

HB

541

DATE: 4/30/90

FURTHER: Finance

DATE TURNED INTO OFFICE: 5-6-90

Resources Committee considered CSHB 541 (Finance)

GUIDELINES FOR LITIGATION SETTLEMENT

and recommended:

- replace with 5 CS HB 541 (Res)
- or adopt _____ CS _____
- attached amendment(s)
- _____ letter of intent adopted

- same title
- new title
- technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

fiscal note(s) _____ Dept/Date: _____

zero fiscal note(s) _____

appropriation-no fiscal note

APPROVES PREVIOUS:

fiscal note(s) _____ Dept/Date: LBA

zero fiscal note(s) _____

Governor's bill w/fiscal note

SIGNING DO PASS:

[Signature] (x CKM crew)

OTHER RECOMMENDATIONS:

[Signature] No Rec
[Signature] No Rec
[Signature] No Rec
[Signature] No Rec

[Signature] No Rec
Chair: Signature and Recommendation

Dept of Law

Offered: 4/23/90
Referred: Rules

6-1806M

Original sponsor(s): REP. COTTEN, Navarre, Davidson

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 541 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to certain agreements, compromises,
7 and settlements entered into by the Departments of
8 Natural Resources and Revenue; to legislative audit
9 of those departments and the release of a report of
10 the audits, that may include or refer to confidential
11 information, to the legislature and public; and to
12 collection and payments of royalties from state
13 resources, the interest rate on unpaid taxes and
14 royalties from state resources, and the interest
15 rate on overpaid taxes."

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

17 * Section 1. AS 05.15.095(c) is amended to read:

18 (c) A delinquent fee bears interest at the rate set by
19 AS 43.05.225(1) [AS 43.05.225].

20 * Sec. 2. AS 24.20.271 is amended to read:

21 Sec. 24.20.271. POWERS AND DUTIES. The legislative audit divi-
22 sion shall

23 (1) conduct a performance post-audit of boards and com-
24 missions designated in AS 44.66.010 and of those programs and activ-
25 ities of agencies subject to termination as determined in the manner
26 set out in AS 44.66.020 and 44.66.030, and submit the audit, together
27 with a written report, not later than the first day of the regular
28 session of the legislature convening in each year set out with refer-
29 ence to boards, commissions, or agency programs whose activities are

1 subject to termination as prescribed in AS 44.66;

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

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

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

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

14 (6) have access at all times to the books, accounts, re-
15 ports, or other records, whether confidential or not, of every state
16 agency;

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

22 (8) complete studies and prepare reports, memoranda, or
23 other materials as directed by the Legislative Budget and Audit Com-
24 mittee;

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

28 (10) periodically

29 (A) conduct a performance audit of the tax functions

1 of the Department of Revenue; and
 2 (B) submit the audit to the legislature not later than
 3 the first day of the ^{next} regular legislative session;
 4 (1) annually
 5 (A) conduct an audit of the resolution of disputed
 6 royalties by the Department of Natural Resources and ^{resolution of} disputed
 7 taxes by the Department of Revenue; ^{under AS 43.05.060 &}
 8 (B) prepare a report summarizing the results of the
 9 audit ^{that may contain information made confidential by AS 43.-}
 10 05.230 and a version of the report edited for the public;] and
 11 [(C) submit the audit [and the unedited report prepared
 12 under (B) of this paragraph] to the legislature not later than the
 13 first day of the ^{next} regular legislative session.

Insert
OPTION I lang.

14 * Sec. 3. AS 34.45.470(a) is amended to read:
 15 (a) A person who fails to pay or deliver property within the
 16 time prescribed by this chapter may be required to pay to the depart-
 17 ment interest at the [ANNUAL] rate calculated under AS 43.05.225(1)
 18 [AS 43.05.225] on the property or the value of it from the date the
 19 property should have been paid or delivered.

20 * Sec. 4. AS 38.05.035 is amended by adding new subsections to read:
 21 (g) If the department enters into negotiations to compromise or
 22 settle a dispute between the department and a person as to a royalty
 23 or net profit payment involving a claim that totals, with applicable
 24 [penalty and] interest, \$10,000,000 or more ~~and that relates to a calen-~~
 25 ~~dar year that is five or more years before the current year,~~ the com-
 26 missioner shall, not later than 14 days after commencement of nego-
 27 tiations, advise the governor that negotiations have commenced, and
 28 shall provide notice to the governor at least once during each
 29 subsequent 30-day period that the negotiations continue.

1 (h) If the department proposes to compromise or settle a dispute
 2 between the department and a person as to a royalty or net profit
 3 payment involving a claim that totals, with applicable [penalty and]
 4 interest, \$10,000,000 or more and that relates to a calendar year that
 5 is five or more years before the current year, the commissioner may
 6 not enter into an agreement to compromise or settle the dispute *without*

7 ~~without first securing and reviewing an independent appraisal of the effects of the proposed compromise or settlement; the independent appraisal~~

10 (A) may be made by a person who is an employee of the
 11 department or who is engaged by contract to complete the apprai-
 12 sal, but may not be made by a person who has been involved in
 13 preparing the proposed compromise or settlement;

14 (B) must specify the objectives of the department's
 15 negotiations; and

16 (C) must review the proposed compromise or settlement
 17 (i) to ensure that it meets the objectives speci-
 18 fied; and

19 (ii) to determine whether it adversely affects
 20 other litigation to which the state is a party; and

21 (2) unless at least 14 days pass between the day the com-
 22 missioner receives the proposed compromise or settlement agreement and
 23 ~~the day the commissioner executes that agreement.~~

24 (i) The commissioner may not enter into a settlement or compro-
 25 mise of a dispute between the department and a person as to a royalty
 26 or net profit payment if the settlement or compromise provides that
 27 information relevant to the settlement or compromise, or the terms of
 28 the settlement or compromise, are confidential beyond the confiden-
 29 tiality otherwise provided for by law.

1 (j) The commissioner shall maintain for review full documenta-
2 tion of a settlement or compromise of a dispute between the department
3 and a person as to a royalty or net profit payment.

4 * Sec. 5. AS 38.05.145 is amended by adding new subsections to read:

5 (c) Payment of the royalty to the state under the provisions of
6 AS 38.05.145 - 38.05.181 becomes due on the date and in the manner
7 specified in the lease or in a regulation adopted by the commissioner.

8 (d) If royalty to which the state is entitled under AS 38.05.180
9 is not paid when it becomes due under (c) of this section [and the
10 total amount of royalty due exceeds \$1,000,000] notwithstanding
11 AS 09.30.070, the royalty bears interest at the rate of five percent-
12 age points above the annual rate charged member banks for advances by
13 the 12th Federal Reserve District, as established on the first day of
14 each calendar quarter, compounded quarterly.

15 * Sec. 6. AS 43.05.060 is amended by adding new subsections to read:

16 (b) If the department enters into negotiations to resolve a tax
17 dispute between the department and a taxpayer involving a claim that
18 totals, with applicable penalty and interest, \$10,000,000 or more ~~and~~
19 ~~that relates to a calendar year that is five or more years before the~~
20 ~~current year~~, the commissioner shall, not later than 14 days after
21 commencement of negotiations, advise the governor that negotiations
22 have commenced, and shall provide notice to the governor at least once
23 during each subsequent 30-day period that the negotiations continue.

24 (c) If the department proposes to enter into an agreement under
25 (a) of this section to resolve a tax dispute between the department
26 and a taxpayer involving a claim that totals, with applicable penalty
27 and interest, \$10,000,000 or more ~~and that relates to a calendar year~~
28 ~~that is five or more years before the current year~~, the commissioner
29 may not enter into the agreement

without first reviewing the proposed agreement or settlement with the governor.

1 ~~(1) without first securing and reviewing an independent ap-~~
2 praisal of the effects of the proposed agreement; the independent
3 appraisal

4 (A) may be made by a person who is an employee of the
5 department or who is engaged by contract to complete the ap-
6 praisal, but may not be made by a person who has been involved in
7 preparing the proposed agreement;

8 (B) must specify the objectives of the department's
9 negotiations; and

10 (C) must review the proposed resolution

11 (i) to ensure that it meets the objectives speci-
12 fied; and

13 (ii) to determine whether it adversely affects
14 other litigation to which the state is a party; and

15 (2) unless at least seven days pass between the day the
16 commissioner receives the proposed agreement and the day the commis-
17 sioner executes that agreement

18 (d) In making an agreement under (a) of this section, neither
19 the department nor the attorney general may agree that information
20 relevant to the agreement, or the terms of the agreement, are confi-
21 dential beyond the confidentiality otherwise provided for by law. The
22 department must maintain for review full documentation of the
23 agreement.

24 * Sec. 7. AS 43.05.070 is amended by adding new subsections to read:

25 (c) If the department enters into negotiations to compromise or
26 settle a tax dispute between the department and a taxpayer involving a
27 claim that totals, with applicable penalty and interest, \$10,000,000
28 or more and that relates to a calendar year that is five or more years
29 before the current year, the commissioner shall, not later than 14

1 days after commencement of negotiations, advise the governor that
2 negotiations have commenced, and shall provide notice to the governor
3 at least once during each subsequent 30-day period that the
4 negotiations continue.

5 (d) If the department proposes to compromise or settle a tax
6 dispute between the department and a taxpayer involving a claim that
7 totals, with applicable penalty and interest, \$10,000,000 or more and
8 that relates to a calendar year that is five or more years before the
9 ~~current year~~, the commissioner may not enter into the agreement ~~without~~
10 ~~first reviewing the proposed agreement or settlement with the governor.~~
11 ~~without first securing and reviewing an independent ap-~~
12 ~~praisal of the effects of the proposed compromise or settlement agree-~~
13 ~~ment; the independent appraisal~~

14 (A) may be made by a person who is an employee of the
15 department or who is engaged by contract to complete the ap-
16 praisal, but may not be made by a person who has been involved in
17 preparing the proposed compromise or settlement agreement;

18 (B) must specify the objectives of the department's
19 negotiations; and

20 (C) must review the proposed compromise or settlement
21 (i) to ensure that it meets the objectives speci-
22 fied; and

23 (ii) to determine whether it adversely affects
24 other litigation to which the state is a party; and

25 (2) unless at least seven days pass between the day the
26 commissioner receives the proposed compromise or settlement agreement
27 and the day the commissioner executes that agreement.

28 (e) In compromising a tax or penalty under this section, neither
29 the department nor the attorney general may agree that information
relevant to the compromise, or the terms of the compromise, are

1 confidential beyond the confidentiality otherwise provided for by law.
2 The department must maintain for review full documentation of the
3 compromise.

4 * Sec. 8. AS 43.05.225 is amended to read:

5 Sec. 43.05.225. INTEREST ON TAXES. Unless otherwise provided,
6 when a tax levied in this title is not paid on or before the date
7 prescribed for its payment, [BECOMES DELINQUENT] it bears interest at
8 the rate of

9 (1) 12 percent a year [if the total amount of the tax owed
10 by the taxpayer does not exceed \$1,000,000; or] under AS 05.15.095(c)
11 AS 34.45.470(a), and AS 47.23.025

12 (2) five percentage points above the annual rate charged
13 member banks for advances by the 12th Federal Reserve District, as
14 established on the first day of each calendar quarter, compounded
15 quarterly, [if the total amount of the tax owed by the taxpayer exceeds
16 \$1,000,000]

17 * Sec. 9. AS 43.05.280(a) is amended to read:

18 (a) Interest shall be allowed and paid on any overpayment of a
19 tax under this title at the rates [RATE] prescribed in AS 43.05.225.]

20 * Sec. 10. AS 47.23.025 is amended to read:

21 Sec. 47.23.025. RATES OF INTEREST. The rate of interest imposed
22 under AS 47.23.020(a)(2)(C) shall equal the rate imposed under AS 43.-
23 05.225(1) [AS 43.05.225] or a lesser rate that is the maximum rate of
interest permitted to be imposed under federal law.

Original sponsor(s): REP. COTTEN, Navarre, Davidson, Gruenberg, Boyer, Sharp

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 541 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to certain agreements, compromises,
7 and settlements entered into by the Departments of
8 Natural Resources and Revenue; to legislative audit
9 of those departments and the release of a report of
10 the audits, that may include or refer to confidential
11 information, to the legislature and public; and to
12 collection and payments of royalties from state
13 resources, the interest rate on unpaid taxes and
14 royalties from state resources, and the interest rate
15 on overpaid taxes."

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

17 * Section 1. AS 05.15.095(c) is amended to read:

18 (c) Until June 30, 1991, a [A] delinquent fee bears interest at
19 the rate set by AS 43.05.225. After June 30, 1991, a delinquent fee
20 bears interest at the rate of 12 percent a year.

21 * Sec. 2. AS 24.20.271 is amended to read:

22 Sec. 24.20.271. POWERS AND DUTIES. The legislative audit divi-
23 sion shall

24 (1) conduct a performance post-audit of boards and com-
25 missions designated in AS 44.66.010 and of those programs and activ-
26 ities of agencies subject to termination as determined in the manner
27 set out in AS 44.66.020 and 44.66.030, and submit the audit, together
28 with a written report, not later than the first day of the regular
29 session of the legislature convening in each year set out with

1 reference to boards, commissions, or agency programs whose activities
2 are subject to termination as prescribed in AS 44.66;

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

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

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

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

15 (6) have access at all times to the books, accounts, re-
16 ports, or other records, whether confidential or not, of every state
17 agency;

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

23 (8) complete studies and prepare reports, memoranda, or
24 other materials as directed by the Legislative Budget and Audit Com-
25 mittee;

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

29 (10) periodically

1 (A) conduct a performance audit of the tax functions
2 of the Department of Revenue; and

3 (B) submit the audit to the legislature not later than
4 the first day of the next regular legislative session;

5 (11) annually

6 (A) conduct an audit of the resolution of disputed
7 royalties by the Department of Natural Resources and the resolu-
8 tion of disputed taxes by the Department of Revenue under AS 43.-
9 05.060 and 43.05.070; and

10 (B) prepare a report summarizing the results of the
11 audit and submit the audit and the report to the legislature not
12 later than the first day of the next regular legislative session;
13 the legislative auditor may disclose information made confiden-
14 tial by AS 45.05.230 to a committee of the legislature meeting in
15 executive session if the committee has adopted procedures to
16 protect the confidentiality of the information.

