ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE
March 18, 2016
1:01 p.m.

MEMBERS PRESENT

Representative Benjamin Nageak, Co-Chair
Representative David Talerico, Co-Chair
Representative Bob Herron
Representative Craig Johnson
Representative Kurt Olson
Representative Paul Seaton
Representative Andy Josephson
Representative Geran Tarr
Representative Mike Chenault (alternate)

MEMBERS ABSENT

Representative Mike Hawker, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 216
"An Act relating to obstruction or interference with a person's free passage on or use of navigable water; and amending the definition of 'navigable water' under the Alaska Land Act."

- MOVED CSHB 216(RES) OUT OF COMMITTEE

HOUSE BILL NO. 274
"An Act relating to extensions of certain state land leases; relating to the exchange of state land; and relating to the definition of 'state land.'"

- HEARD & HELD

HOUSE BILL NO. 247
"An Act relating to confidential information status and public record status of information in the possession of the Department of Revenue; relating to interest applicable to delinquent tax; relating to disclosure of oil and gas production tax credit information; relating to refunds for the gas storage facility tax credit, the liquefied natural gas storage facility tax credit, and the qualified in-state oil refinery infrastructure expenditures tax credit; relating to the minimum tax for certain oil and gas production; relating to the minimum tax calculation

for monthly installment payments of estimated tax; relating to interest on monthly installment payments of estimated tax; relating to limitations for the application of tax credits; relating to oil and gas production tax credits for certain losses and expenditures; relating to limitations for nontransferable oil and gas production tax credits based on oil production and the alternative tax credit for oil and gas exploration; relating to purchase of tax credit certificates from the oil and gas tax credit fund; relating to a minimum for gross value at the point of production; relating to lease expenditures and tax credits for municipal entities; adding a definition for "qualified capital expenditure"; adding a definition for "outstanding liability to the state"; repealing oil and gas exploration incentive credits; repealing the limitation on the application of credits against tax liability for lease expenditures incurred before January 1, 2011; repealing provisions related to the monthly installment payments for estimated tax for oil and gas produced before January 1, 2014; repealing the oil and gas production tax credit for qualified capital expenditures and certain well expenditures; repealing the calculation for certain lease expenditures applicable before January 1, 2011; making conforming amendments; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 216
SHORT TITLE: NAVIGABLE WATER; INTERFERENCE, DEFINITION
SPONSOR(s): REPRESENTATIVE(s) TALERICO

01/19/16	(H)	PREFILE RELEASED 1/8/16
01/19/16	(H)	READ THE FIRST TIME - REFERRALS
01/19/16	(H)	RES
03/16/16	(H)	RES AT 1:00 PM BARNES 124
03/16/16	(H)	Heard & Held
03/16/16	(H)	MINUTE(RES)
03/18/16	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 274
SHORT TITLE: STATE LAND; EXCHANGES; LEASE EXTENSIONS
SPONSOR(s): REPRESENTATIVE(s) MUNOZ

01/22/16	(H)	READ THE FIRST TIME - REFERRALS
01/22/16	(H)	RES
02/08/16	(H)	RES AT 1:00 PM BARNES 124

02/08/16	(H)	-- MEETING CANCELED --
03/18/16	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

JOSHUA BANKS, Staff
Representative David Talerico
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: On behalf of Representative Talerico, sponsor, provided answers to questions previously raised about HB 216.

CRYSTAL KOENEMAN, Staff
Representative Cathy Munoz
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: On behalf of Representative Munoz, sponsor, introduced HB 274.

WYN MENEFEE, Deputy Director
Alaska Mental Health Trust Land Office
Department of Natural Resources (DNR)
Anchorage, Alaska
POSITION STATEMENT: Answered questions regarding HB 274.

DOUG ISAACSON, General Manager
Minto Development Corporation
Fairbanks, Alaska
POSITION STATEMENT: Testified in support of HB 274.

BART GARBER, President, CEO
Toghotthole Corporation
Nenana, Alaska
POSITION STATEMENT: Testified in support of HB 274.

ACTION NARRATIVE

1:01:04 PM

CO-CHAIR DAVID TALERICO called the House Resources Standing Committee meeting to order at 1:01 p.m. Representatives Olson, Johnson, Josephson, Tarr, Herron, Chenault (alternate), Nageak, and Talerico were present at the call to order. Representative Seaton arrived as the meeting was in progress.

