

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

February 24, 2012

3:34 p.m.

MEMBERS PRESENT

Senator Joe Paskvan, Co-Chair
Senator Thomas Wagoner, Co-Chair
Senator Bill Wielechowski, Vice Chair
Senator Bert Stedman
Senator Lesil McGuire
Senator Hollis French
Senator Gary Stevens

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Senator Cathy Giessel
Senator Joe Thomas

COMMITTEE CALENDAR

SENATE BILL NO. 192

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

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 192

SHORT TITLE: OIL AND GAS PRODUCTION TAX RATES

SPONSOR(S): RESOURCES

02/08/12	(S)	READ THE FIRST TIME - REFERRALS
02/08/12	(S)	RES, FIN
02/10/12	(S)	RES AT 3:30 PM BUTROVICH 205
02/10/12	(S)	Heard & Held
02/10/12	(S)	MINUTE(RES)
02/13/12	(S)	RES AT 3:30 PM BUTROVICH 205
02/13/12	(S)	Heard & Held
02/13/12	(S)	MINUTE(RES)
02/14/12	(S)	RES AT 3:30 PM BUTROVICH 205

02/14/12	(S)	Heard & Held
02/14/12	(S)	MINUTE(RES)
02/15/12	(S)	RES AT 3:30 PM BUTROVICH 205
02/15/12	(S)	Heard & Held
02/15/12	(S)	MINUTE(RES)
02/16/12	(S)	RES AT 3:30 PM BUTROVICH 205
02/16/12	(S)	Heard & Held
02/16/12	(S)	MINUTE(RES)
02/17/12	(S)	RES AT 3:30 PM BUTROVICH 205
02/17/12	(S)	Heard & Held
02/17/12	(S)	MINUTE(RES)
02/21/12	(S)	RES AT 3:30 PM BUTROVICH 205
02/21/12	(S)	Heard & Held
02/21/12	(S)	MINUTE(RES)
02/22/12	(S)	RES AT 1:30 PM BUTROVICH 205
02/22/12	(S)	Heard & Held
02/22/12	(S)	MINUTE(RES)
02/22/12	(S)	RES AT 3:30 PM BUTROVICH 205
02/22/12	(S)	Heard & Held
02/22/12	(S)	MINUTE(RES)
02/23/12	(S)	RES AT 3:30 PM BUTROVICH 205
02/23/12	(S)	Heard & Held
02/23/12	(S)	MINUTE(RES)
02/24/12	(S)	RES AT 1:30 PM BUTROVICH 205
02/24/12	(S)	RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

MICHELLE SYDEMAN, Staff
 Senator Bill Wielechowski
 Alaska State Legislature
 Juneau, AK

POSITION STATEMENT: Provided details on Amendments: B.11, B.12 and B.14 to CSSB 192(RES) version B.

DON BULLOCK, Attorney
 Legislative Legal Services
 Legislative Affairs Agency
 Alaska State Legislature
 Juneau, AK

POSITION STATEMENT: Commented on amendment B.11 to CSSB 192(RES) version B.

LISA WIESSLER, Staff
 Senator Hollis French
 Alaska State Legislature
 Juneau, AK

POSITION STATEMENT: Commented on amendment B.16 to CSSB 192(RES) version B.

ACTION NARRATIVE

[3:34:48 PM](#)

CO-CHAIR JOE PASKVAN called the Senate Resources Standing Committee meeting to order at 3:34 p.m. Present at the call to order were Senators Stedman, French, Wielechowski, Stevens, Co-Chair Wagoner and Co-Chair Paskvan.

SB 192-OIL AND GAS PRODUCTION TAX RATES

[3:35:24 PM](#)

CO-CHAIR PASKVAN announced SB 192 to be up for consideration. He said they would adopt a committee substitute (CS) today and begin to hear the amendments proposed by committee members. He said this will be an open and transparent process. There will be no motion to move any amendment either today or tomorrow and then after additional consideration and discussions, amendments may or may not be included in a forthcoming CS. He said all the ideas are interesting and have merit. Ultimately they are required to determine what legislation will advance from this committee and he looked forward to an informative dialogue.

[3:36:31 PM](#)

CO-CHAIR WAGONER moved to adopt CSSB 192(RES), [labeled 27-LS1305\B].

CO-CHAIR PASKVAN objected for purposes of discussion. He said the CS maintains the 25 percent base rate to the \$30 production value mark (PTV) and the current progressivity of .4 percent is changed to .35 percent for each dollar of oil price increase up to 50 percent at which time the tax rate changes to a .1 percent increase for each \$1 of oil price increase. This applies up to the 60th percentile of production tax rate; there is no further progressivity beyond the 60 percent. He then removed his objection and finding no further objections, stated version B was before the committee.

[3:37:01 PM](#)

SENATOR MCGUIRE joined the committee.

CO-CHAIR PASKVAN stated that Senator Giessel was in the audience as well as Commissioner Butcher and Deputy Commissioner Tangeman from the Department of Revenue (DOR).

He said this CS focuses on one lever of the larger tax structure, the issue of progressivity. It is part of a tax system that will be used to start the specific discussion about Alaska's production tax structure overall. Before discussing those details beyond what has already been done, they would address the other levers that have not been addressed in the CS that provide a competitive advantage to Alaska.

He explained that Alaska has a low royalty rate, 12.5 to 16 percent, which is lower than Texas and North Dakota. The royalty is one part of the total load on any production and emphasized that is one component that remains unchanged.

Alaska continues its competitive advantage with respect to capital expenditures made in the state with a 100 percent deduction in the year spent for every qualified CAPEX made in the state. An additional 20 percent credit for that same dollar goes to the bottom line as another reward for investing in capital infrastructure in Alaska. It reduces a company's tax load and reduces monies to the state as well, but it makes Alaska attractive.

[3:40:53 PM](#)

Another lever not changed is Alaska's geological risk. Alaska has been identified as one of the most attractive places in the world in this aspect of its fiscal system. Another lever that establishes Alaska as an attractive location is royalty relief. If a project can be proven to be non-economic, but needs some help, the form of royalty relief is available. That is not changed.

CO-CHAIR PASKVAN said he has heard and believes that progressivity at "high oil pricing" needs to be looked at. How one defines that was to be the subject of both economic and political discussion. While oil prices are in \$120 range that should not be assumed to a stable floor or ceiling. Oil prices change over time as is evidence by the wide range of prices.

CO-CHAIR PASKVAN said they must consider the amount of return the state gets on the billions of dollars it has made in investments through its CAPEX credits for the central North Slope. Those numbers well through the next fiscal year approach \$5 billion. Industry must not ignore the financial upside to Alaska through its direct participation in the long-term success of resource development. It must always be remembered that Alaskans are the resource owners; Alaska has a world class

resource that will be extracted for many decades to come and welcomes responsible development.

He said the CS provides visible benchmarks for a discussion on progressivity and amendments that affect the production tax system. He expects that as elected officials they will uphold their fiduciary duty to the people of Alaska in their discussions and decisions. Alaskans expect them to approach this topic as a sophisticated owner of a world class resource. This topic is a big math problem that needs to be looked at. The CS will be modeled, probed and analyzed as it should be, but the main goal is to get it right.

CO-CHAIR PASKVAN said the information in the CS is consistent with information they have received from professionals who have advised them in the last several weeks.

[3:45:00 PM](#)

At ease from 3:45 to 3:49 p.m.

[3:49:24 PM](#)

CO-CHAIR PASKVAN said there would be no formal submission of the proposed amendments, but he would look to the members to describe their thinking on each one. The first was Item 1, labeled 27-LS1306\B.17, by Senator McGuire.

27-LS1305\B.17

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 192(RES), Draft Version "B"

Page 1, line 1, following "**tax;**":

Insert "**establishing the Oil and Gas Competitiveness Review Board;**"

Page 2, following line 5:

Insert new bill sections to read:

"* **Sec. 2.** AS 44.99 is amended by adding new sections to read:

Article 6. Oil and Gas Competitiveness Review Board.

Sec. 44.99.600. Oil and Gas Competitiveness Review Board established. (a) The Oil and Gas Competitiveness Review Board is established.

(b) The board shall consist of nine members as follows:

(1) one senator appointed by the president of the senate;

(2) one representative appointed by the speaker of the house of representatives;

(3) five members of the public appointed by the governor, including one member who is a petroleum engineer, one member who is a geologist, one member who is an economist, and one member who is a member of an environmental or conservation group;

(4) the commissioner of natural resources or the commissioner's designee; and

(5) the commissioner of revenue or the commissioner's designee.

