

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

May 2, 2007

1:11 p.m.

**MEMBERS PRESENT**

Representative Carl Gatto, Co-Chair  
Representative Craig Johnson, Co-Chair  
Representative Bob Roses  
Representative Paul Seaton  
Representative Peggy Wilson  
Representative Bryce Edgmon  
Representative David Guttenberg  
Representative Scott Kawasaki

**MEMBERS ABSENT**

Representative Vic Kohring

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 121(L&C)

"An Act relating to discharge from small commercial passenger vessels; relating to information-gathering requirements for small commercial passenger vessels; providing for an effective date by repealing the delayed effective date found in sec. 16, ch. 153, SLA 2004; and providing for an effective date."

- MOVED CSSB 121(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 128

"An Act relating to allowable lease expenditures for the purpose of determining the production tax value of oil and gas for the purposes of the oil and gas production tax; and providing for an effective date."

- FAILED TO MOVE OUT OF COMMITTEE

HOUSE BILL NO. 15

"An Act relating to participation in matters before the Board of Fisheries by members of the board; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 121

SHORT TITLE: CRUISE SHIP DISCHARGE & INFO

SPONSOR(s): SENATOR(s) SENATOR ELTON

03/14/07 (S) READ THE FIRST TIME - REFERRALS  
03/14/07 (S) L&C  
03/20/07 (S) L&C AT 1:30 PM BELTZ 211  
03/20/07 (S) Heard & Held  
03/20/07 (S) MINUTE(L&C)  
03/22/07 (S) L&C AT 1:30 PM BELTZ 211  
03/22/07 (S) Moved CSSB 121(L&C) Out of Committee  
03/22/07 (S) MINUTE(L&C)  
03/23/07 (S) L&C RPT CS 2DP 3NR NEW TITLE  
03/23/07 (S) DP: ELLIS, DAVIS  
03/23/07 (S) NR: BUNDE, STEVENS, HOFFMAN  
04/04/07 (S) TRANSMITTED TO (H)  
04/04/07 (S) VERSION: CSSB 121(L&C)  
04/05/07 (H) READ THE FIRST TIME - REFERRALS  
04/05/07 (H) RES, JUD  
05/02/07 (H) RES AT 1:00 PM BARNES 124

BILL: HB 128

SHORT TITLE: OIL & GAS PRODUCTION TAX: EXPENDITURES

SPONSOR(s): REPRESENTATIVE(s) OLSON

02/12/07 (H) READ THE FIRST TIME - REFERRALS  
02/12/07 (H) O&G, RES, FIN  
02/22/07 (H) O&G AT 3:00 PM CAPITOL 124  
02/22/07 (H) Heard & Held  
02/22/07 (H) MINUTE(O&G)  
03/01/07 (H) O&G AT 3:00 PM CAPITOL 124  
03/01/07 (H) Moved CSHB 128(O&G) Out of Committee  
03/01/07 (H) MINUTE(O&G)  
03/05/07 (H) O&G RPT CS(O&G) 3DP 1NR  
03/05/07 (H) DP: DOOGAN, RAMRAS, OLSON  
03/05/07 (H) NR: SAMUELS  
03/19/07 (H) RES AT 1:00 PM BARNES 124  
03/19/07 (H) Heard & Held  
03/19/07 (H) MINUTE(RES)  
03/21/07 (H) RES AT 1:00 PM BARNES 124  
03/21/07 (H) Heard & Held  
03/21/07 (H) MINUTE(RES)  
03/23/07 (H) RES AT 1:00 PM BARNES 124  
03/23/07 (H) Heard & Held  
03/23/07 (H) MINUTE(RES)  
03/26/07 (H) RES AT 1:00 PM BARNES 124

03/26/07 (H) -- MEETING CANCELED --  
03/28/07 (H) RES AT 1:00 PM BARNES 124  
03/28/07 (H) Heard & Held; Assigned to Subcommittee  
03/28/07 (H) MINUTE(RES)  
05/01/07 (H) RES AT 9:00 AM BARNES 124  
05/01/07 (H) Subcommittee Meeting  
05/02/07 (H) RES AT 1:00 PM BARNES 124

**WITNESS REGISTER**

SENATOR KIM ELTON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented SB 121, as the sponsor.

BRYCE BROCKWAY, Vice President of Operations  
Cruise West  
Seattle, Washington

**POSITION STATEMENT:** During testimony on SB 121, answered questions and supported SB 121.

MICHAEL JONES, Director of Marine Operations  
Lindblad Expeditions  
New York, New York

**POSITION STATEMENT:** During testimony on SB 121, answered questions and supported SB 121.

LYNN TOMICH KENT, Director  
Division of Water  
Department of Environmental Conservation (DEC)  
Juneau, Alaska

**POSITION STATEMENT:** During discussion of SB 121, responded to questions and provided comments.

REPRESENTATIVE KURT OLSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Offered a statement as the sponsor of HB 128.

