

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

February 3, 2016

3:32 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator Mia Costello, Vice Chair
Senator John Coghill
Senator Peter Micciche
Senator Bert Stedman
Senator Bill Stoltze
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

OTHER MEMBERS PRESENT

Representative Mike Chenault

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 115(FIN)

"An Act relating to the sovereignty of the state and the state's right to a credit or setoff for amounts or injuries inequitably or unlawfully caused or claimed by the federal government; requiring the United States to lift certain land orders and federal withdrawals; relating to the transfer of public land or interests in public land from the federal government to the state and to the disposal of that land or any interest in land; and providing for an effective date."

- MOVED SCS CSHB 115(RES) OUT OF COMMITTEE

SENATE BILL NO. 137

"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."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 115

SHORT TITLE: AK SOVEREIGNTY;US TRANSFER LAND TO ALASKA

SPONSOR(S): REPRESENTATIVE(S) CHENAULT

02/18/15 (H) READ THE FIRST TIME - REFERRALS
02/18/15 (H) RES, FIN
02/27/15 (H) RES AT 1:00 PM BARNES 124
02/27/15 (H) Moved CSHB 115(RES) Out of Committee
02/27/15 (H) MINUTE(RES)
03/04/15 (H) RES RPT CS(RES) NT 4DP 2DNP 1AM
03/04/15 (H) DP: HERRON, OLSON, HAWKER, TALERICO
03/04/15 (H) DNP: JOSEPHSON, TARR
03/04/15 (H) AM: SEATON
03/16/15 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/16/15 (H) Heard & Held
03/16/15 (H) MINUTE(FIN)
03/23/15 (H) FIN RPT CS(FIN) NT 5DP 2DNP 2NR
03/23/15 (H) DP: SADDLER, PRUITT, GATTIS, NEUMAN,
THOMPSON
03/23/15 (H) DNP: GARA, GUTTENBERG
03/23/15 (H) NR: EDGMON, MUNOZ
03/23/15 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/23/15 (H) Moved CSHB 115(FIN) Out of Committee
03/23/15 (H) MINUTE(FIN)
04/06/15 (H) TRANSMITTED TO (S)
04/06/15 (H) VERSION: CSHB 115(FIN)
04/07/15 (S) READ THE FIRST TIME - REFERRALS
04/07/15 (S) RES, JUD, FIN
02/03/16 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 137

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

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/19/16 (S) READ THE FIRST TIME - REFERRALS
01/19/16 (S) RES, FIN
02/03/16 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

TOM WRIGHT, staff to Representative Chenault
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Commented on HB 115 for the sponsor.

ED FOGELS, Deputy Commissioner
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Commented on HB 115 and SB 137.

LOIS EPSTEIN, Arctic Program Director
Wilderness Society
Juneau, Alaska

POSITION STATEMENT: Strongly opposed HB 115.

ELIZABETH DABNEY, Executive Director
Northern Alaska Environmental Center
Fairbanks, Alaska

POSITION STATEMENT: Opposed HB 115.

JOSEPH SEBASTIAN, representing himself
Kupreanof, Alaska

POSITION STATEMENT: Opposed the portion of HB 115 that wishes to revoke and reclaim 222 million acres of federal public lands in Alaska.

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

POSITION STATEMENT: Commented on SB 137.

ACTION NARRATIVE

[3:32:20 PM](#)

CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:32 p.m. Present at the call to order were Senators Coghill, Stedman, Costello, Wielechowski, Micciche and Chair Giessel.

[3:33:00 PM](#)

HB 115-AK SOVEREIGNTY;US TRANSFER LAND TO ALASKA

CHAIR GIESSEL announced consideration of HB 115 [CSHB 115(FIN) was before the committee]. She invited the sponsor's staff to provide a brief sectional analysis.

TOM WRIGHT, staff to Representative Chenault, Alaska State Legislature, said HB 115 addresses issues related to public

lands including the transfer of title of public lands to the state and also asserts state sovereignty under the 9th and 10th Amendments of the U.S. Constitution. According to the Department of Natural Resources (DNR), right now there are 222 million acres under federal ownership: the Bureau of Land Management (BLM) has about 75 million acres; wildlife refuges comprise about 70 million acres; national parks comprise 54 million acres; national forests comprise about 22 million acres, and the Department of Defense has 2.2 million acres. Alaska was granted 28 percent of the total land area within its borders. State entitlement was about 106 million acres after various federal laws were enacted. The remaining entitlement to be selected is 5.4 million acres.

