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ALASKA STATE LEGISLATURE, TWELFTH LEGISLATURE  
FREE CONFERENCE COMMITTEE ON SENATE BILL 524

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TRANSCRIPT OF PROCEEDINGS  
JUNE 11, 1981

*Contains  
June 11-24, 1981*

COMMITTEE PRESENT:

- Representative Bill Ray, Chairman
- Senator Ed Dankworth
- Senator Don Bennett
- Representative Terry Gardiner
- Representative Anthony Vaska
- Representative Patrick O'Connell

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1  
2  
3 MR. RAY:

4 ... this is the Free Conference on House Committee  
5 Substitute for Senate Bill 524 Finance amended in the  
6 House. Members of the Committee from the Senate side:  
7 Senator Dankworth, Senator Bennett, Senator Ray. On the  
8 House side Representative Gardiner, Representative Vaska  
9 and Representative O'Connell. Sir?

10 MR. GARDINER:

11 I'd like to move and ask unanimous consent that Senator Ray serve  
12 as the Chairman of the Free Conference Committee.

13 MR. RAY:

14 Is there an objection? So ordered. The first order of  
15 business -- I've taken the privilege of asking Commissioner  
16 Williams, please, to come and identify yourself, sir, and  
17 give us more or less a sectional analysis of the House  
18 Committee Substitute for Senate Bill 524.

19 COMMISSIONER WILLIAMS:

20 For the record, my name is Tom Williams. I'm the  
21 Commissioner of Revenue. I'm here to testify on H.C.S.S.B.  
22 524...

23 MR. RAY:

24 Commissioner, I might as well stop you right now. It is  
25 my feeling, as a Chairman, that I am going to allow any

1 member of the Committee to interrupt any witness at any  
2 time if they have a valid question pertaining to the  
3 information. Go ahead, sir.

4 COMMISSIONER WILLIAMS:

5 I think that is fine. I'd like to talk to you briefly  
6 about the context that this bill is in, namely, the  
7 litigation, and what the stakes are; describe in very  
8 brief form what the options seem to be; and then to go  
9 through with you how this bill works. At issue, of course,  
10 is the large majority of money that we are collecting  
11 under the oil and gas corporate income tax, which is  
12 Chapter 21 of Title 43. I'll often refer to it as  
13 Chapter 21. The risks are, that since this law was enacted  
14 in 1978, the United States Supreme Court has decided two  
15 cases: one is Exxon versus Wisconsin, and the other is  
16 Mobil Oil Corporation versus Vermont - which leave a  
17 question about the constitutional validity over the method  
18 of separate accounting, which is incorporated in Chapter 21.  
19 While we believe we will win the case, the stakes present  
20 in the case are very, very, high. Using our low case  
21 numbers, we find that they will be over \$5.1 billion through  
22 1985, which is the time period when we would expect to have  
23 the litigation finally adjudicated. In addition to that  
24 would be over \$1.3 billion worth of interest, at 10%...

25 MR. RAY:

What was that figure, sir?

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1 COMMISSIONER WILLIAMS:

2 \$1.3 billion. So in a sense, this is a \$6.4 billion  
3 question. The risks are that if we lose the case, we'll  
4 have to refund almost all that money. If I may,  
5 Mr. Chairman, I'd like to from time to time go up to the  
6 charts and flip them over and -- at this time I'd like to ...

7 MR. RAY:

8 As long as you stay pertinent to the subject, sir.

9 COMMISSIONER WILLIAMS:

10 Thank you. At this time I would like to briefly run through  
11 the basic types of options that we have available at this  
12 time. There are four basic approaches, as you can see  
13 there.

14 MR. RAY:

15 Excuse me, Senator Bennett?

16 MR. BENNETT:

17 Commissioner, before you proceed -- two questions if I  
18 might, real quick. You say that we would have to refund  
19 most of that money. What is most? And could you elaborate  
20 upon why it is just most instead of all that's involved?

21  
22 COMMISSIONER WILLIAMS:

23 Well, it is conceivable that if the worst came about we'd  
24 have to refund everything. If the court ruled that Chapter  
25 20 applied if 21 was struck down, then we'd have to refund

1           probably 85% of it.

2           MR. BENNETT:

3           My final question is, does this figure include the cost  
4           of litigation?

5           COMMISSIONER WILLIAMS:

6           No, it does not.

7           MR. BENNETT:

8           What would the cost of litigation be  
9           if it took the course that litigation takes?

10

11          COMMISSIONER WILLIAMS:

12          Well, compared to the billions of dollars, it would be  
13          small. In absolute terms, it would run several million  
14          dollars, I would expect.

15          MR. BENNETT:

16          Thank you.

17          MR. RAY:

18          Proceed, sir.

19          COMMISSIONER WILLIAMS;

20          Thank you. So we have four basic options, then, about  
21          types of action that can be taken at this time. First, is  
22          a backstop tax - the basic idea of a backstop tax would be  
23          to have some other tax that does not have the question that  
24          has been raised by the Mobil and Exxon cases decided by  
25          the Supreme Court. This tax would, instead, be a tax that

1 has secure legal precedent and would be much, much safer  
2 from the legal challenge. The second option would be a  
3 settlement package - legislation that would allow the  
4 companies to settle the case, walk away from it. And, of  
5 course, that would provide security, then, for not only  
6 the revenues that the companies have paid in, but would  
7 provide security for the revenues that they would  
8 continue to pay in in the future.

9 MR. RAY:

10 I know, sir, that you are not a practicing attorney - you're  
11 the Commissioner of Revenue. If there was a settlement,  
12 would it take 100% of the people on the Slope, or could  
13 a minority position come in and sue and then if they won the case  
14 it would obligate us to pay everybody at the same time?

15 COMMISSIONER WILLIAMS:

16 I think that while you cannot prevent the people who are  
17 not parties in the litigation from suing at a future time,  
18 I think you can bind the present parties to the litigation  
19 so that they would not get a refund regardless of what the  
20 outcome was of that lawsuit. Now, of course, if there  
21 was a fundamental change in federal law they preempt,  
22 really, passed legislation affecting our structure, well,  
23 that's the supreme law of the land under the federal  
24 constitution. There's nothing we can do about that.  
25 But we can bind the parties to the present lawsuit so that  
their amount, which represents over 90% of what's being

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1       paid ...

2       MR. RAY:

3           What do they call that? Would they call that agreeing  
4           without prejudice? Is that ...

5       COMMISSIONER WILLIAMS:

6           They would be dismissing it with prejudice...

7       MR. RAY:

8           ... with prejudice.

9       COMMISSIONER WILLIAMS:

10           ... so that they could not raise the constitutional issues  
11           again.

12       MR. RAY:

13           You'll have to excuse -- I'm not an attorney, and so  
14           there are some of these things that I'm not too familiar  
15           with.

16       COMMISSIONER WILLIAMS:

17           I shouldn't profess to be one either. I haven't practiced  
18           in a long enough period of time. I'm familiar with the  
19           idea.

20       MR. RAY:

21           Continue, sir.

22       COMMISSIONER WILLIAMS:

23           Thank you. The third option would be to set the money  
24           aside. Obviously, if we don't set the money aside, we  
25           don't have a backstop tax, and we don't have a settlement,

1 then we have a real risk of having to come up with billions  
2 and billions of dollars around 1985 in the event that we  
3 lose. The important thing to remember - it doesn't matter  
4 what our odds are of winning or losing. We only get one  
5 shot. So if we lose, we lost. We can't come back  
6 multiple times on this issue and get to the expected value.  
7 If I think that we've got an 80% chance of winning, or  
8 someone else thinks it's a 60% chance of winning, it doesn't  
9 matter. If we've lost, we lost. And we have to come up  
10 with the money. To set the money aside over the interim  
11 and not spend it is one way to be able to afford to cover  
12 ourselves in the event that we should lose. Then we would  
13 be able to make the payments back that would be required  
14 by the court. Obviously, then, we would continue to  
15 litigate the present law. And there are certain  
16 strategic or technical amendments to -- some of which  
17 alleviate inadvertent inconsistencies in the law. Others  
18 would eliminate certain issues that are really peripheral  
19 issues in the case, and it's better just to clean them  
20 up and have the case go on its basic merits which is can  
21 you have separate accounting or can't you.

22 MR. DANKWORTH:

23 Commissioner Williams, you've said that regardless of what  
24 our chances are in court - whether they are good or bad -  
25 it's still a risk, that if we lose, if it's 80 to 20 and we

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1       lose, we still have to pay it back. You get one shot. You  
2       still have to return this \$6 billion.

3       COMMISSIONER WILLIAMS:

4       That's correct.

5       MR. DANKWORTH:

6       Then if we put in the backstop -- oh, for goodness sakes.  
7       I hope that jackhammer doesn't start right now. If the  
8       backstop tax is in place, now, are you absolutely sure  
9       that that statement is still true that we have 100% chance --  
10      we know that there will be a suit filed against the  
11      backstop. Now, are you satisfied that we'll have 100%  
12      chance of winning that? Or will number 3 still be  
13      necessary to protect the fiscal integrity of the State by  
14      having some money in escrow in case we lose that one?  
15      Or do you think we should take that 20% chance that we  
16      might win?

17      COMMISSIONER WILLIAMS:

18      I don't think any lawsuit is 100% in any party's favor.  
19      So even with the backstop tax, there would be some risk.  
20      The basic risk is, is the 30% share that Alaska is taking  
21      too much under the federal constitution. That risk would  
22      remain regardless of what tax structure you have. If you  
23      had a lawsuit that risk would be present. The backstop  
24      tax, though, I think, does eliminate additional risk that  
25      has been introduced in the income tax area as a result of

1 the Exxon and Mobil cases. So to that extent, it cuts down  
2 significantly - at least in half, I would say - our chances  
3 of losing and having to make this massive refund. But  
4 there still would be the outside chance.

5 MR. DANKWORTH:

6 Well, that's the point that, I think, Commissioner, I wanted  
7 to make, is that -- to get your opinion on. If the backstop  
8 goes in, it may lessen our losses to some regard in the  
9 first case. But, I guess, the question is, is even with  
10 the backstop, now we would have two lawsuits instead of  
11 one, most likely. And I think I can reasonably predict  
12 that that probably will happen. But now we have two  
13 lawsuits. One probably makes us more comfortable with  
14 the first, the second does. But from a purely fiscal  
15 point of view, in looking after the State treasury, are  
16 we so sure, and are the odds so good, and would we  
17 normally in a good fiscal approach to things put the  
18 State in a position where we would continue to spend the  
19 money even though there is 5%, 10%, 20% chance of losing  
20 in that case? I guess I'm back to my question, when  
21 we are at risk is number 3 -- do you still see a need  
22 to put some of this in escrow, or are you satisfied the  
23 State would be in a sound fiscal position to continue on  
24 without any backup money?

25 COMMISSIONER WILLIAMS:

Well, the backstop tax is like having a pair of suspenders

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1 instead of only one suspender. If you wanted to escrow  
2 as well as have a pair of suspenders that would be wearing  
3 suspenders and a belt. You could do it. I don't know  
4 that I would recommend that it's necessary to put the  
5 belt on when you have a pair of suspenders.

6 MR. RAY:

7 Commissioner, perhaps if we are faced with a loss of  
8 6.4, maybe we should increase the tax and put that money  
9 into escrow to accommodate our 6.4 loss in case that we  
10 would lose it.

11 COMMISSIONER WILLIAMS:

12 Well, that's a possibility. In effect, as we'll see, that's  
13 in effect what the backstop tax does, except it doesn't make  
14 the companies cough up the money twice on a current  
15 basis.

16 MR. RAY:

17 And then they could sue us in 1985, and we could figure  
18 out something by 1990 when they come back again. Thank  
19 you, sir.

20 COMMISSIONER WILLIAMS:

21 The fourth option is to do nothing. Which is an option.  
22 Inaction is itself a choice. However, as you can see,  
23 I've put an X through it on the chart. That is the one  
24 clearly, absolutely, unacceptable option for us to take.  
25 That's the worst that we can do. That's going to a crap

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1 shoot with over \$6 billion of the public's money and  
2 rolling the dice. And I don't think that we can responsibly  
3 do that. Certainly we are absolutely opposed to a course  
4 of inaction at this time. I think that the other 3 are  
5 options that are viable. Doing nothing is the one option  
6 that we cannot take. Turning, then, to the basic idea  
7 of the present legislation ...