KONRAD JACKSON, Staff  
to Representative Kurt Olson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During discussion of HB 128, responded to questions on behalf of the bill sponsor, Representative Olson.

JONATHAN IVERSEN, Director  
Anchorage Office  
Tax Division  
Department of Revenue (DOR)  
Anchorage, Alaska

**POSITION STATEMENT:** During discussion of HB 128, responded to questions and provided comments.

KEVIN BANKS, Acting Director  
Central Office  
Division of Oil & Gas  
Department of Natural Resources (DNR)  
Anchorage, Alaska

**POSITION STATEMENT:** During discussion of HB 128, responded to questions and provided comments.

#### **ACTION NARRATIVE**

**CO-CHAIR CARL GATTO** called the House Resources Standing Committee meeting to order at [1:11:06 PM](#). Representatives Gatto, Johnson, Seaton, Roses, Guttentberg, Edgmon, and Kawasaki were present at the call to order. Representative Wilson arrived as the meeting was in progress.

#### SB 121-CRUISE SHIP DISCHARGE & INFO

[1:11:19 PM](#)

CO-CHAIR GATTO announced that the first order of business would be CS FOR SENATE BILL NO. 121(L&C), "An Act relating to discharge from small commercial passenger vessels; relating to information-gathering requirements for small commercial passenger vessels; providing for an effective date by repealing the delayed effective date found in sec. 16, ch. 153, SLA 2004; and providing for an effective date."

[1:11:47 PM](#)

SENATOR KIM ELTON, Alaska State Legislature, said that SB 121 restores the alternate compliance discharge protocols that were passed unanimously by the House and the Senate with HB 522, in 2004. He explained that this is the alternate compliance for small cruise ships because the smaller size of the ships precludes the same protocols as the larger cruise ships. The cruise ship ballot initiative inadvertently repealed the section that had been changed by HB 522. He emphasized that this is not the fault of the initiative sponsors.

1:13:35 PM

CO-CHAIR GATTO asked for a definition of cruise ships.

SENATOR ELTON clarified that the definition in the bill is for small cruise ships. He added that the sponsors of the cruise ship ballot initiative support this bill. He noted that, as in HB 522, the provisions for the alternative compliance protocols for small cruise ships will be repealed on January 1, 2016, with the assumption that technology will have improved.

CO-CHAIR GATTO noted that the members' packets include a letter in support of SB 121 from Joseph Geldhof, co-sponsor of the cruise ship ballot initiative, dated March 16, 2007.

1:15:40 PM

BRYCE BROCKWAY, Vice President of Operations, Cruise West, explained that Cruise West is a small, family owned cruise ship operator, founded by an Alaskan. He expressed his belief that Department of Environmental Conservation (DEC) supports this bill and the best management practices of Cruise West.

CO-CHAIR GATTO noted that the Cruise West ship capacity is 78-138 passengers and he asked if there is a defined limit for the small ship category.

MR. BROCKWAY offered his belief that a small cruise ship is defined as up to 249 passengers on board.

1:17:22 PM

MICHAEL JONES, Director of Marine Operations, Lindblad Expeditions, reported that Lindblad Expeditions has been operating two small 62 passenger vessels in Southeast Alaska since 1989. He expressed his support for SB 121.

CO-CHAIR GATTO asked about the disposal system for the accumulated waste water on board the ship.

MR. JONES explained that the ships have blackwater tanks and graywater tanks and that each is treated by a Coast Guard approved marine sanitation device.

CO-CHAIR GATTO asked if the ship passengers disembark while in port.

MR. JONES replied that passengers are offered tours in Sitka, Juneau, and Petersburg.

1:19:34 PM

CO-CHAIR GATTO asked if the graywater is discharged at a dockside facility or at sea.

MR. JONES responded that the graywater is discharged at sea per the DEC approved best management practices.

CO-CHAIR GATTO asked for a description of the blackwater treatment.

MR. JONES explained that the system is manufactured by Omnipure, an electronic cell that includes treatment with chlorine. The system includes pumps, settling systems, and oxidization so that the blackwater can be discharged after treatment.

CO-CHAIR GATTO asked if the discharge contains chlorine.

MR. JONES responded that the dechlorination system removes chlorine to the acceptable standards.

1:21:12 PM

LYNN TOMICH KENT, Director, Division of Water, Department of Environmental Conservation (DEC), clarified that the DEC has not taken a formal position on SB 121.

