

HB

219

(#1 + #2 WORK-
ING DRAFTS)

3-28-77

TO: JACK

FROM: Judith

RE: Further clarification on the question
of the North Slope Borough

Given that to single out the North
Slope Borough is not feasible perse,
how about language to the effect
that:

If all local communities impacted are in
one municipality and the municipality
and the oil companies can not agree on
onshore facility site and permit fee then
the Department of E&RA would make the
final site selection and ~~determine the fee~~
without issue the permit.

LISA feels that the deal between the
municipality and oil companies is cut
well in advance of ~~permit~~ application for
a permit and it is not this earliest stage of
negotiation that a municipality such as N. Slope
might really hold things up! Thanks. Judith

CONTINENTAL SHELF SERVICE FACILITIES ACT

*Section 1. Legislative Findings and Purpose. Taken from page 1 of HB 219 with whatever changes are necessary to enhance chance of favorable judicial review.

*Section 2. Amend AS 44.47.050 to beef up "purposes" section of C & RA organic statute.

*Section 3. Adds new chapter (44.48)

Sec. 010. Creates Alaska Continental Shelf Services Authority in C & RA for the purposes of coordinating on-shore development related to outer continental shelf petroleum and mineral exploration activities, for purposes of assisting communities impacted by such development, and for the administration of the franchise requirements of this chapter.

unnecess of representation could prove to be a point of contention.
Sec. 020. The authority is to be governed by a committee composed of the commissioner (C & RA), the director of the Division of Community Planning (in C & RA), and the director of the Division of Local Government Assistance.

where is community authority
Sec. 030. No person may operate an "on-shore service facility" for continental shelf development without a franchise from the authority except as provided in sec. 100 of this chapter.

Sec. 040. The authority shall monitor the activities of the federal government and state government with respect to continental shelf exploration and leasing, prepare a quarterly report to the legislature and the governor on the potential need for continental shelf on-shore service facilities. When the board determines that service facilities are likely to be required in the near future, but in no case later than 90 days prior to the date at which the Department of Interior or other leasing authority proposes to receive bids on outer continental shelf tracts, the authority shall give notice of a hearing for the purpose of selecting a site or sites to serve the proposed continental shelf development. The purpose of the hearing shall be to solicit nominations of appropriate sites from interested communities and from continental shelf developers, operators of existing on-shore facilities, and other interested parties. The nominations shall contain 1) location of the proposed site, 2) the types of supply services expected to be required at this site, 3) the ownership of the land at and surrounding the site, 4) the capacity of the site to grow to meet the expected demands and an estimation of that expected demand and 5) such other information as the board may consider pertinent. In the case of facilities already in operation the board shall additionally solicit information concerning the current use of the facility and its ownership.

Sec. 050. The committee shall hold site selection hearings not less than 90 days nor more than 120 days after notice of those hearings have been distributed to all interested parties. Input shall be solicited from local communities in the area of the continental shelf development, prospective

users of the port facility including but not limited to holders of outer continental shelf leases, firms supplying the operations on those leases, local governments in the area of the proposed sites, representatives of fishing or other commercial activities who may be adversely impacted economically from the choice of a particular site or sites, and federal and state governmental experts on civil engineering, environmental science, or other technical matters which may relate to the port development.

Sec. 060. The committee shall determine, on the basis of the public hearing record, and any other relevant information available to it, the preferred site or sites for a continental shelf development facility or facilities. The criteria to be used by the committee in making this selection, in descending order of importance, are 1) minimize adverse economic and social impact on any community that may be adjacent to or coincident with the site, 2) minimize adverse environmental impact, 3) minimize the costs of facility development, minimize the expense of service ^{and} OCS activities, and make the best use of existing port facilities, 4) maximize the likelihood that facilities will be useful for other purposes if and when OCS development tapers off.