The state has selected 10.9 million acres from which to receive those remaining 5.4 million acres, and has 10.2 million acres of top filings that may eventually become selections. A top filing is a contingent selection where the land is subject to federal restrictions or withdrawals. The state is prevented from selecting any of those lands until such time as a public land order is issued by the Department of Interior or an executive order is issued by the executive branch.

The definition of public land within the bill is federal land in the state, except for title held by another person or for military purposes. He said a legal memo indicates constitutional issues with this legislation, but it can be asserted that since land selections were supposed to have been finalized 35 years after Alaska's admission into the United States, that the federal government really has not acted in good faith in honoring the requirements of the Statehood Act.

[3:34:05 PM](#)

SENATOR STOLTZE joined the committee.

MR. WRIGHT said that the state has lost revenue due to lack of resource development on these federal lands; the Alaska National Wildlife Refuge (ANWR) is a prime example. Actions last year by the Obama administration to try to lock up federal lands from any development whatsoever also would have impinged on the state's entitlement to a share of the revenues from mineral development on these federal lands.

MR. WRIGHT said that HB 115 also asserts the state's sovereign rights under Articles 9 and 10 of the U.S. Constitution, and this was previously addressed in the 1983 initiative known as

"The Tundra Rebellion," which was never implemented after its affirmation by voters.

He said that Utah is also struggling with the federal government in trying to get the lands it is entitled to, and the South Carolina House adopted a resolution in 2013 supporting western states in the transfer of federal public lands to them. So, Alaska is not unique in that situation. He said the western states are dominated by federal land ownership. The resolution's main points are that the lack of utilization of these public lands and natural resources has a negative effect on the states' economies as well as that of the entire United States.

An interesting fact is that a study done by the Property and Environmental Research Center (PERC) found that the federal government loses an average of 27 cents for every tax dollar spent managing public lands, whereas state land trusts, on the other hand, realize \$14.51 for every dollar spent on managing public lands.

He said the bill is simple and that is why he didn't prepare a sectional analysis, but he offered to go over each section.

SENATOR COGHILL wanted to know what a "public land order" is referring to Section 4.

[3:38:05 PM](#)

ED FOGELS, Deputy Commissioner, Department of Natural Resources (DNR), Juneau, Alaska, answered that "public land order" is the term the department works with most. He didn't have a precise legal definition, but it is a land order put in place by the Secretary of the Interior on federal lands to withdraw for certain purposes. It prevents state selections from attaching to those lands.

He explained that Alaska is approaching the end of its statehood land entitlement process. Of the 105 million acre entitlement, 100 million acres have been conveyed and there are 5 million acres to be conveyed. The state has selected 10 million acres on BLM land that it could probably get tomorrow by just asking for it. The state also has about 10 million acres of lands it would like to select, but because of the public land orders, those selections don't attach; these are called top filings. The state can't get those lands until the public land orders are lifted. In reality, the state would like to acquire some of the more valuable lands encumbered by the public land orders.

MR. FOGELS said DNR had been pressing the Department of Interior to lift those public land orders, because they have outlived their initial purpose. For example, public land orders were put in place to make sure that the Native corporations could select their lands, but now those selections have been done.

SENATOR COGHILL asked if public land orders were part of the land agreement issue that came up under the Alaska National Interest Lands Conservation Act (ANILCA).

MR. FOGELS answered that those land orders were actually put in place by ANILCA.

SENATOR COGHILL asked if other land orders are disparate in their purposes.

MR. FOGELS responded that there are multiple purposes. A couple of classic examples are the footprint of the Susitna Watana Project that is encumbered by a public land order for a power site withdrawal. The second example that they have been fighting about for years is Public Land Order 5150 that withdrew a wide swath of land for the Trans-Alaska Pipeline System (TAPS) pipeline from Prudhoe Bay to Valdez that encumbers tens of thousands of acres that are clearly not needed. The state would like to select some of those lands for their rare earth mineral potential.

He corrected himself saying that the Native Corporation public land orders may have been put in place by the Alaska Native Claims Settlement Act (ANCSA) not by ANILCA.

