

HOUSE FINANCE COMMITTEE
May 5, 2006
8:04 p.m.

CALL TO ORDER

Co-Chair Chenault called the House Finance Committee meeting to order at [8:04:52 PM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Richard Foster
Representative Mike Hawker
Representative Reggie Joule
Representative Mike Kelly
Representative Beth Kerttula
Representative Carl Moses
Representative Bruce Weyhrauch
Representative Jim Holm

MEMBERS ABSENT

None

ALSO PRESENT

Representative Ralph Samuels; Representative Ethan Berkowitz; Representative Norm Rokeberg; Representative Woodie Salmon; Representative Vic Kohring; Robynn Wilson, Director, Division of Tax, Department of Revenue; Dan Dickinson, Consultant, Tax Division, Department of Revenue; Mr. Robert Mintz, Assistant Attorney General, Department of Law; Lisa Weissler, Staff, Representative Ethan Berkowitz

SUMMARY

CSSB 305(FIN) am

"An Act repealing the oil production tax and the gas production tax and providing for a production tax on oil and gas; relating to the calculation of the gross value at the point of production of oil and gas and to the determination of the value of oil and gas for purposes of the production tax on oil and gas; providing for tax credits against the production tax on oil and gas; relating to the relationship of the production tax on oil and gas to other taxes, to the dates those tax payments and surcharges are due, to interest on overpayments of the tax, and to the treatment of the tax in a producer's settlement with the royalty owners; relating to flared gas, and to oil

and gas used in the operation of a lease or property under the production tax; relating to the prevailing value of oil and gas under the production tax; relating to surcharges on oil; relating to statements or other information required to be filed with or furnished to the Department of Revenue, to the penalty for failure to file certain reports for the tax, to the powers of the Department of Revenue, and to the disclosure of certain information required to be furnished to the Department of Revenue as applicable to the administration of the tax; relating to criminal penalties for violating conditions governing access to and use of confidential information relating to the tax, and to the deposit of tax money collected by the Department of Revenue; amending the definitions of 'gas,' 'oil,' and certain other terms for purposes of the production tax, and as the definition of the term 'gas' applies in the Alaska Stranded Gas Development Act, and adding further definitions; making conforming amendments; and providing for an effective date."

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#sb305

CS FOR SENATE BILL NO. 305(FIN) am

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

the production tax, and as the definition of the term 'gas' applies in the Alaska Stranded Gas Development Act, and adding further definitions; making conforming amendments; and providing for an effective date."

Co-Chair Chenault MOVED to ADOPT Amendment 1. Representative Hawker OBJECTED.

ROBYNN WILSON, DIRECTOR, DIVISION OF TAX, DEPARTMENT OF REVENUE, related that the amendment ~~addresses~~ a technical and grammatical changes; it does not change either the intent or result. She noted that the 10-year fixed sunset was turned into a rolling sunset.

[8:09:30 PM](#)

Representative Hawker WITHDREW his OBJECTION. There being no objection, Amendment 1 was adopted.

[8:10:13 PM](#)

Representative Hawker MOVED TO ADOPT Amendment 2 as amended to remove "and necessary", which he indicated would be redundant. There being no objection, Amendment 2 was adopted.

Co-Chair Chenault MOVED TO ADOPT Amendment 3: insert "or in lieu of" on page 22, line 18. Representative Kerttula OBJECTED. In response to a question by Representative Kerttula, Ms. Wilson explained that it would not currently be applicable for purposes of the production tax.

Representative Kerttula WITHDREW her OBJECTION. There being NO OBJECTION, it was so ordered.

Representative Hawker WITHDREW his Amendment 4.

Representative Hawker MOVED to ADOPT Amendment 5: insert "gross" following "misconduct" on page 23, line 3. Co-Chair Chenault OBJECTED. The amendment would raise the bar ~~to~~ from ordinary negligence to gross negligence on costs arising from fraud. He maintained that the current language would include ordinary and recurring instances that occur at any sophisticated business. He felt that gross negligence would establish an appropriately high standard. Representative Kerttula pointed out that ordinary negligence is still unreasonable behavior. She maintained that the change would risk the allowance of unreasonable behavior. She noted that they might be able to find middle ground.

[8:13:25 PM](#)

Ms. Wilson spoke in support of the amendment. She observed that negligence is a low standard.

[8:14:06 PM](#)

Representative Kelly referred to an earlier discussion on the topic. He MOVED to TABLE Amendment 5. There being NO OBJECTION, it was so ordered.

Representative Hawker WITHDREW Amendment 5.

[8:14:51 PM](#)

Representative Hawker MOVED TO ADOPT Amendment 6: insert "insurance recoveries" as mandatory subtractions to a producer's lease expenditures. Co-Chair Chenault OBJECTED. Representative Hawker explained that the conceptual amendment would address costs, which have already been deducted and should be added back. Co-Chair Chenault WITHDREW his OBJECTION. There being NO OBJECTION, it was so ordered.

[8:15:54 PM](#)

Representative Hawker MOVED to ADOPT amendment 7: delete "of each" following "regulations" on page 26, line 4. Co-Chair Chenault OBJECTED.

Ms. Wilson explained that there ~~arewas extra—excessive wording words~~ on page 26, line 4. The amendment is a grammatical change.

Co-Chair Chenault WITHDREW his OBJECTION. There being NO OBJECTION, Amendment 7 was adopted.

[8:17:12 PM](#)

Representative Hawker MOVED to ADOPT Amendment 8: delete "180 days" and insert "10 months". Co-Chair Chenault OBJECTED. Representative Hawker explained that the amendment would provide additional time for implementing regulations. Without the amendment a payer would have a 6 month window to apply under the old ELF, with a catch up payment at that time. Regulation implementation would extend to 10 months. The amendment represents a window of grace to implement the change, but does not affect the effective date.

Representative Holm asked if it would affect the interest cost. Representative Hawker said the grace period allows for payment under the old ELF; they would not have to pay up under the new PPT system during that time.

Representative Kelly concluded that, minus a little value of interest, the dollar result would be the same. Representative Hawker affirmed that there would be a time

value of money on the increment for the additional four months.

Representative Kerttula asked for an estimate of how much that the grace period would cost in the loss of interest. Representative Hawker thought the difference would be the interest on \$100 million a month. Representative Kerttula stated she would be supportive if there were a way to recoup that cost in the end. She did not object to the delay, but pointed out the cost to the State.

Co-Chair Chenault WITHDREW his OBJECTION. Representative Kerttula OBJECTED.

