MINUTES
SENATE FINANCE COMMITTEE
April 22, 2006
9:15 a.m.

CALL TO ORDER

Co-Chair Lyda Green convened the meeting at approximately 9:15:46 AM.

PRESENT

Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senator Con Bunde, Vice Chair
Senator Fred Dyson
Senator Bert Stedman
Senator Lyman Hoffman
Senator Donny Olson

Also Attending: SENATOR BEN STEVENS, SENATOR TOM WAGONER, SENATOR GARY STEVENS; SENATOR GENE THERRIAULT, SENATOR KIM ELTON; REPRESENTATIVE PEGGY WILSON; REPRESENTATIVE KEVIN MEYER; ROBYNN WILSON, Director, Tax Division, Department of Revenue; AARON DANIELSON, Staff to Representative Peggy Wilson; KEVIN GADSEY, Southeast Alaska Independent Living; PAULA SCAVERA, Special Assistant, Office of the Commissioner, Department of Labor and Workforce Development; MIKE PAWLOWSKI, Staff to Representative Kevin Meyer; JEFFREY TROUT, Deputy Director, Division of Insurance, Department of Commerce, Community and Economic Development; SHELDON WINTERS, representative, State Farm Insurance; KAREN LIDSTER, Staff to Representative John Coghill; RYNNIEVA MOSS, Staff to Representative John Coghill; BEVERLY SMITH, Christian Science Committee on Publication for Alaska; TAMMY SANDOVAL, Acting Deputy Commissioner, Office of Children's Services, Department of Health and Social Services

Attending via Teleconference: From an Offnet Location: ROBERT MINTZ, Attorney with Preston Gates Ellis law firm, former Assistant Attorney General, Oil, Gas & Mining Section, Department of Law, secured as a consultant by the Department of Law

SUMMARY INFORMATION

SB 305-OIL AND GAS PRODUCTION TAX

The Committee heard from the Department of Law and the Department of Revenue. Five of the eight amendments proposed were adopted, and the bill was reported from Committee.

HB 357-STATUTORY REFERENCES TO DISABILITIES

The Committee heard from the sponsor, an independent living organization, and the Department of Labor and Workforce Development. The bill was reported from Committee.

HB 394-INSURANCE POLICIES IN FOREIGN LANGUAGES

The Committee heard from the sponsor, the Department of Commerce, Community and Economic Development, and an insurance agency. The bill was reported from Committee.

HB 400-CONFISCATION OF FIREARMS

The Committee heard from the sponsor. The bill was reported from Committee.

HB 408-DEFINITION OF CHILD ABUSE AND NEGLECT

The Committee heard from the sponsor, the Department of Health and Social Services and a religious organization. The bill was held in Committee.

#sb305

CS FOR SENATE BILL NO. 305(RES)
"An Act providing for a production tax on oil and gas; repealing the oil and gas production (severance) tax; relating to the calculation of the gross value at the point of production of oil or 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 tax for certain expenditures and losses; 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 or 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."

This was the sixteenth hearing for this bill in the Senate Finance Committee. Committee substitute, CSSB 305, Version 24-GS2053\P was the working draft before the Committee.

9:17:21 AM

Amendment #7: This amendment inserts "or explorer" following "producer" where it appears in subsection (i) of Sec. 43.55.024. Tax credits for certain losses and expenditures., added in Section 12 on page 9 line 26 through page 10, line 21.

This amendment also inserts a new subsection to Sec. 43.55.024 on page 10, following line 21 to read as follows.

(j) A producer or explorer that does not produce an amount of oil and gas in a taxable year under AS 43.20 that is more than 50,000 barrels of oil equivalent may apply against the producer's or explorer's tax due for that taxable year under AS 43.20 a tax credit under this section that would otherwise be applicable against a tax due under AS 43.55.011(e) but for the limitation set out in (e) of this section. An amount of a tax credit may not be applied against both a tax due under AS 43.20 and a tax due under

AS 43.55.011(e). For purposes of this subsection, 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.

This amendment also inserts ", or in lieu of," to the language of subsection (d)(1)(B) of Sec. 43.55.160. Determination of production tax value of oil and gas., added by Section 26 on page 20, line 17. The amended language reads as follows.

(d) For purposes of (c) of this section, "direct costs"

(1) includes

…

(B) payments of, or in lieu of, property taxes, sales and use taxes, motor taxes, motor fuel taxes, and excise taxes;

This amendment also inserts ", other than tax credits under this chapter," following "credits" in subsection (e) Sec. 43.55.160. Determination of production tax value of oil and gas., added by Section 26 on page 22, line 1. The amended language reads as follows.

(e) … The payments or credits that a producer shall subtract from the producer's lease expenditures, or from zero, under this subsection are payments or credits, other than tax credits under this chapter, received by the producer for

This amendment also deletes "number of barrels of oil equivalent" and inserts "amount of oil and gas" following "average"; inserts "barrels of oil equivalent following "5,000" and again following "more"; and deletes "number of" and inserts "amount of oil and gas, expressed as" following "average" in subsection (a) of Sec. 43.55.170. Additional nontransferable tax credit., added in Section 26 on page 23, line 26 through page 24 line 6. The amended language reads as follows

(a) For a month that ends before July 1, 2016, and 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 qualifies under (c) of this section may take a credit under this section. If the average amount of oil and gas produced a day during that month and taxable under AS 43.55.011(e) is

(1) not more than 5,000 barrels of oil equivalent, the amount of the credit is 22.5 percent of the producer's production tax value for that month under AS 43.55.160(a);

(2) 5,000 or more barrels of oil equivalent, the amount of the credit is 22.5 percent of the producer's production tax value for that month under AS 43.55.160(a) multiplied by the quotient of 5,000 divided by the average amount of oil and gas, expressed as barrels of oil equivalent, produced a day during that month and taxable.

This amendment also deletes "under AS 43.55.024(d)" from Sec. 43.55.170 (b)(3), on page 24, line 10. The amended language reads as follows.

(3) is not transferable and may not be carried forward or used in a different month;

This amendment also inserts a new section to AS 43.55 article 1 in Section 26, on page 24, following line 26 to read as follows.

Sec. 43.55.185. Tax credits for gas treatment facilities. (a) a producer that incurs a gas treatment investment expenditure on or after July 1, 2006, may take a tax credit in the amount of 35 percent of that expenditure. A credit under this section may be applied against a tax due under AS 43.20 or against a tax due under AS 43.55.011(e). an amount of a tax credit may not be applied against both a tax due under AS 43.20 and a tax due under AS 43.55.011(e).

(b) For a calendar year for which the producer makes an election under AS 43.55.160(f), instead of taking a tax credit at a rate authorized by (a) of this section as to a gas treatment investment expenditure after it has been incurred, a producer that incurs a gas treatment investment expenditure during that year and wished to apply a credit based on that expenditure against a tax due under AS 43.55.011(e) shall calculate and apply every month an annualized tax credit in an amount equal to 2 11/12 percent of that expenditure.

(c) A credit or portion of a credit under this section may not be used to reduce a producer's tax liability under AS 43.20 for any taxable year below zero or a producer's tax liability under AS 43.55.011(e) for any month below zero. Any unused credit or portion of a credit not used

under this subsection may be applied in a later year, under AS 43.20, or a later month, under AS 43.55.011(e).

(d) A tax credit under this section is not transferable.

(e) In this section,

(1) "gas treatment facility" means a facility or portion of a facility in the state devoted exclusively to gas treatment;

(2) "gas treatment investment expenditure" means an expenditure that is

(A) a direct, ordinary, and necessary cost of acquiring or constructing a new gas treatment facility or of improving a gas treatment facility;

(B) treated as a capitalized expenditure under 26 U.S.C. (Internal Revenue Code), as amended; and

(C) treated as a capitalized expenditure for federal income tax reporting purposes by the person incurring the expenditure;

(3) "ordinary and necessary" has the meaning given to "ordinary and necessary" in 26 U.S.C. 162 (Internal Revenue Code), as amended, and regulations adopted under that section.

This amendment also inserts new language to subparagraph (19) of AS 43.55.900 amended in Section 34, on page 27, following line 29 to read as follows.

(C) does not include gas liquefaction;

This amendment also makes grammatical changes and conforming changes.

Co-Chair Green stated that this amendment was developed in response to the issues raised by Senator Dyson during the previous day's hearing. The amendment also addressed the manner in which remote gas treatment facilities would be treated under this Petroleum Profits Tax (PPT) legislation.

9:18:07 AM

ROBYNN WILSON, Director, Tax Division, Department of Revenue, was available to answer questions.

Co-Chair Wilken moved for adoption of Amendment #7 and objected for discussion.

9:18:34 AM

ROBERT MINTZ, Attorney with Preston Gates Ellis law firm, former Assistant Attorney General, Oil, Gas & Mining Section, Department of Law, secured as a consultant by the Department of Law, testified from an offnet location to explain the amendment. He noted that in addition to substantive changes, the amendment made grammatical changes such as the addition of commas for clarity purposes.

Mr. Mintz stated that the inclusion of the term "or explorer" in Sec.12 subsection (i)(1) page 9 lines 27, 28, and 30 and page 10 lines 1 and 2 would further clarify the transitional investment expenditure credit provision. Both a producer and an explorer could "take advantage" of the qualified capital expenditure credits and the net loss carry forward credits, also addressed in Sec. 12, because those credits could be transferred through a transferable tax credit certificate.

Mr. Mintz pointed out that currently the non-transferable transitional investment expenditure credit provisions in Sec. 12 only specified that a producer could utilize that particular credit, as "a producer is the only type of entity that could benefit from that credit. However", the addition of subsection (j) as proposed in the amendment, allow the transitional investment expenditure credit to be applied against either the production tax or the State corporate income tax. This expansion would then avail the benefits of the transitional investment expenditure provision to either a small explorer or producer. The term "or explorer" would also be added following "producer" to language in Sec. 12 page ten lines 5, 7, 8, 10, 12, 13, and 19 for the same reason.

9:25:32 AM

Mr. Mintz expressed that subsection (j) would also allow a small producer or an explorer producing less than 50,000 barrels of oil equivalent (BOE) on an annual basis to apply their transitional investment expenditure tax credit against their PPT tax or their income tax. He noted that 6,000 cubic feet of gas would be equivalent to one barrel of oil.

9:26:52 AM

Senator Stedman noted that the Senate Resources Committee eliminated the ability of a producer or explorer to apply the credits specified in Sec. 12 against their corporate income tax. Continuing, he questioned whether the addition of this language would affect the lookback provisions pertaining to major producers.

9:27:27 AM

Mr. Mintz stated that this would be a policy call. His understood that the reason that previous versions of the bill only allowed the credits to be applied to the PPT tax was "to protect State revenues against unduly large hits". The thought was that were the State to experience a dramatic decrease in revenue under the PPT, then the corporate income tax would assist in supporting the State's budget. However, this amendment would not affect the income tax revenues to a great degree because it was limited to small producers or explorers with "very small production". Subsection (j) was intended to provide "the benefits of the tax credits to small producers without opening up the income tax to large hits".

9:28:41 AM

Senator Stedman continued to be puzzled about the intent of subsection (j). The bill already contained transitional look-back provisions geared to benefit larger producers and the 5,000 barrel per day exclusion for smaller producers. He asked whether the 50,000 barrel provision proposed in subsection (j) was an annual limit.

9:29:16 AM

Mr. Mintz affirmed it was. The original thought was that this provision would apply to "someone who was not producing at all". While the transition investment expenditure lookback provisions contained in the bill would benefit "large producers who have already made a lot of investment in the State", there was at least one company, which while making significant investments in the State during the last few years, had not yet experienced production or a significant level of production to benefit from the transitional investment expenditure credits. Subsection (j) would ensure they could benefit from their investment.

