

HOUSE FINANCE COMMITTEE  
February 7, 2012  
1:37 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:37 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 Reggie Joule  
Representative Mark Neuman  
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Joe Michel, Staff, Representative Bill Stoltze;  
Representative Paul Seaton, Sponsor; Dale Morman,  
President, Anchorage Sand and Gravel Co., Inc.(AS&G); Dave  
Cruz, President, Cruz Companies Alaska; Sam Robert Brice,  
President, Brice Incorporated, Fairbanks; Ben Northey,  
President, Colaska Inc; John MacKinnon, Executive Director,  
Associated General Contractors of Alaska (AGC).

SUMMARY

HB 298 EXEMPTIONS FROM MINING TAX

CSHB 298(FIN) was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the Department of Revenue

and one previously published zero fiscal note:  
FN1 (DNR).

#hb298

HOUSE BILL NO. 298

"An Act exempting sand and gravel and marketable earth mining operations from the mining license tax; and providing for an effective date."

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Co-Chair Thomas MOVED to ADOPT proposed committee substitute for HB 298, Work Draft 27-LS1263\B (Bullock, 2/6/12).

Co-Chair Stoltze OBJECTED for discussion.

JOE MICHEL, STAFF, REPRESENTATIVE BILL STOLTZE, explained that the CS changed the effective date on page 2, line 6 from July 1, 2012 to January 1, 2012. The reasoning behind the change was that the positive impact of the bill should be realized at an earlier date. Subsequently, the original \$150,000 cost to the Department of Revenue (DOR) had been changed to \$300,000 to reflect the entire year.

Co-Chair Stoltze clarified that there was no change to the Department of Natural Resources (DNR) fiscal note. Mr. Michel responded in the affirmative.

Representative Doogan asked whether the cost to DOR was a result of foregone revenue. Mr. Michel responded in the affirmative.

Co-Chair Stoltze WITHDREW his OBJECTION. There being NO further OBJECTION Work Draft 27-LS1263\B was adopted.

REPRESENTATIVE PAUL SEATON, SPONSOR, relayed that HB 298 addressed a tax that gained the state little money in the net operation for sand and gravel. He elaborated that the tax was very cumbersome because it was a profits based tax, which meant that the end-use profit portion of sand and gravel had to be determined and was back-calculated and tracked. The tax also required each pit to have separate schedules. The fiscal cost was approximately \$300,000; however, administrative costs of the tax were currently around \$150,000 per year. He added that between 50 percent

and 80 percent of sand and gravel operations went into public works projects; therefore, the majority of the tax ended up being passed on to customers (funded through the legislature or municipalities) in project costs. He believed the tax had been appropriately defined as a nuisance tax. There would be no unintended consequences on municipalities and their ability to collect taxes would not be impacted. The sand and gravel tax was not the basis for the severance tax that existed in seven municipalities. He relayed that DOR believed it could utilize its auditors in a more efficient and profitable way in the other mining tax sections.

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Co-Chair Stoltze asked whether the elimination of the tax would leave an opening for local governments to charge their own tax. Representative Seaton replied in the negative. He restated his earlier comment that municipalities could have a severance tax, but the basis of the tax was not the same as the complex profits based tax. He was not worried that the tax would be duplicated on a local level.

Co-Chair Stoltze voiced skepticism about underestimating local government.

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DALE MORMAN, PRESIDENT, ANCHORAGE SAND AND GRAVEL CO., INC. (AS&G), voiced support for the tax exemption provided under the proposed legislation. He communicated that AS&G had been in the gravel business since 1938 and provided products including, sand and gravel, concrete, asphalt aggregates, block, pre-cast concrete, specialty sands, and other. The company was in favor of HB 298 for four reasons. First, the amount of revenue received by the state from the tax was less than or equal to the collection cost. The tax was time consuming and complicated and required the state to conduct numerous audits. Second, the tax was burdensome to producers; filing the tax return and responding to audits was time consuming. The Department of Revenue stipulated the fair market value (FMV) should be used for each product; AS&G made a range of 20 to 30 types of products per year and the company's last audit had taken 18 months and cost over \$50,000.

Mr. Morman provided the third reason AS&G supported the legislation. He stressed that the mining tax as it related to sand and gravel was ambiguous and inconsistent. Sand and gravel did not have indexes to determine the FMV (unlike other commodities such as silver, gold, coal, etc.), so it was determined at the local level. Gravel producers throughout the state had different gravel making processes; therefore sale costs varied on one type of item, which led to significantly different taxes between producers. Fourth, the cost of the mining tax was passed on to the end-users, who were local, state, and federal governments 65 percent to 70 percent of the time. He reiterated that the tax was non-productive and inconsistent for the state and producers.

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Co-Chair Stoltze wondered whether the cost or the bureaucratic nuisance represented a larger issue for AS&G. Mr. Morman replied that the amount of time and effort required had become ridiculous. He furthered that the \$50,000 cost of the prior audit did not take into account time spent with attorneys, the audit department, and other. He reiterated that the tax was not easy to deal with.

Representative Guttenberg asked a question related to quarry rock. Mr. Morman answered that many times it was necessary to use rock to make the desired product.

Representative Guttenberg wondered about the definition of "marketable earth." Mr. Morman replied that marketable earth was defined as peat.

Representative Gara asked whether the company paid other state taxes apart from the mining tax. Mr. Morman answered that the company paid corporate state income taxes.

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Representative Seaton clarified that the elimination of the mining tax did not influence royalties paid to DNR on sand and gravel removed from state land.

