

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

November 4, 2007

10:21 a.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative Sharon Cissna  
Representative Les Gara  
Representative Max Gruenberg  
Representative Kyle Johansen  
Representative Mike Kelly  
Representative Beth Kerttula  
Representative Kurt Olson  
Representative Ralph Samuels

**COMMITTEE CALENDAR**

HOUSE BILL NO. 2001

"An Act relating to the production tax on oil and gas and to conservation surcharges on oil; relating to the issuance of advisory bulletins and the disclosure of certain information relating to the production tax and the sharing between agencies of certain information relating to the production tax and to oil and gas or gas only leases; amending the State Personnel Act to place in the exempt service certain state oil and gas auditors and their immediate supervisors; establishing an oil and gas tax credit fund and authorizing payment from that fund; providing for retroactive application of certain statutory and regulatory provisions relating to the production tax on oil and gas and

conservation surcharges on oil; making conforming amendments; and providing for an effective date."

- MOVED CSHB 2001(RES) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB2001

SHORT TITLE: OIL & GAS TAX AMENDMENTS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

10/18/07	(H)	READ THE FIRST TIME - REFERRALS
10/18/07	(H)	O&G, RES, FIN
10/19/07	(H)	O&G AT 1:30 PM HOUSE FINANCE 519
10/19/07	(H)	Heard & Held
10/19/07	(H)	MINUTE(O&G)
10/20/07	(H)	O&G AT 12:00 AM HOUSE FINANCE 519
10/20/07	(H)	Heard & Held
10/20/07	(H)	MINUTE(O&G)
10/21/07	(H)	O&G AT 1:00 PM HOUSE FINANCE 519
10/21/07	(H)	Heard & Held
10/21/07	(H)	MINUTE(O&G)
10/22/07	(H)	O&G AT 9:00 AM HOUSE FINANCE 519
10/22/07	(H)	Heard & Held
10/22/07	(H)	MINUTE(O&G)
10/23/07	(H)	O&G AT 9:00 AM HOUSE FINANCE 519
10/23/07	(H)	Heard & Held
10/23/07	(H)	MINUTE(O&G)
10/24/07	(H)	O&G AT 9:00 AM HOUSE FINANCE 519
10/24/07	(H)	Heard & Held
10/24/07	(H)	MINUTE(O&G)
10/25/07	(H)	O&G AT 10:00 AM HOUSE FINANCE 519
10/25/07	(H)	Heard & Held
10/25/07	(H)	MINUTE(O&G)
10/26/07	(H)	O&G AT 10:00 AM HOUSE FINANCE 519
10/26/07	(H)	Heard & Held
10/26/07	(H)	MINUTE(O&G)
10/27/07	(H)	O&G AT 2:00 PM HOUSE FINANCE 519
10/27/07	(H)	Heard & Held
10/27/07	(H)	MINUTE(O&G)
10/28/07	(H)	O&G AT 2:00 PM HOUSE FINANCE 519
10/28/07	(H)	Moved CSHB2001(O&G) Out of Committee
10/28/07	(H)	MINUTE(O&G)
10/29/07	(H)	O&G RPT CS(O&G) NT 4DP 1NR 2AM
10/29/07	(H)	DP: SAMUELS, NEUMAN, RAMRAS, OLSON
10/29/07	(H)	NR: DOOGAN
10/29/07	(H)	AM: KAWASAKI, DAHLSTROM

10/29/07 (H) RES AT 1:00 PM HOUSE FINANCE 519  
 10/29/07 (H) Heard & Held  
 10/29/07 (H) MINUTE(RES)  
 10/30/07 (H) RES AT 9:00 AM HOUSE FINANCE 519  
 10/30/07 (H) Heard & Held  
 10/30/07 (H) MINUTE(RES)  
 10/30/07 (H) RES AT 6:30 PM HOUSE FINANCE 519  
 10/30/07 (H) Heard & Held  
 10/30/07 (H) MINUTE(RES)  
 10/31/07 (H) RES AT 9:00 AM HOUSE FINANCE 519  
 10/31/07 (H) Heard & Held  
 10/31/07 (H) MINUTE(RES)  
 11/01/07 (H) RES AT 9:00 AM HOUSE FINANCE 519  
 11/01/07 (H) Heard & Held  
 11/01/07 (H) MINUTE(RES)  
 11/02/07 (H) RES AT 9:00 AM HOUSE FINANCE 519  
 11/02/07 (H) Heard & Held  
 11/02/07 (H) MINUTE(RES)  
 11/03/07 (H) RES AT 9:00 AM HOUSE FINANCE 519  
 11/03/07 (H) Heard & Held  
 11/03/07 (H) MINUTE(RES)  
 11/04/07 (H) RES AT 10:00 AM HOUSE FINANCE 519

**WITNESS REGISTER**

PAT GALVIN, Commissioner  
 Department of Revenue (DOR)  
 Juneau, Alaska

**POSITION STATEMENT:** During hearing on HB 2001, provided information and answered questions.

NANETTE THOMPSON, Unit/Tech Support  
 Central Office  
 Division of Oil & Gas  
 Department of Natural Resources (DNR)  
 Anchorage, Alaska

**POSITION STATEMENT:** During hearing on HB 2001, provided information and answered questions.

JULIE HOULE, Resource Evaluation  
 Central Office  
 Division of Oil & Gas  
 Department of Natural Resources (DNR)  
 Anchorage, Alaska

**POSITION STATEMENT:** During hearing on HB 2001, answered questions.

JOHN MESSENGER, Staff  
to Representative Beth Kerttula  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During hearing on HB 2001, provided information and answered questions.

STEVE PORTER, Consultant  
to the Legislative Budget and Audit Committee  
Alaska State Legislature  
Tehachapi, California

**POSITION STATEMENT:** During hearing on HB 2001, provided information and answered questions.

REPRESENTATIVE MAX GRUENBERG  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During hearing on HB 2001, provided information and answered questions.

DAN BRITTON, President  
Fairbanks Natural Gas  
Fairbanks, Alaska

**POSITION STATEMENT:** During hearing on HB 2001, answered questions.

REPRESENTATIVE MIKE KELLY  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During hearing on HB 2001, presented information and answered questions.

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

**POSITION STATEMENT:** During hearing on HB 2001, provided information and answered questions.

#### **ACTION NARRATIVE**

**CO-CHAIR CARL GATTO** called the House Resources Standing Committee meeting to order at [10:21:38 AM](#). Representatives Gatto, Johnson, Fairclough, Roses, Seaton, Wilson, Edgmon, Guttenberg, and Kawasaki were present at the call to order.

Also present were Representatives Cissna, Gara, Gruenberg, Johansen, Kelly, Kerttula, Olson, and Samuels.

HB 2001 - OIL & GAS TAX AMENDMENTS

[10:21:38 AM](#)

CO-CHAIR GATTO announced that the only order of business would be HOUSE BILL NO. 2001, "An Act relating to the production tax on oil and gas and to conservation surcharges on oil; relating to the issuance of advisory bulletins and the disclosure of certain information relating to the production tax and the sharing between agencies of certain information relating to the production tax and to oil and gas or gas only leases; amending the State Personnel Act to place in the exempt service certain state oil and gas auditors and their immediate supervisors; establishing an oil and gas tax credit fund and authorizing payment from that fund; providing for retroactive application of certain statutory and regulatory provisions relating to the production tax on oil and gas and conservation surcharges on oil; making conforming amendments; and providing for an effective date." [Before the committee was CSHB 2001(O&G), as amended on 11/3/07; left pending from 11/3/07 was the motion regarding whether to adopt Amendment 21.]

[10:22:12 AM](#)

REPRESENTATIVE EDGMON withdrew Amendment 21.

REPRESENTATIVE KAWASAKI requested that Amendment 22 be held for consideration after Amendment 44.

REPRESENTATIVE EDGMON withdrew Amendment 23.

[10:24:12 AM](#)

REPRESENTATIVE GUTTENBERG moved that the committee adopt Amendment 24, labeled 25-GH0014\L.74, Bullard/Bullock, 11/4/07, which read:

Page 23, following line 14:

Insert a new bill section to read:

"\* **Sec. 31.** AS 43.55.150(b) is amended to read:

"(b) If the department finds that a condition [THE CONDITIONS] in (a)(1), (2), or [AND] (3) of this section is [ARE] present, the department shall determine the reasonable costs of transportation,

using the fair market value of like transportation, the fair market value of equally efficient and available alternative modes of transportation, or other reasonable methods. Transportation costs fixed by tariff rates that have been adjudicated just and reasonable by [PROPERLY ON FILE WITH] the Regulatory Commission of Alaska or other regulatory agency shall be considered prima facie reasonable."

Renumber the following bill sections accordingly.

Page 31, line 25:

Delete "32 - 34, and 37"

Insert "33 - 35, and 38"

Page 31, line 27:

Delete "31, and 38"

Insert "32, and 39"

Page 32, line 31:

Delete "32 - 34, and 37"

Insert "33 - 35, and 38"

Page 33, line 2:

Delete "31, and 38"

Insert "32, and 39"

Page 33, line 20:

Delete "32 - 34, and 37"

Insert "33 - 35, and 38"

Page 33, line 21:

Delete "31, and 38"

Insert "32, and 39"

Page 33, line 22:

Delete "sec. 44"

Insert "sec. 45"

CO-CHAIR JOHNSON objected to Amendment 24.

The committee took an at-ease from 10:25 a.m. to 10:28 a.m.

REPRESENTATIVE GUTTENBERG restated his earlier motion to adopt Amendment 24.

CO-CHAIR JOHNSON restated his objection to Amendment 24.

REPRESENTATIVE FAIRCLOUGH objected to Amendment 24.

[10:28:36 AM](#)

REPRESENTATIVE GUTTENBERG moved to amend Amendment 24 to read as follows [original punctuation provided]:

Page 23, following line 14:

Insert new bill sections to read:

..."\***Sec. 31.** AS 43.55.150(a) is amended to read:

(a) For the purposes of AS 43.55.011 - 43.55.180, the gross value at the point of production is calculated using the reasonable costs of transportation of the oil or gas. The reasonable costs of transportation are the actual costs, except when the

(1) parties to the transportation of oil or gas affiliated;

(2) contract for the transportation of oil or gas **(A)** is not an arm's length transaction or **(B)** is not representative of the market value of that transportation; or [AND]

(3) method of transportation of oil or gas is not reasonable in view of existing alternative methods of transportation.

"\* **Sec. 32.** AS 43.55.150(b) is amended to read:

"(b) If the department finds that a condition [THE CONDITIONS] in (a)(1), (2), or [AND] (3) of this section is [ARE] present, the department shall determine the reasonable costs of transportation, using the fair market value of like transportation, the fair market value of equally efficient and available alternative modes of transportation, or other reasonable methods. Transportation costs fixed by tariff rates that have been adjudicated just and reasonable by [PROPERLY ON FILE WITH] the Regulatory Commission of Alaska or other regulatory agency shall be considered prima facie reasonable."

Renumber the following bill sections accordingly.

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Insert "33 - 35, and 38"

Page 33, line 21:  
Delete "31, and 38"  
Insert "32, and 39"

Page 33, line 22:  
Delete "sec. 44"  
Insert "sec. 45"

REPRESENTATIVE FAIRCLOUGH objected to the amendment to Amendment 24 for explanation purposes.

[10:29:25 AM](#)

REPRESENTATIVE GUTTENBERG referred to the memorandum accompanying Amendment 24 from [Alpheus Bullard], Legislative Counsel, Legal Services. He said Mr. Bullard had been unable to contact him regarding clarification so had drafted the amendment as best as possible. Representative Guttenberg stated that he had collaborated with the administration on this amendment and the amendment to Amendment 24 was necessary to make it work.

REPRESENTATIVE FAIRCLOUGH maintained her objection to the amendment to Amendment 24.

REPRESENTATIVE WILSON requested further explanation of the amendment to Amendment 24.

[10:30:07 AM](#)

REPRESENTATIVE GUTTENBERG said that Amendment 24, as written, would not work because [Mr. Bullard] had been unable to

communicate with the committee in order to make the amendment consistent and do what the committee wanted it to do.

CO-CHAIR GATTO stated that the amendment to Amendment 24 was mostly for reformatting purposes.

REPRESENTATIVE FAIRCLOUGH withdrew her objection to the amendment to Amendment 24.

There being no further objection, the amendment to Amendment 24 was passed.

[10:30:47 AM](#)

REPRESENTATIVE GUTTENBERG said Amendment 24 was needed because the Trans-Alaska Pipeline System (TAPS) had inflated its charges according to a decision by the Regulatory Commission of Alaska (RCA). The producers are using that inflated number, \$5 per barrel, to calculate their taxes. Amendment 24 would allow [DOR] to use a calculation that has already been adjudicated. Therefore, the department would be able to use the RCA numbers to do the calculation if it meets the tests as outlined in Section 31 [of Amendment 24, as amended].

[10:31:47 AM](#)

PAT GALVIN, Commissioner, Department of Revenue (DOR), explained that for royalty purposes [the state] is contractually obligated to use the tariff that has been reported and filed with the Federal Energy Regulatory Commission (FERC). However, for tax purposes, [the state] does not have a similar legal requirement and can base it upon what [DOR] believes would be the transportation costs. When the petroleum production profits tax (PPT) passed last year, he said, Section 31 was modified to the current language by changing "or" to "and". Thus, exceptions to the reported tariff can be made only when all three parts of the three-part test are met, rather than meeting any one of the three parts. It is a three-part test that will never be met, he continued because there are no existing alternative methods of transportation as contained in [paragraph] (3). Therefore, [the state] will always be stuck with whatever the filed tariff is. Amendment 24 would give DOR the authority to look at what is the reasonable cost of transportation rather than being bound by the tariff on file with a regulatory agency. Commissioner Galvin said the two sections would work together: Section 31 would make it a multi-part test where the actual [tariffs] would be used except when there is reason not to take them; and Section

32 would transfer in the "or" and it would become that test and DOR would no longer be required to use the tariff on file with a regulatory agency unless it has been adjudicated by that agency as just and reasonable. So, when there is an adjudicated tariff, DOR would use that; and when the tariff is only filed with an agency and is an agreement between parties or potentially affiliated parties, the department would have the authority to determine what the reasonable cost of transportation is.

[10:34:38 AM](#)

CO-CHAIR GATTO asked what procedure would be followed when the reasonable cost was challenged by the parties.

COMMISSIONER GALVIN replied that DOR would have the discretion to determine the appropriate method for establishing what is reasonable. [Amendment 24] would provide clarity for situations like what the state is in today with the TAPS tariff. In this particular case, he explained, the filed tariff of about \$5 [per barrel] was challenged by shippers. Both the RCA and an administrative law judge at FERC ruled that reasonable rates are about \$2. Yet, the state cannot rely upon those rulings to make a decision on what is the reasonable rate to allow for a deduction.

[10:35:31 AM](#)

REPRESENTATIVE FAIRCLOUGH inquired whether Amendment 24 affected the charges for intra-state, inter-state, or both.

COMMISSIONER GALVIN responded that it would affect both and that it would not matter either way. The only reason why the distinction exists right now, in the context of TAPS, is because of the dual jurisdiction that exists where FERC regulates the inter-state transport and RCA regulates the intra-state transport. In response to further questions from Representative Fairclough, Commissioner Galvin said there is litigation on [the tariff] for inter-state transportation. He stated that [Amendment 24] would treat all tariff issues, all transportation deductions, the same. The question is whether or not [DOR] is going to rely upon a filed rate or upon a determination of what is the reasonable cost. The current controversy that exists outside of this is isolated to the inter-state on TAPS. But, he continued, there will be similar issues associated with the rates for any of the pipelines providing transport.

10:37:02 AM

REPRESENTATIVE FAIRCLOUGH understood there is an approved FERC ruling for inter-state transportation costs.

COMMISSIONER GALVIN said the question is whether it would be considered approved - there is an agreement that is on file with FERC.

REPRESENTATIVE FAIRCLOUGH further understood that it is part of the inter-agency charges between the corporations that are in partnership on the pipeline and new producers coming onto the line.

COMMISSIONER GALVIN replied that it is part of the rate that the customers to the line have to pay.

10:37:34 AM

REPRESENTATIVE FAIRCLOUGH asked whether the challenge from RCA on the inter-state [tariff] is what is being litigated.

COMMISSIONER GALVIN answered that it is not a challenge by RCA. The RCA adjudicated the intra-state and came up with a different result, so the shippers have challenged the FERC rate and are using the RCA rate as part of their evidence. It is important to note, he continued, that the issue is what rate the shipper is allowed to deduct. It is not the rate that anybody is going to pay; the payment between parties is not affected. Rather, the issue is what the appropriate allowable rate is for deducting transportation costs. If the issue is isolated to TAPS, then the effect is that the owners of TAPS are going to have to pay a rate that [DOR] determines is the reasonable rate, not just the one that the owners have filed at FERC.

10:38:51 AM

REPRESENTATIVE FAIRCLOUGH inquired whether it is the state's assertion that deducting the FERC rate is allowing too high a deduction.

COMMISSIONER GALVIN replied yes, assuming that [DOR] had determined the reasonable rate would be lower than the currently deducted rate. If this change is not made, then [DOR] would be allowing companies to deduct more than what [DOR] would consider being reasonable.

[10:40:13 AM](#)

REPRESENTATIVE FAIRCLOUGH supported the administration trying to establish a reasonable rate, but submitted that it is a guess. "... We have a guess that is in federal law that isn't a guess per se, that supposedly they have backup information [to] document the FERC transportation, and that's what's being challenged," she said.

COMMISSIONER GALVIN responded that the question is "whether you believe the RCA ruling to be proper or not." The RCA ruling was an in-depth analysis of the economics of the line and what is filed is not based upon an economic analysis. What is on file is based upon a settlement of a royalty dispute. There was no federal analysis done, there was no federal backup to justify the rate that is on file. But the question comes down to what is the reasonable rate.

REPRESENTATIVE GUTTENBERG added that the RCA determination has been through adjudication process and the FERC has not.

[10:42:01 AM](#)

CO-CHAIR GATTO requested Nanette Thompson to address the preceding dialog.

NANETTE THOMPSON, Unit/Tech Support, Central Office, Division of Oil & Gas, Department of Natural Resources (DNR), said the RCA ruled that the allowable tariff should be considerably lower. That decision by the RCA was appealed to [Alaska] Superior Court and affirmed in 2006. The superior court's decision was appealed to the Alaska Supreme Court. The argument was held in March 2007 and a ruling is being awaited as to whether or not the RCA will be affirmed. After the state proceedings went forward, the owners of the pipeline adjusted their federal rates to compensate for what they had been required to reduce in their state rates, and they filed that with the FERC. That adjustment was protested at FERC and it had a separate proceeding. For FERC proceedings, cases are first referred to the National Association of Administrative Law Judges (NAALJ), and then the FERC decides whether or not it will adopt the NAALJ ruling. The NAALJ ruling came out earlier this year and it reached the same decision as did the RCA. Adoption of the NAALJ ruling by FERC is still pending. So, continued Ms. Thompson, the issue of whether or not the RCA correctly adjudicated the just and reasonable rate is under advisement in both the state and federal forums.

[10:43:54 AM](#)

CO-CHAIR GATTO requested Ms. Thompson's thoughts on the "adjudicated just and reasonable clause" within Amendment 24.

MS. THOMPSON said she believed the language adequately protected DOR's interests. She understood this was the same language adopted yesterday by the [Senate Judiciary Standing Committee (SJUD)]. She said she had suggested to that committee that the original language be modified because of the way tariff filings work. The owners of the pipeline file a tariff and then it is a filed rate. The process for protesting that rate comes after the filing. So, the shippers have to pay the protested rate until it is adjudicated. Thus, Amendment 24 would have the effect of only allowing a deduction for a rate that was truly adjudicated as just and reasonable, rather than simply a filed rate.

[10:45:41 AM](#)

REPRESENTATIVE FAIRCLOUGH supported the amendment in regard to allowing reasonable costs, but said she was concerned the state would be exposed to litigation if a third rate is picked while the current legal process is still ongoing.

COMMISSIONER GALVIN stated that Section 1 in [HB 2001, as introduced,] referenced the application of the statute of limitations such that when there was a regulatory ruling with a retroactive effective application, the taxpayer would be able to supply an amended tax return and the statute of limitations would then respond to that tax return. He said he thought the risk of ancillary litigation would be minimal because it would all center on the primary issue of that regulated rate and, by having this connection, the decision on that regulated rate would just roll into the tax issue.

MS. THOMPSON, in response to Co-Chair Gatto, said she believed Commissioner Galvin had answered correctly.

JULIE HOULE, Resource Evaluation, Central Office, Division of Oil & Gas, Department of Natural Resources (DNR), in response to Co-Chair Gatto, said she was not qualified to talk to the aforementioned issue.

[10:48:50 AM](#)

REPRESENTATIVE ROSES observed that this was not in either CSHB 2001(O&G) or ACES [HB 2001, as introduced]. He asked whether this was something forgotten in the original bill or something that had transpired afterward that necessitated this be added.

REPRESENTATIVE GUTTENBERG replied that he was working on this outside of the administration's interest and that he and the administration just happened to find a common point right here. So, it is a shared interest, he said.

COMMISSIONER GALVIN explained that this was not something the administration had included in the original bill; it came up through the interest of legislators. The administration was approached by a number of legislators, he said, "and this is our response to ... the concern that was brought to our attention."

[10:49:54 AM](#)

CO-CHAIR JOHNSON asked what would happen to that portion of a [taxpayer's] credit that was taken beyond the ruled amount if the system is left as it is and the state ends up being right.

COMMISSIONER GALVIN replied that the issue with the retroactivity would rest upon the decision and what had been appealed. He said he did not believe that the rate is under appeal - as it relates to the owners of the pipeline - and that he did not think this would be changed by the regulatory agency through this process. When discussing the difference between what is reasonable and what is actual, the question does not totally revolve around whether the regulatory agency is going to change the filed rate. He said the state faces multiple jurisdictions and multiple affected parties and this would establish a single method of determining what the appropriate deduction is. If a ruling affected a tariff that had already been paid, that taxpayer could come back with an amended filing. "It doesn't necessarily mean that it's going to result in the rate being brought to what we would consider to be the reasonable rate," he said.

CO-CHAIR JOHNSON said he was still unclear about what would happen with the excess credit.

COMMISSIONER GALVIN stated that it is a deduction that a taxpayer is taking based upon what is claimed to be the transportation costs.

[10:52:24 AM](#)

CO-CHAIR JOHNSON inquired whether the state would have a way to recoup the money, with interest, should a deduction be proven invalid through adjudication or some other process.

COMMISSIONER GALVIN responded yes. The taxpayer would have to file an amended return with the state if the regulatory agency ruled that the rate was improper. In further response to Co-Chair Johnson, Commissioner Galvin said that the state could recover the money if the rate that was paid was determined by the regulatory agency to be improper.

[10:53:30 AM](#)

CO-CHAIR JOHNSON asked if the state would be required to write a check to the taxpayer should the rate be determined inappropriate in the taxpayer's favor.

CO-CHAIR GATTO added that this would also apply if the rate is correct.

COMMISSIONER GALVIN stated that, under current law, the answer would be what the taxpayer's actual expenditures were. If adjudicated to have underpaid and forced by the regulatory agency to pay more, the taxpayer could seek a refund of overpaid taxes by filing an amended return that showed costs had increased for that fiscal year.

CO-CHAIR JOHNSON understood that there is, then, a mechanism in place for recovering the money.

COMMISSIONER GALVIN replied that the mechanism for recovering the money is not reliable in the sense that it is only a matter of what has been challenged. It is basically a situation of relying upon the owners of the pipeline to challenge themselves in order for that to be brought to bear in the manner described by Co-Chair Johnson. What [DOR] is saying is that it is not going to rely upon that situation.

[10:55:32 AM](#)

CO-CHAIR JOHNSON inquired whether it was thought that a taxpayer would not challenge something that the taxpayer deemed to be in its favor.

COMMISSIONER GALVIN stated that any determination as to what a reasonable rate is would have to be defended from potential

challenge. The question is whether [DOR] is going to rely upon a determination of what is reasonable or upon the rate filed by the taxpayer.

CO-CHAIR JOHNSON contended that what would be relied upon if Amendment 24 passed is [the state's] guess versus [the taxpayer's] guess versus what some court comes up with.

[10:56:41 AM](#)

REPRESENTATIVE SEATON pointed out that there are two different issues here. One issue is a settlement rate, a negotiated rate, that was filed for royalty purposes and this rate is now being applied as an expense against the net profits tax. This royalty settlement rate was filed with FERC but never adjudicated. The second issue is whether this negotiated royalty rate should be considered a just and reasonable rate for lease expenditure deductions from the petroleum profits tax (PPT), even if the settlement rate continues for royalty oil. He said the RCA has determined what a reasonable charge is [for royalty oil], but such a determination has not been undertaken by FERC. There is definitely nothing from FERC relating to PPT. He supported Amendment 24.

[10:58:41 AM](#)

REPRESENTATIVE ROSES asked how far back this would have an effect.

COMMISSIONER GALVIN said it would only affect the effective date of the bill.

REPRESENTATIVE ROSES gave a hypothetical example of a January 2008 effective date and inquired whether any returns filed in the past would be reviewed.

COMMISSIONER GALVIN responded that they would be based upon the existing law that has the three-part test and [DOR] would be primarily bound by the filed rate.

[10:59:27 AM](#)

REPRESENTATIVE ROSES asked whether it was correct that a taxpayer would file an amended return for additional deductions if the rate was re-determined.

COMMISSIONER GALVIN said correct.

REPRESENTATIVE ROSES understood that under the committee's actions of yesterday, the statute of limitations would be extended if a taxpayer filed an amended return. He inquired whether Amendment 24, coupled with yesterday's actions, would mean that returns could now be audited for up to six years after a rate re-determination.

COMMISSIONER GALVIN said he did not see a link between the two in terms of adding additional exposure. If a taxpayer was required to file an amended return because of an agency decision, [Amendment 24] would not add or subtract from past years' exposure to the risk of having to file an amended return.

[11:01:00 AM](#)

CO-CHAIR GATTO interjected that he thought the question was when did the clock start on an amended return.

COMMISSIONER GALVIN said the clock starts when the amended return is filed for the purposes of what is in the amended return.

CO-CHAIR GATTO interjected that it is just on the amended part and the rest of the return is back dated to when it was filed.

COMMISSIONER GALVIN stated that if there is a decision now that affects a past tax year, [Amendment 24] would not change the effect of having to do the amended return for that past tax year because it is a new rule that moves forward.

REPRESENTATIVE ROSES said this would depend on what is set as the effective date.

COMMISSIONER GALVIN responded correct.

REPRESENTATIVE ROSES commented that he thought there was some discrepancy over this and there would likely be considerable debate about it.

[11:01:59 AM](#)

REPRESENTATIVE WILSON inquired whether an amended return filed after the amendment's effective date would be subject to the amendment's provisions.

COMMISSIONER GALVIN explained that the date of the tax return is not controlling because the tax return reflects the taxes that are due for a particular period of time. Thus, a tax return filed in March [2008] for the calendar year 2007 tax will be under the existing law.

REPRESENTATIVE WILSON understood this means that it depends on what the laws were for the tax year that the paperwork is being used for.

COMMISSIONER GALVIN said yes, it would be what the effective law was during that tax year.

[11:03:57 AM](#)

REPRESENTATIVE FAIRCLOUGH noted that the question for her is the uncertainty of litigation. She said that under the current system there is a recouping mechanism that provides for the state to receive interest. This legislation would result in the state guessing at a number, she argued, and the state would be exposed to liability for payment of penalties should the taxpayer prevail in litigation. She hoped the state would use a number estimated from the RCA document.

CO-CHAIR JOHNSON asked what the amount of credit would be.

COMMISSIONER GALVIN replied that the difference between the FERC and RCA rates - relating just to the TAPS issue and not to any other rate - is approximately \$160 million.

CO-CHAIR JOHNSON submitted that passage of [Amendment 24] would result in a \$1.6 billion tax increase to the oil companies, at today's rate.

COMMISSIONER GALVIN said his staff is working on the numbers for the different changes being made to the bill.

[11:06:37 AM](#)

CO-CHAIR JOHNSON remarked that adding \$100 million here and \$1 billion there would quickly result in real taxes.

CO-CHAIR GATTO said he did not see [Amendment 24] as an additional tax, but rather a truing up of the correct charges. He guessed that the people paying those rates were aware that the rates were being challenged and have stashed money away for this purpose. Why should the rates be different for one drop of

oil in the pipeline that goes to a ship and one drop of oil in the pipeline that goes someplace else, he asked.

REPRESENTATIVE GUTTENBERG understood that the state and the producers are already under maximum exposure because it is going through the state court system after having been already decided by the RCA, and then FERC may or may not challenge it into federal court. What this boils down to is who determines what the calculation is on the tax - the state or the producers.

CO-CHAIR JOHNSON maintained his objection to Amendment 24.

A roll call vote was taken. Representatives Wilson, Seaton, Guttenberg, Edgmon, Kawasaki, and Gatto voted in favor of Amendment 24, as amended. Representatives Roses, Fairclough, and Johnson voted against it. Therefore, Amendment 24, as amended, was adopted by a vote of 6-3.