8 MR. RAY:

9 Just one question, sir. When you say the settlement -- the  
10 settlement you are referring to is the settlement only  
11 on this specific case and not on the royalty case and all  
12 the rest of them. You would just get the settlement of  
13 the one that they are -- in the particular area, and then it  
14 leaves the rest of them viable cases - right?

15 COMMISSIONER WILLIAMS:

16 That's correct.

17 MR. RAY:

18 Thank you.

19 COMMISSIONER WILLIAMS:

20 So now to the basic concept of this bill, again -- once  
21 again I'll have to flip the chart. I hope this picks me  
22 up. This tries to illustrate what the basic idea is in  
23 the backstop approach. This red area here, including the  
24 dotted lines, represents the income stream that we  
25 receive in any given year under Chapter 21, which is the

1 subject of the lawsuit, and is what we might have to  
2 refund if we lost. Among the changes that we propose in  
3 the bill is to allow a deduction for the windfall profit  
4 tax, and to make certain strategic or technical changes to  
5 remove what I called warts on the bill, that right now  
6 really raise extraneous issues, ancillary issues.  
7 And so to leave the lawsuit clean, in terms of can you  
8 have separate accounting or not. There's no point in  
9 having the case be decided on some finnarky issue off  
10 on the side and not on the basic merits of can you have  
11 separate accounting. So these two things would represent  
12 a change from the present level of tax down to some  
13 lower level that would be paid under Chapter 21. The  
14 backstop tax is a property tax on oil and gas reserves.  
15 It also produces, in gross, represents as much revenue  
16 as Chapter 21 would have represented before we took  
17 the warts off and before allowing the windfall profit  
18 tax. The payment under Chapter 21 gives rise dollar-  
19 for-dollar for a credit against the reserves tax. The  
20 excess of the reserves tax over the credit is a payment  
21 to the State. The combination is that you have this  
22 much being paid under Chapter 58, the reserves tax; this  
23 much being paid under Chapter 21, the income tax; and  
24 between the two, it adds up to the same size as what  
25 would be collected under Chapter 21, as it reads right now.

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1 That's the basic concept of the reserves tax backstop.  
2 Now, if there's a change in the amount that is paid, either  
3 as a result of judicial decision or an audit or whatever -  
4 this goes up or down in the amount that is paid on the  
5 income tax. There's provision in the bill dollar-for-  
6 dollar for a change in the credit. So if this goes up,  
7 the credit goes up, and they owe less up here under the  
8 reserves tax. Similarly, if this goes way down, the  
9 credit goes way down, and the remaining reserves tax  
10 liability that has to be paid goes up. That's basically  
11 how the credit mechanism works. Now, we've done a  
12 fiscal note -- the bottom line, we've done two cases -  
13 a low price case and a high price case which are not  
14 particularly revenue forecasts in and of themselves.  
15 They are to illustrate whether the reserves tax works  
16 as a backstop for the income tax. Does it have the  
17 revenue generating potential to completely backstop over  
18 \$1 billion a year of income tax payments? The answer is,  
19 yes. If we start at 30 mills for the first tax year,  
20 then go to 25 mills, which is the default rate right now -  
21 if the legislature fails to set the millage at a different  
22 level, it will be at 25. So if we are at 25 mills through  
23 these two years and then drop down to 20 mills in 1985,  
24 you'll see that we have all gained in the next fiscal  
25 year over Chapter 21 under the reserves tax. The reserves

1 tax would come out \$7 million over. There would be small  
2 reductions in each of the next years which can be  
3 eliminated by fine tuning the millage rate. But if the  
4 millages stay at 25, 25 and then goes down to 20, you'll  
5 see that over the period we are looking at, while the  
6 lawsuit is pending, it would be a net failure to cover  
7 of only \$164 million out of the \$6.4 billion. So essentially  
8 over 95% of the revenue is backstopped under the low  
9 price.

10 MR. RAY:

11 Your figures are in millions then?

12 COMMISSIONER WILLIAMS:

13 Those figures are in millions, yes. Now looking at the  
14 high price case. This is more optimistic in terms of the  
15 assumptions about how oil prices will increase. You can  
16 see that, here, this time, it ends up being plus  
17 \$483 million. Again, the same assumptions about millages -  
18 30 mills in the first year, 25 the next two, and then  
19 dropping to 20 in 1985. That produces overall an  
20 increase in the tax liability of \$483 million. These are  
21 the figures that are in the fiscal note. And I'd just  
22 like to show in the low price case some of the backup about how  
23 these are developed. This is what we project in the low  
24 price case would be collected under the present income tax.  
25 No warts, no windfall profit tax - just what we have on the

1 books now. \$1,142 million in fiscal year '82. With the  
2 warts and the windfall profit tax, that would drop to  
3 \$787 million in fiscal year '82. The new reserves tax  
4 would generate \$601 million in that payment part - that  
5 top box that I showed in the first draft, \$601 million.  
6 There'd be retroactive provision for the warts and for  
7 the past windfall profit taxes to clean those up - and  
8 the net change is \$11.149 billion. The difference is a  
9 \$7 million increase - that's the \$7 million that I showed  
10 you earlier on the low price case.

11 MR. RAY:

12 Wait a minute. What was that first figure you just said?  
13 No, the bottom, the total figure. The next one up.

14 COMMISSIONER WILLIAMS:

15 This one is the new cash flow. That's the 787 plus the 601  
16 minus 83 minus 156 - adds up to 1149. This is the  
17 revenue that we would see as the cash coming in under the  
18 low price case with this bill in this fiscal year. In  
19 this year, in 1983, this is the income stream you would  
20 see. There would be no more retroactivity because that  
21 has all been taken care of in the first year. So all you  
22 have now is the ongoing effects of the reserves tax and  
23 the ongoing effects of the amended version of Chapter 21.  
24 So here you have a total of \$1.289 billion being collected.  
25 That's short of the \$1.356 billion that would be collected

1 under the present tax, and is short by \$67 million. Same  
2 thing here - it comes up short by \$49 million. And over  
3 here it comes up short by \$55 million. It does not  
4 necessarily, though, have to come up short. And I'd like  
5 to show you one graph here illustrating that point.  
6 Thank you. This is break even millage rates. One of  
7 the provisions is that the legislature may adjust the  
8 millage each year. If it fails to do it, it's 25 mills.  
9 But if it does do it, it can fine tune this tax so that  
10 the revenue effect is zero. In 1982 these are the  
11 assessed values that come up from the low price case for  
12 the reserves at Prudhoe Bay. These are all in millions  
13 of dollars. So this is \$60.1 billion - would be the  
14 approximate assessed value based on the research and analysis  
15 we did. If you apply the millage, 29.65 mills, that's  
16 2.965% of this assessed value - the gross reserves tax is  
17 \$1.782 billion. The credit for income tax payments, for  
18 past income tax payments and for current income tax  
19 payments, comes to \$1.188 billion - that's the sum of  
20 those two. So you subtract that from this, and you have  
21 the net reserves tax payment of \$594 million. At present,  
22 Chapter 21 produces \$1.142 billion. Taking the warts  
23 off would reduce that by 33. Taking the windfall profit  
24 tax deduction off, we would reduce it by another 308.  
25 And deduction for this reserves tax, since this will now

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1 be an expense charged against their income - that reduces  
2 the reserves tax amount payment in the fiscal year by  
3 \$14 million. So the new income tax that would be paid  
4 under Chapter 21 is \$787 million. The combined revenue  
5 787 plus 594 - right up here, the reserves tax and the  
6 income tax - comes to \$1.381 billion. Applying - I don't  
7 know if you can see this - but applying the retroactive  
8 warts and the retroactive windfall profit tax credits  
9 that would be allowed, that knocks it down to \$1.142 billion.  
10 That's exactly what we're trying to match - \$1.142 billion.  
11 This is the income stream under the present law. So this  
12 is the net income stream we get under the new law if  
13 you apply this millage. And the revenue change is zero.  
14 The same calculations that are worked out for these  
15 (indisc.)--you can see that 29.65, 29.04, 23, and 20.72  
16 work out to have no revenue effects given these assessed  
17 values. It neither raises nor lowers the tax. Now, the  
18 assessed values, of course, may vary as time goes by  
19 from year to year. They may well not come out at these  
20 particular levels. The point is to show that it need not  
21 result in either an increase or a decrease in the tax  
22 liability of the oil industry. But can, in fact, be  
23 fine tuned to eliminate any change in their liability.

24 MR. RAY:

25 Any questions from any members of the Committee? Senator?

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1 MR. DANKWORTH:

2 Commissioner, when setting the mill rate on the assessed  
3 value of your reserve, 29.65, what do you use to -- how  
4 would you know whether to raise or lower that? Does that  
5 have anything to do with the rising or falling cost  
6 of oil or the price of oil in the nation?

7 COMMISSIONER WILLIAMS:

8 No. The assessed value has a relationship with the  
9 expected price of oil in the future because one of the  
10 ways that you'll look at, in evaluating one of a kind  
11 properties like reserves, is to say what's the income  
12 stream that this is likely to produce in the future?  
13 That income stream, of course, is going to depend on  
14 what the price of oil is. So it's this top line that  
15 depends on the price of oil. This one can be solved  
16 mathematically so that the numbers work out to zero  
17 at the bottom. And that's simply what was done. I  
18 went through this from front to back - if you were  
19 solving for this you would essentially, sort of, work  
20 through backwards and find out what millage it was you  
21 needed.

22 MR. DANKWORTH:

23 Does this take the risk out of the State being in the  
24 oil business at all? I mean, can we just use that each  
25 year to make sure that we get that amount which we want?

1 COMMISSIONER WILLIAMS:

2 You can use it to make sure you get the amount that you  
3 want. You can use it to make sure that you are covering  
4 what would have been collected under Chapter 21. It still,  
5 of course, leaves that residual risk about the 30% share -  
6 it's open to legal challenge. If there's a lawsuit,  
7 there's still is that chance in the lawsuit of losing.  
8 I'm not sure which risk you were ...

9 MR. RAY:

10 Are you finished, Senator?

11 MR. DANKWORTH:

12 Thank you.

13 MR. MALONE:

14 Thank you, Mr. Chairman. On these different presentations,  
15 Tom, you've been using high case, low case - which one  
16 is probably more likely?

17 COMMISSIONER WILLIAMS:

18 At the present time the low price case is much closer  
19 to where we are in our revenue forecast than the high  
20 price case. The high price case is the one that, on the  
21 pro forma fiscal note, ends up almost \$500 million tax  
22 increase. That's less likely, considerably, than the low price case,  
23 although you can come up with reasonable situations where  
24 either one can come about.

25 MR. MALONE:

Thank you, Mr. Chairman.

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1 MR. DANKWORTH:

2 Just to clarify that, Commissioner. If it's perceived  
3 that under 21 now that our income should be about 31  
4 something, close to 32% - is that what it is presently,  
5 compared to those?

6 COMMISSIONER WILLIAMS:

7 Through the period to '85, it is about 31.8, I think.

8 MR. DANKWORTH:

9 All right, if it's 31.8% - to maintain that 31.8% of the  
10 revenue, we could annually, the legislature, could play  
11 with this millage rate to hold that 31.8%. Is that  
12 correct?

13 COMMISSIONER WILLIAMS:

14 That's correct. You do so by making these numbers down  
15 here at the bottom all equal to zero.

16 MR. RAY:

17 Just so long as your requirement doesn't exceed 30 mills  
18 though, right?

19 COMMISSIONER WILLIAMS:

20 You could set the millage at any level you wished. 30 mills  
21 is the limit that municipalities have on them.

22 MR. RAY:

23 I see.

24 COMMISSIONER WILLIAMS:

25 But this indicates you wouldn't have to go over 30 mills,

1 unless these assessed values were significantly lower.

