

AK LEGISLATURE SPECIAL COMMITTEE FILES SCOMM 150 3254₂₈

Non-renewable Resource Tax Comparison Chart

Prepared by the office of Rep. Seaton

Current Mining (Statute/ Regulation)

HB 156 - Proposed Mining Tax Changes

Current Oil and Gas Taxes

Taxes		
Mining License Tax Rates on Net Income	Mining License Tax Rates on Net Income	Tax Rates on modified Net Income (see reverse)
0 - \$40K	0	General flat rate on net production tax value 22.5%
\$40K - \$50K	3%	Progressive tax @ 2.5%/\$10 above \$40/bbl
\$50K - \$100K	5%	Floor (minimum tax rate):
\$100K - Up	7%	4% gross when ANSwc > \$25; 3% = \$20--\$25; 2% = \$17.50--\$20; 1% = \$15 --\$17.50; 0% = <\$15
Tax Exemption/ Deferral		
3 1/2 year tax exemption for new mines	3 1/2 year deferral for new mines. Payable over following 10 years of production	Limited exemption for small producers (producing up to 50,000 BTU equivalent barrels per year)
Depletion Allowance		
Choice between Percent Depletion OR Cost Depletion	Cost Depletion Only	No Depletion Allowance when calculating State taxes
% depletion deduction against gross income, Coal 10%; Metals/masc. minerals 15%; Sulphur 23%	Changed to allow for cost depletion only. Cost depletion allows for a % of development expenses equal to the % of total ore body mined during the tax year, to be deducted from mining license tax	
State Corporate Income Tax		
State income tax deductible from Mining License Tax	State Income Tax NOT deductible from Mining License Tax	State Income Tax NOT deductible from Petroleum Profits Tax (PPT)
Royalty		
COAL: 5% of Adjusted Gross Income. Taxable value is price received minus costs of transportation from the mine mouth	COAL: 5% of Adjusted Gross Income. Taxable value is price received minus costs of transportation from the mine mouth	OIL & GAS: minimum 12.5 - 20% of Gross Value at Point of Production. Tax on Private Royalty: oil 5% Gross Value at Pt. Of Production, gas 1.67% of Gross Value at Pt. Of Production
METAL MINES: 3% of Net Income as calculated under Mining License Tax	METAL MINES: 3% Net Smelter Return (NSR), for products which are smelted. The tax base for the NSR is the realized value of the produced materials minus costs associated with smelting, allowing for the deduction of transportation to the smelter	
Rents		
Coal \$3/acre per year	Coal \$3/acre per year	Oil & Gas
	Linked to Anchorage Consumer Index	First 4 years, \$1-2.50 / acre per year. Every year thereafter \$3/ acre per year
Minerals sliding scale: \$0.5-2.5/acre	Minerals \$3.30/acre per year	
Linked to Anchorage Consumer Index (1889 base yr)	Linked to Anchorage Consumer Index (2005 base yr)	

Expenditures Disallowed under PPT

e) For purposes of this section, lease expenditures do not include

- (1) depreciation, depletion, or amortization;
- (2) oil or gas royalty payments, production payments, lease profit shares, or other payments or distributions of a share of oil or gas production, profit, or revenue;
- (3) taxes based on or measured by net income;
- (4) interest or other financing charges or costs of raising equity or debt capital;
- (5) acquisition costs for a lease or property or exploration license;
- (6) costs arising from fraud, wilful misconduct, or gross negligence;
- (7) fines or penalties imposed by law;
- (8) costs of arbitration, litigation, or other dispute resolution activities that involve the state or concern the rights or obligations among owners of interests in, or rights to production from, one or more leases or properties or a unit;
- (9) costs incurred in organizing a partnership, joint venture, or other business entity or arrangement;
- (10) amounts paid to indemnify the state; the exclusion provided by this paragraph does not apply to the costs of obtaining insurance or a surety bond from a third-party insurer or surety;
- (11) surcharges levied under AS 43.55.201 or 43.55.300;
- (12) for a transaction that is an internal transfer or is otherwise not an arm's length transaction, expenditures incurred that are in excess of fair market value;
- (13) an expenditure incurred to purchase an interest in any corporation, partnership, limited liability company, business trust, or any other business entity, whether or not the transaction is treated as an asset sale for federal income tax purposes;
- (14) a tax levied under AS 43.55.011;
- (15) the portion of costs incurred for dismantlement, removal, surrender, or abandonment of a facility, pipeline, well pad, platform, or other structure, or for the restoration of a lease, field, unit, area, body of water, or right-of-way in conjunction with dismantlement, removal, surrender, or abandonment, that is attributable to production of oil or gas occurring before April 1, 2006; the portion is calculated as a ratio of the amount of oil and gas production, in barrels of oil equivalent, associated with the facility, pipeline, well pad, platform, other structure, lease, field, unit, area, body of water, or right-of-way occurring before April 1, 2006, to the total amount of oil and gas production, in barrels of oil equivalent, associated with that facility, pipeline, well pad, platform, other structure, lease, field, unit, area, body of water, or right-of-way through the end of the calendar month before commencement of the dismantlement, removal, surrender, or abandonment; a cost is not excluded under this paragraph if the dismantlement, removal, surrender, or abandonment for which the cost is incurred is undertaken for the purpose of replacing, renovating, or improving the facility, pipeline, well pad, platform, or other structure; for the purposes of this paragraph, "barrel of oil equivalent" means
 - (A) in the case of oil, one barrel;
 - (B) in the case of gas, 6,000 cubic feet;
- (16) costs incurred for containment, control, cleanup, or removal in connection with any unpermitted release of oil or a hazardous substance and any liability for damages imposed on the producer or explorer for that unpermitted release; this paragraph does not apply to the cost of developing and maintaining an oil discharge prevention and contingency plan under AS 46.04.030;
- (17) costs incurred to satisfy a work commitment under an exploration license under AS 38.05.132;
- (18) that portion of expenditures, that would otherwise be qualified capital expenditures as defined in AS 43.55.023(k), incurred during a calendar year that are less than the product of \$0.30 multiplied by the total taxable production from each lease or property, in BTU equivalent barrels, during that calendar year, except that, when a portion of a calendar year is subject to this provision, the expenditures and volumes shall be prorated within that calendar year.

Fortymile Miner's Association
PO Box 70
Chicken, AK 99732

Re: HB-157

March 15, 2007

Dear Representative Mike Hawker,

The mining industry is not unlike the fishing or tourism industries in that all three industries are composed of every size entity from small individual businesses to global, corporate companies with financial pursuits ranging from supplemental income for Alaska residents to earnings for global stockholders.

The Fortymile Miner's Association (FMA), representing the 2nd oldest Mining District in the State, is almost entirely composed of small "Mom & Pop" mining operations, mostly Alaska residents, which generally supplement other income. Almost all of the represented operations earn annual profits of less than \$100,000. Most of the operations pay State rentals on varying sizes of claim blocks, State recording fees and assessments associated with the claims, State royalties on production, State permit & license fees, State reclamation bonding fees, possibly State mining license taxes, possibly State corporate taxes, possibly State unemployment and workers compensation fees and in some cases State leases or campsite fees. Most of the operations are endeavors that last for decades and many are multi-generational businesses. For most operators, their mining business is their largest single lifetime investment. HB-156 would seriously impact all of these operations.

I am going to present a hypothetical scenario to illustrate the magnitude of the increased costs that HB-156 would impose. On the higher end of the spectrum in the Fortymile, a hypothetical operation on a 20 claim block producing \$500,000 annually and earning a \$100,000 profit would pay over \$17,000 to the State before paying any corporate or federal income tax. With the passage of HB-156, the same operator would pay almost \$27,000 before corporate or federal income taxes, a 45% increase. Clearly, most businesses cannot absorb such an increase. For the operations that are smaller than the above example, it gets tougher yet. The proposed rental increase is 500%, which will all but stop new staking by small firms and probably start a mass exodus from existing claims.

In closing, FMA recommends that HB-156 be terminated. Passage of the Bill would not only hurt the smaller operators in the industry, but also send a message to the global mining community that the State does not provide a stable environment in which to conduct capital intensive business pursuits.

Respectfully,
Mike Busby, VP FMA

cc Alaska Miner's Association

Rep. Mike Hawker

From: walt@swiftcreekmine.com
Sent: Friday, March 16, 2007 1:59 PM
To: Rep. Mike Hawker
Subject: HB-156

Sir,

I am concerned with the proposed tax and fee increases in HB-156. I believe it will have a detrimental impact on the small miner in Alaska and urge you to kill this measure. A 500 percent increase is not fair or reasonable.

According to the Alaska constitution, "*It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.*" By increasing the fees by such a high percentage you are restricting land use by pricing mining claims out of reach of many of the citizens. Only the big out of state companies (read that as Pebble) will be unaffected by the increase.

If the state needs more money why not offer similar tax and fee increases for all fish taken from Alaska waters as the bulk of the money from the fishing industry goes out of state. Spend some time in Bristol bay during the fishing season and you'll find the majority of the people in the fishing industry are from up from Seattle. And who owns the canneries? It's not Alaskans!

The large mines can afford an increase while the individual miner can not. The small miners are Alaskans and they are the ones this bill will hurt. I live and work in Anchorage but someday hope to earn a living on the claims I hold. If I can afford to hang on to them.

Thanks for your time;

Walter Larson
16200 Black Bear Dr
Anchorage, AK 99516

3/17/2007

ALASKA STATEWIDE PUBLIC OPINION RESEARCH SURVEY

February 12th to 20th, 2007

Sample size = 402; margin of error $\pm 4.89\%$

HELLENTHAL AND ASSOCIATES

2200 Vanderbilt Circle

Anchorage, Alaska 99508

(907) 276-1001 or

277-2315 (fax)

hellenthal@gci.net (e-mail)

Introduction and Methodology

This report presents an analysis of a survey of Alaskan statewide registered voters. The survey measured properties of Alaskan voters' demographics, behaviors and attitudes concerning the proposed Pebble Mine project.

Research typically involves estimating the characteristics of a designated population. Because of the costs of conducting a census of all items in a population and the adequacy of sample results, sample statistics were used to make statistical inferences concerning population parameters.

Four hundred and two (402) Alaskan registered voters were interviewed between February 12th and 20th, 2007. Interviewing was conducted by telephone on a random digit basis. That is, random numbers were computer generated for the last two digits of the suffix of each workable telephone prefix in Alaska. All Alaskan voters who are accessible by telephone had an equal chance of being interviewed.

This survey is a true random digit survey. Other research firms promote "supervoter" surveys. These surveys are not true surveys of voters or supervoters. Their sample does not include unlisted or underlisted registered voters and, therefore, cannot be generalized to voters or supervoters. They only are surveys of registered voters whose telephone numbers can be determined from a telephone directory. They save the researcher money, to the detriment of their clients' desire for accuracy.

Margin of error

At a 95% confidence level, the empirical proportions reported in the general population survey can be projected, within plus or minus 4.89%, to the entire Alaskan registered voter population. This means one can be 95% sure that the frequencies reported in the general population survey are within 4.89% of the true Alaskan registered voter population proportions.

The areas of Alaska surveyed for the general population survey were as follows:

THE FOLLOWING VARIABLE IS CALCULATED USING THE TELEPHONE PREFIX

AREAS OF ALASKA	FREQUENCY	PERCENT	MARGIN OF ERROR
Southeast.....	52.....	12.9%.....	+ 13.6 %
Valdez-Kenai-Matsu...	76.....	18.9%.....	+ 11.2 %
Anchorage.....	164.....	40.8%.....	+ 7.6 %
Greater Fairbanks....	52.....	12.9%.....	+ 13.6 %
Rural/Bush.....	58.....	14.4%.....	+ 12.9 %
TOTALS.....	402.....	100.0%.....	+ 4.89%

Margin of error

At a 95% confidence level, the empirical proportions reported in the general population survey can be projected, within plus or minus 4.89%, to the entire Alaskan registered voter population. This means one can be 95% sure that the frequencies reported in the general population survey are within 4.89% of the true Alaskan registered voter population proportions.

The questionnaire with results is as follows:

ALASKA STATEWIDE PUBLIC OPINION RESEARCH SURVEY

February 12th to 20th, 2007

Sample size = 402; margin of error $\pm$ 4.89%

Hello, I am _____ from Hellenthal and Associates. We are conducting an area-wide public opinion research survey. Your telephone number was randomly selected. The questions I need to ask will take only a few minutes. All of your responses will be completely confidential. (PAUSE AND PROCEED)

S1. Is this telephone number _____? (IF NO, TERMINATE WITH, "I'm sorry, I dialed the wrong number.")

S2. Am I talking to you at a place where you live?

S3. Are you registered to vote in the State of Alaska?

IF YES, THEN PROCEED TO QUESTION #1

IF NO, THEN ASK...

Is there anyone home who is registered to vote in the State of Alaska?

IF YES THEN ASK...

May I speak with them?

IF NO, THEN ASK...

When will someone be home who is registered to vote?

THE FOLLOWING VARIABLE IS CALCULATED USING THE TELEPHONE PREFIX

AREAS OF ALASKA	FREQUENCY	PERCENT	MARGIN OF ERROR
Southeast.....	52.....	12.9%.....	+ 13.6%
Valdez-Kenai-Matsu...	76.....	18.9%.....	+ 11.2%
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Greater Fairbanks....	52.....	12.9%.....	+ 13.6%
Rural/Bush.....	58.....	14.4%.....	+ 12.9%
TOTALS.....	402.....	100.0%.....	+ 4.89%

1. I am going to read to you a list of names of organizations and public figures. Please tell me whether your feelings toward each of them are very positive, somewhat positive, somewhat negative, or very negative -- or if you don't know who he/she/it is. Are your feelings toward _____ (FILL IN ORGANIZATIONS & PUBLIC FIGURES) very positive, somewhat positive, somewhat negative, or very negative -- or don't you know who it/he/she is?

