

# HOUSE JOURNAL

## ALASKA STATE LEGISLATURE

### TWENTY-FOURTH LEGISLATURE - SECOND SESSION

Juneau, Alaska

Tuesday

February 21, 2006

#### Forty-fourth Day

Pursuant to adjournment the House was called to order by Speaker Harris at 1:14 p.m.

Roll call showed 34 members present. Representatives Croft, Elkins, and Kelly had been previously excused from a call of the House today. Representatives Gara and Kapsner were absent and their presence was noted later.

Representative Coghill moved and asked unanimous consent that Representative Olson be excused from a call of the House today. There being no objection, it was so ordered.

The invocation was offered by the Chaplain, Pastor John Stevens of Resurrection Lutheran Church. Representative McGuire moved and asked unanimous consent that the invocation be spread on the journal. There being no objection, it was so ordered.

With the deepest respect and honor for the religious beliefs of all Alaskans, I offer the following prayer.

Creator and Redeemer,

Thank You. There is so much more I could say. But on this day, I offer up my thanks to You. Thank You for creation. Thank You for life. Thank You for humanity. Please be in the work and with the workers found here today. Give them strength and attention. Sharpen their minds and expand their hearts. I ask this in the name of the one that I know, Jesus the Christ. Amen.

The Pledge of Allegiance was led by Representative Dahlstrom.

### **CERTIFICATION OF THE JOURNAL**

Representative Coghill moved and asked unanimous consent that the journal for the 40th, 41st, 42nd, and 43rd legislative days be approved as certified by the Chief Clerk. There being no objection, it was so ordered.

\* \* \* \* \*

Representative Weyhrauch introduced Cole Lendrum, Melissa Skan, and George Skan, Guest Pages, from Juneau.

### **MESSAGES FROM THE SENATE**

A message dated February 17, 2006, was read stating the Senate has passed the following and it is transmitted for consideration:

### **FIRST READING AND REFERENCE OF SENATE BILLS**

#### **SB 218**

CS FOR SENATE BILL NO. 218(FIN) by the Senate Finance Committee, entitled:

"An Act relating to sex offenders and child kidnappers; relating to reporting of sex offenders and child kidnappers; relating to periodic polygraph examinations for sex offenders released on probation or parole; relating to sexual abuse of a minor; relating to the definitions of 'aggravated sex offense' and 'child kidnapping'; relating to penalties for failure to report child abuse or neglect; relating to sentencing for sex offenders and habitual criminals; and providing for an effective date."

was read the first time and referred to the Finance Committee.

A Senate letter of intent was attached (Senate Journal page 2207).

**COMMUNICATIONS**

The following were received:

Alaska Railroad Corporation  
Special Report to the State of Alaska  
Legislature and Administration  
February 2006

Dept. of Commerce, Community, & Economic Development  
Regulatory Commission of Alaska  
Annual Report  
Fiscal Year 2005  
Available at <http://www.state.ak.us/rca/AnnualReport/FY05AR.pdf>  
(as required by AS 42.05.211 and AS 42.06.220)

**REPORTS OF STANDING COMMITTEES**

The State Affairs Committee has reviewed the qualifications of the following and recommends the appointment be forwarded to a joint session for consideration:

Mr. Quinlan Steiner

as Public Defender.

The report was signed by Representative Seaton, Chair; and Representatives Gardner, Lynn, Gatto, Gruenberg, and Ramras.

**HB 353**

The Judiciary Committee has considered:

HOUSE BILL NO. 353  
"An Act relating to sentences for sexual offenses."

and recommends it be replaced with:

CS FOR HOUSE BILL NO. 353(JUD)  
"An Act relating to sex offenders and child kidnappers; relating to reporting of sex offenders and child kidnappers; relating to

periodic polygraph examinations for sex offenders released on probation or parole; relating to sexual abuse of a minor; relating to the definitions of 'aggravated sex offense' and 'child kidnapping'; relating to penalties for failure to report child abuse or neglect; relating to sentencing for sex offenders and habitual criminals; and providing for an effective date."

