

HOUSE FINANCE COMMITTEE
March 29, 2011
2:09 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 2:09 p.m.

MEMBERS PRESENT

Representative Bill Stoltze, Co-Chair
Representative Bill Thomas Jr., Co-Chair
Representative Anna Fairclough, Vice-Chair
Representative Mia Costello
Representative Mike Doogan
Representative Bryce Edgmon
Representative Les Gara
Representative David Guttenberg
Representative Mike Hawker (Alternate)
Representative Reggie Joule
Representative Tammie Wilson

MEMBERS ABSENT

(None)

ALSO PRESENT

Representative Alan Austerman; Senator Cathy Giessel;
Senator Tom Wagoner; Bryan Butcher, Commissioner,
Department of Revenue; Cheryl Nienhuis, Petroleum Economic
Policy Analyst, Division of Tax, Department of Revenue;
Representative Eric Feige, Chair, House Resources
Committee.

SUMMARY

HB 110 PRODUCTION TAX ON OIL AND GAS

CSHB 110(FIN) was REPORTED out of Committee with a "do pass" recommendation and with new zero note by the Department of Natural Resources, new zero note by the Department of Labor and Workforce

Development, and new fiscal impact note by the Department of Revenue.

#hb110

HOUSE BILL NO. 110

"An Act relating to the interest rate applicable to certain amounts due for fees, taxes, and payments made and property delivered to the Department of Revenue; relating to the oil and gas production tax rate; relating to monthly installment payments of estimated oil and gas production tax; relating to oil and gas production tax credits for certain expenditures, including qualified capital credits for exploration, development, and production; relating to the limitation on assessment of oil and gas production taxes; relating to the determination of oil and gas production tax values; making conforming amendments; and providing for an effective date."

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Co-Chair Stoltze reviewed the amendment and fiscal note process and stated his intent to report the bill out of committee.

Representative Gara queried the fiscal note.

BRYAN BUTCHER, COMMISSIONER, DEPARTMENT OF REVENUE, reviewed the fiscal note. He noted that the department would cover pages 2 and 3 of the analysis section and pointed out that page 4 provided a side-by-side listing of the expected effects of the fiscal note.

Commissioner Butcher detailed that the interest rate on delinquent taxes would change from the greater 5 percentage points, or 11 percent to the lesser of 3 percentage points, or 11 percent. Over the last three fiscal years, the average annual net revenue to the state was about \$30 million in revenue to the general fund and about \$11 million in revenue to the Constitutional Budget Reserve (CBR), or about \$140 million total. Both underpayments that a company would have to pay to the state and overpayments that the state would have to pay back to a company would be affected. Passage of HB 110 (based on the estimates of the past three years) would result in reductions of about \$50 million to \$60 million; the number would vary greatly

depending on the year and the activities. He stressed that the department could not predict either overpayments or underpayments.

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Representative Doogan asked what would be reduced.

Commissioner Butcher responded that the interest rate on delinquent taxes would be lowered from the greater of 11 percent or the fed plus 5 percentage points to 11 percent or the fed plus 3 percentage points the lesser of.

Representative Doogan asked whether the cost to the state would be bigger or smaller.

Commissioner Butcher answered that currently, rates were being compounded quarterly. The statute referred to a time when interest rates were very high; 11 percent was not unusual. With the last few years of low fiscal interest rate environments, it was prohibitive on the company side and the state side because of quarterly compounding. The amount paid in interest would almost equal the amount of the taxes owed if there were a couple years building up.

Representative Doogan queried the \$60 million number.

Commissioner Butcher answered the amount was a ballpark number.

Representative Guttenberg noted that the title of the bill referred to the interest rate. He hoped the bill was mostly about increasing exploration, development, and production. He queried the effect of the proposed change.

Commissioner Butcher responded that the piece was a clean-up rather than a change in order to put more production into the pipeline. He explained that the department had discretion (depending on the circumstances) regarding the amount of taxes paid or owed, but not with the interest. Discussions had revealed the opinion that having to pay such a high interest on an overpayment or underpayment in the current low-interest environment made sense and was not any fault of the company or the state; it might have had to do with regulation change.

Representative Guttenberg wanted to see more understanding about the fiscal relationship. He believed the action should be taken if it made sense; he did not want to penalize people for under- or over-reporting. He thought there could be a quantitative revenue impact on somebody.

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Commissioner Butcher thought the change could provide a net increase to the state in some years; the department still felt there needed to be a change.

Representative Guttenberg did not think the state should look forward to delinquent tax charges, but should be helping people.

Commissioner Butcher addressed the second change, dealing with one of three large policy pieces of the bill: changing the taxes from the current progressivity rate to brackets as well as capping them at 50 percent. He pointed out that the fiscal note showed the change in two different charts. The first chart focused on production tax only (page 2 of 4 of the fiscal note analysis). The first column showed the projected reductions in revenue over the years covered by the fiscal note (based on the Department of Revenue (DOR) preliminary spring revenue forecast) and estimates about what the numbers would look like if there was an increase in production. He noted that increased production would result in an increase in credits as well as spending, which had been factored in.

Commissioner Butcher continued that the second chart showed production tax plus total royalties. The first chart only showed production tax; the second chart included the royalty piece that would result from increased production and provided more of a big-picture view based on production scenarios.

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Representative Gara directed attention to column 2 and asked whether forecasting 5 percent meant 5 percent more than the forecasted decline. He wondered whether the forecast of 5 percent meant essentially zero or a 10 percent increase in production, erasing the 5 percent decline plus adding 5 percent more.

Commissioner Butcher answered that the 5 percent forecast meant 5 percent on the total production number; if the number was \$600,000, it would mean a 5 percent increase on the \$600,000.

Representative Gara asked whether the number was 5 percent above what was forecast or 5 percent above the current year's level.

Commissioner Butcher replied 5 percent above what was forecast.

Commissioner Butcher turned to Analysis 3 (page 3). He explained that the item had to do with production tax for areas that had not been commercialized or unitized, of 15 percent with brackets of progressivity up to 40 percent. The fields were ones that had never had production; the fiscal note was zero, but the number would be positive if there was any production at all as a result of HB 110. He emphasized that the number could not go negative, but there was not a specific prediction on the potential millions that could result.

Representative Gara disagreed with the premise that the number could not go negative. He maintained that the state could grant a 15 percent tax rate to fields that were already going on line, such as Great Bear, which bought its leases in 2010. He thought new production could be spurred, or a lower tax rate could be given to fields that were going to go on-line anyway, which would cost the state a lot of money.

Commissioner Butcher responded that he was speaking to fields that had not been unitized as of December 31, 2008. He did not expect any of the fields to be at a point to come on-line, with or without the passage of the legislation.

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Commissioner Butcher directed attention to Analysis 4, a provision that would require credits to be taken over two years. He noted that the provision would be revenue-neutral; the first year that it took effect, the state would have an entire year during which a company would be taking credit. For example, in 2011, companies had taken the last half of the 2010 credit and the first half of 2011

credit, which would more or less equal an entire year. He noted that trying to sort the numbers out half-way through the year had been an extreme burden on the tax division.

Commissioner Butcher turned to Analysis 5, the 40 percent credit for well-lease expenditures expanded north of 68 degrees North Latitude. He estimated the effect would be \$200 million to \$400 million annually, which would vary according to how much the credit was used. The more the credit was used, the higher the number would be, which would be a positive in terms of getting more production for the state. The department had tried to speculate a higher number with the belief that it would result in a higher number of credits being taken than had been taken recently. The department believed \$400 million would be on the high end.

Commissioner Butcher moved to Analysis 6, the small producer new area development and alternative tax credit for exploration programs, which would be extended from the current sunset date of 2016 to 2021. He noted that the item was added in the House Resources Committee. The department expected the small producer credits to increase within the next several years to \$40 million to \$50 million each year; however, it was extremely difficult for DOR to estimate what that would mean for the state. He said that ultimately, the tax credits would not come in until between five and ten years into the future.

Commissioner Butcher directed attention to Analysis 7; the tax information disclosure statute was expanded to include disclosures of types of credits claimed and types of expenditures for which the credits were claimed. He noted that the item was also added in the House Resources Committee. The department would be allowed to share information it collected and analysis with the legislature.

Commissioner Butcher concluded that the last paragraph discussed the addition of two auditor positions to administer the additional credit and reporting provisions, starting in FY 13.

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Representative Guttenberg was glad to see the last line in the fiscal note. He pointed to a comment in 4 regarding another \$100 million in funds that would likely be sought

for credit certificates, another comment in 5 regarding estimates that the provision would decrease annual revenue based on estimates for drilling costs, and 6 related to expectations that the small producer credit would increase. He commented that the department had constantly been asked about the modeling used and expectations; the consistent answer had been that there was no way to do modeling. He believed some modeling had been done to come up with the fiscal note and estimates of changes. He asked for more information about the process and information underlying the overall assumptions.

Commissioner Butcher responded that page 1 gave indeterminate information, because the department had been asked by all the committees to give the best estimate. The department felt that a snapshot could be given in some situations. For example number 3 discussed non-unitized fields with no production, and the department did not have enough information to make an assumption. When dealing with small producer credits, he could look in the very short term and give at least a snapshot of the out-years.

Representative Doogan pointed to page 4 of the fiscal note and asked whether the committee had gotten the preliminary spring 2011 forecast from DOR.

Commissioner Butcher responded that he expected the forecast to be out the first week of April. He explained that the forecast was always put together after March 31, the true-up date for the previous year and when DOR got the hard numbers of what each of the companies had spent and were able to tighten down the numbers going forward. He did not anticipate that the numbers would be much different from what was prepared in the analysis.

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Representative Doogan requested more detail about how getting more revenue would change the numbers.

CHERYL NIENHUIS, PETROLEUM ECONOMIC POLICY ANALYST, DIVISION OF TAX, DEPARTMENT OF REVENUE, acknowledged the difficulty in comparing the different numbers. She stated the one thing that DOR had "nailed down" on the forecast related to the adjustment of the price forecast. She noted the change in the price forecast from about \$8 per barrel more for FY 12; the number for FY 13 was \$7 per barrel

more. There were differences in the revenue between HB 110 and the DOR forecast. Adjustments had also been made to the production forecast and the cost part, but those were still being worked on. She referred to recent announcements about developments by Repsol, Great Bear, and other companies.

Ms. Nienhuis believed DOR was looking more long-term for the first time. In the recent past (FY 08 through FY 10), there had been quite a bit of price volatility; as a group, they were instructed to look at the near term, because prices were so volatile. The analysis in the fiscal note presented a longer-term forecast; DOR was trying to make sure production and cost forecasts were reasonable, given all the assumptions.

