

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

April 2, 2012

3:35 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Bert Stedman

OTHER LEGISLATORS PRESENT

Senator Joe Thomas
Senator Linda Menard
Senator Cathy Giessel

COMMITTEE CALENDAR

SENATE BILL NO. 215

"An Act requiring the Alaska Gasline Development Corporation to construct a natural gas pipeline to deliver Cook Inlet natural gas to Fairbanks and other communities between Cook Inlet and Fairbanks that do not have access to a natural gas pipeline."

- MOVED SB 215 OUT OF COMMITTEE

SENATE BILL NO. 145

"An Act providing for a credit against the oil and gas production tax for costs incurred in drilling certain oil or natural gas exploration wells in the Nenana Basin."

- MOVED CSSB 145(RES) OUT OF COMMITTEE

SENATE BILL NO. 219

"An Act relating to the Alaska Land Act, including certain lease, sale, and other disposal of state land and materials; relating to production royalties from miners; relating to rights to use state water; and providing for an effective date."

- MOVED CSSB 219(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 215

SHORT TITLE: GASLINE DEV. CORP: IN-STATE GAS PIPELINE

SPONSOR(s): SENATOR(s) THOMAS

02/21/12	(S)	READ THE FIRST TIME - REFERRALS
02/21/12	(S)	RES, FIN
03/19/12	(S)	RES AT 3:30 PM BUTROVICH 205
03/19/12	(S)	Heard & Held
03/19/12	(S)	MINUTE(RES)
03/23/12	(S)	RES AT 3:30 PM BUTROVICH 205
03/23/12	(S)	Heard & Held
03/23/12	(S)	MINUTE(RES)
03/26/12	(S)	RES AT 3:30 PM BUTROVICH 205
03/26/12	(S)	Heard & Held
03/26/12	(S)	MINUTE(RES)
03/28/12	(S)	RES AT 3:30 PM BUTROVICH 205
03/28/12	(S)	Scheduled But Not Heard
03/30/12	(S)	RES AT 3:30 PM BUTROVICH 205
03/30/12	(S)	Heard & Held
03/30/12	(S)	MINUTE(RES)
04/02/12	(S)	RES AT 3:30 PM BUTROVICH 205

BILL: SB 145

SHORT TITLE: OIL/GAS PRODUCTION TAX CREDITS: NENANA

SPONSOR(s): SENATOR(s) WAGONER, COGHILL

01/17/12	(S)	PREFILE RELEASED 1/6/12
01/17/12	(S)	READ THE FIRST TIME - REFERRALS
01/17/12	(S)	RES, FIN
03/28/12	(S)	RES AT 3:30 PM BUTROVICH 205
03/28/12	(S)	Heard & Held
03/28/12	(S)	MINUTE(RES)
03/30/12	(S)	RES AT 3:30 PM BUTROVICH 205
03/30/12	(S)	Heard & Held
03/30/12	(S)	MINUTE(RES)
04/02/12	(S)	RES AT 3:30 PM BUTROVICH 205

BILL: SB 219

SHORT TITLE: DISPOSALS OF STATE RESOURCES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/29/12	(S)	READ THE FIRST TIME - REFERRALS
02/29/12	(S)	RES, FIN

03/28/12 (S) RES AT 3:30 PM BUTROVICH 205
03/28/12 (S) Heard & Held
03/28/12 (S) MINUTE(RES)
03/30/12 (S) RES AT 3:30 PM BUTROVICH 205
03/30/12 (S) Heard & Held
03/30/12 (S) MINUTE(RES)
04/02/12 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

BILL WARREN, representing his daughter who lives in Fairbanks
Kenai, AK

POSITION STATEMENT: Supported SB 215.

MERRICK PEIRCE, representing himself
North Pole, AK

POSITION STATEMENT: Supported SB 215.

SENATOR JOE THOMAS
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of SB 215.

JOMO STEWART
Fairbanks Economic Development Corporation (FEDC)
Fairbanks, AK

POSITION STATEMENT: Supported SB 215.

JOHANNA BALES, Deputy Director
Tax Division
Department of Revenue (DOR)
Anchorage, AK

POSITION STATEMENT: Related department's concerns about
Amendment 2 for SB 145.

JAMES MERY, Vice President
Lands and Natural Resources
Doyon, Ltd.
Fairbanks, AK

POSITION STATEMENT: Answered question on SB 145.

WYN MENEFFEE, Chief of Operations
Division of Mining, Lands and Water
Department of Natural Resources (DNR)
Juneau, AK

POSITION STATEMENT: Answered questions on SB 219.

CAMERON LEONARD, Assistant Attorney General
Civil Division
Environmental Section
Department of Law
Anchorage, AK

POSITION STATEMENT: Answer questions on SB 219 as needed.

MARY JACKSON, Staff
Senator Tom Wagoner
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Answered question about SB 219.

ACTION NARRATIVE

[3:35:11 PM](#)

CO-CHAIR JOE PASKVAN called the Senate Resources Standing Committee meeting to order at 3:35 p.m. Present at the call to order were Senators French, Wielechowski, McGuire, Stevens, Co-Chair Wagoner and Co-Chair Paskvan.

SB 215-GASLINE DEV. CORP: IN-STATE GAS PIPELINE

[3:36:13 PM](#)

CO-CHAIR PASKVAN announced consideration of SB 215 and opened public testimony.

