

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 21, 2021

1:04 p.m.

MEMBERS PRESENT

Representative Josiah Patkotak, Chair
Representative Grier Hopkins, Vice Chair
Representative Zack Fields
Representative Calvin Schrage
Representative Sara Hannan
Representative George Rauscher
Representative Mike Cronk
Representative Ronald Gillham
Representative Tom McKay

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 54

"An Act establishing the Alaska Invasive Species Council in the Department of Fish and Game; relating to management of invasive species; relating to invasive species management decals; and providing for an effective date."

- MOVED CSHB 54(FSH) OUT OF COMMITTEE

HOUSE BILL NO. 130

"An Act relating to exclusions from income, credits, and deductions against the Alaska net income tax; establishing an income tax on oil or gas business entities; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 54

SHORT TITLE: INVASIVE SPECIES MANAGEMENT

SPONSOR(S): FISHERIES

02/18/21	(H)	PREFILE RELEASED 1/15/21
02/18/21	(H)	READ THE FIRST TIME - REFERRALS

02/18/21 (H) RES, FSH
02/24/21 (H) RES REFERRAL MOVED TO AFTER FSH
02/24/21 (H) BILL REPRINTED
03/11/21 (H) FSH AT 11:00 AM GRUENBERG 120
03/11/21 (H) Heard & Held
03/11/21 (H) MINUTE(FSH)
03/12/21 (H) BILL REPRINTED
03/18/21 (H) FSH AT 11:00 AM GRUENBERG 120
03/18/21 (H) Heard & Held
03/18/21 (H) MINUTE(FSH)
03/25/21 (H) FSH AT 10:30 AM GRUENBERG 120
03/25/21 (H) -- MEETING CANCELED --
03/30/21 (H) FSH AT 10:00 AM GRUENBERG 120
03/30/21 (H) <Bill Hearing Canceled>
04/01/21 (H) FSH AT 10:00 AM GRUENBERG 120
04/01/21 (H) <Bill Hearing Canceled>
04/06/21 (H) FSH AT 10:00 AM GRUENBERG 120
04/06/21 (H) Moved CSHB 54(FSH) Out of Committee
04/06/21 (H) MINUTE(FSH)
04/07/21 (H) FSH RPT CS(FSH) 7DP
04/07/21 (H) DP: KREISS-TOMKINS, ORTIZ, MCCABE,
VANCE, STORY, STUTES, TARR
04/16/21 (H) RES AT 1:00 PM BARNES 124
04/16/21 (H) Heard & Held
04/16/21 (H) MINUTE(RES)
04/21/21 (H) RES AT 1:00 PM BARNES 124

BILL: HB 130

SHORT TITLE: CORP. TAX: REMOVE EXEMPTIONS/CREDITS
SPONSOR(S): WOOL

03/10/21 (H) READ THE FIRST TIME - REFERRALS
03/10/21 (H) RES, FIN
04/21/21 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE GERAN TARR
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided information and answered questions during the hearing on HB 54 as chair of the House Special Committee on Fisheries, sponsor.

RACHEL HANKE, Legislative Liaison
Office of the Commissioner
Alaska Department of Fish & Game (ADF&G)

Anchorage, Alaska

POSITION STATEMENT: Provided information and answered questions during the hearing on HB 54.

REPRESENTATIVE ADAM WOOL

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As prime sponsor, introduced HB 130.

KEN ALPER, Staff

Representative Adam Wool

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Gave a PowerPoint presentation on HB 130 on behalf of Representative Wool, prime sponsor.

RYAN FITZPATRICK, Commercial Analyst

Division of Oil and Gas

Department of Natural Resources (DNR)

Anchorage, Alaska

POSITION STATEMENT: Presented a PowerPoint during the hearing on HB 130.

COLLEEN GLOVER, Director

Tax Division

Department of Revenue

Juneau, Alaska

POSITION STATEMENT: Presented a PowerPoint during the hearing on HB 130.

DAN STICKEL, Chief Economist

Tax Division

Department of Revenue

Anchorage, Alaska

POSITION STATEMENT: Co-presented a PowerPoint during the hearing on HB 130.

NICOLE REYNOLDS, Deputy Director

Tax Division

Department of Revenue

Juneau, Alaska

POSITION STATEMENT: Co-presented a PowerPoint during the hearing on HB 130.

ACTION NARRATIVE

[1:04:31 PM](#)

CHAIR JOSIAH PATKOTAK called the House Resources Standing Committee meeting to order at 1:04 p.m. Representatives McKay, Cronk, Schrage, Gillham, Hannan, Rauscher, and Patkotak were present at the call to order. Representatives Hopkins and Fields arrived as the meeting was in progress.

