

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 8, 2014

9:03 a.m.

MEMBERS PRESENT

Representative Eric Feige, Co-Chair
Representative Dan Saddler, Co-Chair
Representative Peggy Wilson, Vice Chair
Representative Mike Hawker
Representative Craig Johnson
Representative Paul Seaton
Representative Scott Kawasaki
Representative Geran Tarr

MEMBERS ABSENT

Representative Kurt Olson

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 138(FIN) AM

"An Act relating to the purposes, powers, and duties of the Alaska Gasline Development Corporation; relating to an in-state natural gas pipeline, an Alaska liquefied natural gas project, and associated funds; requiring state agencies and other entities to expedite reviews and actions related to natural gas pipelines and projects; relating to the authorities and duties of the commissioner of natural resources relating to a North Slope natural gas project, oil and gas and gas only leases, and royalty gas and other gas received by the state including gas received as payment for the production tax on gas; relating to the tax on oil and gas production, on oil production, and on gas production; relating to the duties of the commissioner of revenue relating to a North Slope natural gas project and gas received as payment for tax; relating to confidential information and public record status of information provided to or in the custody of the Department of Natural Resources and the Department of Revenue; relating to apportionment factors of the Alaska Net Income Tax Act; amending the definition of gross value at the 'point of production' for gas for purposes of the oil and gas production tax; clarifying that the exploration incentive credit, the oil or gas producer education credit, and the film production tax credit may not be taken against the gas production tax paid in gas; relating to the oil or gas producer education credit; requesting the governor to establish an

interim advisory board to advise the governor on municipal involvement in a North Slope natural gas project; relating to the development of a plan by the Alaska Energy Authority for developing infrastructure to deliver affordable energy to areas of the state that will not have direct access to a North Slope natural gas pipeline and a recommendation of a funding source for energy infrastructure development; establishing the Alaska affordable energy fund; requiring the commissioner of revenue to develop a plan and suggest legislation for municipalities, regional corporations, and residents of the state to acquire ownership interests in a North Slope natural gas pipeline project; making conforming amendments; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 138

SHORT TITLE: GAS PIPELINE; AGDC; OIL & GAS PROD. TAX

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/24/14	(S)	READ THE FIRST TIME - REFERRALS
01/24/14	(S)	RES, FIN
02/07/14	(S)	RES AT 3:30 PM BUTROVICH 205
02/07/14	(S)	Heard & Held
02/07/14	(S)	MINUTE(RES)
02/10/14	(S)	RES AT 3:30 PM BUTROVICH 205
02/10/14	(S)	Heard & Held
02/10/14	(S)	MINUTE(RES)
02/12/14	(S)	RES WAIVED PUBLIC HEARING NOTICE, RULE 23
02/12/14	(S)	RES AT 3:30 PM BUTROVICH 205
02/12/14	(S)	Heard & Held
02/12/14	(S)	MINUTE(RES)
02/13/14	(S)	RES AT 8:00 AM BUTROVICH 205
02/13/14	(S)	Heard & Held
02/13/14	(S)	MINUTE(RES)
02/14/14	(S)	RES AT 3:30 PM BUTROVICH 205
02/14/14	(S)	Heard & Held
02/14/14	(S)	MINUTE(RES)
02/19/14	(S)	RES AT 3:30 PM BUTROVICH 205
02/19/14	(S)	Heard & Held
02/19/14	(S)	MINUTE(RES)
02/20/14	(S)	RES AT 8:00 AM BUTROVICH 205
02/20/14	(S)	Heard & Held
02/20/14	(S)	MINUTE(RES)

02/21/14 (S) RES AT 8:00 AM BUTROVICH 205
02/21/14 (S) Heard & Held
02/21/14 (S) MINUTE(RES)
02/21/14 (S) RES AT 3:30 PM BUTROVICH 205
02/21/14 (S) Heard & Held
02/21/14 (S) MINUTE(RES)
02/24/14 (S) RES RPT CS 2DP 4NR 1AM NEW TITLE
02/24/14 (S) DP: GIESSEL, MCGUIRE
02/24/14 (S) NR: FRENCH, MICCICHE, BISHOP,
FAIRCLOUGH
02/24/14 (S) AM: DYSON
02/24/14 (S) RES AT 8:00 AM BUTROVICH 205
02/24/14 (S) -- MEETING CANCELED --
02/24/14 (S) RES AT 3:30 PM BUTROVICH 205
02/24/14 (S) Moved CSSB 138(RES) Out of Committee
02/24/14 (S) MINUTE(RES)
02/25/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/25/14 (S) Heard & Held
02/25/14 (S) MINUTE(FIN)
02/25/14 (S) FIN AT 5:00 PM SENATE FINANCE 532
02/25/14 (S) Heard & Held
02/25/14 (S) MINUTE(FIN)
02/26/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/26/14 (S) Heard & Held
02/26/14 (S) MINUTE(FIN)
02/27/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
02/27/14 (S) Heard & Held
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02/28/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
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03/03/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
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03/03/14 (S) MINUTE(FIN)
03/04/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/04/14 (S) Heard & Held
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03/05/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/05/14 (S) Heard & Held
03/05/14 (S) MINUTE(FIN)
03/05/14 (S) FIN AT 5:00 PM SENATE FINANCE 532
03/05/14 (S) Scheduled But Not Heard
03/06/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/06/14 (S) Heard & Held
03/06/14 (S) MINUTE(FIN)
03/07/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
03/07/14 (S) -- MEETING CANCELED --

