

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

April 13, 2016

3:32 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator Mia Costello, Vice Chair
Senator John Coghill
Senator Bert Stedman
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Peter Micciche
Senator Bill Stoltze

COMMITTEE CALENDAR

CS FOR HOUSE CONCURRENT RESOLUTION NO. 17(TRA)

Supporting the aviation industry; and urging the governor to make state-owned land available to the unmanned aircraft systems industry for the management and operation of unmanned aircraft systems and related research, manufacturing, testing, and training.

- MOVED CSHCR 17(TRA) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 216(RES)

"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."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 274(RES)

"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.'"

- MOVED CSHB 274(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HCR 17

SHORT TITLE: SUPPORT AVIATION INDUSTRY; USE STATE LAND
SPONSOR(s): REPRESENTATIVE(s) HUGHES

01/29/16 (H) READ THE FIRST TIME - REFERRALS
01/29/16 (H) TRA
02/02/16 (H) TRA AT 1:00 PM CAPITOL 17
02/02/16 (H) Heard & Held
02/02/16 (H) MINUTE(TRA)
02/04/16 (H) TRA AT 1:00 PM CAPITOL 17
02/04/16 (H) Moved CSHCR 17(TRA) Out of Committee
02/04/16 (H) MINUTE(TRA)
03/15/16 (H) TRA AT 1:00 PM CAPITOL 17
03/15/16 (H) Moved CSHCR 17(TRA) Out of Committee
03/15/16 (H) MINUTE(TRA)
03/16/16 (H) TRA RPT CS(TRA) 5DP 1NR
03/16/16 (H) DP: NAGEAK, STUTES, CLAMAN, HUGHES,
FOSTER
03/16/16 (H) NR: ORTIZ
03/21/16 (H) TRANSMITTED TO (S)
03/21/16 (H) VERSION: CSHCR 17(TRA)
03/23/16 (S) READ THE FIRST TIME - REFERRALS
03/23/16 (S) TRA, RES
04/06/16 (S) TRA RPT 3DP 1NR
04/06/16 (S) DP: MICCICHE, EGAN, BISHOP
04/06/16 (S) NR: STEDMAN
04/06/16 (S) TRA AT 8:30 AM BUTROVICH 205
04/06/16 (S) Moved CSHCR 17(TRA) Out of Committee
04/06/16 (S) MINUTE(TRA)
04/11/16 (S) RES AT 3:30 PM BUTROVICH 205
04/11/16 (S) Scheduled but Not Heard
04/13/16 (S) RES AT 3:30 PM BUTROVICH 205

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
03/18/16 (H) Moved CSHB 216(RES) Out of Committee
03/18/16 (H) MINUTE(RES)
03/21/16 (H) RES RPT CS(RES) 8DP 1NR

03/21/16 (H) DP: JOHNSON, HERRON, CHENAULT, OLSON,
TARR, SEATON, TALERICO, NAGEAK
03/21/16 (H) NR: JOSEPHSON
03/23/16 (H) TRANSMITTED TO (S)
03/23/16 (H) VERSION: CSHB 216(RES)
03/25/16 (S) READ THE FIRST TIME - REFERRALS
03/25/16 (S) RES
03/28/16 (S) RES AT 3:30 PM BUTROVICH 205
03/28/16 (S) Scheduled but Not Heard
04/11/16 (S) RES AT 3:30 PM BUTROVICH 205
04/11/16 (S) Scheduled but Not Heard
04/13/16 (S) RES AT 3:30 PM BUTROVICH 205

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
03/18/16 (H) Heard & Held
03/18/16 (H) MINUTE(RES)
04/01/16 (H) RES AT 1:00 PM BARNES 124
04/01/16 (H) Moved CSHB 274(RES) Out of Committee
04/01/16 (H) MINUTE(RES)
04/04/16 (H) RES RPT CS(RES) 7DP 2NR
04/04/16 (H) DP: JOHNSON, HERRON, OLSON, SEATON,
CHENAULT, TALERICO, NAGEAK
04/04/16 (H) NR: JOSEPHSON, TARR
04/09/16 (H) TRANSMITTED TO (S)
04/09/16 (H) VERSION: CSHB 216(RES)
04/11/16 (S) READ THE FIRST TIME - REFERRALS
04/11/16 (S) RES
04/13/16 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

GINGER BLAISDELL, staff to Representative Shelley Hughes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Commented on HCR 17 for the sponsor.

REPRESENTATIVE HUGHES
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HCR 17.

REPRESENTATIVE DAVID TALERICO

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 216.

CHAD HUTCHINSON, staff to Senator John Coghill

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Commented on HB 216.

ED FOGELS, Deputy Commissioner

Department of Natural Resources (DNR)

Juneau, Alaska

POSITION STATEMENT: Commented on HB 216.

