

SENATE FINANCE COMMITTEE  
March 2, 2020  
9:05 a.m.

[9:05:43 AM](#)

CALL TO ORDER

Senator Click Bishop called the Senate Finance Committee meeting to order at 9:05 a.m.

MEMBERS PRESENT

Senator Natasha von Imhof, Co-Chair  
Senator Lyman Hoffman  
Senator Donny Olson  
Senator Bill Wielechowski  
Senator David Wilson

MEMBERS ABSENT

Senator Bert Stedman, Co-Chair

ALSO PRESENT

Rich Ruggiero, IN3ENERGY, Juneau; Christina Ruggiero, IN3ENERGY, Juneau; Senator Cathy Giessel; Senator Gary Stevens.

SUMMARY

^ANALYSIS OF BALLOT INITIATIVE 190GTX

[9:06:27 AM](#)

Senator Bishop remarked that the meeting may be required to return in the afternoon to complete the presentation.

[9:07:30 AM](#)

RICH RUGGIERO, IN3ENERGY, JUNEAU, introduced himself.

CHRISTINA RUGGIERO, IN3ENERGY, JUNEAU, introduced herself.

[9:07:47 AM](#)

Mr. Ruggiero discussed the presentation "19OGTX Review, Alaska Legislature, February 2020" (copy on file). He spoke to Slide 3, "Ballot Initiative":

The presiding officers formally requested a review of the ballot initiative 19OGTX related to oil and gas production tax, tax payments and tax credits.

The following is an independent review of what is being proposed highlighting clarity and ambiguity. Where there is ambiguity, we highlight ways in which the language of the initiative might be interpreted.

Mr. Ruggiero shared that the review was intended to determine whether there was a clear route and a clear understanding on how the initiative would be implemented if passed or could there be areas that might be disputed. He said that some assets existed on the North Slope that would provide a new set of taxation, a set of ring fencing, and different tax returns that would need to be done. He shared that in reading the initiative, each section provided leeway for multiple interpretations of the language. He noted that after the initiative had been reviewed by Legislative Council, legislative lawyers had determined that some form of litigation would occur upon implementation because of the various interpretations of the language.

Mr. Ruggiero looked at Slide 4, "Glossary, 19OGTX and AS 43.55 Terminology":

**Initiative:** 19OGTX

**GVPP:** Gross Value at the Point of Production

**PTV:** Production Tax Value

**ANSWC:** Alaska North Slope crude sales price on the West Coast of the United States

**bopd:** barrels of oil per day

**NOLs:** net operating losses

**Middle Earth:** region south of 68 degrees north latitude and not Cook Inlet

**AOGCC:** Alaska Oil and Gas Conservation Commission

**Taxable Barrel:** Total barrels of oil sold less royalty barrels

**40/400 Asset:** oil producing asset that meets the qualification criteria in Section 2 of the Initiative

Mr. Ruggiero said that anything that qualified under the initiative was called a "40/400 Asset" - using this term allowed for a general interpretation of an asset for purposes of the presentation.

[9:10:36 AM](#)

Mr. Ruggiero looked at Slide 6, "Summary":

- Based on our petroleum fiscal policy experience we conducted a review of 190GTX, the Initiative, that looks to raise additional revenue from production taxes
- In general, the Initiative lacks necessary specificity making it improbable that a common interpretation could be reached. Alternative interpretations of the Initiative are possible
- The Initiative seems to be written to satisfy a goal of increasing revenue from production tax in the near term. It does not contain any provisions which are designed to encourage or incentivize investment and production
- If the voters approve it, there will very likely be an extended period of uncertainty within the petroleum industry as all interested and impacted parties attempt to push their interpretation of what is written

[9:12:24 AM](#)

Senator Wielechowski asked whether either presenter was an attorney.

[9:12:28 AM](#)

Mr. Ruggiero replied in the negative.

[9:12:34 AM](#)

Senator Wielechowski asked what the Supreme Court had said was the most important thing to look at when interpreting an initiative.

[9:12:44 AM](#)

Mr. Ruggiero responded that he had not looked outside of anything other than the initiative itself.

[9:12:53 AM](#)

Senator Wielechowski understood that the presenters had not communicated with anyone at all, or read any other documents, when preparing the report and making their conclusions.

[9:13:08 AM](#)

Mr. Ruggiero responded that they had followed the instructions of the legislature. They had looked only at the two pages of the initiative and had based their conclusions on their experience of having written legislation and regulation and having advised governments in the past.

[9:13:30 AM](#)

Senator Olson wondered whether IN3ENERGY had advised other states or sovereign nations on ballot initiatives.

[9:13:40 AM](#)

Mr. Ruggiero replied no.

[9:13:46 AM](#)

Senator Wielechowski restated his question concerning what the courts had ruled should be looked at when interpreting a ballot initiative.

[9:13:54 AM](#)

Mr. Ruggiero reiterated that he had not looked at anything outside of the initiative.

[9:14:02 AM](#)

Senator Bishop summarized that the presenters had followed the instructions of the presiding offices in each body. He believed that the initial letter to IN3ENERGY could be made found in members' packets.

[9:14:22 AM](#)

AT EASE

[9:14:33 AM](#)

RECONVENED

Senator Bishop said that the letter would be made available to members.

[9:14:38 AM](#)

Senator Wielechowski cited the letter and said that the presiding officers had expected the presenters to consider the initiative itself and not legislation that was based off any individual's interpretation of the initiative. He did not believe that the instructions warned against contacting initiative sponsors or reviewing any public documents regarding the initiative.