9:30:18 AM

Ms. Wilson agreed that that was the rational for adding subsection (j). A 50,000 BOE would equate to approximately 150 barrels a day. Small producers might have "credits that are unused in the production tax area but are paying State income tax". A producer might be paying a State income tax because of production they experienced in other areas of the country as Alaska "taxes a piece" of a company's worldwide business. Thus a company might have "a corporate income tax liability while having these credits unused on the production tax side".

9:31:26 AM

Senator Stedman recalled that an extensive analysis had been conducted regarding the affect of the look back provision on State revenue. He asked whether the cost of this proposal had been analyzed.

9:31:43 AM

Ms. Wilson stated that if the question was "how much of assumed capital expenditures over the last five years had to do with the small companies", then the answer was approximately $250 million. That was a "small amount compared to the expenditures of the major producers".

9:32:31 AM

Mr. Mintz stated that the inclusion of the word "and" following the word "transportation;" in Sec. 24 subsection (a)(2) page 17 line 6 "would clarify" rather than "change existing law" as the intent was that all three of the criteria specified in Sec. 24 subsection (a)(1),(2) and (3) must be present in order for the Department of Revenue to exclude a cost from being considered an actual cost of transporting oil or gas.

9:33:49 AM

Mr. Mintz stated that the next component of the amendment would address language in Sec. 26 subsection (d) beginning on page 20 line 11 through page 21 line 20; specifically that the term ",or in lieu of," would be inserted following "payments of" in (d)(1)(B) page 20, line 17 in the listing of "examples of what

costs are considered 'direct costs'". The revised language would read as follows.

> (B) payments of, or in lieu of, property taxes, sales and use taxes, motor fuel taxes, and excise taxes;

Mr. Mintz stated that this language would be more appropriate as there "are situations where a producer makes a payment in lieu of taxes. It does the same function it's just not literally a tax". This practice has occurred in relation to the North Slope Borough. It was not the intent of the bill to exclude payments in lieu of taxes from being considered a direct cost.

9:35:09 AM

Senator Hoffman asked for examples of this occurrence.

Mr. Mintz stated that producers have made payments to the North Slope Borough "in lieu of taxes for certain services". Upon further questioning from Senator Hoffman, he could not recall specifics.

Senator Hoffman stated that the addition of this language would "leave a pretty wide open field" as the question was "who would be determining this".

9:36:11 AM

Ms. Wilson understood that a tax was "paid to the North Slope Borough in lieu of property tax". The amendment specifically identified payments in lieu of property tax, as did language in the original PPT bill, SB 305. Version "P" did not make that distinction. Thus, this language would clarify that intent.

Ms. Wilson stated that the direct costs listed in Sec. 23 subsection (d) should not be considered "inclusive". They simply addressed "specific areas where there might be confusion". For instance the question might arise as to whether "a tax direct to a lease" would be considered deductible. "This list includes a clarification that payments for property taxes are in fact deductible direct expenses and this amendment simply clarifies that a payment made in lieu of that tax will be treated the same as an actual property tax".

Senator Hoffman acknowledged but reiterated his concern as to who "would be making this determination of this tax".

9:37:39 AM

Mr. Mintz corrected his remarks. Rather than the payment in lieu of specifically applying to property taxes, it would apply to each of the elements listed in subsection (d)(1)(B).

Mr. Mintz expressed that the concept of payments in lieu of taxes was not a "novel" idea. The concept has been utilized by "tax exempt institutions that are not obligated to pay taxes but do anyway" such as universities and churches.

Mr. Mintz stated that in this instance, a producer might agree to pay something that would substitute "for a tax, but it's not literally a tax". However, "since it serves the same function economically it seems appropriate to make clear that it should get the same treatment for purposes of lease expenditures".

9:38:52 AM

Senator Olson asked whether Mr. Mintz "was retracting" his statement that producers had made payments "to the North Slope Borough for services".

9:39:14 AM

Mr. Mintz apologized for being unfamiliar with this situation. He had heard Dan Dickinson, the PPT consultant to the Office of the Governor, mention this. To that point, however, he was unsure whether it was "tied to specific services" or was "a substitute for a general tax".

Senator Olson could not determine whether the payment being discussed would be paid to the State or to the Borough. This should be clarified.

9:40:00 AM

Mr. Mintz stated that the taxes listed in (d) "would be considered direct costs, regardless of what jurisdiction they're paid to, whether it's local or State".

9:40:23 AM

Co-Chair Wilken understood therefore that the payment made by a producer to the North Slope Borough in lieu of taxes, would be "deducted from the exposure to the PPT. Therefore the people of Alaska participate in that".

9:40:53 AM

Mr. Mintz stated that "the short answer would be yes". The intent of subsection (d) would be to specify what would or would not be considered direct costs. In order to be deductible, "costs must be direct ordinary and necessary". Thus, in theory, a cost "would not automatically be deductible" solely because it was direct. He would "expect that taxes that are directly tied to oil and gas exploration, production or development activities would be deductible". The 22.5 percent tax rate proposed in Version "P" "would be shared 22.5 percent by the State".

9:41:49 AM

Co-Chair Wilken asked which State entity had the listing of any such "payments that were made from the producers to the North Slope Borough" over the past five years.

Mr. Mintz did not know, but thought the most logical entity would be the Department of Revenue.

9:42:21 AM

Ms. Wilson was unaware of whether the Property Tax section in the Department of Revenue "formally" kept those records.

Co-Chair Wilken asked that the Department research this. He would appreciate having a five year history of the payments made by the producers to the North Slope Borough; specifically "the amounts and the purpose" of those payments. If the State did not have this information, he requested he be provided the contact information of the entity that would.

9:43:19 AM

Mr. Mintz next addressed the insertion of the language ", other than tax credits under this chapter," following the word "credits" in Sec. 26 subsection (e) page 22 line 1 as specified in Amendment #7. Subsection (e) addressed provisions pertaining

to adjustments to lease expenditures. "In order to implement the idea of only allowing net costs to be deducted, producers are required to make adjustments to their lease expenditures once they get reimbursements and when they sell assets and so forth." This calculation would include subtracting "payments or credits received by the producer". The industry's concern was to "whether the term credits could be interpreted as including the tax credits that are provided for under the bill" as that would eliminate "part of the benefit of the credit".

Mr. Mintz opined that the insertion of this clarifying language was made in "an abundance of caution because" he did not deem the industry's concern "a reasonable interpretation" of the language.

9:44:50 AM

Mr. Mintz stated that to address the concern raised during the previous day's hearing regarding Sec. 43.55.170. Additional non-transferable tax credit. in Sec. 26 page 23 and 24 of the bill. The insertion of the "amount of oil and gas" and "barrels of oil equivalent" language specified in the amendment would prohibit the language in those sections from being interpreted as allowing a separate credit for up to 5,000 barrels each of oil or 5,000 BOE of gas as the credit would be for a combined total of oil and gas.

Co-Chair Green stated that the language in Sec. 26 subsection (c)(2) page 24 line 3 had been amended during the previous hearing. She questioned whether further revisions might be required.

Mr. Mintz affirmed that the language had been changed.

Co-Chair Green concluded that the intent was for subsection (c)(2) to read "more than 5,000 barrels of oil equivalent". The bill drafters would make the appropriate changes.

9:47:12 AM

Mr. Mintz then addressed the deletion of the words "under AS 43.55.024(d)" in Sec. 26 subsection (b)(3) page 24 line 10. When he was drafting another portion of the amendment dealing with gas treatment credits, he determined that the language in this subsection must be altered as otherwise, it could imply that

those credits might be transferable under another provision. Thus, removal of this language would clarify that gas treatment credits could not be transferable at all.

9:48:10 AM

Mr. Mintz next addressed the amendment's proposal to replace language in Sec. 26 subsection (c) page 24 line 26 with new language. This "slight rearranging" of the definition would further clarify the term BOE to ensure there would be "only a single credit for oil and gas".

9:48:43 AM

Mr. Mintz viewed the section that would be added to Sec. 26 following line 26 on page 24 to be "a very substantive change".

Mr. Mintz reminded the Committee that "under the revised definitions of gross value at the point of production in the bill the point of production for gas would be further downstream than it is under current law". Currently, "gas processing, which is the extraction of hydrocarbon liquids from gas, is downstream of the point of production, but, under the bill, it would be upstream, and therefore, investments in gas processing would be eligible for the usual capital credit".

Mr. Mintz noted that "gas treatment, which is basically getting gas in a condition to be shipped in a pipeline" would continue to be a downstream process and, while being ineligible for upstream credits, would receive "deductions for transportation costs as under current law".

Mr. Mintz stated that subsection (a) of Sec. 43.55.185 reflected "a policy judgment that there should be a credit to encourage or incentivize the building of gas treatment facilities" by providing a 35 percent credit for future investment in gas treatment. This credit could be applied either against the income tax or the production tax.

Mr. Mintz continued that subsection (b) of Sec. 43.55.185 would allow the gas treatment facility investment credit to be annualized and divided by 12. The resulting amount could be applied each month in lieu of the actual month to month expense. This would be similar to existing practice that allowed a producer to annualize lease expenditures in the calculation of

their production tax. This credit would be subject to certain restrictions, including being non-transferable. It could be carried forward and used in later periods "if that would be necessary to avoid reducing the tax below zero".

Mr. Mintz detailed the types of expenditures that would qualify for the credit: it must be an expense related to acquiring or constructing a new gas treatment facility or to improve an existing one; it must meet the existing definition of a capitalized expenditure as specified in Internal Revenue code rules; and it must adhere to the concept of direct ordinary and necessary as specified under lease expenditure in Sec. 160.

9:52:30 AM

Mr. Mintz identified a gas treatment definition change that would also be made by Sec. 43.55.185. Language in Sec. 34 subsection (19) page 27 lines 24 though 29 of Version "P" would be altered to clarify that gas treatment does not include "gas liquefaction". It would be limited "to conditioning gas in a gaseous state for transportation through a pipeline".

9:52:57 AM

Mr. Mintz informed the Committee that an amendment relating to this section would also be required to address "the fact that the first year of implementation would be less than a full calendar year, so the percentages that are referred to in subsection (b)" must be adjusted; specifically those regarding the annualizing of the gas treatment expenditure.

Mr. Mintz stated that this consideration had already been addressed in other areas of the bill. An amendment specific to this section was being developed.

Co-Chair Green acknowledged. She noted that the bill drafter could be directed "to fractionalize" the first year.

9:53:50 AM

Senator Bunde, noting that since the effective date of the bill had previously been amended, the July 1, 2006 effective date in Sec. 43.55.185 would also require changing.

Mr. Mintz expressed that the language in Amendment #7 had been made to the existing committee substitute and would be changed to conform to other amendment changes, such as the effective date amendment.

9:54:18 AM

Senator Bunde asked regarding the decision to provide a 35 percent credit for gas treatment investment expenditures.

Mr. Mintz stated that the percent level would be a policy call. He was "asked to draft it this way" and was unaware of how that decision was made. This issue could be addressed with Dan Dickinson, a consultant to the Office of the Governor.

9:55:00 AM

Co-Chair Wilken asked regarding the fiscal impact of the amendment.

9:55:28 AM

Ms. Wilson advised that this information would be provided.

9:55:37 AM

Senator Stedman declared this amendment to be "a large policy call"; particularly as he thought "the potential impact of the credits in the potential stimulation of the North Slope and the desirability to producers of that particular benefit" had been "understated". The credit would "make it more expensive for them to take their capital and leave the State. It's going to be more advantageous for them to reinvest it into the State". The credits provided in this bill were intended to "stimulate our production that's been in decline".

