Leg. Finance-House & Senate Finance Comte Files (1991-1992) 898

property shall apply to the settlement agreement or to any interest or power created by it." The 1991 Agreement commits the State and ASRC permanently to merge their titles with no right of partition, to jointly lease and develop their interests, and to take a number of other steps with respect to their lands for an indefinite period of time. The law is generally hostile to such perpetual restrictions or restraints on alienation that might be deemed unreasonable. AS 34.27.010, for example, provides that an interest that would violate the rule against perpetuities may be reformed by a court. If the rules apply, the 1991 Agreement could be challenged at any time by the State or ASRC (or possibly in a citizen suit) and stricken down or modified in ways that were never intended.

A major consideration of both the State and ASRC in entering into the 1991 Agreement is improving marketability of title. This objective, and the benefits of the settlement, would be frustrated if the merging of title, prohibition against partition of those interests and executive rights provisions were ever successfully challenged as violative of the rule against perpetuities or as an unreasonable restraint on alienation. Accordingly, Section 2 exempts the 1991 Agreement from these requirements.

Section 3. COMMISSIONER AUTHORITY. This section affirmatively authorizes and directs the Commissioner to carry

out the exchange and makes it clear that in doing so he carried out the mandate of the legislature. The Commissioner is not authorized, however, to materially amend the 1991 Agreement without coming back to the legislature for approval.

Section 4. RECORDATION. This section requires the Commissioner to record the 1991 Agreement in the appropriate recording office, incorporate it into the DNR land record system, and deposit a signed original with the State Archivist.

Section 5. ACTIONS. In order to minimize the possibility that the exchange will have to be unwound after the State and ASRC have committed themselves to making the conveyances and taking the other actions required by the 1991 Agreement, this section provides that any action challenging the legality of the 1991 Agreement must be commenced within six months of the effective date of the legislation. Specifically this provision will insure that the State and ASRC will know whether the exchange is going to be challenged before the Colville Delta lands are leased in a State lease sale scheduled for December 1992. The Act itself may not be construed as creating any rights in any party not privy to the 1991 Agreement to challenge that Agreement or the Act. Finally, the Section waives the sovereign immunity of the State of Alaska to any suit brought by ASRC to enforce the 1991 Agreement, provided that any such action is commenced in a Superior Court of the State of Alaska.

Section 6. EFFECTIVE DATE. This Section provides for an immediate effective date in accordance with AS 01.10.070(c).

SB369

# SENATE FINANCE COMMITTEE REPORT

DATE: 2/28/92

FURTHER:

DATE TURNED INTO OFFICE: 4-9-92

The Finance Committee considered SENATE BILL NO. 369

"An Act ratifying an agreement settling litigation between the State of Alaska and the Arctic Slope Regional Corporation; establishing procedures for implementing the agreement; and providing for an effective date."

and recommends:

[ ] replace with _____ CS _____(FINANCE)
or [ ] adopt previous_____ CS _____(_____)
[ ] attaches amendment(s)

[ ] same title
[ ] **new title**
[ ] technical title change (HB only)

[ ] adopts _____Letter of Intent

[ ] further referral to the _____

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

**NEW FISCAL NOTES:** **Dept/Date**

[ ] **zero** fiscal notes _____

[ ] fiscal notes _____

[ ] **appropriation**--no fiscal note

**PREVIOUS FISCAL NOTES:** **Dept/Date**

[✓] **zero** fiscal notes DNR, LAW 1-15-92

[ ] fiscal notes _____

**DO PASS:** Al Adams

1. _____
Co-Chair: Signature/Recommendation

**OTHER RECOMMENDATIONS:**

2. _____
Co-Chair: Signature/Recommendation

FISCAL NOTE

No. 1

Bill Version: SB 369

(S) Publish Date: 1/24/92

# STATE OF ALASKA
# 1992 LEGISLATIVE SESSION

BILL NO. _____

Revision Date: _____ Department Affected: Natural Resources & Law

Title: Short Title: ASRC Settlement BRU: Division of Oil & Gas

Components: _____

Sponsor: Rules Committee

Requestor: Governor COMPONENT SERIAL NO. 439

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND&STRUCTURES | | | | | | |
| GRANTS,CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL | | | | | | |
| REVENUE Funding Source: | N/A | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | N/A | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER Funding Source: | | | | | | |
| TOTAL | N/A | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | 0.0 | | | | | |
| PART-TIME | 0.0 | | | | | |
| TEMPORARY | 0.0 | | | | | |

Estimate of Current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

See Attachment

Prepared by: Bob Loeffler Phone: 762-2578

Division: Oil & Gas Date: 15-Jan-92

Approved by Commissioner: Harold C. Heinze Date: 1/15/92

Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

REV 10/91

Attachment

Arctic Slope Regional Corporation Settlement Agreement

If the agreement is approved by the Legislature, no additional funds or positions will be needed to implement it.

If the agreement is not approved by the Legislature, the Department of Law would expend significant funds litigating the dispute. The Department of Natural Resources would need a portion of a position to support the litigation.

In addition, the settlement is needed if the state is to lease lands in the Nuiqsut area now scheduled for sale Oil and Gas Lease Sale 75 during December, 1992. If the agreement is approved this year, the lease sale could include approximately 60,000 acres of land covered in the agreement (about one quarter of the total acreage of Sale 75). If the agreement is not approved this session, the Nuiqsut acreage (assuming the litigation is settled) could not be leased until 1995 because of oil and gas lease sale procedural requirements. The Nuiqsut area lands have moderate oil and gas potential. Including them in the lease sale would bring significant new revenues to the state.

# SENATE BILL NO. 369

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

**Introduced:** 1/24/92
**Referred:** O&G, Resources, Finance

## A BILL

## FOR AN ACT ENTITLED

**"An Act ratifying an agreement settling litigation between the State of Alaska and the Arctic Slope Regional Corporation; establishing procedures for implementing the agreement; and providing for an effective date."**

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

*** Section 1.** PURPOSE. The purpose of this Act is to provide for the settlement of certain claims raised in litigation between the State of Alaska and the Arctic Slope Regional Corporation (ASRC) in "State of Alaska v. Arctic Slope Regional Corporation," Alaska Superior Court, Third Judicial District, Case No. 3AN-85-15523, and to improve the marketability of certain land titles in the Nuiqsut and Point Lay areas. The litigation arose over a 1974 agreement under which ASRC and the state were to exchange certain potentially valuable mineral lands in the Point Lay and Nuiqsut areas in exchange for which the state was to withdraw challenges to the eligibility, under the Alaska Native Claims Settlement Act (ANCSA), of the villages of Nuiqsut (Kuukpik Corporation) and Point Lay (Cully Corporation). For reasons that the State and ASRC disputed, the land exchanges of the 1974 agreement were never completed. Under the 1991 Settlement Agreement that this Act ratifies, the state and ASRC will

exchange undivided interests in the subsurface of submerged lands and uplands in the Point Lay and Nuiqsut areas and establish a fixed revenue sharing percentage for those lands.

*** Sec. 2.** RATIFICATION. Notwithstanding any provision of AS 38 or any other provision of state law, the "1991 Settlement Agreement Between Arctic Slope Regional Corporation and the State of Alaska" (including the exhibits to it) is hereby ratified as to the rights, duties, agreements, and obligations of the state provided for or contemplated in it.

*** Sec. 3.** RULES AGAINST PERPETUITIES AND RESTRAINTS ON ALIENATION. No statutory or common law rules against perpetuities, including AS 34.27.010, or restraints on alienation of property apply to the settlement agreement ratified by this Act or to any interest or power created by it.

*** Sec. 4.** COMMISSIONER AUTHORITY. The commissioner of natural resources is authorized and directed to implement the terms of the settlement agreement ratified by this Act, including, without limitation, to execute and deliver patents to ASRC as provided for in the settlement agreement, notwithstanding any procedural requirement or other provision of Alaska law that might otherwise be deemed a restriction on the commissioner's authority to implement the agreement. The commissioner may not materially amend the settlement agreement without legislative approval.

*** Sec. 5.** RECORDATION. (a) The commissioner of natural resources shall record a true and authenticated photocopy of the settlement agreement ratified by this Act, and any conveyance document required by it, in the recording office of the appropriate recording district, and shall incorporate the settlement agreement in the land records system maintained by the Department of Natural Resources.

(b) The commissioner of natural resources shall deliver a signed original of the settlement agreement to the archivist in the Department of Administration, for preservation.

*** Sec. 6.** ACTIONS. (a) Notwithstanding any other provision of Alaska law, no person may bring an action challenging the legality of the settlement agreement ratified by this Act, in whole or in part, or the legality of a provision of this Act, unless the action is commenced in a state superior court within six months after the effective date of this Act.

(b) Nothing in this Act is intended to create a right in any person to challenge the legality of the settlement agreement ratified by this Act, in whole or in part, or the legality of a provision of this Act.

*** Sec. 7.** WAIVER OF SOVEREIGN IMMUNITY. The State of Alaska waives its sovereign immunity from suit by ASRC and its successors or assigns seeking to enforce or protect rights conferred on ASRC under the settlement agreement ratified by this Act, but only if that action is brought in state

superior court. Nothing in this Act is intended to waive the state's immunity from suit in federal court under the eleventh amendment of the Constitution of the United States.

* **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

April 29, 1992

The Honorable Johnny Ellis, Chair
House Rules Committee
State Capitol
Juneau, AK 99811-1182

Dear Representative Ellis:

I am formally requesting that your committee calendar SB 369 for floor action as soon as possible. This bill relates to the Legislature's ratification of the 1991 settlement agreement between the Arctic Slope Regional Corporation (ASRC) and the State of Alaska. It will resolve protracted litigation between the state and the ASRC over potentially valuable North Slope mineral lands, allowing some of these lands to be leased in a December 1992 state oil and gas lease sale.

SB 369 passed the Senate, was referred to the House, and passed from the House Finance Committee with 10 do passes. Its companion bill, HB 416, which we had previously asked you to calendar, passed from House Resources with 6 do pass, House Judiciary with 3 do pass, and House Finance with 11 do pass. SB 369 is now the vehicle for resolving the ASRC litigation, and the bill to be placed on the House calendar.

I have enclosed relevant information about the agreement with this letter. Please let me or Special Assistant Carol Wilson (465-2400) know if you have any questions.

Sincerely,

Harold C. Heinze
Commissioner

enclosure

cc: Paul Fuhs, Legislative Liaison, Office of the Governor
Members of the Committee

10-J9LH

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY
## STATE OF ALASKA

*(907) 465-3867 or 465-2450*
*FAX (907) 465-2029*
*Mail Stop 3101*

*240 Main Street, Suite 500*
*Juneau, Alaska 99801-2101*

**MEMORANDUM** March 28, 1992

**SUBJECT:** An Act ratifying an agreement settling litigation between the state and the Arctic Slope Regional Corporation (Work Order No. 7-GS2063\A)

**TO:** Senator Pat Pourchot, Co-Chair
Senate Finance Committee
ATTN: Geoff Butler

**FROM:** Jack Chenoweth
Legislative Counsel

Section 3 of Senate Bill 369, legislation prepared and offered by the administration, provides:

> RULES AGAINST PERPETUITIES AND RESTRAINTS ON ALIENATION. No statutory or common law rules against perpetuities, including AS 34.27.010, [1] or restraints on alienation of property apply to the settlement agreement ratified by this Act or to any interest or power created by it.

You have asked me to comment about the necessity for and legal implications of this provision.

---

[1] AS 34.27.010 is a technical provision that modifies the manner of interpreting and applying the common law rule against perpetuities:

> Sec. 34.27.010. MODIFICATION OF THE COMMON LAW RULE AGAINST PERPETUITIES. In determining if an interest would violate the rule against perpetuities, the period of perpetuities shall be measured by actual rather than possible events. However, the period of perpetuities may not be measured by a life whose continuance does not have a causal relationship to the vesting or failure of the interest. An interest that would violate the rule against perpetuities as modified by this section shall be reformed, within the limits of that rule, to approximate most closely the intention of the creator of the interest.

Governor Hickel's January 23 letter transmitting SB 369 represents that the purpose of section 3 is to "improve the marketability of title" to the lands that are the subject of the settlement agreement. 2/

In the short time available to me, I have not obtained any other information from the concerned agencies on which to base this discussion and assume, for purposes of it, that the administration's justification is honestly presented.

Rule Against Perpetuities:

The rule against perpetuities is a common law rule based on English precedents. In its technical language, it provides:

> No [real property] interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest.

Under the rule, a property interest or estate must be so limited that it will necessarily vest, or commence, if at all, within the limits prescribed by the rule. Certain future interests that vest too remotely are invalidated by the rule and are stricken from the document making their conveyance.

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2/ The letter, at page 6, states:

> Section 3 of the bill provides that "no statutory or common law rules against perpetuities . . . or restraints on alienation of property shall apply to the settlement agreement . . . or to any interest or power created by it." The 1991 Settlement Agreement commits the state and ASRC [Arctic Slope Regional Corporation] permanently to merge their titles with no right of partition, to jointly lease and develop their interests, and to take a number of other steps, including contemplation of sales, with respect to their lands for an indefinite period of time. The law is generally hostile to perpetual restrictions or restraints on alienation. For example, AS 34.27.010 provides than an interest that would violate the rule against perpetuities may be reformed by a court. If these rules were to apply, the 1991 Settlement Agreement might be challenged and stricken down or modified in ways that were never intended.
>
> A major consideration for both the state and ASRC in entering into the 1991 Settlement Agreement is to improve the marketability of title. This objective, and the benefits of the settlement, would be frustrated if the merging of title, prohibition against partition of those interests, and "executive rights" provisions were ever successfully challenged as violative of the rule against perpetuities or as unreasonable restraints on alienation. Accordingly, sec. 3 exempts the 1991 Settlement Agreement from these requirements.

