

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

April 18, 2005

2:03 p.m.

MEMBERS PRESENT

Senator Gary Stevens, Chair
Senator Bert Stedman
Senator Thomas Wagoner
Senator Johnny Ellis
Senator Albert Kookesh

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 179

"An Act relating to the taxation of mining property; relating to contracts approved by municipalities for payments in lieu of taxes; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 179

SHORT TITLE: MINERALS TAX/PAYMENTS TO MUNIS IN LIEU

SPONSOR(S): SENATOR(S) THERRIAULT

WITNESS REGISTER

Senator Gene Therriault
Alaska State Capitol
Juneau, AK 99801

POSITION STATEMENT: Sponsor SB 179

Steve Borrell, Executive Director
Alaska Miners Association
Anchorage, AK

POSITION STATEMENT: Testified in support of SB 179

JAMES FUGUE, Technical and Permitting Coordinator
Donlin Creek Joint Venture
Vancouver, B.C.

POSITION STATEMENT: Testified in support of SB 179

Kevin Ritchie, Executive Director
Alaska Municipal League
217 Second Street
Juneau, Alaska 99801

POSITION STATEMENT: Raised questions regarding SB 179

ACTION NARRATIVE

CHAIR GARY STEVENS called the Senate Community and Regional Affairs Standing Committee meeting to order at [2:03:53 PM](#). Present were Senators Kookesh, Stedman, Wagoner, Ellis and Chair Gary Stevens.

SB 179-MINERALS TAX/PAYMENTS TO MUNIS IN LIEU

[2:04:35 PM](#)

SENATOR THERRIAULT, Sponsor, said the intent is to offer stability in unorganized areas with respect to generating jobs and value for the state based on the mineral resources found in the unorganized areas.

SENATOR THERRIAULT spoke to the sponsor statement:

Senate Bill 179 seeks to provide tax certainty and make Alaska a more attractive territory for investment. In addition, the mining property tax will provide funding for schools in the unorganized borough and help areas transitioning to local rule by providing some financial stability.

SB 179 levies a property tax on mining facilities in those areas of the State of Alaska that were not organized as of January 1 of this year. The mill rate is tied to the mandatory local contribution requirement set out in the foundation formula. The proceeds are accounted for separately and available for appropriation to the public education fund.

In the area surrounding one of these mining properties organizes a local government, an additional levy of two mills is charged. The entire amount is payable to the new local government. The only additional tax the new local government may levy against the mine is the first \$1,000 of a sale or use of services. The local

government will be free to levy taxes at its own discretion after the mine has been in production for 15 years.

The development of the Greens Creek, Red Dog, Fort Knox, True North, and Pogo mines over the last decade and a half has proven that mineral development can bring substantial private sector investment and employment to diverse geographic regions of Alaska, from southeast Alaska to the Interior and on to the northwest Arctic. Other projects such as Rock Creek, Donlin Creek, and Pebble offer potential economic development to still other parts of Alaska, including eastern and southwestern Alaska.

From the perspective of making the initial decision about whether to invest in Alaska, the unpredictability of future tax liability makes planning difficult. This unpredictability contributes to the disincentive against investment in mining in Alaska because unpredictable operating costs, such as tax liability, combine with fluctuations in metals prices to make projections of economic risk more difficult at the development decision stage. Placing limits on the extent of new taxes for metallic mining operations will make economic planning more predictable and thereby reduce the disincentive against investment in Alaska.

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CHAIR GARY STEVENS asked if this might in any way be a deterrent to borough formation in the unorganized areas.

SENATOR THERRIAULT said he wasn't sure, but when a mine develops, economic activity increases and jobs are created. Hopefully that would generate the desire to have some sort of local control over the mine and also the communities surrounding the mine. That's why the bill also proposes a 2 mill additional levy on the mine if the area around the mine organizes. If the mine has a life beyond 15 years, then the local government could tax at whatever level it wanted. All properties in the borough would be taxed at the same rate as the mine.

SENATOR WAGONER said he likes the bill because it brings certainty to the full process of opening a mine.

CHAIR GARY STEVENS asked what the tax rates are in organized boroughs.

SENATOR THERRIAULT replied in the Fairbanks North Star Borough the general property tax is 16 mills, which is 16 mills on homes, the mine, and the pipeline infrastructure. Certainly the level of services in that area is comprehensive and argues for a higher mill rate. In a more rural setting you wouldn't necessarily expect all services to be offered and you would consequently expect the mill rate to be lower.