2 MR. RAY:

3 Please continue.

4 COMMISSIONER WILLIAMS:

5 Thank you. I think I'd better sit back down. So having  
6 basically described that the fundamental idea of the  
7 backstop tax, having gone through the fiscal note that has  
8 been prepared for the tax, and showing how it can be  
9 tailored so that there is neither an increase nor a  
10 decrease in the percentage share, I'd now like to run  
11 through briefly, section by section, the provisions in  
12 the bill. And the first one involves, once again,  
13 getting to a chart. Section 1 -- the most confusing part  
14 about section 1 is the treatment of income that is  
15 required to be shared under the Native Claims Settlement  
16 Act. This chart illustrates what Congress created under  
17 the Native Claims Settlement Act. Now, for a moment  
18 let's talk about non-oil and gas so that we understand  
19 how it works for corporations that are under Chapter 20,  
20 and under the Internal Revenue Code which Chapter 20  
21 follows. So let's say instead of oil and gas wells -  
22 now if you will imagine those are trees, and some one is  
23 cutting them down, there are trees that are granted  
24 to the regional corporation under the Native Claims  
25 Settlement Act. Under section 7(i) of that Act, the

1 revenue that comes in to the regional corporation owning  
2 that forest from those trees - 70% of the revenue must be  
3 shared under section 7(i). The regional corporation  
4 keeps 30%. 70% is shared under section 7(i), and it  
5 goes to all the regions in proportion to their shareholders.  
6 I've not drawn 12 regions here, but you can see there are  
7 3 of them as well as the region that owns the timber.  
8 Under section 7(j) of the Act, each region in turn is  
9 required to distribute 50% of what it receives to its  
10 village corporations and/or its shareholders. But it has  
11 to break the second distribution out. So you see  
12 village corporations getting income from this region,  
13 these village corporations getting income from their region,  
14 and so on back -- including the original region. It has  
15 to turn back 50% of what it gets under 7(i) - has to  
16 go back to the villages. Now, under the Internal Revenue  
17 Code, and a letter ruling dated February 2, 1977 by the  
18 Internal Revenue Service - it's an informal letter  
19 ruling - the IRS took the position that the income is  
20 taxable to the recipient of it. So if 70% comes here,  
21 and 10% of that goes to this region, and then 5% goes  
22 to the villages. The villages are taxed on the 5% they  
23 received; this region is taxed on the 5% it keeps; this  
24 region is taxed on the 30% it kept originally, plus whatever  
25 it gets back; and these villages are taxed on what they

1 receive, and so on. Each one of these -- the recipient  
2 is taxed on the income. Neither this region nor its  
3 villages, nor any of the other regions and their villages,  
4 has an interest in the land for purposes of depreciation  
5 or depletion or anything else. They don't have an  
6 economic interest in the land under the Internal Revenue  
7 Code. So under Chapter 21, if this were a forest, the  
8 villages would be taxed on their income; this region  
9 would be taxed on what it nets; this region would be  
10 taxed on its net; and these villages would be taxed on  
11 their net. Now, what happens when it becomes Chapter 21  
12 type income - these are oil wells now. Once again, they  
13 go in to section 7(i), 70% of the income. It's shared  
14 among the regions and in turn reshared among the villages.  
15 Some of it comes back to the original region, and half  
16 of that is shared with its village corporations. How  
17 should all of these corporations be taxed? If we follow  
18 the example of the Internal Revenue Code, you say that since  
19 none of these has an economic interest in the oil and  
20 gas, that it stays income under Chapter 20 for the  
21 non-owner region. This region is subject to Chapter 21  
22 because it is getting income from oil and gas. So it is  
23 subject to 21. The income it gets back and keeps under  
24 revenue sharing would be subject to Chapter 21. But the  
25 income it shares out to its villages, since that is a

1 deduction from its income, and for the villages, since  
2 they don't have an economic interest in this land under  
3 the Internal Revenue Service, that's Chapter 20 income.  
4 Which makes sense - that it is exactly the same treatment.  
5 Everybody's getting the same tax rate, and the same  
6 parallel treatment under Chapter 21 as what they are  
7 getting under Chapter 20. That's what the underlying  
8 language in section 1, on page 1, at lines 16 to 21, does.  
9 It's a long explanation but it's probably simpler to  
10 go through the explanation and say what it does than to  
11 try to work with the language. So that's why I've  
12 prepared this. I'd be glad to answer any questions  
13 you have.

14 MR. RAY:

15 I think it is very well understood, and I'd like to  
16 thank you for the explanation.

17 COMMISSIONER WILLIAMS:

18 Thank you, Mr. Chairman. Continuing on, then, section by  
19 section -- the rest of them go much more quickly now.  
20 The second section just simply makes some technical  
21 changes. It does not change the substance, really. It  
22 just makes the language tidier. Section 3 relates to  
23 deductions from production income under Chapter 21. The  
24 addition of the language on line 10, "or incurred," allows  
25 for taxpayers who are using the accrual base of accounting

1 rather than cash base of accounting, to use accruals.  
2 They don't have to gin up a special set of books for our  
3 tax. In fact, we don't want specially ginned up books -  
4 we'll take the real books. So we'll look at their  
5 business the same way they look at their business themselves.  
6 So this allows accrual taxpayers to stay on the accrual  
7 basis. So the same thing is true on line 13 and  
8 again on page 3, line 4. The section on page 3 between  
9 lines 8 and 26 relates to the interest expense. Right  
10 now there is an absolute limit on the allowable interest  
11 that may be deducted. This limits the interest that may  
12 be deducted to interest incurred with respect to  
13 Alaskan investment instead of investment anywhere, and  
14 it allows the limitation -- there's a presumption about  
15 a limitation, but it allows it to be rebutted where the  
16 taxpayer can show that it's actually got more interest.  
17 It also allows the taxpayer to include interest expense  
18 where the parent, where the taxpayer is a subsidiary and  
19 where the parent actually did the borrowing on behalf of  
20 the subsidiary instead of the subsidiary doing it itself.  
21 It's a rather technical point. Again, on page 4, section  
22 9 which starts on line 3 - it's a similar sort of item  
23 there. There's a limitation in the present law on general  
24 overhead or administrative expense that may be deducted.  
25 This replaces that absolute limitation with a presumption -

1 the presumption is provided for in new subsection (f)  
2 which comes in a few pages. The new deduction number 10  
3 is for the deduction of the income that is shared under  
4 section 7(i), revenue sharing. That is to say, this  
5 70% is a deduction from this gross income of this region  
6 which, of course, is consistent with the notion that this  
7 70% is going to be taxable income to the recipient.  
8 That's all that number 10 does. Number 11 allows for a  
9 deduction for the actual reserves tax that is paid -  
10 reserves tax over and above the amount of the credit that  
11 is allowed against it. So actual payment of reserves tax  
12 is a cost and it is allowed as a deduction. Section 12  
13 would allow the windfall profit tax.

14 MR. MALONE:

15 Mr. Chairman, on the windfall profits tax question, now  
16 that's incorporated in the bill but the legality of  
17 allowing or not allowing a federal excise tax, or whatever  
18 you call the windfall profits tax, is that a serious  
19 issue?

20 COMMISSIONER WILLIAMS:

21 I think it's a serious issue when the court looks to the  
22 equities of the tax.

23 MR. MALONE:

24 Mr. Chairman, if the information I have is correct, at least one  
25 state this year, one state legislature in Minnesota, in fact,

1 moved to eliminate that deduction from their tax code --  
2 passed a bill on it.

3 COMMISSIONER WILLIAMS:

4 Mr. Chairman, I understand that to be correct. The point  
5 is, though, that Minnesota does not have a separate  
6 accounting tax. And our concern is, in looking at  
7 separate accounting, that the court may see this as a  
8 particularly unfair feature that separate accounting causes.  
9 And, once again, I think the important thing is to  
10 establish the precedent on the principle of separate  
11 accounting rather than lose that principle because there  
12 was a windfall profit tax associated with it. As I  
13 pointed out, the backstop has the capability to offset the  
14 revenue that's foregone under Chapter 21 - in effect, it  
15 gets shifted over to Chapter 58 because of the credit  
16 mechanism. It's not as though we suffer a diminution in  
17 cash flow by allowing this deduction, but it does  
18 definitely, I think, allow the issue of separate accounting  
19 to be presented on its own merits and not to be decided  
20 possibly on the extraneous issue of the windfall profit  
21 tax.

22 MR. MALONE:

23 Thank you, Mr. Chairman.

24 MR. DANKWORTH:

25 Then it's just semantics in the sense that we haven't given

1       them credit in anything - we changed the wording but we  
2       are still collecting. We've just found a new mechanism  
3       to collect the same amount of money.

4       COMMISSIONER WILLIAMS:

5       That's right. It preserves the revenue share. That's the  
6       purpose of the backstop -- is to protect the level of  
7       revenues that the State desires to continue to receive.

8       MR. DANKWORTH:

9       Thank you.

10      COMMISSIONER WILLIAMS:

11      Section 4 of the bill, which is at the top of page 5,  
12      allows for the taxpayer to rebut the presumptions as to  
13      allowable interest to be deducted or allowable  
14      administrative overhead -- general overhead or administrative  
15      expense that may be deducted. As I said earlier, those  
16      are specifically limited but it's a presumption. This  
17      provides how that presumption is to be rebutted by the  
18      taxpayer.

19      MR. DANKWORTH:

20      Before we get too far off my last question, if you don't  
21      mind, I'd like to return -- Commissioner, do you know  
22      offhand, or do you have the material with you -- if  
23      we gave the windfall profit tax, if we decided that was  
24      an unfair tax and we wanted not to charge that, do you know  
25      about what amount that would amount to between now and  
1985?

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1 COMMISSIONER WILLIAMS:

2 I can quickly hunt it up here.

3 MR. DANKWORTH:

4 Just kind of roughly, Tom. If you could kind of give me  
5 an idea of what -- if we thought that was unfair and we  
6 didn't intend to do it in the first place, and we wanted  
7 not to charge that, how much would we lose in revenue  
8 between now and 1985?

9 COMMISSIONER WILLIAMS:

10 Through that period, the industry would pay approximately  
11 \$18.75 billion of windfall profit tax. So that would  
12 be a deduction in that amount. It would reduce their  
13 income by that amount and our tax rate at 9.4% of that.  
14 So it would be about, I'd say \$1.8 billion - plus or  
15 minus \$20 or \$30 million. But I'd say \$1.8 billion is  
16 close.

17 MR. DANKWORTH:

18 If we had decided that that was an unfair tax and wasn't  
19 intended, and we didn't charge it, then we would, by  
20 setting that straight, we would have to give up about  
21 \$1.8 billion.

22 COMMISSIONER WILLIAMS:

23 That's what you would reduce it by.

24 MR. DANKWORTH:

25 ... if we continued to have Chapter 21.

1 COMMISSIONER WILLIAMS:

2 That's correct.

3 MR. DANKWORTH:

4 Thank you, Mr. Chairman.

5 MR. RAY:

6 However, couldn't we increase, or put another tax in to  
7 keep the same level of taxation? If we made an error  
8 in one place, we can correct it by doing the right thing  
9 in another place and collecting the same tax.

