

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS

February 24, 2006
9:09 a.m.

MEMBERS PRESENT

Representative Bruce Weyhrauch, Chair
Representative Ralph Samuels
Representative Paul Seaton
Representative Peggy Wilson
Representative Max Gruenberg
Representative Carl Moses

MEMBERS ABSENT

Representative Norman Rokeberg

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
02/22/06	(H)	Heard & Held
02/22/06	(H)	MINUTE(W&M)
02/24/06	(H)	W&M AT 9:00 AM CAPITOL 106

WITNESS REGISTER

IAN LAING, Staff
to Representative Paul Seaton
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented information on HB 418 on behalf of Representative Seaton, sponsor.

KARL HANNEMAN, President
Council of Alaska Producers (CAP)
Juneau, Alaska

POSITION STATEMENT: His testimony in opposition to HB 418 was read by Rich Heig.

RICH HEIG, Vice President
Council of Alaska Producers (CAP);
General Manager
Greens Creek Mining Company
Juneau, Alaska

POSITION STATEMENT: Spoke in opposition to HB 418.

RICK VAN NIEUWENHUYSE, President & Chief Executive Officer (CEO)
NovaGold Resources, Inc.
Vancouver, Canada

POSITION STATEMENT: Spoke in opposition to HB 418.

STEVE BORELL, P.E., Executive Director
Alaska Miners Association, Inc.
Anchorage, Alaska

POSITION STATEMENT: Spoke in opposition to HB 418.

ACTION NARRATIVE

CHAIR BRUCE WEYHRAUCH called the House Special Committee on Ways and Means meeting to order at [9:09:10 AM](#). Representatives Weyhrauch, Gruenberg, Moses, and Seaton were present at the call to order. Representatives Samuels and Wilson arrived as the meeting was in progress.

[9:09:28 AM](#)

The committee took an at-ease from 9:09 a.m. to 9:10 a.m.

HB 418-MINING PROD. & LICENSE TAXES/ROYALTIES

[9:10:15 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."

9:11:31 AM

IAN LAING, Staff to Representative Paul Seaton, Alaska State Legislature, directed the committee's attention to the following three updated documents in the committee packets entitled: "Significant Taxes in Select Jurisdictions," "Metal Mines Taxation Comparison of All Taxes," and "Top Metal Producers." He explained that the first document, which provides an international comparison of mining taxation, was modified to include corporate taxes and duties to Alaska and "Alaska (Proposed)" as well as to Canada and its provincial taxes. The second document, he continued, shows a state comparison of mining taxes and the third document compares both United States and international mining production. The latter document, he noted, should be used for "general comparison purposes only, ... the rankings can change from year to year and may not necessarily be exactly accurate."

REPRESENTATIVE SEATON, referring to the chart showing the taxation of metal by state, said that the second column lists the investment attractiveness rankings [taken from] the study by the Fraser Institute. He indicated that Nevada is ranked 1, Alaska ranked 6, and most of the other states ranked in the 40s or 50s. "So [Alaska] is far more attractive for many reasons," he said.

MR. LAING, in response to a question by Representative Gruenberg, said that the Fraser study does not include a similar chart showing state attractiveness rankings, however, it does have charts comparing the tax regimes - net, gross, or otherwise - of different states and countries and the effect this has on investment attractiveness.

REPRESENTATIVE GRUENBERG indicated that reviewing how the states compare to other jurisdictions in addressing similar issues is a helpful guide to him. He asked whether it is possible to manipulate factors in such a way as to determine their effect on attractiveness and to "scale it against other kinds of things like revenue raising ... so we can qualify it as well as quantify it."

MR. LAING said this was the intent of distributing the Fraser study and that the charts before the committee are an attempt to "pare down" the study's findings. The charts show, he summarized, the different taxes in Alaska for the major resource industries, the different mining-specific taxes in different

nations and different states in addition to the many different factors considered in determining investment attractiveness in the mining industry.

[9:18:57 AM](#)

KARL HANNEMAN, President, Council of Alaska Producers (CAP), had his written testimony paraphrased by Rich Heig as follows [original punctuation provided]:

The Council of Alaska Producers (CAP) is an association representing companies involved in exploration, development, and active operation of hard rock mines in Alaska. Our industry is committed to sound operating practices, protection of the environment, and growth of an industry that has the potential to provide much needed private sector economic diversification throughout Alaska.