[3:37:08 PM](#)

BILL WARREN, representing his daughter who lived in Fairbanks, Kenai, AK, supported SB 215. He said Alaska is in an energy crisis while ExxonMobil is making a killing in Qatar. He said our number-one priority should be getting a 36 inch, 2.5 bcf gas line from the North Slope to Fairbanks and then have an open season and see what happens. They also need to run a 24 inch pipeline from Cook Inlet to Palmer and Glennallen to Fairbanks to catch all the military bases. "Then if miracles happen and we get a big line and it comes down to Valdez, they loop the 24 inch into the 36 inch and away we go."

[3:42:15 PM](#)

MERRICK PEIRCE, Board Member, Alaska Gasline Port Authority (AGPA), North Pole, AK, said he was speaking on his own behalf in support of SB 215. He said the high cost of energy in the Interior was crippling the economy. He was "delighted" the sponsors of SB 215 recognized what the USGS scientists, the Department of Energy and those in industry were telling them: that Cook Inlet has as much as 24 tcf/gas, a 200 year supply for

Alaskans. He offered four suggestions for their consideration as they develop this pipeline idea: look for redundancy, integration, greatest population served and a minimal return on equity.

MR. PEIRCE said in considering a small diameter pipeline from Cook Inlet to Fairbanks it is important to route it through the correct corridor and the best one is from Palmer to Glennallen and Glennallen to Fairbanks. While it is longer by almost 100 miles, it serves a larger population with significant potential industrial usage for mining. A longer line does not necessarily mean more expensive gas. If the longer route serves a substantially larger population the cost of gas could even be less due to improved economies of scale.

The military bases need affordable gas, too, and reducing their costs is very important Mr. Peirce said. For example, national missile defense at Fort Greely runs their power plant on expensive diesel fuel.

MR. PEIRCE said because earthquakes, fires, floods and tsunamis all happen here, people need to think about how to build redundancy with the gas grid for the same reasons as the power grid. Being able to pull gas from Cook Inlet, the Copper River Basin or the North Slope through an interconnected grid brings that redundancy. The Cook Inlet gasline can be integrated into the planning for the large diameter gasline, as well; the number of wet gas take off points can be reduced from the large line if the same populations are served through a gas-fed parallel spur line. This would significantly reduce the Capex for the large line gas take off points and if the infrastructure is provided to allow gas to move to Valdez from the spur line to Glennallen, this allows Cook Inlet drillers access to a deep water ice free port where people expect to have an economical LNG export facility.

He said that ANGDA had already created a gasline corridor for a spur line to Glennallen and a final EIS was completed for the Yukon Pacific version of the all-Alaska gasline adjacent to the TAPS corridor, thus demonstrating that such a route is permissible reducing permitting risk.

Finally, he said to consider the benefits of little or no return on equity saying the state does not ask for return on equity with most public infrastructure like highways, airports and ports. They provide great public benefit. The same logic should apply to a gasline that serves Alaskans.

[3:45:21 PM](#)

A good example of what they must not do is seen with HB 9 where the sponsors contemplated double digit return on about \$3 billion in equity. With a 14 percent return, it would cost \$420 million per year (built into the tariff) to support that equity return. With an out of state owner, the \$420 million would be transferred per year out of the Alaskan economy. To provide a sense of scale, this amount of money represents about half of what is paid in annual Permanent Fund Dividends each year, and they have a positive impact on Alaskan economy.

[3:46:09 PM](#)

JOMO STEWART, Fairbanks Economic Development Corporation (FEDC), Fairbanks, AK, supported SB 215. It would help address Fairbanks' energy cost issue as well as their PM2.5 issue. That support is qualified because they believe this is one portion of a multi-phased multi stage project that brings volume gas at an affordable price to not only to Fairbanks and the Interior, but hopefully kick starts broader energy distribution to the rest of the state.

[3:48:20 PM](#)

CO-CHAIR PASKVAN, finding no further comments, closed public testimony and invited the bill sponsor forward.

SENATOR MCGUIRE said she supported the concept in SB 215 and that there are no bad ideas when it comes to considering how to get energy to Fairbanks. Her only question was whether they should consider removing the word "construct" on lines 1 and 9 on page 2, because maybe they want to be cautious about how far they "push these guys" in AGDC with regard to the larger in-state line. She was worried that language said they have to construct it and maybe they should say they want them to study it and come back with a proposal.

[3:50:06 PM](#)

SENATOR THOMAS, Alaska State Legislature, Juneau, AK, sponsor of SB 215, said the word "construct" was used to avoid the word "study," because they are studying that proposal right now. The AGIA proposal might be a little bit more in play and this is intended to make sure they are keeping on track. He didn't want people to think they are starting over with a new study.

SENATOR MCGUIRE said she wanted to get that on the record and she agreed.

SENATOR THOMAS said he appreciated the committee hearing the bill and had no additional comments.

SENATOR FRENCH thanked him for this bill and noted that three Anchorage Senators had signed onto this bill primarily because it gets gas to Fairbanks as fast as possible.

CO-CHAIR WAGONER said he was going to vote to pass SB 215 from the committee, but it's a question about knowing exactly how much reserves Cook Inlet has to develop and send to Fairbanks. This is a little premature, but he also saw the pain on peoples' face in Fairbanks.

SENATOR THOMAS said everyone realizes that the resource has to be proved up before moving forward.

[3:53:52 PM](#)

SENATOR WIELECHOWSKI said they think there is enough gas in Cook Inlet to power the state for 200 years, and it's a lot cheaper than bringing gas down from the North Slope, because you don't need a conditioning plant or to go over tough terrain and the Brooks Range. It also has a railroad for transporting goods.