CO-CHAIR GATTO asked if the DEC has looked at the bill.

MS. KENT replied that SB 121 does exactly as the sponsor states which is to reinstate provisions that the Legislature has passed.

SENATOR ELTON, in response to an earlier question, clarified that small cruise ships are defined as having overnight accommodations for 249 or fewer passengers.

1:22:25 PM

REPRESENTATIVE SEATON asked Ms. Kent to clarify that page 2, line 2, refers only to the discharge of domestic wastewater.

MS. KENT explained that this includes other wastewater discharges from commercial passenger vessels.

REPRESENTATIVE SEATON asked for a definition of "other wastewater."

MS. KENT replied that other wastewater includes ballast and bilge water. She reported that a permit is required for the wastewater discharge, but this permit requirement only pertains to the large commercial passenger vessels.

REPRESENTATIVE SEATON said he is trying to get a better understanding for the breadth of the wastewater that this bill will allow a small vessel to discharge.

MS. KENT requested the opportunity to review the bill.

[1:24:59 PM](#)

SENATOR ELTON explained that Section 2 references existing law, and this bill is not changing existing law. He noted that there are current definitions for graywater and other wastewater in statute.

REPRESENTATIVE SEATON said that he is asking for assurance from DEC that, as SB 121 is going to exempt small commercial passenger vessels from the current regulations, the alternative regulations don't allow the management of oily bilge water and domestic wastewater in the same way.

[1:26:17 PM](#)

REPRESENTATIVE EDGMON noted that page 2, line 2, refers to "into the marine waters" and he commented that another bill refers to "waters of the United States." He asked if there is any difference.

SENATOR ELTON replied that a change in wording is possible, but as these vessels only operate in marine waters, a change may not be necessary.

CHAIR GATTO asked if the commercial passenger vessels ever go into fresh water.

SENATOR ELTON responded that this question is best answered by a ship captain, though he allowed that the small passenger vessels will go into estuaries.

[1:28:47 PM](#)

MS. KENT, in response to Representative Seaton, said that she is not able to determine whether the best management practices plan that is currently in place covers [discharge] other than domestic wastewater discharge from the vessels. She explained that Section 3 reinstates the same conditions that were inadvertently repealed by the cruise ship ballot initiative.

REPRESENTATIVE SEATON replied that this answers his earlier question.

[1:29:27 PM](#)

CO-CHAIR GATTO closed public testimony.

CO-CHAIR JOHNSON voiced his concern with making changes to initiatives. He expressed his desire for the consistency to either allow or disallow changes to initiatives, but not to respond to every whim for an issue. He stated that legislators make important policy decisions on the best course of action for the state, and he requested the same respect from initiative writers to not just amend statutes for their own needs. He commented that the committee process of hearing and vetting is not available for initiatives. He encouraged future initiative writers to "get it right."

[1:31:47 PM](#)

CO-CHAIR GATTO noted that [HB 522} previously passed both the House and the Senate unanimously.

REPRESENTATIVE KAWASAKI pointed out that the memorandum from Alpheus Bullard, Division of Legal and Research Services, dated March 26, 2007, affirms that CSSB 121 is constitutional.

[1:32:20 PM](#)

CO-CHAIR JOHNSON expressed his belief that although the legal opinions on initiatives allow an entitlement for change, it does not always make it acceptable.

REPRESENTATIVE ROSES stated that he supports this bill, but he voiced his concern that "people seem to pick and choose when they want to break away from an initiative and when they don't."

[1:34:07 PM](#)

REPRESENTATIVE GUTTENBERG said, as a sponsor of three initiatives, that amending initiatives is taken very seriously. He stated his concern that amendments can mask revisions. He explained that he reviews an initiative amendment to ensure that the spirit of the original initiative is retained. He noted that this is the first time he has seen the need for a change that is truly beyond the scope of predication. He expressed his belief that the Alaska State Constitution provides for initiative amendments similar to SB 121.

REPRESENTATIVE SEATON moved to report CSSB 121(L&C) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 121(L&C) was reported from the House Resources Standing Committee.

HB 128-OIL & GAS PRODUCTION TAX: EXPENDITURES

[1:37:14 PM](#)

CO-CHAIR GATTO announced that the next order of business would be HOUSE BILL NO. 128, "An Act relating to allowable lease expenditures for the purpose of determining the production tax value of oil and gas for the purposes of the oil and gas production tax; and providing for an effective date." [Before the committee was CSHB 128(O&G), as amended at the March 23, 2007, hearing.]

CO-CHAIR GATTO explained that HB 128 is now back from the subcommittee. He stated that the bill has had more than six hours of discussion before the committee, so it is as vetted as can be expected. He said that there are some amendments to be introduced.