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Representative Doogan asked whether the fiscal note was the same as the last time the committee had looked at it; it ran from \$200 million to \$400 million in FY 12 to over \$2 billion in FY 17.

Commissioner Butcher responded that the numbers were updated from the original fiscal note that came into the committee with the bill, which had been based on the DOR fall forecast. The numbers in the current bill were updated to the preliminary spring forecast.

Representative Doogan believed the numbers in the fiscal note currently before the committee had been seen before in last couple of days.

Commissioner Butcher replied that the numbers had been presented on Saturday [March 26] for the first time.

Commissioner Butcher pointed to an error on page 4 of the fiscal note. Under number 6 in the description (extend the small producer credits), there was a "125" entered in FY 16 and FY 17 that should have been a negative number, because the credits would be paid out. He added that the total revenue impact at the bottom was correct.

Representative Gara summarized that there would be \$287,000 for 2016 for hiring the auditors, \$50 million to \$60 million for changing the interest rate, about \$1.4 billion in lost tax revenue, over \$400 million for extra credits, with a total around \$1.9 billion for 2016.

Commissioner Butcher answered that taking the high numbers and factoring in zero new production would produce the listed numbers.

Representative Gara stated concerns about a chart on page 2 showing what would happen in terms of losses to the state. He did not believe the bill was tailored to increase production. He indicated the bottom box in 2017 (production tax plus total royalties) and asked whether the state would lose \$1.2 billion in production taxes if production were increased by 5 percent.

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Commissioner Butcher replied that the number was the number, and would also include additional credits taken out as a result of production coming on line. He noted that the number did not factor in jobs and prolonging the Trans-Alaska Pipeline System (TAPS); the focus was specific to the production tax.

Representative Gara expressed amazement. He asked whether the \$1.2 billion in less revenue would include the \$200 million to \$400 million in credit costs.

Commissioner Butcher replied that the number applied to the change in production tax; it applied to the brackets and did not include new 15 percent areas that would not have a cost but would be looking at more production.

Representative Gara pointed to the 40 percent credit, which he had heard could cost the state \$200 million to \$400 million per year as well. He asked whether the number would be added to the \$1.2 billion loss.

Commissioner Butcher answered that he would not classify the number as a "loss" as the revenue had not come in; it was a projection of potential less revenue. He said that the \$200 million to \$400 million would be added if a big picture was being put together, but the increased royalty also should be added. He stated that the issue was more complex than adding the negatives.

Representative Gara stated that the way he read the fiscal note, in 2017, if the bill succeeded in adding 5 percent production, the state would receive \$1.2 billion less

revenue plus another \$200 million to \$400 million in less revenue because of the 40 percent tax credit; even if the bill were to increase production by 10 percent (although there was no evidence presented that it would), according to the bottom box, the state would lose \$914 million in production taxes, plus \$200 million to \$400 million in credits. He summarized that if the bill worked, the state would lose over \$1 billion per year.

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Commissioner Butcher responded that the argument was not considering that part of the negative number involved the state cashing in credits that would be an investment into future-year production. He did not recommend taking a snapshot of one year without acknowledging that the number also reflected more credits being used for more exploration and production.

Representative Costello queried the chart on page 4 of the fiscal note. She wondered whether the totals assumed no increase in production and represented the worst-case scenario and corresponded to the top chart on page 2.

Commissioner Butcher responded in the affirmative; the changes to the bill would be assumed as well as no new production, which neither he nor the governor considered was a realistic scenario.

Representative Wilson addressed the job issue related to service industries as well as the companies. She wondered whether there would be money brought in through corporate taxes to the state.

Commissioner Butcher responded in the affirmative and stated that he believed the point was important.

Representative Wilson asked whether the purpose of the bill was good-paying jobs.

Commissioner Butcher agreed. He explained that experienced Alaskans were losing jobs and were leaving the state to search for work.

Representative Wilson believed whole companies were moving out-of-state. She wondered whether there were more jobs

offered in the developmental stage of the oil fields, as opposed to the exploration stage.

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Commissioner Butcher responded that the question would be better answered by the Department of Natural Resources (DNR).

Ms. Nienhuis answered that a developing field could possibly provide more employment.

Representative Wilson believed that more service groups were connected with developing infrastructure, including roads.

Representative Doogan wanted to add to the question by Representative Wilson. He wondered what additional revenue would be brought in through corporate income tax from companies that hired workers.

Commissioner Butcher replied that he had been referring to other taxes not included in the fiscal note, such as production and property taxes.

Representative Doogan restated his question. He relayed that the commissioner had told Representative Wilson that other revenue existed besides the income in the fiscal note that ought to be accounted for in terms of what would happen if the state gave money to the industry and it produced jobs. He asked how much additional income there might be.

Commissioner Butcher summarized that the question was about possible additional income to the state other than the production tax income. He thought Representative Wilson's question was related to a multiplier effect for the state economy of creating oil jobs.

Representative Doogan asked Representative Wilson to help out.

Representative Wilson stated that she had been referring to the service industry aside from the oil companies; she had assumed they paid other taxes that were not factored into the fiscal note.

Commissioner Butcher responded that the taxes referred to were corporate and property taxes.

Representative Doogan asked what the additional taxes would be worth.

Commissioner Butcher responded that DOR had yearly listings of what the state received through various taxes. He offered to get more information to the committee.

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Vice-chair Fairclough directed attention to page 86 of the DOR fall revenue forecast, which indicated the numbers were \$80 million for general corporate taxes and \$447.9 million for petroleum corporate taxes.

Representative Doogan wondered what the increment was worth. He referred to the argument that the state would get more activity that would generate more money. He queried the department's expectation of the increment of additional taxes.

Commissioner Butcher asked whether Representative Doogan's question related to the department's estimate of additional taxes based on future developments.

Representative Doogan agreed. He recognized that answering the question could be difficult, but it had been brought into the discussion.

Commissioner Butcher replied that he had simply been agreeing with Representative Wilson when she said that an increase in activity and jobs would bring more income into the state. He offered to produce a matrix comparing increases in oil and gas production tax to increases in corporate tax for service companies.

Representative Doogan waved the white flag on the question.

Representative Gara referred to the subject of jobs. He realized that the committee had never heard from the Department of Labor and Workforce Development (DLWD), which had given him the latest forecast of oil and gas jobs in the state. He maintained that the numbers indicated that the forecast for jobs in 2010 was 20 percent higher than under the prior tax system. In 2006, jobs were at 10,100;

in 2005 under the Economic Limit Factor (ELF) system, jobs were at 8,700; in 2010, jobs were at 12,700. He did not think that a 4,000 increase by 2010 sounded like the job-loss case that DOR had been making.

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Co-Chair Stoltze appreciated the information, but wanted to direct attention to the fiscal note.

Representative Gara pointed to the fiscal note as it related to jobs. He noted that page 2 included the impact of increased production on royalties, which he thought was fair. The department forecasted that the state would take in \$1.2 billion less in production taxes and \$200 million to \$400 million less from credits if the bill resulted in 5 percent more production. He believed taking in \$1.4 million less each year would negatively impact service jobs in the state; he wondered whether that had been factored in.

Commissioner Butcher responded that the state would have in excess of \$10 billion in the CBR at the end of a ten-year period, assuming the preliminary spring forecast, the passage of HB 110, no new development in the next ten years, and factoring in the Legislative Finance estimate on budget increases. He added information from DLWD on comparisons of calendar-year unemployment insurance claimants; oil and gas industry related claimants had tripled in Alaska between 2006 and calendar year 2010.

Representative Doogan asked for more details.

Commissioner Butcher answered that in 2006, there were 904 claimants; in 2010, there were 2,540.

Representative Doogan asked whether there had been a rise in actual employment in the oil patch and whether that had continued.

Commissioner Butcher replied that there had been a small increase in total jobs up until 2009; there had been a dip in 2010. He did not think the increase was "just a blip."

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Representative Hawker pointed to page 6 of DLWD's Alaska Economic Trends (January 2011), which highlighted that

"less oil production means more risk...the problem of low production increases uncertainty of its potential economic growth." He noted that Section 8 addressed how oil was no longer fueling the state's expansion. He wanted the committee to have the most current information.

Representative Hawker also had a technical point. He believed the state was in uncharted territory with HB 110. He did not think the state had ever considered a reduction in the level at which government would confiscate wealth from the private sector; the state had increased what it took. He thought the film tax credits were a "spectacular exhibit to the contrary"; the state had given \$100 million to the film industry.

Representative Hawker referenced 2013 and 2014 information from the DOR chart presented during the department's March 26 hearing before the committee related to revenue was anticipated under Alaska Clear and Equitable Share (ACES). He pointed to the original fiscal note that had accompanied the ACES legislation to the final vote on the floor of the Senate. He reported that during the debate on the ACES bill, the outside realm considered for oil prices had been \$80 per barrel; ACES was never "stress-tested" at higher oil prices for consequences to the industry and the economy.

Representative Hawker detailed that CSHB 2001(FIN) had projected production tax revenue for 2013 at \$1.9 billion; currently the projection for 2013 was \$3.1 billion. He believed the difference was \$1.2 billion more that would be taken from industry in 2013 than was voted on in the ACES bill.

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Representative Hawker noted that the worst-case scenario (no production increase, the adjustments, the reduction in government take from the private sector, the loss of as much as \$500 million) and pointed out that the state was already taking in \$1.2 billion more than what was anticipated when the bill passed. He believed the factors should be taken into consideration when evaluating whether the state had reached a level of overtaxing. He noted that the same number worked for the year 2014. The state was currently taking in \$1.7 billion more than what was originally voted on in ACES. He thought there had been

compelling testimony about reducing taxes. He stated that he did not subscribe to the theory of taxing industry into production, but to a more free-market concept that lowering taxes would increase production.

Representative Hawker addressed what motivated industry. He pointed to Bloomberg news published March 29, 2011, related to the United Kingdom's increase in its taxes on oil production profits from 50 percent to 62 percent. He reported that Statoil in Norway had officially announced putting a \$10 million plan to develop the Mariner and Bressay fields in the UK on hold, saying it was less likely to buy British assets after a tax increase.

Representative Hawker recalled the two-tiered graph seen previously by the committee related to UK oil production; he referred to the last time the UK wanted to use money to pay for social programs. The UK had eliminated the high-production profits tax on new oil field development and the North Sea production rose even higher than under the existing tax regime.

Representative Hawker summarized that HB 110 represented an investment in a sustained and robust Alaskan economy, and not a give-away. He believed the fiscal note pointed in the right direction.