[11:10:25 AM](#)

REPRESENTATIVE GUTTENBERG moved that the committee adopt Amendment 25, labeled 25-GH0014\L.34, Luckhaupt/Bullock, 11/3/07, which read [original punctuation provided]:

Page 25, line 15, following "e":  
Insert "or (k)"

Page 29, following line 12:  
Insert a new bill section to read:

"\* **Sec. 34.** AS 43.55.165 is amended by adding a new subsection to read:

(k) A producer's lease expenditures with respect to oil and gas produced from each lease or property within a unit from which 1,000,000,000 BTU equivalent barrels of oil or gas have been cumulatively produced by the close of the most recent calendar year and from which the average daily oil and gas production during the most recent calendar year exceeded 100,000 BTU equivalent barrels shall be determined according to this subsection. A producer's lease expenditures for purposes of AS 43.55.160 shall be equal to the quotient obtained by dividing the producer's lease expenditures for each lease or property reported on the producer's tax return for 2006 by the total taxable production of each lease or property as reported on the producer's tax return for 2006, multiplied by the producer's total taxable production,

in BTU equivalent barrels, during the calendar year. Commencing January 1, 2009, for calendar year 2009 the quotient obtained in this subsection shall be increased by three percent. For each calendar year thereafter, the previous year's quotient shall be increased by three percent."

Renumber the following bill sections accordingly.

Page 30, following line 15:

Insert a new bill section to read:

"\* **Sec. 36.** AS 43.55.180(b) is amended to read:

(b) The department shall prepare a report on or before the first day of the 2011 regular session of the legislature on the results of the study made under (a) of this section, including recommendations concerning the amount of lease expenditures specified under AS 43.55.165(k) and [AS TO] whether any other changes should be made to this chapter. The department shall notify the legislature that the report prepared under this subsection is available."

Renumber the following bill sections accordingly.

Page 31, line 25:

Delete "32 - 34, and 37"

Insert "32 - 36, and 39"

Page 31, line 27:

Delete "38"

Insert "40"

Page 32, line 31:

Delete "32 - 34, and 37"

Insert "32 - 36, and 39"

Page 33, line 2:

Delete "38"

Insert "40"

Page 33, line 20:

Delete "32 - 34, and 37"

Insert "32 - 36, and 39"

Page 33, line 21:

Delete "38"

Insert "40"

Page 33, line 22:  
Delete "sec. 44"  
Insert "sec. 46"

CO-CHAIR JOHNSON objected to Amendment 25.

REPRESENTATIVE SEATON objected to Amendment 25.

The committee took an at-ease from 11:11 a.m. to 11:12 a.m.

REPRESENTATIVE GUTTENBERG said Amendment 25 had been a work in progress for several months and many of his colleagues had collaborated on it.

[11:12:47 AM](#)

REPRESENTATIVE GUTTENBERG restated his earlier motion to adopt Amendment 25.

CO-CHAIR JOHNSON restated his objection to Amendment 25.

REPRESENTATIVE GUTTENBERG said Amendment 25 would establish a fixed deduction of expenditures that applies only to the legacy fields. Unlike ACES [HB 2001, as introduced), CSHB 2001(O&G), and PPT where everything is fluid all the time, Amendment 25 would establish a set number and everything would have a place from which to build off of.

JOHN MESSENGER, Staff to Representative Beth Kerttula, Alaska State Legislature, described the PPT as being a very complicated and complex tax with a lot of ambiguity that results in controversy. He said Amendment 25 would provide that the lease expenditure deductions of a legacy field producer be a fixed number based upon the amount reported on the producer's 2006 tax return. Then, that amount would be adjusted annually by 3 percent. In 2011, the commissioner's report to the legislature on PPT would be required to include a recommendation as to how this deduction should be changed, if at all, going forward in the future.

[11:16:34 AM](#)

CO-CHAIR JOHNSON called a point of order. The committee is not dealing with PPT so there is no 2011 date, he stated.

CO-CHAIR GATTO inquired whether the annual 3 percent increase in the deduction would be compounded each subsequent year.

MR. MESSENGER responded that it would be compounding.

REPRESENTATIVE ROSES surmised this would mean that the allowable deductions for lease expenditures would be increased by 3 percent regardless of what the expenses actually were.

MR. MESSENGER said correct.

[11:17:23 AM](#)

REPRESENTATIVE ROSES related that in previous presentations the administration, along with every expert, testified that the reason the projected revenue stream under the current PPT fell short was because costs doubled. Mathematically that is a 100 percent increase; thus, under this scenario for 2007, [the producer] would be allowed to deduct 3 percent of that 100 percent increase. Does this mean that [the producer] would be expected to absorb the other 97 percent of the expenses, he asked.

MR. MESSENGER replied yes. Whatever was reported in 2006 could be deducted on the taxpayer's next return. It is essentially a standard deduction, a fixed number, that does not require auditing and adjustment. The benefit would be that it is fixed and both parties can go forward from there.

[11:18:48 AM](#)

REPRESENTATIVE ROSES requested that Mr. Porter be called forward to discuss this issue. He was concerned that [Amendment 25] takes the net process and turns it into a modified gross inside that net process.

REPRESENTATIVE SEATON understood that [Amendment 25] would still allow the capital to go forward; but lease expenditures are both capital and operating. Is this supposed to be limited to operating expenses, he asked.

MR. MESSENGER said it would affect the deduction which is a fixed number. Credits for capital expenditures would be taken on top of the deduction.

[11:19:54 AM](#)

REPRESENTATIVE SEATON asked where Representative Guttenberg intended to go with this. Rather than promoting capital expenditures to slow decline, he said, this would give a person in harvesting mode with no expenditures the same 3 percent deduction as a person having lots of expenditures. Therefore, it would give more percentage deduction to a harvester than to someone in a legacy field expending capital for infield drilling.

REPRESENTATIVE GUTTENBERG answered that capital expenditures would still be allowed on top of this. He said that there has been a lot of discussion about the efficiencies in the legacy fields and the way deductions are done and that he thought the 3 percent increase gave the producers a lot of wiggle room.

[11:21:26 AM](#)

CO-CHAIR GATTO inquired whether the intent is to give only a standard deduction with no option to itemize deductions.

REPRESENTATIVE GUTTENBERG said yes. There would be an escalator on top of that so [the deduction] would be increasing. The [DOR] commissioner would then make recommendations in 2011, the reporting date in PPT that is in statute.

[11:22:03 AM](#)

CO-CHAIR GATTO requested Mr. Porter to speak to the effects of Amendment 25.

STEVE PORTER, Consultant to the Legislative Budget and Audit Committee, Alaska State Legislature, explained DOR's methodology for calculating the PPT: value, minus capital and operating costs, times the tax, equals the taxable value. He said he thought that capital and operating costs are the deduction piece. The credit piece, which is at 20 percent of capital credits, is what [Representative Guttenberg and Mr. Messenger] have said would not be affected. The deductible capital and operating expenses would be fixed at a point in time by the method in [Amendment 25] and then [increased] 3 percent per year over the course of the future.

[11:23:05 AM](#)

CO-CHAIR GATTO surmised that this would be regardless of the actual expenditures.

MR. PORTER replied correct. He said that on the issue of operating expenses (opex) 3 percent per year is roughly what would be expected to occur, all things being equal. He gestured that oil prices are going up and stated that the problem is that this would affect the opex piece so that it would not flow smoothly within 3 percent. The capital expense (capex) issue would be exacerbated substantially, he continued. When the price of oil goes up, an individual taxpayer might spend \$150 million a year; and when the price of oil goes down, that taxpayer might reduce spending to \$5-\$10 million per year. Thus, he advised, the 3 percent did not have as clean of an effect on the capex side and a substantial deduction in the capital would be lost - the piece that [the state] really wants to encourage. The opex would not be quite as impacting, although it would still rise and fall.

[11:24:41 AM](#)

REPRESENTATIVE ROSES reiterated that [Amendment 25] appears to have the affect of taking a net system and modifying it so that a portion of it behaves like a gross. He presented a scenario in which a taxpayer's allowable deduction was \$150 million in expenses in 2010 and only \$5 million in expenses in 2011. Thus, in 2011, the taxpayer would receive a deduction of \$150 [million] increased by 3 percent. "So," he said, "if expenses actually went down we would basically be giving them the oil."

MR. PORTER pointed out that the 3 percent would be based on whatever happened in 2006 and that the number would be fixed whether or not [the taxpayer] was aggressive. If the taxpayer did not spend any more than that over time the 3 percent would probably be smooth; but, if expenditures decreased, then it is correct that [the state] would be giving away value.

[11:26:21 AM](#)

REPRESENTATIVE FAIRCLOUGH asked whether legacy fields paid a royalty.

COMMISSIONER GALVIN said yes. In further response to Representative Fairclough, he stated that the rate is roughly 12.5 percent.

REPRESENTATIVE FAIRCLOUGH inquired whether this is a flat rate such that it acts like a gross tax.

COMMISSIONER GALVIN responded yes, the only deduction is transportation expenses.

REPRESENTATIVE FAIRCLOUGH asked whether the administration supported Amendment 25.

COMMISSIONER GALVIN said no, not in its present form.

[11:27:38 AM](#)

CO-CHAIR JOHNSON asked how much more [Amendment 25] would bring into the treasury.

COMMISSIONER GALVIN answered that it would be indeterminate at this point for the reasons that were alluded to. If costs or investment went down, this would cost the state more because the deductions would be fixed at a higher rate than what was being experienced. If expenditures or investment went up, then it would result in bringing in more money because of the costs being fixed at a rate lower than what was being experienced.

[11:28:20 AM](#)

CO-CHAIR JOHNSON inquired whether there was a chance that this would encourage less production.

COMMISSIONER GALVIN replied that Amendment 25, as described, encapsulated both operating expenditures and capital investment. Therefore, it would cap the incentive for making capital investment at the rates that the state experienced last year.

CO-CHAIR JOHNSON stated that he was hesitant to do anything that could potentially reduce the amount of barrels going down the pipeline.

REPRESENTATIVE GUTTENBERG pointed out that [Amendment 25] would only affect the legacy fields. Explorers would still be covered under ACES [HB 2001, as introduced]. This was not designed to raise funds, he said, it was designed for the state to have a view of the operating costs. He acknowledged that money might be left on the table, but that until 2011 the state would be trading the money for an understanding of its oil patch.

[11:30:46 AM](#)

REPRESENTATIVE ROSES understood that the legacy fields are where 75-85 percent of all the potential oil lays and incentivizing

that is essential because it is much more expensive to extract due to the technology, heavier oil, and more production costs. He further understood that at the current rate of costs, it is estimated that it could cost nearly \$50 per barrel to extract that oil from the ground. He said if it was him he would not invest a dime if he was limited to 2006 costs at a 3 percent inflation rate and he knew that his costs would be far higher than this allowable amount.

MR. PORTER responded that a standard deduction might distort industry's decision making because industry might then choose to spend its money on lower cost exploration like in-fill drilling rather than higher cost exploration like the West Sak.

[11:34:00 AM](#)

REPRESENTATIVE ROSES asked what affect this would have on the progressivity piece that had already passed.

COMMISSIONER GALVIN guessed the effect would be a fixing of the cost portion of the margin calculation. A progressivity based upon a net or marginal trigger would - through this mechanism - fix the cost portion and result in the price becoming the primary driver of that margin because it would not slide if costs were going up or going down. The margin would not be based upon actual margin; rather, it would be based on the 2006 number and whatever the price change is.

CO-CHAIR GATTO agreed with Representative Roses.

[11:35:07 AM](#)

REPRESENTATIVE ROSES inquired whether he was correct in understanding that if actual deductions were disallowed and deductions were instead based on a 3 percent increase each year from 2006, the effect would be that the trigger point would occur earlier and the progressivity would go much faster.

COMMISSIONER GALVIN said this would be correct "in the situation where actual costs have gone up and we've fixed it low". [The administration] does not support the way this is structured, he advised, but is sympathetic to the ideal behind it - the ideal being the issue of the state moving into a net tax, DOR trying to get new auditors, and a sense of uncertainty with regard to what the public's expectation is. This is trying to capture some sense of seeing how things go for a couple of years before taking the "training wheels off" and letting it run. He said

that from his perspective [Amendment 25] would limit investments because it involves capital expenditures as well as operating expenditures. It would also create some issues in regard to valuation and if audits determined that the 2006 numbers were inaccurate then that would end up replicating itself for a number of years.

[11:37:08 AM](#)

CO-CHAIR GATTO surmised that this would decrease the requirement for additional auditors.

COMMISSIONER GALVIN said, "Only to the extent that we are not actually giving you a report in 2011 that reflects experience." In further response to Co-Chair Gatto, he said that [DOR] would still have to audit the capital expenditures because [the taxpayers] are getting a credit on that above and beyond this. Additionally, he assumed that the legislature would want to know the actual expenditures when it considers DOR's recommendations in 2011 and this would require auditing functions. Therefore, this would not substantially diminish the auditing; it would just eliminate the effect of it on the tax reviews.

[11:38:14 AM](#)

CO-CHAIR GATTO presumed that if this was put in place in November 2007, then in 2011 it would be a way for determining what the differences would have been in the tax collected.

COMMISSIONER GALVIN said sure.

CO-CHAIR GATTO commented that it would not be a difficult task to pick several returns and run them through 2010 and then generate a report.

REPRESENTATIVE ROSES said he hoped a decision was not being made based on whether or not additional auditors would be needed. He called the question.

CO-CHAIR GATTO responded that his auditor questions were rhetorical.

The committee took a momentary at-ease.

[11:39:51 AM](#)

CO-CHAIR GATTO announced that the committee would vote on whether to limit the debate on Amendment 25.

A roll call vote was taken. Representatives Roses, Fairclough, and Johnson voted in favor of the motion to limit the debate on Amendment 25. Representatives Seaton, Guttenberg, Edgmon, Kawasaki, Wilson, and Gatto voted against it. Therefore, the motion failed by a vote of 3-6.

REPRESENTATIVE GUTTENBERG stated that his reason for bringing Amendment 25 forward was to expose members to this big issue and have them develop an understanding of the topic through discussion because it would be coming up in other committees and on the floor. He said Amendment 25 had been drawn to CSHB 2001(O&G) prior to seeing the other amendments before the committee.

REPRESENTATIVE GUTTENBERG withdrew Amendment 25.

CO-CHAIR GATTO held Amendment 26, the replacement for Amendment 1 from Representative Seaton, for later consideration.

REPRESENTATIVE GUTTENBERG withdrew Amendment 27.

[11:47:36 AM](#)

REPRESENTATIVE GUTTENBERG moved that the committee adopt Amendment 28, labeled 25-GH0014\L.69, Cook/Bullock, 11/3/07, which read [original punctuation provided]:

Page 17, line 11:  
Delete "60"  
Insert "120 [60]"

Page 17, lines 14 - 17:  
Delete "if the applicant is required under AS 43.55.030(a) to file a statement on or before March 31 of the year following the calendar year in which the qualified capital expenditures or carried-forward annual loss for which the credit is claimed was incurred,"

Insert "[IF THE APPLICANT IS REQUIRED UNDER AS 43.55.030(a) TO FILE A STATEMENT ON OR BEFORE MARCH 31 OF THE YEAR FOLLOWING THE CALENDAR YEAR IN WHICH THE QUALIFIED CAPITAL EXPENDITURES OR CARRIED-FORWARD ANNUAL LOSS FOR WHICH THE CREDIT IS CLAIMED WAS INCURRED,]"

Page 17, line 18, following "filed":

Insert "for the calendar year in which the qualified capital expenditure or carried-forward annual loss for which the credit is claimed was incurred"

Page 21, line 21:

Delete "and"

Page 21, line 30, following "matters":

Insert "; and

(6) assess against a person required under this section to file a report, statement, or other document a penalty, as determined by the department under standards adopted in regulation by the department, of not more than \$1,000 for each day the person fails to file the report, statement, or other document at the time required; the penalty is in addition to the penalties in AS 43.05.220 and 43.05.290 and is assessed, collected, and paid in the same manner as a tax deficiency under this title"

CO-CHAIR JOHNSON objected to Amendment 28 for purposes of discussion.

REPRESENTATIVE ROSES objected to Amendment 28.

[11:47:50 AM](#)

REPRESENTATIVE ROSES said he thought Amendment 7 that passed yesterday already accomplished the provision included on page 2 [paragraph (6)] of Amendment 28.

REPRESENTATIVE GUTTENBERG withdrew Amendment 28.

[11:48:44 AM](#)

REPRESENTATIVE GUTTENBERG moved that the committee adopt Amendment 29, labeled 25-GH0014\L.51, Kurtz/Bullock, 11/3/07, which read [original punctuation provided]:

Page 1, line 8, following "supervisors;":

Insert "establishing an oil and gas tax credit fund and authorizing payment from that fund;"

Page 17, line 6, following "person":

Insert "or obtain a cash payment under AS 43.55.028"

Page 17, following line 22:

Insert a new bill section to read:

"\* **Sec. 24.** AS 43.55.023(g) is amended to read:

(g) The issuance of a transferable tax credit certificate under (d) of this section or the **purchase of a certificate** [ISSUANCE OF A CASH REFUND] under **AS 43.55.028** [(f) OF THIS SECTION] does not limit the department's ability to later audit a tax credit claim to which the certificate relates or to adjust the claim if the department determines, as a result of the audit, that the applicant was not entitled to the amount of the credit for which the certificate was issued. The tax liability of the applicant under AS 43.55.011(e) and 43.55.017 - 43.55.180 is increased by the amount of the credit that exceeds that to which the applicant was entitled, or the applicant's available valid outstanding credits applicable against the tax levied by AS 43.55.011(e) are reduced by that amount. If the applicant's tax liability is increased under this subsection, the increase bears interest under AS 43.05.225 from the date the transferable tax credit certificate was issued. For purposes of this subsection, an applicant that is an explorer is considered a producer subject to the tax levied by AS 43.55.011(e)."

Renumber the following bill sections accordingly.

Page 18, following line 25:

Insert a new bill section to read:

"\* **Sec. 27.** AS 43.55 is amended by adding a new section to read:

**Sec. 43.55.028. Oil and gas tax credit fund established; cash purchases of tax credit certificates.** (a) The oil and gas tax credit fund is established as a separate fund of the state. The purpose of the fund is to purchase certain transferable tax credit certificates issued under AS 43.55.023 and certain production tax credit certificates issued under AS 43.55.025.

(b) The oil and gas tax credit fund consists of

(1) money appropriated to the fund, including any appropriation of the percentage provided under (c) of this section of all revenue from taxes

levied by AS 43.55.011 that is not required to be deposited in the constitutional budget reserve fund established in art. IX, sec. 17(a), Constitution of the State of Alaska; and

(2) earnings on the fund.

(c) The applicable percentage for a fiscal year under (b)(1) of this section is determined with reference to the average price or value forecast by the department for Alaska North Slope oil sold or otherwise disposed of on the United States West Coast during the fiscal year for which the appropriation of revenue from taxes levied by AS 43.55.011 is made. If that forecast is

(1) \$60 a barrel or higher, the applicable percentage is 10 percent;

(2) less than \$60 a barrel, the applicable percentage is 15 percent.

(d) The department shall manage the fund.

(e) The department may, on the written application of the person to whom a transferable tax credit certificate has been issued under AS 43.55.023(d) or a production tax credit certificate has been issued under AS 43.55.025(f), use available money in the oil and gas tax credit fund to purchase, in whole or in part, the certificate if the department finds that

(1) the calendar year of the purchase is not earlier than the first calendar year for which the credit shown on the certificate would otherwise be allowed to be applied against a tax;

(2) within 24 months after applying for the transferable tax credit certificate or filing a claim for the production tax credit certificate, the applicant incurred a qualified capital expenditure or was the successful bidder on a bid submitted for a lease on state land under AS 38.05.180(f);

(3) the amount expended for the purchase would not exceed the total of qualified capital expenditures and successful bids described in (2) of this subsection that have not been the subject of a finding made under this paragraph for purposes of a previous purchase of a certificate;

(4) the applicant does not have an outstanding liability to the state for unpaid delinquent taxes under this title;

(5) the applicant's total tax liability under AS 43.55.011(e), after application of all

available tax credits, for the calendar year in which the application is made is zero;

(6) the applicant's average amount of oil and gas taxable under AS 43.55.011(e) and produced each day during the calendar year preceding the calendar year in which the application is made was not more than 50,000 BTU equivalent barrels; and

(7) the purchase is consistent with this section and regulations adopted under this section.

(f) Money in the fund remaining at the end of a fiscal year does not lapse and remains available for expenditure in successive fiscal years.

(g) The department may adopt regulations to carry out the purposes of this section, including standards and procedures to allocate available money among applications for purchases the total amount of which exceeds the amount of available money in the fund.

(h) Nothing in this section creates a dedicated fund.

(i) In this section, "qualified capital expenditure" has the meaning given in AS 43.55.023."

Renumber the following bill sections accordingly.

Page 31, line 25:

Delete "Sections 24, 25, 32 - 34, and 37"

Insert "Sections 25, 26, 34 - 36, and 39"

Page 31, line 27:

Delete "31, and 38"

Insert "33, and 40"

Page 31, line 29:

Delete "Sections 26 and 27"

Insert "Sections 28 and 29"

Page 31, line 30:

Delete "sec. 26"

Insert "sec. 28"

Page 31, line 31:

Delete "sec. 27"

Insert "sec. 29"

Page 32, line 1:

Delete "sec. 29"

Insert "sec. 31"

Page 32, line 3:  
Delete "29"  
Insert "31"

Page 32, following line 3:  
Insert a new subsection to read:  
"(e) Section 24 of this Act applies to transferable tax credit certificates issued under AS 43.55.023(d), as amended by sec. 23 of this Act, and to transferable tax credit certificates issued under AS 43.55.023(d), in effect before January 1, 2008, for which a cash refund has not been issued under AS 43.55.023(f) before January 1, 2008."

Page 32, line 31:  
Delete "secs. 24, 25, 32 - 34, and 37"  
Insert "secs. 25, 26, 34 - 36, and 39"

Page 33, line 2:  
Delete "26, 27, 31, and 38"  
Insert "24, 27 - 29, 33, and 40"

Page 33, following line 10:  
Insert a new bill section to read:  
"**\* Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to read:  
TRANSITION: PENDING APPLICATIONS. If an application made under AS 43.55.023(f) is received by the Department of Revenue before January 1, 2008, and is still outstanding on that date, the application is considered to be an application under AS 43.55.028, enacted by sec. 26 of this Act."

Re-number the following bill sections accordingly.

Page 33, lines 19 - 20:  
Delete "Sections 24, 25, 32 - 34, and 37"  
Insert "Sections 25, 26, 34 - 36, and 39"

Page 33, line 21:  
Delete "26, 27, 31, and 38"  
Insert "24, 27 - 29, 33, and 40"

Page 33, line 22:  
Delete "sec. 44"

Insert "sec. 47"

CO-CHAIR JOHNSON objected to Amendment 29.

[11:49:04 AM](#)

REPRESENTATIVE GUTTENBERG requested Commissioner Galvin to explain Amendment 29.

COMMISSIONER GALVIN explained that DOR drafted this language, at Representative Guttenberg's request, to replace the [oil and gas tax] credit fund that had been included in the original bill. The language would ensure that the state had the ability to pay explorers the full value of their transferable credits.

CO-CHAIR JOHNSON withdrew his objection to Amendment 29.

[11:49:55 AM](#)

REPRESENTATIVE SEATON objected to Amendment 29 and asked for an explanation of lines 24-25 on page 2 of the amendment.

COMMISSIONER GALVIN said there needed to be a way to estimate from the tax revenue the amount of credit being generated by explorers. The amount will be different depending upon the price of oil because when the price of oil is higher a larger amount of tax is received than would be the case for a direct-line percentage. There is not a direct relationship between the price and the investment that results in the credit the following year. Thus, to prevent generating more money than needed, the percentage would be reduced when the price went above \$60.

[11:51:37 AM](#)

CO-CHAIR GATTO inquired whether this would be helpful, hurtful, or of no consequence.

COMMISSIONER GALVIN stated that it should be of no consequence because the money in the fund ends up being appropriated anyway. It was only a matter of identifying it for the purpose of putting it to the explorer credits.

[11:51:53 AM](#)

REPRESENTATIVE ROSES asked whether [Amendment 29] returned the language to that of [HB 2001, as introduced,] rather than CSHB 2001(O&G).

COMMISSIONER GALVIN answered yes.

REPRESENTATIVE ROSES said he supported the amendment with mixed emotion because if it passed the Alaska Retirement Management (ARM) Board would not have an opportunity to quickly recoup a lot of money to help pay off the liability for the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS).

[11:52:25 AM](#)

CO-CHAIR GATTO inquired whether this would be detrimental to the ARM Board even though Commissioner Galvin said it would be inconsequential.

REPRESENTATIVE ROSES replied no. He related that there is a bill [HB 48] currently moving through the legislature that would allow the ARM Board to purchase tax credits at a rate of 92 percent of their value. For example, the ARM Board would be able to purchase \$100 million of credits for \$92 million and then gain an \$8 million profit in one day by cashing the credits into the state for full value. If this were done 24 times a year for 3 years the liability for PERS and TRS would no longer amount to much, he said. Under [Amendment 29] the state would be setting up a fund and anyone wanting to sell credits would sell them to the state at 100 percent, so there was no reason to believe that an explorer would want to give up 8 percent just to make the ARM Board happy.

[11:53:47 AM](#)

CO-CHAIR JOHNSON stated that the aforementioned was exactly why he did not support the amendment even though he understood the reason for the amendment. The state's outstanding liability is huge, he said, and if the state is going to save the money then it should do something with it.

REPRESENTATIVE ROSES responded that while he appreciated the support for the ARM Board, he guessed that the state would be better off by giving that 8 percent to the explorer to generate more revenue so that the state could then take care of the PERS and TRS liability. Therefore, he supported the amendment in order to keep the pipeline full.

[11:54:57 AM](#)

REPRESENTATIVE SEATON moved Conceptual Amendment 1 to Amendment 29 that "would establish the fund, but would keep our \$25 million limit that is existing in current law for direct reimbursement". He said he was not opposed to establishing the fund in order that DOR could have the appropriations without having to ask for supplementals. In response to Co-Chair Gatto, he said he believed the affected language would be on pages 2 and 3 of Amendment 29, but that he would like to leave it up to Legal Services to put the language in the appropriate place.

[11:56:45 AM](#)

REPRESENTATIVE ROSES objected to Conceptual Amendment 1 to Amendment 29 for discussion purposes. He inquired why the [\$25 million] cap was removed from ACES [HB 2001, as introduced].

COMMISSIONER GALVIN answered that many of the explorers were generating credits far in excess of the \$25 million and the issue was being brought forward because of the experience that [DOR] was having in trying to transfer the amount in excess of the \$25 million. "That's the value that we're trying to ensure is preserved to the explorer through this program," he said.

[11:57:22 AM](#)

REPRESENTATIVE ROSES asked whether Commissioner Galvin was saying that this would hamper the ability for some explorers to capitalize that credit and hopefully use that money to do more exploration.

COMMISSIONER GALVIN said correct.

REPRESENTATIVE FAIRCLOUGH supported the cap in Conceptual Amendment 1 because one of the small companies had previously testified that the system was working well and the company had been able to sell its credits. Therefore, this free market scenario provided a cost savings for the state.

[11:58:03 AM](#)

REPRESENTATIVE GUTTENBERG inquired whether passage of Amendment 29 with Conceptual Amendment 1 would result in the companies applying for the credits in increments of \$25 million or less so

they could get reimbursed at a faster rate by not having to wait for appropriations from the legislature.

COMMISSIONER GALVIN stated that the limit of \$25 million is per year, so it would not change how the companies come forward. A company would get the \$25 million and would have to find a buyer for the rest.

[11:58:56 AM](#)

REPRESENTATIVE FAIRCLOUGH asked whether [DOR] had previously requested supplemental appropriations from the legislature for this account.

COMMISSIONER GALVIN replied that he thought DOR had estimated enough last year and did not need to request a supplemental, but that it was already looking like this year's estimate would be exceeded.

The committee took an at-ease from 11:59 a.m. to 12:07 p.m.

[12:07:45 PM](#)

REPRESENTATIVE SEATON withdrew Amendment 26.

REPRESENTATIVE FAIRCLOUGH said she learned from Commissioner Galvin during the at-ease that she had misspoken because under Representative Seaton's proposal [the state] would still be on the hook for exactly the same amount of credit as before. Therefore, she opposed [Conceptual Amendment 1 to Amendment 29].

REPRESENTATIVE WILSON inquired whether passage of [Conceptual Amendment 1] would allow for the ARM Board to still purchase credits.

CO-CHAIR GATTO asked whether it reduced the amount of money.

REPRESENTATIVE ROSES understood that under a \$25 million cap, the question would be whether the ARM Board would be able sell any purchased credits to the state. He said he did not know whether the \$25 million would trigger for the ARM Board or if it only triggers for that individual explorer. Therefore, he thought it was an area "we shouldn't go."

[12:09:49 PM](#)

REPRESENTATIVE SEATON noted that [Amendment 5] adopted by the committee [on 11/3/07] excludes the ARM Board from the cap and provides this exclusion under the oil statutes. However, he pointed out, the legislature must first pass [HB 48] to enable the ARM Board to become another vehicle for those transferable credits. The rest of the transferable credits would go through anyone that had a tax liability.

CO-CHAIR JOHNSON objected to Conceptual Amendment 1 to Amendment 29.

A roll call vote was taken. Representatives Guttenberg, Edgmon, Kawasaki, Wilson, Seaton, and Gatto voted in favor of Conceptual Amendment 1 to Amendment 29. Representatives Fairclough, Roses, and Johnson voted against it. Therefore, Conceptual Amendment 1 to Amendment 29 passed by a vote of 6-3.