[9:15:20 AM](#)

Mr. Ruggiero rebutted that he did not have a copy of the letter in from of him, therefore, he could not speak to the letter. He repeated his previous statement that the analysis had been conducted using the two pages of the ballot initiative, using no other outside influence.

[9:15:39 AM](#)

Senator Bishop hoped to move on from Senator Wielechowski's line of questioning.

[9:15:53 AM](#)

Co-Chair von Imhof asked how long IN3ENERGY had been involved in Alaska oil and gas policy and oil and gas policy in general.

[9:16:06 AM](#)

Mr. Ruggiero shared that they had been working in Alaska since 2006. He relayed that they had advised over 2 dozen

governments on their petroleum fiscal policy since the late 1990s.

[9:16:32 AM](#)

Co-Chair von Imhof noted their experience and relayed her confidence in their ability to analyze the initiative.

[9:17:00 AM](#)

Senator Wielechowski argued that to analyze the initiative properly, IN3NERGY should look at the published arguments on the initiative and should have spoken to the initiative sponsor. He argued that without taking those steps to develop their analysis, the 53-page presentation before the committee was a waste of time.

[9:18:34 AM](#)

Senator Bishop felt that the presentation should speak for itself.

[9:18:45 AM](#)

Mr. Ruggiero highlighted Slide 7, "Summary":

- Producers pay the state 4 different types of taxes:
  - Royalty
  - Property Tax
  - Production Tax
  - Corporate Income Tax
- The Initiative only makes changes to the Production Tax
  - Creates increased gross minimum tax
  - Creates a net tax on PTV
  - Maintains the 'greater of' structure
- The Initiative eliminates the use of the GVR and non-GVR per-barrel credits for assets that qualify under Section 2

[9:19:48 AM](#)

Co-Chair von Imhof stated that the presentation was crafted by qualified analysts. She stressed that it would be difficult for Alaskans to research outside the two-page

ballot initiative. She thought that if the bill sponsor wanted to be clearer, they would have provided clarity within the two pages of the initiative.

[9:21:34 AM](#)

Senator Olson wondered whether there would be a presentation from the initiative sponsor.

[9:21:49 AM](#)

Senator Bishop did not know.

[9:21:58 AM](#)

Senator Olson restated his question. He thought that the initiative was important and wondered whether the initiative sponsor would be presenting to the committee.

[9:22:24 AM](#)

Co-Chair von Imhof replied that it was possible to hear from the sponsor.

[9:22:47 AM](#)

Senator Bishop asked for further clarity on the 40/400 Asset descriptor.

[9:23:00 AM](#)

Mr. Ruggiero replied that it was clear that the sponsor had intended to capture 3 large fields under the initiative. Unfortunately, the sponsor used the terms "fields, units, and nonunitized reservoirs" - thereby clouding the definition of that was being discussed. He explained that only one of the terms, "unit", was currently defined in tax regulation, the other two were not. He shared that the term 40/400 asset had been coined because Section 2 had a requirement of 40,000 barrels per day and 400 million cumulative barrels produced.

[9:24:12 AM](#)

Senator Wielechowski stressed that the current conversation was a futile and confusing exercise, and he thought that the Supreme Court would focus on the intent. He felt that

it would create more confusion to discuss ambiguities and continue with the 53-page presentation.

[9:24:53 AM](#)

Mr. Ruggiero discussed Slide 9, "Section 1; Amending the Uncodified Law of Alaska":

**\*Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

SHORT TITLE. This Act shall be known as the "Fair Share Act."

**Notwithstanding Any Other Statutory Provisions to the Contrary, the Oil and Gas Production Tax in AS 43.55 Shall Be Amended as Follows:**

- Titled the "Fair Share Act", there is no language to define what constitutes a fair share of certain oil revenues for Alaska. Without a defined goal, where ambiguity exists numerous interpretations will be possible
- With the inclusion of the term "Notwithstanding" it appears the language of the Initiative is to override existing production tax calculations contained in AS 43.55 for assets that qualify under Section 2
- The only direct reference to a particular part of AS 43.55 and changes to it are in Section 4 paragraph (a), the per barrel credits

[9:26:33 AM](#)

Senator Wielechowski queried the legal significance of the short title.

[9:26:43 AM](#)

Mr. Ruggiero did not believe that the short title had any legal standing. He pointed out that as the public looked at the title and tried to determine what the "fair share" was, they could conclude that what was in the bill was the fair share.

[9:27:02 AM](#)

Senator Wielechowski cited the second bullet on the slide. He stressed that the purpose of the initiative was to amend AS 43.55.

[9:27:36 AM](#)

Mr. Ruggiero replied that there was inconsistency with the interpretation of how "notwithstanding" was used in Sections 3 and 4.

[9:28:00 AM](#)

Mr. Ruggiero highlighted Slide 11, "Section 2; Applicability":

**\*Section 2, Applicability.** The provisions I Section 3 and 4 only apply to oil produced from fields, units, and nonunitized reservoirs north of 68 degrees north latitude that have produced in excess of 40,000 barrels of oil per day in the previous calendar year and in excess of 400,000,000 barrels of total cumulative oil production. For other oil production, the tax shall be unchanged by this Act.

- This section is used to define which North Slope oil and gas assets will be subject to the new taxes in the Initiative
- It applies to "fields, units and nonunitized reservoirs"
- Producing assets qualify if they have produced in excess of 40,000 bopd and have produced more than 400,000,000 barrels over the life of the asset (hereinafter referred to as "40/400 Assets")
- While we believe the description was to isolate three fields, the above language is not straightforward and raises several questions

[9:29:20 AM](#)

Senator Bishop asked about prospective nonunitized reservoirs.

[9:29:35 AM](#)

Mr. Ruggiero replied that nonunitized reservoirs would be discussed in a future slide.

