

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

April 1, 2017

3:03 p.m.

MEMBERS PRESENT

Representative Sam Kito, Chair
Representative Adam Wool, Vice Chair
Representative Andy Josephson
Representative Chris Birch
Representative Gary Knopp
Representative Colleen Sullivan-Leonard

MEMBERS ABSENT

Representative Louise Stutes
Representative Mike Chenault (alternate)
Representative Bryce Edgmon (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 103

"An Act relating to the practice of optometry."

- MOVED CSHB 103(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 124

"An Act relating to corporations, including benefit corporations, and other entities; and providing for an effective date."

- HEARD & HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 36

"An Act bearing the short title of the 'Fair Contribution by High Profit Businesses Act'; requiring certain persons in the business of oil and gas production or transportation to pay income tax; establishing a tax on the income of a sole proprietorship, partnership, limited liability company, or an S corporation; relating to exemptions from the tax on corporations; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 103

SHORT TITLE: OPTOMETRY & OPTOMETRISTS

SPONSOR(S): REPRESENTATIVE(S) SPOHNHOLZ

02/03/17	(H)	READ THE FIRST TIME - REFERRALS
02/03/17	(H)	HSS, L&C
03/14/17	(H)	HSS AT 3:00 PM CAPITOL 106
03/14/17	(H)	Heard & Held
03/14/17	(H)	MINUTE(HSS)
03/16/17	(H)	HSS AT 3:00 PM CAPITOL 106
03/16/17	(H)	Scheduled but Not Heard
03/18/17	(H)	HSS AT 3:00 PM CAPITOL 106
03/18/17	(H)	Moved CSHB 103(HSS) Out of Committee
03/18/17	(H)	MINUTE(HSS)
03/22/17	(H)	HSS RPT CS(HSS) NT 5DP 1NR
03/22/17	(H)	DP: JOHNSTON, TARR, SULLIVAN-LEONARD, KITO, SPOHNHOLZ
03/22/17	(H)	NR: EASTMAN
03/27/17	(H)	L&C AT 3:15 PM BARNES 124
03/27/17	(H)	Heard & Held
03/27/17	(H)	MINUTE(L&C)
03/29/17	(H)	L&C AT 3:15 PM BARNES 124
03/29/17	(H)	Heard & Held
03/29/17	(H)	MINUTE(L&C)
04/01/17	(H)	L&C AT 1:00 PM BARNES 124

BILL: HB 124

SHORT TITLE: BENEFIT CORPORATIONS

SPONSOR(S): REPRESENTATIVE(S) KITO

02/15/17	(H)	READ THE FIRST TIME - REFERRALS
02/15/17	(H)	L&C, FIN
04/01/17	(H)	L&C AT 1:00 PM BARNES 124

BILL: HB 36

SHORT TITLE: TAX: INCOME FROM NON C CORP ENTITIES

SPONSOR(S): REPRESENTATIVE(S) GARA

01/18/17	(H)	PREFILE RELEASED 1/13/17
01/18/17	(H)	READ THE FIRST TIME - REFERRALS
01/18/17	(H)	L&C, FIN
02/27/17	(H)	SPONSOR SUBSTITUTE INTRODUCED
02/27/17	(H)	READ THE FIRST TIME - REFERRALS
02/27/17	(H)	L&C, FIN
04/01/17	(H)	L&C AT 1:00 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE IVY SPOHNHOLZ
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As the sponsor re-introduced HB 103.

BIANCA CARPENETTI, Staff
Representative Sam Kito
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Kito, sponsor, provided an overview of HB 124.

STEPHEN TRIMBLE, Founder and Chief Executive Officer (CEO)
Arctic Solar Ventures
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 124.

REPRESENTATIVE LES GARA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As the sponsor introduced SSHB 36 via a PowerPoint presentation entitled, "HB 36: Fair Contribution by High Profit Businesses Act."

JOHN LETOURNEAU, Certified Public Accountant
Thomas, Head & Greisen, PC
Anchorage, Alaska

POSITION STATEMENT: As an invited witness answered questions related to SSHB 36.

LAURA CHARTIER, Staff
Representative Les Gara
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions related to SSHB 36.

MATTHEW GARDNER, Senior Fellow
Institute on Taxation and Economic Policy
Washington, DC

POSITION STATEMENT: Provided invited testimony on SSHB 36.

ACTION NARRATIVE

[3:03:22 PM](#)

CHAIR SAM KITO called the House Labor and Commerce Standing Committee meeting to order at 3:03 p.m. Representatives Kito, Sullivan-Leonard, Knopp, Birch, and Josephson were present at the call to order. Representative Wool arrived as the meeting was in progress.

HB 103-OPTOMETRY & OPTOMETRISTS

[3:04:06 PM](#)

CHAIR KITO announced that the first order of business would be HOUSE BILL NO. 103, "An Act relating to the practice of optometry; and providing for an effective date." [Before the committee was CSHB 103(HSS).]

[3:04:34 PM](#)

REPRESENTATIVE IVY SPOHNHOLZ, Alaska State Legislature, Juneau, Alaska, as the sponsor, re-introduced HB 103. She explained that HB 103 would update the Board of [Examiners in] Optometry to be more in line with the practices that are consistent with those other boards overseeing health professions throughout the state of Alaska. It would give the board the authority to regulate its own practice and would move management of optometrists away from the legislature and into the board.

[3:05:45 PM](#)

CHAIR KITO moved to adopt Amendment 1, labeled 30-LS0459\J.5, Bruce, 3/28/17, which read:

Page 2, lines 6 - 7:

Delete "standards for the practice of optometry as provided"

Insert "whether optometry practice procedures or policies comply with acceptable standards of the practice of optometry, as provided"

[3:05:57 PM](#)

The committee took a brief at-ease.

[3:06:34 PM](#)

CHAIR KITO again moved to adopt Amendment 1.

[3:07:04 PM](#)

REPRESENTATIVE JOSEPHSON said he is unable to tell what the [proposed] change is.

REPRESENTATIVE SPOHNHOLZ explained Amendment 1 would tighten the definition of standard of practice in a manner that is consistent with the exact language that is used by the Board of Nursing. She said the amendment is at the recommendation of the Department of Law to ensure that the definition of the standard of practice is clearly defined as complying with acceptable standards of practice of optometry. According to the Department of Law, she added, this would tighten the definition of standard of practice in a way that makes it more useful.

[3:07:59 PM](#)

There being no objection, Amendment 1 was adopted.

[3:08:04 PM](#)

The committee took a brief at-ease.

[3:08:42 PM](#)

REPRESENTATIVE JOSEPHSON moved to adopt Amendment 2, labeled 30-LS0459\J.1, Bruce, 3/27/17, which read:

Page 1, line 9, following "disease":
Insert "as provided under AS 08.72.272"

CHAIR KITO objected for purposes of discussion.

[3:08:52 PM](#)

REPRESENTATIVE JOSEPHSON explained Amendment 2. He related that in oral testimony and written comments, several ophthalmologists stated that they don't prescribe anything more powerful than hydrocodone, which, to his knowledge, was not controverted. He further related that these ophthalmologists stated that eyes do not respond well to pain medication. He said that as he reads the bill, it would provide that optometrists could prescribe any [pharmaceutical] ever invented.

REPRESENTATIVE JOSEPHSON further explained that Amendment 2 is consistent with a forthcoming amendment which would repeal language that would give optometrists the authority through their board to prescribe anything they want to. Amendment 2, he

stated, would return to existing language in Alaska Statute (AS) 08.72.272. He said it would be hard to say optometrists didn't make certain arguments about the need to oversee their own practice. However, he continued, they didn't make any arguments in testimony or in writing about why they needed to expand the kinds of prescriptions they make. Given the crisis the state is confronted with, he said he doesn't know why that expansion is necessary, which is why he is offering Amendment 2.

[3:11:13 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD inquired as to what AS 08.72.272 describes in detail.

