WILSON asked for further clarification that the R.S. 2477 were old trails.

MR. BOVEE answered yes; noting most were adopted or used during mining in the late 1800s or early 1900s.

[2:09:23 PM](#)

MR. BOVEE highlighted Ahtna lands include 402 linear miles of R.S. 2477 trails, which would encompass 9,406 acres. The next

slide entitled, "Ahtna Lands Regional Location" shows Ahtna owned lands in red.

[2:10:12 PM](#)

MR. BOVEE turned to the slide entitled "R.S. 2477 Landowner Problems, Icy Roads Caused by Incised Roads "across Ahtna lands. This slide identifies [in black lines] the R.S. 2477 trails located on Ahtna lands. In response to a question, he answered that the 402 linear miles on Ahtna land with a 100-foot right-of-way would consume 9,406 acres.

MR. BOVEE continued. Ahtna, Inc. lands contain over 221 linear miles 17 (b) easements. As the sponsor identified earlier, part 17 (b) ANCSA defines a trail or public use across Native Corporation lands. He pointed out some trails overlap with an existing easement totaling 529 miles.

[2:11:45 PM](#)

CHAIR P. WILSON asked for further clarification on the duplicate trails.

MR. BOVEE answered that two easements cross private property on Native Corporation land and on some non-ANCSA lands. He explained the width and range from 25-60 feet whereas an R.S. 2477 is typically 100 feet wide. The R.S. 2477 rights-of-way often fall on the 17 (b) trails so they are duplicative.

CHAIR P. WILSON clarified that the 17 (b) trails are narrower ones than the R.S. 2477 trails.

MR. BOVEE answered yes.

[2:12:41 PM](#)

MR. BOVEE said that approximately 98 linear miles of 17 (b) easements are duplicative of R.S. 2477 roads.

[2:13:30 PM](#)

MR. BOVEE explained that R.S. 2477 trails represent a significant burden on the landowner. In response to a question, Mr. Bovee answered that the R.S. 2477 easements were federal rules originating from the 1866 mining law. He further clarified that the federal government has recognized only three or four necessary trails of the aforementioned 669 R.S. 2477 trails.

[2:14:41 PM](#)

CHAIR P. WILSON asked whether the state or federal government has authority over the trails.

MR. BOVEE answered that the state has authority.

[2:14:52 PM](#)

MR. BOVEE turned to the next slide entitled "R.S. 2477 Landowner Problems Icy Roads Caused by Incised Roads." This trail located near Cantwell is called the Windy Creek Trail and was the old access to the Denali National Park until the 1960s. He said the 100-foot wide trail doesn't have any restrictions on vehicle use depending on the time of year. The next slide shows a trail into Bear Valley that is overlaid with a 17 (b) easement without any restriction on use. In response to a question, he answered no; that the land is not DNR land, but is Ahtna land with a public easement.

[2:15:44 PM](#)

MR. BOVEE showed several photographs of other R.S. 2477 trails, not in members' packets. Since these trails used the shortest route many of them, such as the one near Copper Center, R.S. 2477 T 633, did not consider erosion, flooding events, or best locations. He explained that Ahtna has made a concerted effort to work with various agencies on the issues surrounding the R.S. 2477 trails. The state agencies refer to the federal statute and basically respond that their "hands are basically tied." The trails can be relocated if natural conditions make the route impassable or unsafe. The state can enter property to perform maintenance and repair work such as paving, leveling,

installation of culverts and other duties such as clearing vegetation or realigning roads. The state maintains that the public has extensive use rights within the right-of-way that include not only transportation but also rest stops, pullouts, boat launches, fishing access, and campgrounds.

[2:18:23 PM](#)

MR. BOVEE explained the Klutina Lake Road starts on the Richardson Highway and goes to the head of Klutina Lake, crossing 18 private landowners, non-ANCSA landowners and crosses driveways. In response to a question, Mr. Bovee explained that the private landowners did not even know the trail existed until about five or six years ago when the state asserted its rights over the R.S. 2477s. Thus, the issue has arisen since the R.S. 2477 trail with its 100-foot wide easement will consume the private landowner's acreage.

[2:19:40 PM](#)

CHAIR P. WILSON related her understanding that Ahtna didn't know their land allotments fell on R.S. 2477 trails.

MR. BOVEE answered yes. He explained the 18 landowners in the aforementioned area own the land, which was previously a Native allotment. The land was subdivided and the private landowners didn't know R.S. 2477 would cross their front yards.

[2:20:16 PM](#)

CHAIR P. WILSON asked for clarification on the state's position.