HB 216-NAVIGABLE WATER; INTERFERENCE, DEFINITION

1:02:00 PM

CO-CHAIR TALERICO announced that the first order of business is HOUSE BILL NO. 216, "An Act relating to obstruction or interference with a person's free passage on or use of navigable water; and amending the definition of 'navigable water' under the Alaska Land Act."

[Before the committee was the proposed committee substitute (CS) for HB 216, Version 29-LS0995\E, Bullard, 3/14/16, adopted as the working document on 3/16/16.]

1:02:33 PM

JOSHUA BANKS, Staff, Representative David Talerico, Alaska State Legislature, discussed the sponsor's 3/18/16 memorandum, included in the committee packet, that details the questions raised by members during the committee's 3/16/16 meeting. He addressed the concern raised by Representative Seaton and Representative Herron about whether there would be restrictions to prevent possible harm from all-terrain vehicles (ATVs) operating along and through anadromous streams. He said the sponsor confirmed with the Alaska Department of Fish & Game (ADF&G) and the Alaska Department of Natural Resources (DNR) that the statutes currently in place would provide some restrictions on what activities could be conducted in or around navigable waters. He relayed that ADF&G notified the sponsor of AS 16.05.871, which requires a person to obtain a permit to conduct certain activities around anadromous waters and is in place to ensure adequate protection of ADF&G resources. Mr. Banks elaborated that AS 16.05.896 allows for a misdemeanor offense to be issued to anyone doing material damage to salmon spawning grounds or disrupting salmon migration. He further explained that there are a number of statutes DNR could use to restrict or manage the use of waters through regulation, including determining which uses are incompatible within certain areas. Drawing attention to Section 1 on page 1 of Version E, he pointed out that AS 38.05.128(a) gives permission to a state agency to obstruct the free passage of navigable waters if it is authorized by law or permit issued by a federal or state agency. So, he continued, a department could stop an activity causing harm to sensitive areas if there is an authorization in the law.

MR. BANKS next addressed the concern raised by Representative Josephson regarding whether the 1824 U.S. Supreme Court case

Gibbons v. Ogden [may cause a problem for the state's definition of navigable water]. Mr. Banks explained that this case dealt primarily with interstate commerce and did not deal with navigability unless it was closely associated with interstate commerce.

MR. BANKS lastly addressed the concern raised by several testifiers regarding the deletion of the language "but not limited to". He reported the deletion is being done due to a legal preference that Legislative Legal and Research Services has started moving toward. He explained that using the single word "including" has the same legal meaning as "including but not limited to", and gets the point across using less words.

1:07:35 PM

REPRESENTATIVE JOSEPHSON moved to adopt Conceptual Amendment 1, which read:

Page 1, line 8, following "**law**";
Insert "**or regulation,**"

CO-CHAIR TALERICO objected for purposes of discussion.

REPRESENTATIVE JOHNSON requested a copy of the amendment prior to discussion.

1:08:41 PM

The committee took a brief at-ease.

1:10:55 PM

REPRESENTATIVE JOSEPHSON explained why he is offering Conceptual Amendment 1. He said he was advised by an attorney who is a water rights expert that the definition in Version E could be restrictive. He noted the Constitution of the State of Alaska, Article VIII, Section 14, Access to Navigable Waters, states, "Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes." He further noted that Title 5 contains a huge number of ADF&G regulations, many created by the Alaska Board of Game. In further research he found the 3/2/01 decision for the case, Interior Alaska Airboat Association Inc. v. State of Alaska, Board of Game, which

concerned regulations in the Nenana region and the Noatak River and whether, for example, on a navigable waterway the Alaska Board of Game could say an airboat or an aircraft cannot be used in certain locations. The Supreme Court of Alaska ruled that the Alaska Board of Game can do that, he related. He said he wants the record to reflect that it is not necessarily a free-for-all across Alaska's navigable waters and so he is offering this amendment.

1:13:16 PM

REPRESENTATIVE JOHNSON brought attention to Version E, page 2, lines [1-2], which state, "authorized by the commissioner after reasonable public notice." He held that this is regulation and therefore adding "or regulation" is unnecessary.

CO-CHAIR TALERICO said the legislature as a body defines the law of the state, which engages the departments to actually create regulations. So, since law is covered in the bill, his question is whether it would be redundant to add "or regulation". He opined that regulations are born via the laws provided by the legislature.

REPRESENTATIVE SEATON offered his understanding that "law" includes both law and regulations of the state; it is not simply by statute, law is a broader term.

REPRESENTATIVE TARR allowed it may be accurate that the proposed language is unnecessary, but said HB 216 would be made more clear by including "or regulation". She suggested taking a brief at ease in order to solicit the opinion of Legislative Legal and Research Services.