(Emphasis added.)

The rule against perpetuities was devised as a rule of law against remoteness by putting limits or restraints on an individual's ability to create successive future interests. Its purpose is to prevent real property from being tied up for too long a period--to avoid landownership from being entailed for generations and centuries through the use of instruments that are executed at the present time. In these times, the rule is of particular concern to attorneys engaged as estate planners, but operation of the rule may arise in the context of any proposed legal arrangement respecting property transfers or dispositions. The interpretative amendment cited above, adopted in 1983, is intended to set aside an overly technical application of the rule to defeat carefully created estate plans. 3/

The rule against perpetuities does not operate as against present interests. In other words, if in the settlement documents or if as a consequence of the settlement document, the parties carry out their intent to "exchange undivided interests in the subsurface of submerged lands and uplands . . . and establish a fixed revenue sharing percentage for those lands," the execution of that arrangement binds the present parties and establishes a new present interest that is beyond the reach of the rule.

Not all future interests in property are covered by operation of the rule against perpetuities. For reasons beyond the scope of this paper, reversions and future vested interests are likewise outside the scope of the rule. However, future nonvested or contingent interests, and executory interests, are subject to it, as, according to cases in other jurisdictions, is an option involving purchase and sale of property if the time period is not limited to the period specified in the rule, or if the option provides for its own renewal indefinitely. As is clear from the concern for the operation of the rule among estate planners, certain trusts may also run afoul of the operation of the rule.

It is this latter set of circumstances--and particularly the use of indefinitely renewable options involving the property subject to the settlement agreement or the possibility that the parties may act to secure treatment of the property in trust--that may be at the heart of this request. In any event, it is not self-evident that setting aside the (that exempting this agreement from the law against perpetuities)

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3/ Essentially, in enacting AS 34.27.010, the legislature was responding to the Code Revision Commission's argument that the rule against perpetuities should be reformed. The commission recommended adoption of language that would foreclose the possibility of defeating a testator's reasonable disposition of property (1) by basing the application of the rule on actual events rather than, as is done under the common law, possible events or theoretical contingencies and (2) by allowing court reformation of a property interest under the rule in accordance with the apparent intent of the donor or grantor of the property rather than eliminating that interest altogether. Understandably, the legislated modification of the application of the rule against perpetuities effectively eliminated the potential liability of practitioners for unwary, unintentional violations of it, materially reducing a finding of malpractice on the part of an erring attorney.

effect of the rule against perpetuities only as to the property embraced within "the settlement agreement ratified by this Act or to any interest or power created in it" is critical to achieve the administration's objective of improving marketability of title to the land in question. Before retaining this provision in the bill, the committee and the legislature are well advised to satisfy themselves that the state anticipates use of some devilishly clever property conveyance agreements and arrangements likely to establish contingent future interests that will call into question the possible operation of the rule against perpetuities.

Restraints On Alienation:

A restraint on alienation is, generally, a restraint on the ability of a property owner to transfer the property to another. [4/] It concerns itself with the limitations that may be imposed on the owner's enjoyment of property. Since, philosophically, as Governor Hickel's January 23 letter relates, the law has favored the ability to dispose of property, restraints on alienation are usually not conditioned or imposed by statute. They are disfavored in the law and historically the common law has acted to set them aside. [5/] Restraints on alienation may arise out of an agreement between parties and, in some circumstances, they may be endorsed or tacitly recognized by statute. (See, for example, AS 10.45.080 authorizing restraints on alienation of shares of stock in article of incorporation applicable to professional corporations, and AS 34.08.530,

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[4/] Restraints on alienation are a consequence of a 13th century English statute enabling tenants in fee simple to alienate their lands at pleasure. Responding to the statute, landlords--no doubt aided by clever 13th century counsellors at law--devised conveyancing methods intended to restrain alienation. Subsequent statutes and a number of English common law court decisions generally served to defeat the efforts to suspend the power of alienation. The body of law is generally known as the rule(s) against restraints.

[5/] So, for example, AS 34.27.020 sets aside the operation of the common law Rule in Shelley's Case. Under that rule of law, if one instrument creates a life estate in land in a person and purports to create a remainder in the person's heirs, the remainder becomes a remainder in fee simple in the grantee, not the heirs, and the remainder to the heirs is void. Alaska's statutory modification of the rule substitutes an outcome that, while at variance with early 17th century English jurisprudence, is believed to better carry out the intentions of the donor or conveyancer of the property.

Similarly, in AS 34.27.030, Alaska abolishes the common law rule of destructibility of contingent remainders. Under the English common law rule, a legal contingent remainder in land was destroyed if it did not vest or commence at or before the termination of the preceding freehold estate. (If land is devised to A for life, then to A's children who reach 21, but A dies when the children are 16 and 12, the remainder over to the children is destroyed and, rather than passing to A's children, the land passes to the testator's heirs.) However, by permitting the conveyances to take effect as intended, the 1983 statutory change assures that the testator's intent would be fulfilled.

acknowledging the ability of parties establishing a common interest community to establish and impose restrictions on alienation on the property of that community.)

At common law, the legal effectiveness of a restraint on alienation generally depends on the type of restraint imposed. The terms of a grant that deny the grantee the power to transfer or attempt to transfer the estate to anyone else are almost always held void. However, provisions that impose restraints with respect to particular persons or for a set duration without first providing the grantor the right to repurchase or match the offer--known as "preemptive rights"--are usually upheld. [6/] Promissory restraints--agreements between property co-owners--who agree between or among themselves to use the property in a certain manner or not to partition the estate may be entitled to have the covenants specifically enforced, but racially restrictive covenants imposed in deeds that are violative of equal protection provisions of the United States or a state constitution will be invalidated.

The parties to this agreement--the State and the Arctic Slope Regional Corporation--are free to come to an agreement imposing limitations on the ability of one or the other freely to alienate or convey an interest in the subject property. What may prove troublesome--and what may be at the root of this request--are efforts by the parties to set restraints on the powers of one another to alienate their respective interests, especially if those restraints are not limited in time. The parties' ability to use devices such as mutual restrictions on alienation, preemptive rights, covenants, and options may be abetted by inclusion of a provision like section 3 in the enactment.

As with my recommendation concluding the discussion about the rule against perpetuities, I encourage the committee and the legislature to satisfy themselves that, in the implementation of the settlement, the parties anticipate use of one or more of the kinds of agreements and arrangements that may raise questions under the common law restrictions against alienation when applied to contemporary land transaction agreements.

(the parties foresee reasons that may give cause to restrict alienation. *

One question arises about section 3: In the context in which it appears, does the provision constitute "special legislation" in violation of the constitutional prohibition, under article II, section 19, against enactment of "special legislation if a general law

Special legislation ?

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[6/] This appears to be particularly true with respect to estates of less than fee simple. So, for example, provisions in leases prohibiting a tenant from assigning or subletting the property without the consent of the landlord are usually treated as valid, as are provisions having similar affect that are imposed in land sale contracts and, in many jurisdictions, due-on-sale contracts inserted in mortgaged premises.

can be made applicable?" Should, in other words, the preferred approach be one of enactment of general legislation covering the substance of section 3 of the bill?

Legislation will not be said to violate this constitutional provision if the legislation is reasonably related to a matter of common interest to the whole state. Abrams v. State, 534 P.2d 91 (Alaska 1975). The circumstances that have given rise to the drafting and consideration of SB 369 are not unlike the issues involving a land exchange litigated in State v. Lewis, 559 P.2d 630 (Alaska 1977), cert. den. 432 U.S. 901 (1977), wherein the court determined that 1976 legislation directing state participation in the land exchange involving the federal government and the Cook Inlet Regional Corporation involved "a general legislative treatment of complex problems of pressing importance and statewide concern." A key element in the Lewis decision was the court's finding of "[a]mple evidence in the record [that] supports our conclusion that [the Act] is designed to facilitate statewide land use management and to resolve a host of pressing legal issues arising in the context of ANCSA." 559 P.2d at 643 (emphasis added). So, while there is a strong surface resemblance between the land exchange in Lewis and the Arctic Slope Regional Corporation exchange addressed in SB 369, the committee and the legislature would be well advised to take the opportunity to ensure that the record of deliberations provides "ample evidence" that the provision is reasonably related to implementation of a land exchange that affects the interests of the state as a whole.

I trust this is sufficient for your purposes.

JBC:pl
92-220.plm

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

**DEPT. OF NATURAL RESOURCES**

*DIVISION OF OIL AND GAS*

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
PHONE: (907) 762-2553

April 8, 1992

The Honorable Pat Pourchot, Co-Chair
Senate Finance Committee
Room 516 Capitol
Juneau, Alaska 99811

Dear Senator Pourchot:

At the request of your staff, the Legislative Counsel prepared an analysis of a portion of SB 369, now before your committee. This bill would approve the litigation settlement between the State of Alaska and Arctic Slope Regional Corporation. The settlement resolves litigation resulting from a 1974 agreement in which ASRC and the state agreed to exchange lands near Nuiqsut and Point Lay. The settlement would allow the state to finally resolve the land dispute — including the resolution of likely future disputes about the nature, extent and location of submerged lands in the Colville River delta — on a basis that will enable the state to offer approximately 50,000 acres near Nuiqsut in Oil and Gas Lease Sale 75, scheduled for December 1992.

As the Legislative Counsel's memorandum indicates, time constraints did not allow him the opportunity to discuss the bill with my staff before the memo was written. This is unfortunate as we believe that a discussion would have avoided two basic misconceptions reflected in the Legislative Counsel's March 28, 1992, memorandum. First, it does not present an accurate understanding of the background of the settlement agreement and, in particular, the manner in which the agreement resolves the severe problems of marketability of the oil and gas resources of the settlement's lands that would face the state and ASRC in the absence of legislative approval of the settlement agreement. Second, the Legislative Counsel implies that the state and ASRC may engage in other conveyancing arrangements or activities in the future that are outside the provisions of the settlement agreement. These concerns, discussed below, are unfounded.

In 1986 — less than a year after the litigation under the 1974 agreement was commenced — the state and ASRC reached a conceptual agreement to split ownership of the disputed lands on a 50-50 basis. By itself, this would have been easy to accomplish. But the parties were concerned about the marketability of the settlement lands, particularly in the Colville River delta where there are numerous, constantly shifting river channels and sand bars. If the parties were to be able to market the settlement lands, it was essential to resolve a very real potential dispute over the nature, extent, and location of submerged lands.

The state asserted ownership of the submerged riverbeds under the Equal Footing Doctrine

and the Submerged Lands Act. The state and ASRC strongly differed about the existence, location, and extent of state owned submerged lands. It took nearly four more years to resolve the submerged lands issue in a way that merged titles to all the lands — submerged and uplands. This compromise solution gave full effect to the 50-50 split of uplands ownership and to the state's 100% ownership of submerged lands. It resolved forever the question of ownership of the uplands and submerged lands, even if, as likely, the river channels were to change location in the future through accretion, reliction, or avulsion.

To maximize marketability of the settlement lands, the settlement was structured so that there would be no confusion about ownership of the settlement lands. Any future disagreement between the state and ASRC would be eliminated; any question by a potential lessee about ownership would be answered.

In his memorandum, the Legislative Counsel focused primarily on Section 3 of the bill. That section ensures that the settlement will not be invalidated by the statutory or common law rules against perpetuities or restraints on alienation of property. We neither disagree with the Legislative Counsel's treatment of the historical background and explanation of these complex legal principles, nor do we see any need to restate them. We do, however, think his memorandum misses the mark and raises unjustified concerns about Section 3 and its application to the settlement agreement.

The Legislative Counsel raises the specter of "indefinitely renewable options" involving the property subject to the settlement agreement and "devilishly clever property conveyance agreements and arrangements likely to establish future contingent interests." See pages 3-4 of memorandum. In fact, all of the conveyances required to be made by the parties to fully implement the agreement are provided for in the agreement and set forth in the accompanying exhibits. With a single exception, there is absolutely no possibility for any other type of conveyance or property transfer arrangement to be made in the future other than those expressly set forth in the agreement and its exhibits.

The only exception relates to the form of oil and gas lease that will be used by the state in the exercise of its Executive Rights to lease the jointly owned settlement property. As this leasing activity will occur solely within the statutory and regulatory framework in which the state customarily engages in oil and gas leasing, there should be no concern here.

Section 3, however, is necessary to avoid any risk that a court would later invalidate the perpetual grant of Executive Rights to the state as violating either statutory or common law rules against perpetuities or possibly constituting an unlawful restraint on alienation. The grant of Executive Rights to the state is crucial to the marketability of the settlement lands and may not be changed except by later agreement between the state and ASRC. Under Section 4 of the bill, such an amendment to the existing agreement would clearly require legislative approval in order to be effective.

Although a substantial majority of the conveyances required by the agreement will be made within 30 days of the Governor's signature on the bill, a few await action by the Bureau of Land Management. It is not totally implausible that BLM action on a few of the sections of land involved on which there are pending Native allotments may take more than a generation. Section 3 therefore also is necessary to prevent the unintended result of invalidating those conveyances.

At least two other provisions of the agreement might be construed by a court to be unlawful restraints on alienation. In Section 4.13 of the agreement, both the state and ASRC waive any right to voluntary or involuntary partition of their undivided interests in the land. Oil is invariably distributed unequally and a partition of the settlement property would give one party an advantage. Instead, the parties have crafted an agreement that provides significant incentives to work together to develop the resources.

Section 7.3 of the agreement also prohibits either the state or ASRC from selling its percentage ownership without the consent of the other party. The state is prohibited by the Statehood Act from selling its subsurface ownership, and this provision was inserted at the state's request to ensure that ASRC did not sell its undivided interest to third parties, including an oil company that might gain a competitive advantage in lease sale or production arrangements.

