

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 31, 2016

1:34 p.m.

MEMBERS PRESENT

Representative Benjamin Nageak, Co-Chair
Representative David Talerico, Co-Chair
Representative Bob Herron
Representative Craig Johnson
Representative Paul Seaton
Representative Andy Josephson
Representative Geran Tarr
Representative Mike Chenault (alternate)

MEMBERS ABSENT

Representative Mike Hawker, Vice Chair
Representative Kurt Olson

COMMITTEE CALENDAR

HOUSE BILL NO. 253

"An Act requiring the electronic filing of a tax return or report with the Department of Revenue; establishing a civil penalty for failure to electronically file a return or report; relating to exemptions from the mining license tax; relating to the mining license tax rate; relating to mining license application, renewal, and fees; and providing for an effective date."

- MOVED CSHB 253(RES) OUT OF COMMITTEE

HOUSE BILL NO. 286

"An Act relating to sport fishing, hunting, or trapping licenses, tags, or permits; relating to penalties for certain sport fishing, hunting, and trapping license violations; relating to restrictions on the issuance of sport fishing, hunting, and trapping licenses; creating violations and amending fines and restitution for certain fish and game offenses; relating to commercial fishing violations; allowing lost federal matching funds from the Pittman - Robertson, Dingell - Johnson/Wallop - Breaux programs to be included in an order of restitution; adding a definition of 'electronic form'; amending

Rule 5(a)(4), Alaska Rules of Minor Offense Procedure; and providing for an effective date."

- MOVED CSHB 286(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 253

SHORT TITLE: ELCTRNC TAX RETURN;MINING LIC. TAX & FEES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/19/16	(H)	READ THE FIRST TIME - REFERRALS
01/19/16	(H)	RES, FIN
02/15/16	(H)	RES AT 1:00 PM BARNES 124
02/15/16	(H)	Heard & Held
02/15/16	(H)	MINUTE(RES)
02/17/16	(H)	RES AT 1:00 PM BARNES 124
02/17/16	(H)	Heard & Held
02/17/16	(H)	MINUTE(RES)
02/19/16	(H)	RES AT 1:00 PM BARNES 124
02/19/16	(H)	Heard & Held
02/19/16	(H)	MINUTE(RES)
02/23/16	(H)	RES AT 1:00 PM BARNES 124
02/23/16	(H)	Heard & Held
02/23/16	(H)	MINUTE(RES)
02/24/16	(H)	RES AT 8:30 AM BARNES 124
02/24/16	(H)	Heard & Held
02/24/16	(H)	MINUTE(RES)
03/28/16	(H)	RES AT 1:00 PM BARNES 124
03/28/16	(H)	Heard & Held
03/28/16	(H)	MINUTE(RES)
03/30/16	(H)	RES AT 1:00 PM BARNES 124
03/30/16	(H)	Heard & Held
03/30/16	(H)	MINUTE(RES)
03/31/16	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 286

SHORT TITLE: FISH & GAME: OFFENSES;LICENSES;PENALTIES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/29/16	(H)	READ THE FIRST TIME - REFERRALS
01/29/16	(H)	RES, JUD
03/21/16	(H)	RES AT 1:00 PM BARNES 124
03/21/16	(H)	Heard & Held
03/21/16	(H)	MINUTE(RES)
03/30/16	(H)	RES AT 1:00 PM BARNES 124
03/30/16	(H)	Scheduled but Not Heard

WITNESS REGISTER

BRANDON SPANOS, Deputy Director

Tax Division

Department of Revenue (DOR)

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 253, answered questions related to amendments.

ED FOGELS, Deputy Commissioner

Office of the Commissioner

Department of Natural Resources (DNR)

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 253, answered questions related to amendments.

KEVIN BROOKS, Deputy Commissioner

Office of the Commissioner

Alaska Department of Fish & Game (ADFG)

Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 286, on behalf of the governor, reviewed Version E.

AARON PETERSON, Assistant Attorney General

Criminal Division

Department of Law (DOL)

Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 286, answered questions related to Version E.

BRUCE DALE, Director

Division of Wildlife Conservation

Alaska Department of Fish & Game (ADF&G)

Palmer, Alaska

POSITION STATEMENT: During the hearing of HB 286, on behalf of the governor, answered questions related to Version E.

AL BARRETTE

Fairbanks, Alaska

POSITION STATEMENT: During the hearing of HB 286, suggested potential amendments.

ACTION NARRATIVE

[1:34:30 PM](#)

CO-CHAIR DAVID TALERICO called the House Resources Standing Committee meeting back to order at 1:34 p.m. [from recess at 3:00 p.m. on 3/30/16]. Representatives Seaton, Josephson, Tarr, Herron, Johnson, Nageak, and Talerico were present at the call to order. Representative Chenault (alternate) arrived as the meeting was in progress.

HB 253-ELCTRNC TAX RETURN;MINING LIC. TAX & FEES

[1:35:32 PM](#)

CO-CHAIR TALERICO announced that the first order of business HOUSE BILL NO. 253, "An Act requiring the electronic filing of a tax return or report with the Department of Revenue; establishing a civil penalty for failure to electronically file a return or report; relating to exemptions from the mining license tax; relating to the mining license tax rate; relating to mining license application, renewal, and fees; and providing for an effective date." [Before the committee was the proposed committee substitute (CS) for HB 253, Version 29-GH2924\N, Nauman, 3/17/16, adopted as the working document on 3/28/16.]

CO-CHAIR TALERICO advised that the committee will continue its consideration of amendments to HB 253, Version N.