(IF POSITIVE OR NEGATIVE SAY, "Is that very positive/very negative or just somewhat positive/negative?")

(IF THEY ONLY RECOGNIZE NAME OR ARE TRULY UNABLE TO GIVE A POSITIVE OR NEGATIVE RECORD A "2" OR "NEUTRAL")

	4 VERY POSITIVE	3 SOMEWHAT POSITIVE	2 NEUTRAL	1 SOMEWHAT NEGATIVE	0 VERY NEGATIVE	WHO?	MEAN
Alaska Miners Association...	12.7%...	23.6%...	36.7%...	5.8%...	1.8%...	19.4%...	2.491
Trout Unlimited...	7.1%...	18.3%...	24.8%...	3.5%...	1.2%...	45.1%...	2.484
Renewable Resources Coalition...	5.8%...	12.5%...	31.1%...	3.7%...	0.7%...	46.2%...	2.352
The Bristol Bay Alliance.....	3.2%...	9.8%...	31.1%...	1.8%...	2.3%...	51.8%...	2.202
Rio Tinto.....	1.2%...	1.0%...	19.9%...	2.3%...	1.9%...	73.6%...	1.895
Northern Dynasty..	2.7%...	9.7%...	31.6%...	11.7%...	10.2%...	34.1%...	1.744
Pebble Mine.....	5.4%...	16.1%...	30.9%...	16.3%...	24.4%...	7.0%...	1.590
Alaska Legislature....	6.8%...	38.0%...	31.4%...	17.3%...	6.5%...	0.0%...	2.211
Sarah Palin.....	38.0%...	35.0%...	19.9%...	5.0%...	2.1%...	0.0%...	3.018
Ted Stevens.....	22.0%...	33.5%...	13.1%...	19.1%...	12.4%...	0.0%...	2.336
Lisa Murkowski...	14.8%...	38.4%...	18.4%...	19.3%...	9.0%...	0.0%...	2.308
Don Young.....	16.4%...	31.2%...	17.5%...	14.1%...	19.4%...	1.4%...	2.114

(ROTATE ORDER)

2. Have you heard of the proposed Pebble Gold Mine Project?

HEARD OF PEBBLE MINE	FREQUENCY	PERCENT
Yes.....	364.....	90.6%
No.....	38.....	9.4%

3. The proposed Pebble Mine would develop a gold and copper deposit at the headwaters of the Bristol Bay watershed near Lake Iliamna (ILL-EE-AM-NAH). The Pebble Mine is potentially one of the largest deposits of gold and copper in North America. Do you strongly favor, somewhat favor, somewhat oppose, or strongly oppose opening Pebble Mine Project to gold and copper mining?

PEBBLE MINE #1	FREQUENCY	PERCENT
4. Strongly favor.....	62	15.4%
3. Somewhat favor.....	101	25.1%
2. Neutral.....	42	10.3%
1. Somewhat oppose.....	77	19.1%
0. Strongly oppose.....	121	30.1%

(Mean = 1.766)

4. The Bristol Bay watershed is the source of the world's greatest wild salmon fishery generating more than \$300 million dollars annually. A bill is now before the state legislature to protect this valuable natural resource and to prohibit the draining and destruction of salmon spawning streams for industrial purposes. Do you strongly favor, somewhat favor, somewhat oppose, or strongly oppose protecting Bristol Bay salmon spawning areas in this manner?

PROTECTING WATERSHED	FREQUENCY	PERCENT
4. Strongly favor.....	253	63.0%
3. Somewhat favor.....	81	20.2%
2. Neutral.....	23	5.6%
1. Somewhat oppose.....	20	5.0%
0. Strongly oppose.....	25	6.2%

(Mean = 3.289)

5. Another proposal before the legislature would establish a game refuge in the watersheds that make up the headwaters of Bristol Bay. It would be named after the late Governor Jay Hammond and is supported by his widow Bella Hammond. Do you strongly favor, somewhat favor, somewhat oppose, or strongly oppose the creation of such a game refuge?

GAME REFUGE	FREQUENCY	PERCENT
4. Strongly favor.....	156	38.7%
3. Somewhat favor.....	113	28.2%
2. Neutral.....	41	10.1%
1. Somewhat oppose.....	51	12.6%
0. Strongly oppose.....	41	10.3%

(Mean = 2.724)

10. Would you strongly favor, somewhat favor, somewhat oppose, or strongly oppose a statewide ballot initiative that would require large mines to pay 10% of their gross profit to the state? What about _____ (FILL IN 15%, 20%, 25%)?

	4	3	2	1	0	
	STRONGLY FAVOR	SOMEWHAT FAVOR	NEUTRAL	SOMEWHAT OPPOSE	VERY OPPOSE	MEAN
TAX RATES						
10%.....	45.4%	24.5%	9.8%	6.8%	13.6%	2.81
15%.....	38.0%	18.9%	11.2%	12.9%	19.0%	2.44
20%.....	36.8%	11.3%	12.9%	14.1%	24.8%	2.21
25%.....	38.0%	9.0%	12.7%	12.0%	28.3%	2.17

11. Would you strongly favor, somewhat favor, somewhat oppose, or strongly oppose 50% of the gross profit paid to the state by large mines going directly to the Permanent Fund?

50% PROFIT TO P.F.	FREQUENCY	PERCENT
4. Strongly favor.....	172	42.8%
3. Somewhat favor.....	64	16.0%
2. Neutral.....	36	9.0%
1. Somewhat oppose.....	44	11.0%
0. Strongly oppose.....	85	21.3%
(Mean = 2.480)		

12. Do you feel that the creation of one of the world's largest open pit mines at the headwaters of the Bristol Bay watershed is a very positive, somewhat positive, somewhat negative, or very negative development for Alaska?

WORLD'S LARGEST OPEN PIT MINE	FREQUENCY	PERCENT
4. Very positive.....	31	7.7%
3. Somewhat positive.....	62	15.5%
2. Neutral.....	31	7.6%
1. Somewhat negative.....	80	19.8%
0. Very negative.....	198	49.4%
(Mean = 1.124)		

13. Do you support a statewide ballot initiative to strengthen Alaska's clean water laws and enhance the safety of its earthen dams?

BALLOT INITIATIVE	FREQUENCY	PERCENT
Yes.....	326	81.2%
No.....	76	18.8%

14. If you had to choose between fish, wildlife and native habitat or gold and copper -- which natural resource would you choose -- would it be fish, wildlife and native habitat or gold and copper?

FISH OR GOLD	FREQUENCY	PERCENT
Fish, wildlife & native habitat	353	87.9%
Gold and copper	49	12.1%
Don't know		0.0%

15. How would you rank the following Alaskan activities and natural resources as to their importance in promoting Alaska's heritage and legacy? Would you say _____ (FILL IN ACTIVITIES AND NATURAL RESOURCES) is very important, somewhat important, somewhat unimportant, or very unimportant in promoting Alaska's heritage and legacy?

	4	3	2	1	0	
	VERY	SOMEWHAT		SOMEWHAT	VERY	
	IM-	IM-	NEUTRAL	UNIM-	UNIM-	
ORGS/INDIVIDUALS	PORTANT	PORTANT		PORTANT	PORTANT	MEAN
Commercial Fishing	62.9%	31.1%	1.2%	2.7%	2.0%	3.50
Recreational Fishing	59.5%	31.3%	2.1%	4.1%	3.0%	3.40
Tourism	60.5%	29.2%	2.1%	4.5%	3.6%	3.39
Hunting	53.4%	36.6%	3.4%	4.1%	2.5%	3.34
Oil Development	41.0%	37.8%	5.0%	9.9%	6.3%	2.97
Mining	18.4%	47.7%	5.1%	15.5%	13.4%	2.42

(ROTATE ORDER)

16. Please let me ask again, the proposed Pebble Mine would develop a gold and copper deposit at the headwaters of the Bristol Bay watershed near Lake Iliamna (ILL-EE-AM-NAH). The Pebble Mine is potentially one of the largest deposits of gold and copper in North America. Do you strongly favor, somewhat favor, somewhat oppose, or strongly oppose opening Pebble Mine Project to gold and copper mining?

PEBBLE MINE #2	FREQUENCY	PERCENT
4. Strongly favor	40	9.9%
3. Somewhat favor	88	21.9%
2. Neutral	20	5.0%
1. Somewhat oppose	70	17.5%
0. Strongly oppose	184	45.8%

(Mean = 1.327)

The last few questions are being collected purely for statistical purposes.

17. When it comes to politics, do you consider yourself to be very liberal, somewhat liberal, somewhat conservative or very conservative?

IDEOLOGY OF RESPONDENT	FREQUENCY	PERCENT
1. Very liberal.....	26.....	6.5%
2. Somewhat liberal.....	133.....	33.0%
3. Moderate.....	43.....	10.6%
4. Somewhat conservative.....	153.....	38.1%
5. Very conservative.....	47.....	11.8%

(Mean = 3.157)

18. Are you, or any person presently living in your household, a member of a labor union?

LABOR UNION HOUSEHOLD	FREQUENCY	PERCENT
Yes.....	109.....	27.1%
No.....	293.....	72.9%

19. How many total years of education have you completed? (FORMAL ATTENDANCE IN SCHOOL -- FIRST GRADE = 1; EIGHTH GRADE = 8; HIGH SCHOOL = 12; TRADE SCHOOL = 13; ASSOCIATE DEGREE - AA or AS = 14; COLLEGE GRADUATE - BA, AB, BS = 16; MASTERS DEGREE - MA, MS, MEng, MEd, MSW, MBA = 18; PROFESSIONAL OR DOCTORATE DEGREE - MD, DDS, DVM, LLB, JD, EdD, LAWYER, DOCTOR, PhD = 20)

EDUCATION	FREQUENCY	PERCENT
High school or less.....	84.....	20.8%
1-2 years College.....	108.....	26.9%
3-4 years College.....	109.....	27.1%
Post College.....	101.....	25.2%

(All Adult Mean = 15.022 years)

20. How many years and months have you lived in Alaska?

ALASKA RESIDENCY	FREQUENCY	PERCENT
1993 to 2007.....	93.....	23.2%
1982 to 1992.....	66.....	16.4%
1973 to 1981.....	97.....	24.0%
Before 1973.....	146.....	36.4%

(All Adult Mean = 27.618 years)

(All Adult Median = 17.928 years)

21. In what year were you born? (COMPUTED TO AGE BY SUBTRACTING FROM 2007)

AGE OF RESPONDENT	FREQUENCY	PERCENT
18 to 30.....	50.....	12.4%
31 to 40.....	70.....	17.5%
41 to 50.....	129.....	32.0%
51 to 60.....	93.....	23.2%
61 or older.....	59.....	14.8%
(Mean = 47.140 years)		
(Median = 47.020 years)		

22. Are you married or single?

MARITAL STATUS	FREQUENCY	PERCENT
Married.....	260.....	64.7%
Single.....	142.....	35.3%

23. Which one of the following groups best describes you? (CHOOSE ONLY ONE)

ETHNICITY	FREQUENCY	PERCENT
White.....	322.....	80.2%
Alaska Native.....	49.....	12.2%
Black or African American.....	10.....	2.6%
American Indian.....	8.....	2.0%
Native Hawaiian or Other Pacific Islander.....	6.....	1.6%
Hispanic or Latino.....	4.....	0.9%
Asian.....	2.....	0.5%

24. GENDER (USUALLY DO NOT NEED TO ASK).....

GENDER	FREQUENCY	PERCENT
Male.....	201.....	50.0%
Female.....	201.....	50.0%

THE FOLLOWING VARIABLES ARE CALCULATED USING THE MARITAL AND GENDER VARIABLES

MARITAL BY GENDER	FREQUENCY	PERCENT
Married Males.....	130.....	32.3%
Married Females.....	130.....	32.3%
Single Males.....	71.....	17.7%
Single Females.....	71.....	17.7%

THIS COMPLETES THE SURVEY, THANK YOU FOR HELPING US -- GOODBYE

Rep. Mike Hawker

From: walt@swiftcreekmine.com
Sent: Friday, March 16, 2007 1:59 PM
To: Rep. Mike Hawker
Subject: HB-156

Sir,

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Thanks for your time;

Walter Larson
16200 Black Bear Dr
Anchorage, AK 99516

3/17/2007

HB 156 - Proposed Changes to Mining License Tax Rates

Prepared by: J. Bales
AK Dept. of Revenue

		Mining License Tax	
Net Income		Current Rates	Proposed Rates
\$	30,000	\$0.00	\$0.00
\$	50,000	\$1,500.00	\$0.00
\$	99,000	\$3,950.00	\$0.00
\$	100,000	\$4,000.00	\$0.00
\$	250,000	\$14,500.00	\$7,500.00
\$	280,000	\$16,600.00	\$9,600.00
\$	5,000,000	\$347,000.00	\$510,000.00
\$	8,000,000	\$557,000.00	\$840,000.00
\$	10,000,000	\$697,000.00	\$1,060,000.00
\$	50,000,000	\$3,497,000.00	\$5,460,000.00

Current Tax Structure

Net Income	Base Tax	Plus%	Of Excess Over
\$0 - \$40,000	\$0	\$0	0
\$40,001 - \$50,000	\$1,200	3%	\$40,000
\$50,001 - \$100,000	\$1,500	5%	\$50,000
>\$100,000	\$4,000	7%	\$100,000