HB 54-INVASIVE SPECIES MANAGEMENT

[1:05:20 PM](#)

CHAIR PATKOTAK announced that the first order of business would be HOUSE BILL NO. 54, "An Act establishing the Alaska Invasive Species Council in the Department of Fish and Game; relating to management of invasive species; relating to invasive species management decals; and providing for an effective date." [Before the committee was CSHB 54(FSH).]

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REPRESENTATIVE GERAN TARR, Alaska State Legislature, as chair of the House Special Committee on Fisheries, sponsor of HB 54, relayed a current events story about Zebra mussels shutting down a water system. She expressed hope that agencies across the state can work together to ensure that the invasive species issues in Alaska won't reach the magnitude of those seen in the Lower 48.

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REPRESENTATIVE CRONK said that this proposed legislation would create a "humongous" invasive species council, and that he doesn't see the need for legislation of this magnitude.

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REPRESENTATIVE MCKAY said he has firsthand experience with invasive species and understands the concern. He then asked how the state would manage invasive species on federal land.

REPRESENTATIVE TARR replied that one of the advantages of this model of invasive species management is having the participation of federal, state, and tribal partners. She then explained that the quorum requirements for the Invasive Species Council under HB 54 would facilitate efficient work.

REPRESENTATIVE MCKAY noted the cost of approximately \$62,000 per year.

REPRESENTATIVE TARR said that the program would be funded largely through federal funds, and deferred to Legislative Liaison Rachel Hanke.

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RACHEL HANKE, Legislative Liaison, Office of the Commissioner, Alaska Department of Fish & Game (ADF&G), explained that funding should come partially from federal grants, with additional funds raised through the sale of invasive species management decals.

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REPRESENTATIVE FIELDS thanked Representative Tarr as chair of the House Special Committee on Fisheries and noted that it's difficult to know how to deal with the threat of invasive species. He expressed concern about the effect of ticks on moose populations.

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REPRESENTATIVE HANNAN spoke in favor of CSHB 54(FSH) and said that the Invasive Species Council would provide the framework for federal, state, tribal and private organizations to work together. She discussed governmental bureaucracy and said that the Department of Environmental Conservation (DEC), Department of Natural Resources (DNR), and Alaska Department of Fish & Game (ADF&G), each have specific powers that overlap in some areas, leaving gaps in others. She said, "I really think it is time for us to put into statute something to address invasive species, versus depending on individual agencies to advocate and say, 'I see a problem, who else needs to know about this, how do we work to prevent it from spreading?'"

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REPRESENTATIVE GILLHAM opined that DNR appeared to be doing "a pretty good job" eradicating invasive species and questioned the need for a 27-member committee. He then noted that Ms. Hanke said there "should" be federal funding, instead of saying there "will" be federal funding, and asked what could happen if the federal funds are not received.

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REPRESENTATIVE SCHRAGE detailed a personal experience with an invasive flora species and its negative impact. He noted that HB 54 would create a council that "comes up with a plan" and that council members would serve without compensation, per diem, or travel expenses. He expressed his support of HB 54.

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The committee took an at-ease from 1:20 p.m. to 1:22 p.m.

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REPRESENTATIVE TARR said that a sunset date for the Invasive Species Council under HB 54 could be added. She then quoted an excerpt from a report [included in committee packet] provided by Tammy Davis, Invasive Species Program Coordinator at ADF&G, which read as follows [original punctuation provided]:

Minnesota DNR states, "Adult mussels can survive out of water - less than five days in dry conditions, but up to 21 days in very wet conditions". They go on to state, "Microscopic larvae (veligers) can survive in water contained in bait buckets, live wells, bilge areas, ballast tanks, motors and other water containing devices."

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REPRESENTATIVE RAUSCHER moved to report CSHB 54(FSH) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 54(FSH) was reported out of the House Resources Standing Committee.

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The committee took an at-ease from 1:25 p.m. to 1:28 p.m.

HB 130-CORP. TAX: REMOVE EXEMPTIONS/CREDITS

[1:28:01 PM](#)

CHAIR PATKOTAK announced that the final order of business would be HOUSE BILL NO. 130, "An Act relating to exclusions from income, credits, and deductions against the Alaska net income tax; establishing an income tax on oil or gas business entities; and providing for an effective date."

[1:28:40 PM](#)

REPRESENTATIVE ADAM WOOL, Alaska State Legislature, as prime sponsor, introduced HB 130. He paraphrased the Sponsor Statement [included in the committee packet] which read as follows [original punctuation provided]:

House Bill 130 is designed to close loopholes and ensure fairness in Alaska's corporate income tax structure. The bill resolves three important issues.

First, it expands the jurisdiction of Alaska's existing corporate income tax to all oil and gas producers doing business here. Currently, only "C" corporations pay this tax on their Alaska profits. This is increasingly concerning as new, smaller companies begin producing. The Department of Revenue has estimated that 30% of Alaska's current oil production is by companies who are organized as something other than C-corporations and thus exempt from our current tax structure. This is costing Alaska an estimated \$25 to \$30 million per year in lost tax revenue, potentially much higher should oil prices recover. With the passage of HB130, all oil and gas producers will pay the same rate of tax based on their Alaska-derived profits.