MR. BOVEE answered that the state asserts it is a public easement and the public can use the roads indiscriminately, any time of the year, using any kind of equipment. In further response to a question, Mr. Bovee agreed access is without any rules or regulations.

MR. LABOLLE, in response to a question, clarified that the bill has an additional referral to the House Resources Standing Committee.

[2:21:27 PM](#)

MR. BOVEE identified potential solutions. One alternative proposes limiting the scope of use of R.S. 2477 trails. He emphasized that Ahtna is not opposed to limiting access. Although Ahtna encourages resource development, the 100-foot right-of-way and unregulated use within the right-of-way opens access. One issue is who will perform road maintenance once the roads are public roads during times of budget constraints.

MR. BOVEE turned to a slide entitled "Well Maintained R.S. 2477 Road" that encompasses a hunting area north of Cantwell. He advised that Ahtna has been working with DOT&PF and DNR to realign the trail around a gravel pit near the Parks Highway. He offered his belief that the department will reroute the trail. In further response to a question, he answered that Ahtna owns the material site.

[2:23:55 PM](#)

MR. BOVEE stated that Ahtna signed a Memorandum of Understanding with DNR, Alaska Department of Fish & Game and DOT&PF last summer. This agreement requires quarterly meetings with the state agencies to try to resolve issues and to pool and use resources more wisely. This bill would require consultation with the private landowner prior to engaging in other than routine maintenance and represents a "good neighbor" policy. It would also require the state to consult with the landowner if an R.S. 2477 right-of-way has been damaged beyond repair and is to be realigned. He mentioned several trails have been realigned several times.

[2:25:19 PM](#)

MR. BOVEE would specifically vacate portions of R.S. 2477 right-of-way along the Klutina Lake road effectively ending litigation with the state. He thanked members.

[2:25:47 PM](#)

REPRESENTATIVE FOSTER offered to provide a chart to better describe the R.S. 2477 right-of-way as compared to the 17 (b) provisions. The goal of the bill is to minimize the impact to the landowner. He related a scenario in which he owned a farm at Kenny Lake with an R.S. 2477 crossing his land. As a landowner he would want to minimize the impact on his private land. He would not want a right-of-way with a campground located on his land, but would prefer a point to point access so people aren't stopping on his land.

[2:27:26 PM](#)

CHAIR P. WILSON asked for the status of the current lawsuit.

MR. BOVEE reported that the case started mediation but must follow state law so the process hit a "brick wall."

[2:28:06 PM](#)

CHAIR P. WILSON asked whether this bill would amend it to satisfy Ahtna.

MR. BOVEE answered that it would not restrict access to state land but would limit easements and define the width of the right-of-way.

[2:28:39 PM](#)

REPRESENTATIVE FEIGE asked whether plat maps exist for Klutina Lake. He understood interest exists with respect to lake access. He further understood that the federal 17 (b) easement but not the R.S. 2477 continues through the private lands. Since it doesn't appear to be overlapping this bill would not vacate the R.S. 2477 easements.

MR. BOVEE offered to provide a detailed plat map of the area.

[2:30:05 PM](#)

REPRESENTATIVE JOHNSON referred to page 2, line 9; paragraph (1), which read, "... routine maintenance and repair may only

preserve the condition of the right-of-way as it existed on October 21, 1976;" He asked whether the state is advocating all the R.S. 2477 lands if the trail has not been maintained. He understood that the state is still in litigation with the federal government and the trails have not been resolved. He asked whether the state would be giving up on those lands. For example, if a trail went from Fairbanks to Nome and it crosses private land, this language would not allow the trail to be maintained any differently than it was in 1976. He asked whether that means these rights-of-way will not be developed.

[2:31:08 PM](#)

MR. BOVEE answered that he was not aware of all R.S. 2477 easements in the state; however, he is familiar with approximately 90 percent of ones in the Ahtna region. He said approximately 95 percent are not developed, but are foot trails, pack trails, or sled trails.

REPRESENTATIVE JOHNSON remarked that is his point. The bill would mean the trails would never be more than the current status.

MR. BOVEE answered that is the point of the bill. If the R.S. 2477 right-of-way is currently an all-terrain vehicle (ATV) trail or a foot trail, that it should be left as such and have room to develop it later.