[9:29:56 AM](#)

Ms. Ruggiero interjected that when discussing ambiguities and the wide latitude of interpretation of the initiative, IN3ENERGY was working to help the legislature to determine whether the bill should pass and how widely the language could be interpreted. She said that Section 2 was an area where there could be a wide range of interpretation.

[9:31:15 AM](#)

Senator Wielechowski wondered whether the sponsors of the initiative could have time between now and the election to clean up any ambiguities in the language.

[9:31:30 AM](#)

Mr. Ruggiero replied that the signatures had been collected and the initiative would go on the ballot "as is" - he wondered whether any actions taken by the sponsor between now and the election would have any legal basis.

[9:31:58 AM](#)

Senator Wielechowski understood that the sponsor could write an opinion editorial or make a public statement to clear up ambiguities in the initiative language; he believed that this would appease the Supreme Court.

[9:32:23 AM](#)

Mr. Ruggiero responded that he could not speak to any Supreme Court case. He felt that Senator Wielechowski's continued reference to the Supreme Court indicated that he believed that the initiative would go to litigation with the Supreme Court as the arbiter.

[9:32:40 AM](#)

Senator Wielechowski disagreed. He reiterated his argument of the various ways the sponsor could clarify any ambiguity in the language.

[9:33:07 AM](#)

Senator Bishop requested that the presenter continue with the presentation.

[9:33:29 AM](#)

Mr. Ruggiero discussed Slide 12, "Section 2; Fields, Units, and Nonunitized Reservoirs":

- AS 43.55 primarily uses "leases and properties" throughout to refer to oil and gas operations in the state. We did not find any usage of the phrase "fields, units or nonunitized reservoirs" in any statute or regulation governing the taxation of oil and gas
- We are unable to discern why terms not common to AS 43.55 would be chosen to assess against the qualification criteria
- It is unclear whether it defines three types of assets, i.e. fields, units and nonunitized reservoirs, or whether that term is to be interpreted as a singular grouping. Likewise, there is no reference to determine what the intended definition(s) is(are) for fields, units and nonunitized reservoirs

[9:34:35 AM](#)

Mr. Ruggiero looked at Slide 13, "Section 2; Fields, Units, and Nonunitized Reservoirs":

- While the term 'field' is very common in the oil and gas industry, we looked in statute and regulations for a more precise Alaska definition
- Various Alaska agencies describe operations and publish data for wells, pads, leases, pools, participating areas, fields, units and general areas such as North Slope, Middle Earth and Cook Inlet
- AS 31.05.170 defines, for that particular chapter, "field" as a general area which is underlain or appears to be underlain by at least one pool, and includes the underground reservoir containing oil or gas. More than one pool can be part of a defined field

[9:35:59 AM](#)

Mr. Ruggiero highlighted Slide 14, "Section 2; Fields, Units, and Nonunitized Reservoirs":

- Neither AS 43.55 nor the Initiative provide any guidance on what grouping of wells constitute a 'field'
- Under AS 43.55.900 "unit" is defined and means a group of tracts of land that is subject to a cooperative or a unit plan of development or operation that has been certified by the commissioner of natural resources under AS 38.05.180(p)
- The North Slope contains a number of "units". Each unit contains a number of pools and fields

[9:37:02 AM](#)

Mr. Ruggiero addressed Slide 15, "Section 2; Fields, Units, and Nonunitized Reservoirs":

- It appears there are two ways to qualify as a 40/400 Asset: (1) the combined daily production and the combined cumulative production of all the pools and fields in a unit meet the two threshold levels, or (2) a single 'field' within a unit meets the two threshold levels which by definition then the field and entire 'unit' of which it is part of would both qualify as a 40/400 Asset
- The 'fields' qualifying as 40/400 Assets are Alpine, Kuparuk and Prudhoe Bay. Because those fields qualify then the Colville River Unit, Kuparuk River Unit and Prudhoe Bay Unit are 40/400 Assets as well

[9:38:28 AM](#)

Mr. Ruggiero discussed Slide 16 "Section 2; Fields, Units, and Nonunitized Reservoirs." He stated that the map showed the various units on the North Slope. The three circles showed the discussed areas.

[9:38:49 AM](#)

Mr. Ruggiero looked at Slide 17, "Section 2; Fields, Units, and Nonunitized Reservoirs":

- The Colville River Unit consists of the following pools:

- ALPINE OIL
- FIORD OIL
- GMT1 UNDEF OIL
- NAN-K OIL TERM
- NANUQ OIL
- QANNIK OIL

Mr. Ruggiero stated that the next three slides showed the numbers of pools of oil included in each of the units. He said, for example; if the definition of the Alpine Field was the Alpine Oil pool; by fact that those other oil fields were in the Colville River Unit, they would be collected and determined as 40/400 assets under Section 2.

Mr. Ruggiero addressed Slide 18, "Section 2; Fields, Units, and Nonunitized Reservoirs":

- The Kuparuk River Unit consists of the following pools:

- KUPARUK RIV OIL
- MELTWATER OIL
- PALEOZ UND OIL
- TABASCO OIL
- TARN OIL
- TOROK OIL
- UGNU UNDEF OIL
- UNDEFINED OIL
- WEST SAK OIL

Mr. Ruggiero looked at Slide 19, "Section 2; Fields, Units, and Nonunitized Reservoirs":

- The Prudhoe Bay Unit consists of the following pools:

- AURORA OIL
- BOREALIS OIL
- KUPARUK RIVER OIL
- LISBURNE OIL
- MIDNIGHT SUN OIL
- N PRUDHOE BAY OIL
- NIAKUK OIL
- POLARIS OIL
- PRUDHOE OIL
- PT M PA UNDEF OIL
- PT M STUMP IS OIL

- PT M UNDEFINE OIL
- PT MCINTYRE OIL
- PUT RIVER OIL
- RAVEN OIL
- SAG RIV UNDEF OIL
- SCHRADER BLUF OIL
- W BEACH OIL

[9:39:51 AM](#)

Senator Wielechowski revealed that he had spoken with the sponsor, and an attorney, and was told that the intent was that every pool, within each of the three units, was intended to be ringfenced together. He believed that this fact cleared up any ambiguity in the last 10 slides of the presentation.