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Representative Gara noted that the job numbers he had referred to earlier had come from DLWD and were from July 2010; the numbers showed jobs were 27 percent higher than they had been in 2005.

Co-Chair Stoltze turned attention to the amendments for HB 110. He noted that Amendments 1 and 2 would be held back for the time being.

Representative Gara MOVED Amendment 3, 27-GH1007\I.11, Bullock, 3/28/11 (copy on file):

Page 1, lines 1 - 8:

Delete all material and insert:

"An Act relating to a tax credit applicable to the oil and gas production tax based on capital expenditures; relating to the alternative tax credit

for oil and gas exploration; and providing for an effective date."

Page 1, line 10, through page 20, line 25:

Delete all material and insert:

"* **Section 1.** AS 43.55.023(a) is amended to read:

(a) A producer or explorer may take a tax credit for a qualified capital expenditure as follows:

(1) except as limited by (p) of this section, notwithstanding that a qualified capital expenditure may be a deductible lease expenditure for purposes of calculating the production tax value of oil and gas under AS 43.55.160(a), unless a credit for that expenditure is taken under AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025, a producer or explorer that incurs a qualified capital expenditure may also elect to apply a tax credit against a tax levied by AS 43.55.011(e) in the amount of 20 percent of that expenditure; however, not more than half of the tax credit may be applied for a single calendar year;

(2) a producer or explorer may take a credit for a qualified capital expenditure incurred in connection with geological or geophysical exploration or in connection with an exploration well only if the producer or explorer

(A) agrees, in writing, to the applicable provisions of AS 43.55.025(f)(2);

(B) submits to the Department of Natural Resources all data that would be required to be submitted under AS 43.55.025(f)(2).

* **Sec. 2.** AS 43.55.023(d) is amended to read:

(d) Except as limited by (i) and (p) of this section, a person that is entitled to take a tax credit under this section that wishes to transfer the unused credit to another person or obtain a cash payment under AS 43.55.028 may apply to the department for transferable tax credit certificates. An application under this subsection must be in a form prescribed by the department and must include supporting information and documentation that the department reasonably requires. The department shall grant or deny an application, or grant an application

as to a lesser amount than that claimed and deny it as to the excess, not later than 120 days after the latest of (1) March 31 of the year following the calendar year in which the qualified capital expenditure or carried-forward annual loss for which the credit is claimed was incurred; (2) the date the statement required under AS 43.55.030(a) or (e) was filed for the calendar year in which the qualified capital expenditure or carried-forward annual loss for which the credit is claimed was incurred; or (3) the date the application was received by the department. If, based on the information then available to it, the department is reasonably satisfied that the applicant is entitled to a credit, the department shall issue the applicant two transferable tax credit certificates, each for half of the amount of the credit. 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. A certificate issued under this subsection does not expire.

* **Sec. 3.** AS 43.55.023 is amended by adding a new subsection to read:

(p) The amount of credit for a capital expenditure under (a) of this section for an expenditure that is also a lease expenditure under AS 43.55.165 is reduced by the amount necessary so that the tax benefit percentage is not more than 85 percent of the capital expenditure. The amount of credit for a capital expenditure under (a) of this section that may not be taken because of the limitation in this subsection may not be applied in a later calendar year under (c) of this section and may not be included in an application for a tax credit certificate under (d) of this section. In this subsection, "tax benefit percentage" means the sum of the average monthly tax rate under AS 43.55.011(e) for the calendar year in which the credit is taken and the percentage of the

capital expenditure that may be taken as a credit under (a) of this section.

* **Sec. 4.** 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 AS 43.55.011(e) is allowed for exploration expenditures that qualify under (b) of this section in an amount equal to 50 [ONE OF THE FOLLOWING:

(1) 30] percent of the total exploration expenditures [THAT QUALIFY ONLY UNDER (b) AND (c) OF THIS SECTION;

(2) 30 PERCENT OF THE TOTAL EXPLORATION EXPENDITURES 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;

(4) 40 PERCENT OF THE TOTAL EXPLORATION EXPENDITURES THAT QUALIFY ONLY UNDER (b) AND (e) OF THIS SECTION; OR

(5) 80, 90, OR 100 PERCENT, OR A LESSER AMOUNT DESCRIBED IN (1) OF THIS SECTION, OF THE TOTAL EXPLORATION EXPENDITURES DESCRIBED IN (b)(1) AND (2) OF THIS SECTION AND NOT EXCLUDED BY (b)(3) AND (4) OF THIS SECTION THAT QUALIFY ONLY UNDER (1) OF THIS SECTION].

* **Sec. 5.** 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 after June 30, 2008, and before July 1, 2021 [2016], 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 well that encounters an oil or gas deposit or a dry hole;

(C) must be for a well that has been completed, suspended, 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 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, including repairs and replacements, arising from or associated with fraud, willful misconduct, gross negligence, criminal negligence, or violation of law, including a violation of 33 U.S.C. 1319(c)(1) or 1321(b)(3) (Clean Water Act); 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 before May 14, 2003.

* **Sec. 6.** AS 43.55.025(k) is amended to read:

(k) Subject to the terms and conditions of this section, if a claim is filed under (f)(1) of this section before January 1, 2021 [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.

* **Sec. 7.** AS 43.55.025(c), 43.55.025(d), 43.55.025(e), 43.55.025(l), and 43.55.025(m) are repealed.

* **Sec. 8.** This Act takes effect January 1, 2012."

Vice-chair Fairclough OBJECTED.

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AT EASE

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RECONVENED

Representative Gara explained that Amendment 3 would offer a different approach than the governor's bill. He maintained that there were two ways to approach an attempt to increase production on the North Slope. He described the main thrust of the governor's approach as reducing taxes with the hope that the companies would spend the money in the state. He did not believe the approach had worked in 2006, when tax rates were very low and investment was lower and oil production was declining.

Representative Gara pointed to an advertisement taken out by the state in Petroleum News and said that using credits attracted investment; with credits, the money had to be spent in Alaska, Alaskans had to be hired, and the activity had to relate to what the credit was aimed at in order for someone to receive the state's money.

Representative Gara continued that Amendment 3 would raise the exploration credit to 50 percent and cap it at 85 percent when the other credits and deductions were considered. The amendment intended to address the concern from the administration raised at the beginning of the debate that exploration and exploration wells were down. He believed the smartest way to increase exploration was to grant an enhanced credit to encourage companies to drill exploration wells. He emphasized that the companies would not get the money unless the wells were drilled.

Representative Gara argued that the measure would address the weakness in the governor's bill, which was that companies could get the money even if they took it out of Alaska. The amendment would require the money to be spent inside the state. The amendment would make it more profitable for a company to drill an exploration well.

Representative Gara referred to DOR testimony that development wells would not get the state out of the production decline (even though they were at the highest level since 2005 or 2006); new exploration was needed. He did not believe the governor's bill would lead to new exploration. He believed the governor's version would lead to capital flight; under the most recent fiscal note, the state would lose around \$1.5 billion each year, even if production went up.

Representative Gara thought Amendment 3 represented a "smarter way to go." The amendment would provide an exploration credit that required hiring people in Alaska to do more exploration, in return for help paying for the wells.

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Co-Chair Stoltze queried materials handed out by Representative Gara.

Representative Gara explained that the handout was the advertisement taken out by the state making the case that ACES was working and that the state had been a good partner for new explorers. He maintained that DOR did not make the same case, but almost the opposite one.

Co-Chair Stoltze commended DNR for the ad.

Vice-chair Fairclough spoke in opposition to Amendment 3. She referred to testimony before the committee that the state already greatly incentivized exploration. She referred to interest by companies in taking advantage of the credits put out by the state for exploration. She reminded the committee that it had agreed with the House Resources Committee in accepting an amendment in the CS currently before the Finance Committee that extended the years; there were people interested, but she maintained that the state did not yet have the actual capital investment. She referred to interest in the progressivity

and the severance tax that would have to be paid, which would mean that they could not yet take the product to market and sell it.

Vice-chair Fairclough emphasized that there were different phases and different entities that wanted to invest and were attracted to different components of Alaska's tax policy for exploration. She argued that the state already had great exploration credits, but could not get anything in the pipeline to monetize, because the entities were ready to sell to someone who would have to go to the capital market and find an investor to invest in the facilities to take the oil and monetize it.

Vice-chair Fairclough believed the governor's amended bill before the committee would extend the years, as recommended by the House Resources Committee, so that there could possibly be a few more interested parties. She agreed with Representative Hawker that the state had never anticipated the amount of revenue that would come into the state; the higher level of production was not "stress-tested" at the higher dollar amount per barrel (above \$80 per barrel) to see its effect on the opportunity to attract capital.

Vice-chair Fairclough believed Alaska already offered excellent incentives for exploration credits, and so opposed Amendment 3.

[3:36:49 PM](#)

Representative Hawker testified against Amendment 3. He thought the goals in the amendment were laudable, but he felt the execution was flawed. He addressed the technical aspects of the amendment. He thought the first three sections were basically adding a new limit to the amount of credits that could be taken, in the form of a cap. He pointed to the language on page 2, lines 28 through 30, which stipulated that to put the cap on the credit, the amount of the credit for the capital expenditure would be reduced by another amount that was necessary so that the tax benefit percentage was not more than 85 percent of the capital expenditure. He called the proposal "accounting alchemy." He did not know how a person could convert percentages into hard dollar expenditures. He thought the sentence was a technical error.

Representative Hawker turned to Section 4, related to enhancing the majority of the credits, particularly those affecting the North Slope, from a 30 and 40 percent tier (depending on certain criteria) to a fixed 50 percent allowed for exploration expenditures. The section would delete an area where the state was taking 80 to 100 percent of an amount described in (1) of the section, which he maintained would actually lower the credits available. He believed Section (1) should be of "grave concern" to those in Southcentral Alaska, as it was the language added the prior year intended to create the Cook Inlet land rush. The provision provided for a substantial incentive for the first three unaffiliated persons drilling an offshore exploration well for the purpose of discovering oil or gas in the Cook Inlet that drilled deep and penetrated and evaluated a prospect in the pre-tertiary zone using a jack-up rig.

Representative Hawker argued that there were at least two organizations that were in the process of working towards taking advantage of the provision already in statute and getting the vital drilling done. He thought the issue was keeping the heat and lights on in his community and not letting people "freeze in the dark" while the state tried to bring the necessary production enhancements to the Cook Inlet. He referred to previous discussion and stated that he did not want to compromise the issue through a new statute.

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Representative Guttenberg acknowledged DNR for the ad communicating that Alaska was open for business and "the more you invest the less you pay." He hoped the administration would continue the trend, and not give the impression that the state was closed for business.

