

COMMITTEE REPORT
SENATE

FURTHER:

Date _____

Mr. President

The Committee on FINANCE considered SB 232

approving the sale of produce and loyalty oil by the State of Idaho to the Collier Valley Electric Association, Inc.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 232 (Finance)
- new title
- same title and recommends individual recommendations
- and attached a "LETTER OF INTENT" SEC Minutes 5-8-85 NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

Chairman recommendation

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

061

SB 232

Revision Date:

REQUEST

Bill/Resolution No.: SB 232
 Title: Approving royalty oil contract with GVEA
 Sponsor: _____
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Natural Resources
 Program Category Affected: NRMEC
 BRU, Program or Subprogram(s) Affected: Oil and Gas

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar Phone: 465-2400
 Division: Commissioner's Office Date: March 5, 1985
 Approved by Commissioner: Arthur C. Warrick Date: March 5, 1985
 Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

Original sponsor: Rules/Governor

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IN THE SENATE

BY THE FINANCE COMMITTEE

CS FOR SENATE BILL NO. 232 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to minimum work commitments in oil and gas leases; and providing for an effective date."

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

* Section 1. AS 38.05.180(h) is amended to read:

(h) The commissioner may include terms in any oil and gas lease imposing a minimum work commitment on the lessee. These terms shall be made public before the sale, and may include appropriate penalty provisions to take effect in the event the lessee does not fulfill the minimum work commitment. If [SHOULD] it is [BE] demonstrated that a lease has been proven unproductive by actions of adjacent lease holders, the commissioner may set aside a work commitment. If a minimum work commitment is not fulfilled because conditions preventing drilling or exploration were not reasonably foreseeable by the lessee or were beyond the lessee's control, the commissioner may waive for two years any term of the minimum work commitment.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Fabron/camp
5/8/85
cm

AS 38.05.180 IS THE STATE OIL AND GAS LEASING AUTHORITY WHICH PROVIDES THE STIPULATIONS UNDER WHICH THE STATE'S LANDS ARE LEASED FOR OIL AND GAS DEVELOPMENT.

AS 38.05.180 (p) PROVIDES FOR LEASEES ON STATE OIL AND GAS LEASE LANDS TO POOL THEIR PROPERTIES INTO A UNIT . UNDER THE UNIT, THE LEASEES AGREE TO ITS COOPERATIVE MANAGEMENT AND DEVELOPMENT. SUBSECTION (p) ALSO PROVIDES THAT THE COMMISSIONER OF NATURAL RESOURCES MAY CHANGE THE DRILLING, PRODUCING OR ROYALTY REQUIREMENTS TO PROTECT THE PUBLIC INTEREST. THIS SUBSECTION ONLY APPLIES TO PRODUCING LEASES AND IS MEANT TO CONSERVE THE RESOURCE THROUGH THE MANAGEMENT/DEVELOPMENT PLAN.

THE COMMITTEE SUBSTITUTE FOR SB 232 (FINANCE) SEEKS TO PROVIDE THE SAME DISCRETION TO THE COMMISSIONER ON STATE OIL AND GAS LEASE LANDS NOT MANAGED UNDER A UNIT PLAN TO CHANGE OR SPECIFICALLY, WAIVE THE WORK COMMITMENT REQUIREMENTS OF A LEASE AGREEMENT FOR A PERIOD OF TWO YEARS. THIS WAIVER AUTHORITY WOULD APPLY TO EXPLORATORY OR WILDCAT TYPE LEASES AND WOULD PROVIDE FLEXIBILITY TO THE COMMISSIONER IN DEALING WITH INDEPENDENT OPERATORS ON STATE LANDS.

CSSB 232 (Finance)

Excerpt From
SENATE FINANCE COMMITTEE MINUTES
May 8, 1985
2:30 p.m.

To Accompany CSSB 232 (Finance) as a Letter of Intent

SB 232

Co-chairman Faiks directed that SB 232 (ACT APPROVING THE SALE OF PRUDHOE BAY ROYALTY OIL BY THE STATE OF ALASKA TO THE GOLDEN VALLEY ELECTRIC ASSOCIATION; efd) be brought on for consideration, and Senator Ferguson MOVED for ADOPTION of CSSB 232 (Finance) (ACT RELATING TO MINIMUM WORK COMMITMENTS IN OIL AND GAS LEASES; efd). No objection to the motion having been raised, CSSB 232 (Finance) WAS ADOPTED.

Senator Paul Fischer advised that the committee was awaiting information from the Dept. of Law concerning the possibility that language in the committee substitute might give rise to litigation brought by competitors who may feel they have not been given fair or equal treatment under state leases.

BOB MAYNARD, Assistant Attorney General, Dept. of Law, spoke to the issue, advising that doctrine stating that one cannot change the terms of a contract after it has been awarded applies to normal competitive bid statutes. As a doctrine of law, should an act of God or a sovereign occur which makes it impossible or extremely difficult for a bidder to fulfill his contractual duties, the duties are suspended for the duration of the occurrence. To the extent that language in the bill is construed along the lines of the aforementioned doctrine of law, there is no problem since the standard would be applicable "across the board."