REPRESENTATIVE JOSEPHSON replied that Amendment 2 would bring this back to current law that exists under [AS 08.72.272], Pharmaceutical Agents, subsection (a), which says optometrists can prescribe for assorted things. Amendment 2, he said, says the status quo will prevail and optometrists will have the authority that they currently have to prescribe.

[3:12:11 PM](#)

REPRESENTATIVE SPOHNHOLZ rebutted that part of the intent of the legislation was to simplify and to streamline the legislation authorizing the [Board of Examiners in Optometry] to oversee their practice. She related that [the board] has testified it will continue to work with the four-day limitation on the supply of opioids, for example. Also, she continued, other regulation is being put into practice regarding the opioid epidemic, which she strongly feels the legislature needs to address by advancing HB 159 for that purpose. She said she understands the maker of the amendment's concerns, but the statutory language currently in place is outdated and leaves [legislators] in a position of overseeing specific kinds of medications for which [legislators] don't have the expertise to be managing. Therefore, it is better to have this authority placed at the board level, she stated.

[3:13:19 PM](#)

REPRESENTATIVE BIRCH spoke against Amendment 2. He recalled the committee hearing testimony about what an optometrist could prescribe and that nurses could not prescribe [narcotics]. However, he continued, he was informed by a friend who is a nurse that nurses can prescribe narcotics in Alaska, have done so for decades, and that nurses need the same Drug Enforcement

Administration (DEA) authority as a physician or any other clinician. Therefore, he said, he is not troubled about providing the latitude proposed [in HB 103].

[3:14:01 PM](#)

REPRESENTATIVE KNOPP asked whether Section 4, page 2, of the bill does what the maker of the amendment is trying to do.

REPRESENTATIVE JOSEPHSON responded, "This brings us back to the overall." What he means, he continued, is it makes the board the ultimate decider about what those prescriptions should be, and he is not comfortable with that. The people who testified have spent more time than anyone else working on eye care and they said they never use more than hydrocodone. Under current law, he continued, "optometrists can do that very thing, but [HB 103] would lift that and say, 'prescribe what you want,' if that [is] what the board says, 'prescribe what you will.'" He further noted it means that the attorney general would have to look at this language and determine whether the board acted consistent with the language [of HB 103 in section 4, page 2], and he would conclude that as long as they establish the what, where, and why of what they were doing, maybe they would say yes. "But," he added, "that is our point - we'd make it valid - and ... there's that argument that the attorney general would have to give them that authority."

[3:16:00 PM](#)

REPRESENTATIVE WOOL offered his understanding that optometrists can already prescribe certain controlled substances. He said he doesn't see that as being a problem in the past; it is a responsibility that [optometrists] have handled.

[3:16:30 PM](#)

CHAIR KITO maintained his objection to Amendment 2.

A roll call vote was taken. Representatives Josephson voted in favor of Amendment 2. Representatives Knopp, Sullivan-Leonard, Wool, Birch, and Kito voted against it. Therefore, Amendment 2 failed by a vote of 1-5.

[3:17:10 PM](#)

REPRESENTATIVE JOSEPHSON moved to adopt Amendment 3, labeled 30-LS0459\J.2, Bruce, 3/27/17, which read:

Page 2, lines 20 - 24:
Delete all material.

Renumber the following bill sections accordingly.

3:17:12 PM

CHAIR KITO objected.

REPRESENTATIVE JOSEPHSON explained Amendment 3. He said it is the same argument as Amendment 2, and that he is not convinced the board has the training, education, and experience to make decisions about pharmaceutical agents in every case. While he is comfortable in some cases, [the bill proposes] to expand this in a way that is, in his view, far beyond [the board's] training and therefore he is offering Amendment 3.

REPRESENTATIVE SPOHNHOLZ opposed Amendment 3. She said her comments on the amendment are much the same as for Amendment 2. The language in Section 4, she stated, is clear that the pharmaceutical agent prescribed needs to be consistent with their standards of practice. Like optometrists, there are other professions that have the authority to practice within this scope that have not gone to medical school and therefore are not under the [State Medical Board].

REPRESENTATIVE BIRCH said he has similar concerns as he voiced before in that if the board is recognized as having the capacity and the ability to make those recommendations, it is not dissimilar from other clinicians in that line of work.

3:19:00 PM

CHAIR KITO maintained his objection to Amendment 3.

A roll call vote was taken. Representative Josephson voted in favor of Amendment 3. Representatives Birch, Sullivan-Leonard, Knopp, Wool, and Kito voted against it. Therefore, Amendment 3 failed to be adopted by a vote of 1-5.

3:19:30 PM

REPRESENTATIVE JOSEPHSON moved to adopt Amendment 4, labeled 30-LS0459\J.3, Bruce, 3/27/17, which read:

Page 2, following line 24:

Insert a new bill section to read:

"* **Sec. 5.** AS 08.72.273 is repealed and reenacted to read:

Sec. 08.72.273. Non-invasive procedures. Except as provided in AS 08.72.278, a licensee may perform non-invasive procedures including

- (1) removing superficial bodies from the eye and its appendages;
- (2) epilating misaligned eyelashes;
- (3) placing punctal or lacrimal plugs;
- (4) diagnosing dilation and irrigation of the lacrimal system;
- (5) performing orthokeratology;
- (6) prescribing and fitting contact lenses with the purpose of altering refractive error;
- (7) using diagnostic instruments that use laser or ultrasound technology; and
- (8) other similar procedures within the scope and practice of optometry."

Renumber the following bill sections accordingly.

Page 2, line 26, following "**practice.**":

Insert "(a)"

Page 2, following line 29:

Insert a new subsection to read:

"(b) A licensee may not perform ophthalmic surgery. In this subsection, "ophthalmic surgery" means an invasive procedure where human tissue is cut, ablated, or otherwise penetrated by incision, laser, or other means to treat diseases of the human eye, alter or correct refractive error, or alter or enhance cosmetic appearance; "ophthalmic surgery" does not include the procedures described under AS 08.72.273."

CHAIR KITO objected.

[3:19:42 PM](#)

REPRESENTATIVE JOSEPHSON described Amendment 4 as critical. Qualifying that he is speaking from memory, he said no fewer than 20 optometrists wrote him stating that HB 103 is not about surgery, but rather about controlling their own destiny and practice. He explained Amendment 4 provides eight non-invasive items that can be done by optometrists with adequate training. These would be eight things in the law that optometrists don't

expressly have now, he continued, which would seem like a good thing if he were an optometrist.

REPRESENTATIVE JOSEPHSON said Amendment 4 also clarifies the opinion of optometrists. He recounted that the committee heard from a doctor of optometry in Juneau who wanted to do a large number of surgeries. There is some confusion about the motivation for the optometrists, he continued. In the original bill, optometrists wanted to do ophthalmic surgery and while that is not before the committee, it is important to ask what the motivation or intent is. He said page 2, subsection (b), comes from Washington state law and delineates the things that optometrists are not trained to do. The difference in training is enormous and that is why the delineation should be made, he stated. The [State Medical Board] says an ophthalmologist needs four years from an accredited medical school; needs to pass steps one, two, and three of general medical boards; needs a year of internship consisting of intensive care, emergency medicine, surgery, internal medicine, often in 80-100 hour work weeks, including the performance of thousands of surgical procedures; needs a three-year ophthalmic residency, which would include laser and ophthalmic surgeries under close supervision; needs one to two years of surgical fellowship consisting of intensive education; and that the total education comprises 22,000 hours of work and training. [Ophthalmologists] also need to complete an American Board of Ophthalmology exam on a 10-year renewable cycle; need to have mandatory 60 hours of class, one continuing medical education; an annual review; and license renewal by the [State Medical Board].