Sec. 070. If the chosen site is in a borough, the borough may appeal the site decision to the governor who shall have 30 days to 1) affirm the decision, or 2) direct the board to give the issue further study, in which case the governor shall provide specific instructions as to what areas of concern should be looked into further. (If the site is in a city which is not itself included in a borough, the city has the same appeal right.) This appeal must be exercised within 30 days of the date of the initial site

choice decision. Other parties with a major interest in the siting decision including the prospective companies developing the OCS resource, land owners in the vicinity of the site, or others with similar interests may, within the 30 day period subsequent to the initial decision, request a rehearing by the board stating in that request the reasons why they believe an additional hearing is necessary.

Sec. 080. Once a final site selection decision is made a regional continental shelf facilities board shall be formed composed of the committee members or their designees (who must be on the C & RA staff) plus three members elected by the borough assembly (or the city council if there is no borough. If the city later becomes a part of a borough the new assembly elects new board members¹⁾) The regional board is empowered to select a franchisee and negotiate the franchise fee.

If requested by a majority of the board members the Department of C & RA shall provide staff support to the board in its selection of the franchisee, and in the setting of the franchise fee. Four members of the board constitute a quorum, and actions of the board require an affirmative vote of four members.

Sec. 090. The franchise shall be awarded to firms actually engaged in continental shelf development unless the board determines that other ownership is in the best interests of the state and community; however, in the case where an approved site is an existing facility the franchise shall be awarded to the operator of the existing facility unless it is the board's decision that the operator does not have the technical or financial capability to promptly and efficiently meet the expected requirements for continental shelf supply services. In this case the board shall encourage the existing facility operator and prospective continental shelf developers to establish some form of joint venture to which the franchise then shall be awarded.

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Sec. 109. Where a port exists at the approved continental shelf supply facility site the franchise and franchise fee shall not be required unless cargo directly destined for outer continental shelf development crossing the facility exceeds 25 per cent of all other cargo either in value or in tonnage over the period of one month. The facility operator shall periodically report to the board on the tonnage crossing its facility and shall not exceed the 25 per cent figure without first obtaining the franchise from the regional facilities board.

Sec. 110. The franchise fee shall be a matter of free negotiation between the board and the franchisee. The fee may be paid on the basis of any or all of the following: 1) an initial lump sum payment, 2) periodic payments of fixed amounts, 3) periodic payments based on the value of material moved across the franchise facility, 4) initial lump sum payment to be followed by a subsequent lump sum payment if and when activity reaches a specified level, or 5) any other method that reasonably relates fee payments to impact costs expected to be imposed upon the community by OCS development.

Sec. 120. The franchise fee shall be subject to renegotiation each five years, and shall not exceed the cost to the community and state that have a reasonable probability of occurring during the five year period. These costs shall be net of any payments expected to be received for property taxes on the facility, and if the franchise fee includes a periodic payment, shall be net of the expected value of those periodic payments. After the initial five year period has lapsed the maximum permissible franchise fee during the second five year period shall be calculated in the same manner as was the maximum fee for the first five year period, except that the maximum

shall be increased by the net community costs incurred over the previous five year period in excess of those collected or defrayed by the franchise fee paid during that period, or alternatively, decreased by the amount that the actual monies paid were in excess of actual net costs incurred on the community. However, in no case shall a community be required to reimburse the franchisee for any "excess payments" except by means of credits against future franchise payments.

Sec. 130. The franchisee or prospective franchisee who believes that the fee proposed by the board is higher than permitted under sec. 120 may pay the fee under protest and appeal to the superior court, and such payment shall not prejudice the franchisee's rights in any way. No franchise shall be awarded, however, without payment of the fee, and a prospective franchisee who appeals an offer of the board to the court acquires no rights in the franchise, which the board may then award to another applicant on the same terms and conditions as were turned down by the initial prospective franchisee. Acceptance by a second applicant of the terms rejected by the initial prospective franchisee shall be prima facie evidence of the reasonableness of the proposed fee under the criteria established in sec. 120. The attorney general shall defend the board and the committee in any actions brought against it.

Sec. 140. If on renegotiation the board and the franchisee cannot agree the franchisee may pay the franchise fee proposed by the board under protest and appeal as provided under sec. 130 above. If the franchisee does not wish to make payment under protest then the local government may acquire by eminent domain the facilities of the franchisee at the approved site, or if the local government is not interested the state may so acquire them.