[1:36:00 PM](#)

REPRESENTATIVE JOSEPHSON moved to adopt Amendment 10, labeled 29-GH2924\N.4, Nauman, 3/29/16, which read:

Page 1, line 2, following "**fees;**":

Insert "**relating to the computation of depletion for purposes of the mining license tax;**"

Page 2, following line 4:

Insert a new bill section to read:

"* **Sec. 3.** AS 43.65.010(e) is repealed and reenacted to read:

(e) The allowance for depletion shall be computed and deducted on the cost depletion basis under 26 U.S.C. 612 (Internal Revenue Code)."

Renumber the following bill sections accordingly.

Page 2, following line 21:

Insert a new subsection to read:

"(c) The change made by the repeal and reenactment of AS 43.65.010(e) by sec. 3 of this Act applies to a tax year beginning on or after the effective date of sec. 3 of this Act."

Page 2, line 28:

Delete "Section 6"

Insert "Section 7"

Page 2, line 29:

Delete "sec. 7"

Insert "sec. 8"

REPRESENTATIVE HERRON objected for discussion purposes.

[1:36:15 PM](#)

REPRESENTATIVE JOSEPHSON explained that one element of Amendment 10 would take the depletion allowance and change it to only include a cost, not percent depletion. He paraphrased a portion of the committee's hearing minutes of 2/17/16, page 14, wherein Mr. Spanos indicated that the amount for percentage depletion can actually exceed actual costs and called the depletion allowance its own line item expense. Representative Josephson then recalled that the committee's substitute for HB 247 stopped gross value reduction (GVR) and net operating loss from being combined to create a loss greater than the actual loss. Thus, one element of the amendment to only include cost depletion, not percentage depletion. He further recalled the department saying it is complicated when it has returns where there is that switch back and forth. Currently, the percentage depletion allowance allows the producer to reduce gross income by 15 percent for metal mines and a calculation of net income. Additionally, mining companies may reduce gross income by actual cost depletion. While the amendment would dispense with a percentage depletion, he noted, there would still be cost depletion. Under this regime it is not hard for companies to inflate expenses, not deliberately but there is some concern because just as the state is trying to contain costs as an institution, the companies are containing and reducing costs. Companies can inflate expenses or export revenue to report less net income, using the depletion allowance the cost of these resources is being expensed at far above the actual costs in some instances. Although the concept of depletion allowance is consistent with the mining industry and part of the mining culture, it should be

changed so that there would only be cost depletion and not percentage depletion, and that is why he offers this amendment.

[1:39:34 PM](#)

BRANDON SPANOS, Deputy Director, Tax Division, Department of Revenue, spoke at Co-Chair Talerico's request. He said there are two methods of depletion in statute. Current statute reads that a company must use percentage depletion unless cost depletion exceeds percentage depletion and then the company must use cost depletion. So basically the statute is saying that percentage depletion is the standard for the expense against the Alaska Mining License Tax, but it allows for the generic cost depletion method in the case that that is a greater expense for the company in that year. That mimics the federal depletion which has similar language, although the reasons are different for federal purposes; it has to do with selling an asset and the capital gain recapture - making that part of ordinary income rather than capital income. The federal statutes read that when the asset is sold, there must be a calculation for either allowed or allowable depletion; does not really apply in mining license tax but the department did adopt similar language for the depletion calculation.

MR. SPANOS confirmed that under the percentage depletion calculation an asset can be depleted beyond its cost basis. When there is a depletion expense the cost basis is reduced, and under percentage the cost basis is reduced by that expense in that year. So, over the life of the mine the operator would eventually deplete the cost to zero. Under the cost depletion method once the basis reaches zero, expenses against that can no longer be taken because the asset has been fully depleted. Under the percentage depletion method, the depletion can continue to be taken beyond that cost basis or adjusted cost basis, and the percentage is simply a percentage of the gross value so that expense is given. There have been discussions as to why the federal government chose to allow that percentage depletion beyond the basis, and the best the department can determine is that it is probably to encourage continued development and give some sort of recognition that those assets are of value even though the cost had been fully depleted.

[1:42:25 PM](#)

REPRESENTATIVE SEATON posited that switching back and forth between years gets confusing. The state allows for cost depletion or depreciation of the full value of the asset and not

beyond the full value of the asset when looking at industries and personal property. He held that the legislature needs to go back and advise that people can get depreciation for their entire asset, but not beyond the entire asset which the percentage depletion allows. He said he therefore supports the amendment.

CO-CHAIR TALERICO asked what type of problem this has presented to the division in administering the tax to date.

MR. SPANOS replied that depletion is a difficult calculation and he wouldn't say that cost versus percentage makes it more difficult. The percentage calculation is straight forward, depending on the records of a company, although if the division is in an audit situation it can become quite difficult to track the adjusted basis of the asset. For example, should a company state that this year its cost expense is greater than its percentage expense and it wants to use the cost, the division would then have to calculate the adjusted basis for that year, which does become quite difficult if there are no records going back because it may be the first time the division has audited the company. It can become complicated, but if the division was to go to just a simple cost depletion method it would probably need to update some schedules in the tax return in order to have companies report what that adjusted basis is so it can be tracked. He supposed the division could do that now and have an easier method, but most [companies] do take percentage depletion and the division doesn't usually run into that issue. So, yes, there are some complications with having both options available but it's not insurmountable.