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DAN DICKINSON, CONSULTANT, TAX DIVISION, DEPARTMENT OF REVENUE, calculated the loss at approximately \$4 million at one percent a month for four months. Representative Hawker maintained that it is not the responsibility of the legislature to pay for the state's inefficiency in implementing regulations. He opined it is an equity issue.

In response to a question by Representative Kelly, Representative Hawker stated that it was his intent that the date run from the passage of the legislation, even if there is a retroactive effective date.

Ms. Wilson ~~said~~ explained that the ~~effective~~ effective date ~~of the bill would~~ not change even if there is a retroactive clause to April 1 in the legislation. Representative Kelly asked if that is linear. Ms. Wilson said that is correct. -

Representative Kerttula maintained her objection.

A roll call vote was taken on the motion.

IN FAVOR: Moses, Foster, Hawker, Holm, Joule, Kelly, Meyer,
Chenault
OPPOSED: Kerttula

Representative Weyhrauch was absent from the vote.

The MOTION PASSED (8-2).

Representative Hawker MOVED to ADOPT Amendment 9: eliminate entities that are not regulated by Federal Energy Regulation Commission (FERC) ~~from~~ credit pass through requirements. Co-Chair Chenault OBJECTED. Representative Hawker explained that the amendment affects credits being passed through to rate payers. The owners of regulated facilities that receive a credit with FERC must file in a manner that all of the tax credits flow through to the rate payer. The amendment

deletes this requirement from those that are not regulated. He felt that the requirement would be invasive and put the department in the position of auditing transactions between commercial payers. He did not feel the Department should be responsible for making such judgments. He observed that Senator Therriault is not opposed to the amendment.

Co-Chair Chenault WITHDREW his OBJECTION.

There being NO OBJECTION, Amendment 9 was adopted.

[8:29:11 PM](#)

Representative Hawker MOVED to ADOPT Amendment 10. Co-Chair Chenault OBJECTED. Representative Hawker explained that the amendment deletes language that would have allowed the use of Royalty Settlement Agreements (RSA). He acknowledged the benefit of RSA in terms of efficiencies for the Department of Revenue, but emphasized the lack of control. He did not think the provision could be made equitable and assure that the state of Alaska's revenue base is protected. The amendment would return the language to the Senate version.

Representative Weyhrauch maintained that the section is at the discretion of the department and is vague. He requested the department's opinion.

Mr. Dickinson related that the fiscal impact on state revenues [of the RSA provision] would not be affected; while the costs to the state would be less as a consequence of resulting efficiencies. He maintained that the language would be appropriate and would not harm tax payer revenues. The Administration supports the inclusion of the [RSA] section.

Representative Weyhrauch observed that there is nothing in law that ~~would~~ prohibits the legislature from addressing regulations that the Department might promulgate regarding royalty settlements. Mr. Dickinson pointed out [RSA's] are contracts that cannot be changed. Royalty agreements do not compare to the legislature's ability to tax values, which is what the statute would do.

Representative Weyhrauch asked what royalty settlement agreements the state currently has. Mr. Dickinson replied that there are at least seven on the North Slope of Alaska that are currently being used; there are also a number in Cook Inlet. The ones on the North Slope do not have expiration dates. He provided backup information regarding the origins of a number of agreements. He explained that, for smaller amounts of production, existing agreements were chosen instead of setting up an independent method of evaluation.

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Representative Hawker sympathized with the argument that the use of RSA's would add to cost and administrative efficiency, but felt that it would empower the Department to adopt a royalty settlement agreement, which would lower the state's per barrel collection. Consultants have estimated that the ~~state~~State could lose as much as \$5 dollars a barrel with the adoption of a particular royalty settlement agreement. He noted he is trying to delete the RSA language in order to prevent exposure to that much judgment.

A roll call vote was taken on the motion.

IN FAVOR: Stoltze, Foster, Hawker, Holm, Joule, Kelly,
Kerttula, Moses, Chenault, Meyer
OPPOSED: Weyhrauch

Amendment 10 was adopted. 10-1

[8:38:15 PM](#)

Representative Hawker MOVED to ADOPT Amendment 11, on behalf of himself and Representative Kelly. Co-Chair Chenault OBJECTED.

Representative Hawker explained that the amendment would restore a provision that was originally in the House Resource version of the bill to refund carry over credits. Currently, credits can be sold by the producer/explorer that generates the credit to another producer that has useable production; the sale is generally at a discount. He stressed that, without the provision, the person that generated the credit through exploration, (who does not have production, which the state of Alaska wants to motivate and reward for their investment in the state) is not fully realizing the benefit. The House Resources approach allowed the State to purchase back up to \$10 million a year in credits. He opined that \$25 million would be a fair number. He noted concern that the State might be exposed to a large monetary obligation to buy back credits, but pointed out that the amendment would not make the buy back provision available to large producers. The 50,000 barrel of oil equivalent per day factor draws a line between the three major producers and the next tier. Using the Department of Revenue statewide barrel of oil equivalent calculations, the lowest of the three major producers is 190,000 barrels; the next highest is 36.8 thousand. The intent is to draw the line at a level that allows the smaller producers to increase before they would not be able to avail themselves of the credit. He did not think that state exposure would be great and emphasized the benefit to those making investments.

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Mr. Dickinson addressed Amendment 11. He noted that the Governor's bill did not contain a provision to buy back credits. The Administration feels that the provision would be destabilizing. Credits could result in a \$100 million obligation by the state.

Representative Hawker ~~referred to the council by Dr. Van Meurs. He~~ emphasized that he is comfortable supporting the small producers, those who have not yet established production in the state.

Co-Chair Chenault WITHDREW his OBJECTION. There being NO OBJECTION, Amendment 11 was adopted.

AT-EASE: [8:44:41 PM](#)
RECONVENED: [8:56:19 PM](#)

Amendment 12 was not offered.

Representative Hawker MOVED to ADOPT Amendment 13. Co-Chair Chenault OBJECTED. He made a technical change: delete (e) and substitute (d). He explained that the amendment deals with storing gas underground in the winter.

Representative Hawker asked about page 19, lines 5 - 30, which were deleted in a previous amendment and asked where it would be placed in statute. Ms. Wilson explained that the amendment would respond to the bill in front of the committee. Mr. Dickinson said it should be in AS 43.55.150, which deals with calculations of gross value at the point of production. It is appropriate to have it in (e).

Representative Kerttula asked ~~the if there is an estimate of what the~~ value of ~~to this amendment would be to~~ the State. Mr. Dickinson said he did not know. Representative Kerttula requested the amendment be held until the information was available. Co-Chair Chenault agreed to hold the amendment until that information was received.