The report was signed by Representative McGuire, Chair, with the following individual recommendations:

Do pass (1): McGuire

No recommendation (3): Coghill, Gruenberg, Anderson

Amend (2): Gara, Kott

The following fiscal note(s) apply to CSHB 353(JUD):

1. Indeterminate, Alaska Court System

HB 353 was referred to the Finance Committee.

### **HB 375**

The State Affairs Committee has considered:

#### HOUSE BILL NO. 375

"An Act relating to the retirement benefit liability account and appropriations from that account; relating to deposits of certain income earned on money received as a result of State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior Court, First Judicial District); and providing for an effective date."

and recommends it be replaced with:

#### CS FOR HOUSE BILL NO. 375(W&M)

"An Act relating to the retirement benefit liability account and appropriations from that account; and providing for an effective date."

The report was signed by Representative Seaton, Chair, with the following individual recommendations:

No recommendation (5): Gardner, Lynn, Gruenberg, Ramras, Seaton

Amend (1): Gatto

The following fiscal note(s) apply to CSHB 375(W&M):

1. Zero, Dept. of Administration
2. Zero, Dept. of Revenue

HB 375 was referred to the Finance Committee.

### **HB 384**

The Judiciary Committee has considered:

#### HOUSE BILL NO. 384

"An Act relating to fines and offenses; amending Rule 8(b), Alaska District Court Rules of Criminal Procedure; and providing for an effective date."

and recommends it be replaced with:

#### CS FOR HOUSE BILL NO. 384(JUD)

"An Act relating to fines for certain offenses involving aeronautics, shipment of animals, alcoholic beverages, boats, fish and game, health care records and public health, medical review organizations, public restroom facilities, smoking, shelter cabins, refrigerators and similar equipment, radiation sources, high voltage lines, child labor, employment in underground mines, marriage licenses, motor vehicles and driver's licenses, ignition interlock devices, pipelines, use of the state seal, and emissions requirements; relating to the maximum fine provided for violations and infractions and to the definition of 'minor offenses'; redesignating certain fish and game misdemeanor offenses as class A misdemeanors; amending Rule 8(b), Alaska District Court Rules of Criminal Procedure; and providing for an effective date."

The report was signed by Representative McGuire, Chair, with the following individual recommendations:

Do pass (4): Coghill, Kott, Gruenberg, McGuire

No recommendation (1): Gara

The following fiscal note(s) apply to CSHB 384(JUD):

1. Zero, Alaska Court System
2. Zero, Dept. of Labor & Workforce Development
3. Zero, Dept. of Law

HB 384 was referred to the Finance Committee.

#### **HB 400**

The Judiciary Committee has considered:

HOUSE BILL NO. 400

"An Act relating to disasters and confiscation of firearms."

and recommends it be replaced with:

CS FOR HOUSE BILL NO. 400(JUD)

(same title)

The report was signed by Representative McGuire, Chair, with the following individual recommendations:

Do pass (4): Coghill, Anderson, Kott, McGuire

No recommendation (1): Gara

Amend (1): Gruenberg

The following fiscal note(s) apply to CSHB 400(JUD):

1. Zero, Dept. of Military & Veterans' Affairs

HB 400 was referred to the Finance Committee.

**SB 186**

The State Affairs Committee has considered:

CS FOR SENATE BILL NO. 186(JUD)

"An Act relating to the Alaska Executive Branch Ethics Act; and providing for an effective date."

and recommends it be replaced with:

HOUSE CS FOR CS FOR SENATE BILL NO. 186(STA)

(same title)

The report was signed by Representative Seaton, Chair, with the following individual recommendations:

Do pass (2): Gardner, Seaton

No recommendation (3): Gruenberg, Elkins, Ramras

Amend (1): Gatto

The following fiscal note(s) apply to HCS CSSB 186(STA):

3. Zero, Dept. of Administration

4. Zero, Dept. of Law

CSSB 186(JUD) was referred to the Judiciary Committee.

\*\*The presence of Representative Gara was noted.