Proposed Tax Structure - HB 156

Net Income	Base Tax	Plus%	Of Excess Over
\$0 - 100,000	\$0	\$0	\$0
\$100,001 - \$250,000	\$0	5%	\$100,000
\$250,001 - \$500,000	\$7,500	7%	\$250,000
\$500,000 - \$1,000,000	\$25,000	9%	\$500,000
>\$1,000,000	\$70,000	11%	\$1,000,000

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE SEATON

TO: HB 156

- 1 Page 2, lines 8-9, following "lease;":
- 2 Delete "the annual rental shall be effective for a period of not more than 20 years;"
- 3 Insert "[THE ANNUAL RENTAL SHALL BE EFFECTIVE FOR A PERIOD OF NOT
- 4 MORE THAN 20 YEARS;]"
- 5
- 6 Page 6, line 8, following "determining the"
- 7 Delete "tax"
- 8 Insert "production royalty"
- 9
- 10 Page 7, line 24, following "of"
- 11 Delete "exemption"
- 12 Insert "deferral [EXEMPTION]"

AMENDMENT #2

OFFERED IN THE HOUSE
TO: HB 156

BY REPRESENTATIVE SEATON

Page 3, line 9, following "shall be"

Delete "not less than \$3.30 for each acre"

Insert "not less than \$1.65 for each acre during the first five years of a lease
and not less than \$3.30 for each acre after the first five years of a lease"

Page 7, line 25 through page 8, line 4:

Delete all material and insert:

* **Sec. 12.** AS 43.65.010(c) is amended to read:

"(c) The license tax on mining is imposed on the net income of the taxpayer from the property in the state, computed with allowable depletion, plus royalty received in connection with mining property in the state. The tax rates applicable to the amount of a taxpayer's net income are as follows:

over \$100,000 and not over \$250,000	5 percent
over \$250,000 and not over \$500,000	\$7,500
	plus 7 percent of the excess over \$250,000
over \$500,000 and not over \$1,000,000	\$25,000
	plus 9 percent of the excess over \$500,000
over \$1,000,000	\$70,000
	plus 11 percent of the excess over \$1,000,000."

Page 9, line 9, following "federal":

Insert "or state"

ALASKA STATE LEGISLATURE REPRESENTATIVE PAUL SEATON

SESSION ADDRESS

State Capitol Building
Juneau, Alaska 99801-1182
(907) 465-2689
Fax: (907) 465-3472
1-800-665-2689



INTERIM ADDRESS

345 W. Sterling Highway
Homer, Alaska 99603
(907) 235-2921
Fax: (907) 235-4008
1-800-665-2689

ALASKA STATE LEGISLATURE

House District 35

HB 156

Sponsor Statement

"The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people." - The Constitution of the State of Alaska

House Bill 156 recognizes our constitutional duty by providing a reasonable share of Alaska's non-renewable resources to benefit all Alaskans. The bill makes changes to the existing Mining License Tax, minerals and coal royalties, as well as the rentals for mining activity on state land.

The Mining License Tax is paid by all mining operations in the state and is levied on the net income from those activities. Tax rates are based on a graduated scale that increases with net income, currently topping out at 7%. Mining operations (excluding sand and gravel) are exempt from paying the mining license tax for the first three and a half years of production. HB 156 changes this exemption to a deferral that is payable over the following 10 years of production. Rates are increased by 2% per income bracket with an additional marginal tax bracket for net income over \$1 million to be taxed at 11%. Income brackets for the mining license tax have not been updated since 1955. These brackets are increased from \$40K to \$100K; \$50K to \$250K; \$100K to \$500K; with a new bracket for mines with a net income over \$1 million. Mines with a net income under \$100,000 pay no mining license tax. HB 156 also disallows mining companies from deducting their state corporate net income tax from their mining license net tax, a practice that is not allowed with other industries or with federal net income taxes. The depletion allowance is changed under HB 156 to cost depletion.

HB 156 changes the calculation of the royalty for mineral mining on state land from our current 3% of net income to a 3% Net Smelter Return (NSR) tax. The royalty represents a share of mineral wealth that is paid to the owner of the mineral rights. Most land owners in Alaska, other than the State, negotiate for a NSR royalty between 2% - 5%.

The bill also updates the royalty for coal by setting the 5% of adjusted gross value currently in regulation as the minimum that can be negotiated with the Administration. This is the first change to the statute governing coal royalties since statehood.

ALASKA STATE LEGISLATURE

REPRESENTATIVE PAUL SEATON

House District 35

Land claim rental rates are adjusted under HB 156. These annual fees are paid by all operators on a per-acre basis for mining on state land. The minimum rates for coal are updated in statute to reflect regulation: \$3/acre. Hard rock and placer claims will be charged \$1.65/acre for the first five years and \$3.30/acre for every year thereafter.

A significant change in HB 156 from the final version of Mining Tax legislation from the 24th legislature is to allow the State to accept coal as royalty in kind, similar to how the State accepts oil and gas. The University of Alaska Fairbanks has a coal fired electric plant and could benefit financially by not having to purchase coal.

Alaska's mining industry bears a light tax burden compared to Alaska's other high value resource industries. The State has historically received less than 1% of the mined resource value as tax revenue, while an additional 1% is paid to municipalities primarily as property tax (based on 2005 figures). The State receives 12.5% royalty on oil and gas on State lands plus an additional 22.5% of net profits. The oil and gas industry also pays 20 mills in property tax to the state and municipalities. State revenue from fisheries amount to about 2.8% of the total production value while an additional 2.5% is paid in severance and use taxes to municipalities. Additionally, vessels, docks and processing plants pay property tax to municipalities.

HB 156 allows the State a reasonable share of the wealth for its mined resources through many overdue changes to the mining tax structure. It is important that we establish a stable tax structure that is fair to the private sector and provides the people of Alaska with a reasonable benefit from their resources.

Revised
8/21/2007

http://www.RepPaulSeaton.com
Email: Rep_Paul_Seaton@legis.state.ak.us

Non-renewable Resource Tax Comparison Chart

Prepared by the office of Rep. Seaton

Current Mining (Statute/ Regulation)

HB 156 - Proposed Mining Tax Changes

Current Oil and Gas Taxes

Taxes					
Mining License Tax Rates on Net Income (AS.43.65.010(c))		Mining License Tax Rates on Net Income (Sec. 12)		Tax Rates on modified Net Income (see reverse)	
0 - \$40K	0	0 - \$100K	0	General flat rate on net production tax value	22.5%
\$40K - \$50K	1.2K + 3% > 40K < 50K	\$100K - \$250K	5K + 5% of amt > 100K < 250K	Progressive tax @ 2.5%/\$10 above \$40/bbl	
\$50K - \$100K	1.5K + 5% > 50K < 100K	\$250K - \$500K	12.5K + 7% of amt > 250K < 500K	Floor (minimum tax rate):	
\$100K - Up	4K + 7% > 100K	\$500K - \$1m	30K + 9% of amt > 500K < 1m	4% gross when ANSwc > \$25; 3% = \$20--\$25; 2% =	
		> \$1m	75K + 11% of amt > 1m	\$17.50--\$20; 1% = \$15 --\$17.50; 0% = < \$15	
Tax Exemption/ Deferral (AS.43.65.010(a))		(Sec. 10)			
3 1/2 year tax exemption for new mines		3 1/2 year deferral for new mines. Payable over following 10 years of production		Limited exemption for small producers (producing up to 50,000 BTU equivalent barrels per year)	
Depletion Allowance (AS.43.65.010(c))		(Sec. 14)			
Choice between Percent Depletion OR Cost Depletion		Cost Depletion Only		No Depletion Allowance when calculating State taxes	
% depletion deduction against gross income: Coal 10%; Metals/masc. minerals 15%; Sulphur 23%		Changed to allow for cost depletion only.			
State Corporate Income Tax (AS.43.65.060)		(Sec. 15)			
State income tax deductible from Mining License Tax		State Income Tax NOT deductible from Mining License Tax		State Income Tax NOT deductible from Petroleum Profits Tax (PPT)	
Royalty					
(AS.38.05.150(d)) COAL: 5% of Adjusted Gross Value. Taxable value is price received minus costs of transportation from the mine mouth. Fixed for no more than 20 yrs.		(Sec. 1) COAL: 5% of Adjusted Gross Value. Taxable value is price received minus costs of transportation from the mine mouth. Fixed for no more than 10 yrs.		OIL & GAS: minimum 12.5 - 20% of Gross Value at Point of Production. Tax on Private Royalty: oil 5% Gross Value at Pt. of Production, gas 1.67% of Gross Value at Pt. of Production	
(AS.38.05.212(b)) METAL MINES: 3% of Net Income as calculated under Mining License Tax		(Sec. 6) METAL MINES: 3% Net Smelter Return (NSR), for products which are smelted. The tax base for the NSR is the realized value of the produced materials minus costs associated with smelting, allowing for the deduction of transportation to the smelter			
Currently no provisions for royalty-in-kind		(Sec. 2) Allows the State to accept coal royalty in kind		State accepts royalty-in-kind or in-value for oil & gas	
Rents					
(AS.38.05.150(d)) Coal \$3/acre per year		(Sec. 1) Coal \$3/acre per year		Oil & Gas	
Linked to Anchorage CPI		Linked to Anchorage CPI		First 4 years, \$1-2.50 / acre per year. Every year thereafter \$3/ acre per year. Changed by statute.	
(AS.38.05.211(a)) Minerals sliding scale: \$0.5-2.5/acre		(Sec. 3) Minerals \$1.65/acre first 5 yrs; \$3.30/acre yr			
Linked to Anchorage CPI (1989 base yr)		Linked to Anchorage CPI (2005 base yr)			

Expenditures Disallowed under PPT

e) For purposes of this section, lease expenditures do not include

- (1) depreciation, depletion, or amortization;
- (2) oil or gas royalty payments, production payments, lease profit shares, or other payments or distributions of a share of oil or gas production, profit, or revenue;
- (3) taxes based on or measured by net income;
- (4) interest or other financing charges or costs of raising equity or debt capital;
- (5) acquisition costs for a lease or property or exploration license;
- (6) costs arising from fraud, wilful misconduct, or gross negligence;
- (7) fines or penalties imposed by law;
- (8) costs of arbitration, litigation, or other dispute resolution activities that involve the state or concern the rights or obligations among owners of interests in, or rights to production from, one or more leases or properties or a unit;
- (9) costs incurred in organizing a partnership, joint venture, or other business entity or arrangement;
- (10) amounts paid to indemnify the state; the exclusion provided by this paragraph does not apply to the costs of obtaining insurance or a surety bond from a third-party insurer or surety;
- (11) surcharges levied under AS 43.55.201 or 43.55.300;
- (12) for a transaction that is an internal transfer or is otherwise not an arm's length transaction, expenditures incurred that are in excess of fair market value;
- (13) an expenditure incurred to purchase an interest in any corporation, partnership, limited liability company, business trust, or any other business entity, whether or not the transaction is treated as an asset sale for federal income tax purposes;
- (14) a tax levied under AS 43.55.011;
- (15) the portion of costs incurred for dismantlement, removal, surrender, or abandonment of a facility, pipeline, well pad, platform, or other structure, or for the restoration of a lease, field, unit, area, body of water, or right-of-way in conjunction with dismantlement, removal, surrender, or abandonment, that is attributable to production of oil or gas occurring before April 1, 2006; the portion is calculated as a ratio of the amount of oil and gas production, in barrels of oil equivalent, associated with the facility, pipeline, well pad, platform, other structure, lease, field, unit, area, body of water, or right-of-way occurring before April 1, 2006, to the total amount of oil and gas production, in barrels of oil equivalent, associated with that facility, pipeline, well pad, platform, other structure, lease, field, unit, area, body of water, or right-of-way through the end of the calendar month before commencement of the dismantlement, removal, surrender, or a cost is not excluded under this paragraph if the dismantlement, removal, surrender, or abandonment for which the cost is incurred is undertaken for the purpose of replacing, renovating, or improving the facility, pipeline, well pad, platform, or other structure; for the purposes of this paragraph, "barrel of oil equivalent" means
 - (A) in the case of oil, one barrel;
 - (B) in the case of gas, 6,000 cubic feet;
- (16) costs incurred for containment, control, cleanup, or removal in connection with any unpermitted release of oil or a hazardous substance and any liability for damages imposed on the producer or explorer for that unpermitted release; this paragraph does not apply to the cost of developing and maintaining an oil discharge prevention and contingency plan under AS 46.04.030;
- (17) costs incurred to satisfy a work commitment under an exploration license under AS 38.05.132;
- (18) that portion of expenditures, that would otherwise be qualified capital expenditures as defined in AS 43.55.023(k), incurred during a calendar year that are less than the product of \$0.30 multiplied by the total taxable production from each lease or property, in BTU equivalent barrels, during that calendar year, except that, when a portion of a calendar year is subject to this provision, the expenditures and volumes shall be prorated within that calendar year.

*Decision Wed
March 14, 2007*

March 15, 2007

I am Roger C. Burggraf and reside at 830 Sheep Creek Rd, Fairbanks AK 99709

I AM OPPOSED TO HB 156!

It is a seriously flawed bill obviously proposed by someone who does not understand the mining industries contribution to the state and the people of Alaska. *of the* *seriously impact that of the* *if we have a healthy mining industry*

Essentially if HB 156 were to be enacted it would ~~put the~~ mining industry in Alaska ~~out of business~~ and would discourage investment in Alaska in areas that need development and jobs.