Second, it resolves a new issue that has arisen with the passage of the federal CARES Act coronavirus relief bill. Typically, a corporation who experiences an operating loss can carry that loss forward to reduce their future year taxes. The CARES Act allows corporations to carry any 2018-2020 losses backwards to a prior tax year. Because Alaska law incorporates most provisions of the IRS tax code, that same item applies to Alaska's tax. In practice, this means that Alaska will be paying retroactive tax refunds to corporate taxpayers, for a forecasted total of \$162 million between FY2021 and FY2022. HB130 severs this link to the federal tax code for this specific issue, preventing Alaska from having to pay these refunds during our historic budget crisis.

Finally, it closes two small but important loopholes that were identified in the state's "Indirect Expenditures Report." It restricts the ability of

corporations to claim federal tax credits for work that has nothing to do with Alaska, and removes the ability to deduct foreign royalties from a company's income calculation. These provisions provide no policy benefits and give an unneeded tax break to several hundred companies. Together, they are estimated to cost the state \$3.5 to \$5 million per year.. Together, the three items will earn or save Alaska close to \$200 million next year, and take an important step towards a comprehensive fiscal plan.

[1:36:22 PM](#)

KEN ALPER, Staff, Representative Adam Wool, Alaska State Legislature, gave a PowerPoint presentation [hard copy included in the committee packet] on behalf of Representative Wool, prime sponsor of HB 130, titled "House Bill 130 Corporate Income Tax Reform." He presented slide 2, "What Does HB130 Do?", which read as follows [original punctuation provided]"

Three separate reforms to Alaska's Corporate Income Tax, each closing a loophole or exemption that costs the state money

1. Federal CARES Act loss-carryback issue forces the state to pay large tax refunds;
2. Oil and gas companies who are not "C" corporations do not have to pay the same tax as those who do;
3. Several smaller tax credits or "indirect expenditures" that don't appear to have any current purpose or value

...but first a little background on our Corporate Income Tax

MR. ALPER presented slide 3, "Alaska's Corporate Income Tax," which read as follows [original punctuation provided]:

- All states have some sort of corporate taxation
- State taxes are typically tied to the federal corporate income tax
 - National ("water's edge") profits are apportioned to Alaska based on certain key ratios:
 - ♣ Percentage of Sales, Property, and Payroll

♣ Based on the federal "UDITPA" (Uniform Division of Income for Tax Purposes Act), which we adopted in 1959

o For oil and gas taxpayers, Alaska has set up a separate, parallel system.

The same tax rates apply, but a different formula:

Global profits are apportioned to Alaska based on different ratios

♣ Percentage of Sales, Property, and Extraction (i.e. production)

• Tax is paid based on apportioned Alaska profits based on the tax table in AS 43.20.011. Top marginal rate is 9.4% of profits above \$222,000.

MR. ALPER continued to slide 4, "Who Pays This Tax?", which read as follows [original punctuation provided]:

• "C" Corporations. Legally these are entities that hold the company's assets and income separate from that of the individual owners of the company

o Profits are retained within the company and taxed separately

• All corporations have to file a tax return with the Department of Revenue, but type "S" corps are currently exempt from the actual tax

• About 17,000 file tax returns, but only the 6,000 "C" Corps are liable to pay

• DOR reports the tax collections separately for oil and non-oil companies

o Oil tax is quite "elastic" with oil prices; average of the last five years is only \$33 million, but over \$500 million / year during the 2005-2014 period

o Non-oil tax is much more stable; average of the last five years was \$103 million and was \$123 million / year during the 2005-2014 period

• Overseen by a staff of about 16 auditors and tax technicians in Anchorage and Juneau

MR. ALPER presented slide 5, "Who Pays This Tax?", which showed a graph of non-oil corporate taxes by industry sector.

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REPRESENTATIVE HOPKINS asked what type of oil companies could be impacted by the provisions under HB 130.

MR. ALPER responded that HB 130 would create a definition for "oil or gas business entity", which carries forth from the existing split in the corporate income tax between producer and transporter. He noted that the profits of a for-profit pipeline would be subject to the tax change.