**SB 224**

The State Affairs Committee has considered:

SENATE BILL NO. 224

"An Act establishing Older Alaskans' Day."

The report was signed by Representative Seaton, Chair, with the following individual recommendations:

Do pass (6): Gardner, Lynn, Gatto, Gruenberg, Ramras, Seaton

The following fiscal note(s) apply:

1. Zero, Office of the Governor/All Depts.

SB 224 was referred to the Rules Committee for placement on the calendar.

### INTRODUCTION OF CITATIONS

The following citations were introduced and referred to the Rules Committee for placement on the calendar:

Honoring - Elijah Hutchison, Michaela Hutchison  
By Representative Chenault; Senator Wagoner

In Memoriam - Patricia Mae Booi  
By Senator French; Representative Berkowitz

In Memoriam - Bill Bryson  
By Senator French; Representative Croft

### CONSIDERATION OF THE DAILY CALENDAR

#### SECOND READING OF HOUSE BILLS

#### HB 326

The following was read the second time:

HOUSE BILL NO. 326  
"An Act relating to harassment."

with the:

Journal Page

JUD RPT CS(JUD) NT 4DP 1AM

2381

FN1: ZERO(CRT)

2381



HOUSE JOURNAL

February 21, 2006

2591

|                            |      |
|----------------------------|------|
| FN2: ZERO(LAW)             | 2381 |
| FN3: ZERO(DPS)             | 2381 |
| FIN RPT CS(JUD) NT 4DP 3NR | 2393 |
| FN1: ZERO(CRT)             | 2393 |
| FN2: ZERO(LAW)             | 2393 |
| FN3: ZERO(DPS)             | 2393 |

Representative Coghill moved and asked unanimous consent that the following committee substitute be adopted in lieu of the original bill:

CS FOR HOUSE BILL NO. 326(JUD)  
"An Act relating to the definition of the crime of harassment."

There being no objection, it was so ordered.

Representative Coghill moved and asked unanimous consent that CSHB 326(JUD) be considered engrossed, advanced to third reading, and placed on final passage.

There was objection.

CSHB 326(JUD) will advance to third reading on tomorrow's calendar.

\*\*The presence of Representative Kapsner was noted.

**HB 393**

The following was read the second time:

HOUSE BILL NO. 393  
"An Act requiring that certain health care insurance plans provide coverage for the costs of colorectal cancer screening examinations and laboratory tests; and providing for an effective date."

with the:

Journal Page

|                             |      |
|-----------------------------|------|
| L&C RPT CS(L&C) 5DP 1NR 1AM | 2458 |
| FN1: ZERO(CED)              | 2458 |
| HES RPT CS(HES) 6DP         | 2572 |
| FN1: ZERO(CED)              | 2572 |

Representative Coghill moved and asked unanimous consent that the following committee substitute be adopted in lieu of the original bill:

CS FOR HOUSE BILL NO. 393(HES)  
(same title)

There being no objection, it was so ordered.

Representative Coghill moved and asked unanimous consent that CSHB 393(HES) be considered engrossed, advanced to third reading, and placed on final passage.

There was objection.

CSHB 393(HES) will advance to third reading on tomorrow's calendar.

The Speaker stated that the House would stand at ease to allow the members of the Senate to enter the Chamber; and so, the House stood at ease at 1:50 p.m.

#### **AFTER AT EASE**

The Speaker called the House back to order at 2:11 p.m.

#### **JOINT SESSION IN THE HOUSE**

In accordance with Uniform Rule 51, Speaker Harris turned the gavel over to President Ben Stevens who called the joint session to order at 2:12 p.m.

The purpose of the joint session was to hear an address by the Honorable Lisa Murkowski, U.S. Senator.

Senator Gary Stevens moved and asked unanimous consent that the roll call of the Senate be waived and all members be shown as present. There being no objection, it was so ordered.

Representative Coghill moved and asked unanimous consent that the roll call of the House be waived and all members be shown as present.

There being no objection, it was so ordered.