[3:43:11 PM](#)

CHAIR GIESSEL recognized Speaker Chenault in the audience.

SENATOR COGHILL remarked that the first section talks about the rights to "setoffs" and asked how the state and federal governments view those.

MR. FOGELS responded that this term is not used a lot by DNR. It is basically the placement for any loss of economy that Alaska would have received had those federal lands had been fully utilized.

SENATOR COGHILL said because the buffer zones in his neck of the woods are getting bigger and bigger, the trappers and placer miners are faced with economic issues. They fall under a rule

that needs to be challenged, but practically speaking, an economy can't be developed there either.

MR. WRIGHT responded that this language is modeled after a Utah bill (HB 141). The sponsor described "setoff" as establishing a place holder to reserve the state's rights as it pursues its sovereignty on land claims against the federal government. It provides notice that the state reserves its right to claim a credit or "setoff" for any amount of injury suffered by the state that is wrongfully caused or claimed by the federal government. If the federal government finds the state has a liability to the federal government, the right of setoff allows the state to reduce or eliminate that liability by deducting or offsetting the amount the federal government owes the state. That claim could be used on any resource, or oil and gas development.

SENATOR COSTELLO said in previous years Mr. Fogels had testified to the fact that the state doesn't want to rush to complete its land selection, because once it does, then some of these other areas are off the table, plus more information will be gathered about the resources on it. She asked him to talk about "that delicate dance" and how this essentially not only keeps the state from the benefits of economic development on these lands but also from completing its land selections. She also had always thought it was 103.5 million acres and he is using 105 million acres.

MR. FOGELS responded that he could give the committee an accounting, but the several different land grant programs total up to an entitlement of 105 million acres. He said it has been the department's position to not rush to the finish line. The state has to get its last 5 million acres and they want to choose the best ones. The 20 million acres in this pool, half of which is off limits to the state, is a big pool of land about which not much is known. He explained that for a number of years, DNR did a strategic and critical minerals assessment program and got a lot of new information on many of those lands. This is how they found the rare earth and other critical mineral spikes in Public Land Order 5150. But, the first thing to do is to unencumber that 10 million acres. If that were done, DNR would ask for certain lands right now, because they know they are valuable. They would probably go for some lands in the selected category.

He explained that the public land orders also hamper the state's ability to gather data on those federal acres as well as the

ability of explorers to explore (a lot of data comes from the private sector).

SENATOR WIELECHOWSKI asked if the administration supports this bill.

MR. FOGELS said he had been told that the bill could have constitutional issues and based on that, the administration might find it hard to put its full weight behind it. The public land order issue is incredibly important to the DNR.

SENATOR WIELECHOWSKI said he didn't think there was any disagreement on that; the argument is all about whether the bill is legal or not. A lot of times attorneys for Legal Services hedge, but they didn't hedge on this; they said the bill is unconstitutional and cited the Constitutional provision, Article 12, Section 12, that says:

The State of Alaska and its people forever disclaim all right and title in or to any property belonging to the United States or subject to its disposition.

Basically, Senator Wielechowski said, the argument in this bill is that Alaska's Constitution is unconstitutional. But aside from that, if the bill passes, what is the enforcement mechanism for the department?

[3:51:38 PM](#)

MR. WRIGHT said honestly, he didn't think the state would take any action. The state is just asserting that it could be better stewards of state lands than the federal government can.

CHAIR GIESSEL thanked Mr. Fogels for his readiness to be on call for information.

SENATOR MICCICHE said he wanted a listing of public land orders that are set aside to understand the one section of the bill that is worthy of fighting for.

CHAIR GIESSEL referred him to an on-line resource, The American Lands Council, that has a map of the U.S. which shows the areas in red, but she said she would also ask for that information.

SENATOR COGHILL said he would be willing to work with Mr. Fogels and asked if he was willing to consider that the Statehood Act, ANCSA and ANILCA became the formulating documents that were meant to be about land use. There is probably a pretty good case

that the constitution has already been stepped over. He asked Mr. Wright if he had gone through the series of legal steps to show that Congress has unilaterally changed - without getting permission from the state that would back up the fact that it has to look through its Constitution, through ANCSA, and through ANILCA - to make this case.

MR. WRIGHT answered no, but he would be more than willing to look at that. He understands the constitutional questions that come with this bill.