MR. ALPER continued his presentation with slide 6, titled "Part 1: CARES Act Carry-Back Issue," which read as follows [original punctuation provided]:

The 2020 CARES Act included a provision for federal corporate taxpayers

- o Any 2018-2020 losses can be carried backwards to a prior tax year

- o Companies could then re-file an older tax return, and potentially get a refund of previously paid taxes

Alaska has adopted the IRS Code "by reference" unless specifically excepted

- o HB130 creates an exception, de-linking Alaska's corporate income tax from the CARES Act rule

The Department of Revenue has estimated that the state is liable for about \$162 million in tax refunds

MR. ALPER continued to slide 7, "Part 1: CARES Act Carry-Back Issue," which showed two graphs from the spring 2021 revenue forecast presentation to the House Finance Committee on March 16, 2021. The graphs showed the revenue lost due to the provisions detailed in the previous slide, totaling the aforementioned \$162 million. He said, "These are refunds that the state would be on the hook to write checks for: past paid taxes that are getting paid back to the taxpayer." He clarified that currently, net operating losses can be used to lower the tax liability of future profits. He explained that under HB 130 there would be more state revenue now and less in the future; if it doesn't pass, however, there would be much less state revenue now but a little more in future years. "Representative Wool believes ... we need the money now. By 2024, hopefully, we've resolved our underlying fiscal situation, whereas \$160 million is a lot of money, facing the uncertainty that Alaska's facing right now," he said.

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REPRESENTATIVE SCHRAGE expressed optimism that the state's fiscal deficit will be fixed in the coming years and said that funding from the American Rescue Plan Act of 2021 (ARPA) is "somewhat" guaranteed. He asked, "Can you share your perspective on why we wouldn't want to just go ahead and take care of this now while we do have that ARPA funding and keep the burden in future years lower, so that should we end up in an unfortunate situation where we don't have a resolved budget, that's not an additional burden on us?"

REPRESENTATIVE WOOL explained that the ARPA funds include many provisions, some which prohibit the money from being used for paying expenses such as pensions and taxes, and that the funds are already allocated. He characterized the state budget as "roughly balanced," but said the permanent fund dividend (PFD) hasn't been "worked in" to the budget. He noted that in 2020 the PFD paid out \$680 million, of which the \$162 million in potential tax refunds would help cover.

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MR. ALPER continued his presentation with slides 9, 10, and 11, all titled "Part 2: Oil and Gas Taxpayer Equitable Treatment," which read as follows [original punctuation provided]:

- The corporate income tax is not the production tax. These are completely different issues
- Corporate income tax is one of four major petroleum revenue sources
 1. Royalty (landowner share) when production is on state land. At least $\frac{1}{4}$ of royalties go to Permanent Fund
 2. Property (ad valorem) Tax on pipeline, equipment, and facilities. About 80% of petroleum property tax is credited back to local governments
 3. Production (severance) tax on net profits with a minimum tax "floor"
- Alaska has a long history of treating oil producers different from other companies within the corporate income tax
 - o Current "extraction" formula and worldwide apportionment
 - o 1978-1981 use of "separate accounting" (Alaska specific profits) rather than apportionment; upheld by Supreme Court 10

- For most of Alaska's history as a major oil producing state, the vast majority of the production has been from traditional, integrated companies that paid the corporate tax as "C-Corps"
- In recent years, newer, smaller companies have entered Alaska, and some of the older producers have sold their assets
- Currently, about 30% of our oil production is from a company that is organized as something other than a "C-Corporation." Typically, these producers are "S-Corporations"
- HB130 changes the statute so that all oil and gas producers would pay this tax at the same rate

Why aren't these profits being taxed?

- A type S corporation is taxed in the same way as a Partnership or LLC
- They calculate their profits, and file a federal tax return, but their profits are not legally retained by the company.
- Profits are "passed through" to their owners, and taxes are paid via the owners' personal income tax returns
- This works in the federal system, but because Alaska has no individual income tax, these profits are not taxed at all by the State

MR. ALPER clarified that the purpose of HB 130 is to resolve the issue of untaxed profits within Alaska. He noted that the tax information of S corporations ("S corps") is private, but since oil and gas companies have similar cost structures and profitability, possible state revenue could be extrapolated from what is already received from oil and gas companies operating as C corporations ("C corps").

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REPRESENTATIVE MCKAY said that he objected to Mr. Alper's assertion that a major oil company has the same cost structure as an individually-owned S corp, such as Hilcorp. He said, "Hilcorp is known to operate at a much lower overhead, so to speculate and assume that they have the same cost structure as a major [oil and gas company], I think, is incorrect."

MR. ALPER said that he agrees that Hilcorp is known for operating on smaller margins; however, since it's an S-corp., its finances can't be publicized; therefore, he was estimating.

He noted that because of its efficiency, Hilcorp may actually be more profitable, resulting in more revenue to the state under HB 130.

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MR. ALPER resumed his presentation with slides 13-16, "Part 3: Corporate Tax Indirect Expenditures," which read as follows [original punctuation provided]:

- Alaska statutes have a large number of tax breaks that in some way reduce revenue.