The mining industry has worked hard with the legislature over the last two decades to improve the investment and regulatory climate in Alaska. Significant fiscal policy improvements, such as the exemption of minerals from municipal in-situ taxation and the passage of the Exploration Incentives Act, both of which passed through your committee, have combined with other regulatory changes to greatly improve the perception of Alaska as a good place to do business. In fact, for several years after the passage of the Exploration Incentives Act, members of the Council and other mining company executives often cited the Incentives Act in speeches around North America as a reflection of the positive support from the Alaska government.

HB 418 would undermine these efforts by imposing a complicated and regressive tax on an industry that has yet to reach its potential. A stable and fair tax policy is necessary to continue to attract investment capital. The existing tax regime, which combines corporate income taxes, a 7% net profits mining license tax, rents, and a 3% net profits royalty, was established after years of litigation on the issue of what constituted an equitable return to the State. Poorly crafted and ill-advised legislation is a poor substitute for the extensive legal and public process that established the current tax regime.

Tax payments from the mining industry to the State are up significantly in recent years, even though Alaska still only has one hardrock mine on State land. The Legislature has worked hard to provide a stable climate for investment. The CAP asks that you **not** pass HB 418 and allow the industry to grow and reach its potential.

[9:22:18 AM](#)

RICH HEIG, Vice President, Council of Alaska Producers (CAP); General Manager, Greens Creek Mining Company, referring to the Fraser Institute survey on mining companies, said that he agrees with the findings that show Alaska as having "improved the climate dramatically for mineral development [which has] happened over the last couple of decades." He opined, however, that the tax proposed in HB 418 is "aggressive" for an industry still emerging from difficult times, and it will not support continued growth. He also noted the difficulty in comparing Alaska's mining tax to the tax rate in other countries because it does not show the difference in where the earnings are applied. That is, he explained, other countries may require higher taxes to fund social benefits for citizens whereas in America, it's often the employer who provides the medical and retirement benefits to workers. Regarding the comparisons made at the last meeting between the mining and fishing industry, he observed that the latter does not face the same detriments to development as does the mining industry, which often must deal with infrastructure challenges such as lack of roads or power. Also, in regard to Representative Seaton's discussion on the "shifting of revenues," he expressed his belief that this is not allowed by the Department of Revenue (DOR) and that there are mechanisms in place to prevent this from happening. He said, "If this is such a concern, I would expect we could provide the factual examples that exist to support the concern for shifting of revenues." As to a statement made at the last meeting regarding Greens Creek Mining Company not having paid its net island royalty to the United States (U.S.) Forest Service based on the current tax structure, he said:

I did state a year ago that Greens Creek [Mining Company] has not paid any funds against the net island royalty; however, we have not avoided nor attempted to avoid the net island royalty payments. Simply put ... we have not mined in any areas that are subjected to the net island royalty under the agreement from the

late 1990s when the net island royalty was put in place. We have not mined in any areas that are susceptible to the net island royalty.

MR. HEIG, referring to the chart showing the top metal producers worldwide, said that Greens Creek Mining Company is primarily the largest silver producer in the U.S. having produced 559,000 "kilograms," not "metric tons" as specified on the chart.

[9:27:52 AM](#)

CHAIR WEYHRAUCH asked for clarification from Mr. Heig on his statement that Greens Creek Mining Company hasn't paid any funds against its net island royalty.

MR. HEIG explained that "net island royalty" is a federal program administered under the Bureau of Land Management (BLM), however, the [mines] are on U.S. Forest Service lands. He said the royalty is on those areas mined outside of the company's "existing extra lateral rights within our mining area" which was determined in the Land Exchange Agreement in the late 1990s. In response to Chair Weyhrauch's question regarding why the company has not mined in areas susceptible to the net island royalties, he clarified:

It's not because of the tax and we hope there are resources to mine and we find them in our exploration program. It's just the way that the structure was designed, as far as what is susceptible to net island royalty and what is not ... and that gets into a discussion on extension of extra lateral rights from existing claims [which] is a very detailed discussion.

[9:29:37 AM](#)

REPRESENTATIVE GRUENBERG asked how many kilograms are in a metric ton.

MR. HEIG said that there are 31.10348 grams per troy ounce and that the 559,000 metric tons, if in kilograms, would convert to 17 million ounces, "although Greens Creek does not produce this amount." In further response to questions by Representative Gruenberg, he noted that whereas there might be byproduct silver credits from other operations, Greens Creek is the only primary producer of silver. Furthermore, he said he was not aware of any other silver mines "coming online" in Alaska as primary producers. When asked what the differences might be in the

silver mining industry versus the mining of other hard minerals, he clarified that Greens Creek produces its silver into a zinc and lead concentrate that is sold to smelters around the world, and does not produce silver bars.