Senator Stedman noted however that the credits would "impact the PPT tax to an unknown amount" depending on the industry's expenditures. Thus he was "rather reluctant to allow them to" apply that credit against their corporate income tax without more thoroughly understanding "the potential impacts" it might have on State revenue.

Senator Stedman suggested that consideration instead to given to allowing a "35 percent credit on the gas treatment". The credits

should be limited to the PPT tax and "restricted from being applied to the corporate income tax, just in case this piece of economic stimulus that we're putting together in this tax bill works better than some of us anticipate …"

9:57:31 AM

In response to a question from Co-Chair Green, Senator Stedman stated that his concern was to the section in the amendment that would allow a 35 percent tax credit pertinent to a producer's expenditures relating to "the construction and upgrades" of a gas treatment facility. Allowing this expenditure to affect both the PPT tax and the corporate income tax could "potentially have a detrimental impact" on State revenues.

9:58:33 AM

Ms. Wilson advised that the gas treatment facility investment credit would be "inconsistent with rest of bill as far as application". The potential impact of that provision on the corporate income tax was as of yet undetermined.

9:58:53 AM

Senator Stedman stressed that the operations of the State depend on revenue generated on the North Slope. The State's royalty tax would continue to generate revenue "regardless of the amount of credits that are applied against construction of facilities on the North Slope". The State would also receive property tax revenue, and efforts should be made "to ensure the collection of income tax".

Senator Stedman stressed that risk would be associated with the PPT tax, depending on "market conditions, not only in price and volume but the amount of credits being generated by the industry". The situation could be "very volatile". It would be "in the best interests of the State to compartmentize that" by allowing credits to be applied solely in the PPT arena.

10:00:01 AM

Senator Olson interpreted Senator Stedman's remarks to imply that the adoption of this section would allow the industry to "double dip against the PPT as well as the corporate income

tax". However, he thought the language specified that the credits could not be applied to both.

10:00:26 AM

Senator Stedman agreed that the amendment specified that the credit could not be used twice. However, "once they've eradicated and/or they're better off to apply it against their corporate income tax, they'll do that". He would prefer that these credits "be compartmentalized" so that were the amount of credits not completely utilized, they could be carried forward and used the following year, "knowing that we have the corporate income tax protected from any type of development credit generation on the North Slope, 'cause we have no idea what kind of stimulus this package is going to generate". He reiterated his belief that "the impact of those credits … has been underestimated".

Senator Hoffman agreed with Senator Stedman.

AT EASE 10:01:21 AM / 10:04:41 AM

Co-Chair Wilken offered a motion to amend the amendment to delete the insertion of ", or in lieu of," following "payments of" on page 20, line 17, and to delete the insertion of a new Sec. 43.55.182., Tax credits for gas treatment facilities., on page 24, following line 26.

Without objection, the amendment was AMENDED.

Co-Chair Green noted that the language being deleted from Amendment #7 would be reworked.

Co-Chair Wilken asked Ms. Wilson to alert him were the Department of Revenue to determine that the remaining language in the amendment would have "significant fiscal impact".

Co-Chair Wilken removed his objection to the adoption of the amendment, as amended.

Senator Stedman also requested the Department of Revenue to determine the impact to the State's corporate income tax revenue that might be incurred by the addition of subsection (j) into Sec. 12. This provision applied to producers or explorers producing less than 50,000 barrels BOE annually.

Ms. Wilson concurred.

There being no further objection, the amended amendment was ADOPTED.

AT EASE 10:06:58 AM / 10:08:07 AM

Amendment #8: This amendment deletes the language of subparagraphs (g) and (h) of AS 43.55.011 amended by Section 5 on page 4, lines 7 through 21 and inserts new language to read as follows.

(g) In addition to the taxes levied under (e) and (f) of this section, if the average ANS West Coast price per barrel of oil during the month exceeds $50, there is levied on the producer of oil a tax for oil produced during that month from each least or property in the state, less any oil the ownership or right to which is exempt from taxation. The tax levied under this subsection is equal to

[((ANS West Coast price - $50) x .002) x [ANS wellhead price x (1 - PPT rate)]] x (total taxable barrels of oil at the point of production)

where

(1) "ANS wellhead price" means the prevailing value for oil produced in the Alaska North Slope area; and

(2) the PPT, or production profit tax, rate is the tax rate described in (e) of this section.

(h) For purposes of (g) of this section, the department may calculate the average price or may, by regulation, specify the method by which the average price shall be calculated with reference to one or more published sources of price information on Alaska North Slope crude oil cease, or appear likely to soon cease, to be available, or if, in the department's judgment, the price of Alaska North Slope crude oil ceases, or appears likely to soon cease, to be a reliable indicator of the general price level of crude oils, the department shall, by regulation, specify a substitute formula for computing the oil price index. The substitute formula specified by the department under this subsection must bear, as nearly as is reasonable possible, the same relationship to the general price level of crude oil as did the price of Alaska North Slope crude oil.

Senator Hoffman moved for adoption. This amendment would change the Progressivity provision to that proposed in CSSB 305(Res) in that the Progressivity multiplier would revert from the .01 percent multiplier specified in Version "P" to the .02 multiplier. Progressivity would be triggered at an Alaska North Slope (ANS) West Coast $50 barrel price.

Co-Chair Green objected.

10:08:52 AM

Senator Bunde asked the Department of Revenue to provide the fiscal impact of that change.

Ms. Wilson stated that the information would be forthcoming.

Co-Chair Green interjected to note that that information had previously been provided to the Committee. It was included on the chart titled "Per Barrel Progressivity Surcharge 2010" on page 3 of the "PPT Revenue Studies" presentation of April 20, 2006 [copy on file].

AT EASE 10:09:37 AM / 10:12:21 AM

Co-Chair Green spoke to her objection. She reminded the Committee that the effort in the development of the Finance committee substitute was to provide "an in between" bill; one that would offer a person something to like and something to feel uncomfortable about". The decision to specify a $70 trigger point for Progressivity, rather than a lower price, was made in consideration of the current price of a barrel of oil.

Co-Chair Green stated that, at this point in time, a $40 or $50 trigger point would "essentially add on six or eight dollars to our tax rate". She considered this "disingenuous" for it could be seen as masking the effort to impose the equivalent of a 30 percent tax rate. The State should present the mechanics of the PPT in "a factual" manner.

Co-Chair Green pointed out that the implementation of the PPT bill had already been delayed three months. She "very uncomfortable" at the effort "to continually hack away" and increase the tax rate to a point that might be regrettable.

10:14:02 AM

Senator Stedman asked Senator Hoffman to provide further information about the amendment.

10:14:13 AM

Senator Hoffman considered the provisions of Amendment #8 to be "in the middle" of the numerous Progressivity discussions that have occurred in both the House and the Senate. Basing the tax on gross dollars would result in fewer legal challenges. Too many calculations would be involved in arriving at net dollars. This would result in a bill that would be must simpler to calculate.

Senator Hoffman stated that this amendment would support a PPT tax rate of 22.5 percent and increase the credit provisions to 25 percent. This would provide the State its "fair share" as oil prices increase.

Senator Hoffman stated that the price of oil was currently $75 per barrel. Exxon Oil Company, on a worldwide basis, had made in excess of $34 billion and British Petroleum had earned more than $20 billion this year. They would continue to earn money. Under his proposal the total government take would be approximately 60 percent at a $60 barrel price.

Senator Bunde asked Ms. Wilson what the Department of Revenue Spring 2006 forecast was for oil prices.

10:17:19 AM

Ms. Wilson did not readily have that information.

Co-Chair Green recalled the short term forecast for oil to be slightly less than $60 a barrel.

Senator Bunde and Co-Chair Wilken thought that the forecast was for oil to be approximately $58 a barrel.

Senator Bunde thought that the long term forecast was approximately $40 per barrel. Were that the case, Progressivity would not be triggered.

10:18:40 AM

Co-Chair Wilken spoke in support of the amendment. The effort "to seek a middle ground" in the bill by decreasing the PPT tax rate from 25 to 22.5 percent and increasing the credit rate would serve to reduce the government share. After reviewing the Progressivity modeling charts that had been provided during the hearings on this bill, he was comfortable that the language in this amendment would support a government share goal of 60 percent. "That's where we want to be." While he was in support of the amendment, he would like to have the Progressivity modeling charts updated to reflect the affects of the amendment.

10:19:39 AM

Senator Stedman recounted that the Senate Resources Committee had spent a great deal of time discussing the Progressivity issue. Originally Progressivity was based on gross dollars. Subsequently it evolved to West Texas Intermediary prices to ANS West Coast Los Angeles prices and then to ANS wellhead prices. The discussion also addressed whether the price should be after or before tax. The equation in both the Senate Resources committee substitute and this amendment had the affect of an after tax rate.

Senator Stedman continued that after the development of the Senate Resources committee substitute Progressivity element, the testimony from the industry was that the impact of rising costs on them was not considered in the equation. Thus, the Progressivity feature was changed to a net basis rather than a gross basis. That approach was included in Version "P".

Senator Stedman stated that "the pros and cons of using the net" have been widely discussed by this Committee. "Clearly the net would move forward in time with the cost of production and the cost of doing business in the State of Alaska." A fairly flat or slight decline in government take would occur absent Progressivity. The language in Version "P" without this amendment would "neutralize the leverage the industry may have over the State on advancing prices". Therefore, he did not support this amendment.

10:21:56 AM

Co-Chair Green asked the impact of subtracting "one minus the PPT rate" in the Progressivity calculation; specifically since the PPT rate had been adjusted.

Senator Stedman responded that the effect would be to decrease the tax rate. "This would be in effect be an after tax" situation.

10:22:43 AM

Senator Stedman recalled a previous Committee discussion it was determined that including the language "one less the tax rate", as proposed in this amendment as well as language allowing the Progressivity tax to be deducted, would have the effect of a double deduction. "That would not be in the best interest of the State." Therefore, were the amendment adopted, efforts should be taken to ensure that the language "that it can't not be directly deducted" be included because "the effect of the deduction is embedded in the formula".

Co-Chair Green asked whether additional language would be required were the effect of this amendment to change the Progressivity element "from a gross value to a net value" system.

Senator Hoffman stated that he had discussed that issue with the bill drafter. His understanding was that this language would suffice.

Co-Chair Green thought that other changes would be required.

10:23:52 AM

Senator Bunde opined that the language might be sufficient since it was specific to Progressivity.

Co-Chair Green remarked that "the whole reason for doing the net value though was to build in with Progressivity" consistency regarding the adjustments for costs among different producers. That approach was preferred to a "one size fits all" approach.

Senator Stedman determined that this language would be all that would be required to "revert the bill back" to the Progressivity language included in CSSB 305(RES). A Progressivity factor based on gross would be based on price and would ignore changes in cost. The effect of Progressivity built on net would be to adjust the trigger point upwards. The trigger point in a gross formula would be "stationary". The $50 trigger point proposed in

this amendment would be "a point in time", and sometime in the future "depending on costs" and field expansions, the industry might request that that figure be revisited.

10:25:48 AM

Senator Bunde opined that several issues have been raised by this amendment. One option would be "to go back to" a Progressivity factor based on gross; the other would be to address Progressivity "pegged at $50 and at .002" as proposed in the amendment. The Progressivity language included in Version "P" would peg the trigger point at $60 per barrel with a multiplier of .001.

Senator Bunde understood that Senator Stedman supported the Progressivity language in Version "P".

10:26:37 AM

Senator Stedman responded that he did not support the amendment as presented.