But this is also good for Anchorage and Southcentral, Senator Wielechowski said, because it will spur more exploration. Over the years they have heard that the problem with Cook Inlet is if you find gas there you have nowhere to sell it. If the line is built to Fairbanks, they now have a market to Fairbanks, but it also connects to the big line that is showing some promise of being built. On the other hand, if it does turn out that Cook Inlet has problems, and they do get a big line, they would have a spur line into Anchorage and Southcentral. This is a win/win for Southcentral, the Interior and for Fairbanks as well as for more exploration in Cook Inlet.

CO-CHAIR PASKVAN echoed the sentiments and added that as a matter of state policy, having a singular energy system from the Kenai through Southcentral to Interior Alaska makes a lot of sense.

[3:56:04 PM](#)

CO-CHAIR WAGONER moved to report SB 215, version \M, from committee with individual recommendations and forthcoming fiscal note. There were no objections and it SB 215 moved from the Senate Resources Standing Committee.

[3:56:33 PM](#)

At ease from 3:56 to 4:00 p.m.

SB 145-OIL/GAS PRODUCTION TAX CREDITS: NENANA

4:00:37 PM

CO-CHAIR WAGONER announced consideration of SB 145 [Version D was before the committee]. He said there was a request for modeling at the last meeting, but it involved too much speculation and too many hypotheticals to consider, so he withdrew the request.

4:01:53 PM

SENATOR WIELECHOWSKI said his staff ran some modeling on SB 145 assuming 10,000 barrels a day at \$110 to get a rough estimate of a production tax value of \$60 (\$10 transportation costs, \$20 OPEX and \$20 CAPEX), and they came up with a production tax value of about \$190 million, which under ACES (backing out tax credits and deductions) would generate a revenue of \$38 million to the state. The 4 percent gross tax under SB 145 appears to generate a negative cash flow of \$14 million to the company from the state.

CO-CHAIR WAGONER said he appreciated that, but would feel more comfortable with Legislative Research modeling or modeling from Senator Stedman's consultants.

CO-CHAIR PASKVAN commented that he didn't want the committee to get too bound up by the potential negative cash flow concept to the state of Alaska, because Cook Inlet has had an annual negative cash flow of \$80 million for many years. The whole concept of opening up the Nenana Basin is that the state puts something into it in terms of reductions in costs and incentives - as long as there are tight parameters on time.

4:05:57 PM

SENATOR WIELECHOWSKI moved Amendment 1.

27-LS1078\D.3
Nauman

AMENDMENT 1

OFFERED IN THE SENATE
BY SENATORS WIELECHOWSKI AND FRENCH
TO: CSSB 145(), Draft Version "D"

Page 1, line 3, following "**basins;**":

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

Page 2, following line 8:

Insert a new bill section to read:

"* **Sec. 3.** AS 43.55.024(b) is amended to read:

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

(1) **2021** [2016]; or

(2) 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 outside the Cook Inlet sedimentary basin, no part of which is north of 68 degrees North latitude, if the producer did not have commercial oil or gas production from a lease or property in the state outside the Cook Inlet sedimentary basin, no part of which is north of 68 degrees North latitude, before April 1, 2006."

Renumber the following bill sections accordingly.

SENATOR WIELECHOWSKI explained applies statewide and expands the small producer tax in AS 43.55.024(b) credit until 2021, because some small producers were concerned that it may expire.

SENATOR FRENCH said the Revenue Sources Book said the net fiscal effect of this credit was \$38 million last year and that it makes sense for people to be able to plan on it.

CO-CHAIR WAGONER, finding no objections, announced that Amendment 1 was adopted.

[4:08:12 PM](#)

SENATOR WIELECHOWSKI moved Amendment 2.

27-LS1078\D.4

Nauman

AMENDMENT 2

OFFERED IN THE SENATE
BY SENATORS WIELECHOWSKI AND FRENCH
TO: CSSB 145(), Draft Version "D"

Page 1, line 3:

Delete "and"

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

Page 1, line 4, following "latitude":

Insert "; and providing for an effective date"

Page 7, following line 2:

Insert new bill sections to read:

"* **Sec. 6.** 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 40.25.100(a) and 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 subsection.

* Sec. 7. 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 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 40.25.100(a) and 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 subsection.

* Sec. 8. Sections 6 and 7 of this Act take effect July 1, 2012."

SENATOR WIELECHOWSKI explained that the amendment requires the disclosure of three items: 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. That information will be made public. The philosophy behind this is that the state is paying close to \$1 billion each year in tax credits and they have no idea where it is going. This will help find out what those credits are being used for and it helps in managing the resource.

[4:10:01 PM](#)

JOHANNA BALES, Deputy Director, Tax Division, Department of Revenue (DOR), Anchorage, AK, said she had a couple of concerns with Amendment 2. The first primarily dealt with the language and the way the amendment is constructed. It says: "Notwithstanding, AS 40.25.100 and AS 43.05.230(a)" and the department didn't believe that language allowed them to completely not adhere to those statutes. Exception language needs to be put in those statutes if they are going to open up taxpayer information to public disclosure.

The other concern she explained was right now when they look at tax credits specifically for audit purposes, they receive millions of lines of data information just like they do for tax returns, and when they conduct audits they look at categories of credits. This amendment would require the department to look at each expenditure and she assumed categorize it for disclosure. But there is no language giving them any idea of how the sponsor wanted those expenditures to be categorized.