[9:40:31 AM](#)

Mr. Ruggiero looked at Slide 20, "Section 2; Fields, Units, and Nonunitized Reservoirs":

- We were unable to find any definition for 'nonunitized reservoir' in Alaska statute or regulation.
- In industry a "unitized" reservoir is a reservoir that crosses ownership boundaries. That agreement decides on how much of the reserves are owned by each party, what the optimum development plan and the naming of the operator. A unitization agreement is for the operation of a single reservoir.
- Units in Alaska do not represent the unitization of a reservoir.
- One alternative interpretation is that all wells that produce from the same reservoir could be deemed a "nonunitized reservoir"

Mr. Ruggiero related that the West Sak Reservoir exited cross the North Slope and could be counted as a 40/400 asset under Section 2.

[9:42:42 AM](#)

Mr. Ruggiero discussed Slide 21, "Section 2; Qualifying Production":

- It is unclear whether production has to average over 40,000 bopd for an entire year or only exceed 40,000 bopd on a single day in the previous year
- Use of a couple extra words, such as "averaged" or "produced on any day" would have easily provided clarity
- For 40/400 Assets, do the new taxes apply beginning January in the following year? Do they apply for an entire calendar year if during a year the production falls below 40,000 bopd? The Initiative provides no direction or clarity

[9:43:50 AM](#)

Mr. Ruggiero highlighted Slide 22, "Section 2; Qualifying Production":

- In the future, some new units may have production above 40,000 bopd but have not yet reached the cumulative criteria of 400,000,000 barrels
- Once the cumulative production exceeds 400,000,000 barrels do the new taxes apply immediately or do they apply at the start of the next calendar year? There is no language to guide this decision
- Where is production to be measured? Barrels sold to the market? Barrels into TAPS? Or, wellhead barrels? How are barrels consumed in field operations counted? Section 2 just mentions barrels
- Does Section 2 refer to the production of total barrels or taxable barrels? As much as a +/- 12 percent difference

[9:46:05 AM](#)

Mr. Ruggiero addressed Slide 23, "Section 2; Summary":

- It appears the intent is to raise taxes only for the large legacy fields of Alpine, Kuparuk and Prudhoe Bay
- Depending on how fields, units and nonunitized reservoirs are defined, there are numerous possible interpretations, some which could have much more of the current North Slope production qualifying as 40/400 Assets
- Other than being immediately applicable to the three large fields, it is unclear when the new taxes begin to apply and when they stop applying

[9:46:57 AM](#)

Mr. Ruggiero discussed Slide 25, "Section 3; Alternative Gross Minimum Tax":

**\*Section 3, Alternative Gross Minimum Tax.** For oil production from fields, units, and nonunitized reservoirs that meet the conditions in Sec. 2, the amount of tax due for each calendar month shall be no less than:

(a) 10 percent of the gross value at the point of production when the average per-barrel price for Alaska North Slope crude oil for sale on the United States West Coast (La.Basin) during the calendar month for which the tax is due is less than \$50;

- This is a monthly gross tax that appears to replace the current gross minimum tax that ranges from 0 percent to 4 percent of the GVPP with a new gross tax ranging from 10 percent to 15 percent of the GVPP
- The Initiative does not contain any language specifically altering the definition of GVPP from how it is defined in current statute
- It is unclear why the parenthetical (La. Basin) has been added to the definition of the ANS WC trigger price and what change that would cause from current statute

[9:48:16 AM](#)

Senator Bishop assumed the "La. Basin" was Los Angeles and not Louisiana.

[9:48:22 AM](#)

Mr. Ruggiero replied in the affirmative.

[9:48:44 AM](#)

Co-Chair von Imhof asked whether there were different prices for different regions in the West Coast.

[9:48:47 AM](#)

Mr. Ruggiero replied that the crude was sold in various locations on the west coast and was not aware of the sales arrangements.

[9:49:18 AM](#)

Co-Chair von Imhof wondered whether the prices were public.

[9:49:27 AM](#)

Mr. Ruggiero replied that there was one publication but was not aware of the specific location on which the public price was based.

[9:49:48 AM](#)

Mr. Ruggiero looked at Slide 26, "Section 3; Alternative Gross Minimum Tax":

(b) an additional 1 percent of the gross value at the point of production for each \$5 increment by which the average per-barrel price for Alaska North Slope crude oil for sale on the United States West Coast (La.Basin) during the calendar month for which the tax is due is equal to or exceeds \$50. The maximum tax rate calculated in this section shall not exceed 15 percent, which is reached when the price per barrel is equal to or exceeds \$70; and

- The language is not clear if the 1 percent gross minimum tax increase at prices above \$50 per barrel is in step increments of \$5 or if the increase is continuous (like progressivity) at the rate of 1 percent per \$5 increase
- e.g. at \$53 ANS WC is the applicable tax rate 11 percent [10 percent+1 percent >\$50 but<\$55] or 10.6 percent [10 percent+1 percent\*(\$3/\$5)]
- A step function would be consistent with current gross minimum tax language. This could have been made clear and unambiguous
- For some reason the last sentence does not define where the price per barrel is to be taken from

[9:51:07 AM](#)

Mr. Ruggiero highlighted Slide 27, "Section 3; Alternative Gross Minimum Tax."