Senator Bunde asked whether Senator Stedman' concern was to the change in the Progressivity trigger or to the gross rather than net approach or a combination thereof.

Senator Stedman identified his concern to be to the "net affect of the entire package we're working with". The Progressivity element was "one piece of the pie". All pieces must be considered "when baking the cake".

10:27:40 AM

Senator Bunde asked whether Senator Hoffman would consider dividing the amendment to address the Progressivity factor separately from the change back to a gross rather than net system.

Senator Hoffman would concur with dividing the amendment were that the will of the Committee.

10:28:04 AM

Senator Olson remarked that the Progressivity component and the bill in general were complicated. He asked whether the

Progressivity concept would be "simpler" "were the final bottom number that the State gets" based on gross rather than net.

10:28:36 AM

Senator Stedman understood that "going to the gross would be simpler and a system that would be less likely to be manipulated"; however, "there's pros and cons of each one". The net system appeared "to be more complex, but with the net, we've got to remember the calculation of taking into account the expenses are already done anyway to get to the PPT tax. The net would be before the PPT tax is applied." Credits could not be utilized "to dilute the dollar amount of the net".

Senator Olson reasoned therefore that "going to the gross would make this complicated bill less complicated".

Senator Green pointed out that utilizing a net value would "address the problem of the cost. Were costs to increase exponentially beyond the price of a barrel, utilizing net value would be a fairer assessment of what we should be taxing". That consideration "would be built in without having to go back to the drawing board" and readdressing the issue.

Senator Olson understood that Co-Chair Green was referring to the production costs.

Co-Chair Green affirmed.

AT EASE 10:30:20 AM / 11:09:43 AM

Co-Chair Green asked Ms. Wilson to discuss the affect of this amendment on Progressivity and regressivity as compared to that of Version "P".

11:10:17 AM

Ms. Wilson first advised that a Progressivity element based on net would be advantageous because it would account for the expense of extracting oil, especially heavy oil. Progressivity based on gross would not consider such "costs or increased costs". The net approach included in Version "P" "is a better plan … on its face"." Progressivity based on net would be considered "progressive" and "that takes care of regressivity in the long run".

Ms. Wilson defined Progressivity as a tax rate that would increase "based on what is measured". The federal government's tax, which is based on a person's net taxable income, was designed with a "stair step" approach in that the tax would increase as a person's net income increased. The net Progressivity approach taken in Version "P" "honors that idea of progressivity because … this overall bill measures tax based on net value, that is, after costs".

Ms. Wilson stated that a Progressivity element that increased based on the net would be "internally consistent" with the overall PPT terms. Progressivity based on gross, as proposed in the amendment, was deemed to have a "disconnect there" as, while the PPT tax measured net, Progressivity would be measured on gross.

11:12:28 AM

Ms. Wilson next addressed the argument that a net calculation was "more difficult" to do. To that point, she stated that the net calculation language crafted in Version "P" was "not difficult". A determination would be made regarding the net value that "would be taxed overall". That number would then be divided by the number of barrels to achieve a net value per barrel. Were that value to exceed the $45 Progressivity trigger point specified in Version "P" then the amount over that trigger would be subject to the Progressivity tax.

In summary, Ms. Wilson did not consider this to be a "troublesome calculation". Furthermore, a net value per barrel would not be subject to the PPT credit provisions.

Ms. Wilson reiterated that the net value per barrel calculation could be likened to a person's net income which was determined by subtracting deductions such as charitable contributions. However, unlike a person's personal income tax to which education and child care credits could be applied, credits would not be allowed in the Progressivity calculation. This "was a straightforward calculation and very readable and understandable".

11:14:33 AM

Ms. Wilson respectfully stated that the Progressivity "calculation in the amendment is a little awkward". While its terms were technically "workable" in terms of "understandability and … consistency with the idea of taxing on net, I would suggest that what is in the current bill is preferable".

Senator Bunde agreed that a net calculation might be more complex than one based on gross; however, "there was nothing simple about this bill". While he was in support of "the notion of the adjustment that the math makes for increased costs" that might occur over time, he did not consider the PPT Progressivity element to be similar to "a progressive income tax". He viewed the Progressivity element in this bill to be a "windfall tax" when prices were in the $70 and $80 per barrel range.

Amendment #8(a): This amendment deletes the language of subparagraph (g) of AS 43.55.011 amended by Section 5 on page 4, lines 7 through 21 and inserts new language to read as follows.

> (g) In addition to the taxes levied under (e) and (f) of this section, if the average ANS West Coast price per barrel of oil during the month exceeds $50, there is levied on the producer of oil a tax for oil produced during that month from each least or property in the state, less any oil the ownership or right to which is exempt from taxation. The tax levied under this subsection is equal to
>
> [((ANS West Coast price - $50) x .002) x [ANS wellhead price x (1 - PPT rate)]] x (total taxable barrels of oil at the point of production)
>
> where
>
> (1) "ANS wellhead price" means the prevailing value for oil produced in the Alaska North Slope area; and
>
> (2) the PPT, or production profit tax, rate is the tax rate described in (e) of this section.

Amendment #8(b): This amendment deletes the language of subparagraph (h) of AS 43.55.011 amended by Section 5 on page 4, lines 7 through 21 and inserts new language to read as follows.

> (h) For purposes of (g) of this section, the department may calculate the average price or may, by regulation, specify the method by which the average price shall be calculated with reference to one or more published sources of price information on Alaska North Slope crude oil cease, or appear likely to soon cease, to be available, or if, in the

department's judgment, the price of Alaska North Slope crude oil ceases, or appears likely to soon cease, to be a reliable indicator of the general price level of crude oils, the department shall, by regulation, specify a substitute formula for computing the oil price index. The substitute formula specified by the department under this subsection must bear, as nearly as is reasonable possible, the same relationship to the general price level of crude oil as did the price of Alaska North Slope crude oil.

Senator Bunde moved to divide Amendment #8. One portion would address whether to base Progressivity on a gross calculation and the other would address whether to "change the Progressivity factor" in Version "P" "to a level similar" as that proposed in Amendment #8.

Senator Hoffman did not consider the amendment divisible. He suggested that a vote be taken on Amendment #8 and in the event it were to fail, Senator Bunde could offer an amendment.

Senator Hoffman noted that a variety of Progressivity approaches had been discussed. "Probably the best one that was discussed hasn't been considered and that was looking at the Governor's original 20/20 plan and have it stair step with dollars". The discussion could include implementing a Progressivity factor at barrel prices as low as $20. Increasing Progressivity as prices increased might provide the State a "straighter line". All of the previous committees that discussed Progressivity applied it "on the gross and it wasn't until" Version "P" was developed "that another option was considered".

Senator Hoffman stated that the effort "all along" was to "simplify" the legislation, and basing Progressivity on gross would further that effort.

11:18:36 AM

Without objection, Senator Bunde WITHDREW the motion to divide Amendment #8.

Co-Chair Green maintained her objection to Amendment #8. She repeated Ms. Wilson's remarks to the effect that the Progressivity language in Version "P" was "workable" and that reverting to a gross calculation as proposed in this amendment "was not preferable".

11:19:22 AM

A roll call was taken on the motion to adopt Amendment #8.

IN FAVOR: Senator Hoffman, Senator Dyson, Senator Olson and Co-Chair Wilken

OPPOSED: Senator Stedman, Senator Bunde and Co-Chair Green

The motion PASSED (4-3)

Amendment #8 was ADOPTED.

11:20:22 AM

Co-Chair Wilken distributed two graphs [copy on file] pertinent to Version "P" that were developed by Econ One Research Inc, the consulting firm secured by the Legislature. In addition, he noted he would be offering one or two amendments. Those amendments were currently being drafted.

Senator Dyson also had an amendment to offer.

Co-Chair Green would accept the amendments "out of respect" for the sponsors; however, she was disappointed that the deadline for amendments had not been adhered to.

Amendment #9: This amendment deletes "that ends before July 1, 2016, and" following "month" from subsection (a) of Sec. 43.55.170. Additional nontransferable tax credit., added by Section 26 on page 23, lines 26 and 27. The amended language reads as follows.

> (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 qualifies under (c) of this section may take a credit under this section. …

This amendment also deletes "5,000 or more" and inserts "more than 5,000" in subparagraph (2) of Sec. 43.55.170(a) on page 24 line 3. The amended language reads as follows.

(2) more than 5,000, the amount of the credit is 22.5 percent of the producer's production tax value for that month under AS 43.55.160(a) multiplied by the quotient of 5,000 divided by the average number of barrels of oil equivalent produced a day during that month and taxable under AS 43.55.130(e).

This amendment also inserts language following "AS 43.55.011(e)" in subparagraph (1) of Sec. 43.55.170(b) on line 8, to read as follows.

(b) A tax credit under this section

(1) may by applied only against the tax levied under AS 43.55.011(e), and may be applied only for a period of 10 years from the date that the oil or gas is first produced in paying quantities;

This amendment also deletes the language of subparagraph (5) of Sec. 43.55.170(b) on lines 15 and 16 and inserts new language to read as follows.

(5) may not be applied by a producer

(A) during the year in which the oil or gas is first produced in paying quantities in an amount that would cause the total of the tax credits applied by the producer under this section to exceed $1,666,667 for each month from the date that the oil or gas is first produced in paying quantities until the last day of that calendar year; or

(B) during the last year for which a credit may be claimed under this section in an amount that would cause the total of the tax credits applied by the producer under this section to exceed $140,000,000.

This amendment also deletes the language of subparagraph (e) of TRANSITIONAL PROVISIONS., added to the uncodified law by Section 38, on page 29, lines 27 through 30, and inserts new language to read as follows.

(e) For oil and gas being produced in paying quantities from a lease or unit that is in effect on the effective date of sec. 26 of this Act, the oil or gas producer may apply the credit authorized by AS 43.55.170, enacted by sec. 26 of this Act,

(1) for a period of 10 years from the effective date of sec. 26 of this Act, notwithstanding the provisions of AS 43.55.170(b)(1) that limit application of the credit authorized by AS 43.55.170 to a period of 10 years from the date the oil or gas is first produced in paying quantities; and

(2) during the calendar year in which sec. 26 of this Act takes effect, in an amount that would cause the total of the tax credits applied by the producer under this section to exceed $1,666,667 for each month from the effective date of sec. 26 of this Act until the last day of that calendar year, notwithstanding the provisions of AS 43.55.170(b)(5)(A) that limit application of the credit during the year of the initial production of the oil or gas in paying quantities.

This amendment was NOT OFFERED.

AT EASE 11:21:41 AM / 11:24:30 AM

Amendment #10: This amendment inserts language following "equal to" and before "22.5 percent" in AS 43.55.011(e), added by Section 5, on page 3, line 15. The amended language reads as follows.

(e) There is levied on the producer of oil or gas a tax for all oil and gas produced each month from each lease or property in the state, less any oil and gas the ownership or right to which is exempt from taxation or constitutes a lessor's royalty interest under and oil and gas lease. The tax is equal to

(1) for oil that is produced in the Cook Inlet sedimentary basin, as that term is defined by regulations adopted to implement AS 38.05.180(f)(4), five percent of the production tax value of the taxable oil as calculated under AS 43.55.160; and

(2) except as to oil described in (1) of this subsection, 22.5 percent of the production tax value of the taxable oil and gas as calculated under AS 43.55.160.

This amendment also inserts new language following "equal to" to AS 43.55.011(f)(3)(A) added by Section 5, on page 4, following line 3, to read as follows.