These potential conflicts with the rules against perpetuities and restraints on alienation might survive a court challenge. The risk of a challenge itself, however, would lower the value of oil and gas leases offered under the settlement. Increasing their marketability increases the bonus bids to the state from the expected leases and will result in the timely and beneficial development of these resources.

As a final matter, the Legislative Counsel expressed concern about the bill's possible conflict with the constitutional prohibition against "special" legislation if a general law can be made applicable. His memorandum correctly noted that the legislation will pass constitutional muster if it is "reasonably related to a matter of common interest to the whole state." This settlement obviously resolves a matter of statewide concern and the record before your committee and the five other Senate and House committees that have considered the bill provide ample evidence of that fact.

I appreciate the close scrutiny your staff has given the bill. Your careful review, and that conducted in the course of five previous hearings, have assured me that we have not made any inadvertent errors in the bill or the settlement. I remain convinced that it is in the best interest of the state to have the legislature approve this settlement.

I hope this information is useful. If you have any further questions, please contact me or Bob Loeffler of my staff (762-2578).

Sincerely,

James E. Eason
Director

WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 28, 1992

The Honorable Jalmar Kerttula, Co-Chair
The Honorable Pat Pourchot, Co-Chair
Senate Finance Committee
Alaska State Legislature
Juneau, AK 99811-1132

Dear Senators Kerttula and Pourchot:

I am formally requesting that a hearing be scheduled on SB 369, relating to the Legislature's ratification of the 1991 settlement agreement between the Arctic Slope Regional Corporation (ASRC) and the State of Alaska. Additional information regarding this bill is being sent to you from the Department of Natural Resources. If you have questions about the agreement please contact Special Assistant Carol Wilson at 465-2400, or Bob Loeffler of the Division of Oil and Gas at 762-2578.

Sincerely,

Paul Fuhs
Senior Legislative Liaison

Enclosures

cc: Carol Wilson, DNR
Bob Loeffler, DNR

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

February 3, 1992

The Honorable Sam Cotten, Chair
Senate Special Committee for Oil and Gas
State Capitol
Juneau, AK 99811-1182

Dear Senator Cotten:

Subject: SB 369, relating to the Legislature's ratification of the 1991 settlement agreement between the Arctic Slope Regional Corporation (ASRC) and the State of Alaska.

Position: The Department of Natural Resources supports this bill. It will ratify an agreement that resolves protracted litigation between the state and the ASRC over potentially valuable North Slope mineral lands, allowing some of these lands to be leased in a December, 1992 state oil and gas lease sale.

Background: The litigation stemmed from a 1974 agreement between ASRC and the state which was intended to resolve a dispute over the Alaska Native Claims Settlement Act eligibility of the villages of Nuiqsut and Point Lay. Under the 1974 agreement, for withdrawing its challenges to these villages eligibility and transferring certain state lands in the Point lay area to ASRC, the state was to receive the subsurface estate to certain lands near Nuiqsut. The dispute became a lawsuit in 1985 after Texaco announced an oil strike northeast of the Nuiqsut lands.

Under the new settlement agreement, the state and ASRC would jointly own undivided interests in the mineral estate of approximately 84,000 acres near Point Lay and over 100,000 acres near Nuiqsut. The state would hold joint oil and gas lease sales for itself and ASRC. If the two disagree about terms for the lease sales, such as minimum bid and royalty rate, a dispute resolution process agreed to in the settlement would be used instead of the courts.

Recommendation: Approve the settlement agreement.

Please let me know if you need additional information about the settlement agreement.

Sincerely,

Harold C Heinze

Harold C. Heinze
Commissioner

10-J9LH

cc: Committee Members
Paul Fuhs, Legislative Liaison, Office of the Governor
Charles E. Cole, Attorney General, Department of Law
Jim Eason, Director, Division of Oil and Gas

WALTER J. HICKEL

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1992

The Honorable Richard I. Eliason
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would ratify the "1991 Settlement Agreement Between the State of Alaska and the Arctic Slope Regional Corporation" (1991 Settlement Agreement). This bill would resolve longstanding litigation between the State of Alaska and the Arctic Slope Regional Corporation (ASRC) over ownership of potentially valuable mineral lands in the Point Lay and Nuiqsut areas of the North Slope. The litigation arose out of a 1974 land exchange agreement (1974 Agreement), discussed below, which followed passage of the Alaska Native Claims Settlement Act of 1971 (ANCSA). The bill also would remove impediments to title marketability to the disputed lands and to create a long-term partnership between the state and ASRC, aimed at maximizing revenue for both parties.

## The 1991 Settlement Agreement - Background

The 1991 Settlement Agreement resolves a dispute over land entitlement stemming from a 1974 land exchange agreement. The 1974 Agreement was intended to resolve state challenges to the BIA- certified eligibility of two ANCSA village corporations by requiring the state and ASRC to exchange certain lands in the Nuiqsut and Point Lay areas, in exchange for which the state agreed to withdraw its challenges to the ANCSA eligibility of Point Lay (Cully Corporation) and Nuiqsut (Kuukpik Corporation).

Under the 1974 Agreement, ASRC agreed to quitclaim any interest it had in 69,120 acres of Nuiqsut area subsurface then tentatively approved to the state, the surface of which Kuukpik Corporation could select under ANCSA. The state agreed to convey to ASRC about 65,000 acres of lands owned by the state in the Point Lay area. Although the state did withdraw its challenges to the eligibility of Point Lay and Nuiqsut, the land exchange provisions of the 1974 Agreement were never completed, for reasons which ASRC and the Department of Natural Resources (DNR) dispute.

In 1985 Texaco made a promising oil strike northeast of the Nuiqsut area lands. At that point, DNR sought to implement the land exchange provisions of the 1974 Agreement. ASRC refused, asserting that the state had abandoned the 1974 Agreement by 11 years of inaction and that the 1974 Agreement was in violation of the Alaska Statehood Act, the Constitution of Alaska, and various state and federal laws. Negotiations between the parties failed, and litigation was filed in state and federal court.

After the initiation of litigation and extensive motion practice, DNR and ASRC, faced with the uncertainties of litigation and the speculative values of both the Nuiqsut and Point Lay parcels, reentered negotiations and in 1986 reached an agreement in principle that contemplated an even split of the contested uplands at both locations. This "50/50" split of the lands subject to the 1974 Agreement remains at the heart of the 1991 Settlement Agreement.

However, after the basic settlement concept was agreed to in 1986, DNR and ASRC engaged in extensive research and discussions concerning the boundaries, extent, and location of uplands and of the state's wholly-owned submerged lands (to which ASRC was not entitled), and regarding which party would manage the lands involved and under what conditions.

The most difficult issue during settlement negotiations concerned the boundaries, extent, and location of submerged lands. ASRC claimed that the extent of the state's wholly-owned submerged lands (including submerged lands underlying lakes, rivers, and tidelands) totalled substantially less in acreage than that claimed by DNR. The parties realized that the inability to agree on the submerged lands would inevitably result in further litigation and make it difficult if not impossible for either party to market its respective interests. Therefore, the parties tentatively agreed to merge title to the uplands and submerged lands and share the revenue from oil and gas development on a section-by-section basis, with the state to get more than 50 percent when, arguably at least, there were submerged lands in a section.

For three years the parties analyzed aerial photos, maps, United States Fish and Wildlife Service and Bureau of Land Management data, and other data in an effort to reach a common data base for determining what the state's wholly owned submerged lands were and what the uplands to be split between the parties were. It took a settlement conference before a United States District Court judge to force the parties to resolve this issue; in that 1989 settlement conference the parties compromised their respective positions. Since then, the parties have continued to negotiate the details of how the lands would be managed.

The resulting 1991 Settlement Agreement, as recommended to me by Attorney General Cole, has the following principal components:

1. The litigation is dismissed and the rights of the parties under the 1974 Agreement are superseded unless the 1991 Settlement Agreement is overturned by a court.

2. The state and ASRC acquire by exchange equal, undivided interests in the subsurface estate of all lands previously subject to the 1974 Agreement.

3. The state and ASRC merge their titles to uplands and submerged lands and establish a formula for percentages of undivided ownership, on a section-by-section basis. This merger would resolve all disputes regarding the existence, extent, and location of state-owned submerged lands and avoid, for all time, the ambiguities otherwise created by constantly shifting boundaries caused by accretion, reliction, and avulsion.

4. The state retains the "executive rights" (leasing authority) to lease all lands on behalf of ASRC and the state. ASRC has the opportunity to review and comment on proposed oil and gas lease terms, with a dispute-resolution mechanism in the event of disagreement. ASRC and the state each retain the right to separately enforce the lease with respect to their respective interests.

5. Revenue generated from the undivided interests is paid directly to the state and ASRC, respectively, in proportion to their percentage ownership interests in the subsurface estates.

6. The state did not give up any of its duties to the public imposed by law. The state will still have to determine whether a sale is in the best interest of the state, and must follow relevant procedural requirements for leasing or exploring for natural resources. The state retains all rights under state law to ensure that development of the subsurface complies with laws concerning natural resource management and protection.

The 1991 Settlement Agreement contains a number of complex, technical provisions dealing with existing oil and gas leases at Nuiqsut, status of state submerged lands, boundary problems, and land management rights and duties. The following describes in more detail the major provisions of the settlement agreement.

## 1991 Settlement Agreement - Substantive Provisions

Under the 1991 Settlement Agreement, the parties agreed to quantify the extent of state-owned submerged lands by splitting the difference between the state's calculations of submerged lands and those of ASRC. Title problems were resolved by combining the interests of the state and ASRC on a section-by-section basis, with each party receiving an undivided percentage ownership reflecting a 50/50 division of the agreed-to uplands within each section, and the state receiving full (i.e., 100 percent) credit for any agreed-to submerged lands within the section. The state retains full sovereign powers over submerged lands, notwithstanding ASRC's undivided ownership interest.

The net effect of the cross-conveyances called for in the 1991 Settlement Agreement is an exchange of undivided interests in the subsurface estate such that the titles to submerged lands and uplands are merged and the parties, for all time, will own their respective undivided percentage interests in each section according to the schedules set out in Exhibits E and F to the 1991 Settlement Agreement. This percentage is fixed and will not change regardless of the amount or location of submerged lands that may be contained in any section from time to time.

In order to eliminate any possible future disputes over the boundary of the settlement area along the coastline and along the National Petroleum Reserve-Alaska (NPRA) boundary, the parties agreed to extend section lines into the ocean and across the NPRA boundary so that the area subject to the 1991 Settlement Agreement will include only full sections whose location can be protracted at any time without reference to changes brought about by accretion, reliction, or avulsion. In this manner, approximately 4,000 acres of ocean submerged lands owned by the state outside the 1974 Agreement area, and approximately 9,000 acres of NPRA subsurface owned by ASRC also outside the 1974 Agreement area, were included in the 1991 Settlement Agreement. In each instance the parties' undivided percentage interest in any section so extended was adjusted to provide a 100 percent credit for lands contributed by the state or ASRC from outside the original 1974 Agreement boundaries.

Finally, the parties agreed that the state would hold the "executive rights" for both parties' interests. As defined in the 1991 Settlement Agreement, "executive rights" empower the state to enter into leases and other subsurface agreements on behalf of both ASRC and the state. The 1991 Settlement Agreement contemplates that the commissioner will exercise the executive rights consistent with statutory constraints; the agreement does not waive any sovereign powers of the state.

The parties to the 1991 Settlement Agreement also discussed the issue of section 6(i) of the Alaska Statehood Act, which generally prohibits the state from alienating any interest in mineral estates it owns. Congress has authorized an exception to this provision under sec. 22(f) of ANCSA, which authorizes exchanges of land with ANCSA corporations. In order to resolve any question as to whether the exchange contemplated in the settlement agreement would require approval of the Secretary of Interior, the state has requested, and expects to receive shortly, an opinion from the Interior Solicitor ruling that no Secretarial approval is required for the 1991 Settlement Agreement.

## The Bill

The attached bill ratifies the 1991 Settlement Agreement and establishes procedures for implementing it. Section 1 of the bill sets out the overall purposes of the bill and settlement agreement.

Section 2 of the bill specifies that the 1991 Settlement Agreement is ratified "notwithstanding any provision of AS 38 or any other provisions of Alaska law." This clarifies that the exchange of undivided interests in land contemplated by the 1991 Settlement Agreement is not subject to the provisions, in particular, of AS 38.50.

AS 38.50 provides authority for exchanges of the state's mineral estate, including the mineral estate in submerged lands. For a variety of reasons, however, that chapter does not provide an appropriate vehicle for the settlement of litigation. For example, AS 38.50 contemplates a voluntary exchange of land for equal values and requires appraisals and a series of public hearings on proposed exchanges. Although the state and ASRC believe that the consideration given and received under the settlement agreement is roughly equal, no effort has been made to appraise the lands. The terms of the exchange are influenced by factors other than land values (which are highly speculative, in any event), including each side's assessment of the risks of litigation. Finally, settlement negotiations have necessarily and appropriately been conducted in closed sessions. Public involvement is provided through the process of legislative ratification, but could not realistically have been provided earlier in the process, as contemplated under AS 38.50.

In addition to addressing AS 38.50, the "notwithstanding any other provision of Alaska law" language is intended to ensure that no other provision of state law might subsequently be raised to challenge the settlement itself. The bill deliberately uses broad language to accomplish this result. This language is intended to make it clear, for example, that in carrying out the provisions of the settlement the commissioner is acting under the mandate of the legislature as provided in this bill and not exercising the commissioner's discretion under other statutory provisions that authorize administrative disposition of state lands. Specifically, this language, together with sec. 3 of the bill, discussed below, relieves the commissioner of any further notice, hearing, or public interest finding requirements before making the conveyances required by the 1991 Settlement Agreement.