[1:38:12 PM](#)

REPRESENTATIVE KURT OLSON, Alaska State Legislature, said that the bill addresses who should pay for bad maintenance, the citizens of Alaska or the responsible party. He said that every day there is more information about the flaws in British Petroleum's North Slope [maintenance] program. He said that he is not proud of this bill, but that he believes in it.

REPRESENTATIVE OLSON said that support of HB 128 makes the statement that proper maintenance is rewarded and that improper

maintenance is not. He urged support for HB 128, and he deferred questions to his aide, Konrad Jackson.

[1:39:57 PM](#)

KONRAD JACKSON, Staff to Representative Kurt Olson, Alaska State Legislature, offered to explain the three amendments that he is going to introduce.

CO-CHAIR GATTO asked to first discuss a news release and an e-mail.

[1:40:27 PM](#)

CO-CHAIR GATTO read the e-mail from John Todd, dated 6/4/99:

Due to budgetary constraints, the decision has been made to discontinue the PW inhibitor (EC 1081A) currently being injected at GC 2 and GC 3.

CO-CHAIR GATTO said that he assumes GC to mean Gathering Center. He then read from a letter by U.S. Representative John Dingell, Chairman of the House Committee on Energy and Commerce, dated May 2, 2007:

We know that BP proceeded with cost cutting measures that may have compromised pipeline safety while earning \$22 billion in profits, but what we don't know is why.

These documents appear to show a severe cost cutting environment with respect to corrosion mitigation in the Prudhoe Bay field.

CO-CHAIR GATTO said that he wants this on the record as documents that he has received.

[1:42:17 PM](#)

MR. JACKSON replied that Senator Wagoner distributed the e-mail to the Senate Resources Standing Committee on April 20, 2007 and that the letter was distributed earlier today [May 2, 2007], also by Senator Wagoner.

[1:42:55 PM](#)

CO-CHAIR GATTO clarified that the letter from U.S. Representative Dingell was released today and he asked the committee if they had any comments on the documents.

REPRESENTATIVE ROSES said that this e-mail indicates there is proof of negligence. He emphasized that he does not support retroactively changing language to address negligence. He will support the bill if it is written to be effective from this day forward.

[1:45:15 PM](#)

JONATHAN IVERSEN, Director, Anchorage Office, Tax Division, Department of Revenue (DOR), said that the retroactivity is fine from a taxation standpoint. He stated that the Petroleum Systems Integrity Office (PSIO) will be a good guide for determining a definition for proper maintenance. He stated that the amendments passed today will provide different tools and organizations to use and look at for their standards, in order to get a better understanding of retroactivity.

[1:47:01 PM](#)

REPRESENTATIVE ROSES asked for clarification that by including the retroactivity section, this will make it easier to define negligence in the past or in the future.

MR. IVERSEN explained that the future benefit will be review of the standards set up by the PSIO. He said that looking backward must rely on other guidelines and standards, which may not be as clear.

[1:47:44 PM](#)

CO-CHAIR GATTO expressed his belief that this is a one-time bill to address a past issue. He allowed that the PSIO will address future issues.

MR. IVERSEN replied that this is not a one-time bill, it is a law of general application that will have future impact. In the future, there is the benefit of the PSIO determining the maintenance plans.

[1:48:29 PM](#)

REPRESENTATIVE SEATON opined that the PSIO will establish a set of regulations.

MR. IVERSEN agreed.

[1:48:47 PM](#)

REPRESENTATIVE SEATON remarked that the PSIO will develop a series of regulations. He offered his understanding that during an audit a large expenditure will flag possible improper maintenance. He asked how a large expenditure that has not violated any regulations will be treated if it appears that there is improper maintenance.

MR. IVERSEN said that the audit process is going to be the primary means of recognition. He allowed that the news systems will also be a means of monitoring possible infractions. He said that it is necessary to be able to ask the right questions to determine upstream costs. He said that DOR will review the claims and consult with Department of Natural Resources (DNR), to determine the proper questions to ask. He noted that DNR will decide whether something is a good oil field practice.

[1:51:49 PM](#)

REPRESENTATIVE SEATON posed that DOR has the statutory authority to challenge any expense that is deemed to be improper maintenance.

MR. IVERSEN explained that this is not just a matter of looking at a large cost, but it is the context of that cost. He stated that DOR does not have the personnel to investigate every cost in an audit, so it will be the auditor's discretion to determine what is not in compliance.

[1:53:57 PM](#)

REPRESENTATIVE SEATON asked how DOR will be able to determine whether a cost in the field is due to improper maintenance. He cited earlier testimony stating that the cost amount will be a main criterion.

