

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 9, 2012

1:21 p.m.

MEMBERS PRESENT

Representative Eric Feige, Co-Chair
Representative Paul Seaton, Co-Chair
Representative Peggy Wilson, Vice Chair
Representative Alan Dick
Representative Neal Foster
Representative Bob Herron
Representative Cathy Engstrom Munoz
Representative Berta Gardner
Representative Scott Kawasaki

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 295

"An Act approving an interim classification by the commissioner of natural resources closing certain land within the Glacier Creek and Winner Creek drainages to new mineral entry; and providing for an effective date."

- MOVED CSHB 295(RES) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 91(FIN)

"An Act amending the termination date of the licensing of sport fishing operators and sport fishing guides; and providing for an effective date."

- MOVED CSSB 91(FIN) OUT OF COMMITTEE

HOUSE BILL NO. 328

"An Act relating to the oil and gas corporate income tax; relating to the credits against the oil and gas corporate income tax; making conforming amendments; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 192

"An Act relating to the oil and gas production tax; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 295

SHORT TITLE: CLOSING CERTAIN LAND TO MINERAL ENTRY

SPONSOR(S): REPRESENTATIVE(S) HAWKER

01/25/12 (H) READ THE FIRST TIME - REFERRALS
01/25/12 (H) RES
04/09/12 (H) RES AT 1:00 PM BARNES 124

BILL: SB 91

SHORT TITLE: SPORT FISHING GUIDING SERVICES

SPONSOR(S): SENATOR(S) MCGUIRE

02/16/11 (S) READ THE FIRST TIME - REFERRALS
02/16/11 (S) RES, FIN
02/25/11 (S) RES AT 3:30 PM BUTROVICH 205
02/25/11 (S) Heard & Held
02/25/11 (S) MINUTE(RES)
02/28/11 (S) RES AT 3:30 PM BUTROVICH 205
02/28/11 (S) Moved SB 91 Out of Committee
02/28/11 (S) MINUTE(RES)
03/01/11 (S) RES RPT 4DP
03/01/11 (S) DP: WAGONER, PASKVAN, MCGUIRE, FRENCH
03/20/12 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/20/12 (S) Heard & Held
03/20/12 (S) MINUTE(FIN)
03/30/12 (S) FIN RPT CS 5DP 1NR SAME TITLE
03/30/12 (S) DP: HOFFMAN, STEDMAN, THOMAS, EGAN,
ELLIS
03/30/12 (S) NR: OLSON
03/30/12 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/30/12 (S) Moved CSSB 91(FIN) Out of Committee
03/30/12 (S) MINUTE(FIN)
04/04/12 (S) TRANSMITTED TO (H)
04/04/12 (S) VERSION: CSSB 91(FIN)
04/05/12 (H) READ THE FIRST TIME - REFERRALS
04/05/12 (H) RES, FIN
04/09/12 (H) RES AT 1:00 PM BARNES 124

BILL: HB 328

SHORT TITLE: OIL AND GAS CORPORATE TAXES

SPONSOR(s): REPRESENTATIVE(s) SEATON

02/17/12	(H)	READ THE FIRST TIME - REFERRALS
02/17/12	(H)	RES, FIN
02/29/12	(H)	RES AT 1:00 PM BARNES 124
02/29/12	(H)	Heard & Held
02/29/12	(H)	MINUTE(RES)
03/16/12	(H)	RES AT 1:00 PM BARNES 124
03/16/12	(H)	Heard & Held
03/16/12	(H)	MINUTE(RES)
03/28/12	(H)	RES AT 1:00 PM BARNES 124
03/28/12	(H)	Heard & Held
03/28/12	(H)	MINUTE(RES)
04/06/12	(H)	RES AT 1:00 PM BARNES 124
04/06/12	(H)	Heard & Held
04/06/12	(H)	MINUTE(RES)
04/09/12	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

JULIE LUCKY, Staff
Representative Mike Hawker
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced HB 295 on behalf of the prime sponsor of the bill, Representative Mike Hawker.

DIANA LIVINGSTON, Co-Chair
Girdwood 2020
Girdwood, Alaska

POSITION STATEMENT: Testified in support of HB 295.

WYN MENAFEE, Chief of Operations
Division of Land, Mining and Water
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Answered questions during discussion of HB 295.