[12:11:59 PM](#)

COMMISSIONER GALVIN announced that with Conceptual Amendment 1 the administration was withdrawing its support of Amendment 29 because "we don't need the fund if the cap is there."

REPRESENTATIVE SEATON said he believed establishing the fund would serve a definite purpose because it would provide a way to refund the capital credits without having to estimate the amount for the next year. This way the legislature could make an appropriation to the fund or the fund could generate money. He said that DOR still needed money to repurchase credits regardless of whether the payment went to the person putting in the certificates, the ARM Board, or producers that have a tax liability.

[12:13:58 PM](#)

REPRESENTATIVE ROSES requested a clarification of the administration's position.

COMMISSIONER GALVIN said he believed that the underlying committee substitute [CSHB 2001(O&G)] "doesn't change the existing law until the cap is in place regardless." [Amendment 29] would repeal the portion of existing law that has the cap and Conceptual Amendment 1 would ensure the cap remained. Thus, the cap would still be there regardless of whether this amendment passes. Commissioner Galvin clarified that in regard to the amount going into the fund, the percentages used in Amendment 29 are based upon a fully creditable fund. If capped

at \$25 million, not nearly as much money would be needed as would be provided under these percentages.

12:15:34 PM

REPRESENTATIVE SEATON inquired how the state's liability would be reduced for credits if the fund was capped at \$25 million in direct reimbursement, especially if the ARM Board was allowed to purchase and refund an unlimited amount of credits and major producers can reduce their tax liability 20 percent. That amount in those different venues should be exactly the same amount of credits as would be issued if they were sold to those third parties and refunded through the state.

COMMISSIONER GALVIN explained that when [credit] is sold to a third party the state does not issue any payment to the producer, it just comes in as a smaller check from the producer. The state only needs the fund when it is actually cutting a check to another party. He said he did not know how an ARM Board transfer would be done. There is no need for that much money if there is a cap of \$25 million per explorer per year, he advised.

12:17:40 PM

REPRESENTATIVE SEATON related that there is a Legal Services opinion stating that even though the refund amounts through the ARM Board would be unlimited, there would still need to be an appropriation; thus, it did not circumvent the appropriation process.

CO-CHAIR JOHNSON objected to Amendment 29, as amended.

A roll call vote was taken. Representatives Edgmon, Kawasaki, Wilson, Seaton, Roses, Guttenberg, and Gatto voted in favor of Amendment 29, as amended. Representatives Fairclough and Johnson voted against it. Therefore, Amendment 29, as amended, was adopted by a vote of 7-2.

REPRESENTATIVE GUTTENBERG withdrew Amendment 30.

12:19:54 PM

REPRESENTATIVE GUTTENBERG moved that the committee adopt Amendment 31, labeled 25-GH0014\L.60, Cook/Bullock, 11/3/07, which read [original punctuation provided]:

Page 17, line 24, through page 18, line 22:

Delete all material and insert:

"(i) For the purposes of this section,

(1) a producer's or explorer's transitional investment expenditures are the sum of the expenditures the producer or explorer incurred after March 31, 2001, and before April 1, 2006, that would be qualified capital expenditures if they were incurred after March 31, 2006, less the sum of the payments or credits the producer or explorer received before April 1, 2006, for the sale or other transfer of assets, including geological, geophysical, or well data or interpretations, acquired by the producer or explorer as a result of expenditures the producer or explorer incurred before April 1, 2006, that would be qualified capital expenditures, if they were incurred after March 31, 2006;

(2) a producer or explorer **that did not have commercial production of oil or gas from a lease or property in the state before January 1, 2008,** may elect to take a tax credit against a tax **levied by** [DUE UNDER] AS 43.55.011(e) in the amount of 20 percent of the producer's or explorer's transitional investment expenditures, but only to the extent that the amount does not exceed 1/10 of the producer's or explorer's qualified capital expenditures that **were incurred after March 31, 2006, and before January 1, 2008** [ARE INCURRED DURING THE CALENDAR YEAR FOR WHICH THE CREDIT IS TAKEN];

(3) a producer or explorer may not take a tax credit for a transitional investment expenditure

(A) for any calendar year after [THE LATER OF

(i)] 2013; [OR

(ii) THE SIXTH CALENDAR YEAR AFTER THE CALENDAR YEAR FOR WHICH THE PRODUCER FIRST APPLIES A CREDIT UNDER THIS SUBSECTION AGAINST A TAX DUE UNDER AS 43.55.011(e), IF THE PRODUCER DID NOT HAVE COMMERCIAL PRODUCTION OF OIL OR GAS FROM A LEASE OR PROPERTY IN THE STATE BEFORE APRIL 1, 2006;]

(B) more than once; or

(C) if a credit for that expenditure was taken under AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025;

(4) notwithstanding (d), (e), and (g) of this section, a producer or explorer may not transfer a tax credit or obtain a transferable tax credit

certificate for a transitional investment expenditure."

Page 31, line 25:

Delete "Sections 24, 25, 32 - 34, and 37"

Insert "Sections 25, 32 - 34, and 37"

Page 31, line 27:

Delete "31"

Insert "24, 31"

Page 32, line 31:

Delete "secs. 24, 25, 32 - 34, and 37"

Insert "secs. 25, 32 - 34, and 37"

Page 33, line 2:

Delete "26, 27, 31, and 38"

Insert "24, 26, 27, 31, and 38"

Page 33, lines 19 and 20:

Delete "Sections 24, 25, 32 - 34, and 37"

Insert " Sections 25, 32 - 34, and 37"

Page 33, line 21:

Delete "26, 27, 31, and 38"

Insert "24, 26, 27, 31, and 38"

CO-CHAIR JOHNSON objected to Amendment 31.

REPRESENTATIVE ROSES objected to Amendment 31.

[12:20:51 PM](#)

COMMISSIONER GALVIN stated that [Amendment 31] would restore the intent of [HB 2001, as introduced,] which was to eliminate credits for transitional investment expenditures (TIE) from the effective date of the bill forward. However, he noted, during testimony it was pointed out that some explorers would not have production until after the effective date, resulting in the possibility that these explorers would be unable to take advantage of the TIE credits during the effective time in which TIE credits were being provided because they are non-transferable. Amendment 31 would restore the elimination of TIE credits moving forward, but would allow the folks who did not have production during that effective time to retain their credits for use when they do have production.

12:22:35 PM

COMMISSIONER GALVIN, in response to Co-Chair Johnson, said the amount of money being talked about is \$700 million over another 5 years, or about \$180 million a year.

CO-CHAIR JOHNSON understood that this would be extracting another \$180 million a year from the oil companies.

COMMISSIONER GALVIN responded that that would be one way of looking at it.

CO-CHAIR JOHNSON remarked that his math calculations now indicate that "we're at \$1.75 billion."

12:23:15 PM

COMMISSIONER GALVIN, in response to Co-Chair Gatto, said that Amendment 31 would preserve the credits that Pioneer Natural Resources Company ("Pioneer") had earned for the investments it made after PPT passed until the effective date, so the company would get the full value of those once it has production.

CO-CHAIR GATTO asked where the harm came from if this was helpful to Pioneer.

COMMISSIONER GALVIN said the harm was that CSHB 2001(O&G) allows the existing producers to continue to take TIE credits into the future and Amendment 31 would cut those off.

12:23:58 PM

REPRESENTATIVE SEATON stated that the only cost associated with progressivity is based on whether oil prices are above industry's anticipated price and thus in the windfall profit range. So, the caveat that needs to be made with TIE credits is that they are non-price sensitive. This distinction needs to be made, he said, because they are two different things. He agreed with the three year restriction in CSHB 2001(O&G) and, therefore, opposed Amendment 31.

CO-CHAIR JOHNSON maintained his objection to Amendment 31.

REPRESENTATIVE ROSES maintained his objection to Amendment 31.

A roll call vote was taken. Representatives Wilson, Edgmon, Kawasaki, and Guttenberg voted in favor of Amendment 31.

Representatives Fairclough, Roses, Seaton, Johnson, and Gatto voted against it. Therefore, Amendment 31 failed by a vote of 4-5.

[12:26:04 PM](#)

REPRESENTATIVE EDGMON moved that the committee adopt Amendment 32, labeled 25-GH0014\L.44, Chenoweth/Bullock, 11/3/07, which read [original punctuation provided]:

Page 1, line 7, following "**surcharges;**":

Insert "**prohibiting a producer or explorer from receiving tax credits if certain judgments are not satisfied and requiring, as a condition of receiving the tax credits, deposit of the amount of certain unpaid judgments and certain interest on those judgments in the registry of the court during an appeal;**"

Page 18, following line 25:

Insert a new bill section to read:

"\* **Sec. 26.** AS 43.55 is amended by adding a new section to read:

**Sec. 43.55.028. Exceptions to tax credits.** (a) A producer or explorer may not take a tax credit under AS 43.55.023, 43.55.024, or 43.55.025 if a state court or a federal court that has subject matter jurisdiction has entered a judgment in an amount greater than \$100,000 against the producer or explorer, the producer or explorer has not satisfied the judgment, and the judgment concerns a matter having connections with this state that are sufficient to satisfy constitutional jurisdictional requirements.

(b) Notwithstanding (a) of this section, the producer or explorer may receive a tax credit described in (a) of this section if

(1) the judgment is appealed but the appeal has not been decided; and

(2) the producer or explorer deposits into the registry of the court where the judgment was entered or the appeal is pending, in the form of cash, bond, or other security,

(A) the full amount of the judgment; and

(B) post-judgment interest on the judgment amount described in (A) of this paragraph; notwithstanding another provision of law, the post-judgment interest rate on a judgment the amount of

which is deposited under (a) of this paragraph is equal to the rate of return on the producer's or explorer's capital as shown on the producer's or explorer's quarterly earnings report."

Renumber the following bill sections accordingly.

Page 31, line 25:

Delete "32 - 34, and 37"

Insert "26, 33 - 35, and 38"

Page 31, line 27:

Delete "31, and 38"

Insert "32, and 39"

Page 31, line 29:

Delete "Sections 26 and 27"

Insert "Sections 27 and 28"

Page 31, line 30:

Delete "sec. 26"

Insert "sec. 27"

Page 31, line 31:

Delete "sec. 27"

Insert "sec. 28"

Page 32, line 1:

Delete "sec. 29"

Insert "sec. 30"

Page 32, line 3:

Delete "29"

Insert "30"

Page 32, line 31:

Delete "32 - 34, and 37"

Insert "26, 33 - 35, and 38"

Page 33, line 2:

Delete "26, 27, 31, and 38"

Insert "27, 28, 32, and 39"

Page 33, lines 19 - 20:

Delete "32 - 34, and 37"

Insert "26, 33 - 35, and 38"

Page 33, line 21:  
Delete "26, 27, 31, and 38"  
Insert "27, 28, 32, and 39"

Page 33, line 22:  
Delete "sec. 44"  
Insert "sec. 45"

CO-CHAIR JOHNSON objected to Amendment 32.

CO-CHAIR ROSES objected to Amendment 32.

[12:26:15 PM](#)

REPRESENTATIVE EDGMON explained that Amendment 32 would require any producer or explorer against which a judgment had been levied in an amount greater than \$100,000, vis-à-vis an Alaskan entity, to deposit the amount of that judgment into the court registry in order to be eligible for the tax credit provisions of HB 2001. He requested that Representative Gruenberg be allowed to explain the amendment details.

CO-CHAIR GATTO inquired whether "certain" judgments included the "biggest-of-the-biggest" judgments as well as little judgments.

REPRESENTATIVE EDGMON said that was his understanding.

[12:27:24 PM](#)

REPRESENTATIVE MAX GRUENBERG, Alaska State Legislature, stated that Amendment 32 would require that to take advantage of the tax credits in the bill, the judgment debtor, pending the appeal, would have to put the money or a bond or other security in the registry of the court. Secondly, the interest, the amount that it would draw pending the outcome of the appeal, would be the rate of return on the producer's or explorer's capital as shown on the producer's or explorer's quarterly earnings report. This would prevent a company from unjustly enriching itself with the plaintiff's money and this is a well recognized legal principle, he said. There is no reason that a company should be able to use somebody else's money to go into their own pockets. The reason is because the rate of interest on pending appeal judgments is at prime plus three percent which is about seven percent. This remedy is fashioned from a federal district court case in Miami, he said. The name of the case is [Allapattah Services, Inc. v. Exxon Mobil Corp. ("Exxon")], the cite is 372 Federal Supplement 1344, pages 1374-1377, from the

southern district of Florida in 2005. According to the documentation in the published opinion, Exxon's own published reports showed it was earning 23.8 percent on the money at that time. Under Florida law [Exxon] was only paying 8 percent and on punitive damages under federal law only 3 percent, a spread of about 16 percent. That spread would have been about 17 percent under Alaska law, Representative Gruenberg noted. Thus, in four and one-half years, just from the use of that money, the company would have completely paid for the judgment, so it would not cost the defendant corporation one dime. "And after that, they would be reimbursed for their attorney's fees and after that just nothing but profit," he said. "This would prevent that by sequestering the money and whoever gets the judgment would get the earnings on that. And if it were reversed by the appellate court, then the company would get to keep its earnings. And if it were affirmed in part and reversed in part, the amount of money would be divided, so it's perfectly fair."

[12:31:40 PM](#)

REPRESENTATIVE GRUENBERG summarized what Amendment 32 would do: 1) it would prevent unjust enrichment by the corporation; 2) it would prevent the corporation from using the plaintiff's own money to pay for the judgment and the costs of defense; and 3) it would speed up the settlement and stop unnecessary litigation. He pointed out that when Judge Gold came down with the decision in the Allapattah case, Exxon immediately settled the case.

CO-CHAIR GATTO asked whether [Amendment 32] would apply to insurance companies.

REPRESENTATIVE GRUENBERG said it would only apply to companies that are entitled to the credits under [HB 2001]. "This is an area of the law that is logically unfair," he said. "Why should a defendant be able to use the plaintiff's own money to pay not only the cost of the judgment but the cost of their own defense, and drag the thing out and tie up the costs for literally decades," he asked.

[12:33:21 PM](#)

CO-CHAIR JOHNSON stated that while he understood what was trying to be done, he had a problem with it. The court system in our country allows for the due process to work through, even if it is cumbersome and takes awhile, he opined. He said he did not like what was happening with Exxon, but that he believed Exxon

had the same right to the court system as did every citizen and that this was a form of execution prior to receiving due process. As far as "using someone else's money" - when there is a settlement that goes into an escrow account, whose money is that, he asked.

[12:35:12 PM](#)

REPRESENTATIVE GRUENBERG responded that the purpose of Amendment 32 is to seek justice and fairness. It is fair because all it does is put the money in the registry of the court, it does not give it to the plaintiff's until the final court makes the determination. The distinction is that the court did not decide that the money was owed from that moment forward, it decided that the money was owed from what happened before. The event occurred before the lawsuit was ever filed and that is when the wrong was committed. In this case, he said, the event occurred on the day of the original judgment and this determined whose money it was. It may have taken awhile to adjudicate it, but all the while that money belonged to the plaintiff's. This just says that it is unfair for the defendant to earn interest and appreciation on that money because it was not the defendant's. Thus, this amendment seeks fairness, he opined.

CO-CHAIR JOHNSON disagreed with Representative Gruenberg's opinion.

The committee took an at-ease from 12:37 p.m. to 12:39 p.m.

[12:39:20 PM](#)

REPRESENTATIVE FAIRCLOUGH inquired whether the administration supported Amendment 32.

COMMISSIONER GALVIN said not at this time because it is a complex issue that could have unintended consequences. He presented an example of a situation "where a non-operator partner is facing not getting a credit for something, and they withhold their funding for something that our operator wants to do, it could put us in the situation where we don't get our ultimate goal which is to get the investment." More thought is needed before trying to fix a separate problem in this particular way, he advised.

REPRESENTATIVE FAIRCLOUGH stated her concern that there may be many unintended consequences by responding to one taxpayer's wrongdoing with the passage of a law that is retroactive. Every

one of Alaska's taxpayers has judgments that are in dispute, she said. Alaska would be moving into more of a dictator state if it precluded litigation on particular points of law by withholding credits that are supposed to be for incentivizing more barrels of oil into the pipeline, she opined. The Exxon litigation needs to be resolved, she said, but Amendment 32 could have unintended consequences.

[12:42:34 PM](#)

REPRESENTATIVE GUTTENBERG asked how much tax credit had been taken over the past few years by anyone having an outstanding judgment of over \$100,000.

COMMISSIONER GALVIN responded that the question was difficult to answer because DOR did not track judgments over \$100,000.

REPRESENTATIVE GUTTENBERG inquired whether the names of the top five applicants for tax credits were confidential.

COMMISSIONER GALVIN answered yes, this is the reason for "aggregated among three". There are approximately \$2 billion in investments that are qualified for capital investment credits and, thus, \$400,000 million in the credit line. Take away the explorers and the rest are primarily the incumbents, he said, "and the math is there." A large number of credits are being given under this system.

[12:44:38 PM](#)

REPRESENTATIVE EDGMON acknowledged the possibility of unintended consequences, but maintained the importance of the issue. The producer that is the root cause of this amendment is involved in billions of dollars of potential money to Alaskan residents, he said, some of whom are constituents of legislators sitting at this table. He requested that there be discussion on whether to move the \$100,000 to a higher number.

REPRESENTATIVE GRUENBERG said he thought the \$100,000 figure was just right, but that the number was up to the committee because the goal is to get these cases settled. He said it was unfortunate the administration had taken a position so early without looking at the result of the judge's actions - the settlement of a huge case. "It is not taking anything away, it's just putting it under the court's jurisdiction, it's just not letting the company unjustly enrich itself," he said. "If the only reason the company is willing to invest in Alaska is if

it can unjustly enrich itself at our citizen's expense, then there is something really wrong." He said he was unsure whether the commissioner really understood what the amendment did.

[12:48:24 PM](#)

REPRESENTATIVE ROSES asked whether raising the interest rate from 7 percent to potentially 27 percent could be interpreted as unjustly enriching the plaintiff. He further inquired whether Alaska's usury laws were different than Florida's.

REPRESENTATIVE GRUENBERG replied that usury is when the interest charged is in excess of that amount allowed by law. Thus, because this is specifically allowed by law, it is not usurious. He explained that when a person loans money, it belongs to the person loaning the money on the date that it is due. Any money earned on that also belongs to the person who loaned the money. By the same token, if a person was damaged in a tort sense, the damage as a matter of law is due from the date the injury occurs, and the [defendant] would not have a right to the earnings on that money after the injury had occurred. Amendment 32 does not go back that far, he said, it only goes back to the date that the judgment was entered by the court.

[12:50:52 PM](#)

REPRESENTATIVE ROSES described a hypothetical example of a person not being repaid a loan who goes to the legislative and judicial systems to have a bill passed disallowing the borrower from receiving his/her Permanent Fund Dividend (PFD) until the loan was repaid. The person making the loan could then go to court and have the PFD garnished. That is different, he said, than saying an entity is not going to be entitled to something that it is currently entitled to until it satisfies the judgment.

REPRESENTATIVE GRUENBERG agreed that they are two different things. One is a method of collecting the judgment or garnishment, he said, and the other is about whose money it is. In the case of the garnishment, the PFD belongs to the borrower because he/she is the resident and applied for it, and the person making the loan has a legal right to execute on that money to satisfy the judgment. That is different than claiming to have the right to keep the earnings on that money. Judge Gold was the first person who really recognized that.

[12:52:23 PM](#)

REPRESENTATIVE ROSES noted that the reason for [Amendment 32] was to expedite the judgment so that Alaskan citizens who were damaged could receive the money they are entitled to, along with the interest being referred to. However, he contended, withholding the credits until the judgment was satisfied would disincentivize more drilling and putting more oil into the pipeline, thus turning things around and harming the very people for whom the resolution was sought.

REPRESENTATIVE GRUENBERG answered no, because the money was not being taken away from anyone; it was just putting it under the jurisdiction of the court.

[12:53:37 PM](#)

REPRESENTATIVE ROSES argued that the reason credits are in the bill is to incentivize exploration by producers that are also exploring. Exploration leads, hopefully, to more production of product. If withholding those credits caused one more well not to be drilled, it could jeopardize future revenue to the state and to the Permanent Fund and thereby harm in some smaller way the very people the legislation was trying to make whole.

REPRESENTATIVE GRUENBERG responded no, because [legislators] would not be making that decision, it would be the producers deciding that they would rather not drill than give up the use of money that does not belong to them. Making Alaskans whole should be encouraged and then they can drill.

REPRESENTATIVE ROSES submitted that it does not matter whether the decision not to drill is made by the [legislature] or the producers, the fact of the matter is that if wells are not drilled, it is a potential harm to the state's treasury and every citizen in the state. He agreed that the situation trying to be resolved is despicable, but he feared it would create other problems in the process.

[12:56:02 PM](#)

REPRESENTATIVE GUTTENBERG moved Conceptual Amendment 1 to Amendment 32 "to line 13, third word, delete \$100,000 and add \$10 million."

CO-CHAIR JOHNSON objected to Conceptual Amendment 1 to Amendment 32.

REPRESENTATIVE SEATON objected to Conceptual Amendment 1 to Amendment 32.

[12:56:30 PM](#)

REPRESENTATIVE GUTTENBERG stated that he was making Conceptual Amendment 1 because there is no way to know where these levels of judgment are, based upon who the producers are, because of the confidentiality issues. He did not want to trap anybody in unintended consequences.

REPRESENTATIVE ROSES appreciated what was trying to be done, but remained apprehensive about possible unintended consequences.

[12:58:27 PM](#)

REPRESENTATIVE SEATON remarked that there are unintended consequences of the system in place right now, those unintended consequences being that it pays to keep appealing a judgment when the internal rate of return is greater than the settlement that would be paid. What has not been considered, he opined, is that this would have a positive effect regarding the state's numerous lawsuits against oil companies over TAPS and other issues that have been dragging on for many years because the internal rates of return are high enough to pay off the judgments. He supported [Amendment 32] "for the Exxon Valdez portion", but said it was more important to consider the lawsuits that are going to be generated under the system of a net profits tax. "When we win those lawsuits, we don't want those to be appealed and appealed and appealed, we want them settled," he declared. He said he supported [Amendment 32] in order to expedite the legal process.

[1:01:39 PM](#)

CO-CHAIR GATTO said he firmly supported [Amendment 32] because "it's easy for big people to push around little people." When corporations out-earn the State of Alaska by ten to one, the state becomes a "little person".

REPRESENTATIVE FAIRCLOUGH accepted the higher number in Conceptual Amendment 1 as a way to mitigate the damage should [Amendment 32] pass. She remained concerned, however, because the higher number was just being pulled out of the air.

[1:04:40 PM](#)

CO-CHAIR JOHNSON expressed his concern about the disconnect regarding investment brought up by Representative Roses. He also feared that raising the number to \$10 million would get into the aspect of equal protection under the law because it was so narrow. "How many \$10 million lawsuits are out there," he asked.

REPRESENTATIVE GRUENBERG responded that one of the reasons the amendment was crafted like this was to avoid equal protection problems. He agreed that raising the number really high could run into that problem. He said he would feel better if it was \$1 million or less.

[1:06:38 PM](#)

REPRESENTATIVE FAIRCLOUGH warned that this issue had not gone through the appropriate process to avoid unintended consequences. If this bill were going through a regular session process, she said, it would be assigned to the House Judiciary Standing Committee where experts could address equal protection under the law and unjust enrichment, and the public could comment and be involved. She acknowledged the importance of taking the opportunity to address the "Exxon litigation issue" so that Alaskans know their legislature understands their frustration. She said she would be voting for the highest number she could get and then not vote for the amendment in its entirety.

[1:08:18 PM](#)

REPRESENTATIVE GUTTENBERG withdrew Conceptual Amendment 1 to Amendment 32. About 2500 Alaskans have been screaming pretty loud, he said.

REPRESENTATIVE GUTTENBERG moved Conceptual Amendment 2 to Amendment 32 "at \$1 million in the same place, line 3, deleting \$100,000 and inserting \$1 million."

REPRESENTATIVE ROSES objected to Conceptual Amendment 2 to Amendment 32.

REPRESENTATIVE FAIRCLOUGH objected to Conceptual Amendment 2 to Amendment 32.

[1:08:48 PM](#)

REPRESENTATIVE ROSES stated that his discomfort remained the same regardless of the amount. There are many issues and many overlaps that have not been considered and the impacts are unknown. He said he supported the concept 100 percent, but remained fearful that other problems would arise. He opposed Conceptual Amendment 2 as well as Amendment 32.

CO-CHAIR GATTO offered his concern over the legality of either \$100,000 or \$1 million.

CO-CHAIR JOHNSON called the question on Conceptual Amendment 2 to Amendment 32.

A roll call vote was taken. Representatives Fairclough, Guttenberg, and Edgmon voted in favor of Conceptual Amendment 2 to Amendment 32. Representatives Wilson, Seaton, Roses, Kawasaki, Gatto, and Johnson voted against it. Therefore, Conceptual Amendment 2 to Amendment 32 failed by a vote of 3-6.

1:13:13 PM

REPRESENTATIVE SEATON commented that if this issue were to be addressed during regular session, it would open up the tax statute again. He therefore preferred to address it now.

CO-CHAIR GATTO said that in a regular session this would be assigned to the House Resources Standing Committee and the House Finance Committee. On the floor there are more than enough attorneys and there is "a legal department" to give an opinion. Although it has not run the realm, it does not make a significant difference to dispense with it here, he opined.

1:14:10 PM

REPRESENTATIVE FAIRCLOUGH disagreed. She said she thought that 100 percent of Alaskans would support this, but maintained that it was incumbent upon those elected to represent Alaskans to fairly balance the issues. This was not brought into discussion until after the House Resources Standing Committee's public hearing was closed, she noted, nor have industry taxpayers been able to comment on it.

REPRESENTATIVE EDGMON submitted that the entire exercise of crafting any bill is fraught with uncertainties or unintended consequences. There is no way to know for sure whether all the incentives and other provisions in [HB 2001] will actually result in inducing investment and increasing production, state

revenue, and employment opportunities, he opined. In said he thought that Amendment 32 would be approved by the people of Alaska if it was brought to them for a vote. While the Exxon Valdez Oil Spill may be the underpinning of this amendment, it is not the only case of protracted legal dispute and foot dragging. Therefore, he said, Amendment 32 is appropriate.

1:17:16 PM

REPRESENTATIVE ROSES inquired whether there was a way to ensure that the other partners in a project would not be harmed should one company in that partnership be disallowed its credits. Was there a way to disaggregate credits among each of the partners in a particular exploration for which the credit would be entitled, he asked.

REPRESENTATIVE EDGMON replied that such a scenario assumed the oil company was not going to comply with this.

COMMISSIONER GALVIN responded that each company in a partnership submits its tax returns separately from the other partners, therefore each company's credits are based on what it reports. Thus, there would be no direct affect on the other partners except that a taxpayer's non-receipt of credits might affect its investment decision which would then be a partnership issue.

1:19:19 PM

REPRESENTATIVE WILSON stated that zeroing in on one company could result in devastating effects to other companies. She therefore opposed Amendment 32.

CO-CHAIR JOHNSON said he was still concerned about equal protection because this narrowed things down to a very specific group of about half a dozen companies and half a dozen regions of the state. Regardless of the amount, he continued, the line was being crossed of not providing equal protection to all lawsuits and settlements of \$100,000. He said he was concerned about the constitutionality and wanted to see a legal opinion.

A roll call vote was taken. Representatives Seaton, Gutenberg, Edgmon, Kawasaki, and Gatto voted in favor of Amendment 32. Representatives Wilson, Roses, Fairclough, and Johnson voted against it. Therefore, Amendment 32 passed by a vote of 5-4.

The meeting was recessed at 1:22 p.m.

CO-CHAIR GATTO called the meeting back to order at [2:20:39 PM](#). Present at the call back to order were Representatives Guttenberg, Edgmon, Fairclough, Wilson, Seaton, Roses, Gatto, and Johnson. Representative Kawasaki arrived as the meeting was in progress.

REPRESENTATIVE GUTTENBERG withdrew Amendment 33.

REPRESENTATIVE GUTTENBERG requested Amendment 34 be considered at a later time.

REPRESENTATIVE GUTTENBERG withdrew Amendment 35.

CO-CHAIR GATTO announced that he was skipping Amendments 36 and 37 at Representative Kawasaki's request because new documents were being drafted.

[2:22:36 PM](#)

REPRESENTATIVE GUTTENBERG moved that the committee adopt Amendment 38, labeled 25-GH0014\L.71, Cook/Bullock, 11/3/07, which read [original punctuation provided]:

Page 1, following line 12:

Insert a new bill section to read:

"\* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. It is the intent of the legislature that provisions of this Act

(1) ensure a fair and equitable means of assessing and taxing Alaska's oil and gas resources;

(2) encourage the availability to Alaska's citizens of affordable gas produced, transported, and consumed within the state; and

(3) confirm by clarification the longstanding interpretation of AS 43.05.260 by the Department of Revenue through enactment of AS 43.55.075(b) in sec. 30 of this Act, relating to limitation of assessments for the production tax on oil and gas and conservation surcharges on oil."

Page 2, line 1:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Page 14, following line 2:  
Insert a new subsection to read:

"(q) Notwithstanding other provisions of this section, for a calendar year before 2022, the tax levied under this section for each 1,000 cubic feet of gas for gas produced from a lease or property outside the Cook Inlet sedimentary basin and used in the state may not exceed the amount of tax for each 1,000 cubic feet of gas that is determined under (j)(2) of this section."