SENATOR COGHILL said he would be willing to work with him and that he thought a severability portion needed to be added. The way the Statehood Compact has been treated - especially under the current administration where conservation unit guidance overrule the whole constitution and a compact that Alaska made with the federal government - might be the place to start a conversation to show that if the state has to assert itself, it's in defense of the Constitution, not in contradiction to it.

[3:56:53 PM](#)

SENATOR COSTELLO moved Amendment 1: 29-LS0587\I.3.

29-LS0587\I.3
Bullard
4/7/15

AMENDMENT 1

OFFERED IN THE SENATE
TO: CSHB 115(FIN)

Page 2, line 30, following the first occurrence of "state":

Insert ", except for land that is used for military or naval purposes including a military reservation,"

Page 3, line 3:

Delete "43 U.S.C. 1635(f) (sec. 906(f))"

Insert "43 U.S.C. 1635(f)(1) (sec. 906(f)(1))"

CHAIR GIESSEL objected for an explanation.

MR. FOGELS said he worked with the sponsor on the two amendments. The first one on page 2, line 30, inserts, "under the public land orders to be lifted except for land that is used for military and naval purposes including a military

reservation," because those are important lands and the state doesn't have an interest in getting those. If they are abandoned or withdrawn at some point in the future, the department would keep a selection in place and it would attach at that time.

The second amendment on page 3, line 3, is technical and refers specifically to the Statehood Act, Sec. 906(f)(1), because the other sections aren't relevant. Sec. (1) basically restricts over-selection to 125 percent and the department has selected about 200 percent. So, according to this section, the BLM could just start tossing the over-selections out without the state's permission. The department has kept BLM at bay, because of the public land order issue. So, it wants that 125 percent over-selection restriction deleted.

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SENATOR STOLTZE said "naval" has different definitions and asked if it is intended to be military-associated or is it broader to encompass National Oceanic and Atmospheric Administration (NOAA) vessels and encampments.

MR. FOGELS answered that the intent is to protect military presence in Alaska.

CHAIR GIESSEL removed her objection and finding no further objection, she announced that Amendment 1 was adopted.

[4:01:47 PM](#)

LOIS EPSTEIN, Director* Arctic Program* Wilderness Society* Juneau, Alaska* strongly opposed HB 115. She said the Wilderness Society is a national membership organization that has had scientists working in Alaska since its inception in the 1930s. Their scientific work has helped identify and protect the highest quality wildlife, recreational, and scenic habitat in the state.

She said HB 115 overreaches greatly, going well beyond lands that have been selected for conveyance to the state. They are concerned that state management would undermine protection of certain types of federally managed lands. They also oppose the bill, because it is unconstitutional according to a February 13, 2015, Legal Services memo, and it would also be costly to the state. Former Arizona Governor, Jan Brewer, vetoed a similar bill, because it was unconstitutional.

Lastly, she said, given the need for the legislature to address the complicated fiscal problems facing the state, they believe

holding this hearing on a clearly unconstitutional bill makes no sense. She quoted from an April 3, 2015 Juneau Empire editorial about HB 115 that backed up that sentiment.

4:05:08 PM

SENATOR STEDMAN commented that the legislature has been frugal with its time this year dealing with the fiscal issues and they take their jobs very seriously. He assured the public that members are working the budget and still trying to keep to their normal business along the way. However, he was a little concerned when they start getting newspaper articles in their bill packets. He exclaimed that everyone can get articles from the entire political gamut with even more extreme opinions than those in the U.S., and said, "Where does it stop? Do we ask ISIS what they think and start reading it into our record? I think we need to be a little bit careful there."

4:06:26 PM

ELIZABETH DABNEY, Executive Director, Northern Alaska Environmental Center, Fairbanks, Alaska, opposed HB 115. It ignores the U.S. Constitution and the state's legal advisors. Given the fiscal crisis Alaska is in and the resources that would be need to be dedicated to seeing this through, the best thing at this time is to let it go of this bill's initiative.

4:08:04 PM

JOSEPH SEBASTIAN, representing himself, Kupreanof, Alaska, said he is a 38-year resident and a commercial fisherman in Southeast Alaska. He opposed the portion of HB 115 that wishes to revoke and reclaim 222 million acres of federal public lands in Alaska.

