

HB

186

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

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March 16, 1987

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the Alaska Oil and Gas Conservation Commission (commission). This bill offers revisions to improve the state's proposed underground injection control (UIC) program for injection wells related to the recovery and production of oil and natural gas (Class II wells). It also reinstates statutory authority for affiliation with the Interstate Oil Compact Commission, conforms certain sections of AS 31.05 to the revised criminal code, and amends the provisions of AS 31.05 relating to the confidentiality of oil and gas well data.

In 1984, CSHB 680 (L&C) was enacted (ch. 91, SLA 1984). It authorized the commission to "take all actions necessary to allow the state to acquire primary enforcement responsibility under 42 U.S.C. 300h-4 (Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f-300j), for the control of underground injection related to the recovery and production of oil and natural gas." AS 31.05.030(h). Under this authority, the commission prepared an application for a state UIC program for Class II wells, which has been submitted to the U.S. Environmental Protection Agency (EPA) for approval.

In their review, EPA staff identified certain provisions in AS 31.05 which could be amended to improve the state's proposed program. The amendments are being proposed under the terms of a memorandum of agreement between the commission and EPA, Region 10.

Amendment of the criminal provisions of AS 31.05 is recommended by the criminal division of the Department of Law. When the comprehensive rewrite of AS 11 and AS 12 was undertaken in 1981 and 1982, it was determined to be too great a task to attempt amendment of the state's other criminal provisions, scattered throughout the Alaska statutes, at the same time. As this bill amends AS 31.05 for other reasons, I believe it appropriate to take advantage of this

opportunity to "clean up" the criminal provisions of AS 31.05 as well, in order to make them consistent with AS 11 and AS 12, as revised.

Amendment of the confidentiality provisions of AS 31.05.035(c) is recommended by the Alaska Oil and Gas Conservation Commission. The proposed changes are described in detail below.

The amendments to AS 31.05 in the bill are as follows:

Section 1. AS 31.05.027 is amended to eliminate state statutory limitations on the commission's jurisdiction over land of the United States.

Federal law requires that state UIC programs apply to underground injection occurring on property leased or owned by the United States. 42 U.S.C. 300h(b)(1)(D) and 300j-6. However, AS 31.05.027 presently provides in part:

The authority of the commission. . . applies to land of the United States or to land subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas and prevention of waste by the United States on its land fails to carry out the intent and purposes of AS 31.05.005 -- 31.05.170, and otherwise applies to federal land so far as an officer of the United States having jurisdiction, or an authorized representative, shall approve any of the provisions of AS 31.05.005 -- 31.05.170 or orders of the commission which affect land.

The jurisdictional limitations of AS 31.05.027 first appeared as territorial legislation enacted in 1955, when Alaska's relationship to the federal government was far more subservient than after Alaska's acceptance into the Union. As a state, Alaska's potential jurisdiction over oil and gas activities on federal land is limited only by constitutional restrictions on the exercise of state police powers. See Myers, The Law of Pooling and Unitization, sec. 11.04 (2d Ed. 1984). AS 31.05.027 asserts less jurisdiction than is now constitutionally permissible, and would be amended by this bill to remove this potential impediment to the commission's regulation of oil and gas activities on federal land.

Section 2: AS 31.05.035(c) is amended to restrict its application to exploratory wells and to limit the period of confidentiality for reports and information from wells on private and federal land to two years. .

The existing language of AS 31.05.035(c) requires that certain reports and information from oil and gas wells be kept confidential for two years after submission to the Alaska Oil and Gas Conservation Commission, and for a longer period if authorized by the commissioner of natural resources. The primary purpose of this subsection was to protect the confidentiality of exploratory well data gathered in preparation for the Beaufort Sea joint lease sale. As that sale had been postponed a number of times, oil companies interested in bidding at the sale indicated their need for a legislative provision ensuring the confidentiality of their data until the sale was held. The commission believes that no purpose is served by applying the extended confidentiality provisions of this subsection to development wells. Furthermore, the retention of confidential data from development wells, which consists in large part of core samples, uses up a substantial amount of storage space, which is in short supply and costly. It is anticipated that oil companies will not oppose this change.

AS 31.05.035(c) authorizes extended confidential treatment beyond the initial statutory period of two years for reports and information from oil and gas wells based on a determination of the commissioner of natural resources. Under AS 38.05, the authority of the commissioner is restricted to state land. Presently there is confusion as to whether the commissioner may view confidential data from wells on private and federal land for the limited purpose of making an extended confidentiality determination under AS 31.05, notwithstanding the commissioner's inability to have access to those data under AS 38.05. Amendment of the subsection would clarify that the commissioner's determination under this provision is limited to state land. The amendment would also eliminate the possibility of extended confidential treatment for well data from private and federal land. This latter amendment was proposed by the Alaska Oil and Gas Conservation Commission based on its belief that extended confidential treatment beyond the automatic statutory two year period for reports and information from those wells serves no useful purpose.

Section 3. AS 31.05.070(a) is amended to eliminate the "transactional" immunity provided as a result of a person being compelled to testify or produce documents before the commission or a court, and to make its provisions consistent with the revised criminal code.

As it now reads, AS 31.05.070(a) affords a person transactional immunity if compelled to appear as a witness under that statute. This provision could preclude effective enforcement of the state's UIC requirements if it were to be applied to compel testimony of a witness, and consequently foreclosed subsequent prosecution of that witness for violating a requirement of the state's UIC program. The provision is also inconsistent with the immunity provision of AS 12.50.101. The amendments eliminate the immunity provision. Under new language added to AS 31.05.070(a), a witness who asserts his or her privilege against self-incrimination may be granted immunity and compelled to testify under AS 12.50.101. The immunity will be immunity from the use of his or her testimony and any evidence derived from it. Language that disallows self-incrimination as a ground for excusing attendance, testimony, or production of books and records, is also deleted. That language is potentially unconstitutional, and is unnecessary.

AS 31.05.070(a) also provides that a compelled witness is not exempt from prosecution and punishment for perjury committed while testifying. This provision would also be repealed because it duplicates provisions of the criminal code.

Section 4. New AS 31.05.141 would be placed in a "miscellaneous provisions" article in AS 31.05, to reinstate express authority to affiliate with the Interstate Oil Compact Commission (IOCC). The new statute is patterned after Vt. Stat. Ann., tit. 29, sec. 565 (1983). Section 15, ch. 40, SLA 1955, which created the Oil and Gas Conservation Commission, authorized affiliation with the IOCC. After statehood, sec. 15 became AS 31.05.130 and 31.05.140. Section 2, ch. 247, SLA 1970, repealed AS 31.05.130 and 31.05.140, purging AS 31.05 of that authorization. Of note is the fact that the state is still a dues-paying member of the IOCC.

Sections 5 and 6. AS 31.05.150(a) and (b) are amended to eliminate the "wilful" standard from consideration in the imposition and recovery of civil penalties; to increase the civil penalties that may be imposed; to make sec. 150's

provisions consistent with the provisions of the revised criminal code; and to establish criminal liability for violations of the commission's regulations and orders.

AS 31.05.150(a) currently imposes civil penalties for wilful violations of AS 31.05 or regulations or orders of the commission. However, there is no indication of the type of wilfulness required.

Use of the term "wilfully" in criminal statutes has traditionally required a showing of bad intent. Although evidence of bad intent is generally not required to impose civil penalties, amendment of the statute to eliminate the term would remove any doubt as to the ability of the state to impose civil penalties in the absence of evidence of bad intent.

The amendments would increase the amount of civil penalties imposable under AS 31.05.150(a) from "not more than \$1,000" to "no more than \$5,000 per day for each day of violation." The \$1,000 amount, which was first established in 1955, is now inadequate to deter violations. The increased penalty would more effectively accomplish that.

The bill would amend AS 31.05.150(b), which imposes criminal liability for falsifying records and committing similar offenses, to make the description of those offenses consistent with AS 11.46.630(a)(1) -- (4). The class A misdemeanor penalty classification raises the possible maximum term of imprisonment to one year but the amount of the fine is unaffected.