RICHARD BISHOP, representing himself

Fairbanks, Alaska

POSITION STATEMENT: Supported HB 216.

ROD ARNO, Executive Director

Alaska Outdoor Council

Juneau, Alaska

POSITION STATEMENT: Supported HB 216.

REPRESENTATIVE CATHY MUÑOZ

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 274.

CRYSTAL KOENEMAN, staff to Representative Muñoz

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis of HB 274.

ALPHEUS BULLARD

Legislative Legal Services

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 274.

WYN MENEFEE, Deputy Director

Alaska Mental Health Trust Land Office

Department of Natural Resources (DNR)

Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 274.

DOUG ISAACSON, General Manager
Minto Development Corporation
Fairbanks, Alaska

POSITION STATEMENT: Supported HB 274.

ACTION NARRATIVE

[3:32:06 PM](#)

CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:32 p.m. Present at the call to order were Senators Stedman, Costello, Coghill, and Chair Giessel.

HCR 17-SUPPORT AVIATION INDUSTRY; USE STATE LAND

[3:32:44 PM](#)

CHAIR GIESSEL announced consideration of HCR 17 [CSHCR 17(TRA) was before the committee].

GINGER BLAISDELL, staff to Representative Shelley Hughes, Alaska State Legislature, said this measure was brought to their attention by the Unmanned Aircraft System's Task Force, because one individual was able to secure a contract with the Department of Natural Resources (DNR) to test his unmanned aircraft system equipment by using state lands. The task force put this idea together and HCR 17 is the result.

REPRESENTATIVE SHELLEY HUGHES, Alaska State Legislature, Juneau, Alaska, sponsor of HCR 17, said the task force's top priority has been safety and privacy, but they are also tasked with promoting economic activities related to this industry and that is what HCR 17 does.

She said Alaska has a lot of space, which is unique, and if state land can be made available, industry could use it for research testing, training, manufacturing and maintenance and operations of the systems. She said this will be a multi-billion industry and would be a good thing for the state. These are high tech jobs and young people are very interested in this kind of activity. It could open the door for some of them in the future.

[3:36:27 PM](#)

CHAIR GIESSEL commented that the University of Alaska, Fairbanks (UAF) has the Poker Flats Research area where her son worked

developing the initial Unmanned Aircraft Program (UAP). He counted walrus in the Aleutians with a little aircraft that could fly over them without them being concerned at all, but if a regular aircraft went over, even if it was higher, they all jumped into the water. It has multiple uses and was also tested on the TransAlaska Pipeline System (TAPS).

SENATOR COSTELLO thanked the sponsor for this resolution and asked if she had run into any privacy issues or if there are any privacy guidelines to oversee this industry.

REPRESENTATIVE HUGHES replied that privacy is always a topic on their agenda and Alaska has statutes that do apply. Right now they are working with law enforcement to create tools to deal with situations if they don't already exist. It's tricky, but she has a draft bill for next year. Congress is currently looking at the FAA reauthorization bill and there is talk about restricting states as to what they can do and whether they can even specify unmanned aircraft systems in their statutes. It is an evolving technology and she doesn't want to penalize this industry specifically if laws are already on the books that will work.

[3:39:20 PM](#)

She said concerns about privacy were expressed on the House floor and a bill was passed a couple of years ago requiring search warrants in conjunction with the use of drones. There were attempts to put privacy language in this resolution, but this bill is about economic opportunities, and another bill would be a proper vehicle for that.

CHAIR GIESSEL opened public comment. Finding none, she closed public testimony.

[3:40:36 PM](#)

SENATOR COSTELLO moved to report CSHCR 17(RES), version 29-LS1327\E, from committee with individual recommendations and attached zero fiscal note. There were no objections and it was so ordered.

[3:41:07 PM](#)

At ease

HB 216-NAVIGABLE WATER; INTERFERENCE, DEFINITION

[3:41:40 PM](#)

CHAIR GIESSEL called the meeting back to order and announced that consideration of HB 216. [CSHB 216(RES), labeled 29-LS0995\N, was before the committee.]

REPRESENTATIVE DAVID TALERICO, Alaska State Legislature, sponsor of HB 216, testified that this measure has to do with the state's navigable waters. The Submerged Lands Act of 1953 recognized each state as holding the title for any submerged land under a navigable waterway within its boundaries. This term is defined in AS 38.05.965 (14), which specifies a number of activities that can be conducted in a body of water in order to deem the body as navigable. While the list of activities is lengthy, there are a few omissions that HB 216 hopefully will address.

He said the Submerged Lands Act, the Statehood Act, and the Alaska National Interest Lands Conservation Act (ANILCA) have provisions about the state's ability to use its waterways. He takes this seriously because our waterways provide commerce for some people and they provide recreation, exploration and subsistence, as well. Waterways in several of his communities are highways.