CO-CHAIR TALERICO said he personally does not have a lot of heartburn about adding the amendment, even though he is unsure how necessary it is.

REPRESENTATIVE HERRON said he views the amendment as a "belt and suspenders" amendment and agreed the amendment is redundant.

CO-CHAIR NAGEAK concurred.

1:16:40 PM

CO-CHAIR TALERICO removed his objection. There being no further objection, Conceptual Amendment 1 was adopted.

1:17:07 PM

REPRESENTATIVE TARR offered her appreciation for the answers to the questions, particularly the issue of sensitive areas and protection of anadromous streams. She addressed previous testifiers who may be listening saying that although the definition is becoming broader, committee members care about the state's salmon and want to avoid any unintended consequences, while [protecting the use of] motorized vehicles.

CO-CHAIR TALERICO offered his appreciation for the questions raised by the committee members, saying it is the committee's responsibility to vet the bills and pursue answers.

REPRESENTATIVE SEATON referenced the definition that people have basically unlimited access to waters of the state. He shared his hope that the addition of methods, such as all-terrain vehicles, snow machines, and so forth, will be further investigated by the sponsor to ensure that adding "in any season" is not expanding access of citizens upon private property. He posited it would be good to clarify that expanding the definition and what can be used will not result in invading private property by statute that allows people access.

1:20:05 PM

CO-CHAIR NAGEAK moved to report the proposed committee substitute (CS), Version 29-LS0995\E, Bullard, 3/14/16, as amended, with attached fiscal notes and individual recommendations. There being no objection, CSHB 216(RES) was reported from the House Resources Standing Committee.

1:20:42 PM

The committee took an at-ease from 1:20 p.m. to 1:23 p.m.

HB 274-STATE LAND; EXCHANGES; LEASE EXTENSIONS

1:23:30 PM

CO-CHAIR TALERICO announced that the next order of business is HOUSE BILL NO. 274, "An Act relating to extensions of certain state land leases; relating to the exchange of state land; and relating to the definition of 'state land.'"

1:23:47 PM

CRYSTAL KOENEMAN, Staff, Representative Cathy Munoz, Alaska State Legislature, introduced HB 274 on behalf of Representative Munoz, sponsor. She said the sponsor introduced HB 274 after being approached with the issue by a Juneau non-profit that had worked with the Department of Natural Resources (DNR) on trying to complete a land exchange. She said the sponsor researched statutes and talked with DNR about what was hindering the land exchange. Through research, the sponsor realized the issue stemmed well beyond just this local non-profit in that it is an issue for non-profits across the state, including land exchanges involving Native corporations, the Alaska Mental Health Trust Authority (AMHTA), and federal land exchanges. The sponsor found inefficiencies within Title 38.50 in the way statutes govern land exchanges. Title 38.50 land exchanges are written differently than the municipal land exchanges. State land exchanges call for the value of the land that is being appraised to be "exactly equal to" when talking about the surveying of land. Municipal land exchanges call for it to be "approximately equal to", which allows for consideration of other factors, such as public interest and access to the land, something that Title 38.50 does not allow for and is a major hurdle.

MS. KOENEMAN pointed out that the other issue is that appraisals under 38.50 are only good for one year. She explained that with the public comment period, the application, and the survey work, most land exchanges take at least a year and are very difficult to complete within one year. Therefore, HB 274 would remove that one-year limitation and let the final paperwork be completed to conclude those land exchanges that are close to being completed.

1:27:32 PM

MS. KOENEMAN provided a sectional analysis of HB 274. She said Section 1 deals with the coordination with other state agencies and would remove a reference that is being repealed. Section 2 [would add two new subsections that] deal with the extension of certain land leases if it is in the best interest of the state. Section 3 would, through new paragraph (7), apply existing notice standards to state land exchanges. Section 4 would provide clarifying language regarding the definition of shore land and tideland; it is technical cleanup from Legislative Legal and Research Services. Section 5 would add two new provisions, one being that the land exchange must be in the best interest of the state and the other being that AS 38.05.945 applies for providing public notice. Section 6 would provide that land exchanges be approximately equal in value and would

require legislative approval of exchanges greater than $5 million; this mirrors the municipal lands exchange statutes. Section 7 would remove the "equal value" provision that was changed to "approximately equal to" in Section 6. Section 8 would remove existing limitations and would provide that the conveyances must be authorized by the Constitution of the State of Alaska and federal laws. Section 9 would provide for the continuation of revenue accrual until state land is conveyed unless jurisdiction from other state agencies is waived.