SHYAN ELY, Intern
Senator Lesil McGuire
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 91 on behalf of the prime sponsor of the bill, Senator Lesil McGuire.

LISA EVANS, Assistant Director

Division of Sport Fishing
Alaska Department of Fish & Game (ADF&G)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during discussion of SB 91.

THOMAS K. WILLIAMS, Senior Tax and Royalty Counsel
BP Exploration (Alaska) Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified during discussion of HB 328.

MICHAEL HURLEY, Lobbyist
ConocoPhillips Alaska, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified during discussion of HB 328.

MARIE EVANS, Lobbyist
ConocoPhillips Alaska, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified during discussion of HB 328.

ACTION NARRATIVE

[1:21:25 PM](#)

CO-CHAIR PAUL SEATON called the House Resources Standing Committee meeting to order at 1:21 p.m. Representatives Dick, Feige, Herron, P. Wilson, Gardner, and Seaton were present at the call to order. Representatives Kawasaki, Foster, and Munoz arrived as the meeting was in progress.

HB 295-CLOSING CERTAIN LAND TO MINERAL ENTRY

[1:23:18 PM](#)

CO-CHAIR SEATON announced that the first order of business would be HOUSE BILL NO. 295, "An Act approving an interim classification by the commissioner of natural resources closing certain land within the Glacier Creek and Winner Creek drainages to new mineral entry; and providing for an effective date."

[1:23:32 PM](#)

JULIE LUCKY, Staff, Representative Mike Hawker, Alaska State Legislature, offered a brief overview of proposed HB 295 on

behalf of the bill sponsor, Representative Hawker. She paraphrased from the sponsor statement:

HB 295 approves Mineral Order 1121 which closes certain lands in the upper Girdwood Valley area to new mining claims and the intent of that is to allow recreational use in these areas and to make sure that incompatible uses aren't occurring on the same land. The land has been historically used for recreational purposes. I believe mining closures have been in place since the 90s, but DNR [Department of Natural Resources] can give us a little bit more information on that. The state, the Municipality of Anchorage, the community of Girdwood have all designated these lands for recreational use in their management plans and the approval of HB 295 and Mineral Order 1121 would allow more long range plans for recreational opportunities to develop.

[1:24:31 PM](#)

MS. LUCKY stated that the mining closure was also supported by the Alaska Miners Association.

[1:24:44 PM](#)

MS. LUCKY directed attention to the proposed Committee Substitute (CS) and asked if the committee wanted to address it.

[Co-Chair Seaton passed the gavel to Co-Chair Feige.]

[1:24:55 PM](#)

CO-CHAIR FEIGE directed Ms. Lucky to discuss the proposed CS.

[1:25:05 PM](#)

MS. LUCKY directed attention to the proposed committee substitute (CS) for HB 295, Version 27-LS1246\B, Bullock, 4/4/12, [Included in members' packets] and explained that Version B added Section 3 on page 3. She detailed that prior legislation in 2003 had not included two specific federal mining claims when closing other claims. She clarified that this amendment had also required a title change and a change to the intent language of proposed HB 295.

[1:26:04 PM](#)

REPRESENTATIVE P. WILSON asked if there was any opposition to the proposed CS for HB 295.

MS. LUCKY replied that no statements to opposition had been received by her office, and that there was no opposition during the public process for the mineral closing order. She shared that there had been expressed concern with an indefinite closure, as prior closures had all been for 10 years. She pointed out that the temporary orders had been to allow a review of the land use for recreational activities. She stated that, as the land had been used for recreational activities, Department of Natural Resources (DNR) had supported an indefinite closure.

[1:27:09 PM](#)

REPRESENTATIVE DICK, referring to the letter from the Alaska Miners Association, Inc., [Included in members' packets] asked if the request by the association to reverse the closure orders should recreational activity cease was included in Version B.

[1:27:26 PM](#)

MS. LUCKY deferred to DNR for any discussion regarding the re-opening of the area to mining claims. She offered her belief that there was a process for this which would require statutory action.

[1:27:58 PM](#)

CO-CHAIR FEIGE opened public testimony.