He was open to discussion with regard to the 4 mills, but the idea is to allow projects to move forward into production.

SENATOR THERRIAULT noted that his staff contacted the assessor's office in Fairbanks to find out exactly what gets taxed and the bill is structured to treat mines the same way. The idea is to treat areas equally, but to also consider the level of services that would be provided in more remote areas.

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SENATOR ELLIS asked whether the 4 mill tax represents the opening bid with the state or does the sponsor represent that projects won't go forward if it's higher than the bill says.

SENATOR THERRIAULT replied he couldn't make the statement that a level beyond that proposed would mean no development would occur. The Legislature is sitting as the assembly for the unorganized area and the rate is certainly up to legislative discussion. The proposal is to tax mines in the unorganized area uniformly and encourage the investment in mining in the state.

The original concept was just 4 mills to cover the education requirement. Subsequently he asked the drafters to increase the cap to 6 mills if an area around a mine were to form a borough.

SENATOR ELLIS asked if there aren't impacts and costs to the state beyond providing education.

SENATOR THERRIAULT replied there could be. If local government isn't there to provide services that are needed, the state is, by default, the provider. But currently there is no allowance in statute for a millage rate to be charged. If a mine were to develop in an unorganized area, nothing would accrue to the state from property tax currently.

SENATOR ELLIS said he understands the need for certainty and consistency, but he questioned whether the 4 mill rate would be based on the least economic project and therefore whether this would be good public policy.

SENATOR THERRIAULT replied it is important to keep the least economically viable in mind.

SENATOR ELLIS remarked that in the mining industry, world commodity prices are the biggest factor. He wasn't sure how much responsibility the state had to take to make projects economic.

SENATOR THERRIAULT agreed that commodity prices and the up front investment are the major factors determining whether a project will go forward. But absent this proposal, no money would accrue to any governmental entity in the state from mining development in the unorganized area.

SENATOR STEDMAN asked if small mining claims with little or no development would be taxed.

SENATOR THERRIAULT explained the property tax would be levied on the mine infrastructure; the lease itself isn't taxable and the minerals in the ground aren't taxed either. There is language in the bill to protect small mining operations and as such, the first \$10 million dollars in infrastructure is exempt.

SENATOR WAGONER remarked that as written, nothing precludes the state from reducing the millage rate for a number of years to make the project viable.

CHAIR GARY STEVENS noted the bill says 4 mills.

SENATOR THERRIAULT agreed it would take legislative action to change the rate.

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STEVE BORRELL, Alaska Miners Association, testified on behalf of the association. He stated that through SB 179 the mining industry is volunteering to pay a 4 mill property tax on large mines operating in the unorganized borough. The tax rate would remain for a period of 15 years from first production.

Depending on the type of land where mining occurs, the industry already pays several taxes to the state. Those taxes include: mining license tax; corporate income tax; mining claim rental on

state and federal claims; production royalty on state land claims; and property tax to the municipality in organized areas.

In the unorganized area there is no municipal government with taxing authority and it is in those areas of the state that the new tax is proposed. The proposed 4 mill tax is the amount a borough would be required to contribute to education. An additional 2 mills would be levied if a borough were to be established in the area. The 4 mill tax would be paid to the state until a borough is established after which it would be paid to the borough.

With regard to whether the tax would encourage or discourage borough formation, the industry hopes the bill would be borough neutral.

The tax would be levied against all mines with an assessed value of \$10 million or more, but smaller mines could elect to pay the tax if they wanted the rate certainty for 15 years. As previously stated, the decision to go forward with a project is tied to a number of factors relating to certainty.

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JAMES FUGUE, Technical and Permitting Coordinator for the Donlin Creek joint venture, stated that Placer Dome Inc. supports SB 179 for two reasons. First it provides a mechanism for the mine to contribute to the local community by providing funds that could be used for education and local government. Second it helps provide long-term stability to assist in making a positive decision on a project they expect to be in excess of \$1 billion.

If developed, the mine would pay corporate income tax, mining license tax, and royalty tax to Calista Corporation for mineral extraction. SB 179 wouldn't affect those payments, but would provide additional revenue to the state or a future borough. Local communities would also benefit through the jobs created. The company has a history of local hire and community participation at Donlin Creek and that would continue if the mine goes forward. The proposed property tax rate is set at the rate that is currently set for funding education.

Preliminary capital estimates for the construction of the mine at Donlin Creek are on the order of \$1 billion. Under SB 179, this could result in a revenue stream of \$4 million per year, which would cover about 90 percent of the state's cost for education in the local area.