Representative Guttenberg spoke in support of Amendment 3. He believed that there were two parts to the bill and that the amendment addressed exploration, the more important part. He referred to testimony about understanding the nature of the oil basin, and how little was known. He wanted to "gold plate" and not "gold fence." He thought the amendment would help focus the issue and bring more exploration to the state.

Representative Wilson voiced opposition to Amendment 3. She believed the state was already open for business and that more explorers had come and drilled, but the key question was why there was no development. She thought the incentives had to be for the producers. She had learned that the Interior had less than two weeks of heating oil in reserve if the pipeline shut down. She wanted effort to go towards development.

[3:45:31 PM](#)

Representative Gara MOVED Conceptual Amendment 1 to Amendment 3:

Page 3, lines 21-25
Delete text

Representative Hawker OBJECTED. He argued against making "conceptual amendments on the fly." He questioned whether there could be absolute assurance that the conceptual amendment would do what it intended to do.

Co-Chair Stoltze acknowledged that Representative Gara could not guarantee that, but thought he could clarify his intentions.

Representative Hawker REMOVED his OBJECTION.

There being NO further OBJECTION, it was so ordered.

Representative Gara MOVED Conceptual Amendment 2 to Amendment 3 to include a possible conforming language change that could be required later in Amendment 3:

Page 5, line 8
Eliminate the repealer to 43.55.025(1)

There being NO OBJECTION, it was so ordered.

[3:48:29 PM](#)

Representative Gara noted a further need for conforming language page 2, line 29. He responded to Representative Hawker's statement that the 85 percent cap was not clear. He believed line 29 stated the issue clearly, and said that a company would only get as high as 85 percent of the capital expenditure.

Representative Gara pointed out that ACES had passed over three years prior. He summarized that all the testimony had shown that it took five to seven years to get a field from exploration to being on-line; there had only been three and one-half years since exploration started. The unopposed testimony had been that there had been lots of exploration on the North Slope. He did not think companies would spend money on exploration if they did not think there would be the capital to produce.

Representative Gara emphasized that the three to seven years needed in order to produce had not passed, and he did not want to put a stop to a process that was probably working before the necessary time needed to get fields to development.

Representative Gara argued that Amendment 3 was necessary (along with another amendment that was forthcoming) if the goal was more jobs, more exploration, and more oil in the pipeline.

[3:50:26 PM](#)

Vice-chair Fairclough MAINTAINED her OBJECTION to Amendment 3.

A roll call vote was taken on the motion.

IN FAVOR: Guttenberg, Doogan, Gara
OPPOSED: Joule, Hawker, Wilson, Costello, Edgmon,
Fairclough, Stoltze, Thomas

The MOTION FAILED (8/3). Amendment 3 was not adopted.

Vice-chair Fairclough requested fiscal notes for Amendment 3 and Amendment 4. She wanted to know the potential costs of the proposals.

Representative Gara MOVED Amendment 4, 27-GH1007\I.13, Bullock, 3/28/11 (copy on file):

Page 1, lines 1 - 8:

Delete all material and insert:

"An Act providing for a tax credit applicable to the oil and gas production tax based on capital

expenditures for a production facility for new oil and gas production; and providing for an effective date."

Page 1, line 10, through page 20, line 25:

Delete all material and insert:

"* Section 1. AS 43.20.043(g) is amended to read:

(g) A taxpayer that obtains a credit for a qualified capital investment or cost incurred for qualified services under this section may not also claim a tax credit or royalty modification for the same qualified capital investment or cost incurred for qualified services under AS 38.05.180(i), AS 41.09.010, AS 43.55.023, [OR] 43.55.025, or 43.55.026. However, a taxpayer may elect not to obtain a credit under this section in order to qualify for a credit provided under AS 38.05.180(i), AS 41.09.010, AS 43.55.023, [OR] 43.55.025, or 43.55.026.

*** Sec. 2.** AS 43.55.023(a) is amended to read:

(a) A producer or explorer may take a tax credit for a qualified capital expenditure as follows:

(1) except as limited by (p) of this section, notwithstanding that a qualified capital expenditure may be a deductible lease expenditure for purposes of calculating the production tax value of oil and gas under AS 43.55.160(a), unless a credit for that expenditure is taken under AS 38.05.180(i), AS 41.09.010, AS 43.20.043, [OR] AS 43.55.025, or 43.55.026, a producer or explorer that incurs a qualified capital expenditure may also elect to apply a tax credit against a tax levied by AS 43.55.011(e) in the amount of 20 percent of that expenditure; however, not more than half of the tax credit may be applied for a single calendar year;

(2) a producer or explorer may take a credit for a qualified capital expenditure incurred in connection with geological or geophysical exploration or in connection with an exploration well only if the producer or explorer

(A) agrees, in writing, to the applicable provisions of AS 43.55.025(f)(2);

(B) submits to the Department of Natural Resources all data that would be required to be submitted under AS 43.55.025(f)(2).

* **Sec. 3.** AS 43.55.023(d) is amended to read:

(d) Except as limited by (i) and (p) of this section, a person that is entitled to take a tax credit under this section that wishes to transfer the unused credit to another person or obtain a cash payment under AS 43.55.028 may apply to the department for transferable tax credit certificates. An application under this subsection must be in a form prescribed by the department and must include supporting information and documentation that the department reasonably requires. The department shall grant or deny an application, or grant an application as to a lesser amount than that claimed and deny it as to the excess, not later than 120 days after the latest of (1) March 31 of the year following the calendar year in which the qualified capital expenditure or carried-forward annual loss for which the credit is claimed was incurred; (2) the date the statement required under AS 43.55.030(a) or (e) was filed for the calendar year in which the qualified capital expenditure or carried-forward annual loss for which the credit is claimed was incurred; or (3) the date the application was received by the department. If, based on the information then available to it, the department is reasonably satisfied that the applicant is entitled to a credit, the department shall issue the applicant two transferable tax credit certificates, each for half of the amount of the credit. 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. A certificate issued under this subsection does not expire.

* **Sec. 4.** AS 43.55.023 is amended by adding a new subsection to read:

(p) The amount of credit for a capital expenditure under (a) of this section for an expenditure that is also a lease expenditure under AS 43.55.165 is reduced by the amount necessary so that the tax benefit percentage is

not more than 85 percent of the capital expenditure. The amount of credit for a capital expenditure under (a) of this section that may not be taken because of the limitation in this subsection may not be applied in a later calendar year under (c) of this section and may not be included in an application for a tax credit certificate under (d) of this section. In this subsection, "tax benefit percentage" means the sum of the average monthly tax rate under AS 43.55.011(e) for the calendar year in which the credit is taken and the percentage of the capital expenditure that may be taken as a credit under (a) of this section.

* **Sec. 5.** AS 43.55 is amended by adding a new section to read:

Sec. 43.55.026. Production facility cost credit. (a) This section applies to a credit for a qualified production facility expenditure incurred before the date of production of oil or gas in paying quantities for a lease or property that is taxable under AS 43.55.011(e) and that contains land that, as of December 31, 2010, is not or previously had not been within a unit or produced oil or gas in paying quantities.

(b) The amount of the credit under this section is equal to 50 percent of the qualified production facility expenditures that are incurred after the completion of the first well drilled that discovers a pool capable of commercial production from the lease or property and before the commencement of production in paying quantities. The department, in consultation with the

(1) Alaska Oil and Gas Conservation Commission, shall determine the date on which the first well drilled discovered a pool capable of production from a lease or property for which the credit is taken; and

(2) Department of Natural Resources, shall determine the date of the commencement of production in paying quantities from the lease or property for which the credit is taken.

(c) The credit under this section may be applied against the tax due under AS 43.55.011(e) during the two-year period immediately following

the date of the commencement of production in paying quantities.

(d) A qualified production facility expenditure that is taken as a credit under this section may not be used as an expenditure for which a credit may be taken under AS 43.20.043 or AS 43.55.023. A credit under AS 43.55.023 for a qualified production facility expenditure may not be taken against the tax due under AS 43.55.011(e) during the same month in which a credit is taken or purchased by the department under this section.

(e) A credit or portion of a credit under this section may not be used to reduce a taxpayer's tax liability under AS 43.55.011(e) below zero for any calendar month. A person eligible for the credit under this section that does not take the credit within the two-year period immediately following the date of the commencement of production in paying quantities may apply to the department for a cash payment under AS 43.55.028. An application under this subsection must be in a form prescribed by the department and must include supporting information and documentation that the department reasonably requires. The department shall grant or deny an application, or grant an application as to a lesser amount than that claimed and deny it as to the excess, not later than 120 days after the date the department receives the application. If, based on the information then available to it, the department is reasonably satisfied that the applicant is entitled to a payment, the department shall issue the cash payment or a lesser amount after applying all or a portion of the credit to any outstanding unpaid balance of a tax owed by the applicant under this title.

(f) The department shall adopt regulations describing the procedures for determining the amount of the credit, record keeping, verification of the accuracy of the credit claimed, and other regulations necessary to administer this section.

(g) In this section,

(1) "production facility" means a flow station, a gathering center, a pump station, a

storage tank, and related appurtenances, and other facilities that gather, clean, dehydrate, condition, or store crude oil, natural gas, or associated hydrocarbons and that are located on a lease or property leased from the state;

(2) "production in paying quantities" means production of oil and gas in quantities sufficient to recover the cost of operating and marketing, although the quantity may be insufficient to recover the cost of drilling;

(3) "qualified production facility expenditure" means an expenditure for a production facility that may be recognized as a qualified capital expenditure as defined in AS 43.55.023.

* **Sec. 6.** AS 43.55.028(a) is amended to read:

(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 transferable tax credit certificates issued under AS 43.55.023 and production tax credit certificates issued under AS 43.55.025 and to pay for unused credits under AS 43.55.026 and refunds claimed under AS 43.20.046.

* **Sec. 7.** AS 43.55.028(g) is amended to read:

(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 and payments for unused credits under this chapter and claims for refunds under AS 43.20.046 when the total amount of the applications for purchase and claims for refund exceed the amount of available money in the fund. The regulations adopted by the department may not, when allocating available money in the fund under this section, distinguish an application for the purchase of a credit certificate issued under AS 43.55.023(m), a payment for an unused credit under AS 43.55.026(e), or a claim for refund under AS 43.20.046.