[1:45:25 PM](#)

REPRESENTATIVE SEATON surmised that if the depletion allows cost to be reduced below the depreciable cost of the item that means the state is losing mining license tax. He inquired whether the division knows how much money the state is losing by allowing people to depreciate more than the full value of the assets.

MR. SPANOS answered that the division has not performed a calculation on that. He offered that with the older mines it could be assumed that they have already fully depleted the basis of the asset, and it could be assumed that any depletion would be above and beyond what they would be allowed under cost. A newer mine may be taking cost in lieu of percentage now.

CO-CHAIR TALERICO presumed there is not currently an analysis of where the state is actually sitting today.

MR. SPANOS confirmed the division does not presently have an analysis, although based on the age of the mine the division could try to analyze it and give a rough estimate.

[1:47:07 PM](#)

REPRESENTATIVE JOSEPHSON posited that in some instances it appears the companies prefer cost depletion and if they prefer it then it must be to their financial benefit. But at the same time the companies should not be allowed to take beyond the cost basis when they are getting depletion and also enjoying other deductions for purposes of calculating a net profit tax, which is why he has offered Amendment 10.

[1:47:44 PM](#)

REPRESENTATIVE HERRON maintained his objection.

A roll call vote was taken. Representatives Seaton, Josephson, and Tarr voted in favor of Amendment 10. Representatives Herron, Chenault, Johnson, Talerico, and Nageak voted against it. Therefore, Amendment 10 failed to be adopted by a vote of 3-5.

[1:48:45 PM](#)

REPRESENTATIVE JOSEPHSON withdrew Amendment 11, labeled 29-GH2924\N.9, Nauman, 3/29/16.

[1:48:56 PM](#)

REPRESENTATIVE JOSEPHSON moved to adopt Amendment 12, labeled 29-GH2924\N.10, Nauman, 3/29/16, which read:

Page 1, line 1, following "**Act**":

Insert "**relating to the limitation on the exploration incentive credit;**"

Page 1, following line 4:

Insert a new bill section to read:

"* **Section 1.** AS 27.30.050 is amended to read:

Sec. 27.30.050. Limit on application of credit.

An exploration incentive credit for a mining operation may not exceed \$20,000,000 and must be applied within

seven [15] tax years or royalty payment periods after the taking of the credit is approved under AS 27.30.020(2), but the tax years or royalty payment periods in which the credit is applied need not be

(1) the tax year or royalty payment period in which the person first incurs liability for payment of tax or royalty based on the person's activity that is the basis of the claim of the exploration incentive credit; or

(2) consecutive periods."

Page 1, line 5:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Page 2, line 17:

Delete "sec. 1"

Insert "sec. 2"

Page 2, line 18:

Delete "sec. 1"

Insert "sec. 2"

Page 2, line 19:

Delete "sec. 2"

Insert "sec. 3"

Page 2, line 21:

Delete "sec. 2"

Insert "sec. 3"

Page 2, following line 21:

Insert a new subsection to read:

"(c) AS 27.30.050, as amended by sec. 1 of this Act, applies to a credit accrued on or after the effective date of sec. 1 of this Act."

Page 2, line 28:

Delete "Section 6"

Insert "Section 7"

Page 2, line 29:

Delete "sec. 7"

Insert "sec. 8"

REPRESENTATIVE HERRON objected for discussion purposes.

[1:49:23 PM](#)

REPRESENTATIVE JOSEPHSON explained Amendment 12. He noted that the law reads that the mining exploration incentive credit can, essentially, cover 3.5 calendar years. The committee substitute (CS) reduces that to 3 years. The administration would like to dispense with the credit altogether, and he made arguments about the need to do that during periods of production. Amendment 12 would shorten the period in which it could be exercised to 7 years rather than 15 years. It may have the salutary effect of incentivizing production because it doesn't benefit exploration and development, it benefits production. The amendment says to get to production if the company is going to get there, and if the company doesn't get there the credit would be lost. So, it is another way of looking at reform of this very long period of incentive credits which has existed since 1951 and which needs another consideration.

REPRESENTATIVE HERRON related his understanding that this amendment was within Amendment 4, which was passed, and the only difference is that there was a 15 year time limit for an exploration incentive credit, and the amendment would change it to 7 years. He asked why 7 years and not 10 or 5 years.

REPRESENTATIVE JOSEPHSON replied that he consulted with the Tax Division and is trying to strike a middle ground.

[1:52:13 PM](#)

REPRESENTATIVE HERRON asked whether someone is available to speak to the amendment being an incentive and whether it would be an advantage to miners or a complication for miners.

ED FOGELS, Deputy Commissioner, Office of the Commissioner, Department of Natural Resources (DNR), explained that the once a company has built up some exploration and incentive credits and then starts production, the company has up to 15 years to cash in those credits; Amendment 12 would reduce it to 7 years. The issue is what the company's tax liability would be in any given year for those first 7 years and whether the company could use up all \$20 million if it had accumulated the maximum amount. It is hard to say whether that would be a net positive for the state's treasury or some kind of a disadvantage to the individual miner because it would depend upon the particular project and the project's tax liability year to year.

REPRESENTATIVE HERRON related that he is seeking an answer as to whether he should vote for this amendment because it benefits the mining operation or unfairly harms the mining operations.

MR. FOGELS surmised that the longer time period a mining company has to utilize its credits the more advantageous it would be for the company.

REPRESENTATIVE HERRON asked whether there is an analysis and whether it means more money in the treasury. He said he wishes he knew that answer before making a policy decision.

