

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

February 19, 2015

1:31 p.m.

MEMBERS PRESENT

Senator Mia Costello, Chair
Senator Cathy Giessel, Vice Chair
Senator Kevin Meyer
Senator Gary Stevens
Senator Johnny Ellis

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 5

"An Act relating to loss of income and valuing property for orders of restitution."

- MOVED SB 5 OUT OF COMMITTEE

SENATE BILL NO. 39

"An Act repealing the film production tax credit; providing for an effective date by repealing the effective dates of secs. 31 - 33, ch. 51, SLA 2012; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 5

SHORT TITLE: RESTITUTION: PROPERTY AND INCOME LOSS

SPONSOR(S): SENATOR(S) MICCICHE

01/21/15	(S)	PREFILE RELEASED 1/9/15
01/21/15	(S)	READ THE FIRST TIME - REFERRALS
01/21/15	(S)	L&C, JUD
02/19/15	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 39

SHORT TITLE: REPEAL FILM PRODUCTION TAX CREDIT

SPONSOR(s): SENATOR(s) STOLTZE

02/04/15 (S) READ THE FIRST TIME - REFERRALS
02/04/15 (S) L&C, FIN
02/19/15 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

CHUCK KOPP, Staff
Senator Peter Micciche
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided supplementary information on SB 5.

KACI SCHROEDER, Assistant Attorney General
Criminal Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Testified that SB 5 is not expected to have any fiscal impact on DOL.

CHRIS NETTELS, small business owner and representative
National Federation of Independent Businesses

POSITION STATEMENT: Testified in strong support of SB 5.

SENATOR BILL STOLTZE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 39

DANIEL GEORGE, Staff
Senator Bill Stoltze
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided the following sectional analysis for SB 39.

JERRY BURNETT, Deputy Commissioner
Department of Revenue (DOR)
Juneau, Alaska

POSITION STATEMENT: Presented fiscal information related to SB 39.

ACTION NARRATIVE

[1:31:25 PM](#)

CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Giessel, Ellis, and Chair Costello. Senators Meyer and Stevens arrived soon thereafter.

SB 5-RESTITUTION: PROPERTY AND INCOME LOSS

[1:32:56 PM](#)

CHAIR COSTELLO announced the consideration of SB 5. "An Act relating to loss of income and valuing property for orders of restitution."

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SENATOR PETER MICCICHE, sponsor of SB 5, described the legislation as putting the rights of a victim of property theft just ahead of the rights of the perpetrator. He related that the Alaska Department of Public Safety (DPS) 2013 report shows that Alaskans lost over \$23 million due to property crime. This is an increase of more than 12 percent from 2011. SB 5 seeks to address this scourge by 1) strengthening restitution laws to restore crime victims to a pre-crime condition; 2) clarifying in statute that public policy favors having criminals compensate victims for their loss, including loss of income; 3) defining loss of income as the total loss of income a business or person suffers as a result of not having the stolen property available during the time it takes to obtain a replacement; and 4) giving direction to the court in making determinations of loss for restitution to value property as the market value of the property. He provided an analogy of a roll of copper wire stolen from the job site. The copper itself may cost \$2,500, but it may take another \$10,000 to \$20,000 in other costs before the contractor is restored to a pre-offense condition.

SB 5 also addresses the decision in Lori Welsh v. State of Alaska. The appellate court ruled that the victim of a theft crime was not entitled to restitution that covered the loss of income, because it would be an unjust enrichment of the crime victim. SB 5 asks courts that are considering restitution to restore businesses and crime victims to a pre-offense condition.

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SENATOR STEVENS joined the meeting.

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CHUCK KOPP, Staff, Senator Peter Micciche, elaborated on the facts of the Welsh case. The crux of the argument was whether

restitution should be retail or wholesale value of the stolen property. The appellate court reversed the district court order stating that two restitution statutes AS 12.55.045(a) and AS 12.55.100(a)(2) seemingly were competing. The court deferred to the more restrictive statute and commented that it had inferred earlier that the legislature should work out the conflict. SB 5 reconciles the statutes and clarifies that loss of income should be considered when the court considers restitution.