MS. BALES said the second part of the amendment talks about a detailed description of the purpose of the expenditure and they were not entirely sure what the intention was.

Another concern Ms. Bales said they had was although this amendment didn't require identifying the taxpayer, they could have instances where a lease or property has only one of two owners and by simply providing that information, they would have disclosed the taxpayer. She didn't know if that was the sponsor's intent either.

[4:13:18 PM](#)

MS. BALES said another issue would be the cost of being subject to public records requests. The minute this information is made public and subject to disclosures they would be required to disclose this information for any individual that requested it and that would be disincentive to companies to get these credits if they are concerned that their proprietary information might be disclosed.

SENATOR FRENCH asked if language on page 2, lines 17-24 (number 10 on a list of 9 other items), on types of information is sent to the department by the producers.

MS. BALES answered yes; that was correct.

SENATOR FRENCH asked if the other nine items in that list were disclosed to the public, too.

MS. BALES replied generally no, unless it has been aggregated, and they aggregate at a high level.

SENATOR FRENCH asked if her concern was with language actually in subsection (10) that says it may be disclosed to the public because it's treated differently than the other nine items.

MS. BALES replied yes. Also, the language on line 17 says "for each expenditure" and in their mind an expenditure is every single line item of expense.

SENATOR FRENCH said that the language was modified to say "for each expenditure that is the basis for a credit claimed under .023 or .025."

MS. BALES replied that each expense item is the basis for a credit. If they have to categorize and identify each and every expense and identify the purpose of that expense, a little more clarification would be needed on whether they wanted every single expense item or categories of expenditures.

SENATOR FRENCH said if he were in her shoes, he would be saying it's the producers' job to do the categorizations. But she was saying it would be the department's job and he didn't want to make her do that. He asked if there was language causing her confusion about whose job it is.

MS. BALES replied that the producer would have to provide the information, but she was confused as to what information and

what level of detail and assumed that the producers and explorers would share that same confusion.

SENATOR FRENCH said they were big boys and could stick up for themselves and he wanted the department's perspective on whether this amendment would require them to detail things and to categorize them.

MS. BALES answered that the department would have to do a certain amount of detail and categorization, because if an explorer or producer sent them information at the expense level and provided the purpose of each expenditure, they would still need to compile that data into a report.

SENATOR FRENCH said he thought they would be pulling information out of one spreadsheet and inserting it into another until they aggregated.

MS. BALES responded that would be true, and as simple as that might sound, they get data in all sorts of different formats. They don't have an automated system right now, so they would have to look at how this information was provided and it would be helpful to have a little bit more guidance about whether the producers and explorers were providing them a report that the department was providing to the legislature and the public as requested.

SENATOR FRENCH said that was his intent, but he could see where she would need a little more guidance.

[4:19:18 PM](#)

CO-CHAIR WAGONER said he wasn't that comfortable with this either, for a little bit different reason. Let's say I'm a charter business taking high end charters out and am forced by APOC to disclose each one of those charters, because it's over the maximum allowable. In doing that, he has just opened up his entire list of business associates to his competitors. That is why he couldn't support the amendment.

SENATOR WIELECHOWSKI withdrew Amendment 2 and said he would work with Senator Wagoner, the Finance Committee and the department to provide clear guidance and not have any unintended consequences.

[4:21:15 PM](#)

SENATOR FRENCH moved Amendment 3.

AMENDMENT 3

OFFERED IN THE SENATE

TO: CSSB 145(), Draft Version "D"

Page 2, line 3:

Delete "seven"

Insert "four"

CO-CHAIR WAGONER objected for discussion purposes.

SENATOR FRENCH explained that this was part of a conversation he had with the Nana folks to put some sidebar limit to the extremely low tax provisions the state is offering under this bill. They had talked about using a barrel a day limit, but the drafter said it was too much. So he simply limited it down to four years. He was comfortable with four years, but he would be open to five. His idea was to limit the length of time under which these extremely low tax provisions are offered; they might need to look at Cook Inlet the same way.

SENATOR FRENCH moved to amend his amendment to insert "five" instead of "four" on line 3.

CO-CHAIR PASKVAN asked if Doyon had been contacted about five versus seven years.

CO-CHAIR WAGONER said he talked to them in the past a couple or three times about it and didn't think they would object to going to five.

[4:23:47 PM](#)

JAMES MERY, Vice President, Lands and Natural Resources, Doyon, Limited, Fairbanks, AK, said it depends on the price of oil and the size of the find, but the number "five" would work for them in the larger context of trying to attract capital to these projects. It's still a good period of protection during a critical period of capital recovery.

SENATOR WIELECHOWSKI remarked that they were sort of shooting in the dark without modeling and he would support the amendment, but hoped it would get a thorough look in the Finance Committee.

CO-CHAIR WAGONER removed his objection and the amendment to Amendment 3 was adopted. Finding no further objections, he announced that Amendment 3 as amended was adopted.

CO-CHAIR WAGONER removed his objection to the CS.

CO-CHAIR PASKVAN moved to report CSSB 145(), version\D, as amended by Amendments 1 and 3, to the next committee of referral with individual recommendations and attached fiscal note(s). There were no objections and CSSB 145(RES) moved from the Senate Resources Standing Committee.

[4:27:32 PM](#)

At ease from 4:27 to 4:29 p.m.

