

HB

541

HOUSE COMMITTEE REPORT

(9)

Date Referred: February 12, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 4/5/90

The RESOURCES Committee considered:

HR 541

HOUSE BILL NO. 541

GUIDELINES FOR LITIGATION SETTLEMENT

"An Act relating to certain agreements, compromises, and settlements entered into by the Departments of Natural Resources and Revenue."

RECOMMENDATIONS:

- be replaced with CS HB 541 (RES) the same title
- a new title a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass No Rec Amend

[Signature] MEYERD

[Signature] DAVIDSON

[Signature] JACKO

[Signature] DAVIS

<u>[Signature]</u> SHARP	<input checked="" type="checkbox"/>		
<u>[Signature]</u> HUDSON	<input checked="" type="checkbox"/>		

[Signature]
Chairman's Signature

From the desk of

 **Richard A. Fineberg**
Juneau, Alaska 99801

401 8th St. - Apt. 208
tel 907 / 463-3568

To: Jay Nelson
Staff Assistant, House Resources Committee

Date: April 13, 1990

Re: HB 541

The following amendments to CS HB 541 (Res), WORK DRAFT 6-1806E, reflect Resource Committee discussion of this measure and Jack Chenoweth's memorandum of April 9. Essentially, these amendments cover two points:

1. There is a discrepancy between HB 541 as introduced and the manner in which that bill's purpose was consistently described to the committee during its discussions. The bill was described to the committee as affecting large settlements involving a tax or royalty payment for a year least five years prior to the current year. However, the original bill's language omitted the limiting phrase and therefore covers all assessments or claims larger than \$10 million, regardless of age. This correction inserts a "five-year prior" clause to match the language of the measure with the sponsor's intent and the Resource Committee's understanding of its purpose (as indicated by testimony and committee discussion).

2. The Commissioner of Revenue pointed out that notification of the governor would be more appropriate than notification of various agencies. This change to notification procedures would be consistent with the sponsor's intent and the explicit concerns of at least one committee member (Rep. Hudson).

In my estimation, these amendments would provide the appropriate starting point for discussion of HB 541 in the Finance Committee.

Page 3, lines 8-10:

penalty and interest, \$10,000,000 or more and relates to a calendar year that is five or more years before the current year, the commissioner shall, not later than 14 days after commencement of negotiations, advise the [COMMISSIONER OF REVENUE AND THE ATTORNEY GENERAL] governor at least once . . .

Page 3, line 17:

interest, \$10,000,000 or more[,] and relates to a calendar year that is five or more years before the current year, the commissioner may not enter into an . . .

Page 4, lines 19-21:

totals, with applicable penalty and interest, \$10,000,000 or more and relates to a tax year that is five or more years before the current year, the commissioner shall, not later than 14 days after commencement of negotiations, advise the [COMMISSIONER OF NATURAL RESOURCES AND THE ATTORNEY GENERAL] governor at least once . . .

Page 4, line 29:

and interest, \$10,000,000 or more[,] and relates to a tax year that is five or more years before the current year, the commissioner may not enter into . . .

Page 5, line 29 - Page 6, line 2:

or more and relates to a tax year that is five or more years before the current year, the commissioner shall, not later than 14 days after commencement of negotiations, advise the [COMMISSIONER OF NATURAL RESOURCES AND THE ATTORNEY GENERAL] governor at least once . . .

Page 6, line 8:

totals, with applicable penalty and interest, \$10,000,000 or more[,] and relates to a tax year that is five or more years before the current year, the . . .




Alaska State Legislature

HOUSE RESOURCES COMMITTEE

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3715

TO: House Resources Committee Members

FROM: Representative Cliff Davidson, Co-chair
Representative Curt Menard, Co-chair
House Resources Committee 

DATE: April 3, 1990

SUBJECT: Department of Revenue Amendments to HB 541

Attached are proposed amendments to HB 541 provided by the Department of Revenue but redrafted by the Legislative Legal Division. These amendments were suggested by Commissioner Malone in testimony before the Committee last week.