MR. KOPP provided a sectional analysis of SB 5 as follows:

Section 1 amends AS 12.55.045(a)(1) *Restitution and compensation*, clarifying that our public policy favors requiring criminals to compensate their victims not only for damages and injury, but loss of income as well.

Section 2 amends 12.55.045(n) to define "loss of income" as *the total loss of income a business or person suffers as a result of not having stolen property available during the time it takes to obtain a replacement*.

Section 3 amends AS 12.55.045 adding new subsection (o) which directs the courts, in making determinations of loss or damage for restitution, to value property as the market value of the property at the time and place of the crime or, if this cannot reasonably be established, the cost of replacement within a reasonable time after the crime.

This section adopts language currently used by the courts in AS 11.46.980 to make determinations of property value in criminal offenses against property (i.e. theft, burglary, criminal trespass, vehicle theft, arson, criminal mischief, forgery, business and commercial offenses).

Section 4 amends AS 12.55.100(a) *Conditions of probation*, clarifying how the court shall value property when determining the amount of actual damages or loss under this paragraph, establishing the same standard as in Section 3.

Section 5 establishes that amendments in Sections 1-4 of the Act apply to an order of restitution for an

offense committed on or after the effective date of the Act.

MR. KOPP stated that the bill has received strong support from Alaska businesses and their representatives.

CHAIR COSTELLO asked Ms. Schroeder to review the fiscal impact of the bill.

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KACI SCHROEDER, Assistant Attorney General, Criminal Division, Department of Law (DOL), stated that SB 5 is not expected to have any fiscal impact on DOL.

CHAIR COSTELLO noted that copies of the zero fiscal note are included in the packets.

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CHRIS NETTELS, small business owner and representative, National Federation of Independent Businesses, stated strong support for SB 5. He related a personal story as the owner of a small service business to illustrate the need for the legislation. A snow machine was stolen from a job site after the job was finished. Had it been stolen earlier, his business would have lost the job.

CHAIR COSTELLO asked who will determine the market value of the stolen property.

MR. KOPP replied it will be determined by the market at the time and place where the crime occurs. He read the relevant provision [in Section 4 on page 2, lines 27-31].

CHAIR COSTELLO asked if increasing the value of the item will affect the level of the crime.

MR. KOPP replied theft of property valued from \$750 to \$25,000 will be a class C felony.

CHAIR COSTELLO asked if the difference in value could be considered as a mitigating factor when sentencing juveniles.

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SENATOR MEYER joined the committee.

MR. KOPP responded that the bill clarifies the public policy of restoring crime victims to a pre-offense condition when considering sentencing and probation.

SENATOR STEVENS observed that the bill would take care of the type of situation Mr. DeWitt cited when he wrote that far more than the boat is harmed when a commercial fishing boat is disabled during the fishing season.

MR. KOPP agreed.

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CHAIR COSTELLO closed public testimony.

[1:50:10 PM](#)

SENATOR GIESSEL moved to report SB 5 from committee with individual recommendations and attached fiscal note(s).

CHAIR COSTELLO found no objection and announced that SB 5 is reported from the Senate Labor and Commerce Standing Committee.

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At ease

SB 39-REPEAL FILM PRODUCTION TAX CREDIT

[2:03:21 PM](#)

CHAIR COSTELLO reconvened the meeting and announced the consideration of SB 39. "An Act repealing the film production tax credit; providing for an effective date by repealing the effective dates of secs. 31 - 33, ch. 51, SLA 2012; and providing for an effective date." She stated that public testimony would be taken on February 24.

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SENATOR BILL STOLTZE, sponsor of SB 39, stated that he introduced the legislation because he has never supported the subsidy, even in times of high revenue. He maintained the intent is not a punitive attack on the industry; it is due to the fiscal impacts. He spoke to the following sponsor statement:

Senate Bill 39 repeals the film production tax credit program as passed by the 27th Legislature, but will leave the film production program office in place.

The bill also authorizes the Department of Revenue to review and audit the record for previous recipients of

film tax credits and allows the Department of Revenue the ability to recover certain damages.