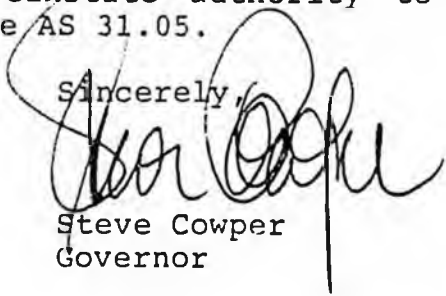
Section 7. AS 31.05.150 is amended by adding a new subsection (f), imposing criminal liability on a person who knowingly violates a regulation or order of the commission.

Section 8. This section identifies a somewhat unusual adoption of a court rule. It takes a cautious approach, to assure compliance with art. IV, sec. 15, of the Alaska Constitution, regarding legislative change of a court rule. Although Rule 732 of the Uniform Rules of Criminal Procedure (promulgated by the National Conference of Commissioners on Uniform State Laws in 1974) does not appear in the publication of Alaska Court Rules, it was adopted by the Alaska Supreme Court, under its constitutional rule-making authority, in State v. Serdahely, 635 P.2d 1182 (Alaska 1981). A Superior Court judge has held that a legislative change of the substance of that rule requires the same procedures as for a legislative change of any other court rule.

Thus, sec. 8 of this bill cites the court rule and describes the change, as required by Rule 39(e), Uniform Rules of the Alaska State Legislature. Also, in compliance with that legislative rule, the title of the bill mentions the court-rule change. If this bill passes but the section making that change does not receive a two-thirds vote in favor of it, and the amended statute is challenged in court, the Alaska Supreme Court will, of course, have the final word on whether those procedures were necessary.

I urge your prompt action on this measure to strengthen the state's UIC program, to reinstate authority to affiliate with the IOCC, and to update AS 31.05.

Sincerely,



Steve Cowper
Governor

STATE OF ALASKA 1987 LEGISLATIVE SESSION

FISCAL NOTE

Bill Version: HB 186

Publish Date: HOUSE 3/18/87

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REQUEST

Bill/Resolution No. :
 Title : An act relating to the Alaska Oil & Gas Conservation Commission
 Sponsor : Governor
 Requestor :
 Date of Request : 11/24/86

FISCAL DETAIL

Agency Affected : Natural Resources
 BRU :
 Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
		-0-	-0-	-0-	-0-	-0-
REVENUE						
		-0-	-0-	-0-	-0-	-0-

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 This bill amends the statutes governing the Alaska Oil and Gas Conservation Commission. Only Section 2 has any affect on the Alaska Department of Natural Resources.

However, it places no new requirements on the department, and therefore requires no additional funding.

Prepared by: Robert Butts *R. Butts* Phone: 465-2400
 Division: Oil and Gas Date: 12/1/86
 Approved by Commissioner: Norm D. Amundson, Acting Date: 12/8/86
 Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: HB 6
Publish Date: HOUSE 3/18/87

Revision Date: _____
Title: Alaska Oil & Gas Conservation Commission changing a court rule:
Sponsor: Rules
Requestor: Steve Cowper, Governor

Agency Affected: Comm. & Econ. Dev.
BRU: Oil & Gas Conservation

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Chat Chatterton, Commissioner
Division: Oil and Gas Conservation Commission

Phone: 279-1433
Date: January 13, 1987

Approved by Commissioner: 
Agency: Commerce and Economic Development

Date: January 13, 1987

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

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Chenoweth
3/29/88

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 186 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Oil and Gas Conserva-
7 tion Commission; changing a court rule, Rule 732 of
8 the Uniform Rules of Criminal Procedure, adopted by
9 the Alaska Supreme Court under its constitutional
10 rule-making authority; and providing for an effective
11 date."

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

13 * Section 1. AS 31.05.027 is amended to read:

14 Sec. 31.05.027. LAND SUBJECT TO COMMISSION'S AUTHORITY. The
15 authority of the commission applies to all land in the state lawfully
16 subject to its police powers, including [. IT APPLIES TO] land of the
17 United States and [OR TO] land subject to the jurisdiction of the
18 United States [ONLY TO THE EXTENT THAT CONTROL AND SUPERVISION OF
19 CONSERVATION OF OIL AND GAS AND PREVENTION OF WASTE BY THE UNITED
20 STATES ON ITS LAND FAILS TO CARRY OUT THE INTENT AND PURPOSES OF THIS
21 CHAPTER, AND OTHERWISE APPLIES TO FEDERAL LAND SO FAR AS AN OFFICER OF
22 THE UNITED STATES HAVING JURISDICTION, OR AN AUTHORIZED REPRESENTA-
23 TIVE, SHALL APPROVE ANY OF THE PROVISIONS OF THIS CHAPTER OR ORDERS OF
24 THE COMMISSION WHICH AFFECT LAND]. The authority of the commission
25 further applies to all land included in a voluntary cooperative or
26 unit plan of development or operation entered into in accordance with
27 AS 38.05.180(p).

28 * Sec. 2. AS 31.05.035(c) is amended to read:

29 (c) The reports and information required in (a) of this section

1 must [SHALL] be kept confidential for 24 months following the 30-day
2 filing period for all stratigraphic tests and exploratory wells unless
3 the owner of the well gives written permission to release the reports
4 and information at an earlier date. If the commissioner of natural
5 resources finds that the required reports and information from strati-
6 graphic tests and exploratory wells drilled for oil and gas contain
7 significant information relating to the valuation of unleased land in
8 the same vicinity, the commissioner shall keep the reports and infor-
9 mation confidential for a reasonable time after the disposition of all
10 affected unleased land, unless the owner of the well gives written
11 permission to release the reports and information at an earlier date.
12 Well location, depth, status and production data and production
13 reports required by the commission to be filed subsequent to the
14 30-day filing period are [SHALL BE CONSIDERED] public information and
15 may [SHALL] not be classified confidential. Production data, as used
16 in this subsection, means volume, gravity and gas-oil ratio of all
17 production of oil or gas after the well begins regular production.

18 * Sec. 3. AS 31.05.070(a) is amended to read:

19 (a) The commission may summon witnesses, administer oaths, and
20 require the production of records, books, and documents for examina-
21 tion at a hearing or investigation conducted by it. [A PERSON MAY NOT
22 BE EXCUSED FROM ATTENDING AND TESTIFYING, OR FROM PRODUCING BOOKS,
23 PAPERS AND RECORDS BEFORE THE COMMISSION OR A COURT, OR FROM OBEDIENCE
24 TO THE SUBPOENA OF THE COMMISSION OR A COURT, ON THE GROUND OR FOR THE
25 REASON THAT THE TESTIMONY OR EVIDENCE, DOCUMENTARY OR OTHERWISE,
26 REQUIRED OF THAT PERSON MAY TEND TO INCRIMINATE OR SUBJECT THAT PERSON
27 TO A PENALTY OR FORFEITURE.] This section does not require a person
28 to produce books, papers, or records, or to testify in response to an
29 inquiry not pertinent to some question lawfully before the commission.

1 or court for determination. If a witness claims the privilege against
2 self-incrimination, the commission may request the attorney general to
3 apply to the superior court under AS 12.50.101 for an order compelling
4 testimony [A NATURAL PERSON IS NOT SUBJECT TO CRIMINAL PROSECUTION OR
5 TO A PENALTY OR FORFEITURE FOR OR ON ACCOUNT OF ANY TRANSACTION,
6 MATTER OR THING CONCERNING WHICH, IN SPITE OF OBJECTION, THAT PERSON
7 MAY BE REQUIRED TO TESTIFY OR PRODUCE EVIDENCE, DOCUMENTARY OR OTHER-
8 WISE, BEFORE THE COMMISSION OR COURT, OR IN OBEDIENCE TO ITS SUBPOENA.
9 HOWEVER, A PERSON TESTIFYING IS NOT EXEMPT FROM PROSECUTION AND PUN-
10 ISHMENT FOR PERJURY COMMITTED IN SO TESTIFYING].