The exemption as to other provisions of Alaska law extends, however, only to those actions mandated by the 1991 Settlement Agreement necessary to implement the settlement. The 1991 Settlement Agreement contemplates that, following conveyance, the commissioner will exercise management responsibilities consistent with statutory constraints, and does not waive any sovereign powers of the state. Any exploration and development activities that occur subsequent to the exchange will be fully subject to the normal statutory and regulatory procedures applicable to administration of state lands. Specifically, lease sales will be conducted in the normal manner and all regulatory requirements will be observed, including coastal zone consistency and public interest findings. To the extent that ASRC exercises powers as a landowner, this legislation does not exempt ASRC from federal, state, or local requirements otherwise applicable to private landowners.

Section 3 of the bill provides that "no statutory or common law rules against perpetuities . . . or restraints on alienation of property shall apply to the settlement agreement . . . or to any interest or power created by it." The 1991 Settlement Agreement commits the state and ASRC permanently to merge their titles with no right of partition, to jointly lease and develop their interests, and to take a number of other steps, including contemplation of sales, with respect to their lands for an indefinite period of time. The law is generally hostile to perpetual restrictions or restraints on alienation. For example, AS 34.27.010 provides that an interest that would violate the rule against perpetuities may be reformed by a court. If these rules were to apply, the 1991 Settlement Agreement might be challenged and stricken down or modified in ways that were never intended.

A major consideration for both the state and ASRC in entering into the 1991 Settlement Agreement is to improve the marketability of title. This objective, and the benefits of the settlement, would be frustrated if the merging of title, prohibition against partition of those interests, and "executive rights" provisions were ever successfully challenged as violative of the rule against perpetuities or as unreasonable restraints on alienation. Accordingly, sec. 3 exempts the 1991 Settlement Agreement from these requirements.

Sections 4 and 5 of the bill outline the authorities and duties of the commissioner of natural resources to carry out the terms of the 1991 Settlement Agreement, including issuing and recording the appropriate land conveyances.

Section 6 of the bill limits the time within which the bill or the 1991 Settlement Agreement can be challenged in court. In order to minimize the possibility that the exchange might be altered or invalidated by a court after the state and ASRC have committed themselves to making the conveyances and taking the other actions required by the 1991 Settlement Agreement, sec. 6 provides that any action challenging the legality of the 1991 Settlement Agreement must be commenced within six months after the effective date of the legislation. A joint lease sale involving lands subject to the settlement agreement is scheduled for December 1992. Any uncertainty as to the validity of the 1991 Settlement Agreement or the implementing legislation could adversely affect the marketability of the leases. Although the six-month limitation period is rather short, the parties most likely to have standing to challenge the settlement agreement are the state and ASRC or entities in privity with them. We believe that the short limitation period is reasonable in light of the extensive past negotiations between the parties and the need to provide some finality to the litigation and to allow for future uses of the lands. Also, sec. 6 of the bill provides that the bill may not be construed as creating any right in any party not privy to the 1991 Settlement Agreement to challenge that Agreement or the Act.

Finally, sec. 7 of the bill waives the sovereign immunity of the state to any suit brought by ASRC to enforce the 1991 Settlement Agreement if that action is commenced in a superior court of the state. The state does not waive its protection from suit in federal court under the eleventh amendment of the Constitution of the United States.

The 1991 Settlement Agreement is a compromise, and settles highly disputed issues. Because of that, it is not without risks to both the state and ASRC. However, I believe that these risks are outweighed by the benefits to the state of finally resolving this 18-year-old dispute. The 1991 Settlement Agreement not only settles long-standing litigation between ASRC and the state, it also anticipates and resolves disputes regarding the existence, extent, and location of submerged lands owned by the state in the Nuiqsut and Point Lay areas. Finally, by merging title to uplands and submerged lands and vesting "executive rights" in the state, the 1991 Agreement will result in maximum certainty and predictability for potential lessees, which in turn will make the interests of both the state and ASRC more marketable.

Copies of the 1991 Settlement Agreement will be provided to the senate secretary and the clerk of the house. Additional copies are available through the Department of Natural Resources.

I urge your prompt consideration and passage of this bill.

Sincerely,

Walter J. Hickel
Governor

# STATE OF ALASKA

**DEPT. OF NATURAL RESOURCES**

*DIVISION OF OIL AND GAS*

*WALTER J. HICKEL, GOVERNOR*

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
PHONE: (907) 762-2553

MB

January 3, 1992

Dear Sir or Madame:

I am writing to inform you of a settlement agreement concerning certain mineral resources on the north slope. In December 1991, the State of Alaska and the Arctic Slope Regional Corporation (ASRC) settled a long-running legal dispute concerning land ownership on the north slope near Nuiqsut and Point Lay. The mineral estate of this land is potentially valuable for oil, gas, or coal. The settlement resolves litigation resulting from a 1974 agreement in which ASRC and the state agreed to exchange lands near Nuiqsut and Point Lay. The settlement is not effective until approved by the legislature. The Governor will submit the settlement agreement to the legislature at the beginning of the legislative session in January. Much of the Nuiqsut-area lands have existing oil and gas leases. Certain unleased portions of that area are scheduled to be offered for competitive leasing in Oil and Gas Lease Sale 75 in December 1992.

I am enclosing a copy of the settlement, and a summary of its terms prepared by the Division of Oil and Gas. If you would like more information, please contact Bob Loeffler of my staff at the address on the letterhead. He can be reached at 762-2578.