1:30:00 PM

MS. KOENEMAN continued the sectional analysis, explaining that Section 10 would change the hearing requirements on land valued at more than $5 million. The hearing requirement would be changed from three public hearings to one public meeting prior to it being submitted to the legislature for review.

REPRESENTATIVE HERRON expressed his concern with Section 10. He asked why reduce the number from three hearings to one [meeting] for land that is valued over $5 million.

MS. KOENEMAN replied that the way the Department of Natural Resources (DNR) conducts its public hearings is a much higher bar than is its public meetings. She qualified the sponsor does not want to limit public participation and wants to ensure that all the issues are vetted, but said the sponsor also understands the need for the timeline of getting land exchanges taken care of. Additionally, with the additional oversight of the legislature, the sponsor feels comfortable that the legislature will do its due diligence on these land exchanges. Multiple public meetings and legislative hearings could be held regarding these land exchanges and therefore the sponsor feels the public would be well served and there would be no diminishment.

REPRESENTATIVE HERRON observed in the bill that the status quo language is for "at least three public hearings" and the proposed language is "at least one public meeting". He inquired as to the difference between a hearing and a public meeting.

MS. KOENEMAN responded that the commissioner must attend the public hearings and recorders must be there and [minutes] transcribed. Hearings are a much higher bar than having, say, a town hall [meeting], where there is more of a free-form discussion.

REPRESENTATIVE HERRON commented that land exchanges should not be easy, and that is the reason for his concern.

1:33:43 PM

REPRESENTATIVE JOSEPHSON surmised that if it is not a hearing then the legislature would not be privy to what was said at the hearing, given that for a public meeting the legislature would probably read a press account of it.

MS. KOENEMAN understood the legislature would still be privy to much of the information that was presented at a [meeting].

1:34:38 PM

REPRESENTATIVE SEATON stated his concern regarding Section 10, noting there is a proposal for an area on the Kasilof River for which there are three public hearings - one each in Wasilla, Anchorage, and Kasilof. He posited that the public opinion coming out of a meeting in Kasilof will absolutely be totally different than what will come out from the other two locations. This is because it relates to dip netting and people from the population centers have a definitely different attitude to that than the property owners who live around that area and who have the impact of that. Therefore, he is concerned about going from three public hearings to one public meeting. He requested he be provided with the definition of public hearing versus public meeting, saying that normally [legislators] get the notice of public hearings but not necessarily public meetings.

MS. KOENEMAN answered that the proposed language states DNR shall hold "at least" one public meeting, it would not limit DNR to only one [for exchanges having value of more than $5 million]. It would allow for if there is public outcry or interested parties to request more than one meeting. She said public meetings do still go through the public notice requirement and so notice is sent out to all interested parties, ensuring that every affected party does have the ability to comment. This is in addition to the public notice provisions that are contained in statute, so there would already have been the chance to submit comments through the public notice. The department would have a chance and opportunity to review those public comments and determine where the issues are and which communities would be greatly affected.

1:37:20 PM

MS. KOENEMAN resumed the sectional analysis, noting Section 11 would provide conforming language regarding the legislative review for changes made in Section 6 and Section 13. Section 12 would provide additional clarifying language for the definition of shore land and tideland for another section of statute. Section 13 would repeal several statutes.

MS. KOENEMAN reviewed the statutes that would be repealed under Section 13: AS 38.50.020, which deals with the value of properties exchanged, would be repealed because Section 6 of the bill which would change the language from "exactly equal to" to "approximately equal"; AS 38.50.040, which deals with the land subject to exchange, would be repealed because the state does not have the legal authority to violate a covenant or a restriction on a title that prevents the disposal or land exchange, therefore Legislative Legal and Research Services determined this statute does not seem to hold any functional value; AS 38.50.080(b), which deals with the prohibition against alienation of selection rights, would be repealed because the state has already selected its lands under the Alaska Statehood Act and has no further ability to select lands.

1:39:12 PM

REPRESENTATIVE CHENAULT offered his belief that Alaska has not yet selected all of its lands, so there are still lands that are available.

CO-CHAIR NAGEAK agreed with Representative Chenault.

MS. KOENEMAN replied that that was the information provided to her and she will follow up in this regard.

REPRESENTATIVE CHENAULT requested that DNR provide the committee with clarification.