- These are generally referred to as "Indirect Expenditures"

- The legislature started looking closely at these in 2014, with the passage of HB306 by Rep. Thompson

- This bill requires periodic reports from both the Legislative Finance Division and the Department of Revenue

- HB130 addresses two specific "indirect expenditures" identified in these reports

- Both were previously proposed for elimination in 2018, in HB399 by Rep. Thompson (bill passed the House and died in Senate Finance)

1. Federal Tax Credits that reduce a taxpayer's federal tax liability can be apportioned to Alaska and reduce a company's Alaska tax liability, regardless of whether the credit was in any way related to the company's Alaska activity

- Example: A company earns a \$10 million federal credit for investing in an "opportunity zone" in California. Per HB130, that expenditure would no longer be used in the apportionment of that company's income to Alaska. Depending on the company, our "share" could be a couple hundred thousand.

2. 80% of Foreign Royalties received by a company are currently excluded from income before it is apportioned to Alaska

- These are generally royalties for intellectual property, patents, copyrights, etc. Not the resource "royalties" we usually think about here

- Example: a software company licenses their operating system to a company in Europe. The licensee pays a royalty to the taxpayer based on their sales to

customers. Per HB130, those royalty payments would now be fully counted in the income apportionment to Alaska

o A New York judge recently ruled that foreign royalties could not be excluded, and that requiring taxes to include these payments from non-resident companies was not unconstitutional

- Together, these two items cost the state an average of \$4.0 million / year during the 2015-2018 period (last complete years available)
- In the current Indirect Expenditures report (pages 164-165), DOR said there would be no cost to administer either change if they were eliminated

MR. ALPER presented slide 17, "Fiscal Note Summary," which showed the subcomponents of HB 130 and their projected revenue over the next six years, as well as the cost for two new corporate income tax auditor positions. He concluded his presentation with slide 19, "Technical Amendment," which read as follows [original punctuation provided]:

DOR identified several small issues that could impact implementation. We have submitted a proposed amendment (G.1) to the Chair that would resolve them:

- In the reference to the Federal CARES Act legislation, an incorrect subsection number is used
- Concern that a taxpayer who already re-filed and received a refund for a carry-back loss could have to pay penalties and interest if the bill passes and they must pay back these refunds. Amendment allows for waiver
- Authorizes DOR to write regulations that are retroactive to the effective date of the bill

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REPRESENTATIVE MCKAY referred to Section 2, page 2, lines 15-18 of HB 130 which read as follows:

* Sec. 2. AS 43.20.011 is amended by adding a new subsection to read: (g) In this section, "oil or gas business entity" means a person engaged in the production of oil or gas from a lease or property in this state or engaged in the transportation of oil or gas by pipeline in this state.

REPRESENTATIVE MCKAY said he would prefer that Section 2 be addressed separately from the proposed legislation. He then referred to comments he made on the House floor in which he "quoted the Fraser Institute, which ranked Alaska forty-ninth in the country, only second to New York State, in business friendliness," and expressed that HB 130 could "put us at 51." He opined that Hilcorp extended the life of Cook Inlet oil fields and has increased production at Prudhoe Bay, which had been in decline for 45 years. He said, "The idea that we should target S corporation companies for specific taxes may be to our detriment; S corporations operating our oil fields may be the future, and we have to be prepared for that." He hypothesized that, should HB 130 pass, Hilcorp may cease operations in Alaska. He then said, "I also wonder, is it constitutional to target one company in our state in such a fashion? It's right here in the slides, we're going after Hilcorp." He expressed curiosity at how other oil-producing states treat the taxes of S corps, LLCs, and partnerships.

REPRESENTATIVE WOOL explained that HB 130 doesn't target Hilcorp; rather, Hilcorp was highlighted because they acquired the land previously operated by BP, which had been in partnership with ConocoPhillips Alaska, Inc. and ExxonMobil Corporation in Prudhoe Bay, and had been taxed as a C corp. He noted that California has an income tax, so a shareholder of an S-corp. there would have a tax liability. He expressed understanding of the wariness of tax changes and the possible business implications but said that taxes change often, and businesses also make decisions based on other factors.

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REPRESENTATIVE FIELDS asked whether this proposed legislation would apply only to Hilcorp at this time.

REPRESENTATIVE WOOL said that while Hilcorp is known to be an S corp, he doesn't know whether there are any other oil and gas companies that are S corps.

MR. ALPER said under Alaska tax law, anyone who owns a share of an oil field is an oil producer.

REPRESENTATIVE FIELDS asked what the tax differences are for business that are not oil and gas producers, whether they are C corps or S corps, and if a similar discrepancy exists.

MR. ALPER responded that S corps don't pay any state income tax, no matter what type of business, and that many small businesses are S corps. In response to Representative Fields' follow-up question, Mr. Alper clarified that when he was a shareholder in an S-corp., he paid federal taxes for the business through his personal income taxes but had no tax liability to the state.

REPRESENTATIVE FIELDS asked how many S-corps operate in Alaska.

MR. ALPER replied that approximately 10,000 S corps operate within Alaska.

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REPRESENTATIVE GILLHAM said that he's concerned about how HB 130 could affect the gold mining and fishing industry, Wal-Mart, and Fred Meyer.