03/10/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/10/14 (S) Heard & Held
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 03/10/14 (S) FIN AT 5:00 PM SENATE FINANCE 532
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 03/10/14 (S) MINUTE(FIN)
 03/11/14 (S) FIN AT 5:00 PM SENATE FINANCE 532
 03/11/14 (S) Heard & Held
 03/11/14 (S) MINUTE(FIN)
 03/12/14 (H) RES AT 1:00 PM BARNES 124
 03/12/14 (H) -- MEETING CANCELED --
 03/14/14 (S) FIN RPT CS 6DP 1AM NEW TITLE
 03/14/14 (S) LETTER OF INTENT WITH FINANCE REPORT
 03/14/14 (S) DP: KELLY, MEYER, DUNLEAVY, FAIRCLOUGH,
 BISHOP, HOFFMAN
 03/14/14 (S) AM: OLSON
 03/14/14 (S) FIN AT 9:00 AM SENATE FINANCE 532
 03/14/14 (S) Moved CSSB 138(FIN) Out of Committee
 03/14/14 (S) MINUTE(FIN)
 03/14/14 (H) RES AT 1:00 PM BARNES 124
 03/14/14 (H) <Pending Referral>
 03/17/14 (H) RES AT 1:00 PM BARNES 124
 03/17/14 (H) <Pending Referral>
 03/18/14 (S) TRANSMITTED TO (H)
 03/18/14 (S) VERSION: CSSB 138(FIN) AM
 03/19/14 (H) READ THE FIRST TIME - REFERRALS
 03/19/14 (H) RES, L&C, FIN
 03/19/14 (H) RES AT 1:00 PM BARNES 124
 03/19/14 (H) Heard & Held
 03/19/14 (H) MINUTE(RES)
 03/21/14 (H) RES AT 1:00 PM BARNES 124
 03/21/14 (H) Heard & Held
 03/21/14 (H) MINUTE(RES)
 03/24/14 (H) RES AT 1:00 PM BARNES 124
 03/24/14 (H) Heard & Held
 03/24/14 (H) MINUTE(RES)
 03/25/14 (H) RES AT 4:30 PM BARNES 124
 03/25/14 (H) Heard & Held
 03/25/14 (H) MINUTE(RES)
 03/26/14 (H) RES AT 1:00 PM BARNES 124
 03/26/14 (H) Heard & Held
 03/26/14 (H) MINUTE(RES)
 03/27/14 (H) RES AT 4:30 PM BARNES 124
 03/27/14 (H) Heard & Held
 03/27/14 (H) MINUTE(RES)
 03/28/14 (H) RES AT 1:00 PM BARNES 124
 03/28/14 (H) Heard & Held

03/28/14	(H)	MINUTE(RES)
03/31/14	(H)	RES AT 1:00 PM BARNES 124
03/31/14	(H)	Heard & Held
03/31/14	(H)	MINUTE(RES)
04/01/14	(H)	RES AT 4:30 PM BARNES 124
04/01/14	(H)	Heard & Held
04/01/14	(H)	MINUTE(RES)
04/02/14	(H)	RES AT 1:00 PM BARNES 124
04/02/14	(H)	Heard & Held
04/02/14	(H)	MINUTE(RES)
04/03/14	(H)	RES AT 4:30 PM BARNES 124
04/03/14	(H)	Heard & Held
04/03/14	(H)	MINUTE(RES)
04/04/14	(H)	RES AT 1:00 PM BARNES 124
04/04/14	(H)	Heard & Held
04/04/14	(H)	MINUTE(RES)
04/05/14	(H)	RES AT 10:00 AM BARNES 124
04/05/14	(H)	Heard & Held
04/05/14	(H)	MINUTE(RES)
04/06/14	(H)	RES AT 1:00 PM BARNES 124
04/06/14	(H)	Heard & Held
04/06/14	(H)	MINUTE(RES)
04/07/14	(H)	RES AT 1:00 PM BARNES 124
04/07/14	(H)	Heard & Held
04/07/14	(H)	MINUTE(RES)
04/08/14	(H)	RES AT 8:00 AM BARNES 124
04/08/14	(H)	FIN AT 8:30 AM HOUSE FINANCE 519

WITNESS REGISTER

MICHAEL PAWLOWSKI, Deputy Commissioner
Office of the Commissioner
Department of Revenue (DOR)
Anchorage, Alaska

POSITION STATEMENT: Answered questions on CSSB 138(FIN) am.

JOE BALASH, Commissioner
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: In regard to CSSB 138(FIN) am, provided the administration's position on proposed amendments.

CHRISTOPHER POAG, Assistant Attorney General
Labor and State Affairs Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Answered questions on CSSB 138(FIN) am.

ACTION NARRATIVE

[9:03:54 AM](#)

CO-CHAIR ERIC FEIGE called the House Resources Standing Committee meeting back to order at 9:03 a.m. Representatives Tarr, Seaton, P. Wilson, Kawasaki, Hawker, Johnson, Saddler, and Feige were present at the call back to order. [The meeting was previously recessed at 3:05 p.m. on April 7, 2014.]

SB 138-GAS PIPELINE; AGDC; OIL & GAS PROD. TAX

[9:04:03 AM](#)

CO-CHAIR FEIGE announced that the only order of business is CS FOR SENATE BILL NO. 138(FIN) am, "An Act relating to the purposes, powers, and duties of the Alaska Gasline Development Corporation; relating to an in-state natural gas pipeline, an Alaska liquefied natural gas project, and associated funds; requiring state agencies and other entities to expedite reviews and actions related to natural gas pipelines and projects; relating to the authorities and duties of the commissioner of natural resources relating to a North Slope natural gas project, oil and gas and gas only leases, and royalty gas and other gas received by the state including gas received as payment for the production tax on gas; relating to the tax on oil and gas production, on oil production, and on gas production; relating to the duties of the commissioner of revenue relating to a North Slope natural gas project and gas received as payment for tax; relating to confidential information and public record status of information provided to or in the custody of the Department of Natural Resources and the Department of Revenue; relating to apportionment factors of the Alaska Net Income Tax Act; amending the definition of gross value at the 'point of production' for gas for purposes of the oil and gas production tax; clarifying that the exploration incentive credit, the oil or gas producer education credit, and the film production tax credit may not be taken against the gas production tax paid in gas; relating to the oil or gas producer education credit; requesting the governor to establish an interim advisory board to advise the governor on municipal involvement in a North Slope natural gas project; relating to the development of a plan by the Alaska Energy Authority for developing infrastructure to deliver affordable energy to areas of the state that will not have direct access to a North Slope natural gas pipeline and a

recommendation of a funding source for energy infrastructure development; establishing the Alaska affordable energy fund; requiring the commissioner of revenue to develop a plan and suggest legislation for municipalities, regional corporations, and residents of the state to acquire ownership interests in a North Slope natural gas pipeline project; making conforming amendments; and providing for an effective date."