[3:42:44 PM](#)

SENATOR WIELECHOWSKI joined the committee.

REPRESENTATIVE TALERICO said he had conferred with the Department of Natural Resources (DNR) about an unambiguous definition, one that was a good enough so there would be no ambiguity about where Alaska stands on its waterways He noted that there was an amendment to consider.

[3:44:39 PM](#)

SENATOR COGHILL moved Amendment 1.

29-LS0995\N.1
Bullard
4/13/16

AMENDMENT 1

OFFERED IN THE SENATE
TO: CSHB 216(RES)

BY SENATOR COGHILL

Page 2, line 7, following "season":

Insert ", whether in a frozen or liquid state,"

Page 2, lines 9 - 13:

Delete "harvesting of ice, state or federal military training, landing and takeoff of aircraft, operation of boats or other watercraft, hovercraft, snow machines, all-terrain vehicles, and other motorized or nonmotorized vehicles, storage of vehicles, and [PUBLIC BOATING,] trapping, hunting [WATERFOWL AND AQUATIC ANIMALS]"

Insert "landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals"

SENATOR COGHILL explained that this amendment would "slim down" the definition, because of concerns that this definition would actually make it tougher for land dispositions within Alaska. It deletes the harvesting of ice and the nonmotorized vehicle storage and inserts landing and takeoff of aircraft, public boating, trapping, hunting, water fowl and aquatic animals. It also says water is navigable whether it's in the frozen or liquid state. He didn't want existing verbiage to create a problem for Alaska on land disposals or create places where people could hide things in case law.

SENATOR STEDMAN objected for discussion and clarification. He liked the direction the amendment was going, but was concerned about how it would affect the southern coastal regions of the state. Some people who moved up here from the Lower 48 find airplane noise objectionable, and it seems like more restrictions have been put on airplanes for ingress and egress to peoples' properties. One way to restrict them is by using municipal planning ordinances. He wanted the "pecking order" to be clear about how this statute would mesh with municipal and city ordinances.

SENATOR COGHILL referenced Alaska's Public Trust Doctrine and enjoyment of public waterways on public trust lands is pretty significant. So, they want to make sure planes have access on water and on frozen land. The language was meant to assure that the Public Trust Doctrine was upheld without creating more difficulties in disposal of public land in Alaska.

[3:49:23 PM](#)

SENATOR STEDMAN said to put a finer point on it, planning departments or commissions take property rights away and it's a

very sensitive subject when municipalities start stripping peoples' access rights. He wanted it clear what authority the state has over municipalities with this statute change. He wants to make it as difficult as possible for folks that showed up fairly recently to get away from where they live to come here and make it just like the place they left. He wanted a conversation on that issue. Then he removed his objection to adopting Amendment 1.

3:50:36 PM

CHAD HUTCHINSON, staff to Senator John Coghill, Alaska State Legislature, said he had done research on this issue and there are multiple definitions of navigable waters depending on whether you are dealing with a federal or a state agency. For instance, "navigable waters" has a separate definition as it relates to the EPA and the Clean Water Act as opposed to what HB 216 is trying to do. There is a definition for "navigable servitude" as it relates to the commerce clause when a new channel is built, particularly as it pertains to the Coast Guard and the military. There is a definition of "navigable waters" under the Quiet Title Act, evidenced by the Sturgeon Case, and whether the determination can be made in federal district court, something the state has struggled with for years. Another case in the year 2000 tried to assert jurisdiction under the federal Quiet Title Act, and the federal court system basically said because they hadn't made a determination as to navigability yet, they could move to dismiss and the state would have to wait for some sort of legislative change from Congress, which is what they are attempting to do right now.

HB 216 references the state Public Trust Doctrine, which is distinct from those other definitions. Every state's public trust doctrine is different, he explained, but they have three common elements: they handle commerce and focus on navigability and on fisheries. Those are the three things that are held in trust for the beneficiaries. The trustees are the legislative branch and they make a determination as to what they consider to be important to be held in trust for the public. In this case, the existing statute says that float planes and aircraft are important. The Public Trust Doctrine has multiple definitions depending on what the state deems to be important: ie, cutting ice, bathing, and swimming, on an open beach. The determination has been made that there is a public interest in maintaining some sort of access into remote areas of Alaska for float planes and that is why it is included in the current definition.

MR. HUTCHINSON said expanding the Public Trust Doctrine too much or adding multiple definitions can adversely affect private property interests in the surrounding adjacent areas. For state land disposals they have to fit into the statutory definition of allowable uses. Depending on what region you are in in Alaska, aircraft have a significant influence for just getting in and out of a community. The amendment is balanced to assure the adjacent private property owners' interest isn't damaged versus the sponsor's intent of having some sort of analysis as it relates to frozen water conditions.