REPRESENTATIVE WOOL explained that large, publicly-traded companies are C corps, and that S corps which are not oil and gas companies would not be affected by HB 130.

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REPRESENTATIVE HANNAN noted that Hilcorp is paying taxes on profits earned in Alaska to the federal government instead of to the State of Alaska, and that HB 130 wouldn't change the amount of taxes being paid, only which governmental entity would receive the revenue.

MR. ALPER responded, "Yes, Mr. Hildebrand pays tax to the federal government, presuming that his numbers are positive." He noted that under HB 130, every incremental dollar that Hilcorp would pay to the State of Alaska would reduce its federal tax liability.

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REPRESENTATIVE RAUSCHER asked whether Hilcorp would be providing testimony on HB 130.

CHAIR PATKOTAK said that, as far as he knows, Hilcorp has not been contacted.

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REPRESENTATIVE CRONK asked why HB 130 is specific to oil and gas companies instead of all S corps. He noted that Alaska gets 12.5 percent on "every barrel that goes through that pipeline," and he questioned negating that production and pondered where "the happy medium" may be.

REPRESENTATIVE WOOL replied that there would be 10,000 new state income taxes filed, which he characterized as "a much heavier lift." He commented that he is not sure he would want to do that. If he were to propose enacting a broad-based tax, he added, he was not sure it would be on S corps. He observed that if the state were to enact a state income tax, "every business owner that owns an S corp would have to pay it through their personal state income tax," which, he opined, would be a more equitable way to tax. He said that the Prudhoe Bay [oil field] has, until recently, been owned by three large corporations that have paid taxes to the State of Alaska, and now that an S corp has bought one of those shares, the state could potentially lose the \$50 million in annual revenue it had previously been getting.

[2:26:18 PM](#)

RYAN FITZPATRICK, Commercial Analyst, Division of Oil and Gas, Department of Natural Resources (DNR), presented excerpts from a PowerPoint on HB 130 [hard copy included in the committee packet], titled "Petroleum Revenue Systems: Royalties." He clarified that the purpose of his presentation is to provide context around the petroleum revenue system and noted that slide 9, "Total Petroleum Revenue by Restriction and Type, Millions of Dollars," provides background information detailing the major types of petroleum revenue. He then paraphrased slide 2, "State Oil & Gas Lease Revenue Types," which read as follows [original punctuation provided]:

Royalty

- Share of gross production of oil and gas from the lease owed to the landowner.
- Set as a fraction (e.g. 1/8) or percentage (e.g. 12.5%) or production.
- Owed upon severance from the lease.
- May be taken as payment in value ("RIV") or as delivery in kind ("RIK").
- Generally free of costs of production (CAPEX and OPEX), but subject to transportations costs.

Net Profit Share

- Share of net profits generated by the lease from oil and gas production.
- Set as a percentage (e.g. 30%, 40%, 79.59%) of net profits.
- Owed once developments costs have been recovered (with interest).
- Always taken as a payment.
- Paid on net profits after deducting costs of production (both OPEX and CAPEX).

Bonus Bid

- Cash payment paid when lease is issued.
- Typically the bid variable, so lessees compete on the bonus bid amount.

Lease Payment

- Annual cash payment, may be credited against royalty
- Set as a dollar per acre amount for each lease, some leases include increases during the lease term.

[2:30:38 PM](#)

The committee took an at-ease from 2:30 p.m. to 2:37 p.m.

[2:37:41 PM](#)

MR. FITZPATRICK finished showing the information on slide 2 and continued to slides 3 and 4, titled "Royalty Calculation Examples" and "Net Profit Share Calculation Examples." He explained that the royalty calculation begins with the price of a barrel of oil; pipeline tariffs and marine transportation costs are deducted; net value is multiplied by total production; and total production is multiplied by the royalty rate to find the dollar amount of revenue to the state. For net profit share leases, revenue to the state is determined by both the royalty rate and a separate rate based on the profit made from the commodity.

MR. FITZPATRICK concluded his presentation with slide 5, which displayed a map of the North Slope showing state and federal lands, the Arctic National Wildlife Refuge (ANWR), Arctic Slope Regional Corporation (ASRC) lands, and private land holdings, all of which provide revenue to the state.

[2:44:55 PM](#)

COLLEEN GLOVER, Director, Tax Division, Department of Revenue, presented a PowerPoint on HB 130 [hard copy included in the committee packet] titled "Oil and Gas Tax Revenue Overview." She began on slide 2, "Agenda," which listed two tax revenue sources as follows [original punctuation provided]:

1. Oil and Gas Revenue Tax Sources
 - Property Tax Overview
 - Production Tax Overview
 - Corporate Income Tax Overview
2. Oil and Gas Total Revenues

MS. GLOVER presented slide 3, titled "Oil and Gas Fiscal System: Overall Order of Operations," which displayed a flowchart showing the relationship between royalties, which are the first element of the fiscal system; property taxes, which are considered lease expenditures and can be applied against production tax; production tax, which comes after royalties are subtracted and allows property tax as a deduction; state corporate income tax, of which production tax, property tax, and royalties are excluded; and federal corporate income tax, which excludes all other royalties and taxes.

