

**ALASKA STATE LEGISLATURE**  
**HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS**

February 22, 2006

9:09 a.m.

**MEMBERS PRESENT**

Representative Bruce Weyhrauch, Chair  
Representative Norman Rokeberg  
Representative Ralph Samuels  
Representative Paul Seaton  
Representative Peggy Wilson  
Representative Carl Moses

**MEMBERS ABSENT**

Representative Max Gruenberg

**COMMITTEE CALENDAR**

HOUSE BILL NO. 418

"An Act relating to a mining production tax; relating to the mining license tax; relating to production royalties on minerals; relating to exploration incentive credits; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 418

SHORT TITLE: MINING PROD. & LICENSE TAXES/ROYALTIES

SPONSOR(S): REPRESENTATIVE(S) SEATON

|          |     |                                 |
|----------|-----|---------------------------------|
| 02/01/06 | (H) | READ THE FIRST TIME - REFERRALS |
| 02/01/06 | (H) | W&M, RES, FIN                   |
| 02/22/06 | (H) | W&M AT 9:00 AM CAPITOL 106      |

**WITNESS REGISTER**

IAN LAING, Staff  
to Representative Paul Seaton  
Alaska State Legislature  
POSITION STATEMENT: Elaborated on the figures and tables from the Fraser Institute study.

**ACTION NARRATIVE**

**CHAIR BRUCE WEYHRAUCH** called the House Special Committee on Ways and Means meeting to order at [9:09:15 AM](#). Representatives Weyhrauch, Rokeberg, Samuels, Seaton, and Wilson were present at the call to order. Representative Moses arrived as the meeting was in progress.

HB 418-MINING PROD. & LICENSE TAXES/ROYALTIES

[9:09:21 AM](#)

CHAIR WEYHRAUCH announced that the only order of business would be HOUSE BILL NO. 418, "An Act relating to a mining production tax; relating to the mining license tax; relating to production royalties on minerals; relating to exploration incentive credits; and providing for an effective date."

[9:09:55 AM](#)

REPRESENTATIVE SEATON informed the committee that this bill is a result of Article VIII, Section 2 of the Alaska State Constitution, which reads as follows: "The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people." He remarked that this bill fulfills this duty by considering a 3 percent production tax on all mine products. He added that this bill will result in more parity between the different segments of the [mining] industry, and it replaces the existing mining license tax, which is a net tax, with one that is a net smelter return (NSR). He noted that it's not referred to as NSR in this bill, but for mine minerals, it's the equivalent. From [Alaska's] gross tax, the production and the transportation smelting fees are subtracted. He stated that it's the value established at the end of the smelter because it's difficult to establish an ore value as it comes out of the ground because that's generally not the first point of sale. Furthermore, the bill ensures that the Department of Revenue (DOR) is able to ensure that these are "arm length" transactions in order that there isn't shuffling of resources and income. He further noted that this bill moves away from the problem of being able to shift net income to an "untaxable" body. He referred to four tables which are a condensed version of the legislative research report that was completed on June 28, 2005. Table one is entitled, "Percent of Resource Production Value Paid to State and Municipalities from Oil and Gas, Mining and Fishing Industries, FY 03 - 05 (in \$Million)."

The committee took an at-ease from 9:13 a.m. to 9:16 a.m.

REPRESENTATIVE SEATON again referred to table one and directed the committee's attention to the "% Value to State" column. He noted that for the oil and gas industry, it was 18.8 percent in 2003, 20.2 percent in 2004, and 22.1 percent in 2005. In regard to the mining industry, he noted that between 2000 and 2004, the percentages ranged from .5 percent to .8 percent. In regard to the fishing industry, he further noted that between 2003 and 2005, the percentages ranged from 2.5 percent to 2.9 percent. He turned to the "% Value to Municipalities" column and stated that the percentage was approximately 2 percent from the oil and gas industry, 1 percent from the mining industry, and 2.5 percent from the fishing industry. He stated that the "% Value Total" was approximately 22 percent from the oil and gas industry, 1.5/1.6 percent from the mining industry, and 5 percent from the fishing industry.

[9:18:11 AM](#)

REPRESENTATIVE ROKEBERG, in regard to tables 3 and 4 and fiscal year (FY) 2004, inquired as to whether the \$29,462,779 total from the fishing industry on table 3 is separate from the \$29,027,456 total from the fishing industry on table 4.