17 * Sec. 3. AS 34.45.470(a) is amended to read:

18 (a) Until June 30, 1991, a [A] person who fails to pay or
19 deliver property within the time prescribed by this chapter may be
20 required to pay to the department interest at the annual rate calcu-
21 lated under AS 43.05.225 on the property or the value of it from the
22 date the property should have been paid or delivered. After June 30,
23 1991, a person who fails to pay or deliver property within the time
24 prescribed by this chapter may be required to pay to the department
25 interest at the rate of 12 percent a year on the property or the value
26 of it from the date the property should have been paid or delivered.

27 * Sec. 4. AS 38.05.035 is amended by adding new subsections to read:

28 (g) If the department enters into negotiations to compromise or
29 settle a dispute between the department and a person as to a royalty

1 or net profit payment involving a claim that totals, with applicable
2 interest, \$10,000,000 or more, the commissioner shall, not later than
3 14 days after commencement of negotiations, advise the governor that
4 negotiations have commenced, and shall provide notice to the governor
5 at least once during each subsequent 30-day period that the nego-
6 tiations continue.

7 (h) If the department proposes to compromise or settle a dispute
8 between the department and a person as to a royalty or net profit
9 payment involving a claim that totals, with applicable interest,
10 \$10,000,000 or more, the commissioner may not enter into an agreement
11 to compromise or settle the dispute without first reviewing the
12 proposed compromise or settlement with the governor.

13 (i) The commissioner may not enter into a settlement or compro-
14 mise of a dispute between the department and a person as to a royalty
15 or net profit payment if the settlement or compromise provides that
16 information relevant to the settlement or compromise, or the terms of
17 the settlement or compromise, are confidential beyond the confiden-
18 tiality otherwise provided for by law.

19 (j) The commissioner shall maintain for review full documenta-
20 tion of a settlement or compromise of a dispute between the department
21 and a person as to a royalty or net profit payment.

22 * Sec. 5. AS 38.05.145 is amended by adding new subsections to read:

23 (c) Payment of the royalty to the state under the provisions of
24 AS 38.05.145 - 38.05.181 becomes due on the date and in the manner
25 specified in the lease or in a regulation adopted by the commissioner.

26 (d) If, after June 30, 1991, royalty to which the state is
27 entitled under AS 38.05.180 is not paid when it becomes due under (c)
28 of this section notwithstanding AS 09.30.070, the royalty bears in-
29 terest at the rate of five percentage points above the annual rate

1 charged member banks for advances by the 12th Federal Reserve Dis-
2 trict, as established on the first day of each calendar quarter,
3 compounded quarterly.

4 * Sec. 6. AS 43.05.060 is amended by adding new subsections to read:

5 (b) If the department enters into negotiations to resolve a tax
6 dispute between the department and a taxpayer involving a claim that
7 totals, with applicable penalty and interest, \$10,000,000 or more, the
8 commissioner shall, not later than 14 days after commencement of
9 negotiations, advise the governor that negotiations have commenced,
10 and shall provide notice to the governor at least once during each
11 subsequent 30-day period that the negotiations continue.

12 (c) If the department proposes to enter into an agreement under
13 (a) of this section to resolve a tax dispute between the department
14 and a taxpayer involving a claim that totals, with applicable penalty
15 and interest, \$10,000,000 or more, the commissioner may not enter into
16 the agreement without first reviewing the proposed agreement with the
17 governor.

18 (d) In making an agreement under (a) of this section, neither
19 the department nor the attorney general may agree that information
20 relevant to the agreement, or the terms of the agreement, are confi-
21 dential beyond the confidentiality otherwise provided for by law. The
22 department must maintain for review full documentation of the agree-
23 ment.

24 * Sec. 7. AS 43.05.070 is amended by adding new subsections to read:

25 (c) If the department enters into negotiations to compromise or
26 settle a tax dispute between the department and a taxpayer involving a
27 claim that totals, with applicable penalty and interest, \$10,000,000
28 or more, the commissioner shall, not later than 14 days after com-
29 mencement of negotiations, advise the governor that negotiations have

1 commenced, and shall provide notice to the governor at least once
2 during each subsequent 30-day period that the negotiations continue.

3 (d) If the department proposes to compromise or settle a tax
4 dispute between the department and a taxpayer involving a claim that
5 totals, with applicable penalty and interest, \$10,000,000 or more, the
6 commissioner may not enter into the agreement without first reviewing
7 the proposed compromise or settlement agreement with the governor.

8 (e) In compromising a tax or penalty under this section, neither
9 the department nor the attorney general may agree that information
10 relevant to the compromise, or the terms of the compromise, are confi-
11 dential beyond the confidentiality otherwise provided for by law. The
12 department must maintain for review full documentation of the compro-
13 mise.

14 * Sec. 8. AS 43.05.225 is amended to read:

15 Sec. 43.05.225. INTEREST ON TAXES. Unless otherwise provided,

16 (1) until June 30, 1991, when a tax levied in this title is
17 not paid on or before the date prescribed for its payment, [BECOMES
18 DELINQUENT] it bears interest at the rate of 12 percent a year;

19 (2) after June 30, 1991, when a tax levied in this title is
20 not paid on or before the date prescribed for its payment, it bears
21 interest at the rate of five percentage points above the annual rate
22 charged member banks for advances by the 12th Federal Reserve Dis-
23 trict, as established on the first day of each calendar quarter,
24 compounded quarterly.

25 * Sec. 9. AS 47.23.025 is amended to read:

26 Sec. 47.23.025. RATES OF INTEREST. Until June 30, 1991, the
27 [THE] rate of interest imposed under AS 47.23.020(a)(2)(C) shall equal
28 the rate imposed under AS 43.05.225 or a lesser rate that is the
29 maximum rate of interest permitted to be imposed under federal law.

1 After June 30, 1991, the rate of interest imposed under AS 47.23.-
2 020(a)(2)(C) is 12 percent a year or a lesser rate that is the maximum
3 rate of interest permitted to be imposed under federal law.
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6-1806P
Chenoweth
5/6/90

Original sponsor(s): REP. COTTEN, Navarre, Davidson, Gruenberg, Boyer, Sharp

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 541 (Resources)

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10 the audits, that may include or refer to confidential
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13 resources, the interest rate on unpaid taxes and
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18 (c) A delinquent fee bears interest at the rate of 12 percent a
19 year [SET BY AS 43.05.225].

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21 Sec. 24.20.271. POWERS AND DUTIES. The legislative audit divi-
22 sion shall

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24 missions designated in AS 44.66.010 and of those programs and activ-
25 ities of agencies subject to termination as determined in the manner
26 set out in AS 44.66.020 and 44.66.030, and submit the audit, together
27 with a written report, not later than the first day of the regular
28 session of the legislature convening in each year set out with refer-
29 ence to boards, commissions, or agency programs whose activities are

1 subject to termination as prescribed in AS 44.66;

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

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

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

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

14 (6) have access at all times to the books, accounts, re-
15 ports, or other records, whether confidential or not, of every state
16 agency;

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

22 (8) complete studies and prepare reports, memoranda, or
23 other materials as directed by the Legislative Budget and Audit Com-
24 mittee;

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26 management of the University of Alaska and have the same right of
27 access as exists with respect to every other state agency;

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1 of the Department of Revenue; and

2 (B) submit the audit to the legislature not later than
3 the first day of the next regular legislative session;

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5 (A) conduct an audit of the resolution of disputed
6 royalties by the Department of Natural Resources and the resolu-
7 tion of disputed taxes by the Department of Revenue under AS 43.-
8 05.060 and 43.05.070; and

9 (B) prepare a report summarizing the results of the
10 audit and submit the audit and the report to the legislature not
11 later than the first day of the next regular legislative session;
12 the legislative auditor may disclose information made confiden-
13 tial by AS 43.05.230 to a committee of the legislature meeting in
14 executive session if the committee has adopted procedures to
15 protect the confidentiality of the information.

16 * Sec. 3. AS 34.45.470(a) is amended to read:

17 (a) A person who fails to pay or deliver property within the
18 time prescribed by this chapter may be required to pay to the depart-
19 ment interest at the [ANNUAL] rate of 12 percent a year [CALCULATED
20 UNDER AS 43.05.225] on the property or the value of it from the date
21 the property should have been paid or delivered.

22 * Sec. 4. AS 38.05.035 is amended by adding new subsections to read:

23 (g) If the department enters into negotiations to compromise or
24 settle a dispute between the department and a person as to a royalty
25 or net profit payment involving a claim that totals, with applicable
26 interest, \$10,000,000 or more, the commissioner shall, not later than
27 14 days after commencement of negotiations, advise the governor that
28 negotiations have commenced, and shall provide notice to the governor
29 at least once during each subsequent 30-day period that the

1 negotiations continue.

2 (h) If the department proposes to compromise or settle a dispute
3 between the department and a person as to a royalty or net profit
4 payment involving a claim that totals, with applicable interest,
5 \$10,000,000 or more, the commissioner may not enter into an agreement
6 to compromise or settle the dispute without first reviewing the
7 proposed compromise or settlement with the governor.

8 (i) The commissioner may not enter into a settlement or compro-
9 mise of a dispute between the department and a person as to a royalty
10 or net profit payment if the settlement or compromise provides that
11 information relevant to the settlement or compromise, or the terms of
12 the settlement or compromise, are confidential beyond the confiden-
13 tiality otherwise provided for by law.

14 (j) The commissioner shall maintain for review full documenta-
15 tion of a settlement or compromise of a dispute between the department
16 and a person as to a royalty or net profit payment.

17 * Sec. 5. AS 38.05.145 is amended by adding new subsections to read:

18 (c) Payment of the royalty to the state under the provisions of
19 AS 38.05.145 - 38.05.181 becomes due on the date and in the manner
20 specified in the lease or in a regulation adopted by the commissioner.

21 (d) If royalty to which the state is entitled under AS 38.05.180
22 is not paid when it becomes due under (c) of this section notwith-
23 standing AS 09.30.070, the royalty bears interest at the rate of five
24 percentage points above the annual rate charged member banks for
25 advances by the 12th Federal Reserve District, as established on the
26 first day of each calendar quarter, compounded quarterly.

27 * Sec. 6. AS 43.05.060 is amended by adding new subsections to read:

28 (b) If the department enters into negotiations to resolve a tax
29 dispute between the department and a taxpayer involving a claim that

1 totals, with applicable penalty and interest, \$10,000,000 or more, the
2 commissioner shall, not later than 14 days after commencement of
3 negotiations, advise the governor that negotiations have commenced,
4 and shall provide notice to the governor at least once during each
5 subsequent 30-day period that the negotiations continue.

6 (c) If the department proposes to enter into an agreement under
7 (a) of this section to resolve a tax dispute between the department
8 and a taxpayer involving a claim that totals, with applicable penalty
9 and interest, \$10,000,000 or more, the commissioner may not enter into
10 the agreement without first reviewing the proposed agreement with the
11 governor.

12 (d) In making an agreement under (a) of this section, neither
13 the department nor the attorney general may agree that information
14 relevant to the agreement, or the terms of the agreement, are confi-
15 dential beyond the confidentiality otherwise provided for by law. The
16 department must maintain for review full documentation of the agree-
17 ment.

18 * Sec. 7. AS 43.05.070 is amended by adding new subsections to read:

19 (c) If the department enters into negotiations to compromise or
20 settle a tax dispute between the department and a taxpayer involving a
21 claim that totals, with applicable penalty and interest, \$10,000,000
22 or more, the commissioner shall, not later than 14 days after com-
23 mencement of negotiations, advise the governor that negotiations have
24 commenced, and shall provide notice to the governor at least once
25 during each subsequent 30-day period that the negotiations continue.

26 (d) If the department proposes to compromise or settle a tax
27 dispute between the department and a taxpayer involving a claim that
28 totals, with applicable penalty and interest, \$10,000,000 or more, the
29 commissioner may not enter into the agreement without first reviewing

1 the proposed compromise or settlement agreement with the governor.

2 (e) In compromising a tax or penalty under this section, neither
3 the department nor the attorney general may agree that information
4 relevant to the compromise, or the terms of the compromise, are confi-
5 dential beyond the confidentiality otherwise provided for by law. The
6 department must maintain for review full documentation of the compro-
7 mise.

8 * Sec. 8. AS 43.05.225 is amended to read:

9 Sec. 43.05.225. INTEREST ON TAXES. Unless otherwise provided,
10 when a tax levied in this title is not paid on or before the date
11 prescribed for its payment, [BECOMES DELINQUENT] it bears interest at
12 the rate of five percentage points above the annual rate charged
13 member banks for advances by the 12th Federal Reserve District, as
14 established on the first day of each calendar quarter, compounded
15 quarterly [12 PERCENT A YEAR].