REPRESENTATIVE JOSEPHSON said he feels that if the state doesn't tightly regulate surgical eye care there's really no need in regulating anything with great vigor. While that may sound alarmist, he continued, he feels that this subject, in particular, needs that sort of scrutiny, and Amendment 4 would essentially mirror current Washington state practice. If the bill passes, he pointed out, the current law will say that the only type of invasive surgery an optometrist can perform is removal of a foreign body from the eye, yet the rest of the bill, CSHB 103(HSS), opens the door for much more. So, he said, the bill already creates some odd complications and he therefore asks for support of Amendment 4.

[3:24:05 PM](#)

REPRESENTATIVE KNOPP offered his appreciation for Representative Josephson's concerns, but said he has always advocated for

allowing the board to regulate its profession within the scope of the license, education, training, and experience - that is the key point. He said Amendment 4 would gut the intent of the bill and therefore he is against it. According to the sectional analysis, he continued, Section 5 provides that the board may not authorize any procedure beyond the scope of the licensee's education and experience. The whole intent of the bill is to allow optometrists to practice their business in the manner that they went to school and were taught and trained to do. He said he cannot see them doing anything outside of that scope; therefore, he is speaking against Amendment 4 and in support of the bill.

[3:25:18 PM](#)

REPRESENTATIVE SULLIVAN-LEONARD recalled discussions within the Health & Social Services Standing Committee regarding the formation of the board and the work of the board. She said her hope is that additional information could come back to legislators in a year or two that provides more detail about the type of non-invasive procedures that optometrists do. She asked whether this is something the sponsor thinks would work better than to try to amend the bill with this concept now.

REPRESENTATIVE SPOHNHOLZ answered that, if the bill passes, the legislature's role is to ensure that the law is being implemented in ways that the legislature thinks are consistent with its original intent. She added that having the board provide presentations on the evolution of the board process seems like a reasonable thing to do. Regarding the amendment as a whole, she said she agrees with Representative Knopp's characterization that it takes away the guts of the bill. The intent of the bill is to delegate the authority to manage optometrists and the practice of optometry to the [Board of Examiners in Optometry].

REPRESENTATIVE SPOHNHOLZ added that she doesn't disagree with Representative Josephson's characterization of the extensive education of ophthalmologists who are trained surgeons. Using an analogy, she noted that the distinction between dentistry and oral surgeons is fairly similar - the amount of education that dentists receive is fairly similar to the amount of education that optometrists receive. Dentists oversee their own scope of practice through their board and there are not huge problems and conflicts between oral surgeons and dentists. The problem is not the distinction between optometry and ophthalmology, she continued, but rather that the legislature is overseeing it.

Taking politics out of good governance in health programs, and health practice in particular, is the way get the best evidence-based efforts and management and that is why HB 103 proposes to delegate that authority as described specifically to the [Board of Examiners in Optometry].

[3:28:30 PM](#)

REPRESENTATIVE WOOL stated he is not able to list the procedures that would be performable by an optometrist and doesn't want to limit an optometrist's practice just to that. He said the bill would allow the [Board of Examiners in Optometry] to say what optometrists can and cannot do within the scope of their training and practice.

REPRESENTATIVE WOOL related that over the last week he called some optometrists in his home community who hadn't called in and were not following this in committee and asked them whether they wanted to do surgery. He said their reply was absolutely not. One optometrist, he continued, told him there is a procedure that optometrists are trained to do, but it cannot be done in Alaska and will not be something optometrists will do if HB 103 passes. While he respects the argument for 20,000 hours, he said every medical doctor goes through medical school whether to be an ophthalmologist, heart surgeon, or podiatrist, and much of those 20,000 hours is studying cardiology and cancer and other things, and all those hours are not applicable exactly to the eye. Optometrists spend a lot of hours studying specifically the eye, he continued, and they do not want to do surgery out of this bill; they just want to have control of their professions.

[3:30:47 PM](#)

CHAIR KITO maintained his objection to Amendment 4.

A roll call vote was taken. Representative Josephson voted in favor of Amendment 4. Representatives Wool, Birch, Knopp, Sullivan-Leonard, and Kito voted against it. Therefore, Amendment 4 failed to be adopted by a vote of 1-5.

[3:31:18 PM](#)

CHAIR KITO announced that HB 103, as amended, was now before the committee.

[3:31:31 PM](#)

REPRESENTATIVE JOSEPHSON offered comments for the legislative record. He recalled the sponsor and her aide as both stating that the bill does not touch AS 08.72.273. The only way to read that, he said, is to derive the conclusion that the only type of invasive surgery that would be allowed if this bill became law is removal of a foreign body. This section for removal of a foreign body is not intended to permit a licensee to perform invasive surgery. He noted that Section 72 of the aforementioned statute covers the entire optometrists' code. So, he continued, it is not just about foreign bodies, it is about all types of surgeries. He stated that his previous amendment would have helped optometrists by saying that without question those eight things can be done, but now there could be a debate about that.

REPRESENTATIVE JOSEPHSON added that this reminds him in some ways about his response to SB 91, which he is mentioning because he tends to be cautious about things that can hurt people and things that can hurt the natural environment. He pointed out that the concerns of the ophthalmologists are almost entirely not economic. Ophthalmologists have spent their lives working in eye care and care about the standard of practice, he continued, and while that is not to say that optometrists don't, the way the bill is written optometrists can do any manner of things. He recollected that in a March 14 hearing before a different committee, [Assistant Attorney General Harriet] Milks had stated that the attorney general would not intervene on matters of policy or comment on how the optometrists regulate themselves; if they are promulgating regulations within this bill, they can do it. In some respects, this is just being moved to a different venue, he said, and people are going to continue reading about this in the newspaper.

[3:34:23 PM](#)

CHAIR KITO drew attention to Section 5 of the bill, which states, "A licensee may perform the services of optometry as defined in AS 08.72.300 only if the services are within the scope of the licensee's education, training, and experience as established by regulations adopted by the board." He said he is familiar with this type of thing because he is an engineer regulated under the [State Board of Registration for Architects, Engineers, & Land Surveyors]. As an engineer, he noted, he could theoretically design a bridge, but without any experience designing a bridge that bridge could collapse and hurt people. With his experience, he continued, he could design a roadway, breakwater, sewer, or outfall, all of which he has done and in

which he has education, training, and experience. He said it is his responsibility within that license to perform those duties that he has the training for and it is up to him with the knowledge of his education to know when and how to apply that experience. Optometrists have much more education and training in their field than he does in engineering, he stated, and they should be allowed to identify what the scope of practice is that is consistent with their experience, education, and training, and he believes that this bill goes there. He said he does not believe that optometrists will be practicing outside their knowledge and experience and offered his support for the passage of HB 103.

[3:36:21 PM](#)

REPRESENTATIVE WOOL moved to report CSHB 103(HSS), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 103(L&C) was reported from the House Labor and Commerce Standing Committee.

[3:36:41 PM](#)

The committee took an at-ease from 3:36 PM to 3:38 PM.

HB 124-BENEFIT CORPORATIONS

[3:38:48 PM](#)

CHAIR KITO announced that the next order of business would be HOUSE BILL NO. 124, "An Act relating to corporations, including benefit corporations, and other entities; and providing for an effective date."

CHAIR KITO, sponsor, stated that his interest in introducing this bill is to modify Alaska's corporate structure to allow for the ability of a corporation to establish itself with a charitable component as opposed to being fiducially responsible to shareholders. A corporation would be able to use some of its profits, earnings, or other assets to benefit other or charitable or nonprofit organizations. This would allow many corporations that would like to provide some type of support outside their primary business mode, or even within their business mode, that is not reflective of expending profits, and allow them to do that without violating their fiduciary responsibility.

CHAIR KITO drew attention to the sponsor statement and noted that the first paragraph might need to be amended because it appears to be a carryover from another bill.

3:40:20 PM

BIANCA CARPENETI, Staff, Representative Sam Kito, Alaska State Legislature, explained the purpose of HB 124 on behalf of Representative Kito, sponsor. She spoke as follows:

The purpose of HB 124 is to expand the options for Alaskan entrepreneurs and investors by placing a new type of corporate entity - Benefit Corporation or B Corp - in Alaska statute. A benefit corporation is a for-profit corporation that includes public benefits and community improvements into their business practices, no matter the principal services or products provided.