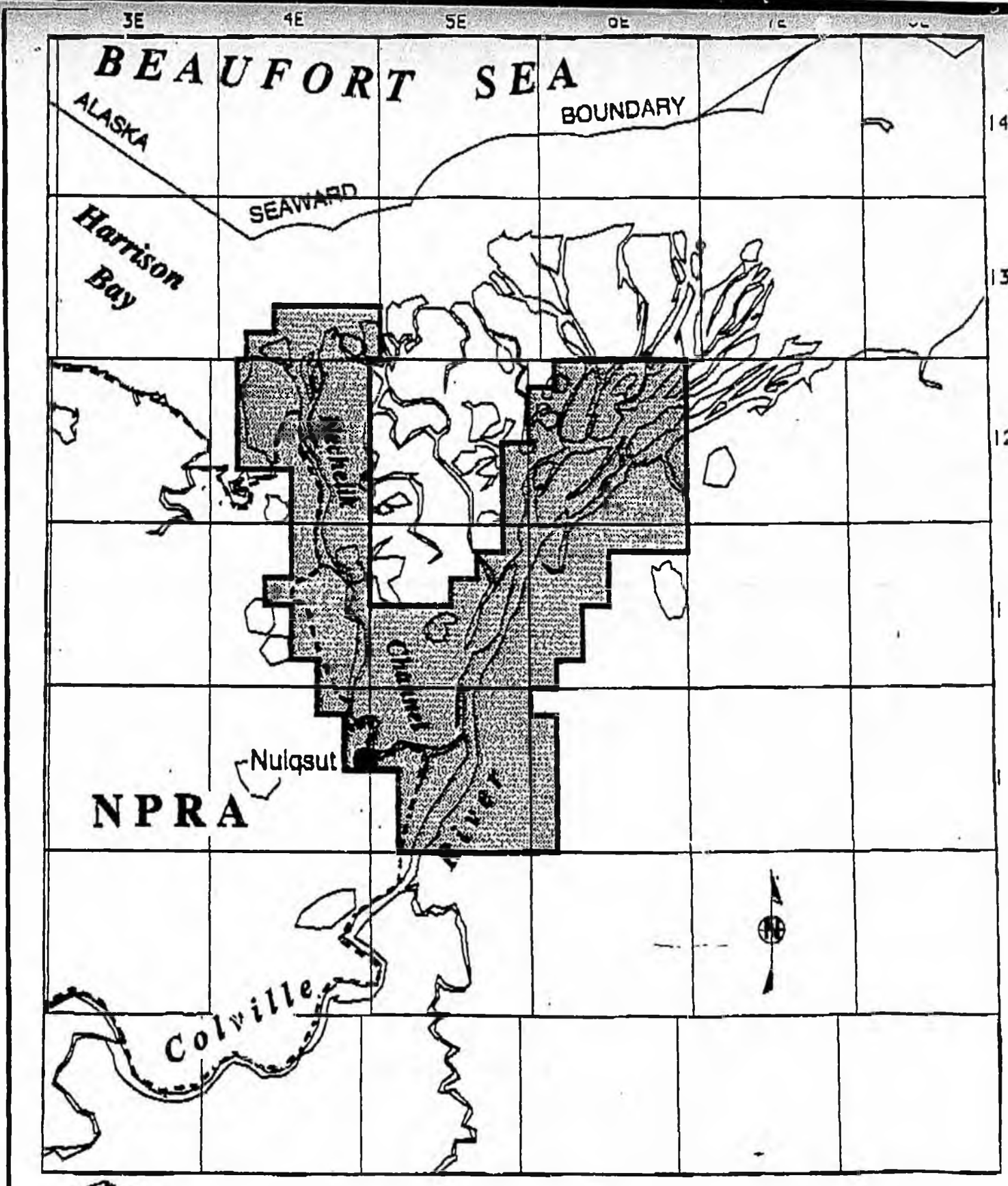
Sincerely,

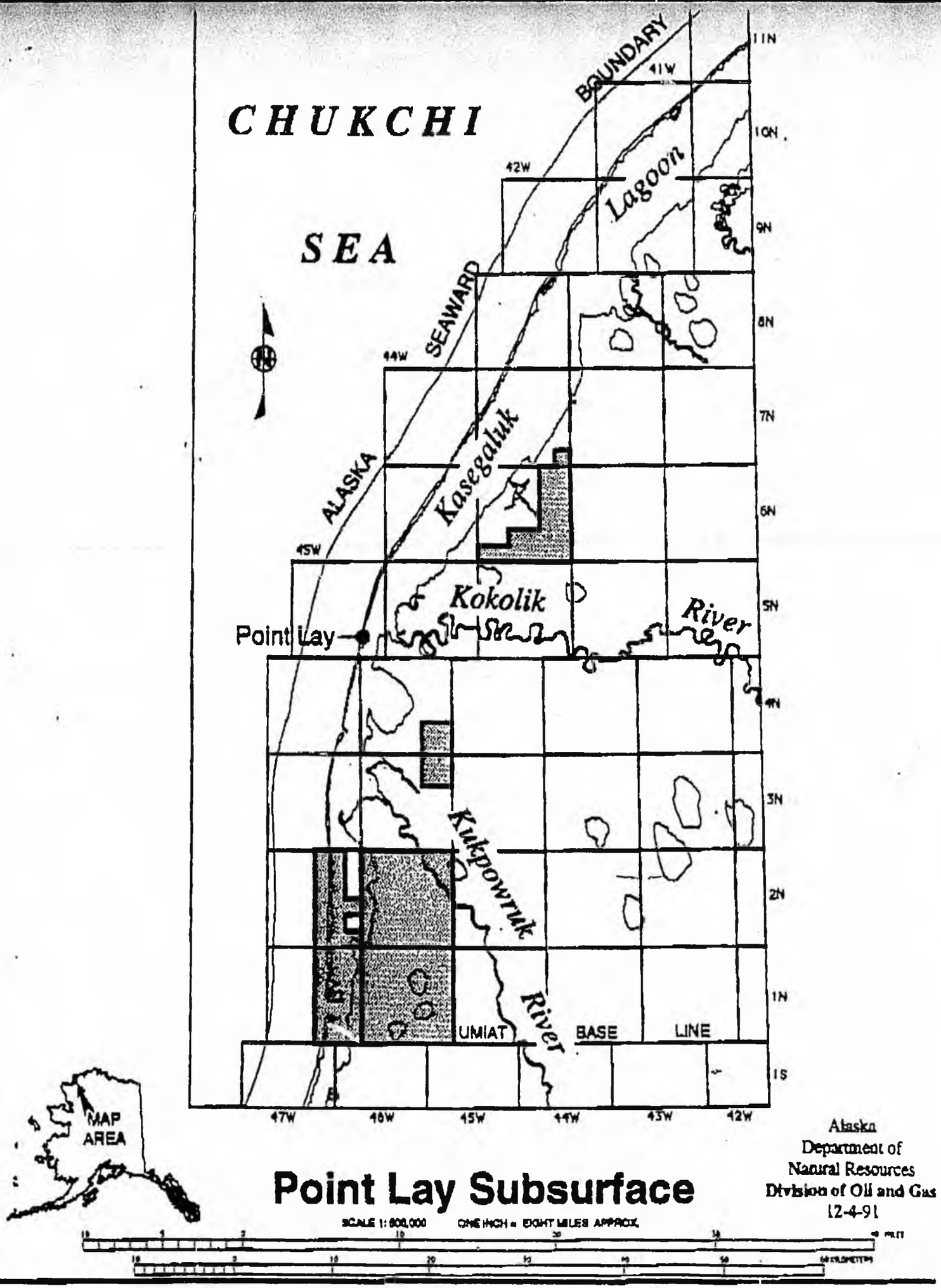
James E. Eason
Director

Enclosures



FAX TO
463-4867
Sen Adams
ATTN: Martha





STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
PHONE: (907) 762-2553

DIVISION OF OIL AND GAS

# SUMMARY OF THE 1991 SETTLEMENT AGREEMENT
## between
## ARCTIC SLOPE REGIONAL CORPORATION & STATE OF ALASKA

January 1992

## INTRODUCTION

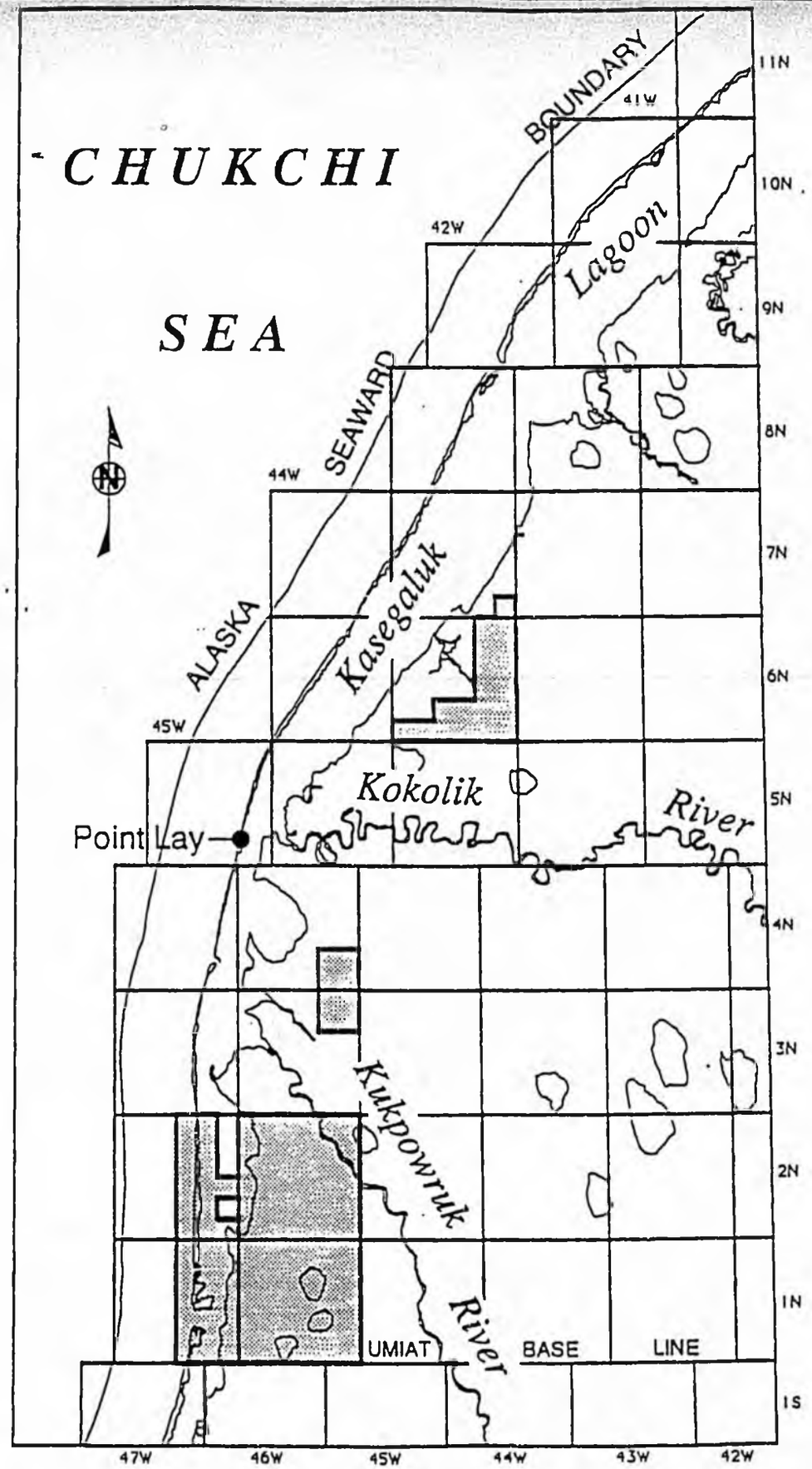
In December 1991, the State of Alaska and the Arctic Slope Regional Corporation (ASRC) settled a long-running legal dispute concerning north slope mineral ownership near Nuiqsut and Point Lay. The settlement resolves litigation resulting from a 1974 agreement in which ASRC and the state agreed to exchange lands near Nuiqsut and Point Lay. The settlement is not effective until approved by the legislature. The Governor will submit the settlement agreement to the legislature at the beginning of the legislative session in January. The area affected by the settlement is displayed in the maps on the next pages.

Under the settlement, the state and ASRC agree to jointly own undivided interest in the mineral estate of the disputed lands. The settlement also grants the state the right to hold oil and gas lease sales jointly for itself and for ASRC. Once a lease has been signed, the state and ASRC each separately administer its lease with respect to its own undivided interest in the subsurface.

Under the settlement agreement, the state does not give up any of its duties to the public imposed by law. The state would still have to determine whether a sale would be in the best interest of the state, and would follow relevant procedural requirements for leasing and for permitting the subsequent exploration for natural resources. The state retains all rights under state law to ensure that development of the subsurface complies with laws governing natural resource management and protection.

The agreement involves only mineral estate; it does not change the surface ownership. The surface estate of the Point Lay lands is state-owned; the Nuiqsut surface is owned by the village corporation for Nuiqsut, Kuukpik Corporation.

The land dispute began in 1973 when the federal government allowed the village corporations for Nuiqsut and Point Lay to select lands that had previously been transferred to the state. The state then protested the eligibility of those villages under the Alaska Native Claims Settlement Act. One year later, the state withdrew its protest and agreed to give up ownership of Point Lay mineral estate in return for ownership of the Nuiqsut mineral estate. For various reasons, the land exchanges expected by the 1974 agreement were never completed. This smoldering dispute erupted into lawsuits in 1985 after Texaco announced an oil discovery northeast of the Nuiqsut lands.




# Point Lay Subsurface

SCALE 1: 500,000 ONE INCH = EIGHT MILES APPROX.

Alaska
Department of
Natural Resources
Division of Oil and Gas
12-4-91

# CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF NATURAL RESOURCES

P.O. BOX 107034
ANCHORAGE, ALASKA 99510-7034
PHONE: (907) 762-2553

DIVISION OF OIL AND GAS

# SUMMARY OF THE 1991 SETTLEMENT AGREEMENT
## between
## ARCTIC SLOPE REGIONAL CORPORATION & STATE OF ALASKA

January 1992

## INTRODUCTION

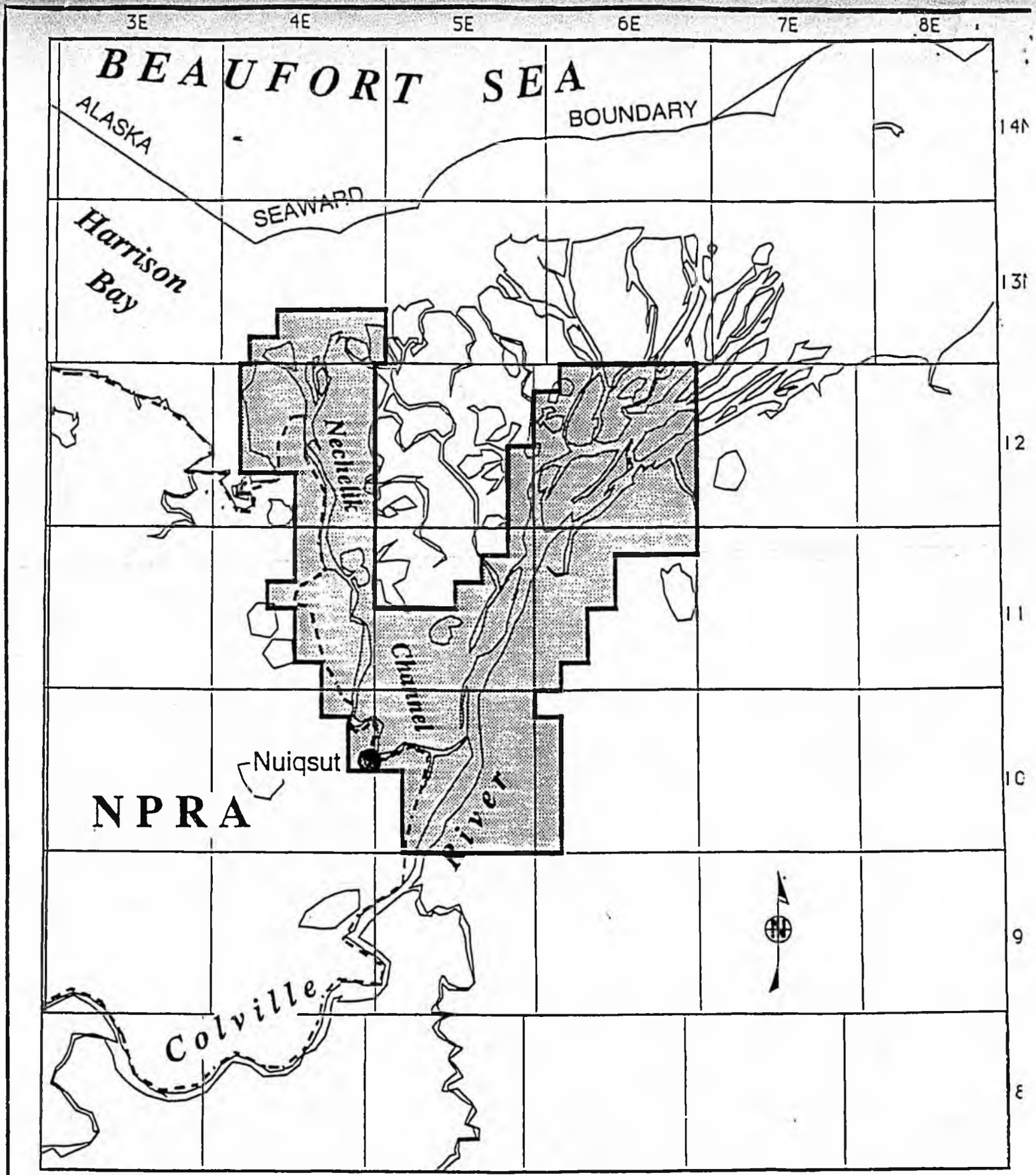
In December 1991, the State of Alaska and the Arctic Slope Regional Corporation (ASRC) settled a long-running legal dispute concerning north slope mineral ownership near Nuiqsut and Point Lay. The settlement resolves litigation resulting from a 1974 agreement in which ASRC and the state agreed to exchange lands near Nuiqsut and Point Lay. The settlement is not effective until approved by the legislature. The Governor will submit the settlement agreement to the legislature at the beginning of the legislative session in January. The area affected by the settlement is displayed in the maps on the next pages.

Under the settlement, the state and ASRC agree to jointly own undivided interest in the mineral estate of the disputed lands. The settlement also grants the state the right to hold oil and gas lease sales jointly for itself and for ASRC. Once a lease has been signed, the state and ASRC each separately administer its lease with respect to its own undivided interest in the subsurface.

Under the settlement agreement, the state does not give up any of its duties to the public imposed by law. The state would still have to determine whether a sale would be in the best interest of the state, and would follow relevant procedural requirements for leasing and for permitting the subsequent exploration for natural resources. The state retains all rights under state law to ensure that development of the subsurface complies with laws governing natural resource management and protection.

The agreement involves only mineral estate; it does not change the surface ownership. The surface estate of the Point Lay lands is state-owned; the Nuiqsut surface is owned by the village corporation for Nuiqsut, Kuukpik Corporation.

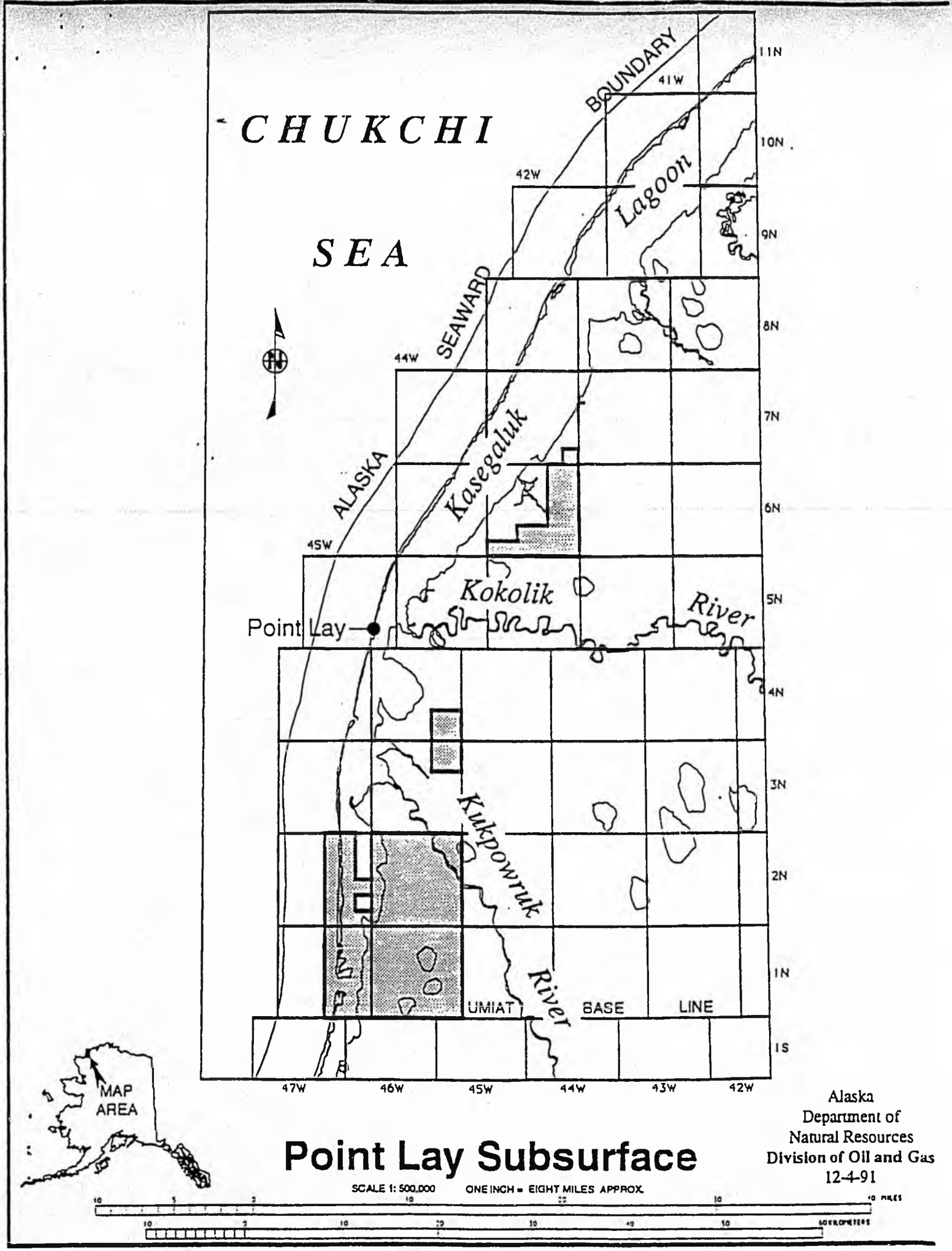
The land dispute began in 1973 when the federal government allowed the village corporations for Nuiqsut and Point Lay to select lands that had previously been transferred to the state. The state then protested the eligibility of those villages under the Alaska Native Claims Settlement Act. One year later, the state withdrew its protest and agreed to give up ownership of Point Lay mineral estate in return for ownership of the Nuiqsut mineral estate. For various reasons, the land exchanges expected by the 1974 agreement were never completed. This smoldering dispute erupted into lawsuits in 1985 after Texaco announced an oil discovery northeast of the Nuiqsut lands.