16 * Sec. 9. AS 47.23.025 is amended to read:

17 Sec. 47.23.025. RATES OF INTEREST. The rate of interest imposed
18 under AS 47.23.020(a)(2)(C) is 12 percent a year [SHALL EQUAL THE RATE
19 IMPOSED UNDER AS 43.05.225] or a lesser rate that is the maximum rate
20 of interest permitted to be imposed under federal law.
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A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 541 (Resources)

Page 6, after line 20:

Insert a new bill section to read:

"*Sec. 10. INTEREST ON DELINQUENT ROYALTY AND TAXES DUE ON EFFECTIVE DATE OF THIS ACT. The interest rate set by AS 38.05.145(d), added by sec. 5 of this Act, and AS 43.05.225, amended by sec. 8 of this Act does not apply to, or compound on, interest accrued before the effective date of this Act.

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 541 (Resources)

Page 6, after line 20:

Insert a new bill section to read:

"* Sec. 10. INTEREST ON DELINQUENT TAXES DUE ON EFFECTIVE DATE OF THIS ACT. For delinquent taxes due before and remaining unpaid on the effective date of this Act, interest on the delinquent taxes for the period between the date of delinquency and the effective date of this Act must be computed under AS 43.05.225 as that section read before its amendment by sec. 8 of this Act and, notwithstanding the amendment of AS 43.05.225 by this Act, may not be computed as compound interest."

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 541 (Resources)

Page 6, after line 20:

Insert a new bill section to read:

"*Sec. 10. INTEREST ON DELINQUENT ROYALTY AND TAXES DUE ON EFFECTIVE DATE OF THIS ACT. The interest rate set by AS 38.05.145(d), added by sec. 5 of this Act, and AS 43.05.225, amended by sec. 8 of this Act does not apply to, or compound on, interest accrued before the effective date of this Act.

6-1806R
Chenoweth
5/6/90

Original sponsor(s): REP. COTTEN, Navarre, Davidson, Gruenberg, Boyer, Sharp

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 541 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to certain agreements, compromises,
7 and settlements entered into by the Departments of
8 Natural Resources and Revenue; to legislative audit
9 of those departments and the release of a report of
10 the audits, that may include or refer to confidential
11 information, to the legislature and public; and to
12 collection and payments of royalties from state
13 resources, the interest rate on unpaid taxes and
14 royalties from state resources, and the interest rate
15 on overpaid taxes."

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

17 * Section 1. AS 05.15.095(c) is amended to read:

18 (c) Until June 30, 1991, a [A] delinquent fee bears interest at
19 the rate set by AS 43.05.225. After June 30, 1991, a delinquent fee
20 bears interest at the rate of 12 percent a year.

21 * Sec. 2. AS 24.20.271 is amended to read:

22 Sec. 24.20.271. POWERS AND DUTIES. The legislative audit divi-
23 sion shall

24 (1) conduct a performance post-audit of boards and com-
25 missions designated in AS 44.66.010 and of those programs and activ-
26 ities of agencies subject to termination as determined in the manner
27 set out in AS 44.66.020 and 44.66.030, and submit the audit, together
28 with a written report, not later than the first day of the regular
29 session of the legislature convening in each year set out with

1 reference to boards, commissions, or agency programs whose activities
2 are subject to termination as prescribed in AS 44.66;

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

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

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

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

15 (6) have access at all times to the books, accounts, re-
16 ports, or other records, whether confidential or not, of every state
17 agency;

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

23 (8) complete studies and prepare reports, memoranda, or
24 other materials as directed by the Legislative Budget and Audit Com-
25 mittee;

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

29 (10) periodically

1 (A) conduct a performance audit of the tax functions
2 of the Department of Revenue; and

3 (B) submit the audit to the legislature not later than
4 the first day of the next regular legislative session;

5 (11) annually

6 (A) conduct an audit of the resolution of disputed
7 royalties by the Department of Natural Resources and the resolu-
8 tion of disputed taxes by the Department of Revenue under AS 43.-
9 05.060 and 43.05.070; and

10 (B) prepare a report summarizing the results of the
11 audit and submit the audit and the report to the legislature not
12 later than the first day of the next regular legislative session;
13 the legislative auditor may disclose information made confiden-
14 tial by AS 43.05.230 to a committee of the legislature meeting in
15 executive session if the committee has adopted procedures to
16 protect the confidentiality of the information.

17 * Sec. 3. AS 34.45.470(a) is amended to read:

18 (a) Until June 30, 1991, a [A] person who fails to pay or
19 deliver property within the time prescribed by this chapter may be
20 required to pay to the department interest at the annual rate calcu-
21 lated under AS 43.05.225 on the property or the value of it from the
22 date the property should have been paid or delivered. After June 30,
23 1991, a person who fails to pay or deliver property within the time
24 prescribed by this chapter may be required to pay to the department
25 interest at the rate of 12 percent a year on the property or the value
26 of it from the date the property should have been paid or delivered.

27 * Sec. 4. AS 38.05.035 is amended by adding new subsections to read:

28 (g) If the department enters into negotiations to compromise or
29 settle a dispute between the department and a person as to a royalty

1 or net profit payment involving a claim that totals, with applicable
2 interest, \$10,000,000 or more, the commissioner shall, not later than
3 14 days after commencement of negotiations, advise the governor that
4 negotiations have commenced, and shall provide notice to the governor
5 at least once during each subsequent 30-day period that the nego-
6 tiations continue.

7 (h) If the department proposes to compromise or settle a dispute
8 between the department and a person as to a royalty or net profit
9 payment involving a claim that totals, with applicable interest,
10 \$10,000,000 or more, the commissioner may not enter into an agreement
11 to compromise or settle the dispute without first reviewing the
12 proposed compromise or settlement with the governor.

13 (i) The commissioner may not enter into a settlement or compro-
14 mise of a dispute between the department and a person as to a royalty
15 or net profit payment if the settlement or compromise provides that
16 information relevant to the settlement or compromise, or the terms of
17 the settlement or compromise, are confidential beyond the confiden-
18 tiality otherwise provided for by law.

19 (j) The commissioner shall maintain for review full documenta-
20 tion of a settlement or compromise of a dispute between the department
21 and a person as to a royalty or net profit payment.

22 * Sec. 5. AS 38.05.145 is amended by adding new subsections to read:

23 (c) Payment of the royalty to the state under the provisions of
24 AS 38.05.145 - 38.05.181 becomes due on the date and in the manner
25 specified in the lease or in a regulation adopted by the commissioner.

26 (d) If, after June 30, 1991, royalty to which the state is
27 entitled under AS 38.05.180 is not paid when it becomes due under (c)
28 of this section notwithstanding AS 09.30.070, the royalty bears in-
29 terest at the rate of five percentage points above the annual rate

1 charged member banks for advances by the 12th Federal Reserve Dis-
2 trict, as established on the first day of each calendar quarter,
3 compounded quarterly.

4 * Sec. 6. AS 43.05.060 is amended by adding new subsections to read:

5 (b) If the department enters into negotiations to resolve a tax
6 dispute between the department and a taxpayer involving a claim that
7 totals, with applicable penalty and interest, \$10,000,000 or more, the
8 commissioner shall, not later than 14 days after commencement of
9 negotiations, advise the governor that negotiations have commenced,
10 and shall provide notice to the governor at least once during each
11 subsequent 30-day period that the negotiations continue.

12 (c) If the department proposes to enter into an agreement under
13 (a) of this section to resolve a tax dispute between the department
14 and a taxpayer involving a claim that totals, with applicable penalty
15 and interest, \$10,000,000 or more, the commissioner may not enter into
16 the agreement without first reviewing the proposed agreement with the
17 governor.

18 (d) In making an agreement under (a) of this section, neither
19 the department nor the attorney general may agree that information
20 relevant to the agreement, or the terms of the agreement, are confi-
21 dential beyond the confidentiality otherwise provided for by law. The
22 department must maintain for review full documentation of the agree-
23 ment.

24 * Sec. 7. AS 43.05.070 is amended by adding new subsections to read:

25 (c) If the department enters into negotiations to compromise or
26 settle a tax dispute between the department and a taxpayer involving a
27 claim that totals, with applicable penalty and interest, \$10,000,000
28 or more, the commissioner shall, not later than 14 days after com-
29 mencement of negotiations, advise the governor that negotiations have

1 commenced, and shall provide notice to the governor at least once
2 during each subsequent 30-day period that the negotiations continue.

3 (d) If the department proposes to compromise or settle a tax
4 dispute between the department and a taxpayer involving a claim that
5 totals, with applicable penalty and interest, \$10,000,000 or more, the
6 commissioner may not enter into the agreement without first reviewing
7 the proposed compromise or settlement agreement with the governor.

8 (e) In compromising a tax or penalty under this section, neither
9 the department nor the attorney general may agree that information
10 relevant to the compromise, or the terms of the compromise, are confi-
11 dential beyond the confidentiality otherwise provided for by law. The
12 department must maintain for review full documentation of the compro-
13 mise.

14 * Sec. 8. AS 43.05.225 is amended to read:

15 Sec. 43.05.225. INTEREST ON TAXES. Unless otherwise provided,

16 (1) until June 30, 1991, when a tax levied in this title is
17 not paid on or before the date prescribed for its payment, [BECOMES
18 DELINQUENT] it bears interest at the rate of 12 percent a year;

19 (2) after June 30, 1991, when a tax levied in this title is
20 not paid on or before the date prescribed for its payment, it bears
21 interest at the rate of five percentage points above the annual rate
22 charged member banks for advances by the 12th Federal Reserve Dis-
23 trict, as established on the first day of each calendar quarter,
24 compounded quarterly.

25 * Sec. 9. AS 47.23.025 is amended to read:

26 Sec. 47.23.025. RATES OF INTEREST. Until June 30, 1991, the
27 [THE] rate of interest imposed under AS 47.23.020(a)(2)(C) shall equal
28 the rate imposed under AS 43.05.225 or a lesser rate that is the
29 maximum rate of interest permitted to be imposed under federal law.

1 After June 30, 1991, the rate of interest imposed under AS 47.23.-
2 020(a)(2)(C) is 12 percent a year or a lesser rate that is the maximum
3 rate of interest permitted to be imposed under federal law.
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CS HB 541 (Fin.) Synopsis

CS HB 541 (Fin) deals with three principal matters relating to oil and gas revenue disputes: LB& A Report on Royalty Tax Matters, Internal, Independent Review of Major Oil & Gas Settlements and Interest Provisions on Outstanding Royalty and Tax Payments. A sectional analysis follows:

Sec. 1 (technical): Amends AS 05.15.095 to keep interest rates on payments relating to Games of Skill and Chance at 12% simple. (Amendment by legislative drafters.)

A. LB& A Report on Royalty Tax Matters

Sec. 2: This section amends AS 24.20.271 by adding new subsections to require the Legislative Auditor to audit and report periodically to the Legislature on tax functions, including an annual report on the resolution of royalty and tax disputes. (Amendment proposed by LB&A.)

Sec. 3 (technical): Amends AS 34.45.470(a) to keep interest rates on payments relating to unclaimed property at 12% simple. (Amendment by legislative drafters.)

B. Internal, Independent Review of Major Oil & Gas Settlements

Sec. 4: To ensure that major settlements of the State's royalty litigation under AS 38.05 are in the public interest, this section requires the Commissioner of Natural Resources, before settling any royalty dispute involving a claim greater than \$10 million for a calendar year five years or more prior to the current year, to obtain an independent, internal review of the proposed settlement by an individual who was not involved in negotiating the settlement.

The review will specify initial objectives and how they are met and will consider how the settlement affects other outstanding disputes. Additionally, this section provides that: the Commissioner shall notify the Governor when negotiations have begun; 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; no settlement shall extend confidentiality otherwise provided by law; and full documentation shall be maintained for review. (Amendments by House Resources Committee and House Finance Committee.)

Secs. 6 and 7: To ensure that major settlements of the State's tax litigation under AS 43.05.060 or AS 43.05.070 are in the public interest, these identical sections require the Commissioner of Revenue, before settling any tax dispute involving amounts greater than \$10 million for a tax year five years or more prior to the current year, to obtain an independent, internal review of the proposed settlement by an individual who was not involved in negotiating the settlement.

Sections 6 and 7 contain language similar to Section 4, except that the minimum hiatus between the time the Commissioner receives a final settlement offer and the date s/he approves the settlement is only seven days for tax cases. Unlike the royalty case, in which all royalty payers are bound together in a single case, in tax cases each company is separate and settlements are routine. For this reason, the minimum hiatus is reduced to seven days. Nothing in statute limits the Commissioner's discretionary power to extend that period to complete a settlement review, or for any other purpose. (Amendment by House Resources Committee and House Finance Committee.)

(OVER)

From the desk of

Richard A. Fineberg
Juneau, Alaska 99801

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

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

Date: April 2, 1990
(rev. #2)

Representative Curt Menard
Co-Chair, House Resources Committee

Re: Comments on HB 541 (Oil & Gas Settlement Review)

You have now heard testimony for three days on measures dealing with oil and gas revenue disputes. I believe the most important of these bills is HB 541 (Cotten), which provides straight-forward statutory guidelines for review of settlements for a tax or royalty claim greater than \$10 million, on the books for at least one year and involving a year at least five years prior to the current year.

Industry representatives have opposed HB 541. More surprisingly, the Departments of Law and Natural Resources have also expressed reservations. Since this bill simply codifies review procedures the Commissioner would use to pass judgement on settlements of this importance, lack of departmental support is surprising. While some of the arguments against HB 541 have merit at first glance, I believe these arguments are answerable.