REPRESENTATIVE SEATON confirmed that the totals are separate.

REPRESENTATIVE ROKEBERG surmised that the \$29,462,779 total from the fishing industry on table 3 goes into the State general fund (GF) and the \$29,027,456 total from the fishing industry on table 4 is distributed to the municipalities.

REPRESENTATIVE SEATON confirmed that Representative Rokeberg is correct and added that most of that comes from the raw fish tax, which is basically 3 percent of the gross value of the produced fish. He further added that it's 5 percent of the gross value of the produced fish if it's done on a "floater" rather than a shore-based plant. That amount of tax is then split equally between municipalities, or the Department of Commerce, Community, & Economic Development (DCCED) distributes it to communities and half of it is kept by the state.

[9:19:18 AM](#)

REPRESENTATIVE ROKEBERG, in regard to the mining industry, noted that in FY04, \$8.8 million went to the State and \$10.9 million

went to municipalities. He expressed his confusion regarding these numbers and the percentages from table 1.

9:19:44 AM

REPRESENTATIVE SEATON replied that the State and municipality don't split the taxes from mining. The municipality acquires the mining tax. He referred to table 3 and noted that the mining industry is comprised of various taxes. The majority of municipality revenue comes from property taxes and severance taxes from some boroughs.

REPRESENTATIVE ROKEBERG surmised, "The state governmental take is about 60/40 to the municipalities for mining and 50/50 for fishing."

REPRESENTATIVE SEATON confirmed that Representative Rokeberg is correct and added that there is a lot more municipality take that doesn't appear in this table. When [Legislative Legal and Research Services] constructed this table, it forgot to include the fishing industry's local property taxes as well as the vessel license fees, which cost up to \$900 per vessel and will increase to \$3,000 in the future. In addition, this table doesn't include the permit fees. He noted that the majority of the State revenue from the mining industry comes from property taxes.

9:22:10 AM

REPRESENTATIVE ROKEBERG suggested that Representative Seaton examine the amount of GF State money invested in the fishing industry.

REPRESENTATIVE SEATON remarked that [the legislature] needs to examine the different resources in Alaska and how they compare.

9:23:38 AM

CHAIR WEYHRAUCH surmised that this isn't the "universe" of other taxes in the state. He further surmised that there's also a timber tax, which is related to a severance tax.

REPRESENTATIVE SEATON responded that he didn't examine the timber industry. He noted that there has been discussion regarding the appropriate tax level for the fishing industry. He further noted the consideration of 3-5 percent of the gross "ex-vessel" price, which is a produced resource price. He

related that fishermen would love to pay on their net tax because they would never have to pay any taxes, which is basically what's happening in the mining industry. The mining industry is paying on a net tax, which allows for cost shifting, which changes the net and whether taxes need to be paid.

[9:25:00 AM](#)

REPRESENTATIVE SEATON clarified that he's not saying that the mining industry is doing something wrong. He mentioned that the legislature designed the tax system and it expects the industry to abide by it. He said that the legislature set up a tax system that only returned .6 percent to the State and there isn't blame on the mining industry for abiding by the tax structure. He remarked that it's essential for the legislature to be informed as to the basic justification and equity of the tax structure and how it compares globally before changing it. He referred to a table entitled "Significant Taxes in Selected Jurisdictions" and directed the committee's attention to Alaska and Alaska proposed, which is under the proposed HB 418. The corporate income tax would remain the same and the royalty, instead of 3-7 percent of net profits, would be 3 percent of gross sales, which is equivalent to NSR. The costs of transportation and smelting are subtracted from the gross sales. In response to Chair Weyhrauch, he noted that the source of the data is the Fraser Institute.

[9:27:45 AM](#)

REPRESENTATIVE SEATON noted that Argentina has a corporate [income] tax rate of 35 percent and its royalty is a 3 percent NSR. Argentina also has a value added [tax on imported equipment], a dividend withholding tax of 0-35 percent, and an interest withholding tax of 15[.05] percent, or 35 percent on "intercompany" loans. He stated that Alaska doesn't have a mechanism to prevent tax shifting. He further noted that Australia has a 30 percent corporate [income] tax rate, compared to Alaska's 9.4 percent above \$90,000. Australia's royalty is 1.25-7.5 percent NSR and it also has dividend and interest withholding taxes. Botswana has a 25 percent corporate income tax and its royalty is 15 percent NSR. Brazil has a 33 percent corporate income tax and its royalty is 3 percent of gross sales of gold. He relayed that there have been comments that Alaska would be out of the mainstream if it were taxing on NSR or a gross amount of the tax. He further noted that China has a 33 percent corporate [income] tax and its royalty is 2 percent of

the gross revenue, which is more than NSR. He characterized South Africa as interesting because it's highly mineralized.