(A) notwithstanding (1) of this subsection, the tax is equal to

(i) for oil that is produced in the Cook Inlet sedimentary basin, as that term is defined by regulations adopted to implement AS 38.05.180(f)(4), five percent of the gross value at the production of the oil; and

(ii) for oil, except oil described in (i) of this subparagraph, and gas 22.5 percent of the gross value at the point of production of the gas.

This amendment also deletes the language of subparagraphs (1) and (2) of subsection (a) of Sec. 43.55.170. Additional nontransferable tax credit., added by Section 26 on page 24, lines 1 through 6, and inserts new language to read as follows.

(1) not more than 5,000, the amount of the credit

(A) for oil subject to tax under AS 43.55.011(e)(1) is five percent of the producer's production tax value for that month under AS 43.55.160(a); and

(B) for oil and gas subject to tax under AS 43.55.011(e)(2) is 22.5 percent of the producer's production tax value for that month under AS 43.55.160(a); and

(2) more than 5,000, the amount of the credit

(A) for oil subject to tax under AS 43.55.011(e)(1) is five percent of the producer's production tax value for that month under AS 43.55.160(a) multiplied by the quotient of 5,000 divided by the average number of barrels of oil equivalent produced a day during that month and taxable under AS 43.55.011(e)(1); and

(B) for oil and gas subject to tax under AS 43.55.011(e)(2) is 22.5 percent of the producer's production tax value for that month under AS 43.55.160(a) multiplied by the quotient of 5,000 divided by the average number of barrels of oil equivalent produced a day during that month and taxable under AS 43.55.011(e)(2).

Senator Dyson moved for adoption.

Co-Chair Green objected.

Senator Dyson explained that the "net effect" of this" amendment would be "to reduce the tax rate on the oil portion on Cook Inlet". The area is "very challenged" and "has a 90 percent water cut". The vitality of the industry, particularly gas production, in Cook Inlet is important to communities there. Efforts should be made to maintain gas production in Cook Inlet until a gas spur line to the area was available.

11:25:22 AM

Senator Stedman noted that Cook Inlet had been the focus of numerous discussions. He asked that a royalty estimate for Cook Inlet, in terms of percentages as opposed to dollars, be provided.

Senator Stedman referencing Senator Dyson's comment that the water cut in Cook Inlet was 90 percent, understood that the platforms in Cook Inlet "were pumping a lot more water than oil". A review of the "intricacies" of Cook Inlet would be appreciated.

Co-Chair Green advised that information pertinent to Cook Inlet had been included in a handout previously provided to the Committee.

11:26:42 AM

Co-Chair Green informed the Committee that the total oil production in Cook Inlet was less than 20,000 barrels BOE per day.

11:26:56 AM

Senator Stedman stated that there were many moving parts to the PPT bill. One of the parts that had been successfully resolved was the 5,000 barrel per day exclusion. While most of the production in Cook Inlet would qualify for that exclusion, some of the producers operating there would not due to their statewide volume.

Senator Stedman thought that a refresher on the barrel exclusion and how it might apply to Cook Inlet would be timely. The information could also address whether there was a need for royalty reduction in Cook Inlet. "In the event that this

amendment" failed, it was his understanding that "this law would be a general law of application in Cook Inlet" and therefore the Legislature could revisit it "and respond to potential shutdown in Cook Inlet". The desire would be for activities in Cook Inlet to "expand" rather than collapse.

A roll call was taken on the motion.

IN FAVOR: Senator Hoffman, Senator Olson, Senator Dyson, Senator Bunde and Co-Chair Wilken

OPPOSED: Senator Stedman and Co-Chair Green

The motion PASSED (5-2)

Amendment #10 was ADOPTED.

AT EASE 11:29:14 AM / 11:30:47 AM

Co-Chair Green ordered the bill HELD in Committee.

[NOTE: This legislation was brought before the Committee again later in the hearing. See Time Stamp 2:37:11 PM]

11:31:06 AM

#hb357

> CS FOR HOUSE BILL NO. 357(FIN)
> "An Act updating the terminology in statutes for persons with disabilities; and providing for an effective date."

[NOTE: The introduction of this bill was not recorded due to an audio malfunction. Recording resumed at 11:32:06 AM.]

This was the first hearing for this bill in the Senate Finance Committee.

REPRESENTATIVE PEGGY WILSON, the bill's sponsor, informed the Committee that her staff intern, Aaron Danielson, would be explaining the bill.

11:32:17 AM

AARON DANIELSON, Staff to Representative Wilson, testified that this legislation pertained to statutory references to disabilities. Changes to these references are proposed at the request of the Department of Labor and Workforce Development and the Governor's Council on Disabilities and Special Education. This bill would replace "handicapped" with "person or peoples with disabilities" where it appears in Alaska statute.

Mr. Danielson told of the changes in terminology in recent years resulting from the federal Americans with Disabilities Act of 1990. States have been making coinciding statutory changes to comply with the Act.

Mr. Danielson defined a handicap as "an environmental limitation". For example, a person confined to a wheelchair who is confronted with a stair would be handicapped by the stair. That person is not handicapped, but rather is a person with a disability. The disabled persons' "community" has strong feelings on this matter.

11:34:00 AM

Co-Chair Green asked if this bill contained language pertaining to signage to indicate handicap facilities.

Mr. Danielson answered that it does not contain such language. Representative Bill Stoltze had expressed concerns on this issue when the bill was heard in the House Finance Committee.

Co-Chair Green had understood that statutory reference changes had been made at the time she served on the Governor's Council on Disabilities and Special Education. She concluded that this legislation pertained to a different section of law than the earlier effort.

11:34:39 AM

Senator Bunde, noting the zero fiscal note accompanying this legislation, ascertained that language on signage would be revised at the time normal replacements were made.

11:35:16 AM

KEVIN GADSEY, Southeast Alaska Independent Living, testified that the organization participates in advocacy efforts for

persons with disabilities. "Handicapped" is a word considered as an annoyance or a slur. This language change is important. He told of changes underway to signage at private businesses.

11:37:10 AM

PAULA SCAVERA, Special Assistant, Office of the Commissioner, Department of Labor and Workforce Development, testified that this bill would change statutory language governing the Department of Health and Social Services, the Department of Transportation and Public Facilities, the Department of Education and Early Development, the Department of Commerce, Community and Economic Development, the Department of Law, the Department of Administration and the Department of Labor and Workforce Development.

Ms. Scavera gave a history of the word "handicap", which originated in Great Britain and was used to reference war veterans legally permitted to beg in public. Today, people with disabilities are not treated as "beggars".

11:38:29 AM

Co-Chair Wilken offered a motion to report the bill from Committee with individual recommendations, accompanying fiscal notes and accompanying Letter of Intent.

Without objection CS HB 357(FIN) was MOVED from Committee with zero fiscal notes #1 from the Department of Health and Social Services and #2 from the Department of Labor and Workforce Development, and a Letter of Intent by the House Finance Committee.

11:39:21 AM

#hb394

CS FOR HOUSE BILL NO. 394(L&C) am
"An Act relating to allowing insurance policy forms to be filed and approved in languages other than English if an official English language version is also filed, and authorizing use of insurance policy forms and associated materials in languages other than English."

This was the first hearing for this bill in the Senate Finance Committee.

11:39:43 AM

REPRESENTATIVE KEVIN MEYER, the bill's sponsor, testified that more than 80,000 Alaskans speak a language other than English. Statute does not specify which version of an insurance policy or information about a policy published in both English and another language was the official version. State statute currently prohibits information and advertisements concerning insurance and insurance policies from being published in any language besides English. Since there is never a "perfect" translation, and any translation is easily challenged in Court, insurance companies are reluctant to produce translated documents. This law would allow insurance companies to publish materials and advertise in a language other than English, provided the English version was deemed the official document.

Representative Meyer claimed this bill would allow insurance companies in the state to provide services to a growing portion of Alaskans, while clarifying their responsibilities to protect the consumer.

11:41:48 AM

Senator Bunde observed that insurance policies may already be written in a foreign language.

Co-Chair Green declared a conflict of interest, as her husband owns an insurance company. His company employs a person who speaks Spanish as well as another foreign language, and the office has greatly benefited from her ability to explain policies and answer questions in a language more familiar to their customers.

11:42:50 AM

Senator Stedman disclosed that he also owns part of an insurance agency. He would support the bill, and felt it would help explain some of the complications of insurance.

Co-Chair Green referenced the importance of the inclusion of "associated material" as defined by subsection (d) of Sec.

21.42.175. Non-English translations. added by Section 1 of the bill.

Co-Chair Wilken asked how this bill would affect an insurance agent.

Representative Meyer replied that there was an insurance agent in the room to testify who could answer specific questions. He cited the primary impact of the bill would be to allow a policy to be written in Spanish or another language. However, the official version provided to Division of Insurance would be in English.

11:44:47 AM

MICHAEL PAWLOWSKI, Staff to Representative Meyer, inferred that the bill would not require an agent to do anything, but would allow insurance information to be printed in a language other than English.

Co-Chair Wilken understood that this legislation would remove a prohibition currently in statute on printing insurance documents in another language.

Mr. Pawlowski clarified that insurance companies are not barred from providing translations, but are reluctant to do so because there is no provision in statute to guarantee that the English version would be the official version. This bill would allow insurance companies to provide translations of the official documents with the security that the English version would be the official version.

Co-Chair Wilken surmised that the bill would allow an insurance company to produce a policy in a foreign language, and that policy would then become the official policy.

Mr. Pawlowski corrected that the foreign language policy would be for informational purposes only, and the English version would be official version.

Representative Meyer concurred.

11:46:28 AM

Senator Olson asked if a policy written in two languages could be challenged in court based on an interpretation of the foreign language version.

11:47:23 AM

Mr. Pawlowski responded that the English version would always be the official version. The version in another language would be for informational purposes only. The consumer protection portion of the bill is contained in subsection (c) of the bill and provides that an insurance company may not "misrepresent information" in any of the foreign language information it provides.

11:47:57 AM

JEFFREY TROUT, Deputy Director, Division of Insurance, Department of Commerce, Community and Economic Development, spoke in support of the bill. He concurred with the sponsor's remarks. The Division viewed this legislation as a consumer protection bill that would assist consumers. While some people may argue that all Americans should speak English proficiently, that is, in reality, unlikely for first generation immigrants.

Mr. Trout set forth that there are currently no laws or regulations to address how the insurance industry handles foreign language translations. In the past, the Division has accepted foreign language policies, as long they were accompanied by an English translation. He predicted the affect on the average insurance agent would be "nominal". The proposed legislation is directed at insurance companies, in clarifying what information they can publish in other languages. Agents could choose to opt in, or continue operating as they currently do.

11:51:12 AM

SHELDON WINTERS, representative, State Farm Insurance, testified that the insurance industry is in support of this legislation and in support of providing information to consumers.

11:52:09 AM

Co-Chair Wilken offered a motion to report the bill from Committee with individual recommendations and accompanying fiscal note.

There being no objection, CS HB 394 (L&C) am, was REPORTED from Committee with zero fiscal note #1 from the Department of Commerce, Community and Economic Development.

11:52:41 AM

#hb400

SENATE CS FOR CS FOR HOUSE BILL NO. 400(JUD)
"An Act relating to confiscation of firearms during disaster emergencies."

This was the first hearing for this bill in the Senate Finance Committee.

11:52:54 AM

KAREN LIDSTER, Staff to Representative John Coghill, informed the Committee that this bill was prompted by the confiscation of firearms in Louisiana after Hurricane Katrina. That event prompted the State to review regulations in the Alaska Disaster Act. This bill would add a new limitation that provides that there is "no authority granted to confiscate lawfully owned, possessed, or carried firearms by law-abiding citizens".