11 * Sec. 4. AS 31.05 is amended by adding a new section to read:

12 ARTICLE 2A. MISCELLANEOUS PROVISIONS.

13 Sec. 31.05.141. AFFILIATION WITH THE INTERSTATE OIL COMPACT
14 COMMISSION. The governor, in the name of the state, may join with the
15 other states in the interstate compact to conserve oil and gas, exe-
16 cute agreements to extend the expiration date of the interstate com-
17 pact, and determine when it is in the best interests of the state to
18 withdraw from the compact and take the actions necessary to effect the
19 withdrawal. The governor, or the governor's designee, is the official
20 representative of the state in the interstate compact, and shall take
21 whatever action is considered appropriate in connection with that
22 position.

23 * Sec. 5. AS 31.05.150(a) is amended to read:

24 (a) A person who [WILFULLY] violates a provision of this chap-
25 ter, or a regulation or order of the commission adopted under this
26 chapter, is liable for [SUBJECT TO] a civil penalty of no [NOT] more
27 than \$5,000 per day [\$1,000] for each day [ACT] of violation [AND FOR
28 EACH DAY THAT THE VIOLATION CONTINUES], unless the penalty for viola-
29 tion is otherwise provided for and made exclusive in this chapter.

1 * Sec. 6. AS 31.05.150(b) is amended to read:

2 (b) A [IF A] person who, for the purpose of evading this chapter
3 or any regulation or order of the commission adopted under this chap-
4 ter, knowingly commits any of the acts specified in AS 11.46.630(a)-
5 (1) - (4), is guilty of a class A misdemeanor [WILFULLY MAKES OR HAS
6 MADE A FALSE ENTRY IN A RECORD, ACCOUNT OR MEMORANDUM REQUIRED BY THIS
7 CHAPTER, OR BY A REGULATION OR ORDER, OR WILFULLY OMITTS, OR CAUSES TO
8 BE OMITTED, FROM A RECORD, ACCOUNT OR MEMORANDUM, FULL, TRUE AND
9 CORRECT ENTRIES AS REQUIRED BY THIS CHAPTER, OR BY A REGULATION OR
10 ORDER, OR REMOVES FROM THE STATE OR DESTROYS, MUTILATES, ALTERS OR
11 FALSIFIES SUCH RECORD, ACCOUNT OR MEMORANDUM, THE PERSON IS GUILTY OF
12 A MISDEMEANOR, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE
13 THAN \$5,000, OR BY IMPRISONMENT IN JAIL FOR NOT MORE THAN SIX MONTHS,
14 OR BY BOTH].

15 * Sec. 7. AS 31.05.150 is amended by adding a new subsection to read:

16 (f) A person who knowingly violates a regulation or order of the
17 commission is guilty of a misdemeanor punishable by a fine of no more
18 than \$5,000 per day for each day of violation.

19 * Sec. 8. AS 31.05.170 is amended by adding a new paragraph to read:

20 (15) "exploratory well" means a well drilled

21 (A) in search of a new and yet undiscovered pool of
22 oil or gas; or

23 (B) with the hope of extending the limits of a pool of
24 oil or gas that has been discovered or developed.

25 * Sec. 9. Section 3 of this Act has the effect of changing Rule 732 of
26 the Uniform Rules of Criminal Procedure, adopted by the Alaska Supreme
27 Court in State v. Serdahely, 635 P.2d 1182 (Alaska 1981), by changing the
28 immunity granted a witness for compelled testimony from "transactional"
29 immunity to "use" immunity.

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* Sec. 10. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA 1987 LEGISLATIVE SESSION

FISCAL NOTE

Bill Version: HB 186

Publish Date: HOUSE 3/18/87

REQUEST

Bill/Resolution No. : _____
 Title: An act relating to the Alaska Oil & Gas Conservation Commission
 Sponsor: Governor
 Requestor: _____
 Date of Request: 11/24/86

FISCAL DETAIL

Agency Affected: Natural Resources
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
		-0-	-0-	-0-	-0-	-0-
REVENUE						
		-0-	-0-	-0-	-0-	-0-

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 This bill amends the statutes governing the Alaska Oil and Gas Conservation Commission. Only Section 2 has any affect on the Alaska Department of Natural Resources.

However, it places no new requirements on the department, and therefore requires no additional funding.

Prepared by: Robert Butts R. Butts Phone: 465-2400
 Division: Oil and Gas Date: 12/1/86

Approved by Commissioner: Anna D. Zimmer, Acting Date: 4/1/86
 Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: HB 186
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Revision Date: _____
Title: Alaska Oil & Gas Conservation
Commission changing a court rule:
Sponsor: Rules
Requestor: Steve Cowper, Governor

Agency Affected: Comm. & Econ. Dev.
BRU: Oil & Gas Conservation
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Chat Chatterton, Commissioner
Division: Oil and Gas Conservation Commission

Phone: 279-1433
Date: January 13, 1987

Approved by Commissioner: 
Agency: Commerce and Economic Development

Date: January 13, 1987

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
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STATE OF ALASKA 1987 LEGISLATIVE SESSION

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Date of Request: 11/24/86

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BRU:
Components:

EXPENDITURES/REVENUES : (Thousands of Dollars)

Table with 7 columns: OPERATING, FY 87, FY 88, FY 89, FY 90, FY 91, FY 92. Rows include PERSONAL SERVICES, TRAVEL, CONTRACTUAL SUPPLIES, EQUIPMENT, LAND & STRUCTURES, GRANTS, CLAIMS, MISCELLANEOUS, and TOTAL OPERATING.

Table with 7 columns: CAPITAL, FY 87, FY 88, FY 89, FY 90, FY 91, FY 92.

Table with 7 columns: REVENUE, FY 87, FY 88, FY 89, FY 90, FY 91, FY 92.

FUNDING : (Thousands of Dollars)

Table with 7 columns: GENERAL FUND, FEDERAL FUNDS, OTHER, TOTAL, FY 87, FY 88, FY 89, FY 90, FY 91, FY 92.

POSITIONS :

Table with 7 columns: FULL-TIME, PART-TIME, TEMPORARY, FY 87, FY 88, FY 89, FY 90, FY 91, FY 92.

ANALYSIS : Attach a separate page if necessary This bill amends the statutes governing the Alaska Oil and Gas Conservation Commission. Only Section 2 has any affect on the Alaska Department of Natural Resources.

However, it places no new requirements on the department, and therefore requires no additional funding.

Prepared by: Robert Butts (signature) Phone: 465-2400
Division: Oil and Gas Date: 12/1/86

Approved by Commissioner: (signature) Date: 4/8/86
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

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Title: Alaska Oil & Gas Conservation
Commission changing a court rule:
Sponsor: Rules
Requestor: Steve Cowper, Governor

Bill Version: HB 186
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Agency Affected: Comm. & Econ. Dev.
BRU: Oil & Gas Conservation
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Chat Chatterton, Commissioner
Division: Oil and Gas Conservation Commission

Phone: 279-1433
Date: January 13, 1987

Approved by Commissioner: 
Agency: Commerce and Economic Development

Date: January 13, 1987

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

ARCTIC SLOPE REGIONAL)
CORPORATION, an Alaska)
corporation; CHEVRON U.S.A.)
INC., a Pennsylvania)
corporation; STANDARD ALASKA)
PRODUCTION COMPANY, a Delaware)
corporation,)

Plaintiffs,)

vs.)

STATE OF ALASKA, DEPARTMENT)
OF NATURAL RESOURCES; and)
ALASKA OIL AND GAS)
CONSERVATION COMMISSION,)

Defendants.)

Case No. 3AN-88- 4357 CI

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

In this action, plaintiffs seek a judgment declaring that AS 31.05.035 is unconstitutional insofar as it requires the plaintiffs to disclose confidential oil and gas well information obtained from private lands to either the Department of Natural Resources or the public. Plaintiffs also seek preliminary and permanent injunctive relief prohibiting the Department of Natural Resources from obtaining access to certain confidential oil and gas well information.