CO-CHAIR FEIGE said the committee would continue to work on amendments to CSSB 138(FIN) am.

9:04:25 AM

CO-CHAIR FEIGE moved to adopt Amendment 27, labeled 28-GS2806\I.A.91, [text provided at the end of this document].

REPRESENTATIVE HAWKER objected for discussion purposes.

CO-CHAIR FEIGE explained that proposed Amendment 27 combines several previous amendments. It requires the commissioner of the Department of Revenue (DOR) to report to the legislature on the full range of financing options regarding state acquisition of an ownership interest and participation in the North Slope natural gas project. He deferred to Representative Hawker to explain the additional portion of the combined amendment.

REPRESENTATIVE HAWKER explained that Amendment 27 amends proposed Section 60 of CSSB 138(FIN) am to include information on development of the plan for public participation in ownership of the pipeline project. He said the amendment merges two concerns by inserting "buyer beware" provisions into proposed Section 60. This would ensure that the public will have an opportunity to review full disclosure of all the financial risks, obligations, and burdens that the proposed gasline might entail. He wanted to ensure that all the risks are highlighted for any proposal brought forward since ownership entails risks.

CO-CHAIR FEIGE noted subsection (b) is language suggested by DOR to require an interim draft report to the legislature due the first day of the regular session of the legislature.

9:07:04 AM

REPRESENTATIVE HAWKER removed his objection.

REPRESENTATIVE TARR asked whether the administration wished to comment.

MICHAEL PAWLOWSKI, Deputy Commissioner, Office of the Commissioner, Department of Revenue, expressed his appreciation for working with the committee on this language. He said [Amendment 27] "works" for the department and includes important clarification to enhance consumer protection in the second part of the report. He said [Amendment 27] is a "good amendment."

REPRESENTATIVE TARR asked if the bill was amended to include financial briefings and reports, which will "synch up" with the [Municipal Advisory Gas Project Review Board] to ensure the reports don't have overlapping or interfering timelines.

MR. PAWLOWSKI answered no and said DOR has a good progression of reports from the [Municipal Advisory Gas Project Review Board] ranging from an interim draft to a final plan as the contracts are brought back. This amendment will provide a regular updating of information from members as the contracts and briefing occur.

[9:08:41 AM](#)

There being no further objection, Amendment 27 was adopted.

[9:09:08 AM](#)

CO-CHAIR FEIGE moved to adopt Amendment 28, labeled 28-GS2806\I.A.97, Nauman/Bullock, 4/6/14 [text provided at the end of this document].

REPRESENTATIVE HAWKER objected for the purpose of discussion.

CO-CHAIR FEIGE explained Amendment 28 combines two amendments. Beginning on page 1, line 7 [of proposed Section 57], Amendment 28 would add language that lists duties of the Oil and Gas Competitiveness Review Board, which was an element of SB 21 from the last legislative session. Amendment 28, beginning on page 2, line 16, adds a requirement for an additional report due on January 15, 2017, regarding the state's tax structure and rates on oil and gas produced south of 68 degrees North latitude or everything excluding the North Slope. He stated the purpose of Amendment 28 is to address potential concerns about Cook Inlet that will arise in about 2018.

[9:10:57 AM](#)

REPRESENTATIVE HAWKER referred to previous testimony on two amendments [28-GS2806\I.A.18, Nauman/Bullock, 4/2/14] and [28-GS2806\I.A.54, Nauman/Bullock, 4/2/14], which were merged [into Amendment 28]. He said this provides an effective way forward to ensure that other areas of the state are reviewed with an appropriate lead time and direction by the administration to provide necessary information. Thus, as [the state] reviews the convergence of tax structures that will occur in 2022, the [state] would have sufficient lead time to consider the effects and ensure the [state] doesn't compromise the revitalization accomplishments of Cook Inlet and the incentivizing of Middle Earth between now and then.

MR. PAWLOWSKI said he appreciated Representative Hawker linking back to the previous record of testimony that he believes provides guidance to the department as it supports the Oil and Gas Competitiveness Review Board in bringing back these recommendations. He offered his belief the committee held a healthy discussion and Amendment 28 reflects a good merger.

[9:12:28 AM](#)

REPRESENTATIVE SEATON referred to page 2, line 19 [of Amendment 28, sub-subparagraphs] (ii) and (iii) and the tax structure that takes into account the gross value reduction (GVR) at the point of production. He asked for clarification on whether this analysis will include all options not limited to the gross value at the point of production scenarios.

REPRESENTATIVE HAWKER answered that the point of the provisions [of Amendment 28 and proposed Section 57] was that as [the state] moves into a "SB 21 world" structured on a flat production tax of 35 percent and considers creating production incentives as appropriate through GVRs, that [sub-subparagraph (ii) would recognize the unique circumstances of each of the areas south of 68 degrees North latitude. [Sub-subparagraph (iii) specifies that the GVRs are taken into account and [under sub-subparagraph (iv) considers other incentives for oil and gas. This language would give the department complete latitude to consider other incentives, not only the GVR, in the written findings and recommendations to the Alaska State Legislature on January 15, 2017.

[9:14:42 AM](#)

REPRESENTATIVE TARR recalled the committee previously discussed unique economic circumstances and requested further clarification of unique economic circumstances.

MR. PAWLOWSKI said the aforementioned dialogue was multi-faceted. At the primary level, DOR first described how the department and the Oil and Gas Competitiveness Review Board needs to examine clearly the in-state energy role that Middle Earth and the Cook Inlet Basin play. Secondly, there are very different circumstances within terms of access to infrastructure underlying each of those producing regions. For example, Middle Earth has numerous basins that will need to be reviewed, with each one presenting different challenges and opportunities to support development in those regions. However, as was discussed the other day, it is really those two combinations that need to be tailored for each specific place.