Questions might be raised, however, in situations where, due to vagueness, it is unclear what conditions allow for extension of an obligation. This might raise constitutional problems. Since the commissioner's exercise of authority under the proposed bill is discretionary, in instances where constitutional problems might be created, the commissioner would simply not apply the statute.

Mr. Maynard reiterated that should a problem arise under the bill, it would be a constitutional problem, and in situations where constitutional problems might occur, the commissioner would be prevented, by constitutional provisions, from following the statute. In situations where no constitutional problem exists, the commissioner's discretion could be exercised. The issue

raised by the language is one of fairness to other bidders and whether problems relate to constitutional or statutory questions.

Co-chairman Sackett asked how problems raised by statute would be resolved. Mr. Maynard responded that if a problem arises involving another statute, this statute would supersede--it is a statute of equal dignities. The only real issue is whether proposed bill language raises a constitutional problem. If it does, nothing can be done statutorily to solve the problem.

Co-chairman Sackett asked Senator Fahrenkamp, the author of the proposed language, to advise of the purpose behind it. Senator Fahrenkamp explained that it was intended to give independent operators holding state leases which contain time and work requirements no longer included in leases today, an opportunity for a one-time, two-year extension to meet unforeseen problems, i.e. lack of gravel, lack of ability to utilize ice roads, etc.

Mr. Maynard explained that if delays result from weather--an act of God--there may be no problem. Possible readings of bill language could raise problems, given the fact that the bill allows the commissioner discretion as to whether the statute should be enforced. However, a constitutional problem is not foreseen since unconstitutional application of the language can be avoided at the commissioner's discretion. In instances where constitutional problems arise, the commissioner would be prevented from applying the statute.

Co-chairman Faiks directed that further research into the issue be conducted by the Dept. of Law.

Senator Eliason asked if intent language which would strengthen the legislature's position in the event of suit could be drafted to accompany the bill. Mr. Maynard reiterated that there may be no problem with the language as written. He advised that his initial reaction is that there is no problem. Further, if there is a problem, Mr. Maynard voiced his opinion that because the exercise of authority is discretionary, the commissioner would be prevented from applying the statute in situations where constitutional issues might arise. The language solves the problem itself.

Co-chairman Sackett asked if the foregoing answered Senator Fischer's earlier question concerning possible suit brought by competitors. Mr. Maynard responded, "no it did not," since the foregoing represents a situation in which a constitutional problem might arise. As an example, Mr. Maynard advised of a competitor who might claim that oil prices are falling and, as a result, he cannot fulfill drilling requirements under his lease. Another competitor might claim that he would have bid a lower price and gotten the lease had he known that prices were falling. If the above raises constitutional questions, the Dept. of Law would tell the commissioner that statutory discretion could not be exercised. Mr. Maynard advised that he did not know the answer to potential problems, but they could be solved later.

Senator Paul Fischer advised that his concern relates to instances in which discretionary action has been taken, and someone (an unsuccessful bidder) questions the action "after the damage has been done." Mr. Maynard responded that when the contract was bid, everyone had "an equal shot." The proposed law was not even "on the books." It is not a clear cut issue one way or the other.

Co-chairman Sackett restated Senator Ferguson's earlier motion for adoption of CSSB 232 (Finance). Again, no objection was raised.

Senator Kerttula requested that it be made clear that should the commissioner be advised of possible constitutional problems resulting from exercise of authority under the statute, that he or she avoid application of the statute in those instances. He stressed the importance of retaining the spirit of the law, while avoiding nuances which could give rise to constitutional prohibition. He requested that Legislative Finance staff reflect the foregoing intent as backup information to the committee decision concerning the subject bill.

Co-chairman Sackett MOVED that CSSB 232 (Finance) pass from committee with individual recommendations, accompanied by a copy of Senate Finance Committee Minutes as a letter of intent reflecting the above discussion in order to clarify limitations placed on discretionary application of the law by the commissioner. No objection having been raised, CSSB 323 (Finance) was REPORTED OUT of committee, accompanied by the committee minutes of the afternoon of May 8, 1985, as a letter of intent. Senators Eliason, Ferguson, and Co-chairman Sackett signed the committee report with a "do pass" recommendation. Senators Paul Fischer, Kerttula, and Co-chairman Faiks signed "no recommendation."

Introduced: 3/13/85
Referred: Resources and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 232

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act approving the sale of Prudhoe Bay royalty oil
7 by the State of Alaska to the Golden Valley Electric
8 Association; and providing for an effective date."

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

10 * Section 1. The "Agreement for the Sale and Purchase of Prudhoe Bay
11 Royalty Oil" between the State of Alaska and the Golden Valley Electric
12 Association, dated February 8, 1985, is approved and ratified.

13 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
14 10.070(c).