I. PARTIES AND JURISDICTION

1.1 Arctic Slope Regional Corporation ("ASRC") is a Native Regional Corporation established pursuant to the Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. §§ 1601-1629a, and organized under the Alaska Business Corporation Act, AS 10.05. ASRC's shareholders are the Inupiat Eskimos of the Arctic Slope. ASRC has its principal place of business in the State of Alaska. ASRC has paid its biennial corporation tax last due and has filed its biennial report for the last reporting period, and is qualified in all respects to maintain this action.

1.2 Chevron U.S.A. Inc. ("Chevron") is a Pennsylvania corporation with its principal place of business in the State of California. Chevron has paid its biennial corporation tax last due and has filed its biennial report for the last reporting period, and is qualified in all respects to maintain this action.

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1.3 Standard Alaska Production Company ("Standard") is a Delaware corporation with its principal place of business in the State of Alaska. Standard has paid its biennial corporation tax last due and has filed its biennial report for the last reporting period, and is qualified in all respects to maintain this action.

1.4 State of Alaska, Department of Natural Resources ("DNR"), is an agency of the State of Alaska.

1.5 The Alaska Oil and Gas Conservation Commission ("Conservation Commission") is an agency of the State of Alaska.

1.6 This court has jurisdiction over this matter pursuant to AS 22.10.020 and AS 09.40.230.

II. CONFIDENTIAL OIL AND GAS WELL DATA

2.1 On or about April 24, 1986, Chevron completed the drilling of an oil and gas well ("KIC well") on private land located in the North Slope Borough. The land is owned by ASRC and leased to Chevron and Standard. The location of the well is described as:

1409 feet from the south line, 1861 feet from the east line, Section 1, Township 3 North, Range 36 East, Umiat Meridian. State of Alaska.

2.2 Chevron and Standard are the "owners" of the KIC well as that term is used in AS 31.05.035 and defined in AS 31.05.170(9). Chevron is the operator of the KIC well.

2.3 Pursuant to AS 31.05.035(b) and 30 AAC 25.071, Chevron filed certain confidential reports and

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information concerning the KIC well ("KIC well data") with the Conservation Commission.

2.4 At such time as the Chevron and Standard lease terminates, ASRC will become the "owner" of the KIC well. At that time, ASRC will also have the right to use the KIC well data for its own proprietary purpose.

2.5 The sole legitimate purpose for which the KIC well data may be used by the State of Alaska is the prevention of waste and conservation of oil and gas.

2.6 The process of drilling the KIC well and producing the KIC well data cost the plaintiffs in excess of fifty million dollars and required over three years of planning, drilling and analysis.

2.7 The KIC well data have substantial economic value to the plaintiffs. The KIC well data allow the plaintiffs to evaluate ASRC's land for potential oil and gas development. In addition, the KIC well data provide the plaintiffs with critical information for the evaluation of land surrounding the KIC well.

2.8 So long as it is held confidential, the KIC well data provide the plaintiffs with a significant competitive advantage with respect to their competitors.

2.9 The KIC well data will continue to have substantial economic value to the plaintiffs for the indefinite future, so long as it continues to be held confidential by the Conservation Commission.

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III. STATUTORY AND REGULATORY CONFIDENTIALITY PROVISIONS

3.1 AS 31.05.035(c) directs the Conservation Commission to hold confidential oil and gas well information filed with it for 24 months following the 30-day filing period after completion of the well.

3.2 The KIC well data have been held confidential by the Conservation Commission. Unless the confidential period is extended as described below, the Conservation Commission will release the data to the public at 8:00 A.M., on Tuesday, May 24, 1988.

3.3 AS 31.05.035(c) also provides in pertinent part:

If the commissioner of natural resources finds that the required reports and information contain significant information relating to the valuation of unleased land in the same vicinity, the commissioner shall keep the reports and information confidential for a reasonable time after the disposition of all affected unleased land, unless the owner of the well gives written permission to release the reports and information at an earlier date.

3.4 DNR has implemented AS 31.05.035(c) by promulgating 11 AAC 83.153. The regulation states, in pertinent part:

If the commissioner finds that reports or information required under AS 31.05.035(a) contain significant information relating to the valuation of unleased land within a three-mile radius of the well from which these reports or information were obtained, the commissioner will, upon the written request of the owner of the well, keep the reports or information confidential for a

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reasonable time not to exceed 90 days after disposal of the unleased land, unless the owner of the well gives written permission to release the reports and information at an earlier date.

3.5 The KIC well is located less than one half mile from unleased land. Approximately three-fourths of all land located within a three-mile radius of the KIC well is unleased state or federal land.

3.6 Accordingly, the KIC well data contain significant information relating to the valuation of unleased land.

3.7 In order to obtain extended confidentiality, DNR requires that Chevron file a written request with DNR.

3.8 DNR does not currently have the authority to examine the KIC well data.

3.9 DNR asserts that it may examine the KIC well data filed with the Conservation Commission at the time Chevron files a request for extended confidentiality pursuant to AS 31.05.035(c) and 11 AAC 83.153 in order to make the finding set out in the statute ("AS 31.05.035(c) finding").

IV. STATE USE OF CONFIDENTIAL INFORMATION

4.1 Employees of DNR have asserted, in public media, in submissions to the Alaska legislature, and in conversations with Chevron employees, that DNR is inclined to use, and will use, the KIC well data for the following purposes, among others: (a) Estimating the value of land owned by the state for oil and gas development; (b) Setting sale terms for oil and gas lease sales of state lands pursuant to AS

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38.05.180; (c) Establishing minimum bids for tracts offered in state oil and gas lease sales; (d) Evaluating public offshore lands, the ownership of which is in dispute between the United States and the State of Alaska; (e) Promoting the state's position with respect to the oil and gas development of the Arctic National Wildlife Refuge (ANWR); and (f) Promoting the state's position with respect to the land leases negotiated between the United States Department of the Interior and certain Native corporations.

4.2 The KIC well data will be reviewed by DNR employees whose responsibilities include evaluation and leasing of state lands. DNR's valuation of state lands will be affected by information obtained from reviewing the KIC well data.

4.3 DNR asserts that it is impossible to structure DNR's review of the KIC well data so as to preclude access to that information by employees whose responsibilities include evaluation and leasing of state lands.

4.4 The information DNR will obtain from reviewing the KIC well data will have economic value to DNR in its capacity as proprietor of state land, in that it will enhance DNR's ability to evaluate state land.

V. COUNT ONE - UNCONSTITUTIONAL TAKING OF PROPERTY

5.1 Plaintiffs incorporate the prior allegations.

5.2 Mandatory disclosure to the public or to DNR of well data obtained from private lands in connection with an

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application for extended confidentiality, does not substantially advance any legitimate state interest.

5.3 Mandatory disclosure to the public or to DNR of the KIC well data therefore violates state and federal constitutional prohibitions against taking or damaging private property for public use without just compensation.

VI. COUNT TWO - VIOLATION OF DUE PROCESS OF LAW

6.1 Plaintiffs incorporate the prior allegations.

6.2 Mandatory disclosure to the public or to DNR of the KIC well data bears no reasonable or rational relationship to the furtherance of a proper legislative purpose.

6.3 Mandatory disclosure to the public or to DNR of the KIC well data therefore violates state and federal constitutional prohibitions against deprivation of property without due process of law.

VII. COUNT THREE - POLICE POWERS

7.1 Plaintiffs incorporate the prior allegations.

7.2 Mandatory disclosure to the public or to DNR of the KIC well data has no connection with the promotion of the public health, safety, or general welfare.

7.3 Mandatory disclosure to the public or to DNR of the KIC well data is therefore in excess of the police powers of the State of Alaska.

VIII. COUNT FOUR - VIOLATION OF INHERENT RIGHTS

8.1 Plaintiffs incorporate the prior allegations.

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8.2 Mandatory disclosure to the public or to DNR of the KIC well data deprives plaintiffs of the enjoyment of the rewards of their own industry.

8.3 Mandatory disclosure to the public or to DNR of the KIC well data therefore violates the inherent rights of the plaintiffs.