SENATOR STEDMAN said his district doesn't have the ice issues that people in the north have. When water freezes over here people don't put skis on planes; they just don't fly. But they do fly into bays to drop off and pick up people from the beach, from their home on the water front, or from a public easement on the beach. That type of ingress/egress is his concern in his district. It is a very sensitive topic, because it infuriates Alaskans when people come up here and want to shut down access because they don't like propeller noise for three minutes. He wants to protect the rights that Alaskans have to access their property as much as absolutely possible and not be interfered with by people paddling around in some "non-motorized gizmo." He wanted a clearer definition of how this language change will interact with that policy.

[3:57:49 PM](#)

SENATOR COGHILL said he totally agreed with Senator Stedman and that is why the measure talks specifically about landing and take-off of aircraft, public boating, trapping and hunting.

CHAIR GIESSEL, finding no further questions, invited the DNR to testify.

[3:58:16 PM](#)

ED FOGELS, Deputy Commissioner, Department of Natural Resources (DNR), said DNR deals with two navigability issues: one is fighting for state ownership of lands under navigable waters. They challenge the Bureau of Land Management any time a state land parcel is conveyed to make sure that navigable waters are identified, because those lands under navigable waters were already state-owned at statehood. Therefore, they shouldn't be part of Alaska's statehood land entitlement. He said HB 216 doesn't really affect that task, at all, because it focuses on the state's definition of navigability. But in looking at this bill, he saw perhaps some unintended consequences with impacts on private property, but the amendment addresses those concerns.

SENATOR STEDMAN said he has had numerous conversations in his office on this subject over the years. A lot of state leases were transferred to most of the major Southeast communities several years ago and the regulatory environment that the state imposed was much more amenable to the public than when these leases were turned over to the municipalities. A lot of people were infuriated because property rights were inadvertently stripped away, and that is where they are stuck today. He wanted to know how this measure interacts on the municipal level with potential removal of property rights folks have under the state guidance.

MR. FOGELS answered that this bill with the amendment won't have any impact on the status quo. If there is a body of water the state believes is navigable today under current law this amendment would ensure that definition would hold in all seasons and even if the body of water is frozen. The actual water body itself would still be accessible as it is today.

MR. FOGELS explained that the state definition of navigability comes into play when the DNR conveys land to municipalities, because it can't convey ownership of navigable waters. These waters have to be identified and excluded from conveyance to the municipalities. They are retained in state ownership and easements would likely be reserved along those water bodies. This bill won't change that in any way.

SENATOR STEDMAN gave him another example: Senator Wielechowski wants to go trout fishing and grabs his fly rod and wants to be picked up in front of his house or from a state easement; his concern is the restriction that may be imposed on him to have a plane come in and pick him up and take him trout fishing for the day or load his family's camping gear in a Beaver and go to some lake. This trend is very slow, but it is definitely in place, and he wants state statute to be as tight as possible to block it. "If they don't want to hear float planes, Southeast is not the place to live," Senator Stedman exclaimed.

MR. FOGELS said this bill would not add further restrictions.

SENATOR STEDMAN said he recognizes that, but he wanted to know if this bill interacts with any municipal ordinances when some municipalities may not want airplane noise before 9 a.m. in after 5 p.m.

[4:05:22 PM](#)

MR. FOGELS responded that the intent of the navigability definition is to define where state ownership is among municipal, private, and state lands, and it was beyond his level of expertise to know if the state of Alaska and a municipality disagree on how float planes should be regulated on a typical pond. But typically, the state would defer to the local government to manage that activity if push came to shove.

SENATOR STEDMAN removed his objection to adopting the amendment, but he wanted the opportunity for his staff to work on the bill for a day to make sure they leave no stone unturned to keep property rights embedded with Alaskans who own the property.

SENATOR COSTELLO said she had identified a drafting error on page 1, line 12, where the number should be 2. After some discussion, it was decided that there was no error.

CHAIR GIESSEL opened public comment.

[4:08:43 PM](#)

RICHARD BISHOP, representing himself, Fairbanks, Alaska, supported HB 216. One thing caught his attention on page 1, line 8:

Section 1(a)(1) authorized by law or regulation or by a permit issued by a federal or [AGENCY AND A] state agency;

He said the Sturgeon case has been very prominent in the news. The Supreme Court told the Ninth Circuit Court to go back to the drawing board and get it right. That promises ongoing court deliberation over some period of time. The National Park Service issued a news release saying this hadn't really changed anything and that they would continue business as usual in administering lands. That raises the question of what sort of regulations or permits they may apply during the course of further court deliberations on the question of the extent of their authority over state navigable waters. He said it is a very dangerous precedent to have state statute that says "authorized by...a permit issued by the federal government." It would be appropriate to qualify that as a "valid federal permit" or simply leave reference to "federal permit" out. In political gamesmanship in the legal arena it would be entirely inappropriate for the state to tacitly concede that any federal permit without qualification would be cause for restricting the use of state navigable waters. Wording should be changed to avoid that implication. Otherwise he supports the bill and the amendment.