(c) The senator and representative appointed to the board under (b)(1) and (2) of this section shall be cochairs.

(d) Each legislative member serves for the duration of the legislature during which the member is appointed. Each public member serves for three years. An individual who has served on the board may be reappointed.

(e) A vacancy on the board shall be filled in the manner of the original appointment.

(f) A member of the board may be removed and replaced at the discretion of the person appointing that member.

(g) The public members of the board serve without compensation but shall receive per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(h) The board may enter into contracts for professional services and may employ staff for administrative support for the board.

Sec. 44.99.610. Duties. The duties of the board include the following:

(1) review historical, current, and potential levels of investment in the state's oil and gas sector;

(2) identify factors that affect investment in oil and gas exploration, development, and production in the state, including tax structure, rates, and credits; royalty requirements; infrastructure; workforce availability; and regulatory requirements;

(3) review the competitive position of the state to attract and maintain investment in the oil and gas sector in the state as compared to the

competitive position of other regions with oil and gas resources;

(4) in order to facilitate the work of the board, establish procedures to accept and keep confidential information that is beneficial to the work of the board, including the creation of a secure data room and confidentiality agreements to be signed by individuals having access to the confidential information;

(5) make written findings and recommendations, together with suggested legislation, to the Alaska State Legislature before December 1 of each year, or as soon thereafter as practicable, regarding

(A) changes to the state's regulatory environment that would be conducive to encouraging increased investment while protecting the interests of the people of the state and the environment;

(B) changes to the state's fiscal regime that would be conducive to increased and ongoing long-term investment in and development of the state's oil and gas resources; and

(C) alternative means for increasing the state's ability to attract and maintain investment in and development of the state's oil and gas resources.

Sec. 44.99.620. Information to be provided to board. (a) The commissioner of natural resources, the commissioner of revenue, the commissioner of environmental conservation, and other commissioners and state agencies that have responsibility for and maintain information related to oil and gas investment and activity in the state shall, at the request of the board, provide information required by the board to carry out the duties described in AS 44.99.610.

(b) At the request of the board, and except for information that is confidential under AS 43.05.230, a commissioner may disclose to the board information that is otherwise confidential after each member of the board and each staff member for the board with access to the information signs a confidentiality agreement prepared by the commissioner making the disclosure. Information that is confidential under AS 43.05.230 may not be disclosed to the board.

Sec. 44.99.630. Definition. In AS 44.99.600 - 44.99.630, "board" means the Oil and Gas Competitiveness Review Board.

* **Sec. 3.** AS 44.99.600, 44.99.610, 44.99.620, and 44.99.630 are repealed June 30, 2021."

Renumber the following bill section accordingly.

Page 2, line 6:

Delete "This"

Insert "Section 1 of this"

Page 2, following line 6:

Insert a new bill section to read:

"* **Sec. 5.** Except as provided in sec. 4 of this Act, this Act takes effect immediately under AS 01.10.070(c)."

SENATOR MCGUIRE said this amendment would establish an Oil and Gas Competitiveness Review Board; it's modeled in part after the Alberta Competitiveness Review Board. Industry has told them that the progressivity element in ACES render Alaska no longer competitive. In 12 years, oil and gas policy has been changed four major times, and she suspected they would continue changing it because it represents 90 percent of Alaska's economy.

Even though the Department of Revenue (DOR) has a lot to do with taxation they have challenges regarding confidentiality in other things. So, the point of this review board would be to establish a place where institutional knowledge can be kept regarding trends and Alaska's competitiveness moving forward.

SENATOR MCGUIRE said the board would consist of nine members as follows:

- (1) one senator appointed by the president of the senate;
- (2) one representative appointed by the speaker of the house of representatives;
- (3) five members of the public appointed by the governor.

She related that Alberta's parliament established a windfall profits tax much like Alaska's progressivity at the time oil shot up to \$100 a barrel; it backfired and industry took its business to the neighboring province of Saskatchewan. Many elected officials were thrown out in a call on their government; the new one came in and established a competitiveness review board. It came back to the parliament with recommendations for options to re-stimulate the oil and gas economy. That is how she

envisions the role of this committee. Nothing in this amendment is meant to take away the legislature's power.

She said the five members of the public would be appointed by the governor, including one member who is a petroleum engineer, one member who is a geologist, one member who is an economist, and one member who is a member of an environmental or conservation group, the commissioner of natural resources or the commissioner's designee; and the commissioner of revenue or the commissioner's designee. The senator and representative appointed would be co-chairs and duration of the term would be three years. Vacancies to the board would be filled in the same manner as the original appointment.

[3:54:29 PM](#)

Duties of the board:

- (1) review historical, current, and potential levels of investment in the state's oil and gas sector;
- (2) identify factors that affect investment in oil and gas exploration, development, and production in the state, including tax structure, rates, and credits; royalty requirements; infrastructure; workforce availability; and regulatory requirements;
- (3) review the competitive position of the state to attract and maintain investment in the oil and gas sector in the state as compared to the competitive position of other regions with oil and gas resources;
- (4) in order to facilitate the work of the board, establish procedures to accept and keep confidential information that is beneficial to the work of the board, including the creation of a secure data room and confidentiality agreements to be signed by individuals having access to the confidential information;
- (5) make written findings and recommendations, together with suggested legislation, to the Alaska State Legislature before December 1 of each year, or as soon thereafter as practicable, regarding:
 - (A) changes to the state's regulatory environment that would be conducive to encouraging increased investment while protecting the interests of the people of the state and the environment;
 - (B) changes to the state's fiscal regime that would be conducive to increased and ongoing long-term investment in and development of the state's oil and gas resources; and

(C) alternative means for increasing the state's ability to attract and maintain investment in and development of the state's oil and gas resources.

[3:57:21 PM](#)

SENATOR MCGUIRE said Pedro van Meurs said the State of Alaska needs to get a brochure out touting its opportunities and this board would have the ability to do that.

CO-CHAIR PASKVAN thanked her.

CO-CHAIR WAGONER said at first he didn't look at this concept, but the more he has seen the way the committee has worked this year he thought it could be a very positive thing if done in the right manner. He said if Alaska is as non-competitive at this time as they are being told by some people, then Alaskans have been asleep at the switch (but he wasn't sure they were that far off). That is what this board would do; it would keep it from going asleep at the switch and he thought it was worth a try.

CO-CHAIR PASKVAN set the amendment aside.

SENATOR EGAN joined committee.

[3:59:00 PM](#)

CO-CHAIR PASKVAN announced consideration of Item 2, 27-LS1305\B.6 by Senator McGuire:

27-LS1305\B.6

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 192(RES), Draft Version "B"

Page 1, line 6:

Delete "\$30"

Insert "the greater of \$30 or the amount determined under (p) of this section [\$30]"

Page 1, line 14:

Delete "\$30"

Insert "the greater of \$30 or the amount determined under (p) of this section [\$30]"

Page 2, following line 5:

Insert a new bill section to read:

"* **Sec. 2.** AS 43.55.011 is amended by adding a new subsection to read:

(p) For a calendar year after 2013, the \$30 amount in (g) of this section shall be adjusted by the commissioner as soon as practicable before the start of the calendar year for which the tax will be determined according to changes in the Consumer Price Index for all urban consumers for the Anchorage metropolitan area compiled by the United States Department of Labor, Bureau of Labor Statistics. The \$30 amount in (g) of this section shall be adjusted based on the increase, if any, between the consumer price index for January through June of 2011 and for January through June of the year immediately preceding the year for which the \$30 amount in (g) of this section is being adjusted."

Renumber the following bill section accordingly.

SENATOR MCGUIRE explained this amendment would allow the .4 percent to be adjusted for inflation at the \$30 trigger. It is a practical approach to providing the ability to make a cost of living adjustment for that dollar. She explained the purpose of the progressivity trigger is to protect a certain portion of profits that come back to industry and so they have to look at inflation's effect on the trigger.

[4:00:40 PM](#)

SENATOR FRENCH asked what other static pieces in ACES tax code this would bump up against, erode or enhance.

SENATOR MCGUIRE replied that this amendment is crafted based on the current ACES structure and the \$30 trigger is the only place it would impact. She added the committee may want to consider another portion of the ACES formula, the \$92.58 threshold where progressivity declines to .1 percent per dollar (to preserve the portion of the oil price curve that is subject to the higher slope that is at 75 percent right now).