Page 23, line 24, following "AS 43.55.170;":

Insert "this subparagraph does not apply to gas taxable under AS 43.55.011(q);"

Page 24, line 1, following "AS 43.55.170;":

Insert "this subparagraph does not apply to gas taxable under AS 43.55.011(q);"

Page 24, following line 13:

Insert a new subparagraph to read:

"(E) gas produced during a calendar year from a lease or property outside the Cook Inlet sedimentary basin and used in the state is the gross value at the point of production of that gas taxable under AS 43.55.011(e) and produced by the producer from that lease or property, less the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to that gas produced by the producer from that lease or property, as adjusted under AS 43.55.170;"

Page 24, line 22, following "AS 43.55.170;":

Insert "this subparagraph does not apply to gas subject to additional tax under AS 43.55.011(o);"

Page 24, line 30, following "AS 43.55.170;":

Insert "this subparagraph does not apply to gas subject to additional tax under AS 43.55.011(o);"

Page 25, line 13, following "AS 43.55.170":

Insert "i

(E) gas produced during a month from a lease or property outside the Cook Inlet sedimentary basin and used in the state is the gross value at the point of production of that gas taxable under

AS 43.55.011(e) and produced by the producer from that lease or property, less 1/2 of the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to that gas produced by the producer from that lease or property, as adjusted under AS 43.55.170"

Page 29, following line 12:

Insert a new bill section to read:

"\* **Sec. 35.** AS 43.55.165(h) is amended to read:

"(h) The department shall adopt regulations that provide for reasonable methods of allocating costs between oil and gas, between gas subject to AS 43.55.011(q) and other gas, and between leases or properties in those circumstances where the determination of the lease expenditures that are applicable to oil or to gas, that are applicable to gas subject to AS 43.55.011(q) or to other gas, or that are applicable to oil and gas produced from different leases or properties, requires an allocation of costs."

Renumber the following bill sections accordingly.

Page 31, line 25:

Delete "Sections 24, 25, 32 - 34, and 37"

Insert "Sections 25, 26, 33, 34, 36, and 39"

Page 31, line 27:

Delete "Sections 14 - 20, 31, and 38"

Insert "Sections 15 - 21, 32, 35, and 40"

Page 31, line 29:

Delete "Sections 26 and 27"

Insert "Sections 27 and 28"

Page 31, line 30:

Delete "sec. 26"

Insert "sec. 27"

Page 31, line 31:

Delete "sec. 27"

Insert "sec. 28"

Page 32, line 1:

Delete "sec. 29"

Insert "sec. 30"

Page 32, line 3:  
Delete "secs. 13 and 29"  
Insert "secs. 14 and 30"

Page 32, line 13:  
Delete "sec. 9"  
Insert "sec. 10"

Page 32, line 16:  
Delete "sec. 9"  
Insert "sec. 10"

Page 32, line 19:  
Delete "sec. 9"  
Insert "sec. 10"

Page 32, line 31:  
Delete "secs. 24, 25, 32 - 34, and 37"  
Insert "secs. 25, 26, 33, 34, 36, and 39"

Page 33, line 2:  
Delete "secs. 14 - 20, 26, 27, 31, and 38"  
Insert "secs. 15 - 21, 27, 28, 32, 35, and 40"

Page 33, lines 19 - 20:  
Delete "Sections 24, 25, 32 - 34, and 37"  
Insert "Sections 25, 26, 33, 34, 36, and 38"

Page 33, line 21:  
Delete "Sections 14 - 20, 26, 27, 31, and 38"  
Insert "Sections 15 - 21, 27, 28, 32, 35, and 40"

Page 33, line 22:  
Delete "sec. 44"  
Insert "sec. 46"

CO-CHAIR JOHNSON objected to Amendment 38.

[2:23:30 PM](#)

COMMISSIONER GALVIN stated, "We are the drafters of this in response to a request to deal with the in-state use issue." There is a desire to provide the same tax treatment to other in-state projects that is provided for gas that is produced within Cook Inlet, he explained. This amendment would provide Cook

Inlet tax treatment for gas projects taking place for in-state use.

REPRESENTATIVE SEATON moved Amendment 1 to Amendment 38 which read as follows [original punctuation provided]:

Page 1, line 21:

Insert "Page 13, line 23, through page 14,  
line 2:

Delete all material"

Page 2, line 7:

Insert "For purposes of this section, "used in the state" means delivered for consumption as fuel in the state, including as fuel consumed to generate electricity."

CO-CHAIR JOHNSON objected to Amendment 1 to Amendment 38.

[2:24:36 PM](#)

REPRESENTATIVE SEATON said that Amendment 1 to Amendment 38 delineates that gas produced in-state for use in-state as fuel, including fuel to generate electricity, shall receive the preferential treatment no matter where it is from.

COMMISSIONER GALVIN, in response to Representative Fairclough, explained that Amendment 1 to Amendment 38 would delete the language in CSHB 2001(O&G) that provides the Cook Inlet treatment to only a certain segment of the state. Thus, it would broaden the application of that special treatment. In further response to Representative Fairclough, he said that on page 1, line 21, of Amendment 38, the following words would be added by Amendment 1: "Page 13, line 23, through page 14, line 2: Delete all material". The language currently on line 21, page 1, of Amendment 38 would then slide down.

[2:28:16 PM](#)

REPRESENTATIVE SEATON added that the language of Amendment 1 could [instead] be inserted on line 20 [on page 1].

REPRESENTATIVE FAIRCLOUGH responded that she did not understand where the words [in Amendment 1] "Delete all material" tie into the amendment.

REPRESENTATIVE SEATON explained that the wording "Page 13, line 23..." would be inserted into Amendment 38, which would delete [subsection] (p) on page 13, line 23, through page 14, line 2, of CSHB 2001(O&G).

[2:29:22 PM](#)

COMMISSIONER GALVIN stated that all the material between the quotation marks in Amendment 1 would be added to Amendment 38. In response to Representative Fairclough and Co-Chair Gatto, Commissioner Galvin added that these words were being inserted so that when Amendment 38 passed those words would be executed and result in changing CSHB 2001(O&G). He specified that the second portion of Amendment 1 was intended to become part of subsection (q) at the top of page 2 of Amendment 38. Thus, the following words in Amendment 1 would become a part of subsection (q) of Amendment 38: "For the purposes of this section, 'used in the state' means delivered for consumption as fuel in the state, including as fuel consumed to generate electricity." This language, Commissioner Galvin continued, would provide the clarification that Representative Seaton wanted to ensure the inclusion of certain things while excluding liquefied natural gas (LNG) that was exported out of the state or a gas-to-liquids that was exported out of the state.

[2:31:20 PM](#)

CO-CHAIR JOHNSON inquired whether this would affect exports from the Kenai LNG Plant.

COMMISSIONER GALVIN responded no. In response to Representative Wilson, he stated that [the second portion of Amendment 1] would be inserted on page 2, line 7, of Amendment 38 before the words Page 23. He said it would be more accurate to say to insert this portion on line 5 after the word section; or, it could be inserted on line 6.

REPRESENTATIVE SEATON offered that Amendment 1 be conceptual so the drafters would know that the exact placement was not being dictated.

CO-CHAIR JOHNSON withdrew his objection to [Conceptual] Amendment 1 to Amendment 38.

[2:33:09 PM](#)

REPRESENTATIVE KAWASAKI objected to [Conceptual] Amendment 1 to Amendment 38. He said the legislative intent on page 1 of Amendment 38 might not match the second portion of the conceptual amendment. He inquired whether the purpose was to allow an electric producing company that built on top of a gas field to use the credits within the bill.

REPRESENTATIVE SEATON replied that when something was sold off of a lease it became taxable, so it was not the intent of this to allow a manufacturing or some other kind of facility to move [on top of a gas field]. Electricity being used on the lease falls under conditions of the lease terms and this would be the same for a diesel topping plant that is providing the diesel consumed on the leasehold. The purpose of this is for in-state use for non-industrial purposes, he said, but specifically excluding so that everyone knows that electric generation for use in the state is considered for this treatment for the gas.

[2:34:59 PM](#)

REPRESENTATIVE KAWASAKI asked whether a gas field owner could build an [electric producing] plant nearby and then use the credits from the gas producing field.

COMMISSIONER GALVIN answered that the credits allowed under the production tax are only those that are directly related to the production of the gas. Therefore, the credits would not be deductible under the production tax for gas used to power a nearby electric producing plant.

REPRESENTATIVE KAWASAKI withdrew his objection to [Conceptual] Amendment 1 to Amendment 38.

There being no further objection, [Conceptual] Amendment 1 to Amendment 38 was passed.

[2:35:56 PM](#)

REPRESENTATIVE SEATON moved Amendment 2 to Amendment 38 which read as follows [original punctuation provided]:

Page 2, line 2:  
Delete, "under"  
Insert, "by (e) and (o) of"

CO-CHAIR JOHNSON objected to Amendment 2 to Amendment 38.

REPRESENTATIVE SEATON explained that subsection (i) of this section addresses a separate tax on landowner royalties that does not apply to what is being done here. Therefore, the purpose of Amendment 2 to Amendment 38 is to look only at subsections (e) and (o) instead of all of the subsections of this section.

CO-CHAIR JOHNSON withdrew his objection to Amendment 2 to Amendment 38.

There being no further objection, Amendment 2 to Amendment 38 was passed.

[2:38:03 PM](#)

CO-CHAIR JOHNSON objected to Amendment 38, as amended, for purposes of discussion.

REPRESENTATIVE FAIRCLOUGH inquired how [Amendment 38, as amended,] would guarantee Alaskans a price sensitive structure. The rest of the state would need to be brought under the RCA to make sure this credit actually happens for the people of Alaska, she opined. The amendment would provide a credit or incentive for producers, explorers, and transporters, but it does not ensure that the public would see the actual benefit.

MS. HOULE stated that Kevin Banks could probably address this issue for DNR.

COMMISSIONER GALVIN responded that Representative Fairclough is exactly right because [Amendment 38, as amended,] would lower the production tax that a producer would pay, but the question would become whether or not that tax savings would get passed along the chain to the consumer. In the end it would be up to the utility regulators to ensure that this occurred. He said he believed that there are different levels of regulation taking place with utilities that may be affected by this in terms of the amount of regulation that covers them, but that this is a separate issue that his department does not deal with. "What we can do," he said, "is ... ensure that there isn't a higher production tax that is being paid by the producer that will result in the risk of that higher tax being passed along to the consumer." What is being done here is to ensure that the playing field is level at the start, but whether or not it remains there would be up to the regulations of the utilities.

[2:40:46 PM](#)

REPRESENTATIVE GUTTENBERG suggested that Dan Britton, President of Fairbanks Natural Gas (FNG), be brought forward to answer the question since a lot of this is built around FNG.

REPRESENTATIVE FAIRCLOUGH contended that it was inappropriate for Mr. Britton to answer because it was an unbalanced equation. Under the Cook Inlet "ring fencing" in Anchorage, the state ensures there is a balance for consumers by requiring rate studies, she said. The RCA needs to control a utility to ensure that any allowed credits are passed along to consumers.

[2:42:20 PM](#)

CO-CHAIR GATTO asked whether FNG is regulated by the RCA.

DAN BRITTON, President, Fairbanks Natural Gas, replied that FNG is a regulated gas utility that currently has an exemption from rate regulation that allows it some flexibility for adjusting rates that do not require specific [RCA] approval. He said he had a letter from FNG's legal counsel clarifying FNG's regulation status if the committee would like to enter that.

CO-CHAIR GATTO declined the offer. There is no way to ascertain or deliver a question [to the RCA], he said.

[2:42:55 PM](#)

REPRESENTATIVE WILSON surmised that [Amendment 38, as amended,] would allow one part of the state something that is not allowed to other parts of the state.

COMMISSIONER GALVIN replied that it is the opposite. Right now, one part of the state - Cook Inlet - enjoys a particular tax benefit that is not allowed in other parts of the state. Within Cook Inlet, he explained, not only are the gas consumers paying a lower passed-along rate, so are the electrical utilities. Additionally, half of the gas is being exported out of Alaska at a lower production tax rate. "What we are doing is recognizing that there is that favorable tax treatment being provided within Cook Inlet," he said, "and we're trying to ensure that that same treatment is available to other uses within the state outside of Cook Inlet."

[2:43:58 PM](#)

REPRESENTATIVE WILSON inquired whether this would assist western villages that pay much higher rates than do other places in Alaska.

COMMISSIONER GALVIN responded yes, to the extent that [the villages] used gas that is produced within the state that is the subject of the production tax being dealt with today. If it is imported gas or diesel, then this would have nothing to do with [the villages] because it would have nothing to do with the issue.

REPRESENTATIVE SEATON explained that basically there is a 5 percent tax cap for the Cook Inlet sedimentary basin, but that there is no 5 percent tax cap for gas produced in places like Nenana, or the North Slope, or western Alaska. This would provide the same state production tax rate for gas produced in other areas, but only if that gas is used in the state, he opined. So, it is equity for everyone across the state as far as state tax treatment. This does not modify the Cook Inlet provisions in statute; therefore, it would have no affect on anything in Cook Inlet.

[2:46:10 PM](#)

REPRESENTATIVE WILSON understood that since that was not happening in southeast or western Alaska, this was then making sure that people in the "Railbelt" got cheaper energy rates.

COMMISSIONER GALVIN pointed out that the tax code only provided the lower production tax treatment, it did not guarantee that this value would be enjoyed by the consumer because that was beyond the scope of this legislation. He said that if [Amendment 38, as amended,] did not pass, the higher tax would be applied to the production and would likely result in higher consumer costs because it would be passed along. Passing the amendment would reduce that production tax burden, he continued, but other means would be necessary to guarantee that this got passed along to the consumer. The starting point is to ensure that the production tax is not higher than what is being charged in other parts of the state. In further response to Representative Wilson, Commissioner Galvin reiterated that [Amendment 38, as amended,] would provide that the lower tax treatment be applied statewide. If the amendment did not pass, then the higher production tax would be assessed in areas outside the Railbelt.

[2:48:54 PM](#)

REPRESENTATIVE FAIRCLOUGH warned that this is creating a two-legged stool rather than a balanced three-legged stool because it opens up the rest of the state for lower costs, but does not guarantee it. She said that when the credit was allowed for the Railbelt area, the RCA was created to ensure compliance through rate studies. She agreed that the benefit should be applied statewide, but that because it is being done in special session there is no ability to put it under the RCA to guarantee that the benefit would be passed on to consumers. Therefore, she was struggling with whether to support it.

REPRESENTATIVE GUTTENBERG requested Ms. Thompson to address this issue.

MS. THOMPSON stated that if it is a regulated utility it is up to the RCA as to whether a tax credit would be passed on to the consumer. How often the RCA resets rates varies depending on a number of factors, she said. The commission itself can decide to go back and revisit rates and reset them based on a significant change in tax treatment, or the utility can apply to have rates reset. It is not something that would happen automatically, but could be initiated by any number of parties. The RCA considers the total taxes paid by a utility when determining the appropriate rate that consumers should pay.

[2:51:35 PM](#)

REPRESENTATIVE WILSON asked whether Amendment 38, as amended, would require the entity providing the electricity to pass on the savings to its customers.

MS. THOMPSON replied that it is up to the RCA to require a rate reduction. This would not happen automatically, she said, somebody would have to request the RCA to initiate a proceeding. After passage of the bill the legislature could request the RCA to review the rates of any utility that would receive a tax benefit as a result of the legislation. In further response to Representative Wilson, Ms. Thompson said it is not necessarily a hole that needs to be plugged in the amendment because plugging the hole could be as simple as sending a request to the chairman of the RCA after the legislation was passed asking for a review of the rates of any utility whose tax treatment might be affected.

[2:53:51 PM](#)

REPRESENTATIVE WILSON stated that she would be voting against Amendment 38, as amended, because it gave credits to a company that did not have to pass the savings on to its customers.

COMMISSIONER GALVIN noted that the whole function of the RCA is to provide fair rates and that there must be trust that the RCA will fulfill its obligations. The tax benefit being provided here could provide benefit in multiple ways, he said. For developments like the Red Dog Mine or the Donlin Creek gold project, it is not a rate-making issue but rather a way to provide lower cost fuel to make the project more economic or to move the project forward. When talking about the issues with these other projects, he advised, keep in mind that nothing is being changed for any existing rate payers or any existing consumers because there are not any projects going on right now that would be affected by this and, therefore, there is time to deal with that and fix it. If this is not done, then there is only one leg of the three-legged stool and providing low cost energy for Alaskans is that much further away, he opined.

REPRESENTATIVE WILSON commented that due to her past experience with the RCA, she did not trust the commission to address the issue automatically or in a timely manner. Therefore, she remained against [Amendment 38, as amended].

[2:56:52 PM](#)

REPRESENTATIVE FAIRCLOUGH inquired whether the exemption for [FNG] is under state statute or RCA regulations.

MS. THOMPSON said she is unsure, but that she believes the exemption for [FNG] is under statute.

REPRESENTATIVE FAIRCLOUGH responded that this is her point. If it is state statute, then everything Representative Wilson said is absolutely true. If it is state statute that allows the exemption, then everything has been exempted out except Anchorage. Thus, it requires the legislature to change state statute and is not something that RCA can just be asked to do a rate study on. She offered a conceptual amendment to Amendment 38, "that this particular amendment goes into effect when RCA has jurisdiction" because "the whole point is we're trying to ensure consumers have lower costs." The rest of the state needs to be included in the same framework as that of Anchorage and the Railbelt. "Conceptually, if it's contingent on that, then we ensure that the producers have to provide the consumer the benefit," she said.

3:00:04 PM

REPRESENTATIVE ROSES understood that FNG is currently buying Cook Inlet gas, thus it is receiving some of that benefit now. He asked whether there is a way - under legislative intent - to specify that the intent is for this to come under the jurisdiction of the RCA.

REPRESENTATIVE GUTTENBERG said he would receive no personal economic benefit from this, except for the price structure and competitive nature of the market, because LNG would never get to the outskirts of Fairbanks where he lives. He said his name is on Amendment 38 because he thought it would be more competitive in the long run for the consumers of Fairbanks. There are subsets of benefits around the state such as that mentioned for Red Dog Mine. The mine has gas deposits that it is trying to develop and this would benefit the people of western Alaska, he opined. Because there is no provider or regulator out there yet, an entity would be established at the time that the mine developed the gas. Others in the state have not had the same benefit that Southcentral has enjoyed for many years and gas found anywhere in the state would also benefit Southcentral. They are regulated under the RCA, but not economically regulated, and a distinction between these things must be made. The RCA could not be added to the bill during a special session, he contended, but he supported addressing it in January in regular session.

3:04:18 PM

REPRESENTATIVE ROSES disagreed because many other additions had already been made to the bill, such as the "Supreme Court", all types of litigation, and the ARM Board. He said he believes in the equity and wants to ensure that citizens would capture the intended credit. The intent of his suggestion, he continued, was to move the amendment along in Representative Guttenberg's favor, not to have the representative speak against it.

REPRESENTATIVE GUTTENBERG said thank you.

REPRESENTATIVE SEATON stated that failure to pass Amendment 38 would assure that taxes of 22.5 percent, instead of 5 percent, would be passed along to consumers. The original amendment was for the Nenana Basin, he noted, but it did not make much equitable sense to restrict it to only that area. He said his amendment to the amendment is to ensure maximum flexibility for

developing gas in other areas of the state in addition to Anchorage and the Railbelt. However, he argued, this is not the control mechanism to ensure that those costs are absolutely passed on to consumers.

[3:06:51 PM](#)

REPRESENTATIVE WILSON moved Amendment 3 to Amendment 38 on "page 1, line 14, ... add [paragraph] (4) if the company gets the credit they must pass the cost savings on to their customers in the state."

CO-CHAIR JOHNSON objected to Amendment 3 to Amendment 38.

CO-CHAIR GATTO objected to Amendment 3 to Amendment 38.

REPRESENTATIVE WILSON explained that if it is the committee's intent to pass the savings on to customers, then the section related to legislative intent is the appropriate place to say this.

CO-CHAIR GATTO said more focus is needed in regard to "if they get the credit then they pass the savings" and that he "wanted to join that the savings come from at least a large part of the credit."

COMMISSIONER GALVIN suggested the wording be something like "the tax benefit provided by this exception".

[3:08:39 PM](#)

CO-CHAIR GATTO asked whether [the savings] would be all of [the credit]. He said he was unsure how it was done with regard to Cook Inlet.

REPRESENTATIVE WILSON specified that Amendment 3 to Amendment 38 be conceptual so the drafters could make the wording correct.

[3:09:25 PM](#)

CO-CHAIR JOHNSON suggested including the words "if it is resold must fall under the Regulatory Commission [of Alaska]" or somehow specifying that if it is a utility that it must be a regulated utility. He said he supported the concept, but that he did not know how to get there and therefore might not vote for such an amendment.

COMMISSIONER GALVIN pointed out that the issue is a three-step process: first, the gas producer is charged a certain tax; second, the producer will recover the value of that tax when it sells the gas to a utility at a cost that is higher because of the treatment; and third, the rates charged by the utility will take into account the price that the utility pays to the producer. Thus, it is most likely that the entity getting this tax benefit would not be the company providing the gas to the consumer. He said he is therefore unsure how to accomplish the intent.

REPRESENTATIVE GUTTENBERG supported Conceptual Amendment 3 to Amendment 38 in the interest of moving things along.

[3:12:05 PM](#)

CO-CHAIR JOHNSON said he is uncomfortable with assuming that the savings will be passed on. He said he supports fair prices and access to the gas by everyone in Alaska, but that it needs to be tightened up because nothing is guaranteed when it comes to utilities and consumers and, therefore, a regulatory agency should be included.

REPRESENTATIVE FAIRCLOUGH said she would support [Conceptual Amendment 3] and urged that the objections be withdrawn so things could move on and return to Amendment 38. The conceptual amendment has no teeth, she said, because it is under legislative intent.

CO-CHAIR JOHNSON withdrew his objection to Conceptual Amendment 3 to Amendment 38.

There being no further objections, Conceptual Amendment 3 to Amendment 38 was passed.

[3:14:51 PM](#)

REPRESENTATIVE FAIRCLOUGH said she would like to offer a conceptual amendment.

CO-CHAIR JOHNSON objected.

REPRESENTATIVE FAIRCLOUGH offered [Conceptual Amendment 4 to Amendment 38] that "this section does not go into effect until there is a regulated utility, until it falls under RCA." She said it would be unfair to Anchorage if it became the only one under regulatory jurisdiction because everyone else was

exempted. She said she wants everyone to receive the benefit and does not understand the hesitation by the members from Fairbanks to support the regulatory component that everyone else is supposed to be under.

CO-CHAIR GATTO commented that the Railbelt up to a certain level receives the same "ENSTAR" gas and that Fairbanks receives gas that is trucked up from the Matanuska-Susitna Valley where it is liquefied and bottled, and Southeast Alaska receives hydropower. There are lots of places getting a unique benefit, he said.

[3:17:18 PM](#)

REPRESENTATIVE SEATON noted that Anchorage is a huge market with a big utility that serves many things. Putting a small village under the RCA process would result in no gas being developed, he opined, because the RCA process requires lawyers and such. A lower production tax treatment might not be passed along to consumers because instead the lower tax is what is necessary just to get marginally economic gas produced for a small western village that does not have hundreds of commercial buildings to use the gas. The lower tax may be just the thing to encourage development throughout state and bring gas to villages, he submitted.

[3:19:39 PM](#)

REPRESENTATIVE MIKE KELLY, Alaska State Legislature, recalled his many years spent in private business under regulation. He said FNG is a regulated utility and that the RCA did not come into existence to take care of the Cook Inlet situation. All utilities, whether garbage or others, are regulated by statute if they are of a certain size, unless the utility's consumers vote to take them out or if the utility is not regulated relative to rates. The RCA gave FNG the rate exemption because RCA only regulates rates in a monopoly situation; competition replaces the need for regulation. He said FNG faces stiff competition from Usibelli Coal Mine, Inc. and others. If RCA observes that FNG is overcharging, it will immediately regulate the utility, he said.

[3:23:31 PM](#)

REPRESENTATIVE FAIRCLOUGH pointed out that two answers had been given to her question regarding whether a statute change would be required. One answer was that a letter would need to be submitted and the other was that state statute would have to be

changed. She asked Representative Kelly's perspective on what would be required.

REPRESENTATIVE KELLY said he is not an expert witness, but that he understood FNG petitioned for, and received, the permission not to be regulated and that there was an RCA proceeding wherein that occurred.

[3:24:26 PM](#)

REPRESENTATIVE FAIRCLOUGH reiterated her question on whether it would require a state statute change or generation of a letter and asked for the attorney's opinion.

COMMISSIONER GALVIN explained that Nan Thompson is a unit manager [not an attorney] within DNR's Division of Oil & Gas, and that she was formerly the chair of RCA. He agreed that advice from the Department of Law (DOL) should be sought in order to decide what is regulatory jurisdiction.

[3:25:02 PM](#)

REPRESENTATIVE FAIRCLOUGH inquired why Anchorage is under RCA regulation since it has competition.

REPRESENTATIVE KELLY said Anchorage has no competition in its electric.

COMMISSIONER GALVIN stated that the purpose of bringing forth [Amendment 38] was as a solution to individual projects - some that would result in the gas going to a utility and some that would result in the gas being consumed by the producer for other purposes. If a statement is made that this only comes into account when the gas goes to a regulated utility serving consumers, then it would cut off a lot of folks that this was intended to affect.

[3:27:04 PM](#)

REPRESENTATIVE FAIRCLOUGH stated that she wanted to "vote on the amendment." She said, "RCA has criteria that would protect people not to be under their jurisdiction if they didn't qualify if Fairbanks came on because there is not a competitor." Putting it under RCA would still take care of Representative Seaton's issue about small people receiving those savings. She was "unconvinced that RCA is the bad guy if you are already

exempted out for all of those other reasons that are applicable."

CO-CHAIR JOHNSON withdrew his objection to [Conceptual Amendment 4 to Amendment 38].

REPRESENTATIVE SEATON objected to [Conceptual Amendment 4 to Amendment 38].

[3:28:15 PM](#)

REPRESENTATIVE GUTTENBERG spoke to the objection. He said that FNG is covered by RCA and is regulated, but that it is not economically regulated. The amendment is moot, he argued, because it is already done.

REPRESENTATIVE FAIRCLOUGH responded, "If you'd like me to vote yes on this bill and it's moot, then pass the conceptual amendment."

REPRESENTATIVE SEATON disagreed that it is moot. It might be moot for Fairbanks, he said, but it is not moot for any of the individual entities or the small folks. He understood the conceptual amendment to mean that the same break given to Cook Inlet would only be given to other gas developments if they are regulated by RCA. If that is the case, he said, a development could not go forward with the 5 percent tax unless regulated by the RCA and would instead be subject to the full PPT.

[3:30:12 PM](#)

REPRESENTATIVE FAIRCLOUGH submitted that:

RCA has current jurisdiction under x, y and z communities in the state of Alaska, and they have criteria as was laid out by Representative Kelly. That criteria says whether they are regulated or not by the utility. My point is if they fall under the criteria that is in existence to have to have an economic dialogue with the RCA and they don't meet the criteria, then they fall under it.

REPRESENTATIVE SEATON asked if he was correct in understanding that:

[Conceptual Amendment 4 to Amendment 38] says that if the RCA regulates them, then if they fall under the

RCA criteria the RCA will have jurisdiction and the tax will be at the Cook Inlet rate. If they do not fall under the criteria for RCA they can still get the Cook Inlet tax rate for that development.

The committee took an at-ease from 3:31 p.m. to 3:55 p.m.

[3:55:04 PM](#)

The committee discussed procedures for dealing with complex amendments.

[3:56:21 PM](#)

REPRESENTATIVE FAIRCLOUGH distributed written copies of Conceptual Amendment 4 to Amendment 38 which read [original punctuation provided]:

The RCA shall determine if an entity that receives gas that is taxed, for production tax purposes, under the provisions of 43.55.011(p) falls under their jurisdiction.

REPRESENTATIVE FAIRCLOUGH proffered that the committee's intent is to pass along the savings to those who fall under the jurisdiction of RCA. Fairbanks currently has an economic exemption that cannot be changed without the legislature going back into the statutes, she said. She supported distributing this type of resource state-wide. If RCA determined the credit, the issue could then be raised to the legislature. This would ensure that any economic benefits would be passed on to the consumer, she opined.

[3:58:07 PM](#)

COMMISSIONER GALVIN pointed out that "credit" is a misstatement because it is a "tax benefit" - the rate is what is being changed, it is not a new credit. It is important to recognize that the entity receiving the tax benefit would be the producer, not FNG or the utility or regulated entity. He said he is therefore unsure how to tie it together.

REPRESENTATIVE FAIRCLOUGH requested that Conceptual Amendment 4 to Amendment 38 be set aside so she could work with the administration.

REPRESENTATIVE GUTTENBERG withdrew Amendment 39.

REPRESENTATIVE GUTTENBERG withdrew Amendment 40.

[4:01:11 PM](#)

REPRESENTATIVE GUTTENBERG moved that the committee adopt Amendment 41, labeled 25-GH0014\L.55, Kane/Bullock, 11/3/07, which read [original punctuation provided]:

Page 17, following line 3:

Insert a new bill section to read:

"\* **Sec. 23.** AS 43.55.023(b) is amended to read:

(b) A producer or explorer may elect to take a tax credit in the amount of 25 [20] percent of a carried-forward annual loss. A credit under this subsection may be applied against a tax levied by [DUE UNDER] AS 43.55.011(e). For purposes of this subsection, except as limited by AS 43.55.160(h), a carried-forward annual loss is the amount of a producer's or explorer's adjusted lease expenditures under AS 43.55.165 and 43.55.170 for a previous calendar year that was not deductible in calculating production tax values for that calendar year under AS 43.55.160. However, a carried-forward annual loss may not include an adjusted lease expenditure to explore for, develop, or produce oil or gas deposits located within a unit or nonunitized reservoir subject to AS 43.55.011(f) [AS 43.55.160(b) AND (e)]."