As I understand them, industry and department staffs have raised five major points concerning HB 541. These arguments, along with the response to each, follow:

1. The Commissioner could circumvent this statute simply by hiring someone to do what the Commissioner wants.

Response: The rubber-stamp problem is unavoidable and is no reason not to enact this statute. The fact is, at this time there are no guidelines in place to govern this major policy area. With codified procedures in place specifying internal, independent review, you are certainly less likely to see a rubber-stamp settlement than without such procedures. (To cure the rubber-stamp problem by setting up an independent review process outside the department was considered and rejected during the drafting of HB 541 because such a proposal would add a new layer to an already complicated process.)

2. The existence of a review procedure would undermine the negotiators' status with its industry counterparts.

Response: It is not clear why this is review would undermine the settlement process. HB 541 merely sets out in statute a review similar to what a Commissioner should do before taking a major policy step. Industry negotiators must be aware that settlements involving hundreds of millions of dollars are public policy issues that can and should be reviewed by elected public officials before they are put into place.

3. A settlement of this kind of case is too complex to be reviewed in 14 days.

Response: (A) In fact, I conducted a review similar to the one set out in HB 541 in the 1988 ARCO income tax settlement. That review required less than 14 days. (B) Nothing in the proposed statute prevents the Commissioner from beginning the independent review earlier; the 14 day hiatus specified in HB 541 is simply a cooling off-period, not a review mechanism.

4. The Commissioner of Natural Resources has already specified that she will get a "second opinion" from the litigating attorneys in the royalty litigation.

Response: (A) Even if this were true, what about future commissioners? Shouldn't matters of this magnitude have statutory guidelines? (B) Nothing in the proposed review framework prevents the Commissioner from seeking the counsel of the litigating attorneys; the review framework established by HB 541 simply guarantees the litigating team a sounding board to present its viewpoint. This is necessary because policy makers have sometimes discounted the opinions of litigating attorneys in previous settlements because the attorneys were felt to have a vested interest in continued litigation.

5. This review will not contribute to public review by putting more information into the public record.

Response: This statute was designed to improve policy execution, not development or review. However, it is possible to amend this legislation by requiring

the Commissioner to make a summary of a major settlement public. (Since settlements covered by HB 541 involve tax years five years prior, such a provision should not jeopardize current market information.)

The Department of Revenue has proposed adding sections pertaining to interest rates and legislative oversight measures for HB 541. While legislative oversight can improve the State's policy formulation and review, the essence of HB 541 deals with policy execution. Post-settlement legislative review is no substitute for statutory guidelines for the execution of major oil and gas revenue dispute settlements.

This analysis supports the conclusion that the need for codified, internal, independent review of major oil and gas revenue disputes outweighs the arguments against HB 541. In view of the amounts at issue in outstanding cases and the documented questions concerning past settlements, I believe HB 541 should be enacted this year.

From the desk of


Richard A. Fineberg
Juneau, Alaska 99801

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

Via Telefax — Return Phone or Fax 907 / 463-3568

To: Rep. Sam Cotten
Speaker of the House

Date: April 19, 1990

Fax #: 907 / 465-2418

No. of Sheets (including this sheet): 3

Re: Effects of Floating Interest Rates

Last night you requested tables comparing the effects of applying different interest rates to a \$100,000 outstanding tax balance. The attached tables indicate that:

Table 1. Over the last five years, the Department of Revenue's proposed interest rate of 5% above the federal funds rate, compounded quarterly, would increase the taxpayer's total payment on outstanding assessment balances by approximately 10% over payments at the current statutory rate.

Table 2. If the floating rate proposed by DOR had been in effect since 1980, the relatively high interest rates of the early 1980's would have been reflected in higher taxpayer payments. Because the holder of that money would have been able to earn a higher return on that money, the State would have been well served by the DOR proposal.

To summarize: Based on these data, my conclusion is that in recent years the difference between the current statutory 12% interest rates and the rates proposed by Department of Revenue is approximately 10% over a five-year period. When interest rates fluctuate, the DOR proposal will track those changes more accurately.

These are preliminary data. To ensure that these tables correctly reflect the data the Department of Revenue provided the House Resources Committee, I have requested prompt review of these tables by the Department of Revenue.

Table 1

SIMPLE, COMPOUND AND FLOATING INTEREST RATE COMPARISONS, 1985-1990

<u>Date</u>	<u>12% Simple (current law)</u>	<u>12% Compound Annual</u>	<u>12% Compound Quarterly</u>	<u>14% Compound Quarterly</u>	<u>16% Compound Quarterly</u>	<u>Federal Funds + 5% Compound Quarterly</u>
1/1/85	100,000	100,000	100,000	100,000	100,000	100,000
4/1/85			103,000	103,500	104,000	103,250
7/1/85			106,090	107,123	108,160	106,477
10/1/85			109,273	110,872	112,486	109,804
1/1/86	112,000	112,000	112,551	114,752	116,986	113,235
4/1/86			115,927	118,769	121,665	116,632
7/1/86			119,405	122,926	126,532	119,986
10/1/86			122,987	127,228	131,593	123,135
1/1/87	124,000	125,440	126,677	131,681	136,857	126,367
4/1/87			130,477	136,290	142,331	129,685
7/1/87			134,392	141,060	148,024	133,089
10/1/87			138,423	145,997	153,945	136,749
1/1/88	136,000	140,493	142,576	151,107	160,103	140,509
4/1/88			146,853	156,396	166,507	144,373
7/1/88			151,259	161,869	173,168	148,344
10/1/88			155,797	167,535	180,094	152,609
1/1/89	148,000	157,352	160,471	173,399	187,298	156,996
4/1/89			165,285	179,468	194,790	161,706
7/1/89			170,243	185,749	202,582	166,557
10/1/89			175,351	192,250	210,685	171,554
1/1/90	160,000	176,234	180,611	198,979	219,112	176,700

This table compares the effects of simple versus compound and floating interest rates over the last five years.

Amounts in the right hand column are pegged to federal fund interest rates as reported by Department of Revenue.

4/19/90 PRELIMINARY DATA; SUBJECT TO REVISION

TABLE 2

SIMPLE, COMPOUND AND FLOATING INTEREST RATE COMPARISONS, 1980-1990

<u>Date</u>	<u>12% Simple (current law)</u>	<u>12% Compound Annual</u>	<u>12% Compound Quarterly</u>	<u>14% Compound Quarterly</u>	<u>16% Compound Quarterly</u>	<u>Federal Funds + 5% Compound Quarterly</u>
1/1/80	100,000	100,000	100,000	100,000	100,000	100,000
4/1/80			103,000	103,500	104,000	104,500
7/1/80			106,090	107,123	108,160	108,680
10/1/80			109,273	110,872	112,486	113,027
1/1/81	112,000	112,000	112,551	114,752	116,986	118,113
4/1/81			115,927	118,769	121,665	123,429
7/1/81			119,405	122,926	126,532	129,291
10/1/81			122,987	127,228	131,593	135,433
1/1/82	124,000	125,440	126,677	131,681	136,857	141,189
4/1/82			130,477	136,290	142,331	147,189
7/1/82			134,392	141,060	148,024	153,445
10/1/82			138,423	145,997	153,945	159,199
1/1/83	136,000	140,493	142,576	151,107	160,103	164,572
4/1/83			146,853	156,396	166,507	170,126
7/1/83			151,259	161,869	173,168	175,868
10/1/83			155,797	167,535	180,094	181,803
1/1/84	148,000	157,352	160,471	173,399	187,298	187,939
4/1/84			165,285	179,468	194,790	195,457
7/1/84			170,243	185,749	202,582	202,298
10/1/84			175,351	192,250	210,685	209,378
1/1/85	160,000	176,234	180,611	198,979	219,112	216,183
4/1/85			186,029	205,943	227,877	223,209
7/1/85			191,610	213,151	236,992	230,184
10/1/85			197,359	220,611	246,472	237,378
1/1/86	172,000	197,382	203,279	228,333	256,330	244,796
4/1/86			209,378	236,324	266,584	252,139
7/1/86			215,659	244,596	277,247	259,388
10/1/86			222,129	253,157	288,337	266,197
1/1/87	184,000	221,068	228,793	262,017	299,870	273,185
4/1/87			235,657	271,188	311,865	280,356
7/1/87			242,726	280,679	324,340	287,716
10/1/87			250,008	290,503	337,313	295,628
1/1/88	196,000	247,596	257,508	300,671	350,806	303,757
4/1/88			265,234	311,194	364,838	312,111
7/1/88			273,191	322,086	379,432	320,694
10/1/88			281,386	333,359	394,609	329,914
1/1/89	208,000	277,308	289,828	345,027	410,393	339,399
4/1/89			298,523	357,103	426,809	349,581
7/1/89			307,478	369,601	443,881	360,068
10/1/89			316,703	382,537	461,637	370,870
1/1/90	220,000	310,585	326,284	395,926	480,102	381,996

This table compares the effects of simple versus compound and floating interest rates over the last ten years.

Amounts in the right hand column are pegged to federal fund interest rates as reported by Department of Revenue.

4/19/90 PRELIMINARY DATA: SUBJECT TO REVISION

CSHB 541 (Resources)

Department of Revenue Comments

House Finance Committee

April 19, 1990

The committee is considering CSHB 541 (Resources), which currently embodies a number of provisions suggested by the Department of Revenue. The legislation will improve the process for resolving disputes between the state and the oil industry over back taxes and royalties.

Specifically, the provisions prohibiting extra confidentiality in settlements, requiring documentation of settlements, and the legislative oversight provision together provide for less secrecy and more accountability than under the law today. This is good public policy. We note that these provisions apply to tax and royalty disputes, but not to pipeline tariff disputes.

Additionally, the interest provisions improve the "back-taxes" resolution by removing a disincentive to pay -- or an incentive to drag out a dispute as long as possible. The current interest provision is outdated and needs revision; the rate should follow the market. The department would prefer that the interest rate be uniform for all taxpayers and all tax types.

The department does not support the notification provisions in sections 3 (AS 43.05.060(b)) and 4 (AS 43.05.070(c)). First, program

responsibility should clearly reside in a single program. To require notification is to imply shared responsibility; shared responsibility means loss of accountability. Second, good managers will invoke the procedures outlined here in appropriate cases, whether or not the provisions are in statute; bad managers will avoid these guidelines -- or give them pro forma compliance -- whether or not the provisions are in statute. Attached is a proposed amendment deleting this provision; for consistency, it is deleted from the royalty provision as well as the tax provisions.

Finally, although the department is comfortable with the internal review provisions in the bill, the department does not support the seven day restriction on the ability to approve an agreement. The provision may be too restrictive in some cases, and would not be long enough in others. Again, program responsibility must reside with the program manager. The attached amendment would delete this provision from the two tax provisions, and, for consistency, also from the royalty provision.

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

April 18, 1990

The Honorable Ronald L. Larson
Co-Chairman, House Finance Committee
and

The Honorable Lyman F. Hoffman
Co-Chairman, House Finance Committee

Dear Co-Chairmen Larson and Hoffman:

The Division of Legislative Audit Division has reviewed CS for House Bill No. 541 (Resources). The bill provides for this Division's involvement in the review of the Department of Revenue's resolution of disputed taxes and also for performance audits of the Department of Revenue tax functions. We support the involvement of the Audit Division in this area, as does Senator Kerttula, Chairman of the Legislative Budget and Audit Committee.

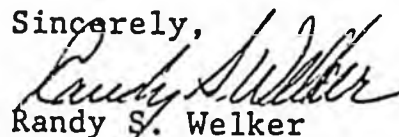
We have proposed amending language to Section 1 of the bill to better define the requirements for audit review. The amended language is enclosed for your consideration. The proposed language requires periodic performance audits of the tax functions of the Department of Revenue as opposed to annual audits. The Department has a variety of tax programs, and we would envision conducting a detailed review annually of one or two specific programs. On a rotating basis, we would cover all tax programs. This will lessen the impact on the Audit Division and better fit the purpose of performance audits.

The proposed language also includes the resolution of disputed royalties by the Department of Natural Resources along with the resolution of disputed taxes by the Department of Revenue.

Finally, we have also enclosed a fiscal note to accompany this amended language. The fiscal note provides for two Auditor positions, most likely positioned in Anchorage to implement the new responsibilities.

If we can provide any additional information, please contact me at 465-3830.

Sincerely,



Randy S. Welker
Legislative Auditor
Division of Legislative Audit

Enclosure

Lenient laws give oil industry a good tax stall

It's a wonder the oil companies complain so much about Alaska taxes and royalties. They don't pay much of them anyway.

The Legislature is beginning to wrestle again with the problem of how to make oil companies pay the billions of dollars they owe us. The companies' dilatory tactics in administrative hearings and in court have choked the state's revenue flow and put our accounts years behind schedule.

Platoons of lawyers are tied up in eternal litigation, but that's only today's problem. The logjam sends the wrong signal to



Fred Pratt

all businesses, telling them Alaska is a place where they can stall the government forever, and where the government and courts can't resolve sophisticated business questions.

According to a legislative report last month, the state and Alaska oil companies have more than \$4.4 billion in taxes, royalties and pipeline tariff cases, not counting interest due. That only includes North Slope oil royalties through 1986, and income taxes only through 1985.

This concerns other businesses as well. Mining companies are embroiled in similar disputes, and whatever "solution" the Legislature devises will be read as a sign of Alaska's business climate for the 1990s.

The first steps should probably be to change lenient state laws that allow the large companies to profit from delaying their tax payments so long.

California requires taxpayers to prepay their taxes in order to challenge state assessments, for instance, but we do not. One change might be to require prepayment at some point during a lengthy major assessment appeal.

Late tax payments in Alaska bear only a 12 percent interest rate, and that's simple interest, not compounded. At times of high interest rates the companies are essentially borrowing operating revenue from the state at lower than market rates when they delay payments to us.