[9:16:12 AM](#)

REPRESENTATIVE KAWASAKI referred to [sub-subparagraph] (ii) that highlights the unique economic circumstances for each oil and gas producing area south of 68 degrees North latitude. He related his understanding that these are not currently oil and gas producing areas. He asked for clarification on whether that recognizes the potential oil and gas areas.

CO-CHAIR FEIGE pointed to Cook Inlet.

REPRESENTATIVE KAWASAKI acknowledged work is being performed in the Middle Earth such as in the Doyon Basin and near Copper River Basin.

MR. PAWLOWSKI responded that the department hopes production will occur given all the work by this committee and members. He offered his belief the key is that those areas are subject to the oil and gas production tax so [Amendment 28] is designed around that concept. The department interprets it to apply to all of them, he said.

[9:17:14 AM](#)

REPRESENTATIVE HAWKER removed his objection to Amendment 28. There being no further objection, Amendment 28 was adopted.

[9:17:44 AM](#)

REPRESENTATIVE TARR moved to adopt Amendment 29, labeled 28-GS2806\I.A.95, Bullock, 4/6/14, which read as follows:

Page 18, following line 17:

Insert a new bill section to read:

"* **Sec. 19.** AS 38.05.182(a) is amended to read:

(a) Any royalty provided for in AS 38.05.135 - 38.05.181 may be taken in kind rather than in money if the commissioner determines that the taking in kind would be in the best interest of the state. However, royalties on oil and gas shall be taken in kind unless the commissioner determines that the taking in money would be in the best interest of the state. **It is not in the best interest of the state to take royalty on gas in money from a lessee transporting gas in the North Slope natural gas project if the lessee has committed to dispose of or market the state's royalty gas taken in kind on the same terms and conditions as the lessee markets or disposes of the lessee's gas.**"

Renumber the following bill sections accordingly.

Page 21, line 16:

Delete "sec. 27"

Insert "sec. 28"

Page 25, line 9:

Delete "sec. 30"

Insert "sec. 31"

Page 31, line 18:

Delete "sec. 37"

Insert "sec. 38"

Page 53, lines 24 - 25:

Delete "sec. 23"

Insert "sec. 24"

Page 56, line 6:

Delete "23 - 27, 29, 30, 37, 39, and 55 - 61"

Insert "24 - 28, 30, 31, 38, 40, and 56 - 62"

Page 56, line 8:

Delete "Section 38"

Insert "Section 39"

Page 56, line 9:

Delete "secs. 62 and 63"
Insert "secs. 63 and 64"

CO-CHAIR SADDLER objected [for discussion purposes].

[9:17:55 AM](#)

REPRESENTATIVE TARR explained one concept brought up by Roger Marks, [consultant to the Legislative Budget & Audit (LB&A) committee], was characterized as the most favored nation. In the event the state contracts with one of the project sponsors to market and sell the state's gas, the state would want the producers to sell its gas at the same price as the producers sell their gas. She reported that she has worked with the department on the language in Amendment 29 and offered her belief that the department supports it. Amendment 29, which falls in the bill section for royalty gas - proposed Section 19, AS 38.05.182(a), provides a trigger on the commissioner's finding that taking royalty-in-kind (RIK) would be in the state's best interest. She pointed out that the language is written in a double negative. The amendment states that it is not in the best interest of the state to take the royalty on gas in value if the producer has committed to dispose or market the gas on the same terms and conditions as their own. She acknowledged that the double negative creates some difficulty in understanding the amendment, but that is conceptually what Amendment 29 does and it falls in the section of the bill the administration supports.

[9:19:16 AM](#)

REPRESENTATIVE HAWKER concurred the double negative creates an affirmative; however, this affirmative also creates one case in which an affirmative exists. That affirmative is that royalty-in-kind can be used "if" the lessee agrees to dispose of the state's royalty gas taken in-kind on the same terms and conditions as the producer markets its own gas. However, as written, this does not preclude the administration from making other decisions. This would carve out one specific case that makes an absolute certainty on the same terms and conditions; however, this would not necessarily preclude reaching the same conclusion through other means.

REPRESENTATIVE TARR agreed that is her understanding.

[9:20:22 AM](#)

JOE BALASH, Commissioner, Department of Natural Resources (DNR), said Representative Tarr has related the concerns and positions on Amendment 29 accurately. He said the concept is consistent with the agreement in the Heads of Agreement (HOA) with the other parties. He acknowledged that it has been a challenge to engage each of the other parties on this particular topic since everyone "freaks out" when pricing and marketing arrangements are broached. He predicted that if Amendment 29 was adopted by the committee he would expect further discussion with all the parties, which might necessitate further refining the language in the next committee of referral. He offered to keep members apprised. He amplified Representative Hawker's remarks by emphasizing the importance of maintaining the option. This needs to be a decision that the department makes when deciding whether or not to rely on the terms and conditions provided by the lessees. He highlighted that there may be important circumstances under which the state may wish to pursue an arrangement independent of the producers and it would be a disservice if the state does not have the necessary flexibility.

CO-CHAIR FEIGE asked whether Amendment 29 gives the department the necessary flexibility.

COMMISSIONER BALASH said the administration believes it does.

[9:22:22 AM](#)

REPRESENTATIVE P. WILSON asked whether the committee needed to do anything further.

COMMISSIONER BALASH said his attempt to convey that conversation outside of committee with each producer in the HOA, specifically ExxonMobil Corporation, BP Exploration Alaska, and ConocoPhillips, has been a little bit of a "moving target." He explained the committee first discussed [proposed amendment] "A.61" on Friday and that [proposed amendment] "A.95" was just distributed yesterday. He acknowledged that based on his conversations with each company, the companies agree with the concept, but the review process takes time to work through. Although the language may need to be "wordsmithed" a little, the concept is sound. It is consistent with the agreement that everyone has come to understand with regard to each individual lessee working with the state - individually, with no collusion.

[9:23:55 AM](#)

CO-CHAIR FEIGE requested that the commissioner keep the committee informed of new developments since his preference is to address the language before it moves out of committee

COMMISSIONER BALASH agreed he would do so.