Ms. Lidster informed that the bill originally provided for a penalty of a Class A felony for anyone who unlawfully confiscated firearms. The current version of the bill contained "sidebars" that specify that a person must first be found guilty of official misconduct under AS 11.56.850 or interference with constitutional rights under AS 11.76.110 before a penalty is incurred. Public safety personnel also deemed it appropriate to specify that those in law enforcement fall under the jurisdiction of this legislation. The intent of the bill was to ensure that Alaskans retain the ability to protect themselves in times of disaster when they are at their most vulnerable.

11:56:27 AM

Senator Olson inquired if there was any opposition to this bill.

Ms. Lidster had received no communications indicating opposition, and noted the bill passed unanimously in the House of Representatives.

AT EASE 11:56:56 AM / 11:57:40 AM

Co-Chair Green summarized that an individual in an official capacity who attempts to confiscate a personal firearm could be convicted, could forfeit any government appointed position, and could be subject to impeachment.

Ms. Lidster affirmed.

11:58:19 AM

Senator Dyson remarked on the thoroughness of the bill. Sec. 26.23.200 represented a careful consideration of the limits on the government when declaring a disaster, including the prohibition on the government from interfering with the settlement of labor disputes and freedom of speech. This bill would also allow people to retain their own firearms in times of disaster. He considered the bill "careful" and "appropriate".

Senator Bunde offered a motion to report the bill from Committee with individual recommendations and accompanying fiscal note.

There being no objection, SCS CS HB 400 (JUD) was MOVED from Committee with zero fiscal note #1 from the Department of Military and Veterans Affairs.

12:00:01 PM

#hb408

> SENATE CS FOR CS FOR HOUSE BILL NO. 408(JUD)
> "An Act relating to the standard of proof required to terminate parental rights in child- in-need-of-aid proceedings; relating to a healing arts practitioner's duty to report a child adversely affected by or withdrawing from exposure to a controlled substance or alcohol; relating to disclosure of confidential or privileged information about certain children by the Departments of Health and Social Services and Administration; relating to permanent fund dividends paid to foster children and adopted children;

relating to child abuse or neglect investigations and training; amending Rule 18, Alaska Child in Need of Aid Rules of Procedure; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

AT EASE 12:00:23 PM / 12:01:30 PM

RYNNIEVA MOSS, Staff to Representative John Coghill, expressed support for the language proposals of the Department of Health and Social Services. The original bill, as introduced on behalf of Governor Murkowski, has been revised. She read the sectional analysis, titled "Family Rights Act of 2006, SCS CS HB 408(JUD), Sectional for Senate Judiciary CS", into the record as follows.

> Section 1. This section contains language that would release OCS [Office of Children's Services] from providing family support services when they can show the court, by clear and convincing evidence, that the parent or guardian poses substantial risk to a child, has committed a homicide of a child, or parent has taken such actions as described in Section 1. This raises the level of proof from "a preponderance of the evidence". (Requested by Department of Law)
>
> Section 2. This section raises the standard for the department showing they have complied with reasonable efforts to provide family support services from a "preponderance of evidence" to "clear and convincing evidence". (Requested by OCS language; Rep. Coghill legislation-HB 261, 2001)

Ms. Moss stated that evidence indicates that the existing standards would not assist certain families.

> Section 3. This section is language clean up to accommodate Section 2 amendments. (Department of Law)
>
> Section 4. When a public official or an employee requests information from the department, they will now have five working days to respond. (HB 327 - Rep. Chenault)

Ms. Moss explained this language would resolve a dispute between the legislature and the Department of Law in that it would allow OCS to release information regarding harm inflicted on a child were the parent to make "public disclosure of the perpetrator being charged with the crime or there has been a fatality or near fatality of a child". She recalled an instance in which the Department of Law prohibited release of such information.

> Section 5. Clarifies the intent of HB 53 that once a report of harm has resulted in a parent making public disclosure, the alleged perpetrator being charged with a crime, or has resulted in fatality or near fatality of a child, OCS is able to disclose the nature and validity of any report of harm about a child in a report of harm. (Representative Coghill)

12:05:23 PM

> Section 6. Broadens the department's ability to discuss a report of harm pertaining to not only children in the family or household, but also children who may be under the care of a perpetrator in a report of harm. (Representative Coghill)

> Section 7. Last summer two teenagers were placed in a foster home and the foster parents were appointed as legal guardians. The State released the teens' permanent fund dividends to the legal guardians. The placement did not work and the children were removed from the home without their dividends. Section 6 says the only way a child's past dividend can be released is if the child is adopted and has remained adopted for one year, the child turns eighteen and the PFD's are released by OCS, the child is returned to the parent(s), or the department is ordered to do so by the court. The one-year provision is put in place because there is a high rate of adoptions being disturbed. Subsection (c) clarifies this applies to legal guardians of children who have been in state custody, unless the guardianship was established for an incapacitated person. (Representative Coghill)

> Section 8. This section requires practitioners of the healing arts involved in the delivery or care of a child who determines the child is adversely affected by a controlled substance or alcohol to notify OCS. It clarifies

that a "controlled substance" does not include prescription medication, but rather "a drug, substance, or immediate precursor included in the schedules set in AS 11.71.140 - 11.71.190".

Ms. Moss noted an amendment was drafted to replace "child" with "infant" in the language of Section 8.

Section 9. This provision consolidates HB 346 sponsored by Representative Mark Neuman into HB 408. The provision requires social worker training to include constitutional and statutory rights of children and families, requires cooperation by OCS with law enforcement to ensure the possibility of criminal charges is not compromised in the investigation, and that the alleged perpetrator be advised of what the specific complaint or allegation is without disclosing the identity of the accuser.

Section 10. Indirect Court Rule change dealing with changing "preponderance of evidence" in Sections 1, 2, & 3 to "clear and convincing evidence". (Department of Law)

Section 11. Applicability language to clarify that pending cases and non-pending cases still within the statute of limitation will have "clear and convincing evidence" standard applied to them. (Department of Law)

Section 12. Because Sections 1, 2, & 3 will result in an Indirect Court Rule Amendment, those section[s] of the bill will only take place if the vote on Section 9 receives a two-thirds vote of each house of the legislature. (Department of Law)

Section 13. Immediate effective date clause.

12:09:39 PM

Senator Stedman referenced Sec. 47.10.115. Permanent fund dividend., added by Section 7 on page 5 of the bill. He understood the Permanent Fund dividend (PFD) was the property of the child, and asked whether the child would have some legal recourse when he or she turned 18.

Ms. Moss responded that the issue had not yet been determined, but was under investigation by the Attorney General's office in Fairbanks.

12:10:38 PM

Senator Stedman realized that parents often use a child's PFD to house, clothe, and fed the child. He considered it a different situation when a parent used a child's PFD for unneeded items.

Co-Chair Green asked if Senator Stedman was referring to the case of an adopted or foster child.

Senator Stedman affirmed, and clarified he was speaking of a case where a child had been in foster care for a period of time that allowed the foster care provider access to the child's PFDs.

Co-Chair Green inquired if a natural parent would be held to the same standard.

Senator Stedman affirmed.

Co-Chair Green stated that natural parents are not currently held to that standard.

Senator Stedman opined that all legal guardians should be able to use a child's PFD only to meet basic needs, and expected a court opinion on that issue. He supported the language in the bill.

Co-Chair Green voiced intent to conclude testimony on the bill and address amendments at a later date.

Ms. Moss clarified that there were no amendments forthcoming.

12:13:13 PM

BEVERLY SMITH, Christian Science Committee on Publication for Alaska, referred to a memorandum from the organization dated April 22, 2006 [copy on file], and requested that consideration be given to the addition of language to Section 8. This proposed amendment would insert a new subsection to AS 47.17.024. Duties of practitioners of the healing arts., amended by Section 8 on page 6, following line 15 to read as follows.

(c) Nothing in this chapter shall compel a religious healing practitioner to disclose information learned through sacred communications with a person seeking his or her spiritual help and enjoined to be kept confidential under the discipline of his or her church or religious organization.

Ms. Smith stated that this language would allow Christian Science practitioners to maintain their religious customs. Certain communications between parishioners should be kept confidential. This provision would also assure that a practitioner would report crimes committed against a child. She additionally supported the proposed language change of "child" to "infant".

12:17:19 PM

Senator Bunde asked if the proposed amendment would prevent a Christian Science practitioner from reporting knowledge of a child who appeared to be affected by prenatal drug use.

Ms. Smith responded that practitioners are primarily concerned with the best interest of the child. They would have to use their judgment. Church doctrine would not prevent them from reporting a child in danger.

Co-Chair Green understood that the language in bill would address that situation.

Ms. Smith concurred. The change to "infant" from "child" might provide more clear direction in that instance, as a child could be "affected" by a parent's alcoholism, but in a different manner than an infant with fetal alcohol symptoms.

12:18:55 PM

Senator Bunde furthered that the current language proposal stated that the practitioner "cannot be compelled" to disclose information, but language elsewhere in the bill stipulates a doctor "shall report" evidence of drug use. This appeared to leave practitioners with more discretion than doctors when reporting medical observations.

12:19:25 PM

Co-Chair Green read the current language as follows: "a practitioner of the healing arts involved in the delivery or care of a child who the practitioner determines has been adversely affected by, or is withdrawing from exposure to, a controlled substance or alcohol shall immediately notify the nearest office of the department of the child's condition". She interpreted the requested amendment as applying to knowledge gained through a conversation with a family. She likened the confidentiality afforded by the proposed amendment to a psychiatrist's doctor-client privilege.

12:20:31 PM

Senator Dyson asked for a definition of "sacred communication" as it appears within the suggested amendment.

Ms. Smith explained that because a Christian Science practitioner is not technically a member of the clergy, but acts in that capacity, "sacred communication" would apply to conversations between practitioners and parishioners, as well as clergy.

Senator Dyson surmised the definition was similar to confidential. He commented that mandatory reporting requirements apply to the medical field, but not clergy. Christian Science practitioners were in the difficult position of providing both types of services.

Ms. Smith agreed, and desired to make the Committee aware of this disconnect in the law. The proposed amendment would satisfy the current requirements in this bill.

12:22:43 PM

TAMMY SANDOVAL, Acting Deputy Commissioner, Office of Children's Services, Department of Health and Social Services, testified that the original intent of this legislation was to provide for compliance with federal law. A person assisting in the delivery of an infant must report if that infant was adversely affected by alcohol or a controlled substance. The Department of Health and Social Services would then be obligated to investigate the matter.

The bill was HELD in Committee.

RECESS TO CALL OF THE CHAIR 12:24:34 PM / 2:37:11 PM

#sb305

CS FOR SENATE BILL NO. 305(RES)
"An Act providing for a production tax on oil and gas; repealing the oil and gas production (severance) tax; relating to the calculation of the gross value at the point of production of oil or 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 tax for certain expenditures and losses; 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 or 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."

This bill was again before the Committee.

Co-Chair Green noted that following the adoption of Amendment #7 as Amended, earlier in the meeting, it was determined that a section that should have been removed from the bill had been overlooked.

Co-Chair Wilken offered a motion to rescind the Committee's action in adopting this amendment.

There was no objection and the earlier adoption of the amendment was RESCINDED.

Amendment to Amendment #7 as Amended: This conceptual amendment deletes the insertion of new subsection (j) to Sec. 43.55.024 on page 10, following line 21 as added by the adoption of Amendment #7 as amended. The language being deleted reads as follows.