[1:28:16 PM](#)

DIANA LIVINGSTON, Co-Chair, Girdwood 2020, referred to her letter of support from February 17, 2011 [Included in members' packets] which outlined the support by Girdwood 2020. She stated that, during the period of successive tenure closures to mining, Girdwood 2020 had always supported recreational use, which she declared to have intensified in the past 10 years. She declared support for proposed HB 295.

[1:30:02 PM](#)

REPRESENTATIVE P. WILSON moved to adopt the proposed committee substitute (CS) for HB 295, Version 27-LS1246\B, Bullock,

4/4/12, as the working document. There being no objection, Version B was before the committee.

1:30:29 PM

REPRESENTATIVE DICK requested to hear testimony from DNR regarding mineral development should the order for closure be reversed.

1:30:52 PM

WYN MENAFEE, Chief of Operations, Division of Land, Mining and Water, Department of Natural Resources, stated that, should proposed HB 295 become law, it would take a statutory change to reverse. He declared that mineral closing orders could be reversed with an administrative action for an interim order, which would then be brought to the legislature for approval.

1:31:41 PM

REPRESENTATIVE MUNOZ asked if there was any existing mineral activity that would be affected by proposed HB 295.

1:31:50 PM

MR. MENAFEE replied that any existing claims would not be affected, as this would only apply to new claims.

1:32:15 PM

REPRESENTATIVE DICK asked if the proposed bill would create any issues for access to the existing mineral claims.

1:32:30 PM

MR. MENAFEE replied that the mineral closing order did not dictate how the land would be used, other than to prevent any future claims for mining. In response to Representative Dick, he declared that there would not be any problems with mining equipment being transported in or out.

1:33:18 PM

REPRESENTATIVE P. WILSON moved to report HB 295, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB

295(RES) was reported from the House Resources Standing Committee.

[1:33:41 PM](#)

The committee took an at-ease from 1:33 p.m. to 1:35 p.m.

SB 91-SPORT FISHING GUIDING SERVICES

[1:35:31 PM](#)

CO-CHAIR FEIGE announced that the next order of business would be CS FOR SENATE BILL NO. 91(FIN), "An Act amending the termination date of the licensing of sport fishing operators and sport fishing guides; and providing for an effective date."

[1:35:44 PM](#)

SHYAN ELY, Intern, Senator Lesil McGuire, Alaska State Legislature, explained the proposed bill:

SB [9]1 guarantees the continuation of the sport fish guide licensing and reporting program as well as provides an effective date. SB 91 extends the sunset date of the program which is already in place. Legislation for this program was first passed in 2004. This program has proven to be beneficial to the sport fishing industry as well as resource managers. It requires licensing and regulation of sport fishing operators and sport fishing guides and sport fishing vessels. The program has provided an average of 1,541 sport fishing business licenses and 1,828 sport fishing guide licenses annually. Ninety percent of the license holders are Alaska residents. The sport fishing guide industry has taken more than 2.6 million clients fishing from 2005 - 2010, totaling more than 625,000 guided fishing trips in Alaska. Guided sport fishing has become an integral part of Alaska's tourism economy. In 2007, \$1.39 billion was spent on licensing and stamps, trip related expenditures, fishing packages, equipment, and real estate use for the fishing. This spending supported more than 15,879 jobs in Alaska and provided \$545.3 million in income. This bill has provided an accurate accounting for Alaska's resources which are being harvested. Federal law for guided halibut sport fishing is tied to the Alaska sport fishing log books and failure to keep

this program in place would likely result in the development of federal log book for halibut which would create duplication of efforts at a later date.

[1:37:39 PM](#)

MS. ELY pointed out that Alaska was exempt from participation in the NOAA National Saltwater Angler Registry as a result of the information collected from the guide license program. She urged support for proposed SB 91.

[1:38:02 PM](#)

REPRESENTATIVE GARDNER asked about the function of the National Saltwater Angler Registry, and why Alaska should be exempt.

[1:38:30 PM](#)

MS. ELY deferred to the Alaska Department of Fish & Game (ADF&G).

[1:38:45 PM](#)

REPRESENTATIVE MUNOZ asked if the logbooks were manual or data entry.

MS. ELY offered her belief that the logs were now entered electronically.

REPRESENTATIVE MUNOZ opined that previously there had been additional cost for ADF&G to electronically enter the log book data. She asked whether there had been a savings to the state by going to an electronic system instead of the previous manual entry.