Representative Kelly spoke in support of the amendment. He noted that gas is stored ~~gas~~ for "peaking" to meet demand. This raises the value of the product. The State would receive a share of ~~the this~~ earned income.

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Representative Weyhrauch thought that there was a disconnect between transportation and storage of gas.

Representative Rokeberg spoke in support of the amendment and emphasized that it is a much-needed addition to the transportation system in the Cook Inlet area; the scope would only be applicable to this area. There is extra

storage capacity in the stream of transportation. He noted that it could be placed under AS 43.55.105, on the recommendation of the Department of Revenue and grants the ability for credits to be used in that area.

Representative Joule asked if it has an effect on the consumer. Co-Chair Chenault observed that when temperatures drop in Anchorage or Cook Inlet, where there is gas consumption, the utilities have a hard time pushing enough gas up the line. The amendment would allow summer storage in order to meet peak demands in the winter. Representative Joule wondered if it keeps costs down. Co-Chair Chenault explained that if pressure drops enough in the main line the industrial users are kicked off. If gas production in Cook Inlet continues to decline, then industrial users might go offline to meet the demands ~~from-of~~ consumers.

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Representative Hawker referred to the reasonable cost of transportation under AS 43.55.150 and asked if it would be an inclusion or exclusion.

Representative Weyhrauch suggested holding amendment 13. Representative Chenault HELD Amendment 13.

[9:05:00 PM](#)

Representative Weyhrauch HELD Amendment 12.

[9:05:18 PM](#)

Co-Chair Chenault MOVED to ADOPT Amendment 14. Representative Stoltze OBJECTED.

Representative Rokeberg explained that the amendment relates to exploration production tax credits. He observed that a \$20 million cap on annualized expenditures was placed on Cook Inlet a few years ago. He did not believe a cap was needed on credits for exploration in Cook Inlet. He emphasized the need for incentives for exploration. The amendment would eliminate the \$20 million cap for exploration credits for Cook Inlet.

Ms. Wilson understood the intent.

Representative Kelly asked for more information to understand how the amendment fits into the whole bill.

Representative Rokeberg maintained the amendment would fix a bill that was made two years ago, which was done outside of the context of PPT, except that exploration credits are being addressed in the larger context of PPT. He maintained the amendment would take off an artificial cap.

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Representative Hawker summarized that the intent is to eliminate the \$20 million limit for credit certificates issued in Cook Inlet and questioned if the amendment would achieve that goal. He asked for more time to review the amendment.

In response to a question by Representative Weyhrauch, Mr. Dickinson clarified that the provision ~~that~~ would have inserted the \$20 million cap would be deleted.

Representative Weyhrauch OBJECTED to Amendment 14.

Representative Kelly requested more time.

Co-Chair Chenault HELD Amendment 14.

[9:12:55 PM](#)

Representative Hawker MOVED to ADOPT Amendment 15, which addresses the base \$12 million credit in AS 43.55.170. He explained that the committee substitute, inadvertently, denied credits to the smaller producers and bestowed credits to the larger producers, which was the reverse of what was intended. The amendment was recommended by the Department of Revenue to allow the base \$12 million credit as a staggered approach. The \$12 million credit would not be allowed for producers of an average of greater than 100,000 barrels equivalent of oil a day.

Ms. Wilson noted that the committee substitute includes an anti-gold plating language that restricts the \$12 million credit to one-half of the qualified capital expenditures. Discussion revealed that the credit would be inadvertently reduced for the small players. The methodology based on production removes language relating to one-half of the expenditures; and allows the credit based on production through a formula for production between 50,000 and 100,000 barrels to phase out the credit. Representative Hawker added that it would give full value to all but the ~~big~~-three large producers.

[9:15:46 PM](#)

Representative Weyhrauch expressed concern with an economic inefficiency with the gold plating issue. He noted that the House CS based the credit on 100 percent of the qualified expenditure. The same expenditure would be eligible for an additional 20 percent credit under an earlier provision, as well as a reduction of the lease expenditure under AS 43.55.160. The net result would be that a producer or

explorer could get back \$140 for every 100 dollars spent that qualified for the AS 43.55.170 credit.

Ms. Wilson explained that the amendment addresses the issue because the credit was dependent on qualified expenditures; the credit would be closer in character to a standard credit and closer to the original goal of being enjoyed by smaller producers. This is why it phases out in higher production. Mr. Dickinson referred to the allowance in the governor's bill, which would have allowed \$63 million who had that amount of net profits. The amendment is closer to the Governor's concept that if a producer has net production tax value against taxable value can be taken. It would not be tied dollar to dollar, or any other way, to investments being made.

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Representative Hawker WITHDREW Amendment 15 in order to offer Amendment 15A. There being NO OBJECTION, it was so ordered.

Representative Hawker MOVED to ADOPT Amendment 15A. Co-Chair Chenault OBJECTED.

MR. ROBERT MINTZ, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, explained that Amendment 15A corrects an error in the first part of Amendment 15. He noted that amendments 11 and 15A both addressed the barrel of oil equivalent. Amendment 15A would adopt the approach offered in Amendment 11 in regards to volume under AS 42.55.011(e). Under the amendment, taxable oil and gas would be described as the following:

Sec. 43.55.170. Additional nontransferable tax credit.

(a) For a month for which a producer's tax liability under AS 43.55.011(e) exceeds zero before application of any credits under this chapter, a producer that is qualified under (c) of this section and whose average amount of oil and gas produced a day and taxable under AS 43.55.011(e) is less than 100,000 barrels of oil equivalent a day may apply a tax credit under this section against that liability. A producer whose average amount of oil and gas produced a day and taxable under AS 43.55.011(e) is (1) not more than 50,000 barrels of oil equivalent may apply a tax credit of up to \$1,000,000 for the month;

(2) more than 50,000 and less than 100,000 barrels of oil equivalent may apply a tax credit of up to the following fraction of \$1,000,000 for the month:

1 - [2 x (AP - 50,000)]/100,000, where AP = the average amount of oil and gas, expressed as barrels of oil equivalent, produced a day during the month and taxable under AS 43.55.011(e).

(b) A producer may not take a tax credit under this section for any month that ends the later of

(1) July 31, 2016; or

(2) the 10th anniversary of the last day of the month for which the producer first has commercial oil or gas production from at least one lease or property in the state, if the producer did not have commercial oil or gas production from a lease or property in the state before July 1, 2006.