Mr. Ruggiero discussed the gross tax changes using West Coast prices to determine the gross tax amount, current vs. Initiative, and assuming a step function.

[9:51:40 AM](#)

Senator Wielechowski noted that the chart created for the initiative said that greater than zero or equal to 50 was a 10 percent gross tax. He noted that Section three said that an additional 1 percent of the gross value would be added when it was equal to or exceeding \$50. He questioned the numbers on the charts.

Mr. Ruggiero considered the comments in the affirmative.

[9:52:28 AM](#)

Mr. Ruggiero discussed Slide 28, "Section 3; Alternative Gross Minimum Tax":

(c) No credits, carried-forward for lease expenditures, including operating leases, or other offsets may reduce the amount of tax due below the amounts calculated in this action.

- Under AS 43.55, when calculating the applicable gross tax there are no provisions for adjusting the GVPP, through the use of credits, net operating losses ("NOLs") or similar
- Deductions from GVPP are allowed under AS 43.55 to derive the PTV
- As such, we do not see why paragraph (c) is included in this Section versus Section 4
- If the intent was to make the gross tax calculation a hard floor, that could have been explicitly written

Mr. Ruggiero discussed his discomfort with subsection (C). He thought that if the intent had been to establish a hard floor - it could have been done with greater clarity.

[9:54:07 AM](#)

Mr. Ruggiero looked at Slide 30, "Section 4; Tax on Production Tax Value":

**\*Section 4, Tax on Production Tax Value.** For production from fields, units, and nonunitized reservoirs that meet the conditions in Sec.2:

(a) The per-taxable-barrel credit in AS 43.55.024(i) and (j) shall not be used; and

(b) An additional production tax shall be paid for each month for which the producer's average monthly Production Tax Value of taxable oil is equal to or more than \$50. The additional tax shall be the difference between the average monthly Production Tax Value of a barrel of oil and \$50, multiplied by the volume of taxable oil produced by the producer for the month, multiplied by 15 percent.

- Paragraph (a) clearly and explicitly states that the credits now allowed in AS 43.55.024 (i) and (j) shall not be used for 40/400 Assets
- These credits are the fixed \$5 per barrel credit for GVR eligible fields and the sliding scale (from \$0 to \$8) per barrel credit for all other fields
- Here, unlike elsewhere in the Initiative, specific references in the current statutes were used to unambiguously state which of the many credits allowed under AS 43.55 would no longer apply

[9:54:58 AM](#)

Mr. Ruggiero discussed Slide 31, "Section 4; Tax on Production Tax Value":

- Under AS 43.55 both the gross tax on GVPP and the net tax on PTV are referred to as a "production tax"
- Given the above, it is unclear whether "An additional production tax" means
  - (1) another production tax in addition to the Section 3 production tax; or
  - (2) an additional tax on top of other production taxes currently in AS 43.55
- Nowhere in the Initiative is there any direct or implied reference to the current applicable net tax on PTV in AS 43.55

[9:56:02 AM](#)

Mr. Ruggiero looked at Slide 32, "Section 4; Tax on Production Tax Value":

- Two different definitions of PTV are used, PTV "of taxable oil" and PTV "of a barrel of oil"
- PTV "of taxable oil" defines the gross income. It is sales revenues minus transportation and lease costs. It will always exceed \$50

- PTV "of a barrel of oil" is the PTV divided by applicable production to derive a per barrel unit value

[9:57:06 AM](#)

Senator Wielechowski wondered what language would be used to offer a reasonable interpretation of Section 4.

[9:57:10 AM](#)

Mr. Ruggiero asked for clarification of the question.

[9:57:15 AM](#)

Senator Wielechowski thought that \$50 per barrel profit was clear in the language.

[9:57:25 AM](#)

Mr. Ruggiero suggested it was not clear and that multiple interpretations were available. He added that there was confusing use of "taxable" and "barrel", which had a 12 percent difference between the two.

[9:58:05 AM](#)

Senator Wielechowski asked Mr. Ruggiero for his interpretation of the language.

[9:58:15 AM](#)

Mr. Ruggiero replied that he did not have a single interpretation, rather he could highlight the alternative ways in which the section could be interpreted. He stressed that there were multiple interpretations that would need to be addressed if the initiative were to become law.

[9:58:48 AM](#)

Mr. Ruggiero continued to discuss Slide 32:

- As worded, the additional tax will apply every month

[9:59:06 AM](#)

Mr. Ruggiero highlighted Slide 33, "Section 4; Tax on Production Tax Value":

- As highlighted above, paragraph (b) uses the terms "taxable oil" and "oil"
- "Taxable oil" is "oil" less royalty barrels
- Thus these two terms differ by roughly 12 percent
- All references in AS 43.55 today for similar mechanisms make explicitly clear to use PTV of a taxable barrel of oil. This ambiguity was easily preventable

[9:59:46 AM](#)

Senator Olson requested a brief explanation of the 12 percent previously mentioned.

[9:59:55 AM](#)

Mr. Ruggiero replied that the 12 percent came from the royalty. He explained that if one had 1000 barrels of oil, and a one-eighth royalty, the one-eighth would be subtracted (125 barrels) resulting in 875 barrels of taxable oil. He said that one would have either 1000 barrels of total oil, or 875 barrels of taxable oil, and determining the tax basis on which to pay on presented a significant difference.

