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SB744

Neil Condon -

orig report \$8.631M from Governor. -  
reduced by Security Fed. Counts.

His loss for 73 -

However, if the FERC do later  
than Aug 15, 1982 require a settlement  
over this then this is for \$1,500,000.

— 1941 decree — between the parties  
to FARS -

Phillips — f → F

→ why not 1yr appropriation? →

Anderson — technical problem w/ oppr. \$2-  
more than 1yr. —

Busby Materials for proposed  
T.A.P.'S settlement.

Original sponsor: Rules/Governor

Offered: 3/24/82  
Referred: Rules

Funding Information

General Fund	\$5,684,750
Other Funds	-0-
	<u>\$5,684,750</u>

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2

CS FOR SENATE BILL NO. 744 (Finance) am

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act making special appropriations for legal fees  
and litigation costs related to oil and gas matters;  
and providing for an effective date."

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9

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

10

\* Section 1. The sum of \$815,200 is appropriated from the general fund to  
the Department of Law for costs associated with the oil and gas corporate  
income tax litigation, for fiscal year 1983. *AS 43.21*

11

12

13

\* Sec. 2. The sum of \$224,500 is appropriated from the general fund to  
the Department of Revenue for its costs associated with the oil and gas  
corporate income tax litigation, for fiscal year 1983. *same as §1*

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16

\* Sec. 3. The sum of \$4,433,350 is appropriated from the general fund to  
the Department of Law for costs associated with the continuing proceeding  
before the Federal Energy Regulatory Commission for establishing tariffs for  
transporting oil through the Trans-Alaska Pipeline System (TAPS), for fiscal  
year 1983. *may settle if OK w/ legislature's leadership*

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\* Sec. 4. The sum of \$211,700 is appropriated from the general fund to  
the Department of Law for the State v. Amerada Hess litigation, for fiscal  
year 1983. *orig. req. was \$7.380M. This \$ only goes thru Hancu 15T*

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\* Sec. 5 The appropriations made by this Act are not one-year appro-  
priations and do not lapse under AS 37.25.010. *no slope royalty case - 1/2 resolved - remaining will  
valuation of oil at pump etc. no. - not likely to settle.*

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*may need to  
amend*

BILL SUMMARY

SB 744

SB 744 appropriates to the Departments of Law and Revenue funds necessary to cover legal fees and litigation costs for Fiscal Year 1983 for oil and gas matters including oil and gas corporate income tax cases, on-going Federal Energy Regulatory Commission proceedings to establish trans-Alaska pipeline tariffs and State vs Amerada - Hess litigation. A letter from the Attorney General which details the need for these appropriations and a proposed committee substitute are attached.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

March 11, 1982

Senator M. E. Dankworth  
Pouch V  
Juneau, Alaska 99811

Re: SB 744: special appropriations for  
legal fees and litigation costs  
related to oil and gas matters

Dear Ed:

Pursuant to your request, I am providing a review of our Department's needs for oil and gas litigation funding.

### I

#### Funding Needs for Income Tax Cases (Section 1 of the bill)

The Department of Law's funding needs for the oil and gas corporate income tax cases (Arco v. State and Exxon v. State) for fiscal year 1983 total at least \$815,200. The amount at stake is approximately \$1.8 billion, and increases at an annual rate of \$144 million in accumulated prejudgment interest. The \$1.8 billion is money that the State has already received and spent, so the consequence of losing this case would be staggering. The State would not simply forego future receipts -- it would have to give an enormous amount of money back. Consequently, it is imperative that the Department's litigation budget be fully funded for the entire fiscal year.

In recognition of the sizeable exposure just on annual prejudgment interest, the Department of Law believes it is important to have these cases decided as early as possible. Accordingly, the department has moved the case to the point where a trial court decision is expected this autumn. On November 13, 1981, the department filed a summary judgment motion which asks the court to rule on all the issues in the case without the necessity of trial.

The motion was prepared by the department's litigation team, which consists of three attorneys. Unlike other complex litigation in which the State has been involved, use of outside counsel has been minimized. The State has retained on this case the firm of Rogovin, Hugel and Lenzner, with Mitchell Rogovin being the partner chiefly involved. Mr. Rogovin, former general counsel to the Internal Revenue Service, and Mr. Walter Dellinger, a nationally recognized constitutional law scholar and law professor at Duke University, have been asked to review the state's materials and perform certain original work within their particular areas of expertise. Total billings over the past year have been \$210,000. Conversely, the same firm's billings on the TAPS tariff case, in which the firm plays a lead role, have been approximately \$5 million over the same period.

The state chose as its other outside counsel what we believe to be the best West Coast litigation firm not already associated with the industry--Preston, Thorgrimson, Ellis and Holman. Their role has been to find, assemble and index necessary documents. For example, the firm spent three months assembling a 10,000-page legislative history of AS 43.21 for submission with our motion, together with a seven-volume multiple index. Billings for this effort were \$50,000.