REPRESENTATIVE JOHNSON maintained the language would restrict further development. If the road is a walking trail then it cannot be more than a walking trail even if gold is discovered. He expressed concern about the restriction. He discussed some of the history of the R.S. 2477 trails such that the state has had to litigate each trail. He did not want to advocate limited access across federal lands. Secondly, if an R.S. 2477 runs along a river and a boat launch is not permitted, wouldn't that limit access to a publically-owned resource based on Alaska's Constitution. He expressed concern about limiting future development. He suggested there might be a way to compromise; however, he maintained his concern about limiting access that is

provided by Alaska's Constitution. He did not want to send a message to the federal government that Alaska has limited access by freezing the R.S. 2477 right-of-way to 1976 condition.

[2:34:59 PM](#)

REPRESENTATIVE ISAACSON offered his belief that this bill goes too far since the state is developing. One way would be to recognize that some right-of-way will not be used. He acknowledged that there isn't a management plan and that seems to be the biggest issue. He agreed that managing the rights-of-way is important and to ensure that property owners are aware of the use. He pointed out that Farmers Loop Road was an R.S. 2477 right-of-way and currently in many places is a four-lane highway. He noted several other roads in Alaska that were developed on R.S. 2477 trails. He cautioned against impeding development. He acknowledged that a R.S. 2477 right-of-way will likely become a road and development occurs along the road and Ahtna, Incorporated will likely need those roads in the future. He asked whether Ahtna has a bill before the Congress on this same subject.

MR. BOVEE answered yes; but it does not have anything to do with R.S. 2477s.

[2:38:33 PM](#)

REPRESENTATIVE ISAACSON asked how the federal bill will affect this bill. He suggested the federal bill asserted groups within the state as having more rights to the transportation corridors. He asked whether this was related.

MR. BOVEE answered that he was not aware of the federal transportation bill.

REPRESENTATIVE ISAACSON said he would further research it.

[2:39:11 PM](#)

REPRESENTATIVE ISAACSON said he would be interested in solving a specific issue rather than "locking up" the lands globally in Alaska.

REPRESENTATIVE JOHNSON referred to the fiscal note which identifies 20,000 linear miles of R.S. 2477 rights-of-way, which could increase to 26,600 once settled. He expressed concern that the bill could jeopardize 26,000 miles of access for 400 miles of Ahtna trail. He agreed the R.S. 2477 right-of-way issue is not just an Ahtna issue, but is a statewide issue that could affect Alaska's future. He said he would hate to give up this access.

MR. LABOLLE referred to the fiscal note and clarified that of the 20,000 linear miles, 50 percent is on private land, and so about 10,000 miles applies to R.S. 2477s that cross privately-owned land.

REPRESENTATIVE JOHNSON pointed out the checkerboard of private lands, noting one acre in the middle could impede development.

[2:42:28 PM](#)

CHAIR P. WILSON, referring to the DNR fiscal note of 3/8/14, noted that diminishing the right-of-way to 40 feet would equate to 48,500 acres.

[2:42:50 PM](#)

REPRESENTATIVE ISAACSON suggested this issue goes back to the municipal model, noting it is the state's policy to encourage the settlement of the land based on maximum use and benefit. Although the cities have private land until the land is used for public interest, the advantage for the historical trails is that they provides access to private lands and that will continue to evolve over time. He expressed concern about restricting access to a time certain. He said he could not get past that hurdle, particularly since the state is required to settle the land. He suggested that Ahtna try to find a way to solve the specific problem without unintentionally restricting access throughout the state.

[2:44:40 PM](#)

CHAIR P. WILSON remarked that she has not seen improvement during the time she has served in the legislature. At the time she was initially elected the state was in a deficit. Since the state's population is so low a sales tax or an income tax doesn't solve the financial issues. She concluded that the state needs more population in order to grow.

[2:45:45 PM](#)

REPRESENTATIVE FEIGE referred to a Bureau of Land Management (BLM) document in members' packets entitled, "Public Access Information." He asked whether the Klutina Lake Road referred to as the Brenwick-Craig Road and the Klutina Trail in the document are different or are these easements part of the same access to Klutina Lake.

MR. BOVEE answered that the Brenwick-Craig Road is more commonly referred to as the Klutina Lake road. The ANCSA 17 (b) easement stops at private property at the mouth of the lake. The Klutina Trail turns into an R.S. 2477 trail because it is not an ANCSA 17 (b) easement.

[2:46:51 PM](#)

REPRESENTATIVE FEIGE related his understanding that the Klutina Lake road goes to the outlet of Klutina Lake and the Klutina trail continues beyond that point.

MR. BOVEE answered that the Klutina trail wraps around the north side of Klutina Lake and continues to Valdez.

[HB 194 was held over.]

[2:48:21 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:48 p.m.