> (j) A producer or explorer that does not produce an amount of oil and gas in a taxable year under AS 43.20 that is more than 50,000 barrels of oil equivalent may apply against the producer's or explorer's tax due for that taxable year under AS 43.20 a tax credit under this section that would otherwise be applicable against a tax due under AS 43.55.011(e) but for the limitation set out in (e) of this section. An amount of a tax credit may not be applied against both a tax due under AS 43.20 and a tax due under AS 43.55.011(e). For purposes of this subsection, 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.

Co-Chair Wilken offered the motion to amend Amendment #7 as amended. He objected for purposes of clarification and read the language that would be eliminated by the motion.

Co-Chair Wilken removed his objection.

Without further objection, the amended amendment was AMENDED.

The amendment as twice amended was ADOPTED with no objection.

Amendment #11: This amendment inserts a new subparagraph to subsection (d)(2) of Sec. 43.55.160. Determination of production tax value of oil and gas., added by Section 26, on page 21, following line 20, to read as follows.

> (d) For purposes of (c) of this section, "direct costs"
>
> …
>
> (2) does not include

…

(P) the portion of costs incurred for dismantlement, removal, surrender, or abandonment of a well, facility, pipeline, platform, or other structure, or for the restoration of a lease, field, unit, area, body of water, or right-of-way in conjunction with dismantlement, removal, surrender, or abandonment that is attributable to production of oil or gas occurring before the effective date of this section; the portion is calculated as a ratio of production of oil or gas associated with the well, facility, pipeline, platform, or other structure, lease, field, unit, area, body of water, or right-of-way occurring before the effective date of this section to all production of oil or gas associated with that well, facility, pipeline, platform, or other structure, lease, field, unit, area, body of water, or right-of-way through the end of the calendar month before commencement of the dismantlement, removal, surrender, or abandonment.

Co-Chair Wilken moved for adoption.

Co-Chair Green objected for discussion.

Co-Chair Wilken stated that this amendment would address the issue of abandonment. The language being proposed had previously been "contemplated" in regards to the State's existing severance tax regime, the Economic Limit Factor (ELF), and had also been discussed by the Senate Resources Committee in its PPT deliberations.

Co-Chair Wilken asked that the Committee consider adding the language to this bill. To that point, he asked that Senator Gene Therriault be allowed to provide further detail about the amendment.

Co-Chair Green preferred that the Department of Revenue address the issue.

Ms. Wilson explained that the amendment would allow for costs of abandonment. The issue of abandonment had been previously discussed by the Committee; however, it was determined that the phrase "extended period of disuse" required further clarification. That language was eliminated from the language

being proposed. Thus, the amendment would "simply address abandonment … removal costs".

Co-Chair Green asked how CSSB 305(RES) addressed this issue.

2:40:36 PM

Co-Chair Wilken stated that after discussing this issue with the Administration and a representative of British Petroleum, "it became clear that the words 'extended period of disuse' were problematic when it comes to administering the tax". Mr. Dickinson and Ms. Wilson indicated that the language needed to change or they would ask for the provision to be removed. They also indicated they would work on "language to effectuate that change". That language has not yet been provided.

2:41:11 PM

Senator Stedman was confused as to whether the amendment was complete.

2:41:36 PM

Co-Chair Green asked Ms. Wilson to expand on the term abandonment.

2:41:50 PM

Ms. Wilson expressed that "abandonment would be the cost of closing up the well. … The problem with the language" that had previously been considered was that, regardless of whether it would be a credit or deduction, the costs associated with an extended period of disuse were denied. There are several facilities on the North Slope which, while not being in use, might be called upon for "backup purposes in case the main facility is down". Thus, the question was how to treat the costs for that backup facility. Similar questions arose in regards to facilities which were "mothballed" or not intended to be permanently abandoned. That "troublesome" language has been removed from the language in this amendment.

Co-Chair Green asked how the current Statute addressed abandonment.

Ms. Wilson responded that abandonment was currently considered an upstream cost and therefore did not affect the existing production tax.

Co-Chair Green concluded therefore that abandonment was considered a legitimate necessary business expense.

Ms. Wilson affirmed.

Co-Chair Green understood that abandonment was "generally" addressed as part of a lease or contract.

Ms. Wilson affirmed, and noted that the Alaska Oil and Gas Conservation Commission (AOGCC) might also apply specific abandonment requirements.

Co-Chair Green concluded that the adoption of this amendment would add abandonment costs to the list of things that would not be included as a direct cost.

Ms. Wilson concurred.

2:44:28 PM

Ms. Wilson stated that CSSB 305(RES) contained "a prohibition against taking credits for abandonment". The exclusion of abandonment provisions in Version "P" "means it's not addressed". Therefore, the adoption of this amendment would exclude the costs specified in the amendment as abandonment costs from being applied "against the production tax values". In other words, "you could not deduct abandonment costs".

In response to a question from Co-Chair Green, Ms. Wilson communicated that even though abandonment could be viewed as "an ordinary and necessary part of doing business in the oil field, whether that's a acceptable deductible expense would be a policy call".

2:45:53 PM

Senator Bunde pointed out that because abandonment is "a usual business expense", it would be deductible from a company's income tax. However, because "abandonment obviously doesn't increase production", which is "the goal" of the credits in the

PPT, "then the abandonment costs could not be taken as a credit under PPT".

Ms. Wilson affirmed that abandonment costs were a deductible expense on an entity's income tax. The adoption of this amendment would include abandonment costs in "the list of items for which a deduction is not allowed" under the provisions of this bill.

2:47:01 PM

Senator Bunde reiterated that the adoption of this amendment would not "prohibit abandonment expenses from being deducted from an income tax".

Ms. Wilson agreed.

In response to a question from Co-Chair Green, Ms. Wilson expressed that the amendment would exclude abandonment costs from the list of direct costs. This would prohibit those costs from being deductible or creditable under the PPT.

2:47:56 PM

Senator Stedman understood that the amendment would apply only "to assets that are not used today before the effective date" of the PPT. It would not apply to facilities constructed after the effective date.

Ms. Wilson affirmed that to be the effect of the amendment's language "attributable to production of oil or gas occurring before the effective date".

2:48:24 PM

Co-Chair Green understood therefore that the exemption was "only relating to things before the effective date of this bill".

Ms. Wilson affirmed.

2:48:36 PM

Co-Chair Wilken stated that the drafter of the amendment, Jack Chenoweth, Assistant Revisor, Legislative Legal and Research Services, Legislative Affairs Agency, could provide further

information about the amendment if desired. The amount of money that would be affected by this "policy call …""was not an insignificant amount of money".

AT EASE 2:48:58 PM / 2:49:16 PM

Co-Chair Wilken referred the Committee to a letter [copy on file] dated February 27, 2006 to Senator Gene Therriault, Chairman Legislative Budget and Audit Committee from James E. Eason, Oil and Gas Operations Management and Policy, a consultant to the Legislature. The letter indicated that the cost associated with decommissioning just the wells in Cook Inlet would be $1,007,699,000. The cost of decommissioning wells on the North Slope and other fields in the future could be considerable. The cost of that activity for the North Star region could be approximately $75 million.

Co-Chair Wilken stated that this policy call should consider the affect of not excluding these costs. The expenses associated with that activity in Cook Inlet alone could provide the industry "billions of dollars of credit". This issue should be addressed.

2:50:58 PM

In response to a question from Senator Olson, Ms. Wilson stated that contract provisions never allowed for abandonment costs.

Co-Chair Green also noted that this issue was moot in regards to a proposed gas pipeline contract as that contract was still being developed.

2:52:27 PM

Senator Bunde stated that the amendment solely addressed credits under the PPT.

Co-Chair Green affirmed.

2:52:38 PM

Senator Stedman offered a point of clarification: this amendment would serve "to exclude existing infrastructure that's not used. There's a sharing relationship if its not used today, but used

in the future, and it really doesn't impact anything built" after the effective date of the bill.

Ms. Wilson, after reviewing the amendment, agreed with Senator Stedman.

Co-Chair Green summarized therefore that the amendment would prohibit abandonment costs associated with facilities predating the effective date of the bill.

2:54:03 PM

Ms. Wilson exampled that the majority of the costs of a well abandoned two months after the effective date of the PPT bill would be disallowed, based on "the formula specified here comparing the production before effective date to total production".

2:54:21 PM

Co-Chair Wilken noted there being 16 platforms in Cook Inlet. Four of those have been shut in or converted to lighthouses. The decommissioning expenses of those 16 were reflected on page 3 of Mr. Eason's letter.

Co-Chair Green asked whether this amendment would address abandonment costs on a statewide basis or were limited to Cook Inlet.

2:54:45 PM

Ms. Wilson concluded that since no geographic exclusions were specified in the amendment, its provisions would apply statewide.

2:55:11 PM

Senator Hoffman observed that the letter from Mr. Eason had not been signed.

AT EASE 2:55:26 PM / 2:55:46 PM

A roll call was taken on the motion.

IN FAVOR: Senator Olson, Senator Stedman, Senator Bunde, Senator Dyson and Co-Chair Wilken

OPPOSED: Senator Hoffman and Co-Chair Green

The motion PASSED (5-2)

The amendment was ADOPTED.

2:56:24 PM

Amendment #12: This amendment deletes the language of Section 25, on page 17 line 9 through page 18, line 5, which reads as follows.

> Sec. 25. AS 43.55.150 is amended by adding a new subsection to read:
>
> (d) Under regulations adopted by the department, if the department determines that an election under this subsection would improve the efficiency and economy of tax administration and would result in calculations that represent value and actual costs of transportation with reasonable accuracy and are not biased toward understating a producer's tax liability, the department may allow a producer, subject to limitation prescribed by the department as to the frequency of making elections, to elect prospectively to calculate the gross value at the point of production of oil or gas based in whole or part on
>
> (1) a formula prescribed by the department that uses, with adjustments if appropriate, a royalty value or valuation methodology accepted by the
>
> (A) Department of Natural Resources under AS 38.05, in the case of oil or gas produced from a lease issued by the Department of Natural Resources or produced from a lease or property that is part of a unit approved by the Department of Natural Resources; or
>
> (B) United States Department of the Interior under applicable federal oil and gas leasing statutes, in the case of oil or gas produced from a lease issued by the United States Department of the Interior that is not part of a unit approved by the Department of Natural Resources, or produced from a lease or property that is part of a unit approved by the United

States Department of the Interior but not approved by the Department of Natural Resources; or

(2) another formula prescribed by the Department of Natural Resources that reasonably estimates a value for the oil or gas at a specific geographical locations, such as the point of tender or delivery into a common carrier pipeline; the formula may use factors such a published price indices for oil or gas in or outside the state, quality differentials for oil or gas, transportation costs between markets, and inflation adjustments.

This amendment also makes the necessary conforming changes to delete references to the deleted language elsewhere in the bill.

Co-Chair Wilken moved for adoption.

Co-Chair Green objected for discussion.

Co-Chair Wilken informed the Committee that this amendment pertained to Royalty Settlement Agreements (RSAs). He requested that Senator Therriault be allowed to testify on the effect of the amendment.

Co-Chair Green denied the request.

Co-Chair Wilken then asked Ms. Wilson for assistance.

2:56:50 PM

Ms. Wilson expressed that RSAs were settlement agreements "with a specific royalty payor regarding the royalties". This issue was addressed in this bill because both the Department of Revenue and the Department of Natural Resources calculated royalty values under ELF. While the information utilized by the departments was the same, a difference in methodologies resulted in a slight difference in those values. Thus, language was included in SB 305 to improve efficiency and simplicity. The result was that the Department of Revenue could rely on the value determination calculated by the Department of Natural Resources. A tremendous amount of discussion occurred in this regard during the bill's committee hearing process.