MS. GLOVER paraphrased slide 5, titled "Oil and Gas revenues: Property Tax," which read as follows [original punctuation provided]:

- Based on assessed value of oil and gas property
- State tax rate is 2% (20 mills) of assessed value
- Municipalities can levy property taxes at same rate it taxes all non-oil and gas property
 - o Taxes paid to municipalities acts as credit towards tax due to state
 - o Municipalities receive large majority of total revenue
- Governing Statute AS 43.56; Regulations 15 AAC 56.005-.900

MS. GLOVER explained that oil and gas property tax is a tax on production, pipeline, and equipment. She then moved on to slide 6, titled "Oil and Gas Revenues: Property Tax Distribution, FY2020," which displayed a table showing the amount of tax by jurisdiction and the proportions for state and local government. She noted that the total tax revenue for fiscal year 2020 was \$280 million, of which the state kept approximately \$123 million with the remainder allocated to the communities.

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REPRESENTATIVE HOPKINS asked about the weighted average referred to in the slide 6 footnote, which read as follows [original punctuation provided]:

The Fairbanks North Star Borough, Kenai Peninsula Borough, and Matanuska-Susitna Borough do not have a uniform mill rate for petroleum properties. The rate presented here is the weighted-average effective mill rate based on the 2020 certified tax roll.

MS. GLOVER replied that she couldn't speak to specific municipalities, but overall, communities "can only tax oil and gas property to the same rate that they tax other property."

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REPRESENTATIVE HANNAN asked Ms. Glover whether she is able to confirm the existence of more than one S corp in the oil and gas industry in Alaska.

MS. GLOVER replied that the Department of Revenue can't state who is or isn't a taxpayer. She said, "There are several entities that are a[n] oil producer, or actually own the oil on the North Slope or in the Cook Inlet, that are not C corporations."

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REPRESENTATIVE FIELDS asked, "Why? I find this puzzling."

MS. GLOVER explained that, while the Department of Revenue is allowed to aggregate certain information, it's legally prohibited from disclosing individual taxpayer information.

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DAN STICKEL, Chief Economist, Tax Division, Department of Revenue, continued the PowerPoint presentation, titled "Oil and Gas Tax Revenue Overview," with slide 8, "Oil and Gas Revenues: Production Tax," which read as follows [original punctuation provided]:

- Assessed on taxable barrels of oil and gas
- Taxed at segment level
 - All North Slope one segment

- o Cook Inlet fields are each separate segments
- Governing Statute AS 43.55; Regulations 15 AAC 55.010-.900

MR. STICKEL explained that "taxed at segment level" means that a company may calculate tax according to the production value and costs for the entire area in which it's operating, rather than calculating for each individual field. He said that Cook Inlet has a tax ceiling in statute, as well as lower overall production, and both factors limit the revenue collected from the Cook Inlet Basin.

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NICOLE REYNOLDS, Deputy Director, Tax Division, Department of Revenue, continued the PowerPoint presentation, titled "Oil and Gas Tax Revenue Overview," with slide 11, "Oil and Gas Revenues: Corporate Income Taxable Entities," which read as follows [original punctuation provided]:

- Generally, Alaska follows the Internal Revenue Code when determining an entity's taxable status.
- Applies to C-Corporations only

MS. REYNOLDS explained that a C corp is an independent legal entity owned by its shareholders, with profits taxed at the entity level only. Alaska uses the federal provisions exempting an S corp from tax at the entity level; rather, S corps are treated as partnerships, so owners report a share of company earnings on their individual tax returns. Alaska treats limited liability companies (LLCs) as partnerships or sole proprietorships, depending on their federal filing status. In response to an earlier question asking how many S corps operate in Alaska, she said that there are approximately 11,700 companies, which includes oil and gas companies.

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REPRESENTATIVE SCHRAGE asked whether aggregate data regarding oil and gas companies could be provided.

MS. REYNOLDS replied that she would research whether she's allowed to provide the information.

REPRESENTATIVE FIELDS said that he would like to know how many oil and gas companies are S corps.

REPRESENTATIVE SCHRAGE clarified that he's not asking for identifying information, only the number of oil and gas companies operating as S corps.

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MS. REYNOLDS continued her presentation with slide 12, "Oil and Gas Revenues: Corporate Income Tax," which read as follows [original punctuation provided]:

- AS 43.19 - Multistate Tax Compact (MTC)
 - Regulations 15 AAC 19.011-.1490
- AS 43.20 - Alaska Net Income Tax Act (ANITA)
 - Regulations 15 AAC 20.010-.920
- 26 U.S.C. 1 - 1399 and 6001 - 7872
 - Adopted, as amended, by reference in AS 43.20.021(a)

MS. REYNOLDS gave a brief history of tax laws adopted by the State and explained that Alaska adopts any changes to the Internal Revenue Code as they happen.