# Nuiqsut Subsurface

SCALE 1: 317,000 ONE INCH = FIVE MILES APPROX.

Alaska
Department of
Natural Resources
**Division of Oil and Gas**
12-4-91


CHUKCHI
SEA
BOUNDARY
41W
11N
10N
42W
Lagoon
9N
SEAWARD
8N
44W
7N
ALASKA
Kasegaluk
6N
45W
Kokolik
River
5N
Point Lay
4N
3N
Kukpowruk
River
2N
1N
UMIAT
BASE
LINE
1S
47W
46W
45W
44W
43W
42W
MAP
AREA
Point Lay Subsurface
SCALE 1: 500,000
ONE INCH = EIGHT MILES APPROX.
Alaska
Department of
Natural Resources
Division of Oil and Gas
12-4-91

The Point Lay area includes the mineral estate beneath approximately 84,000 acres (including all lands -- both the disputed uplands and the state-owned submerged lands). The Nuiqsut area includes the mineral estate beneath approximately 111,000 acres. However, the Nuiqsut-area acreage will eventually be reduced. The agreement concerns the subsurface estate conveyed to ASRC by the federal government. Conveyances in that area are not complete. The Nuiqsut area includes overselections, all of which will not be conveyed to ASRC. Sections not conveyed to ASRC will eventually be eliminated from the area affected by the agreement.

## SUMMARY OF THE ISSUES

**Land Ownership.** The dispute concerns the ownership of the subsurface estate beneath the uplands in the Nuiqsut and Pt. Lay areas. The agreement resolves the location and amount of the subsurface estate attributable to upland ownership. In concept, the state and ASRC agreed that submerged lands and the subsurface below them were state-owned. However, the location and amount of submerged lands were hotly disputed and difficult to resolve.

The agreement fixes the amount of submerged lands -- for purposes of oil and gas leasing -- for all time. This will eliminate administrative complexity for the state and ASRC, and for lessees who might otherwise be unsure who owns their lease tracts. The agreement also provides that the amount of submerged lands is agreed to for purposes of resolving this litigation only and has no further implication for the many other submerged lands disputes in which the state is involved.

According to the agreement, the state and ASRC own undivided interests in the subsurface estate of each section of land in the Nuiqsut and Pt. Lay areas. The interest that each owns reflects a 50/50 split of the uplands plus a state credit for 100% of the agreed-to submerged land acreage. The agreement establishes percentages for all times; the percentages will not change with changes in the extent of submerged lands (i.e., due to accretion, reliction, or erosion). Boundaries are "squared off" along the coast and along the NPRA border (i.e., the boundary includes entire sections). The squaring off allows for more efficient leasing. It also has the effect of giving ASRC a small share of lands in Harrison Bay which are already leased, and the state a small share of NPRA lands.

$$\text{State \%} = \frac{(\text{upland acres} * 50\%) + (\text{submerged land acres} * 100\%)}{\text{number of acres in the section (usually 640)}}$$

Crucial to the agreement is an exhibit that lists for each disputed section the state and the ASRC percentage ownership in that section. Revenue is calculated by section; it accrues according to the percentage ownership listed by section.

**Land Management.** The state and ASRC agreed to a system where the state manages the land for both parties up to the point of leasing. In return for that management, the state owes ASRC a certain standard of performance. Once the lease has been signed, the state has for the most part

discharged its duty to ASRC. Thereafter, the state and ASRC each separately administers its lease with respect to its own undivided interest in the subsurface. The exception is that in some situations, the commissioner has the power to establish the royalty value of oil for the state. If that occurs the commissioner's decision will also establish the value for purposes of ASRC.

## TERMS OF THE AGREEMENT

**The State's Right to Lease on Behalf of ASRC:** ***The Grant of Executive Rights.*** Under the agreement, ASRC grants the state "executive rights" to lease the jointly held land on behalf of itself and ASRC. Thus, the state holds the lease sale, accepts bids, and signs the lease agreement with the lessee. The lease binds both the state and ASRC. In return for these executive rights, the state agrees to comply with a standard of performance with respect to ASRC's interest in the land. By this standard, the state agrees to act with "the degree of diligence and discretion that would be exercised by an average landowner, acting as a reasonable and prudent person...in seeking to cause his subsurface to be explored and developed..." The state and ASRC also agree that this standard of performance does not apply "to the extent that the state is prevented from complying with such standard because of its duties and obligations as sovereign or because of applicable federal or state statutes, regulations and constitutional provisions including, but not limited to, those that govern protection of natural resources and procedural requirements for disposal of interests in state lands..."

In other words, the state agrees to a standard of care, but does not give up any of its duties to the public imposed by law (i.e., we still have to determine whether a sale would be in the best interests of the state, etc.). If, for example, it is not in the state's best interest to lease because of potential environmental harm or another reason, the state can decline to lease (can decline to exercise its execute rights). In that case, ASRC has the same rights as any member of the public to appeal the state's finding, but cannot compel the state to act by virtue of this agreement. If the state refuses to lease, ASRC has the right to lease its own interest under the laws of mineral cotenancy. Finally, the state agrees to "treat ASRC's interest in the same manner as it treats its own interest and shall not act in a manner intended to benefit itself at the expense of ASRC."

The state's liability under this standard could, in some circumstances, be quite significant. With knowledge gained by exploration, it is always possible to second-guess the terms of a past lease sale. To avoid claims made in hindsight that the state should have acted differently and did not live up to its promised standard, the parties agreed upon a dispute resolution process to resolve differences before the sale (and without going to court).

In this process, the state proposes "substantive terms and conditions" for a lease sale to ASRC. These terms include such variables as royalty rate and minimum bid, but they do not include sovereign powers of the state such as those that are exercised in best interest findings or in stipulations attached to land use permits. If they cannot agree on the "substantive terms and conditions" of the sale, the disagreement is referred to an expert (called a qualified independent

consultant). The expert determines whether the state's proposed "substantive terms and conditions" meet the standard of performance.

Three outcomes are possible: (1) the state and ASRC agree on terms and the lease sale goes forward; (2) they disagree, and the issue is referred to the expert who decides in favor of the state; or (3) they disagree, and the issue is referred to the expert who decides in favor of ASRC. If either of the first two situations occurs (agreement or an expert decision favoring the state), ASRC forever waives the right to argue that the state violated its standard of performance. If the expert decides in favor of ASRC, the state can, of course, decide to adopt ASRC's recommendations. It can also go ahead under its own terms. If this occurs, however, ASRC may claim damages in court, arguing that the state violated the standard of performance that it promised in the agreement.

**After the Joint Lease:** ***Separate Administration.*** After the state signs the lease on behalf of itself and ASRC, the state and ASRC will each separately administer its own interest in the lease. The two parties have what is essentially identical but separate legal relationship with the lessee with respect to the same mineral estate. Although a new concept for Alaska, this is a frequent occurrence in other parts of the United States, like Texas, where landownership is more complicated.

Most state administration of oil and gas leases focuses on an operator's compliance with laws concerning natural resource management and protection (land use permits, etc.). This administration is based not upon the state's statutes for oil and gas leases, but on the state's sovereign powers. These regulatory decisions are made by the state alone. Decisions concerning whether the lessee has lived up to his lease obligation (e.g., paid rent, drilled for oil) are made under the requirements of the individual lease document. These decisions would be administered separately by the two parties with respect to their own interests.

There is an unlikely possibility that the state or ASRC will terminate its lease but that the other will not. In that case, the party with the unleased interest would be free to lease its interest on its own (though such a lease might be worth considerably less than a joint lease). In addition, the lessee may still explore and produce, but as long as part of the subsurface interest is unleased, production occurs under the laws of mineral cotenancy. These laws have not been tested in Alaska, but we expect that the lessee will owe the remaining lessor (the one with the lease) the royalty due under that lease, and will owe the other lessor (the one without a lease) the value of all oil after its share of production and development costs have been subtracted.

This system, while unusual for Alaska, is unlikely to create frequent conflict. The limited nature of decisions made under the lease and the self-interest of both the state and ASRC will likely result in consistent administration.

## SUMMARY OF PROCESS BEFORE A JOINT LEASE SALE.

The previous section explained the concept of the settlement agreement. This section explains the steps that precede a joint lease sale.

**The Grant of Executive Rights.** Once State and ASRC both have title to a section and the section is unleased, State has Executive Rights to lease both State and ASRC acreage for oil and gas. With those executive rights, the State is held to a "Standard of Performance" but does not give up its "Sovereign Powers."

1. **State proposes** "substantive terms and conditions" of the lease sale. At least 6 months before sale, State gives ASRC notice of proposed "substantive terms and conditions" for the sale.

2a. **If State and ASRC reach "Approval Agreement"** -- that is, if State and ASRC agree on those terms, State goes forward and holds the sale. Go to Step 3.

2b. **If State and ASRC disagree - the Qualified Independent Consultant** (QIC). If State and ASRC disagree, the disagreement is referred an expert, the Qualified Independent Consultant. State and ASRC show each other and the QIC their information; QIC decides whether State would breach its "Standard of Performance" in using those "substantive terms and conditions."

(i) **If QIC decides for State.** State holds lease sale. Go to Step 3.

(ii) **If QIC decides against State.** State has two choices:
(A) **Change terms** to those requested by ASRC and hold sale. Go to Step 3.
(B) **Hold sale using State's proposed terms.** Go to Step 4.

3. **State holds Lease Sale -- Liability Ends.** ASRC loses right to argue State breached Executive Rights "Standard of Performance" because ASRC agreed or lost in front of the QIC.

4. **State holds Lease Sale -- Liability Continues.** ASRC retains right to sue for damages that State breached "standard of performance." If they sue, court reviews decision of QIC based on the record before QIC. If, based on record before QIC, court decides that QIC's decision was "arbitrary and capricious" State is absolved of liability. If court upholds QIC, then court awards damages on State's failure to comply with "standard of performance."

**Grant of Executive Rights Ends -- State and ASRC Administer Own Interest Separately.** One partial exceptions to separate administration: ASRC agrees to use State's method for royalty evaluation.

STANDARD OF PERFORMANCE. The agreed standard of performance is reproduced from the agreement.

4.2 Standard of Performance.

(a) The State shall exercise the Executive Rights granted herein in compliance with the Limited Prudent Landowner Standard, as defined herein, as to the substantive terms and conditions of all Subsurface Agreements[1] and Subsurface Agreement Solicitations[1] to be executed or issued by the State as executive pursuant to this Settlement Agreement. In exercising such Executive Rights, the State shall treat ASRC's interest in the same manner as it treats its own interest and shall not act in a manner intended to benefit itself at the expense of ASRC.

(b) Neither the Limited Prudent Landowner Standard nor any other provision of this Settlement Agreement creates a fiduciary duty on the part of the State to ASRC.

IMPORTANT DEFINITIONS

**"Executive Rights"** means the exclusive right, power, and authority to formulate and issue Subsurface Agreement Solicitations[1] and to negotiate, formulate, agree upon, execute, and grant Subsurface Agreements[1] pursuant to the terms of this Settlement Agreement.

**"Limited Prudent Landowner Standard"** means the **Prudent Landowner Standard** except to the extent that the State is prevented from complying with such standard because of its duties and obligations as sovereign or because of applicable federal or state statutes, regulations, and constitutional provisions, including, but not limited to, those that govern protection of natural resources and procedural requirements for disposal of interests in state lands for leasing, exploration, and development of natural resources, subject, however, to the provisions of subsection 8.2.[2]

**"Prudent Landowner Standard"** means the degree of diligence and discretion that would be exercised by an average landowner, acting as a reasonable and prudent person who is familiar with prevailing practices and standards in the oil, gas, and mineral industry in the area at the time, in seeking to cause his subsurface to be explored and developed and to maximize subsurface revenues from such subsurface and protect such subsurface from drainage.

**"Substantive terms and conditions"** means, but is not limited to, timing of lease sales, lease tract identification and composition, bid terms, and lease terms but shall not include (i) the exercise by the State of its duties and obligations as sovereign, (ii) the State's compliance with applicable federal or state statutes, regulations, and constitutional provisions, including but not

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[1] "Subsurface Agreements" are essentially oil and gas, or coal leases. "Subsurface Agreement Solicitations" is the lease sale.