[4:12:20 PM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council, Juneau, Alaska, supported HB 216. He also supported Senator Coghill's amendment. He had the same concerns as Mr. Bishop about having some qualifier on the federal permitting.

CHAIR GIESSEL, finding no further testimony, closed public comment on HB 216. Finding no further objection, she said Amendment 1 is adopted.

SENATOR COGHILL asked the sponsor to respond to "authorized by law or by a permit".

REPRESENTATIVE TALERICO said he talked about Alaska's potential to develop hydroelectric projects in the future, and wanted to "massage" a provision giving the state the ability to work with the federal government on permitting those projects. He had discussed inserting "valid" in front of "permit", but he was open to suggestions. He shared Senator Stedman's sentiments and would strengthen that language if possible.

[4:15:39 PM](#)

MR. HUTCHINSON said he talked with Mr. Bishop earlier today, and the Sturgeon case in some respects is a slightly different issue as it relates to state statute and the state Public Trust Doctrine. The Sturgeon issue is on federal navigability on the Nation River in the Yukon. It has been sent back to the Ninth Circuit with instructions, but the actual specifics of the case have not been determined. He understands the possible confusion, which is worthy of further consideration.

CHAIR GIESSEL announced that she would hold HB 216 in committee to allow the opportunity to work on it.

HB 274-STATE LAND; EXCHANGES; LEASE EXTENSIONS

[4:17:13 PM](#)

CHAIR GIESSEL announced consideration of HB 274 [CSHB 274(RES), version 29-LS0234\N, was before the committee.]

REPRESENTATIVE CATHY MUÑOZ, Alaska State Legislature, Juneau, Alaska, sponsor of HB 274 said about four or five years ago she was contacted by a local non-profit who had been working for many years on a potential land exchange with the State of Alaska. The state wanted to acquire the trail land that leads out to a state park that is on private property, and the owner

of the trail wanted a piece of nearby land to get better access to their camp. Discussions to try to initiate and finalize this land exchange began in early 2000.

REPRESENTATIVE MUNOZ said when she became involved she found a number of inefficiencies in land exchange statute. Two sections of code govern land exchanges; one is land exchanges with municipalities, and that section of code works pretty well, and the other is private land exchanges, which is very cumbersome and almost impossible to finalize a successful land exchange under.

The section of code that governs private land exchanges includes private entities, the Mental Health Trust Authority, tribal entities as well as the federal government. The last successful land exchange under this section of code happened in 2006 near Skagway where a piece of state land was exchanged for a piece of federal land near Gustavus for the Falls Creek Hydroproject. That took close to 20 years to finalize.

REPRESENTATIVE MUNOZ explained that the reason it takes so long is because one needs to have exact value between the two parcels, which is very difficult to achieve, and the fact that the appraisal is only good for one year. So, after going through an extensive public process, the best interest finding, three public hearings, the surveying and the appraisal, at the end of the one year the whole process has to start over because the appraisal is only good for one year. Under this legislation the best interest finding will continue, but instead of exact value, it calls for approximate equal value. It has the same notice provisions under AS 38.05.945 and best interest finding provisions that are used for all oil and gas leases, timber sales, and leasing of mineral land.

[4:21:26 PM](#)

HB 274 has language that affirms that a mineral estate can only be executed consistent with the State Constitution or with federal law. In particular the Statehood Act, Section (6)(i), affirms that the state can only convey a mineral estate to the federal government. Other language requires the exchange to go before the legislature for review and approval if the exchange has a value of \$5 million or more.

REPRESENTATIVE MUNOZ summarized that the main changes in HB 274 are that the exchange procedures will follow AS 38.05.035(e) and the notice provisions under AS 35.05.945. The one-year limitation has been removed on the validity of an appraisal and

approximate equal value is used instead of exact value for the potential exchanges.

[4:22:59 PM](#)

CHAIR GIESSEL asked for a sectional analysis.

[4:23:07 PM](#)

CRYSTAL KOENEMAN, staff to Representative Muñoz, Alaska State Legislature, provided a sectional analysis of HB 274 as follows:

Section 1. Removes a reference in AS 38.05.030(c) to AS 38.05.090 which is repealed in sec. 13 of the bill.

Section 2. Adds two new subsections to AS 38.05.070. The first subsection permits the Department of Natural Resources (department) to extend certain existing land leases if it is in the best interest of the state and necessary while the department considers applications. The second subsection provides that the extensions are not subject to AS 38.05.035(e) and it requires public notice of a lease extension under the section.