SENATOR FRENCH commented that if you inflation-adjust the trigger point without adjusting the cap you could eventually inflation-proof yourself out of any progressivity whatsoever. So it would make sense to move them up together.

This amendment was set aside.

[4:03:06 PM](#)

CO-CHAIR PASKVAN said they would next take up Item 3, labeled 27-LS1305\B.11 by Senators Wielechowski and French.

27-LS1305\B.11

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 192(RES), Draft Version "B"

Page 1, line 1, following "Act":

Insert "relating to oil and gas or gas only leasing; requiring that a minimum work commitment be included in each oil and gas and gas only lease and that a proposed plan of development be included in an application for an oil and gas or gas only lease;"

Page 1, following line 2:

Insert new bill sections to read:

"* **Section 1.** AS 38.05.180(h) is amended to read:

(h) The commissioner shall [MAY] include terms in a [ANY] lease that impose [IMPOSING] a minimum work commitment on the lessee to implement the plan of development submitted by the lessee with a bid for an oil and gas or gas only lease. The terms of the minimum work commitment must [. THESE TERMS SHALL BE MADE PUBLIC BEFORE THE SALE, AND MAY] include appropriate penalty provisions to take effect in the event the lessee does not fulfill the minimum work commitment. If it is demonstrated that a lease has been proven unproductive by actions of adjacent lease holders, the commissioner may set aside a work commitment. The commissioner may waive for a period not to exceed one two-year period any term of a minimum work commitment if the commissioner makes a written finding either that conditions preventing drilling or exploration were beyond the lessee's reasonable ability to foresee or control or that the lessee has demonstrated through good faith efforts an intent and ability to drill or develop the lease during the term of the waiver.

* **Sec. 2.** AS 38.05.180(x) is amended to read:

(x) A lessee conducting or permitting any exploration for, or development or production of, oil or gas on state land shall provide the commissioner access to all noninterpretive data obtained from that lease; shall provide the commissioner access to all

information necessary to perform an economic analysis under (ii)(2) of this section, including the capital, operating, production, and development costs and an estimate of total reserves; and shall provide copies of that data and information, as the commissioner may request. The confidentiality provisions of AS 38.05.035 apply to the information obtained under this subsection.

* **Sec. 3.** AS 38.05.180 is amended by adding new subsections to read:

(hh) The commissioner shall require each bidder for an oil and gas lease or gas only lease and each lessee applying for an extension or renewal of an oil and gas lease or gas only lease to submit a plan of development for exploring, developing, and producing from the lease within the period of the lease or the extension or renewal of the lease. The commissioner shall review each plan of development and determine if the proposed plan of development is reasonably expected to develop the lease in the best interest of the state. The plan of development shall be included in a lease along with penalties for failing to comply with the plan of development and other terms of the lease. A bidder may not be a "qualified bidder" for the purposes of (f)(1) of this section if the commissioner finds that the bidder has not submitted a proposed plan of development that is in the best interest of the state or that the person that submitted the plan of development is not reasonably capable of implementing the plan.

(ii) The commissioner shall

(1) review each oil and gas lease or gas only lease each year for the purpose of determining whether a lease is being developed in the best interest of the state, whether the lessee is complying with the plan of development applicable to the lease, and whether revision of a development plan, including the planned rate of development, would provide the maximum benefit to the people of the state;

(2) every five years, perform an economic analysis on each participating area and determine whether the participating area is capable of increased production in paying quantities over the current rate of production or plan of development;

(3) enforce the terms of each oil and gas lease or gas only lease, including imposing any applicable penalty or other remedy for noncompliance,

within a reasonable time after finding that a lessee is out of compliance with the terms of the lease;

(4) submit a report to the legislature before the first day of each regular session that lists each oil and gas or gas only lessee that is found to be out of compliance and the action by the commissioner to bring the lessee back into compliance or to terminate the lease.

(jj) For the purposes of (hh) and (ii) of this section, a plan of development for a cooperative or unit under (p) of this section is the plan of development for a lease within the cooperative or unit, except where a different plan of development is established for a lease within the cooperative or unit.

(kk) For purposes of (ii) of this section,

(1) "participating area" means that part of an oil and gas lease unit area to which production is allocated in the manner described in a unit agreement;

(2) "production in paying quantities" means production in quantities sufficient to yield a return in excess of drilling, development, and operating costs."

Page 1, line 3:

Delete "**Section 1**"

Insert "**Sec. 4**"

Page 2, line 6:

Delete all material and insert:

*** Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. Section 1 of this Act and AS 38.085.180(hh), enacted by sec. 3 of this Act, apply to a proposed lease sale and the renewal or extension of a lease on or after the effective date of secs. 1 and 3 of this Act.

*** Sec. 6.** Section 4 of this Act takes effect January 1, 2013.

*** Sec. 7.** Except as provided in sec. 6 of this Act, this Act takes effect July 1, 2013."

SENATOR WIELECHOWSKI said he thought one of the biggest problems with the oil tax structure is the way the state does its leases. It almost sets up an adversarial situation between the state and the companies taking out the leases and he said, "I think we can

do better than that." They could set up a structure that gets everyone on the same page right from the beginning.

SENATOR WIELECHOWSKI said the state's exploration leases are not being treated as legal obligations to explore; they are being treated as options to explore. Our resource provides 90 percent of the state's revenue. Leases are a legal contract he said and when the State of Alaska puts a lease out it is giving the exclusive right to a company or organization oil company to develop that piece of property.

The state cannot go back on its lease. What it gets in return for that is that that company is under a legal obligation to explore; and then if they make a find they are under a legal obligation to develop. There are two problems with this; one is Pt. Thomson, currently being litigated before the Alaska Supreme Court. It is an example of a lease that went out over 30 years and sat dormant for decades. It is a lease that the state finally took back, and when they took it back they became engaged in a lawsuit that has been going on for years. He said this is not how the state should do its leases and it can be changed with the changes in this amendment.

Another example is when the state put out millions of acres for lease a couple of months ago; one company took out dozens of leases and in the very next week it was reported that company said they weren't sure they were going to explore on those 34 tracts in part because they didn't know what the tax structure was going to be. This is a systemic problem that can be fixed and he stated, "We should never let anyone leverage us for lower tax rates."

[4:05:47 PM](#)

SENATOR WIELECHOWSKI said this amendment would make sure that companies agree to explore when they take out the leases. Part two is a trust but verify provision once the exploration is done. When companies say they are not developing a piece of property because it's not economic, the lawmakers have no way of knowing it is true. Maybe it is true, but they have no way of knowing that. This would require the administration to actually do an economic analysis and determine whether or not the lease holdings are currently economic. He thought this would lead to more development and more oil in the pipeline.

[4:06:42 PM](#)

SENATOR THOMAS joined the committee.

[4:07:01 PM](#)

MICHELLE SYDEMAN, staff Senator Wielechowski, provided a little more detail:

- One way to address declining oil production is to ensure that oil and gas leases go to companies that will develop leases expeditiously and efficiently.
- Last year the Department of Natural Resources reported that of 1,320 leases, 578 were part of production units or were producing oil or gas, 404 had been sold in the preceding three years (so might still be in the planning stages), and 338 could be "idle," as lessees had not applied for any permits to explore or develop them.
- This means more than 25% of existing leases could be sitting idle, effectively warehousing Alaska's resources.
- Under existing statutes, the DNR commissioner has the option of including a minimum work commitment in a lease, along with a penalty provision in the event the lessee does not fulfill the work commitment.
- This amendment requires that work commitments be part of a lease, consistent with the Alaska Constitution's mandate to develop our natural resources for the maximum benefit of the people.

[4:09:35 PM](#)

The amendment requires bidders for an oil and gas lease to submit a plan of development for exploring, developing, and/or producing from the lease. It requires the commissioner to review each bidder's plan of development and determine if the plan is "reasonably expected to develop the lease in the best interest of the state." If a plan were not found to be consistent with the state's needs that bidder would not be considered a qualified bidder. DNR would also look at the bidder's ability to carry out the terms of the work plan.

The amendment requires that these plans be included in leases and that DNR review leases annually to ensure that plans are being implemented. It enables the commissioner to waive a work commitment if conditions preventing drilling or exploration were beyond the lessee's reasonable ability to foresee or control or the lessee demonstrates through good faith efforts an intent to drill or develop the lease in the following two years.