REPRESENTATIVE TARR commented on the review process. She indicated that originally she worked with Legislative Legal and Research Services, but the amendment was redrafted after working with the administration. She identified this as the "finessing" process. She agreed that if the language needs a little more work that it could also be accomplished.

[9:24:44 AM](#)

CO-CHAIR SADDLER removed his objection. There being no further objection, Amendment 29 was adopted.

[9:25:23 AM](#)

REPRESENTATIVE HAWKER moved to adopt Amendment 30, labeled 28-GS2806\I.A.98, Bullock, 4/6/14 [text provided at the end of this document].

CO-CHAIR SADDLER objected for discussion purposes.

REPRESENTATIVE HAWKER related that Amendment 30 goes back to the early discussions on CSSB 138(FIN) am, in which the department acknowledged the apportioning of the state's corporate income tax. He explained that Amendment 30 would make certain the tax related to sales factors would need to be "tuned up." Amendment 30 would make certain that the "tax as gas" (TAG) is excluded from the sales factor when taken in conjunction - necessarily included in the extraction factor - but it would not include [TAG] in the sales factor. The second part of Amendment 30 would clarify that inter-company sales and transfers are not part of a tariff and thereby not part of a sale.

[9:27:44 AM](#)

MR. PALOWSKI complimented Representative Hawker's explanation of the background, saying this has been worked on through several iterations of the bill. Included in the original bill, he explained, was the concept that "tax as gas" (TAG) needs to be included in the extraction factor for calculating corporate income tax, which includes the business activity conducted in Alaska and also ensures that it is accurately reflected. He

referred to page 1, line 15, sub-subparagraph (ii), of Amendment 30 which provides that the department will not construct or deem as sales the TAG delivered to the state; this gas is being given to the state. Thus, Amendment 30 would clarify that neither an auditor nor DOR can later consider the TAG a sale; it is a payment of corporate income tax. This clarifies how [TAG] will be treated in the sales factor since it was initially included in the extraction factor. Sub-subparagraph (iii) provides that fees on an intercompany basis are not subject as a sale, but a regulated tariff is; however, there are conforming changes on page 2, lines [9]-15 of Amendment 30. Sales factors include a numerator and denominator and the language is consistent in both. He said, "It's really meant to clarify as the result of the specific designation of the tax gas in the extraction factor, the limited inclusion in our apportionment factors for corporate income tax."

[9:29:55 AM](#)

REPRESENTATIVE SEATON asked whether this affects the tariff charged by the operator of the state's 25 percent [ownership] of the pipeline or applies strictly to the corporate tax of the parties producing gas.

MR. PAWLOWSKI replied this relates specifically to the corporate income tax of the parties producing gas or their affiliates within the midstream. It would clarify, consistent with the way it is treated today. Thus, DOR would not change the way the state conducts corporate income tax; however, it becomes necessary since the previous section specifically called out that the state is including TAG in the extraction factor, which would increase corporate income tax liability to the state. The state needs to be careful about "belts, suspenders, boots, and waders" for the other portions in the apportionment factor to protect against changes in interpretation down the road.

[9:31:06 AM](#)

REPRESENTATIVE KAWASAKI, regarding [sub-subparagraph] (ii), requested discussion of the definitions of "constructive sales," "deemed sales," and "natural gas delivered to the state."

MR. PAWLOWSKI answered the "natural gas delivered to the state" as payment of tax is the TAG or the gas the producer pays to the state. "Constructive" or "deemed" is a term of art in the corporate income tax world in which the state would look at the transfer of that gas to the state as a payment. This means the

producer who paid tax with that gas is not actually selling the gas because the value would then be included in their sales factor. However, it is not a sale, it is a transfer as a payment of tax to the state. He characterized Amendment 30 as a clarifying amendment.

[9:32:06 AM](#)

CO-CHAIR SADDLER removed his objection. There being no further objection, Amendment 30 was adopted.

The committee took a brief at-ease.

[9:35:43 AM](#)

REPRESENTATIVE SEATON moved to adopt Amendment 31, labeled 28-GS2806\I.A.50, Bullock, 4/2/14, which read as follows:

Page 15, following line 30:

Insert a new bill section to read:

"* **Sec. 16.** AS 38.05 is amended by adding a new section to read:

Sec. 38.05.023. Limitation on a provision related to a payment in lieu of property tax. An agreement or contract associated with a North Slope natural gas project may not authorize a payment in lieu of a property tax to a municipality before a final investment decision is made for the project."

Re-number the following bill sections accordingly.

Page 17, line 24:

Delete "sec. 17"

Insert "sec. 18"

Page 21, line 16:

Delete "sec. 27"

Insert "sec. 28"

Page 25, line 9:

Delete "sec. 30"

Insert "sec. 31"

Page 31, line 18:

Delete "sec. 37"

Insert "sec. 38"

Page 53, lines 24 - 25:

Delete "sec. 23"

Insert "sec. 24"

Page 56, line 6:

Delete "16, 17, 23 - 27, 29, 30, 37, 39, and 55 - 61"

Insert "16 - 18, 24 - 28, 30, 31, 38, 40, and 56 - 62"

Page 56, line 8:

Delete "Section 38"

Insert "Section 39"

Page 56, line 9:

Delete "secs. 62 and 63"

Insert "secs. 63 and 64"

CO-CHAIR SADDLER objected [for discussion purposes].

[9:35:57 AM](#)

REPRESENTATIVE SEATON explained Amendment 31. Municipalities have indicated that the payment in lieu of tax (PILT) or the reclassification restructure of property tax should not go into effect unless the final investment decision (FID) is made. Otherwise a change in taxes may impact municipalities although the project may not be finished. Amendment 31 would ensure that PILT would be in place once the FID is made and the project moves forward.

[9:37:09 AM](#)

REPRESENTATIVE HAWKER appreciated the intent [of Amendment 31], but expressed concern that it would constrain the negotiation process with an artificial constraint that may or may not be appropriate for the municipalities. He suggested that a PILT will necessarily be the result of a negotiation among the affected communities and the state, noting any PILT must come back to the legislature for approval as part of this process. He asked for the reason to constrain the negotiating process when the [legislature] is holding "the absolute hammer" over any outcome.