Renumber the following bill sections accordingly.

Page 25, following line 13:

Insert new bill sections to read:

"\* **Sec. 33.** AS 43.55.160(e) is repealed and reenacted to read:

(e) Any adjusted lease expenditures under AS 43.55.165 and 43.55.170 that (1) would otherwise be deductible by a producer under (a)(1)(A) of this section in calculating a production tax value under (a)(1) of this section of oil and gas produced from a lease or property for a calendar year but whose deduction would cause the production tax value to be less than zero; (2) are the producer's costs incurred during the calendar year of exploring for, developing, or producing oil or gas deposits located within the producer's leases or properties in the state outside the Cook Inlet sedimentary basin that do not produce

oil or gas during the calendar year; or (3) are the producer's costs incurred during the calendar year of exploring for oil or gas deposits located within land in the state outside the Cook Inlet sedimentary basin in which the producer does not own an operating right, operating interest, or working interest must be allocated to, and deducted in calculating the producer's production tax value of the oil and gas produced during the calendar year from, the producer's other leases or properties, in accordance with the provisions of (f) and (g) of this section, to the extent consistent with (b) of this section. Other than for a lease or property subject to AS 43.55.011(f) and except as otherwise provided under (h) of this section, any remaining adjusted lease expenditures in excess of what may be deducted consistent with (b) of this section may be used to establish a carried-forward annual loss under AS 43.55.023(b).

\* **Sec. 34.** AS 43.55.160 is amended by adding new subsections to read:

(f) This subsection applies to adjusted lease expenditures required to be allocated under (e) of this section that are the producer's costs of exploring for, developing, or producing oil or gas deposits located within the producer's leases or properties that include land north of 68 degrees North latitude or are the producer's costs of exploring for oil or gas deposits located within land in the state north of 68 degrees North latitude in which the producer does not own an operating right, operating interest, or working interest. To the extent consistent with (b) of this section, adjusted lease expenditures under this subsection that are

(1) not costs of exploring for, developing, or producing oil or gas deposits located within a lease or property subject to AS 43.55.011(f) must be allocated to one or more leases or properties from which the producer produces oil or gas during the calendar year that include land north of 68 degrees North latitude;

(2) costs of exploring for, developing, or producing oil or gas deposits located within a lease or property subject to AS 43.55.011(f) must be allocated to one or more other leases or properties from which the producer produces oil or gas during the calendar year that are within the same unit or overlies the same nonunitized reservoir.

(g) This subsection applies to adjusted lease expenditures required to be allocated under (e) of this section that are the producer's costs of exploring for, developing, or producing oil or gas deposits located within the producer's leases or properties outside the Cook Inlet sedimentary basin and no part of which is north of 68 degrees North latitude or are the producer's costs of exploring for oil or gas deposits located within land in the state outside the Cook Inlet sedimentary basin and not north of 68 degrees North latitude in which the producer does not own an operating right, operating interest, or working interest. To the extent consistent with (b) of this section, adjusted lease expenditures under this subsection must be allocated to one or more leases or properties that are outside the Cook Inlet sedimentary basin and no part of which is north of 68 degrees North latitude from which the producer produces oil or gas during the calendar year.

(h) For purposes of this section, Cook Inlet excess adjusted lease expenditures for a calendar year are determined by adding (1) the adjusted lease expenditures that would otherwise be deductible by a producer in calculating production tax values under (a)(2) or (3) of this section for the calendar year but whose deduction would cause a production tax value to be less than zero; (2) the adjusted lease expenditures that are the producer's costs incurred during the calendar year of exploring for, developing, or producing oil or gas deposits located within the producer's leases or properties in the Cook Inlet sedimentary basin from which no oil or gas is produced during the calendar year; and (3) the adjusted lease expenditures that are the producer's costs incurred during the calendar year of exploring for oil or gas deposits located within land in the Cook Inlet sedimentary basin in which the producer does not own an operating right, operating interest, or working interest. For a calendar year for which a limitation under AS 43.55.011(j) or (k) on the tax levied by AS 43.55.011(e) would have the effect of reducing the producer's tax for oil or gas produced from one or more leases or properties in the Cook Inlet sedimentary basin below the amount of the tax that would be levied in the absence of that limitation, the producer shall perform the calculations set out in (i) of this section. The amount, if any, calculated under

(i)(6) of this section is the only amount of Cook Inlet excess adjusted lease expenditures that may be used to establish a carried-forward annual loss under AS 43.55.023(b).

(i) A producer subject to (h) of this section shall perform the following calculations:

(1) calculate the total amount of Cook Inlet excess adjusted lease expenditures;

(2) multiply that total amount by 25 percent;

(3) calculate for each lease or property the amount by which a limitation under AS 43.55.011(j) or (k) would reduce the amount of the producer's tax levied by AS 43.55.011(e);

(4) calculate the total of the reductions calculated under (3) of this subsection for all affected leases or properties;

(5) if the amount calculated under (2) of this subsection is greater than the amount calculated under (4) of this subsection, subtract the latter from the former; and

(6) multiply the amount, if any, calculated under (5) of this subsection by four."

Renumber the following bill sections accordingly.

Renumber internal references to bill sections in accordance with this amendment in a way that makes secs. 23, 33, and 34 effective January 1, 2008. Insert references to secs. 33 and 34 in (b) of the applicability section. Insert references to secs. 23, 33, and 34 in (1)(B) of the retroactivity of regulations section (sec. 41). Below are all internal bill section references in this bill:

Page 31, lines 25, 27, 29, 30, and 31

Page 32, lines 1, 3, 13, 16, 19, and 31

Page 33, lines 2, 19 - 20, 21, and 22

[4:01:21 PM](#)

CO-CHAIR JOHNSON objected to Amendment 41.

COMMISSIONER GALVIN explained that Amendment 41 would replace language that is in the original ACES bill [HB 2001, as introduced]. There are two different "clean ups", he said. One is creating equivalent value for entities with net operating losses (NOLs) due to having exploration expenses but no

production revenue against which to charge those expenses. Under PPT, a 20 percent rate is provided for a credit carry forward for those explorers experiencing net operating losses. However, a producer having these same expenditures is able to deduct them from its tax base at the rate of 22.5 percent. The amendment would replace that 20 percent with 25 percent. While the use of a 25 percent rate might be premature and could be the subject of an amendment, he said, the idea is to make the rates equivalent.

[4:03:29 PM](#)

REPRESENTATIVE ROSES said he thought this issue had been taken care of yesterday by [adoption of] Amendment 3 that set [the NOL credit rate] at the base tax rate so that it was self adjusting. In response to Co-Chair Gatto, he said it is correct that the NOL credit would be the same as the base [tax] rate.

REPRESENTATIVE SEATON agreed that Amendment 3 took care of this [through the addition] of Section 23. He did not know whether Sections 33 and 34 in Amendment 41 had also been addressed by Amendment 3.

REPRESENTATIVE GUTTENBERG requested that Amendment 41 be set aside so this could be double-checked.

[4:05:11 PM](#)

REPRESENTATIVE GUTTENBERG moved that the committee adopt Amendment 42, labeled 25-GH0014\L.50, Bullard/Bullock, 11/3/07, which read [original punctuation provided]:

Page 18, following line 25:

Insert new bill sections to read:

"\* **Sec. 26.** AS 43.55.025(a) is amended to read:

(a) Subject to the terms and conditions of this section, a credit against the production tax levied by [DUE UNDER] AS 43.55.011(e) [OR (f)] is allowed for exploration expenditures that qualify under (b) of this section in an amount equal to one of the following:

(1) 20 percent of the total exploration expenditures that qualify only under (b) and (c) of this section;

(2) 20 percent of the total exploration expenditures [FOR WORK PERFORMED BEFORE JULY 1, 2007,

AND] that qualify only under (b) and (d) of this section;

(3) 40 percent of the total exploration expenditures that qualify under (b), (c), and (d) of this section; or

(4) 40 percent of the total exploration expenditures that qualify only under (b) and (e) of this section.

\* **Sec. 27.** AS 43.55.025(b) is amended to read:

(b) To qualify for the production tax credit under (a) of this section, an exploration expenditure must be incurred for work performed [ON OR] after **December 31, 2007** [JULY 1, 2003], and before July 1, 2016, [EXCEPT THAT AN EXPLORATION EXPENDITURE FOR A COOK INLET PROSPECT MUST BE INCURRED FOR WORK PERFORMED ON OR AFTER JULY 1, 2005,] and

(1) may be for seismic or **other** geophysical exploration costs not connected with a specific well;

(2) if for an exploration well,

(A) must be incurred by an explorer that holds an interest in the exploration well for which the production tax credit is claimed;

(B) may be for either **a** [AN OIL OR GAS DISCOVERY] well **that encounters an oil or gas deposit** or a dry hole; [AND]

(C) must be for **a well that has been completed or abandoned at the time the explorer claims the tax credit under (f) of this section; and**

**(D) must be for** goods, services, or rentals of personal property reasonably required for the surface preparation, drilling, casing, cementing, and logging of an exploration well, and, in the case of a dry hole, for the expenses required for abandonment if the well is abandoned within 18 months after the date the well was spudded;

(3) may not be for testing, stimulation, or completion costs; administration, supervision, engineering, or lease operating costs; geological or management costs; community relations or environmental costs; bonuses, taxes, or other payments to governments related to the well; **costs arising from gross negligence or violation of health, safety, or environmental statutes or regulations;** or other costs that are generally recognized as indirect costs or financing costs; and

(4) may not be incurred for an exploration well or seismic exploration that is included in a plan

of exploration or a plan of development for any unit on May 13, 2003.

\* **Sec. 28.** AS 43.55.025(c) is repealed and reenacted to read:

(c) To be eligible for the 20 percent production tax credit authorized by (a)(1) of this section or the 40 percent production tax credit authorized by (a)(3) of this section, exploration expenditures must

(1) qualify under (b) of this section; and

(2) be for an exploration well, subject to the following:

(A) before spudding the well, (i) the explorer shall submit to the commissioner of natural resources the information necessary to determine whether the geological objective of the well is a potential oil or gas trap that is distinctly separate from any trap that has been tested by a preexisting well; and (ii) the commissioner of natural resources must make an affirmative determination on that question; the commissioner of natural resources shall decide whether to make that determination within 60 days after receiving all the necessary information from the explorer and based on the information received and on other information the commissioner of natural resources may consider relevant;

(B) for an exploration well other than a well to explore a Cook Inlet prospect, the well must be located and drilled in such a manner that the bottom hole is located not less than three miles away from the bottom hole of a preexisting well drilled for oil or gas, irrespective of whether the preexisting well has been completed, suspended, or abandoned;

(C) after completion or abandonment of the exploration well, the commissioner of natural resources must determine that the well adequately achieved the explorer's stated geological objective.

\* **Sec. 29.** AS 43.55.025(f) is amended to read:

(f) For a production tax credit under this section,

(1) an explorer shall, in a form prescribed by the department and, **except for a credit under (1) of this section,** within six months of the completion of the exploration activity, claim the credit and submit information sufficient to demonstrate to the department's satisfaction that the claimed exploration expenditures qualify under this section;

(2) an explorer shall agree, in writing,

(A) to notify the Department of Natural Resources, within 30 days after completion of seismic or geophysical data processing, completion of [A] well **drilling**, or filing of a claim for credit, whichever is the latest, for which exploration costs are claimed, of the date of completion and submit a report to that department describing the processing sequence and providing a list of data sets available; [IF, UNDER (c)(2)(B) OF THIS SECTION, AN EXPLORER SUBMITS A CLAIM FOR A CREDIT FOR EXPENDITURES FOR AN EXPLORATION WELL THAT IS LOCATED WITHIN THREE MILES OF A WELL ALREADY DRILLED FOR OIL AND GAS, IN ADDITION TO THE SUBMISSIONS REQUIRED UNDER (1) OF THIS SUBSECTION, THE EXPLORER SHALL SUBMIT THE INFORMATION NECESSARY FOR THE COMMISSIONER OF NATURAL RESOURCES TO EVALUATE THE VALIDITY OF THE EXPLORER'S CLAIM THAT THE WELL IS DIRECTED AT A DISTINCTLY SEPARATE EXPLORATION TARGET, AND THE COMMISSIONER OF NATURAL RESOURCES SHALL, UPON RECEIPT OF ALL EVIDENCE SUFFICIENT FOR THE COMMISSIONER TO EVALUATE THE EXPLORER'S CLAIM, MAKE THAT DETERMINATION WITHIN 60 DAYS;]

(B) to provide to the Department of Natural Resources, within 30 days after the date of a request, **unless a longer period is provided by the Department of Natural Resources,** specific data sets, ancillary data, and reports identified in (A) of this paragraph; **in this subparagraph,**

**(i) a seismic or geophysical data set includes the data for an entire seismic survey, irrespective of whether the survey area covers nonstate land in addition to state land or land in a unit in addition to land outside a unit;**

**(ii) well data include all derivative products, results, and copies of data collected and data analyses for the well; well logs; sample analyses; geophysical and velocity data including vertical seismic profiles and check shot surveys; and tangible material including, for each whole core collected, a lengthwise cut slab that is at least 1/3 of the whole core volume, and representative samples, as specified by the Department of Natural Resources, of other gaseous, liquid, or solid material collected from drilling or testing the well;**

(C) that, notwithstanding any provision of AS 38, information provided under this paragraph will be held confidential by the Department of Natural Resources

(i) in the case of well data, until the expiration of the 24-month period of confidentiality described in AS 31.05.035(c), without extension, after which the Department of Natural Resources [FOR 10 YEARS FOLLOWING THE COMPLETION DATE, AT WHICH TIME THAT DEPARTMENT] will release the information after 30 days' public notice;

(ii) in the case of seismic or other geophysical data, other than seismic data acquired by seismic exploration subject to (1) of this section, for 10 years following the completion date, at which time the Department of Natural Resources will release the information after 30 days' public notice;

(iii) in the case of seismic data obtained by seismic exploration subject to (1) of this section, only until the expiration of 30 days' public notice issued on or after the date the production tax credit certificates are issued under (5) of this subsection; and

(D) that, in the case of well data, the explorer will not make a request under AS 31.05.035(c) that the commissioner of natural resources keep the data confidential for longer than the 24-month period of confidentiality described in AS 31.05.035(c);

(3) if more than one explorer holds an interest in a well or seismic exploration,

(A) each explorer may claim an amount of credit that is proportional to the explorer's cost incurred;

(B) in the case of a well, each explorer holding an interest in the well shall agree, in writing, that the explorer will not make the request described in (2)(D) of this subsection;

(4) the department may exercise the full extent of its powers as though the explorer were a taxpayer under this title, in order to verify that the claimed expenditures are qualified exploration expenditures under this section; and

(5) if the department is satisfied that the explorer's claimed expenditures are qualified under this section and that all data required to be submitted under this section have been submitted, the department shall issue to the explorer two [A] production tax credit certificates, each [CERTIFICATE] for half of the amount of the credit to be allowed against production taxes levied by AS 43.55.011(e); the credit shown on one of the two certificates is

available for immediate use; the credit shown on the second of the two certificates may not be applied against a tax for a calendar year earlier than the calendar year following the calendar year in which the certificate is issued, and the certificate must contain a conspicuous statement to that effect; notwithstanding any contrary provision of AS 38, AS 40.25.100, or AS 43.05.230, the following information is not confidential:

- (A) the explorer's name;
- (B) the date of the application;
- (C) the location of the well or seismic exploration;
- (D) the date of the department's issuance of the certificate; and
- (E) the date on which the information required to be submitted under this section will be released [DUE UNDER AS 43.55.011(e) OR (f)].

\* **Sec. 30.** AS 43.55.025(g) is amended to read:

(g) An explorer, other than an entity that is exempt from taxation under this chapter, may transfer, convey, or sell its production tax credit certificate to any person, and any person who receives a production tax credit certificate may also transfer, convey, or sell the certificate.

\* **Sec. 31.** AS 43.55.025(h) is amended to read:

(h) A producer that purchases a production tax credit certificate may apply the credits against its production tax liability under AS 43.55.011(e) [OR (f)]. Regardless of the price the producer paid for the certificate, the producer may receive a credit against its production tax liability for the full amount of the credit, but for not more than the amount for which the certificate is issued. A production tax credit allowed under this section may not be applied more than once.

\* **Sec. 32.** AS 43.55.025(i) is repealed and reenacted to read:

(i) For a production tax credit under this section,

(1) a credit may not be applied to reduce a taxpayer's tax liability under AS 43.55.011(e) below zero for a calendar year; and

(2) an amount of the production tax credit in excess of the amount that may be applied for a calendar year under this subsection may be carried forward and applied against the taxpayer's tax

liability under AS 43.55.011(e) in one or more later calendar years.

\* **Sec. 33.** AS 43.55.025(k) is amended by adding a new paragraph to read:

(4) "preexisting well" means a well that was spudded more than 540 days but less than 35 years before the date on which the exploration well to which it is compared is spudded.

\* **Sec. 34.** AS 43.55.025 is amended by adding a new subsection to read:

(1) Subject to the terms and conditions of this section, if a claim is filed under (f)(1) of this section before January 1, 2016, a credit against the production tax levied by AS 43.55.011(e) is allowed in an amount equal to five percent of an eligible expenditure under this subsection incurred for seismic exploration performed before July 1, 2003. To be eligible under this subsection, an expenditure must

(1) have been for seismic exploration that

(A) obtained data that the commissioner of natural resources considers to be in the best interest of the state to acquire for public distribution; and

(B) was conducted outside the boundaries of a production unit; however, the amount of the expenditure that is otherwise eligible under this section is reduced proportionately by the portion of the seismic exploration activity that crossed into a production unit; and

(2) qualify under (b)(3) of this section."

Renumber the following bill sections accordingly.

Page 31, line 25:

Delete "32 - 34, and 37"

Insert "41 - 43, and 46"

Page 31, line 27:

Delete "31, and 38"

Insert "31, 32, 34, 40, and 47"

Page 31, line 29:

Delete "Sections 26 and 27"

Insert "Sections 35 and 36"

Page 31, line 30:

Delete "sec. 26"

Insert "sec. 35"

Page 31, line 31:  
Delete "sec. 27"  
Insert "sec. 36"

Page 31, following line 31:  
Insert a new subsection to read:  
"(d) Sections 26 - 29 and 33 of this Act apply to exploration expenditures incurred for work performed after December 31, 2007, that are the basis of tax credits that may be claimed against taxes levied for oil and gas produced after December 31, 2007."

Reletter the following subsection accordingly.

Page 32, line 1:  
Delete "sec. 29"  
Insert "sec. 38"

Page 32, line 3:  
Delete "29"  
Insert "38"

Page 32, line 31:  
Delete "32 - 34, and 37"  
Insert "41 - 43, and 46"

Page 33, line 2:  
Delete "26, 27, 31, and 38"  
Insert "26 - 29, 31 - 34, 35, 36, 40, and 47"

Page 33, line 19, following ".":  
Insert "(a) Section 30 of this Act is retroactive to July 1, 2003.  
(b)"

Page 33, line 20:  
Delete "32 - 34, and 37"  
Insert "41 - 43, and 46"

Page 33, line 21:  
Delete "26, 27, 31, and 38"  
Insert "26 - 29, 31 - 34, 35, 36, 40, and 47"

Page 33, line 22:  
Delete "sec. 44"

Insert "sec. 53"

CO-CHAIR JOHNSON objected to Amendment 42.

REPRESENTATIVE GUTTENBERG said the subject of Amendment 42 is exploration tax credits.

[4:05:23 PM](#)

REPRESENTATIVE SEATON pointed out that both Amendment 6 and Amendment 42 deal with the same thing, although they may be slightly different.

The committee discussed which of the two amendments should be considered.

REPRESENTATIVE GUTTENBERG withdrew Amendment 42.

[4:07:15 PM](#)

REPRESENTATIVE WILSON moved that the committee adopt Amendment 6, labeled 25-GH0014\L.76, Bullard/Bullock, 11/4/07, which read [original punctuation provided]:

Page 18, following line 25:

Insert new bill sections to read:

"\* **Sec. 26.** AS 43.55.025(a) is amended to read:

(a) Subject to the terms and conditions of this section, a credit against the production tax levied by [DUE UNDER] AS 43.55.011(e) [OR (f)] is allowed for exploration expenditures that qualify under (b) of this section in an amount equal to one of the following:

(1) 30 [20] percent of the total exploration expenditures that qualify only under (b) and (c) of this section;

(2) 30 [20] PERCENT of the total exploration expenditures [FOR WORK PERFORMED BEFORE JULY 1, 2007, AND] that qualify only under (b) and (d) of this section;

(3) 40 percent of the total exploration expenditures that qualify under (b), (c), and (d) of this section; or

(4) 40 percent of the total exploration expenditures that qualify only under (b) and (e) of this section.

\* **Sec. 27.** AS 43.55.025(b) is amended to read:

(b) To qualify for the production tax credit under (a) of this section, an exploration expenditure must be incurred for work performed [ON OR] after **December 31, 2007** [JULY 1, 2003], and before July 1, 2016, [EXCEPT THAT AN EXPLORATION EXPENDITURE FOR A COOK INLET PROSPECT MUST BE INCURRED FOR WORK PERFORMED ON OR AFTER JULY 1, 2005,] and

(1) may be for seismic or **other** geophysical exploration costs not connected with a specific well;

(2) if for an exploration well,

(A) must be incurred by an explorer that holds an interest in the exploration well for which the production tax credit is claimed;

(B) may be for either **a** [AN OIL OR GAS DISCOVERY] well **that encounters an oil or gas deposit** or a dry hole; [AND]

(C) must be for **a well that has been completed, suspended, or abandoned under AS 31.05.030 at the time the explorer claims the tax credit under (f) of this section; and**

**(D) must be for** goods, services, or rentals of personal property reasonably required for the surface preparation, drilling, casing, cementing, and logging of an exploration well, and, in the case of a dry hole, for the expenses required for abandonment if the well is abandoned within 18 months after the date the well was spudded;

(3) may not be for [TESTING, STIMULATION, OR COMPLETION COSTS;] administration, supervision, engineering, or lease operating costs; geological or management costs; community relations or environmental costs; bonuses, taxes, or other payments to governments related to the well; **costs arising from gross negligence or violation of health, safety, or environmental statutes or regulations;** or other costs that are generally recognized as indirect costs or financing costs; and

(4) may not be incurred for an exploration well or seismic exploration that is included in a plan of exploration or a plan of development for any unit on May 13, 2003.

\* **Sec. 28.** AS 43.55.025(c) is repealed and reenacted to read:

(c) To be eligible for the 30 percent production tax credit authorized by (a)(1) of this section or the 40 percent production tax credit authorized by (a)(3) of this section, exploration expenditures must

(1) qualify under (b) of this section; and  
(2) be for an exploration well, subject to the following:

(A) before spudding the well, (i) the explorer shall submit to the commissioner of natural resources the information necessary to determine whether the geological objective of the well is a potential oil or gas trap that is distinctly separate from any trap that has been tested by a preexisting well; and (ii) the commissioner of natural resources must make an affirmative determination on that question; the commissioner of natural resources shall decide whether to make that determination within 60 days after receiving all the necessary information from the explorer and based on the information received and on other information the commissioner of natural resources may consider relevant;

(B) for an exploration well other than a well to explore a Cook Inlet prospect, the well must be located and drilled in such a manner that the bottom hole is located not less than three miles away from the bottom hole of a preexisting well drilled for oil or gas, irrespective of whether the preexisting well has been completed, suspended, or abandoned;

(C) after completion, abandonment, or suspension under AS 31.05.030 of the exploration well, the commissioner of natural resources must determine that the well adequately achieved the explorer's stated geological objective.

\* **Sec. 29.** AS 43.55.025(f) is amended to read:

(f) For a production tax credit under this section,

(1) an explorer shall, in a form prescribed by the department and, **except for a credit under (1) of this section,** within six months of the completion of the exploration activity, claim the credit and submit information sufficient to demonstrate to the department's satisfaction that the claimed exploration expenditures qualify under this section;

(2) an explorer shall agree, in writing,

(A) to notify the Department of Natural Resources, within 30 days after completion of seismic or geophysical data processing, completion of [A] well **drilling**, or filing of a claim for credit, whichever is the latest, for which exploration costs are claimed, of the date of completion and submit a report to that department describing the processing sequence

and providing a list of data sets available; [IF, UNDER (c)(2)(B) OF THIS SECTION, AN EXPLORER SUBMITS A CLAIM FOR A CREDIT FOR EXPENDITURES FOR AN EXPLORATION WELL THAT IS LOCATED WITHIN THREE MILES OF A WELL ALREADY DRILLED FOR OIL AND GAS, IN ADDITION TO THE SUBMISSIONS REQUIRED UNDER (1) OF THIS SUBSECTION, THE EXPLORER SHALL SUBMIT THE INFORMATION NECESSARY FOR THE COMMISSIONER OF NATURAL RESOURCES TO EVALUATE THE VALIDITY OF THE EXPLORER'S CLAIM THAT THE WELL IS DIRECTED AT A DISTINCTLY SEPARATE EXPLORATION TARGET, AND THE COMMISSIONER OF NATURAL RESOURCES SHALL, UPON RECEIPT OF ALL EVIDENCE SUFFICIENT FOR THE COMMISSIONER TO EVALUATE THE EXPLORER'S CLAIM, MAKE THAT DETERMINATION WITHIN 60 DAYS;]

(B) to provide to the Department of Natural Resources, within 30 days after the date of a request, unless a longer period is provided by the Department of Natural Resources, specific data sets, ancillary data, and reports identified in (A) of this paragraph; in this subparagraph,

(i) a seismic or geophysical data set includes the data for an entire seismic survey, irrespective of whether the survey area covers nonstate land in addition to state land or land in a unit in addition to land outside a unit;

(ii) well data include all derivative products, results, and copies of data collected and data analyses for the well, including well logs; sample analyses; geophysical and velocity data including vertical seismic profiles and check shot surveys; and tangible material including, for each whole core collected, a lengthwise cut slab that is at least 1/3 of the whole core volume, and representative samples, as specified by the Department of Natural Resources, of other gaseous, liquid, or solid material collected from drilling or testing the well;

(C) that, notwithstanding any provision of AS 38, information provided under this paragraph will be held confidential by the Department of Natural Resources

(i) in the case of well data, until the expiration of the 24-month period of confidentiality described in AS 31.05.035(c), the Department of Natural Resources [FOR 10 YEARS FOLLOWING THE COMPLETION DATE, AT WHICH TIME THAT DEPARTMENT] will release the information after 30 days' public notice, unless in the discretion of the commissioner of

natural resources, it is necessary to protect information relating to the valuation of unleased acreage in the same vicinity;

(ii) in the case of seismic or other geophysical data, other than seismic data acquired by seismic exploration subject to (1) of this section, for 10 years following the completion date, at which time the Department of Natural Resources will release the information after 30 days' public notice;

(iii) in the case of seismic data obtained by seismic exploration subject to (1) of this section, only until the expiration of 30 days' public notice issued on or after the date the production tax credit certificates are issued under (5) of this subsection; and

(D) that, in the case of well data, the explorer will not make a request under AS 31.05.035(c) that the commissioner of natural resources keep the data confidential for longer than the 24-month period of confidentiality described in AS 31.05.035(c);

(3) if more than one explorer holds an interest in a well or seismic exploration,

(A) each explorer may claim an amount of credit that is proportional to the explorer's cost incurred;

(B) in the case of a well, each explorer holding an interest in the well shall agree, in writing, that the explorer will not make the request described in (2)(D) of this subsection;

(4) the department may exercise the full extent of its powers as though the explorer were a taxpayer under this title, in order to verify that the claimed expenditures are qualified exploration expenditures under this section; and

(5) if the department is satisfied that the explorer's claimed expenditures are qualified under this section and that all data required to be submitted under this section have been submitted, the department shall issue to the explorer a production tax credit certificate for the amount of credit to be allowed against production taxes levied by AS 43.55.011(e); the credit is available for immediate use; notwithstanding any contrary provision of AS 38, AS 40.25.100, or AS 43.05.230, the following information is not confidential:

(A) the explorer's name;

(B) the date of the application;

(C) the location of the well or seismic exploration;

(D) the date of the department's issuance of the certificate; and

(E) the date on which the information required to be submitted under this section will be released [DUE UNDER AS 43.55.011(e) OR (f)].

\* **Sec. 30.** AS 43.55.025(g) is amended to read:

(g) An explorer, other than an entity that is exempt from taxation under this chapter, may transfer, convey, or sell its production tax credit certificate to any person, and any person who receives a production tax credit certificate may also transfer, convey, or sell the certificate.

\* **Sec. 31.** AS 43.55.025(h) is amended to read:

(h) A producer that purchases a production tax credit certificate may apply the credits against its production tax liability under AS 43.55.011(e) [OR (f)]. Regardless of the price the producer paid for the certificate, the producer may receive a credit against its production tax liability for the full amount of the credit, but for not more than the amount for which the certificate is issued. A production tax credit allowed under this section may not be applied more than once.