Such mines as Fort Knox, Pogo, and Usibelli Coal Mine would have never got off the ground. *power and Transportation Infrastructure*

depressed
Developing a mine
There has been a concerted effort in this legislature to enact legislation to stop mine development on state lands. The legislature should be supporting the industry which creates revenues for both the state and local communities and jobs for rural residents in *economically* ~~poor~~ *poor* ~~stricken~~ areas. Before an operating large mine can go into production, millions of dollars must be spent on exploration, permitting, and construction of mining facilities. *in Alaska*
is a lengthy and costly process. It requires a lot of up front capital to be spent on a project which may or may not become a mine. In the meantime the industry is spending *millions of* dollars on trying to locate ~~a~~ viable deposits and providing jobs.

The way to create a viable and healthy industry is support it and not kill the goose who lays the golden egg.

If you look at other industries in Alaska and analyze what taxes they pay you will find industries that supposedly generate higher revenues which pay less tax. Much of this revenue goes out of state and only peripherally benefits a few Alaskans. *- mining is labor intensive and Alaska and its people benefit directly from mining.*
The present tax law I feel is well balanced and the Mining License Tax taxes all mines regardless of whether they are on Federal lands, State lands, and private lands. The seven percent (7%) net profits tax is reasonable.

In addition a three percent (3%) Net Profits Production Royalty ~~is to be~~ placed on mines developed on state lands. Mining claim holders must pay claim rentals on state lands and claim maintenance fees on Federal lands.

Mining companies in addition to the mining license tax must also pay Alaska Corporate Income Tax at nine percent (9%).

Usibelli
Greens Creek
Rob Dog
Ft Knox
Ogish
mines

Most small ~~miners~~ ^{many} are marginally profitable and ~~some~~ can be related to a subsistence type of income in small communities ~~which do not generate a lot of revenue but provides jobs to locals.~~ ^{however} They do provide jobs to locals.

There are only five large mines in Alaska ~~which are~~ operating in Alaska today. They are the mines that are generating the bulk of the mining revenues in the State of Alaska.

Proposed large mines must go thru ^a the costly permitting process today and ~~face one~~ ^{are facing} lawsuit after another by environmental groups ~~funded by outside interest to protect the~~ ^{opposed to the} development of our resources in Alaska. The Kensington Mine near Juneau and Rock Creek Mine in Nome are recent examples.

If the State wants more revenue from mines on state, federal, or private lands they should encourage the development of large mines on those lands.

Alaska has a progressive tax standard for mining which means when a miner is successful the state shares in that success.

^{Permit}
During the past period of low metal prices the Fort Knox mine was having a hard time keeping open. No revenues were being received to pay down the huge capital expenditure it had to make to construct and operate the mine. Still they operated, paid property taxes, paid their creditors, and their workers. Now with higher global metal prices they are able to pay down their capital expenditures. A company should be allowed to make a profit when times are good. The state benefits also.

The mining industry averages about a five percent (5%) return on investment - much below other major industries in Alaska. With the low rate of return a net profits tax is the only type of tax that can be paid on a sustainable basis. The mining industry must be able to operate in a stable regulatory climate and have a stable tax basis for it to continue to invest in Alaska.

The present taxation system is well thought out and has allowed large mining companies to invest billions of dollars in Alaska. We hope you will not tamper with it and that HB 156 will be relegated to the circular waste basket file.

From: Busbys/Chicken Gold Camp [mailto:chickengold@starband.net]

Sent: Tuesday, March 20, 2007 11:31 PM

To: Rep. Mike Hawker

Subject: HB-156

Representative Hawker,

I would like to comment on the revisions to HB-156. Current rental rates are \$.66/acre so Representative Seaton's revised change is still a 150% increase. I know that \$1.65/acre or \$3.30/acre does not sound like much, but in order to locate a prospective resource larger enough to justify the expense of bringing the prospect into production, it requires rentals of large acreages over long periods of time. All of the mining industry will be impacted dramatically by these increases, but small mines will feel it the most. Representative Seaton had stated that the original amount (\$3.30/acre) was no increase but rather only putting into Statute what is currently charged (from Seaton's email to me: "The rental fees are basically not increased over current regulation rent charges but bring our statutes into line with the existing rate"). If that was Representative Seaton's intent, then this Bill should not include any increase in the revision, but should merely make the correction to his "mistake" and charge the current \$.66/acre years one through 5 and \$1.375/acre for years 5 through 10.

The revised increase to the mining license tax is definitely an improvement over the original proposal and would certainly give some relief to the small miner. I would suggest that the proposed elimination of the percentage method for calculating depletion allowance be dropped. The end result to the State is essentially no different, but complications of accounting for the "cost" method make filing much more arduous for the miner, especially smaller, lower capitalized entities.

Regards,
Mike Busby, VP Fortymile Miner's Assn.

From: Jim Chumbley [mailto:chumbley@gci.net]

Sent: Tuesday, March 20, 2007 7:54 AM

To: Rep. Mike Hawker

Subject: HB156

Dear Representative Hawker,

I am writing in support of HB156. Alaska is a resource rich state, and our past and our future lies with resource extraction. However, since these resources belong to the people of Alaska, fair compensation is essential. While discouraging development is not the goal, mining taxation has remained unchanged for over 50 years. The nature of the industry as changed much in that time frame, and the state and industry needs to recognize this. HB 156 is a fair bill at this time, providing more income to the state while still encouraging extraction.

Thanks for listening,

Jim Chumbley



810 N Street #203

Anchorage, AK 99501

P 907-277-0005

F 907-277-0990

March 20, 2007

Alaska State Representative Mike Hawker
Chair, Ways and Means Committee

RE: HB 15

Dear Chair Hawker and Representative Members:

This letter is submitted to strongly support HB 156. First, I wish to commend Representative Seaton for sponsoring this bill and taking on this important issue. Since 1955, the mining industry has been extracting Alaska's precious mineral resources and making significant profits, especially in recent years with coal, minerals, and metals at all-time highs, without paying a fair price for those resources. This is grossly unfair to Alaska and the citizens of Alaska who should be receiving the 'maximum benefit' for the development and production of those resources under Article VIII of the Alaska Constitution. As Governor Wally Hickel and the Late Governor Jay Hammond long argued, it is time for the mining industry to start paying its fair share.

Under Alaska's current mining laws, mining claimants or lessees are required to pay rents and royalties. The royalty rate is 3% of net income which is essentially a royalty on profits. Fifty percent of mineral royalties in Alaska are required to be paid into the Alaska Permanent Fund, which provides a financial benefit to all Alaskans. The reality, however, is that the net income royalty structure allows mining companies to claim significant deductions from their income such that there is rarely a 'profit' against which to levy the royalty.

Because the State of Alaska is realizing very little, if any, royalty return on mining allowed in the State, its royalty system is broken and must be revised. It is time to structure the royalty system to better compensate Alaskans for the valuable resources extracted from state lands. Article VIII of the Alaska Constitution requires that "[t]he legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit to the State, including land and waters, for the maximum benefit of its people." Alaska Const. art. VIII Section 2. The current Alaska mining royalty structure, however, does not provide adequate returns to the State for allowing the mining of its valuable resources, and therefore does not achieve the maximum benefit for Alaskans.

Most states and private owners of the mineral estate realize a fair return from mining by requiring a net smelter royalty, which is a royalty on the value of the mineral after it has been refined or smeltered, but without deducting the costs of development, production, and environmental liability. A net smelter royalty provides greater revenue predictability because it is primarily a function of

physical sales volume and of price. These factors are much less variable than those used to determine net income.

Net income royalties require the calculation of a 'profit' on mining and processing activities, which allows for the deduction of costs associated with mining and relevant deductions. The costs of administering and monitoring the royalty calculation are what have led other states and private owners of mineral estate to reject that system in favor of net smelter royalties-the royalties are far less complicated to calculate, there is less room for mining companies to manipulate the cost data, and they provide more fair compensation.

In fact, Alaska and Nevada are the only states that have a net income royalty system, as show by the following table:

STATE	ROYALTY
Alaska	3% of net income as determined under section 43.65 (AS 38.05.212)
Arizona	2% of gross value of produced minerals paid monthly based on the previous month (AZ Rev. Stat. 27-234(B), (I))
California	Not <10% gross value, less approved charges, 20% if no lease (CA Public Res. Code § 6895)
Colorado	Royalty assessed case by case - usually 4-7% gross*
Idaho	2 ½ - 10% (rent deducted) (ID Code 47-704); During location activities 5% of gross value (IDAPA 20.03.05.016)
Kansas	Not <12.5% of produced minerals (KS State Statute Ann. 19-110, 32-850, 75-52, 136)
Louisiana	12.5% of all minerals produced or saved; if on behalf of the school board = 16-2/3% (LA Rev. Stat. 30:127)
Minnesota	\$0.11-\$0.18 per ton (MN Stat. § 93.20)
Mississippi	18.75% of minerals (MS Code Ann. § 29-7-3)
Montana	Not <5% of returns or full market value of the recovered metalliferous minerals or gems (MT Code Ann. § 77-3-106)
Nebraska	Not <5% of production (NE Rev. Stat. 72-308)
Nevada	Up to 5% net proceeds (Nev. Rev. § Stat. 321-300)
New Mexico	Not <2% gross returns from all ores or materials mined and extracted from the land; 5% if Atomic Energy Comm. determines that the mineral is particularly essential to production of fissionable materials (NM Stat. Ann. § 19-8-22)
New York	Not <2% of market value of all minerals (NY Pub. Lands Law 82)
Oklahoma	Not <5% of gross receipts from sale of minerals produced; if not sold, 5% of

Oregon	market value (OK Stat Stat. Tit. 645, § 455) 5% gross value for metallic minerals and uranium (rent deducted) (OAR 141-071-0600, 0610)
South Dakota	Not <2% of gross returns from sale of ores and mineral products, less reasonable transportation, smelting, reduction, or other customary charges, as allowed (SD Codified Laws § 5-7-55)
Texas	Not <6.25% of value of minerals produced under lease (TX Nat. Res. Code Ann. § 53.018)
Utah	Fissionable metals 8% gross; non-fissionable metals 4% gross; gemstones/fossils 10% gross (rent deducted) (UAC R652-20-1000(2)(b))
Vermont	2% of market value of all mineral products (determination made when products are first in marketable form) (VT Stat. Ann. Tit. 29, § 302)
Washington	5% of gross receipts (WAC 332-16-035)
Wyoming	5-10% /depending on sales value per ton: To \$50 = 5%, \$50-\$100 = 7%, \$100-\$150 = 9% >\$150 = 10%.

*Source: GAO Report: Mineral Royalties: Royalties in the Western States and in Major Mineral-Producing Countries (March 1993).

The proposed changes in HB 156 would be the first statutory changes to the tax and royalty rate structure since 1955 and would increase the current graduated scale from 3-7% to 5-9% of net income and add an additional bracket for income over \$500,000 to be taxed at 11%. HB 156 would also change the current 3 1/2 year exemption from taxes on production to a 3 1/2 year deferral that would be payable in equal installments over the 10 years following the end of the deferral period. This exemption has never been used before as many mines already operate with no net profit during that time period. A change would also be made to alter the calculation of the royalty for mineral mining on state land from a 3% of net profits to 3% of Net Smelter Return (NSR) royalty.

HB 156 would amend AS 38.05.150(d) to change the royalty rate on coal from less than \$.05/Short ton (2,000 pounds) to (a) not less than 5% of the gross value for a noncompetitive lease or for a competitive lease in which royalty is a bid variable or (b) not less than 5% or more than 12% for a competitive lease in which royalty is not a bid variable. Under current DNR regulations, coal leases in existence before June 1982 must be adjusted, when royalty agreements are renewed after June 1982, to include a royalty of 5% of the 'adjusted gross value' sold. 'Adjusted gross value' allows for transportation costs to be deducted. Transportation costs from Alaska are high because of the distance. As a result, this deduction is clearly not a maximum benefit to Alaska. Additionally, under current DNR regulations, royalty may be taken in-kind where the commissioner determines it is in the best interests of the State to do so. 11 AAC 85.230(a). This bill would codify the regulation, leaving it unclear whether DNR would continue to be required to do a "best interest finding".

Furthermore, Section 17 would make the new law only applicable to coal leases entered into or renegotiated after December 2007. This section would exclude the Chuitna Coal Project from the coal royalty provisions in this Act. The Chuitna Coal Project is anticipated to contain 1 billion metric

tons of recoverable coal. Again, these kinds of exclusions do not provide the "maximum benefit to the State" and Alaskans, as mandated by the Alaska Constitution.

Alaskans for Responsible Mining supports revisions to the current mining rent and royalty structure that require mining companies to pay fair market value for the minerals they extract, i.e., a net smelter royalty of at least 5%. We believe this is a good first step, a marked improvement over the current program.

Thank you for your consideration of these comments and this important bill.