SB 219-DISPOSALS OF STATE RESOURCES

[4:29:15 PM](#)

CO-CHAIR WAGONER announced consideration of SB 219.

[4:29:37 PM](#)

WYN MENEFFEE, Chief of Operations, Division of Mining, Lands and Water, Department of Natural Resources (DNR), Juneau, AK, said he was available to answer questions on SB 219.

CO-CHAIR WAGONER moved Amendment 1.

27-GS2717\A.1
Bailey

AMENDMENT 1

OFFERED IN THE SENATE BY SENATOR WAGONER
TO: SB 219

Page 1, line 1:
Delete "**lease, sale and other disposal**"
Insert "**leases, sales, and other disposals**"

Page 1, following line 4:
Insert a new bill section to read:
"*** Section 1.** AS 38.05.050 is amended to read:
Sec. 38.05.050. Disposal of land for private ownership. The commissioner shall determine the land to be disposed of for private use. The commissioner shall determine the time and place of disposal. **A public** [AN] auction sale, **sale by sealed bid,** a

lottery sale, or a disposal of land for homesites may be held in a community that is near the land to be sold or disposed of."

Page 1, line 5:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Page 1, line 10:

Delete "no"

Insert "**not** [NO]"

Page 3, line 22:

Delete "only be renewed"

Insert "be renewed only"

Page 3, line 23:

Delete "no"

Insert "not"

Page 4, line 5, following "38.05.102,":

Insert "**38.05.565,**"

Page 5, following line 2:

Insert new bill sections to read:

"* **Sec. 10.** AS 38.05.075(e) is amended to read:

(e) The commissioner may require prequalification of bidders for a lease to be issued under AS 38.05.070. If the commissioner determines to require prequalification, the procedures established by this section and the notice including **prequalification** [PRE-QUALIFICATION] requirements required to be given under AS 38.05.945 shall be completed within 75 days of the receipt of the first lease application unless the commissioner grants additional time for the completion of the procedures. Within the 75-day period or the additional time granted by the commissioner, the commissioner shall complete

(1) classification under AS 38.05.300;

(2) the procedures required by AS 38.05.035(e);

(3) any other action required by law for the disposal of the lease to a bidder except survey, appraisal, and the auction **or sealed bid.**

* **Sec. 11.** AS 38.05.075(g) is amended to read:

(g) Notice of an auction or sealed bid required under this section shall be made by certified mail to all prequalified bidders."

Renumber the following bill sections accordingly.

Page 5, following line 19:

Insert a new bill section to read:

"* **Sec. 14.** AS 38.05.115 is amended to read:

Sec. 38.05.115. Limitations and conditions of sale. (a) The commissioner shall determine the timber [AND OTHER MATERIALS] to be sold [,] and the limitations, conditions, and terms of sale. The limitations, conditions, and terms shall include the utilization, development, and maintenance of the sustained yield principle, subject to preference among other beneficial uses. The commissioner may negotiate sales of timber [OR MATERIALS] without advertisement and on the limitations, conditions, and terms that are considered to be in the best interests of the state. Within a one-year period, the commissioner may not negotiate a sale without advertisement to the same purchaser of

[(1)] more than 500 M.B.M. or equivalent other measure of timber [;

(2) EXCEPT AS PROVIDED IN (3) OF THIS SUBSECTION, MORE THAN 25,000 CUBIC YARDS OF MATERIALS; OR

(3) MORE THAN 100,000 CUBIC YARDS OF MATERIALS TO A COMMON CARRIER HOLDING A LEASE UNDER AS 38.35].

(b) Negotiated sales not exceeding 50 M.B.M. or the equivalent other measure of timber [OR 2,500 CUBIC YARDS OF MATERIALS] are exempt from the provisions of AS 34.15.150.

(c) The limitations of this section are not applicable to timber that [WHICH] becomes state property under the provisions of AS 45.50.210 - 45.50.235."

Renumber the following bill sections accordingly.

Page 6, line 21:

Delete "**14A**"

Insert "**13A**"

Page 6, line 22:
Delete "in fee"

Page 7, line 13:
Delete "either"

Page 8, line 15:
Delete "per person within a one calendar year"
Insert "a person within a one-calendar-year"

Page 8, following line 17:
Insert a new subsection to read:

"(f) Notwithstanding (a) - (e) of this section, for the purpose of creating incentives for the development of peat as a source of heat or power, the director may negotiate the sale of peat to individuals, organized or unorganized communities, tribal governments, or private profit or nonprofit organizations. Under this subsection, the director may provide

(1) for personal use by an individual, not more than 200 cubic yards of peat a year at no cost;

(2) for commercial use, not more than 30,000 cubic yards of peat during a single 10-year period at no cost; or

(3) for commercial use requiring more than 30,000 cubic yards of peat, the amount required by the user during a 10-year period beginning when the user uses more than 30,000 yards of peat at the price of

(A) 20 percent of the representative regional sales price determined by the director under AS 38.05.550(d)(1); or

(B) 20 percent of the fair market value determined by an appraisal completed under AS 38.05.550(d)(2), if the applicant provides the appraisal at the applicant's expense and the appraisal is approved by the commissioner."