1:39:38 PM

MS. KOENEMAN continued her review of the statutes that would be repealed under Section 13: AS 38.50.090, which deals with coordination with other state agencies, would be replaced with AS 38.05.035(e) which requires that a summary be provided of agency and public comments that have been obtained as a result of contacts with other agencies and other efforts taken by the department through public comment; AS 38.50.100, which deals with the finding requirements as to alternatives, would be replaced with AS 38.05.035(e) which requires a written

determination that the exchanges will serve the best interests of the state; AS 38.50.110, which is the notice of proposed exchanges, would be replaced with the requirements of AS 38.05.945 which is the standard for most other disposals, including oil and gas leases, land sales, material sales, and other leases; AS 38.50.120(b), which is the public hearings statute, would be replaced by Section 10 of the bill; and AS 38.50.130, which is the report on proposed exchanges, would be repealed because it is duplicative of existing requirements for publications of the best interest finding and would add costs and complexities to the exchange process. The best interest decision would still lay out the considerations used in determining the value of the property, the value of the exchange, and what the benefits are of the exchange.

1:41:36 PM

REPRESENTATIVE JOSEPHSON noted that under AS 38.50.080(b) the state may not alienate land selected under the Statehood Act of 1958. He said he has not seen a map showing what Alaska has received as of January 3, 1959. He inquired whether there is some reason why lawmakers eons ago said that that is sacred land and is not to be exchanged, whereas land the state has accepted since then has been exchanged, albeit very slowly.

MS. KOENEMAN deferred to DNR for an answer.

CO-CHAIR TALERICO requested DNR to address the land selection question and also the public hearing versus meeting question.

1:42:39 PM

WYN MENEFEE, Deputy Director, Alaska Mental Health Trust Land Office, Department of Natural Resources (DNR), first addressed the state's selection rights, explaining that at statehood Alaska had 105 million acres to select, with certain coming through grants and certain needing to be selected. The state had a time period in which to select lands and the selections have already occurred. Of the remaining selections that the state has, the state is currently figuring out which ones to relinquish and which ones to close, but the state does not have the ability to select more. At the time [AS 38.50.080(b)) was created the state likely had the ability to select lands, so that is the reason why currently it is not needed. The state does have the ability to change what is its priority in selection and close out of selection, but the state does not have the ability to select more land.

1:44:01 PM

MR. MENEFEE then addressed the difference between meetings and hearings. He said DNR's interpretation of hearings is that a court transcriber must be there to type out every word said and then the department pays someone to process and publish the hearing minutes. This is a very lengthy procedure for DNR to do because it does not normally do that. Normally, the department disposes of oil and gas leases, mineral rights, land sales, all under AS 38.05.035(e) decisions. The department uses public meetings to reach out and gather input from the public, then documents the type of input received at the meetings but does not use a system of transcribing someone on the record. The department has found meetings to be much more beneficial because meetings allows for a dialogue. People can give their ideas, ask questions, and discuss solutions with department staff, rather than a person being constrained to two or three minutes and that's it. That is why the department prefers to have meetings instead of hearings.

1:46:53 PM

MR. MENEFEE clarified that AS 38.05.945 is DNR's public notice requirements and AS 38.05.035(e) is DNR's decision process. The combination of those two statutes, he explained, requires the department to reach out to potentially affected parties the best way the department sees fit to reach the potentially affected parties. It could be that the department determines six public meetings are needed to do that or only one is needed. If it is under the $5 million value threshold it would give the department the decision making authority to determine how much notice is needed or how many meetings to do and even whether a meeting is even needed. For example, something very small in a subdivision may not really need a public meeting. It will have a public notice because the department always has a public notice and will always post it on the internet and probably in the local newspaper. But the need to go through multiple meetings is not always essential. However, he continued, if an exchange is over the $5 million value threshold, the department would need to bring that to the legislature, and the legislature could hold as many hearings as it likes in order to approve the land exchange. The department cannot do over $5 million or an unequal land exchange without getting legislative approval and therefore even more hearings occur. The requirement for the three hearings in current law is only for if it is over $5 million, so it seems even repetitive. The department would do

public meetings and such as necessary up to that point, but once the department finally determined it to be a good exchange and ready for the legislative approval, the legislature could hold as many hearings on that as it likes.

1:47:40 PM

REPRESENTATIVE SEATON presumed that written public comment to public hearings is on the record. He asked how written public comment to public meetings is acquired and whether it is verbatim as written by the person or is summarized as someone commenting in the positive or negative.