CO-CHAIR TALERICO responded he is unsure that anyone has the ability to answer that question. He recalled that DOR Deputy Commissioner Burnett testified that one of the particular things in the bill was the exemption which didn't seem to be a hot ticket item for the administration because there isn't anything on the immediate horizon that is going to get underway.

MR. FOGELS noted that as far as the 3.5 year exemption, DNR does not see any mines coming on line in the immediate future that would be affected by this. That would be down the road far enough where it is out of the range of the department's fiscal analysis. So, he said, he thinks that for that particular provision there would be no immediate fiscal impact to the return to the state down the road.

CO-CHAIR TALERICO remarked it could be a good topic for the working group.

[1:56:40 PM](#)

REPRESENTATIVE JOSEPHSON held that this is a hot ticket item for the administration in that the original bill dispensed with the credit altogether. He therefore surmised the administration's position is that it does not want this credit.

MR. FOGELS agreed that that provision is in the governor's bill, and Deputy Commissioner Burnett said it is something the administration is willing to discuss as the bill moves forward.

REPRESENTATIVE SEATON referred to the statement that right now nothing is seen on the immediate horizon so the issue could wait until a later time. He posited that it would be advisable to have changes the industry is aware of rather than waiting until a project is about to come online.

MR. FOGELS agreed and clarified he is not advising the committee to rule on that provision one way or the other, he is just pointing that if the tax exemption is deleted there won't be any real immediate benefit to the state's treasury in the near term.

REPRESENTATIVE SEATON stated this should be an issue the working group contemplates to be certain the legislature has those decisions in place before a mine is coming close to production.

MR. FOGELS agreed it would be advisable and would be a good topic for the working group along with all of the other components in the fiscal picture for a mining operation.

[1:59:20 PM](#)

REPRESENTATIVE HERRON noted the administration wanted to remove this and it is back in, his colleague wants to reduce it from 15 years to 7 years, and the advantage or harm that the reduction could cause is unknown. He asked Co-Chair Talerico whether this committee could request an analysis so it is there for the House Finance Committee to review. Even if the amendment passes, it would be important for the next committee to understand what it means. Responding Co-Chair Talerico, he clarified that his request is for the co-chair's office to send a note along for the House Finance Committee to seek analysis on this question.

CO-CHAIR TALERICO agreed to do so.

MR. SPANOS clarified that the exploration incentive credit and the 3.5 year exemption often get confused. The administration was trying to remove the 3.5 year exemption in the bill. Therefore, he is unsure whether the administration has a position on the credit.

[2:01:07 PM](#)

REPRESENTATIVE HERRON maintained his objection to Amendment 12.

A roll call vote was taken. Representatives Tarr and Josephson voted in favor of Amendment 12. Representatives Herron, Chenault, Johnson, Seaton, Talerico, and Nageak voted against it. Therefore, Amendment 12 failed to be adopted by a vote of 2-6.

[2:02:03 PM](#)

REPRESENTATIVE JOSEPHSON moved to adopt Amendment 13, labeled 29-GN2924\N.11, Nauman, 3/29/16, which read:

Page 1, following line 9:

Insert a new bill section to read:

"* **Sec. 2.** AS 43.65.010(a), as amended by sec. 1 of this Act, is amended to read:

(a) A person prosecuting or attempting to prosecute, or engaging in the business of mining in the state shall obtain a license from the department. [ALL NEW MINING OPERATIONS ARE EXEMPT FROM THE TAX LEVIED BY THIS CHAPTER FOR THREE YEARS AFTER PRODUCTION BEGINS.]"

Renumber the following bill sections accordingly.

Page 2, following line 14:

Insert a new bill section to read:

"***Sec. 6.** AS 27.30.030(b)(2), AS 43.65.010(b), and 43.65.060(4) are repealed."

Page 2, following line 18:

Insert a new subsection to read:

"(b) AS 43.65.010(a), as amended by sec. 2 of this Act, applies to a mining operation that begins production on or after the effective date of sec. 2 of this Act."

Reletter the following subsection accordingly.

Page 2, line 19:

Delete "sec. 2"

Insert "sec. 3"

Page 2, line 21:

Delete "sec. 2"

Insert "sec. 3"

Page 2, line 28:

Delete "Section 6"

Insert "Section 8"

Page 2, following line 28:

Insert a new bill section to read:

"* **Sec. 10.** Sections 2 and 6 of this Act take effect January 1, 2020."

Renumber the following bill section accordingly.

Page 2, line 29:

Delete "sec. 7"

Insert "secs. 9 and 10"

CO-CHAIR TALERICO objected for discussion purposes.

2:02:17 PM

REPRESENTATIVE JOSEPHSON explained Amendment 13. He noted the administration would like to collect taxes in every year and end what he calls "the tax holiday" for hard rock mines. The committee has so far rejected that, although the committee reduced from 3.5 years to 3 year the term of the exemption. Amendment 13 would remove that exemption in 2020. As heard from the deputy commissioner, there's probably no one known, and there are only really six or seven players, who in the near term are probably in their exempt profile. If there is any concern about that, they would be captured in this window and would continue to enjoy the exemption for another 3 years 8 months. However, as pointed out by Representative Seaton, vested interests could grow during that span under anticipation that the tax holiday would be there for them. Those interests would know now at the outset that it would not be there for them. Therefore, the amendment is designed to offer some amount of comfort to both sides, and also put the state in a position where the maximum benefit is arrived to the people from the "taxation scheme that we have."

2:04:22 PM

REPRESENTATIVE HERRON asked whether the new bill section, Section 2, proposed by Amendment 13 is a business license that shall be obtained.