Section 3. Applies existing notice standards to state land exchanges.

[4:24:13 PM](#)

Section 4. Clarifies that in AS 38.05 the terms "state land" and "land" include shoreland and tideland. It was suggested by Legislative Legal Division as cleanup language.

Section 5. Amends AS 38.50.010 to add two new requirements: when the director disposes of state land or an interest in state land the disposal must be in the best interest of the state and the director must provide notice under AS 38.05.945.

Section 6. Adds three new subsections to AS 38.50.010 that establish procedures for the exchange of state land or an interest in state land and requires legislative review of exchanges valued at \$5 million or more.

[4:25:11 PM](#)

Section 7. Removes a requirement that the director, when negotiating a land exchange involving more than one party, "consider only the land and other consideration which the state would convey and receive if the exchange were executed."

Section 8. Removes an existing limitation in AS 38.50.050 that was deemed by the Legislative Legal Division to not add anything and references "significant public purpose" which is not defined in statute nor is it used anywhere else and there is no case law referencing it. It is clean up language clarifies that any conveyances must be authorized by the Constitution of the State of Alaska and by applicable federal law.

Section 9. Amends AS 38.50.070 to provide that, unless waived, the appropriate state agency will continue to administer valid existing rights in land, or interests in land, conveyed under AS 38.50 and that revenue derived from existing rights in the land, or an interest in land, will continue to accrue to the state until the land is conveyed under AS 38.50 .150

[4:26:42 PM](#)

Section 10. Changes the requirement that the director hold three public hearings concerning the exchange of land valued at more than \$5,000,000 to a requirement that the director hold at least two public meeting, one of which must be held in person in a municipality close to the proposed land exchange.

Section 11. Conforms AS 38.50.140 to changes made in secs. 6 and 13 (repeal of AS 38.50.020). Makes de minimus editorial changes.

Section 12. Clarifies that in AS 38.50 the terms "state land '' and "land" include shoreland and tideland and was recommended by Legislative Legal.

[4:27:39 PM](#)

Section 13. Repeals AS 38.50.020, 38.50.040, 38.50.080(b), 38.50.090, 38.50.100, 38.50.110, 38.50.120(b), and 38.50.130. She said an explanation was in their packets, but she would go over those if that was the committee's will.

[4:28:06 PM](#)

SENATOR STEDMAN asked for clarification of references to "submerged lands below mean low tide and tidelands up to mean high tide" and "in-shoreland."

MS. KOENEMAN said that Alpheus Bullard from Legislative Legal was on line to clarify.

SENATOR STEDMAN asked Mr. Bullard to define "shoreland, tideland, and submerged land."

[4:28:57 PM](#)

ALPHEUS BULLARD, Legislative Legal, Alaska State Legislature, Juneau, Alaska, answered that shoreland and tideland don't have a specific definition in statute. These changes are included in this bill to make all the provisions consistent. So, instead of calling "shore or tide," now they say "shoreland and tideland." The normal understanding of those words is that shoreland is along the shore and tideland is land that is touched by the tide.

SENATOR STEDMAN said he wanted some help from DNR, because he thought there was a clear delineation of separate property rights whether one is in the uplands or shoreland versus a tideland versus submerged lands.

CHAIR GIESSEL said that could be done.

REPRESENTATIVE MUNOZ interrupted that that Ms. Koenaman would read the definition into the record.

MS. KOENEMAN read from AS 38.05.965, subsection (23):

Shoreland means land belonging to the state, which is covered by non-tidal water that is navigable under the laws of the United States up to ordinary high water mark as modified by accretion, erosion or election.

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SENATOR WIELECHOWSKI asked if "when it is in the best interest of the state" on line 5 in section 5 is an appealable decision, and if it is subject to a lawsuit and if there are any recommendations on how the department is supposed to define what is in the best interest of the state.

REPRESENTATIVE MUNOZ replied that the best interest finding is necessary and is outlined in statute. That same finding is used on all existing land lease deals with DNR. It is an appealable decision. That was affirmed by Wyn Menefee, Deputy Director, Alaska Mental Health Lands Trust, Department of Natural Resources (DNR), who was also in the audience.

SENATOR WIELECHOWSKI said line 8 looks like a very significant change, but he was told it is not. It says the director has the right to dispose of state land or interest in land and then language is added: including the land estate, the mineral estate or both. And when they start talking about mineral estate that means oil and gas, which triggers a lot of strong emotions in this committee. He asked her to explain the rationale for

including mineral estate and to reassure him they are not giving the director the ability to give away oil and gas rights to a private individual.