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On the companies' side we conservatively estimate that 40 attorneys are assigned to the case. These attorneys have attempted to delay resolution of the case, and we recently spent five weeks in response to one company discovery request, ultimately producing approximately 15,000 pages of individually reviewed documents.

The FY 83 budget request (\$815,200) represents approximately 2/3 of the FY 82 appropriation and RSA with the Department of Revenue.

Here is the functional breakdown:

Professional Services	\$323,800
Contractual - professional service charges of consultants, outside counsel, and expert witnesses	400,000
Contractual - in-house, (long-distance telephone, word processing, copying, printing, computerized legal research, etc.)	54,200
Travel and per diem (confer with expert witnesses, take depositions, examine evidence, meet with opposing counsel)	30,000
Commodities (legal publications and expendable supplies)	<u>7,200</u>
TOTAL	\$815,200

The personal services component of \$323,800 is a maintenance level budget.

The \$400,000 budgeted for consultants represents a major reduction from the FY 82 appropriation, - down from \$520,000 actually spent thus far for Rogovin, Preston-Thorgrimson, Deakin, Horst and Conrad over the past 12 months. This component programs \$100,000 for the Preston firm (discovery and assistance on the final brief, due July 17, 1982); \$100,000 for the Rogovin firm (discovery and assistance on the final brief); and \$200,000 to be allocated among our 3 expert witnesses.

The \$30,000 budgeted for travel and per diem likewise represents a major reduction from the FY 82 appropriation. To date, \$50,000 has been spent in travel in FY 82. Travel necessities are largely dictated by the companies' actions. If the oil companies schedule numerous depositions across the country, this \$30,000 budget may be quickly consumed.

Overall, this FY 83 budget assumes that the trial court will grant our summary judgment motion and will decide the case without trial. If an actual trial should become necessary (the oil companies say that it will), then this budget will have to be substantially increased to cover the sizeable expansion of the litigation effort.

## II

### Funding Needs for the Amerada Hess case (Section 4 of the bill)

The Department of Law's funding needs for the Amerada Hess case (State v. Amerada Hess) for fiscal year 1983 total \$211,700. This sum is almost entirely to cover the professional fees of the expert witnesses who will be crucial to the State's case.

The Amerada Hess case challenges all royalty payments made by the Prudhoe Bay lessees since North Slope production began. Because the royalty payable by those lessees directly affects the price payable by third parties for the State's royalty oil, this case has far-reaching consequences for the State's past and future revenue receipts. It is difficult to estimate with precision the amount at issue in the case, but over the life of the Prudhoe Bay and Kuparuk fields it could easily amount to several hundred million dollars.

The central issue in the case is the determination of the "value" of the oil. This issue turns on expert opinion and the particular facts of the disposition of the oil. The State has attempted to negotiate a settlement, but the Prudhoe Bay lessees have been unwilling to agree to any proposal that would be acceptable to the State. Consequently, there is no reasonable alternative to litigation.

Because of the nature of the issue in controversy, the trial will of necessity be a "battle of experts." Consequently, preparation for trial will require a substantial and detailed discovery effort.

The \$211,700 budget requirement is almost entirely allocated to outside expert witnesses and consulting counsel. No funds or positions are requested for additional Department of Law personnel. Here is a functional breakdown:

Contractual - professional service charges of consultants and expert witnesses	\$200,000
Contractual - in-house (long-distance telephone, word-processing, copying, printing, computerized legal research etc.)	3,800
Travel and per diem (confer with expert witnesses, take depositions, examine evidence, meet with opposing counsel)	7,500
Commodities (legal publications and expendable supplies)	<u>400</u>
TOTAL	\$211,700

### III

#### Minimum partial funding needs for TAPS tariff litigation (Section 3 of the bill)

The Department of Law's minimum partial funding needs for the TAPS tariff litigation for fiscal year 1983 total \$4.43 million. This is the sum required to cover litigation efforts for the first 7½ months of FY 83 (until February 15, 1982), with a modest contingency allowance built in.

This funding proposal takes into account the status of ongoing settlement efforts. While settlement is more likely now than it has ever been, it is still less than a 50% probability. We are currently in the process of hammering out a settlement proposal with one of the eight TAPS owner companies. At present, however, there is no agreement in hand. Even after a satisfactory proposal is reached with this individual company (assuming one can be agreed upon), we still face extensive and difficult negotiations with the seven remaining owner companies. To date, none of these seven have advanced any settlement proposals that would be remotely acceptable to the State. To preserve the strength of our bargaining position during the months of difficult negotiations ahead, it is imperative that we fully maintain our ability to litigate if need be. Furthermore, this is the only adequate means of planning for the likely possibility that our settlement efforts may ultimately prove unsuccessful.