Corporate law generally requires corporations to consider the financial impact to their shareholders as the top priority when making decisions. Maximizing corporate returns can interfere with other corporate goals, such as electing to do something beneficial for the community by enhancing social benefit. Some of the defining characteristics of a benefit corporation include expanded purpose beyond maximizing share value to explicitly include general and specific public benefit. A benefit corporation also considers and balances the impacts of their decisions not only on shareholders but also on their stakeholders. ... Benefit corporations must make available to the public a regular benefit report that assesses their overall social and environmental performance against a third-party standard.

Three arguments in support of laws establishing public benefit corporations are: First, it creates legal requirements that regulate corporations claiming to work toward social good. Becoming a benefit corporation as a legal entity means a business that says it is dedicated to the public good will have to substantiate this claim, similar to how qualifying as tax-exempt helps define non-profits as charitable. Moreover, benefit corporations' reporting requirements to shareholders, the state, and the public provide a degree of transparency the corporations could

otherwise refuse to provide. Second, these laws promote societal benefits by clarifying fiduciary duty. Entrepreneurs are more likely to pursue lines of business in a socially beneficial way when the law ensures that the pursuit of profit does not need to be the highest priority. Likewise, investors concerned with the public good are given an alternative. Third, this provides legal protection for companies that seek purpose-driven partnerships. Benefit corporation legislation allows them to undertake beneficial partnerships that conventional corporations might shun out of fear that shareholders would not see it as a venture likely to be profitable.

[3:43:33 PM](#)

MS. CARPENETI turned to a discussion of the bill itself. She said Section 1 amends Alaska Statute (AS) 10.06.633(a), regarding how corporations may be dissolved, to include benefit corporations.

MS. CARPENETI stated that Section 2 adds to AS 10, Alaska's corporation code, a new chapter, Chapter 60, establishing benefit corporations. Article 1, she continued, establishes how a new business corporation or existing entity may become a benefit corporation, and it also declares that an amendment of an existing corporation must be adopted by at least the minimum two-thirds vote. She said Article 2 establishes seven factors that the board of directors and individual directors of a benefit corporation shall consider while discharging their duties. She pointed out that directors of the benefit corporation are not required to give priority to any of these listed factors unless the intention to prioritize them has been identified in the benefit corporation's articles of incorporation.

MS. CAPENETI continued to address Section 2 and said Article 3 allows the board to include a benefit director who is not financially liable if acting in good faith. She explained that Article 4 directs an officer of a benefit corporation to consider the factors enumerated by the board of directors. Article 4 also states that an officer of the benefit corporation is not personally liable for monetary damages if the officer's duties are performed in compliance with Alaska statute. She said Article 5 identifies who may bring action or claims against a benefit corporation for a failure to pursue general or specific public benefit.

MS. CARPENETI stated that Article 6 of Section 2 requires a benefit corporation to file a biennial benefit report in addition to the biennial report, and it also provides details of what must be in that report. She related that Article 7 establishes a status change for a merger or amendment for a benefit corporation or a domestic entity other than a business corporation, which must be approved by at least two-thirds the vote of all shareholders entitled to vote. Article 7 also establishes statutory guidelines for third-party standards used as an assessment tool in the required benefit report to ensure that the general or specific public benefits are being done. She said Article 8 provides for general provisions, including regulations, definitions, and applicability.

MS. CARPENETI advised that the remaining sections of the bill deal with regulations and effective date.

[3:45:47 PM](#)

MS. CARPENETI added that it is important to note the following: First, that benefit corporations are voluntarily formed. Second, that benefit corporations have the same tax status as for-profit corporations. Third, that benefit corporation is a legal designation, not a marketing label. Fourth, this legislation specifies the requirements for the biennial benefit report, which does two things: 1) It provides accountability to the shareholders who will be able to track and direct benefit, and 2) it provides transparency to investors who will know what the benefits are.

MS. CARPENETI concluded by stating that HB 124 establishes a solid foundation for long-term mission alignment and value creation. It protects mission through capital raises and leadership changes and creates more flexibility when evaluating potential sale and liquidity options. Further, she said, it prepares businesses to lead a mission-driven life.

[3:46:54 PM](#)

REPRESENTATIVE JOSEPHSON brought attention to page 3 where the types of benefits that could be provided are laid out. He asked what would constrain the legislation from becoming politicized; for example, a debate about what a public benefit was.

MS. CARPENETI replied that a benefit corporation is responsive to its shareholders. She inquired whether the question is about abuse of this system or what might happen in that event.

REPRESENTATIVE JOSEPHSON said he assumes shareholders would know that if they have invested in Ben and Jerry's they are going to get a certain benefit corporation investment, and if they invested in Dow Chemical, they might get a different one.

MS. CARPENETI responded that that is the point of the benefit report - it outlines what the company is doing. In its articles of incorporation, a corporation outlines any potential priorities that it might have for the corporation. Those are publically available, so as informed consumers [people] can decide if that is the company they want to invest in. In terms of holding the company accountable, she said she would point to the biennial report as being the mechanism by which shareholders would be able to track what the corporation is doing and if a shareholder has concerns about the action, or concerns that the corporation is not conforming to its previously stated benefits or mission, then a shareholder would potentially have grounds for bringing claim against the directors or the board.

[3:48:45 PM](#)

REPRESENTATIVE JOSEPHSON related that he once invested in Calvert Investment Funds, an ethics fund that was supposed to have a benign impact on the world, at least as perceived by Calvert Investments. He said he is mentioning that because he knew going in with his small investment that the return might be 6 percent instead of 10 percent. He inquired whether that is something [benefit corporation] shareholders would understand.

MS. CARPENETI answered that the way it is set up it is often called the double bottom line. So, instead of the board of directors being responsible for only making decisions based on the financial impact, the board could also base its decisions on other factors, including social good.

[3:49:52 PM](#)

REPRESENTATIVE KNOPP asked whether public benefit corporations exist today.

MS. CARPENETI replied that Alaska is not groundbreaking with this legislation. Thirty-one other states have adopted similar legislation and other states are considering it.

REPRESENTATIVE KNOPP requested Ms. Carpeneti to provide examples of benefit corporations.

MS. CARPENETI responded by first clarifying that Ben and Jerry's is not technically a benefit corporation, but rather a Certified B Corp, which means the company has gone through third party analysis that says the company provides this good. Examples of current benefit corporations include Patagonia and King Arthur Flour, the oldest flour producer in America.

REPRESENTATIVE KNOPP asked what public benefit services are provided by the aforementioned corporations.

MS. CARPENETI answered that she would get back to the committee with a list of all the public benefits that Patagonia provides, but that Patagonia is dedicated to outdoor recreation.

REPRESENTATIVE KNOPP inquired whether this is talking about only publicly traded corporations, given not all corporations are publicly traded. He further inquired whether there is a tax benefit to the corporation to do this. Lastly, he inquired why any publicly traded corporation could not in its articles of incorporation or in its prospectus to shareholders list itself as public benefit.

MS. CARPENETI replied that corporate law says a corporation could become liable if its shareholders disagree with doing this and bring suit against the corporation for not deciding based on the financial impact of its decisions in expanding to a public benefit good. The bill would provide legal protection for the corporation to include those benefits into its decision-making process.

REPRESENTATIVE KNOPP reiterated his question about whether this is talking only about publicly traded corporations that trade stock on an exchange.

MS. CARPENETI offered her belief that the answer is yes.

CHAIR KITO interjected that he would get this clarified and provide the information to the committee. He said it is in the corporation statutes and offered his belief that any company filing an incorporation notice with the state could become a benefit corporation. The corporation would still be required to file its articles of incorporation, but the articles of

incorporation may provide a public benefit as opposed to just a fiduciary responsibility.