\* **Sec. 32.** AS 43.55.025(i) is repealed and reenacted to read:

(i) For a production tax credit under this section,

(1) a credit may not be applied to reduce a taxpayer's tax liability under AS 43.55.011(e) below zero for a calendar year; and

(2) an amount of the production tax credit in excess of the amount that may be applied for a calendar year under this subsection may be carried forward and applied against the taxpayer's tax liability under AS 43.55.011(e) in one or more later calendar years.

\* **Sec. 33.** AS 43.55.025(k) is amended by adding a new paragraph to read:

(4) "preexisting well" means a well that was spudded more than 540 days but less than 35 years before the date on which the exploration well to which it is compared is spudded.

\* **Sec. 34.** AS 43.55.025 is amended by adding a new subsection to read:

(1) Subject to the terms and conditions of this section, if a claim is filed under (f)(1) of this section before January 1, 2016, a credit against the production tax levied by AS 43.55.011(e) is allowed in an amount equal to five percent of an eligible expenditure under this subsection incurred for seismic exploration performed before July 1, 2003. To be eligible under this subsection, an expenditure must

(1) have been for seismic exploration that

(A) obtained data that the commissioner of natural resources considers to be in the best interest of the state to acquire for public distribution; and

(B) was conducted outside the boundaries of a production unit; however, the amount of the expenditure that is otherwise eligible under this section is reduced proportionately by the portion of the seismic exploration activity that crossed into a production unit; and

(2) qualify under (b)(3) of this section."

Renumber the following bill sections accordingly.

Page 31, line 25:

Delete "32 - 34, and 37"

Insert "41 - 43, and 46"

Page 31, line 27:

Delete "31, and 38"

Insert "31, 32, 34, 40, and 47"

Page 31, line 29:

Delete "Sections 26 and 27"

Insert "Sections 35 and 36"

Page 31, line 30:

Delete "sec. 26"

Insert "sec. 35"

Page 31, line 31:

Delete "sec. 27"

Insert "sec. 36"

Page 31, following line 31:

Insert a new subsection to read:

"(d) Sections 26 - 29 and 33 of this Act apply to exploration expenditures incurred for work performed after December 31, 2007, that are the basis

of tax credits that may be claimed against taxes levied for oil and gas produced after December 31, 2007."

Reletter the following subsection accordingly.

Page 32, line 1:  
Delete "sec. 29"  
Insert "sec. 38"

Page 32, line 3:  
Delete "29"  
Insert "38"

Page 32, line 31:  
Delete "32 - 34, and 37"  
Insert "41 - 43, and 46"

Page 33, line 2:  
Delete "26, 27, 31, and 38"  
Insert "26 - 29, 31 - 34, 35, 36, 40, and 47"

Page 33, line 19, following ".":  
Insert "(a) Section 30 of this Act is retroactive to July 1, 2003.  
(b)"

Page 33, line 20:  
Delete "32 - 34, and 37"  
Insert "41 - 43, and 46"

Page 33, line 21:  
Delete "26, 27, 31, and 38"  
Insert "26 - 29, 31 - 34, 35, 36, 40, and 47"

Page 33, line 22:  
Delete "sec. 44"  
Insert "sec. 53"

CO-CHAIR JOHNSON objected to Amendment 6.

[4:07:25 PM](#)

REPRESENTATIVE WILSON advised that Amendment 6 would put the Exploratory Incentive Credits (EIC) back in the way they were, along with several other housekeeping items. She deferred to Kevin Banks to explain the amendment.

KEVIN BANKS, Director, Central Office, Division of Oil & Gas, Department of Natural Resources (DNR), stated that Amendment 6 would preserve the EIC's established under 43.55.025, a statute predating the PPT. He explained that EIC's provide tax credits for exploration activities in which wells are drilled more than 3 miles from a pre-existing well. A larger credit is offered for wells drilled more than 25 miles away from a pre-existing unit. Several housekeeping matters must be taken up as a result of reinserting the "025 credits" into the ACES bill [HB 2001], he continued. Under the existing program, a company first drills the well, then it submits an application for a credit, and then it waits to see whether the credit will be received. Determination for the credit is made by DOR with advice from DNR. Amendment 6 would provide for pre-approval so that an applicant would be assured of receiving the credit prior to spending any money.

MR. BANKS noted that Amendment 6 would establish a new class of credits for seismic surveys conducted prior to July 1, 2003. The commissioner of DNR would be able to essentially buy the seismic information for five percent of its original cost and then make that information available for others to use. A public disclosure of information would be required so that DNR and DOR could then create a database of credits that have been offered and for what kinds of activities for which wells that have had seismic surveys done. Subsequently, those interested in investing in Alaska could anticipate the kind of information that might become available to them after awhile. Requirements would be expanded for information to be handed over to the state under this particular set of circumstances, Mr. Banks continued. At the moment, when a well is drilled, some well logs and chunks of core are submitted for safekeeping to the Alaska Oil and Gas Conservation Commission (AOGCC). [Amendment 6] would require that the state receive an actual piece of any core taken from a well, along with any fluids produced by the well in the course of the exploration activity. This would be valuable in providing the state with greater information. He said the expansion of these requirements is because the state is, in a sense, participating in the exploration as would another working-interest owner that would have access to that information. [Amendment 6 would require] that for all wells receiving credits, the information be made public after 24 months, plus a 30-day notice, or approximately 25 months. Under the current situation, he explained, the information for a well drilled in the state of Alaska is submitted to the AOGCC. The DNR gets access to any information for wells drilled on state

land. After 24 months, that information could be kept confidential if there is unleased acreage nearby and the DNR commissioner wished to preserve the value of the well drilling for the applicant or the lessee or the explorer, or it could be kept confidential if the DNR commissioner determined it is in the state's interest because a lease sale was underway and the state expected it could do better if the information remained secret.

[4:14:10 PM](#)

MR. BANKS explained that DNR did not currently get access to information on wells drilled outside of state land. For example, the AOGCC has access to the information from wells drilled on the National Petroleum Reserve-Alaska (NPR-A), but DNR does not. By the same token, the DNR commissioner may also rule on whether or not extended confidentiality can be offered to wells drilled in the NPR-A. [Amendment 6] would require an applicant for an EIC under the "025 program" to agree that the [DNR] commissioner has the discretion to reveal that information after 24 months plus 30 days notice. Other jurisdictions are more liberal on how information is shared within their jurisdiction, he noted, and it is DNR's view that the more information available to other explorers, the better the state's interests are served for encouraging new development. Mr. Banks advised that the last [housekeeping] piece would provide that in return for receiving [EIC] credit, the seismic information would be made public after 10 years. There is currently no provision for revealing seismic data to anyone and it remains confidential forever. He said DNR acquires seismic information for its own land, but not on land belonging to someone else.

MR. BANKS described an economic feature [in Amendment 6] related to the credits. For wells drilled more than three miles from an existing well, the current 20 percent credit would be increased to 30 percent. The proposed increase is because the allowable deductions for which the credit is received are somewhat more limited than in PPT. This strikes a balance, he said, between the newcomer explorer having no tax liability and the incumbent that has the ability to cash in its qualified lease expenditures "under the '023' or the standard PPT ACES tax credit."

[4:17:30 PM](#)

MR. BANKS detailed a second economic feature that would change the definition of a pre-existing well. [Currently], an entity drilling a well can receive the credit only for the first well

in its exploration program because the definition of a pre-existing well falls into place - a second "stepout" or "delineation" well drilled on the same prospect or near the well just drilled falls within the three mile limit and is disqualified from receiving a credit. To alleviate this problem, [Amendment 6] would change the definition of a pre-existing well from a well drilled within 150 days to a well drilled within 540 days, he said. This would give the applicant for the credit the opportunity to return to the exploration prospect in the following drilling season and drill a second and perhaps a third well depending upon the length of the winter drilling season. Thus, the credit would be extended to more than just one well when an applicant is proving up a prospect.

[4:19:11 PM](#)

REPRESENTATIVE FAIRCLOUGH understood that the administration's changes from the original ACES bill [HB 2001] are as follows: "on page 1 [lines 8 and 10 of Amendment 6], 20 percent is changed to 30 percent; on page 2, lines 7 and 8, the word suspended is added and a specific statute [AS 31.05.030] is inserted." Regarding the gross negligence language added on page 2, lines 18 and 19, she suggested that an amendment to Amendment 6 might be made to incorporate the criminal negligence language that Representative Seaton had come up with in previous discussions.

MR. BANKS stated that the term suspended was added to the terms abandoned and completed, and that the statutory reference there is related to the definitions that are applied by the AOGCC when information is taken on a well. These terms are needed, he said, because a well can be drilled and then left in stasis so that the 24 month clock does not begin. Thus, this would assure that the clock on confidentiality is triggered when the credit is awarded. He skipped addressing the issue of negligence saying it should be addressed by a lawyer, but he noted additional changes to that same paragraph on line 15, page 2. He explained that under the existing "025 credit" an applicant cannot deduct or include in the calculation of its credit, the costs for testing, stimulation, or completion which are down-hole activities in an exploration well. These costs were excluded from the "025 credit" when it was created, he said, even though they are part and parcel of any kind of exploration activity. Leaving them out was inappropriate.

[4:23:24 PM](#)

MS. HOULE explained that AS 31.05.030 "is the authority for the AOGCC to go to their regulations with our 20 AAC that talk about the different cases of wells being suspended, completed, or abandoned." She said the word suspended needs to be included because it sometimes takes two seasons to drill a well and then come back to test it, especially with NPR-A drilling. Additionally, testing, stimulation, and completion costs should be included because they are part of appraising an exploration well. She said she thought that gross negligence is included for clean air, as mentioned yesterday, but that it is mostly included for acts in which physical injury occur because of failure to follow safety procedures.

MR. BANKS pointed out that on page 5, line 2, language was added that referred to the 24-month period of confidentiality governed by [AS 31.05.035(c)], along with new language that gives the commissioner of DNR the discretion to withhold the information if it serves the interest of the state.

[4:26:07 PM](#)

REPRESENTATIVE GUTTENBERG inquired whether there are other categories of wells in addition to completed, suspended, or abandoned. For example, he had earlier heard the term "spudded".

MS. HOULE explained that when the process of drilling begins, the well is called "spudded".

MR. BANKS added that the expression "to spud a well" means to begin drilling.

[4:27:01 PM](#)

REPRESENTATIVE GUTTENBERG asked whether a well drilled only 10 or 20 feet and then walked away from would be a spudded well or an abandoned well.

MS. HOULE responded that, technically, such a well would be spudded. To spud a well, a large diameter of pipe is used in the first 20-80 feet, she explained. The well is then drilled from there using smaller and smaller pipe as the drilling goes down. In further response to Representative Guttenberg, Ms. Houle said that what is being looked here is the three categories that are on an AOGCC completion report. Operational suspension is a different order and is not on the completion report.

[4:28:36 PM](#)

MS. HOULE, in response to Representative Wilson, stated that the language on page 2, lines 22 and 23, of Amendment 6 should say "before or on" May 13, 2003, rather than just "on" because this has been causing administration problems for DOR.

MR. BANKS noted that when the state of play was looked at on May 13, 2003, there were units, and there were lands that were not in units, therefore it must go back to that point. Several units no longer exist; drilling back into or doing seismic across those areas that had been units would not qualify for an "025 credit".

REPRESENTATIVE WILSON moved Amendment 1 to Amendment 6 that "on page 2, line 22, before the word 'on', insert 'before or'".

There being no objection, Amendment 1 to Amendment 6 was passed.

[4:30:46 PM](#)

CO-CHAIR GATTO inquired how to deal with criminal negligence.

MR. BANKS said he did not know. He referred to the concept pointed out by Ms. Houle that the kind of environmental regulations being talked about are typically air quality and there is an umbrella air quality standard that is imposed in the drilling program. There are discharge permits that are made for a drilling program and if those standards are exceeded, then those costs could not be included in the credit.

[4:32:23 PM](#)

REPRESENTATIVE FAIRCLOUGH objected to Amendment 6, as amended. She asked how this affected, on a cost line, the fiscal note for this bill.

MR. BANKS responded that in the original fiscal note for ACES [HB 2001, as introduced] in which this language appeared, it was stated that it was indeterminate. It depends on the industry's response to these kinds of credits and whether or not future exploration is successful and leads to development, he said.

MS. HOULE interjected that the Division of Oil & Gas had determined it had enough people on the "rock side" in Resource Evaluation to help DOR with the statute.

MR. BANKS added that [DNR] has managed this program for several years and has not had to hire an extra person.

[4:33:16 PM](#)

CO-CHAIR JOHNSON asked what the economic impact is on the producers.

COMMISSIONER GALVIN answered that this would benefit the industry because it would provide a greater credit than is currently provided in statute.

CO-CHAIR JOHNSON withdrew his objection to Amendment 6.

[4:33:55 PM](#)

REPRESENTATIVE ROSES requested further clarification from Mr. Porter.

MR. PORTER stated that DOR's projection models assumed about a \$50 million credit under "025". Because the 20 percent matches the capex benefit, there is actually less going into that from an effective standpoint and it is really just captured in the capex benefit. He guessed that the total exposure of going from 20 percent to 30 percent would cause a slight shift and that his rough guess is that the 10 percent would still be in the \$10-20 million range.

[4:35:00 PM](#)

MR. PORTER, in response to Co-Chair Johnson, agreed that this would reduce taxes on industry by \$10 million.

CO-CHAIR JOHNSON remarked that this is moving in the right direction.

[4:35:13 PM](#)

REPRESENTATIVE FAIRCLOUGH reminded the committee that taxpayers eligible for this credit had previously testified that they did not think the credit would be beneficial to the state in the way that the state is presenting it. She said she did not believe that any of the taxpayers had stated that they wanted this language to be included.

CO-CHAIR GATTO inquired whether the credit is optional.

MR. PORTER confirmed that the credit is optional and a taxpayer could choose not to take it. He said he had been concerned about the requirement for giving up data in two years because it is very harsh for an explorer in a extremely remote area. However, he commented, it is now better than before because the current amendment would allow DNR to keep the information confidential in those circumstances where an explorer's surrounding acreage is not fully protected.

[4:37:11 PM](#)

MR. BANKS pointed out that Mr. Porter is describing the provisions on page 5, line 7, of Amendment 6. He disagreed that the requirement is "harsh". Perhaps it is harsh compared to the existing system in Alaska for wells that do not receive credits because extended confidentiality is offered for wells that are drilled where there is vacant acreage nearby. However, he contended, it is not harsh compared to other capitalistic jurisdictions like Canada where this kind of information is routinely made available to the public fairly quickly after the wells are drilled. Regarding what is in the state's interest, he reiterated that the state is, in a sense, participating in the well as would any other participant. The benefit to the state is, in part, not only a successful drilling program but the ability to leverage that information for further exploration and potential development by others. The state is also ponying up part of the expense to drill the well in the first place, he argued.

MS. HOULE related that explorers drilling primarily in the NPR-A have told [the division] that this credit makes a difference in whether or not they drill a well. Most of these credits have been given for NPR-A, she said, and looking at who has drilled there will indicate who has most likely been applying for the credits.

[4:38:54 PM](#)

REPRESENTATIVE FAIRCLOUGH advised that she had just wanted the committee to be aware of the past testimony and the concern for confidentiality in starting a time clock. Because of it being optional on the credit side, she removed her objection.

CO-CHAIR JOHNSON removed his objection to Amendment 6.

There being no further objection, Amendment 6, as amended, was adopted.

[4:40:11 PM](#)

REPRESENTATIVE KAWASAKI moved that the committee adopt Amendment 22, labeled 25-GH0014\L.20, Bullard/Bullock, 11/3/07, which read [original punctuation provided]:

Page 21, following line 30:

Insert a new bill section to read:

"\* **Sec. 29.** AS 43.55 is amended by adding a new section to read:

**Sec. 43.55.055. Penalty for understatement of tax.** (a) If there is a substantial understatement of tax required to be shown on a return under this chapter, there shall be added to the tax an amount equal to 20 percent of the substantial understatement of tax.

(b) If there is a gross understatement of tax required to be shown on a return under this chapter, there shall be added to the tax an amount equal to 40 percent of the gross understatement of tax.

(c) If there is a substantial or gross understatement of tax required to be shown on a return under this chapter, the department's reasonable costs of establishing the understatement shall be added to the amount of the penalty established under (a) or (b) of this section.

(d) A penalty imposed under this section is in addition to any other penalty, remedy, or amount of interest provided by law.

(e) For purposes of this section,

(1) a substantial understatement of tax for any taxable year exists if the amount of the understatement for the taxable year exceeds the lesser of 10 percent of the tax required to be shown on the return for the taxable year or \$10,000,000;

(2) a gross understatement of tax for any taxable year exists if the amount of the understatement for the taxable year exceeds the lesser of 20 percent of the tax required to be shown on the return for the taxable year or \$20,000,000;

(3) "understatement" means the amount by which the tax required to be shown on the return for the taxable year exceeds the amount of the tax

reported as due by the taxpayer as shown on the return."

Renumber the following bill sections accordingly.

Page 31, line 25:

Delete "32 - 34, and 37"

Insert "33 - 35, and 38"

Page 31, line 27:

Delete "31, and 38"

Insert "32, and 39"

Page 32, line 1:

Delete "sec. 29"

Insert "sec. 30"

Page 32, line 3:

Delete "29"

Insert "30"

Page 32, line 31:

Delete "32 - 34, and 37"

Insert "33 - 35, and 38"

Page 33, line 2:

Delete "31, and 38"

Insert "32, and 39"

Page 33, line 20:

Delete "32 - 34, and 37"

Insert "33 - 35, and 38"

Page 33, line 21:

Delete "31, and 38"

Insert "32, and 39"

Page 33, line 22:

Delete "sec. 44"

Insert "sec. 45"

CO-CHAIR JOHNSON objected to Amendment 22.

REPRESENTATIVE KAWASAKI noted that Amendment 4 by Representative Seaton assesses a penalty for paying less than is required under the entity's tax liability and Amendment 7 by Representative Roses deals with failure by a company to report. Amendment 22

is also a penalty issue, he said. It would impose a penalty when a company files on time, but files either a gross or large understatement of the taxes due as required by law. He said the understatement would have to be a pretty large amount - 10 percent and 20 percent - as shown on page 1, lines 19 and 22. Page 2, he explained, consists of conforming amendments and the definition of understatement.

[4:41:37 PM](#)

CO-CHAIR JOHNSON expressed his fear that the state had already closed itself to business and, therefore, he did not want to add any more penalties. He said he understood the intent, but that he is concerned this would be stepping even further across the line to the state being closed to business.

REPRESENTATIVE ROSES said he did not oppose Amendment 22, but that he opposed assessing penalties in cases where underpayment is not deliberate. For example, internal audits between joint interest partners could later result in the filing of an amended return that is quite different from the original return. Another example would be an audit that results in disallowance of credits. He supported penalties for deliberate understatements, but wanted to ensure that penalties would not be assessed when understatements were inadvertent.

[4:44:04 PM](#)

REPRESENTATIVE SEATON shared the sponsor's desire to ensure that taxes are reported properly. He also shared Representative Roses' fear that a company could get penalized through no fault of its own. He requested Commissioner Galvin to address the issue.

COMMISSIONER GALVIN said his understanding is that the imposition of a penalty is discretionary on the part of the agency. In taking into account the imposition of that penalty, the culpability of the taxpayer would be considered. He said he thought that Amendment 22 would basically establish the maximum penalty that would be allotted by the department in that circumstance.

[4:46:25 PM](#)

CO-CHAIR GATTO asked whether this would be handled in the same manner as the Internal Revenue Service (IRS) which is that an error receives a penalty.

COMMISSIONER GALVIN responded that a level of care can be established, such as willful, fraudulent, negligent, and so forth. Amendment 22 would substitute a quantitative measurement for that standard of care and would base it upon the magnitude of the understatement.

[4:47:07 PM](#)

REPRESENTATIVE SEATON inquired whether incorrect joint interest billings or other non-deliberate circumstances could result in understatements of [10 and 20 percent].

COMMISSIONER GALVIN replied that DOR does not yet have the experience on which to base a response regarding how likely an understatement could be due to a disagreement over a characterization as opposed to an attempt to add a cost that is clearly inappropriate. He clarified that the 20 and 40 percent figures represent the penalty, and the 10 and 20 percent figures represent the understatement amount for reaching those various thresholds. Given the magnitude of many of the tax returns and the relative inexperience that we all have in the implementation of this, he said, this could be a threshold that is met often.

[4:49:27 PM](#)

CO-CHAIR GATTO inquired whether the error would be calculated on a line-by-line basis or on the total of the entire return.

COMMISSIONER GALVIN said he would interpret the substantial understatement of tax as being on the return. In further response to Co-Chair Gatto, Commissioner Galvin confirmed that this would then result in just one assessment.

CO-CHAIR GATTO asked if the procedure for overstatements is to send the taxpayer a check.

COMMISSIONER GALVIN stated, "Generally, yes."

[4:50:06 PM](#)

REPRESENTATIVE KAWASAKI inquired whether a delayed effective date would be appropriate given the lack of experience in this regard. He also requested Commissioner Galvin's overall opinion on whether penalties should be in place.

COMMISSIONER GALVIN answered that there are already penalties in place, but that it is a matter of whether they are substantial enough to affect behavior. Everyone, including DOR, is struggling with moving to a system where the state is reliant upon taxpayer self-reporting and then the state catching up and identifying what the actual amount should be. The concern from the public is that that is going to represent a large amount and there will be a financial value in under-reporting in order to retain the money and then pay an insignificant penalty. The transition from a gross-based tax to a net-based tax is going to be filled with a period of learning what the vulnerability is, Commissioner Galvin noted. He said that [DOR] wants to ensure that the system does not incentivize under reporting, but that [DOR] is also sensitive as to whether it will be perceived as being punitive in moving to the new system. The totality of the whole structure must be considered and because amendments are being made one at a time it is difficult to see the whole scheme and whether there has been an over-stepping. "In that context," he continued, "... we don't have a strong feeling on this particular amendment or this particular area in either direction, but we do want to ensure that there is proper incentive for full compliance."

[4:52:48 PM](#)

CO-CHAIR GATTO asked whether there is authority to forgive a penalty or are the rules hard and fast and the penalties exact.

COMMISSIONER GALVIN said that as the commissioner he would have the authority to waive a penalty if the circumstances warranted.

REPRESENTATIVE FAIRCLOUGH pointed out that some of the power to negotiate down was removed by an amendment that had already passed that precluded negotiation down under 50 percent, including interest. She also noted that an amendment had passed that provided for the state to start estimating the reasonable cost of transportation. She expressed her concern that the state might cause a gross underestimate as a result of changing the mix of what is required. We are asking taxpayers for new auditing compliance records and now we are going to penalize them if they do not get it right, she opined. She therefore appreciated the suggestion for delaying the implementation date.

[4:54:52 PM](#)

REPRESENTATIVE ROSES requested Mr. Porter's opinion in this regard.

MR. PORTER advised that given the amount of tax that would now be paid, a mistake of 1-2 percent would be subject to a penalty, and this seemed harsh, especially in the current environment where companies do not know what they are supposed to pay. He suggested that imposition of penalties be deferred until after either the first taxable year in which regulations are in place or after a certain number of years. This would allow the taxpayers and DOR the time to fine-tune what should be paid.

[4:56:46 PM](#)

REPRESENTATIVE ROSES said he would be more comfortable if the implementation date was after the calendar year following completion of the first set of audits, which would take about six years. This would help determine whether or not the state was being "gamed". He asked if this kind of effective date would accomplish the objective mentioned by Mr. Porter.

MR. PORTER replied it that would address the concern.

[4:57:47 PM](#)

REPRESENTATIVE WILSON inquired whether the check-back date of [2011] is still in the bill.

COMMISSIONER GALVIN said the date of 2011 had not been changed.

REPRESENTATIVE WILSON stated that perhaps 2011 would be the time to determine if this is needed.

[4:58:38 PM](#)

REPRESENTATIVE ROSES moved [Conceptual] Amendment 1 to Amendment 22 to "set the effective date ... at the calendar year immediately following the first set of completed audits, or the taxable year following the first set of completed audits."

REPRESENTATIVE FAIRCLOUGH objected to [Conceptual] Amendment 1 to Amendment 22.

COMMISSIONER GALVIN asked for a definition of "set of completed audits".

REPRESENTATIVE ROSES said the intent of his [conceptual] amendment is to ensure that a penalty would not be assessed until audits had been done and it was known whether

understatements were deliberate or a result of regulations or the changes that were made. An audit would reveal facts and test the regulations and until then, he said, a penalty would be unfair.

[5:00:28 PM](#)

CO-CHAIR JOHNSON commented that there are Enron Corporation executives in jail today for falsifying and presenting misleading reports on returns.

COMMISSIONER GALVIN said that this was not for tax returns, it was for fraud for falsifying to their investors.

[5:01:15 PM](#)

CO-CHAIR JOHNSON inquired whether there are substantial penalties in state or federal law for intentionally falsifying reports.

COMMISSIONER GALVIN responded yes, there are substantial penalties for willful fraud on tax returns. In further response to Co-Chair Johnson, Commissioner Galvin said it would be criminal for purposely providing willful, fraudulent tax returns with wrong information. In response to Co-Chair Gatto regarding statutes of limitations, Commissioner Galvin stated that each criminal thing would have a different statute of limitations.

The committee took an at-ease from 5:02 P.M. to 5:03 P.M.

[5:04:03 PM](#)

REPRESENTATIVE ROSES clarified that the conceptual intent of Amendment 1 to Amendment 22 is that it would be only for those taxpayers to which this penalty would apply and not for all taxpayers. A penalty would not be imposed until after the taxpayer had gone through an audit process that is based upon the new regulations.

CO-CHAIR GATTO asked whether a mistake on the first tax return could cause penalties to be applied to returns filed in subsequent years.

COMMISSIONER GALVIN answered that it would depend on how it is written, but that he thought the intent is that penalty would not be assessed unless the taxpayer was filing a tax return after the previous tax return had been fully audited.

REPRESENTATIVE ROSES said correct. For example, if returns are filed in 2006, 2007, and 2008, and an audit did not occur until the year 2009, then the penalty would not apply for 2006, 2007, or 2008. It would only apply to those returns filed after an audit had been done.

[5:06:48 PM](#)

COMMISSIONER GALVIN explained that there is already a 5 percent penalty in place for understatement, so that is the base regardless of whether [Amendment 22] went into effect or not. In a case of willful fraudulent reporting, it is an additional 50 percent on top of the other penalties.

MR. PORTER read the statute which states that the 5 percent shall be added to a tax for each 30-day period or fraction of the period during which the taxpayer fails to file at the time or times required by the law of regulation a report or pay the full amount of the tax or a portion of the deficiency of the tax that is finally determined by the department and is required by this title, unless there is showing that the failure is due to reasonable cause and not willful neglect. The penalty may not exceed 25 percent in the aggregate. "If it is negligence," he continued, "an additional penalty is added on top of that, and if it is fraud it is 50 percent on top of that."

[5:08:02 PM](#)

CO-CHAIR GATTO presumed that one tax return did not need to be audited before any of the aforementioned would apply.

COMMISSIONER GALVIN clarified that the penalty applies to all tax, not just production taxes.

REPRESENTATIVE ROSES inquired whether the penalties under Amendment 22 could be less than under existing penalties.

COMMISSIONER GALVIN replied that subsection (d) of Amendment 22 provided that it would be additive to any other penalty.

REPRESENTATIVE ROSES said he would not withdraw his amendment.

[5:09:36 PM](#)

REPRESENTATIVE FAIRCLOUGH surmised that Conceptual Amendment 1 to Amendment 22 applied to the new law that would be imposed if

passed under this special session, not to some past auditing procedure.

REPRESENTATIVE ROSES said correct.

There being no objection, Conceptual Amendment 1 to Amendment 22 was passed.

The committee took an at-ease from 5:11 P.M. to 5:13 P.M.

5:13:00 PM

REPRESENTATIVE KAWASAKI moved [Conceptual] Amendment 2 to Amendment 22 to "strike the words in line 19 [page 1] 'the lesser of', in line 20 'or \$10,000,000', [in] line 22 'the lesser of', and [in] line 23 'or \$20,000,000'".

CO-CHAIR JOHNSON objected to [Conceptual] Amendment 2 to Amendment 22.

REPRESENTATIVE KAWASAKI explained that as mentioned by Mr. Porter, \$10 million is a very small percent of a liability that is over \$1 billion. He said that 10 percent still seemed substantial and 20 percent still seemed gross to him. He said he believed that the 10 percent or 20 percent margin was high enough and therefore fair for any company that understates its taxes by mistake or otherwise, so for this reason he left the percentages and struck the dollar amounts.

5:13:48 PM

REPRESENTATIVE FAIRCLOUGH said she did not support [Amendment 22], but she encouraged all members to support [Conceptual Amendment 2 to Amendment 22].

CO-CHAIR JOHNSON withdrew his objection to [Conceptual] Amendment 2 to Amendment 22.

There being no further objection, [Conceptual] Amendment 2 to Amendment 22 was passed.

REPRESENTATIVE FAIRCLOUGH called the question for Amendment 22, as amended.

A roll call vote was taken. Representatives Edgmon, Kawasaki, and Guttenberg voted in favor of Amendment 22, as amended. Representatives Fairclough, Wilson, Seaton, Roses, Johnson, and

Gatto voted against it. Therefore, Amendment 22, as amended, failed adoption by a vote of 3-6.

The committee took an at-ease from 5:16 P.M. to 5:18 P.M.