Best regards,

Vanessa Salinas
Campaign Director
vanessa@reformakmines.org

25-LS0548M
Bullock
3/23/07

CS FOR HOUSE BILL NO. 156(W&M)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS

Offered:

Referred:

Sponsor(s): REPRESENTATIVES SEATON, Doll

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to mining licenses, to the mining license tax, and to production
2 royalties on minerals and rents for property involved in mining; and providing for an
3 effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 38.05.150(d) is amended to read:

6 (d) For the privilege of mining or extracting the coal in the land covered by
7 the lease, the lessee shall pay to the state

8 (1) [SHALL PAY TO THE STATE] the royalties specified in the
9 lease; the royalties shall be fixed before offering the lease, and shall be effective for a
10 period of not more than 10 [20] years; the royalties shall be based on the adjusted
11 gross value of coal from the leased area that is sold, disposed, transferred, or
12 consumed by the lessee at a rate not less than

13 (A) five percent for a noncompetitive lease or for a
14 competitive lease in which royalty is a bid variable; or

1 (B) five percent nor more than 12 percent for a competitive
2 lease in which royalty is not a bid variable; and [NOT LESS THAN FIVE
3 CENTS A TON OF 2,000 POUNDS; THE ROYALTY PAYMENT IS
4 SUBJECT TO THE EXPLORATION INCENTIVE CREDIT AUTHORIZED
5 BY AS 27.30;]

6 (2) [SHALL ALSO PAY] an annual rental, payable at the date of the
7 lease and annually thereafter, on the land or coal deposits covered by the lease, at a
8 rate fixed by the commissioner before offering the lease; [THE ANNUAL RENTAL
9 SHALL BE EFFECTIVE FOR A PERIOD OF NOT MORE THAN 20 YEARS;] the
10 annual rental shall be not less than three dollars for each acre [25 CENTS AN
11 ACRE FOR THE FIRST YEAR OF THE LEASE, NOT LESS THAN 50 CENTS AN
12 ACRE FOR THE SECOND YEAR, THIRD YEAR, FOURTH YEAR AND FIFTH
13 YEAR, AND NOT LESS THAN \$1 AN ACRE FOR EACH YEAR THEREAFTER
14 DURING THE CONTINUANCE OF THE LEASE]; the rental for each year shall be
15 credited against the royalties as they accrue for that year; each lease shall provide that
16 the annual rental payment is subject to adjustment at intervals of not [NO] more than
17 10 [20] years [AND ADJUSTMENTS SHALL BE BASED ON THE CURRENT
18 RATES FOR PROPERTIES SIMILARLY SITUATED].

19 * Sec. 2. AS 38.05.150 is amended by adding new subsections to read:

20 (g) Notwithstanding the requirement in (d)(1) of this section, the
21 commissioner may require the lessee to pay royalty-in-kind rather than value as
22 necessary to fuel a coal-fired power plant owned by the state or an agency of the state.

23 (h) If the commissioner establishes an amount to be paid as rent by a
24 regulation adopted under this section, at least every 10 years, the commissioner shall
25 calculate a change in the rental amount based on the change in the Consumer Price
26 Index for all urban consumers, Anchorage Metropolitan Area (Semi-Annual Average)
27 compiled by the Bureau of Labor Statistics, United States Department of Labor, as
28 revised, rebased, or replaced by that bureau; the reference base index is the index for
29 January - June 2005, as revised or rebased by that bureau and adopt a regulation
30 establishing a new rental amount based on the calculation.

31 * Sec. 3. AS 38.05.211(a) is amended to read:

(a) The holder of each mining claim, leasehold location, prospecting site, and mining lease, including a mining lease under AS 38.05.250, shall pay, in advance, rental for the right to continue to hold the mining claim, leasehold location, prospecting site, and mining lease, including a mining lease under AS 38.05.250. Rental is due and payable as follows:

(1) the rental amount for a prospecting site is fixed at \$200 for the two-year term of the site;

(2) annual rental for a mining claim, leasehold location, or mining lease shall be not less than \$1.65 for each acre during the first five years of a lease and not less than \$3.30 for each acre after the first five years of a lease [BASED ON THE NUMBER OF YEARS SINCE A MINING CLAIM, A LEASEHOLD LOCATION, OR A MINING LEASE'S PREDECESSOR CLAIM OR LEASEHOLD LOCATION WAS FIRST LOCATED; THE ANNUAL RENTAL AMOUNTS FOR A MINING CLAIM, LEASEHOLD LOCATION, OR MINING LEASE ARE AS FOLLOWS:

NUMBER OF YEARS SINCE FIRST LOCATED	RENTAL AMOUNT FOR EACH MINING CLAIM OR LEASEHOLD LOCATION INCLUDING		
	RENTAL AMOUNT PER ACRE FOR MINING LEASES	EACH QUARTER- QUARTER SECTION MTRSC SYSTEM	
0 - 5	\$.50		\$ 20
6 - 10	\$1.00		40
11- OR MORE	\$2.50		100;

(3) THE ANNUAL RENTAL IN ANY YEAR FOR EACH QUARTER SECTION CLAIM, LEASEHOLD LOCATION, OR LEASE BASED ON THE MTRSC SYSTEM IS FOUR TIMES THE RENTAL AMOUNT FOR A QUARTER-QUARTER SECTION MINING CLAIM, LEASEHOLD LOCATION,

OR LEASE IN THAT YEAR].

* **Sec. 4.** AS 38.05.211(d) is amended to read:

(d) For a claim, leasehold, location, prospecting site, and mining lease, including a mining lease under AS 38.05.250, first located before January 1, 2008, the [THE] rental amount established under this section shall be revised by the commissioner as provided in this section based on changes in the Consumer Price Index for all urban consumers, Anchorage Metropolitan Area (Semi-Annual Average) compiled by the Bureau of Labor Statistics, United States Department of Labor, as revised, rebased, or replaced by that bureau. The reference base index is the index for January - June 1989, as revised or rebased by that bureau. The rental amount shall be increased or decreased, as appropriate, by an amount equal to the change in the index described in this subsection. The commissioner shall calculate the change in the rental amount each 10 years and, if the rental amount must be revised, shall adopt a regulation establishing the revised rental amount. A revised rental amount applies to a rental payment if the regulation establishing the revised rental amount took effect at least 90 days before the date the rental payment is due.

* **Sec. 5.** AS 38.05.211 is amended by adding a new subsection to read:

(f) For a claim, leasehold, location, prospecting site, and mining lease, including a mining lease under AS 38.05.250 first located after December 31, 2007, the rental amount established under this section shall be revised by the commissioner as provided in this section based on changes in the Consumer Price Index for all urban consumers, Anchorage Metropolitan Area (Semi-Annual Average) compiled by the Bureau of Labor Statistics, United States Department of Labor, as revised, rebased, or replaced by that bureau. The reference base index is the index for January - June 2005, as revised or rebased by that bureau. The rental amount shall be increased or decreased, as appropriate, by an amount equal to the change in the index described in this subsection rounded to the nearest whole \$5 unit. The commissioner shall calculate the change in the rental amount each 10 years and, if the rental amount must be revised, shall adopt a regulation establishing the revised rental amount. A revised rental amount applies to a rental payment if the regulation establishing the revised rental amount took effect at least 90 days before the date the rental payment is due.

1 * **Sec. 6.** AS 38.05.212(b) is repealed and reenacted to read:

2 (b) The production royalty is

3 (1) subject to the exploration incentive credit authorized by AS 27.30;

4 and

5 (2) three percent of

6 (A) the net smelter return for mining production that is further
7 processed by a smelter or refinery; or

8 (B) the gross value at the point of production as determined
9 under AS 38.05.213 for mining production that is not further processed by a
10 smelter or refinery.

11 * **Sec. 7.** AS 38.05.212 is amended by adding a new subsection to read:

12 (d) In this section, "net smelter return" means the value the person engaged in
13 mining receives from the smelter or refinery and may be based on

14 (1) the spot or current price of the mineral minus deductions for the
15 costs associated with the processing by the smelter or refinery and transportation
16 between the smelter or refinery and the location of the mine; or

17 (2) another method adopted by the department by regulation.

18 * **Sec. 8.** AS 38.05 is amended by adding a new section to read:

19 **Sec. 38.05.213. Gross value at the point of production.** (a) The gross value
20 at the point of production

21 (1) is the value of a resource immediately after its removal from the
22 mine;

23 (2) does not include income from the extraction or processing of
24 resources from mine waste or residue of previously processed resources previously
25 subject to tax under AS 43.65.

26 (b) Except as provided in (c) of this section, the value of a resource
27 immediately after its removal from the mine is the price received by the person
28 engaged in the mining of the resource adjusted for value added after the resource was
29 produced.

30 (c) The price received by the person engaged in the mining of the resource
31 may be rejected by the department as the gross value at the point of production when

1 the

2 (1) price received is less than the fair market value;

3 (2) price received does not reflect the total value received by the seller
4 in the transaction;

5 (3) parties to the transaction are affiliated; or

6 (4) price received was not negotiated in an arm's length transaction
7 between the buyer and seller.

8 (d) If the department rejects the price reported by the person engaged in the
9 mining of the resource, the department shall substitute the fair market value of the
10 resource on the date and at the place of production for purposes of determining the
11 production royalty liability under this chapter.

12 (e) The gross value at the point of production shall be calculated using the
13 reasonable costs of transportation if the destination value is used to determine the
14 value at the point of production. The reasonable costs of transportation shall be the
15 actual costs, except when the

16 (1) parties to the transportation are affiliated;

17 (2) contract for the transportation is not an arm's length transaction or
18 is not representative of the market value of that transportation;

19 (3) method of transportation is not reasonable in view of existing
20 alternative methods of transportation.

21 (f) If the department finds that the conditions in (e)(1), (2), or (3) of this
22 section are present, the department shall determine the reasonable costs of
23 transportation, using the fair market value of like transportation, the fair market value
24 of equally efficient and available alternative modes of transportation, or another
25 reasonable method. Transportation costs fixed by tariff rates properly on file with the
26 Regulatory Commission of Alaska or another regulatory agency shall be considered
27 prima facie reasonable.

28 (g) In this section,

29 (1) "affiliated" means a person who directly, or indirectly through one
30 or more intermediaries, controls, is controlled by, or is under common control with the
31 persons specified;

1 (2) "destination value" means the value of the resource at the
2 destination where production from the mine is delivered for treatment or processing.

3 * Sec. 9. AS 43.65 is amended by adding a new section to read:

4 **Sec. 43.65.003. Mining license.** (a) A person engaged in mining after
5 December 31, 2007, shall apply to the department for a mining license before the later
6 of May 1 of each year or within 30 days following the date on which mining began.

7 (b) The department shall adopt regulations that prescribe the information
8 required to be submitted on a mining license application submitted to the department
9 and a fee for the issuance of the license that represents the reasonable cost of
10 processing the application.

11 * Sec. 10. AS 43.65.010(a) is amended to read:

12 (a) A [PERSON PROSECUTING OR ATTEMPTING TO PROSECUTE, OR
13 ENGAGING IN THE BUSINESS OF MINING IN THE STATE SHALL OBTAIN A
14 LICENSE FROM THE DEPARTMENT. ALL] new mining operation may defer the
15 payment of the tax due under [OPERATIONS ARE EXEMPT FROM THE TAX
16 LEVIED BY] this chapter during the first [FOR] three and one-half years after the
17 date production begins. A taxpayer that defers the payment of tax under this
18 subsection shall pay the amount of tax deferred in 10 equal annual installments,
19 without interest, before May 1 of each year beginning with the first calendar year
20 following the date the deferral period ends. The tax deferral [EXEMPTION]
21 granted to a new mining operation [OPERATIONS] does not [EXTEND OR] apply
22 to the mining of sand and gravel.

23 * Sec. 11. AS 43.65.010(b) is amended to read:

24 (b) The Department of Natural Resources shall certify to the department the
25 date [UPON WHICH] production begins, and the department shall issue a certificate
26 of deferral [EXEMPTION] to the producer accordingly.

27 * Sec. 12. AS 43.65.010(c) is repealed and reenacted to read:

28 (c) The license tax on mining is imposed on the net income of the taxpayer
29 from the property in the state, computed with allowable depletion, plus royalty
30 received in connection with mining property in the state. The tax rates applicable to
31 the amount of a taxpayer's net income are as follows:

over \$100,000 and not over \$250,000 5 percent
over \$250,000 and not over \$500,000 \$7,500
plus 7 percent of the excess over \$250,000
over \$500,000 and not over \$1,000,000 \$25,000
plus 9 percent of the excess over \$500,000
over \$1,000,000 \$70,000
plus 11 percent of the excess over \$1,000,000.

* Sec. 13. AS 43.65.010(d) is amended to read:

(d) If a person conducts [WHERE] mining operations [ARE CONDUCTED] in two or more places, [BY ONE PERSON] the operations are considered a single mining operation and the tax under this chapter is computed upon the aggregate income derived from all the mining operations. The lessor of a mine operated under a lease is considered to be engaged in mining within this chapter, and the royalties received by the lessor are considered to be the net income of the lessor's mining operations. If the lessor receives royalties from more than one mine or mining operation, the tax payable under this chapter by the lessor is computed upon the aggregate royalties received by the lessor from all the mines or mining operations as though they were a single mining operation.

* Sec. 14. AS 43.65.010(e) is repealed and reenacted to read:

(e) The allowance for depletion shall be computed and deducted on the cost depletion basis under 26 U.S.C. 612 (Internal Revenue Code).