[3:52:54 PM](#)

REPRESENTATIVE BIRCH asked what the genesis is for the proposal and whether someone requested that it be done.

CHAIR KITO replied it was a proposal put forth by Representative Seaton in a past session. He said he thought the bill a great idea and so took it forward with the idea that a Native for-profit corporation might want to try doing something that benefits heritage. Right now, many corporations have a for-profit as well as a non-profit heritage group, which sometimes share boards of directors. However, he continued, the for-profit has to make its decisions in supporting some of those other organizations based on what is a responsible fiduciary manner as opposed to, say, what might be culturally desirable for a Native corporation. Whether or not it gets used that way, he said, he saw the opportunity to strongly link, or more strongly link, the for-profit motive of a Native corporation or any other corporation to the values of the shareholders and allow a corporation to provide opportunities and benefits to a cultural group or charity. It is a voluntary choice, he pointed out, but if it is chosen then the corporation has to outline everything it is going to be doing in its articles, which thereby allows the corporation to not have to make all of its goals fiduciary goals.

REPRESENTATIVE BIRCH reiterated his question as to whether someone specifically came to Chair Kito.

CHAIR KITO answered that nobody came to him specifically. He further offered his belief that nobody went to Representative Seaton specifically.

REPRESENTATIVE BIRCH said he is familiar with non-profits that are set up with public charitable purpose and while he is not opposed to the bill, he doesn't fully understand the need for it.

CHAIR KITO responded that the purpose is to get the information out and discover who might be interested in utilizing it.

REPRESENTATIVE BIRCH stated he is more used to someone coming to a legislator with a problem that needs solving, rather than

throwing something out there and asking whether anyone has a problem with it.

MS. CARPENETI noted that there is correspondence accompanying Representative Seaton's previous iteration of the bill from an individual with the business Earth Friendly Coffees who had expressed interest. Additionally, she advised, Stephen Trimble of Anchorage will be testifying today that he is interested in gaining benefit corporation status for his business.

[3:56:27 PM](#)

REPRESENTATIVE WOOL offered his understanding that the proposed concept would allow a corporation to make a decision that isn't totally financial as a benefit for something else, rather than being required to give top priority to financial. He surmised that this concept changes how a corporation would practice its business as opposed to what it does with its profits.

MS. CARPENETI replied yes, this establishes a legal designation for a corporation that wants to be recognized as a benefit corporation. It doesn't change how traditional corporations operate; it just sets up the standards for benefit corporations. She added that it allows a great deal of latitude to the board of directors of the company to decide what that balance is. It doesn't provide any sort of table or schedule saying this is how the company must allocate its profits or this is how the company must act as a benefit corporation. It just allows the flexibility for a corporation to decide how to operate as best suits its mission and what it is trying to do.

REPRESENTATIVE WOOL offered his understanding that all Newman's Own profits go to charity. He surmised this is what Newman's Own does with its profit and is not necessarily how it operates its business. He asked whether Newman's Own is a benefit corporation or whether it is more a corporate decision as to what Newman's Own does with its profits.

MS. CARPENETI responded that she would look at Newman's Own to see whether it is established as a benefit corporation and will get back to the committee with an answer.

CHAIR KITO pointed out that his intent is not to change the way the corporation would operate, but just to allow the corporation to have more flexibility with what it does with its profits.

[3:58:50 PM](#)

REPRESENTATIVE BIRCH inquired whether a traditional corporation could transition to a benefit corporation and whether it would take a shareholder vote.

MS. CARPENETI answered yes, a corporation can start as a regular corporation and then if HB 124 became law the corporation could opt to change through a two-thirds vote of its shareholders.

[3:59:32 PM](#)

REPRESENTATIVE KNOPP asked whether there is anything in the Internal Revenue Service (IRS) code as far as tax structures, or in states that have benefit corporations, that allow benefit. For example, he asked, whether the benefits that are expended are taxable benefits to the corporation.

MS. CARPENETI replied that benefit corporations do not enjoy any special tax status, they are taxed the same as corporations.

[4:00:16 PM](#)

REPRESENTATIVE WOOL offered his understanding that a benefit corporation would not get any special tax status. He observed that next on the committee's calendar is a bill related to taxing [non-C corporations]. He asked whether benefit corporations could in theory avoid a tax given that they would have a different designation than other types of corporations.

MS. CARPENETI responded she is hesitant to comment on legislation she hasn't seen and how it would impact benefit corporations. She deferred an answer to someone with legal expertise and tax expertise.

REPRESENTATIVE WOOL surmised that if there are certain tax laws that affect certain types of corporations and this is yet another type of corporation, then he would expect that the law would have to address that type of corporation, which hasn't yet happened.

MS. CARPENETI replied that that is a reasonable expectation.

[4:01:53 PM](#)

CHAIR KITO opened public testimony on HB 124.

[4:02:14 PM](#)

STEPHEN TRIMBLE, Founder and Chief Executive Officer, Arctic Solar Ventures, speaking on behalf of his company, testified in support of HB 124, which would authorize the creation of benefit corporations in Alaska law. He said Arctic Solar Ventures is a residential and commercial solar design and installation company that operates statewide. He noted that his company is the second Certified B Corp in the history of Alaska.

MR. TRIMBLE explained that the difference between a Certified B Corp and benefit corporation is that a certified B Corp is a third-party global standardized certification that is sort of like a fair-trade certification for coffee for businesses that incorporate social and environmental benefit into their mission. He said benefit corporation legislation is a compendium piece to certified B Corp status that allows companies like his to be able to also acknowledge that commitment to society and the environment within the structure of state law.

MR. TRIMBLE advised that his company, a leading socially responsible business in Alaska, plans on becoming Alaska's first benefit corporation after the passage of HB 124 and has been actively working on it. During the previous iteration of the bill by Representative Seaton, he continued, he called and expressed interest in the bill and urged it be passed. His company has been following this for the past two to three years and has been pressing for its adoption because the entire company believes this is an incredibly valuable tool for Alaska businesses to be able to differentiate themselves.

MR. TRIMBLE stated that this is uniquely critical to the "DNA" of his business and it will also present many other businesses the opportunity to codify their commitment to society and the environment within their bylaws. Differentiating businesses within their communities and within the global community at large sends a clear message that Alaska is a leading place for socially responsible businesses to form and thrive, he said. Profit, societal benefit, and environmental stewardship can powerfully coexist within business. He urged that the full legislature support the enabling of Alaska businesses to fully commit themselves to making the world a better place through their practices and policies.

[4:06:03 PM](#)

REPRESENTATIVE KNOPP asked whether Mr. Trimble's company is publicly traded on an exchange and whether it issues shares.

MR. TRIMBLE responded that his is a privately held corporation. He advised it is not required that a benefit corporation be publicly traded.

REPRESENTATIVE KNOPP inquired as to the number of board members for Mr. Trimble's company.

MR. TRIMBLE replied that his corporation has five board members.

REPRESENTATIVE KNOPP asked why Mr. Trimble's corporation would need to be a benefit corporation if the purpose is to disseminate information about the purpose of the corporation and the company only has board members and no shareholders.

MR. TRIMBLE answered that this legislation would enable his corporation to consider, as a company, other aspects of societal and environmental benefit as opposed to merely profit as its predominant driver and measure of business success. This is an incredibly powerful tool for businesses to be able to differentiate themselves within the local community, he reiterated, because making those commitments public and being upheld to those commitments in the form of reporting is very powerful. It goes far above and beyond just saying a company does good - the company has to actually show it does good. That is also the reason why his corporation has already pursued the extremely stringent third-party B Corp certification. It's different than simply just being able to report to the company's shareholders or board.

[4:08:43 PM](#)

REPRESENTATIVE BIRCH inquired as to what the distinction is that [HB 124] would offer Mr. Trimble and his business aspirations versus a conventional configuration.