REPRESENTATIVE SEATON recalled this process was also taken under the Alaska Stranded Gas Act Development Act (ASGDA), such that if the contract was approved and the project did not go forward,

it would have changed the calculations and method of payment on municipal property taxes without the project moving forward. He reiterated that this ensures that what is negotiated is negotiated on the basis of the project and if the project does not happen, the municipal property tax is not being changed based on something that does not occur.

[9:38:54 AM](#)

MR. PAWLOWSKI viewed the implication of this amendment - that the state would have a contract that would affect municipal taxes - as something that makes DOR very uncomfortable. A deeper concern, he said, is that Amendment 31 could be construed to mean the administration has the power to authorize a PILT in a contract. As DOR previously has testified, the department does not believe it has that power. According to the Alaska Constitution changes to municipal taxation are provided by law. Thus, it is a more fundamental implication that someone might believe that DOR has the power to make those changes. The property tax changes for the process will go through the consensus working group with the municipalities and municipalities will come back to the legislature for statutory changes based on the consensus recommendation from the group. Only then would there be the opportunity to authorize something related to a municipality in its property tax. The idea that the state, through contractual changes, could change municipal tax rates is counter to the Alaska Constitution.

[9:40:24 AM](#)

REPRESENTATIVE SEATON argued that Legislative Legal and Research Services does not agree that Amendment 31 would authorize DOR to change taxes. That is a separate issue that is not raised here. {Amendment 31} is a prohibition on coming back to the legislature with a contract that would do this; however, [the amendment] doesn't say that [DOR] can contract property taxes. The restriction or "sideboard" does not mean everything outside the "sideboard" is appropriate. He recalled that Mr. Don Bullock testified several days ago to that effect on a different amendment. He indicated it seems clear that the legislature wants to receive a contract without the flaw that the Alaska Stranded Gas Development Act had if the [legislature] approves the contract. The [legislature] sets taxes on oil and gas and the state allows municipalities to take a portion of that tax; however, it is not directly the municipalities that do so, but [the legislature] that does so.

[9:42:05 AM](#)

REPRESENTATIVE KAWASAKI said Amendment 31 addresses the concern he had that taxes could be locked in and municipalities might get shut out. He related his understanding that it is not the administration's intent to do so. He referred to AS 30.50.023, which bumps the discussions with the municipalities to the top, such that the state agrees with municipalities on how taxation should occur well before the contract is set. He said he prefers it that way, but is unsure whether it is proper, but believes it would protect municipalities.

[9:43:01 AM](#)

MR. PAWLOWSKI said he reads the language differently. He acknowledged he could confer with the Department of Law on this. He referred to page 1, lines 5-7, of the amendment which state in part, "or contract associated with a North Slope natural gas project may not authorize a payment in lieu of a property tax to a municipality before a final investment decision is made for the project." He viewed the implication as being that if the department waits until the FID is made, then does the department in a contract have the authorization to do a PILT to a municipality? He suggested that this would be "bumping" actually later in the process the engagement with the municipality. The department has tried to "limit the table up front" through an administrative order and recognize clearly and consistently on the record that authorizing a PILT to a municipality takes a change in law. Thus, it should not be implied that it can be done through a contract.

[9:44:03 AM](#)

CO-CHAIR FEIGE asked for clarification regarding at what point in the process that a change in law would be required.

MR. PAWLOWSKI replied [the administration's] intent is to work with the [Municipal Advisory Gas Project Review Board] established by administrative order. He said, "[DOR] would be bringing changes or recommendations from that group to changes to the property tax back to the next legislative session in 2015 prior to the finalization of contracts."

[9:44:37 AM](#)

REPRESENTATIVE HAWKER maintained that what happened in ASGDA is totally and completely irrelevant to this conversation and any

contract that would be negotiated for a payment in lieu of taxes (PILT) proposal and brought forward to the legislature. He supposed that work is done with the Municipal Advisory Gas Project Review Board. He acknowledged that the [legislature] views final investment decision (FID) occurring in about 2019 in the most optimistic light. As this project reaches the end of Front-End Engineering and Design (FEED) and is going to FID, the municipalities will want the PILT revenue to help them. He offered his belief that if he was negotiating on behalf of the municipalities, he would be asking for PILT that anticipates the amount needed, with some PILT payments up-front that would likely predate the FEED event. Thus, this [amendment] would be telling the municipalities, "Sorry, guys. You can't do that." He said, "And I'm looking up and down that pipeline looking at those small communities. I'm looking at the bigger communities as well. You're telling them that you don't get a shot at anything until the boots are on the ground and the project's begun. In fact, if I was them I'd be really disappointed in the legislature shutting out that option to me."

[9:46:27 AM](#)

REPRESENTATIVE SEATON offered his belief that Amendment 31 does not address impact payments since those are before construction starts. Amendment 31 would address PILT for property taxes and not impact payments. The question is whether the contract will come back to [the legislature] with sideboards so the property taxes do not change unless the project moves forward or if something will come back to the legislature since it is the tax setting body that will ensure that the property tax structure is not being changed before the project is built and gas is flowing, but until the project is sanctioned and the legislature knows the project is moving forward. He offered his belief that this is the appropriate time for the legislature to have a new tax structure sanctioned once the project is going forward.

[9:47:37 AM](#)

REPRESENTATIVE KAWASAKI requested the Department of Law testify.

CHRISTOPHER POAG, Assistant Attorney General, Labor and State Affairs Section, Civil Division, Department of Law (DOL), agreed with Mr. Pawlowski that the Alaska Constitution vests the power to tax and the legislature has allowed the power to tax be shared with only one other group of entities, which is municipal entities. He said Mr. Pawlowski [DOR] does not have the power to set taxes through contract. The inference from the statute,

however, is that after a FID is made, [DOR] has that power. He suggested that Mr. Bullock's testimony was that the power to tax may not be surrendered. Thus, the DOL would read the statute in light of the Alaska Constitution to say that it could not create that power, but the inference drawn from the language is that it does. He said his perspective, which is consistent with Mr. Bullock's testimony, is that the power to tax cannot be contracted by Mr. Pawlowski. It will need to be set by [the legislature] with the municipal entities involved.