He said federal lands have laws and rights that do not exist on state or private lands. One such right is subsistence use, which under ANILCA seeks to protect the public's right to those lands for subsistence takings and purposes. Yet, under current state forestry regulations, timber harvest is a primary use on state lands.

Another example is the National Policy Environmental Act (NEPA) that ensures certain procedures and oversight to resource use and development that do not exist on state or private lands. State forestry on state lands is relaxed to a point where it appears that "variance management" or "anything goes" is the state's low standard. The state is unable to manage the lands it already has under its jurisdiction. While he didn't oppose the state regaining the 5.5 million acres of Statehood Act lands still unconveyed, he opposed the "nonsensical pie in the sky"

request for all 222 million acres of federal lands that belong to all Americans.

SENATOR STEDMAN noted that the original 13 colonies had very little federal land, and when the State of Texas came into the Union it had very little federal land. The later states coming into the Union ended up having all the federal land. The original 13 colonies and Texas have healthy economies and their tax base is much broader than Alaska's; they have a lot easier time funding schools and building roads.

CHAIR GIESSEL, finding no further comments, closed public testimony. She said they would hear from Mr. Sturgeon who was also asserting state jurisdiction over state land in the U.S. Supreme Court. She said HB 115 goes on to the Judiciary Committee where it will be further examined, particularly on legal issues.

SENATOR COSTELLO commented that there is a difference in the tone and tenor of this bill that it wouldn't have if it was in the form of a resolution. It gets at the heart of what it means to be an Alaskan and references the economic wealth in our Statehood Compact. She then moved to report work order 29-LS9587\I as amended from committee with individual recommendations and attached fiscal note(s).

SENATOR WIELECHOWSKI objected. He said they shouldn't be spending any more time on this and their energies should be focused on other ways to resolve this problem. Legislators took an oath when they were sworn in to uphold the Constitution and this is beyond a doubt unconstitutional.

[4:15:28 PM](#)

A roll call vote was taken: Senators Stoltze, Coghill, Micciche, Stedman, Costello, and Chair Giessel voted yea; Senator Wielechowski voted nay. Therefore SCS CSHB 115(RES) moved from committee.

[4:15:55 PM](#)

At ease

SB 137-ELCTRNC TAX RETURN;MINING LIC. TAX & FEES

[4:17:27 PM](#)

CHAIR GIESSEL announced consideration of SB 137.

JERRY BURNETT, Deputy Commissioner, Department of Revenue (DOR), thanked the committee for hearing the governor's mining tax bill. He said since 1913, Alaska has had a mining tax. The original mining license tax was .5 percent on mining net income over \$5,000 collected on both net income from mining operations and from mining-related royalties. So, an owner collecting the royalties would pay a mining tax, as well as the operator of the mine. It came primarily from businesses engaged in coal and hard rock mining; gravel pits and quarry rock were exempt from the tax.

He said there were numerous changes from 1915-1953, but in 1951, the Territorial Legislature adopted a 3.5 year exemption for new mining operations. The current tax structure, in place since 1955 (pre-dating statehood) is as follows: incomes of zero to \$40,000 pay no tax; incomes from \$40,000 to 50,000 pay \$1,200 plus 3 percent over \$40,000; incomes from \$50,000 to 100,000 pay \$1,500 plus 5 percent over \$50,000, and incomes over \$100,000 pay \$4,000 plus 7 percent over \$100,000 net.

[4:20:14 PM](#)

ED FOGELS, Deputy Commissioner, Department of Natural Resources (DNR), Juneau, Alaska, said Alaska has six major mines that are currently operating and about 570 smaller placer and suction dredge operations that were permitted in 2015. The top 200 of those register enough on the tax scale and contribute as much to the economy as one major large mine. There are 34,197 active mining claims on state land. Of the six large operating mines, five are hard rock mines and one is a coal mine and are as follows:

1. The Red Dog Mine is an open pit lead and zinc mine and is operated by Teck Alaska, Incorporated, on NANA Native Corporation land; it is one of the largest zinc producers in the world and employs 610 people.
2. The Fort Knox Mine is an open pit gold mine near Fairbanks on state and private lands and is operated by Fairbanks Gold Mining and has 600 employees. It is the largest taxpayer of the Fairbanks North Star Borough.
3. The Pogo Mine is an underground gold mine located 38 miles northeast of Delta Junction on state land. It's operated by Sumitomo Metal Mining and employs 320 people.
4. The Usibelli Coal Mine is operated by Usibelli Coal Mine Incorporated, is owned by a local family, and employs 140 people.
5. The Kensington Mine is an underground gold mine located near Juneau and is operated by Coeur Alaska on Forest Service land.