President Ben Stevens appointed Representative Foster and Senator Bunde to escort the Honorable Lisa Murkowski to the joint session.

The Senate Sergeant-at-Arms announced the Senator's entrance into the House Chamber.

Senator Murkowski was escorted to the rostrum and welcomed by President Ben Stevens.

Senator Murkowski delivered her address and it is published in Senate and House Joint Journal Supplement No. 12.

A question and answer period followed the conclusion of the Senator's speech.

Senator Murkowski received a standing ovation and was escorted from the Chamber by Representative Foster and Senator Bunde.

Senator Gary Stevens moved and asked unanimous consent that the joint session adjourn. There being no objection, President Ben Stevens adjourned the joint session at 3:08 p.m.

The Speaker ordered the House at ease to allow members of the Senate to leave the Chamber.

#### **IN THE HOUSE**

The Speaker called the House back to order at 3:13 p.m.

The Speaker stated that, without objection, the House would revert to:

#### **INTRODUCTION, FIRST READING, AND REFERENCE OF HOUSE BILLS**

##### **HB 488**

HOUSE BILL NO. 488 by the House Rules Committee by request of the Governor, entitled:

"An Act repealing the oil production tax and gas production tax and providing for a production tax on the net value of oil and gas; relating to the relationship of the production tax to other taxes; relating to the dates tax payments and surcharges are due under AS 43.55; relating to interest on overpayments under AS 43.55; relating to the treatment of oil and gas production tax in a producer's settlement with the royalty owner; relating to flared gas, and to oil and gas used in the operation of a lease or property, under AS 43.55; relating to the prevailing value of oil or gas under AS 43.55; providing for tax credits against the tax due under AS 43.55 for certain expenditures, losses, and surcharges; relating to statements or other information required to be filed with or furnished to the Department of Revenue, and relating to the penalty for failure to file certain reports, under AS 43.55; relating to the powers of the Department of Revenue, and to the disclosure of certain information required to be furnished to the Department of Revenue, under AS 43.55; relating to criminal penalties for violating conditions governing access to and use of confidential information relating to the oil and gas production tax; relating to the deposit of money collected by the Department of Revenue under AS 43.55; relating to the calculation of the gross value at the point of production of oil or gas; relating to the determination of the net value of taxable oil and gas for purposes of a production tax on the net value of oil and gas; relating to the definitions of 'gas,' 'oil,' and certain other terms for purposes of AS 43.55; making conforming amendments; and providing for an effective date."

was read the first time and referred to the Resources and Finance Committees.

The following fiscal note(s) apply:

1. Zero, Dept. of Natural Resources
2. Fiscal, Dept. of Revenue

The Governor's transmittal letter dated February 21, 2006, follows:

"Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the oil and gas production tax.

This bill would eliminate the economic limit factor (ELF) from the determination of production tax, and would replace it with a more progressive and investment-friendly tax system.

Under current law, the tax imposed on oil or gas production generally is determined by multiplying the gross value at the point of production times the appropriate tax rate times the economic limit factor for that production.

The economic limit factor was intended to provide a proxy for costs. It is determined by a complex formula that uses as input the total production from, and productivity of, the wells in a field. The theory behind the economic limit is that a producer would not be taxed for production below the economic limit while still recovering costs. However, this has not worked well in recent practice. On the one hand, under current conditions, producers are allowed proxy costs several times their actual costs. On the other hand, a producer reinvesting its profits from Alaska production in exploration, production, or development in the state may receive little or no tax benefit compared to a producer who exports its profits and makes those same investments in another state or country.

As explained in more detail below, this bill introduces two important investment-friendly tax concepts in place of the economic limit factor.

- The tax proposed in the bill is based essentially on the cash flow from a lease, or the profit net of all qualified costs. Thus, a deduction is allowed for all upstream costs, including expenses and capital investment. In other words, the tax base is not gross value at the point of production but the net value. In addition, every producer is allowed an annual allowance of up to \$73 million, so if a producer's cash flow is \$73 million or less in a year, there would be no tax.