* **Sec. 8.** AS 43.55.028 is amended by adding a new subsection to read:

(j) The department, on the written application of a person for the payment of an unused credit under AS 43.55.026(e) after the end of the two-year period immediately following the

date of the commencement of production in paying quantities, may 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 applicant does not have an outstanding liability to the state for unpaid delinquent taxes under this title;

(2) the applicant's total tax liability under AS 43.55.011(e) for the calendar year in which the application is made, after application of all available tax credits, is zero; and

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

* **Sec. 9.** AS 43.55.180(a) is amended to read:

(a) The department shall study

(1) the effects of the provisions of this chapter on oil and gas exploration, development, and production in the state, on investment expenditures for oil and gas exploration, development, and production in the state, on the entry of new producers into the oil and gas industry in the state, on state revenue, and on tax administration and compliance, giving particular attention to the tax rates provided under AS 43.55.011, the tax credits provided under AS 43.55.023 - 43.55.026 [AS 43.55.023 - 43.55.025], and the deductions for and adjustments to lease expenditures provided under AS 43.55.160 - 43.55.170; and

(2) the effects of the tax rates under AS 43.55.011(i) on state revenue and on oil and gas exploration, development, and production on private land, and the fairness of those tax rates for private landowners.

* **Sec. 10.** This Act takes effect January 1, 2012."

Vice-chair Fairclough OBJECTED.

Representative Gara explained Amendment 4. He maintained that two things were needed to get oil in the pipeline, exploration and the ability to monetize. He noted that small producers had testified that it was very difficult to take a moderate-sized field on the North Slope without a production facility and monetize the oil. A production

facility was needed, which cost in the tens of billions of dollars or more. He thought the state should be a partner in helping to finance the facilities.

Representative Gara argued that Amendment 4 would grant a 50 percent credit for the construction of production facilities, with a cap of 85 percent with the stackable credits. He pointed out that there had only been one case in which a big producer had allowed their processing facilities to be used by an independent company. The state wanted to spur the development of the necessary production facilities.

Representative Gara continued that Amendments 3 and 4 in combination would get exploration and then monetize the oil through production. He said that members of the legislature had made the case that access to processing facilities had been unfairly blocked; he set that argument aside for the moment. He believed the state should be a partner in establishing the production facilities needed to get the oil out of the ground. He wanted the state to give money that would not be sent outside the state and to shareholders, but money that would be tied to Alaska. In order to use the funds that Amendment 4 would make available, a company would have to spend money in Alaska, hire Alaskan workers, and spend the money to build production facilities.

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Representative Hawker spoke in opposition to Amendment 4. He maintained that the proposed amendment would essentially delete the entire bill that was before the committee. In addition, he believed that the specifics of the production facility cost credit in the amendment looked familiar, and he wondered whether there was another piece of legislation proposing the same thing.

Representative Hawker pointed to page 4, line 28, which discussed what a production facility was, including such things as the flow station, gathering center, pump station, and storage tank. He argued that pump stations were upstream assets and not downstream assets. He did not believe the committee had had the technical discussion to be able to understand what the amendment could empower. He cited the next line, related to definitions of production and quantities "sufficient to recover the cost of operating

and marketing." He argued that the committee had strongly avoided allowing any tax benefits for marketing activities in any of the tax work done.

Representative Hawker believed that Amendment 4 would require a great deal more consideration than the committee could give it.

Representative Guttenberg spoke in support of Amendment 4. He stated that he had a bill related to the production facility, and that the bill was nothing like the proposed amendment. He believed the other bill that was being contemplated was also nothing like the amendment.

Representative Guttenberg listed the various aspects of production facilities. He pointed out that a well could cost \$20 million. The process started with exploration, with seismic work; there were credits for that. When sufficient oil or gas was found to warrant production, a road was built, wells were drilled, pipelines were constructed, and the oil was pumped to the facilities. In order to get into a facility, a company had to either make a commercial agreement with someone who already had a facility, or have findings in sufficient quantities to finance their own facility.

Representative Guttenberg noted that one of the small explorers who had visited his office had said that they would either come up with a sound fiscal contract to put their oil into an existing facility, or build one themselves. The explorer had mentioned that the existing facilities were old and had built-in inefficiencies. He referred to past corrosion problems and emphasized that some explorers might not want to use existing facilities because of safety issues.

Representative Guttenberg argued that many things had to be done to oil before a company could get it into a pipeline, which was a common carrier. For example, the sediments had to be separated out as well as the gas and water, and the resulting product had to be at a standard approved of by Alyeska. In addition, the oil had to be metered because of tariffs and costs. He emphasized that it was expensive to build a new facility. He referred to Gubik (100 miles south of the pipeline) and said a company would not want to ship oil that far and then be charged to ship it through several legs north and south in order to get to TAPS. A company

would want to build a facility near Gubik, which would require a small pump station. He questioned why a producer out on the Colville River (near Umiat) would want to pay to ship all the external and wasteful components, such as water and sediment.

Representative Guttenberg pointed out that the state should give new producers credits related to building a facility if the state wanted to give new producers opportunities and the ability to do things efficiently. Once a facility was in a location, someone else could explore in that location as well.

Representative Guttenberg referred to a presentation by Gaffney, Cline & Associates to the House Resources Committee on February 11, 2011. The presenter had spoken to how Alaska was perceived as "stranded," which meant that producers could not get access to infrastructure.

Representative Guttenberg summarized that new exploration would be encouraged if the state could build new infrastructure. He believed that Amendment 4 could provide the infrastructure that new explorers and producers would want.

Representative Gara acknowledged that Representative Hawker had been correct in saying that both Amendment 3 and Amendment 4 intentionally deleted the entirety of the governor's bill. He argued that there were many good reasons for such extensive change to the legislation, including the current fiscal note, which showed that the state would lose over \$1 billion each year in revenue.

Representative Gara maintained that Amendment 4 would accomplish something very important. He did not think a producer would build a facility unless it was on the verge of producing oil. He believed that Amendment 4 would incentivize the production of oil. He stressed that all the other credits, such as the development well and service credits, might or might not stem a production decline. He maintained that a production facility would add new oil into the pipeline, which was what the state needed. The entire goal was to make sure that the state got exploration and production in exchange for the money it spent.

[4:03:54 PM](#)

Vice-chair Fairclough MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Gara, Guttenberg, Doogan

OPPOSED: Joule, Hawker, Wilson, Costello, Edgmon,
Fairclough, Thomas, Stoltze

The MOTION FAILED (8/3). Amendment 4 was not adopted.

Representative Doogan MOVED Amendment 5, 27-GH1007\I.9,
Bullock, 3/28/11 (copy on file):

Page 1, lines 5 - 6:

Delete "**relating to certain additional
nontransferable oil and gas production tax credits;**"

Page 1, following line 12:

Insert a new bill section to read:

"* **Sec. 2.** AS 05.15.095(c) is amended to read:

(c) A delinquent fee bears interest at the
rate set by **AS 43.05.225** [AS 43.05.225(2)]."

Renumber the following bill sections accordingly.

Page 2, following line 5:

Insert a new bill section to read:

"* **Sec. 4.** AS 34.45.470(a) is amended to read:

(a) A person who fails to pay or deliver
property within the time prescribed by this
chapter may be required to pay to the department
interest at the annual rate calculated under
AS 43.05.225 [AS 43.05.225(2)] on the property or
the value of it from the date the property should
have been paid or delivered."

Renumber the following bill sections accordingly.

Page 2, following line 17:

Insert a new bill section to read:

"* **Sec. 6.** AS 43.05.225 is amended to read:

Sec. 43.05.225. Interest. Unless otherwise
provided,

(1) when a tax levied in this title
becomes delinquent, it bears interest in a
calendar quarter at the rate of **five** [THREE]
percentage points above the annual rate charged

member banks for advances by the 12th Federal Reserve District as of the first day of that calendar quarter, or at the annual rate of 11 percent, whichever is greater [LESSER], compounded quarterly as of the last day of that quarter;

(2) the interest rate is 12 percent a year for

(A) delinquent fees payable under AS 05.15.095(c); and

(B) unclaimed property that is not timely paid or delivered, as allowed by AS 34.45.470(a)."

Renumber the following bill sections accordingly.

Page 2, following line 25:

Insert a new bill section to read:

"* **Sec. 8.** AS 43.20.046(i) is amended to read:

(i) The issuance of a refund under this section does not limit the department's ability to later audit or adjust the claim if the department determines, as a result of the audit, that the person that claimed the credit was not entitled to the amount of the credit. The tax liability of the person receiving the credit under this chapter is increased by the amount of the credit that exceeds that to which the person was entitled. If the tax liability is increased under this subsection, the increase bears interest under AS 43.05.225 [AS 43.05.225(1)] from the date the refund was issued."

Renumber the following bill sections accordingly.

Page 3, following line 2:

Insert a new bill section to read:

"* **Sec. 10.** AS 43.50.570 is amended to read:

Sec. 43.50.570. Interest. A licensee who fails to pay an amount due for the purchase of stamps within the time required

(1) is considered to have failed to pay the cigarette taxes due under this chapter; and

(2) shall pay interest at the rate established under AS 43.05.225 [AS 43.05.225(1)]

from the date on which the amount became due until the date of payment."

Renumber the following bill sections accordingly.

Page 3, following line 20:

Insert a new bill section to read:

"* **Sec. 12.** AS 43.55.011(e) is repealed and reenacted to read:

(e) There is levied on the producer of oil or gas a tax for all oil and gas produced each calendar year 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 (f), (j), (k), and (o) of this section, the tax is equal to the sum of

(1) the annual production tax value of the taxable oil and gas as calculated under AS 43.55.160(a)(1) multiplied by 25 percent; and

(2) the sum, over all months of the calendar year, of the tax amounts determined under (g) of this section."

Renumber the following bill sections accordingly.

Page 7, following line 24:

Insert a new bill section to read:

"* **Sec. 14.** AS 43.55.011(g) is repealed and reenacted to read:

(g) For each month of the calendar year for which the producer's average monthly production tax value under AS 43.55.160(a)(2) for each BTU equivalent barrel of the taxable oil and gas is more than \$30, the amount of tax for purposes of (e)(2) of this section is determined by multiplying the monthly production tax value of the taxable oil and gas produced during the month by the tax rate calculated as follows:

(1) if the producer's average monthly production tax value for each BTU equivalent barrel of the taxable oil and gas for the month is not more than \$92.50, the tax rate is 0.4 percent multiplied by the number that represents the difference between that average monthly

production tax value for each BTU equivalent barrel and \$30; or

(2) if the producer's average monthly production tax value for each BTU equivalent barrel of the taxable oil and gas for the month is more than \$92.50, the tax rate is the sum of 25 percent and the product of 0.1 percent multiplied by the number that represents the difference between the average monthly production tax value for each BTU equivalent barrel and \$92.50, except that the sum determined under this paragraph may not exceed 50 percent."