10 COMMISSIONER WILLIAMS:

11 If you didn't want to forego the \$1.8 billion. In fact,  
12 that's what the backstop tax would recover.

13 MR. RAY:

14 Go ahead, sir.

15 COMMISSIONER WILLIAMS:

16 Thank you. Section 5 of the bill which starts on line 9  
17 on page 5 allows for the non-production and non-pipeline  
18 income of a Chapter 21 taxpayer to be taxed on the basis  
19 of the federal taxable income. It's the same treatment  
20 as we give taxpayers now under Chapter 20. It refers to  
21 foreign subsidiaries and domestic subsidiaries, and it  
22 reflects the present practice of the Department - that  
23 where you have a domestic subsidiary that files or reports  
24 federal taxable income, that we use that federal taxable  
25 income in looking at the worldwide pie to be apportioned

1 to Alaska. Where there is a foreign subsidiary involved,  
2 we look at their book income usually. Ordinarily the  
3 taxpayer says, hey, it ought to be federal taxable income but  
4 then when it looks at the cost of redoing the books on  
5 the basis of federal taxable income they say it's close  
6 enough. So on lines 21 through 24 the option is there  
7 for the taxpayer to use book income if it's easier for  
8 it. But otherwise, if they can readily convert it over  
9 to federal taxable income, that's just as soon as what  
10 we'd have them do. Section 6 allows for administrative  
11 relief by the Department. This does not change what  
12 we believe the law to be at this time. Alaska is a  
13 member of the Multistate Tax Compact. It's enacted and  
14 codified as Chapter 19 of Title 43 of the Alaska  
15 Statutes. And under the Act, the Commissioner already  
16 may provide for modifications in the formula or in the  
17 separate accounting provisions where those are resulting  
18 in an inappropriate measure of the extent of the  
19 taxpayer's business in the State. Nevertheless, in the  
20 lawsuit, it is alleged and contended by the plaintiffs  
21 that the authority for our regulation does not exist,  
22 the regulation affording tax relief. This would make it  
23 clear that the authority does exist, that the Multistate  
24 Tax Compact is intended to apply to Chapter 21 just as it  
25 applies already to Chapter 20. On page 6 section 7 of the

1 bill allows for prepayments of the tax. Again, by  
2 regulation we have interpreted the present statute to  
3 allow for either payments on installments after the tax  
4 is due or for prepayments of estimated tax before the  
5 tax is due. The regulations require prepayments. The  
6 regulations are being challenged as lacking statutory  
7 authority. Once again, we don't believe that to be the  
8 case, but in an excess of caution and to simplify the  
9 lawsuit, this change would make it absolutely clear that the  
10 regulations do have that authority. Then comes section 8  
11 which is the reserves tax - it enacts the reserves tax.  
12 One of the things that happens here is instead of using  
13 the existing provisions of AS 43.58, we are renumbering  
14 slightly off the original sequence. And the purpose of  
15 that is that the original Title 40 Chapter 58 had a  
16 provision saying that the tax expired. There's been some  
17 question raised about whether that expiration language  
18 means the tax was repealed. Rather than to have any  
19 question about whether the tax was repealed or not, we  
20 are repealing those sections and enacting new ones. The  
21 first one is Findings and Purposes which provide a  
22 statement of the intention of the reserves tax to be a backstop  
23 tax, a statement of the circumstances about why it is  
24 appropriate for the legislature to do so. The real  
25 substance of the tax starts on page 9. Page 9, first of all

1 on line 11 is the new 43.58.021 which imposes the  
2 reserves tax. It sets the rate at 25 mills each year  
3 unless a different rate is set for that tax year. The  
4 reason a deadline is imposed for changing the rate at the  
5 end of February, is because we send the tax bills out on  
6 March 15, and we need the two weeks in order to prepare  
7 the bills and we have to know what the millage rate is by  
8 that time. But the legislature would be free any time  
9 before the end of February to fine tune the rate if it wished  
10 to make the revenue consequence of the tax zero, as I illustrated before.  
11 Section 31 provides for exemptions. First one is fairly  
12 obvious. Property of the United States or the State is  
13 exempt from the tax - that's fairly clear. Property that  
14 we are preempted from taxing under the federal laws is  
15 also exempt - that's number 2. Under section 21(d) of the  
16 Native Claims Settlement Act, it seems quite clear that the intent  
17 there is that developed and undeveloped lands conveyed  
18 under the settlement act are exempt from State taxation,  
19 although they may be subject to municipal taxation once  
20 they are developed. But they are not subject to State  
21 taxation and consequently it's specifically referred to  
22 as being exempt here. The third exemption is for gas  
23 reserves. The major areas where gas reserves are found in  
24 Alaska are in the Cook Inlet area, and on the North Slope.  
25 The major developmental projects that are planned for both

1 areas are a gas liquification plant in Cook Inlet, and, of  
2 course, the gas pipeline on the North Slope. Both of those  
3 have marginal economic possibilities. And how many times  
4 we've been warned that the tax structure of Alaska can  
5 have a chilling effect on the decisions to develop or not  
6 develop. Consequently, since all gas in Alaska seems to be  
7 close to the margin of major development, it is appropriate  
8 at this time to exempt them from the reserves tax. And  
9 so the third exemption is in there. Gas reserves are  
10 exempted. If, however, you have exempt property of the  
11 United States or the State which is leased to a third party  
12 who is not tax exempt, that leasehold interest of that  
13 third party is taxable and that's provided for in  
14 subsection (b) starting at line 28 on page 9 and continuing  
15 on to the next page. Now, the next section .041 is the  
16 credits. This is one of two sections that form the  
17 heart of the reserves tax and the backstop concept. This  
18 allows for the credits for the income taxes that are paid.  
19 Subsection (a) is a credit for income taxes that are paid  
20 before July 1, 1981. Those credits may be carried forward  
21 from year to year. They are not exhausted just because  
22 there's not enough reserves tax to use them all up. They  
23 may be carried forward from one year's reserves tax to the  
24 next. Subsection (b) is for the current year's income tax  
25 payments. That is to say, income taxes paid starting

1 July 1, 1981. Those do not carry forward. That's why  
2 they are set out in a separate subsection. They are  
3 applied first against the reserves tax to make sure, in fact,  
4 they are all used up. They are taken first but they do  
5 not carry forward into subsequent years. That's the  
6 difference between the subsection (a) credits and the  
7 subsection (b) credits. Subsection (c) makes it clear  
8 the sequence that you use in applying the credits. You  
9 take the subsection (b) credits first, then you take the  
10 subsection (a) credits. And it provides a limitation --  
11 subsection (d) provides for payment under Chapter 20 to  
12 give rise to a credit against the reserves tax where you  
13 have a taxpayer that's not a corporation, but is  
14 otherwise engaged in oil and gas. This is to give equal  
15 treatment for various interests in the State right now  
16 who will be subject to the reserves tax but who are not  
17 subject to Chapter 21 because they are not corporations -  
18 they're trusts, or individuals, and therefore exempt from  
19 income tax. Section .051 is the other critical part of the  
20 backstop concept. This says that where there's an  
21 adjustment in the income tax liability under Chapter 21  
22 there's a dollar for dollar adjustment in the credit that  
23 is allowed against the reserves tax. In effect, this  
24 allows the reserves tax to serve as the escrow pool, as if  
25 we were collecting the tax under Chapter 43.58 - collecting it

1 and setting it aside in escrow. The credit mechanism  
2 accomplishes the same result but without making the  
3 companies pay twice as much on a current basis. Section .061  
4 provides for the assessment of the reserves. Reserves  
5 are assessed in their full and true value as of the  
6 beginning of each tax year, and the tax date is July 1  
7 of each tax year. It's the standard full and true value  
8 that you get in the open market. Fortunately you don't  
9 have lots of market sales of these types of properties.  
10 So one of the things that is specifically authorized,  
11 and, in fact, required that the Department look at is the  
12 discounted present value of the future income stream that  
13 we would expect reasonably to be generated from those  
14 reserves. Subsection (c) says you can't count property  
15 that's already taxed under Chapter 56. You can't double  
16 count it by hitting it again under 58 - well, that makes  
17 sense. Subsection (d) says what the discount rate shall  
18 be presumed to be. Discount rate is a very sensitive  
19 factor, and I think that it is better to create a  
20 presumption by law than to leave it to the individual  
21 assessor's judgment from year to year. This is one of the  
22 areas where, when I was director of the petroleum  
23 revenue and responsible for administering the first reserves  
24 tax, is one of the areas where we saw the biggest amount  
25 of problems with undue influence on the assessor's judgment.

1 And, rather than have that critical variable be subject  
2 to the assessor's judgment, we think it is best to create  
3 a presumption and the taxpayers can rebut it on an  
4 adequate showing that the presumption is inappropriate.  
5 Section .071 says we send out an assessment roll listing the  
6 properties - what its assessed value is and who the  
7 taxpayers are who own it. Section .081 provides that we  
8 mail the tax bill out -- a notice, rather, of what the  
9 assessed value is by October 15 of each year. Section .091  
10 on page 12 gives the taxpayer 20 days after he gets the  
11 notice to make an appeal if he objects to the assessment.  
12 If he does object to the assessment, he has a formal  
13 hearing in conformance with the standard formal hearing  
14 procedures specified by law for the Department for other  
15 taxes. If he is still dissatisfied once the Department  
16 makes its decision, he has 30 days in which to appeal to  
17 the superior court. By February 1 we certify what the  
18 assessed values are. At that point -- actually we should  
19 have a pretty good idea of what the assessed values are  
20 before February 1 -- but by that point you'll have a clear  
21 handle what the assessed values will be and it will then  
22 be a straightforward matter to ascertain what the millage  
23 should be, if it should be changed at all. So that does  
24 give, I think, adequate lead time. Ordinarily, we would  
25 expect to beat that February deadline, but this is the

1 latest that it possibly can be. Section.111 on page 13  
2 provides for picking up property that for one reason or  
3 another is not included on the original assessment roll -  
4 either it wasn't reported and we didn't know about it at  
5 the time, or it's new property coming into production  
6 after that time. If it's new property coming into  
7 production this section, in response to a comment made  
8 during the public hearings by the Joint Gas Pipeline  
9 Committees, it allows for prorating of the tax over the  
10 year - otherwise people would be hit for a double tax,  
11 once on the supplemental roll and then again the next  
12 July 1, and that's not really appropriate. That will  
13 tend to delay when people will start their properties  
14 up. So this prorating avoids that problem. Section.121  
15 is the same language as was originally in the original  
16 reserves tax, saying that the Department can go out and,  
17 on its own, try to find taxable property so that we make  
18 sure, in fact, that people are -- everybody who has  
19 taxable property is reporting taxable property. It gives  
20 us the authority to conduct the investigation and find  
21 out where there's production. Section.131 talks about the  
22 statute of limitations and the time for when you make  
23 refunds of taxes. And it incorporates the standard  
24 provisions that are applicable to all taxes under Title 43.  
25 Section 141 requires the taxpayer to file a return reporting

1 what his taxable property is each year by the 1st of  
2 August. It also provides for who shall pay it and who is  
3 liable for the tax. Subsection (c) of that section says  
4 that we can require installment payments or authorize  
5 installment payments if it becomes appropriate to do so.  
6 Subsection (d) allows leases that have been unitized to be  
7 treated as a single property or other properties that are  
8 distinct can be combined if the Department authorizes it.  
9 Subsection (e) again is the standard provision from the  
10 other tax relating to payments and authorizes the person  
11 who makes the return to withhold the tax from anybody on whose  
12 behalf he is filing the report. And subsection (f)  
13 authorizes us to require additional information upon  
14 written notice. We can adopt regulations under section.151.  
15 And then.161 is just the list of definitions. And that's  
16 essentially the reserves tax in its basic form. Section 9  
17 of the bill which appears on 17 makes it clear that the  
18 credit mechanism is essentially a subject of legislative  
19 grace. It's legislative grace in that we are not doubling  
20 up the amount of tax that has to be paid by the oil  
21 industry at this time. Credit mechanism allows them to  
22 pay the present amount of income that the State is  
23 receiving and provides for the backstop rather than doubling  
24 the amount that is collected and setting half of it  
25 aside in an escrow account. However, if that mechanism is

1 invalid then the credit is provided for to be struck down.  
2 And then it is doubled up. Section 10 is the severability  
3 feature for any of the exemptions from the reserves tax  
4 that were set out in the event that any of those should  
5 be declared to be invalid. Once again, it's out of an excess  
6 of caution - we don't expect that any of them will be  
7 struck down. Section 11 makes it clear that if separate  
8 accounting is declared to be unconstitutional, then it is  
9 at least intended that the taxpayers will be subject to  
10 Chapter 20. That's not a great deal of -- you know, we  
11 take a big fall from 21 back to 20, 85% of the revenue  
12 that under 21 would be shifted and only 15% of the  
13 amount of revenue would correspond to Chapter 21.  
14 Nevertheless, it's clear that that 15% is to be paid under  
15 Chapter 20 which is the approximate proportion it is  
16 (indisc.-cough) 15%. So if they are not under Chapter 21,  
17 they are not free from income tax - they are under  
18 Chapter 20. That's what Section 11 of the bill does.  
19 Section 12 provides for the special millage of 30 mills  
20 for the first year of the tax. Section 12(b) limits the  
21 amount of combined credits that may be taken against the  
22 reserves tax. But again there's a provision for the  
23 unused prior tax credits to be carried forward into subsequent  
24 years. So it really doesn't - it's just a question of the  
25 timing when those credits are recognized. It's a mechanism

1 there designed to preserve the cash flow so that we don't  
2 shift income from next year into 1984 and '85. It keeps  
3 it spread through the 4 years more or less evenly. And  
4 that's what section 12(b) does. Section 13 provides  
5 for a transition rule that 30 days after the effective  
6 date of the reserves tax the initial returns on the  
7 property reporting the taxable property are due. And that  
8 60 days after the effective date of the reserves tax the  
9 Department's assessment notices are due to be issued.  
10 The rest of the schedule, or the rest of the timetable set  
11 out in the reserves tax we should be able to meet - the  
12 February 1 deadline for certifying the roll, the March 15  
13 deadline for sending out the bills -- that we should be  
14 able to meet those without any problem. Section 14  
15 repeals 2 sections in the Chapter 21 income tax. It's  
16 a technical change. It removes the warts, and it's to  
17 be consistent with changes that are made elsewhere in this  
18 law. And then Section 15 provides for repeal of certain  
19 provisions on the severance tax, and for the repeal  
20 of the existing sections of the reserves tax that are on  
21 the books. And that's it. Section 16 is for retroactive  
22 dates on certain sections.