Page 9, line 31:
Delete "section"
Insert "paragraph"

Page 10, line 1:
Delete "such a"
Insert "the"

Page 10, line 4:

Delete "section"
Insert "paragraph"

Page 11, line 3:
Delete "insure"
Insert "ensure [INSURE]"

Page 11, line 7:
Delete "which"
Insert "that [WHICH]"

Page 12, line 12:
Delete "[(i)]"

Page 13, line 16:
Delete "[(A)]"

Page 13, line 28:
Delete "sec. 18"
Insert "sec. 22"
Delete "further"

Page 15, line 23:
Delete "and quarry stone"
Insert "stone, pumice, and common clay"

Page 15, following line 23:
Insert a new bill section to read:

"* **Sec. 25.** AS 41.23.470(b) is amended to read:

(b) The commissioner may conduct only a negotiated timber [OR MATERIAL] sale under AS 38.05.115 to provide for personal use, including house logs and firewood, or for a use incidental to the construction of access, or for habitat enhancement."

ReNUMBER the following bill sections accordingly.

Page 16, line 5:
Delete "Article"
Insert "art."

Page 16, line 7:
Delete "catchline"
Insert "catch line"

Page 16, line 9:

Delete "Section 19"
Insert "Section 23"

Page 16, line 10:
Delete "sec. 23"
Insert "sec. 28"

CO-CHAIR PASKVAN objected for discussion purposes.

[4:31:15 PM](#)

CAMERON LEONARD, Assistant Attorney General, Civil Division, Environmental Section, Department of Law, Anchorage, AK, said he was available to answer questions on SB 219.

CO-CHAIR WAGONER invited Mr. Menefee to explain the amendment.

MR. MENEFEЕ explained that the majority of the following amendments were crafting amendments. The Division of Legislative Legal found a couple of things that needed to be brought into conformance and there were a few other more substantial points.

He explained that the bill put all the "Auction and sealed bid" provisions together for consistency, but a few places were missed in sections 1, 10, 11 for AS 38.05.050, .075 and .075(g), so those were modified to say "auction or sealed bid".

[4:32:56 PM](#)

Section 14 on page put the "timber sale" back in because it was accidentally omitted when they removed "material sale" out of the "timber sale" statutes.

[4:33:51 PM](#)

On page 1 another change dealt with pluralizing lease sale disposal in the title to "leases, sales, and other disposals". The second item adds "sealed bid" into section 1 in AS.3895.050. Line 14 was a numbering issue and line 20 was a Legislative Legal correction from "not" to "no". The next two changes on page 2 were also from Legislative Legal.

[4:34:57 PM](#)

Line 9, page 2, of the amendment would go into page 4, line 5, of the bill and provides exceptions when land might be sold for less than the sealed bid amount. A part of AS 38.05.565 deals with a less than fair market value sale and using the representative regional sales price instead of the competitive sales price had to be inserted in the list.

[4:36:37 PM](#)

On page 2, "or sealed bid" was added to lines 12 and 27 in section 10 of .075(e) because it had been omitted. Legislative Legal also found the "prequalification" spelled without the hyphen and that was corrected to "pre-qualification".

[4:37:22 PM](#)

Language on page 3, line 4, put "and other materials" back into the timber sale statutes in Section 14. Language on page 3, line 27, starts renumbering per Legislative Legal.

Language on page 3-4 of the amendment refers to page 6, line 22, of the bill and talks about "all materials owned in fee by the state" and "in fee" was removed, because the state does not always own the entire fee simple estate. The idea here was as long as the state owns the surface estate, it can dispose of the materials; this clarifies that it doesn't have to be "in fee."

The language on page 7, line 13, was a crafting issue; the same with the next amendment.

[4:37:59 PM](#)

SENATOR FRENCH stated that he felt his "inner Max Gruenberg coming out" on page 4, lines 6-8, of the amendment addressing page 8, line 15, of the bill, and wanted to say "per year," but he would let it go.

[4:39:27 PM](#)

MR. MENEFEE moved on to page 4, lines 10-29, of the amendment that dealt with peat. An amendment in the House incentivized extracting peat for power and heat production; it also dealt with private individuals getting 30,000 cubic yards of peat for the first 10 years for free and 20 percent of the representative sales or an appraisal price for the second decade - the idea was to try to incentivize some sort of market to use peat in rural villages by taking the startup cost part out of the equation.

On the bottom of page 4, top of page 5, "section" was changed to "paragraph" and was a drafting error. The next statements were all drafting issues that Legislative Legal said should be another word.

He asked Ms. Jackson to fill in what Legislative Legal's response was to the next section.

[4:41:51 PM](#)

MARY JACKSON, staff to Senator Wagoner, Alaska State Legislature, explained that a technical renumbering revision "i" was made per Legislative Legal on page 12, lines 25-29 where a new section was inserted on "publication of a legal notice".

[4:43:49 PM](#)

MR. MENEFEЕ said the renumberings on page 5, line 26, were because other things were renumbered further up. Changing "quarry stone" to "stone, pumice, and common clay" was done because they recognized that someone could construe the language "materials" didn't really mean "pumice and common clay", but they really want those included and thought it would be clearer this way.

MR. MENEFEЕ said line 4, page 6, was another Legislative Legal issue that referred to "material sales" in the recreation rivers special designation area and those statutes were changed. The new "material sales" statutes cover all this, so it's not needed here. The rest of the amendment was all legislative crafting issues.

[4:46:09 PM](#)

SENATOR WIELECHOWSKI asked him to explain the policy of not charging anything for commercial use of not more than 30,000 cubic yards of peat during a single 10-year period on page 4, lines 19 and 20, of the amendment.