Renumber the following bill sections accordingly.

Page 10, following line 13:

Insert a new bill section to read:

"* **Sec. 16.** AS 43.55.020(a) is amended to read:

(a) For a calendar year, a producer subject to tax under AS 43.55.011(e) - (i) shall pay the tax as follows:

(1) an installment payment of the estimated tax levied by AS 43.55.011(e), net of any tax credits applied as allowed by law, is due for each month of the calendar year on the last day of the following month; except as otherwise provided under (2) of this subsection, the amount of the installment payment is the sum of the following amounts, less 1/12 of the tax credits that are allowed by law to be applied against the tax levied by AS 43.55.011(e) for the calendar year, but the amount of the installment payment may not be less than zero:

(A) for oil and gas produced from leases or properties in the state outside the Cook Inlet sedimentary basin but not subject to AS 43.55.011(o), other than leases or properties subject to AS 43.55.011(f), the greater of

(i) zero; or

(ii) the sum of 25 percent and the tax rate calculated for the month under AS 43.55.011(g) multiplied by [APPLICABLE TAX RATES IN AS 43.55.011(e), AS APPLICABLE, AND 43.55.011(g), AS APPLICABLE, APPLIED TO] the remainder obtained by

subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible for the leases or properties under AS 43.55.160 from the gross value at the point of production of the oil and gas produced from the leases or properties during the month for which the installment payment is calculated;

(B) for oil and gas produced from leases or properties subject to AS 43.55.011(f), the greatest of

(i) zero;

(ii) zero percent, one percent, two percent, three percent, or four percent, as applicable, of the gross value at the point of production of the oil and gas produced from all leases or properties during the month for which the installment payment is calculated; or

(iii) the sum of 25 percent and the tax rate calculated for the month under AS 43.55.011(g) multiplied by [APPLICABLE TAX RATES IN AS 43.55.011(e), AS APPLICABLE, AND 43.55.011(g), AS APPLICABLE, APPLIED TO] the remainder obtained by subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible for those leases or properties under AS 43.55.160 from the gross value at the point of production of the oil and gas produced from those leases or properties during the month for which the installment payment is calculated;

(C) for oil and gas produced from each lease or property subject to AS 43.55.011(j), (k), or (o), the greater of

(i) zero; or

(ii) the sum of 25 percent and the tax rate calculated for the month under AS 43.55.011(g) multiplied

by [APPLICABLE TAX RATES IN AS 43.55.011(e), AS APPLICABLE, AND 43.55.011(g), AS APPLICABLE, APPLIED TO] the remainder obtained by subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible under AS 43.55.160 for oil or gas, respectively, produced from the lease or property from the gross value at the point of production of the oil or gas, respectively, produced from the lease or property during the month for which the installment payment is calculated;

(2) an amount calculated under (1)(C) of this subsection for oil or gas produced from a lease or property subject to AS 43.55.011(j), (k), or (o) may not exceed the product obtained by carrying out the calculation set out in AS 43.55.011(j)(1) or (2) or 43.55.011(o), as applicable, for gas or set out in AS 43.55.011(k)(1) or (2), as applicable, for oil, but substituting in AS 43.55.011(j)(1)(A) or (2)(A) or 43.55.011(o), as applicable, the amount of taxable gas produced during the month for the amount of taxable gas produced during the calendar year and substituting in AS 43.55.011(k)(1)(A) or (2)(A), as applicable, the amount of taxable oil produced during the month for the amount of taxable oil produced during the calendar year;

(3) an installment payment of the estimated tax levied by AS 43.55.011(i) for each lease or property is due for each month of the calendar year on the last day of the following month; the amount of the installment payment is the sum of

(A) the applicable tax rate for oil provided under AS 43.55.011(i), multiplied by the gross value at the point of production of the oil taxable under AS 43.55.011(i) and produced from the lease or property during the month; and

(B) the applicable tax rate for gas provided under AS 43.55.011(i),

multiplied by the gross value at the point of production of the gas taxable under AS 43.55.011(i) and produced from the lease or property during the month;

(4) any amount of tax levied by AS 43.55.011(e) or (i), net of any credits applied as allowed by law, that exceeds the total of the amounts due as installment payments of estimated tax is due on March 31 of the year following the calendar year of production."

Renumber the following bill sections accordingly.

Page 10, following line 25:

Insert a new bill section to read:

"* **Sec. 18.** AS 43.55.020(g) is amended to read:

(g) Notwithstanding any contrary provision of AS 43.05.225, an unpaid amount of an installment payment required under (a)(1) - (3) of this section that is not paid when due bears interest (1) at the rate provided for an underpayment under 26 U.S.C. 6621 (Internal Revenue Code), as amended, compounded daily, from the date the installment payment is due until March 31 following the calendar year of production, and (2) as provided for a delinquent tax under AS 43.05.225 [AS 43.05.225(1)] after that March 31. Interest accrued under (1) of this subsection that remains unpaid after that March 31 is treated as an addition to tax that bears interest under (2) of this subsection. An unpaid amount of tax due under (a)(4) of this section that is not paid when due bears interest as provided for a delinquent tax under AS 43.05.225 [AS 43.05.225(1)]."

Renumber the following bill sections accordingly.

Page 11, following line 12:

Insert a new bill section to read:

"* **Sec. 20.** AS 43.55.023(a) is amended to read:

(a) A producer or explorer may take a tax credit for a qualified capital expenditure as follows:

(1) notwithstanding that a qualified capital expenditure may be a deductible lease expenditure for purposes of calculating the

production tax value of oil and gas under AS 43.55.160(a), unless a credit for that expenditure is taken under AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025, a producer or explorer that incurs a qualified capital expenditure may also elect to apply a tax credit against a tax levied by AS 43.55.011(e) in the amount of 20 percent of that expenditure; **however, not more than half of the tax credit may be applied for a single calendar year;**

(2) a producer or explorer may take a credit for a qualified capital expenditure incurred in connection with geological or geophysical exploration or in connection with an exploration well only if the producer or explorer

(A) agrees, in writing, to the applicable provisions of AS 43.55.025(f)(2);

(B) submits to the Department of Natural Resources all data that would be required to be submitted under AS 43.55.025(f)(2)."

Renumber the following bill sections accordingly.

Page 12, following line 7:

Insert a new bill section to read:

"* **Sec. 22.** AS 43.55.023(d) is amended to read:

(d) Except as limited by (i) of this section, a person that is entitled to take a tax credit under this section that wishes to transfer the unused credit to another person or obtain a cash payment under AS 43.55.028 may apply to the department for [A] transferable tax credit **certificates** [CERTIFICATE]. An application under this subsection must be in a form prescribed by the department and must include supporting information and documentation that the department reasonably requires. The department shall grant or deny an application, or grant an application as to a lesser amount than that claimed and deny it as to the excess, not later than 120 days after the latest of (1) March 31 of the year following the calendar year in which the qualified capital expenditure [, WELL LEASE EXPENDITURE,] or carried-forward annual loss for which the credit is claimed was incurred; (2) the date the statement required under AS 43.55.030(a)

or (e) was filed for the calendar year in which the qualified capital expenditure [, WELL LEASE EXPENDITURE,] or carried-forward annual loss for which the credit is claimed was incurred; or (3) the date the application was received by the department. If, based on the information then available to it, the department is reasonably satisfied that the applicant is entitled to a credit, the department shall issue the applicant two [A] transferable tax credit certificates, each for half of [CERTIFICATE FOR] the amount of the credit. 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. A certificate issued under this subsection does not expire."

Renumber the following bill sections accordingly.

Page 13, following line 4:

Insert a new bill section to read:

"* **Sec. 25.** AS 43.55.023(g) is amended to read:

(g) The issuance of a transferable tax credit certificate under (d) of this section, [OR] former (m) of this section, or (p) of this section, or the purchase of a certificate under AS 43.55.028 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

[AS 43.05.225(1)] 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 13, line 8:

Delete "2021"

Insert "2015"

Page 13, line 31:

Delete "2020"

Insert "2014"

Delete "2021"

Insert "2015"

Page 14, line 9, following "expenditure;":

Insert "a tax credit under this paragraph may be applied for a single calendar year;"

Page 15, line 3, following "(l)":

Insert "and (p)"

Page 15, following line 15:

Insert a new bill section to read:

"* **Sec. 30.** AS 43.55.023 is amended by adding a new subsection to read:

(p) For a lease expenditure incurred in the state south of 68 degrees North latitude after December 31, 2014, that qualifies for tax credits under (a) and (b) of this section, and for a well lease expenditure incurred in the state south of 68 degrees North latitude that qualifies for a tax credit under (l) of this section, the department shall issue transferable tax credit certificates to the person entitled to the credit for the full amount of the credit. The transferable tax credit certificates do not expire."

Renumber the following bill sections accordingly.

Page 15, line 16, through page 17, line 16:

Delete all material.

Renumber the following bill sections accordingly.

Page 18, following line 6:

Insert a new bill section to read:

"* **Sec. 32.** AS 43.55.028(e) is amended to read:

(e) The department, on the written application of a person to whom a transferable tax credit certificate has been issued under AS 43.55.023(d), [OR] former AS 43.55.023(m), or AS 43.55.023(p), or to whom a production tax credit certificate has been issued under AS 43.55.025(f), may 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) the applicant does not have an outstanding liability to the state for unpaid delinquent taxes under this title;

(3) 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;

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

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

Renumber the following bill sections accordingly.

Page 18, following line 15:

Insert a new bill section to read:

"* **Sec. 34.** AS 43.55.028(g) is amended to read:

(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 under this chapter and claims for refunds under AS 43.20.046

when the total amount of the applications for purchase and claims for refund exceed the amount of available money in the fund. The regulations adopted by the department may not, when allocating available money in the fund under this section, distinguish an application for the purchase of a credit certificate issued under former AS 43.55.023(m) or AS 43.55.023(p) or a claim for refund under AS 43.20.046."

Renumber the following bill sections accordingly.

Page 19, following line 12:

Insert a new bill section to read:

"* **Sec. 36.** AS 43.55.890 is amended to read:

Sec. 43.55.890. Disclosure of tax information.