It mandates the DNR commissioner to analyze the economics of each Participating Area (a unitized reservoir where sustained production is occurring) every five years to determine whether the Area is capable of increased production. Forty-two areas

have been designated as participating areas in Alaska. These are areas where there is sustained oil and gas production. The commissioner would perform an economic analysis to determine whether additional development would be reasonably economic.

Finally, it requires DNR to annually submit a report to the legislature that lists each lease found to be out of compliance and the action taken by the commissioner to bring the lessee back into compliance.

[4:11:02 PM](#)

SENATOR FRENCH said that was great presentation, but he wanted to say that this is in part an idea they brought back from Norway where the government tries to be very strong partners with the industry. But they also understand that they are the landlord and the oil industry is the tenant; and a lease is the kind of thing that runs between a landlord and a tenant.

He thought the state's leases should have a minimum work commitment in them and noted language on page 1, lines 9-12, that says the commissioner "shall" include terms in a lease that impose a minimum work commitment.

SENATOR FRENCH said the report on the leases should go to Senator McGuire's competitive review board if that goes forward. It would look at not just how Alaska compares with other jurisdictions, but with how industry is performing here in Alaska and if they are honoring the commitments they made when they took out leases.

CO-CHAIR PASKVAN questioned with respect to the extension of a lease if a lease is capable of producing 100 barrels but is only producing 1 does that in and of itself extend the lease or would there be an analysis under that "duty to produce" that says the production of only 1 when you can produce 100 fails to satisfy that duty to produce. This is an issue that goes right to the heart of what the throughput is in Alaska and where that can be derived in analyzing a lease's terms both at its original and at the extension.

SENATOR FRENCH said two days ago many of them thought the exploration on the North Slope was being driven by the credits, improving capital markets and the rise in the price of a barrel of oil, but then they heard from Director Barron that the reason is because a lot of those North Slope leases are expiring. Tightening up this kind of language may have accelerated that exploration season by several years. Bottom line is that it's

clear the terms of the leases drive work and they can shape a more productive North Slope exploration and development agenda if they set the terms more clearly at the beginning of the relationship.

SENATOR MCGUIRE said she supports coming to a better and more transparent agreement between industry and the government about expectations. She agreed that the state had set itself up in part for failure in that relationship by not being as clear as they could be.

[4:14:49 PM](#)

SENATOR MCGUIRE questioned whether in directing the executive branch with a "shall" from a "may" on page 1, line 9, violated the state's Constitution.

SENATOR WIELECHOWSKI said he didn't think it would violate the Constitution, but they should investigate it through Legislative Legal. He said Article 8, Section 2 of the Constitution says the Legislature is responsible for ensuring we get maximum benefit from our resource and it would just be the case of the Legislature directing how it wants the state's resource to be developed.

CO-CHAIR PASKVAN said that as owners of the resource, if Alaska is tendering control over portions of North Slope to someone there should be minimum work commitments - for example, work within a 10 year timeframe.

[4:16:51 PM](#)

DON BULLOCK, Legislative Legal Services, Legislative Affairs Agency, said he didn't see a problem with using "shall"; the statutes are peppered with shalls and mayas and discretion and requirements. He said Senator Wielechowski is correct that the legislature does establish the policies for implementing the provisions requiring that resources be developed in the best interests of the state. As Director Barron pointed out, under current law if someone has a lease they don't really have a duty to produce until the end of the lease at which point they have to be in production and show they are actually working on the lease in order to get it extended.

This amendment would give the state an idea of what a company plans to do when submitting their bid. One of the interesting things is that they have to submit a proposed plan before they even qualify as a bidder before they can even apply for the lease. He said the commissioner maintains the discretion as to

what the terms of the lease are in terms of the bonuses under AS 38.05.180(f).

SENATOR WIELECHOWSKI said the original idea was to look at what is done in some other countries, like Norway for instance, that doesn't take bids. They simply invite the oil companies to come in and propose plans of development for the lease tracts. If one company says they'll do one well over five years, but another says they'll do five wells in one year, and it's a reputable company, they can pick the one that will truly develop it in the best interests of the country.

This amendment was set aside.

[4:19:55 PM](#)

CO-CHAIR PASKVAN said that Item 4, labeled as 27-LS1305\B.12 by Senators Wielechowski and French was up for consideration.

27-LS1305\B.12

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 192(RES), Draft Version "B"

Page 1, line 1, following "**tax;**":

Insert "**relating to participation by the Alaska Industrial Development and Export Authority in the development of oil and gas resources in the state;**"

Page 2, following line 5:

Insert new bill sections to read:

*** Sec. 2.** AS 44.88.080 is amended by adding a new paragraph to read:

(32) to acquire an interest in a project as necessary or appropriate to provide working or venture capital for an oil or natural gas development project under AS 44.88.650 - 44.88.660, whether by purchase, gift, or lease;

*** Sec. 3.** AS 44.88 is amended by adding new sections to read:

Sec. 44.88.650. Acquisition of interest in businesses. (a) The authority may acquire, through purchase or other means, an interest in an in-state asset of a corporation or other business entity that has a lease interest in an oil or natural gas field in the state that has been explored, but only if the authority determines the leaseholder has made

reasonable efforts to obtain financing from the private sector to develop the lease and those efforts have, in whole or part, been unsuccessful. The authority shall exercise due diligence in acquiring an interest in an in-state asset of a business entity under this section.

(b) If the authority acquires an interest in an in-state asset of a business entity under this section, the authority may use the authority's assets, as appropriate, to aid in the development of the oil or natural gas field in which the business entity has a lease interest.

Sec. 44.88.660. Alaska resource development fund.

(a) The Alaska resource development fund is established in the authority for the purpose of developing oil and gas resources, and consists of appropriations to the fund. The authority shall manage the fund and may create separate accounts within it. Income of the fund or of enterprises of the authority shall be separately accounted for and may be appropriated to the fund.

(b) The authority may use money from the fund to carry out the fund's purposes set out in (a) of this section.

* **Sec. 4.** AS 44.88.900(9) is amended to read:

(9) "project" means

(A) a plant or facility used or intended for use in connection with making, processing, preparing, transporting, or producing in any manner, goods, products, or substances of any kind or nature or in connection with developing or utilizing a natural resource, or extracting, smelting, transporting, converting, assembling, or producing in any manner, minerals, raw materials, chemicals, compounds, alloys, fibers, commodities and materials, products, or substances of any kind or nature;

(B) a plant or facility used or intended for use in connection with a business enterprise;

(C) commercial activity by a business enterprise;

(D) a plant or facility demonstrating technological advances of new methods and procedures and prototype commercial applications for the exploration, development, production, transportation, conversion, and use of energy resources;

(E) infrastructure for a new tourism destination facility or for the expansion of a tourism

destination facility; in this subparagraph, "tourism destination facility" does not include a hotel or other overnight lodging facility;

(F) a plant or facility, other than a plant or facility described in (D) of this paragraph, for the generation, transmission, development, transportation, conversion, or use of energy resources;

(G) a plant or facility that enhances, provides for, or promotes economic development with respect to transportation, communications, community public purposes, technical innovations, prototype commercial applications of intellectual property, or research;

(H) a plant or facility used or intended for use as a federal facility, including a United States military, national guard, or coast guard facility;

(I) development of an oil and gas lease by providing working or venture capital in exchange for an equity interest;

* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

ANALYSIS AND REPORT ON ALASKA RESIDENT INVESTMENT PROGRAM. The Alaska Industrial Development and Export Authority shall research the possibility of creating a program through which a resident of the state could invest the resident's permanent fund dividend or other funds in an in-state oil or gas asset acquired by the authority under AS 44.88.650 and report its findings to the legislature on December 31, 2012."

Renumber the following bill section accordingly.

Page 2, line 6:

Delete "This"

Insert "Section 1 of this"

SENATOR WIELECHOWSKI said the legislature wanted wildcatters to come up to Alaska and explore and develop; and after it developed ACES the number of companies doing business in the oil patch went up over 250 percent. But they also had the financial meltdown in 2008; he has heard from a lot of people in industry that they are having a hard time attracting capital. This amendment enables the Alaska Industrial Development and Energy Authority (Alaska Industrial Development and Export Authority (AIDEA)) to provide venture capital to ensure that new oil comes

on line as quickly as possible. This is not novel; it is something that Alaska Industrial Development and Export Authority (AIDEA) does in a variety of different spectrums. For instance, Alaska Industrial Development and Export Authority (AIDEA) owns a Cook Inlet rig; they're invested in an oil terminal in Skagway, a mining road in a port in Northwest Alaska, a shipyard in Ketchikan and many others.