MR. MENEFEЕ replied that this amendment came forward on the House side and this language matches that. The discussion was at least one company in rural Alaska (trying to create pellets out of peat to burn in a stove, he thought) said the cost of extracting the peat would be too exorbitant to ever start a business and he proposed no cost for the first 10 year period switching to 20 percent of either the original representative sales price or an appraisal for the next 30,000 cubic yards of peat in the next 10-year period. He reminded them that only one appraisal had been done on peat, because there was no other peat extraction to compare it to. So they have to look overseas. The university did an appraisal and it may have resulted in too high of a cost to start a business.

CO-CHAIR PASKVAN said then it's not the intent to give free peat to use for lawns, but just for heating.

MR. MENEFEЕ clarified that line 13 [page 4] says "development of peat as a source of heat or power" and it's not just for personal use, but it could be for something like a school, too.

SENATOR WIELECHOWSKI went to lines 24 and 25 and asked if getting the first 30,000 cubic yards for free was up to the discretion of the director. What was the authority to say yours is free but yours is \$1 cubic yard?

MR. MENEFEER replied that these kinds of discretions are based upon the need of the business that wants to get started. For instance, somebody needs only 20,000 cubic yards or wants it for a 12-year period or they only need it for 8 years.

SENATOR WIELECHOWSKI went to lines 24-29 and asked if over 30,000 yards you could get a million yards at 20 percent of the fair market value.

[4:50:58 PM](#)

MR. MENEFEER answered that people do cut peat to use in their stove, but not commercially. In this situation the volumes seem large, but idea is if you are going to incentivize and get a business started where they can regionally market this and start shipping it around, it needs pretty large volumes. He was correct that there wasn't an upper limit, but as soon as you jump over the 30,000 cubic yards of peat in a 10-year period, you get into this 20 percent category on line 22. Once you get past that, you're into full price. By that time the idea was that the market would be established by then and it could be compared against market values at that point.

SENATOR WIELECHOWSKI asked if any regulations or laws were in place for cutting peat now on state land - liking mining.

MR. MENEFEER replied not specifically for peat, but even if it's free, they would still need to get an authorized amount from the Corps of Engineers for so much peat from such and such a location and reclaiming instructions. The way .550 is set up they would have to designate a site as such and go through a public process asking people if they know peat will be dug out of the area.

[4:53:26 PM](#)

CO-CHAIR PASKVAN said when you extract gravel, peat often gets extracted with it and he was trying to figure out what he meant by saying there was no market for peat.

MR. MENEFEER responded when he talks about market he is speaking specifically to the production of heat and power. He explained that when a materials site is created it has a certain amount of

overburden that is usually used for reclamation. At times people have sold that to create other types of organic material for gardens and such and that doesn't fit this definition of being used for heat and power. They do have prices for the overburden if someone starts selling it; it would be a standard material sale process.

He explained that if you find gravel, you probably don't have peat, because it is typically created by an anaerobic wet environment.

CO-CHAIR WAGONER said this amendment was made in the other body that was looking for ways to create businesses in rural Alaska.

SENATOR WIELECHOWSKI said he didn't know enough about peat, but it sounded like it could be good for rural communities. However, 30,000 cubic yards for free seemed like a lot.

CO-CHAIR WAGONER explained that his experience with peat was that thousands or tons of it are eroding into Cook Inlet and disappear. There is a lot of it and it's not used for much.

SENATOR FRENCH said he shared some of Senator Wielechowski's concerns.

MR. MENEFEЕ shared what Representative Dick said: if it never happens the state hasn't lost anything, but if you don't incentivize it, a market will never get started and he wanted to be overly generous in creating a new industry.

SENATOR WIELECHOWSKI said he wouldn't object, but he would find out more about it.

CO-CHAIR WAGONER found no objection and announced that Amendment 1 was adopted.

SENATOR FRENCH moved Amendment 2.

27-GS2717\A.2
Bailey

AMENDMENT 2

OFFERED IN THE SENATE
TO: SB 219

BY SENATOR FRENCH

Page 3, line 23, following "lease.":

Insert "The director shall provide public notice of the lease renewal decision."

CO-CHAIR WAGONER objected for discussion purposes.

SENATOR FRENCH said he didn't think DNR would oppose the amendment, because it adjusts page 3, line 23, by adding "The director shall provide public notice of the lease renewal decision." DNR said it was their intent to provide public notice, so this just makes it explicit.

CO-CHAIR WAGONER removed his objection and finding no further objection said Amendment 2 was adopted.

SENATOR FRENCH said he was withdrawing Amendment 27-GS2717\A.3 because it had a drafting error. He noted that it could be addressed in the next committee.

SENATOR FRENCH moved Amendment 3.

27-GS2717\A.4
Bailey

AMENDMENT 3

OFFERED IN THE SENATE BY SENATOR FRENCH
TO: SB 219

Page 1, line 3:

Delete "**relating to rights to use state water;**"

Page 15, line 24, through page 16, line 1:

Delete all material.

Renumber the following bill sections accordingly.

Page 16, line 10:

Delete "sec. 23"

Insert "sec. 22"

CO-CHAIR WAGONER objected for discussion purposes.

SENATOR FRENCH explained that this makes some significant adjustments to the bill; however it conforms with amendments offered in the other body.

[5:01:29 PM](#)

CO-CHAIR PASKVAN confirmed that it removed section 21 of version A on page 15 of the bill as it was removed in House Finance.

MR. MENEFEE said that was correct.

CO-CHAIR WAGONER removed his objection and finding no further objection said that Amendment 3 was adopted.