[10:00:41 AM](#)

Mr. Ruggiero discussed Slide 35, "Section 5; Separate Treatment":

**Section 5, Separate Treatment.** For each producer, the taxes set forth in Section 3 and 4 shall be calculated separately for the following:

- (a) For oil and for gas;
  - (b) For each calendar month (annual leave expenditures shall be divided equally among the 12 months of the tax year); and
  - (c) For each of the fields, units, and nonunitized reservoirs, the lease expenditures shall be calculated, deducted, and carried forward separately.
- Section 2 noted the taxes under Sections 3 and 4 can only apply to oil. Section 5 now states the taxes in

Sections 3 and 4 apply to gas as well. Both can not be true

- The inclusion of gas here opens the door to any number of interpretations including that gas from 40/400 Assets would be ring fenced from other North Slope gas and taxed via Sections 3 and 4 and not current AS 43.55
- Another possible interpretation is that all costs related to gas are to be separate from oil, not combined as they are now under AS 43.55 and subtracted from oil revenue to determine oil taxes

[10:02:04 AM](#)

Senator Wielechowski asked how much gas from the 40/400 assets was currently being produced and taxed.

[10:02:13 AM](#)

Mr. Ruggiero replied that he knew that gas was being used for fuel purposes but could not say how much was sold to other operators.

[10:02:38 AM](#)

Senator Wielechowski asked Mr. Ruggiero to research and provide the information.

[10:02:44 AM](#)

Mr. Ruggiero responded that the Department of Revenue would need to get back to the committee as he did not have access to tax records.

[10:03:10 AM](#)

Senator Wielechowski knew that a "huge amount" of cycling gas was not being taxed. He felt that any gas being sold among producers was a small amount and not a significant source of production tax.

[10:03:36 AM](#)

Mr. Ruggiero stressed that under the current legislation, all the gas costs, including for recycling, were included as oil lease expenses and deducted against the GVPP for

oil. He wondered whether the initiative intended to separate oil and gas.

[10:04:46 AM](#)

Mr. Ruggiero looked at Slide 36, "Section 5; Is it Oil or is it Oil and Gas?"

**\*Section 2, Applicability.** The provisions in Section 3 and 4 *only apply to oil*

**\*Section 3, Alternative Gross Minimum Tax.** *For oil production from fields, units,*

**\*Section 4, Tax on Production Tax Value.** *For production from fields, units, and*

**\*Section 5, Separate Treatment.** For each producer, the taxes set forth in Section 3 and 4 shall be calculated separately for the following:

(a) *For oil and for gas*

- Note the changing terminology.
  - Section 2 "only apply to oil"; then
  - Section 3 "for oil production"; but
  - in Section 4 it only addresses "production" which generically means oil and gas, and then
  - Section 5 states the taxes in Section 3 and 4 apply "for oil" and "for gas"

[10:06:02 AM](#)

Co-Chair von Imhof remarked that the issue was the different language in the four sections.

[10:06:20 AM](#)

Mr. Ruggiero replied that writing a regulation using the initiative would be a challenge because of the large number of variations in the language. He stressed that ambiguity in the language should be discussed before the passage of the initiative.

[10:07:25 AM](#)

Senator Bishop interjected that the interpretation would come from the revisor of statutes and from the affected departments.

[10:07:40 AM](#)

Mr. Ruggiero looked at Slide 37, "Section 5, Separate Treatment":

**\*Section 5, Separate Treatment.** For each producer, the taxes set forth in Sections 3 and 4 shall be calculated separately for the following:

(a) for oil and for gas;

(b) *For each calendar month (annual lease expenditures shall be divided equally among the 12 months of the tax year); and*

- Paragraph (b) changes the current monthly installment payments as part of an annual tax return to require a tax return be filed for each month for each 40/400 Asset
- Because the accurate value for 1/12th of the annual lease expenditures is not known until several weeks after the end of the year, an amended return will need to be filed for each month of the prior year for each and every 40/400 Asset

Mr. Ruggiero said that the section called for 200 tax returns to be filed, every calendar year, for all the 40/400 assets.

[10:09:44 AM](#)

Senator Wielechowski offered that under Alaska's Clear and Equitable Share (ACES), which Mr. Ruggiero had consulted on, lease expenditures were counted for the monthly progressivity calculation by dividing the annual numbers by 12.

[10:10:01 AM](#)

Mr. Ruggiero replied in the affirmative.

[10:10:03 AM](#)

Senator Wielechowski reiterated that was the calculation under ACES.

[10:10:06 AM](#)

Mr. Ruggiero reminded Senator Wielechowski that the initiative, and not ACES, was the current topic of conversation.

[10:10:15 AM](#)

Senator Bishop commented that the filing could get labor intensive for DOR at the end of the year.

[10:10:33 AM](#)

Mr. Ruggiero replied in the affirmative.

[10:10:40 AM](#)

Ms. Ruggiero addressed the complexity of tax return issue under the initiative.

[10:11:20 AM](#)

Senator Wielechowski wondered how complex the tax structure was under SB 21, in comparison to the rest of the world.

[10:11:33 AM](#)

Mr. Ruggiero responded that SB 21 had only changed certain aspects of the taxation system. He said that SB 21 was the only system he was aware of with negative progressivity. He shared that looking at the totality of SB 21, with additional statues, the system was quite complex.