MR. TRIMBLE replied that this would allow his corporation to volunteer to a higher level of scrutiny and obligation to do good in its business practices. It is a voluntary thing, but to be able to offer yourself to be held up to the reporting requirements to a broader mission beyond profit is something that every Alaskan company should want to do because businesses are here to make Alaska a better place. As founder of Arctic Solar Ventures, he said, this is his company's DNA. To have the state acknowledge that and join his company in its voluntary reporting of that is hugely important.

[4:10:28 PM](#)

REPRESENTATIVE WOOL asked whether Mr. Trimble's business could still operate the same way it does and make the same decisions without the benefit corporation designation other than the recognition of it.

MR. TRIMBLE responded that his business, through its internal practices, does that now, but he can't guarantee that other companies will do the same. If a company is volunteering to be held to that standard and wanting to receive the public relation benefits that are associated with being in a business that has considerations above and outside of pure profit, he said, then the company needs to be held to a standard. This structure has been designed and implemented by other states so that businesses can't claim societal benefit without a standard and proof under the state's corporate structure.

MR. TRIMBLE addressed the committee's earlier discussion about the use of profits and how that plays in. He pointed out that there is no requirement under HB 124 that profits be donated to a non-profit or used for a non-profit, which is the case for benefit corporation structure anywhere. It has nothing to do with how profits are dispersed or where they should go, he advised, rather it has to do with internal practices and policies of the business. For example, his company firmly believes that one of its public benefits is that it deploys clean energy and the deployment of clean energy has many societal benefits. His company is creating local jobs and stimulating the local economy, as well as reducing carbon footprints of people and cleaning the air. It's not only about being able to be acknowledged for being held to a higher standard, he reiterated, but that the company is volunteering to be held to that standard, and that is why HB 124 is important.

[4:14:02 PM](#)

REPRESENTATIVE WOOL offered his understanding that it is a standard of corporate behavior that a company would be adhering to, as well as the public recognition and benefit that the company would get from being identified as that type of corporation.

MR. TRIMBLE confirmed that that is a very fair assessment.

[4:14:26 PM](#)

REPRESENTATIVE KNOPP inquired whether B Corp Certification is a federal certification.

MR. TRIMBLE answered that it is an international certification with over 4,000 corporations now certified throughout the world, and that this certification is administered by the organization, B Lab, LLC. He explained that B Lab is the organization that helped states develop the first benefit corporation legislation. The idea behind B Corp Certification and the B Lab organization was to create a global framework where businesses can volunteer to be a part of this very rigorous assessment and to work with states to then develop the benefit corporation designation within their corporate state structure, so it completes the puzzle. The benefit corporation piece is a U.S. specific piece, he said, but the B Corp Certification is a global certification.

[4:15:49 PM](#)

CHAIR KITO held over HB 124.

HB 36-TAX: INCOME FROM NON C CORP ENTITIES

[4:16:03 PM](#)

CHAIR KITO announced that the final order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 36, "An Act bearing the short title of the 'Fair Contribution by High Profit Businesses Act'; requiring certain persons in the business of oil and gas production or transportation to pay income tax; establishing a tax on the income of a sole proprietorship, partnership, limited liability company, or an S corporation; relating to exemptions from the tax on corporations; and providing for an effective date."

[4:16:24 PM](#)

REPRESENTATIVE WOOL moved to adopt the proposed committee substitute (CS) for SSHB 36, Version 30-LS0148\E, Nauman, 3/29/17, as the working document. There being no objection, Version E was before the committee.

[4:16:50 PM](#)

REPRESENTATIVE LES GARA, Alaska State Legislature, as the sponsor introduced SSHB 36 via a PowerPoint presentation entitled, "HB 36: Fair Contribution by High Profit Businesses Act." He explained SSHB 36 tries to close a number of

exemptions that Alaska has [slides 1-3]. Until 1980 when Alaska had an income tax, every business in the state contributed towards the state's public services and roads - the business owners paid an income tax. He said the profits that the owners owned through their business, whether lawyers, doctors, engineers, architects, oil field service companies, or any business of which the state has 40,000, paid a portion of the business's profits to the state to help support public services.

REPRESENTATIVE GARA said SSHB 36 tries to solve the state's current problem, which is that the 9,000 C corporations in Alaska are subject to the state's corporate business tax while most other businesses are not. Most people see C corporations as publicly traded corporations, he noted, but they are more than that. Although some businesses are subject to a fisheries tax or a mining tax, most other businesses - lawyers, doctors, architects - pay no tax to the state other than a \$50 license fee per business. So, a company making \$10 million in profits contributes \$50 to the state. He advised that SSHB 36 tries to recognize that struggling businesses cannot afford to pay a tax, but that those who are doing much better in terms of profits can afford to contribute to the state's schools and infrastructure. People who are successful benefit from the things the state pays for, such as roads and infrastructure, energy projects, and the public schools that produce the employees who work for the business. Members of society want to support the next generation that benefits from those things, which is the point of contributing back.

[4:20:00 PM](#)

REPRESENTATIVE GARA pointed out that 9,000 S corporations in Alaska pay no corporate tax [slide 4]. Regardless of whether these S corporations make \$10 million or \$500,000 in profits, their tax is only the \$50 in license fees paid per business. Obviously, jobs in this economy are important, he continued, but in some sense for the state treasury every business right now actually costs the state money - for roads, schools, and the other infrastructure that is provided by the state. From a budget standpoint, one would hate to have businesses be a money drain, but that is the way things are set up in Alaska. Businesses certainly help with local property taxes, but for the state budget businesses cost more money than the state gets back. He noted that there are 45,000 businesses in the state that are not S corporations, and related that when he was a salaried attorney at a law firm, the firm took in \$10-15 million in profits and paid \$100 to the state with two lines of business

license fees. This is the same for doctors' offices and many other businesses, he continued. He said he didn't feel that the law firm contributed back and when he became a partner at that firm, he felt the firm should contribute back more than the license fee that it paid.

REPRESENTATIVE GARA advised that the number of non-corporate businesses that pay tax in Alaska is zero, regardless of the amount of their profits [slide 5]. He said the corporations that do pay tax are the roughly 9,000 C corporations in the state as there is a tax structure for C corporations. The types of business not currently paying tax in Alaska include S corporations, limited liability companies (LLCs), partnerships, and sole proprietorships. Those are the classes of the [45,000] businesses that don't pay a tax in Alaska.

[4:22:27 PM](#)

REPRESENTATIVE GARA stated that the matter of fairness is one reason why he introduced SSHB 36 [slides 8-9]. He offered his belief that people who are successful in society should chip in to help society run. The state's current exemption, which is every business that is not a C corporation, does not help close the state's deficit.

REPRESENTATIVE GARA pointed out that Alaska law has a confidentiality provision and every business that does not pay a tax is considered a taxpayer under Alaska law because that is how the law is written [slides 10-11]. That confidentiality provision for taxpayers, even taxpayers that pay no tax, requires that the Department of Revenue not reveal the name of any business that does not pay a tax. In some sense, he said, it is almost good not to know the names of the businesses that don't pay taxes. The purpose of the bill is not to target any business. It is to say that if a business makes a certain amount of income it should chip in toward the ability for the state to provide public services.

REPRESENTATIVE GARA stated that SSHB 36 tries to draw a line between those businesses that are successful and those that are struggling because it is not wanted to tax a business out of business [slide 12]. He said he drew a line that says the first \$200,000 of profit/net income is nontaxable under the bill, which he thinks is generous. The bill does not change the current corporate tax on C corporations, he explained, and less profitable businesses will remain fully exempted from any

business tax under SSHB 36. He allowed there could be differing views on whether the \$200,000 mark is the right mark.

[4:24:58 PM](#)

REPRESENTATIVE GARA advised that SSHB 36 would not tax Alaska Native corporations specifically, which the bill states [slides 13-14]. Most, if not all, Native corporations are covered as C corporations given the number of shareholders that they have, and if they make a profit, they probably pay a tax to the state under the C corporation tax. He said it is the same with village corporations and that the village corporations often don't make a profit.