Just last year legislation proposed by Governor Parnell was enacted to expand Alaska Industrial Development and Export Authority (AIDEA)'s authority to invest in economic development projects. This is the State of Alaska using its billions and billions of dollars and helping out projects "that just need a little push." The is already the largest investor on the North Slope, investing 60 and 80 percent through its credits structure in development projects on the North Slope. This gives the state an opportunity to align with industry and to be at the table when decisions are made.

SENATOR FRENCH said this idea was borne out of a desire to get a take a different approach than what is in HB 110 where there was an enormous amount of dollars flowing from the state to the industry without any concomitant work commitments. Maybe they could create a resource development corporation that takes the \$2 billion that they would otherwise push across the table and invest it ourselves. Seeing how Norway does business really catalyzed the idea. Norway does two things: it has a state-owned oil company called Statoil that owns and operates oil fields just like any other oil company does. Alaska won't ever do that. Besides Statoil, Norway has a wing of their government that is just like an investment bank. It provides state direct financial investment in fields. He said it's an idea that needs to be looked at and if people see the state investing maybe others will follow.

[4:26:14 PM](#)

MS. SYDEMAN explained that this amendment gives the AIDEA the authority to provide venture capital for and take an equity position in oil and gas development projects. In recent years a growing number of independent oil companies have come to Alaska in search of a small but still significant pockets of oil that remain on the North Slope. In some cases, they have discovered substantial quantities but have lacked the capital needed to begin development particularly during the recent credit crunch. This amendment would enable Alaska Industrial Development and Export Authority (AIDEA) to partner with them to ensure that new oil production comes on line.

Alaska Industrial Development and Export Authority (AIDEA) already invests in a variety of development projects from shipyards to oar terminals to mining roads and ports. Last year Governor Parnell proposed legislation that further expanded Alaska Industrial Development and Export Authority (AIDEA)'s ability to invest in development projects.

She said before making the decision to invest in an oil and gas project this amendment would require AIDEA to exercise due diligence and ensure the investment is in the state's best interest. It would also need to determine that the lease holder had made reasonable efforts to obtain financing from the private sector and that those efforts had been unsuccessful. This amendment also directs AIDEA to look at the idea of establishing a program where Alaskans could also invest their own resources in any project in which AIDEA is a partner.

[4:27:43 PM](#)

MS. SYDEMAN recalled that Bradford Keithley [consultant with Perkins Coie] said earlier that such an approach would create greater alignment between the state and the oil industry and would truly lay the groundwork for increased investment and expanded oil and gas production and that such public private partnerships exist all around the world and are very successful. She said direct partnerships would also increase the state's understanding of how oil companies invest in and develop projects leading to better decisions on the state's part about how to manage Alaska's resources.

SENATOR FRENCH commented when AIDEA was buying a jack up rig he talked with them about the mechanics of the financial deal. He brought up some of the difficulties the state had on its own over the years with grain terminals and fish plants. It typically failed, but when it has participated with private sector and each side has some of its own money at work it has done a lot better. This is an opportunity for the state to get alongside smart driven folks like BP, ConocoPhillips and ExxonMobil or smaller more nimble players and help them make investments that are just out of reach and still profit from their expertise.

SENATOR WIELECHOWSKI said that AIDEA is a state corporation.

CO-CHAIR WAGONER commented that this would be an excellent model to follow to see if partnering with industry is where the state wants to go. The jack up rig AIDEA is participating in will have

its entire investment back after five wells are drilled. This may have far reaching benefits such as roads into Ambler and Umiat - and they would get done faster.

[4:31:52 PM](#)

CO-CHAIR PASKVAN said they would next take up Item 5, labeled 27-LS1305\B.14 by Senators Wielechowski and French.

27-LS1305\B.14

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 192(RES), Draft Version "B"

Page 1, line 1 following "tax;":

Insert **"relating to the oil and gas corporate income tax; relating to the credits against the oil and gas corporate income tax; making conforming amendments;"**

Page 1, following line 2:

Insert new bill sections to read:

*** Section 1.** AS 29.60.599(1) is amended to read:

(1) **"barrel,"** when used with reference to oil, **means the quantity of oil contained in 42 United States gallons of 231 cubic inches each, measured at a temperature of 60 degrees Fahrenheit and an absolute pressure of 14.65 pounds a square inch** [HAS THE MEANING GIVEN IN AS 43.20.072];

*** Sec. 2.** AS 41.09.010(b) is amended to read:

(b) An exploration incentive credit extended under (a) of this section may be applied against

(1) a payment or obligation against which a credit authorized by AS 38.05.180(i) may be claimed;

(2) taxes payable under AS 43.20 **or AS 43.21, as applicable;** and

(3) oil and gas bonus payments due the state under AS 38.05.180(f).

*** Sec. 3.** AS 43.20.011 is amended by adding a new subsection to read:

(g) For purposes of calculating the tax under (e) of this section, the taxable income of a corporation engaged in the production or transportation of crude oil or natural gas shall be determined in accordance with AS 43.21.

*** Sec. 4.** AS 43.20.073(f) is amended to read:

(f) This section does not apply to taxpayers subject to **AS 43.21** [AS 43.20.072 ENGAGED IN

(1) THE PRODUCTION OF OIL OR GAS FROM A LEASE OR PROPERTY IN THE STATE; OR

(2) THE TRANSPORTATION OF OIL OR GAS BY REGULATED PIPELINE IN THE STATE].

* **Sec. 5.** AS 43.21 is amended by adding new sections to read:

Article 1. Determination of Taxable Income.

Sec. 43.21.200. Application. This chapter applies to every corporation doing business in the state that derives income from the production of oil or gas from a lease or property in the state or from the pipeline transportation of oil or gas in the state. The tax calculated under this chapter is measured by the total taxable income of the corporation during the tax period as defined by AS 43.21.210 - 43.21.240 and is calculated at the rates established under AS 43.20.011(e).

Sec. 43.21.210. Determination of taxable income from oil and gas production. (a) The taxable income of a corporation from the production of oil and gas from a lease or property in the state is the corporation's net income as calculated by the department in accordance with this section.

(b) Gross income of a corporation from oil and gas production is the gross value at the point of production of oil or gas produced from a lease or property in the state. The department shall by regulation determine a uniform method of establishing the gross value at the point of production. For the purpose of determining the gross value at the point of production under this subsection, the department shall use AS 43.55.150 for the determination of transportation costs.

(c) Net income from oil and gas production shall be determined by the department by deducting from gross income the following:

- (1) royalties paid in kind or in value;
- (2) taxes imposed under AS 43.55 that are actually paid or incurred by the corporation on the production from a lease or property in the state;
- (3) taxes imposed under AS 29.45.080 - 29.45.090 and AS 43.56 that are actually paid or incurred by the corporation on property used directly in the production of oil or gas from a lease or property in the state, including property used in

production, gathering, treatment, or preparation of the oil or gas for pipeline transportation, but only if those property tax payments were due and payable only after the date of commercial production from the lease or property with which the property was associated;

(4) the direct costs incurred by or for the corporation in operating the lease or property, including the direct costs of producing, gathering, treating, or preparing the oil or gas for pipeline transportation, but net of any payments received for those activities and not including any indirect cost or overhead expense;

(5) depreciation, using the percentage depletion basis under 26 U.S.C. 613 (Internal Revenue Code) or another reasonable method as the department may by regulation establish, on property used directly in the production, gathering, treatment, or preparation of the oil or gas for pipeline transportation, including amortization of capitalized interest for investments in that property at a rate not to exceed the average cost to the taxpayer of borrowed capital during the year in which the interest is capitalized;

(6) the amortization of lease acquisition payments and taxes paid or incurred under AS 29.45.080, 29.45.090, or AS 43.56, including capitalized interest, for or on producing properties before the commencement of commercial production from the lease or property for which the property is being used;

(7) interest expense of the corporation, not capitalized during construction, that was paid or incurred in connection with property in the state; however, unless (f) of this section applies, the interest expense may not exceed that portion of the total interest paid by the consolidated business of which the corporation is a part, determined by multiplying the total interest by a fraction, the numerator of which is the value of the corporation's real and tangible personal property used directly in the production of oil or gas from a lease or property in the state and the denominator of which is the value of all real and tangible personal property of the consolidated business; in this paragraph, "total interest paid by the consolidated business" does not include interest expense arising from intercompany

obligations within the consolidated business except to the extent that the interest expense reflects a pass-through of interest on a third-party borrowing by the parent or other member of the consolidated business with the purpose, expressed at the time of the third-party borrowing, of financing Alaska business activity of the taxpayer corporation;

(8) expenses incurred by the corporation after December 31, 2012, of unsuccessful exploration of oil or gas in the state, including the acquisition costs of abandoned properties, dry hole costs, and the costs of geologic and geophysical exploration related to those abandoned properties;

(9) general overhead or administrative expense incurred by the corporation attributable to deriving income from the production of oil or gas from a lease or property in the state to the extent, except as provided in (f) of this section, that the general overhead or administrative expense does not exceed that portion of the total general overhead or administrative expense incurred by the consolidated business of which the corporation is a part, determined by multiplying the total general overhead or administrative expense by a fraction, the numerator of which is the value of the corporation's real and tangible personal property used directly in the production of oil or gas from a lease or property in the state and the denominator of which is the value of all real and tangible personal property of the consolidated business;

(10) the amount of income from the production of oil and gas from a lease or property that is divided among the regional Native corporations under 43 U.S.C. 1606(i) (sec. 7(i), Alaska Native Claims Settlement Act, P.L. 92-203).