9:49:00 AM

REPRESENTATIVE SEATON argued that the [legislature] will get a contract back containing the tax terms in it and will approve it or not. He argued that DOR should not be able to bring the [legislature] a contract if the legislature would follow the DOL's advice since something within the contract will be related to taxes. Amendment 31 simply says that DOR cannot propose to the legislature tax terms that indicate the property taxes are being changed on the gas project prior to project sanction. In any case, DOR will come back to the legislature with a proposed contract that is negotiated with [the administration], not yet approved by the legislature, containing tax provisions. He reiterated that Amendment 31 just indicates that one of the tax terms cannot be that the property tax is changing now, whether the state gets a project or not.

9:50:15 AM

MR. PAWLOWSKI stated he appreciates the intent [of Amendment 31]; however, the point is not that the contract may or may not include tax terms. Those tax terms will be enacted by the legislature and not be authorized by any administration. The DOR would bring the terms to the legislature, just as the administration is doing in the bill in terms of setting "tax as gas" terms. The terms must be voted on by the legislature prior to integration into a contract. He offered his belief that DOR would be referencing terms enacted by the legislature. He said he views the implication that any contract brought back should not be effective unless a project is built as being different than the implication in the way this language is written, which is what makes him uncomfortable based on the advice from his legal counsel. "I think that's a fair concept that makes a good deal of sense," he said. "It's just based on my conversation with my legal counsel; this implication makes us uncomfortable."

REPRESENTATIVE SEATON responded that Legislative Legal and Research Services draws up the statutes and this is the way the legal counsel drew up the statutes, such that the [legislature] was restricting the terms that could be proposed back to the legislature, that the terms could not go into effect until the project was actually sanctioned. The legislative legal counsel testified the other day that authorizing or taxing could not be done; however, that is not what Amendment 31 does, even though DOR or DOL might interpret it that way. Mr. Bullock was very specific that "may not authorize" does not say that the department is authorized. It simply limits what [DOR] could propose in a contract to the [legislature]. He acknowledged it is possible that the attorneys disagree, but this amendment is Legislative Legal's way of saying that within the statutory framework, this is the language to accomplish the intent.

[9:52:52 AM](#)

REPRESENTATIVE KAWASAKI, to provide an amicable resolution, inquired about the possibility of adding some severability language into the corpus of Amendment 31 that makes it clear that the legislature is not giving away taxing authority to the administration.

[9:53:36 AM](#)

REPRESENTATIVE SEATON moved to adopt Conceptual Amendment 1 to Amendment 31, to add on page 1, line 6, after "not" and before "authorize" to insert, "propose to". The language would then read, "An agreement or contract associated with a North Slope natural gas project may not propose to authorize a payment in lieu of a property tax to a municipality before a final investment decision is made for the project." Thus, the contract may not propose to authorize would mean that there is not any ability to authorize, but the proposal would come back to the legislature. If this is acceptable, it could give the legislature comfort to go forward.

REPRESENTATIVE P. WILSON objected to Conceptual Amendment 1 to Amendment 31. She suggested this change still states that the administration cannot propose [the PILT] until the FID, but the [municipalities] want to [institute PILT] before then.

MR. PAWLOWSKI said it is a bit of a "chicken and egg" situation since it comes back to the concern expressed by Representative Hawker that impact payments are one side of a PILT arrangement. It is not that they are divorced from each other.

Substantively, the committee may have that concern, but the department and committee are having a little "back and forth" on some of the language on the power of the executive branch concept that causes DOR some concern. He did not disagree with the substance of the intent that Representative Seaton is trying to describe, outside of the issue that Representatives Hawker and P. Wilson have just raised, which is the order of the "chicken and egg" agreements.

[9:56:25 AM](#)

REPRESENTATIVE P. WILSON asked whether the agreements or discussion should happen prior to the 2015 legislative session.

CO-CHAIR SADDLER said he does not think "proposed to" carries with it the implication that the department has the authority.

REPRESENTATIVE TARR regarding Conceptual Amendment 1, referred to page 1, line 6, saying what is being considered is that the "project may not propose to authorize a payment in lieu of a property tax to a municipality". She asked whether the language "take effect before a final investment decision is made for the project," could accomplish that no changes would be made to the method for property tax calculations in the event a project does not happen to avoid recalculating and calibrating the taxes. She further asked whether inserting "take effect" would not delay when negotiations can take place, but would change when the actual tax would take place.

[9:58:39 AM](#)

CO-CHAIR FEIGE asked to first consider Conceptual Amendment 1 to Amendment 31.

REPRESENTATIVE P. WILSON maintained her objection.

REPRESENTATIVE SEATON withdrew Conceptual Amendment 1.

[9:59:16 AM](#)

CO-CHAIR FEIGE drew attention to [previously adopted] Amendment 15, which takes the duties and responsibilities laid out in Administrative Order 269 and inserts them into statute verbatim. He referred to line 12 of the amendment. He said it was the second duty assigned to the interim advisory board. It reads, "Provide recommendations for changes to the oil and gas exploration production and pipeline transportation property

taxes." He stated that the committee has asked the Municipal Advisory Gas Project Review Board to discuss and report its recommendations to the legislature. He said he understands the intent of Amendment 31. The legislature is still the taxing authority and must write the law, but said he thinks this has been addressed.

10:00:59 AM

REPRESENTATIVE SEATON withdrew Amendment 31. He offered his belief that, given the discussion, this is an issue that will be well considered.