Sec. 150. Franchise payment shall be shared between the state and local government (if one exists) on the basis of 30 percent to the state and 70 per cent to the local government. If a local government should be formed or should expand to encompass an approved site subsequent to the collection of a franchise fee the local government shall receive 1.167 per cent of the previously collected fee for each month of the five year franchise period yet to run, counting from the effective date of the annexation or formation of the local government.

Sec. 160. The board shall have power of eminent domain, but this may be exercised only through unanimous vote of the board and only to acquire an approved site. Nothing herein requires the use of this power by the board.

read Sec. 170. A franchise may not be sold or otherwise alienated to a non OCS operator without local government having right of first refusal, and the state the right of second refusal.

Sec. 180. Non discrimination in operation of the facility with respect to rates, terms and conditions charged to other users shall be a condition of the franchise.

Sec. 190. Nothing herein shall exempt a franchise facility from payment of property taxes or compliance with lawful zoning requirements. Neither shall a facility be entitled to any local services or special treatment by virtue of its franchise. The franchise is not necessary exclusive.

Sec. 200. Civil penalties shall be assessed for operation of an OCS service facility without a franchise. Penalties shall be based on the value of the cargo moved across the facility during any period when the facility did not possess but should have possessed a franchise. Owner of the cargo and the owner and/or operator of the facility shall be jointly liable for the civil penalty.

Sec. 300. Definitions.

SECTIONAL OUTLINE

- * SECTION 1 - LEGISLATIVE FINDINGS AND PURPOSE
PAGE 1 of HB 219 WITH WHATEVER
CHANGES ARE NECESSARY TO ELIMINATE
CHANCE OF UNFAVORABLE JUDICIAL REVIEW

- * SECTION 2 - AMEND AS 44.47.050 TO
BEEF UP "PURPOSES" SECTION OF C & R.A.
ORGANIC STATUTE

- * SECTION 3 - NEW CHAPTER (44.48)
SEC 010. CREATES ALASKA OCS SERVICES
AUTHORITY IN C & R.A.; ~~GRANTED TO~~
~~HAVE AUTHORITY TO~~ FOR THE PURPOSE OF
CO-ORDINATING ONSHORE DEV. AND ^{ASSISTING COMMUNITIES} IMPARTED, AND ADMINISTERING
THE FRANCHISE REQUIREMENTS OF THIS CHAPTER
SEC 020 - AUTHORITY GOVERNED BY
COMMITTEE COMPOSED OF COMMISSIONER
OF C & R.A. + DIRECTOR OF DIVISION
OF COMMUNITY PLANNING + DIRECTOR OF
DIV OF LOCAL GOV ASSIST.

- SEC 030 - NO PERSON MAY OPERATE
AN "ONSHORE SERVICE FACILITY" FOR
~~ONSHORE DEVELOPMENT~~ OCS DEVELOPMENT
WITHOUT A FRANCHISE FROM THE
AUTHORITY (EXCEPT AS PROVIDED IN —)

ACQUISITION OF
SEC 040 FRANCHISE TO BE INITIATED

BY APPLICATION TO COMMITTEE STATING

A) IN THE CASE OF FACILITIES OPERATING
ON THE EFFECTIVE DATE OF THIS ACT

- 1) LOCATION
- 2) TYPES OF OCS GRABBER
- 3) OWNERSHIP OF LAND
- 4) OWNERSHIP OF OPERATION
- 5) EXPECTED GROWTH, PHYSICAL

EXPECTED WORKS

EXPANSION ALLOWED BY PERMITS FROM

B) IN CASE OF FACILITIES NOT YET
OPERATING

- 1) PROPOSED SITE
- 2) OWNERSHIP OF PROPOSED SITE
- 3) EXPECTED QUANTITY OF CARGO
- 4) ETC

M) OTHER INFORMATION REQUIRED BY
REGULATION

ALSO EXACT MONEY PAYMENT

SEC 050 COMMITTEE TO HOLD PUBLIC HEARING

ON APPLICATION(S) 90 DAY NOTICE
REQUIRED. OTHERS MAY APPLY FOR
SAME SITE OR OTHER SITES TO SERVE

SAME AREA - PURPOSE OF HEARING TO
DETERMINE ~~SUITABILITY~~ ^{SUITABILITY} OF SITE

IN RELATION TO EXPECTED USE,
ENVIRONMENTAL AND COMMUNITY
IMPACT.