CHAIR WEYHRAUCH, in regard to policy framework for existing tax policy on mining, commented that Alaska's policies, on an international basis, encourage investment.

[9:31:43 AM](#)

IAN LAING, Staff to Representative Paul Seaton, Alaska State Legislature, relayed that various sources were used to produce the tables. Primarily, a book compiled by James Otto, a mining tax specialist from the Colorado School of Mines, was used. In addition, sources were used to accommodate for more recent changes in tax structure. For example, there have been more recent efforts in Peru and South Africa to change the tax structure to something that's more equitable (indisc).

REPRESENTATIVE SEATON pointed out that the aforementioned are included in the footnotes on page 4 and that he added Alaska and Alaska (proposed). He informed the committee that the Fraser Institute is a Canadian socioeconomic organization that conducts a survey amongst all of the mining companies. The mining companies rate the various countries based on their attractiveness to conduct business as well as their mineral potential. He noted that the data is from the 2004/2005 study.

REPRESENTATIVE SAMUELS commented that the problem with comparing a state to a country is that the federal income tax affects the rankings. He said, "It's a huge component. It's another 35/40 percent."

[9:34:21 AM](#)

REPRESENTATIVE SEATON responded that [the federal income tax] is not included in his calculations. He questioned whether NSR is reasonable. He noted that he also has state comparisons.

REPRESENTATIVE SAMUELS expressed his interest in comparing the total government take.

MR. LAING clarified that [the total government take] is included in the investment attractiveness index.

[9:35:55 AM](#)

REPRESENTATIVE SEATON mentioned that for Alaska and Alaska (proposed), he would be able to include [the total government take]. He explained that there is a net island royalty for Greens Creek Mine because it's within the U.S. Forest Service. Greens Creek Mine's president testified that it has yet to pay on the net island royalty. Therefore, the government take from Greens Creek Mine has been zero. He acknowledged that there's a corporate tax difference.

REPRESENTATIVE SAMUELS surmised that [Greens Creek Mine] escaped the local tax, but not the federal tax. He reiterated his interest in the total government take - local, state, and federal - in order that comparisons can be made to other countries.

REPRESENTATIVE SEATON replied that he would be able to include the corporate income tax. He acknowledged the difficulty in determining the individually negotiated deals on federal land. He said that he would also be able to investigate import/export duty for comparison.

[9:39:00 AM](#)

REPRESENTATIVE SEATON directed the committee's attention to the Fraser Institute study. He referred to figure 1, "Policy Potential Index" and noted that Alaska is in the middle. He referred to figure 2, "Current Mineral Potential - Assuming Current Regulations/Land Use Restrictions" and noted that Alaska is toward the bottom. He referred to figure 3, "Best Practices Mineral Potential - Assuming No Land Use Restrictions in Place and Assuming Industry 'Best Practices'" and clarified that best practices means very little regulation - environmental or taxation. He noted that Alaska is ranked number 3, so its mineral potential is very high if it assumes the same structure across everything. He referred to figure 17, "Composite Policy and Mineral Potential" and noted that Alaska is ranked number 6.

[9:41:43 AM](#)

REPRESENTATIVE WILSON asked, "With our policies and with our potential, why don't we see more? Just because of the areas that are way out in the middle of nowhere and things like that? We should see a lot more going on then, shouldn't we?"

REPRESENTATIVE SEATON answered that there is a lot going on in Pebble, Donlan Creek, Fort Knox, and Red Dog, for example. He relayed that [Alaska] has a fairly strict regulatory process.

In regard to regulations, Alaska is "down at the bottom," and in regard to mineral potential, Alaska is "way up at the top." He noted that Alaska is ranked number 6 in composite policy and mineral potential.