MS. ELY deferred to the Alaska Department of Fish & Game (ADF&G).

[1:39:33 PM](#)

REPRESENTATIVE KAWASAKI observed that there were licenses required for many occupations; however, this industry did not have a licensing board.

MS. ELY replied that she would research this.

[1:40:19 PM](#)

REPRESENTATIVE DICK, directing attention to the sponsor statement, asked what was included in the estimated \$650 million spent on sport fishing in 2007.

MS. ELY offered her belief that it was general spending. She offered to research the specific spending.

REPRESENTATIVE DICK questioned whether this entire income would disappear without sport fishing.

MS. ELY, in response, said that she would get back to the committee if ADF&G was unable to answer the question.

[1:41:44 PM](#)

LISA EVANS, Assistant Director, Division of Sport Fishing, Alaska Department of Fish & Game (ADF&G), stated that the sport fish guide licensing program was an important tool for the management of state fisheries. She reported that ADF&G collected the data and used it extensively for regulatory options and decisions by the International Pacific Halibut Commission and the North Pacific Fisheries Management Council to maintain the "least conservative regulatory structure possible." She added that the fisheries managers documented the harvest patterns within specific time frames, and used that data to evaluate and update the ADF&G regulatory structure for specific species to ensure maximum opportunity for fishing. She said that the information from the angler harvest logbooks was collected and used in decision making. She gave examples for decisions made to the Kodiak and Southeast Alaska fisheries based on logbook information.

MS. EVANS relayed that ADF&G had responded to the concerns from the sport fish guides industry for data turnaround time, however there was still not an electronic logbook for the guides. She said that the logbook information was now scanned, rather than entered manually, which had significantly improved the time for which the data was now available, and that this system would be implemented for freshwater data entry, as well, during the upcoming season. She shared that the research for an electronic system was ongoing. She estimated that sport fishing was a \$1.4 billion industry in Alaska in 2007, which included trip related expenditures such as airfare, lodging, equipment, and guide services. She declared that the proposed bill was a necessary fisheries management tool.

[1:45:23 PM](#)

REPRESENTATIVE GARDNER inquired whether the funds that were raised through the program generated a sufficient amount of income. She asked for an explanation of the National Saltwater Angler Registry program, and the reason for the proposed exemption.

MS. EVANS replied that there was a \$400,000 fiscal note attached to proposed SB 91. She reported that the program generated about \$250,000 in receipts, with the balance paid by the ADF&G sport fish license sales. She explained that the National Saltwater Angler Registry program was a new NOAA (National Oceanic and Atmospheric Administration) program which now required a saltwater fishing license for harvest data collection for saltwater sport fisheries. She relayed that Alaska had received an exemption from this NOAA program because of its existing statewide harvest survey and the guide logbook program.

REPRESENTATIVE GARDNER asked to clarify that, as the NOAA registry was mainly for data collection and Alaska already collected this data, Alaska could be exempt from the NOAA registry.

MS. EVANS concurred.

[1:47:05 PM](#)

REPRESENTATIVE KAWASAKI asked why there was not yet a fully electronic log book system, and he questioned how the proposed funding would be used to attain this system.

MS. EVANS replied that the number of staff on this program had not been reduced. She expressed the possibility for more efficiency with implementation of the freshwater log book system. She stated that an electronic program, which was cost effective, had not yet been found. She relayed that the current estimate for an electronic system was up to \$1.25 million. She noted an additional obstacle, the sport fish license system was not yet completely electronic at point of sale.

CO-CHAIR FEIGE asked for a description of the format that was scanned.

MS. EVANS offered her belief that it was a scanned copy of the actual logbook page, and then software read the sport fish

license number, the individual, and the number of fish released. She said that she would get back to the committee to confirm.

CO-CHAIR FEIGE inquired whether the department had looked into application software.

MS. EVANS replied that the department had a small team researching options that had been implemented elsewhere.

CO-CHAIR FEIGE expressed his agreement that the data was useful and allowed precise quantification of what was being taken.

MS. EVANS, in response to Co-Chair Feige, said that 80 - 85 percent of the public and the sport fish industry were in supported of the guide logbook program. She allowed that some had expressed that the program was cumbersome and not essential.