(c) On written application by a producer, including any information the department may require, the department shall determine whether the producer qualifies under this section for a calendar year. To qualify under this section, a producer must demonstrate that its operation in the state or its ownership of an interest in a lease or property in the state as a distinct producer entity would not result in the division among multiple producer entities of any production tax liability under AS 43.55.011(e) that would be reasonably expected to be attributed to a single producer entity if the tax credit provision of (a) of this section did not exist.

(d) A tax credit authorized by this section may not be applied to reduce a producer's tax liability under AS 43.55.011(e) for any month below zero. An unused portion of a tax credit that could otherwise be applied for a month but whose application would cause the producer's tax liability under AS 43.55.011(e) for the month to be less than zero may be applied for one or more other months in the same calendar year to the extent otherwise allowed under this section.

(e) An unused tax credit or portion of a tax credit under this section is not transferable and may not be carried forward to or used in a later calendar year.

(f) For the purposes of this section, a barrel of oil equivalent is

(1) one barrel of oil, in the case of oil;

(2) 6,000 cubic feet of gas, in the case of gas.

Representative Weyhrauch wondered if Amendment 15A would be consistent with Amendment 11, which was previously adopted. Ms. Wilson explained that Amendment 11 dealt with the capex

credit under AS.43.55.024 and is a metric measure. Amendment 15A dealt with the credit contained in AS 43.55.170; and has its own production metric. Both ~~are~~ contain the 50,000 reference but one does not depend on the other. The change to adopt a less than 100,000 barrels of oil equivalent [to apply the tax credit] would be a policy call. He questioned the intent of the change.

[9:22:38 PM](#)

Mr. Dickinson responded that the intent of the amendment is to assure that there are not disincentives to increase production. The amendment would create a phase out approach in order to reverse the incentive. If there is a straight ~~a~~ cut-off at 50,000, a producer would qualify at 49,999 for a million dollar credit. An additional barrel would cost the producer one million dollars.

Representative Kelly asked to hold Amendment 15A to assure consistency. Co-Chair Chenault felt the language was consistent. Representative Hawker spoke in support of the amendment. He reiterated that without Amendment 15A large producers would benefit while small producers would be penalized. The amendment assures the benefit to small producers and phases it out over the 50,000 - 100,000 barrel range to prevent the disincentive of a cliff on the trigger point.

Co-Chair Chenault WITHDREW his OBJECTION. There being NO OBJECTION, it was so ordered, and Amendment 15A was adopted.

[9:26:36 PM](#)

Representative Foster MOVED to ADOPT Amendment 14. Co-Chair Chenault asked for more time to think about that amendment. Representative Foster WITHDREW his MOTION.

[9:27:40 PM](#)

Co-Chair Chenault MOVED to ADOPT Amendment 16. Representative Hawker OBJECTED.

Co-Chair Chenault explained that Amendment 16 would delete "July 1" and implement an April 1, 2006 deadline. He stressed that industry has been aware of the intent to implement a PPT tax. He emphasized the amount of money being made in the industry and problems with the current ELF system. Representative Hawker opposed the retroactive application of taxes on anyone for any purpose. Co-Chair Meyer agreed with Representative Hawker. He felt it would be unfair to tax industry retroactivity based on the success of their business and maintained that business needs time to adjust. He observed support for a retroactive date of

January 1st, 2006 and stated that he would support Representative Chenault's amendment as a compromise.

Representative Kelly felt that the effective date should go back even further. He MOVED to AMEND Amendment 15A: insert "January 1, 2006". Co-Chair Chenault OBJECTED.

[9:32:33 PM](#)

A roll call vote was taken on the motion to amend.

IN FAVOR: Weyhrauch, Foster, Hawker, Holm, Joule, Meyer, Chenault

OPPOSED: Kelly, Kerttula, Moses, Stoltze

The MOTION FAILED (4-7).

A roll call vote was taken on the motion to adopt Amendment 16.

IN FAVOR: Joule, Kelly, Kerttula, Moses, Stoltze, Meyer, Chenault

OPPOSED: Foster, Hawker, Holm, Weyhrauch

The MOTION PASSED (7-4).

[9:34:32 PM](#)

Representative Kelly WITHDREW Amendment 17.

Representative Kelly MOVED to ADOPT Amendment 18. Co-Chair Chenault OBJECTED.

Representative Kelly explained the amendment would increase the tax rate from 20 to 22.5 percent. He stressed the importance of not erring on the low side.

Representative Hawker noted the complexity of the legislation. He observed that taxes would be raised on an industry that state revenue is dependant upon and stressed the inability to tax an industry into success or productivity. He noted the need to strike a balance that would encourage investment in Alaska. He observed that after hours of consideration an attempt was made to strike a balance by retaining the base 20 percent tax level with the adoption of an aggressive progressivity curve. He stressed the significance of progressivity in the tax structure and maintained that the base rate must be considered in this light. At today market prices, the State is looking at a 25 - 27% effective nominal tax rate with progressivity. He pointed out that there is no cap on the curve, which is steep and begins at a [realitivelyrelatively](#) low rate. He felt that the balance was as good and reasonable as could be achieved.

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Representative Weyhrauch observed that with progressivity the state would be taxing at a higher rate under current conditions. He MOVED to AMEND #18: delete "22.5" and insert "30".

Representative Hawker OBJECTED.

A roll call vote was taken on the motion.

IN FAVOR: Kerttula, Weyhrauch
OPPOSED: Hawker, Holm, Joule, Keelly, Moses, Stoltze, Foster, Chenault, Meyer

The MOTION FAILED (2-9).

[9:41:47 PM](#)

Co-Chair Meyer argued that the rate is the heart of the legislation and noted the various approaches. He observed the 20 percent credit was dropped, which he felt was overly generous and not necessary. He noted that the tax rate would be between 25 and 26 percent, at today's prices and with progressivity. He spoke against Amendment 18.

[9:43:18 PM](#)

A roll call vote was taken on the motion.

IN FAVOR: Holm, Kelly, Moses, Stoltze
OPPOSED: Joule, Kerttula, Weyhrauch, Foster, Hawker, Meyer, Chenault

The MOTION FAILED (4-7).

[9:44:13 PM](#)

Representative Kelly WITHDREW Amendment 19. He explained that Amendment 19 was no longer needed because there is a method to get 100 cents on a dollar for credits; the amendment would have taken advantage of a spread. Representative Weyhrauch observed the intent to use credits to reduce the state's unfunded liability on PERS and TRS, but acknowledged that the amendment was not viable.

[9:46:48 PM](#)

Co-Chair Chenault MOVED to ADOPT Amendment 20A (24-GS2052\N.14. Representative Hawker OBJECTED.