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DANIEL GEORGE, Staff, Senator Bill Stoltze, provided the following sectional analysis for SB 39:

Section 1 removes a reference to the film tax credit from AS 43.75.130(f), related to the revenue sharing with local governments of the fisheries business tax. The effective date of this section is July 1, 2015.

Section 2 removes a reference to the film tax credit from AS 43.75.130(f) as it is amended in sec. 14, ch. 61, SLA 2014. The effective date of this section is the same as the effective date of sec. 14, December 31, 2016.

Section 3 removes a reference to the film tax credit from AS 43.77.060(e), related to the revenue sharing with local governments of the fisheries resource landing tax. The effective date of this section is July 1, 2015.

Section 4 removes a reference to the film tax credit from AS 43.77.060(e), as it is amended in sec. 17, ch. 61, SLA 2014. The effective date of this section is the effective date of sec. 17, ch. 61, SLA 2014, December 31, 2016.

Section 5 makes amendments conforming with the repeal of AS 44.25.100 - 44.25.190, related to the film production incentive program. The effective date of this section is July 1, 2015.

Section 6 removes a reference to the film tax credit from sec. 28(b), ch. 61, SLA 2014, (the transition language of SCS CSHB 306(FIN) am S of the 28th Legislature) relating to the repeal of the film tax credit and other tax credits. This section has an immediate effective date.

Section 7 repeals AS 24.20.271(12) (related to the duty of the legislative audit division to conduct audits of the film production incentive program), and AS 44.33.231(c) (administration of the Alaska film production incentive program (AS 44.25.110)). The effective date of this section is July 1, 2015.

Section 8 repeals AS 44.25.135, effective July 1, 2021, allowing six years for the recovery of the film production tax credit after the credit program is repealed if the film office determines that the film producer or production is liable for damages to the state, or any political subdivision of the state. This section has an immediate effective date.

Section 9 repeals multiple sections of ch. 51, SLA 2012 and ch. 61, SLA 2014, related to the film tax credit. The effective date of this section is July 2015.

Section 10 provides transition language for the repeal of the film tax credit. The effective date of this section is July 1, 2015.

Section 11 repeals certain sections of ch. 51, SLA 2012, related to the film tax credit. The effective date of this section is July 1, 2015.

Sections 12-15 provide the effective dates for the bill, noted above. These various dates are necessary because 2014 legislation will amend some sections in 2016, and to allow recovery of damages after the program is repealed.

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SENATOR STOLTZE advised that he introduced the bill last year with Representative Thompson and it is back again with more urgency.

CHAIR COSTELLO asked Mr. Burnett to review the information he provided relating to the program.

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JERRY BURNETT, Deputy Commissioner, Department of Revenue (DOR), stated that under the current program, which started July 1, 2013, \$28.3 million in credits have been approved. Under current statute this leaves \$171.7 million in potential tax credits between now and 2018.

He reviewed the status report of the Alaska film production incentive for FY2009 to FY2013 under the Department of Commerce, Community and Economic Development (DCCED). About \$38 million in tax credits were approved for 11 commercial films, 19

documentary films, 29 feature films, 65 TV-nonfiction films, and 1 TV-drama. About \$117 million in expenditures were reported.

CHAIR COSTELLO asked how the credit works.

MR. BURNETT explained that a commercial entity pays a fee and submits a detailed application to the Alaska Film Incentive Commission, which is comprised of the commissioners or their designees from the Department of Labor and Workforce Development, the Department of Natural Resources, the Department of Commerce, Community and Economic Development, and Department of Revenue. The executive director of the film office, who works in the Tax Division of DOR, reviews the applications and makes recommendations. Because the applicants are commercial entities, the information is confidential. The Alaska Film Incentive Commission makes a qualifying determination and a narrow appeal opportunity is available under the Administrative Appeals Act. This has happened once and the appeal was successful. Once the applicant is qualified, the entity does the work, reports its expenditures to the Tax Division, and receives a transferable credit certificate that can be sold to a taxpayer. The taxpayer can use the credit to reduce their tax liability.

MR. BURNETT reviewed the status report of the Alaska film production incentive that was released yesterday, February 18, 2015. It is the first annual report under the new program that stated on July 1, 2013 when the law changed.