REPRESENTATIVE SEATON said that he wished to clarify two points made earlier. The first, he stated, deals with whether cost shifting takes place under the current tax structure. He referred to correspondence from the Department of Revenue (DOR), which explained that this practice is hard to track and that audits are not currently performed to determine if cost shifting is happening. He said he also wanted to clarify that it was never his intent to relay that "the mining industry is doing anything wrong." Whereas the current tax policy for the industry does not provide a reasonable return, it is one that the State of Alaska adopted, not the mining industry, he opined. Therefore, he said he does not fault the industry "for following the tax policy to the full vantage that they can within the State of Alaska."

[9:34:12 AM](#)

RICK VAN NIEUWENHUYSE, President & Chief Executive Officer (CEO), NovaGold Resources, Inc., explained that the company is a junior exploration and mining company with headquarters in Vancouver, British Columbia (BC). NovaGold Resources has invested approximately \$25 million in Alaska during the last 5 or 6 years and is currently working on 3 projects with different partners: the Rock Creek project in Nome; the Donlin Creek gold project, which is a joint venture with Placer Dome/Barrick located in the Kuskokwim Gold Belt region on lands owned by the Calista Corporation and the surface rights owned by the Kuskokwim Corporation; and the Arctic project, a joint venture with "Rio Tinto Zinc" (RTZ) located in the Northwest Arctic Borough adjacent to lands owned by the State of Alaska and lands owned by NANA Regional Corporation. He noted that his company and its partners have spent a combined \$100 million on all three projects to date and have yet to receive any return on investment. "A tax such as is proposed in HB 418 is what I would consider an extremely regressive tax," he said and highlighted that there is already a 7 percent net profits tax in Alaska, which "is the correct kind of a tax to apply to the mining industry." With the huge amount of capital required to develop any of these mines - due to the lack of infrastructure, no central power grids, and no roads - he expressed his belief that it "is very unfair to have a tax come off of the top ... before your investors are getting a return on their investment

...." He opined that this would send a very negative message to the mining industry worldwide and "very strongly would urge the committee to put a no-vote on HB 418."

9:38:59 AM

CHAIR WEYHRAUCH asked Mr. Van Nieuwenhuyse to explain NovaGold's affiliation with Alaska mines.

MR. VAN NIEUWENHUYSE explained that his company purchased the Alaska Gold Company six years ago, a company that's been in operation since the 1920s in the Nome area of Alaska, and where now a sand and gravel business is operated. It is there, he continued, that the Rock Creek Mine is being developed, which will be Nome's first modern, open pit, hard rock mine. The Rock Creek Mine will produce about 100,000 ounces of gold and employ approximately 135 people. The company is currently in the permitting process and expects to have its permits by May or June and the first gold ore by the end of the year. He then mentioned the other two projects currently being developed: Donlin Creek, one of the largest undeveloped gold projects in the world at 28 million ounces, and the Arctic deposit, which is a copper, lead, zinc deposit in the Northwest Arctic Borough region. He said that the company has already spent \$5 million and will spend an additional \$3 million with this year's budget.

REPRESENTATIVE SEATON said he wanted to make sure Mr. Nieuwenhuyse understood that the tax proposed in HB 418 replaces the current mining license tax, and is not an additional tax. Furthermore, he informed, it is a net smelter return tax, which is not applicable prior to production or before there are returns. He also highlighted the provision included in the bill for a three-year deferral of taxes to allow mining companies and their investors to recover more capital in the first three years of production. He then asked Mr. Van Nieuwenhuyse if he did business in Canada as well as in Alaska.

MR. VAN NIEUWENHUYSE said that [NovaGold Resources, Inc.] has several big projects in the Canadian provinces of British Columbia and the Yukon as well. Then referring to the tax proposed in the bill, he opined that "a 3-year tax holiday is not going to go a long way to paying off [the] \$1.5 billion" needed to invest in the Donlin Creek project to extract that first ounce of gold. He said he disagrees strongly with the statement that "[company] investors would get a return" because a project like Donlin will probably take five years before there is any return on the invested capital. He assured the committee

that he does understand that the tax is "not over the top" of the existing net profits interest tax that currently exists and one that he opined is a good tax, recommending, "if it ain't broke, don't fix it."