[9:47:12 PM](#)

REPRESENTATIVE NORMAN ROKEBERG spoke to Amendment 20A. He explained that the committee substitute provided for a formula based on the assumption of 0.019 NCF as a cap on Cook Inlet gas production. He felt that it would be in the best interest of the state, not to address the formulation due to the difficulty in verifying rates. The amendment would freeze in place gas production taxes at the current ELF price based on the twelve month period ending on June 30th 2006, of prevailing price tax rate x the value and volume produced on each field. The amendment would affect the Railbelt Energy grid. The amendment would also freeze prices for industrial use. He maintained that if the adoption of a PPT tax and elimination of the ELF would, ~~pass,~~ in essence, pass the tax onto consumers. He noted that the Regulatory Commission of Alaska allows the tax to be passed on to the consumer. He estimated that 75% of Alaskans would be improperly impacted by the amendment. He stated it would cap the tax rate in the Cook Inlet area to not exceed the formulation. The rate would be frozen for a fifteen year period in the Cook Inlet area. He added that a bench mark would be established under page 1, line 18 of the amendment. He observed that there is a large variation in the costs of Cook Inlet producers ranging from .10 to .19 cents per 1000 cubic feet. He acknowledged the complexity of the amendment, but maintained that it would be a fair method.

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Representative Holm thought that the amendment acted like urban power cost equalization. He pointed out that some people that do not have access to gas would be carrying the expense. He thought it was an odd way to insert fairness into the bill.

Representative Hawker spoke against the amendment and asserted that it was not well structured. He stressed that the legislation was well structured.

Representative Kelly encouraged that Amendment 20A be included in a larger discussion regarding Cook Inlet area gas.

[9:57:07 PM](#)

In response to a question by Vice-Chair Meyer, Ms. Wilson spoke to the intent of the amendment to assure that the tax rate [on Cook Inlet gas] is not increased. She observed that there is no guarantee that the tax would not raise if it were tied to ELF. The amendment takes the rate under the ELF times the average prevailing value of the previous 12 months; times the amount of production, which would accomplish the sponsor's goal. The amendment would also address concerns regarding shifting costs for Cook Inlet. She added that ~~in~~ the current legislation refers to Cook

Inlet oil at 5% of net. However, there is no definition of net taxable value for oil. The amendment would authorize the Department to adopt regulations and establish a reasonable basis for the allocation of costs.

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Mr. Dickinson suggested that "leases" be replaced with "leases or properties" for the tax base on page 1, line 23 of the amendment. The amendment appears to retroactively apply a gross tax base, so that changes in price would not affect ~~o+n~~ Cook Inlet gas.

Representative Hawker MOVED a AMEND, Amendment 20A by adding "or properties" on line 23, page 1. There being NO OBJECTION, it was amended.

[10:01:28 PM](#)

Co-Chair Chenault stated that the amendment would be HELD for further consideration.

AT EASE: [10:02:54 PM](#)
RECONVENE: [10:20:54 PM](#)

AT EASE: [10:21:16 PM](#)
RECONVENE: [10:22:25 PM](#)

Representative Kerttula MOVED to ADOPT Amendment 21. Co-Chair Chenault OBJECTED.

Representative Kerttula explained that Amendment 21 would remove gas from the bill. Gas would retain the current ELF system. The amendment authorizes the use of apportionment methods or formulas for determining the portion of a deductible oil related cost. The legislation currently contains similar apportionments for lease expenditures. Under one of the methods, if the predominate purpose of an expenditure is related to the production of oil, it would be a deductible oil related cost. Under another method, the cost could be allocated between oil and gas, depending on the relative volume. The authority is given to the Department to use these or other reasonable methods to achieve the desired result. She noted that the process began with the intent to revise an oil bill; a gas tax was not part of the discussions. She felt that the addition of gas in the legislation and has complicated the issue, especially in consideration that the legislature might be facing a contract [relating to a gas pipeline]. She maintained that that it was premature to deal with the gas until a contract is seen. She felt that the way gas expenses were deducted from oil needed further consideration.

[10:24:48 PM](#)

Mr. Dickinson spoke against the amendment and asserted that it is impossible to differentiate between the joint costs of producing oil and gas. The amendment acknowledges that an arbitrary allocation method is therefore needed. He maintained that the current legislation recognizes that oil and gas is a single function and is appropriate.

LISA WEISSLER, STAFF, REPRESENTATIVE ETHAN BERKOWITZ, provided information on Amendment 21. She observed that the amendment would follow the pattern of allocations used for other expenses in the bill. She noted that consultants have indicated that the [separation of oil and gas for allocation] can be done. She emphasized that the amendment would provide more flexibility to the Department of Revenue to modify the methods being proposed in order to implement alternative methods.

[10:26:23 PM](#)

Representative Hawker spoke against the amendment. He stressed that the legislation mitigates the need to make artificial divisions or minimize the need to allocate costs. He pointed out that it was a policy call to implement a unified tax system that avoids the need to allocate costs.

Representative Weyhrauch noted that it is an oil and gas industry and the difficulty of separating them in regards to policy. Mr. Dickinson agreed that gas is integral part of the bill.

[10:28:20 PM](#)

Ms. Weissler observed that unless gas is taken out of the legislation, development of big gas fields, like Pt. Thompson, could be deductible and creditable against the oil tax. Representative Hawker pointed out that all activities that involve the North Slope would be subject to the SGDA proposal. He maintained that the legislation must look at universal rules that apply outside the North Slope. He stressed that any discussion is irrelevant to the discussion without a gas pipeline.

Representative Kerttula stressed the difficulty of making decisions about gas without looking at the [gas pipeline contract].

[10:30:02 PM](#)

A roll call vote was taken on the motion.

IN FAVOR: Joule, Kerttula, Moses

OPPOSED: Kelly, Stoltze, Weyhrauch, Foster, Hawker, Holm, Chenault, Meyer

The MOTION FAILED (3-8).

[10:30:48 PM](#)

Representative Kerttula MOVED to ADOPT Amendment 22. Co-Chair Chenault OBJECTED.

Representative Kerttula explained that Amendment 22 would delete the provision limiting the tax to 1/3rd of the gross value of the gas. She referred to charts by EconOne, which demonstrated methodology affects outcome, especially at lower prices. She acknowledged concerns regarding fields that are not under the Stranded Gas contract, but stressed the difficulty of addressing the issue without the contract present.