REPRESENTATIVE MUNOZ replied that an exchange of a mineral estate can only be conveyed by the state to the federal government and the section 8 language is consistent with existing statute. It says "exchanges must be pursuant to the State Constitution and applicable federal law, which is the Statehood Act, Section (6)(i), which requires the state not to dispose of those interests to any entity other than the federal government." However, the state can receive a mineral estate and having that language is helpful in clarifying that.

SENATOR WIELECHOWSKI said it looks like language on page 3, lines 10-14, deletes: "exchanges shall be for the purpose of consolidating state land holdings, creating land ownership, and use patterns, which will permit more effective administration of the state public domain, facilitating the objectives of state programs or other public purposes." He asked the rationale for taking that out.

REPRESENTATIVE MUNOZ replied that language is considered superfluous. The department is focusing on just five or six categories, when in fact there might be a broader opportunity which is covered through the best interest finding. The state would not enter into an exchange unless it clearly was in the state's best interest.

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SENATOR WIELECHOWSKI asked the rationale for the repealer in section 13.38.50.080(b) that says:

The director in implementing the provisions of this chapter may not alienate or agree not to exercise selection rights granted to the state in the Alaska Statehood Act or other applicable law authorizing the state to select land or interest in land.

MS. KOENEMAN replied that the state has already selected all of its land under the Alaska Statehood Act, and since it has no further ability to select land, that subsection is no longer necessary. She added that the state hasn't necessarily received the selections.

CHAIR GIESSEL pointed out that it is actually explained on a page in the document, which is on BASIS.

SENATOR WIELECHOWSKI asked for the rationale for removing AS 38.50.090 language on coordinating with other state agencies.

MS. KOENEMAN replied that language was removed, because there is now reference to AS 38.05.035(e), which includes a requirement for state agencies to provide a summary through public comments. The department would collect those public comments from the other agencies and work with the other departments on their concerns. Basically, it ties back to another version of statute.

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WYN MENELEE, Deputy Director, Alaska Mental Health Trust Land Office, Department of Natural Resources (DNR), Juneau, Alaska, said he was chief of operations for the Division of Mining, Land and Water for 12.5 years and this issue is very important to DNR as they have had "much trouble" getting exchanges done, because of existing language.

Many needs are coming before them, he said, everything from consolidation of land ownership and access to business opportunities where a lease or an easement doesn't handle the problem, and numerous people have been turned away.

He said the department disposes of a huge amount of state interests through AS 38.05.035(e) decisions, which are appealable and can be taken to court. If they do something that is not in the best interest of the state, the public surely can challenge them. The department needs a very supportable decision if they are going to go through with an exchange, but they believe that can be done with this modification.

SENATOR WIELECHOWSKI asked him to provide some exchanges he would consider doing under this language that have not been considered before.

MR. MENELEE answered that there have been proposed exchanges from native corporations and private individuals for purposes that were wholly for their purposes and weren't in the interest of the state, at all. Those were easy to turn away. But others offer up something that would be very beneficial to the state, for instance creating a landownership pattern or maybe a mineral estate offering that would be good for miners to develop, or maybe the state has been wanting to do work on some sort of project and hasn't been able to without the land. He has seen exchanges proposed for conservation purposes and development purposes, but only a few have been successful.

He explained that because of the decision process in AS 38.05.133(e) the department has to describe why it is in the best interest of the state to do an exchange. They have to articulate the analysis of things they have considered and what it will do for the state that is good.

SENATOR WIELECHOWSKI asked what deference the court would give to the best interest finding.

MR. MENEFEЕ answered that there is a lot of case law on state best interest, and the court does not replace its judgment for the department's as long as it is not acting capriciously and arbitrarily. They look at whether the statutes and regulations have been followed and if a logical train of thought was used in explaining why it is in the best interest of the state. The courts have said they don't want to define "best interest," because it changes over time.

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SENATOR WIELECHOWSKI said this measure really is investing a huge amount of power in the DNR director and commissioner, and maybe it would be good and maybe not. The courts have very little say about the arbitrary and capricious standard and it is "extremely difficult" to overcome. He asked if opening up a whole lot of land for exchanges is a big policy call.

MR. MENEFEЕ responded that he thinks there will be plenty of opportunities for land exchanges. He didn't think it opens up anything more grandiose than before other than the process is cleaner. The department still must make sound defensible decisions and the public can challenge their decisions. The courts have told them numerous times when they have gone astray; so he feels the system has a check and balance.

SENATOR WIELECHOWSKI said it doesn't appear that they are changing any legal standards that a court would look at as diminishing the public process.

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MR. MENEFEЕ agreed with that and added the only exception is that "hearings" was changed to "meetings" in one section and it went from three to two, the main reason being they would have to go through the whole legislative process again on anything that fits into that one area of the statute.