House Bill 519, one of five related bills considered in House Resources Committee hearings last week, would raise the interest rate to 20 percent. Another solution might be to put disputed payments in escrow accounts, where the money wouldn't be available for the Legislature to spend.

With an escrow account our politicians wouldn't spend the money and later be faced with repaying it if they lose in court. That's the situation that impelled former Gov. Jay Hammond and the 1981 Legislature to repeal the separate accounting of corporate income tax, even when it was later found to be constitutional.

HB 519 would also require oil companies to pay up their back taxes before they can buy new state oil leases. That would be OK as long as they want our new oil leases badly enough, but Alaska oil leases haven't been too hot an item for the past five years.

Another provision in HB 519 would establish an office of administrative adjudication for tax disputes, headed by an administrative law judge. That could be a move in the right direction, building a judicial expertise in business matters.

Most large corporations are chartered in Delaware for two reasons: Delaware's corporate and tax laws are favorable, and Delaware's chancery court is skilled and experienced in resolving cases of corporate law that would overwhelm most state judges who handle business cases between drunken drivers and divorces.

We might not want to be another Delaware, but we should insist on a top quality judiciary and bureaucracy. As Delaware shows, efficient government can be a "resource" every bit as valuable to our economy as gold or oil.

■ *Free-lance journalist Fred Pratt has been covering Alaska business and politics for the past 18 years.*

STATE OF ALASKA

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

M E M O R A N D U M

DATE: May 3, 1990

TO: The Honorable Bettye Fahrenkamp
Alaska State Senate
Chair, Senate Resources Committee

FROM: Randy S. Welker *Randy*
Legislative Auditor

RE: House Bill 541 Confidentiality Concerns

We have considered the concerns raised over the ability to maintain the confidentiality of the audit report provided for in lines 8 through 10 on page 3 of the referenced bill.

We agree that no procedure can guarantee the confidentiality of information in a written report provided to all members of the Legislature. The fewer copies that are available and the closer they are controlled, the better. In any event, we would not include confidential information in a report unless it was critical to understanding a particular significant issue. The report we prepare for public distribution would contain as much information as possible without breaching confidentiality.

The following options are provided for your consideration as possible amendments.

Option 1. Delete the provisions that relate to a written report containing confidential information and add language that authorizes the Legislative Auditor to disclose confidential information to a committee of the Legislature meeting in executive session if the committee has adopted procedures to protect the confidentiality of the information. This procedure would be similar to the verbal presentation process now followed by the Resources Committee in meetings with the Executive branch.

Having conducted the audit of the resolution of disputed royalties and taxes, the Legislative Auditor should attend any committee presentations by the administration to provide an informed and objective perspective on behalf of the Legislature.

OPTION 1

Page 3, lines 9-12 Delete: audit[s 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 3, after paragraph (11) Add: The Legislative Auditor may disclose information made confidential by AS 43.05.230 to a committee of the legislature meeting in executive session if the committee has adopted procedures to protect the confidentiality of the information.

OPTION 2

Page 3, paragraph (11)'C) Amended to read: (C) submit the audit and the unedited report prepared under (B) of this paragraph to the [legislature] Legislative Budget and Audit Committee meeting in executive session not later than the first day of the regular legislative session. Upon approval by the Legislative Budget and Audit Committee, the edited report shall be released to the public and one confidential copy of the unedited report shall be filed with the President of the Senate and the Speaker of the House of Representatives. The presiding officers shall establish procedures to provide for the confidential reading of the report by a member of the respective body. At the close of the legislative session, the presiding officers shall return the confidential report to the Legislative Auditor's office for permanent filing. Subsequent readings of the report by individual legislators shall be authorized by the either presiding officer or the chairman of the Legislative Budget and Audit Committee under procedures established by the Legislative Auditor and approved by the chairman.

Option 2. Amend lines 11 through 13 on page 3 to limit the distribution of a report containing confidential information. We suggest that the report would be approved by the Legislative Budget and Audit (LBA) Committee in an executive session presentation to members only; however, after LBA Committee approval, a copy would be filed with the President of the Senate and the Speaker of the House of Representatives. The presiding officers would be required to establish procedures to provide for the confidential reading of the report by a member of the respective body. At the end of each legislative session, the presiding officers should return the confidential copy of the report to be permanently filed in the Legislative Auditor's office. Subsequent readings of the report shall be authorized by either presiding officer or the Chairman of the LBA Committee under procedures established by the Legislative Auditor and approved by the Chairman.

In our opinion, the best and most restrictive option would be to not produce a written report containing confidential information. We would maintain confidential records in the Audit Division to support and document our review, our testimony, and the report prepared for public distribution.

The public report should be able to be written in a manner that adequately informs the reader of the policy issues and critical findings and recommendations without the necessity of disclosing proprietary information. The public report coupled with the confidential presentation provided for in Option 1 should adequately inform the Legislature. This approach should provide greater assurance to the taxpayer and protect the State's best interests.

cc: Senator Kerttula
Senator Eliason
Senator Frank
Senator Halford
Senator Sturgulewski
Senator Zharoff
Representative Cotten

PROPOSED AMENDMENTS TO CSHB 541 (Finance) (dealing with various tax and royalty issues)

Department of Revenue
Hugh Malone May 2, 1990

I suggest some specific amendments to HB 541.

Several of the amendments deal only with clarification or technical conforming changes, and are self-explanatory.

The other amendments deal with the issues in the bill, and I believe will both strengthen and simplify the legislation.

First, I recommend that the internal review required by the bill apply to all settlements over the threshold amount (which is \$10 million in the bill). There does not seem to be any sense in requiring review only for settlements that have "aged" for five or more years. One of the amendments would accomplish this consistency.

Second, I believe that the scope of the separate review should clearly be limited to determining whether the settlement meets the goals established for the settlement. These goals are established early in the process. It should be clear that the reviewer does not have the responsibility to set these goals after the fact as part of the review process. There is a proposed change to accomplish this.

Third, based on my experience in coordinating inter-agency projects, I strongly recommend that the reviewer not be required to determine whether there is a possible adverse impact on all the litigation in which the state is involved. This would not only be cumbersome, but may establish a divided responsibility that makes it difficult for even the governor to determine who is responsible for the project management. I am submitting language that would ameliorate this possibility.

Finally, I believe that there should be a uniform interest rate schedule that applies to all taxes due the state. Setting a \$1 million floor for the floating rate raises difficulties in applying the rate to different tax types and periods. For example, suppose that a taxpayer owed \$900,000 for fisheries business license taxes for one operation, and another \$250,000 for corporate income tax for another or the same tax year. Would the fixed rate or the floating rate apply? Similarly, would the floating rate apply to an oil producer which owed \$1.1 million in oil production tax over 15 different reporting periods? I believe that the floating rate should apply to all taxes due, just as the IRS does now. An amendment to accomplish this is submitted for the committee's consideration. A conforming amendment is offered for the royalty interest provision.

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSHB 541 (Finance)

AMENDMENT

EFFECT

Page 3, line 3, after "the":

Insert "next"

Clarifies that audit is to be submitted promptly.

Page 3, line 6, after "and":

Insert "the resolution of"

Clarifies subject of annual audit

Page 3, line 7, after "Revenue"

Insert "under AS 43.05.060 and
AS 43.05.070"

Same

Page 3, line 9:

Delete "audits", insert "audit"

Makes consistent with paragraph (A)

Page 3, line 13, after "the"

Insert "next"

Clarifies that audit and report are to be submitted promptly

Page 3, line 24:

Delete "penalty and"

There are no penalty provisions for royalties

Page 4, line 3, after "applicable"

Delete "penalty and"

Same

Department of Revenue
May 2, 1990

Age of Dispute

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSHB 541 (Finance)

AMENDMENT

EFFECT

Page 5, lines 18 - 20:

Delete "and that relates to a calendar
year that is five or more years before
the current year,"

Deletes reference to
age of dispute

Page 5, lines 27 - 28:

Delete "and that relates to a calendar
year that is five or more years before
the current year,"

Same

Page 6, lines 28 and 29:

Delete "and that relates to a calendar
year that is five or more years before
the current year,"

See above

Page 7, lines 7 - 9:

Delete "and that relates to a calendar
year that is five or more years before
the current year,"

See above

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSHB 541 (Finance)

AMENDMENT

EFFECT

Page 6, line 8 after "must"

Delete "specify the objectives of the
department's"

Clarifies that the
objectives are set by
the commissioner, not
by the reviewer

Insert "contain a statement of the
department's objectives in the"

Page 6, line 13:

Delete "whether"; insert "how"

Modifies review of other
disputes

Delete "adversely"

Page 6, line 14:

Delete "litigation"; insert "revenue
dispute"

Same

Page 7, line 17 after "must"

Delete "specify the objectives of the
department's"

Clarifies that the
objectives are set by
the commissioner, not
by the reviewer

Insert "contain a statement of the
department's objectives in the"

Page 7, line 22 :

Delete "whether"; insert "how"

Modifies review of other
disputes

Delete "adversely"

Page 7, line 23:

Delete "litigation"; insert "revenue
dispute"

Same

~~Delete all material~~

~~See above~~

Department of Revenue
May 2, 1990

Tax & Royalty Interest

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSHB 541 (Finance)

AMENDMENT

EFFECT

Page 5, lines 9 and 10:

Delete "and the total amount of royalty
due exceeds \$1,000,000"

Deletes \$1,000,000 floor
for royalty interest
rate

Page 8, lines 9 and 10, after "year":

Delete all material
Insert "under AS 05.15.095(c),
AS 34.45.470(a), and AS 47.23.025"

Deletes \$1,000,000
floor for tax interest
Retains 12% interest
for gaming, unclaimed
property and child support

Page 8, lines 14 and 15 after "quarterly"

Delete all material

Same

Page 8, lines 16 - 18:

Delete all material

Conforms to single rate
set out above

SCS CSHB 541 (Fin) by Cotten...relating to
agreements and settlements entered into by
Departments of Natural Resources and
Revenue

For many years, the Legislature has 'been in the dark' about tax settlements and disputed royalty payments. The bill, approved by the Departments of Law, Natural Resources and Revenue, merely has Legislative Budget and Audit conduct periodic performance audits of the tax functions in the Department of Revenue and submit it to the legislature. Disputed Royalty payments will be treated in the same manner on an annual basis. Information collected by the Legislative Auditor will be treated confidentially.

Additionally, new language provides that the departments will advise the Governor when negotiations begin--and provide him with monthly updates--in royalty disputes over \$10 million. Any compromise the department proposes must be reviewed by the Governor prior to signature.

Finally, the bill calls for full documentation of settlements or compromises so that continuity can be continued during possible changes in Commissioners and/or Administrations.

Sen. Fahrenkamp:

Senate Finance took out all the controversial
sections re: Interest. Would you
carry the bill for ~~the~~ Sam?
Bill Vile



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

April 3, 1989

MEMORANDUM

TO:

ATTN:

FROM: Ginny Fay *afay*
Legislative Analyst

RE: Incentives to Settle Outstanding Corporate Tax Liabilities
Research Request 89.328

You requested information regarding procedures in other states to encourage settlement of state income tax liabilities. You are interested in changing Alaska's collection, interest, and penalties procedures for businesses that are deficient in paying their state income taxes. You asked that we discuss means of accomplishing this in light of practices at the federal level and in other states. Additionally, you wanted to know if other states have special tax courts and/or administrative judges to handle tax liability cases. You asked if other states required or allowed prepayment of liabilities pending the outcome of tax litigation. You are particularly interested in California's constitution and statutes that require prepayment of any disputed tax liabilities.

The major conclusions reached in this memorandum are that the Alaska Legislature could encourage prompt settlement of tax deficiencies by changing AS 43.05.225 to specify an interest rate greater than the present 12 percent simple interest charge. Interest could be tied to a floating financial indicator--such as the short-term Treasury Bill rate or Prime rate charged by major banks--plus some premium (perhaps three to five percent). Doing so would ensure that a business owing the state back-taxes does not receive use of its tax deficiency at a below market rate of interest. Alternatively, Alaska could adopt a procedure similar to California, where any disputed tax liabilities must be prepaid in order to have judicial standing.

Further incentive could be provided by charging compound interest on the outstanding deficiency (including penalties and interest charges). Presently, a business can pay off the principal of a deficiency owed the state and indefinitely appeal its case in court without paying any interest on outstanding penalty or interest charges. A compound interest provision could discourage this practice. Another incentive would be to specify that penalty and interest charges must be paid before the principal of the deficiency can be reduced.

April 3, 1989
Page 2

Interest Rate and Penalty Schedules

Alaska Statute 43.05.225 specifies a 12 percent (simple) interest rate to be charged on delinquent taxes. AS 43.05.220 assigns an additional civil penalty of five percent of the delinquency per month for failure pay taxes or file the proper forms. The penalty may not exceed 25 percent of the outstanding deficiency. Interest and penalty charges begin to accrue from the due date of the return (in cases of failure to file) or from the date the return is filed (in cases of underpayment of taxes). Conversely, the state is required to begin paying 12 percent annual interest on any overpayment of corporate income taxes if the taxpayer does not receive a return within 90 days of filing. None of the national tax organizations we contacted were able to supply a central compilation of interest and penalty charges in other states.

The Internal Revenue Service (IRS) charges a variable interest rate on delinquent taxes based on the short-term federal Treasury Bill rate for a given quarter. For deficiencies, the rate charged is the 90 day T-Bill rate plus three percentage points. For overpayments (refunds), it is the T-Bill rate plus two points. The IRS date of claim provisions are the same as Alaska's. (Attachment A is House Research Agency memorandum 87.313, which includes copies of the relevant Alaska and federal laws.) Alaska is a signatory to the federal Tax Economic Fiscal Responsibility Act (TEFRA), which allows the state's Department of Revenue (DOR) to adopt most provisions of the IRS Tax Code. Alaska's treatment of deficiencies and refunds is an obvious departure from the IRS approach.