MR. MENEFEE answered that when DNR does an AS 38.05.035(e) decision it oftentimes does a summary of comments received because sometimes there can be one comment and sometimes a thousand, but the public record is still there that documents it. The department tells people that in order to be heard DNR wants comment to be put in writing to preclude the department from mistakenly putting words in someone's mouth. At any public meeting, DNR has forms for writing down comments on the spot or for mailing in, and DNR is willing to help the person write it. That is in the public record and available for anyone to see when doing decisions. However, in the actual decision document, DNR oftentimes summarizes.

1:49:27 PM

REPRESENTATIVE SEATON, regarding three [hearings] versus one [meeting] for land exchanges valued over $5 million, said his concern with an exchange coming before the legislature that has had only one public meeting is that 50 people will call in asking legislators to make a decision on something that was not as amply vetted in the local area as it should have been, given that legislative hearings are not in the local area. He requested Mr. Menefee to address his concern and asked whether DNR would have three meetings if the value is over $5 million.

MR. MENEFEE replied that if the value is over $5 million it is likely either a broader land base or a very valuable location, such as downtown. If it is that type of value it likely would be more than one [meeting]. If it is an accumulation of several different land parcels located in different communities, DNR would likely have public meetings in each of those communities. It would be unlikely, although he cannot guarantee it, that something would get to the legislature under the requirement of unequal value or of over $5 million with only one meeting. In

either of those cases there would probably be more than one public meeting because DNR does not want to bring something to the legislature that is not vetted. The department wants to know what the problems and concerns are. That is not to say that people will not ask for additional hearings with the legislature, but DNR would like to have that vetted, so if it is going to take more meetings DNR would hold more meetings.

1:51:59 PM

REPRESENTATIVE JOSEPHSON remarked that severing of the surface from the mineral estate as proposed under Section 8 seems like a major shift. He inquired what the goal is here and how it would be known that the state had not exchanged something that had valuable minerals or oil and gas under it.

MR. MENEFEE responded that current law talks about trying to not do mineral estates separately. By law, the federal government is the only group to which state land mineral rights can be disposed. The proposal says it can only be done according to state constitution and law, therefore it could not be segregated and given to "Joe" because it is not permissible by law. But it would allow the separation. So, for instance, when dealing with the federal government there may be reasons the state would only want to do a mineral estate in certain cases. Even under an exchange, he explained, the state keeps the rights to the oil and gas and such because of the statutes. The state is going to evaluate that because it does not want to give away a valuable resource. Normally, exchanges are going to occur with fee simple, which is both the mineral estate and the land estate all together. Typically in an exchange, both the surface and the subsurface come into the state and only the surface estate is given back out.

1:54:24 PM

REPRESENTATIVE SEATON drew attention to page 4, Section 9, of the bill and requested an explanation of the language "and revenue" on lines 24-25.

MR. MENEFEE answered by posing a scenario in which the state is selling gravel off of a site, is going through a land exchange process, and is in a preliminary exchange agreement but gravel is still being extracted there. The other entity that the state is exchanging with does not get any of the revenues off of the gravel extraction that continues until the actual exchange is complete. This is because the state does not want the other

entity to say, "Well this exchange took 10 years and I demand all the revenue that came off during that time." The state has not given that land to the other entity until the exchange is done and therefore the idea is to be expeditious about going through an exchange but not wanting the other entity to be accruing any sort of right on the other side. It is wanted to keep that to the state so the state keeps the benefit of any revenues coming off that land until the exchange is done.

REPRESENTATIVE SEATON asked whether there are any repealers that the department is uncomfortable with or that expand further than is needed.

MR. MENEFEE replied that DNR is comfortable with the way the bill is written. In regard to the repealers, he said some are pieces of language being moved from one part to another, some are recommendations by Legislative Legal and Research Services for what it should be, and some are just for efficiencies. Therefore, DNR is very comfortable with where it stands.

1:56:38 PM

REPRESENTATIVE JOSEPHSON noted that "best interest" is used in the bill. He asked whether this could result in more litigation that would hold up the exchange, given there is a whole body of law on what that means and that it is a term of art.

MR. MENEFEE responded that, except for this, almost every disposal by DNR is done through the AS 38.05.035 decision process, which says the department has to decide it is in the best interest of the state. Absolutely that can be challenged, he said. Every decision DNR does can be appealed by somebody and eventually taken to court. If DNR did not do its due diligence, evaluate correctly, or do everything required under AS 38.05.035, it could be challenged. The department can be challenged whether it has done a good job or a bad job. The department gets taken to court all the time. He allowed it is a term of art, but pointed out that that is what the legislature set up for DNR to do for all of the disposals. The department's large oil and gas leases and land sale program are all done through that same decision process - the same appealable process is there, same best interest determination.