Because of the extraordinary scope of the case and the Department's manpower commitments to the ARCO and Amerada - Hess cases, the State has had to rely on outside counsel to an unprecedented extent. Accordingly, the budgetary requirements of this case are sizeable. It is our best judgment that the State would not save enough to justify increasing the Department's involvement, even though there might be room for savings using in-house personnel to a greater degree.

The \$4.43 million budget requirement is based on the Department's FY 82 Detail Budget Submission, as updated by our principal contractors within the past 6 months. Here is a functional breakdown:

Phase I Appeal/Consent Decree	\$ 319,000
Phase II	
Cost of Construction	3,286,350
Non-Cost of Construction	678,000
Department of Law - Administration	<u>150,000</u>
TOTAL	\$4,433,350

The FY 82 Detail Budget Submission projected \$319,000 for lawyers and disbursements associated with Phase I appeals in FY 83. Since the Administrative Law Judge's Phase I decision is a great victory for the State (and the critical mainstay of our negotiation position) we must be prepared to fund whatever appellate efforts may be required in FY 83, whenever we may be called upon to pursue the appellate process. This component of the budget will also fund the State's representation in the Consent Decree proceedings initiated by the Anti-Trust Division of the Department of Justice, which materially impact upon the TAPS proceeding.

Rogovin, Huger & Lenzner, the law firm in charge of our Phase II Cost of Construction case, has recently given us a month-by-month budget for FY 83 totalling \$5,884,750. Through mid-February, 1983, the subtotal is \$2,738,625. Allowing 20% for a contingency fund yields \$3,286,350. Preliminary reports indicate that the cross-examination of our witnesses, which has just commenced, will be both longer and more intense than originally anticipated, increasing the probability that the 20% contingency will be drawn down.

Donelan, Cleary, Wood & Maser, the law firm in charge of our Phase II Cost of Service case, has recently provided us with a revised FY 83 budget totalling \$1,084,800. Five-eighths of this figure (the equivalent of 7½ months) equals \$678,000.

Finally, the FY 82 Detail Budget Submission projects \$150,000 for the Department's in-house administration of the case. This component of the budget funds the Department's monitoring of the outside counsel. These monitoring responsibilities require full-year commitments to be in-place at the start of the fiscal year.

If you would like to know more about the long-term professional and budgetary requirements for the TAPS case (assuming we litigate to the end of the appellate process), you should find informative the attached TAPS Status Report Memorandum to the File (dated March 1, 1982). This memo gives a Phase-by-Phase breakdown of past and projected expenditures, outlines what remains to be done in each Phase of the case, and assesses our three best options to continued full-scale litigation.

Senator M. E. Dankworth

March 11, 1982  
Page 8

I have attached a draft Committee Substitute for the bill which incorporates the changes suggested in this letter.

I hope this answers your questions about the Department's FY 83 funding needs for oil and gas litigation. If you have any further questions or information need, please feel free to call on me at any time.

Very truly yours,

A handwritten signature in cursive script that reads "Wilson L. Condon". The signature is written in dark ink and is positioned above the typed name.

Wilson L. Condon  
Attorney General

WLC:vrh

Original Sponsor: Rules/Governor

Funding Information

General Fund	\$6,120,750
Other Funds	-0-
	<u>\$6,120,750</u>

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 744 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making special appropriations for legal fees  
7 and litigation costs related to oil and gas matters;  
8 and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. The sum of \$815,200 is appropriated from the general fund to  
11 the Department of Law for costs associated with the oil and gas corporate  
12 income tax litigation, for fiscal year 1983.

13 \* Sec. 2. The sum of \$224,500 is appropriated from the general fund to  
14 the Department of Revenue for its costs associated with the oil and gas  
15 corporate income tax litigation, for fiscal year 1983.

16 \* Sec. 3. The sum of \$4,433,350 is appropriated from the general fund to  
17 the Department of Law for costs associated with the continuing proceeding  
18 before the Federal Energy Regulatory Commission for establishing tariffs  
19 for transporting oil through the Trans-Alaska Pipeline System (TAPS), for  
20 fiscal year 1983. However, if the Federal Energy Regulatory Commission, no  
21 later than August 15, 1982, approves a settlement of that proceeding between  
22 the State of Alaska and all of the pipeline carriers which own the Trans-  
23 Alaska Pipeline System, then this appropriation is for \$1,500,000 instead of  
24 \$4,433,350.

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the Department of Law for the State v. Amerada Hess litigation, for fiscal  
year 1983.

Original sponsor: Rules/Governor

Offered: 3/24/82  
Referred: Rules

Funding Information

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*# 7.38 million requested  
→ for up to March 1982.*

*Settlement  
Announced  
Yesterday  
4/12/82*

*Need  
Amend  
Here.*

21

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24

? \* Sec. 5. The appropriations made by this Act are not one-year appropriations and do not lapse under AS 37.25.010.

26

\* Sec. 6. This Act takes effect July 1, 1982.

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BILL SUMMARY

SB 744

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(Section 3 of the bill)

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Wilson L. Condon  
Attorney General

WLC:vrh