MR. IVERSEN agreed. He explained that all 19 items in Section 1 of the bill will be reviewed. He allowed that gross negligence will be reviewed even though it is not a specific item. He said that litigation may reveal improper maintenance or gross negligence that is not revealed in an audit.

[1:56:23 PM](#)

REPRESENTATIVE SEATON asked how improper maintenance, which may not be simple or gross negligence, will be treated under the bill.

MR. IVERSEN stated that an issue will be noted for later review during the audit cycle and then DNR will determine if it is improperly maintained.

[1:57:46 PM](#)

REPRESENTATIVE ROSES asked when the PSIO regulations will be available.

MR. IVERSEN responded that is best be answered by DNR.

[1:58:23 PM](#)

KEVIN BANKS, Acting Director, Central Office, Division of Oil & Gas, Department of Natural Resources (DNR), said that the PSIO will be working on the regulations and coordinating this with other participating agencies, including Department of Environmental Conservation (DEC) and Alaska Oil and Gas Conservation Commission (AOGCC). He related that much of the PSIO authority will originate with the [oil] lease contract, and he expressed that the challenge will be to define in statute the regulations which originate in the lease contract, yet not impair the contract.

[2:00:11 PM](#)

REPRESENTATIVE SEATON asked about the procedure should someone violate the PSIO regulations.

MR. BANKS said that the regulations governing the PSIO will focus on systems integrity, and the physical maintenance of records related to company plans for quality assurance. He explained that DNR will focus on violations of regulations or maintenance per the lease contract. He mentioned that DOR will focus on the question of deductibility. He reported that if DOR is concerned that costs have been deducted with relation to a failure of maintenance, they will consult with DNR and PSIO, who will go to the records and opine whether it was improper maintenance.

[2:02:28 PM](#)

REPRESENTATIVE SEATON asked to clarify that a company can be following the regulations for pipeline integrity and can still fall under the improper maintenance category.

MR. BANKS replied that if an operator meets the rules and demonstrates that they have met the quality assurance regulations, then this is evidence of proper maintenance. If this is the case, DNR will tell DOR that the cost is deductible.

[2:04:00 PM](#)

REPRESENTATIVE SEATON asked if it is willful misconduct when a company does not follow the regulations.

MR. BANKS responded that this is a legal question.

[2:05:23 PM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 1, which read [original punctuation provided]:

Page 3, lines 21-22:

Delete "Alaska Oil and Gas Conservation Commission"

Insert "person in the Department of Natural Resources who is the lead person for exercising oversight over the maintenance of oil and gas facilities, equipment, and infrastructure in the state"

CO-CHAIR JOHNSON objected.

[2:05:39 PM](#)

REPRESENTATIVE SEATON said that this amendment is to ensure the right people are in the discussion.

The committee took an at-ease from [2:05:55 PM](#) to [2:17:25 PM](#).

[2:17:26 PM](#)

CO-CHAIR JOHNSON asked for the sponsor to explain Amendment 1.

MR. JACKSON explained that this same amendment was added to SB 80 (the Senate Version of HB 128). He said that Amendment 1 will include the PSIO coordinator in the consultation group.

MR. JACKSON relayed that an e-mail from John Norman, Chairman of AOGCC, dated April 25, 2007, stating support for the amendment is in the members' packets. He mentioned that Administrative Order 234 to authorize the PSIO is also included.

CO-CHAIR JOHNSON withdrew his objection.

There being no objection, Amendment 1 was adopted.

[2:19:09 PM](#)

REPRESENTATIVE SEATON moved to adopt Conceptual Amendment 2, which read [original punctuation provided]:

Add a new paragraph (4) to AS 43.55.165(j):

(4) "improper maintenance" is defined as any maintenance that is not consistent with good oil field practice.

Add a new paragraph (5) to AS 43.55.165(j):

(5) "good oil field practice" is defined as a practice that is generally accepted to be good, safe and efficient in carrying out oil field operations, including, but is not limited to, the design, construction, testing, operating, and maintaining of production, processing and transportation facilities and equipment, consistent with standards such as the American Petroleum Institute (API) or American Society for Testing and Materials (ASTM), federal regulations, maintenance programs consistent with the program requirements set forth by the person in the Department of Natural Resources who is the lead person for exercising oversight over the maintenance of oil and gas facilities, equipment, and infrastructure in the state, or other applicable standards for the production, processing and transportation of oil, gas, produced water, and other fluids.

CO-CHAIR JOHNSON objected.

[2:19:21 PM](#)

REPRESENTATIVE SEATON asked to clarify that as design, construction, testing, and operating are included in the definition of "good oil field practice", are these also included in the definition of "improper maintenance."