* Sec. 15. AS 43.65.060 is amended to read:

Sec. 43.65.060. Definitions. In this chapter, unless the context otherwise requires,

(1) "date production begins" means the date on which the initial shipment of products from a mining operation is made;

(2) "gross income from property" means the gross income from mining in the state;

(3) [(2)] "mining" means the extraction or operation to take [AN OPERATION BY WHICH] valuable metals, ores, minerals, asbestos, gypsum, coal, marketable earth, or stone, or any of them [ARE EXTRACTED, MINED, OR

1 TAKEN] from the earth and [; "MINING"] includes the ordinary treatment processes
2 normally applied by a mine owner or operator [OWNERS OR OPERATORS] to
3 obtain the commercially marketable product, but does not include the extraction or
4 production of oil and gas;

5 (4) [(3)] "net income of the taxpayer [(COMPUTED WITHOUT
6 ALLOWANCES FOR DEPLETION)] from the property" means the gross income
7 from mining [THE PROPERTY], less allowable deductions attributable to the mineral
8 property for [UPON] which [THE] depletion is claimed and the allowable deductions
9 attributable to ordinary treatment processes that [INSOFAR AS THEY] relate to the
10 product of the property, including overhead and operating expenses, development
11 costs properly charged to expense, depreciation, taxes, and losses sustained, [ETC.,]
12 but excluding [ALLOWANCES FOR DEPLETION, AND] deductions for federal or
13 state income taxes, or for the tax imposed by this chapter;

14 (5) [(4)] "new mining operation [OPERATIONS]" means the first
15 mining operation on a property that previously has not been subject to mining
16 [MINING OPERATIONS WHICH BEGAN PRODUCTION AFTER JANUARY 1,
17 1953, OR WHICH HAVE NOT BEEN LIABLE TO PAY A MINING LICENSE
18 TAX UNDER THIS CHAPTER ON NET INCOME SINCE JANUARY 1, 1948];

19 (6) [(5)] "ordinary treatment processes" includes

20 (A) in the case of coal: cleaning, breaking, sizing, and loading
21 for shipment,

22 (B) in the case of sulphur: pumping to vats, cooling, breaking,
23 and loading for shipment,

24 (C) in the case of iron ore, bauxite, fall and sagger clay, rock
25 asphalt, and minerals that [WHICH] are customarily sold in the form of crude
26 mineral product: sorting, concentrating, and sintering to bring to shipping
27 grade and form, and loading for shipment, and

28 (D) in the case of lead, zinc, copper, gold, silver, platinum
29 metals or fluorspar ores, potash and ores that [WHICH] are not customarily
30 sold in the form of the crude mineral product: crushing, grinding, and
31 beneficiation by concentration (gravity, flotation, amalgamation, electrostatic,

1 or magnetic), cyanidation, leaching, crystallization, precipitation (but
2 excluding electrolytic deposition roasting, thermal or electric smelting or
3 refining), or by substantially equivalent processes or combination of processes
4 used in the separation or extraction of a product from the ore, including the
5 furnacing or quicksilver ore [;

6 (6) "PRODUCTION" MEANS THE DATE ON WHICH THE
7 INITIAL SHIPMENT OF PRODUCTS FROM MINING OPERATIONS IS MADE].

8 * **Sec. 16.** AS 38.05.211(b), 38.05.211(e); and AS 43.65.030 are repealed.

9 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 APPLICABILITY. AS 38.05.150(d), as amended by sec. 1 of this Act, applies to
12 leases entered into or renegotiated after December 31, 2007.

13 * **Sec. 18.** This Act takes effect January 1, 2008.

SCOMM

150:11

SARAH PALIN
GOVERNOR

GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

March 15, 2007

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the public employees' and teachers' defined benefit retirement plans; relating to the public employees' and teachers' defined contribution retirement plans; relating to the judicial retirement system; relating to the health reimbursement arrangement plan for certain teachers and public employees; relating to the supplemental employee benefit program; relating to the public employees' deferred compensation program; relating to group insurance for public employees and retirees; and making conforming amendments.

In 2005, FCCS SB 141(2d FCC) (SB 141) was enacted, making changes to the state's teachers' and public employees' defined benefit retirement plans and creating new defined contribution plans, with certain fixed and guaranteed benefits and a new health reimbursement arrangement plan, for new teachers and employees hired under the systems (ch. 9, FSSLA 2005). Following the enactment of SB 141, a number of needed corrections and clarifications of statutes were identified but legislation to address these issues failed to pass last year. The Commissioner of Administration also took steps to adopt regulations to clarify how benefits would be provided under the new plans. Those regulations interpreted the statutes for the new plans in a manner that would secure favorable determinations from the Internal Revenue Service (IRS) that the plans are qualified under the Internal Revenue Code (IRC). Favorable determinations for the defined contribution and occupational disability and death components were received on February 14, 2007.

This legislation is intended to provide the necessary clarifications and corrections that remain unresolved.

The Honorable John Harris

March 15, 2007

Page 2

The regulations adopted by the Commissioner of Administration primarily dealt with issues crucial to securing favorable determinations from the IRS. A number of statutory amendments remain necessary to correct and clarify the statutory provisions of the plans, and to assure that benefits are provided in the manner intended by the Legislature. New provisions in this bill are designed to maintain the IRC-qualified status of both the defined benefit and defined contribution plans.

While a section-by-section analysis that contains a detailed explanation of the bill will be provided to the Legislature by the Department of Administration, Division of Retirement and Benefits, below is a summary list of the purpose of some of the amendments proposed by the bill:

- (1) provide statutory authority for funding of the new Teachers' Retirement System (TRS) plan's occupational disability and death benefits;
- (2) clarify statutory authority for funding of the new Public Employees' Retirement System (PERS) plan's optional monthly pension benefits upon the retirement of disabled peace officers and fire fighters and clarify that employer contributions for defined benefits in the new PERS and TRS plans (occupational disability; occupational death; disabled peace officer/ fire fighter optional pension benefit) will be deposited to separate trust accounts;
- (3) add annual cost-of-living increases to disability benefits, survivor pensions, and optional pension benefits upon the retirement of disabled peace officers and fire fighters provided by the new PERS and Teachers' Retirement System (TRS) plans;
- (4) add employer cost sharing of medical premiums for persons younger than Medicare age whose disability or survivor benefits are terminated due to eligibility for normal retirement;
- (5) clarify that a member or survivor is not entitled to elect distributions from the member's individual account while receiving disability benefits or a survivor's pension;
- (6) provide that elected officials of the state are eligible to participate in the new PERS defined contribution retirement plan;
- (7) clarify that continuing employer contributions are made on behalf of the surviving spouse and member's dependent children rather than "beneficiaries";

(8) add guidelines for employer participation and termination from the PERS defined contribution retirement plan, including employee designations for participation and rights upon termination;

(9) remove residual provisions that allow former defined benefit plan members to reinstate refunded service, effective in 2010;

(10) provide authority for the Commissioner of Administration to adopt regulations for the supplemental employee benefits system, health reimbursement arrangement plan, deferred compensation plan, and group health insurance plans;

(11) provide a clear definition of "peace officer" and "fire fighter" under the defined contribution retirement plan;

(12) allow TRS or PERS defined benefit plan members to participate in the TRS or PERS defined contribution retirement plan if hired by an employer that only participates in the defined contribution plan;

(13) allow TRS and PERS defined benefit plan former (refunded) members to become members of the TRS or PERS defined contribution retirement plan if rehired on or after July 1, 2010;

(14) revise the method for funding the retirement benefit for survivors of members who are disabled or die from occupational causes, to conform to the IRC;

(15) clarify that the new retirement plans established by SB 141 are hybrid plans that fall under IRC sec. 414(k);

(16) limit the option of non-vested PERS and TRS employees to transfer to the defined contribution plans to one 12-month window, to conform to the IRC;

(17) update rollover provisions of the PERS and TRS plans and the judicial retirement system, to conform to the IRC.

The bill includes a delayed effective date of July 1, 2010, for specific sections. These include provisions that remove the opportunity for defined benefit plan members to reinstate refunded service and that allow such members to become members of the defined contribution retirement plans if they are rehired. The remainder of the bill has an immediate effective date.

The Honorable John Harris

March 15, 2007

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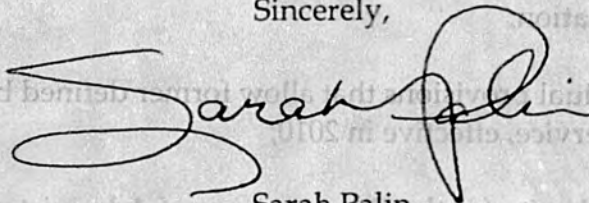
The Honorable John Harris

March 15, 2007

Page 3

I urge your support of this important legislation.

Sincerely,



Sarah Palin
Governor

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 204
(H) Publish Date: 3/16/07

Revision Date/Time (Note if correction):
Title: An Act relating to public employees' and teachers' retirement defined contribution retirement plans.
Sponsor: Rules Committee
Requester: Governor
Dept. Affected: Administration
RDU: Centralized Administrative Services
Component: Retirement and Benefits
Component No.: 64

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill provides clarifying revisions to SB 141 passed by the 24th Alaska Legislature and enacted as ch. 9, FSSLA 2005. Some of the provisions include the following: identifies a funding source for teachers' disability and death benefits; adds annual cost of living increases to disability benefits, survivor pensions, and peace officer/fire fighter pensions provided by the new PERS and TRS plans; clarifies that a member or survivor is not entitled to elect distributions from the member's individual account while receiving disability or death benefits; makes clarifying changes to maintain Internal Revenue Code requirements.

This bill has no fiscal impact on the Division of Retirement and Benefits. Please see page two for the analysis required by AS 24.08.036.

Prepared by: Melanie Millhorn, Director
Division: Retirement and Benefits
Approved by: Rachael Petro, Deputy Commissioner
Agency: Department of Administration
Phone: 465-4817
Date/Time: 3/15/07 11:00 AM
Date: 3/15/2007

STATE OF ALASKA
2007 LEGISLATIVE SESSION

BILL NO. HB 204

ANALYSIS CONTINUATION

Sec. 24.08.036. Fiscal notes on bills affecting state retirement systems. Before a bill which would have an effect on the retirement systems of the state is reported to the rules committee, there shall be attached to the bill an analysis of the long-term and short-term costs to the state if the bill is adopted, as well as the impact of the bill on the actuarial soundness of the fund. The analysis is in addition to the fiscal note requirements of AS 24.08.035.

The legislature passed Senate Bill 141, enacted as Ch. 9 FSSLA 2005, establishing defined contribution retirement plans for new members of the PERS and TRS first enrolled on or after July 1, 2006. It was important to the legislature that members of the defined contribution retirement plans receive death and disability benefits commensurate with the death and disability benefits available to members of the defined benefit plans. As a result of this plan structure combining certain guaranteed fixed benefits with defined contribution benefits, these plans are hybrid plans under the Internal Revenue Code sec. 414(k).

There were some oversights in the drafting of the original legislation that resulted in the exclusion of explicit statutory authority for funding of some of the fixed benefits contained in the plans. This bill contains the conforming amendments necessary to pay all the benefits required in accordance with the intent of the new defined contribution retirement plans as enacted by the legislature and adds the following:

- Annual COLA for recipients of disability benefits.
- Annual COLA for recipients of a survivor's pension.
- Medical premium cost-sharing for disabled members and survivors at normal retirement.
- Funding for disabled police/fire fighter members who choose a monthly retirement pension.
- Annual COLA for disabled police/fire fighter members who choose a monthly retirement pension.

The State's actuary, Buck Consultants, developed cost estimates for these benefits. The total combined increase to the employers of the PERS and TRS in FY 2008 is approximately \$147,200. The table below breaks out the dollar cost estimates for each retirement system based on the projected payroll for the PERS and TRS Defined Contribution Retirement Plans in 2008:

Benefit	PERS "Others" Rate	PERS Others Costs (Payroll \$133.4 m)	PERS P/F Rate	PERS P/F Costs (Payroll \$17.0 m)	Total PERS Costs	TRS Rate	TRS Costs (Payroll \$69.8 m)
COLA	0.048%	\$ 64,032	0.214%	\$ 36,380	\$ 100,412	0.038%	\$ 26,524
Disabled P/F Pension at Normal Retirement	N/A	N/A	0.119%	\$ 20,230	\$ 20,230	N/A	N/A
Medical cost-sharing at Normal Retirement	0.019%		0.176%			0.025%	

The FY08 rates for retiree medical benefits, as well as all costs related to occupational disability, occupational death, and disabled P/F retirement, were based upon actuarial calculation and adopted by the Alaska Retirement Management Board [per AS 14.25.350(b) and AS 39.35.750(b)]. The long-term costs will vary by plan experience. However, Buck made these cost estimates based on PERS Tier 3 and TRS Tier 2 members, expecting the experience of the new tiers to be reflective of that population. As PERS Tier 4 and TRS Tier 3 plan membership grows annually, these rates (as actuarially calculated) would be applied to the annual payroll base.

Separate trust accounts will be established in which all contributions and earnings will be deposited to pay the guaranteed fixed benefits associated with the occupational disability and occupational death provisions (including disabled P/F retirement) of the defined contribution retirement plans. Absent the increased rates as noted above, the employers will not contribute in FY 2008 to these trust accounts an amount sufficient to pay for the death and disability benefits for their members. As a result, the initial health of the trust funds for death and disability benefits may be considered not actuarially sound in order to properly pay future benefits to members from these trust funds.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB204-DOA-OAH-3-20-07
 Bill Version: HB 204
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act relating to public employees' and teachers' def RDU Central Administrative Services
 Component Office of Administrative Hearings
 Sponsor House Rules Committee
 Requester Governor Component No. 2771

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal: ☐

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill provides for the Office of Administrative Hearings (OAH) to conduct the hearings in SBS, Deferred Compensation and Health Reimbursement administrative appeals, in addition to the PERS and TRS appeals already heard by OAH. The Division of Retirement and Benefits estimates that this may generate two additional hearings per year. OAH presently has the capacity to handle these cases without increasing personnel. The cost of doing so would be recovered from the division through interagency receipts under OAH's cost allocation plan, based on the time commitment required for the hearings. OAH does not anticipate increased expenditures for its operation due to the addition of these three, low volume case types.