[9:43:31 AM](#)

REPRESENTATIVE WILSON agreed that there is a lot going on in Alaska. Considering that Alaska is ranked number 6, she said, "I still feel like we should be seeing more. Because of our environmental regulations, that's probably the main thing that's holding back right now."

REPRESENTATIVE SEATON responded that it's not just the environmental regulations; it's also Alaska's permitting regulations, tax structure, the Department of Natural Resources (DNR), and the federal government.

[9:44:40 AM](#)

MR. LAING mentioned that the 64 selected regions are considered to be the most attractive to mineral investors. In regard to the investment expenditures in Alaska, he stated that last year, \$70 million dollars was spent on exploration and \$209 million was spent on development. The aforementioned is part of the \$1.6 billion that is spent in the mining industry in Alaska. He stated that in the search for a more equitable tax structure, Alaska has to be able to continue to attract investors. He relayed that "money executives" are hesitant to invest in Alaska because of environmental regulations, regulatory duplication and inconsistencies, and infrastructure, which is often in remote locations. The aforementioned have tended to keep Alaska from the very top of that list.

REPRESENTATIVE SEATON referred to figure 8, "Taxation Regime" and noted that Alaska is "way up there at the top." He added that [the taxation regime] is low in the "Strong deterrent to investment" category. He referred to table A6, "Taxation Regime" and noted that 12 percent of the respondents said that Alaska's taxation regime encourages investment and 62 percent said that it's not a deterrent to investment.

[9:48:52 AM](#)

REPRESENTATIVE ROKEBERG noted that Pogo is the only mine to begin production in the last 12 years. He further noted that

the legislature passed an exploration credit tax, which is in repeal by this bill.

[9:50:07 AM](#)

REPRESENTATIVE SEATON discussed Section 1 and the legislative intent of the bill. Section 5 is amended to read that the production royalty is 3 percent of gross value at the point of production. Section 7 is amended to read that the commissioner shall, upon request, furnish to DNR copies of tax returns, reports, and documents filed. Section 12 reads that the mining production tax after December 31, 2006 starts at 0.6 percent and increases to 3 percent by [2010]. He clarified that the tax is on NSR on minerals. He noted that this bill also exempts taxation on the first \$50,000 from the point of sale. Section 43.66 provides for the deferment of the production tax for the first three years, except for the production of sand, gravel, coal, or rock. He stated that for mineral production, which has a high capital expenditure, there would be a deferment of those taxes. Gross value at production is defined as well as how to get there with NSR. This bill authorizes DOR to reject values that don't appear to be "arm length," determined by the fair market value. He informed the committee that there are also provisions for determining reasonable transportation costs, which allow the department to not accept them if they're not reasonable, and requires that the tax be paid before April of the following year. Section 43.66.160 exempts an individual from being required to file taxes if his/her total gross value of production is less than \$10,000. Currently, there's a law that requires everyone who mines minerals to file taxes. He noted that a number of people are violating the law and not filing tax returns, and this bill actually exempts them in order that someone earning under \$10,000 is not required to file. Those that earn under \$50,000 are not required to pay tax because there's that \$50,000 tax exemption. He further noted that affiliated taxpayers are required to file a combined statement. He remarked that a number of these provisions ensure that there isn't tax shifting. He summarized that this bill changes the net tax to a production tax, which is basically NSR with a schedule for implementing that.

CHAIR WEYHRAUCH requested, "Unless those statutes that are repealed in Section 15 are just sort of ministerial clean-up, if they're substantive repealers, could we see what is being repealed under Section 15?"

REPRESENTATIVE SEATON obliged and added that it's mostly that the net mining tax was repealed.

[9:55:06 AM](#)

CHAIR WEYHRAUCH inquired as to which statute the exploration credit tax is in and requested a copy of that statute.

REPRESENTATIVE WILSON referred to the [handout] from DOR regarding ounces of gold, silver, lead, zinc, sand, gravel, and the proposed tax on the gross value. She asked, "What difference is it from now compared to what your bill would be?"

[9:56:41 AM](#)

CHAIR WEYHRAUCH announced that the committee would adjourn at 10:00 a.m. and gave Representative Seaton the option of answering Representative Wilson's question on Friday.

REPRESENTATIVE SEATON opted to answer Representative Wilson's question on Friday.

[9:56:52 AM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Ways and Means meeting was adjourned at 9:56 a.m.