REPRESENTATIVE JOSEPHSON responded yes, the amendment was written so that it attaches itself to the mining tax statute, which is the mining license tax. It uses the language "business of mining" in the narrative at line 5 of the amendment, but he thinks this part of the mining license tax. It would repeal the reprieve from tax effective January 1, 2020.

MR. SPANOS clarified the mining license is in lieu of a business tax. So, a person only in the business of mining can obtain a mining license through the Tax Division, and a business license would be unnecessary.

CO-CHAIR TALERICO surmised that a typical business license is not required for mining due to the mining license.

MR. SPANOS replied correct. If mining is the only business then obtaining a business license is not required; if a person is building roads and mining, a business license would be required. If just mining, the mining tax license is in lieu of a business license; the Tax Division administers that and when a person gets a license the person must then file a tax return.

REPRESENTATIVE SEATON offered that Section 2 refers to a person obtaining a license, and Section 10 reads that it takes effect after January 1, 2020. He asked whether page 2, line 13, of the amendment means that people do not need to get a mining license until January 1, 2020, because Version N, [page 1, lines 6-7, states, "(a) a person prosecuting or attempting to prosecute or engaging in the business of mining in the state shall obtain a license from the department."

[2:08:00 PM](#)

The committee took an at-ease from 2:08 p.m. to 2:14 p.m.

[2:14:20 PM](#)

REPRESENTATIVE SEATON said the construction of Amendment 13 is confusing. He understood that the [amendment] reinserts the original bill language that the three year tax exemption goes away, but starting in 2020. He further understood that Section 6 of the amendment would not apply to current mines. It simply says to stay with the three year exemption until 2020 and then the tax exemption will go away.

REPRESENTATIVE JOSEPHSON held that Amendment 13 captures a couple of concerns. One is that in the near term there probably will not be anyone who would be affected in regard to tax exemptions. He reminded the committee of testimony on various bills regarding resource development that it is important not to pull the rug out and disrupt something and make it less viable. This amendment allows that if a company is in the early phase of development, the company knows before making serious investment that there has been a change in the 65-year-old policy. He recalled that in HB 247 the committee looked at the affordability of tax credits. He pointed to a discussion of the Pebble Mine from Mr. [Brune] of receiving \$200 million, which included all sorts of revenue and not solely the mining license

tax. Amendment 13 would achieve some balance between the administration's position, which was a more abrupt end, and a nearly four year extension of the exemption.

[2:17:03 PM](#)

REPRESENTATIVE HERRON maintained his objection.

A roll call vote was taken. Representatives Josephson, Tarr, and Seaton voted in favor Amendment 13. Representatives Herron, Johnson, Talerico, and Nageak voted against it. Therefore, Amendment 13 failed to be adopted by a vote of 3-4.

[2:18:08 PM](#)

CO-CHAIR TALERICO clarified for the record that Amendment 3, labeled 29-GH2924\N.8, Shutts/Nauman, 3/29/16, had been adopted [at the previous hearing]. That amendment established a legislative working group to study the tax structure for mining.

REPRESENTATIVE JOSEPHSON noted that Amendment 4, labeled 29-GH2924\N.16, Nauman, 3/30/16, had also been adopted [at the previous hearing]. That amendment was in regard to deductions of the credit against royalty.

[2:19:02 PM](#)

CO-CHAIR TALERICO opened committee discussion.

REPRESENTATIVE SEATON related his appreciation for the adoption of a working group because mining taxes are complex and the goal is to align the industry's needs with the needs of the state and broad based taxes. He reiterated that the amount of revenue being generated from all of the different industries, such as tobacco and alcohol at \$40 million and the fishing industry at \$13 million. The committee is discussing many things and the state does not have as much new revenue to try to balance the state's books from this industry as the state receives from other industries. In moving forward, he is hoping the working group can help the legislature balance between the industry as well as the broad-based taxes.

REPRESENTATIVE JOSEPHSON offered his appreciation for the committee taking some of the governor's positions - reducing the exemption by six months and increasing the mining license tax by a percentage point. Even though he gained enormously from visiting the Fort Knox Mine, he related, part of this relates

back to the legislative research Minerals Extraction Report, which said the resource value, for example in 2009, was just a hair under \$2.5 billion, and the state received as government revenues a percentage of the \$2.5 billion at 2.76 percent. That appears to be a small number, but obviously the committee has to remove itself from the oil and gas industry because even though that is capital intensive, this is really capital intensive and they are just different animals. He said he is glad the legislature intends to continue to study this issue.

CO-CHAIR TALERICO said the committee will forward Representative Herron's request to the bill's next committee of referral.

[2:22:32 PM](#)

CO-CHAIR NAGEAK moved to report the proposed committee substitute for HB 253, Version 29-GH2924\N, Nauman, 3/17/16, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 253(RES) was passed from the House Resources Standing Committee.

[2:23:01 PM](#)

The committee took an at-ease from 2:23 p.m. to 2:26 p.m.

HB 286-FISH & GAME: OFFENSES;LICENSES;PENALTIES

[2:26:42 PM](#)

CO-CHAIR TALERICO announced that the final order of business is HOUSE BILL NO. 286, "An Act relating to sport fishing, hunting, or trapping licenses, tags, or permits; relating to penalties for certain sport fishing, hunting, and trapping license violations; relating to restrictions on the issuance of sport fishing, hunting, and trapping licenses; creating violations and amending fines and restitution for certain fish and game offenses; relating to commercial fishing violations; allowing lost federal matching funds from the Pittman - Robertson, Dingell - Johnson/Wallop - Breaux programs to be included in an order of restitution; adding a definition of 'electronic form'; amending Rule 5(a)(4), Alaska Rules of Minor Offense Procedure; and providing for an effective date."