[2] Section 8.2 ensures that ASRC has not waived "its right to challenge the constitutionality of any statute or the validity of any regulation...that singles out the Nuiqsut subsurface or the Point Lay subsurface for treatment different from that accorded to other lands with the State of Alaska, or that causes any injury-in-fact to any rights expressly granted to ASRC under this Settlement Agreement."

limited to, those that govern protection of natural resources and procedural requirements for disposal of interests in State lands for leasing, exploration, and development of natural resources, (iii) the granting of exploration incentive credits against tax obligations or the State's royalty interest (but not ASRC's royalty interest), or (iv) other exercise of the State's taxing power."

Why does the legislature have to approve this settlement? It doesn't approve most settlements.

First, the settlement requires the state to convey a portion of its mineral interest to ASRC. Alienation of the state's mineral interest is prohibited by Section 6(i) of the Alaska Statehood Act. In 1976, however, Congress amended Section 22(f) of ANCSA to permit the state to enter into exchanges of land "for the purpose of effecting land consolidations or to facilitate the management or development of the land, or for other public purposes." Exchanges must be of equal value unless found to be in the public interest "by the appropriate Secretary." The United States has confirmed that its consent to the exchange is not required and that the requirements of Section 6(i) of the Statehood Act and 22(f) of ANCSA will be satisfied as long as the legislature finds the exchange to be in the public interest.

Second, AS 38.50 which provides authority for exchanges of interests in state lands does not provide an appropriate vehicle for the settlement of litigation. Among other things, Chapter 50 contemplates a voluntary exchange for equal values, and requires appraisals and a series of public hearings on proposed exchanges. Although the state and ASRC believe that the consideration given and received in the exchange is roughly equal, no effort has been made to appraise the lands. The terms of the exchange are influenced by factors other than land values (which are highly speculative, in any event), including each side's assessment of the risks of litigation. Because the agreement does not fit the process of AS 38.50, legislative approval provides the authority necessary to effectuate the exchange.

Third, Article VIII, Section 10 of the Alaska Constitution requires that "[n]o disposals...of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interests as may be prescribed by law." Public involvement in the settlement is provided through the process of legislative ratification, in order to avoid any potential constitutional infirmity.

How are funds accounted for? Does this settlement evade the legislature's appropriation authority?

Funds accruing to the state from oil and gas leases on state land go in part to the general fund and in part to the permanent fund. Leases issued under the ASRC agreement are no different. The agreement divides interests in land, but all revenue from the state's interest belongs to the state and is handled like "normal" state revenues. In addition, it is the lessee's responsibility to pay the appropriate share directly to the state and to ASRC. This divided payment is unusual for Alaska, but is a frequent occurrence in other parts of the United States where land status is more complex.

If, for example, the lessee owes $100 in rent under the lease made under this agreement, and that lease happens to be on land that the state owns a 60% undivided interest and ASRC owns a 40% undivided interest, then the lessee must send $60 to the state, and $40 to ASRC. That $60 is accounted for like other oil and gas revenues. Part goes to the general fund and part goes to the permanent fund.

SB372

# HOUSE COMMITTEE REPORT

(11)
Date Referred: April 10, 1992 FURTHER REFERRALS:

Date of Committee Action: 5/9/92

The FINANCE Committee considered: SB 372

SENATE BILL NO. 372 DISCLOSURE BY CERTAIN FISCAL OFFICERS

"An Act requiring the state's investment officers and the state comptroller, in the Department of Revenue, to comply with the requirements of AS 39.50."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[✓] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [✓] zero fiscal note(s) DOR 11/27/92

| *SIGNING DO PASS* | *DP* | *OTHER RECOMMENDATIONS* | *DNP* | *NR* | *AM* |
|---|---|---|---|---|---|
| E.P. MacLean MACLEAN | V | | | | |
| Mark Boyer / Boyer | X | | | | |
| Jay Brown Brown | ✓ | | | | |
| Mike Navarre NAVARRE | ✓ | | | | |
| Koponen | ✓ | | | | |
| Barnes BARNES | + | | | | |
| Phillips PHILLIPS | V | | | | |
| Ulmer ULMER | X | | | | |
| Sharp SHARP | X | | | | |
| | X | | | | |
| | | | | | |

Mike Navarre E.P. MacLean
CHAIRMAN'S SIGNATURE

# FISCAL NOTE

No. 1

Bi. Version: SA 372

(S) Publish Date: 1-27-92

## STATE OF ALASKA
## 1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Revenue

Title: State Investment Officers comply with AS 39.50 BRU: Revenue Operations

Component: Treasury Management

Sponsor: _____

Requestor: _____ COMPONENT SERIAL NO. 0121

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | 0 | 0 | 0 | 0 | 0 | 0 |
| TRAVEL | 0 | 0 | 0 | 0 | 0 | 0 |
| CONTRACTUAL | 0 | 0 | 0 | 0 | 0 | 0 |
| SUPPLIES | 0 | 0 | 0 | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 | 0 |
| LAND & STRUCTURES | 0 | 0 | 0 | 0 | 0 | 0 |
| GRANTS, CLAIMS | 0 | 0 | 0 | 0 | 0 | 0 |
| MISCELLANEOUS | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE FUND SOURCE: | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER FUND SOURCE: | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Darrel J. Rexwinkel Phone: 465-2300

Division: Treasury Date: 12/10/91

Approved by Commissioner: Darrel J. Rexwinkel

Agency: Department of Revenue Date: _____

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

# SENATE BILL NO. 372

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/27/92
Referred: ETR, State Affairs

## A BILL

## FOR AN ACT ENTITLED

**"An Act requiring the state's investment officers and the state comptroller, in the Department of Revenue, to comply with the requirements of AS 39.50."**

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

*** Section 1.** AS 39.50.020 is amended to read:

Sec. 39.50.020. REPORT OF FINANCIAL AND BUSINESS INTERESTS. (a) A judicial officer, commissioner, chairman or member of a state commission or board specified in AS 39.50.200(b), a person hired or appointed as head or deputy head of, or director of a division within, a department in the executive branch, a person appointed as assistant to the governor, **a state investment officer and the state comptroller in the Department of Revenue,** and a municipal officer, shall file a statement giving income sources and business interests, under oath and on penalty of perjury, within 30 days after taking office as a public official. Candidates for state elective office shall file such a statement with the director of elections at the time of filing a declaration of candidacy or within 30 days of the filing of any nominating petition, or within 30 days of becoming a candidate by any other means. Candidates for elective municipal office

shall file such a statement at the time of filing a nominating petition, declaration of candidacy, or other required filing for the elective municipal office. Refusal or failure to file within the time prescribed shall require that the candidate's filing fees, if any, and filing for office be refused or that a previously accepted filing fee be returned and the candidate's name removed from the filing records. A statement shall also be filed by public officials no later than April 15 or 15 days after the person files a federal income tax return in each following year, whichever comes first. Persons who, on or after December 11, 1974, were members of boards or commissions not named in AS 39.50.200(b) are not required to file financial statements.

(b) The governor, lieutenant governor, members of the legislature, judicial officers, each commissioner, head or deputy head of, or director of a division within, a department in the executive branch, assistant to the governor, **state investment officers and the state comptroller in the Department of Revenue,** or chairman or member of a commission or board required to report under this chapter, shall file the statement with the Alaska Public Offices Commission. Candidates for the office of governor, lieutenant governor, and the legislature shall file the statement under AS 15.25.030 or 15.25.180. Municipal officers, and candidates for elective municipal office, shall file with the municipal clerk or other municipal official designated to receive their filing for office. All statements required to be filed under this chapter are public records.

* **Sec. 2.** AS 39.50.200(a)(8) is amended to read:

(8) "public official" means a judicial officer, a member of the legislature, the fiscal analyst of the legislative finance division, the legislative auditor of the legislative audit division, the executive director of the Legislative Affairs Agency and the directors of the divisions within the Legislative Affairs Agency, the governor, the lieutenant governor, a person hired or appointed as the head or deputy head of, or director of a division within a department in the executive branch, an assistant to the governor, chairman or member of a state commission or board, **state investment officers and the state comptroller in the Department of Revenue,** the executive director of the Alaska Tourism Marketing Council, and each appointed or elected municipal officer;

* **Sec. 3.** TRANSITION. Notwithstanding the filing deadline set by AS 39.50.020(a), a person employed by the Department of Revenue as an investment officer or as the state comptroller on the effective date of this Act shall file the statement required by AS 39.50.020(a) within 30 days after the

1 effective date of this Act.

SB 372

Senate Bill 372 is an Act requiring the state's investment officers and the state comptroller, in the Department of Revenue, to comply with the requirements of AS 39.50, the Executive Branch Ethics statutes.

This legislation requires the state's investment officers and the state comptroller to file a statement giving income sources and business interests with APOC upon taking office. These individuals make significant independent decisions concerning financial management of various state funds. The filing of these potential conflict of interest statements allow for prudent management of the state's resources.

SB 372 received three "do pass" in the Senate Ethics Committee and four "do pass" in the Senate State Affairs Committee. It has a zero fiscal note.

# Alaska State Legislature

## Senate

Official Business

SPECIAL COMMITTEE ON ETHICS REFORM
Senator Virginia Collins

Pouch V
State Capitol
Juneau, Alaska 99811


April 8, 1992

MEMORANDUM

TO: Members of the Senate

FROM: Senator Virginia Collins, Chair
Special Committee on Ethics Reform

SUBJECT: SB 372 - requires investment officers and the state comptroller to comply with AS 39.50

Senate Bill 372 adds state investment officers and the state comptroller to comply to the list of public officials required to comply with the Executive Branch ethics statutes.

This legislation requires the state's investment officers and the state comptroller to file a statement giving income sources and business interests with APOC upon taking office. These individuals make significant independent decisions concerning financial management of various state funds. The disclosure of potential conflicts of interest allow for prudent management of the state's resources.

SB 372 received three "do pass" recommendations from the Special Committee on Ethics Reform and four "do pass" recommendations from the State Affairs Committee. The bill has a zero fiscal note.

WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 27, 1992

The Honorable Richard I. Eliason
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Eliason:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a bill that would require investment officers and the comptroller in the Department of Revenue to comply with the disclosure requirements and financial gain and representation prohibitions of Alaska's conflict of interest law, AS 39.50.

I am aware of no problems with these officials regarding conflicts of interest. However, given that the comptroller's duties include examining, auditing, and reporting on the state's financial condition, and that the investment officers' duties include investing the state's money, and managing the state's cash and debt, a requirement that they report their business interests and income sources is clearly warranted. Making the investment officers and the comptroller subject to the financial gain and representation prohibitions (AS 39.50.090) ensures that the highest standard of conduct will continue to be maintained.

I urge your prompt and favorable action on this bill.

Sincerely,

Walter J. Hickel

Walter J. Hickel
Governor

SB373

# SENATE FINANCE COMMITTEE REPORT

DATE: 3/25/92

FURTHER:

DATE TURNED
INTO OFFICE: _____

The Finance Committee considered SENATE BILL NO. 373

"An Act establishing a loan guarantee and interest rate subsidy program for assistive technology."

DIED

and recommends:

[ ] replace with _____ CS _____(FINANCE)
or [ ] adopt previous_____ CS _____(_____)
[ ] attaches amendment(s)

[ ] same title
[ ] new title
[ ] technical title change (HB only)

[ ] adopts _____Letter of Intent
[ ] further referral to the _____

[ ] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations

**NEW FISCAL NOTES:** **Dept/Date**

[ ] **zero** fiscal notes _____
_____
_____

[ ] fiscal notes _____
_____
_____

[ ] **appropriation**--no fiscal note

**PREVIOUS FISCAL NOTES:** **Dept/Date**

[ ] **zero** fiscal notes _____
_____
_____

[ ] fiscal notes _____
_____
_____

**DO PASS:**

_____
_____
_____
_____
_____

**OTHER RECOMMENDATIONS:**

_____
_____
_____
_____
_____

1. _____
Co-Chair: Signature/Recommendation

2. _____
Co-Chair: Signature/Recommendation

No. 1

FISCAL NOTE

Bill Version: SB 373

(S) Publish Date: 3-25-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: 3-11-92
Title: An Act establishing a loan guarantee and interest rate subsidy program for assistive technology.
Sponsor: Senator Duncan
Requestor: (S) HESS

Department Affected: Education
BRU: Vocational Rehabilitation
Component: Assistive Technology

COMPONENT SERIAL NO. 1 2 0 2

Expenditures/Revenues: (Thousands of Dollars)

| OPERATING | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | | | | | | |
| REVENUE FUND SOURCE: | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | | | | | | |
| OTHER FUND SOURCE: | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Changes in CS SB373 (HES) have no fiscal impact. This fiscal note is appropriate.

24Mar92 MA Fouse
date Comte Aide (initial)

Prepared by: Stan Ridgeway
Division: Vocational Rehabilitation

Phone: 465-2814
Date: 3-11-92

Approved by Commissioner: for JC Jerry Covey
Agency: Education

Date: 3-12-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).
Rev 10/07/91

# SENATE BILL NO. 373

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY SENATORS DUNCAN, Zharoff

Introduced: 1/29/92
Referred: HES, Finance

## A BILL

## FOR AN ACT ENTITLED

**"An Act establishing a loan guarantee and interest rate subsidy program for assistive technology."**

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

*** Section 1.** AS 23.15 is amended by adding a new section to read:

Sec. 23.15.125 ASSISTIVE TECHNOLOGY LOAN GUARANTEE AND INTEREST SUBSIDY PROGRAM. (a) An assistive technology loan guarantee fund is established in the agency. The fund consists of money appropriated to it.

(b) The agency may use money in the fund established under (a) of this section to make a loan guarantee or to subsidize the interest rate of a loan guaranteed by the agency for appropriate assistive technology that is best suited for enabling

(1) a handicapped individual to obtain or maintain employment; or

(2) an individual having a physical or mental disability to live more independently.