23 MR. RAY:

24 Commissioner, it would appear - and you may correct me -  
25 it would appear that in this proposed legislation that the

1 State has the mechanism to protect its people or itself  
2 from a loss of revenue no matter what the court case says  
3 or does -- it has the mechanism either to make it up or  
4 to stabilize it so that there is a minimal loss of  
5 revenue. Is it safe to say, or is it a fair thing to say,  
6 that any change, any substantial reduction or increase  
7 in the revenues from the oil industry at this particular  
8 time would be a policy question and not one of strict  
9 need or desire -- it would be a policy question because  
10 we do have the mechanism to protect ourselves?

11 COMMISSIONER WILLIAMS:

12 That's correct. It's a policy question. The present  
13 level of the State's revenue from the oil industry is a  
14 policy question.

15 MR. RAY:

16 Thank you.

17 MR. DANKWORTH:

18 I'd like to -- you're through testifying on the bill, aren't  
19 you?

20 COMMISSIONER WILLIAMS:

21 I'm through testifying on this bill, yes.

22 MR. DANKWORTH:

23 I'd like to just touch on a couple of things that still  
24 bother me. And again we're back to policy questions, Tom,  
25 and that's, how much security do the people of Alaska have

1 in passing this bill -- if this bill were to pass --  
2 certainly we have the ability to put in another bill to  
3 get the same amount of money, as Senator Ray just asked?  
4 We could even raise the taxes if we wanted to. There's  
5 no question about that's a policy decision. But the point  
6 is would you anticipate that we will have a lawsuit on  
7 this particular tax when we put it in?

8 COMMISSIONER WILLIAMS:

9 I'd be surprised if there was not a lawsuit.

10 MR. DANKWORTH:

11 Okay. I would to, and I've been told by a number of  
12 people there would be. But I guess I get back to worrying  
13 about, not so much how we got to 30% and stuff -- I'm one  
14 that believes that Alaska should have got her 30% and  
15 I don't mind seeing that we stay at 30%, and I'm going  
16 to insist on that even though we may now be talking at, in  
17 the tax we are in court on, I understand, at 31.8. But  
18 I just want to know for sure that if we try to hold on to  
19 the same thing we get in court on two cases, we should  
20 make a fiscal policy here as to whether we want to  
21 continue to spend this money on the statement that I  
22 think we'll win both cases. \$6.5 billion is at stake,  
23 and I don't care if your chances, let's say they're 90% in  
24 favor of the State, and I don't know anybody that would  
25 go up on any case before any court and say you have a 90%

1 chance of winning. No lawyer would do that, I don't think,  
2 because of the way courts go. I'm concerned  
3 that if we take that 10% risk between now and 1985, that  
4 would almost bankrupt the State if we lose. That's the  
5 question that I'm asking sometimes, and I'm going to later  
6 on in these discussions, at least discuss the possibility  
7 of a settlement, and how it relates to that question.  
8 So I guess I'm not asking you a question so much as I am  
9 making a statement, Mr. Chairman, that concerns me.  
10 Well, that's permissible isn't it?

11 MR. RAY:

12 It's all right with me.

13 MR. DANKWORTH:

14 Thank you.

15 MR. RAY:

16 But I haven't heard from the rest of the Committee,  
17 though, there might be some ...

18 MR. DANKWORTH:

19 Well, ask them. Maybe they won't allow a statement.

20 MR. RAY:

21 Well, every action should have a reaction so I'll play  
22 your devil's advocate for you, if that's what you are  
23 desiring, sir.

24 MR. DANKWORTH:

25 I was reacting to yours, sir.

1 MR. RAY:

2 Oh. Well, I'll double the act to you then. If --  
3 I don't think there is anybody here, except possibly  
4 the representatives of the oil companies, that can tell  
5 you whether the oil companies are going to -- when and  
6 at what point and at what issue that they are going to  
7 attack the State with a lawsuit. And I would imagine  
8 that they are well enough equipped and have the expertise,  
9 having been through it in many countries throughout the  
10 world, to continue a series of lawsuits on everything  
11 from taxes up through land or anything else. So I really --  
12 that isn't a concern that I have of their threats or what  
13 they are going to do, and I don't think that they really  
14 mean that as a threat. I think that if what they -- when  
15 somebody sues me I think it's a promise from them that  
16 they are going to do what they want to do, and when they  
17 come around to make a settlement then it would seem to me  
18 that suddenly I've become very, very likeable in their  
19 eyes, and for some unknown reason. And I don't quite  
20 know what that reason is except perhaps through friendship  
21 or the respect for the State and the love of all of the  
22 people here. But I doubt that very much. I think that  
23 when they come around to make a settlement they have a  
24 reason. And as soon as we can uncover what the reason is  
25 that they want to make the settlement, and we can evaluate

1 what their answers are, then we'll know exactly where  
2 we're standing. As far as lawsuits, they are going to be  
3 suing us as long as there is oil coming out of the  
4 ground -- they're going to have a suit against the State.  
5 And the fear of a suit, or one down the road, or one  
6 tomorrow or the next day or the next day, it doesn't  
7 bother me that much. That's the end of the statement, sir.

8 MR. DANKWORTH:

9 You and I didn't come here to debate. But you did bring  
10 some good questions. And I don't mean my comments in the  
11 sense of debate. But I would like to say one thing -  
12 that I certainly view our duty here as legislators, and  
13 as responsible people here, not to use our powers to  
14 tax as any kind of a threat or to be unfair, or to bring  
15 people to their knees so that they can come and beg  
16 for mercy, you might say. That's not the purpose of that.  
17 And nor would we want -- I know in some of our consumer  
18 protection areas and other things, I see they get  
19 merchants down where they can hardly move and then sure  
20 they'll allow you to go ahead and do what you want to do.  
21 I just want to make the point that I think the question here  
22 is the sense of fairness, and I don't know which side  
23 it should fall on. And I'm not taking anyone's particular  
24 side even though I may appear to be. But, at least, I  
25 think our taxing policies should be based on a sense of

1 fairness and not trying to push somebody to the wall to the  
2 extent that they have to give in that which is not fair.  
3 So that's what I'm looking for.

4 MR. RAY:

5 Well, Senator, I, for one, will stand with you and I will  
6 guarantee that no action that I take here will ever push  
7 the oil companies to the wall.

8 MR. GARDINER:

9 Mr. Chairman, a question. Commissioner, what risk does the  
10 State have in a settlement?

11 COMMISSIONER WILLIAMS:

12 Risks in a settlement?

13 MR. GARDINER:

14 Yes. Is the settlement risk free?

15 COMMISSIONER WILLIAMS:

16 Not 100%. But it does reduce the risk, I think. There  
17 are very few things that are totally risk free. We can make  
18 a settlement and the federal government next year can pass  
19 a law that none of us see or contemplate, and because it  
20 is the supreme law of the land it completely frustrates  
21 the intent of the parties in the settlement and the  
22 settlement is undone. So there is that sort of risk.  
23 For instance, if we settled with a severance tax increase  
24 and then Congress passed a law saying you can't have  
25 severance taxes that high and it's ultimately upheld

1 that Congress has the power to pass such a law. Obviously,  
2 the intent of the parties in the settlement agreement  
3 has been materially affected and frustrated by such a  
4 Congressional act. So you don't completely escape that  
5 sort of risk. In addition, the entire oil industry is  
6 not party to this lawsuit. You do have over 90% of the  
7 money being paid by the parties who are in this lawsuit.  
8 With respect to them, you have -- if you had a settlement,  
9 you would have security for past revenues and you would  
10 have security for future revenues subject to some sort of  
11 preemptive legislation by the federal government, or what  
12 have you. But they, for that 90 plus percent of the  
13 income, you could gain more stability even than you would  
14 have under a backstop tax.

15 MR. GARDINER:

16 But one of the things here is we are only talking about  
17 right now, that 90% of our income comes -- that most of  
18 our oil income comes from Prudhoe Bay and these three  
19 companies represent 90% of the income there, or whatever  
20 it is. But, you know, 10 years from now, it's going to be  
21 different. We're going to have other oil being produced  
22 by other companies -- these same companies may produce  
23 some of the oil but we don't know who will find what in upper  
24 Cook Inlet or other regions, or the Beaufort or other  
25 North Slope regions - so even though we can say it's 90%

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1 today, it wouldn't necessarily be 90% in the future, would  
2 it?

3 COMMISSIONER WILLIAMS:

4 Well, it's hard to tell. I mean, that's pure speculation,  
5 ultimately, about who will find what and where. These  
6 particular three companies - ARCO, Exxon and SOHIO - did  
7 a good job in getting prime prospects for themselves in the  
8 Beaufort Sea lease sale. And one of them is going to be  
9 paying us almost 80% net profits in addition to a 20%  
10 royalty if they get production from block 76. But it's  
11 possible that block 76 may not come into production - it  
12 may not have commercial reserves. And so you never know  
13 until it is actually developed. But they -- it is true  
14 that as basins are explored elsewhere you have no assurance  
15 that these companies will always be the ones who are  
16 successful in acquiring the developmental rights to that  
17 acreage.

18 MR. DANKWORTH:

19 Commissioner, on the -- aside from that we do know that --  
20 and we'll get to that later in this hearing about  
21 settlements and what their relationships are in answer  
22 to Representative Gardiner. Certainly we will always be  
23 open to suits- you and I are, and everybody is, and there  
24 is no security that anybody can offer on that -- but at least,  
25 we -- I believe you testified we pretty well admit that if

1 we pass the bill, Senate Bill 524, we are sure going to  
2 get sued. I mean, there's not the risk of that -- it's  
3 pretty obvious. You've said so yourself. But aside from  
4 that, I'd like to get to the question of, just out of my  
5 own curiosity, how many states presently do allow a  
6 deduction for windfall profits tax? Do you know?

7 I know Minnesota and California have recently followed  
8 Alaska's lead, somewhat, or perhaps they didn't, maybe  
9 they weren't following our lead - but I believe now that  
10 they've said that they would not allow the deduction.

11 Do you know if there is any other states that ...?

12 COMMISSIONER WILLIAMS:

13 I'm not sure whether California has actually passed it,  
14 or whether it has passed only one house there.

15 MR. DANKWORTH:

16 I don't know either, but -- is that all it's done is  
17 passed one house?

18 COMMISSIONER WILLIAMS:

19 In any event, the states that use apportionment, which is  
20 the other approach rather than separate accounting, and they  
21 start with federal taxable income that's -- the windfall  
22 profit tax is already going to be taken out of the pie that  
23 they then use the apportionment formula to figure the size  
24 of the slice they take out. And because the windfall profit  
25 tax is specifically allowed under the Internal Revenue Code

1 as a deduction in figuring federal taxable income. So if  
2 they start with federal taxable income, they are starting  
3 with the windfall profits tax having been allowed and it  
4 would take affirmative action on their part to add it back  
5 into the pie and then take their slice. As far as I  
6 know, it's only Minnesota and California who are doing it  
7 or are in the process of doing it.