[5:18:34 PM](#)

CO-CHAIR GATTO announced that Amendment 26 had been previously withdrawn and that the committee was now on Amendment 4 to Amendment 38.

REPRESENTATIVE SEATON inquired whether Amendment 4 to Amendment 38 would be on line 14 of page 1.

[5:18:55 PM](#)

REPRESENTATIVE FAIRCLOUGH said that the subsection referenced in Amendment 4 to Amendment 38 needed to be amended.

COMMISSIONER GALVIN noted that the language is intended for the statute and that it could go in as a new subsection on page 2 below what is currently (q).

REPRESENTATIVE FAIRCLOUGH interjected that it would fit in on line 6 of page 2, and that Legal Services could work out where the exact location should be.

COMMISSIONER GALVIN recommended that it be inserted on page 2, line 6, as a new subsection (r), and that "(p)" in the written amendment be changed to "(q)". Thus under a new subsection (r), Amendment 4 to Amendment 38 would read: "[The RCA shall determine if an entity that receives gas that is taxed, for production purposes,] under the provisions of 43.55.011 (q) falls under their jurisdiction."

[5:21:07 PM](#)

REPRESENTATIVE GUTTENBERG objected. He argued that intent language is one thing, but that non-intent language expanding the authority of RCA would require a language change and consideration of whether it falls under the call of the special session. He said he thought every regulated utility in the state would know that RCA did not need to expand its authority in order to ask questions of a utility.

REPRESENTATIVE FAIRCLOUGH contended that it did not expand RCA's authority. If a producer or a developer taking the tax supplies

a utility that is under the RCA's jurisdiction as it stands today under the criteria given by Representative Kelly, then the utility must pass on the credit to the consumer. So, it is asking RCA to look at a rate case in this type of situation.

5:23:08 PM

REPRESENTATIVE GUTTENBERG said his point is that RCA already has the authority as it is their role to examine these things. Expanding RCA's authority would necessitate changing the title of this bill, he contended.

REPRESENTATIVE FAIRCLOUGH asked whether Commissioner Galvin supported this amendment.

COMMISSIONER GALVIN responded no. The purpose of the statute is to provide the tax benefit for the production of the gas. It would not change RCA's jurisdiction, whether or not they had it over the entity. He said he thought it would merely make [the utility] come to [RCA's] attention because the consumers would demand it.

REPRESENTATIVE FAIRCLOUGH reiterated that she supports a guarantee that the benefit will be offered to all Alaskans.

A roll call vote was taken. Representatives Wilson, Fairclough, Roses, and Johnson voted in favor of Amendment 4 to Amendment 38. Representatives Seaton, Edgmon, Kawasaki, Guttenberg, and Gatto voted against it. Therefore, Amendment 4 to Amendment 38 failed to pass by a vote of 4-5.

5:25:29 PM

REPRESENTATIVE FAIRCLOUGH called the question for Amendment 38, as amended. In response to Co-Chair Johnson, she withdrew her call of the question.

CO-CHAIR JOHNSON expressed his support for equal treatment for all Alaskans. He said he is concerned that North Slope gas is being monetized. [Gas] contracts may or may not be presented at the end of the month and there will be an open season in 12-18 months. He could see a scenario where the oil industry would not show up to open season because: a) the gas is being monetized, b) industry was told it could not have the Murkowski Administration's [gas] contract, and c) industry was prohibited from going over the top. Therefore, any grounds for a state lawsuit against the industry are unfounded, he opined. This is

one more opportunity for the oil companies to say they will not monetize their gas because they are meeting certain criteria. He said he has grave concerns that this will be a problem.

COMMISSIONER GALVIN noted that the purpose of Amendment 38, as stated in its legislative intent section, is to have the tax benefit provide lower cost energy for Alaskans; not because it is economically necessary for North Slope production.

[5:28:47 PM](#)

A roll call vote was taken. Representatives Kawasaki, Seaton, Guttenberg, Edgmon, and Gatto voted in favor of Amendment 38, as amended. Representatives Fairclough, Wilson, Roses, and Johnson voted against it. Therefore, Amendment 38, as amended was adopted by a vote of 5-4.

CO-CHAIR GATTO announced that Amendments 39 and 40 were withdrawn.

The meeting was recessed at 5:30 p.m.

CO-CHAIR GATTO called the meeting back to order at 6:58 P.M. Present at the call back to order were Representatives Guttenberg, Edgmon, Fairclough, Wilson, Seaton, Roses, Gatto, Kawasaki, and Johnson.

[6:59:04 PM](#)

CO-CHAIR GATTO moved for reconsideration of his vote on passing Amendment 32. There being no objection, the vote on Amendment 32 was rescinded, and the amendment was back before the committee.

REPRESENTATIVE ROSES inquired why Co-Chair Gatto decided to rescind his vote.

CO-CHAIR GATTO replied that he had spoken with House leadership and learned that Amendment 32 would give the committee bill an additional referral which would delay the bill one more week. He said he did not think this was in the best interest of the state, so he would now be voting against it.

[7:00:49 PM](#)

REPRESENTATIVE ROSES agreed. He said that during the initial debate on Amendment 32, Representative Fairclough had warned

that it could cause referral to the House Judiciary Standing Committee (HJUD). He said he is disappointed, however, that decisions on policy this large are being based on whether or not to extend the special session a week or have it be carried over into the regular session. If it is important enough to pass in the first place, it ought to be important enough to discuss, he opined.

CO-CHAIR JOHNSON remarked that there had been many votes on amendments for which he would have liked to have seen legal opinions regarding the impact. He said he appreciated Co-Chair Gatto rescinding his vote, but that he is not necessarily afraid of exposing this legislation to as many committees and as much time as it takes.

[7:02:59 PM](#)

REPRESENTATIVE FAIRCLOUGH stated that she also appreciated Co-Chair Gatto's reconsideration of Amendment 32. Because of the seriousness of the topic, she said she would not "game" this by voting yes in order to send it to HJUD. Rather, she would again be voting no because she did not think it was legal.

REPRESENTATIVE GUTTENBERG said there are two large and inseparably related issues on the same table: passing or killing ACES [HB 2001] and whether or not to set aside for another day the Exxon Valdez and the interests of Alaskans. "It is troubling for me to even not have objected to this motion to rescind," he said. The ExxonMobil Corporation has the right to its day in court and the right to appeal which might take five more years. Many aspects of this bill, he opined, are related to whether the state is going to act in its own best interest or allow corporations to dictate how the state does business. Living to fight another day is what this means to me.

[7:06:14 PM](#)

REPRESENTATIVE ROSES advised that he would be voting against Amendment 32 for the same reasons that he voiced during the first vote and that he was not voting against the amendment to prevent the bill from going to HJUD.

REPRESENTATIVE WILSON specified that she would also be voting against Amendment 32 for the same reasons as the first time, and that her vote had nothing to do with extending the special session for another week. If it is true that it would extend

the special session by a week, then it should be extended in order to take the necessary time, she opined.

A roll call vote was taken. Representatives Edgmon and Kawasaki voted in favor of Amendment 32. Representatives Wilson, Seaton, Guttenberg, Fairclough, Roses, Gatto, and Johnson voted against it. Therefore, Amendment 32 failed to pass by a vote of 2-7.

[7:09:24 PM](#)

REPRESENTATIVE KAWASAKI moved that the committee adopt Amendment 36, labeled 25-GH0014\L.77, Cook/Bullock, 11/4/07, which read [original punctuation provided]:

Page 1, following line 12:

Insert a new bill section to read:

**"\* Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. It is the intent of the legislature that not less than half of the amount of money received by the state as a result of the retroactivity of certain provisions under sec. 45 of this Act that exceeds the amount the state would have received if those provisions had not been made retroactive will be appropriated to the budget reserve fund (art. IX, sec. 17, Constitution of the State of Alaska)."

Page 2, line 1:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Page 31, line 28:

Delete "2007"

Insert "2006"

Page 33, line 3:

Delete "2008"

Insert "2007"

Page 33, line 19, following "ACT.":

Insert "(a)"

Page 33, following line 20:

Insert a new subsection to read:

"(b) Sections 15 - 21, 27, 28, 32, and 39 of this Act are retroactive to January 1, 2007."

Page 33, line 21:

Delete all material.

Re-number the following bill section accordingly.

Page 33, line 22:

Delete "Except as provided in sec. 44 of this Act, this"

Insert "This"

Re-number internal references to bill sections in accordance with this amendment so that the LEGISLATIVE INTENT section, added as bill section 1, is given an immediate effective date. Below are all internal bill section references in this bill:

Page 31, lines 25, 27, 29, 30, and 31

Page 32, lines 1, 3, 13, 16, 19, and 31

Page 33, lines 2, 19 - 20, 21, and 22

CO-CHAIR JOHNSON objected to Amendment 36 for discussion purposes.

REPRESENTATIVE KAWASAKI explained that Amendment 36 would save for the future by making some of the tax regulation and progressivity provisions retroactive to January 1, 2007, and putting that money into the Constitutional Budget Reserve Fund (CBRF). The state's debt to the CBRF is \$5 billion, he noted.

[7:10:37 PM](#)

CO-CHAIR GATTO asked what the current balance of the CBRF is.

COMMISSIONER GALVIN said approximately \$2.65 billion.

[7:11:15 PM](#)

CO-CHAIR GATTO surmised that Amendment 36 is an attempt to repay the amount of money that has been taken from the CBRF.

REPRESENTATIVE KAWASAKI responded that not less than half [of the amount of money received by the state as a result of the retroactivity] would be placed in the CBRF. His intent, he said, is that a larger portion than one-half be put in. So far \$5 billion has been spent and the balance is roughly \$2.65

billion. The best part, he opined, is that it takes a three-quarters vote of the legislature to tap the CBRF.

[7:12:50 PM](#)

CO-CHAIR JOHNSON moved Amendment 1 to Amendment 36 to "on line 8, after 'appropriated to' strike 'budget reserve fund' and insert 'permanent fund'". The problem, he said is that the state needs a long-term fiscal plan to save for a rainy day. The three-quarter vote required to withdraw from the CBRF inflates the capital budget, he contended, because at the end of the session people want to get home and will give away projects in order to get out of here. The only way to assure that money is saved is when, as a body, it takes a 50 percent vote and a legislator must defend his/her vote to constituents.

CO-CHAIR JOHNSON withdrew Amendment 1 to Amendment 36.

[7:14:50 PM](#)

REPRESENTATIVE WILSON applauded the state having to save money. She said she was there when money was taken from the CBRF and that despite the three-quarter vote requirement, legislators were able to demand and get something in return for their yes vote. Thus, in order to garner the votes, more money was taken out than was necessary. It is a double-edged sword, she argued, and she would therefore be voting no even though she supported the state having a savings account.

[7:16:20 PM](#)

CO-CHAIR GATTO inquired whether the CBRF is invested in interest bearing notes or in investments.

COMMISSIONER GALVIN replied that part of the CBRF is longer-term, higher return, but that the bulk is shorter-term, lower return. In further response to Co-Chair Gatto, Commissioner Galvin said he thought the return is in the 5-6 percent range as opposed to the 10 percent range for the state's other funds.

[7:16:59 PM](#)

REPRESENTATIVE ROSES stated that he had supported the amendment passed earlier by the committee to create the savings account. He understood that it took a simple majority to move money out of that account to somewhere else, thus 21 members could decide to take half of that savings account and put it into the CBRF.

He said he would therefore vote no on Amendment 36 because it takes a three-quarters vote to move money out of the CBRF, but only a simple majority to move money in.

REPRESENTATIVE SEATON said changing the retroactivity for a year under Amendment 36 troubles him because there is so little experience with PPT regulations. Re-writing the regulations and making other changes in a retroactive fashion would be problematic.

REPRESENTATIVE KAWASAKI requested Commissioner Galvin to speak to the point of retroactivity.

COMMISSIONER GALVIN agreed that the retroactive effective date would be a complication. He recommended that the committee consider amending Amendment 36 to include transitional provisions similar to what was done for the PPT when it passed to allow for a period where taxpayers can continue to make payments under the current system and then have a true-up on March 31.

[7:19:49 PM](#)

REPRESENTATIVE FAIRCLOUGH reiterated her support from the previous day for the money rolling into the Permanent Fund, the CBRF, or an account in the general fund (GF). She cautioned that having a CBRF designation would require the bill to go to the House Special Committee on Ways and Means (HW&M) and that the leadership is looking at how loaded the bill is with additional things needing to be looked at. She supported the money going to CBRF but suggested calling an at-ease to determine if this would send the bill to HW&M. She asked why the amendment was not made yesterday to go into the CBRF. She said the committee could choose to: rescind someone else's vote and go back and replace it in a single item fund so that the full body had an opportunity on that specificity of change; or reroute to another fund in the GF; or vote for the amendment and take an at-ease.

[7:21:35 PM](#)

CO-CHAIR JOHNSON moved Amendment 2 to Amendment 36 on [line 8 on page 1] "at the end of 'appropriated to' pay down the (PERS)/(TRS) obligation of the state." Fixing the problem of the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS) is both a legal and moral obligation. The state has billions of dollars in obligation to retirees, he

said, and he would not withdraw his amendment because he wanted it on the record. The other side of savings is to pay down debt.

[7:23:14 PM](#)

REPRESENTATIVE ROSES objected to Amendment 2 to Amendment 36 for discussion purposes. He inquired if this conceptual amendment was worded to pay down the PERS and TRS unfunded liability.

CO-CHAIR JOHNSON answered yes.

REPRESENTATIVE ROSES asked whether Co-Chair Johnson's intention was to pay the money to the savings account created by the past amendment once PERS and TRS is no longer a liability.

CO-CHAIR JOHNSON said that would be appropriate.

REPRESENTATIVE ROSES supported Amendment 2 to Amendment 36.

[7:23:37 PM](#)

REPRESENTATIVE GUTTENBERG said that GF monies or some other source would be used to pay the obligation down, but that he did not believe a specific account had been set aside. He did not know whether the administration had a larger fiscal plan in order to get there, but advised that it be addressed in the next day or two.

The committee took an at-ease from 7:24 P.M. to 7:35 P.M.

[7:35:13 PM](#)

CO-CHAIR JOHNSON withdrew Amendment 2 to Amendment 36. He moved Conceptual Amendment 3 to Amendment 36 "that 25 percent of the 50 percent goes to pay down the unfunded liability and the other 25 percent goes into the ... educational fund". In response to Representative Roses and Co-Chair Johnson, he clarified that of the half of the money received by the state, it would be split equally so that half of the 50 percent would go to PERS/TRS and half of the 50 percent would go to education.

CO-CHAIR GATTO restated that Conceptual Amendment 3 to Amendment 36 would use 50 percent of the retroactivity money and divide that in half between education and PERS/TRS refunding.

[7:37:45 PM](#)

REPRESENTATIVE SEATON said he wanted to make sure that Co-Chair Johnson's intent is what is stated in the bill - that the increase in tax rate and progressivity is retroactive for the past year, and that half of the retroactive increase on everything that is retroactive is to be deposited to PERS/TRS and the other half is to be deposited in the education fund. He reminded the committee of Commissioner Galvin's recommendation to include transition language. He also noted that this amendment deals with exclusively making this bill retroactive for the past tax year.

[7:39:37 PM](#)

REPRESENTATIVE GUTTENBERG pointed out that the CBRF had some parameters around it like a three-quarters vote, but that the committee would be taking that away. "We're putting them into two funds, but they are not there," he said. Neither of these two funds is putting it at arms reach like with the CBRF, and the only farther thing is the Permanent Fund. He submitted that the money is not really being put into a savings, rather in some ways it is being put into operating.

CO-CHAIR JOHNSON answered that it takes the same simple majority to withdraw money out of the Earnings Reserve Account of the Permanent Fund, as well. However, that comes with political consequences because each legislator must explain why to his/her constituents. He said he is comfortable with that and welcomes that.

[7:42:11 PM](#)

REPRESENTATIVE FAIRCLOUGH asked what would happen to the money once the PERS/TRS obligation was fulfilled. She pointed out that the committee had still not addressed the regressiveness of going back on the 2006, but that she realized this could not be done by Conceptual Amendment 3 to Amendment 36.

CO-CHAIR JOHNSON understood that any unspent and unobligated money left in the GF at the end of the year is automatically swept into the CBRF. Thus, when the PERS/TRS liability is paid off, that money will be automatically swept into the CBRF unless some future body determines otherwise.

[7:43:43 PM](#)

REPRESENTATIVE ROSES requested clarification from Commissioner Galvin as to whether unspent money would be swept into the CBRF.

COMMISSIONER GALVIN said this is not under his normal purview, but that he understood the unspent money from last year's appropriation went into the capital account, not the CBRF. It is a matter of identifying where the excess goes each appropriation year, he said.

CO-CHAIR JOHNSON responded that the [capital account] is a need of the state and that because he has been harking on jobs he did not have a problem with the money going into that account at that time.

[7:44:38 PM](#)

REPRESENTATIVE WILSON praised the Conceptual Amendment 3 to Amendment 36 because it addressed the burden of PERS/TRS and provided forward funding for education. She said she would be voting for it.

REPRESENTATIVE EDGMON appreciated Co-Chair Johnson's idea and urged support for it.

A roll call vote was taken. Representatives Edgmon, Kawasaki, Fairclough, Wilson, Seaton, Roses, Guttenberg, Johnson, and Gatto voted in favor of Conceptual Amendment 3 to Amendment 36. No members voted against it. Therefore, Conceptual Amendment 3 to Amendment 36 passed by a vote of 9-0.

[7:47:28 PM](#)

REPRESENTATIVE ROSES moved Conceptual Amendment 4 to Amendment 36 "to remove the retroactivity language and that it just take effect with the effective date of this bill."

REPRESENTATIVE KAWASAKI objected to Conceptual Amendment 4 to Amendment 36.

REPRESENTATIVE SEATON objected to Conceptual Amendment 4 to Amendment 36. He noted that Amendment 36 only deals with the difference between the amount of money generated retroactively and what would be collected under PPT. Thus, deleting the retroactivity would result in there being no money to distribute to the two funds. This is not a going forward bill, he explained, it is a bill that only deals with one year and that

is a retroactivity between changing 2007 to 2006 and applying the tax rates that are incorporated in this bill.

[7:49:35 PM](#)

REPRESENTATIVE ROSES said he brought up the amendment because concern was voiced by Commissioner Galvin and others about the retroactivity.

COMMISSIONER GALVIN, in response to Representative Kawasaki and Co-Chair Gatto, stated that [Conceptual Amendment 4] would eliminate the purpose of [Amendment 36] as explained by Representative Seaton. He clarified that his recommendation to include transition language if there was retroactivity did not mean he was opposed to the amendment. He said he thought that from a parliamentary standpoint an amendment could not be taken that would eliminate the purpose of the standing amendment.

REPRESENTATIVE ROSES withdrew Conceptual Amendment 4 to Amendment 36.

[7:51:40 PM](#)

CO-CHAIR JOHNSON removed his objection to Amendment 36.

REPRESENTATIVE SEATON objected to Amendment 36, as amended. In response to Co-Chair Gatto, he declined to speak further to the amendment.

REPRESENTATIVE FAIRCLOUGH appreciated the committee's support for the state to save money, but cautioned that there are more implications in what has been done. She said she would vote yes because she supported saving the money, but she hoped that Amendment 36 would not cause further delay in getting the governor's bill [HB 2001] completed inside the 30-day session.

CO-CHAIR JOHNSON stated that [Amendment 36, as amended] is not enough, but it is a beginning to sound footing for the future.

A roll call vote was taken. Representatives Fairclough, Roses, Guttenberg, Edgmon, Kawasaki, and Johnson voted in favor of Amendment 36, as amended. Representatives Wilson, Seaton, and Gatto voted against it. Therefore, Amendment 36, as amended, passed by a vote of 6-3.

[7:54:18 PM](#)

REPRESENTATIVE KAWASAKI withdrew Amendment 37.

REPRESENTATIVE GUTTENBERG withdrew Amendment 41.

CO-CHAIR GATTO announced that Amendment 42 was withdrawn.

[7:56:19 PM](#)

REPRESENTATIVE EDGMON moved that the committee adopt Amendment 43, labeled 25-GH0014\L.68, Wayne/Bullock, 11/3/07, which read [original punctuation provided]:

Page 26, lines 17 - 19:

Delete

"(8) costs of arbitration, litigation, or other dispute resolution activities that involve the state or concern the rights or obligations among owners of interests in, or rights to production from, one or more leases or properties or a unit;"

Insert

"(8) costs of arbitration, litigation, [OR OTHER] dispute resolution, lobbying, public relations, advertising, or policy advocacy [ACTIVITIES THAT INVOLVE THE STATE OR CONCERN THE RIGHTS OR OBLIGATIONS AMONG OWNERS OF INTERESTS IN, OR RIGHTS TO PRODUCTION FROM, ONE OR MORE LEASES OR PROPERTIES OR A UNIT];"

Page 29, line 12, following "processed":

Insert ";

(21) costs relating to office buildings, fixtures and equipment, and real property that is not located on an oil or gas exploration, production, or development lease or property in the state; and

(22) overhead, office, or administrative expenses and all other indirect costs of oil or gas exploration, development, or production"

CO-CHAIR JOHNSON objected to Amendment 43.

[7:56:33 PM](#)

REPRESENTATIVE EDGMON explained that Amendment 43 would expand the exemptions from lease expenditures to include the following costs: lobbying, public relations, advertising, and public advocacy; costs relating to office buildings, fixtures and equipment, and real property that is not located on an oil or gas exploration, production, or development lease or property in

the state; and overhead, office, or administrative expenses and all other indirect costs of oil or gas exploration, development, or production. In response to Co-Chair Gatto, Representative Edgmon requested Commissioner Galvin to comment on the differences between Amendment 43 and a similar amendment that went through the Senate Judiciary Standing Committee.

The committee took an at-ease from 7:58 p.m. to 8:14 p.m.

8:14:22 PM

COMMISSIONER GALVIN described the differences between Amendment 43 and a similar amendment in the senate. [Paragraph] (8) makes it explicitly clear that lobbying, public relations, and advertising are excluded expenditures because they are not direct costs associated with production. Additional explicit exclusions from lease expenditures are included by adding [paragraphs] (21) and (22). He noted that [paragraph] (21) in Amendment 43 was modified [in the senate] to delete the words on line 16 "on an oil or gas exploration, production, or development lease or property" so that it reads "costs relating to office buildings, fixtures and equipment, and real property that is not located in the state". [Paragraph] (22) references "overhead, office, or administrative expenses and all other indirect costs". He explained that, separately, in the description of direct costs of lease expenditures, specific reference is made to allowances for overhead that is directly related to production. Current regulations allow up to 3 percent of capital expenditures and 9 percent of operating expenditures as separate allowances on top of those costs. The reference here, he pointed out, does not eliminate that inclusion of overhead directly related to production. He said he did not know if the purpose of having him explain the differences is because the committee intended to amend [Amendment 43] to delete that language.

8:17:44 PM

REPRESENTATIVE ROSES recommended identifying the specific kind of disallowed advertising because Amendment 43 could exclude advertising expenses for jobs in the classifieds and professional journals.

REPRESENTATIVE GUTTENBERG said that taking out a comma might address Representative Roses' concern. Industry has a right to conduct advocacy, it is just whether or not they can write it off against state taxes.

CO-CHAIR JOHNSON voiced his concern about excluding public relations as well as advertising. He said industry's donations to arts, parks, and education fall under public relations and that he does not have a problem with allowing industry to write off community involvement. It would affect not only the industry but also advertising outlets, he argued. In the interest of disclosure, he noted that his wife works for an advertising company and that his background is in advertising. The list of people and projects that fall under the category of public relations is enormous, he continued, and there would be a major impact if corporate donations were to stop.

[8:21:43 PM](#)

REPRESENTATIVE SEATON pointed out that Amendment 43 would not disallow deductions against corporate taxes; it only says that it cannot be considered a direct lease expense. He said he had a question about lines 9, 10, and 11 where the following language is eliminated: "obligations among owners of interests in, or rights to production from, one or more leases or properties or a unit".

COMMISSIONER GALVIN responded that Amendment 43 would apply a blanket disallowance for any costs of litigation, arbitration, or dispute regardless of whether or not they involve the state or owners.

[8:23:45 PM](#)

REPRESENTATIVE GUTTENBERG stated that it would be a concern if corporations are making charitable contributions just so they can advertise to the public that they have done so. But if corporations are making a deduction and writing it off their lease expenditures, they are probably also writing it off as a charitable deduction on their federal taxes and on their state corporate taxes. So, he said, maybe the state is making those donations.

COMMISSIONER GALVIN replied that if corporations are making charitable donations, they are not lease expenditures, and they are not deductible under production tax.

[8:24:56 PM](#)

REPRESENTATIVE EDGMON said that the intent of Amendment 43 was to take it back to what are ordinary and necessary expenses in

exploring or developing and all the activities it takes to actually conduct business on the North Slope. Why would the state want to allow lobbying as a write-off, he asked.

COMMISSIONER GALVIN said he appreciated that the purpose of Amendment 43 is to explicitly state that, but that his point is that the overarching inclusion is costs that are directly attributable to production of oil and gas. Under any definition, he continued, lobbying, public relations, and donations are not considered direct costs associated with production of oil and gas. This makes it clear that these are not deductible from PPT.

[8:26:05 PM](#)

REPRESENTATIVE WILSON inquired whether Amendment 43 did what DOR was already doing anyway.

COMMISSIONER GALVIN answered yes, with regard to the change in [paragraph] (8).

REPRESENTATIVE ROSES remained concerned about advertising. He said that Representative Guttenberg's statement regarding corporations making charitable donations just so they can advertise that they have done so is a personal affront. He related that he was a proud recipient of BP's "Teacher of the Year Award" and that it meant a lot to him and his family.

[8:27:51 PM](#)

CO-CHAIR JOHNSON asked what the cost of Amendment 43 would be.

COMMISSIONER GALVIN responded that he thought there would be no fiscal impact given that none of the costs listed in the amendment would have been deducted otherwise. However, he said, if the amendment is left as stated without making the same modification that was made in the Senate, then the cost related to office buildings, fixtures, equipment, and real property not located on the lease itself will not be deductible. Thus, any office buildings in Anchorage or other locations in the state would no longer be deductible even though they may be directly related to the production of oil and gas given that they house the personnel needed for that activity. He did not know how much the potential fiscal impact would be, but that it would "not be in the nature of millions".

[8:29:18 PM](#)

REPRESENTATIVE FAIRCLOUGH submitted that this encouraged the exportation of jobs from Alaska to other cities and countries. There are many oil industry buildings in Anchorage, but the industry could do business cheaper in their home cities like Houston, she said. This jeopardizes a significant portion of the economics of Alaska's cities where people are working. She could not support Amendment 43 in its current form, although she supported [paragraph] (8) because she did not think lobbying should be an allowable deduction. She is unhappy to hear statements that the industry panders their good deeds to the public, she said, but did not think that industry's charitable contributions are at risk. Many of these businesses are wonderful corporate partners with numerous non-profit organizations, she opined, including a nonprofit for which she had been executive director. She related that an economist speaking before the House Special Committee on Economic Development, International Trade and Tourism testified that industry contributed 88-90 percent of the bottom line into the GF and that oil and gas jobs were the first or second best paying in the state.

[8:33:02 PM](#)

REPRESENTATIVE SEATON moved [Amendment 1] to Amendment 43 to delete the following language on lines 16 and 17: "on an oil or gas exploration, production, or development lease or property". Thus, the language beginning on line 16 would read, "real property that is not located in the state;".

CO-CHAIR JOHNSON objected to Amendment 1 because he objected to Amendment 43 in its entirety. He requested that his silence not be misconstrued as endorsement of removing this deduction. With that, he removed his objection.

REPRESENTATIVE ROSES stated that if Amendment 1 to Amendment 43 does not pass, he may want to go back to [Amendment 36] to rescind the education and PERS/TRS funds and replace them with a down payment fund for the BP Exploration (Alaska) Inc. building [in Anchorage] so that it could be used for the capitol building after BP moved its headquarters.

There being no further objection, Amendment 1 to Amendment 43 was passed.

[8:35:47 PM](#)

REPRESENTATIVE EDGMON maintained that a line needed to be drawn in the sand somewhere. We all file taxes with the IRS and are familiar with what can and cannot be deducted, he said, and this same logic should apply here. He supported providing incentives for further exploration development and doing that by attempting to influence behavior. Regulations for the terms in Amendment 43 can be developed to provide the intent described by Representative Roses, he argued, which is very laudable.

REPRESENTATIVE FAIRCLOUGH supported lines 1-12 of Amendment 43, but remained opposed to the language below those lines. The State of Alaska has an office in Washington, DC, and if the state were to file a federal tax return it would likely consider the building an allow expense for deduction, she conjectured. The companies in Alaska are global and their offices in other locations should be an allowable expense, although not 100 percent. The more the ability is eroded for companies to receive exploration credits, the more further investment is put at risk, she opined. She said she thought that the increase in tax burden is higher than Co-Chair Johnson's current estimate of \$1.7 billion and that she could not support it how it stands.

[8:38:59 PM](#)

REPRESENTATIVE ROSES shared Representative Fairclough's concerns. He noted that the word equipment on line 15 of Amendment 43 could be construed to mean that drilling rigs being built outside for transport to Alaska could not be deducted. He understood the intent, but questioned the wisdom of making amendments to order to craft a bill that conforms to what is happening in the other body.

REPRESENTATIVE EDGMON responded that it was not his intent to come up with language conforming to the other body. He said he knew from his past work developing regulations with an agency that this language would be subservient to the language that deals with ordinary and necessary costs attributable to developing and drilling in the North Slope.