[5:02:10 PM](#)

SENATOR WIELECHOWSKI moved Amendment 4.

27-GS2717\A.6
Bailey

AMENDMENT 4

OFFERED IN THE SENATE BY SENATOR WIELECHOWSKI
TO: SB 219

Page 6, lines 12 - 13:

Delete ". The department may exempt, by regulation, small operations from the production royalty otherwise required by this section"

CO-CHAIR WAGONER objected for discussion purposes.

SENATOR WIELECHOWSKI explained that this amendment deletes two lines from page 6, lines 12-13. The current provision reads the department that is contemplated being added may exempt by regulation small operations from the production royalty otherwise required by this section. A legislative Legal opinion, dated April 2, 2012, says in essence that this would violate the terms of the Statehood Act.

[5:03:14 PM](#)

At ease 5:03 to 5:04 p.m.

[5:04:03 PM](#)

SENATOR WIELECHOWSKI added that a Legislative Legal Memo, dated April 2, stated that the Alaska Supreme Court decided that the leasing requirements in section (6)(i) of the Alaska Statehood Act considered in the context of the Schools Land Act, the Mineral Leasing Act and other Statehood Minerals Act and Mineral Leasing systems in other states mandates a system under which the State of Alaska must receive rent or royalties for its mining leases. The decision determined that the state could not forego or fail to charge and collect rents and royalties. The

court stated that the State Hard Rock Mineral Leasing Laws that did not require rents or royalties did not meeting the leasing requirements of section (6)(i). It goes on to say the proposed amendment to AS 38.05.212(a) apparently provides for a circumstance where small operations would be exempt from royalties. Therefore, it is likely to be found to violate the terms of the Statehood Act and therefore, Amendment 4 simply removes that provision to stay in compliance with the Statehood Act.

MR. MENEFEЕ said they reviewed this with the Department of Law (DOL), and the exemption was for people who in the end don't pay royalty anyway because it is based upon net income not on gross income. That's why they felt it wasn't a violation of the Statehood Act and it got rid of the paperwork shuffle where someone is not going to pay royalty. It's not a loss of revenues to the state; it's the same amount.

MR. LEONARD said that was a good explanation of the intent to cover operations that weren't paying royalties already because of their small size, but he couldn't say if that ran afoul of section (6)(i) or not.

CO-CHAIR PASKVAN asked if there was a limitation on the number of years someone can report that they are not making any money.

MR. MENEFEЕ replied that no law could prevent someone from failing to produce enough income to pay royalty for years on end. What has happened is that hobby miners can go out and mine, but they are not getting enough to pay royalty, because they can deduct their costs for producing that gold. However there are certain situations, like submerged mining leases, where you have to produce in paying quantities or the terms will be changed.

[5:08:36 PM](#)

CO-CHAIR PASKVAN asked how many people were reporting they weren't making any money.

MR. MENEFEЕ replied about 100 or so people.

CO-CHAIR WAGONER related that he had a mining claim on state forest land, False Creek 1, and his wife remarked that he had never worked so hard for so little and he they were trying to address people like that.

SENATOR WIELECHOWSKI said he didn't dispute that, but a Supreme Court case, the Statehood Act and a Legislative Legal opinion

appear to be right on point, and he didn't know how they could do this without running afoul of multiple pieces of law.

MR. MENEFEЕ said this doesn't create additional work and they were suggesting something that would limit the amount of work.

[5:10:52 PM](#)

CO-CHAIR PASKVAN asked if there was a limit for gross expenses one can declare.

MR. MENEFEЕ replied that rent and expenses can be counted, but they have to be justified. He didn't know if large mines had any sort of cap.

MR. LEONARD said that the statute doesn't provide a cap, but there is a relatively comprehensive regulatory scheme that delves into calculating royalties, which he didn't have with him.

CO-CHAIR PASKVAN said the question was if someone can extract a thousand ounces and say they didn't make a penny for five years in a row and the state doesn't get anything.

SENATOR WIELECHOWSKI said his staff just pointed out another section of (6)(i) of the Statehood Act, which says, "any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States." He said this amendment clearly violates those provisions and the consequences appear to be quite severe.

[5:14:38 PM](#)

MR. MENEFEЕ said he understood what he was saying and he wouldn't dispute the legal opinion.

SENATOR FRENCH said he had spent many hours this session reading the statehood debates in US Congress, and this was one of the larger questions that took place in both 1954 and 1957 - about how the state would gain control of land that was then in the hands of the US government.

[5:16:08 PM](#)

CO-CHAIR WAGONER removed his objection and finding no further objections announced that Amendment 4 was adopted.

CO-CHAIR PASKVAN asked if the department could estimate the number of ounces that are extracted that the state receives nothing on.

MR. MENEFEE answered that they could go the state's royalty records and find an example where a company starts up the first year and doesn't produce that much and doesn't pay royalty. Staff found at about 6 ounces of gold or about \$10,000 worth of income was the threshold where people weren't paying royalty.

CO-CHAIR PASKVAN said he wanted the gross amount that was being written off per year.

[5:18:16 PM](#)

SENATOR FRENCH moved to report SB 219, as amended, from committee with individual recommendations and attached fiscal note(s) to next committee of referral. There were no objections and therefore CSSB 219(RES) moved from the Senate Resources Standing Committee.

[5:18:38 PM](#)

CO-CHAIR WAGONER adjourned the Senate Resources Standing Committee meeting at 5:18 p.m.