8 MR. DANKWORTH:

9 All other states do allow that deduction, is that what  
10 you are saying?

11 COMMISSIONER WILLIAMS:

12 To my knowledge at this time.

13 MR. DANKWORTH:

14 Thank you.

15 MR. RAY:

16 That's hardly a fair assumption, though, because Alaska  
17 is unique in itself, and I don't think that there's another  
18 state that's producing oil in the same quantities and  
19 in the same manner as Alaska is. They welcome the oil  
20 companies to -- they've been with them for a long time  
21 and we welcome them and we hope we'll be with you for a  
22 long time too.

23 MR. DANKWORTH:

24 Well, Mr. Chairman, maybe you should clarify why we are  
25 unique in the sense of the windfall profits tax. The law

1 came along. We didn't intend to pass it. That just came  
2 about. I question whether we are unique in why we would  
3 charge and someone else wouldn't. We did, I agree, sort  
4 of get trapped into it in the sense that when that  
5 windfall profits tax hit we didn't have the provisions  
6 to allow the deduction. But we've never corrected it  
7 either. I don't believe that makes us necessarily unique.  
8 We just haven't done it.

9 MR. RAY:

10 Well, uniqueness is like beauty in the eye of the beholder.

11 MR. DANKWORTH:

12 All right.

13 MR. GARDINER:

14 Mr. Chairman, one thing on this, you know, over the  
15 windfall profits tax or anything, the basic question is  
16 still what share should the State be getting? That's  
17 why we passed the income tax bill in the first place.  
18 Everybody had expectations of what percentage it would  
19 bring in. And the passage of the windfall profits tax  
20 affected both the companies and the State adversely  
21 because what it did in that sense is raise the federal share  
22 of the pie. And at the time when we passed the income tax  
23 nobody thought they were going to pass it one way or the  
24 other -- I mean, I guess we could have guessed that they  
25 would do something if they ever deregulated -- but if they had

1 never passed the whole thing in the first place, then  
2 we might have had a higher percentage because they wouldn't  
3 have been taking that much of the total. Right now they  
4 are getting more than -- almost as much as the companies  
5 and the State put together.

6 MR. RAY:

7 Well, it seems to me I remember when we were first  
8 considering oil taxation and there were a lot of us at  
9 that time that wanted just to take the simplest procedure  
10 possible and eliminate all the transportation costs,  
11 and figuring this and figuring that, and just say every  
12 barrel of oil that popped out of the ground -- Alaska  
13 got so much and the oil companies could do with it what  
14 they wanted with the rest of it. But that wasn't  
15 satisfactory with the oil companies because they had a  
16 different way of going at it. And they won that by a  
17 very slim margin. And I just want to tell them, see if  
18 you had went with us on that we would have never been in  
19 this mess now. So really you have only yourselves to  
20 blame for being in this spot. I think that it's about  
21 4:30. Truthfully, fellas, a lot of us have been here and  
22 have other ideas and other things that we have to work on,  
23 and I'm certainly -- want to give the oil representatives  
24 the complete time but in order -- but to start you  
25 out now, I wouldn't be fair to you. So if it is agreeable

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1 with the Committee, I'll adjourn for today. And we'll  
2 meet again at 2:00 tomorrow? 2:00 p. m. tomorrow --  
3 that'll give us plenty of time because we have some --  
4 we want to hear your testimony, and we want to be  
5 fresher than we are at this time in order to evaluate it.  
6 I hope you will understand what I'm saying.

7

8 (meeting adjourned 4:30 p.m. June 11, 1981)

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1 ALASKA STATE LEGISLATURE, TWELFTH LEGISLATURE  
2 FREE CONFERENCE COMMITTEE ON SENATE BILL 524  
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6 TRANSCRIPT OF PROCEEDINGS

7 JUNE 22, 1981  
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16 COMMITTEE PRESENT:

17 Senator Bill Ray, Chairman  
18 Senator Ed Dankworth  
19 Senator Don Bennett  
20 Representative Terry Gardiner  
21 Representative Rick Halford  
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23  
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P R O C E E D I N G S

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MR. RAY:

Free Conference Committee on Senate Bill 524, come to order please. The discussion that we had, and I should apologize to the witnesses for keeping you so long, but the demands of the adjournment of the legislature in trying to get things going, I felt that you had as much interest as you needed in this or that you would be available when we took it up again. The discussion that we had during the last meeting - I think you were all here - we were discussing -- we have heard the testimony of Commissioner Williams and you people from the industry requested to give your testimony and so I would ask W. Monte Taylor, would you like to come forward, sir, and discuss whatever you would care to discuss about 524?

MR. TAYLOR:

Am I to understand that I'm supposed to just discuss the backstop bill?

MR. RAY:

You can discuss whatever you want, sir - if it concerns this bill or any other possible contingency.

MR. TAYLOR:

Mr. Chairman, members of the committee, my name is Monte Taylor, I'm Alaska Operations Manager for Exxon Company, U.S.A. With me today is Ken Reither, who is a tax attorney

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1 for Alaska Operations. I appreciate the opportunity to  
2 present our views on this issue and I will develop, in this  
3 testimony, the fact that we have a limited opportunity to  
4 resolve -- in an equitable manner - a major issue facing the  
5 state and the industry. Some days ago, I joined other oil  
6 company representatives, as well as a number of Alaska  
7 citizens not affiliated with the oil industry, in testifying  
8 before the Joint Gas Pipeline Committee against the adoption  
9 of SB 524, then identified as sponsor Substitute for House  
10 Bill 200. At that time I commented that this bill did not  
11 solve the problem at hand and that it would only invite  
12 further litigation. I also noted that the bill would  
13 simply be a disguised tax increase, something most Alaskans  
14 do not favor, and would build instability into the tax  
15 system while assuring an annual confrontation between the State  
16 and the industry. Changing the number on the bill, to  
17 524, has not changed its provisions or its effects. The bill  
18 is still not in the best long-term interests of the state,  
19 it's people, or the oil industry. Despite what some may say,  
20 the backstop bill is not risk free - not only does it carry  
21 the legal and the economic risks of additional lawsuits,  
22 but it endangers any future settlement of this issue. It  
23 certainly does not enhance the state's negotiating position.  
24 As time goes on, the amounts at risk in the Chapter 21 law-  
25 suits, grow at the rate of about one billion dollars per year,

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1 according to state figures. While it might be possible now  
2 for Exxon and other companies to give up the 1.5 billion  
3 in taxes paid under protest so far, the larger the amount  
4 gets, the harder it becomes to write off past payments for  
5 potential future gain. And any future settlement would  
6 certainly require the state to make at least a partial  
7 refund of some of these past payments. In my earlier  
8 testimony before the Joint Gas Pipeline Committee, I commented  
9 that Exxon felt that somewhere between the extremes  
10 represented by this so-called backstop bill, and the simple  
11 repeal of AS 43.21, there must be a middle ground, which  
12 would stabilize the tax structure, solve the uncertainty  
13 of future state revenues, and permit the industry to plan  
14 with more certainty on future involvement in the state.  
15 We felt that this middle ground, or 50/50 settlement, was  
16 possible because of some preliminary discussions with a  
17 number of legislators. Since that time, we seriously  
18 discussed - with Ed Dankworth and certain other members  
19 of the legislature - the possibilities and details of  
20 compromise legislation. These discussions resulted in  
21 a proposed compromise bill which, apparently, is not before  
22 you today, but which Ed Dankworth has....

23 MR. DANKWORTH:

24 Mr. Chairman?

25 MR. RAY:

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1 Senator?  
2 MR. DANKWORTH:  
3 May I interrupt at this point?  
4 MR. TAYLOR:  
5 Yes.  
6 MR. DANKWORTH:  
7 You -- he's brought up a modified portion of a bill - 524 -  
8 an amended version which he's discussing now, and I'd like  
9 the opportunity to pass those out to the members so you'll  
10 know what -- so everybody'll know what he's testifying to.  
11 MR. RAY:  
12 No objection.  
13 MR. DANKWORTH:  
14 Now that you all have a copy ...  
15 MR. TAYLOR:  
16 I'd like one.  
17 MR. DANKWORTH:  
18 This is the settlement ...  
19 MR. TAYLOR:  
20 Oh, okay.  
21 MR. DANKWORTH:  
22 In passing that out, Mr. Chairman, if I may proceed -- may  
23 I have just two minutes to comment about why I'm passing  
24 this out?  
25 MR. RAY:

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1 You're a member of the committee, sir.

2 MR. DANKWORTH:

3 Thank you. So that everyone will know what I have just  
4 passed out -- as the testimony's certainly correct - we've  
5 spent a lot of time working on proposals - it's been referred  
6 to a great deal as a settlement proposal, and with that,  
7 there was a lot of months of work that went in back and forth  
8 and working on this bill and I commend you fellows for  
9 all the time and effort you put into it. So at that, if  
10 you'd like to address this settlement proposal, Mr. Taylor,  
11 fine, but I wanted the committee to know how that came about,  
12 I didn't just pass this amendment out in the last few  
13 minutes.

14 MR. TAYLOR:

15 Okay.

16 MR. RAY:

17 Before you start, sir ...

18 MR. TAYLOR:

19 Yes, sir?

20 MR. RAY:

21 ... if it's agreeable with the committee, it's my thought  
22 as chairman that during any testimony that any witness is  
23 giving, any member of the committee may halt the testimony  
24 at any time for a question ...

25 MR. TAYLOR:

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1 Yes, sir.

2 MR. RAY:

3 ... as long as it isn't dilatory. Go ahead, sir.

4 MR. TAYLOR:

5 Okay, the compromise that is now before you, we believe  
6 would, in fact, settle the current oil tax controversy.  
7 However, I might add that the compromise does not result  
8 in the 50/50 settlement we proposed, but rather as a better  
9 than 70/30 split for the state. The compromise, if I divert  
10 just a minute to talk about some of the characteristics  
11 of it, what it does is convert the income tax to modified  
12 apportionment effective January 1st, 1982, in lieu of  
13 chapter 21, if the industry has dropped, with prejudice, the  
14 lawsuit at -- before that date. It also has a compensating  
15 increase in the severance tax to 15 percent, also on January  
16 1st, 1982, and also conditional on the dropping the law -  
17 suit. And includes a 10 percent tax credit for investments  
18 in Alaska against the income tax and that's not exclusive  
19 to the oil industry, it would be for any industry making  
20 investments -- any corporation making an investment in  
21 Alaska. As we view it, the compromise through this  
22 combination of apportionment formula, the increased severance  
23 tax, and the tax credit offers much to the State of Alaska.  
24 First, it would allow the state to keep the 1.5 billion  
25 dollars in income taxes it's collected so far under Chapter 21,

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1 and the interest on that money that would undoubtedly be  
2 added to the state's liability under an adverse court  
3 decision. Second, based on figures supplied by the  
4 Department of Revenue, it would provide the state over a  
5 30 percent share of the Prudhoe Bay net oil income. Third,  
6 it would result in only a very minor decrease in funds  
7 available for appropriation in fiscal year '82, and fourth,  
8 it would provide for increasing levels of state revenues  
9 in the years ahead, again based on the state's projections.  
10 Over all, the compromise would allow the state to recover  
11 73 percent of the amount at risk by the time the courts are  
12 expected to resolve the current chapter 21 lawsuit. The  
13 industry, on the other hand, would only receive 27 percent  
14 of the amount at risk. Nevertheless, we would be willing  
15 to settle for this amount, at this time, in order to obtain  
16 the promise of a more stable and predictable tax climate  
17 and the incentive for future Alaska investments through the  
18 investment tax credit. As with any compromise, neither  
19 side will get everything it wants, or feels that it  
20 deserves, but both must get enough to make the agreement  
21 mutually worthwhile. Believe me, we have worked long and  
22 hard to accomplish a settlement this year and have  
23 compromised on our side to the limit. Perhaps the major  
24 benefit to the state and the industry from this compromise  
25 would be that it would allow the state and the oil industry,

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1 at long last, to put behind us the almost continual tax  
2 confrontations which have characterized our relationship  
3 since the discovery at Prudhoe Bay. It would allow us,  
4 instead, to use our energies to work together to promote  
5 future development and enhance the long-term benefits of  
6 that development for Alaska and its people. Mr. Chairman,  
7 Exxon had great difficulty coming to the point of agreeing  
8 to this compromise, however, if it is enacted into law in  
9 this form, Exxon would withdraw its lawsuit contesting  
10 the constitutionality of Chapter 21, and would relinquish  
11 its claim to those taxes already collected under that  
12 statute. This morning we were handed still another version  
13 of a bill that I would like to comment about, too, if it's  
14 going to be introduced to this committee.