IX. COUNT FIVE - UNAUTHORIZED USE OF CONFIDENTIAL INFORMATION

9.1 Plaintiffs incorporate the prior allegations.

9.2 In the alternative, if the court rules that AS 31.05.035(c) is constitutional, neither that statute, nor any other statute, authorizes the state, DNR, or any of their respective employees or agencies, to use information submitted pursuant to AS 31.05.035 to enhance the state's own proprietary interest, or for any purpose other than the limited purpose of making the AS 31.05.035(c) finding.

9.3 Plaintiffs will suffer irreparable harm if DNR is allowed to review the KIC well data under circumstances that permit access to this information by employees whose responsibilities include evaluation and leasing of state lands.

X. COUNT SIX - TAKING PRIVATE PROPERTY FOR PUBLIC USE

10.1 Plaintiffs incorporate the prior allegations.

10.2 Any use of the KIC well data by the state, DNR, or any of their respective employees or agencies for purposes other than making the AS 31.05.035(c) finding constitutes a "taking" or "appropriation" of plaintiffs' private property for public use without just compensation.

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XI. COUNT SEVEN - DECLARATORY RELIEF

11.1 Plaintiffs incorporate the prior allegations.

11.2 AS 22.10.020(g) authorizes the superior court to declare the rights and legal relations of an interested party in case of an actual controversy.

11.3 Actual controversies exist with respect to (a) the constitutionality of AS 21.05.035(c) as applied to private lands, and (b) assuming AS 31.05.035(c) is constitutional, DNR's authority to use the KIC well data for purposes other than making the AS 31.05.035(c) finding.

11.4 Plaintiffs are entitled to a judgment declaring AS 31.05.035(c) unconstitutional on its face or as applied to the facts of this case.

11.5 In the alternative, plaintiffs are entitled to a judgment declaring that DNR may not use the KIC well data for any purpose other than making the AS 31.05.035(c) finding.

XII. COUNT EIGHT - INJUNCTIVE RELIEF

12.1 Plaintiffs incorporate the prior allegations.

12.2 11 AAC 83.153(a) requires Chevron to file a written request with DNR in sufficient time prior to May 14, 1988, to allow DNR to confirm that the KIC well data contains significant information relating the valuation of unleased land within a three-mile radius of the well.

12.3 Plaintiffs will suffer irreparable harm if the KIC well data is disclosed to the public or DNR.

12.4 Pursuant to AS 09.40.030 and CIVIL RULE 65, plaintiffs are entitled to a preliminary and a permanent

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injunction, directing the Conservation Commission to hold the data confidential without any review of the data by DNR.

12.5 In the alternative, plaintiffs are entitled to a preliminary and permanent injunction directing DNR to review the KIC well data for the sole purpose of making the AS 31.05.035(c) finding under such procedures as the court deems necessary and appropriate to insure the data will not be used for any other purpose.

WHEREFORE having stated its complaint, plaintiffs pray for the following relief:

1. A judgment declaring that AS 31.05.035 is unconstitutional insofar as it requires the plaintiffs and/or the Conservation Commission to disclose the KIC well data to DNR or the public;

2. A judgment declaring that the Conservation Commission must continue to maintain the confidentiality of the KIC well data;

3. In the alternative, a judgment declaring that DNR and its employees and agencies are without authority to use the KIC well data for any purpose other than making the AS 31.05.035(c) finding;

4. A preliminary injunction directing the Alaska Oil and Gas Conservation Commission to maintain the KIC well data as confidential pending the resolution of this litigation;

5. In the alternative, a preliminary injunction directing DNR to review the KIC well data for the sole purpose of making the AS 31.05.035(c) finding, under such procedures as

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the court deems necessary and appropriate to insure the data will not be used for any other purpose;

6. A permanent injunction directing the Alaska Oil and Gas Conservation Commission to maintain the KIC well data as confidential;

7. In the alternative, a permanent injunction forbidding DNR to disclose the KIC well data prior to the time set forth in AS 31.05.035(c), and forbidding DNR to use the KIC well data for any purpose other than making the AS 31.05.035(c) finding.

8. Costs and attorney fees incurred in the prosecution of this matter; and

9. Such other relief as the court may deem equitable and just under the circumstances.

DATED at Anchorage, Alaska this 21st day of April, 1988.

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STANDARD ALASKA PRODUCTION COMPANY

STATEMENT ON HB 186 - March 17, 1988

HB 186, in Section 2, seeks to (i) amend AS 31.05.035(c) to limit its application to all exploratory wells, and (ii) exclude wells drilled on private lands from the benefits of extended confidentiality, while providing these benefits to wells drilled on State lands. Standard believes no legitimate public interest is served by this discriminatory treatment of wells drilled on private lands.

In Alaska's unique frontier environment, years may elapse between the drilling of an exploratory well and the disposition of unleased acreage nearby. Almost any well yields significant information about nearby lands, both State and private, and has considerable commercial value. Alaska exploratory wells are extremely expensive. The capital investment required to drill a well is simply not justified unless the information obtained thereby is maintained in a confidential status until nearby lands are leased. Therefore, Standard believes the proposed language on lines 2 and 3 on page 2 of HB 186 should be eliminated.

Standard has consistently objected to the removal of provisions providing protection for exploratory wells, delineation wells or development wells which are deepened to new horizons. However, Standard has no objection to the immediate release of information from wells drilled strictly in a development setting. Accordingly, Standard would support provisions relieving the Alaska Oil and Gas Conservation Commission from this administrative burden.

Standard believes the encouragement of the drilling of exploratory wells on all lands is in the overall best interest of the State and is the key to continued development of the oil and gas industry in Alaska. Unless provisions are made for protection of information obtained from this activity, no incentive will exist to engage in exploration in areas where development could require decades.

**TESTIMONY OFFERED ON MARCH 17, 1988
BEFORE THE ALASKA HOUSE OF REPRESENTATIVES
RESOURCES COMMITTEE
REGARDING HOUSE BILL 186**

by J. R. Carson

Thank you, Mr. Chairman. My name is John Carson. I am the Chief Geologist for Chevron U.S.A.'s Western Region. I have been a petroleum geologist for 32 years and have spent nearly two-thirds of that time working on Alaska exploration. I speak today on behalf of Chevron. I appreciate the opportunity to testify on this matter of importance to both the State and the petroleum industry. My remarks will be brief. I will be glad to answer questions.

Chevron opposes Section 2 of House Bill (HB) 186 which amends AS 31.05.035(c). The issue is extended confidentiality of well data. HB 186 proposes restricting eligibility for extended confidentiality to exploratory wells only and to further restrict eligibility to only those wells drilled on state lands.

As we stated in testimony during last year's session with reference to HB 41, Chevron believes the current law is fair, well-intended, and in the best interest of the State as well as the industry. I will not repeat that total testimony here today, but will sum it up by saying we feel that the opportunity to apply for extended confidentiality encourages operators to expend risk capital in the search for oil and gas; they can count on their sensitive data being held from other operators while waiting for a sale to be scheduled and held. Further, the surrounding landowners will receive higher sale bids and leasing bonuses if the data are held confidential. The benefit to all will be increased drilling over a long period of time which should lead to discovery of more reserves. For your further information, we have attached a copy of Chevron's testimony on HB 41 offered last April.

Chevron's objections to Sec. 2 of HB 186 are twofold: first, the limitation of extended confidentiality to exploratory wells, and second, the elimination of extended confidentiality provision for wells drilled on lands other than those owned by the State.

Chevron has no objection to routine development wells being excluded from eligibility; however, problems arise when delineation or development wells drilled below the producing zones are not afforded confidential status. Such wells may not fall in the State's definition of exploratory wells. Often, the data from these wells is highly critical. Provisions should be made to cover these wells as well as stratigraphic tests which are drilled solely to gain information about the rocks in the subsurface.

In discussing the limitation of extended confidentiality to wells drilled on state lands, I would like to make three points: 1) oil knows no political boundaries, 2) the AOGCC's obligation is to protect all landowners, and 3) the makeup of landownership in Alaska, which confirms the need for the current law.