[End of discussion--bill was held over]

Following is the text for Amendments 27, 28, and 30:

Amendment 27, labeled 28-GS2806\I.A.91, Nauman/Bullock, 4/6/14

Page 2, line 5, following "credit;":

Insert "**requiring the commissioner of revenue to provide a report to the legislature on financing options for state ownership and participation in a North Slope natural gas project;**"

Page 54, line 23:

Delete ". (a)"

Insert "; IDENTIFICATION OF AND REPORT ON FINANCING OPTIONS FOR STATE OWNERSHIP AND PARTICIPATION IN A NORTH SLOPE NATURAL GAS PROJECT. (a) The commissioner of revenue shall identify and report to the legislature on a range of financing options for state acquisition of an ownership interest and participation in a North Slope natural gas project. The report must include a description of the risk associated with each option and the effect of each option on the bonding capacity and bond rating of the state. In this subsection, "North Slope natural gas project" has the meaning given in AS 38.05.965, as amended by sec. 23 of this Act.

(b) The commissioner shall make an interim draft of the report described in (a) of this section available to the legislature on the first day of the First Regular Session of the Twenty-Ninth Alaska State Legislature, and a final report at the time the commissioner of natural resources submits the first agreement or contract to the legislature for approval

under AS 38.05.020(b)(11), enacted by sec. 14 of this Act."

Reletter the following subsections accordingly.

Page 54, line 28:

Delete "of"

Insert "and analysis by"

Page 55, line 21:

Delete "and"

Page 55, line 23, following "interest":

Insert ";

(8) whether the ownership interest held by a municipality, regional corporation, or resident would be subject to project assessments;

(9) how cash calls for the project and the expansion of the project would be managed;

(10) the income tax consequences to the holder of an ownership interest, including the timing and recognition of income related to the ownership interest, including differentiating income related to the ownership interest from the receipt of dividends or other distributions;

(11) the risk that the receipt of a benefit from the project by a person other than the state would make income received from the project by the state subject to federal income tax; and

(12) constitutional issues that may be implicated by restricting ownership interests under the plan to residents and municipalities in the state"

Page 55, following line 24:

Insert a new paragraph to read:

"(1) "municipality" has the meaning given in AS 01.10.060;"

Renumber the following paragraphs accordingly.

Amendment 28, labeled 28-GS2806\I.A.97, Nauman/Bullock, 4/6/14

Page 2, line 14, following "**project;**":

Insert "**relating to the duties of the Oil and Gas Competitiveness Review Board;**"

Page 53, following line 13:

Insert a new bill section to read:

"* **Sec. 57.** AS 43.98.050 is amended to read:

Sec. 43.98.050. Duties. The duties of the board include the following:

(1) establish and maintain a salient collection of information related to oil and gas exploration, development, and production in the state and related to tax structures, rates, and credits in other regions with oil and gas resources;

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

(3) 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;

(4) 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;

(5) 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 confidential information;

(6) make written findings and recommendations to the Alaska State Legislature before

(A) January 31, 2015, or as soon thereafter as practicable, regarding

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

(ii) the status of the oil and gas industry labor pool in the state and the effectiveness of workforce development efforts by the state;

(iii) the status of the oil-and-gas-related infrastructure of the state, including a description of infrastructure deficiencies; and

(iv) the competitiveness of the state's fiscal oil and gas tax regime when compared to other regions of the world;

(B) January 15, 2017, regarding

(i) the state's tax structure and rates on oil and gas produced south of 68 degrees North latitude;

(ii) a tax structure that takes into account the unique economic circumstances for each oil and gas producing area south of 68 degrees North latitude;

(iii) a reduction in the gross value at the point of production for oil and gas produced south of 68 degrees North latitude that is similar to the reduction in gross value at the point of production in AS 43.55.160(f) and (g);

(iv) other incentives for oil and gas production south of 68 degrees North latitude;

(C) January 31, 2021, or as soon thereafter as practicable, regarding

(i) 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;

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

(iii) a review of the current effectiveness and future value of any provisions of the state's oil and gas tax laws that are expiring in the next five years."

Renumber the following bill sections accordingly.

Page 56, line 6:

Delete "61"

Insert "62"

Page 56, line 9:

Delete "secs. 62 and 63"

Insert "secs. 63 and 64"

Amendment 30, labeled 28-GS2806\I.A.98, Nauman/Bullock, 4/6/14

Page 26, following line 24:

Insert a new bill section to read:

"* **Sec. 33.** AS 43.20.144(d) is amended to read:

(d) The sales factor of a taxpayer subject to this section is a fraction,

(1) the numerator of which is the sum of the following for the tax period:

(A) the tariffs allowed and received by or for the taxpayer for transporting oil or gas by pipeline in this state, regardless of whether the tariffs are paid by third parties or by entities within the taxpayer's consolidated business; and

(B) the total sales of the taxpayer in this state, determined in accordance with AS 43.19 (Multistate Tax Compact), but excluding

(i) those sales already included in the tariffs described in (A) of this paragraph;

(ii) constructive sales or deemed sales of natural gas delivered to the state as payment of tax under an election made by the taxpayer under AS 43.55.014;

(iii) fees, allowed and received, that are paid between entities within the consolidated business of the taxpayer for transporting the taxpayer's natural gas; and

(2) the denominator of which is the sum of the following for the tax period:

(A) the tariffs allowed and received by or for the taxpayer's consolidated business for transporting oil or gas by pipeline everywhere, regardless of whether the tariffs are paid by third parties or by entities within the taxpayer's consolidated business; and

(B) the total sales of the taxpayer's consolidated business everywhere, determined in accordance with AS 43.19 (Multistate Tax Compact), but excluding

(i) those sales already included in the tariffs described in (A) of this paragraph;

(ii) constructive sales or deemed sales of natural gas delivered to the state as payment of tax under an election made by the taxpayer under AS 43.55.014 or delivered in another tax jurisdiction under a law comparable to AS 43.55.014;

(iii) fees, allowed and received, that are paid between entities within the consolidated business of the taxpayer for transporting the taxpayer's natural gas."

Renumber the following bill sections accordingly.

Page 31, line 18:

Delete "sec. 37"

Insert "sec. 38"

Page 56, line 6:

Delete "37, 39, and 55 - 61"

Insert "38, 40, and 56 - 62"

Page 56, line 8:

Delete "Section 38"

Insert "Section 39"

Page 56, line 9:

Delete "secs. 62 and 63"

Insert "secs. 63 and 64"

[CSSB 138(FIN) am was held over.]

[10:01:32 AM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 10:02 p.m.