- A 20 percent tax credit is allowed for all the upstream capital investment, even if a deduction was taken for that investment as described above. Another credit is allowed for operating losses.

Because of this proposed switch from a gross to net basis, a higher tax rate is appropriate and this bill would raise the rate (before applying ELF) from the current 15 percent (or 12.25 percent for new production) to 20 percent. In addition, the minimum tax is repealed. Thus, as mentioned above, a company would incur a production tax liability only if it has positive cash flow from its Alaska production properties greater than \$73 million a year.

#### Upstream Cost Deduction

The calculation of the net value of a producer's oil and gas starts with gross value, which is essentially unchanged from current law, with some streamlining. Direct lease costs, including both capital investment and operating costs are deducted from that gross value. If in any month the total cash flow is reduced to zero by those costs, remaining costs are carried forward to future months (or, if unused by the end of a calendar year, are translated into a credit applicable in future years). In addition, each producer is granted an allowance of up to \$200,000 a day or \$73 million a year. That is, if after calculating its net profit a producer still showed positive cash flows of \$73 million or less, this allowance may be used to reduce that cash flow to zero (though again, not any lower). If the producer showed a positive cash flow of more than \$73 million, the allowance would be used to reduce the taxable cash flow by \$73 million. Finally, as a transition measure, for the first 72 months in which the Alaska North Slope oil spot price is above \$40 a barrel, a producer is allowed to include in its upstream deduction a pro rata amount of capital costs incurred in the five years before the new production tax takes effect.

In the interests of streamlining and simplicity, the Department of Revenue is directed to take into account the kind of costs that an operator typically bills a working interest owner (and a working interest owner typically audits) and the Department of Natural Resources' net profit share lease regulations.

A number of indirect costs that may not be included in the calculation of direct lease costs are specified in the bill. Finally, the bill specifies that any deduction for lease expenses must be reduced by any reimbursements that a taxpayer receives from other taxpayers, say, for example, for use of facilities, or from the government where such payments are in the nature of field costs.

#### New Investment Credits

Two major new credits are provided for in the bill.

(1) A credit would be allowed against the production tax for 20 percent of any qualified investment, even though that same outlay may also be deductible in calculating taxable net value of the oil and gas. This credit and the exploration credits under AS 43.55.025 may not both be taken for the same expenditures. Qualified capital expenditures include outlays for new (or new-to-Alaska) assets that are treated as capital under the federal tax code, as well as geological and geophysical exploration costs and drilling costs that would be expensed under the federal tax code.

(2) A credit also would be allowed for 20 percent of any annual loss. Because the tax due can only be reduced to zero (and not below zero), mechanically this is the same as allowing unclaimed expense to be carried forward year to year, but for tax administration purposes it is preferable for carryforwards to be in the form of credits.

These credits would be non-refundable; that is, they could not be used to reduce a taxpayer's liability below zero. However, any credit not used in a given period could either be carried forward or sold to another taxpayer who might better be able to use it. Taxpayers who purchase credits may not use the credits to reduce their production taxes by more than 20 percent in any year.

In addition to the two major new credits, producers would be allowed to credit their oil conservation surcharge payments under AS 43.55 against the production tax.

Other Provisions

In providing for taxation of the net value of oil and gas, the bill also would preserve most of the current provisions on calculating gross value at the point of production, since this calculation is an intermediate step in calculating taxable net value. This approach has the benefit of conserving the body of regulations, interpretations, and case law that has developed over several decades. In the interest of fostering simplicity and efficiency, however, the bill would make a significant addition to the current provisions, authorizing the Department of Revenue to allow taxpayers, if appropriate, to rely on royalty settlement agreements with the Department of Natural Resources (DNR), or other royalty values or methodologies accepted by the DNR, or the United States Department of the Interior (in the case of some federal leases or units) or to use a simplifying formula approved by the Department of Revenue.