[10:12:08 AM](#)

Mr. Ruggiero continued to discuss Slide 37:

- The Initiative provides no guidance on how to apply tax credits, other carried forward credits or net operating losses to the monthly tax returns. Lacking guidance producers would appear to be free to use these items at their discretion to minimize tax payments

[10:14:00 AM](#)

Mr. Ruggiero addressed Slide 38, "Section 5; Separate Treatment - Expenses":

- Paragraph (c) requires that lease expenditures be treated separately for each 40/400 Asset. Point forward, systems can be put in place to disaggregate future North Slope costs

- However, any existing carry-forward tax credits and operating losses resulted collectively from all operations a producer had on the North Slope
- The Initiative is silent on their use and likewise silent on how these aggregated amounts are to be separated for each 40/400 Asset. A mechanism will need to be put in place as to how they are to be used for 40/400 Assets. The Initiative provides no direction in this regard
- Costs for common facilities will also need to be identified and allocated to all users

[10:15:00 AM](#)

Mr. Ruggiero addressed Slide 40, "Section 6; Greater Of":

**\*Section 6, Greater-of.** For each producer, for each month, and for each of the fields, units, and nonunitized reservoirs, the tax due shall be greater of the tax under Section 3 or Section 4.

- The language above explicitly states that the tax due from a producer for a 40/400 Asset shall be the greater of the tax under Section 3 or Section 4
- There is no Initiative reference, direct or implied, to the inclusion of any other taxes under AS 43.55 being applicable for a 40/400 Asset
- The language above only references the tax calculated under Section 4 and not Section 4 in addition to another tax such as AS 43.55.011(e)(2) the 35 percent tax on PTV
- Section 5 defined items that needed to be treated separately, but never called for each field, unit and nonunitized reservoir to have its own tax return. The use of "each of" above seems to imply that each of the fields, units and nonunitized reservoirs is ring fenced separately for tax purposes. If so, it raises the possibility of double taxation, once as a field and again as a unit

[10:17:45 AM](#)

Mr. Ruggiero discussed Slide 42, "Section 7; Public Records":

**\*Section 7, Public Records.** All filings and supporting information provided by each producer to the

Department relating to the calculation and payment of the taxes set forth in Section 3 and 4 *shall be a matter of public record.*

- Given that 'units' may contain more than one 'field' or pool, this language would continue to treat tax returns and supporting documentation as matters of public record
- While our assumption is that the sponsors wanted to make returns public, it is our understanding they did not include the necessary language specifying the returns need to be non-confidential
- "All filings and supporting information" could be interpreted as not only supplying documents and data for the initial filing of the monthly returns but also all amended returns, all audits, and all settlement negotiations

Mr. Ruggiero asserted that the section would take Alaska beyond what any other regime in the world required of the industry.

[10:19:44 AM](#)

Senator Wielechowski offered a quote from Mr. Ruggiero from January 31, 2018:

"What I can say is some of the most transparent regimes that I am aware of, people don't lose competition or competitiveness, and they don't lose their edge, and they don't lose people coming in to develop, in fact it is just the opposite; the more transparent, usually the more activity they have and the more investment they have."

[10:20:15 AM](#)

Mr. Ruggiero replied that he agreed and stated that his reference was to Norway and the information provided to him upon his request. He stressed that what he did not have in Norway was access to invoice level paperwork. He said that his previous comment had been based on what other regimes made available to him and to the public.

[10:21:11 AM](#)

Co-Chair von Imhoff understood that most construction bids for developments were closed.

[10:21:32 AM](#)

Mr. Ruggiero replied in the affirmative.

[10:21:34 AM](#)

Co-Chair von Imhof surmised that if those bids were available to the public, out-of-state operations could study them and undercut Alaskan contractors.

[10:22:00 AM](#)

Mr. Ruggiero shared that allowing certain information to become public could jeopardize companies, which could prompt them to stop doing business in the state.

[10:22:58 AM](#)

Senator Wielechowski thought that the ambiguity in the language could have been cleared up if they had directly asked the bill sponsor their intent.

[10:23:29 AM](#)

Mr. Ruggiero rebutted that the language could have been written more clearly from the onset.

[10:23:47 AM](#)

Mr. Ruggiero addressed Slide 43, "Section 7, Public Records":

- If the suggested documents were to be made public, since producers as part of their various tax return submissions would be replying to inquiries or statements by DOR staff, DOR documents could become matters of public record
- Could this be interpreted to include settlement negotiations? If so, further government drafted documents could be captured and made public
- Throughout AS 43.55 the Department of Revenue is referred to as the "department" (lower case). We are not able to discern any reason why the Initiative would choose to use the upper-case Department

[10:24:58 AM](#)

Mr. Ruggiero looked at Slide 45, "Section 8; Scope of Initiative":

**\*Section 8, Scope of Initiative.** Nothing in this Act authorizes or requires the Legislature to dedicate revenue, to make or repeal appropriation, to enact local or special legislation, or to perform any unconstitutional act. While not required by this Act, the revenues from this Act could be used to fund essential government services, capital projects, the permanent fund, *and permanent fund dividends*.

- This section places no restriction on the legislature for use of the funds raised by this Initiative
- It explicitly allows for the revenues generated to be used to pay permanent fund dividends

[10:25:26 AM](#)

Mr. Ruggiero addressed Slide 47, "Section 9; Severability":

**\*Section 9, Severability.** The provisions of this Act are independent and severable, and if any provision of this Act or applicability of any provision to any person or circumstance shall be found to be invalid, the remainder of this Act shall not be affected and shall be given effect to the fullest extent practicable.

- This is a typical clause that states if any part of the Act is found to be invalid all the other parts remain unaffected

[10:25:47 AM](#)

Mr. Ruggiero looked at Slide 49, "Specific Questions; Changes to Current Fiscal Regime":

Please review the initiative language from a holistic perspective. Describe the initiative; *how it would change the current oil and gas fiscal regime*; questions raised by the initiative, the answers to which would materially impact future analysis of the initiative impacts; and provisions to which the

contractors, as they undertake modeling and analysis of the impacts, may need to interpret or receive direction on how to interpret.