(d) Deductions from gross income under this section may not include expenses previously deducted on a return filed under AS 43.20.

(e) If a corporation subject to this chapter shares the production or proceeds of the production from a lease or property through a working interest, royalty interest, overriding royalty interest, production payment, net profit interest, joint venture, or other agreement, the department shall allocate the deductions from gross income between the corporation and the persons with whom the corporation

has the agreement in accordance with the terms of the agreement.

(f) If a corporation demonstrates to the satisfaction of the department that the corporation paid or incurred actual expenses for interest or for general overhead or administration attributable to deriving income from the production of oil or gas from a lease or property in the state in an amount greater than the amount determined under (c)(7) or (9) of this section, the department may allow the corporation to deduct the greater amount.

Sec. 43.21.220. Determination of income from oil and gas pipeline transportation. (a) Except as provided in (c) of this section, taxable income attributable to the transportation of oil in a pipeline engaged in interstate commerce in this state shall be determined by the department and shall be the amount reported or that would be required to be reported to the Federal Energy Regulatory Commission or its successors as net operating income, less those portions of interest and general overhead or administrative expense attributable to the pipeline transportation of oil in the state, except that taxable income shall also include taxes on or measured by income. The department shall establish regulations governing the determination of interest and general overhead or administrative expense attributable to pipeline transportation of oil in the state.

(b) Except as provided in (c) of this section, taxable income attributable to the transportation of natural gas in a pipeline engaged in interstate commerce in this state shall be determined by the department and shall be the amount reported or that would be required to be reported to the Federal Energy Regulatory Commission as net operating income, less that portion of interest and general overhead or administrative expense attributable to pipeline transportation in the state, except that the taxable income shall also include taxes on or measured by income. The department shall establish regulations governing the determination of interest and general overhead or administrative expense attributable to pipeline transportation of natural gas in the state.

(c) Taxable income attributable to the transportation of oil or natural gas in this state of a corporation not under the jurisdiction of the Federal Energy Regulatory Commission, or of a

corporation under the jurisdiction of the Federal Energy Regulatory Commission but not reporting the operation of pipelines in the state separately from the operation of pipelines elsewhere, shall be determined by the department and shall be based on an amount equal to the amount that would have been reported to the Federal Energy Regulatory Commission under (a) of this section in the case of oil pipelines, or under (b) of this section, in the case of natural gas pipelines, had the corporation been, in fact, under the jurisdiction of the Federal Energy Regulatory Commission for the taxable year and required to report on the operation of pipelines in the state separately from the operation of pipelines elsewhere.

Sec. 43.21.230. Determination of income from activities other than oil and gas production or pipeline transportation. (a) Taxable income of a corporation subject to this chapter from activities in this state other than the production of oil or gas from a lease or property in the state or the pipeline transportation of oil or gas in the state shall be determined in accordance with the method established in art. IV of AS 43.19.010 and in AS 43.20.071, as modified by (b) - (d) of this section.

(b) The total taxable income of a consolidated business is its entire income less the portion of that entire income attributable to worldwide production and pipeline transportation of oil and gas. In this subsection, for a member of a consolidated business who is

(1) required to file under the Internal Revenue Code, "entire income" means the taxpayer's taxable income as the term is used in AS 43.20.011 - 43.20.065;

(2) not required to file under the Internal Revenue Code, "entire income" means an income determination prepared in accordance with generally accepted accounting principles, except that a taxpayer may elect to report income as the income would be determined under (1) of this subsection.

(c) The numerator and denominator of the property factor, of the payroll factor, and of the sales factor shall be calculated without reference to that portion of property, payroll, or sales directly related to the production of oil or gas from a lease

of property in the state or the pipeline transportation of oil or gas in the state.

(d) The value attributed to vessels transporting Alaska oil or gas of a consolidated business that are not owned or effectively owned by the consolidated business shall be excluded from the property factor.

Sec. 43.21.240. Applicability of tax to a consolidated business. The provisions of this chapter apply to a consolidated business whether or not the taxpayer is the parent or controlling corporation.

Article 2. Calculation of Tax; Returns.

Sec. 43.21.300. Assessment of income and tax. (a) The department shall assess taxable income and the amount of tax payable on that taxable income. The amount of the tax payable shall be determined using the tax rates in AS 43.20.011(e).

(b) On or before August 15 of each year, the department shall send to every corporation taxable under this chapter a notice of assessment showing the amount of income taxable under this chapter for the previous year and the amount of tax payable on that taxable income.

(c) For purposes of this chapter, the department may combine taxable income of corporations subject to tax under this chapter who are part of the same consolidated business.

(d) If the methods of allocation and apportionment provided in this chapter do not fairly represent the extent of a corporation's business activity in the state, the corporation may petition for or the department may require, in respect to all or any part of the corporation's business activity, if reasonable, the employment of any method authorized under art. IV, sec. 18, AS 43.19.010 (Multistate Tax Compact), to carry out an equitable allocation and apportionment of the corporation's income. The commissioner shall include in the annual report required in AS 43.21.410 a report on all relief granted under this subsection, including, for each case, a statement of the changes in tax liability resulting from the granting of relief, the tax years involved, and a description of the method of determining taxable income that was substituted for the methods provided in this chapter.

Sec. 43.21.320. Credits. A credit under AS 43.20.043, 43.20.044, or 43.20.046 may also be applied against the tax levied under this chapter,

unless a credit for the same expenditure has been taken against a tax levied under AS 43.20 or AS 43.55.

Sec. 43.21.330. Returns. On or before April 15 of each year, a corporation subject to tax under this chapter shall submit a return in a form prescribed by the department setting out information required by the department to determine taxable income. For purposes of this chapter, the department may require corporations subject to tax under this chapter that are part of the same consolidated business to file a single return.

Sec. 43.21.340. Payment of tax. The tax levied under this chapter is payable to the department on or before September 30 of each year or in installments, including prepayments of estimated tax, at the times and under the conditions the department may by regulation require. The tax is payable on the due date set out in this section even though the assessment is under appeal or the validity, enforceability, or application of this chapter or any provision of this chapter is challenged before the department or in the courts.

Article 3. Administrative Matters.

Sec. 43.21.400. Regulations. The department shall adopt regulations in accordance with AS 44.62 (Administrative Procedure Act) as appropriate to administer and enforce this chapter.

Sec. 43.21.410. Public reporting. (a) The commissioner shall compile and transmit to the legislature an annual report of state revenue and the implementation of taxation policies under this chapter. The report must include total aggregate income tax paid by corporations subject to this chapter and aggregate income and deductions by category, classified so as to prevent the identification of particular returns or reports.

(b) The legislative auditor shall notify the legislature on or before the first day of each regular session that the annual report reviewing the actions of the department in administering this chapter is available.

Sec. 43.21.420. Information disclosure. Notwithstanding AS 43.05.320, the department shall disclose to a legislator, on request, information collected from a taxpayer to the extent that

(1) the taxpayer is a publicly traded company;

(2) the information has been filed in a quarterly, annual, or other periodic report to the United States Securities Exchange Commission; and

(3) the information has been made public by the United States Securities Exchange Commission.

Sec. 43.21.499. Definitions. Unless the context requires otherwise, the definitions contained in AS 43.55.900 are applicable to this chapter. In addition, in this chapter,

(1) "consolidated business" means a corporation or group of corporations having more than 50 percent common ownership, direct or indirect, or a group of corporations in which there is common control, either direct or indirect, as evidenced by an arrangement, contract, or agreement;

(2) "Internal Revenue Code" has the meaning given in AS 43.20.340."