2:58:11 PM

Mr. Mintz advised that the impact of this amendment on Version "P" would be more extensive than solely affecting RSAs. At one time, the PPT bill included three valuation methodology alternatives: one was RSAs, the second was "other valuations, and then general provisions for a simplified formula". RSAs were excluded from the alternatives in Version "P". This amendment would remove the remaining options "so that the department would no longer be allowed to authorize a producer to use a simplified formula to calculate gross value at the point of production".

Co-Chair Green asked the result of that action.

Mr. Mintz expressed that it would not have "a material impact on revenues because the simplified formulas themselves were not intended to have material impact", they were intended "to improve the economy and efficiency of tax administration" for both the producers and the Department of Revenue, as they could "take advantage of rules of thumb or ways of arriving at estimates of values that wouldn't require as much detailed specific information system to be calculated every month and then be subject to specific audit in the future". Thus, "it was really an administrative issue".

3:01:44 PM

Ms. Wilson stated that Version "P" contained "specific language" that would only allow the simplified methods to occur were the Department of Revenue to determine "that it would improve the efficiency and economy. And only if it doesn't systemically understate tax liability".

3:02:26 PM

Co-Chair Wilken concluded that, in effect, an RSA would allow a producer to value their oil differently than another.

3:02:48 PM

Mr. Mintz responded that that was "essentially correct". He noted that the phrase "with adjustments if appropriate" as depicted in Sec. 25 subsection (d)(1) page 17, lines 18 and 19 would allow the department to add 50 cents a barrel were it determined that a producer's formula "understated the value by 50 cents a barrel". Thus, "in detail, there could be variations amongst producers, but … the intent is that they wouldn't be material over the long term".

Co-Chair Wilken asked Mr. Mintz whether he would agree with the Legislature's consultant, Econ One Research Inc., that "the value of the RSAs over the next ten years" would be three million dollars" under current law.

Mr. Mintz was not qualified in that regard.

Co-Chair Wilken identified one issue with RSAs as being that some producers could lower their tax liability because they could deduct transportation costs.

Mr. Mintz affirmed that transportation costs were "a deduction for royalty values just as they are for the production tax". There could be "variations among RSAs in how transportation costs are handled". Nonetheless, "the aim of the RSA would be to have a reasonable and accurate way of stating" those costs.

Senator Stedman asked Ms. Wilson whether the language reflected in Version "P" would be "problematic and put the State at a disadvantage in the enforcement and collection of the taxes".

3:05:04 PM

Ms. Wilson expressed that the language in Version "P" "would not disadvantage the State". It would "place the responsibility on the Department to evaluate" a producer's formula for efficiencies and economies as well as to consider whether the formula might be "biased towards understating the tax liability".

3:06:04 PM

Co-Chair Wilken recalled there being concern that continuance of RSAs might result in litigation on the basis of "equal protection under the Constitution".

3:06:29 PM

Ms. Wilson deferred to Mr. Mintz.

3:06:38 PM

Mr. Mintz expressed that "equal protection is concerned with [indisc] treatment of similarly situated persons, and the Courts

look at equal protection questions with different standards depending on the type of interest that's involved. When it comes to taxation, the Courts have been lenient in terms of upholding distinctions and different treatment". While there was no guarantee that there "could not be a successful equal protection challenge here", he doubted that such a challenge "would be successful … The considerations of tax administration would probably be sufficient to justify whatever relatively minor difference in treatment … might occur under this provision".

A roll call was taken on the motion.

IN FAVOR: Co-Chair Wilken and Senator Dyson

OPPOSED: Senator Hoffman, Senator Olson, Senator Stedman, Senator Bunde, and Co-Chair Green

The motion FAILED (2-5)

Amendment #12 FAILED to be adopted.

3:08:49 PM

Amendment #13: This amendment inserts language following "this section" in subsection (i) of Sec. 43.55.160. Determination of production tax value of oil and gas., added by Section 26 on page 23 line 15 to read as follows.

> (i) the department may adopt regulations that establish additional standards necessary to carrying out the purposes of this section, including the incorporation of the concepts of 26 U.S.C. 482 (Internal Revenue Code), as amended, and 26 U.S.C. 6662(e) (Internal Revenue Code), as amended, the related or accompanying regulations of each of those sections, and any ruling or guidance issued by the United States Internal Revenue Service that relates to each of those sections.

Co-Chair Wilken moved for adoption.

Co-Chair Green objected for explanation.

Co-Chair Wilken explained that this amendment would provide the Department of Revenue the option "to use the concepts of the Internal Revenue Code" 26 U.S.C 482 and 26 U.S.C 6662(e) when

auditing producers to insure that the State would be "paid properly" under the terms of the PPT bill.

Ms. Wilson stated that this topic had also been addressed by the Senate Resources Committee. Neither she nor Dan Dickinson felt that incorporating this option into the bill "was necessary;" however, it may be another tool".

Ms. Wilson noted that the amendment might address potential problems associated with inter-company transfers. Current language would disallow an inter-company transfer exceeding current market value. Thus, Legislative consultants questioned whether the State might require "more power in terms of auditing". 26 U.S.C 482 is primarily utilized by the Internal Revenue Service (IRS) to audit offshore transfer pricing transactions. This code would assist the State in addressing situations where a producer had the flexibility to utilize a range of possible values. "No one expected the Department to quibble about a four million dollar drill bit" that might cost $4.5 million due to weather conditions or timing; however, it would be an issue, were $10 million paid for that drill bit.

Ms. Wilson stated that a disadvantage to 26 U.S.C 482 audits was that they were "very time consuming and … very hard"; specifically as contracts and other material would be reviewed.

3:12:14 PM

Senator Bunde understood that the adoption of this amendment would make the use of the Internal Revenue Codes "permissive" but not required.

Ms. Wilson affirmed.

Co-Chair Wilken considered this one of the times when "you look down the wrong end of the binoculars". The provisions in this bill could be in effect for 30 years. During that time, the producers would become "more sophisticated in their analysis in their efforts to pay correctly". With that in mind, the State should endeavor to include "every tool in the toolbox that we have should we need it". This amendment would further that effort.

3:13:24 PM

Senator Stedman asked how changes made to the federal tax statutes at the federal level might affect the State were this language incorporated into the bill. He allowed that changes at the federal level would likely continue to be applicable to the State regardless.

3:14:03 PM

Ms. Wilson agreed that changes to the federal codes could be possible. There were other references to Internal Revenue codes in the PPT bill, including in the definition of ordinary and necessary. She reminded that this amendment was "discretionary": the State could revise any regulations pertaining to the Code were changes at the federal level deemed not applicable.

3:15:00 PM

Co-Chair Green asked whether the State could utilize these federal codes without adopting this amendment.

Ms. Wilson disclosed that she would tend to use these federal codes as "a reference" on transfer pricing issues, even absent this amendment. The federal code would provide starting point guidelines.

Co-Chair Green asked whether the Department would rank the option proposed in this amendment higher than other audit options that were available. In addition, she asked whether confusion might arise over the decision to use one option over another.

Ms. Wilson deferred to Mr. Mintz as the question had legal ramifications.

3:16:44 PM

Mr. Mintz considered this a "very good question" as there could be "certain examples enumerated in a Statute". However, he did not think there would be "a problem" in this case as there "was really not much of a list; its' just pretty much singling out one or two sources" which would "be relevant to aspects of AS 43.55.160".

A roll call was taken on the motion.

IN FAVOR: Senator Bunde, Senator Dyson, and Co-Chair Wilken

OPPOSED: Senator Hoffman, Senator Olson, Senator Stedman and Co-Chair Green

The motion FAILED (3-4)

The amendment FAILED to be adopted.

Amendment #14: This amendment inserts a new subsection to Sec. 43.55.024. Tax credits for certain losses and expenditures., added by Section 12 on page 10, following line 21, to read as follows.

> (j) As a condition of receiving a tax credit under this section, a producer, explorer, or other taxpayer that obtains the tax credit for or directly related to a pipeline, facility, or other asset that is or becomes subject to regulation by the Federal Energy Regulatory Commission or the Regulatory Commission of Alaska, or a successor regulatory body, shall at all times support and in all rate proceedings file to flow through 100 percent of the tax credits to ratepayers as a reduction in the costs of service for the pipeline, facility, or other asset.

Co-Chair Wilken moved for adoption.

Co-Chair Green objected for explanation.

Co-Chair Wilken asked that Senator Therriault be able to testify to this amendment.

Co-Chair Green refused.

Co-Chair Wilken then explained that this amendment was pertinent to Sec. 12. subsection 42.55.024. Tax credits for certain losses and expenditures. The effect of the amendment would be that the builder receiving a credit from the State for building an asset could ask the Federal Energy Regulatory Commission (FERC) to allow that credit to be utilized against "the tariff for hauling the product north to south". This would in effect lower that tariff rate.

Co-Chair Wilken stated that lowering the pipeline tariff would have two beneficial consequences: it would reduce the cost of

hauling the product and it would make the cost of using the pipeline more accessible for new producers. This could result in there being more explorers and producers.

3:20:23 PM

Co-Chair Green read the last sentence of the amendment. She thought that the consideration of this language was "a little premature" to address at this time. She suggested an alternative approach: that the credits be used as currently proposed in the PPT bill until FERC suggested otherwise.

3:21:21 PM

Senator Stedman did not support the amendment. It was an issue relevant to a proposed gas pipeline rather than to this "supposedly stand alone tax bill". While he acknowledged that this issue must be eventually addressed, it should be done at a later time.

A roll call was taken on the motion.

IN FAVOR: Senator Bunde, Senator Dyson and Co-Chair Wilken

OPPOSED: Senator Olson, Senator Stedman, Senator Hoffman and Co-Chair Green

The motion FAILED (3-4)

The amendment FAILED to be adopted.

3:23:44 PM

In response to a question from Co-Chair Wilken, Co-Chair Green communicated that language pertaining to "the Anadarko issue" had not developed to a desired point. That matter would likely be addressed by either the House or the Senate at a later time.

AT EASE 3:24:03 PM / 3:25:39 PM

Co-Chair Green directed members to Amendment #7 as twice amended. In order to address a phase inadvertently included in that amendment, she would be offering a separate amendment.

Amendment #15: This conceptual amendment inserts "other than tax credits" following "credits" in the last sentence of subsection (e) of Sec. 43.55.160. Determination of production tax value of oil and gas., added by Section 26, on page 22, line 1. The amended language reads as follows.

> …The payments or credits that a producer shall subtract from the producer's lease expenditures, or from zero, under this subsection are payments or credits other than tax credits received by the producer for…

Co-Chair Green moved for adoption.

Senator Bunde objected for explanation.

3:26:17 PM

Ms. Wilson stated that the phrase ", other than tax credits under this chapter," inserted following "credits" in subsection (e) Sec. 43.55.160. Determination of production tax value of oil and gas., added by Section 26 on page 22, line 1 by the adoption of Amendment #7 as amended seemed to imply that tax credits other than those in this chapter would have to be added back. The intention "was to address tax credits in general".

Senator Bunde removed his objection.

Without objection the amendment was ADOPTED.

Senator Bunde offered a motion to report CSSB 305, Version 24-GS2052\P, as amended, from Committee with individual recommendations and accompanying fiscal notes.

There being no objection, CSSB 305 (FIN) was REPORTED from Committee with new $801,200 Department of Revenue fiscal note dated April 24, 2006 and previous zero fiscal note #1 from the Department of Natural Resources.

Co-Chair Green expressed appreciation for the efforts exerted by the Committee and the many others who contributed to the development of this legislation.

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ADJOURNMENT

Co-Chair Lyda Green adjourned the meeting at 3:30:27 PM.