[2:27:09 PM](#)

CO-CHAIR NAGEAK moved to adopt the proposed committee substitute (CS) for HB 286, version 29-GH2958\E, Bullard, 3/30/16, as the working document.

CO-CHAIR TALERICO objected for discussion purposes.

[2:27:36 PM](#)

KEVIN BROOKS, Deputy Commissioner, Office of the Commissioner, Alaska Department of Fish & Game (ADFG), explained the changes in Version E. Drawing attention to the title, page 1, line 5, he advised that a semi-colon has been added that creates an exemption from payment of restitution for certain unlawful takings of big game animals. Referring to Section 3, page 2, line 21, he noted that the words "tag or permit" were removed from an item that can be correctable, and also removed is a reference to the court. This change thereby allows a person to correct a violation at any office of the Department of Public Safety (DPS). He explained that the words "tag and permit" were deleted after a Senate Resources Standing Committee hearing wherein there was a fair amount of discussion about the ability to fix a license, but a tag or permit have different purposes such as recording harvest, and it appeared most appropriate to remove the words tag and permit.

MR. BROOKS said the third change is in Section 17 on page 5, line 6, where the words, "and (c) of this section," are added. This comes into play in Section 18 as the changes are worked out to AS 16.05.925. He turned to the fourth change, page 5, lines 14-25, and said those reflect changes that Co-Chair Talerico's office recommended to the bill on the restitution amounts. The fifth change is to page 5, line 26, where Section 17 was deleted from the previous bill because there was a typo and it was a redundant section. The sixth change on page 5, lines 26-31, creates a new section that provides that a court may not order restitution under Section 17 of this bill in a case where the defendant voluntarily turns themselves in and is charged with a violation offense. It also provides that a person must voluntarily and immediately report to the Alaska Department of Fish & Game or the Department of Public Safety the violation that he/she committed in order to qualify for this affirmative defense. This change is in response to testimony that was heard and questions that were received about the bill. The seventh change is on page 6, lines 21-22, and is a correction to a typing error in the drafting. The eighth change is to page 7, line 7, which deletes Section 27 of the original bill that

referenced a court rule. Through consultation with the court system this was deemed unnecessary and so it was deleted.

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REPRESENTATIVE JOSEPHSON referred to Section 6 [page 3, lines 12-21], and said it appears that commercial fishing violations would no longer be jailable offenses. He inquired as to why the possibility of jail for a commercial fisheries violation was altered.

MR. BROOKS deferred to Aaron Peterson, Department of Law.

AARON PETERSON, Assistant Attorney General, Criminal Division, Department of Law (DOL), responded that there was not a possibility of jail under AS 16.05.722 previously. There was and still remains in AS 16.05.723 misdemeanor commercial fishing penalties up to imprisonment for not more than one year or a fine of up to \$15,000, and that does still remain and is not affected by the change in AS 16.05.722.

REPRESENTATIVE JOSEPHSON referred to Section 8, page 3, lines 25-29, and the taking a brown or grizzly bear within one-half mile of a solid waste disposal facility. He noted the bill removes the potential criminality of that action, and asked whether it instead imposes a fine without culpable mental state.

MR. PETERSON answered that it takes out "with criminal negligence" because the default mental state in Title 16 offenses is civil negligence. The Alaska Supreme Court found that under State v. Rice, which was reaffirmed by the Court of Appeals in 1999. To say that something required a mental state of criminal negligence would actually raise the burden because it is misdemeanors being talked about here. It's a Class A misdemeanor and would be treated as such which carries a potential jail sentence of up to one year. There is a potential that it could be charged with a violation but, if it is charged with a misdemeanor then it does carry a potential penalty of up to one year.

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REPRESENTATIVE JOSEPHSON noted that the bill reads that hunting violations within an X feet or yards from the Yukon to the Arctic will no longer be jailable. He asked why that policy decision is good, bad, or indifferent. He said Section 12 of the original bill treated that type of offense in that

geographic region as a violation only, and Version E appears to keep it at a misdemeanor.

MR. BROOKS offered that the prior Section 12 is now Section 13 in Version E.

REPRESENTATIVE JOSEPHSON concurred, and said the question remains.

MR. BROOKS explained that it retains the original language and adds this option so that law enforcement has the opportunity to charge it as one or the other, it does not replace it but rather adds the option.

[2:37:46 PM](#)

REPRESENTATIVE JOSEPHSON referred to Sections 15, 19, and 20, of the original bill, and surmised that Section 15 makes it less of a penalty to interfere with a salmon stream and it would no longer be a jailable penalty. He asked what the bill does about the criminality of interfering or deterring anadromous streams in regard to the above sections.

MR. BROOKS replied that the bill is trying to make consistent the charges for all of these infractions, and provide for the opportunity to charge them in a more severe manner when there is a culpable mental state. He deferred to Mr. Peterson.