Page 1, line 3:

Delete "**Section 1**"

Insert "**Sec. 6**"

Page 2, line 6:

Delete all material and insert:

"* **Sec. 7.** AS 43.82.210(a) is amended to read:

(a) If the commissioner approves an application and proposed project plan under AS 43.82.140, the commissioner may develop proposed terms for inclusion in a contract under AS 43.82.020 for periodic payment in lieu of one or more of the following taxes that otherwise would be imposed by the state or a municipality on the qualified sponsor or member of a qualified sponsor group as a consequence of participating in an approved qualified project:

(1) oil and gas production taxes and oil surcharges under AS 43.55;

(2) oil and gas exploration, production, and pipeline transportation property taxes under AS 43.56;

(3) oil and gas corporate income tax under AS 43.21; [REPEALED]

(4) Alaska net income tax under AS 43.20;

(5) municipal sales and use tax under AS 29.45.650 - 29.45.710;

(6) municipal property tax under AS 29.45.010 - 29.45.250 or 29.45.550 - 29.45.600;

(7) municipal special assessments under AS 29.46;

(8) a comparable tax or levy imposed by the state or a municipality after June 18, 1998;

(9) other state or municipal taxes or categories of taxes identified by the commissioner.

* **Sec. 8.** AS 43.20.072 is repealed.

* **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 43.21, added by sec. 5 of this Act, applies to taxable income earned or received after December 31, 2012.

* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REGULATIONS. (a) The Department of Revenue may adopt regulations necessary to implement AS 43.21, added by sec. 5 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the law implemented by regulation.

(b) The Department of Revenue shall provide by regulation for a transition for a corporation subject to tax under AS 43.20 before December 31, 2012, to avoid double taxation of the same income or double deduction of the same expense of the corporation as a result of becoming subject to tax under AS 43.21, added by sec. 5 of this Act.

* **Sec. 11.** Section 10 of this Act takes effect immediately under AS 01.10.070(c).

* **Sec. 12.** Except as provided in sec. 11 of this Act, this Act takes effect January 1, 2013."

SENATOR WIELECHOWSKI said a current piece of legislation on this issue was referred to the Finance Committee and he thinks it's a good idea for this committee to have an understanding of what it does because it impacts what they are doing. He explained it reinstates separate accounting method of calculating corporate income tax paid by the oil industry. This was strongly recommended by Pedro van Meurs.

MS. SYDEMAN explained that since oil production in Alaska began the state has been strongly urged by industry to use a proportion of world-wide profits for a unitary tax method for calculating their income tax. In 1978, Alaska realized it was losing significant revenue under the unitary system. So the legislature passed separate accounting. Under separate accounting revenues generated in Alaska less expenses are the

basis for the 9.4 percent corporate income tax. The oil companies sued and lost in lower court, and then appealed to the State Supreme Court. Four years later the state reverted to unitary system because the legislature feared there was a potential cost of \$1.8 billion if the state lost. At the time the legislature saw that as too great a liability with the 1981 treasury balance. However, in 1985 the state won on all points with the Alaska Supreme Court and the US Supreme Court declined the oil companies appeal request stating there was no federal issue. Unfortunately, separate accounting has never been reinstated.

For years the companies have said they couldn't do separate accounting since they did not track their revenues and costs that way. That may have been true under the old ELF gross tax system but it's not true under the profits based PPT or ACES systems. They also know the oil companies do separate accounting for other oil provinces like Norway.

MS. SYDEMAN said if they take just the \$1.8 billion difference between the income tax these corporations paid under the unitary system and separate accounting between the years of 1978 and 1981 and divide that by four years it equals an underpayment during those years of about \$450 million per year. Multiplying that by the 30 years that separate accounting has now not been in effect, the state may have lost up to \$13.5 billion, which is more than the total unfunded liability for the state's PERS and TRS retirement systems.

[4:36:02 PM](#)

In the year 2000, the DOR did an analysis and determined that the state had probably lost \$4.7 billion between 1982 and 1997. She contacted the economist this morning that conducted that analysis to ask him whether he thought separate accounting would still yield more revenue for the state today accounted to determine if separate accounting would still yield more revenue for the state today as he had determined back then and he said yes.

Internationally acclaimed oil consultant Pedro van Meurs recently said he believes the unitary method is cumbersome; it is an obstacle to new investment and it's not in the state's best interests. Recently they also have heard from oil industry representatives who have stated that Alaska has comparatively strong margins. So, that is an indication that the state may still be losing revenue under the unitary tax method. If this is so, the income taxes in Alaska would be effectively lowered by

the less profitable investments around the world. Conversely, if oil development in Alaska is less profitable than elsewhere as some of have stated, this would result in a tax cut for oil industry. Either way, this method of accounting is more straight forward sensible and a fairer way of determining the corporate income tax.

[4:37:41 PM](#)

CO-CHAIR PASKVAN announced consideration of Item 6 by Senators French and Wielechowski, labeled 27-LS1305\B.15.

27-LS1305\B.15

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 192(RES), Draft Version "B"

Page 1, line 1, following "tax;":

Insert **"relating to information concerning oil and gas taxes, including information about expenditures that must be provided in order to claim an oil and gas production tax credit for those expenditures, and relating to the disclosure of that information;"**

Page 2, line 6:

Delete all material and insert:

"* Sec. 2. AS 43.55.030(a) is amended to read:

(a) A producer that produces oil or gas from a lease or property in the state during a calendar year, whether or not any tax payment is due under AS 43.55.020(a) for that oil or gas, shall file with the department on March 31 of the following year a statement, under oath, in a form prescribed by the department, giving, with other information required by the department under a regulation adopted by the department, the following:

(1) a description of each lease or property from which oil or gas was produced, by name, legal description, lease number, or accounting codes assigned by the department;

(2) the names of the producer and, if different, the person paying the tax, if any;

(3) the gross amount of oil and the gross amount of gas produced from each lease or property, and the percentage of the gross amount of oil and gas owned by the producer;

(4) the gross value at the point of production of the oil and of the gas produced from each lease or property owned by the producer and the costs of transportation of the oil and gas;

(5) the name of the first purchaser and the price received for the oil and for the gas, unless relieved from this requirement in whole or in part by the department;

(6) the producer's qualified capital expenditures, as defined in AS 43.55.023, other lease expenditures under AS 43.55.165, and adjustments or other payments or credits under AS 43.55.170;

(7) the production tax values of the oil and gas under AS 43.55.160;

(8) any claims for tax credits to be applied; [AND]

(9) calculations showing the amounts, if any, that were or are due under AS 43.55.020(a) and interest on any underpayment or overpayment; and

(10) for each expenditure that is the basis for a credit claimed under AS 43.55.023 or 43.55.025, a description of the expenditure, a detailed description of the purpose of the expenditure, and a description of the lease or property for which the expenditure was incurred; notwithstanding AS 43.05.230(a), information submitted under this paragraph may be disclosed to the public and shall be disclosed to the legislature in a report submitted within 10 days after the convening of the next regular legislative session following the date a statement is filed under this section.

* Sec. 3. AS 43.55.030(e) is amended to read:

(e) An explorer or producer that incurs a lease expenditure under AS 43.55.165 or receives a payment or credit under AS 43.55.170 during a calendar year but does not produce oil or gas from a lease or property in the state during the calendar year shall file with the department on March 31 of the following year a statement, under oath, in a form prescribed by the department, giving, with other information required by the department under a regulation adopted by the department, the following:

(1) the producer's qualified capital expenditures, as defined in AS 43.55.023, other lease expenditures under AS 43.55.165, and adjustments or other payments or credits under AS 43.55.170; [AND]

(2) if the explorer or producer receives a payment or credit under AS 43.55.170, calculations showing whether the explorer or producer is liable for a tax under AS 43.55.160(d) or 43.55.170(b) and, if so, the amount; and

(3) for each expenditure that is the basis for a credit claimed under this chapter, a description of the expenditure, a detailed description of the purpose of the expenditure, and a description of the lease or property for which the expenditure was incurred; notwithstanding AS 43.05.230(a), information submitted under this paragraph may be disclosed to the public and shall be disclosed to the legislature in a report submitted within 10 days after the convening of the next regular legislative session following the date a statement is filed under this section.