A M E N D M E N T

OFFERED IN THE HOUSE

BY THE RESOURCES COMMITTEE

TO: HB 541

Page 1, line 8, after "Revenue":

Insert "to legislative audit of the Department of Revenue and the release of a report of that audit, that may include or refer to confidential information, to the legislature and public, and to the interest rate on unpaid taxes and to overpaid taxes"

Page 1, following line 9:

Insert a new bill section to read:

"* Section 1. AS 24.20.271 is amended to read:

Sec. 24.20.271. POWERS AND DUTIES. The legislative audit division shall

(1) conduct a performance post-audit of boards and commissions designated in AS 44.66.010 and of those programs and activities of agencies subject to termination as determined in the manner set out in AS 44.66.020 and 44.66.030, and submit the audit, together with a written report, not later than the first day of the regular session of the legislature convening in each year set out with reference to boards, commissions, or agency programs whose activities are subject to termination as prescribed in AS 44.66;

(2) audit at least once every three years the books and accounts of all custodians of public funds and all disbursing officers

of the state;

(3) at the direction of the Legislative Budget and Audit Committee, conduct performance post-audits on any agency of state government;

(4) cooperate with state agencies by offering advice and assistance as requested in establishing or improving the accounting systems used by state agencies;

(5) require the assistance and cooperation of all state officials and other state employees in the inspection, examination, and audit of state agency books and accounts;

(6) have access at all times to the books, accounts, reports, or other records, whether confidential or not, of every state agency;

(7) ascertain, as necessary for audit verification, the amount of agency funds on deposit in any bank as shown on the books of the bank; a [NO] bank may not be held liable for making information required under this paragraph available to the legislative audit division;

(8) complete studies and prepare reports, memoranda, or other materials as directed by the Legislative Budget and Audit Committee;

(9) have direct access to any information related to the management of the University of Alaska and have the same right of access as exists with respect to every other state agency;

(10) annually

(A) conduct a performance audit of the tax functions

of the Department of Revenue, including the department's resolution of disputed taxes;

(B) prepare a report summarizing the results of the audit that may contain information made confidential by AS 43.-05.230 and a version of the report edited for the public; and

(C) submit the audit and the unedited report prepared under (B) of this paragraph to the legislature not later than the first day of the regular legislative session."

Page 1, line 10:

Delete "Section 1"

Insert "Sec. 2"

Renumber the following bill sections accordingly.

Page 2, following line 12:

Insert new subsections to read:

"(i) The commissioner may not enter into a settlement or compromise of a dispute between the department and a person as to a royalty or net profit payment if the settlement or compromise provides that information relevant to the settlement or compromise, or the terms of the settlement or compromise, are confidential beyond the confidentiality otherwise provided for by law.

(j) The commissioner shall maintain for review full documentation of a settlement or compromise of a dispute between the department and a person as to a royalty or net profit payment."

Page 3, following line 15:

Insert a new subsection to read:

"(d) In making an agreement under (a) of this section, neither the department nor the attorney general may agree that information relevant to the agreement, or the terms of the agreement, are confidential beyond the confidentiality otherwise provided for by law. The department must maintain for review full documentation of the agreement."

Page 4, following line 17:

Insert new bill material to read:

"(e) In compromising a tax or penalty under this section, neither the department nor the attorney general may agree that information relevant to the compromise, or the terms of the compromise, are confidential beyond the confidentiality otherwise provided for by law. The department must maintain for review full documentation of the compromise.

* Sec. 5. AS 43.05.225 is amended by adding a new subsection to read:

(b) If a tax imposed by AS 43.55, AS 43.56, AS 43.57, former AS 43.21, or former AS 43.58 is not paid on or before the date prescribed for payment, it bears interest at the rate of five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District, as established on the first day of each calendar quarter, compounded quarterly."

Page 5, following line 12:

Insert a new bill section to read:

"* Sec. 7. AS 43.05.280(a) is amended to read:

(a) Interest shall be allowed and paid on any overpayment of a tax under this title at the rate prescribed in AS 43.05.225 less two percentage points."

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act Relating to certain
agreements & settlements by CNR & DOR
Sponsor: Cotten, Navarre
Requestor: _____

Agency Affected: _____
BRU: _____
Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE	See analysis.					

FUNDING: (Thousands of Dollars)

GENERAL FUND					
FEDERAL FUNDS					
OTHER					
TOTAL					

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS : (Attach a separate page if necessary)

See attached.