Oil and gas accumulations and their accompanying rock formations have no coincidence with or regard for political boundaries. Consequently, enacting legislation that discriminates as to ownership is futile. Oil is where you find it and accumulations are rarely on one landowner's domain. Prudhoe Bay is a notable exception.

The AOGCC is empowered to subject its policing authority to all lands of the state regardless of ownership (Sec. 1 of HB 186 clarifies this authority). This authority should carry with it an obligation to protect, as well as police, all of the

landowners of the state. Surely, the federal government and private landowners, whether they be Alaska natives or individuals, deserve the same protection as the State. If HB 186 is enacted, operators would tend to drill on state lands to the detriment of the private landowner and the federal government.

An argument for relaxation of extended confidentiality is that the law was enacted for a special situation — the Beaufort Sea Sale of 1979 — and is no longer needed. We believe the policy considerations which gave rise to the law remain wholly applicable today. There are too many variables in the Alaska political scene to assure sales coming off as scheduled. In addition, the 6,640-mile long coast line of Alaska has the same multiple landownership at every mile that was responsible for sale delays in the Beaufort in 1979. The 1979 sale may have been unique in that the two government agencies were able to work out a joint sale. Typically state and federal agencies hold sales at different times in the same area while private landowners lease when the demand exists. This complication of various leasing dates is the reason that extended confidentiality eligibility on all lands is so important.

HB 186 acknowledges that extended confidentiality for exploratory well data is appropriate, but unfairly limits its effect to wells drilled on state lands.

As presently drafted, HB 186 would apply to well data presently on file with the State. We have previously expressed our grave concern with this type of retroactive legislation. The present version of HB 41 recognizes these concerns. That bill has been amended to prevent retroactive consideration. A similar amendment should be made to HB 186.

In summary, AS 31.05.035(c) currently provides protection for all parties concerned; the state, the landowners, and the operators. Continuation of this law unchanged will, in the long run, encourage drilling for oil and gas and, hopefully, in finding new reserves which will offset foreign oil dependency and strengthen Alaska's economy.

Thank you. I will be glad to answer any questions you may have.

ATTACHMENT

TO J. R. CARSON'S STATEMENT

OF MARCH 17, 1988

ATTACHMENT

TESTIMONY OFFERED ON APRIL 28, 1987
BEFORE THE ALASKA HOUSE OF REPRESENTATIVES
FINANCE COMMITTEE REGARDING HB 41 AND
HB COMMITTEE SUBSTITUTE 41

By J. R. Carson

Thank you, Mr. Chairman. My name is John Carson. I am the Chief Geologist for Chevron U.S.A.'s Western Region. I have been a petroleum geologist for 31 years and have spent nearly two-thirds of that time involved with Alaska's exploration problems. I speak today on behalf of Chevron. Chevron appreciates the opportunity to testify on this matter of importance to both the State and the petroleum industry. My remarks will be brief and I will be glad to answer any questions you may have.

Chevron opposed HB Committee Substitute 41 because we feel that the State and the industry's best interests are served under the existing law. The State's best economic interests are served when increased leasing and exploratory drilling are promoted. Given the multiple lessors, harsh climate, long lead times, and uncertain economic conditions, a prudent operator will not drill an exploratory well next to open acreage unless he has some certainty that the open acreage will be sold prior to his well data being released.

Therefore, Chevron contends that exploratory drilling will decline if HB 41 is enacted. Previous testimony has generated much discussion on this topic and, I must admit, it is not an easily proven point from either side. However, I plan to present evidence that I hope will show why we contend that drilling will decrease.

First, historically there is a strong correlation between impending lease sales and exploratory drilling. In the eighteen months prior to the State of Alaska Prudhoe

Bay Sale in September 1969, a total of 17 exploratory wells were drilled on leased parcels adjacent to unleased parcels scheduled for the 1969 sale. Although these operators were hoping to find oil, they were obviously attempting to gain information that would allow them to construct realistic bids on the adjoining parcels.

From 1974 through 1979, no State lease sales were held due to various factors including complications of the Alaska Native Claims Settlement Act. From 1974 through 1976, very few exploratory wells were drilled. In 1976, in anticipation of the joint State-Federal Beaufort Sea Sale scheduled for 1978, exploratory activity picked up. In 1978, when it became apparent that this sale would have to be delayed, the State enacted the current law which allowed operators to apply for extended confidentiality on wells drilled in the vicinity of unleased lands.

The message here, I believe, is clear. Operators are looking beyond the drilling of an exploratory well in an attempt to gain information near unleased parcels.

This leads to my second line of evidence which is a personal one. I have been involved in numerous lease sales in my career, and in every one a major strategic element was the consideration of drilling a well or wells at a location that would gain information for an upcoming sale. In previous discussions on HB 41, there have been statements made to the effect that operators only drill wells to find oil and gas. That is true up to a point. We do not normally drill these offsetting wells without an economically feasible venture, but the strategy involves finding the combination of the best prospect located in the optimum position to gain information on adjacent unleased lands. It is a standard part of our lease sale preparation as I'm certain it is of any aggressive exploratory company. The

aggressive explorer must look to the future. The early release of well data punishes the aggressive explorer.

A second item that I feel needs clarification is the contention that the current law stifles competition by denying a broad common data base to any company that may want to explore in Alaska. Of the more than 100 exploratory wells drilled in Alaska since the enactment of the extended confidentiality in 1978, only 50 have received extensions of confidentiality beyond the normal two-year period. Currently, only 17 wells are in extended confidentiality. Of those 33 wells removed from the list, the average period of extended confidentiality was 2.3 years. A broad common data base does indeed exist.

The companies that are aggressive explorers and have the expertise, capital and commitment to explore Alaska have been here doing so since statehood and are exploring now. Other companies who have not been involved in drilling in Alaska already have a wealth of information available; all but 17 wells are available to them free of cost, courtesy of those who have taken the risks and expended the capital. This bill will not motivate drillers to take exploratory risks. It should be pointed out that the release of over 100 wells drilled on the NPRA has not increased competition and not encouraged any more companies to explore the area other than those who have operated on the North Slope historically.

A third point that I would like to speak to concerns a suggestion that firms which drill exploratory wells in frontier areas do not actually provide free information to other firms, even under a two-year disclosure rule, because the firm doing the drilling is able to recoup most of its costs from other firms through the process of cost equalization. But cost equalization will occur only if the lease owned by the

exploratory firm is later included with other leases in a potential producing unit. In the period since 1978, 77 percent (or 111) of the 144 exploratory wells drilled in Alaska have not been included in a potential producing unit. Furthermore, of the eight potential producing areas where the other 33 wells are located, most have not yet been developed and, as a result, these wells may never have their costs shared. What is most important to note in this regard is that if an exploratory well is incapable of production — and this is true of most exploratory wells — there is generally no cost equalization.

Another contention of HB 41 proponents is that the release of well data to the public will allow safer and more efficient drilling practices. The Alaska Oil and Gas Conservation Commission (AOGCC) already obtains the drilling data from every well drilled. It is aware if there are known drilling hazards in certain formations and it ensures safe drilling practices, because all drilling operations must be permitted by them. The AOGCC currently reviews and approves all drilling plans prior to the drilling of each well in Alaska, without having to divulge well data to the public. Making all well data public will not make drilling operations any safer or more efficient than they already are.

Now I would like to discuss two of the provisions of Committee Substitute for HB 41. First is the provision that the AOGCC shall provide access to all of the confidential well data to the Department of Natural Resources. Chevron strongly objects to this provision. We are, frankly, concerned with security. There are large turnovers with DNR which industry has no control over. Often these former employees end up in industry. We believe this to be an unacceptable risk. Within our own company, we operate on a need-to-know basis. There are wells which Chevron has drilled in Western Region that I am not privy to because I don't need

to know in order to perform my function as Chief Geologist. As previously mentioned, the AOGCC is charged with insuring safe and efficient drilling practices. They need to know, DNR does not. We are particularly concerned about the release of this data from wells on private lands.