6. The Greens Creek Mine, also operating on Forest Service land, is an underground silver, zinc, lead and gold mine located close to Juneau and is operated by Hecla Greens Creek Mining and employs 415 people.

He said that the Nixon Fork Mine has been in temporary cessation since 2013, but it has been maintained and monitored, and hopefully will open again.

[4:22:53 PM](#)

CHAIR GIESSEL asked why Nixon Fork is suspended at the moment.

MR. FOGELS answered the reason is that commodity prices right now are too low and the expense of the operation is too great to justify operating. He thought the company was looking for more investors.

CHAIR GIESSEL said one could construe that economic factors affect the ability of a mine to continue operating.

MR. FOGELS agreed.

CHAIR GIESSEL asked what assessment was done on the proposed tax as far as its effect on a mine like Nixon Fork.

MR. BURNETT answered that the department looked at the tax on net income so as economic factors go down the tax will also go down. In fact, from the time they started looking at this tax proposal the estimated revenue went down from \$12 million to \$6 million. They have discussed this with the mining companies and found that the tax rate is much less of a concern to them, because it is on net income and is still fairly low, than suspending the tax holiday.

CHAIR GIESSEL pointed out that Nixon Fork closed for economic reasons and increasing taxes would accelerate those economic reasons for other mines.

SENATOR STOLTZE asked if any of the operating mines are in unincorporated areas.

MR. FOGELS said that Pogo and Nixon Fork Mines are in unincorporated areas.

SENATOR STOLTZE asked if there were any local, production or severance taxes.

MR. BURNETT answered that he didn't have all the details, but the Fort Knox Mine is the largest taxpayer in the Fairbanks North Star Borough and the Greens Creek and Kensington Mines are the one and two largest taxpayers in Juneau. The Red Dog Mine pays a Payments in Lieu of Taxes (PILT) and a severance tax to the Northwest Arctic Borough and is the only taxpayer there.

He said these mines are an important source of local income and they build a tremendous amount of infrastructure. In Juneau, residents enjoy hydropower and lower electric rates, and its third largest taxpayer is the privately owned electric utility that was actually built to service the local mines. Clearly, large mines are a major source of local revenue and a major contributor to local infrastructure in those areas where they are located.

SENATOR STOLTZEE commented that in previous revenue bills on other industries, an analysis of government take was part of the administration's presentation. He asked if there would be an analysis of government take.

[4:28:04 PM](#)

CHAIR GIESSEL concurred and asked Mr. Burnett for a summary of government take for each of the operating mines.

MR. BURNETT replied that he can't do that for individual mines, because that is confidential information, but he could do it for mines as a group. In 2014, 13 taxpayers were in the upper bracket, which probably means multiple ownership of those mines. The total income amongst that group was \$571 million and they paid \$37,853,000 in state mining license tax. The other 490-plus mine license taxpayers that filed had a total net income of \$1 million.

[4:30:00 PM](#)

SENATOR STEDMAN said Alaska can't get the mining industry off the ground, because it is just too remote and too expensive, also called green-field costs, to do here. The tax structure is not what is stopping it, because there is no mining tax for all practical purposes. However, for the Niblack and the Bokan Mines in Southeast, taking away the three-year window in the beginning just creates another hurdle. Those two mines could bring a lot of benefits to that region, so he was a little bit gun-shy about putting up more hurdles for these mines that are trying to open.

SENATOR WIELECHOWSKI said a study was done a few years ago under the Palin Administration comparing Alaska's mining tax to other

states' and countries' around the world. It seemed to have some good ideas and didn't recommend tax increases. However, it noted that Alaska's tax structure is very old, going back to 1955, and there was some thought about updating the structure. He asked to get a copy of that study, because he thought it could be helpful in making other changes to encourage development and exploration.

[4:33:59 PM](#)

MR. BURNETT said he was aware of the study and would find out if it is available.

SENATOR COGHILL said they may not be able to get the whole picture of mines and their value, but they need to know, for one thing, if there is a royalty base.