MR. JACKSON explained that Conceptual Amendment 2 is cobbled together from a variety of sources, and that Legislative Legal and Research Services has not yet reviewed it. He suggested that "design" might not be included in the definition of "improper maintenance" and that some other terms may need to be added.

[2:21:13 PM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 1 to Conceptual Amendment 2, as follows:

Line 8:

Delete ",but is not limited to, the design, construction, testing, operating, and"

MR. JACKSON expressed his concern with eliminating the words "but is not limited to". He recommended that the definition should not be so focused to exclude any new advances.

[2:22:34 PM](#)

CO-CHAIR GATTO relayed that Mr. Bullock from Legislative Legal and Research Services has previously stated that "but is not limited to" is not necessary.

REPRESENTATIVE WILSON expressed her belief that "testing" and "operating" should remain in Amendment 2.

[2:23:29 PM](#)

REPRESENTATIVE SEATON asked if "maintenance" is expanded to now include operations of the pipeline, or if "maintenance" means maintaining production, processing and transportation facilities and equipment.

MR. JACKSON responded that the only reason "operating" is included in the definition is that part of the operation would be the testing, or pigging, of the line.

[2:24:30 PM](#)

CO-CHAIR GATTO asked where the definition derived from.

MR. JACKSON described the definition as an attempt to be reasonably broad and include a reference to the PSIO.

CO-CHAIR GATTO asked if Mr. Jackson drafted Amendment 2.

MR. JACKSON said that he did.

[2:25:13 PM](#)

REPRESENTATIVE GUTTENBERG said that he supports maintaining "not limited to" as this will cover aspects that the PSIO might not cover in the earlier referenced analysis.

CO-CHAIR GATTO objected to Amendment 1 to Conceptual Amendment 2.

A roll call vote was taken. Representatives Seaton, Roses, and Johnson voted in favor of Amendment 1 to Conceptual Amendment 2. Representatives Guttenberg, Edgmon, Kawasaki, Wilson, and Gatto voted against it. Therefore, the Amendment 1 to Conceptual Amendment 2 failed by a vote of 3-5.

[2:28:35 PM](#)

REPRESENTATIVE WILSON moved to adopt Amendment 2 to Conceptual Amendment 2, as follows:

Line 8:

Delete "the design, construction,"

CO-CHAIR GATTO objected.

[2:29:30 PM](#)

CO-CHAIR JOHNSON asked for an explanation.

CO-CHAIR GATTO explained that he has another amendment he is going to offer.

[The committee treated Co-Chair Gatto's objection as if it was withdrawn.]

A roll call vote was taken. Representatives Roses, Guttenberg, Edgmon, Kawasaki, Wilson, Seaton, Johnson voted in favor of Amendment 2 to Conceptual Amendment 2. Representative Gatto voted against it. Therefore, Amendment 2 to Conceptual Amendment 2 passed by a vote of 7-1.

[2:32:11 PM](#)

REPRESENTATIVE SEATON asked if Conceptual Amendment 2 as amended is still answering the sponsor intent.

MR. JACKSON responded that not following those good, safe and efficient practices is "improper maintenance."

[2:32:59 PM](#)

REPRESENTATIVE SEATON asked if not following good, safe and efficient testing and operation is defined as "improper maintenance."

MR. JACKSON agreed that "improper maintenance" is defined by going to the definition, and if the maintenance is not consistent with testing and operating, and the "good oil field practice" has not been followed, there is improper maintenance.

[2:34:14 PM](#)

REPRESENTATIVE SEATON asked to clarify that if a [pipe]line is improperly operated, is that defined as improper maintenance, or is improper maintenance only if some work is not done on the [pipe]line.

MR. JACKSON said that if the [operators] are not operating properly as recognized by the American Petroleum Institute (API) or the American Society for Testing and Materials (ASTM), then this is "improper maintenance."

[2:35:49 PM](#)

REPRESENTATIVE SEATON expressed his desire to define the parameters of the definition. He asked if an improper operation, for example too much pressure in an oil pipeline, is also defined as "improper maintenance."

MR. JACKSON allowed that Mr. Banks might be best suited to answer.

[2:37:00 PM](#)

CO-CHAIR GATTO offered that intentional improper operation would be different than "improper maintenance."

MR. BANKS agreed with Chair Gatto. If someone is intentionally operating improperly, this is a gross negligence violation. If

equipment fails because it is not properly maintained, the standards of API and ASTM or any qualified assurance plan will dictate improper maintenance.

[2:38:36 PM](#)

CO-CHAIR GATTO moved to adopt Conceptual Amendment 3 to Conceptual Amendment 2, as follows:

Line 8:

Delete " operating, and maintaining"  
Add "operation, and maintenance"

REPRESENTATIVE SEATON advised that further tenses in the amendment will also need to be adjusted.