CO-CHAIR FEIGE asked if most complaints were for not wanting to participate, or just opposition on a general basis.

MS. EVANS allowed that it was cumbersome to fill out the logbook while on the water with clients and that there had been some objection to the \$100 annual license fee.

[1:52:41 PM](#)

REPRESENTATIVE KAWASAKI expressed that his objection, from the very beginning, had been regarding the necessity of this program. Even though he understood the value of the data, he did not like imposing any additional licensing requirements on sport fish guides. He questioned whether there was a better way to enforce compliance to collect the necessary information.

[1:54:13 PM](#)

REPRESENTATIVE MUNOZ moved to report CSSB 91(FIN) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 91(FIN) was reported from the House Resources Standing Committee.

[1:55:49 PM](#)

The committee took an at-ease from 1:55 p.m. to 1:59 p.m.

HB 328-OIL AND GAS CORPORATE TAXES

[1:59:12 PM](#)

CO-CHAIR FEIGE announced that the final order of business would be HOUSE BILL NO. 328, "An Act relating to the oil and gas corporate income tax; relating to the credits against the oil and gas corporate income tax; making conforming amendments; and providing for an effective date." [Before the committee was the proposed committee substitute (CS), Version I, labeled 27-LS1142\I, Nauman, 3/27/12, adopted as the working document on 3/28/12.]

[1:59:16 PM](#)

REPRESENTATIVE MUNOZ moved to adopt the proposed committee substitute (CS) for HB 328(RES), Version 27-LS1142\E, Nauman, 4/7/12, as the working document. There being no objection, Version E was before the committee.

[1:59:31 PM](#)

CO-CHAIR FEIGE opened public testimony.

[2:00:16 PM](#)

THOMAS K. WILLIAMS, Senior Tax and Royalty Counsel, BP Exploration (Alaska) Inc., stated that he had worked for the State of Alaska as the Director of Petroleum Revenue from 1975 - 1979, during the years of separate accounting, and he suggested the reinstatement of several guidelines.

[2:02:00 PM](#)

CO-CHAIR FEIGE asked if Mr. Williams had created the initial separate accounting system.

MR. WILLIAMS replied that the legislature had passed the separate accounting, and the commissioner of DOR at the time, had assigned this accounting to the Petroleum Reserve division, instead of the income tax division which handled personal income tax. He pointed out that consideration had been given for the difference between a severance or production tax and an income tax. He explained that the legislature could set any tax rate for production within the state. He noted that income tax was based on income earned within the state. He declared that the fundamental approach within the context of income tax, how much did you make in Alaska, was confronted directly by separate accounting. He allowed that the accounting became more difficult when a business included both in-state and out of

state income. He gave an example of a fisherman who lived in Canada, bought fuel and goods in Canada and Alaska, fished in Alaska, Canada and international waters, and sold his fish in the State of Washington. He questioned a clear means for determining the amount of income from each area, as it was not clear, and was removed from "the pure idea of taxing the business straight as if it's standing alone in Alaska." With separate accounting, assumptions were then made for cost and income allocations, even though it was not straightforward. He offered another example for the problem of allocating the costs and income from gold mining and refining in different states, stating that it was difficult to determine the answers.

[2:09:42 PM](#)

MR. WILLIAMS explained that the apportionment approach had been in response to the desire for uniform systems of laws so that each state did not have a different set of laws. One of these was called the Uniform Division of Income for Tax Purposes Act (UDITPA), the formula for which was later used in the Multi-State Tax Compact (MTC). He explained that this approach attempted to determine the potential to generate income in a state, compared this to the potential everywhere the company did business, and then allocated the actual overall profits back to each of the states in proportion to the state's income generating potential. He opined that Alaska, in 1959, was the first state to adopt this approach. He shared that the current statute divided income on the basis of three different measures of income generating potential: amount of property investment in Alaska should get the same return compared to other areas; sales should bring in the same margin everywhere; and production should have comparable income potential. He declared that each of those in-state percentages was averaged and then multiplied by the overall business to arrive at the present tax.

[2:12:58 PM](#)

MR. WILLIAMS pointed out that this present tax system was not free of issues as it was only as good as the assumption that the in-state factors were representative of income generating potential out of state. He declared that, for every industry in the extractive business, it became more expensive as the easier product was removed, until, ultimately, the cost of removal and the value were equal, and then the company would start to lose money.