[9:43:08 AM](#)

REPRESENTATIVE SEATON, returning attention to the chart entitled, "Significant Taxes in Select Jurisdictions," which lists the mining taxes to several Canadian provinces, and asked Mr. Van Nieuwenhuysse to compare these figures to those taxes proposed in the bill.

MR. VAN NIEUWENHUYSE relayed that BC has a net profits tax not a net smelter tax. He also explained that this province has some of the cheapest power in the world, at 3.2 cents per kilowatt-hour (kWh), which is part of where the corporate tax is applied. For comparison purposes, he said that a project like Donlin Creek would likely cost 10 to 11 cents per kWh and relayed that even the proposed gross royalty tax "would be very detrimental in encouraging investment in a yet young industry in Alaska."

REPRESENTATIVE SEATON, again referring to the comparative study on taxation, informed the committee that BC has a profits tax of 13 percent, which is "considerably above" Alaska's mining tax, and has a minimum tax of 2 percent, unlike Alaska which has no minimum tax.

MR. VAN NIEUWENHUYSE, responding to Representative Wilson's question regarding available power in northern BC, confirmed that this region has very little power available, which is one of the things the BC government is currently considering installing. He said that his company does have a copper/gold project in the area that produces a concentrate, requiring a significant amount of power, which is then shipped to smelters overseas. Installing the power lines would likely be a project done by the BC government, he explained, and would provide relatively inexpensive power to developers in that region.

[9:49:06 AM](#)

REPRESENTATIVE GRUENBERG asked if he was correct in understanding Mr. Van Nieuwenhuysse's perspective of Alaska's mining industry as one in a developmental stage rather than a producing stage since it lacks the infrastructure of other jurisdictions.

MR. VAN NIEUWENHUYSE said this is correct and that there are very few mines in Alaska. He commented that the lack of infrastructure does have an effect on attracting new industry and that "having good taxes that recognize the hurdles that exist in the state would be appropriate."

REPRESENTATIVE GRUENBERG said that the charts don't capture this factual distinction, and therefore he requested comparisons to similar jurisdictions showing how they partner with the industries to ensure that "the industry can grow and so that the government can get sufficient royalty and taxes to maintain itself"

MR. VAN NIEUWENHUYSE relayed that he currently had no charts available, but offered to find "fair and objective" comparative information.

[9:52:11 AM](#)

STEVE BORELL, P.E., Executive Director, Alaska Miners Association, Inc., expressed his concern with the proposed changes to tax policy in HB 418 and additionally with the timing of the proposal. With passage of the Alaska Native Claims Settlement Act (ANCSA), Section 17(d)(2) ("d-2"), and the resulting lands debate, and with passage of the Alaska National Interest Lands Conservation Act (ANILCA), he said the [association] has been working extremely hard "to convince mining companies ... to consider investing in Alaska." He recalled that because of the uncertainty [of how these land debates] would be resolved, about 80 different [mining] companies either closed their businesses in Alaska or decided not to develop in the state - an occurrence which the Alaska Miners Association is trying to reverse. He noted that currently, precious metal, base metal, and coal prices are all elevated and said he couldn't "recall a time ever before when all three of those major mining sectors ... have been high at the same time." However, he pointed out that for most of the past 20 years, the mining industry "has been suffering under very low [metal] prices" and yet those currently operating in Alaska, continue investing and risking the very limited exploration dollars despite these low prices.

MR. BORELL then addressed the Mining License Tax of Alaska, which is a special targeted tax required of the mining industry on all metals produced. He opined that it's to be a progressive form of taxation based on the net proceeds from mineral production. In addition to this tax, he informed the committee

that the mining industry also pays rent and production royalty taxes. He speculated that when the 2005 data is available, it will show significant increased payment to the state's general fund (GF), and this with only 4 large operating mines during that year, with a fifth mine currently adding to the pool. He pointed out that when a miner is successful, the state shares in that success, and even operating at a loss, the industry provides jobs and in some cases pays local property taxes that have been essential for local communities. He expressed his disappointment with the analysis provided at the previous committee meeting which, when referring to the amount of tax revenue generated, failed to mention that at that time there was only one large mine operating on state land. He relayed that during the 1980s, when there were no hard rock mines operating in Alaska, "establishing a stable and appropriately progressive tax in advance of an investment was a good policy ... and it's helped set the stage to attract significant risk capital to Alaska that now is beginning to mature into a core business."

[9:58:57 AM](#)

CHAIR WEYHRAUCH announced that HB 418 would be held over.

[9:59:56 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Ways and Means meeting was adjourned at 9:59 a.m.