* **Sec. 4.** Sections 2 and 3 of this Act take effect July 1, 2012.

* **Sec. 5.** Section 1 of this Act takes effect January 1, 2013."

SENATOR FRENCH explained that basically this is grounded in the idea that the legislature is not getting enough information on the credits they are issuing, and they amount to billions of dollars. The state's oil and gas production tax includes incentives to increase production and exploration in the form of generous tax credits - the 20 percent credit for capital expenditures enables companies to deduct their capital expenses twice: once to reduce taxable income and again as a credit against a portion of their taxes on that income. If a company incurring an expense has insufficient income against which to apply a tax credit, they can sell it to another firm, carry it forward or apply for a refund from the state. Companies carry losses forward forever. The state has approved about \$4 billion in credits over the last several years - that is a \$4 billion investment by the state -, and yet there is scant publicly available information letting Alaskans know where this investment is going. The amendment requires that producers who apply for a tax credit against their production tax liability to describe what they did with the expenditure and where they did it and the purpose of it. The information provided may be disclosed to the public and must be reported to the legislature. With this publicly available information the public and decision makers can ensure that state dollars are being used effectively to increase production of Alaska's oil and gas resources.

[4:40:10 PM](#)

CO-CHAIR PASKVAN announced consideration of Item 7 by Senator French, labeled 27-LS1305\B.16.

27-LS1305\B.16

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 192(RES), Draft Version "B"

Page 1, line 1, following "Act":

Insert "relating to the duties of the Alaska Oil and Gas Conservation Commission; relating to a petroleum information management system; relating to the duties of the Department of Natural Resources, the Department of Revenue, and the Department of Labor and Workforce Development that relate to providing the Alaska Oil and Gas Conservation Commission with certain information relating to oil and gas;"

Page 1, following line 2:

Insert new bill sections to read:

* **Section 1.** AS 31.05.030 is amended by adding a new subsection to read:

(n) The commission shall develop and maintain the petroleum information management system required under AS 31.05.031.

* **Sec. 2.** AS 31.05 is amended by adding a new section to read:

Sec. 31.05.031. Petroleum information management system. (a) The commission shall develop and maintain an electronic petroleum information management system to collect, secure, distribute, store, retrieve, and archive information related to oil and gas exploration, development, and production in the state. The purposes of the petroleum information management system are to improve the administration of the oil and gas production tax and to facilitate exploration, development, and production of oil and gas resources. The petroleum information management system shall be accessible by the public.

(b) To the extent the information is available and is not confidential, the petroleum information management system must include the following information:

- (1) unit and joint operating agreements;
- (2) state oil and gas exploration licenses and oil and gas leases;

(3) for exploration activities,
 (A) exploration work programs and budgets;
 (B) seismic data;
 (C) drilling reports;
 (D) logs;
 (E) well tests;
 (F) geological models and maps;
 (4) for development activities,
 (A) development plans with operating and capital expenditure projections;
 (B) construction progress reports;
 (C) drilling reports;
 (D) reservoir characterization;
 (5) for production activities,
 (A) production work programs and budgets;
 (B) oil and gas sales, revenue, and pricing;
 (C) transportation agreements;
 (D) production data;
 (E) injection data;
 (F) operating and capital expenditures;
 (G) facility maps and studies;
 (6) for abandonment of oil and gas wells, leases, and production and transportation facilities,
 (A) abandonment plans and budgets;
 (B) progress reports;
 (7) for oil and gas related employment information,
 (A) the number of resident and nonresident hires for each year;
 (B) training opportunities; and
 (8) other information the commission determines necessary and relevant to the oil and gas production tax and to the exploration, development, and production of oil and gas resources.

(c) The Department of Natural Resources, the Department of Revenue, and the Department of Labor and Workforce Development, in consultation with the commission, shall provide information described in (b) of this section that is not confidential and within each department's control to the commission for inclusion in the petroleum information management system. The information provided by a department under this subsection shall be in a form suitable for the commission to include in the petroleum information management system.

* **Sec. 3.** AS 31.05.093(c) is amended to read:

(c) The commission shall determine the regulatory cost charges levied under this section so that the total amount to be collected approximately equals the appropriations made for the operating costs of the commission under this chapter for the fiscal year. For the purpose of determining the regulatory costs charges under this subsection, the operating costs for the petroleum information management system (AS 31.05.031) may not be included in the operating costs of the commission."

Page 1, line 3:

Delete "Section 1"

Insert "Sec. 4"

Page 2, following line 5:

Insert a new bill section to read:

"* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

IMPLEMENTATION OF THE PETROLEUM INFORMATION MANAGEMENT SYSTEM; RECOMMENDATION FOR STATUTORY CHANGES. The Alaska Oil and Gas Conservation Commission shall develop and implement a work plan for the development of the petroleum information management system required by AS 31.05.031, enacted by sec. 2 of this Act, so that the system is operational before January 1, 2014."

Renumber the following bill section accordingly.

[4:40:36 PM](#)

LISA WIESSLER, staff to Senator French, explained that concerns have been raised about the amount of information that is or is not available to legislators and the public in terms of making decisions on the oil taxes and how the fields are developed. While a lot of the information is confidential under the law, a lot of it is public, but it is scattered among several agencies and is very difficult to find.

She said this amendment begins the process of making information more available to the public, decision makers, and to other oil and gas companies who might want to do business in our oil fields. It calls for the Alaska Oil and Gas Conservation Commission (AOGCC) to develop an electronic petroleum information management (PIMS) that would obtain public information that is currently gathered by the commission, the Departments of Revenue and Natural Resources and the Department

of Labor and Workforce Development (DOLWD) and to consolidate it for the purpose of oil and gas production tax and to facilitate exploration, development and production of oil and gas resources.

She said the information going into the system is limited to what is currently available and is not confidential. The list in subsection (b) on page 2 contains everything they hope to eventually see in the system as it becomes available through statutory or other changes. This list is taken from a 2007 Gaffney Kline report that provided an overview of how the acquisition, distribution and publication of oil company data is handled in other oil and gas producing regimes.

In subsection (c) on page 3 the departments that have control of the information are directed to provide what is not confidential to the commission in a form that is suitable for this new information system. Section (3) addresses an administrative concern, because the commission currently charges industry a regulatory cost charge and determines it based on the operating costs. It was suggested that PIMS might not be suitable for use of these funds. So those costs will not be included in the calculation. Section (5) directs the AOGCC to develop and implement the system so it's operational before January 1, 2014.

MS. WEISSEL said the idea is to have an easy one-stop shop for people who maybe want to do business in Alaska's oil fields and to continue developing ways to release more confidential information into the system.

SENATOR FRENCH stated that the AOGCC is not begging to get for this to be situated in their domain, but it has to go somewhere and they are the leading independent oil and gas entity right now. He said this information should not be scattered throughout many places and this could be the genesis for addressing some issues talked about yesterday where a SARB board is charged to set the value of a pipeline dealing with an extremely recalcitrant Department of Revenue that feels its bound by confidentiality statutes to not reveal anything to the SARB board that could help another state agency perform its very job. It also dovetails with Senator McGuire's proposal for a competitiveness review board.

This amendment was set aside.

[4:46:19 PM](#)

CO-CHAIR PASKVAN announced consideration of Item 15, labeled 27-LS1305\B.1 by Senator Wagoner.

27-LS1305\B.1

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 192(RES), Draft Version "B"

Page 1, line 1, following "tax;":

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

Page 2, following line 5:

Insert a new bill section to read:

"* **Sec. 2.** AS 43.55.024(d) is amended to read:

(d) A producer may not take a tax credit under (c) of this section for any calendar year after the later of

(1) 2021 [2016]; or

(2) if the producer did not have commercial oil or gas production from a lease or property in the state before April 1, 2006, the ninth calendar year after the calendar year during which the producer first has commercial oil or gas production before May 1, 2021 [2016], from at least one lease or property in the state."

Renumber the following bill section accordingly.

CO-CHAIR WAGONER explained that this extends the sunset date of a PPT and ACES credit that incentivizes small producers for another five years from 2016 to 2021. The credit for production can be up to \$12 million annually based on production volumes. He asked that the department bring them information on how much this credit has been used. The commissioner nodded affirmatively.

CO-CHAIR PASKVAN said the committee had moved through the items that didn't directly impact progressivity and would take those up tomorrow. [SB 192 was held in committee.]

[4:48:13 PM](#)

CO-CHAIR PASKVAN adjourned the Senate Resources Standing Committee meeting at 4:48 p.m.