A second provision of the Committee Substitute involves continuing the present law as status quo until July 1991. Chevron's reaction to this is that this is an arbitrary date and, like any arbitrary date or time period, overlooks the fact that critical exploratory wells will continue to be drilled in Alaska as long as there is open acreage and a probability that this open acreage will be sold. For your consideration, I present the scenario that few or no critical wells requiring confidentiality may be drilled until after 1991. Although I hope this is not the case, I believe anyone who follows the oil industry in general, and Alaska oil in particular, could consider this possibility.

Chevron hopes that the committee will not change the current law and leave open the possibility that all critical offsetting wells to be drilled in Alaska may receive extended confidentiality.

Thank you. I will be happy to answer any questions.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 16, 1987

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the Alaska Oil and Gas Conservation Commission (commission). This bill offers revisions to improve the state's proposed underground injection control (UIC) program for injection wells related to the recovery and production of oil and natural gas (Class II wells). It also reinstates statutory authority for affiliation with the Interstate Oil Compact Commission, conforms certain sections of AS 31.05 to the revised criminal code, and amends the provisions of AS 31.05 relating to the confidentiality of oil and gas well data.

In 1984, CSHB 680 (L&C) was enacted (ch. 91, SLA 1984). It authorized the commission to "take all actions necessary to allow the state to acquire primary enforcement responsibility under 42 U.S.C. 300h-4 (Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f-300j), for the control of underground injection related to the recovery and production of oil and natural gas." AS 31.05.030(h). Under this authority, the commission prepared an application for a state UIC program for Class II wells, which has been submitted to the U.S. Environmental Protection Agency (EPA) for approval.

In their review, EPA staff identified certain provisions in AS 31.05 which could be amended to improve the state's proposed program. The amendments are being proposed under the terms of a memorandum of agreement between the commission and EPA, Region 10.

Amendment of the criminal provisions of AS 31.05 is recommended by the criminal division of the Department of Law. When the comprehensive rewrite of AS 11 and AS 12 was undertaken in 1981 and 1982, it was determined to be too great a task to attempt amendment of the state's other criminal provisions, scattered throughout the Alaska statutes, at the same time. As this bill amends AS 31.05 for other reasons, I believe it appropriate to take advantage of this

opportunity to "clean up" the criminal provisions of AS 31.05 as well, in order to make them consistent with AS 11 and AS 12, as revised.

Amendment of the confidentiality provisions of AS 31.05.035(c) is recommended by the Alaska Oil and Gas Conservation Commission. The proposed changes are described in detail below.

The amendments to AS 31.05 in the bill are as follows:

Section 1. AS 31.05.027 is amended to eliminate state statutory limitations on the commission's jurisdiction over land of the United States.

Federal law requires that state UIC programs apply to underground injection occurring on property leased or owned by the United States. 42 U.S.C. 300h(b)(1)(D) and 300j-6. However, AS 31.05.027 presently provides in part:

The authority of the commission. . . applies to land of the United States or to land subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas and prevention of waste by the United States on its land fails to carry out the intent and purposes of AS 31.05.005 -- 31.05.170, and otherwise applies to federal land so far as an officer of the United States having jurisdiction, or an authorized representative, shall approve any of the provisions of AS 31.05.005 -- 31.05.170 or orders of the commission which affect land.

The jurisdictional limitations of AS 31.05.027 first appeared as territorial legislation enacted in 1955, when Alaska's relationship to the federal government was far more subservient than after Alaska's acceptance into the Union. As a state, Alaska's potential jurisdiction over oil and gas activities on federal land is limited only by constitutional restrictions on the exercise of state police powers. See Myers, The Law of Pooling and Unitization, sec. 11.04 (2d Ed. 1984). AS 31.05.027 asserts less jurisdiction than is now constitutionally permissible, and would be amended by this bill to remove this potential impediment to the commission's regulation of oil and gas activities on federal land.

Section 2: AS 31.05.035(c) is amended to restrict its application to exploratory wells and to limit the period of confidentiality for reports and information from wells on private and federal land to two years.

The existing language of AS 31.05.035(c) requires that certain reports and information from oil and gas wells be kept confidential for two years after submission to the Alaska Oil and Gas Conservation Commission, and for a longer period if authorized by the commissioner of natural resources. The primary purpose of this subsection was to protect the confidentiality of exploratory well data gathered in preparation for the Beaufort Sea joint lease sale. As that sale had been postponed a number of times, oil companies interested in bidding at the sale indicated their need for a legislative provision ensuring the confidentiality of their data until the sale was held. The commission believes that no purpose is served by applying the extended confidentiality provisions of this subsection to development wells. Furthermore, the retention of confidential data from development wells, which consists in large part of core samples, uses up a substantial amount of storage space, which is in short supply and costly. It is anticipated that oil companies will not oppose this change.

AS 31.05.035(c) authorizes extended confidential treatment beyond the initial statutory period of two years for reports and information from oil and gas wells based on a determination of the commissioner of natural resources. Under AS 38.05, the authority of the commissioner is restricted to state land. Presently there is confusion as to whether the commissioner may view confidential data from wells on private and federal land for the limited purpose of making an extended confidentiality determination under AS 31.05, notwithstanding the commissioner's inability to have access to those data under AS 38.05. Amendment of the subsection would clarify that the commissioner's determination under this provision is limited to state land. The amendment would also eliminate the possibility of extended confidential treatment for well data from private and federal land. This latter amendment was proposed by the Alaska Oil and Gas Conservation Commission based on its belief that extended confidential treatment beyond the automatic statutory two year period for reports and information from those wells serves no useful purpose.

Section 3. AS 31.05.070(a) is amended to eliminate the "transactional" immunity provided as a result of a person being compelled to testify or produce documents before the commission or a court, and to make its provisions consistent with the revised criminal code.

As it now reads, AS 31.05.070(a) affords a person transactional immunity if compelled to appear as a witness under that statute. This provision could preclude effective enforcement of the state's UIC requirements if it were to be applied to compel testimony of a witness, and consequently foreclosed subsequent prosecution of that witness for violating a requirement of the state's UIC program. The provision is also inconsistent with the immunity provision of AS 12.50.101. The amendments eliminate the immunity provision. Under new language added to AS 31.05.070(a), a witness who asserts his or her privilege against self-incrimination may be granted immunity and compelled to testify under AS 12.50.101. The immunity will be immunity from the use of his or her testimony and any evidence derived from it. Language that disallows self-incrimination as a ground for excusing attendance, testimony, or production of books and records, is also deleted. That language is potentially unconstitutional, and is unnecessary.

AS 31.05.070(a) also provides that a compelled witness is not exempt from prosecution and punishment for perjury committed while testifying. This provision would also be repealed because it duplicates provisions of the criminal code.

Section 4. New AS 31.05.141 would be placed in a "miscellaneous provisions" article in AS 31.05, to reinstate express authority to affiliate with the Interstate Oil Compact Commission (IOCC). The new statute is patterned after Vt. Stat. Ann., tit. 29, sec. 565 (1983). Section 15, ch. 40, SLA 1955, which created the Oil and Gas Conservation Commission, authorized affiliation with the IOCC. After statehood, sec. 15 became AS 31.05.130 and 31.05.140. Section 2, ch. 247, SLA 1970, repealed AS 31.05.130 and 31.05.140, purging AS 31.05 of that authorization. Of note is the fact that the state is still a dues-paying member of the IOCC.

Sections 5 and 6. AS 31.05.150(a) and (b) are amended to eliminate the "wilful" standard from consideration in the imposition and recovery of civil penalties; to increase the civil penalties that may be imposed; to make sec. 150's

provisions consistent with the provisions of the revised criminal code; and to establish criminal liability for violations of the commission's regulations and orders.

AS 31.05.150(a) currently imposes civil penalties for wilful violations of AS 31.05 or regulations or orders of the commission. However, there is no indication of the type of wilfulness required.

Use of the term "wilfully" in criminal statutes has traditionally required a showing of bad intent. Although evidence of bad intent is generally not required to impose civil penalties, amendment of the statute to eliminate the term would remove any doubt as to the ability of the state to impose civil penalties in the absence of evidence of bad intent.