[2:14:15 PM](#)

MR. WILLIAMS emphasized that for every company producing oil and gas or coal, the time would come when it would want separate accounting, as the profitability would be less in Alaska than elsewhere. He declared separate accounting to be a good tool for use at the end of field life. He suggested that the small fields did not have the same margins to start with and those margins were not at all comparable to the North Slope fields. He pointed out that the state could not be sure whether it would get more or less money from a particular tax system because it depended on where the profit margin was in each individual business. He summarized that this explained the differing responses to the amount of money made by a business in Alaska.

[2:16:04 PM](#)

MR. WILLIAMS spoke about some of the constitutional issues addressed in 1978. He said that ACES focused on value over price, defining price as what it sold for and value as what it could have sold for. He declared that, oftentimes, the price would fall short of the value, and that it was unconstitutional to tax income that had not been recognized. He said that ACES allowed a tariff to be calculated on fair, just, and reasonable. He went on to explain that, to the extent that the state was disregarding what was actually paid, it would either be allowing over-deduction, which was not a constitutional issue, or under-deduction for actual cost which was an issue as it taxed income that did not exist. He declared that the state could tax less income than existed, but could not tax more income than existed.

[Co-Chair Feige returned the gavel to Co-Chair Seaton.]

[2:18:55 PM](#)

MR. WILLIAMS reported that Alaska followed the Multi-State Tax Compact Formula for ascertaining the size of the family of companies to determine the taxable income. He allowed that Alaska chose a two-pronged test: if there was more than 50 percent ownership, or common control of the group, then it was a consolidated business. This was included in the regulations during the time of separate accounting in Alaska. He pointed out that this was included in proposed HB 328. He relayed a story about unitary business and apportionment, which was also separate accounting, and a determination by the Alaska Supreme Court which rejected the UDIPTA test for 50 percent ownership or control in favor of the unitary business and apportionment concept. He suggested that the legislature consult with their

attorneys for advice, as these issues were contained in proposed HB 328.

[2:22:22 PM](#)

MR. WILLIAMS questioned the reasoning for separate accounting to be implemented to increase revenue. He offered his belief that the taxation in proposed HB 328 would be counterproductive in the long term as an investment for Alaska. He reported that "the market is betting that we have a temporary situation" of higher oil prices. He allowed that some companies, as oil prices decreased, could request separate accounting. He pointed out that the Department of Revenue (DOR) already had the discretion to offer separate accounting under the MTC.

[2:24:53 PM](#)

REPRESENTATIVE GARDNER referenced the increasing cost per barrel that was being experienced from some of the older oil fields, and that there was a "tipping point" where it would be more advantageous for the industry to have separate accounting because Alaska was so expensive. She asked if the current opposition to separate accounting meant that the profitability in Alaska ranked "well compared to the profitability in other places."

MR. WILLIAMS, in response, said that although the assumption could be made he was unsure if it was a correct assumption. He questioned that the purpose for the assumption was to gain more revenue, and, if so, the long term effect could be to deter investments which would increase the rate of production from its current decline.

REPRESENTATIVE GARDNER asked why, if the oil industry currently opposed separate accounting, was it a fair assumption that apportionment benefited the oil industry. She expressed her agreement that each oil company should pursue its own best interests.

[2:26:47 PM](#)

MR. WILLIAMS referred to earlier testimony by Alaska Oil and Gas Association (AOGAA) which reflected unanimous opposition by its members against separate accounting, which could offer more opportunities for business in Alaska.

[2:27:35 PM](#)

CO-CHAIR SEATON pointed out that, although the Alaska corporate income tax rate was 9.4 percent, under apportionment the tax rate was only 5.2 percent. He asked what the benefit to Alaska was to be perceived as "less conducive to a competitive fiscal system," when, in fact, the actual corporate tax rate was lower than recognized.

MR. WILLIAMS offered his belief that the strongest attribute for investing in Alaska was its track record of stability, as there had been very few re-writes of oil and gas taxes since 1981. He pointed out that there could be adjustments to forecasting and optimized investment if the platform was stable. He opined that the level of taxation had "overshot the mark."