Notwithstanding any contrary provision of AS 40.25.100, and regardless of whether the information is considered under AS 43.05.230(e) to constitute statistics classified to prevent the identification of particular returns or reports, the department may publish the following information under this chapter, if aggregated among three or more producers or explorers, showing, by month or calendar year and by lease or property, unit, or area of the state:

- (1) the amount of oil or gas production;
- (2) the amount of taxes levied under this chapter or paid under this chapter;
- (3) the effective tax rates under this chapter;
- (4) the gross value of oil or gas at the point of production;
- (5) the transportation costs for oil or gas;
- (6) qualified capital expenditures, as defined in AS 43.55.023;
- (7) exploration expenditures under AS 43.55.025;
- (8) production tax values of oil or gas under AS 43.55.160;
- (9) lease expenditures under AS 43.55.165;
- (10) adjustments to lease expenditures under AS 43.55.170;

(11) tax credits applicable or potentially applicable against taxes levied by this chapter [; THE INFORMATION RELATING TO TAX CREDITS UNDER THIS PARAGRAPH, TO THE EXTENT THE INFORMATION IS AVAILABLE TO THE DEPARTMENT, MUST INCLUDE THE STATUTORY AUTHORITY FOR EACH TYPE OF CREDIT TAKEN, THE AMOUNT OF CREDITS TAKEN UNDER EACH STATUTE AUTHORIZING A TAX CREDIT, AND WHETHER THE CREDIT IS FOR AN EXPENDITURE RELATED TO OIL OR GAS EXPLORATION, DEVELOPMENT, OR PRODUCTION, INCLUDING THE DRILLING OF WELLS; PERFORMING WORK ON EXISTING WELLS; CONDUCTING GEOLOGICAL OR GEOPHYSICAL EXPLORATION; ACQUIRING, CONSTRUCTING, OR INSTALLING NEW FACILITIES OR EQUIPMENT; AND MAINTAINING, REPAIRING, OR REPLACING EXISTING FACILITIES OR EQUIPMENT]."

Renumber the following bill sections accordingly.

Page 19, following line 17:

Insert a new bill section to read:

"* **Sec. 38.** AS 43.56.160 is amended to read:

Sec. 43.56.160. Interest and penalty. When the tax levied by AS 43.56.010(a) becomes delinquent, a penalty of 10 percent shall be added. Interest on the delinquent taxes, exclusive of penalty, shall be assessed at a rate of eight percent a year [THE RATE SPECIFIED IN AS 43.05.225(1)]."

Renumber the following bill sections accordingly.

Page 19, following line 28:

Insert a new bill section to read:

"* **Sec. 40.** AS 43.77.020(d) is amended to read:

(d) A person subject to the tax under this chapter shall make quarterly payments of the tax estimated to be due for the year, as required under regulations adopted by the department. A taxpayer will be subject to an estimated tax penalty, determined by applying the interest rate specified in AS 43.05.225 [AS 43.05.225(1)] to the underpayment for each quarter, unless the taxpayer makes estimated tax payments in equal installments that total either

(1) at least 90 percent of the taxpayer's tax liability under this chapter for the tax year; or

(2) at least 100 percent of the taxpayer's tax liability under this chapter for the prior tax year."

Renumber the following bill sections accordingly.

Page 20, following line 1:

Insert a new bill section to read:

"* **Sec. 42.** AS 43.90.430 is amended to read:

Sec. 43.90.430. Interest. When a payment due to the state under this chapter becomes delinquent, the payment bears interest at the rate applicable to a delinquent tax under **AS 43.05.225** [AS 43.05.225(1)]."

Renumber the following bill sections accordingly.

Page 20, line 5:

Delete "Sections 10 - 12, 14, 16, and 28"

Insert "Sections 19, 21, 23, 26, 28, and 43"

Page 20, line 7:

Delete "Sections 6 - 8"

Insert "Sections 11, 13, and 15"

Page 20, line 8:

Delete "Sections 15 and 17"

Insert "Sections 20, 22, 25, 27, 29, and 30"

Page 20, line 9:

Delete "2020"

Insert "2014"

Page 20, following line 9:

Insert a new subsection to read:

"(d) Sections 12, 14, and 16 of this Act apply to oil and gas produced after December 31, 2014."

Page 20, line 18:

Delete "Sections 10 - 12, 14, 16, 22, 23, and 28"

Insert "Sections 19, 21, 23, 26, 28, 31, 33, and 43"

Page 20, line 20:

Delete "Section 24"
Insert "Section 35"

Page 20, line 21:
Delete "Sections 6 - 8 and 29(b)"
Insert "Sections 11, 13, 15, and 44(b)"

Page 20, line 22:
Delete "Sections 15, 17, and 29(c)"
Insert "Sections 2, 4, 6, 8, 10, 12, 14, 16, 18,
20, 22, 25, 27, 29, 30, 32, 34, 36, 38, 40, 42, and
44(c)"
Delete "2021"
Insert "2015"

Page 20, line 23:
Delete "Sections 10 - 12, 14, 16, 22, 23, 28,
29(a), and 31"
Insert "Sections 19, 21, 23, 26, 28, 31, 33, 43,
44(a), and 46"

Page 20, line 25:
Delete "secs. 32 - 35"
Insert "secs. 47 - 50"

Vice-chair Fairclough OBJECTED.

Representative Doogan explained Amendment 5. He noted that Don Bullock had drafted the amendment. He summarized that the amendment would essentially set a sunset date for 2014.

Representative Doogan stated that the committee was being asked to pass HB 110 without knowing its cost, the effects it would have, and the fiscal situation it could create at any given point in time. He said that Amendment 5 would allow the state to see what the proposed bill would do; by 2014, the effects could be re-evaluated. The measure could then be sunsetted if it was not working.

[4:07:51 PM](#)

Representative Doogan reminded the committee that a sunset provision provided an opportunity at a specific date to change a measure rather than shut it down.

Vice-chair Fairclough spoke in opposition to Amendment 5. She reported that she had voted in favor of the 25 percent

on the House floor when ACES was being considered, but voted against the overall bill because of progressivity and other issues. She liked the idea of a sunset date in 2014, but was fearful that the sunset date would still create uncertainty for investors.

Vice-chair Fairclough recalled at least one entity that had testified that it had made investment decisions under the Petroleum Production Tax (PPT), and then under ACES, and were having difficulty being forced into production. She was afraid Amendment 5 would create a climate of uncertainty for investors. She stated that she supported holding industry accountable through the 15 percent bracketing proposal in HB 110, so that the units would be taxed in a fair way.

Representative Wilson spoke against Amendment 5. She pointed out that most of the bill would not go into effect until 2013, so there would only be one year in which to find out what could happen. She believed that at some point, the state had to stop changing the rules.

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Representative Guttenberg testified in support of Amendment 5. He argued that the entire premise of HB 110 was based on things that he did not think the administration had been able to make a case for. He pointed out that the administration had not done modeling to show how a reduced tax rate and changes to credits would increase exploration and production. He wanted a "hard line" with things happening by a certain date, as well as data about the number of permits and the resulting infrastructure and employment.

Representative Gara spoke in support of the amendment. He spoke to fears that the industry would follow through on promises made during the discussion about the bill. For example, Exxon and BP had promised that they would not drill a single new exploration well if the bill was passed, while ConocoPhillips had said they might or might not. He believed the amendment would address the concerns; companies who kept the promises would lose the benefits of the bill. He also thought the amendment would encourage companies to do something better than what they promised if they wanted to keep the money the state would offer.

Vice-chair Fairclough protested against "disparaging comments" said about larger producers. She stated that she had not heard companies promise not to do something; she heard companies say they could not promise to DO something. For example, companies would have to change their stance to projects and would compete for the assets. She did not think all companies were alike and she did not want to lump all oil and gas companies together. She believed that there were many different businesses and that companies with large capital assets were buying smaller companies. She thought smaller producers were conducting exploration with a business model of looking for oil, coal, or other resources.

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Vice-chair Fairclough maintained that "labor" referred to service industry businesses that built infrastructure and supported the oil and gas industry in many different ways. She resonated with people who had run businesses and worked on the North Slope, and then had to move to North Dakota to remobilize their assets.

Vice-chair Fairclough believed that the bill before the committee had to do with a "balanced approach" to the different kinds of models and companies that were investing in Alaska. She believed that the state was doing a good job on exploration and credits. She believed it was valid to say that it was expensive to try to capitalize production facilities, but she thought there was a combination of two credits adding up to 45 percent for that. She wanted to balance policy approaches.

Vice-chair Fairclough stressed that Amendment 3 would create uncertainty for capitalization on the production side and not the development level for producers. She thought there three different types of business (with the service industry making a possible forth type) and that the state (as far as credits went) was divided into three different regions. She reported that she had learned about "Middle Earth," or the regions that credits were associated with that were between the North Slope region (north of 68 degrees Latitude) and the Cook Inlet region.

Vice-chair Fairclough appreciated the effort to hold industry accountable. She believed ACES had gone too far and that the state had to revisit the policies.

Representative Doogan explained that the year 2014 was selected as the date in the amendment because it reflected how long ACES was in place before the current attempt to amend it. He thought the timeframe was long enough.

Representative Doogan stated that his intention was to make sure the committee did not inadvertently commit the state to buying something it did not intend to buy ("buying a pig in a poke"). He asserted that it was not possible to know what was going to happen; he believed there was no assurance that HB 110 would result in a single drop of oil.

Representative Doogan did not think it was responsible to give companies the money without holding them to anything, and without having a sunset date in order to re-evaluate the situation. He pointed out that the state went to great lengths to do reviews of other issues. He wanted the state to at least have a safety net.

[4:24:05 PM](#)

Vice-chair Fairclough MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Gara, Guttenberg, Doogan

OPPOSED: Fairclough, Joule, Hawker, Wilson, Costello, Edgmon, Stoltze, Thomas

The MOTION FAILED (8/3). Amendment 5 was not adopted.

Representative Gara referred to accusations that had been made that the truth was not being told, particularly the comment that he had not accurately represented what was said by BP and ExxonMobil. He read from transcripts related to the companies claiming that they would not go ahead with exploration wells. He quoted Clair Fitzpatrick (from BP):

BP does not do what is referred to as traditional exploratory wells...It is not BP's current intention, (although that may change; I only own 20 percent of Prudhoe Bay) to do it as technically classified as an exploration well.

Representative Gara continued that he had asked ExxonMobil if it had drilled an exploration well in the last twenty

years. The answer was, "I think the last one we did was in 1982." He had asked ExxonMobil whether their plan was to continue the practice of not drilling exploration wells. The answer had been, "I can't promise you that it (the governor's bill) would lead to increased exploration."

Representative Gara recommended disagreeing on the merits of the issue without accusing the person being disagreed with of misrepresenting the facts.