According to Carl Meyer, DOR chief of Audit Appeals, one factor that acts as a disincentive for prompt settlement and payment of outstanding tax deficiencies is the simple interest rate charged by the state. A taxpayer must appeal a state assessment of tax deficiency within 60 days of the mailing date of the department's notice of action (see Attachment B for details of the appeals procedure). Once a request for appeal is filed, it is common for a corporation to pay off the principal of the deficiency pending the outcome of the appeal process.

The problem with this is that the state's assessment of back-taxes (following an audit) generally occurs several months after the company has filed its return. Thus, a delinquent taxpayer owes the principal of the deficiency as well as interest accrued and any penalty charges assessed by the DOR.¹ Under

¹In Alaska, corporations are required to prepay their estimated tax liability on a quarterly basis. Corporations may file for an extension of up to six months on their annual return deadline. If a subsequent DOR audit reveals that the corporation prepaid less than 90 percent of its annual tax liability, DOR assesses a penalty of up to 25 percent of the outstanding deficiency. Thus it is common for deficient taxpayers to have accrued substantial penalty and interest charges before filing an appeal.

April 3, 1989

Page 3

current statute, corporations may prepay the principal of their deficiency pending the outcome of their appeal without accruing further interest liability on already outstanding interest and penalty charges--effectively stopping the meter on its liability. On the other side of the issue, once DOR has received payment of the deficient principal, the agency is likely to be much more amenable to delays in the appeal process and has less incentive to settle the case promptly.

For overpayments of tax liability, the 12 percent annual interest rate paid by the state is an above (current) market rate of return for a corporation. Thus financial incentives in cases of disputed tax assessments appear to be weighted in the taxpayer's favor. Depending on one's viewpoint, this may or may not be a desirable statutory objective. Relative to Alaska's statutes, the IRS Tax Code provides greater incentive to settle disputes promptly.

Tax Courts and Administrative Procedures in Alaska and Other States

In Alaska, the administrative process for taxpayers protesting assessments, penalties or other actions by the DOR occurs at the agency level. Any taxpayer is entitled to a formal hearing before the commissioner's office within 90 days of filing an appeal. Taxpayers are encouraged to settle disagreements at an informal conference prior to the formal hearing.

If a taxpayer disagrees with the formal hearing decision, within 30 days of the decision, he/she must file an appeal with the Superior Court in the district in which he/she resides. Department of Law (DOL) attorneys represent the state in court. In most cases, the court record and subsequent decision on the merits of the appeal is based entirely on information produced at the agency hearing. To introduce new material for review by the court, the taxpayer must file a motion for a de novo trial, which the courts have traditionally been very reluctant to accept.²

Other states have established a variety of agencies and review procedures for revenue department rulings. Attachment C contains a comprehensive state by state compilation of these agencies and descriptions of each state's appeal procedures. In two states and the District of Columbia, special tax courts with judicial status have been established. Administrative review boards, which provide a review of tax rulings before any recourse to the courts, have

²A de novo trial means trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered.

April 3, 1989

Page 4

been set up in twenty states. Four states require an independent review by a commission or board which performs administrative functions other than tax review but does not administer the tax in dispute. In the remaining states (including Alaska), the tax collecting agency itself conducts the review. Eleven states have more than one administrative review agency, where a separate property tax review board has been established to handle property tax appeals. Seven states have instituted small claims procedures to handle some taxpayer complaints.

According to Carl Meyer, the appeal process in Alaska works fairly efficiently. It is likely that establishment of a special tax appeals court would simply create a large backlog of cases by adding to the DOL workload. Auditors from DOR would have to educate DOL attorneys on the accounting complexities of each case instead of only those that are appealed to the Superior Court.

Prepayment of Liabilities Pending the Outcome of Tax Litigation

In Alaska, tax deficiencies, penalties and interest need not be paid prior to appealing a tax deficiency. For federal taxes, once the IRS has conducted an audit of a tax return and issued a notice of deficiency to the taxpayer, he/she has 90 days in which to appeal the case to a U.S. Tax Court. If the case is appealed, the IRS cannot issue an assessment until the case is decided in court, but the taxpayer may prepay the deficiency pending the outcome of the case. (There is no suspension of interest accrual until all charges are paid). If the case is not appealed, the IRS issues an assessment (after the 90 day period is up) which must be paid. Once payment is made, the taxpayer has six months in which to file an original action in federal District Court for a refund. In layman's terms, a taxpayer must pay before he/she can sue for a refund.

In California, all taxpayers can dispute state tax assessments. In order to dispute a tax assessment in California, however, a taxpayer must have paid the disputed tax. According to Glenn Rigby, chief counsel, California Franchise Tax Board, this feature tends to discourage challenges to tax assessments and is in marked contrast to Alaska's procedure. As mentioned above, in Alaska disputed taxes do not have to be paid and the simple, fixed interest rate charged essentially results in a relatively low-interest loan to corporations while taxes are in dispute. Prepayment of taxes encourages rapid settlement. California's prepayment requirement is established in state constitution as well as statutorily. See Attachment D for pertinent sections.

According to Linda Spencer, staff attorney with the National Association of Tax Administrators (NATA), most states allow prepayment of tax deficiencies and many require full payment of all charges before allowing a taxpayer to file

April 3, 1989
Page 5

suit for a refund. None of the national tax organizations contacted had compiled a centralized list of state laws or regulations governing prepayment of tax liabilities pending the outcome of litigation. Attachment E contains two articles sent by NATA on this issue.

* * *

I hope we have provided enough information for your purposes; these are technical issues. If you have further questions, I suggest you call Carl Meyer at 465-2343. He is very knowledgeable on this subject and patient in explaining the intricacies of tax provisions.

Attachments

The three provisions of CSHB 541(Finance) that might be deleted include the following purposes in each section. These provisions are important to the purpose of the legislation.

Before the provisions are deleted, the advocates of deleting these purposes should be asked to explain to the committee why it is not in the public interest to have these purposes set out in the law. Since there are various provisions, it is important to address each issue separately.

PURPOSE	AGENCY	SEC.	PAGE	LINE
1) REQUIRES MAINTAINING FULL DOCUMENTATION OF A SETTLEMENT. THIS ALLOWS THE LEGISLATIVE AUDITOR, A SUBSEQUENT COMMISSIONER OR OTHER AUTHORIZED PERSON TO DETERMINE WHAT HAPPENED AND WHY.	NAT RES	4	5	1-3
	REV	6	6	21-22
	REV	7	8	2-3
2) PROHIBITS EXTENDING CONFIDENTIALITY FOR SETTLEMENT PROVISIONS IN EXCESS OF THAT WHICH IS PROVIDED IN THE LAW. AGAIN, THIS ALLOWS THE LEGISLATIVE AUDITOR, OR OTHER AUTHORIZED PERSON ACCESS. IN ADDITION, ITEMS THAT THE LAW DOES NOT REQUIRE TO BE CONFIDENTIAL WOULD BE AVAILABLE FOR PUBLIC INFORMATION.	NAT RES	4	4	24-29
	REV	6	6	18-21
	REV	7	7	27-29;
			8	1
3) REQUIRES NOTIFICATION OF GOVERNOR FOR ANY MAJOR SETTLEMENT NEGOTIATIONS	NAT RES	4	3	21-29
	REV	6	5	16-23
4) REQUIRES "COOLING OFF" PERIOD FOR MAJOR SETTLEMENT AGREEMENTS	NAT RES	4	4	21-23
	REV	6	6	15-17
		7	7	24-26
5) REQUIRE COMMISSIONER TO ESTABLISH AN INDEPENDENT INTERNAL REVIEW OF ANY MAJOR SETTLEMENTS BEFORE THE SETTLEMENT IS CARRIED OUT.	NAT RES	4	4	7-20
	REV	6	6	1-14
		7	7	10-23

From the desk of

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

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

To: Senator Bettye Fahrenkamp, Chair
Senate Resources Committee

Date: May 4, 1990

Re: HB 541 (Oil and Gas Revenue Disputes)

One of the three principal challenges to this bill raised in your committee Wednesday¹ concerns Secs. 4, 6 and 7, which are virtually identically-worded sections calling for internal, independent review of major oil and gas revenue dispute settlements. I was asked this question: Since an independent review of the TAPS settlement in 1985 did not enable policy makers to identify problems subsequently revealed, how would the LB&A report and settlement review procedures help? This question is particularly relevant to the State's royalty litigation, in which settlement efforts are active, a large number of oil companies are involved and confidentiality limits the field of players to an extremely narrow group. After I deal with TAPS and other past cases, I will return to the royalty case.

I. TAPS

In my report to the Legislature in February, I included a supplementary study of the 1985 TAPS settlement. In that study I documented twenty examples of omission, misinformation, needlessly obscure and delayed presentations that hampered policy makers in their review of the settlement of what has been called the largest and most complicated piece of rate-making litigation in the history of the United States. On the bases of the documentary history of the TAPS case, here is why I believe the internal, independent review proposals of HB 541 would be responsive to the problems I have identified:

1. Unlike the internal, independent review proposed in Secs. 4, 6 and 7 of HB 541, the TAPS settlement study by Connie Barlow in 1985 was a POST-settlement analysis. Ms. Barlow was retained by the Legislature in mid-February 1985, approximately a week after the settlement was formally signed with ARCO. Faced with something of a *fait accompli*, her charge was not to pass judgement on the settlement and her report explicitly refrained doing so.

2. The assignment of a knowledgeable LB&A staff person and the statutory mandate for independent, internal analysis will provide a more healthy institutional framework than Barlow encountered. From my reconstruction of the TAPS record, I believe Barlow may have been unaware (or gave too little recognition to the fact) that prior to her retainer, State economists from various agencies who were questioning the settlement had been admonished by the Chief of Staff on the eve of the formal signing.

¹ The other two major questions, as I understand them, were: (1) How can confidentiality be preserved? and (2) Is the \$1 million floor on a floating interest rate equitable? While Messrs. Welker and Malone should serve you better than I on these two questions, I think it is appropriate for me to take on the settlement review question. Unlike the others, I have some first-hand familiarity with all three of the major settlements since 1985. Aside from yourselves as distant observers, I believe nobody else in the room can make that claim (Norm Gorsuch and Mary Nordale were involved only in the first two).

They were told to back off, that it was too late to question the settlement, and that it was going to be signed the following day. Barlow, who was on an extremely limited budget and did much of her work by telephone, encountered a system that was working against objective review. Under these circumstances, it is not surprising that her informal conclusions were supportive of the settlement, even though she identified potential problems — and it is understandable that she overlooked the significance of some of the glitches she encountered.

3. A common denominator in all three major settlements since 1985 is that the review process is essentially circular. By mandating independent, internal review of settlements, the provisions of HB 541 will alleviate the effects of this bureaucratic Bermuda Triangle. One reason the problems in the TAPS settlement did not surface in March 1985 is the extensive reliance on the settlors themselves. The clearest example of this is the surprising omission of the U.S. Supreme Court's unanimous 1978 decision on TAPS refunds from briefing documents presented in the Spring of 1985 — one facet of a tendency to downplay the role of the courts in general. At the same time that reviewers were not being told of the Supreme Court decision on TAPS refunds, the proponents of the settlement were arguing that trading away refunds was a good thing because refunds would be too difficult to collect.

II. Other Major Settlements

As I indicated in prior testimony, in another major settlement there were at least two policy issues of significance that never came to the attention of the Legislature under the procedures presently in place. I want to stress again that, unlike TAPS, I do not believe these policy issues should have led to the overturning of that particular settlement. The point is this: In the second of three major settlements since 1985, it is my belief that an independent review did discover policy issues that would have led the commissioner to request substantive changes, if that review had been institutionalized and mandated as a pre-settlement review within the commissioner's routine. The only reason I cannot document this point is the confidentiality requirements of that particular settlement.

III. Royalty Litigation

In October, legislative leaders were advised that the State had quantified its claims in this long-standing litigation. As part of the four pages released at that time, one page was captioned:

Settlement Principles of the Amerada Hess Working Group
Adopted Feb. 16, 1988
Modified August 23, 1989

I was concerned that this release — one of the few documents in the public record outside of the procedural record in the Court file — contained the clear implication that whatever document was created on February 16, 1988 was no longer operative, having been replaced by the document of August 23, 1989. In fact, the February 16, 1988 document contains the litigation guidelines for the case and is regarded by the Working Group as very much alive.

Since the litigation guidelines are understandably different from the settlement guidelines and these documents sometimes seem to develop a life of their own,² it seemed peculiar to create confusion by giving legislators and the public the misimpression that the guidelines of Feb. 16, 1988 were no longer operative.

To my surprise, when I called this problem to the Chair of the Royalty Litigation Working Group, I was advised, over a several month period, that the Chair did not intend to release the information, or even to bring the matter to the Working Group.³ Consequently, it has taken an undue amount of time and energy to enter the correct information into the public record.

I am not arguing here the merits of the settlement guidelines as compared to the litigation guidelines. I felt it was important to get the February 1988 document into the public record because any review of a royalty case settlement should be done with the litigation goals as a template to see what we initially sought and what we left on the table. Consideration of such a policy matters could not be made in an informed manner on the basis of the information provided legislative leadership October 17, 1989; it took months to get that information into the record. Time spent trying to get the basic facts is time taken away from deliberation based on those facts.

To my mind, the difficulty clarifying this record demonstrates why it is necessary to lay out clearly in statute that, as a matter of public policy, we should require the commissioner codify the goals of all major settlements. That is only one of five rather basic provisions of the internal, independent review proposal you have been asked to delete.