CO-CHAIR SEATON pointed to the competitive calculations presented during the PowerPoint presentations, which stated that the corporate income tax in Alaska was 9.4 percent. He asked how Alaska could be competitive when the actual corporate income tax based on apportionment was lower than the tax presented.

MR. WILLIAMS stated that he disagreed, declaring that Alaska always received 9.4 percent of any income attributed to Alaska, under both separate accounting and apportionment.

[2:31:02 PM](#)

CO-CHAIR SEATON asked how a formula for a worldwide apportionment, which arrived at a significantly different result than what was presented, would portray Alaska in its true competitive nature.

MR. WILLIAMS replied that people would perceive Alaska as accurately as they could, which combined the opportunities, operating costs and logistics, and fiscal regime. This would allow for estimation as to the profitability of an investment, and he opined that any competitive investment would be made, regardless of the perception to Alaska. He offered his belief that the current system, since ACES, did not entice investment. He pointed out that oil companies had testified to the Senate Finance Committee with suggestions for meaningful fiscal changes to spur additional investment.

CO-CHAIR SEATON referred to Mr. Williams' earlier reference that the basis of worldwide apportionment was that the margin of profit should be the same worldwide. He then directed attention to the Legislative Legal and Research Services report dated

March 2012, which detailed that the prior 10 years of per barrel income data from ConocoPhillips Alaska, Inc. reflected that Alaska had a higher margin than other states. He asked why Alaska would not correct this fiscal system.

MR. WILLIAMS declared that he was not in the position to respond to the underlying principle to apportionment as it applied to ConocoPhillips Alaska, Inc. However, he said that this fiscal principle was developed by UDITPA in order to standardize taxes and codes. He said that he had also chaired the Multi-State Tax Commission, which offered this as an article of good faith. He referenced that the Alaska Supreme Court had also accepted this as an article of good faith, expressing its reasoning in earlier cases that "the object of this formula approach, slice the pie, is not to get to perfection in terms of measuring, but rather to have it represent fairly the potential to generate income over time." He declared that there was sound underlying economic evidence and analysis for UDITPA with which the courts had expressed agreement.

CO-CHAIR SEATON expressed his appreciation for the declaration that this was an article of good faith, but then he stated that his data reflected that the good faith was not justified. He offered to provide Mr. Williams' with the aforementioned Legislative Legal and Research Services report.

[2:38:09 PM](#)

REPRESENTATIVE MUNOZ directed attention to the earlier reference that the department had the ability to implement separate accounting, and asked what level would determine when separate accounting was an option. She asked how close Alaska was to this level.

MR. WILLIAMS relayed that separate accounting depended on the specific facts and circumstances for a particular company. He stated that the test in the statute was whether the formula fairly represented the extent of the business activity and income. He said that "fairly representative" was a subjective term designed to deal with many types of conditions and not to be prescriptive. He offered his belief that the challenge would need to be material and impugned, which would lead to a full scale investigation to determine whether it was a temporary or ongoing circumstance.

[2:40:52 PM](#)

MICHAEL HURLEY, Lobbyist, ConocoPhillips Alaska, Inc., addressed the issues and concerns that had come up since he testified earlier on the proposed bill. He distributed the 2010 Index to Financial Statement from ConocoPhillips Alaska, Inc. that listed the jurisdiction breakdown of income, expenses, and revenues. He pointed out that the aforementioned legislative analysis was incomplete, as numbers were missing that were important for understanding relative margins between different segments of the company business.

CO-CHAIR SEATON expressed his desire to get a better understanding of the intricacies.

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MR. HURLEY directed attention to the upcoming repositioning of ConocoPhillips into two separate publicly traded companies, which was anticipated to occur on May 1, 2012. He reported that these two companies would be taxed differently, noting that although the company currently paid state income tax in 45 states, it was still unclear what would be the impact for each state. He offered to answer the earlier question regarding the perception of different corporate tax rates.

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MR. HURLEY explained that evaluating a business, for example a ConocoPhillips business in Alaska, did not necessarily mean that the 9.4 percent corporate income tax was all paid to the State of Alaska. He pointed out that, as other states do apportionment, if ConocoPhillips earned an incremental dollar of income in Alaska, that dollar would be included in the ConocoPhillips revenue for apportionment by all the other states. He observed that \$1 invested on the North Slope would generate income which would be taxed in 45 different states, so that the ConocoPhillips Alaska, Inc. state income tax calculation must "have a blended rate that reflects all of those different taxes that are going to be levied on that \$1 of incremental income."