There being no objection, Conceptual Amendment 3 to Conceptual Amendment 2 was passed.

CO-CHAIR JOHNSON withdrew his objection to Conceptual Amendment 2.

There being no objection, Conceptual Amendment 2 as amended was passed.

[2:40:21 PM](#)

CO-CHAIR GATTO brought attention to the amendment labeled 25-LS0561\K.2, Bullock, 3/21/07, and labeled this as Amendment 3.

REPRESENTATIVE KAWASAKI moved to adopt Amendment 3, which read:

Page 4, lines 9 - 10:

Delete "lease expenditures that may not be deducted"

Insert "costs that may not be treated as lease expenditures or claimed as a credit based on costs that may not be claimed as lease expenditures"

Page 4, line 10:

Delete "AS 43.55.165(e), as amended"  
Insert "AS 43.55.165(e)(19), as enacted"

Page 4, line 13, following "AS 43.55.020(a)":

Insert "before the effective date of this Act"

Page 4, line 15:

Delete "lease expenditures that may not be deducted"

Insert "costs that may not be treated as lease expenditures or attributable to a credit based on costs that may not be claimed as lease expenditures"

Delete "AS 43.55.165(e) as amended"

Insert "AS 43.55.165(e)(19), as enacted"

Page 4, following line 17:

Insert a new subsection to read:

"(c) Interest on an additional amount of tax due under (a) of this section or on the amount of the underpayment of an installment under (b) of this section does not begin to accrue until 90 days after the effective date of this Act."

CO-CHAIR GATTO objected.

CO-CHAIR JOHNSON objected.

[2:41:30 PM](#)

MR. JACKSON explained that Amendment 3 is drafted by Mr. Don Bullock, Division of Legal and Research Services, and is a technical change for the transitional language on Page 4 of HB 128. He noted that a memorandum from Mr. Bullock, Division of Legal and Research Services, dated April 4, 2007, is also included in the members' packets. He pointed out that page 3 of the memorandum explains that the amendment changes are "technical and not substantive corrections to the bill."

CO-CHAIR GATTO pointed out that the referenced amendment on page 3 of the memorandum, is labeled M.2.

MR. JACKSON explained that the amendment labeled K.2, currently in front of the committee, is identical to an earlier Senate bill amendment labeled M.2. He reported that he attached this earlier memorandum from Mr. Bullock that explains amendment M.2, as it is the identical explanation for amendment K.2.

[2:42:42 PM](#)

CO-CHAIR GATTO noted that Mr. Bullock is essentially saying "not substantive."

MR. JACKSON clarified that Mr. Bullock's memorandum is referring to page 1 of the amendment, not page 1 of the bill.

[2:44:15 PM](#)

CO-CHAIR GATTO withdrew his objection.

CO-CHAIR JOHNSON maintained his objection.

[2:44:35 PM](#)

REPRESENTATIVE ROSES asked for the effective date of the bill.

MR. JACKSON responded that page 4, line 20, of the bill states the effective date to be retroactive to April 1, 2006.

CO-CHAIR GATTO asked if the Senate version of the bill also included retroactivity.

MR. JACKSON said yes.

[2:45:33 PM](#)

REPRESENTATIVE ROSES asked to clarify that the amendment will now state "common negligence" instead of "gross negligence," will be retroactive to April 1, 2006, and will not charge interest until July 1, 2006.

MR. JACKSON explained that he misspoke, and the effective date is stated on page 4, line 21 of the bill, which is 90 days after the bill passes.

[2:46:24 PM](#)

REPRESENTATIVE ROSES asked to clarify that retroactivity is not being determined on the money due, but on the determination of negligence.

CO-CHAIR JOHNSON expressed his belief that the effective date is April 1, 2006, and that the interest begins to accrue 90 days later.

[2:47:08 PM](#)

MR. IVERSEN explained that the 90-day provision is coordinated with transition provisions of the PPT to allow companies time to adjust to the bill. He said that prior to 2007 all the payments were made under the Economic Limit Factor (ELF). The payments

are not accruing interest under the Production Profits Tax (PPT).

CO-CHAIR JOHNSON asked when the interest will start accruing if this bill passes.

MR. IVERSEN replied that interest will begin 90 days after the bill passes.

[2:49:27 PM](#)

REPRESENTATIVE SEATON offered his belief that the retroactive date is only for Section 1 of the bill.

CO-CHAIR GATTO agreed with Representative Seaton.

[2:50:23 PM](#)

CO-CHAIR JOHNSON withdrew his objection to Amendment 3.

There being no objection, Amendment 3 was passed.