Prepared by: Terry L. Thurbon, Chief Administrative Law Judge Phone 465-1886
 Division Office of Administrative Hearings Date/Time 03/20/2007 3:22 p.m.
 Approved by: Kevin Brooks, Deputy Commissioner Date 3/20/2007 4:30pm
 Agency Department of Administration

SECTIONAL ANALYSIS FOR Senate Bill 123 / House Bill 204

Sec. 1 AS 14.25.065(b). Amends the section regarding transmittal of contributions to identify the newly created Alaska retiree health care trust as a trust separate from the pension trust; clarifies the administrator may claim unpaid contributions and interest due from any agency of the state or political subdivision from funds due to a school district if the funds are not restricted by statute or appropriation to a specific purpose.

Reason: This amendment directs contributions for retiree health benefits to a separate trust to conform to the IRC and clarifies the administrator's authority to intercept other funds designated for a school district if that school district has not paid employee and employer contributions and interest due to the TRS.

Sec. 2 AS 14.25.070(a). Changes the calculation of the employer contributions to the TRS defined benefit (DB) plan so that the employer rate is applied to the employer's entire TRS system payroll base.

Reason: Under current statutes, the employer DB plan contribution rate is applied only to salaries paid to members of the TRS DB plan. This amendment allows the contribution rate to be applied to the entire TRS payroll base of the employer's TRS workforce without regard to plan (tier) membership, and will keep employer contribution rates for the DB plan lower than would otherwise be calculated. It will also allow calculation of an employer rate for past service for smaller employers who may not have active DB members at some time in the future. However, this will neither increase employers' liability nor will it relieve employers of the liability; it merely restates the rate as a lower percentage of the applicable payroll.

Sec. 3 AS 14.25.070(d)-(e). Requires contributions for retiree health benefits to be separately computed and deposited in the new Alaska retiree health care trust established in sec. 50 of this bill; adds definitions for "employer normal cost rate" and "past service rate" and clarifies the rate is applied to the employer's entire TRS payroll base.

Reason: In combination with Sec. 1 of this bill, this amendment directs contributions for retiree health to a separate trust to conform to the IRC and changes the calculation of the employer contributions so that the normal cost rate and the past service rate are applied to the employer's entire TRS payroll base.

Sec. 4 AS 14.25.075(f). Clarifies the plans eligible for rollover into the plan for the payment of purchased service to be those plans recognized by the IRS in 26 U.S.C. 402(c)(8)(B).

Reason: Updates the plan's provisions and provides language for the plan to keep current with changing federal legislation regarding eligible and non-eligible plans.

Sec. 5 **AS 14.25.075(f).** Effective July 1, 2010, removes the provision that allows acceptance of qualified rollovers for payment of contributions to reinstate forfeited (refunded) service.

Reason: SB 141 repealed statutes allowing payment and reinstatement of refunded service and contributions, effective July 1, 2010, making this provision unnecessary.

Sec. 6 **AS 14.25.125(c)** Effective July 1, 2010, removes the provisions that allow members to repay refunded contributions for the purpose of obtaining a conditional service benefit.

Reason: SB 141 repealed statutes allowing reinstatement and payment of refunded service and contributions, effective July 1, 2010. This statute was overlooked in the repeal by SB 141 of the reinstatement of service provisions. AS 14.25.125(c) allows a member who is vested in PERS to reinstate and pay refunded service to be eligible for an early or normal conditional service pension benefit. A person who is eligible for a normal or early retirement salary under PERS qualifies for a normal or early "conditional service" retirement benefit under TRS if he or she has at least two years of credited service in TRS. Members are allowed to reinstate refunded service credit in order to qualify for the conditional service benefit. The conditional service benefit is very expensive because it results in payment of medical premiums and other medical charges from both the PERS and TRS for a single retiree.

Consequence: Without change, refunded PERS members will be treated differently under separate statutes. It would also continue to allow an "off-books" liability in the DB plan, one that can be neither accounted for nor paid until an eligible member applies for the benefit.

Sec. 7 **AS 14.25.163(b).** Clarifies that the plan does not accept rollover contributions other than those expressly defined in 14.25.075(f), which are rollovers to purchase forfeited (refunded) service or claimed service.

Reason: Previous reference was to 14.25.075(f)(5), which covered only direct rollovers from the supplemental annuity plan. This change clarifies the types of plans available for rollover and payment for service purchases.

Sec. 8. **AS 14.25.163(c)(2).** Includes an alternate payee in the definition of "distributee".

Reason: Provides rollover rights to an alternate payee in the event of a divorce and refund of member contributions.

Consequence: Without this change an alternate payee, which is a former spouse of the member with spousal rights as defined by a Qualified Domestic Relations Order, would not be able to rollover the portion of a member's account that represented his/her marital portion to another qualified plan in the event the member refunded contributions.

Sec. 9. **AS 14.25.163(c)(3).** Adds a Roth IRA (post-tax) as an eligible plan to receive rollovers as of January 1, 2008; removes obsolete language.

Reason: To conform to federal Pension Protection Act of 2006.

Consequence: Without this amendment the member would not be able to roll contributions to a Roth IRA.

Sec. 10 AS 14.25.163(c)(4). Allows distribution (rollover) of post-tax portion of member DB plan account to certain qualified plans only if the receiving plan agrees to account for pre-tax and post-tax contributions separately.

Reason: To conform to IRC requirements for qualified plans.

Sec. 11 AS 14.25.168. Clarifies that health benefits will be paid in part from the Alaska retiree health care trust.

Reason: A new qualified Alaska retiree health care trust is established in sec. 50 of this bill as an IRC section 115 plan recognized by the IRS as a tax exempt plan. This section authorizes payment of retiree health benefits from that trust.

Sec. 12 AS 14.25.181(b). Authorizes reversion of excess plan assets to employers upon termination of the plan, subject to approval of the termination by the IRS.

Reason: Ensures that excess plan assets will be distributed to employers upon termination of the plan only if the IRS approves termination.

Sec. 13 AS 14.25.181. Conforms plan language to IRC. Subsection (c) codifies the division's practice of use of forfeitures to reduce future employer contributions. Subsection (d) complies with IRC requirement that the actuarial calculation of benefits is based on actuarial tables using assumptions approved by the administrator and is not subject to discretion of the employer. Subsection (d) updates language providing that contributions to and benefits paid from the plans will not exceed 26 U.S.C. 415 limits, and provides the administrator with the ability to either establish a periodic payment plan or reduce the contribution amount for payments of purchased service that would otherwise exceed the 415 limits.

Reason: The Pension Protection Act of 2006 sets out new qualification criteria for tax qualified plans and requires previously qualified plans to be reviewed for qualification compliance every five years. The PERS will be reviewed for compliance in 2008. Addition of language related to use of forfeitures and enforcing U.S.C. 415 limits is required.

Sec. 14 AS 14.25.220(10). Clarifies that reductions to an employee's salary to pay for coverage under a cafeteria plan, such as life insurance or disability insurance or certain fringe benefit agreements that are paid from the employee's salary, are included as compensation.

Reason: Clarifies that the employee's gross pay prior to authorized pre-tax wage reductions should be used for the calculation of retirement benefits. The language is required to maintain

compliance with IRS requirements as to the definition of compensation and is not meant to be a substantive change.

Sec. 15 AS 14.25.220(16). Removes the National Education Association of Alaska (NEA) from the TRS definition of "employer" to reflect that NEA is not a qualifying employer under this plan.

Reason: Although NEA had been included in the TRS DB plan in statute, NEA is a private non-profit organization and does not qualify for inclusion in the system. This error was acknowledged by the Division of Retirement and Benefits, the Department of Law, and the NEA in the early 1990s/late 1980s. In discussion with participating NEA management it was decided by the TRS Board that members participating at the time would be grandfathered and inclusion of new members would be discontinued (since then the last member has retired). Removing this language regarding a non-government entity also removes questions about the governmental status of the plan under the IRC.

Sec. 16 AS 14.25.310. Adds a provision for TRS DB plan members who employ with new employers that join the TRS after July 1, 2006, and that do not participate in the TRS DB plan to participate in the TRS DCR Plan.

Reason: SB 141 applied the new TRS DCR plan only to teachers first hired into the TRS on or after July 1, 2006, and nonvested TRS DB employees who elected to transfer to the DCR plan. Without this change, a new school district formed after July 1, 2006 would not be able to provide TRS retirement benefits to teachers who entered the TRS prior to July 1, 2006 and would normally participate in the DB plan.

Sec. 17 AS 14.25.310. Effective July 1, 2010, adds former members of the TRS who have not reinstated refunded service to the definition of employees covered by the TRS DCR Plan.

Reason: Former members who have not reinstated their DB service will not be able to do so when the reinstatement statutes repeal on July 1, 2010. With this change, should they rehire in a TRS covered position on or after July 1, 2010, they will be members of the TRS DCR Plan. Without this change, they would not be covered by either the DB or the DCR plan.

Sec. 18 AS 14.25.320(c) clarifies that the TRS defined contribution plan is a qualifying hybrid plan. Provides that medical benefits are not provided by the DCR plan.

Reason: With defined benefit type components such as occupational death and disability benefits as well as the defined contribution plan, the TRS DCR plan is covered by section 414(k) of the IRC (26 U.S.C.). This section defines a hybrid defined contribution and defined benefit plan and other Code sections that may apply to such a plan. Medical benefits will be provided through the new Alaska retiree health care trust established by sec. 50 of the bill.

Sec 19 AS 14.25.350(b). Requires employer contributions for retiree health insurance to be deposited in the new Alaska retiree health care trust created in sec. 50 of this bill.

Reason: Directs contributions for retiree health benefits to a separate trust to conform to the IRC.

Sec. 20 AS 14.25.350(e). Requires employers in the Teachers' Retirement System (TRS) to pay occupational disability and death benefits through contributions calculated actuarially. Contributions will be deposited to a separate trust account for this purpose.

Reason: The absence of a funding mechanism for TRS occupational death and disability benefits was an inadvertent omission in drafting SB 141 in conference committee. The "trust account" language clarifies that contributions for these fixed benefits are treated differently and kept separate from the contributions to the plan's individual member accounts.

Consequence: The consequence of not enacting this amendment is that there will be no funding source from which to pay TRS occupational disability and death benefits for eligible members of the DCR plan and their survivors. Adding this change furthers IRC compliance because a qualified plan must be operated in accordance with its terms.

Sec. 21 AS 14.25.360(d)(3). Updates the rollover provisions to include any IRA described in 26 U.S.C. (408)(d)(3)(A) rather than limiting only to a conduit IRA. Adds a Roth IRA as a qualifying plan eligible for rollover as of January 1, 2008.

Reason: To conform to federal Pension Protection Act of 2006.

Sec. 22 AS 14.25.360(d)(4). Adds clarification allowing rollover distribution of post-tax portion of member DCR account to certain qualified plans if the receiving plan agrees to account for pre-tax and post-tax contributions separately.

Reason: To conform to federal Pension Protection Act of 2006 and to conform to previous amendments to the IRC.

Sec. 23 AS 14.25.370(a). Specifies that contributions to the plan will be deposited in the appropriate plans or trusts and sets a payment deadline for contributions for the end of the school year.

Reason: This amendment accommodates deposit of contributions for retiree health benefits in a separate trust, and deposit of contributions for occupational disability and death benefits in a trust account in the DCR plan to conform to the IRC. Clarifies when contributions are due at the end of the school year.

Sec. 24 AS 14.25.370(b) and (c). Subsection (b) provides for interest to be charged on contributions that are not transmitted to the TRS from employers timely and allows the TRS administrator to claim the amount of contributions and interest due from any agency of the state or political subdivision from funds due to a school district (including the Department of Education and Early Development) if the funds are not restricted by statute or appropriation to a specific purpose. Subsection (c) provides that employers are responsible for any administrative fees, investment fees and investment losses when ineligible employees are

enrolled into the TRS and a correcting adjustment is made and that contributions transmitted to the plan for ineligible participants will be returned to the employer by crediting future payroll the amount of the contributions net of fees and any investment losses.

Reason: New subsection (b) clarifies the administrator's authority to attach funds designated for a school district if that school district is delinquent in paying employee and employer contributions (including interest due) to TRS. Section (c) clarifies the manner in which the DCR plan will return contributions if employers report ineligible teachers (such as uncertified employees) to the plan and provides that the plan will credit future employer payroll with the total in contributions less any fees or investment losses sustained.

Sec. 25 AS 14.25.380. Clarifies that the defined contributions paid into a member's individual account are subject to the limitations of 26 USC 415(c) and fixed benefits paid under the DCR plan (occupational disability, survivor's pension) are subject to the limitations of 26 USC 415(b).

Reason: This is one of several conforming amendments clarifying statutes to ensure that benefits are paid in accordance with the intent of SB 141 and the retirement plans contained therein. SB 141 provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans.

Consequence: The plan has received a favorable determination letter as a 414(k) plan. Addition of this language will assist in continued compliance activities.

Sec. 26 AS 14.25.485(b). Clarifies the termination of a disability benefit when a person no longer meets the requirements to receive occupational disability benefits or recovers from disability.

Reason: The intent of an occupational disability benefit is to provide an income for a person who is no longer able to work due to an injury sustained on-the-job. In combination with sec. 30 of this bill, the amendment makes it clear that if a person is able to perform the duties of any other available and comparable position, regardless of employer, then that person no longer meets the requirements to receive occupational disability benefits.

Consequence: Without this change, persons receiving disability benefits who become able to perform duties of another comparable position will continue to qualify for and receive disability benefits, even if working in a comparable position, if the position is not with a TRS employer.