1:58:32 PM

CO-CHAIR TALERICO understood that under the Statehood Act any mineral rights surrendered by the state would go back to the federal government.

MR. MENEFEE answered yes.

CO-CHAIR TALERICO presumed it would be the feeling of everyone listening that that would never happen, that the state would never give those up.

MR. MENEFEE replied correct, except if it was going back to the federal government. An allowance is there and exchanges to the federal government are possible in the future. For example, the Alaska Mental Health Trust Land Office is working an exchange with the federal government, however mineral rights were not really the issue there. In the future it could be a possibility that the state could exchange mineral rights back to the federal government and that is the only place that that works.

CO-CHAIR TALERICO surmised that some of the land selected by the state has not yet been adjudicated. He assumed the state must work with the U.S. Bureau of Land Management (BLM) to do the adjudication for the state to acquire the rest of its acreage.

MR. MENEFEE responded that the selections have already occurred and the state has over-selected. In that over-selection the state must work with BLM to fine-tune what the state is going to get in the end. It is somewhat like a chess game - Native corporations get first dibs on selections and from what remains the state will adjust its priorities and will get the remaining selections. So, it is still under adjudication and is still a process ongoing.

2:00:27 PM

REPRESENTATIVE JOSEPHSON asked how many of the exchanges involve the federal government. He further requested Mr. Menefee to elaborate on the federal exchange that is currently going on.

MR. MENEFEE answered he can only think of two that have in any way been going on right now. One is Izembek National Wildlife Refuge, which has been going on for quite some time with many perils with the exchange. Under AS 38.50 there is not an exchange going on presently. There are many different ways to do exchanges. An exchange with the federal government can be done administratively or as a congressionally mandated exchange. An administrative exchange is more like what is being done with

the Alaska Mental Health Trust Land Office, where the office is working with the U.S. Forest Service in Southeast Alaska to do an exchange for approximately 18,000 acres of trust land for about 20,000 acres of U.S. Forest Service land. There are many parcels and it is a fairly large and lengthy process. Right now an agreement has been entered into to initiate with the federal government. There is a National Environmental Policy Act of 1969 (NEPA) process that needs to occur, an environmental impact statement (EIS), and this must be done before doing the AS 38.50 land exchange on the state side. So, it is just in the first stages of a real robust process on the federal side and then it must be married up. The way AS 38.50 currently stands especially wreaks havoc with this appraisal problem of only being good for one year. For example, the Falls Creek exchange took at least 12 years to get through because of trying to match up the state and federal processes.

2:03:36 PM

REPRESENTATIVE HERRON commented that in regard to the Izembek trade there is a lot of bitter resentment with the way the federal government has treated that trade. The EIS process took four years to do with many Alaskans and other parties interested in a successful conclusion to that trade. In his opinion, he continued, the EIS was corrupted at the highest levels of the U.S. Department of the Interior at the last minute. He asked when the Izembek trade agreement is going to expire.

MR. MENEFEE responded that DNR will have to get back to the committee with an answer.

2:04:42 PM

REPRESENTATIVE TARR related that a criticism she has heard with the whole land exchange process is the great length of time that it can take and that costs may be exceeded through the process relative to the value of the property. She inquired whether the cleanup proposed in HB 274 will help expedite the process, if that is an accurate criticism.

MR. MENEFEE replied that the criticism is accurate in the sense that DNR has had numerous failed exchanges and exchanges that never got off the ground because of process. Under AS 38.50, the way the timing works it is extremely difficult to get an exchange through - many years in the making, many repeated steps, lots of cost for both the state and the entity proposing to exchange with the state. It is not good for anyone because

much money and staff time is wasted that way. The intention of HB 274 is to make it more consistent with how DNR does normal disposals and what is really trying to be done is get efficiency so exchanges can actually get done. Numerous people and entities, such as Native corporations, have come to DNR wanting to do an exchange and explaining why it is in the state's best interest. But oftentimes DNR has said that it probably cannot be done because of the law as it stands. That is not a good answer because it might actually be in the state's interest. When it is in the state's interest, DNR wants to be able to actually complete an exchange.