The amendments would increase the amount of civil penalties imposable under AS 31.05.150(a) from "not more than \$1,000" to "no more than \$5,000 per day for each day of violation." The \$1,000 amount, which was first established in 1955, is now inadequate to deter violations. The increased penalty would more effectively accomplish that.

The bill would amend AS 31.05.150(b), which imposes criminal liability for falsifying records and committing similar offenses, to make the description of those offenses consistent with AS 11.46.630(a)(1) -- (4). The class A misdemeanor penalty classification raises the possible maximum term of imprisonment to one year but the amount of the fine is unaffected.

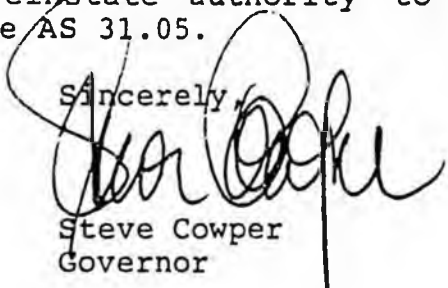
Section 7. AS 31.05.150 is amended by adding a new subsection (f), imposing criminal liability on a person who knowingly violates a regulation or order of the commission.

Section 8. This section identifies a somewhat unusual adoption of a court rule. It takes a cautious approach, to assure compliance with art. IV, sec. 15, of the Alaska Constitution, regarding legislative change of a court rule. Although Rule 732 of the Uniform Rules of Criminal Procedure (promulgated by the National Conference of Commissioners on Uniform State Laws in 1974) does not appear in the publication of Alaska Court Rules, it was adopted by the Alaska Supreme Court, under its constitutional rule-making authority, in State v. Serdahely, 635 P.2d 1182 (Alaska 1981). A Superior Court judge has held that a legislative change of the substance of that rule requires the same procedures as for a legislative change of any other court rule.

Thus, sec. 8 of this bill cites the court rule and describes the change, as required by Rule 39(e), Uniform Rules of the Alaska State Legislature. Also, in compliance with that legislative rule, the title of the bill mentions the court-rule change. If this bill passes but the section making that change does not receive a two-thirds vote in favor of it, and the amended statute is challenged in court, the Alaska Supreme Court will, of course, have the final word on whether those procedures were necessary.

I urge your prompt action on this measure to strengthen the state's UIC program, to reinstate authority to affiliate with the IOCC, and to update AS 31.05.

Sincerely,



Steve Cowper
Governor

ATTACHMENT

TO J. R. CARSON'S STATEMENT

OF MARCH 17, 1988

ATTACHMENT

TESTIMONY OFFERED ON APRIL 28, 1987
BEFORE THE ALASKA HOUSE OF REPRESENTATIVES
FINANCE COMMITTEE REGARDING HB 41 AND
HB COMMITTEE SUBSTITUTE 41

By J. R. Carson

Thank you, Mr. Chairman. My name is John Carson. I am the Chief Geologist for Chevron U.S.A.'s Western Region. I have been a petroleum geologist for 31 years and have spent nearly two-thirds of that time involved with Alaska's exploration problems. I speak today on behalf of Chevron. Chevron appreciates the opportunity to testify on this matter of importance to both the State and the petroleum industry. My remarks will be brief and I will be glad to answer any questions you may have.

Chevron opposed HB Committee Substitute 41 because we feel that the State and the industry's best interests are served under the existing law. The State's best economic interests are served when increased leasing and exploratory drilling are promoted. Given the multiple lessors, harsh climate, long lead times, and uncertain economic conditions, a prudent operator will not drill an exploratory well next to open acreage unless he has some certainty that the open acreage will be sold prior to his well data being released.

Therefore, Chevron contends that exploratory drilling will decline if HB 41 is enacted. Previous testimony has generated much discussion on this topic and, I must admit, it is not an easily proven point from either side. However, I plan to present evidence that I hope will show why we contend that drilling will decrease.

First, historically there is a strong correlation between impending lease sales and exploratory drilling. In the eighteen months prior to the State of Alaska Prudhoe

Bay Sale in September 1969, a total of 17 exploratory wells were drilled on leased parcels adjacent to unleased parcels scheduled for the 1969 sale. Although these operators were hoping to find oil, they were obviously attempting to gain information that would allow them to construct realistic bids on the adjoining parcels.

From 1974 through 1979, no State lease sales were held due to various factors including complications of the Alaska Native Claims Settlement Act. From 1974 through 1976, very few exploratory wells were drilled. In 1976, in anticipation of the joint State-Federal Beaufort Sea Sale scheduled for 1978, exploratory activity picked up. In 1978, when it became apparent that this sale would have to be delayed, the State enacted the current law which allowed operators to apply for extended confidentiality on wells drilled in the vicinity of unleased lands.

The message here, I believe, is clear. Operators are looking beyond the drilling of an exploratory well in an attempt to gain information near unleased parcels.

This leads to my second line of evidence which is a personal one. I have been involved in numerous lease sales in my career, and in every one a major strategic element was the consideration of drilling a well or wells at a location that would gain information for an upcoming sale. In previous discussions on HB 41, there have been statements made to the effect that operators only drill wells to find oil and gas. That is true up to a point. We do not normally drill these offsetting wells without an economically feasible venture, but the strategy involves finding the combination of the best prospect located in the optimum position to gain information on adjacent unleased lands. It is a standard part of our lease sale preparation as I'm certain it is of any aggressive exploratory company. The

aggressive explorer must look to the future. The early release of well data punishes the aggressive explorer.

A second item that I feel needs clarification is the contention that the current law stifles competition by denying a broad common data base to any company that may want to explore in Alaska. Of the more than 100 exploratory wells drilled in Alaska since the enactment of the extended confidentiality in 1978, only 50 have received extensions of confidentiality beyond the normal two-year period. Currently, only 17 wells are in extended confidentiality. Of those 33 wells removed from the list, the average period of extended confidentiality was 2.3 years. A broad common data base does indeed exist.

The companies that are aggressive explorers and have the expertise, capital and commitment to explore Alaska have been here doing so since statehood and are exploring now. Other companies who have not been involved in drilling in Alaska already have a wealth of information available; all but 17 wells are available to them free of cost, courtesy of those who have taken the risks and expended the capital. This bill will not motivate drillers to take exploratory risks. It should be pointed out that the release of over 100 wells drilled on the NPRA has not increased competition and not encouraged any more companies to explore the area other than those who have operated on the North Slope historically.

A third point that I would like to speak to concerns a suggestion that firms which drill exploratory wells in frontier areas do not actually provide free information to other firms, even under a two-year disclosure rule, because the firm doing the drilling is able to recoup most of its costs from other firms through the process of cost equalization. But cost equalization will occur only if the lease owned by the

exploratory firm is later included with other leases in a potential producing unit. In the period since 1978, 77 percent (or 111) of the 144 exploratory wells drilled in Alaska have not been included in a potential producing unit. Furthermore, of the eight potential producing areas where the other 33 wells are located, most have not yet been developed and, as a result, these wells may never have their costs shared. What is most important to note in this regard is that if an exploratory well is incapable of production -- and this is true of most exploratory wells -- there is generally no cost equalization.

Another contention of HB 41 proponents is that the release of well data to the public will allow safer and more efficient drilling practices. The Alaska Oil and Gas Conservation Commission (AOGCC) already obtains the drilling data from every well drilled. It is aware if there are known drilling hazards in certain formations and it ensures safe drilling practices, because all drilling operations must be permitted by them. The AOGCC currently reviews and approves all drilling plans prior to the drilling of each well in Alaska, without having to divulge well data to the public. Making all well data public will not make drilling operations any safer or more efficient than they already are.

Now I would like to discuss two of the provisions of Committee Substitute for HB 41. First is the provision that the AOGCC shall provide access to all of the confidential well data to the Department of Natural Resources. Chevron strongly objects to this provision. We are, frankly, concerned with security. There are large turnovers with DNR which industry has no control over. Often these former employees end up in industry. We believe this to be an unacceptable risk. Within our own company, we operate on a need-to-know basis. There are wells which Chevron has drilled in Western Region that I am not privy to because I don't need

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Thank you. I will be happy to answer any questions.