The bill would make several changes in current law to facilitate administration of the new production tax approach. The subjects addressed include tax returns and tax payment due dates, definitions of oil and gas and other terms, and treatment of private royalty oil and gas for production tax purposes. The bill clarifies how the Department of Revenue may disclose certain otherwise confidential information to taxpayers when the information affects their tax liabilities. Persons who violate the conditions of such disclosure would be subject to the same criminal penalties that currently apply to state employees who violate taxpayer confidentiality. The bill also simplifies the tax treatment of flared gas and extends to oil the current tax exemption for gas that is used on the lease.

The bill would make needed updates and clarifications to certain provisions of the production tax statute: confirming the Department of Revenue's long-standing application of the prevailing value concept to internal transfers of oil or gas, incorporating a necessary reference to the constitutional budget reserve fund regarding the department's disposition of revenue, and repealing a specific failure-to-file penalty that is superfluous in the light of the general penalty provisions of the revenue laws.



The proposed new production tax on net value, and related provisions of the bill, would apply prospectively, as of July 1, 2006. The bill has an immediate effective date for other purposes.

This bill will greatly improve Alaska's oil and gas tax system, encouraging investment in the state, making tax administration more predictable, better reflecting the variable economics of oil and gas development, and providing Alaskans with a fairer share of the value of the oil and gas taken out of the ground in our state. I urge your prompt and favorable action on this legislation.

Sincerely yours,

/s/

Frank H. Murkowski  
Governor"

### UNFINISHED BUSINESS

#### **HB 398**

The Community & Regional Affairs Committee submitted the following corrected committee substitute to accompany their report (page 2559):

#### CS FOR HOUSE BILL NO. 398(CRA)

"An Act relating to disposition of revenue from certain charges collected on valuable mineral deposits on land belonging to the state and subject to location, license, lease, discovery, or the right to prospect for the extraction of natural resources under the Alaska Land Act, and to aid to municipalities to offset the anticipated effect of lessees' exploration or location activities on land made subject to extraction of valuable mineral deposits; and providing for an effective date."

HB 398 is in the Finance Committee.

#### **HB 271**

Representative Elkins added his name as cosponsor to:

#### HOUSE BILL NO. 271

"An Act relating to limitations on overtime for registered nurses in health care facilities; and providing for an effective date."

**HB 318**

Representative Rokeberg added his name as cosponsor to:

CS FOR HOUSE BILL NO. 318(FIN) am  
"An Act limiting the exercise of eminent domain."

**HB 326**

Representatives Dahlstrom and Gatto added their names as cosponsors to:

CS FOR HOUSE BILL NO. 326(JUD)  
"An Act relating to the definition of the crime of harassment."

**HB 393**

Representatives Gara and Gardner added their names as cosponsors to:

CS FOR HOUSE BILL NO. 393(HES)  
"An Act requiring that certain health care insurance plans provide coverage for the costs of colorectal cancer screening examinations and laboratory tests; and providing for an effective date."

**SB 218**

Representatives Neuman and Stoltze added their names as cross sponsors to:

CS FOR SENATE BILL NO. 218(FIN)  
"An Act relating to sex offenders and child kidnappers; relating to reporting of sex offenders and child kidnappers; relating to periodic polygraph examinations for sex offenders released on probation or parole; relating to sexual abuse of a minor; relating to the definitions of 'aggravated sex offense' and 'child kidnapping'; relating to penalties for failure to report child abuse or neglect; relating to sentencing for sex offenders and habitual criminals; and providing for an effective date."

**SB 224**

Representative Gatto added his name as cross sponsor to:

SENATE BILL NO. 224  
"An Act establishing Older Alaskans' Day."

**ENGROSSMENT**

**HB 318**

Reconsideration of the following was not taken up on this legislative day. It was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration:

CS FOR HOUSE BILL NO. 318(FIN) am  
"An Act limiting the exercise of eminent domain."

**ANNOUNCEMENTS**

House committee schedules are published daily under separate cover.

**ADJOURNMENT**

Representative Coghill moved and asked unanimous consent that the House adjourn until 11:00 a.m., February 22, 2006. There being no objection, the House adjourned at 3:15 p.m.

Suzi Lowell  
Chief Clerk