Prepared by: Charles J. Loosdon
Division: Oil and Gas Audit

Phone: 277-5627
Date: March 22, 1990

Approved by Commissioner: [Signature]
Agency: _____

Date: 3/26/90

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

Fiscal Note
HB 541
March 22, 199

Analysis

This bill would establish a review and or a 14 day cooling off period for agreements and settlements of tax and royalty disputes in excess of \$10 million entered into by the Department of Revenue or the Department of Resources.

The aim of this bill is to provide additional assurance that the State receives the maximum expected value from oil and gas tax and royalty revenue.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to... agreements, compromises... Natural Resources and Revenue."
Sponsor: Repr. Cotten
Requestor: House Resources

Agency Affected: Department of Law
BRU: Oil and Gas Special Projects
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 21, 1990
Approved by Commissioner: Richard I. Pegues / FOR / Date: March 21, 1990
Agency: Douglas B. Baily, Attorney General
Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 541

This bill amends AS 38.05.035 to require that if the commissioner of natural resources enters into negotiations to compromise or settle a dispute between the department and a person as to a royalty or net profit payment involving a claim that totals, with applicable penalty and interest, \$10,000,000 or more, the commissioner shall advise the commissioner of revenue and the attorney general that negotiations have commenced, not later than 14 days after the commencement of negotiations.

This bill also amends AS 43.05.070 to require that if the Department of Revenue enters into negotiations to compromise or settle a tax dispute between the department and a taxpayer involving a claim that totals, with applicable penalty and interest, \$10,000,000 or more, the commissioner of revenue shall advise the commissioner of natural resources and the attorney general that negotiations have commenced, not later than 14 days after the negotiations commenced.

In effect, the bill institutionalizes the notification process to be followed whenever the Departments of Natural Resources or Revenue seek to settle major royalty or tax claims. Inasmuch as notification is a normal part of business, there should not be a fiscal impact for the Department of Law.

FISCAL NOTE

REQUEST:

Revision Date: 3/27/90
Title: Revenue and DNR Agreements and Settlements
Sponsor: Rep. Cotten, Rep. Navarre
Requestor: House Resources

Agency Affected: Natural Resources
BRU: Petroleum Management
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0- *	-0- *	-0- *	-0- *	-0- *	-0- *
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

* If the independent appraisal of a proposed settlement, as required by this bill, is completed by an employee of the Department of Natural Resources there would likely be no additional cost. If the appraisal is completed by a consultant, there would be additional costs. Costs for consulting services would depend on the topic of the settlement and the degree of technical expertise required for review.

Prepared by: Carol Wilson Phone: 465-2400
Division: Commissioner's Office Date: 3/27/90

Approved by Commissioner: [Signature] Date: 3/27/90
Agency: Department of Natural Resources

Distribution (by preparer):

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

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 9, 1990

SUBJECT: House Bill 541 -- Sectional analysis

TO: Representative Cliff Davidson, Co-Chair
House Resources Committee

FROM: Jack Chenoweth
Legislative Counsel 

The measure sets out statutory guidelines applicable to the handling and disposition of agreements, compromises, and settlements relating to certain royalty and net profit payments payable under AS 38.05 and to certain tax disputes arising under AS 43.

The handling of royalty and net profit payments involving claims totalling, with applicable penalty and interest, \$10,000,000 or more, is addressed by the new subsection added to AS 38.05.035 by bill section 1. In that change:

-- at the time the Department of Natural Resources commenced negotiations with an eye toward compromise or settlement, the department would be required, within 14 days, to advise the commissioner of revenue and the attorney general;

-- while negotiations were in progress, the commissioner of natural resources would be required to give notice to the other two state officers at least every 30 days;

-- the commissioner of natural resources would not be permitted to enter into a compromise or settlement agreement unless (1) the commissioner first obtained and reviewed an independent appraisal of the effects of the proposed compromise or settlement, and (2) unless 14 days passed between the commissioner's receipt of the proposed compromise or settlement agreement and the date of the commissioner's execution of the proposed agreement.

Representative Cliff Davidson
Page 2
March 9, 1990

The bill also contains [page 1, line 27 - page 2, line 9] provisions indicating who may prepare the required independent appraisal of the proposed compromise or settlement and what that appraisal must contain.