INPUT FROM COMMUNITY LOCAL
PERSPECTIVE
COMPARISONS OF PORT FACILITY

Mr. Ziegman - power of state to tax extra territorial activities - Buck Act - federally owned lands outside state has power to tax economic activities (income or severance tax)
OCS Lands Act (fed) - not extended state's taxing power.
Ziegman - impose a tax on onshore facilities (clear right)
franchise tax precedent for use in this way - 50% chance that S.C. will invalidate

adv. of franchise tax is that you
- owner
- operator
} right to operate a supply base, dock-

license to use the land / license to

(tax is on the franchise that legislature creates)
of tax imposed on the privilege

→ not a franchise fee (limited = annual recurring % of gross net there losses = dry wells)

Rudd
also franchise fee within the 3 mile limit - way of getting at OCS activities

taxes used to discriminate foreign vessels,
foreign commerce -

AK. week position if applied

(1) onshore fac. to service OCS
explore other alternatives

on AK. production
and on OCS } equal
taxation

draft - emphasis on onshore activity is what
you are measuring the fee by:

don't put OCS into the measure of the tax

* tax creditable against a severance tax

AK & OCS production serviced at same onshore
base (how do you determine credit in this
situation & when it is dry hole)

(drill holes)

→ x base rate

Initial fee -

D & P - incremental fee - rate based on production

not dealing w/ Admin - DOR no right situation -

Defense of legality - offshore instead of OCS -
Cook Inlet - current tax & reconciliation or
within 3-mile limit credit against seance tax or

Leads requiring req. by computing estimated input
even though facilities has dual usage.
(ie measuring increased use)

* [different fee computed based on different areas]
Jack's notion in part

Icy Bay - retroclization for imposing tax:
- state called upon to provide services

Possibility be license fees: (ie fee to operate
& simplest graduation)

PROPOSAL - Apply permit - file w/ state economic & EIP
- based on submit to DOR & makes a
study - increased pop - & cost up w/
build, permit fee
- oil companies don't know & we couldn't

production at OCS is basis of tax

if brings on shore then
measure tax at 1st use - when it comes on shore
state (Louisiana) has right (severance tax is
disguised)

Mississippi case - validated a franchise tax
on interstate commerce / legitimized U.S.

Supreme Court

(Check supower power) regarding request
for information of oil companies.

impact cost ^{related} to production } not in favor
impose a tax on Off-shore production is weak position
tax tied to development on shore
find a device to measure the tax.

leaves a great deal of discretion of the departments
to what they determine is
established - admin. procedure that is
somewhat formal - direct COP to a certifi-
cate (annual or whatever) to provide
prop. req. for making this kind of thing -
how computation is made & then
submit to legislature - would it be ok

by DOR - assess - ~~for~~ measured by the
anticipated impact but is ascertainable at that
time - qualification & selection for reevaluation
as well as any further expansion require a
reassessment by DOR.

- Can you require

~~Making the best~~

if within 3 miles limit

Broad Act - including offshore within 3 mile limit
for all facilities after the following date

Impact measured by both direct & indirect ^{employment} and
multiplied by any factor

[use complicated Adm. structure for disaction
at Administrative level weakens the position
with the oil company -]

Memorandum

C & RA
employment
formula -
change or
increase

(- Dept - Wednesday

base
that one
takes

Thursday 116
85

Schedule

- ~~for~~ DOR

note - explanation
Friday -
mechanism -

assessed value - net effect of info -
estimate of prop. to be built

index based upon employment

- LISA - does not really answer the problem of
down the line development -

Anchorage
Literacy
Project

219 - Oil Company handouts - Cecil Barnes

- next is JACK

- answer - couple of letters

-

fee for zoning / can't we ask
then to pay a fee -

(above taxable base)
collect if it
legislation)

forget franchise approach - CSD Authority

JACK - Charlie PARR -
Mr. Ziefman -