The project would construct and maintain its own infrastructure and wouldn't draw on local services. The tax would be paid to the state unless the community decided to form a local government. If that were to happen, the taxes would be paid directly to the local government, which would help provide financial security to the new government.

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Referencing language about the tax payable upon formation of a new borough, he suggested amendment to avoid future uncertainty about the intent of the language. As written the language on page 2, lines 22-23 says "...the tax rate in a municipality incorporated after January 1, 2005 is the mill rate specified in AS 14.17.410(b)(2) plus two mills." He suggested it be amended to read "...is the mill rate required to meet the local contribution required of that municipality under AS 14.17.410(b)(2) plus two mills"

In making capital investments, mining companies place emphasis on political and economic stability at all government levels. In the unorganized borough there are no rules and therefore no entity to negotiate agreements regarding taxation at the local level. This makes long term economic modeling and forecasting difficult when investment decisions must be made. One billion dollars is a significant investment for the company and a positive decision on economic viability at Donlin Creek would be easier to achieve if the maximum tax level were certain.

Placer Dome Inc. supports the bill because it serves the interests of Alaskans while helping to provide the investment climate that will help the company make a positive decision on the Donlin Creek Project.

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CHAIR GARY STEVENS asked for clarification on the proposed amendment.

MR. FUGUE referenced page 2, line 23.

SENATOR WAGONER asked Mr. Borrell to discuss the three taxes he mentioned in terms of cost or percentage.

MR. BORRELL replied the mining license tax is variable at the start and then rises to 7 percent of net proceeds from the

project. The state production royalty is also a net proceeds royalty and it is 3 percent. That means the state receives 10 percent of the profit.

SENATOR WAGONER said corporate tax would also be due.

MR. BORRELL said that's correct.

CHAIR GARY STEVENS noted Mr. Hoffbeck from the Department of Revenue was available for questions.

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KEVIN RITCHIE, Executive Director, Alaska Municipal League (AML), testified that this is difficult because it looks at impacts on boroughs that don't exist.

He suggested that the committee look at mines that are currently operating in boroughs across the state. Information on those mines would be available through the state assessor's office.

The sponsor's comment that the Legislature is the unorganized borough assembly de facto is a good one. Although it's positive that the mining industry came forward to talk about taxation in the unorganized area, significant discussion is in order with the state assessor to clearly understand how mines are treated elsewhere and to look at tax structures. The average mill rate property tax in the state is between 14 and 15 mills. If a municipality were to form and provide services, you'd want to make sure that a borough didn't end up subsidizing a mine as a result of this bill. Referencing page 6 relating to exemptions from municipal tax and mining property tax he suggested the state assessor could and should provide comment.

The AML is supportive of new business coming into the state and mining in general, but make sure the book is balanced and that a mine wouldn't be a deterrent to borough formation as opposed to just neutral.

CHAIR GARY STEVENS asked if he had comment on his major concern, which is whether this might be seen as a detriment or encouragement to borough formation.

MR. RITCHIE said depending on the circumstances and on a case-by-case basis it could be a detriment. One part of the solution is that everyone in the borough must be taxed at the same rate. Another is that during borough formation the tax structure is

discussed. He noted the bill would exempt the mine from other taxes such as sales tax, which is something else to question.

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CHAIR GARY STEVENS asked the sponsor if he had further comments.

SENATOR THERRIAULT referenced page 2, lines 21-22 and said the original bill specified 4 mills. Because he didn't want to lock the contributions from these projects at 4 mills and have a future Legislature boost the required mill rate for education, he had the drafter put in language that says the statutory education requirement shall be the millage rate that is paid. If the Legislature adjusts the education requirement from 4 mills to 5 mills, the millage rate requirement would increase on a mine as well.

On page 3, lines 7-9 talk about a sales tax. A local sales tax levy is allowed and is capped at \$1,000. Clearly, if a local government is formed it can establish a sales tax.

Language on page 6, lines 18-19 makes it clear that roads, storage facilities, terminals, docks and other port facilities and airstrips that are open to public use are exempt. He tried to draw sensible lines with regard to taxation and the level of local taxing power that would be available if a government were to form. Hopefully this will give a level of certainty that is required for projects to move forward.

SENATOR WAGONER commented it makes a difference for a mining company to know in advance what the property tax would be.

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CHAIR GARY STEVENS said he looks forward to another hearing and held SB 179 in committee.

There being no further business to come before the committee, Chair Gary Stevens adjourned the meeting at [2:51:30 PM](#).