A second substantive requirement of these three sections — notification of the Governor — would ensure that a settlement in a tax case will not have an adverse effect on the royalty case (or vice-versa). This cross-check seems entirely consistent with the observations of the International Tax Comparison Group, which observed that Alaska has an unusually broad number of separate groups dealing with oil and gas policy and may benefit from improved coordination in this area.

Without going through the remaining three elements of the internal, independent review sections, I think it might be appropriate to ask the opponents to these sections who have recently approached you which of these five substantive provisions of the independent, internal review sections of HB 541 seem like bad public policy to them, and why they hold this view.

As you know, the Commissioner of Natural Resources has created a special settlement team that is working actively to settle the State's royalty litigation. The Commissioner of has informed the House Resources Committee that she has no intention

² Consider, for example, the May 17, 1982 Halford-Fahrenkamp letter to Governor Hammond on TAPS. This letter was frequently cited in 1985 as the basis of State pipeline policy.

³ I was also informed that I might be in violation of the Administrative Ethics Act if I made public any information gained as a member of the Working Group, including the fact that there was a second set of guidelines still in existence. However, when the House Resources Committee requested the documents, they were deemed appropriate for public release by the Department of Law. As a result of these inquiries, the litigation guidelines are now on public file with the House Resources Committee.

of establishing an independent review procedure for this important case. Instead, she informed the Chair of that committee:

initial review of settlement offers will be undertaken by the settlement team I have appointed. . . . Any recommendations toward settlement for this group will be reviewed by the litigation team and its consultants. . . . That team, which has undertaken the most extensive analysis of and aggressive posture toward royalty obligations . . . would provide the most extensive "second opinion" on proposed settlements or settlement offers [*emphasis added*].

In my estimation, the Commissioner's blueprint is no substitute for the internal, independent review that HB 541 would mandate. Her plan has two basic problems:

First, settlements tend to develop a momentum of their own, as we have seen in the past. This happens because a settling team is liable to become enamored of its own settlement, and also because a bureaucratic group that works at length on a project naturally wants to complete that project.

What about the so-called "second opinion" by the litigating attorneys? If the litigating attorneys do not approve the settlement, their wisdom is liable to be dismissed on one of two grounds: "Of course they want to litigate: They're lawyers." Or: "These lawyers just don't want to see their rice bowl broken." I've seen that happen at critical junctures in both of the major settlements with which I am familiar.

Note that the Commissioner's letter to the Resources Committee indicates that the State's litigating attorneys exhibit a most aggressive posture toward royalty obligations. As you and I both know, Wilson Condon is, by nature, rather cautious (it was Condon, for example, who pushed the 1982 TAPS settlement). I have tremendous admiration for Wilson and respect for the work of his team. But I can tell you this: if he does not approve of some aspects of a settlement, his view is liable to be dismissed as one of those litigating attorneys. Moreover, if he is not apprised of a settlement's particulars in time, his admirably cautious nature will prevent him from expressing strong opposition. This is not an outsider's opinion: in addition to serving on the Royalty Litigation Working Group from its inception through early 1989, I worked closely with Wilson and his team in Los Angeles and Anchorage on three separate projects in 1987 and 1988.

The settlement review procedures of HB 541 will provide a mechanism to make sure we do not allow ourselves to get stamped into settlements we will later regret.

With hundreds of millions of dollars riding on royalty disputes with individual companies and \$1.3 billion in outstanding claims (excluding punitive damages), the independent, internal review mandated by HB 541 seems like a wise precaution. This is especially true in view of the very small number of players involved in this arena. Additionally, the history of previous settlements, described above, clearly demonstrates the need for this measure at this time.

I would welcome the opportunity to meet with you, and to participate in further deliberations with the committee. In any event, I would appreciate it if you would share these views with the members of your committee. Thank you for your consideration of this matter.

DOR

ANNUAL INTEREST RATE CHARGED MEMBER
BANKS FOR ADVANCES BY 12TH FEDERAL
RESERVE DISTRICT ON FIRST PAY OF EACH
CALENDAR QUARTER

<u>Date</u>	<u>Rate</u>	<u>Rate + 5 percentage points</u>
01/1/85	8 percent	13 percent
04/1/85	8 percent	13 percent
07/1/85	7.5 percent	12.5 percent
10/1/85	7.5 percent	12.5 percent
01/1/86	7.5 percent	12.5 percent
04/1/86	7 percent	12 percent
07/1/86	6.5 percent	11.5 percent
10/1/86	5.5 percent	10.5 percent
01/1/87	5.5 percent	10.5 percent
04/1/87	5.5 percent	10.5 percent
07/1/87	5.5 percent	10.5 percent
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01/1/88	6 percent	11 percent
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01/1/89	6.5 percent	11.5 percent
04/1/89	7 percent	12 percent
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01/1/90	7 percent	12 percent

Department of Revenue
April 25, 1990

COMPOUND INTEREST - AN INCENTIVE TO PAY

Assumptions: \$1,000,000 plus interest 1/1/85 to 1/1/90 showing total amounts which would be due at 1, 2, 3, 4 and 5 years.

<u>Interest Rate</u>	1/1/86	1/1/87	1/1/88	1/1/89	1/1/90
12% Simple	1,120,000	1,240,000	1,360,000	1,480,000	1,600,000
12% Compound	1,120,000	1,254,400	1,404,928	1,573,519.4	1,762,341.7
13% Simple	1,130,000	1,260,000	1,390,000	1,520,000	1,650,000
13% Compound	1,130,000	1,276,900	1,442,897	1,630,473.6	1,842,435.2
14% Simple	1,140,000	1,280,000	1,420,000	1,560,000	1,700,000
14% Compound	1,140,000	1,299,600	1,481,544	1,688,960.2	1,925,414.6
15% Simple	1,150,000	1,300,000	1,450,000	1,600,000	1,750,000
15% Compound	1,150,000	1,322,500	1,520,875	1,749,006.2	2,011,357.2

Department of Revenue
April 25, 1990

12% SIMPLE v. FLOATING COMPOUND INTEREST RATES (CSHB 541 (FIN))

<u>Jan. 1, 1980 - Jan. 1, 1990</u>		
<u>Date</u>	<u>12% Simple (current law)</u>	<u>Federal Funds + 5% Compound Quarterly</u>
1/1/80	100,000	100,000
1/1/81	112,000	118,113
1/1/82	124,000	141,189
1/1/83	136,000	164,572
1/1/84	148,000	187,939
1/1/85	160,000	216,183
1/1/86	172,000	244,796
1/1/87	184,000	273,185
1/1/88	196,000	303,757
1/1/89	208,000	339,399
1/1/90	220,000	381,996

The columns AT LEFT show the difference between \$100,000 compounded at current statutory rates and compounded at the proposed rates over the TEN-YEAR period between Jan. 1, 1980 and Jan. 1, 1990.

The columns BELOW show the difference between \$100,000 compounded at current statutory rates and compounded at the proposed rates over the FIVE-YEAR period between Jan. 1, 1985 and Jan. 1, 1990.

Note the effects of the relatively high interest rates of the early 1980's on the amounts at the end of 5 years, compared to the amount after five years in the columns below.

<u>Jan. 1, 1985 - Jan. 1, 1990</u>	
<u>12% Simple (current law)</u>	<u>Federal Funds + 5% Compound Quarterly</u>
100,000	100,000
112,000	113,235
124,000	126,367
136,000	140,509
148,000	156,996
160,000	176,700

Finberg

This table compares the effects of simple versus compound floating interest rates over the last ten years.

Amounts in the right-hand columns are pegged to federal fund interest rates as reported by Department of Revenue.

FRIDAY
SECTION G May 4, 1990

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DAVID PEDERSEN / Special to the Daily News

New owner, new sign

Rick Nerland and Rick Mystrom look at the new sign that went up this week on the office window of Nerland/Mystrom & Associates, formerly Mystrom Advertising and Public Relations. In February, Nerland bought the company from Mystrom, who founded it 14 years ago.

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NEWS

Billions in taxes at stake

By LARRY PERSILY
The Associated Press

JUNEAU — Oil companies could owe the state more than \$4.4 billion in disputed taxes, royalties and pipeline tariffs, and the House wants an independent review each time a major settlement is proposed.

The House bill also would require the Legislative Audit Division to issue an annual report on tax cases, and would include money for two extra auditors to handle the task.

Lawmakers have questioned previous settlements of tax disputes, and the legislation is intended to ensure additional oversight of several multimillion-dollar cases handled by the Revenue and Law departments and governor's office.

"There's huge potential there," House Speaker Sam Cotten, D-Eagle River, said this week.

Settlements usually involve private negotiations between state and company officials over tax records exempt from the state's public records law.

House Bill 541 would help open up the settlement process to the public and the legislature, said Cotten, prime sponsor of the measure.

The legislation passed the House without opposition and discussion Sunday. It joins more than 120 other House bills awaiting Senate action in the final week of the session.

But Senate President Tim Kelly, R-Anchorage, said it has a chance of passage. "As long as it doesn't discourage the seeking of a settlement, I can support it," he said.

OPEC members agree on quick cuts

By JAN KRISTIANSEN
Agence France-Presse

GENEVA — The Organization of Petroleum Exporting Countries said Thursday it was immediately cutting its crude oil output by 1.445 million barrels a day up to the end of July in a bid to reverse a price slide caused by heavy oversupply.

Acting OPEC president Sadek Boussema said the reduction had been "unanimously agreed" by all 13 member countries, including the United Arab Emirates.

The cutback was agreed to at the end of a two-day emergency session of OPEC's ministerial market monitoring committee called hurriedly after a supply glut sent crude prices tumbling in April, hitting OPEC export earnings.

Boussema implied that most of the cuts, based on OPEC's April output of 23.5 million barrels a day, would be made by Saudi Arabia, Kuwait and the UAE.

Member countries that have been overproducing compared with their individual shares under a November 1989 agreement that set an OPEC ceiling of 22 million barrels a day "will go back" to their quotas, he said.

Boussema described the UAE as "a special case" because it did not take part in the November agreement, but he said it had agreed to contribute to cutting production by reducing output by 200,000 "concrete and real" barrels per day.

The UAE refused to accept its November daily quota of 1,095 million barrels and has been pro-

ducing in excess of 2 million barrels a day.

UAE oil minister Mana Saeed Otaiba told reporters, "We are producing 2.1 (million barrels a day) and are reducing to 1.9."

Including continued "tolerated" leakage from the UAE, the accord should bring effective OPEC output to 22.5 million barrels a day, OPEC sources said.

Boussema implied the 22 million barrels a day ceiling remained in effect but said the deal had in fact produced "a new ceiling," the difference compared with November being that "it includes the Emirates."

The ministers in a final statement said they had postponed their midyear conference, due to set production and pricing levels

Please see Page G-2, OPEC

Please see Page G-2, TAXES

TAXES: Oil companies could owe state

Continued from Page G-1

Kelly said he would support any effort to encourage out-of-court settlement of tax disputes as an alternative to prolonged legal actions that could further delay payments to the state.

The state has accepted out-of-court settlements in three major oil-industry cases since 1985, totaling

more than \$656 million.

Cotten said the bill also would prohibit adding confidentiality requirements to a settlement that are greater than those already in state law.

The bill also would change the interest charged by the state on disputed taxes over \$1 million. The current rate is 12 percent simple interest, which the

bill would change to a floating rate.

A recent legislative report said the low interest rate may be a bargain for companies that owe taxes, allowing them to use the disputed money as a low-cost loan at state expense. The report said the state should raise its rates to deter companies from delaying tax-case settlements.

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From the desk of


Richard A. Fineberg
Juneau, Alaska 99801

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

To: Senator Bettye Fahrenkamp, Chair
Senate Resources Committee

Date: April 22, 1990

Re: HB 541 (Oil and Gas Revenue Disputes)

In view of your long-standing interest in this area, I wanted to make sure you were aware that this bill passed out of the House Finance Committee last week.

CS HB 541 (Fin) deals with three principal matters relating to oil and gas revenue disputes: LB&A report on royalty and tax matters; internal, independent review of major oil and gas settlements; and interest provisions on outstanding royalty and tax payments.

The hearing record includes extended testimony in the House Resources Committee by the administration, representatives of the three North Slope majors and myself. The Finance Committee heard testimony from the Speaker, the Department of Revenue and myself (supporting) and representatives of the three North Slope majors (opposing). The Finance Committee substitute, with revisions resulting from its hearing Wednesday, was moved Friday with bipartisan support.

This bill embodies five of the 22 recommendations in my February report to the Legislature on oil and gas revenue disputes. In my estimation, the provisions of CSHB 541 (Fin) would greatly reduce many of the problems associated with executing and reviewing major oil and gas revenue dispute settlements. The provisions increasing tax and royalty dispute monitoring and reporting by LB&A, prohibiting the special confidentiality accorded to some major settlements in the past and setting up a procedure calling for independent, internal review of major settlements are particularly important during transition — especially in view of the existing lack of statutory guidelines for policy judgements in this important area.

A synopsis of the bill and a copy of the Finance Committee substitute are attached. Please let me know if you would like additional information.

CS HB 541 (Fin.) Synopsis

CS HB 541 (Fin) deals with three principal matters relating to oil and gas revenue disputes: LB& A Report on Royalty Tax Matters, Internal, Independent Review of Major Oil & Gas Settlements and Interest Provisions on Outstanding Royalty and Tax Payments.

Sec. 1 (technical): Amends AS 05.15.095 to keep interest rates on payments relating to Games of Skill and Chance at 12% simple. (Amendment by legislative drafters.)