REPRESENTATIVE GARA pointed out that the tax schedule set under SSHB 36 is lower than the schedule under the current corporate tax, mostly because the first \$200,000 of income is exempt [slide 15]. He noted that the top tax rate under the current corporate tax for C corporations is 9.4 percent of income above \$222,000 a year, and that there is a smaller tax on lower levels of income. He explained that by exempting the first \$200,000 of income the proposed tax is a lower tax and the proposed tax gradually moves the tax from 5 percent to 9.4 percent at \$1,000,000. He allowed it is for the committee to decide whether those are the right graduations, but that the exemption under the current C corporation statute only excludes the first \$25,000 of income. One reason a less aggressive tax than the corporate tax is sought is that many larger companies and publicly traded companies are going to be under the C corporation tax. A larger company probably has a greater ability to "weather the storm" in down years with a tax than would a much smaller company.

REPRESENTATIVE GARA reiterated that the first \$200,000 is tax-free and then the tax starts at 5 percent for income over \$200,000. At \$500,000 the tax goes to 7.5 percent and at income above \$1 million it caps out at the current corporate tax rate of 9.4 percent, whereas the current corporate tax rate is 9.4 percent at income above \$222,000. He noted that the bill's effective tax rate is even lower because, like the corporate tax, it is deductible from federal income tax. Thus, under this bill the effective payment may possibly be 20-39 percent lower. For example, a 9.4 percent tax would be closer in effect to about 6 percent tax because it is deductible from federal tax.

[4:29:10 PM](#)

REPRESENTATIVE GARA pointed out that there is one exception to what he has said so far - Alaska has a separate corporate tax for oil and gas producers and pipeline owners [slide 17]. If it is a C corporation it pays the 9.4 percent tax at \$222,000. Under current law, an oil and gas producer or a pipeline owner that is formed as an S corporation or as an LLC avoids the corporate tax. He said SSHB 36 would put all companies that are inside the state's oil and gas corporate tax into the existing corporate tax structure - an oil and gas producer formed as an S corporation would be treated as a C corporation. That tax has a different definition on income than the corporate tax for all non-oil and gas companies. He noted that under the bill, if [Hilcorp Alaska, LLC], the fourth largest oil and gas producer in the state, made profits it would be subject to the existing oil and gas corporate tax, while currently it is not.

REPRESENTATIVE GARA said SSHB 36 uses the same definition of taxable income as existing law because he didn't want to create a new definition. He stated: "There is one definition of income for non-oil and gas companies that's based on a multi-state tax compact that's designed so many states don't tax the same income. Income for oil and gas companies will be defined the way it's defined for oil and gas companies; it's a complex formula that is ... referred to as worldwide apportionment."

[4:31:29 PM](#)

REPRESENTATIVE GARA continued his discussion of how taxable income is defined (slide 19). A few policy calls were made in the bill, he said, and one was whether to tax the business or the individual shareholders. It was decided to levy the tax on the business to minimize the cost of administration for both the business and the state, but primarily to minimize the costs for the businesses and their shareholders. Rather than make each shareholder or each partner pay tax separately, SSHB 36 provides that the business pay the tax on the business's net income. The business can then apportion its net income and the tax paid between its shareholders.

REPRESENTATIVE GARA reported that the corporate income tax produces roughly \$100 million annually (slide 20), but that the amount of oil and gas corporate income tax produced each year depends very much on oil prices. For example, in 2016 there was a negative amount. It was negative, he explained, because companies pay estimated taxes and by the end of the year the Department of Revenue (DOR) owed money back. The current

projections for 2017 and 2018 are about \$100 million and \$200 million, respectively, as oil prices are projected to rise.

4:33:23 PM

REPRESENTATIVE GARA stated that originally the thought was to only cover those corporations that are not covered (slide 21). So, he continued, why does this bill go beyond corporations? Why does it add partnerships? Why does it add general businesses? He explained that as an attorney he could form a law firm as a corporation, which many law firms do. Or, he could form a law firm as a partnership. Or, he could form as a sole proprietorship and hire a number of lawyers. He said that if a law firm took in \$10 million in profits, he could not find an answer as to why he should pay a tax if he files as an S corporation but not if he files as a sole proprietorship. It's the same business activity, the same benefits from the state, and the same cost to the state (for example, the court system). He said he therefore doesn't think the form that someone creates a corporation under should determine whether or not that person pays a tax; rather, the activity and the level of profit should determine whether or not someone pays a tax. He added that he cannot come up with a logical reason why he would tax the same business that forms as an LLC differently than a business that does the same exact thing and makes the same exact money as a sole proprietorship, for example.

REPRESENTATIVE GARA said much time was spent on ensuring that there would be no double taxation under the bill (slides 22-23). Any income taxed under SSHB 36 would be exempted from a personal income tax if one were adopted in Alaska. The bill is modeled as much as possible under existing law - the definitions of income used in the bill are the same as under existing law. Also, he continued, the bill avoids double taxation in cases where one business owns another business. There would not be a tax on the owner business as well as a tax on the business that it owns. The owning business is already going to be paying taxes on the business that it owns. Additionally, he said, current C corporation law says that if a corporation pays another tax, such as a fishing or mining tax, those taxes are deducted from the company's corporate tax, and this same rule is followed in SSHB 36.

REPRESENTATIVE GARA stated that the bill's biggest goal is to make sure everyone is "chipping in together" (slide 24). The bill is one way to help address the state's \$2.8 billion deficit. In looking at the various plans out there, he

continued, there are none on the table that would allow legislators to both fill the deficit and return to having a capital budget. A number of different approaches are needed, he said, and it is his hope that as many good ideas as possible will advance forward and people will decide which ones are needed as a fiscal plan.

[4:38:38 PM](#)

REPRESENTATIVE JOSEPHSON observed that the first bullet on slide 19 states, "To minimize the costs of administration, tax is placed on the business and the individual owners". He further observed that the second bullet on slide 19 states, "Business will apportion taxes based on ownership shares, so that each owner does not have to hire their own accountant". He said the second bullet seems to be the opposite of the first bullet.

REPRESENTATIVE GARA replied that the tax would be placed on the business so only one filing would have to be made. If a business had 20 shareholders and the individual was taxed, then 20 filings would have to be made and those 20 different people might have to hire 20 different accountants. When the tax is placed on the business, then the business will apportion taxes based on a person's shares for what the person's net income was and what the taxable portion attributed to that was. Then, each person can figure out his or her federal taxes.

[4:39:37 PM](#)

REPRESENTATIVE JOSEPHSON said it appears to be in the Gardner memo that Alaska is one of only two states that fully exempt this sort of income. He inquired whether this is correct.

REPRESENTATIVE GARA offered his belief that that is correct. He further offered his belief that 41 states have an income tax and business owners pay their share of the income they get from their law firm, oil field services company, or store as an income tax. Some states have both an income tax and a business tax, he advised, and most states that don't have an income tax have some sort of law like SSHB 36 that taxes non-C corporations; they may just tax S corporations and LLCs. He reiterated his earlier statement that he doesn't understand why a state would tax the same business as an LLC but let them avoid taxation if they formed under some other form. He added that he thinks some states go beyond LLCs.

[4:40:44 PM](#)

REPRESENTATIVE BIRCH expressed his concern that the bill would [create double taxation] and that, in the absence of imposing a statewide personal income tax, an entry-level tax on pass-through businesses would in fact double up. He said the bill needs a lot more work because he is very concerned about cranking up the taxes when [the legislature] is not making the budget reduction that needs to be done.

REPRESENTATIVE GARA answered that much care and work has been taken to ensure there will be no double tax under the bill. "If an income tax were to be adopted," he explained, "the income that you pay under this tax would not be subject ... to the income tax." He pointed out that this provision is on page 2, starting on line 5. He added that SSHB 36 also avoids the other possible double taxation issue of an entity that owns another entity that would be taxed under this bill. He said he understands the concern of whether members believe people should be paying taxes, but that there is no double taxation under SSHB 36.