MR. PETERSON responded that the entire purpose of most of these changes is to add the ability to charge with violations where appropriate. For example, under Section 15 the Department of Public Safety and Department of Law would retain the ability to charge and prosecute a Class A misdemeanor for AS 16.05.831. It gives flexibility where necessary. Specifically, with respect to Sections 15 and 20, it actually just changes the specific penalties previously in place. For example, in Section 20 it was previously a fine of not less than \$100 and not more than \$500. Version E deletes that language and replaces it with the standard Class A misdemeanor range which is a fine of up to \$10,000 and jail time up to one year. It allows uniformity in prosecuting what would be expected from a Class A misdemeanor, in addition to changing some of the other penalties and adding in the ability to be charged where appropriate as a violation. He reiterated it is already available in many of the charges in Title 16 and in the Administrative Code, but for whatever reason there was not that flexibility in several of the statutes and that is what is being addressed here.

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REPRESENTATIVE JOSEPHSON noted the original bill provided that if a person commits a violation, restitution may be imposed; under Version E, if the person tells the authorities the person may be shown some pity. He asked why, if the public understood that, people would not just do that in record numbers.

MR. BROOKS answered that this amendment came from previous testimony and it is trying to put the current practice into the law. Currently, there is self-reporting which the Department of Public Safety encourages, such that if a person takes a moose and finds the rack is one-half inch too small to be legal, if the person immediately takes action to self-report, the department wants to recognize that action. That person will still pay a fine and lose the moose, but the person would not be punished to lose his/her weapons or other things that might have happened under a different circumstance. It is absolutely meant to act as an incentive to self-report where an accidental violation has occurred.

BRUCE DALE, Director, Division of Wildlife Conservation, Alaska Department of Fish & Game (ADF&G), said another requirement is that the person must salvage and care for the meat and deliver the meat to the state because it is property of the state, and then the meat is put to use. So that is another reason that restitution might not be required.

REPRESENTATIVE JOSEPHSON asked whether from a citizen's standpoint there would be greater vulnerability in reporting because now the Alaska Department of Fish & Game (ADFG) and Department of Public Safety (DPS) would ask where the citizen was located, would come to the citizen, and that person could now be charged, theoretically jailed, and civilly fined. He said that perhaps that strikes the proper balance in that restitution would not be charged, the civil fine, and probably a suspended jail sentence could be imposed.

MR. BROOKS replied that the person in the above scenario would pay a fine and lose the animal, and not have anything more; so it is trying to strike that balance being referred to.

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CO-CHAIR TALERICO commented that he understands what Representative Josephson means when someone is pulled over at

1:30 a.m. headed down the highway with an illegal moose in the back and the person's first response is that he was headed to law enforcement to advise of the taking of the illegal moose. He opined that there was a lot of judgement from the municipality he previously served in as it had issues a few times. He pointed out that the Department of Public Safety is good at determining how accurate those statements might be.

CO-CHAIR TALERICO drew attention to page 5, lines 14-25, which includes changes made by his office and commented that he had thought about the actual meat values of some of these animals. He pointed out that if the state is to discourage people from doing this, the state should be closer to charging them full value rather than a discount rate on volume.

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REPRESENTATIVE TARR observed that in comparison to the original version of the bill almost all of the fines increased except the black bear and wolverine. She asked the rationale.

CO-CHAIR TALERICO said he has seen poaching situations happen where he lives and generally the black bear and wolverines are not "hot items," whereas moose is the "big ticket item." He posited that the general increases serve as a deterrent for people to poach animals.

REPRESENTATIVE HERRON pointed out that in his district there is no closed season on black bear, every Alaskan can take five, and this species has actually become a nuisance to the moose calves. The wolverine is hard to catch anywhere.

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CO-CHAIR TALERICO removed his objection to adopting Version E as the working document. There being no further objection, Version E was before the committee.

CO-CHAIR TALERICO opened public testimony on HB 286, Version E.

[2:49:17 PM](#)

AL BARRETTE related that he would like to see the word "sport" removed from the words sport fishing. He commented that the state has subsistence fishermen not required to have a license to engage in subsistence fishing. Therefore, tens of thousands of Alaskans are not paying in to the system and it falls upon

other users, such as sport fish and commercial fish, to make up that loss of revenue. He then referred to Section 5, page 3, lines 7-11, which read:

(d) In addition to any penalty imposed under (a) or (b) of this section, a person may be ordered to pay restitution to the state equal to the amount of any lost state or federal matching funds from the Pittman - Robertson, Dingell - Johnson/Wallop - Breaux programs incurred from the person's violation of AS 16.05.330 - 16.05.420 or a regulation adopted under this chapter, AS 16.20, or AS 16.40.

MR. BARRETTE suggested that instead of the money going to the general fund, it go to the fish and game fund because that is where money from those acts goes.

MR. BARRETTE turned to Section 6, page 3, lines 17-20, and noted the fines were doubled for the first two convictions and did not quite double for the third conviction. In Section 17, page 5, lines 14-25, regarding restitution, he noted that bison, deer, elk, goat, and moose are all over two times the original amount. He asked why fish convictions are only doubled while several big game species are more than two times the original amount.

[2:51:13 PM](#)

REPRESENTATIVE TARR requested the department to respond to Mr. Barrette's suggestion of deleting "sport" from sport fish. She understood that subsistence fishing is managed differently than sport fishing or commercial fishing.

MR. BROOKS confirmed that the three types of fisheries certainly are managed differently. Sport fishing has been in statute for many years, he said. The department recognizes the different types of fishing, such as sport, personal use, commercial, and it is not a change the department would advocate.