Sec. 27 AS 14.25.485(d). Provides that a member who receives disability benefits from the plan is 100% vested in all the employer contributions made to the member's individual account, regardless of years of service worked, once the member is appointed to disability. This subsection also clarifies that a member may not elect a distribution from the member's individual account while receiving disability benefits.

Reason: This amendment relates specifically to the continuing employer contributions required under AS 14.25.485(d). 26 USC 415(c)(3)(C) provides special rules that allow the compensation of a disabled member for any year subsequent to the disability to be considered equivalent to the rate of compensation immediately prior to the disability. However, these rules only apply if the contributions are non-forfeitable when made.

The clarification that a member may not receive distributions from the individual contribution account while receiving disability benefits effectuates the intent of the legislature that the employer's continued contributions to that account during disability will provide retirement benefits to the member once the normal retirement date is reached and disability benefits end.

Sec. 28 AS 14.25.485(g). Clarifies the termination of disability benefits when a disabled member first qualifies for normal retirement.

Reason: Technical clarification for administrative purposes. Conforms to other benefit payment provisions.

Sec. 29 AS 14.25.485(i). Changes made to this subsection, which is related to the benefits for a survivor of a disabled member who dies while receiving disability benefits, mirror other changes being made to the disability and death statutes throughout this bill. The changes are: (1) clarifies the termination of a survivor's pension; (2) clarifies that a survivor cannot access the member's individual account while receiving a survivor's pension; (3) clarifies the normal retirement benefits available to a survivor; (4) clarifies that the period of disability benefits and the period of survivor benefits constitute membership service for eligibility for medical benefits and the Health Reimbursement Arrangement; and (5) establishes a tax qualified mechanism for the employer to continue to make employer and employee contributions to provide benefits to a survivor when the member would have reached normal retirement, had the member survived.

Reason: The majority of this section contains IRC conforming amendments. The most important change is the provision for a tax qualified mechanism to allow the employer to continue making contributions (see sec. 31) to the plan to provide a benefit to an eligible survivor when the survivor's pension ends. Unlike the special rules under 26 USC 415(c)(3)(C) that allow the compensation of a disabled member for any year subsequent to the disability to be considered equivalent to the rate of compensation immediately prior to the disability, thereby allowing continued contributions to the employee's account, there is no corresponding rule for a deceased participant. Thus, there would be no compensation for a deceased member in the year after death and, therefore, no allowable contributions to the deceased member's individual account. The solution this amendment proposes is to provide an "additional benefit" that is equal to the amount that would have been contributed to the member's individual account had the member survived, with allocated earnings.

Consequence: If this amendment is not adopted, the TRS DCR plan will not be able to pay the intended retirement benefits to survivors. Contributions would only be allowed to be made to the member account until the end of the year in which the member died.

Sec. 30 AS 14.25.485(j). Clarifies the definition of occupational disability.

Reason: The intent of an occupational disability benefit is to provide an income for a person who is no longer able to work due to an injury sustained on-the-job. This definition is slightly different from the definition under AS 39.35.680. In combination with Sec. 26 of this bill, the amendment provides that if a person is able to perform the duties of another available and comparable position, regardless of employer, then that person no longer meets the requirements to receive occupational disability benefits.

Sec. 31 AS 14.25.485(k). Requires employers to fund the additional benefit for survivors of a disabled member by making contributions to the appropriate trust accounts based on the deceased member's gross monthly compensation.

Reason: The "additional benefit" for survivors is explained in the reason for sec. 29, above. IRS rules prohibit continued contributions to the deceased member's contribution account after the last day of the calendar year in which the member dies. By requiring the employer contributions to be made to a trust account to fund the benefit, the legislature's intent regarding survivor benefits can be achieved.

Sec. 32 AS 14.25.486. Adds an annual adjustment to occupational disability benefits equal to 75% of the increase in the Anchorage Consumer Price Index or 9%, whichever is less.

Reason: This amendment provides a formula for annual increases to the monthly amount of an occupational disability benefit that is the similar to the formula for TRS Tier II members.

Consequence: If this amendment is not enacted, a member's monthly disability benefit amount will remain static from year to year without adjustment for inflation.

Sec. 33 AS 14.25.487(b). Clarifies the termination of a survivor's pension under the occupational death benefit provisions, including the end of death benefits when a dependent child no longer meets the definition of dependent.

Reason: This amendment clarifies the death benefit statute to provide clearly that a survivor's pension paid to a dependent child ends the last month in which there is an eligible child (i.e., when the child reaches age 19, or age 23 if the child is enrolled in school).

Sec. 34 AS 14.25.487(c). Clarifies that a survivor of a member who died from occupational causes is not entitled to elect distributions from the member's individual account while receiving survivor benefits. Clarifies that the continuing contributions required by the employer are made on behalf of the surviving spouse and member's dependent children rather than "beneficiaries." Directs all continuing contributions by the employer into the occupational disability and death trust account and other appropriate accounts and funds in accordance with the IRC.

Reason: The death benefit provides an income, and eventually retirement benefits, for the family of a member who dies in the line of duty. This clarification preserves the individual account until the member would have been eligible for the normal retirement benefit. The situation is similar to that described under sec. 27[AS 14.25.485(d)]. Please see the reason for sec. 31 above for an explanation of the funding of the additional benefit to conform to the IRC.

Consequence: If the clarification substituting surviving spouse and dependent children for "beneficiaries" is not enacted, the plan will be subject to additional tax reporting requirements in connection with benefits payable to beneficiaries other than the member's surviving spouse and/or dependent children.

Sec. 35 AS 14.25.487(e). The amendment to this subsection (1) clarifies the normal retirement benefits available to survivors of members who died occupationally; (2) establishes a tax qualified mechanism for the plan to provide benefits to a survivor when the member would have reached normal retirement, had the member survived; and (3) clarifies that the period of death benefits constitutes membership service for determining vesting in employer contributions and eligibility for medical benefits and the Health Reimbursement Arrangement.

Reason: Please see the reason for sec. 29 above for an explanation of the provision of a tax qualified mechanism to provide an "additional benefit" to an eligible survivor when eligibility for the survivor's pension ends.

Consequence: If this amendment is not adopted, the TRS DCR plan will not be able to pay the intended retirement benefits to survivors. Contributions would only be allowed to be made to the member account until the end of the year in which the member died.

Sec. 36 AS 14.25.488. Adds an annual adjustment to the survivor's pension benefit equal to 50% of the increase in the Anchorage Consumer Price Index or 6%, whichever is less. Persons who are receiving a survivor's pension who are age 60 or older and persons who have received a survivor's pension for at least 8 years are eligible for the COLA.

AS 14.25.489. Adds a provision that a person whose disability or survivor benefits are terminated due to eligibility for a normal retirement benefit will be treated as if that person is eligible for Medicare, regardless of age, for the purpose of cost-sharing medical premiums with the Plan.

Reason: These new sections provide a formula for annual increases to the monthly amount of a disability benefit that is the same as the formula for TRS Tier II members and apply the medical cost-sharing provisions of the new retirement tier so that benefit recipients do not have to bear the full burden of medical insurance premiums when the member reaches normal retirement.

Consequence: If these amendments are not enacted, a member's monthly disability amount and a survivor's monthly pension amount will remain static from year to year without adjustment for inflation. Disabled members and survivors who have not reached the age required for Medicare eligibility when the member qualifies for a normal retirement benefit will have to pay 100% of the monthly premium for retiree major medical insurance.

Sec. 37 AS 14.25.500(d) and (e). Conforms plan language to IRC. Subsection (d) codifies the division's practice of use of forfeitures to reduce future employer contributions. Subsection (e) complies with IRC requirement that the actuarial calculation of benefits is based on actuarial tables using assumptions approved by the administrator and is not subject to discretion of the employer.

Reason: Codifies the division's practice and updates the statute to comply with IRS requirements.

Sec. 38 AS 14.25.510. Clarifies that the nonguarantee clause relates only to the defined contribution portion of the TRS DCR plan. The fixed benefits contained under the plan are defined by statute.

Reason: The TRS DCR plan provides both guaranteed fixed benefits for certain eligible persons as well as benefits based upon defined contributions to an individual account. This type of plan structure is provided for under 26 USC 414(k) "Certain plans." These changes, in combination with others, are designed to clarify the structure of the new retirement plans.

Sec. 39 AS 14.25.540(c). Clarifies that IRC section 415(c) limits apply to employer matching contributions when a DB member elects to convert to the DCR plan. Should the amount of the employer contribution exceed the 415(c) limits for the tax year, the amount of matching contributions that exceeds the limits will be made in the following tax year as long as the limits are not exceeded in that tax year.

Reason: This clarification implements the legislature's intent that an employee electing conversion to the TRS DCR plan receive an amount matching the employee's DB contribution account balance in the new account and also complies with IRC contribution limits.

Sec. 40 AS 14.25.540(d). Clarifies that transferred membership service from the TRS DB plan to the TRS DCR plan will be applied to vesting in both the employer's matching contribution and subsequent employer contributions.

Reason: SB 141 is silent on this issue. Ambiguity about whether a member's DB plan service applies to vesting in DCR plan employer contributions may prevent members who would otherwise benefit from transferring from making the decision to transfer.

Sec. 41 AS 14.25.540(h). Provides a time limit -- 12 months from the date the employer consents to the conversion -- within which an eligible member must make the decision to transfer from the TRS DB plan to the TRS DCR plan.

Reason: Under SB 141, an employer's decision to allow its employees to convert is irrevocable and employees have up until the day before they become vested in the TRS DB plan to convert. However, a plan does not satisfy the qualifications of an IRC section 401(a) plan if it includes a cash or deferred arrangement. Treasury Regulation 1.401(k)-1(a)(3) does provide for certain

one-time elections. The time limit in this amendment for the decision-making process is intended to meet the requirements of the Treasury Regulation.

Sec. 42 AS 14.25.582. Adds required language for the TRS DCR plan to be in compliance with the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) referred to in 26 U.S.C. 414(u).

Reason: Under USERRA, qualified plans are required to restore employees that have been called from employment to active military duty to the job and benefits they would have attained if they had not been called to active duty. Employees must be honorably discharged and return to the employer within 90 days of discharge. Addition of this language aids in IRC compliance.

Sec. 43 AS 14.25.590(7). Removes the Social Security Taxable Wage Base cap from the definition of eligible compensation for contribution purposes

Reason: The Social Security Tax Wage Base for 2007 is \$97,500. After a Social Security member reaches that compensation level, no further Social Security contributions are made for the remainder of the year. Without this change, contributions to member TRS DCR Plan accounts would also cease for the remainder of the year after members reached \$97,500 in compensation.

Sec. 44 AS 22.25.022(c). Includes an alternate payee in the definition of "distributee".

Reason: Provides rollover rights to an alternate payee in the event of a divorce and refund of member contributions.

Consequence: Without this change an alternate payee, which is a former spouse of the member with spousal rights as defined by a Qualified Domestic Relations Order, would not be able to rollover the portion of a member's contribution account that represented his/her marital portion to another qualified plan in the event the member refunded contributions.

Sec. 45 AS 22.25.022(3). Adds provisions for a rollover to a Roth IRA on or after January 1, 2008; removes obsolete language.

Reason: To conform to federal Pension Protection Act of 2006.

Sec. 46 AS 22.25.022(c)(4). Adds clarification allowing distribution (rollover) of post-tax portion of member account to certain qualified plans if the receiving plan agrees to account for pre-tax and post-tax contributions separately.

Reason: To conform to IRC requirements for qualified plans and to ensure that post-tax contributions can be rolled over only if the receiving plan agrees to account for them separately from pre-tax contributions.

Sec. 47 **AS 22.25.046.** Provides for separately computed employer contributions to pre-fund retiree health benefits to be paid to the new Alaska retiree health care trust established in Sec. 50 of this bill.

Reason: The trust to fund retiree health benefits will be a tax exempt IRC section 115 plan recognized by the IRS. This amendment provides authority to separately compute and deposit employer JRS contributions to the new account.

Sec. 48 **AS 22.25.090.** Clarifies that health benefits will be paid in part from the Alaska retiree health care trust.

Reason: This section authorizes payment of health benefits from the Alaska Retiree health care trust created in Sec. 50 of this bill.

Sec. 49 **AS 37.10.210(a).** Provides the Alaska Retirement Management Board authority to serve as trustee of the new Alaska retiree health care trusts.

Reason: Necessary to provide for ARMB governance and investment authority over the new Alaska health care trusts.

Sec. 50 **AS 39.30.097.** Creates new Alaska retiree health care trusts to hold employer contributions to pre-fund retiree medical benefits and trust operations, provides for governance, administration and investment of the assets, and payment of benefits and administrative costs.

AS 39.30.098. Authorizes the commissioner of administration to promulgate regulations to implement the state's group life and health insurance statutes, including the new Alaska retiree health trust statute.

Reason: In order to pre-fund retiree medical benefits in conformity with the IRC and comply with GASB requirements for a trust or equivalent structure, a new IRC section 115 retiree health care trust is established, separate from the pension trusts. The trustee will be the ARMB, with the commissioner of administration or the commissioner's designee, as the administrator of the trust. The assets of the new trust may be pooled for investment purposes with the pension assets and group health and life insurance assets as long as they are separately accounted for. The commissioner of administration will promulgate regulations for the administration of the trusts.

Sec. 51 **AS 39.30.154.** Clarifies the duties of the administrator for the Alaska Supplemental Benefits System (SBS).

Reason: to correct statutory references to administrator duties in SBS to correlate with statutes as amended or added by SB 141.

Sec. 52 **AS 39.30.160(a).** Returns the authority for adopting regulations for the SBS from the Alaska Retirement Management Board (ARMB) to the commissioner of administration.