(c) The agency may guarantee a loan or subsidize the interest rate of a loan guaranteed

under this section if

(1) the loan is made to a handicapped or disabled person, a member of the person's family, or the employer or prospective employer of a handicapped or disabled person;

(2) the term of the loan does not exceed four years;

(3) the loan is originated and serviced by a state or federally chartered financial institution located in the state;

(4) the agency determines that the person requesting the loan guarantee or subsidy is not able to obtain the needed assistive technology from a less costly source;

(5) the agency determines that the person or the family of a child reasonably can be expected to repay the loan given their expected income or other resources; and

(6) for a loan to purchase or modify a vehicle to provide transportation for a handicapped person, the handicapped person has been steadily employed for the 12 months immediately preceding the date of the loan application.

(d) In this section, "assistive technology" means durable equipment, adaptive aids, and assistive devices.

SB374

# HOUSE COMMITTEE REPORT

(11)

Date Referred: April 24, 1992 FURTHER REFERRALS:

Date of Committee Action: 5/5/92

The FINANCE Committee considered: CSSB 374(FIN)

CS FOR SENATE BILL NO. 374 (FIN) INVESTMENT POOLS FOR PUBLIC ENTITIES

"An Act relating to investment pools for public entities; and providing for an effective date."

RECOMMENDATIONS: [✓] the same title
be replaced with HCS CS SB 374 (FIN) [ ] a new title

[ ] have attached amendments(s)
[✓] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[✓] zero fiscal note(s) EDUCATION 2/26/92 OCRA 2/24 Revenue 2/26/92 OCED 2/21

| SIGNING DO PASS | DP | OTHER RECOMMENDATIONS | DNP | NR | AM |
|---|---|---|---|---|---|
| Mike Navarre Navarre | ✓ | Barnes | | ✓ | |
| Mark Boyer Boyer | X | Sharp | | X | |
| Jay Brown Brown | ✓ | Phillips | | ✓ | |
| A Ulmer Ulmer | X | | | | |
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Mike Navarre Navarre
CO-CHAIRMAN'S SIGNATURE

No. 5

Bill Version: CSSB 374(CRA)

(S) Publish Date: 2-26-92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: 2/7/92
Title: An Act relating to investment pooling by public entities.
Sponsor: Senate Rules Committee
Requestor: Governor

Department Affected: Education
BRU: Executive Administration
Component: Commissioner's Office

COMPONENT SERIAL NO. | | 1 | 8 | 9 |

Expenditures/Revenues: (Thousands of Dollars)

| OPERATING | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | | | | | | |
| REVENUE FUND SOURCE: | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER FUND SOURCE: | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Changes in CSSB 374 (FIN) have no fiscal impact. This fiscal note is appropriate.

2-10-92 date — Comte Aide (initial)

Prepared by: Mike Maher
Division: Commissioner's Office
Phone: 465-2800
Date: 2/7/92

Approved by Commissioner: Jerry Covey
Agency: Education
Date: February 7, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).
Rev 10/07/91

# FISCAL NOTE

No. 7

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: SB 374

(S) Publish Date: 2-26-92

Revision Date: 2/6/92

Department Affected: Revenue

Title: An act relating to investment pools for public entities; and providing for an effective date.

BRU: Operations

Component: Treasury Management

Sponsor: Rules Committee

Requestor: Senator Frank

**Component Serial No.**

| 0 | 1 | 2 | 1 |
|---|---|---|---|

Expenditures/Revenues: (Thousands of Dollars)

| OPERATING | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND/Unrestricted | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | |
|---|---|---|---|
| FULL-TIME | | | |
| PART-TIME | | | |
| TEMPORARY | | | |

Changes in CSSB 374 (Fin) have no fiscal impact. This fiscal note is appropriate.

3-10-92 date — Comte Aide (initial)

Estimate of current year impact: None

ANALYSIS:

Prepared by: Brian C. Andrews

Phone: 465-2350

Division: Treasury

Date: February 6, 1992

Approved by Commissioner:

Agency: Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 12/91

Changes in CSSB 374 (CRA) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

3/17/92 date — Comte Aide (initial)

# FISCAL NOTE

No. 3

Bill Version: SB 374

E (S) Publish Date: 2-26-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date:
Title: Investment pools for public entities

Sponsor: Senate Rules by Request of Governor
Requestor: (S) CRA Committee

Department Affected: Community and Regional Affairs
BRU:
Component:

COMPONENT SERIAL NO. 0 0 0 0

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL | | | | | | |
| REVENUE FUND SOURCE: | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| FEDERAL FUNDS | | | | | | |
| OTHER FUND SOURCE: | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

Estimate of current year impact: No impact

ANALYSIS: (Attach a separa

Changes in SB 374 (FIN) have no fiscal impact. This fiscal note is appropriate.

3-16-92 date — Comte Aide (initial)

Changes in CSSB 374 (CRA) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

2/13/92 date — Comte Aide (initial)

Prepared By: Ronald Hendrickson — Phone: 465-4708
Division: Administrative Services Division — Date: 2/10/92

Approved by Commissioner: Ed. Dersh
Agency: Department of Community and Regional Affairs — Date: 2-12-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).
Rev 10/7/91

STATE OF ALASKA
1992 LEGISLATIVE SESSION

# FISCAL NOTE

Bill Version: SB 374 (S)
(S) Publish Date: 2-26-92

Revision Date:
Department Affected: Commerce & Econ. Dev.
Title: Investment Pools for Public Entities
BRU: Banking, Securities & Corpora
Component:
Sponsor: Senate Rules
Requestor:
COMPONENT SERIAL NO. 1 2 3

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

| OPERATING | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 | FY 98 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE FUND RESOURCE: | 0 | 0 | 0 | 0 | 0 | 0 |

**FUNDING: (Thousands of Dollars)**

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER FUND SOURCE: | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

**POSITIONS:**

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

Estimate of current year impact:

**ANALYSIS** (Attach a separate p

Changes in CSSB 374 (FIN) have no fiscal impact. This fiscal note is appropriate.

3-16-92 date — Comte Aide (initial)

Changes in CSSB 374 (CRA) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

2/25/92 date — Comte Aide (initial)

Prepared By: Willis F. Kirkpatrick, Director
Phone: 465-2521
Division: Banking, Securities & Corporations
Date:
Approved by Commissioner: Glenn A. Olds
Agency: Department of Commerce & Economic Development
Date: 2-13-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., and Impacted Agency(ies).



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(Rev. 12/91)

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adopted

# HOUSE CS FOR CS FOR SENATE BILL NO. 374 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to investment pools for public entities; and providing for an effective date."

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

* Section 1. PURPOSE. The purpose of this Act is to provide a means for certain public entities to secure the maximum investment return consistent with the preservation of capital and liquidity by pooling money temporarily available for investment. The Act allows for the establishment of

(1) centralized investment through pooling of certain available money by participating public entities; and

(2) operational and investment criteria for investment pools in order to attain the maximum investment return for the public entities' money consistent with the preservation of capital and liquidity.

* Sec. 2. AS 29.35 is amended by adding a new section to read:

Sec. 29.35.015. INVESTMENT POOLS. A municipality may invest money in investment pools for public entities as authorized under AS 37.23 only if that municipality has

obtained the consent of its governing body through an ordinance authorizing the participation.

* Sec. 3. AS 37 is amended by adding a new chapter to read:

CHAPTER 23. INVESTMENT POOLS FOR PUBLIC ENTITIES.

Sec. 37.23.010. INVESTMENT POOL PARTICIPATION. (a) Subject to this chapter, a public entity may enter into an agreement with other public entities to form and manage an investment pool under which funds of the participating public entities are administered and invested jointly. A public entity, by itself or with other public entities, may form a nonprofit corporation for the purpose of managing an investment pool.

(b) A public entity participating in an investment pool or a nonprofit corporation formed under (a) of this section may spend money reasonably necessary for the management of the pool, including the employment of staff. Income from investments of the pool may be used for management costs.

(c) The registration requirements of AS 45.55 do not apply to an investment pool formed under this chapter or to participating public entities with respect to activities of the pool.

Sec. 37.23.020. AUTHORIZED INVESTMENTS. An investment pool may invest only in securities that have a final maturity date within 13 months after the date of purchase. Investments may only include

(1) obligations of the United States and of an agency or instrumentality of the United States;

(2) repurchase and reverse repurchase agreements secured by the Treasury of the United States and obligations of an agency or instrumentality of the United States;

(3) certificates of deposit, bankers acceptances, and other similar obligations of a bank domiciled in the United States that has

(A) outstanding debt rated A or higher by at least one of the nationally recognized rating services; and

(B) a combined capital and surplus aggregating at least $500,000,000;

(4) commercial paper and other short-term taxable instruments that, at the time of investment, maintain the highest rating by at least two nationally recognized rating services;

(5) obligations of a corporation domiciled in the United States or obligations of a municipality that are taxable under federal law, if the obligations are rated A or higher by at least two nationally recognized rating services at the time of investment;

(6) certificates of deposit that are issued by a state or federally chartered financial institution that is a commercial or mutual bank, savings and loan association, or credit union and if the institution's accounts are insured through the appropriate federal insuring agency of the United States, regardless of whether the institution meets the requirements of (3) of this section;

(7) money market funds in which the securities of the fund consist of obligations listed in this section and otherwise meet the requirements of this chapter;

(8) other cash equivalent investments with a maturity date of one year or less after date of the investment that are of similar quality to those listed in (1) - (7) of this section, are rated A or higher by at least one of the nationally recognized rating services, and are approved by the public entities participating in that investment pool.

Sec. 37.23.030. COLLATERALIZATION. Investment in certificates of deposit under AS 37.23.020(6) and the entire amount of principal and interest payable upon maturity of the certificates must be collateralized by a combination of securities that are marked to market at least monthly and have maturity dates that do not exceed five years. Only the following securities may serve as collateral:

(1) obligations of the United States with a maturity date of five years or less after the date of the pool's investment transaction, and with a market value of at least 102 percent;

(2) securities in United States agencies or instrumentalities that are actively traded, other than mortgage pass-through securities, with a maturity date of

(A) one year or less after the date of the pool's investment transaction, and with a market value of at least 103 percent;

(B) of more than one year and less than five years after the date of the pool's investment transaction, and with a market value of at least 107 percent;

(3) mortgage pass-through securities issued by the Government National Mortgage Association with a market value of at least 120 percent;

(4) obligations of the state or its political subdivisions secured by the full faith, credit, and taxing power of the state or its political subdivisions, rated A or higher by at least one of the nationally recognized rating services, with a maturity date of

(A) one year or less after the date of the pool's investment transaction, and with a market value of at least 102 percent;

(B) more than one and less than five years after the date of the pool's

investment transaction, and with a market value of at least 107 percent.

Sec. 37.23.040. PORTFOLIO RESTRICTIONS. The portfolio of an investment pool under this chapter may not contain

(1) more than five percent of total investments in securities of one issuer unless the securities are an obligation of or guaranteed by the United States;

(2) more than 30 percent of total investments in securities of companies whose principal business is in the same industry; or

(3) transactions in futures, options, derivative securities, or short sales.

Sec. 37.23.050. INVESTMENT MANAGEMENT. The public entities participating in an investment pool under this chapter shall provide for management of investments in the pool by contracting for investment management and related services with

(1) a securities broker-dealer registered under AS 45.55.030 and under 15 U.S.C. 78o (Securities Exchange Act of 1934);

(2) an investment adviser registered under AS 45.55.030 and under 15 U.S.C. 80b-3 (Investment Advisers Act of 1940);

(3) the Department of Revenue; or

(4) a financial institution that is a state or federally chartered commercial or mutual bank, savings and loan association, or credit union if the institutions's accounts are insured through the appropriate federal insuring agency of the United States, and if the institution has trust powers under state or federal law.

Sec. 37.23.060. INVESTMENT RESPONSIBILITIES. The management and investment of assets by investment pools shall be done with the care, skill, prudence, and diligence under the circumstances then prevailing that an institutional investor would use in the conduct of an enterprise of a like character and with like aims.

Sec. 37.23.070. REPORTS; DISCLOSURE STATEMENT. (a) The manager of an investment pool shall provide to the participating public entities a monthly report on the allocation of income of investments of the pool and describing activities of the pool. At least annually, the manager of an investment pool shall provide a disclosure statement on the management and operation of the pool to each public entity participating in the pool. The disclosure statement must include a copy of the annual audit required under AS 37.23.080.

(b) A public entity participating in an investment pool that is an organization composed

of political subdivisions of the state shall promptly provide a copy of each report or statement received under (a) of this section to its members who are participating in the investment pool.

(c) The manager of an investment pool shall provide to a prospective participant in the pool copies of monthly reports prepared under (a) of this section for the past year, and a copy of the most recent disclosure statement prepared under (a) of this section.

Sec. 37.23.080. ANNUAL AUDIT. By September 30 of each year, the manager of an investment pool shall submit to the participating public entities an audit of the pool's investments as of June 30 of that year. The audit must be performed by a certified public accountant licensed under AS 08.04 who is not

(1) an employee of a public entity participating in the investment pool; or

(2) a contractor or an employee of a contractor who performed investment services for the investment pool.

Sec. 37.23.090. LIMITATION OF LIABILITY. The state, except when providing investment management and related services under AS 37.23.050(3), and participating public entities are not liable for any acts or omissions of an investment manager with whom the participating entities have contracted for investment management and related services under AS 37.23.050.

Sec. 37.23.900. DEFINITION. For purposes of this chapter, "public entity" means a political subdivision of the state, including a municipality and its subdivisions, a school district, a regional educational attendance area, or an organization composed of political subdivisions of the state.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).