[4:42:29 PM](#)

CHAIR KITO turned to invited testimony.

[4:42:56 PM](#)

JOHN LETOURNEAU, Certified Public Accountant, Thomas, Head & Greisen, PC, stated he doesn't have prepared testimony, but, per the sponsor's invitation, he is before the committee to answer questions on SSHB 36 as a person who is a practicing certified public accountant (CPA) and involved in preparing income tax returns for C corporations, S corporations, LLCs, and sole proprietorships.

[4:43:32 PM](#)

REPRESENTATIVE BIRCH posed a scenario of a group of attorneys that have an S corporation. He asked whether the tax return would roll down to where it would be individually accountable to each partner.

MR. LETOURNEAU replied yes. He posed a scenario of a group of attorneys that choose to form a corporation and do business as an Alaska for-profit corporation that elects to be taxed as an S corporation. The attorneys as shareholders would be allocated a share of the taxable income of the S corporation, he said, and they would report that on their federal income tax return. If

the attorneys were residents of the state of California, they would also pay tax on their share of the income to the State of California. If the attorneys were residents of Alaska and all the operations of the law firm were in the state of Alaska, there would be no income tax on the profits of the law firm.

[4:44:50 PM](#)

REPRESENTATIVE KNOPP surmised that the focus is really on taxing S corporations. He asked whether the multi-national companies operating in Alaska, such as Tesoro, Walmart, or Fred Meyer's would be C corporations subject to taxation under the structure currently in place.

MR. LETOURNEAU responded yes and offered his belief that the most common form of business organization for a large multi-national entity is to be taxed in the U.S. as a C corporation. However, he pointed out, certain transportation companies in the oil and gas industry - public pipelines - have elected to be organized as limited liability companies (LLCs). They would not be taxed under the C corporation rules for income tax, but they might be taxed under the special oil and gas rules.

REPRESENTATIVE KNOPP posed a scenario of an oil and gas company doing business in Alaska as an S corporation that the state does not tax. He inquired whether an S corporation or an LLC might consider changing to a C corporation should SSHB 36 pass.

MR. LETOURNEAU answered that it is possible for an organization to make different tax elections. However, in his experience, an organization that would consider that would be driven largely by the federal tax implications first and foremost and then they would consider the state tax implications. So, he continued, it would be unusual for an entity that had elected to be an S corporation for federal income tax purposes to elect to change to a C corporation simply as a result of this proposed statute. But, he added, any analysis would be very company specific.

[4:47:40 PM](#)

REPRESENTATIVE WOOL recalled [slide 6] says 9,000 C corporations [do pay tax] and [slide 4] says 9,000 S Corporations [do not pay tax]. He asked whether those numbers are a typographical error or a coincidence.

LAURA CHARTIER, Staff, Representative Les Gara, Alaska State Legislature, confirmed the numbers are correct. She pointed out

that the fiscal note repeats those same data points. Out of the 18,000 corporations, roughly half are C corporations and roughly half are S corporations, which is the federal designation.

REPRESENTATIVE WOOL remarked that it is a funny coincidence and seems like a lot of corporations for a state with less than a million people. He recalled that Alaska had an income tax prior to 1980 and inquired whether it is correct that all these entities would have paid state tax through their income tax and so this corporate tax was not necessary.

REPRESENTATIVE GARA replied that this exemption didn't exist before 1980 because all the non-C corporations distributed their profits to their owners and then their owners would pay the income tax on that share of their profits. When the income tax was eliminated in 1980, he continued, the state did not impose a business tax and so that left C corporations taxed and all other business and corporate forms untaxed other than the \$50 license fee. He asked Mr. Letourneau whether this is something that an accountant could do for a business if SSHB 36 were to pass as currently written.

MR. LETOURNEAU offered his belief that, yes, an accountant could file the tax return based on this bill. Based on how it is set forth in the bill, he said he would anticipate that the Department of Revenue (DOR) would issue regulations and forms, which he doesn't think would be tremendously different than the forms and regulations governing C corporations. He stated that accountants already deal with taxation of C corporations, LLCs, S corporations, and sole proprietorships, and therefore he doesn't think this is something an accountant would have a hard time helping clients and taxpayers comply with.

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REPRESENTATIVE GARA said his concern is that a C corporation might say the tax is lower under this new bill and might decide to become an S corporation but recalled that Mr. Letourneau had responded that that would be difficult. He asked Mr. Letourneau to address C corporations becoming S corporations.

MR. LETOURNEAU answered that the Alaska state corporate income tax is adopted by reference to the Internal Revenue Code (IRC). There is a provision that if a C corporation elects to become an S corporation it is considered a prospective election with the possibility that the C corporation could pay a toll charge. It is referred to as a toll charge in the applicable Alaska

statute. It's called a built-in gains tax, he continued, and is a tax that Congress has chosen to levy when a C corporation chooses to change its form of organization. This would present a substantial issue for any C corporation thinking that it could change to an S corporation. He further pointed out that S corporations are much more restricted than C corporations in terms of their allowable shareholders, so not all C corporations would have the opportunity to convert to S corporations.

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MATTHEW GARDNER, Senior Fellow, Institute on Taxation and Economic Policy, provided invited testimony on SSHB 36. He said that most states currently tax the income of both of the broad types of businesses that have been discussed - C corporations through the corporate income tax and pass-through corporations through the personal income tax. Nine states depart meaningfully from this, he continued, and within that there are two states that exempt all the income of pass-through entities while fully taxing the income of C corporations. Those two states are Alaska and Florida.

MR. GARDNER explained that in the 42 states with both types of taxes, the main concern of policymakers about the relationship between these two types of business taxes is whether the tax system is prompting businesses to make their entity choices based on the tax rules. If there is a big gap between the personal corporate income tax rate and the corporate income tax rate, are companies, going to change their entity form based only on tax reasons? In most states and at the federal level this isn't really a concern, he said. Where this concern crops up most is in exactly the situation that Alaska finds itself in now and has found itself in for the last 30 years, which is that Alaska has a corporate tax rate that tops out around 9 percent and a pass-through business tax rate of 0 percent.

MR. GARDNER recounted that 15 years ago a deputy revenue commissioner argued that in a place with no state income tax a person would be an idiot to start up a C corporation. He said he thinks that is overstating things because there are non-tax reasons, regulatory reasons in particular, why businesses choose the entity that they choose. The federal tax system is a much bigger driver to the extent tax rates matter at all.

MR. GARDNER noted, however, that other things equal there is still a clear incentive in place in Alaska for companies to shift toward the pass-through form. He said SSHB 36 would

reduce that incentive by narrowing the gap between the 0 percent rate that currently exists on pass-through businesses and the 9.4 percent top marginal rate that currently exists on C corporations. The proposed bill wouldn't end that incentive because the rates aren't exactly equal between the two, but it would sharply reduce that incentive. The main benefit of the proposal, he continued, is that it would get the state of Alaska closer to the principle of tax neutrality where individuals and businesses make their investment decisions based on the economic merits of those choices rather than making those decisions purely or even primarily for tax reasons, which is the main point that he wanted to add to the discussion.

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REPRESENTATIVE JOSEPHSON inquired whether a corporation, such as Coca Cola, that is nationally a C corporation could pursue a different structure within Alaska.

MR. GARDNER replied that such a corporation could not. The choice of entity for a multi-national company like Coca Cola is a monolithic choice and it is going to be made primarily for reasons having to do with the federal tax laws and with the other regulatory framework within which these companies operate.

[4:58:04 PM](#)

CHAIR KITO stated that public testimony on SSHB 36 would be taken on [April 3, 2017]. He noted that the public can also provide written comments via email, letter, or other means to his office and those would be included in the committee packet.

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ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:59 p.m.