[4:34:52 PM](#)

MR. FOGELS responded that DNR's role is not to tax, but to collect the royalties and property rentals. There are 34,197 mining claims and those generated \$6.07 million in 2014. All the claims - upland and offshore mining leases and some coal leases - generated \$6.8 million in 2014, while production royalty generated \$7.07 million, and coal leases generated \$2.3 million.

SENATOR COGHILL said some of his constituents tell him that miners don't pay royalties, but they do. It's just small, because they are a smaller mining business.

MR. FOGELS added of the six operating mines, only two are on state land that pay royalty: Usibelli Coal Mine and Pogo Mine. The Fort Knox Mine is on Mental Health Trust Land and private lands, the Kensington and Greens Creek Mines are on federal land, Nixon Fork is on BLM land and Red Dog is on NANA land.

[4:38:02 PM](#)

SENATOR COGHILL said he wanted people to realize that the state is the landlord to only a small portion of mines. When it comes to taxation, in Alaska anything green field requires defending its permitting system in court. Those who come to explore up here also have to defend themselves in court for the right to do what is quite often permitted. This is a universe of permitting costs that at the end of the day it is a "deafening taxation" of a different style, and it needs to be quantified as the state tries to get its resource industries engaged and working.

SENATOR STOLTZE wanted a better grasp of the administration's policy behind the proposed taxation. Is it purely to fill the

revenue shortfall, because it's pretty small and may actually be counterproductive. The idea is to grow the pie not get sinew off a diminished carcass.

MR. BURNETT responded that the policy behind the legislation is parts of all the factors Senator Stoltze mentioned. Part of it is to fill the state treasury, but if the state proposes to spend money on mine infrastructure and facilities, it is possibly politically more palatable if people see that the state is collecting revenue from the mining industry (that would be reallocated back to it). "The industry has to be seen that it is paying its way."

[4:41:05 PM](#)

SENATOR STOLTZE commented that his takeaway from Mr. Burnett's reply is that the legislature has to demonstrate credibility to the public before embarking on fiscal policy and plans and taxation regimes.

SENATOR STEDMAN asked if the mining industry does separate accounting.

MR. BURNETT replied that the license tax is separate accounting on the mining operations in Alaska. Corporate income taxes, as with the rest of the state's corporate income tax structure, are allocated based on various factors. For one, it's a portion of their U.S. income tax.

SENATOR COGHILL said tradeoffs always happen with taxation, and he is not against the mining industry putting money into state coffers if the real value can be seen. However, the state already has the large mines contributing the cost of permitting.

MR. FOGELS answered that was correct; the large mine permitting process has evolved to where companies enter into an agreement with DNR to coordinate permitting that is 100 percent reimbursable to DNR, the Department of Environmental Conservation (DEC), Alaska Department of Fish and Game (ADF&G), Department of Health and Social Services (DHSS) or any other agency that is actually involved in permitting. It is totally voluntary.

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SENATOR COGHILL said the larger mines generally have to go through a national environmental policy (NEPA) process where the smaller mines probably wouldn't have to, but the smaller mines would still have to go through the licensing tax.

MR. FOGELS said that was right.

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CHAIR GIESSEL asked what the Red Dog Mine has to reimburse the Alaska Industrial Development and Export Authority AIDEA for in the construction of its road. Is there any still outstanding debt?

MR. BURNETT said they are still paying, but he would have to get the specific numbers for her.

CHAIR GIESSEL said the social impacts have to be considered, though it is an unquantifiable item, - like when the Nixon Fork Mine shut down. She asked if there was a known number of jobs lost from that.

MR. FOGELS answered that 30 to 40 people worked that project.

SENATOR COGHIL, for context, asked the value of the 3.5 year exemption on the mining tax for new operations and if it is a diminishing value.

MR. BURNETT answered that currently a large mine, in particular, has a large capital construction budget over a long period of time. So, at the beginning of operations, the first 3.5 years are not subject to tax, which is quite valuable. The proposal to remove this is based on a set of assumptions that the mine will still be economic and that removing it won't affect any major mining project during the period on the fiscal note.

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SENATOR WIELECHOWSKI asked what a production curve for a standard mine looks like, because he knows that oil companies produce huge amounts of oil at first to recoup their costs and then production declines pretty steadily.