Mr. Dickinson believed that the 1/3 exclusion would create equity. He disputed numbers provided by EconOne. He suggested that ~~the~~ analysis would demonstrate that in situations like Pt. Thompson where there is half oil and half gas, the costs incurred from development are necessary for the development of either one.

[10:32:38 PM](#)

Ms. Weissler posed a question to the Department. She observed speculation that taxable gas would be taken in-kind and questioned if the provision would affect the amount of gas that would be taken in kind under the contract. Mr. Dickinson acknowledged that one of the provisions in the contract would allow gas to be taken in kind. He and concluded that the Stranded Gas Act would be the controlling measure if it is passed; it would that-determines how gas is dealt with in the North Slope; if there e is a major gas project. He felt the ~~explained that the~~ exclusion ***would be appropriate because it would apply to Nenana, Bristol Bay, and Cook Inlet and would not become the controlling law for the North Slope. The contract would be the controlling method on the North Slope.

Representative Kelly questioned if the state would be taxing at the proper rate, should a "big" find be discovered in Nenana, Bristol Bay or Cook Inlet. Mr. Dickinson suggested that distance from the market and issues of development would be more critical than the size of the find. He pointed out that the legislature is free to change a tax rate if they deemed it inappropriate. He added that the one-third provision recognizes that the percentage of cost to the total price of gas is different than the same relationship for oil and is not constant over time.

Representative Kelly thought the tax was currently closer to two-thirds and questioned the validity of the number. Mr. Dickinson stated that there are several relationships shown. He stressed that the provision is dependant upon costs and is an approximation based on what is generally seen in Alaska.

Mr. Dickinson explained that, if broad areas of productivity are found and there is additional gas, the legislature could consider a rate change, but acknowledged that it would ~~be~~ probably be inappropriate to jump the rate on a single field. Representative Kelly concluded that they were attempting to combine a benefit to the consumer, provide exploration incentives, and hold the state in a good position in case of a good find. He expressed his concern with the task and indicated that he would like further time for consideration of these issues.

[10:38:25 PM](#)

Representative Kerttula referred to the comments of an EconOne consultant regarding the potential Pt. Thompson development at 22.5 percent. She concluded that the state of Alaska would make less under the one-third system than under the current ELF system.

A roll call vote was taken on the motion to adopt Amendment 22.

IN FAVOR: Kerttula, Moses, Stoltze, Joule
OPPOSED: Kelly, Foster, Hawker, Holm, Meyer, Chenault

Representative Weyhrauch absent from the vote.

The MOTION FAILED (4-6).

[10:39:53 PM](#)

Representative Kerttula WITHDREW Amendment 23

Representative Kerttula MOVED to ADOPT Amendment 24. Co-Chair Chenault OBJECTED.

[10:40:18 PM](#)

~~***~~ Representative Kerttula explained that Amendment 24 would provide a revenue floor. She observed that severance tax has been seen as the sale of our state resources. She felt there should be a revenue floor above zero to is appropriate to protect the state against lower oil prices. She noted that the state of Alaska would always receive royalties and corporate income and property taxes, but went on to emphasize that corporate and property taxes provide significantly smaller revenues than either royalties

or the production tax. She maintained that the production tax is intended to compensate Alaska and its citizens for the depletion of its natural resources and should not go below zero.~~The amendment would address~~

Mr. Dickinson agreed that there are royalties, income taxes, and property taxes, and pointed out that these revenues sources would remain even if PPT went to zero. He emphasized that a minimum tax works against an incentive on profits. The intent is to use the tax to generate the kind of investment that would generate royalties, income taxes, and property taxes. ~~T. Even if the PPT went to zero, there would be ***other takes &~~ he Administration did not support the amendment.

Ms. Wilson added that it is not uncommon to have a minimum tax in bad times, with a, credit, which would be applied when times improve. She felt the amendment was out of balance, since it would provide a floor, but would not provide compensation when the good times return.

Representative Hawker summarized that the amendment would require a differentiation between Cook Inlet oil and all other areas across the state. He pointed out that the entire bill is based on /// unified net base calculation and the amendment ~~To would~~ require allocations that would only kick in at the low price scenario.

10:43:32 PM

Representative Kelly noted that he had requested materials from EconOne regarding a floor and expressed concern that the curves "dive for the straight down, on the left side." He acknowledged that a floor needed to be addressed, but stated that he would not support the current amendment.

Representative Kerttula pointed out that there was an effort to be more favorable toward Cook Inlet. Cook Inlet was left with the structure contained in the legislation, but the rest of the state was taken to six percent of gross.

10:44:50 PM

A roll call vote was taken on the motion.

IN FAVOR: Stoltze, Foster, Hawker, Holm, Kelly, Chenault, Meyer

OPPOSED: Kerttula, Joule

Representatives Moses and Weyhrauch were absent from the vote.

The MOTION FAILED (7-2).

[10:45:40 PM](#)

Representative Kerttula WITHDREW Amendment 25.

[10:45:46 PM](#)

Representative Kerttula MOVED to ADOPT Amendment 26. Co-Chair Chenault OBJECTED.

Representative Kerttula explained ~~that the amendment~~ would add a new section:

The Regulatory Commission of Alaska, in consultation with the Alaska Oil and Gas Conservation Commission (AOGCC, may require working interest owners to provide access to production and other facilities whenever necessary to:

- 1 maximize the economic and physical recovery of the state's oil or gas resources;
- 2 maximize competition among parties seeking to explore and develop the resource;
- 3 minimize the adverse effects of exploration, development, production and transportation activity; or
- 4 otherwise protect the best interests of the state.

Ms. Wilson questioned why the language would be added to AS 43.55, which addresses, specifically, production tax.

Mr. Mintz had not had an opportunity to study the amendment. He thought it might be more appropriate outside the production concept and thought that the amendment might introduce a title problem.

[10:47:38 PM](#)

A roll call vote was taken on the motion.

IN FAVOR: Stoltze, Joule, Kerttula

OPPOSED: Foster, Hawker, Holm, Kelly, Meyer, Chenault

Representatives Moses and Weyhrauch were absent from the vote.

The MOTION FAILED (3-6).

[10:48:22 PM](#)

Representative Kerttula MOVED to ADOPT Amendment 27. Co-Chair Chenault OBJECTED.

Representative Kerttula explained that the amendment would provide a statewide funding mechanism for high energy costs. The fund would provide cost offsets during high energy periods and provide a surcharge on oil that exceeds \$35 dollars.

Co-Chair Chenault observed that not all state residents are affected by Power Cost Equalization. He acknowledged that providing PCE was an honorable goal and indicated that the issue would be given further consideration.