*

Substantially similar procedures, time limitations, and guidelines would apply to tax settlements under the additions made by bill sections 2 - 4. In those instances, negotiations would be undertaken by the commissioner of revenue, who must regularly advise the commissioner of natural resources and the attorney general. Otherwise, the same general parameters and limitations attach to tax disputes as are described above for resolutions involving royalties and net profit payments.

In these sections,

-- the additional materials added by bill section 2 address negotiations to resolve a tax dispute by means of agreements respecting the taxpayer's tax liability;

-- the additional materials added by bill section 3 involve the authority of the Department of Revenue to compromise a tax or penalty in the event of doubt as to the taxpayer's tax liability; and

-- the additional materials added by bill section 4 are incorporated to govern redeterminations or revisions of tax liability (i.e. redetermination of tax liability through department-initiated tax assessments).

JBC:lmb
L10/006

Internal Independent Settlement Review Procedures for Royalty Settlements (Section 1)

To ensure that any major settlement of the State's royalty litigation is in the public interest -- and to assure the public that this is the case -- this measure requires the Commissioner of Natural Resources, before settling any dispute involving amounts greater than \$10 million in a tax year five years or more prior to the current year, to conduct an independent review of the proposed settlement.

The review will specify objectives, indicate how these objectives are met and evaluate how the settlement affects other outstanding disputes. Additionally, there shall be a minimum of 14 days between the time the Commissioner receives a final settlement offer and the date s/he approves the settlement.

With settlement offers increasingly likely as trial date approaches, there are no procedures in place to ensure that settlement review will be thorough and deliberate.

— [Statute Reference: AS 38.05.035]

— [See Fineberg Report: Recommendation #8, pp. 23-24]

Tax Settlement Internal Independent Review Procedures (Sections 2-4)

The remaining three sections of HB 541 contain language similar to Section 1 for insertion at three places in the tax statutes:

Sec. 2: Adds new subsections to AS 43.05.060 (on closing agreements) requiring settlement review for settlements over \$10,000,000.

Sec. 3: Adds new subsections to AS 43.05.070 (on compromises) requiring settlement review for settlements over \$10,000,000.

Sec. 4: Adds new subsections to AS 43.05.260 (on assessment revisions) requiring settlement review in settlements over \$10,000,000.

— [Statute Reference: AS 43.05.060, .070, .260]

— [See Fineberg Report: Recommendation #15 (pp. 30-31)]




Alaska State Legislature

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

TO: House Resource Committee members

FROM: Representative Curt Menard 

DATE: April 3, 1990

SUBJECT: Amendments to HB 541

Attached are two amendments to HB 541 that I would like to see incorporated into a Committee Substitute prior to passing the bill from Committee. Although these amendments look somewhat technical in nature, they accomplish a simple purpose, better public accountability for oil and gas, tax and royalty settlements.

Amendment #1 embodies one of the recommendations made by Commissioner Malone in his presentation to the Committee last week. It provides that no oil and gas settlement agreement shall provide for greater confidentiality than provided for under state law.

Amendment #2 expands the sunshine provisions of HB 541 by providing for public disclosure of any oil and gas settlement involving amounts greater than \$10 million or for a tax year more than five years old.

I will be happy to talk to Committee members about either of these amendments.

HIB 541 Amendment # 1

Settlements Shall Not Extend Royalty or Taxpayer Confidentiality

Bars any settlement agreement from further restricting the taxpayer confidentiality under AS 09.25.100 or royalty confidentiality under AS 38.05.035 .

The Department of Revenue agreed in the 1988 ARCO income tax settlement to a provision that seeks to prevent the department from responding to legislative inquiries unless the taxpayer is present. (The specific mechanism is that the Department of Revenue promised in the closing agreement to advise the Legislature of this agreement with the taxpayer, and to ask the Legislature to honor it.)

This agreement restricts communication with the Legislature in two ways: (1) With the taxpayer present, there are liable to be some matters of strategy (as well as implications for other cases) that the Department is reluctant to discuss. Thus the Legislature may not get the whole picture. (2) Because there has been only one major settlement under this Administration, information is liable to be restricted because the Department of Revenue may find it difficult to discuss settlements in any specific way in the absence of the taxpayer.