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REPRESENTATIVE P. WILSON asked to clarify that the tax paid in other states was subtracted from the Alaska corporate tax rate of 9.4 percent.

MR. HURLEY replied that when evaluating Alaska investments or its competitiveness, it was necessary to take into account the taxes paid on incremental Alaska income, which, he opined, was paid in 42 of the 45 jurisdictions in which ConocoPhillips did business. He stated that it was complex, and he offered an example of the sales tax generated by a gas pipeline.

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MR. HURLEY referred back to the ConocoPhillips Index to Financial Statements and, recalling the aforementioned Legislative Legal and Research Services report, directed attention to the consolidated operations. He stated that the research report only referred to the consolidated operations, but did not include the equity affiliates. He explained that, although ConocoPhillips did not have equity affiliates in Alaska or the Lower 48, for legal reasons in many jurisdictions there were separately owned equity companies and affiliates. He declared that these companies, under Securities and Exchange Commission (SEC) rules, had to be accounted for separately. He stated that the research report ignored these companies although their margins per barrel of oil equivalent (BOE) were higher in Asia Pacific/Middle East and Europe, than in Alaska.

CO-CHAIR SEATON asked to clarify that either those should be factored in, or ignored with the focus on Alaska and the Lower 48.

MR. HURLEY expressed his belief that the equity affiliates were appropriate to include, as the issue was with the structure of the ConocoPhillips business.

CO-CHAIR SEATON explained that, as there were not any affiliates in Alaska or the Lower 48, it would be appropriate to compare them with each other for net income BOE, but not with the international companies as their net income BOE contained an additional factor.

MR. HURLEY expressed his agreement.

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MR. HURLEY said that ConocoPhillips Alaska, Inc. supported the earlier Department of Revenue (DOR) testimony to adopt as much of the Internal Revenue Code as possible, as the further the state strayed from the Internal Revenue code for defining

expenses, revenue, and intercompany transactions, the more difficult it would be for DOR.

CO-CHAIR SEATON replied that the DOR suggestions had been incorporated into Version E of the proposed bill, and asked Mr. Hurley to address any further concerns as he studied this version.

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MARIE EVANS, Lobbyist, ConocoPhillips Alaska, Inc., suggested that page 13, lines 7-8 did not implement the intent that the co-chair had just stated.

CO-CHAIR SEATON replied that there was no intent to avoid the issues, and he requested an e-mail or public testimony.

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MR. HURLEY concluded by saying that ConocoPhillips Alaska, Inc. did not believe that proposed HB 328 would make Alaska more competitive and attract the capital which Alaska needed to stem the decline of oil production. He opined that this policy change would "make the state actually more hostage to oil prices than they are today." He declared that the proposed bill would exacerbate the situation and make things more difficult when oil prices went down.

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CO-CHAIR SEATON, offering his belief that ConocoPhillips Alaska, Inc. would remain in Alaska as an upstream company after the "corporate split," asked if Phillips 66 would be a participant in Alaska.

MR. HURLEY opined that there would not be any Phillips 66 assets in Alaska, and that all the assets would be owned by ConocoPhillips Alaska, Inc.

CO-CHAIR SEATON asked to clarify the reason that, as Phillips 66 and its downstream assets were no longer to pay corporate taxes in Alaska, the price of oil in one mechanism was more than another if the only activity in Alaska was upstream.

MR. HURLEY allowed that this would be true from the standpoint of ConocoPhillips Alaska, Inc., noting, however, that his company was only one of the major companies operating in Alaska.

He pointed out that some of the aforementioned small oil companies did not pay any state corporate income tax at the corporate level, as they were LLCs (Limited Liability Company).

CO-CHAIR SEATON offered his belief that this was also addressed in Version E, and he stated that there was not an attempt to provide a loophole for not paying corporate taxes to oil and gas producing companies.

[3:02:25 PM](#)

CO-CHAIR SEATON announced that public testimony would be held open.

[HB 328 was held over.]

[3:02:43 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:03 p.m.