[10:51:04 PM](#)

Representative Weyhrauch observed that the lack of encouragement toward alternative fuels is a problem.

Representative Hawker stressed that the intent of the legislation is to increase industry taxes. The legislation doesn't address how the money would be spent.

Representative Holm agreed and observed that all consumers are hurting. He spoke against the amendment, but emphasized that a consumer credit may need to be addressed at a later date.

[10:53:23 PM](#)

Representative Kerttula maintained that the time is coming when something must be done to address the issue.

[10:54:16 PM](#)

A roll call vote was taken on the motion.

IN FAVOR: Joule, Kerttula

OPPOSED: Stoltze, Weyhrauch, Foster, Hawker, Holm, Kelly, Chenault, Meyer

Representative Moses was absent from the vote.

The MOTION FAILED (2-8).

[10:54:31 PM](#)

Representative Kerttula MOVED to ADOPT Amendment 28. Co-Chair Chenault OBJECTED. Representative Kerttula explained that the amendment would address how deductions or credits are dealt with for internal transactions between taxpayers. The burden of proof would be transferred from the Department to the taxpayer. The taxpayer would have the burden to identify internal transfer transactions and show that they were at "arms length" by clear and convincing evidence, which is a higher standard.

[10:56:21 PM](#)

In response to a question by Representative Weyhrauch, Mr. Dickinson explained that once the commissioner makes a determination the burden of proof shifts to the taxpayer to disapprove the assertion of the commissioner. Representative Weyhrauch spoke in support of the conception and questioned the Department's view.

Mr. Mintz agreed that an assessment by the Department is presumptively correct and therefore the taxpayer has some burden to overcome. However, the current standard is not "clear and convincing". He observed that most "non-arms" length transactions are addressed by the Department's regulations. He explained that when transportation is by a tanker that is owned by the producer, the regulations provide for a way to calculate transportation costs. He acknowledged that there would be additional upstream costs, but added that there is not a lot of precedence on the issue.

[10:58:46 PM](#)

Representative Weyhrauch MOVED to AMEND Amendment 28: delete "by clear and convincing evidence". He noted that the Department wants to assure that the lease transfers are viable. The amendment to the amendment would achieve the goal of providing a scrutiny of their affiliates using the same standard of proof used for other investigatory actions. Ms. Wilson spoke in support of the amendment to the amendment and pointed out that "clear and convincing evidence" is not included in their general audit provisions. She felt that this level of proof might be onerous. She felt that the language in the legislation was sufficient to satisfy the Department of Revenue's needs to deal with any potential transfer pricing issues.

Representative Kerttula spoke in support of the main amendment, which would, even without the clear and convincing standard, shift the burden to the taxpayer to bring the information to the Department. The intent is to make it clear who has to come forward with the information.

There being NO OBJECTION, the amendment to Amendment 28 was adopted.

[11:03:22 PM](#)

Representative Hawker asserted that the amendment would require preapproval for transactions. He pointed out that most producers are involved in joint actions. He observed that almost every transaction could be held for preapproval and stressed that the amendment would be problematic.

[11:04:41 PM](#)

In response to a question by Representative Weyhrauch, Representative Hawker spoke in support of section (m), which would prevent cost shifting and require any related transactions to be at no more than fair market value. Auditors would be given the tools to enforce without pre-approving every transaction.

[11:05:46 PM](#)

Representative Kerttula argued that it would not be preapproval, but would allow the burden to shift. Producers would have to prove to the Department that transactions are at "arms length".

A roll call vote was taken on the motion to adopt Amendment 28 as amended.

IN FAVOR: Weyhrauch, Joule, Kerttula, Stoltze,
OPPOSED: Foster, Hawker, Holm, Kelly, Meyer, Chenault

Representative Moses was absent from the vote.

The MOTION FAILED (4-6).

[11:07:01 PM](#)

Representative Kerttula MOVED to ADOPT Amendment 29 (copy on file.) Co-Chair Chenault OBJECTED. Representative Kerttula noted that the amendment would be stringent in specifying allowable deductions, and would preclude deductions for overhead expenses and abandonment costs. She asserted that the existing language is very broad.

Mr. Dickinson argued that the committee substitute is stringent, and observed that deductions would be accepted industry practice as of a certain date. Costs would have to be actively monitored by the parties that have to pay the costs. He felt that defining when costs are appropriately spent would be better than listing costs.

[11:09:27 PM](#)

Representative Weyhrauch referred to direct costs as defined on page 22, and questioned if routine maintenance would be included. Mr. Dickinson affirmed. Representative Weyhrauch asked if subsections (A) - (E) were all direct costs or reasonable allowances. Ms. Wilson responded that all the items contained in subsections (A) - (E) of the amendment would be allowable under the bill. She expressed concern that the amendment would be too narrow and would not recognize all the expenses that would be incurred. She pointed out that the amendment refers to routine maintenance, but does not address repairs. A limited list of allowed expenses does not recognize all the expenses which

would be incurred to generate the profit, which she argued, is the basis of the entire bill. Overhead and administration costs would be disallowed under the amendment, while the bill would provide for a reasonable allowance. She acknowledged that "overhead" can be broad, but spoke against the amendment, which she felt would be too restrictive and would not cover all reasonable costs.

[11:12:12 PM](#)

Representative Weyhrauch referred to section (P). Ms. Wilson spoke against the amendment and explained that the legislation, as written, would allow abandonment costs for facilities that produce new production. A facility would receive an allocation of abandonment costs if it were in production before and after the effective date. The portion attributed to production prior to the effective date would not be allowed. The amendment would disallow abandonment costs without distinction. She argued that abandonment is a necessary cost to responsibly develop oil and gas and to plan for its expense.

In response to a question by Representative Weyhrauch, Ms. Wilson clarified that the committee substitute would allow abandonment for new production, but not old production.

[11:14:51 PM](#)

In response to a question by Representative Weyhrauch, Ms. Wilson explained that there is no definition for "booked" in current statute.

[11:15:47 PM](#)

Representative Hawker stressed the difficulty of "carving out extremely limited categories" for deductions. He noted that the amendment would allow deductions of employee wages and benefits working on production operations, while their lodging, food, transportation, or personal safety gear would not be covered. Representative Kerttula felt that there should have been more extensive conversations regarding deductions and other items in the legislation. She observed that the Department would be given broad authority to negotiate, often confidentially, agreements regarding deductions.

[11:17:30 PM](#)

Representative Kelly observed that he had crafted an amendment regarding overhead charges, but was persuaded by the Department that it was not necessary.