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REPRESENTATIVE HANNAN referred to Section 7 on page 3, [lines 8-16], of HB 130, which read as follows:

Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to read:

CARES ACT; NET OPERATING LOSS CARRYBACK. Notwithstanding AS 43.20.021(a), changes made to 26 U.S.C. 172 by sec. 2302, P. L. 116-136 (CARES Act), amending 26 U.S.C. 172(b)(1), providing for a carryback of net operating losses arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, do not apply to a state taxpayer filing net income taxes under AS 43.20 for a tax year beginning after December 31, 2017, and before January 1, 2021.

REPRESENTATIVE HANNAN asked Ms. Reynolds whether there is any sense of how many taxpayers will apply net operating losses from 2020 to previous years' taxes.

MS. REYNOLDS answered that, as 2020 returns haven't been filed, the Department of Revenue doesn't have a firm number.

REPRESENTATIVE HANNAN clarified her question.

MS. REYNOLDS responded that there have been taxes filed claiming refunds from tax years 2018 and 2019.

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MS. REYNOLDS continued the PowerPoint presentation with slide 13, "Oil and Gas Revenues: Corporate Income Tax Calculation Example," which showed how a C corp in Alaska calculates its state corporate income tax liability. She clarified that the tax rate applies to the net taxable income within the state after deducting the net operating losses. She continued on to slide 14, "Oil and Gas Revenues: Corporate Income Tax Apportionable Income," which read as follows [original punctuation provided]:

Oil & Gas C-Corporations use the "Worldwide Reporting Method" under AS 43.20.144(b) to determine their unitary combined groups and their apportionable income.

MS. REYNOLDS clarified that for presentation purposes she would focus on oil and gas producers and pipeline companies, as identified in AS 43.20.144, referring to them as "oil and gas taxpayers." She then explained that "apportionable income" means the entire business income of a multi-state taxpayer subject to apportionment. Oil and gas taxpayers apportionable income is their federal taxable income with four primary exceptions: taxes based on net income that were deducted in determining federal taxable income are added back; intangible drilling and development costs that were deducted as expenses in determining federal taxable income are capitalized and depreciated on a slower, straight-line expense approach rather than the accelerated federal depreciation schedule; the depletion deduction is allowed only on a cost depletion basis rather than on a percentage depletion basis; or, depreciation is computed using the pre-1981 federal rule, which is a slower, straight-line expense approach rather than the accelerated schedule under federal law. The apportionment formula is used to determine how much of the taxpayer's apportionable income is taxable by the State of Alaska. Taxpayers engaged in oil or gas production as well as pipeline transportation generally use a three-factor formula composed of property, sales, and extraction, which are all added together and divided by three. Taxpayers engaged in either oil and gas production or pipeline transportation use a modified apportionment factor, depending on

their business activity. Sales for oil and gas taxpayers is based on sales in Alaska rather than worldwide sales.

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MS. REYNOLDS continued her presentation with slide 16, "Oil and Gas Revenues: Corporate Income Tax Net Operating Losses," which read as follows [original punctuation provided]:

- Prior to 2017, NOLs could be carried back two years and forward 20 years.
- Tax Cut and Jobs Act (TCJA) limited the ability of corporations to carry back NOLs.
- CARES Act, Section 2303, reversed the TCJA treatment of NOLs arising in 2018, 2019, and 2020 to provide stimulus and cash infusion to economy.
 - Change was to the timing of when these can be applied not to the value of the NOLs
 - Can be carried back five years
 - Applies to losses in tax years 2018, 2019, and 2020 only.

MS. REYNOLDS explained that the purpose of the carry-back provision was to provide stimulus to companies that suffered large losses in 2018, 2019, and 2020 and to give the economy an infusion of cash. She said that for tax year 2021, the law will revert back to the TCJA treatment of net operating losses, so those losses would be limited to 80 percent of taxable income and "can only be carried forward indefinitely."

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REPRESENTATIVE HANNAN noted Ms. Reynolds' use of the phrase "can only be carried forward indefinitely." She asked, "Does it mean I can carry it forward until I choose to use that net operating loss? Or, if I had so much of a loss that I could carry it forward for forty years, I could do that?"

MS. REYNOLDS said that it means that a taxpayer would be able to apply the loss in future years until they've exhausted the loss. She illustrated that with a \$100 million loss in tax year 2020, and a future tax liability of only \$10 million per year, a taxpayer would be able to apply the \$100 million loss to each of those future years until the loss is exhausted.

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CHAIR PATKOTAK announced that HB 130 was held over.

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ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:16 p.m.