By extending taxpayer confidentiality, this agreement runs directly counter to the spirit of the Alaska Supreme Court's recent decision barring public entities from entering into confidential settlements. However, that decision apparently does not apply to tax cases because tax information is exempt from public disclosure laws (AS 09.25.100).

- [Statute Reference: AS 43.05.060, .070, .260; AS 09.25.100; AS 38.05.035]
- [Fineberg report recommendation #18 (Chapter V, pp. 33)]

A M E N D M E N T # 1

OFFERED IN THE HOUSE

BY THE RESOURCES COMMITTEE

TO: HB 541

Page 1, line 8, after "Revenue":

Insert ", and to the release of tax information by the Department of Revenue and of information relating to royalty and net profit payment claims by the Department of Natural Resources"

Page 2, line 12, after "agreement.":

Insert a new subsection to read:

"(i) An agreement or compromise concerning a royalty or net profit payment entered into between the department and a person may not extend the confidentiality provisions of (a)(9) of this section."

Page 3, line 15, after "agreement.":

Insert a new subsection to read:

"(d) An agreement under this section may not extend the confidentiality provisions of AS 09.25.100."

Page 4, line 17, after "agreement.":

Insert a new subsection to read:

"(e) A compromise under this section may not extend the confidentiality provisions of AS 09.25.100."

Page 4, line 18:

Delete "a new subsection"

Insert "new subsections"

Page 5, line 12, after "revision.":

Insert a new subsection to read:

"(e) A written consent or agreement relating to a tax assessment may not extend the confidentiality provisions of AS 09.25.100."

HB 541 Amendment #2

Public Disclosure of Settlements Covered by Internal Independent Review Provisions

This amendment would require public disclosure of the essential facts about any oil and gas revenue settlement involving amounts greater than \$10 million for a royalty production or tax year five or more years prior to the current year.

— [Statute Reference: AS 09.25.100; AS 43.05.230]

A M E N D M E N T #2

OFFERED IN THE HOUSE

Y REP. MENARD

TO: HB 541

Page 1, line 8, after "Revenue":

Insert ", and to the release of tax information by the Department of Revenue and of information relating to royalty and net profit payment claims by the Department of Natural Resources."

Page 1, following line 9:

Insert a new bill section to read:

"* Section 1. AS 09.25.100 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, if, having once assessed a tax, penalty, or interest due the state, the Department of Revenue enters into an agreement or compromise involving a taxpayer's tax liability under AS 43.05.060 or 43.05.070, the department

(1) shall prepare and disclose a summary of the essential facts about the tax dispute or the terms and amounts of the agreement or compromise entered into between the department and the taxpayer

(A) if the tax liability disclosed is for a period ending not less than five years before the tax year in which the disclosure is made; and

(B) if, as a result of the agreement or compromise,

the taxpayer's tax liability involves an overpayment or underpayment that totals, with applicable penalty and interest, \$10,000,000 or more;

(2) may not make a disclosure under (1) of this subsection to the extent that the commissioner of revenue determines that disclosure would involve publication of a trade secret of the taxpayer; in this paragraph, "trade secret" has the meaning given in AS 45.50.940."

Page 1, line 10:

Delete "Section 1."

Insert "Sec. 2."

Renumber the following bill sections accordingly.

Page 2, following line 12:

Insert a new subsection to read:

"(i) Notwithstanding (a)(9) of this section, in a dispute between the department and a person as to a royalty or net profit payment, if, having made a determination applicable to allocation of costs and production or to any other factor bearing upon determination of the royalty or net profit share and assessed the payment, penalties, and interest due, or if the department enters into an agreement or compromise relating to the payment due, the commissioner

(1) shall prepare and disclose a summary of the essential facts about the dispute or the terms and amounts of the agreement or compromise entered into between the department and the person

(A) if the agreement or compromise involves a royalty or net profit payment that is at least five years old; and

(B) if, as a result of the agreement or compromise, the claim of the person involves an overpayment or underpayment of a royalty or net profit claim that totals, with applicable penalty and interest, \$10,000,000 or more;

(2) may not make a disclosure under this subsection to the extent the commissioner determines that disclosure would involve publication of a trade secret of the person; in this paragraph, "trade secret" has the meaning given in AS 45.50.940."