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At ease

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CHAIR COSTELLO reconvened the hearing.

MR. BURNETT reviewed the FY2014 annual report under the DCCED program that existed prior to July 1, 2013, AS 44.25.105(a). The tax credits disbursed amounted to \$5,543,701. The qualified expenditures paid by productions qualifying for the film production tax credit amounted to [\$17,417,134]. The qualified expenditures paid by productions qualifying for the film production tax credit to established Alaska businesses totaled [\$5,730,621]. The qualified expenditures paid by productions qualifying for the film production tax credit to Alaska residents as wages totaled [\$1,344,918]. The qualified expenditures paid by productions qualifying for the film production tax credit for wages paid to non-residents totaled [\$5,667,782]. The number of residents employed by productions

qualifying for the film production tax credit totaled 188. The number of individuals employed by productions qualifying for the film production tax credit who were not residents totaled 192. The expenditures paid by productions qualifying for the film production tax credit that were not qualified expenditures totaled \$34,141,296.

FY2014 data under the new Department of Revenue program shows 50 applications of which 40 were approved. The estimated credits totaled \$18,263,211. There were 8 applications rejected, 1 withdrawn, and 1 was under review at the end of the fiscal year. Two tax credits were disbursed but the dollar amount of tax credits disbursed is confidential when fewer than 3 credits are issued.

The information for calendar year 2014 is similar. There were 40 applications and 24 were approved. The total amount of estimated credits approved was \$16,192,992. Just 4 tax credits were disbursed for a total of \$585,984. The qualified expenditures that were paid by productions qualifying for the film production tax credit totaled \$1,461,063. The qualified expenditures totaled \$601,529. Ninety one residents and 64 non-residents were employed on those 4 productions. The expenditures that were paid by productions qualifying for the film production tax credit that were non-qualified expenditures totaled \$11,118,329.

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CHAIR COSTELLO asked if there are any outstanding credits.

MR. BURNETT offered to follow up with the aggregate amount.

CHAIR COSTELLO noted that the statute was amended to focus on Alaskan jobs and Alaskan companies. She asked if the report reflects full-time equivalent jobs.

MR. BURNETT clarified that it is the number of individuals employed, not the number of jobs. He advised that there have been 2 meetings since the beginning of 2015 and 1 application was approved at a January meeting.

CHAIR COSTELLO asked what the governor has done to affect the program.

MR. BURNETT explained that the Governor's FY2016 budget removed funding for the DOR staff in the Alaska Film Office. The practical effect under AS 44.25.110 is that qualified credits will be processed and the program will be suspended after July

1. Due to the current fiscal climate, is unlikely that the incentive commission will approve any further applications.

CHAIR COSTELLO asked the practical difference between the Governor's action and the bill.

MR. BURNETT explained that under the Governor's action new legislation would not be required to reinstate the program, whereas SB 39 eliminates the program.

CHAIR COSTELLO asked him to characterize the current fiscal situation.

MR. BURNETT explained that the State of Alaska will bring in about 40 percent of the general fund revenue it is expending in FY2015, which is potentially a deficit of more than \$3.5 billion. Money has to come out of savings to pay for the budget and the state has ample savings for the next several years. Going forward the deficit appears to stay in place and perhaps get worse, which is a concern. He opined that the film tax incentive legislation isn't consistent with the fiscal structure of the state and doesn't bring much revenue into the state coffer.

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SENATOR STEVENS questioned the apparent disparity between the fiscal note that says that tax credits preapproved prior to July 1, 2015 would be allowed, and the testimony that the commission isn't expected to make further approvals.

MR. BURNETT clarified that he said it is unlikely that any further applications would be approved, but there could be a special circumstance that makes an application stand out.

SENATOR STEVENS asked if there is any difference between the Governor's suspension and the bill with regard to the July 1, 2015 date.

MR. BURNETT offered his belief that it's the same in both cases.

CHAIR COSTELLO stated that she would hold SB 39 in committee and take public testimony on February 24.

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There being no further business to come before the committee, Chair Costello adjourned the Senate Labor and Commerce Standing Committee meeting at 2:41 p.m.