[4:45:48 PM](#)

DOUG ISAACSON, General Manager, Minto Development Corporation, Fairbanks, Alaska, said he supported HB 274. He noted at least three letters of support in their packets: one from his president, Roxanne Frank, one from their parent corporation, Seth-De-Ya-Ha Corporation, and one from Edna Riley, president of the Board of Directors. There was also a letter of support from Mike Kelly who is the COO of the Dinyea Corporation. They support it, because it cleans up the process.

He appreciated Senator Wielechowski's question about it causing a stampede, and his corporation in applying will have to prove that it's a good idea for the state. When he contemplates doing some development on the Steese Highway, he has his shareholders' interest at heart, but he also has workforce development and benefits to the local community in mind. But they aren't able to use that as a consideration without the language in this bill. They still have to meet high hurdles, but this will make the process worth looking at.

[4:48:16 PM](#)

SENATOR WIELECHOWSKI said a new section is being added saying that land or an interest in land exchange must be approximately of equal value, and then it says the director may enter into an exchange with a finding that the value of the property received together with the value of other public benefit equals or exceeds the value of the property relinquished by the state. He surmised that some people will want to trade swamp land for valuable state land and he wanted "some findings" on the record about what "approximately equal value" means in terms of protecting the citizens from that happening.

MR. MENEFEE replied the rationale behind going with "approximate equal value" rather than "appraised fair market value only" is that when you start taking "other considerations" into account, the Universal Standards of Professional Appraisal Practice (USPAP), which is used nationwide for coming up with fair market value doesn't allow using "other considerations" in the valuation.

For example, he said currently an exchange is happening at Point Bridget and because of the survey an appraisal couldn't quite get to an exact equal value. Two things could be done to resolve the issue. It could be equalized with cash or one could say the value is pretty close, because the state now has road access to a state park, which it did not have before and the private land owner could have shut down access to that park. People were trespassing across it at all times to get to the state park, and

the question becomes is that public access valuable enough to warrant covering the difference in value. The decision would have to articulate that and then it would have to go before the legislature.

SENATOR WIELECHOWSKI asked him to clarify when they have to get legislative approval.

MR. MENEFEE replied for unequal values.

SENATOR WIELECHOWSKI asked if the value is unequal by \$1, do they still have come to the legislature for approval.

MR. MENEFEE replied because there was terminology about unequal value in previous statute, regulations had clarified that it had to be a small percentage.

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SENATOR WIELECHOWSKI asked how he would define "approximate equal value."

MR. MENEFEE replied that regulations go through a public process and they think that would be a good way to further define "approximate equal value" if this measure passes. In his view the intent is to always try to reach equal value, but in thinking of "other considerations" it's hard to get to that exact equal value. In the case of Point Bridget, because of the way the subdivision went, it threw off the appraisal, making the values a little off. So, in that case they would have to go through another cycle of trying to do another subdivision plat to make it equal. Maybe one could get close enough with \$1000 to \$5000; it's hard to say, because if you are dealing with a small parcel an unequal value is going to be a big deal, but for a larger parcel that unequal value is a little bit more.

SENATOR WIELECHOWSKI said hypothetically someone has a piece of swamp land that is worth \$50,000 and it happens to be access to a river where people want to go and fish - the Kenai River - and they want to swap that for a half-million dollar parcel. The director says that piece is only worth \$100,000, but it has a \$400,000 approximately value to the public, because of the access. So, they deem it to be of approximately equal value. The court gives them broad deference in their decision. As he reads it that wouldn't have to come before the legislature. Is that correct?

[4:55:15 PM](#)

MR. MENEFEER replied that his hypothetical would come before the legislature, because he would consider that an unequal value land exchange. Approximate equal value gives them that flexibility for when the exchange can't be made exact and that is the flexibility they are looking for.

SENATOR WIELECHOWSKI countered that the statute they are passing gives the director the ability to say approximate equal value, but also the ability to include the value of other public benefits in that consideration. So, could he not say we think the value of access to this river is worth \$450,000?

MR. MENEFEER replied for the department to feel secure with that, they would have to be ready to go to court and uphold it. They would have to say why they think the other benefit of that access is worth that much in monetary terms. That could be in lost opportunities where the department can say it knows it will have to later buy that access for this much or they will lose this opportunity that will make the state this many millions of dollars. He would work to state the value in terms of money.

[4:57:20 PM](#)

SENATOR WIELECHOWSKI said he appreciated the dialogue and sees where he is trying to get, but he is naturally suspicious about a bad deal escaping legislative oversight.

MS. KOENEMAN closed by thanking the committee for considering the bill.

SENATOR COGHILL moved to report CSHB 274(RES), version N, from committee with individual recommendations and attached zero fiscal note. There were no objections and it was so ordered.

[4:58:50 PM](#)

CHAIR GIESSEL finding no further business to come before the committee, adjourned the Senate Resources Committee meeting at 4:58 p.m.