15 MR. DANKWORTH:

16 Mr. Chairman. I would like for you to comment on it because  
17 it probably will also be offered as an amendment, so now  
18 would probably be an appropriate time, if you like, to  
19 comment on it.

20

21

22 MR. GARDINER:

23 Are we going to have copies of that, too?

24 MR. DANKWORTH:

25 They should be being made up now. I don't whether they're  
ready or not. Senator Ray, shall we hand them out?

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1  
2  
3 MR. GARDINER:

4 Mr. Chairman? I had some questions on this proposal.  
5 Maybe it would be better to ask them before we go on to  
6 the next one.

7 MR. RAY:

8 Go ahead Representative Gardiner.

9 MR. GARDINER:

10 Okay. You made the argument now and in the past that the  
11 one thing that you didn't like about the backstop bill  
12 was the thought that industry would just file another suit  
13 against it and something, as it wouldn't get us out, and  
14 this proposal, because it's acceptable to the company, would  
15 get us out of litigation. There's a question about the  
16 other companies and stuff, but I have some questions about  
17 how safe this thing is in court, too - whether this is going to  
18 stand up. Because this doesn't really repeal 43.21, does it?

19 MR. TAYLOR:

20 It replaces, after the effective date that the other one  
21 comes in, it - in effect - replaces 43.21 with a modified  
22 apportionment.

23 MR. GARDINER:

24 But it would still be on the books for the other companies  
25 that aren't part of the suit?

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1 MR. TAYLOR:

2 No, it would -- it would only be on the books for the  
3 time it's already been on the books and would be completely  
4 replaced by the modified apportionment, as of 1/1/82, assuming  
5 that the three companies that are in litigation had dropped  
6 their lawsuit with prejudice.

7 MR. GARDINER:

8 But how does that apply to the other -- it doesn't say that in  
9 here on page 3 -- is that the language that you say does that?

10 MR. REITHER:

11 Right. The intent of the bill is -- 43.21 just would not  
12 apply after 1/1/82.

13 MR. RAY:

14 Would you identify yourself, sir, for the record?

15 MR. REITHER:

16 Pardon?

17 MR. RAY:

18 Could you identify yourself for the record?

19 MR. REITHER:

20 Oh, it's Ken Reither, R-E-I-T-H-E-R.

21 MR. RAY:

22 Proceed, sir. Go ahead.

23 MR. TAYLOR:

24 The -- to get into that further, Terry, of course the past  
25 liability -- I mean the past other companies that are not

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1 involved in the lawsuit would still have paid taxes under  
2 43.21. They obviously have not joined the lawsuit now, in  
3 Tom's words I think the amount at issue there if they did sue  
4 would be minimal and we would have agreed not to - even if  
5 they sued and won - on the past liability for 43.21, we would  
6 have dropped with prejudice, so we wouldn't be able to take  
7 advantage of that. So, for the major revenues, it would be  
8 safe.

9 MR. GARDINER:

10 Okay. Do you think there is a delegation of powers problem  
11 with this section in the sense that three companies have  
12 basically the leverage or control, or the decision to  
13 effect other taxpayer's tax policy. Whether that's for  
14 better or for worse isn't one of my questions, but in  
15 effect, the state says look, all you companies out there,  
16 we'll change your tax policy if these three companies that  
17 are taking us to court do X, Y, and Z. I mean, is that  
18 a delegation of powers problem that would be a constitutional  
19 question?

20 MR. TAYLOR:

21 Well, I'm not a lawyer so I don't feel qualified to answer  
22 that. But another way to handle that, if you're worried  
23 about that, is not put that in the law, get letters from  
24 all three companies, which we're prepared to do, saying  
25 we will drop the lawsuit, signed by the appropriate

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1 management, and then that potentially could solve that problem,  
2 if there's a problem; I don't really know.

3 MR. GARDINER:

4 Okay, this modified apportionment, of course, the companies have  
5 filed suit and say that there's all kinds of constitutional  
6 and legal problems with 43.21 -- I'm concerned about this  
7 modified apportionment doing the same thing. So you're  
8 sort of representing to us that you feel the modified  
9 apportionment is a legal and constitutional means as  
10 proposed here?

11 MR. REITHER:

12 Well, modified apportionment has been adopted, as I understand  
13 it, by 39 -- or apportionment formula taxation has been  
14 adopted by 39 states ...

15 MR. GARDINER:

16 But nobody has one quite like this.

17 MR. REITHER:

18 ... and several of those states have modified apportionment  
19 of one kind or another. I agree, nobody has one exactly like  
20 this, but again, if we have settled a lawsuit on the  
21 income tax on this issue, I don't see where the risk is.

22 MR. GARDINER:

23 Well, the risk - seems to me - that you come in and you  
24 say well, this is fine with us, this modified apportionment,  
25 and then we settle out 43.21 some other company says well,

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1 we don't like this extraction factor. It's unreasonable,  
2 it doesn't relate to our business activity -- in Alaska,  
3 they file suit and they win, you're not stipulating that  
4 if some future company beats this apportionment in that you  
5 won't take advantage of that, are you?

6 MR. TAYLOR:

7 No.

8 MR. GARDINER:

9 So how do we know you're not selling us something here that  
10 you think will be struck down in court? I mean, do you  
11 think this is vulnerable in court, on the bases -- on that  
12 basis?

13 MR. TAYLOR:

14 From the discussions I've had within our company, we do  
15 not think that it's near as vulnerable in court, and we've  
16 had discussions with your attorney general and people and I  
17 think it's generally accepted that the modified apportionment that  
18 since it's been adopted by most of the states, is a lot  
19 safer way to go about it.

20 MR. GARDINER:

21 Mr. Chairman -- that's what bothers me is what you say --  
22 you don't think think this is near as vulnerable, right?  
23 And you stated other very carefully worded language in  
24 the previous testimony today that is very much like that.  
25 You're not saying that you think it is, you think it's better.

1 But I don't know if that's a dollar better, or a lot better,  
2 or whatever. So, it really is a big question in my mind,  
3 is whether we're making an improvement here or we're just  
4 opening up another court suit with this. I don't hear  
5 strong statements from you that - yes, we've checked this  
6 out with our legal people and it is a safe thing for the  
7 state to do.

8 MR. TAYLOR:

9 Do you want to say something?

10 MR. REITHER:

11 I don't think it's possible to write a law that absolutely  
12 guarantees the state that no one will challenge it. I think  
13 it's fair to say that Exxon wouldn't challenge that law, and  
14 I think, as to the merits of it, just how safe that law  
15 is -- I'd invite you to direct a question to Commissioner  
16 Williams.

17 MR. GARDINER:

18 Mr. Chairman, I'm not worried about the Commissioner suing  
19 over this thing, but I am worried about ...

20 MR. REITHER:

21 Well, you're worried about us suing?

22 MR. TAYLOR:

23 Well, we are proposing ...

24 MR. RAY:

25 Let him finish, please.

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1 MR. GARDINER:

2 I'm worried about you and even if you say you won't, I'm  
3 worried about the reality of the legal problems with it.  
4 You might say we won't, but then run around and get one of  
5 your buddies to do it. I mean, I'm not saying you're going  
6 to do that, but that's conceivable that somebody would just  
7 do it on their own anyway, and I would like to know like,  
8 everybody's complaining about the one we got now, and I'd  
9 like to really know if this is any better and hear your  
10 legal people sit with their legal weight behind it and say it  
11 is okay.

12 MR. TAYLOR:

13 We think it's much better and we think if we settled the  
14 lawsuit, obviously, it's much better for the industry and  
15 the state. And we don't have some imagined scenario up  
16 our sleeve.

17 MR. GARDINER:

18 Thank you, Mr. Chairman.

19 MR. RAY:

20 Okay, any other questions for the witness? Thank you.  
21 Senator?

22 MR. DANKWORTH:

23 You know, Monte, we worked for an awful long time -- 2 months  
24 on this settlement, and I know you fellows have put in an  
25 awful lot of work and I think I have too and others of the Senate Committee  
and everyone trying to find that which we all think is

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1 desirable and that's to get out, and this is the proposal  
2 and I really sincerely believe, when you tell me this is the bottom  
3 line. We went as far as we could go to get a settlement.  
4 Now, there was another amendment as I saw it, and I don't  
5 mean to make a speech, Mr. Chairman, but I do think the  
6 committee needs to know -- as we look at the different  
7 options this is one. Of course, the bill before  
8 us is 524 is one -- but we could have an amended,  
9 and I'm going to propose an amended thing to this  
10 settlement agreement and I'll explain that in a minute. and --  
11 because I want you to address these things, the other one is I think  
12 that you will hear testimony later, is if we could take 1 and  
13 2 which is the 200 and the settlement agreement and put it  
14 on a ballot and let the people decide. - I think that will be  
15 testified to later. Of course, there's the other one,  
16 and that's the -- what we call the old warts bill and we  
17 just put that in and repeal the windfall profits tax and  
18 raise the severance tax and go from there. Then -- or we  
19 could do nothing. So with those options, I'd like to go  
20 back and while others will be addressed during this meeting,  
21 we've already talked about 200, I've passed out what I  
22 consider an amended version of settlement agreement - not a  
23 settlement agreement, I'd better not use the word settlement,  
24 but at least an amended version of what was originally the  
25 settlement agreement that is no longer a settlement agreement.

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1 MR. TAYLOR:

2 Yes.

3 MR. DANKWORTH:

4 But an amended version that I made may propose as amendment  
5 before the committee and I may be unfair to you to ask you  
6 to comment on it in the short length of time you've had to  
7 see it, but if you could, and if you've had time, I think the  
8 Committee would like to hear your comments on that proposal.

9 MR. TAYLOR:

10 Yes, well we got a copy of that bill this morning and I'm  
11 not sure this is exactly what we were looking at, but  
12 assuming it is, that -- what that appears to us to be is  
13 pretty much a grab bag of various bills that have been  
14 floating around - as Ed says, including the compromise --  
15 the proposed compromise, but also including some provisions  
16 from the backstop bill. In comparing it with the compromise,  
17 what it does is removes entirely the investment tax credit,  
18 which we considered a major -- an integral part of the  
19 compromise and the incentive for industry to agree to only  
20 a 27 percent recovery of the amount at risk. It also  
21 increases the severance tax on Prudhoe Bay by \$2.2 billion  
22 over that proposed in the compromise, and it creates a  
23 major disincentive for future marginal fields in that it  
24 places a higher severance tax on all future fields for at  
25 least 10 years, considerably higher, it takes away the ELF

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1 factor, and in our view does nothing to settle the lawsuit.  
2 So we view that as merely another attempt to substitute  
3 another tax for the Chapter 21 tax which we think is  
4 unconstitutional; it's another backstop tax, in our opinion.

5 MR. RAY:

6 Does it lessen the state's income from the oil production?

7 MR. TAYLOR:

8 What, sir, I couldn't hear you.

9 MR. RAY:

10 Does it lessen the states income from the 30 or 31.8 or  
11 whatever it's considered the state is getting now?

12 MR. TAYLOR:

13 I think it does reduce the state income somewhat over the  
14 5 year period we're talking about. We looked at it as about  
15 a 95 percent recovery by the state of the amount of  
16 money risk, which, of course, is not even in the ballpark as  
17 a settlement.

18 MR. RAY:

19 But you don't believe it removes the challenge, or at least  
20 you say that it won't remove your court case challenge?

21 MR. TAYLOR:

22 No, sir.

23 MR. RAY:

24 Well, I think you're wise in that because if you win, you  
25 win - you know - and I think that you should proceed along  
those lines if you feel that strongly about it, I think --

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1 once and for all you'll know exactly what the extent of the  
2 State's taxing abilities are. Senator?

3 MR. DANKWORTH:

4 Monte, on this -- and again I apologize for the lack of  
5 time you've had to look at this -- but on page, the  
6 bottom of 13 and the top of page 14, we talk about  
7 production of what any new oil production would cost.  
8 We allowed 5 years, the first 5 years to revert the --  
9 we would go back to the 12.25 severance tax and the  
10 ELF factor would go back in for that first 5 years.