MR. BROOKS addressed Mr. Barrette's other suggestions. He clarified that the fines currently go into the fish and game fund. There is a distinction between civil and criminal, but they would go into the fish and game fund. He recalled previous testimony by Major Chastain regarding how the fines were set, and explained there was an attempt to tie those to [consumer price index (CPI)] increases. Referring to the fines in Section 6, he explained that commercial fishing, as well as the original restitution amounts, were tied to CPI adjustments.

CO-CHAIR TALERICO thanked Mr. Barrette for his testimony.

MR. BARRETTE referred to Section 18, page 5, line 29, which states, "voluntarily and immediately reported the taking to the department", and suggested a definition be given for how much time is meant by "immediately" self-reporting.

CO-CHAIR TALERICO closed public testimony after ascertaining that no one else wished to testify.

[2:54:11 PM](#)

REPRESENTATIVE JOSEPHSON moved to adopt Amendment 1, labeled 29-GH2958\E.1, Bullard, 3/31/16, which read:

Page 5, following line 28:

Insert a new paragraph to read:

"(1) had the license, tag, and permit required by AS 16.05.340 for the species of animal taken;"

Renumber the following paragraphs accordingly.

[CO-CHAIR TALERICO objected to the amendment.]

REPRESENTATIVE JOSEPHSON explained Amendment 1. He said his concern with affirmative defense, which allows someone to voluntarily and immediately report an illegal taking to avoid restitution, is that there should be the simple screen that the person is already licensed, tagged, and permitted under Title 16 for the species taken. Otherwise, the committee is saying the person can be in violation of fundamental Title 16 provisions. He posited that a hunter without the license, tag, or permit should be penalized because he/she is not playing fair or by the social contract. Amendment 1 would create a new paragraph (1) at page 5, after line 29, because coming to the plate and having not followed the requirements is not worthy of restitution.

CO-CHAIR TALERICO clarified that he objected to Amendment 1. He requested ADF&G to speak to the amendment.

MR. BROOKS explained that the department's interpretation of how it would work is that if a person self-reported and didn't have a license or tag, that person would have many other problems besides the taking of an illegal animal. The department

believes it is implied and so the amendment is unnecessary, but the amendment cannot hurt anything either.

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REPRESENTATIVE JOHNSON posited that someone hunting without a license is unlikely to self-report anyway and so he does not see a real need for the amendment.

REPRESENTATIVE HERRON described the amendment as a belts and suspenders amendment and he thinks it is fine.

REPRESENTATIVE TARR understood that within this section a defendant may not be ordered to pay restitution. She surmised that through that process the person would not be charged with an illegal taking if the person had a license, tag, or permit.

MR. BROOKS replied that a person could be guilty of an illegal taking and not having a license, there would be multiple infractions. He pointed out the word is "may" and so there is that discretion. He reiterated that it would not be the practice to provide for this if the person didn't already have the appropriate license and tag.

REPRESENTATIVE SEATON stated he is not sure that this is a "may" because Version E states "may not" and a "may not" does not have flexibility as defined in the statutes. A "may not" means that a person cannot be required to pay restitution if the person fulfills these things. He said Amendment 1 ascertains that a person has the required documentation because otherwise the person could be required to pay restitution. The amendment doesn't harm anything and does help.

2:59:52 PM

REPRESENTATIVE TARR posed a scenario in which the hunter has a license, tag, or permit but takes an animal out-of-season or an illegal female. She asked whether that would be a circumstance where the person would potentially have to pay restitution.

MR. BROOKS answered that if a person is appropriately licensed and takes an illegal animal, but then takes steps to immediately report, that person would not be subject to restitution. He advised that often someone has been in the field for a couple of days tracking an animal and realizes it's an illegal animal, but then someone else comes in and shoots it in front of them and the first hunter will call it in. So, other people in the field

will report and there is cell phone coverage in many parts of the state. There are ways the troopers have in determining the effort taken to immediately report, such as whether the troopers received a call from someone else before receiving a call from the person who illegally took the animal and these things would be factored in.

REPRESENTATIVE TARR surmised that a person would have to possess the required license, tag, and permit, and also immediately voluntarily report the taking to the department, and also surrender to the department. She therefore inquired whether the bill language needs to include the word "and" so that all requirements are met and not an either or requirement.

MR. BROOKS asked whether Representative Tarr is suggesting an amendment to the amendment to add the word "and".

REPRESENTATIVE SEATON pointed out that in sentence construction if "or" is at the last then they are all "or"; if "and" is at the last then they are all "and". So, in this case, all three requirements would have to be met.

[3:02:42 PM](#)

CO-CHAIR TALERICO removed his objection to Amendment 1, saying he thinks it would provide some clarity. There being no further objection, Amendment 1 was adopted.

[3:03:05 PM](#)

REPRESENTATIVE JOHNSON asked how these proposed fines align with other states in terms of the Interstate Wildlife Violators Compact; for example, whether other states charge the same amount or the same kind of parallels.

MR. DALE related that after the previous hearing, the department investigated that issue and found that many western states have restitution fees even higher than these. However, he continued, there was enough variation that the department did not feel comfortable having a defensive statement because, as of yet, not many states have been polled.

REPRESENTATIVE JOHNSON suggested that while polling those states the department might want to also ask how another state would treat a resident violator from Alaska, and also consider how Alaska would treat an out-of-state violator, because a lot of

discrepancy is given to the states in the Interstate Wildlife Violators Compact.

3:05:01 PM

CO-CHAIR NAGEAK moved to report CSHB 286, Version 29-GH2958\E, Bullard, 3/30/16, [as amended], out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 286(RES) was reported out of the House Resources Standing Committee.

3:05:35 PM

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:05 p.m.