CO-CHAIR GATTO clarified that HB 128 requires five votes to report it from the committee.

[2:50:50 PM](#)

REPRESENTATIVE SEATON moved to adopt Conceptual Amendment 4, as follows:

Page 2, line 3:

Insert "(8) costs incurred as a result of an action or inaction in violation of regulations or procedures adopted by the pipeline safety integrity organization or other appropriate agency."

Re-number accordingly.

REPRESENTATIVE SEATON explained that it is unclear whether a violation of the PSIO regulations will fall under willful misconduct. He expressed his desire for regulations that clarify both operations and the penalties for violation of the regulations.

[2:53:19 PM](#)

REPRESENTATIVE WILSON objected to Conceptual Amendment 4.

REPRESENTATIVE SEATON restated Conceptual Amendment 4.

REPRESENTATIVE WILSON removed her objection.

There being no objection, Conceptual Amendment 4 was passed.

[2:54:28 PM](#)

CO-CHAIR JOHNSON moved to adopt Amendment 5, as follows:

Page 4, line 20:  
Delete all material

CO-CHAIR GATTO objected.

CO-CHAIR JOHNSON explained that he is deleting the retroactivity clause.

[2:55:00 PM](#)

REPRESENTATIVE GUTTENBERG asked for clarification of the intent.

CO-CHAIR JOHNSON explained that the regulations to be drafted by DOR and PSIO will still allow collection of any funds.

[2:56:12 PM](#)

REPRESENTATIVE ROSES said that deductions are not allowed for negligence. This bill lowers the burden of proof for negligence. He emphasized that he has a serious problem with "reactive" legislation as well as "retroactivity," as he doesn't support a change to the rules after the fact.

A roll call vote was taken. Representatives Roses, Wilson, and Johnson voted in favor of Amendment 5. Representatives Guttenberg, Edgmon, Kawasaki, Seaton, and Gatto voted against it. Therefore, Amendment 5 failed by a vote of 3-5.

[2:59:46 PM](#)

REPRESENTATIVE SEATON stated that PPT has two goals: encourage investment and raise more money for the state. He said that encouraging investment requires certainty on investment, but that this bill allows a lot of risk, as no standard has been set. He reported that the definition of "improper maintenance" has not been tested in court and is not even contained in law.

He pointed out that it does not have to include negligence. He emphasized that changing the standard for the entire industry across Alaska, and removing the certainty for investment that is so critical for the PPT, goes against his feelings.

REPRESENTATIVE WILSON agreed with Representative Seaton.

[3:02:23 PM](#)

CO-CHAIR JOHNSON offered a synopsis of the subcommittee report. He said that there is a recommendation for this bill to go to House Judiciary Standing Committee because there are legal issues involved. He said that retroactivity is a concern, but the amendments solve some of those issues. He said that he supports the concept, but he offered his belief that a better job needs to be done with the definitions. He stressed that he does not want to sacrifice quality legislation for expediency.

REPRESENTATIVE GUTTENBERG said that the concern of the legislature is reflected by the number of co-sponsors on the bill. He ascertained that the oil industry makes every decision based on maximizing returns, and that no matter what is done, the oil industry will take the state to court. He expressed his belief that the committee owes it to the people of the state to move this bill from committee.

[3:06:02 PM](#)

CO-CHAIR GATTO offered his opinion, summarizing that the bill addresses the responsibility to monitor what is defined as a deduction against revenue, in order to protect the net tax.

A roll call vote was taken. Representatives Guttenberg, Edgmon, Kawasaki, and Gatto voted in favor of CSHB 128(O&G). Representatives Wilson, Seaton, Roses and Johnson voted against it. Therefore, CSHB 128(O&G) failed to be reported out of the House Resources Standing Committee by a vote of 4-4.

[3:07:32 PM](#)

CO-CHAIR GATTO announced that the committee may look at the subcommittee report and hear the bill again.

CO-CHAIR JOHNSON said that this bill has potential, but it needs some work, and he asked to hear the bill again.

[3:08:12 PM](#)

CO-CHAIR GATTO asked if Co-Chair Johnson will reconsider his vote if there is a referral to House Judiciary Standing Committee.

CO-CHAIR JOHNSON said that he will reconsider his vote.

REPRESENTATIVE ROSES said he will reconsider his vote, as well.

3:09:02 PM

REPRESENTATIVE GUTTENBERG moved to rescind the committee's action on CSHB 128(O&G).

CO-CHAIR JOHNSON objected and allowed that the Speaker of the House is the only person who can change the committee assignment for the bill.

REPRESENTATIVE GUTTENBERG withdrew his motion to rescind the vote.

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:10 p.m.