Mr. Dickinson acknowledged that overhead would remain an issue, but emphasized that the legislation would resolve the

issue to a great degree. The legislation would set up specific conditions, in which they would accept the overhead allowances in agreements. He pointed to Prudhoe Bay and gave examples of how direct costs would be resolved. The legislation recognizes that it takes overhead to run a production operation, without arguing over all the marginal areas.

A roll call vote was taken on the motion to adopt Amendment 29.

IN FAVOR: Joule, Kerttula

OPPOSED: Stoltze, Weyhrauch, Foster, Hawker, Holm, Kelly, Chenault, Meyer

Representative Moses was absent from the vote.

The MOTION FAILED (2-8).

[11:20:30 PM](#)

Representative Kerttula MOVED to ADOPT Amendment 30. Co-Chair Chenault OBJECTED. Representative Kerttula explained that the amendment would delete a new provision in the committee substitute, which would allow out-sourcing of activities. She felt the language was too broad and should be restructured.

Mr. Dickinson spoke against the amendment. He stressed the difficulty of out-sourcing natural resource extraction and pointed out that many of the modules are constructing in other areas of the state or out-of-state. The intent of the provision is to identify costs spent on exploration and production in the State. He argued that a standard that increases the wellhead value deals with costs most efficiently and is most appropriate. He maintained that the language was necessary and useful for clarification. Mr. Mintz explained that the language was not added to change anything, but to clarify the definition of "up stream." Up stream to the point of production is an operational concept not a geographical concept. Well drilling is an upstream operation, but the petroleum engineer might be located in Anchorage.

[11:24:16 PM](#)

Representative Kerttula felt the provision could contain a broad variety of activities and the section should be tighter.

A roll call vote was taken on the motion.

IN FAVOR: Joule, Kerttula

OPPOSED: Stoltze, Foster, Hawker, Holm, Kelly, Chenault,
Meyer

Representative Weyhrauch and Moses was absent from the vote.

The MOTION FAILED (2-7).

[11:25:42 PM](#)

Representative Kerttula WITHDREW Amendments 31, 32, and 33.

[11:26:41 PM](#)

Representative Kerttula MOVED to ADOPT Amendment 34. Co-Chair Chenault OBJECTED. Representative Kerttula explained that the amendment would prevent a tax payer from claiming a deduction and credit for the same expenditure. The amendment provides that a tax payer may not claim a credit for any lease expenditure that has already been deducted.

Mr. Dickinson spoke against the amendment. He emphasized that the intent was to encourage investment. He maintained that the allowance of a deduction and credit play different roles depending on the size of the company and other factors. He felt the provision was needed to strike a balance in the legislation.

A roll call vote was taken on the motion.

IN FAVOR: Joule, Kerttula

OPPOSED: Stoltze, Foster, Hawker, Holm, Kelly, Chenault,
Meyer

Representative Weyhrauch and Moses was absent from the vote.

The MOTION FAILED (2-7).

[11:28:20 PM](#)

Representative Kerttula MOVED to ADOPT Amendment 35. Co-Chair Chenault OBJECTED. Representative Kerttula explained that the amendment would strengthen the audit authority for the Department of Revenue, by establishing strong penalties for substantial understatements and for gross misstatements of value. She expressed concern that there are no penalties as deterrents. She explained that the intent was not to capture unintentional mistakes. Mr. Dickinson stressed that civil penalties exist for willful violations of the law, whereas 25 percent of the substantial understatement of the tax would be charged. He felt that existing law would be sufficient. In response to a question by Co-Chair Chenault, Mr. Dickinson acknowledged that the amendment would deal with onerous conditions, but reiterated that the Department

already has the ability to add penalties for intentional disregard of the law.

[11:31:12 PM](#)

Representative Weyhrauch questioned when substantial understatement and misrepresentation of fraud begin. Mr. Mintz explained the difference between the amendment and the existing penalty: existing penalty provisions all have some kind of element of fault, while the amendment would be linked to the amount of underpayment. Below fraud, penalties generally depend on lack of reasonable cause, negligence, or intentional disregard of the law or regulations. He suggested that the amendment would be automatic and would not depend on the intent of the taxpayer, but the amount of underpayment.

Ms. Wilson referred to current civil penalty statutes: AS 43.405.220 (b). She observed that 5 percent of the total amount of the tax deficiency would be assessed. She pointed out that a failure to pay penalty is also assessed when AS 43.405.220 (b) is assessed, in conjunction with regulations. She concluded that if there is a negligence finding there would be a penalty of 30 percent. Under AS 43.405.220 (c), penalties due to fraud would 50 percent of the tax due or \$500, or whichever is greater. The level of misbehavior determines the penalty.

[11:34:15 PM](#)

Representative Weyhrauch observed that the safe harbor provision would also apply under section 7 of the legislation. Ms. Wilson agreed that it could potentially apply.

Representative Weyhrauch questioned what interest is charged. Ms. Wilson noted that the interest is defined in existing law: AS 43.05.225.

Co-Chair Chenault spoke against the amendment.

A roll call vote was taken on the motion.

IN FAVOR: Joule, Kerttula, Weyhrauch

OPPOSED: Stoltze, Foster, Hawker, Holm, Kelly, Chenault, Meyer

Representative Moses was absent from the vote.

The MOTION FAILED (3-7).

[11:36:35 PM](#)

Representative Kerttula MOVED to ADOPT Amendment 36, Co-Chair Chenault OBJECTED. Representative Kerttula explained that the amendment would add a severability clause. She observed that the severability clause would protect the rest of the statute in the event that the deductions and credits were challenged under the bill. She noted that Ms. Cook, (Alaska Legislative Affairs, Legal Services Division, Director) indicated that a severability clause would protect against any chance of a court interpretation that the general statute regarding severability didn't apply.

Mr. Mintz noted that the legislature-drafting manual generally recommends that a severability provision is not needed because it is assumed. He observed that it is uncertain how much benefit would be derived from the amendment. The amendment only represents legislative intent and would not direct the court.

Ms. Weissler acknowledged that the legislative drafting manual speaks to general severability, but emphasized that something specific would cover the basis if there is any doubt.

A roll call vote was taken on the motion.

IN FAVOR: Kerttula, Stoltze, Weyhrauch, Holm, Joule
OPPOSED: Kelly, Foster, Hawker, Meyer, Chenault

[11:40:04 PM](#)

Representative Kerttula HELD Amendment 37 and 38.

Representative Kelly WITHDREW Amendment 39.

#

ADJOURNMENT

The meeting was adjourned at 11:41 PM