A. LB& A Report on Royalty Tax Matters

Sec. 2: This section amends AS 24.20.271 by adding a new subsection to require the Legislative Auditor to audit and report periodically to the Legislature on tax functions, including an annual report on the resolution of royalty and tax disputes. (Amendment proposed by LB&A.)

Sec. 3 (technical): Amends AS 34.45.470(a) to keep interest rates on payments relating to unclaimed property at 12% simple. (Amendment by legislative drafters.)

B. Internal, Independent Review of Major Oil & Gas Settlements

Sec. 4: To ensure that major settlements of the State's royalty litigation under AS 38.05 are in the public interest, this section requires the Commissioner of Natural Resources, before settling any royalty dispute involving a claim greater than \$10 million for a calendar year five years or more prior to the current year, to obtain an independent, internal review of the proposed settlement by an individual who was not involved in negotiating the settlement.

The review will specify initial objectives and how they are met and will consider how the settlement affects other outstanding disputes. Additionally, this section provides that: the Commissioner shall notify the Governor when negotiations have begun; 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; no settlement shall extend confidentiality otherwise provided by law; and full documentation shall be maintained for review. (Amendments by House Resources Committee and House Finance Committee.)

Secs. 6 and 7: To ensure that major settlements of the State's tax litigation under AS 43.05.060 or AS 43.05.070 are in the public interest, these identical sections require the Commissioner of Revenue, before settling any tax dispute involving amounts greater than \$10 million for a tax year five years or more prior to the current year, to obtain an independent, internal review of the proposed settlement by an individual who was not involved in negotiating the settlement.

Sections 6 and 7 contain language similar to Section 4, except that the minimum hiatus between the time the Commissioner receives a final settlement offer and the date s/he approves the settlement is only seven days for tax cases. Unlike the royalty case, in which all royalty payers are bound together in a single case, in tax cases each company is separate and settlements are routine. For this reason, the minimum hiatus is reduced to seven days. Nothing in statute limits the Commissioner's discretionary power to extend that period to complete a settlement review, or for any other purpose. (Amendment by House Resources Committee and House Finance Committee.)

C. Interest Provisions on Outstanding Royalty and Tax Payments

Sec. 5: This section amends AS 38.05.145 to change the interest rates for outstanding oil and gas royalties (paid under AS 38.05.180) from 12% interest to a floating interest rate five percentage points above the annual rate charged by member banks for advances by the 12th Federal Reserve District and compounded quarterly if the total amount of royalty due exceeds \$1,000,000. (Amendment by House Finance Committee.)

Sec. 8: This amendment to AS 43.05.225 to change the interest rate for outstanding taxes to a floating interest rate five percentage points above the annual rate charged by member banks for advances by the 12th Federal Reserve District and compounded quarterly if the total amount of royalty due exceeds \$1,000,000. (Amendment by House Finance Committee.)

Sec. 9: This section amends AS 43.05.280 to make the interest rates for State refunds of overpayments on oil and gas taxes equal to those of Sec. 8. (Amendment proposed by Rep. Rieger.)

Sec. 10 (technical): Amends AS 47.23.025 to keep interest rates on payments relating to child support at 12% simple. (Amendment by legislative drafters.)

6-1806H ✓
Chenoweth
4/20/90

Original sponsor(s): REP. COTTEN, Navarre, Davidson

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 541 ()
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to certain agreements, compromises,
7 and settlements entered into by the Departments of
8 Natural Resources and Revenue; to legislative audit
9 of those departments and the release of a report of
10 the audits, that may include or refer to confidential
11 information, to the legislature and public; and to
12 collection and payments of royalties from state
13 resources, the interest rate on unpaid taxes and
14 royalties from state resources, and the interest
15 rates on overpaid taxes."

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

17 * Section 1. AS 05.15.095(c) is amended to read:

18 (c) A delinquent fee bears interest at the rate set by
19 AS 43.05.225(1) [AS 43.05.225].

20 * Sec. 2. AS 24.20.271 is amended to read:

21 Sec. 24.20.271. POWERS AND DUTIES. The legislative audit divi-
22 sion shall

23 (1) conduct a performance post-audit of boards and com-
24 missions designated in AS 44.66.010 and of those programs and activ-
25 ities of agencies subject to termination as determined in the manner
26 set out in AS 44.66.020 and 44.66.030, and submit the audit, together
27 with a written report, not later than the first day of the regular
28 session of the legislature convening in each year set out with refer-
29 ence to boards, commissions, or agency programs whose activities are

1 subject to termination as prescribed in AS 44.66;

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

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

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

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

14 (6) have access at all times to the books, accounts, re-
15 ports, or other records, whether confidential or not, of every state
16 agency;

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

22 (8) complete studies and prepare reports, memoranda, or
23 other materials as directed by the Legislative Budget and Audit Com-
24 mittee;

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

28 (10) periodically

29 (A) conduct a performance audit of the tax functions

1 of the Department of Revenue; and

2 (B) submit the audit to the legislature not later than
3 the first day of the regular legislative session;

4 (1) annually

5 (A) conduct an audit of the resolution of disputed
6 royalties by the Department of Natural Resources and disputed
7 taxes by the Department of Revenue;

8 (B) prepare a report summarizing the results of the
9 audits that may contain information made confidential by AS 43.-
10 05.230 and a version of the report edited for the public; and

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

14 * Sec. 3. AS 34.45.470(a) is amended to read:

15 (a) A person who fails to pay or deliver property within the
16 time prescribed by this chapter may be required to pay to the depart-
17 ment interest at the [ANNUAL] rate calculated under AS 43.05.225(1)
18 [AS 43.05.225] on the property or the value of it from the date the
19 property should have been paid or delivered.

20 * Sec. 4. AS 38.05.035 is amended by adding new subsections to read:

21 (g) If the department enters into negotiations to compromise or
22 settle a dispute between the department and a person as to a royalty
23 or net profit payment involving a claim that totals, with applicable
24 penalty and interest, \$10,000,000 or more and that relates to a calen-
25 dar year that is five or more years before the current year, the com-
26 missioner shall, not later than 14 days after commencement of nego-
27 tiations, advise the governor that negotiations have commenced, and
28 shall provide notice to the governor at least once during each
29 subsequent 30-day period that the negotiations continue.

1 (h) If the department proposes to compromise or settle a dispute
2 between the department and a person as to a royalty or net profit
3 payment involving a claim that totals, with applicable penalty and
4 interest, \$10,000,000 or more and that relates to a calendar year that
5 is five or more years before the current year, the commissioner may
6 not enter into an agreement to compromise or settle the dispute

7 (1) without first securing and reviewing an independent ap-
8 praisal of the effects of the proposed compromise or settlement; the
9 independent appraisal

10 (A) may be made by a person who is an employee of the
11 department or who is engaged by contract to complete the apprai-
12 sal, but may not be made by a person who has been involved in
13 preparing the proposed compromise or settlement;

14 (B) must specify the objectives of the department's
15 negotiations; and

16 (C) must review the proposed compromise or settlement

17 (i) to ensure that it meets the objectives speci-
18 fied; and

19 (ii) to determine whether it adversely affects
20 other litigation to which the state is a party; and

21 (2) unless at least 14 days pass between the day the com-
22 missioner receives the proposed compromise or settlement agreement and
23 the day the commissioner executes that agreement.

24 (i) The commissioner may not enter into a settlement or compro-
25 mise of a dispute between the department and a person as to a royalty
26 or net profit payment if the settlement or compromise provides that
27 information relevant to the settlement or compromise, or the terms of
28 the settlement or compromise, are confidential beyond the confiden-
29 tiality otherwise provided for by law.

1 (j) The commissioner shall maintain for review full documenta-
2 tion of a settlement or compromise of a dispute between the department
3 and a person as to a royalty or net profit payment.

4 * Sec. 5. AS 38.05.145 is amended by adding new subsections to read:

5 (c) Payment of the royalty to the state under the provisions of
6 AS 38.05.145 - 38.05.181 becomes due on the date and in the manner
7 specified in the lease or in a regulation adopted by the commissioner.

8 (d) If royalty to which the state is entitled under AS 38.05.180
9 is not paid when it becomes due under (c) of this section and the
10 total amount of royalty due exceeds \$1,000,000, notwithstanding
11 AS 09.30.070, the royalty bears interest at the rate of five percent-
12 age points above the annual rate charged member banks for advances by
13 the 12th Federal Reserve District, as established on the first day of
14 each calendar quarter, compounded quarterly.

15 * Sec. 6. AS 43.05.060 is amended by adding new subsections to read:

16 (b) If the department enters into negotiations to resolve a tax
17 dispute between the department and a taxpayer involving a claim that
18 totals, with applicable penalty and interest, \$10,000,000 or more and
19 that relates to a calendar year that is five or more years before the
20 current year, the commissioner shall, not later than 14 days after
21 commencement of negotiations, advise the governor that negotiations
22 have commenced, and shall provide notice to the governor at least once
23 during each subsequent 30-day period that the negotiations continue.

24 (c) If the department proposes to enter into an agreement under
25 (a) of this section to resolve a tax dispute between the department
26 and a taxpayer involving a claim that totals, with applicable penalty
27 and interest, \$10,000,000 or more and that relates to a calendar year
28 that is five or more years before the current year, the commissioner
29 may not enter into the agreement

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(1) without first securing and reviewing an independent appraisal of the effects of the proposed agreement; the independent appraisal

(A) may be made by a person who is an employee of the department or who is engaged by contract to complete the appraisal, but may not be made by a person who has been involved in preparing the proposed agreement;

(B) must specify the objectives of the department's negotiations; and

(C) must review the proposed resolution

(i) to ensure that it meets the objectives specified; and

(ii) to determine whether it adversely affects other litigation to which the state is a party; and

(2) unless at least seven days pass between the day the commissioner receives the proposed agreement and the day the commissioner executes that agreement.

(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.

* Sec. 7. AS 43.05.070 is amended by adding new subsections to read:

(c) If the department 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 and that relates to a calendar year that is five or more years before the current year, the commissioner shall, not later than 14

1 days after commencement of negotiations, advise the governor that
2 negotiations have commenced, and shall provide notice to the governor
3 at least once during each subsequent 30-day period that the
4 negotiations continue.

5 (d) If the department proposes to compromise or settle a tax
6 dispute between the department and a taxpayer involving a claim that
7 totals, with applicable penalty and interest, \$10,000,000 or more and
8 that relates to a calendar year that is five or more years before the
9 current year, the commissioner may not enter into the agreement

10 (1) without first securing and reviewing an independent ap-
11 praisal of the effects of the proposed compromise or settlement agree-
12 ment; the independent appraisal

13 (A) may be made by a person who is an employee of the
14 department or who is engaged by contract to complete the ap-
15 praisal, but may not be made by a person who has been involved in
16 preparing the proposed compromise or settlement agreement;

17 (B) must specify the objectives of the department's
18 negotiations; and

19 (C) must review the proposed compromise or settlement

20 (i) to ensure that it meets the objectives speci-
21 fied; and

22 (ii) to determine whether it adversely affects
23 other litigation to which the state is a party; and

24 (2) unless at least seven days pass between the day the
25 commissioner receives the proposed compromise or settlement agreement
26 and the day the commissioner executes that agreement.

27 (e) In compromising a tax or penalty under this section, neither
28 the department nor the attorney general may agree that information
29 relevant to the compromise, or the terms of the compromise, are

1 confidential beyond the confidentiality otherwise provided for by law.
2 The department must maintain for review full documentation of the
3 compromise.

4 * Sec. 8. AS 43.05.225 is amended to read:

5 Sec. 43.05.225. INTEREST ON TAXES. Unless otherwise provided,
6 when a tax levied in this title is not paid on or before the date
7 prescribed for its payment, [BECOMES DELINQUENT] it bears interest at
8 the rate of

9 (1) 12 percent a year if the total amount of the tax owed
10 by the taxpayer does not exceed \$1,000,000; or

11 (2) five percentage points above the annual rate charged
12 member banks for advances by the 12th Federal Reserve District, as
13 established on the first day of each calendar quarter, compounded
14 quarterly, if the total amount of the tax owed by the taxpayer exceeds
15 \$1,000,000.

16 * Sec. 9. AS 43.05.280(a) is amended to read:

17 (a) Interest shall be allowed and paid on any overpayment of a
18 tax under this title at the rates [RATE] prescribed in AS 43.05.225.

19 * Sec. 10. AS 47.23.025 is amended to read:

20 Sec. 47.23.025. RATES OF INTEREST. The rate of interest imposed
21 under AS 47.23.020(a)(2)(C) shall equal the rate imposed under AS 43.-
22 05.225(1) [AS 43.05.225] or a lesser rate that is the maximum rate of
23 interest permitted to be imposed under federal law.
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BP EXPLORATION

BP Exploration (Alaska) Inc.
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(907) 561-5111

May 7, 1990

The Honorable Bettye M. Fahrenkamp
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

Committee Substitute for House Bill 541 is an extremely significant and harmful tax bill for BP Exploration and Alaska's oil industry.

From its effective date, CSHB 541 will result in an effective doubling of the current interest rate charged on tax and royalty claims. This effective doubling of the rate imposes a competitively unfair burden on BP Exploration because the Department of Revenue chose to concentrate its efforts on another major taxpayer until early last year.

Even now, BP Exploration has not received final assessments for any income tax years after 1977. It is impossible to even negotiate tax resolutions before we receive final assessments.

The recent International Tax Comparison study highlighted the tension between the oil industry and the State. This bill -- which effectively doubles an interest rate on the industry while providing no opportunity for the industry to accelerate settlements -- would make matters much worse.

Sincerely,

A handwritten signature in cursive script that reads 'Jim Palmer'.

Jim Palmer