Representative Hawker agreed that Representative Gara was correct about his characterization of one part of the conversation. He wanted the record to reflect that BP-Alaska and ExxonMobil had corporate business profiles that were not exploration; in other words, the companies were not the explorers. He claimed that BP had never explored for and found oil in the state (other than the [unintelligible] prospect); BP acquired production from the explorers whose business it was to locate and find oil. He added that the same was largely true of ExxonMobil. He believed that characterizing their testimony as disrespecting the state was not accurate. He believed the entities were looking for the support needed to operate profitably. He believed HB 110 would try to restore balance to the state's tax-production system.

[4:28:14 PM](#)

Co-Chair Stoltze MOVED Amendment 2, 27-GH1007\I.6, Bullock, 3/28/11 (copy on file):

Page 7, line 23:
Delete "15"
Insert "25"

Representative Wilson OBJECTED.

Co-Chair Stoltze explained that the amendment would correct a typographical error.

Commissioner Butcher agreed that the number was a technical error, and that the number should indicate a rise from 22.5 to 25, and not down to 15.

There being NO OBJECTION, it was so ordered. Amendment 2 was adopted.

[4:30:42 PM](#)

Co-Chair Stoltze explained that Amendment 1 would be replaced by Amendment 6.

Co-Chair Stoltze MOVED Amendment 6, 27-GH1007\I.15, Kurtz/Bullock, 3/29/11 (copy on file):

Page 3, line 15, following "production":

Insert "or produced during the first seven years after the effective date of this bill section, whichever is later,"

Representative Wilson OBJECTED.

Representative Hawker explained Amendment 6. He directed attention to the provision referenced on page 3, line 14, which would authorize the 15 percent base progressivity and the curve for certain production from certain areas limited to the first seven consecutive years after production commenced. The areas referred to (on lines 16 and 17) were those that had not previously been within an established unit, or areas that had not been in commercial production as of December 31, 2008.

Representative Hawker detailed that HB 110 as introduced by the administration had originally contained the date December 31, 2010. The date was moved back to December 31, 2008 by the House Resources Committee, specifically to make certain that prospective developments (related to Armstrong and Repsol) would qualify to incentivize and bring new exploration into the state. During the House Finance Committee process, the decision had been made that the 15 percent benefit would only exist for the first seven consecutive years of production for the particular lease or property.

Representative Hawker reported that he had had concerns and had conferred with Mr. Bullock (the drafter of the legislation) and Co-Chair Eric Feige of the House Resources Committee, who concurred that the effective date of the provision (January 1, 2012) would have been the starting date for the seven consecutive years, rather than after the start of sustained production.

Representative Hawker summarized that the language in the amendment would ensure that anyone that qualified would get

seven years of benefit. He believed there had been sufficient ambiguity in the bill's language that someone who had actually started production before the effective date could be denied the benefits. He emphasized that the provision would be directed at new production and that there would be no fiscal note consequence to the change.

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Representative Gara questioned whether the dates were right for the Liberty field. He wondered whether Liberty field would get the 15 percent rate under the amendment, since it had not started production; he noted that the field would pay the 25 percent tax rate plus progressivity without the amendment. He wondered which fields would pay 15 percent rather than 25 percent if the amendment were adopted.

Representative Hawker responded that the amendment would clarify the intent of the House Resources Committee and would not expand the intent or scope of the original language.

Co-Chair Stoltze wanted to keep consistent with intent. He referred to mistakes related to the Cook Inlet.

Representative Hawker pointed out that the Liberty field was federal and not state. He stated that the amendment would have no effect on the field.

Representative Doogan asked whether the amendment language would change who would get seven "low-cost" years before paying an enhanced tax. He asked whether current fields would be affected.

Commissioner Butcher replied that the discussed aspect of HB 110 covered fields that had not been unitized or developed.

Co-Chair Stoltze noted that during the CS process, the Finance Committee had inadvertently undone some of the work of the previous committee.

[4:38:03 PM](#)

Representative Gara questioned the intent of the House Resources Committee related to the language. He wondered whether the amendment would affect a field already unitized

under ACES and whether the field would get the 15 percent tax rate because production was not started until after the effective date of the bill.

REPRESENTATIVE ERIC FEIGE, CO-CHAIR, HOUSE RESOURCES COMMITTEE, explained that the intent of the date in the provision was to segregate areas that had not been put into production from those already in production. The intent was to leave the effective base rate at 25 percent for areas already in production; the intent for areas outside was a lower base-rate tax. He added that the problem with the language in the original bill was the discussion of "units." Brooks Range Petroleum and Armstrong Petroleum had leases that did not have current production, but the leases were already in existing units; leaving the original date would have exempted those units and kept as-yet-to-be-produced areas at the higher base tax rate. He underlined that the House Resources Committee changed the date in order to segregate the producing areas from the undeveloped areas.

Representative Wilson REMOVED her OBJECTION to Amendment 6.

Representative Gara OBJECTED. He did not want to grant the lower tax rate to fields that would be produced anyway.

Representative Gara WITHDREW his OBJECTION. There being NO further OBJECTION, it was so ordered. Amendment 6 was adopted.

[4:42:32 PM](#)

AT EASE

[4:59:04 PM](#)

RECONVENED

Vice-chair Fairclough MOVED to report CSHB 110(FIN) out of Committee with individual recommendations and the accompanying fiscal notes.

Representative Gara OBJECTED.

Representative Gara spoke against the legislation. He acknowledged that the state would be smart to do something like HB 110. He noted that he and Senator Hollis French had asked the governor to start selling the positive aspects of ACES.

Representative Gara reviewed that the governor had proposed HB 110 as a provision that would not cost the state money over the long-term and that would increase production. He continued that based on the second page of the fiscal note, the state would lose over \$3.5 billion in revenue over the next five years, even with a 5 percent increase in production. He believed the amount of revenue loss would grow as the years passed.

Representative Gara wanted the whole economy of the state to be addressed. He was concerned that the \$1.5 billion loss would affect state operations, such as hiring teachers, fire-fighters, and state troopers. He believed more damage would be done to Alaska's economy by adopting the bill than would be done by leaving the situation as it was. He believed it made more sense to give companies credits only if they did what the state wanted them to do than to give companies money and hope they put it back into the state.

Representative Gara referred to the decline of the ELF tax rate to zero percent on 15 of 19 North Slope fields, when the production decline remained at 6 percent each year, and employment and investment were lower. He thought historically, giving companies tax money and allowing them to decide what to do with it had resulted in flight of money from the state. He thought the smart approach would be to pay for things that resulted in more oil, which was why the minority had proposed the series of amendments offered in the committee. The goal was more money for more exploration wells, and money for processing facilities; the only way a company could get more money would be to help increase production.

Representative Gara believed HB 110 would accomplish something that DOR had said was not wise four years prior. Companies that invested in major oil field developments had an economic incentive to continue the production of wells in certain fields, which was why ACES granted only a 20 percent credit for in-field production. The legislature had been told that giving the companies more money would fund what the companies wanted to do to maintain the lives of the fields.

Representative Gara summarized that he wanted to get something back for state investment. He did not believe the

governor's bill could provide adequate assurance that the state would get anything other than a loss in revenue.

5:04:03 PM

Representative Guttenberg spoke against HB 110. He recommended looking at the long view. He believed that changing a tax fiscal regime was an equation: there was an equal sign in the middle, and two equations on either side of it. He felt that sometimes, "two plus two equaled five" and believed the value had to be weighed as to its return to the state.

Representative Guttenberg referred to testimony from the administration, the producers, and others, and noted that there had been two assumptions: the competitive nature of the fiscal policy and chasing capital. The themes seemed like a marketing plan rather than a balanced equation. He was troubled by the lack of modeling done to demonstrate numbers moving towards increased production. He was also troubled that the two consultants who had testified (who were private consultants, outside the realm of the administration, and not producers with a "ball in the game") had disagreed with the assumption.

Representative Guttenberg referred to the DOR presentation by Gaffney, Cline & Associates to the House Resources Committee, in which there had been discussion about designing a fiscal system with two parts art and one part science. There was discussion of nine "influencing factors"; the last one was "competition from everywhere."

Representative Guttenberg pointed out that the consultant was someone with a lot of private-sector experience who had been an industry man and had to evaluate a lot of things; he was not seen before the Finance Committee.

5:08:20 PM

Representative Guttenberg recalled testimony by consultant Rick Harper in the committee ["An Independent View of HB 110, March 24, 2011"], who "rolled his eyes" during his presentation. He quoted Mr. Harper as saying, "the things that should be important in building a fiscal structure are the things you are not hearing." He questioned what those "things" were and expressed disappointment that the administration had not addressed the issue. He claimed that

the only two people who had come from outside the administration had serious questions about the proposal. He did not believe the administration had made the case for the state to adopt the proposed fiscal regime.

Representative Wilson spoke in support of HB 110. She agreed that the entire picture had to be considered; the bigger picture for her was about jobs, development, and keeping oil coming down the pipeline. She had not seen any new oil coming online and wanted to know why. She thought there were explorers, but she questioned why the explorers were not developing and becoming producers. She thought the answer was that explorers were explorers; the next step was to sell the package, which consisted of some credits. She thought the worst part was that the more money a company made, the more money the state would take. She thought that was a "hard sell."

Representative Wilson argued that not using incentives to bring business in was an avoidance of reality. She believed it was "normal" in everyday business to provide tax relief for developers in order to create jobs. She felt HB 110 would produce more jobs and allow her community to have heating oil (although she also hoped to look at other energy options).

Representative Wilson agreed that there could always be more information. She reported that she had gone to the community and asked people if they had seen jobs leave with ACES; the answer in the Fairbanks and North Pole area was that jobs had declined. People believed that making changes in the tax regime would get the service industry jobs back.

[5:12:08 PM](#)

Representative Doogan spoke against the legislation. He opined that HB 110 would give a lot of state money to the oil industry, would not require anything in return, and would go on forever. He maintained that he could not support a bill with such a profile, and was surprised that any committee member could support it.

Co-Chair Stoltze acknowledged the work done on the bill and expressed appreciation to staff. He thought the process in the committee was good.

[5:16:34 PM](#)

Representative Doogan appreciated the process and tolerance shown.

Representative Gara MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Edgmon, Fairclough, Joule, Hawker, Wilson,
Costello, Thomas, Stoltze

OPPOSED: Gara, Guttenberg, Doogan

The MOTION PASSED (8/3).

CSHB 110(FIN) was REPORTED out of Committee with a "do pass" recommendation and with new zero note by the Department of Natural Resources, new zero note by the Department of Labor and Workforce Development, and new fiscal impact note by the Department of Revenue.

[5:18:20 PM](#)

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ADJOURNMENT

The meeting was adjourned at 5:18 PM.