MS. KOENEMAN added that the land exchange example she used at the start of her testimony was in regard to the Point Bridget trailhead and the Echo Ranch Bible Camp, a land exchange process that started in the early 2000s. She said the bible camp has dumped tens of thousands of dollars over and over, year after year, trying to get this exchange. It has been a frustrating ordeal for the camp because it is a nonprofit and should be using those funds for other purposes instead of exchanges. The hope is that there will be additional public entities that will not have to expend those same funds and that it will be more cost advantageous for them.

2:07:35 PM

CO-CHAIR TALERICO opened public testimony on HB 274.

2:08:35 PM

The committee took a brief at-ease due to technical difficulties at the Fairbanks Legislative Information Office.

2:09:05 PM

DOUG ISAACSON, General Manager, Minto Development Corporation, stated his corporation's support for HB 274. He noted that Minto Development Corporation is a subsidiary of Seth-De-Ya-Ah Corporation and Minto is a federally recognized village under the Alaska Native Claims Settlement Act (ANCSA). He offered his appreciation for the earlier testimony and explanations by Mr. Menefee, noting that a Native corporation looking at economic development for its village, work for shareholders, and the ability to create value for the greater community at large, the corporation is discouraged from pursuing any land exchanges due to the process. He related his experience with a land exchange while he was mayor of North Pole. North Pole was looking at

expanding its wastewater treatment center and the exchange process became too cumbersome to pursue.

MR. ISAACSON noted that HB 274 was immediately received well by his board. He drew the committee's attention to two letters, one from the Minto Development Corporation and one from the Seth-De-Ya-Ah Corporation. If the bill is passed, he said, the corporation is looking at pursuing some ventures that would open up some economic opportunities. It is reasonable to reduce the number of public meetings. It does not say there will not be public meetings, but in the municipal process for land issues there is outreach to those who are immediately affected by exchanges. Having three mandated public hearings does not make sense when something is being done in an area that is not going to have a lot of affect. The proposal is a much more reasonable way of pursuing it and would allow the corporation to appraise the property, go through the best interest findings, and get a determination in a much more timely way.

2:13:04 PM

BART GARBER, President, CEO, Toghotthole Corporation, stated his corporation is a village corporation in Nenana. He offered the corporation's support for HB 274. He said he echoes Minto Development Corporation's testimony and added that Nenana potentially has a more extreme case. By the time Toghotthole got around to selecting lands, the vast majority of lands in its area had already been selected by the state and by the city. So, Toghotthole's lands are primarily distant, many of them are split up along the road system or farther out on some of the river systems. There have already been times when Toghotthole needed or had opportunity to exchange and it was easier when the city and the village had to make a land exchange. The parties were more similar, the parcels were smaller, and the interests were more in line. There are now increasing amounts of development in the area, but the corporation's parcels are still all spread out, and it is getting into more and more areas where the state has lands. It is not large parcels that are being talked about, but potentially small parcels that are loggerheads for access issues and other things. He related that this last year he had to make arrangements for the lease of a very small state parcel between Toghotthole's property and some mental health property that Toghotthole had to get to. That worked out okay, but it might have been easier and in the long term it may be easier, to get an exchange. However, given the current process, there is a very good chance of not going through it simply because of the time deadlines and the length of the

transaction. Toghotthole Corporation supports HB 274 and would like to see the number of hearings potentially diminished or at least sped up. In most situations where the principle parties are in agreement, it would be in the best interests of both parties if the process does not get in way.

2:15:56 PM

CO-CHAIR TALERICO closed public testimony on HB 274 after ascertaining no one else wished to testify.

2:16:06 PM

REPRESENTATIVE SEATON stated his concern that budget constraints and future administrative contraction might result in saving expenses by having a single hearing for exchanges valued at over $5 million and then shoving that off to the legislature. He said he would like, at the appropriate time, to go from one public meeting to three public meetings because meetings are simpler and easier than hearings and three meetings would ensure that budgetary problems do not shift from the administration to the legislature. He recounted that he has been through timber sales or exchanges that were very contentious by the time they came before the legislature and some of that was because things had not been worked out in public meetings. He urged the committee to stay at three meetings and not go down to one meeting for exchanges valued at $5 million.

2:17:34 PM

CO-CHAIR TALERICO held over HB 274 and requested that proposed amendments be submitted to the co-chairs' offices.

2:18:30 PM

CO-CHAIR NAGEAK explained the procedures that will be followed for the committee's meetings on 3/19/16 and the week of 3/21/16.

2:21:03 PM

ADJOURNMENT

The House Resources Standing Committee meeting was recessed at 2:21 p.m., to be continued at 1:00 p.m. on March 19, 2016.