DAVE CRUZ, PRESIDENT, CRUZ COMPANIES ALASKA, spoke in favor of the legislation. He discussed that the majority of work conducted by the company related to heavy civil public works projects. He explained that currently the mining tax

was passed back to the Department of Transportation and Public Facilities (DOT). He stressed that the tax was cumbersome and difficult to calculate. The company had spent a significant amount of time working to decipher an audit and he did not believe the revenues were enough to justify the expense. He explained that the elimination of the tax would save money and time would be better spent in other areas.

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SAM ROBERT BRICE, PRESIDENT, BRICE INCORPORATED, FAIRBANKS, expressed support for HB 298. The company operated a basalt, sand, and gravel quarry between Fairbanks and the North Pole that generated 30 plus products per year. The company sold to the general public and supported public works projects; its tax costs were passed on to clients. He relayed that the tax was extremely burdensome and it was difficult for the company to determine what it owed on all of the various products. He relayed it had cost the company approximately \$35,000 to respond to an audit; whereas, the mining tax from the relevant years had been less than \$10,000.

BEN NORTHEY, PRESIDENT, COLASKA INC, spoke in support of the legislation. Colaska was a heavy civil road builder and sand and gravel producer. He assured the committee that the passage of the bill would not result in a loss of jobs. Public works represented approximately 80 percent of the company's work; the tax on sand and gravel was passed directly on to customers for concrete, asphalt, roads, airport projects, and more. He noted that costs varied by producer.

Co-Chair Stoltze remarked that many people had written in support of the legislation.

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JOHN MACKINNON, EXECUTIVE DIRECTOR, ASSOCIATED GENERAL CONTRACTORS OF ALASKA (AGC), explained the impetus for the legislation. He relayed that the prior spring one of his contractor members had received an audit request from DOR that took weeks to compile a response to. He had approached DOR to discuss simplifying the tax to help solve the problem. The department was cooperative and had discovered that the tax brought in minimal revenue of approximately

\$200,000 to \$250,000 per year. There were approximately 180 firms required to file the tax, but because of their operations only 17 paid the tax. He explained the tax had been dubbed a nuisance tax. At DOR's recommendation, an exemption had been agreed to by the industry; it was clear that sand, gravel, quarry rock, and marketable earth used in the aggregate industry were different than other minerals. He explained that it was not possible to file a claim for sand, gravel, or marketable earth on land that was open to entry, but it was possible to file a claim for gold, silver, coal, or zinc on that same land. The bill provided a broad-based public benefit because currently the public usually paid for the tax in the product cost.

Representative Guttenberg wondered why and when the tax had been implemented.

Mr. MacKinnon believed the tax dated back to 1953. Sand and gravel had been a major industry in the state, but most of the processing that was done currently had not been done at the time. He added that very few people had filed a return at that time. Statute currently required businesses making \$40,000 or less to file, but exempted them from the tax. In the past there had been an effort by DOR to get businesses to file; the occurrence had created an uproar related to the difficulty and effort that it took to file.

Representative Edgmon asked whether there was any applicability to village corporation lands. He was a member of a village corporation board that harvested and sold gravel for public works projects.

Mr. MacKinnon responded in the affirmative. He explained that regional corporations owned subsurface rights through the Alaska Native Claims Settlement Act (ANCSA). The Act provided the corporations with the ability to use a full depletion allowance; therefore, they paid no taxes on the mined gravel but were required to file a return. The bill did not include a severance tax due to the impact it could have had. He detailed that the regional corporations owned the subsurface rights, the village corporations mined them, and technically any operator or owner of a pit was required to file a return. He communicated that the impact was positive, not negative.

Co-Chair Stoltze did not like it when the state paid right-of-way costs to DOT and another government entity charged

DOT. He opined the entities acted like private land owners and added to the cost of construction projects. He thought the situation was unreasonable unless it involved a university lands trust or mental health trust that had a responsibility to maximize. He noted that it would be necessary to stretch scarcer money and that federal funds were decreasing.

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Mr. MacKinnon replied that he spoken with Co-Chair Stoltze about a number frustrating issues related to the cost of public construction and dealing with other entities.

Co-Chair Stoltze CLOSED public testimony.

Representative Seaton explained that there had been a concern that gravel islands built offshore for oil exploration would use large quantities of gravel; however, HB 298 did not apply because gravel islands used gravel from leases. He clarified that there was no exemption for large masses of gravel used for gravel islands.

Representative Neuman wondered how the legislation would impact audits that were currently underway. Representative Seaton replied that the updated fiscal note represented a change from the fiscal year to the beginning of the calendar year effective January 1, 2012.

Co-Chair Stoltze supported the effective date change.

Representative Seaton restated Representative Neuman's question and answered that that the bill did not contain a retroactivity to address current audits.

Representative Neuman expressed concern that audits underway would still move forward. He believed existing audits should be eliminated under the legislation.

Representative Seaton deferred the question to DOR or the Department of Law. The DOR Tax Division had voiced its opinion that the tax was a nuisance and that it would prefer to spend staff time on more productive efforts, but he did not know how it felt about existing audits.

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Representative Neuman suggested that the committee recommend that any ongoing audits should be eliminated.

Co-Chair Stoltze thought that a letter of intent would be more appropriate and could be offered on the House floor. He directed that the drafting of a letter should be done in collaboration with Representative Seaton if it was decided that a letter was necessary.

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Co-Chair Thomas MOVED to report CSHB 298(FIN) out of committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSHB 298(FIN) was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the Department of Revenue and one previously published zero fiscal note: FN1 (DNR).

#  
ADJOURNMENT

[2:16:42 PM](#)

The meeting was adjourned at 2:16 PM.