COMMISSIONER GALVIN advised that statutory construction would require giving full value to all aspects and interpreting them to be consistent if there is another area that says that costs associated with the construction of equipment elsewhere is a direct cost. Interpreting this to be consistent with that would probably require a more narrow interpretation of this, and regulations would need to hammer that out.

8:41:27 PM

REPRESENTATIVE ROSES inquired whether DOR would disallow as a deduction a not-yet-shipped drilling rig sitting in Seattle if Amendment 43 passed as currently written.

COMMISSIONER GALVIN stated that, absent legal advice, it would be a matter of having the equipment arrive in Alaska before attributing the cost associated with it to production in Alaska.

REPRESENTATIVE ROSES said he believed there was an amendment passed yesterday that included this language, therefore that problem had been taken care of. He said it made him just as sick as he felt before.

REPRESENTATIVE FAIRCLOUGH said that she appreciated Commissioner Galvin's interpretation and that she believed she was on the failing side of the amendment being spoken to by Representative Roses. She warned that regardless of how the administration interpreted the legislation in regard to the building of rigs, a private citizen could interpret it differently and bring forth a challenge.

8:43:35 PM

REPRESENTATIVE SEATON moved [Amendment 2] to Amendment 43 to remove the comma after public relations on line 8 so that line 8 would read as follows:

lobbying, public relations advertising, or public advocacy;

CO-CHAIR JOHNSON objected to Amendment 2 to Amendment 43 so that he could think about it.

REPRESENTATIVE FAIRCLOUGH added that Amendment 2 would allow advertising expenses for personnel which is what Representative Roses had spoken to before.

CO-CHAIR JOHNSON withdrew his objection to Amendment 2 to Amendment 43.

CO-CHAIR GATTO stated that removing the comma to say "public relations advertising" clarified the issue quite well.

[There being no further objections, Amendment 2 to Amendment 43 was considered as passed.]

8:46:37 PM

CO-CHAIR JOHNSON moved Amendment 3 to Amendment 43 to delete everything below line 12 up to and including line 19.

REPRESENTATIVE EDGMON objected to Amendment 3 to Amendment 43.

CO-CHAIR JOHNSON stated that he still had serious doubts about [paragraphs] (21) and (22) in Amendment 43 because he believed they ran a serious risk of exporting jobs. He did not think lobbying and policy advocacy should be paid for and, after giving it some thought, nor should public relations advertising.

8:48:10 PM

REPRESENTATIVE KAWASAKI said it appears clear to him that this only includes office buildings, fixtures and equipment. However, it could be clarified by adding the word office before the word fixtures and before the word equipment.

REPRESENTATIVE EDGMON supported Representative Kawasaki's comments. He said he believes that the way the sentence now reads is clear. He said it clearly differs with the language in the bill now under Title 43 that talks about all direct and necessary costs for exploring, developing, producing oil and gas deposits located within the producer's leases. He reiterated that his fundamental point is that a line needs to be drawn somewhere.

A roll call vote was taken. Representatives Roses, Fairclough, Wilson, and Johnson voted in favor of Amendment 3 to Amendment 43. Representatives Seaton, Guttenberg, Edgmon, Kawasaki, and Gatto voted against it. Therefore, Amendment 3 to Amendment 43 failed to pass by a vote of 4-5.

CO-CHAIR GATTO clarified that the previous amendment, Amendment 2 to Amendment 43, had passed.

8:52:51 PM

REPRESENTATIVE SEATON moved Amendment 4 to Amendment 43 "to delete lines 18 and 19".

CO-CHAIR GATTO clarified that this is [paragraph] (22).

There being no objection, Amendment 4 to Amendment 43 was passed.

CO-CHAIR JOHNSON sustained his objection to Amendment 43, as amended.

A roll call vote was taken. Representatives Roses, Guttenberg, Edgmon, Kawasaki, Seaton, and Gatto voted in favor of Amendment 43, as amended. Representatives Fairclough, Wilson, and Johnson voted against it. Therefore, Amendment 43, as amended, was adopted by a vote of 6-3.

[8:54:19 PM](#)

CO-CHAIR GATTO announced that he would skip Amendment 44.

REPRESENTATIVE SEATON withdrew Amendment 45.

REPRESENTATIVE GUTTENBERG withdrew Amendment 46.

[8:54:28 PM](#)

CO-CHAIR GATTO moved that the committee adopt Amendment 44, labeled 25-GH0014\L.72, Cook/Bullock, 11/3/07, which read [original punctuation provided]:

Page 10, following line 25:

Insert a new bill section to read:

"\* **Sec. 14.** AS 43.55.011(e) is amended to read:

(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 landowner's royalty interest. Except as otherwise provided under (j) and (k) of this section, the tax is equal to the greater of **25** [22.5] percent of the production tax value of the taxable oil and gas as calculated under AS 43.55.160, or the minimum tax determined under (f) of this section."

Renumber the following bill sections accordingly.

Page 14, line 21:

Delete "22.5"

Insert "**25** [22.5]"

Renumber internal references to bill sections in accordance with this amendment in a way that makes sec. 14 effective January 1, 2008, and adds sec. 14 to (b) of the APPLICABILITY section and to (1)(B) of the TRANSITION: RETROACTIVITY OF REGULATIONS section. Below are all internal bill section reference in this bill:

Page 31, lines 25, 27, 29, 30, and 31

Page 32, lines 1, 3, 13, 16, 19, and 31

Page 33, lines 2, 19 - 20, 21, and 22

CO-CHAIR JOHNSON objected to Amendment 44.

[8:54:48 PM](#)

CO-CHAIR GATTO moved Amendment 1 to Amendment 44 which read as follows [original punctuation provided]:

Page 1, line 5, following "produced each":

Delete "month"

Insert "calendar year"

Page 1, line 8, following "percent of the"

Insert "annual"

REPRESENTATIVE WILSON inquired whether this is the issue in which the desire is to have it done on a monthly basis.

COMMISSIONER GALVIN responded that that is for progressivity.

REPRESENTATIVE WILSON removed her objection to Amendment 1 to Amendment 44.

There being no further objection, Amendment 1 to Amendment 44 was passed.

[8:56:04 PM](#)

CO-CHAIR GATTO explained that Amendment 44 would change the percent [of the production tax value of the taxable oil and gas] from 22.5 to 25.

CO-CHAIR JOHNSON sustained his objection to Amendment 44, as amended.

REPRESENTATIVE WILSON objected to Amendment 44, as amended.

The committee took an at-ease from 8:57 P.M. to 9:24 P.M.

9:25:02 PM

CO-CHAIR JOHNSON asked Commissioner Galvin to address the monetary effect of Amendment 44, as amended.

COMMISSIONER GALVIN replied that the effect of Amendment 44 would be to raise the base tax rate from 22.5 to 25 percent. Because of the effective date change by a previous amendment, he said, the increase in revenue is for fiscal year (FY) 07 as well as FY 08. The total effect is \$247 million: \$142 million for the current FY 08 and \$105 million for FY 07. With that in context and given all the changes, the current bill at 22.5 percent rate results in an FY 08 increase in revenue of \$773 million and a total FY 07 increase of \$139 million, for a total of \$912 million. All these numbers are at the current forecasted price of \$71.65, he noted.

9:27:31 PM

CO-CHAIR JOHNSON requested those numbers at today's price because that is what [the committee] has been basing things on.

COMMISSIONER GALVIN said he does not have the PPT rate, but that he does have an \$80 price for the current bill.

CO-CHAIR JOHNSON noted that a chart was previously presented to the committee that showed a \$1.4 billion increase just on progressivity at today's prices.

COMMISSIONER GALVIN said the chart was not generated by DOR.

9:28:35 PM

CO-CHAIR JOHNSON inquired whether today's prices would elevate DOR's number up to the \$1.7 billion that he had been led to believe was correct or was the chart wrong. Did [the committee] pass an amendment based on faulty information, he asked. He was concerned about the large difference and that this could lead to another revenue forecast shortfall. He requested the real numbers at today's price.

COMMISSIONER GALVIN said he would have to get the real number for PPT at today's price. He was not sure where the number came from because he was not present during the progressivity

amendment. He asked if the committee would like him to get the numbers right now.

[9:30:44 PM](#)

CO-CHAIR JOHNSON stated that it is a number he would like to see.

COMMISSIONER GALVIN asked what price Co-Chair Johnson is specifically referring to.

CO-CHAIR JOHNSON responded \$95.

COMMISSIONER GALVIN noted that \$95 is an all-time high price.

CO-CHAIR JOHNSON said he thought the high was \$96.

[9:30:55 PM](#)

REPRESENTATIVE SEATON clarified that the request is to see an annual projection at a price of \$95 throughout the entire year.

COMMISSIONER GALVIN noted that it is now November and that there are real numbers for the first four months of this year. Running the number at \$95, he explained, would be equivalent to an average price for the entire year of \$95, which would mean that the price would have to go way over \$100 in order to overcome the four months below this.

CO-CHAIR GATTO stated that he is not the one asking for the numbers, that Co-Chair Johnson is the member making the request.

CO-CHAIR JOHNSON requested using an average for the last five months because they are real numbers.

COMMISSIONER GALVIN explained that the current forecast price of \$71.65 being used for FY 08 was generated by [DOR's] economic team as well as experts that were brought in, and that it is based on the real numbers so far and a projection for the remainder of the fiscal year. He said he already has the numbers for an \$80 average, but that he would have to rerun everything if the committee wants it done at a \$95 price.

[9:33:24 PM](#)

CO-CHAIR JOHNSON agreed to \$80. He questioned the forecast because he thought the average had been over \$70 for the past five months. Is DOR expecting the price to go down, he asked.

COMMISSIONER GALVIN replied yes, the economists are expecting the price to go down to \$66 in FY 09 and continue down from there.

CO-CHAIR GATTO asked whether these are all based on 720,000 barrels.

COMMISSIONER GALVIN answered that 722,000 barrels is the current number for this week.

CO-CHAIR JOHNSON said he would take the \$80 numbers for expedience.

[9:34:21 PM](#)

REPRESENTATIVE ROSES stated that he has a question on the progressivity piece for which numbers had been given because he wants to make sure everyone is operating off the same set of numbers and the same retroactive date.

REPRESENTATIVE FAIRCLOUGH inquired whether the forecast included the consequence of all of the amendments that passed that were underdetermined for credits.

REPRESENTATIVE ROSES continued with his aforementioned question. He asked whether the retroactivity included in [Amendment 36] is the same as this retroactive date, and if it is not, which trumps which.

COMMISSIONER GALVIN said that his numbers are based on [Amendment 36] and that the retroactivity in this amendment is what resulted in the numbers having to be calculated for FY 07 as well as all of FY 08. In further response to Representative Roses, Commissioner Galvin clarified that Amendment 44 does not have any retroactive date, it would only change the tax rate. He said that the effect of [Amendment 36] is to change the effective date of the bill.

[9:36:20 PM](#)

REPRESENTATIVE ROSES referred to the governor's recent newspaper article in which she addresses making sure that the state gets its fair and equitable share. Given the retroactivity provided

under [Amendment 36] and progressivity rates in the current bills before both bodies that are much higher than the .2 percent rate in [HB 2001, as introduced], why is the governor still concerned that we have 25 percent on the base rate, he asked.

COMMISSIONER GALVIN cautioned that Representative Roses is going back and forth between retroactivity and progressivity. He noted that ACES [HB 2001, as introduced] was a balance between a gross-based floor and a relatively modest progressivity. The governor has made clear that if there is no longer a floor to protect the state during low prices, then she would support an increased progressivity. The progressivity provided in the current bill with the amendments passed yesterday by the House Resources Standing Committee is consistent with the governor's interest with 25 percent as the base rate, he related.

[9:38:04 PM](#)

REPRESENTATIVE ROSES inquired whether the governor's objectives would be met at a 22.5 percent base tax rate if there is no floor and the entire progressivity is on a marginal rate that is greatly escalated from [HB 2001, as introduced].

COMMISSIONER GALVIN answered no. When there is no floor and the prices comes down to where there is no progressivity, [the administration] believes the rate should be 25 percent. When the floor is taken out, an increase in progressivity is appropriate.

REPRESENTATIVE ROSES recalled that his support of the progressivity in Amendment 2 was contingent upon the base tax rate being 22.5 percent and that he had reserved the right to revisit Amendment 2 if the rate was raised to 25 percent. He requested that Amendment 2 be revisited if Amendment 44 passes.

CO-CHAIR GATTO promised to provide that opportunity.

[9:40:27 PM](#)

REPRESENTATIVE FAIRCLOUGH requested that Legal Services be asked to draft a CS with all the amendments that have been passed so the committee could see what has been done in totality and debate the points still in need of consideration during the light of day when the public can watch.

CO-CHAIR GATTO responded that he had stated at the start that the committee would meet from Monday to Sunday and that the committee would use HB 2001(O&G) and consider every amendment offered by House Resources Standing Committee members. He said the committee's work is serious but not complicated and that all committee members had been allowed full and adequate opportunity to speak. He said it is his intent to continue the meeting until the bill is moved.

[9:45:48 PM](#)

COMMISSIONER GALVIN stated that at a price of \$80 and a 22.5 percent base tax rate with progressivity, the difference between PPT and [HB 2001(O&G), as amended thus far] is \$1.166 billion for FY 08.

CO-CHAIR JOHNSON asked what the number would be if Amendment 44 passed?

COMMISSIONER GALVIN replied that \$167 million would be added for FY 08 at the \$80 price.

CO-CHAIR JOHNSON inquired whether that included the roughly \$100 million that would be added by one of the amendments accepted today.

COMMISSIONER GALVIN answered that the \$105 million for FY 07 is fixed because the price was already in place and that it would be added to this amount as well.

[9:47:43 PM](#)

CO-CHAIR JOHNSON asked whether his addition is correct at a little more than \$1.4 billion

COMMISSIONER GALVIN confirmed that if Amendment 44 passed the amount would be \$1.408 billion at the \$80 price.

CO-CHAIR JOHNSON opposed Amendment 44. He noted that his previous estimate of \$1.7 billion in tax increases is incorrect and that \$1.4 billion is a more accurate estimate. The tax was increased by almost \$1 billion last year, he said, so in two years the increase now totals \$2.4 billion. Because that was different than the number he had seen on a progressivity chart he thought it should be revisited. He disagreed that increasing the tax rate is simple. It is not money that I am looking at, he opined, it is the state's economy and jobs.

REPRESENTATIVE WILSON advised that she would be voting against Amendment 44 because of her concern that it tips the scales too far and leaves no balance. She recalled what happened in 1986 and that a lot of lives were changed dramatically because of it.

9:51:20 PM

REPRESENTATIVE SEATON addressed the discrepancies in the charts. He explained that the effect of capital investment is to move the progressivity down the slope. However, the amount of investment is company-specific data that cannot be included in the model, therefore the numbers shown in the charts can be about 10 percent high. For example, for a large producer with a large percentage of profits, investment represents only a small percent of gross revenue; thus, the investment moves a large producer down the progressivity ladder only slightly. Conversely, for a small producer with small production, investment could move the company totally off the progressivity ladder. He pointed out that the progressivity used in every model kicked in at \$54 and that this is pretty much the target range where decisions are being made. A stress test is done down to \$35-\$40, but progressivity is not effective there at all. So, he said, the only effective tax rate for the state within that \$40-\$70 range after the subtraction of costs is really the 2.5 percent that is on the table now. At \$90, he continued, progressivity is 12 percent which is \$2.3 billion and the 25 percent baseline is about \$4.7 billion. Not shown on the charts is that this leaves \$12.3 billion for the companies. While progressivity increases the government take, it is also important to look at the other side of the chart to see how much is left on the table, Representative Seaton opined. He referred to the Gaffney, Cline & Associates models that showed virtually no difference in the internal rates of return between 22.5 percent and 25 percent. Therefore, changing the base rate to 25 percent would not have a negative effect on investment decision making, he contended.

9:57:00 PM

REPRESENTATIVE ROSES remarked that with the current price over \$90 and a forecast of \$71, it would take a considerable decline to get back to \$54 where there is no progressivity. Because he had not had the time to go through all of this, he said he would like to move Conceptual Amendment 2 to Amendment 44, "starting on line 8, ... if a taxpayer has no progressivity taxes ... their rate would be 25 percent, but those that have a

progressivity would have a rate of 22.5 percent." He requested Commissioner Galvin and Mr. Porter to speak to Conceptual Amendment 2 to Amendment 44.

CO-CHAIR GATTO objected to Conceptual Amendment 2 to Amendment 44.

COMMISSIONER GALVIN said the effect of Conceptual Amendment 2 to Amendment 44 would mean that the tax rate would come down and then at progressivity it would blip up a little bit. Thus, once the progressivity is hit it will go up the .2, or whatever it may be, and immediately drop down to 22.5 plus the .2 percent. At that particular moment in time there would be a significant drop in the tax rate by having the margin go up. In response to further questions from Representative Roses, he stated that the forecast used for FY 09 was \$66 which is \$12 higher than \$54.

10:00:16 PM

REPRESENTATIVE ROSES calculated that at a drop of \$5 per year from the FY 08 forecast price of \$71, it would take about four years to get down to \$54. He said he thought his amendment would take care of the administration's concern about no floor and not receiving its fair share when the price gets too low to have progressivity. In response to Representative Wilson, Representative Roses said that the rate would be 25 percent when there is no progressivity and that it would go down to 22.5 percent when there is progressivity.

COMMISSIONER GALVIN appreciated the message, but noted that the end result would be a strange disincentive because a company could end up saving perhaps tens of millions of dollars by not investing that extra dollar to keep its margin from hitting the progressivity. He pointed out that it is not that the price has to come down to \$54 in order for everybody to experience progressivity because there can be projects that at an \$80 price will be at the progressivity trigger.

10:03:04 PM

REPRESENTATIVE ROSES asked whether the converse of that would not also be true because not raising the tax rate from 22.5 to 25 would encourage companies to invest those dollars because they would not be as severely impacted.

COMMISSIONER GALVIN said not necessarily. At that particular point in time, if it's at a 25 percent rate, companies would

still get the tax advantage of having that progressivity bring them down. The question of whether to go from 22.5 to 25 percent is not the same as having progressivity suddenly kick in and drop the rate to 22.5 percent.

[10:04:22 PM](#)

REPRESENTATIVE ROSES said he understood that, but that he is looking for a compromise. He said his reason for supporting Amendment 2 is because every expert had testified that to encourage investment, incentivize more production, and get the state its fair share, the state needed to take a larger piece when profits and margins are higher, and then be willing to take the risk and share the expense when they are lower. He asked Mr. Porter to speak to his conceptual amendment.

MR. PORTER responded that the effect of Conceptual Amendment 2 to Amendment 44 is the opposite of what he would do. The models show that the state should set a fair amount on its base rate. When balancing base rate and progressivity, however, the base rate should be pushed down and the progressivity pushed up. This would effect positive economics and stimulate investment. Pressing the 25 [percent] into the base rate would have a similar, but not as bad, an effect directionally as would a gross floor. According to the Gaffney, Cline & Associates model, even the most profitable portion of a Prudhoe Bay field results in a relative balance in net present value (NPV) between the state and the industry, Mr. Porter related. He said this surprised him because he had thought that [industry's] NPV would be substantially higher than [the state's] at the current rates; so, it ends up being a fairly good balance. But, if 22.5 percent is added, [the state's] NPV goes up and [industry's] NPV goes down, so there is a relative impact. It is not a huge effect over the very long term, but will it result in industry changing its opinion on major decisions, he asked. Going from 22.5 to 25 percent would probably not impact the specific decision for a major project, he advised. However, from a long-term standpoint regarding investment strategies and relationship, [the state] would probably be slightly better off by trying to catch that incremental value at a high side and maintaining a lower base tax.

[10:09:53 PM](#)

REPRESENTATIVE ROSES stated that Mr. Porter's advice is exactly his reasoning for supporting progressivity that takes a larger piece of the pie when industry is making more and can afford to

share more and still have profitability in investments, and takes a smaller piece when prices are lower. That is why he had supported the 22.5 percent, he said, and why he had also considered supporting an even lower rate. He withdrew Conceptual Amendment 2 to Amendment 44.

REPRESENTATIVE FAIRCLOUGH submitted that [the committee] does not adequately understand the total impact of the numerous amendments that have been passed. She predicted that there would be many unintended consequences as a result of not reviewing the CS in its entirety. She said she did not believe that the governor's message that the state is open for business will get out with all that has been done. She said she could not vote yes without reviewing a CS and knowing the totality of what has been done.

[10:12:50 PM](#)

CO-CHAIR GATTO described his living and investment experiences in Alaska since 1968 and that despite ups and downs over this time period the oil companies have done extremely well. He said he is concerned for the state's future due to the lack of saving and unavoidable looming expenses. He does not begrudge the oil companies for making huge amounts of money, he said, but the state must make a fair share. He hoped there would be no floor because the state needed to be at risk because it is asking for more money and that he is okay with being at risk. He saw the future of the state as prospering better with a 25 percent tax on the base rate. He said he was stunned at the difference of opinion within the [Twenty-Fourth Alaska State Legislature] and that he believed the state was cheated when the base rate was not established somewhere between 25-30 percent. He said he is offering the 25 percent tax rate not to raise the rate, but rather to bring the rate to the level at which it should have been for the past year.

[10:21:04 PM](#)

A roll call vote was taken. Representatives Kawasaki, Seaton, Guttenberg, Edgmon, and Gatto voted in favor of Amendment 44, as amended. Representatives Fairclough, Wilson, Roses, and Johnson voted against it. Therefore, Amendment 44, as amended, was adopted by a vote of 5-4.

[10:22:05 PM](#)

CO-CHAIR GATTO asked whether fiscal notes are available for the bill at this juncture.

COMMISSIONER GALVIN responded yes.

CO-CHAIR JOHNSON inquired whether there are two sets of fiscal notes.

COMMISSIONER GALVIN said there is one at 22.5 percent and one at 25 percent.

REPRESENTATIVE FAIRCLOUGH recognized that she has constituents on both sides of this issue and supported re-visiting of the issue via the special session. She reiterated her concern that errors are being made and that increasing taxes by \$2 billion over PPT is too big of a gamble and may cause the global corporations to leave Alaska. She said her responsibility to her constituents means that she must look beyond the short-term of putting dollars into the bank today and consider the long-term. She supported the progressivity and the structure that would be going forward, but cautioned that the totality of legislative actions would not be realized for eight years.

[10:27:15 PM](#)

REPRESENTATIVE ROSES said he heard Co-Chair Gatto's support for 25 percent and understood the co-chair's personal story about investments. He related that up until two years ago every cent of his personal investments was made within the state. Therefore, if the oil companies did not continue investing in Alaska his own investments would crash. Yet, regardless of this, he came to Juneau to accomplish what the governor was requesting and had gone beyond what she called for by helping to pass the progressivity piece. He asked for reconsideration of Amendment 2.

There being no objection to the reconsideration, Amendment 2 was again before the committee.

REPRESENTATIVE ROSES explained that his intent is for Amendment 2 to disappear and have the progressivity piece be returned to the version contained in CSHB 2001(O&G). He encouraged committee members to defeat Amendment 2 because there would still be a progressivity piece greater than what existed in PPT and would still be similar to what the governor had wanted.

[10:32:01 PM](#)

CO-CHAIR GATTO supported adoption of Amendment 2.

CO-CHAIR JOHNSON objected to Amendment 2.

CO-CHAIR GATTO further outlined his past business and personal investments in Alaska and his worry for the future of Alaska's residents. Oil prices are more likely to go up than down, he submitted, and it is appropriate for the state to share in the wealth when prices are high. The key for the state is not only to save money but to have enough money to save. A 25 percent tax rate is modest and is the number the state should have had earlier.

[10:35:09 PM](#)

CO-CHAIR JOHNSON stated that the chart and numbers provided by Representative Seaton are good and, therefore, he still stood by his number of \$1.7 billion. He said that Amendment 2 would generate an extra \$146 million over PPT and, if his numbers are right, this would be \$170 million more than what the governor had asked for. He supported going back to the progressivity [in CSHB 2001(O&G)] and urged a vote of no on Amendment 2.

[10:38:06 PM](#)

REPRESENTATIVE SEATON said that failure to pass Amendment 2 would result in a gross progressivity with a gross trigger that is not self-correcting and not self-adjusting for inflation. Investment would not be stimulated because high cost projects, like heavy oil, would be hit with progressivity and would be disadvantaged because it does not work on the net profits and does not ensure that net profits are available at \$30 before even the lowest progressivity kicks in. This is designed so that progressivity is lowest at \$30, it goes up only two-tenths of a percent per dollar and then it increases as it goes up and as everything becomes much more profitable. If we are left with the other option, he said, it is a straight line and for every dollar above the trigger there is the same increase in progressivity that results in the companies being hit just as hard at the bottom end as at the top end. Turning down [Amendment 2] would require going back to a gross floor, he said, because that was the balance that was being struck - taking more at the high side sooner and dropping off the part that was detrimental to investment. He urged members to support Amendment 2.

10:41:49 PM

REPRESENTATIVE ROSES encouraged members to vote against Amendment 2. He said he did not think the progressivity piece in CSHB 2001(O&G) would survive travel to or on the House floor. He said he had heard that the administration liked the Senate version; therefore, he expected amendments to be introduced for conforming the House bill to the Senate bill.

CO-CHAIR GATTO agreed that the language would be changed. However, he said, this committee has the responsibility to do its job regardless of what might happen in other committees or on the House floor.

A roll call vote was taken. Representatives Seaton, Guttenberg, Edgmon, Kawasaki, and Gatto voted in favor of Amendment 2. Representatives Fairclough, Wilson, Roses, and Johnson voted against it. Therefore, Amendment 2 was adopted by a vote of 5-4.

10:45:56 PM

REPRESENTATIVE FAIRCLOUGH thanked everyone for their work and voiced her hope that the bill would be moved out of committee.

REPRESENTATIVE ROSES said there is a lot that he would like say, but that he had spoken his piece.

CO-CHAIR JOHNSON requested that copies of the fiscal note be distributed to committee members.

REPRESENTATIVE FAIRCLOUGH inquired what the process would be for committee members to see the CS in totality and review it for accuracy. She noted that the vote on the bill as amended will be occurring prior to being able to see the CS.

CO-CHAIR GATTO said the CS would be generated by Legal Services.

10:47:16 PM

REPRESENTATIVE GUTTENBERG said he is touched by the stories of Co-Chair Gatto and Representative Roses because he arrived in Alaska at age 18 to work in the oil patch. Years after his arrival the industry began a policy, due to economics, of hiring workers from outside rather than Alaskans. He said that, for him, this issue is not about being punitive, but rather it is about standing up for the state and its people. He related that several years ago there was a Wood Mackenzie report for which

people had to sign confidentiality agreements in order to read, and that one part of the report talked about how expensive it is for the oil industry to operate in Alaska. However, he continued, someone else was able to release another part of the report that said operating in Alaska is also phenomenally profitable. This is about taking a small piece from a very healthy industry, he said, and increasing taxes will not endanger the industry. Industry views the state as a competitor, not a partner. A big part of this issue is exercising the state's sovereignty. He cautioned that lobbyists represent someone else and should be listened to with a grain of salt. The state does not have the numbers from industry that everyone else in the world receives, he argued, and this will help the state to get there.

[10:55:37 PM](#)

REPRESENTATIVE FAIRCLOUGH noted that there is a typo in the fiscal analysis and that she does not know whether the actual calculation is affected by the typo.

COMMISSIONER GALVIN inquired whether the typo being identified is in the progressivity section relating to 30-50.

REPRESENTATIVE FAIRCLOUGH said no, the typo is located "at a rate of .225".

COMMISSIONER GALVIN responded that this is a "straggler" for that block from CSHB 2001(O&G).

REPRESENTATIVE FAIRCLOUGH replied that that is her point exactly. She said she is asking because she does not know if it is calculated and that these are the problems she is afraid of.

COMMISSIONER GALVIN replied that it will be corrected for the floor as far as the actual language of that block, but that the numbers have not changed.

REPRESENTATIVE FAIRCLOUGH said she is worried about the language in the block and asked whether the numbers shown are correct.

COMMISSIONER GALVIN answered yes, it did not change the numbers that designate the fiscal impact, it is merely a typo in the text.

[10:57:22 PM](#)

REPRESENTATIVE EDGMON acknowledged the amount of work involved in putting together the PPT structure from which discussions are now being built. While much of the current discussion is about the taxation side of the proposal, he said he believed that the credits and deductions built into the plan would encourage investment by both large and small companies. The oil companies have not said they are leaving Alaska. This is a fair tax proposal that rides the curve by sharing the risk in the lower part of the curve and receiving a fair share in the upper part.

11:01:08 PM

CO-CHAIR JOHNSON voiced his fear that the state is heading for an economic disaster that will creep up slowly but be just as devastating as a quick disaster like Hurricane Katrina. It will not affect the people in the oil industry who can afford to move, he argued, rather it will affect the people who can least afford it, such as the young and the old. He hoped there would not be a Hurricane ACES in seven to ten years because his constituents would be among those put out of work. He said he prays he is wrong, but fears he is right.

CO-CHAIR GATTO said he is optimistic and that this is the beginning of a huge success and great future for Alaska. He saw companies coming to Alaska, not leaving, and he looked forward to a [gas] pipeline being built. He expected to soon be reading letters of support from his constituents.

11:09:10 PM

REPRESENTATIVE GUTTENBERG moved to report CSHB 2001(O&G), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 2001(RES) was reported from the House Resources Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 11:10 P.M.