MR. FOGELS said typically the production curve for a mine goes up quickly to a peak and then depending on the nature of the ore body it stays high, and then as the ore body is depleted, unless additional reserves are found, production might trickle down depending on the grades. Typically the highest grades are produced first to try and recoup those high upfront capital costs.

SENATOR WIELECHOWSKI asked for a model of how much the state would have made on other mines and asked if he had any predictors on future hard rock mines.

SENATOR COSTELLO wanted more information about the context of this tax proposal. Did the administration use several guiding principles, or was it just a sentiment of "everyone is going to feel the pain?" How much of the fiscal gap will this tax address versus what amount of foregone revenue from projects being shelved actually contribute to the deficit?

MR. BURNETT responded that there were a lot of discussions. One factor was that they didn't want to leave any portion of the economy out because of fairness issues.

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SENATOR STEDMAN said on the positive side, the tax structure has been in place since 1955, so there is a lot of stability, which he thought was a good sign. But in 1955 the state didn't have automation and computerization. This bill requires electronic filing, which is good, but will there be savings within the department by switching?

MR. BURNETT answered that the department did not intend to add or delete any positions as a result of passage of this bill. However, because the legislature appropriated \$35 million in 2011 to allow for a new custom off-the-shelf tax management system that is now operating for all tax types, the department has been able to delete some Tax Division positions over the past two years.

None of these bills will change how the department does business significantly enough to affect its position count. A small increment is needed for changing the program and forms and changing tax rates, but after that it's steady. That is one of the reasons they didn't make changes in tax structures.

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SENATOR COSTELLO asked Mr. Burnett to clarify the statement that position counts were expected to change, specifically that instituting an income tax would require additional people.

MR. BURNETT clarified that he was referring to changing existing taxes. Any new taxes will require additional staffing.

CHAIR GIESSEL said the lens they look at these taxes through is how a proposed tax affects Alaska families, businesses and jobs.

They talked briefly about the Nixon Fork Mine, which is in a very rural area with very few jobs to begin with, and the loss of jobs when the mine closed.

She said this committee is interested in growing the pie. A Livengood mine (a massive gold and limestone (for cement) deposit) that is in pre-permitting would diversify the economy, and provide a commodity at a much lower cost than having to ship it in, which is done now. She asked what was considered as far as the economic impact of removing the 3.5 year tax holiday on the Livengood development, which is, at this point, at a standstill because of commodity prices.

MR. BURNETT said he didn't know the specifics, but he would provide the committee the information that is available on that project.

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SENATOR COGHILL said they need to look at modeling capital investment and capital gain to see if the state is missing part of that top.

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SENATOR MICCICHE said he was worried about how the tax policy is presented across the board. Alaska had been blessed with enormous revenues from the North Slope that has provided an economy through the government structure. Some agree that is appropriate and some disagree, but it is something that can occur at \$107 a barrel oil and not something that can occur at \$30 a barrel.

He said the state's tax policy seems to be looking to continue that government economy even though the state doesn't have the revenue. He supported some of the measures that have come before the legislature this year, but he worries that they are trying to harvest too much from the producers in the state that really have the potential to provide jobs at \$30 a barrel oil and provide a sustainable job market as the oil price recovers in the future. He said Alaska is a resource rich state with nothing but potential and he hoped they weren't dis-incentivizing future projects with some shortsighted revenue outlooks today.

CHAIR GIESSEL thanked him for those comments.

MR. BURNETT continued that the mining tax proposal increases the tax rate on the highest bracket from 7 to 9 percent and removes the 3.5 year exemption for new mines. It requires electronic

filing and adds an application and renewal fee for the tax license, which is a substitute for a business license.

SENATOR MICCICHE asked the department to provide an approximate bracketed government take that isn't related to actual income. The other taxes, which are in the public record, could supplement that approximation.

MR. BURNETT said he would do his best to get that information.

SENATOR WIELECHOWSKI said that this was the first time in his tenure as a legislator that mining taxes were being deliberated. He also asked for details about how Alaska stands relative to the mining industry in other states and countries.

SENATOR COSTELLO also want to know how long the average permitting window is for mining in other states.

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ADJOURNMENT

CHAIR GIESSEL adjourned the Senate Resources Standing Committee meeting at 5:01 p.m.