- Creates a new tax ring fence for each producer for each producing asset that meets the qualifications set forth in Section 2, a 40/400 Asset
- Raises the gross minimum tax on GVPP
- Creates a new net tax on PTV when realized prices exceed a threshold
- Details of the above are contained in the previous sectional analysis of the Initiative

[10:27:39 AM](#)

Mr. Ruggiero highlighted Slide 50, "Specific Questions; Investment Impacts":

Identify provisions which may affect generally investment in the North Slope basin, such as the disclosure of previously confidential taxpayer information.

- There are no provisions of the Initiative that encourage or incentivize more investment
- Ring fencing the revenues of the largest fields will make investment on the North Slope much more expensive which can only hurt investments
- The Initiative creates a high degree of economic uncertainty and would be viewed as extremely risky given the many possible interpretations
- The uncertainty will take a long time to sort out likely resulting in a reluctance to commit funds until statute and regulation are finalized
- The uncertainty will very likely slow capital spending, which would then likely cause production levels to decline faster than expected

[10:29:17 AM](#)

Senator Wielechowski wondered whether the legislature could pass legislation to clear up the ambiguity in the language.

[10:29:38 AM](#)

Mr. Ruggiero replied that the legislature working to clear up ambiguity in the language had been the basis of his and Ms. Ruggiero's work on the matter.

[10:29:56 AM](#)

Senator Wielechowski said that when ACES was passed the bill had been effective January 1, 2008, and the day it was passed an advisory bulletin had been issued on who to interpret parts of it - and draft regulations were issued within a month.

[10:30:20 AM](#)

Mr. Ruggiero said he would take the statement subject to check.

[10:30:32 AM](#)

Senator Wielechowski noted that under previous legislation SB 21, the bill was signed into law on June 24, 2013 - after which roughly 46 pages of proposed regulation were issued a month later.

[10:30:57 AM](#)

Mr. Ruggiero replied that he would fact check the statement. He added that both ACES and SB 21 had been multi-paged documents and had created a specific tax. He said that the writing of regulation for something specific was not difficult. He said that writing regulation for a document full of ambiguities would be more challenging.

[10:31:41 AM](#)

Co-Chair von Imhof noted that there were laws that limited legislative edits on initiatives. She remarked that the first bullet point on Slide 50 was troubling. She lamented that volume was waning in the state and it was becoming more expensive and more difficult to produce in Alaska. She believed that SB 21 was working. She asked whether passing of the initiative would halt activity, investment, or forward progress for the industry in the state.

[10:33:22 AM](#)

Mr. Ruggiero replied that he believed that capital spending would slow. He noted Alaska's decline as a player in the industry. He thought that ringfencing large fields would cause a pause in productivity.

[10:35:28 AM](#)

Co-Chair von Imhof stressed that with a 300 percent tax increase there would be a decline in production in less than a decade.

[10:36:28 AM](#)

Senator Wielechowski pointed out that under SB 21 investment on the North Slope had declined. He said that jobs had declined - over 5,000 jobs. He said that in that timeframe the number of out-of-state workers had actually increased. He argued that every aspect of production was down.

[10:37:39 AM](#)

Senator Bishop remarked that the price of oil had contributed to the loss of jobs.

[10:38:03 AM](#)

Mr. Ruggiero addressed Slide 51, "Specific Questions; Disclosure Impacts":

- Producers with ownership in the 40/400 Assets will no longer be able to deduct expenses associated with smaller fields or new developments against the revenues of the 40/400 Assets
- This ring fencing will greatly increase the perceived costs and negatively impact the economics (longer time to recovering costs and being profitable) of any satellite operations or possible new developments
- The negative impact to economics could push the new developments being actively pursued below the corporate funding level for approval
- If documents were to become non-confidential, Alaska would be the only regime to require public disclosure of all documents associated with tax filings

[10:39:44 AM](#)

Mr. Ruggiero discussed Slide 52, "Specific Questions; Middle Earth and Cook Inlet Impacts":

Articulate ant impacts of the Middle Earth and Cook Inlet basins, including to investment behavior.

- The current wording of the Initiative makes no changes to operations or tax returns for Middle Earth or Cook Inlet
- The only impact we perceive to non-North Slope areas is the uncertainty that is created and the ensuing debates that will take place on how to interpret the Initiative
- This risk will likely cause current and prospective producers to take a pause in their investment considerations while implementation details are sorted

[10:40:42 AM](#)

Senator Wielechowski wondered whether the legislature should do everything it could to reduce uncertainty associated with the Fair Shar Act and how it should be applied.

[10:40:56 AM](#)

Mr. Ruggiero said that the legislature should decide what action to take with the initiative.

[10:41:04 AM](#)

Senator Wielechowski asked whether the legislature should be responsible to clear up ambiguity in the language.

[10:41:17 AM](#)

Mr. Ruggiero reiterated his previous answer.

[10:41:23 AM](#)

Senator Wielechowski asked whether, as an expert, Mr. Ruggiero believed that it would be responsible for the legislature to clear up ambiguity in the language if the initiative should pass.

[10:41:40 AM](#)

Mr. Ruggiero rested that the decision was with the legislature.

[10:42:14 AM](#)

Co-Chair von Imhof thought that if the sponsor of the initiative wanted to be clear with their intent, they would have written the language more clearly. She noted that in the DOR Fall Revenue Source Book - capital expenditures had increased under SB 21. She noted several articles that supported the idea that SB 21 was, in fact, working.

[10:43:52 AM](#)

Senator Bishop thanked the committee and presenters.

#

ADJOURNMENT

[10:44:04 AM](#)

The meeting was adjourned at 10:44 a.m.