COMMITTEE REPORT
SENATE

FURTHER: FINANCE

3/13/85

Date _____

Mr. President

The Committee on RESOURCES considered SB 232

approving the sale of Prudhoe Bay royalty oil by the State of Alaska for the Golden Valley Electric Association; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

1 Butte Sabertang

1 Paul Stanger

[Signature]

1 [Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS

2 [Signature] N.R.

2 Rick Halford N.R.

1 Curtis Stanger
Chairman
Do Pass
Chairman recommendation

Db 232

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

POUCH 7-034
ANCHORAGE, ALASKA 99510

March 11, 1985

The Honorable Dor: Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Reference: "An Act Relating to the Sale and Purchase of Royalty Oil from the Prudhoe Bay Unit between the State of Alaska and Golden Valley Electric Association, Inc."

Dear Mr. President:

In accordance with AS 38.06.040(3), I am forwarding for your consideration the resolution of the Alaska Royalty Oil and Gas Development Advisory Board which recommends that the legislature approve the referenced sale of royalty oil to Golden Valley Electric Association, Inc.

If we can be of further service, please do not hesitate to call.

Sincerely,



James B. Gottstein
Chairman

The Alaska Royalty Oil & Gas Development Advisory Board

Resolution 85-1

Findings

1. On December 5, 1984, the Alaska Royalty Oil and Gas Development Advisory Board ("board") received the preliminary findings and determinations of the commissioner of the Alaska Department of Natural Resources ("commissioner") on the sale of Prudhoe Bay royalty oil to Golden Valley Electric Association, Inc. ("GVEA") and the draft contract with GVEA for the sale and purchase of that royalty oil.
2. On January 16, 1985, the board received the commissioner's final findings and determinations on the sale of Prudhoe Bay royalty oil to GVEA.
3. On February 8, 1985, the State of Alaska, through the commissioner, executed the agreement for the sale of royalty oil with GVEA and provided each board member with a copy of the GVEA contract.
4. On February 20, 1985, the board held a public hearing in Anchorage, with telecommunication hookups in Fairbanks, Juneau, and Valdez, to receive testimony on the proposed sale of Prudhoe Bay royalty oil to GVEA and met to discuss the GVEA contract, the commissioner's findings and determination, and the public testimony.

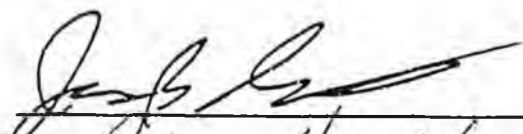
Conclusions

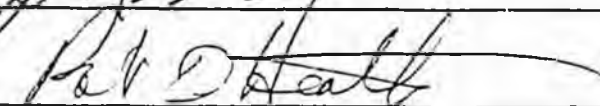
Based on the board's review of the GVEA contract, the commissioner's findings and determinations, and the public testimony, the board concludes that the proposed disposal of Prudhoe Bay royalty oil to GVEA meets the requirements of AS 38.06.

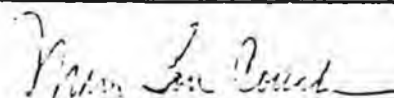
Resolution

Based on these findings and conclusions, the board recommends to the Fourteenth Alaska Legislature that the "Agreement for the Sale and Purchase of Royalty Oil" between the State of Alaska and Golden Valley Electric Association, Inc., dated February 8, 1985, be APPROVED.

Dated: March 11, 1985









STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

232

March 13, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that provides for legislative approval of a royalty oil contract between the state and Golden Valley Electric Association for the sale of Prudhoe Bay royalty oil. Also transmitted with this bill is a copy of the resolution of the Alaska Royalty Oil and Gas Development Advisory Board recommending approval of this contract, along with a letter from the board chairman. This resolution is being transmitted in accordance with AS 38.06.040(a)(3) and AS 38.06.070(c).

This contract is also described in the findings issued by the Department of Natural Resources on January 16, 1985. Copies of these findings have been made available to the legislature and the public for review.

This contract is being submitted for legislative approval for two reasons. First, although this and the previous administration have consistently taken the position that the statutory requirement of legislative approval of royalty oil contracts (AS 38.06.055) is unconstitutional, as a matter of comity I respect the legislature's desire to have a direct voice in major disposals of royalty oil. Therefore, this contract contains provisions requiring approval by the legislature before it becomes effective. Second, this bill would ratify the agreement for sale of oil. This ratification would cure any procedural defect that may have occurred in the process of entering into this contract. Although we believe that all necessary steps have been taken, the statutes and regulations governing the disposal of royalty oil represent often conflicting desires and goals -- both procedural and substantive. For example, even if statutorily requiring legislative approval were constitutional, the present statutes provide, on the one hand, that the legislature is to approve the contract by enacting

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legislation (AS 38.06.055(a)), but, on the other hand, they also provide that a report of the Royalty Board "shall be submitted for legislative review at the time a resolution for legislative approval of a proposed disposition of royalty oil and gas is introduced in the legislature" (AS 38.06.070(c)). Since legislative approval is required anyway as a matter of contract, I believe that it is only prudent to present this contract for legislative approval and ratification at this time.

Sincerely,



Bill Sheffield
Governor