11 MR. TAYLOR:

12 On a new field?

13 MR. DANKWORTH:

14 On any new -- and I didn't know whether you had time to see  
15 that ...

16 MR. TAYLOR:

17 I didn't notice that the ELF factor was -- what happens  
18 in the second 5 years on a new field?

19 MR. DANKWORTH:

20 Then, of course, you have the problem of not having  
21 ten in and that there will be a 5 year  
22 problem there. But at least we have the first 5 years  
23 covered.

24 MR. RAY:

25 12.5 %

1 MR. DANKWORTH:

2 ...get back to 12.5%, yes, sir.

3 MR. RAY:

4 After 5 years it goes to 15%. In other words, you get  
5 the first 5 years production at 12.5 and the next 5, or  
6 from then on, ...

7 MR. TAYLOR:

8 Well, that's how I read it - at 12.25, but without the  
9 ELF factor.

10 MR. DANKWORTH:

11 But it was my understanding, and we will hear the  
12 testimony in a moment from the Commissioner, but I  
13 thought it went back. I'll find out when he testifies  
14 as to whether that does.

15 MR. TAYLOR:

16 But in any case, if you have a marginal field, the ELF --  
17 one of the good things about the severance tax in  
18 Alaska is the ELF factor because it takes into account  
19 marginal fields and makes them different from major fields.  
20 Any time you assume that 1.0 for some period of time,  
21 that's going to be very damaging to a marginal field,  
22 whether it's the second 5 years or the first 5 years.

23 MR. DANKWORTH:

24 I wanted to correct that because I think you're right.  
25 I think after the first 5 years you would go back to the

1 12.5 on the severance but you wouldn't continue for that  
2 next 5 years -- but I  
3 don't think the ELF factor comes out -- the ELF factor  
4 would still be 1.0 until you got the 10 years of  
5 production in. So you are correct in that.

6 MR. RAY:

7 That's in section 13. It takes care of the ELF factor.  
8 It tells you the first 10 years is 1.0, and then it  
9 goes on ...

10 MR. DANKWORTH:

11 Right.

12 MR. TAYLOR:

13 Yes.

14 MR. RAY:

15 ... ELF factor. After the first 10 years ...

16 MR. TAYLOR:

17 ... after the first 10 years. I understand.

18 MR. RAY:

19 ... then you go to your monthly production rate,  
20 total production (indisc. -- noise). It's an easy  
21 formula that everyone can understand.

22 MR. TAYLOR:

23 Right.

24 MR. RAY:

25 It's not like the severance tax. This is much easier

1 than the severance tax where, you know, a barrel pops  
2 out of the ground and there's so much that the State  
3 gets, and so much that you get. That's very complicated.  
4 But this is easy.

5 MR. DANKWORTH:

6 Mr. Chairman. I would like, before you leave the witness  
7 chair there, to go on to the other options for just  
8 a moment because you commented on that one. And while  
9 you are here, if you'd like to, the other proposal was  
10 to take -- it will be proposed, I'll assume, because  
11 it's one of the Governor's proposals ...

12 MR. TAYLOR:

13 To take it to a vote?

14 MR. DANKWORTH:

15 To take the number 1 and 2 that you are here to testify  
16 in favor of, the settlement agreement, stand it along-  
17 side the backstop 200 or 524, whichever you prefer,  
18 and let the people decide what they -- you know, we're  
19 talking in terms of possibly, with the settlement agreement,  
20 of loss of revenue to the State -- and that again depends  
21 on how you want to do it -- there would be a reduction  
22 of revenue of about \$400 million. There's a number of  
23 ways of calling that, whether it's a loss of  
24 revenue or correcting some inequities.

25

1 MR. TAYLOR:

2 We call our part loss of revenue -- that's a lot bigger, too.

3 MR. DANKWORTH:

4 I understand that. Putting that settlement agreement  
5 up against going into the backstop, that's one agreement  
6 that you might want to comment on as to how your company  
7 would view that proposal. And the next one would be  
8 to do nothing. Leave everything just as it is until  
9 next year. And the 6th one, of course, is the repeal  
10 of the windfall profits tax, raising the severance tax  
11 to 15, and, I believe, is that correct, we went back and  
12 put what we call the warts arrangement in. So if you'd  
13 like to comment on those three ...

14 MR. TAYLOR:

15 Okay. Well, I guess -- putting it to a public vote is --  
16 I can't think of the proper terms -- is a cop-out, as far  
17 as I'm concerned. This is a representative government --  
18 the representatives should take the action, as far as  
19 we're concerned.

20 MR. RAY:

21 Is that how you handle your stockholders meetings, sir?  
22 When you have a policy question, is that when you are  
23 copping out?

24 MR. TAYLOR:

25 It's according to what the question is. Some questions

1 are valid for the stockholders. Some questions are not.  
2 This is proposed as an advisory vote.

3 MR. RAY:

4 I see.

5 MR. TAYLOR:

6 In any case, if it was passed that way and subjected to  
7 a public vote, and I don't know what our company would  
8 do about that, I would say first off that our agreement  
9 to drop the lawsuit on that compromise would be up in  
10 the air, that it would not carry through to that.  
11 We would also not agree to necessarily work on the vote  
12 or to drop the lawsuit if we won. In some ways of thinking,  
13 if we won a public vote, you begin to wonder whether you  
14 ought to do a 73:27 compromise, if we had the public on  
15 our side in voting that way.

16 MR. DANKWORTH:

17 I take it then that you don't see that as one of your  
18 better options.

19 MR. TAYLOR:

20 No.

21 MR. DANKWORTH:

22 What about doing nothing. How do you feel about doing  
23 absolutely nothing. I know that's a tough question  
24 for all of us. How do you feel?

25

1 MR. TAYLOR:

2 We like that alternative better than some of the ones  
3 that are being considered right now because we still  
4 think a rational solution to this is some kind of a  
5 negotiated settlement. And doing nothing, at least,  
6 leaves us in a position possibly to do that. I don't  
7 think we can just go through the years and keep trying  
8 to settle the way we're doing it, and us picking up  
9 all the tab for past taxes paid. If we were to do  
10 nothing, at least there would be the possibility that  
11 this summer, with the right people, we could work out a  
12 compromise. I don't think it could be any better than  
13 the one we've offered. But maybe we could get more  
14 people convinced that we are offering a pretty good  
15 compromise. And maybe do it next year with the same  
16 effective dates. But, the do nothing option only has  
17 appeal if we are working on a settlement, it seems like  
18 to me.

19 MR. DANKWORTH:

20 Now the last one was the -- if you would like to comment  
21 while you're here on this -- the one where we would --  
22 it was an original discussion when we first came down  
23 here talking about the possible solutions. I frankly  
24 don't know whether you were in on those discussions or  
25 not.

1 MR. TAYLOR:

2 Where you trade the windfall profits tax for an increased  
3 severance tax? That's no compromise. That's nothing.  
4 What are we to do? You can do that but not in exchange ...

5 MR. REITHER:

6 Could I add something there too? It also doesn't do  
7 anything to get rid of the lawsuit.

8 MR. DANKWORTH:

9 I agree. But I'm going to assume that number 1, the  
10 backstop, is not too good. 4, going to the voters,  
11 wasn't too good. 5 is do nothing which you could  
12 live with, if we could work on an agreement, but that's  
13 not too good - certainly not for the State because  
14 of the cash flow problems that would be involved.  
15 If we were to settle next year I think our settlement  
16 is going to be much harder, and secondly, the fiscal  
17 problems that are involved here if we allow the State  
18 to go any further without even an escrow account or  
19 some type of -- we are putting ourselves in a great  
20 deal of jeopardy. And the sixth one, of course, like  
21 you say, is do nothing. It gets us back to number 2  
22 and 3, and that's the settlement agreement which you  
23 propose to get us out of court, and everybody shake  
24 hands and go away, with us with a little less cash and  
25 everybody happy. Or number 3, which is a little bit of

1 everything, and possibly -- we can discuss that later.  
2 You have already addressed that. Basically, as I see it,  
3 we are down to those 2 that make any sense.

4 MR. TAYLOR:

5 Well, one of those makes a lot of sense to us.

6 MR. RAY:

7 Are you finished, Senator?

8 MR. DANKWORTH:

9 I would like a few more ...

10 MR. RAY:

11 If time permits. Mr. Donaldson, Vice President for  
12 Government and Public Affairs, Standard Oil Company of  
13 Ohio.

14 MR. DONALDSON:

15 Thank you, sir. Mr. Chairman, members of the Committee.  
16 As you requested I will focus my testimony on the subject  
17 of this hearing. That is to say, what I understand is  
18 referred to now as Free Conference Committee Substitute for Senate  
19 Bill 524.

20 MR. RAY:

21 No, sir, that is not correct. This testimony ...

22 MR. DONALDSON:

23 How should I refer to that?

24 MR. RAY:

25 This testimony is opened for anything contingent upon

1 Senate Bill 524, or anything else. As I said at the first,  
2 if you have something that you want to say, we certainly  
3 don't want to cut you off, sir. We will give you a  
4 wide latitude as long as you don't get too far afield.

5 MR. DONALDSON:

6 I appreciate that, and thank you. What I'll do then  
7 is address that, the associated oil and gas tax policy  
8 of the State, and the effect on our pending litigation.  
9 A moment ago, Senator Dankworth mentioned that he thought  
10 the focus was down to two subjects: one was the possible  
11 settlement or compromise, and the other, I guess his  
12 third alternative, which was the, sort of, catch all  
13 of pieces...

14 MR. RAY:

15 Sir, that was -- the individual Senator was speaking  
16 for himself. All the options are open. It comes with  
17 the consensus of opinion of both the House and the  
18 Senate committee members, subject to the ratification  
19 by the body. So we are not limited to anything. If you've  
20 go some other thing that you want to talk about, you  
21 go right ahead.

22 MR. DONALDSON:

23 Let me go back just a couple of steps, then, to deal  
24 directly with the subject of this committee. The subject  
25 before the Free Conference Committee today, I think, is

1 really the third major effort by the State and our industry  
2 to try to settle or resolve our longstanding differences  
3 on the State's oil and gas tax policy. The first  
4 attempt at this occurred a year ago at the end of the  
5 last legislature. A lot of work was done to find a  
6 legislative settlement, and all concerned then agreed  
7 that the votes were there, in both the Senate and House,  
8 to pass a settlement bill. Unfortunately, the Speaker  
9 and the House leadership at that time would not permit  
10 a settlement bill to come to the floor. I told the  
11 Speaker that I did not understand his position and  
12 asked him what he really wanted. The Speaker said,  
13 and I quote, we'd like to rewrite the Prudhoe Bay  
14 leases. I'll tell you frankly, I was shocked by that  
15 answer. I'm still concerned that this thinking has been  
16 with us in all of the efforts to resolve the problem  
17 since that time. Last fall discussions began again  
18 between the State and the industry. Some progress was  
19 made. But on March 18th of this year a press conference  
20 was held here in Juneau. The timing and the content of  
21 that conference came as a surprise to us in view of  
22 our ongoing discussions. The State made it clear at the  
23 conference that it intended to maintain the State's  
24 revenue position and that it would not seek a settlement,  
25 notwithstanding the serious constitutional challenge on

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1 the present oil and gas income tax facing them in the  
2 courts, and the financial risk to the State in such  
3 litigation. Five weeks ago Senator Dankworth initiated  
4 an effort to find some middle ground between the  
5 State and our industry to solve these difficult problems.  
6 While substantially protecting the State's revenues --  
7 his intent was quite clear, I think, in that. He laid  
8 some very tough requirements for any settlement on us.  
9 My first reaction was that it just couldn't be done.  
10 The Senator is a hard negotiator and hard negotiations  
11 followed. Finally, and I might say reluctantly, two  
12 weeks ago, SOHIO, Exxon and ARCO agreed to the Senator's  
13 requirements. We had, and still have, nothing more in  
14 the drawer to add to that settlement. A one page  
15 summary of this settlement concept dated June 19th has  
16 been around for the last couple of days - it is a  
17 convenient summary reference for the longer document,  
18 and if you'd like I'd be happy to furnish extra copies  
19 to your Committee. I think it's a convenient reference  
20 to see the overall structure. What is does do is  
21 present that idea or concept in its basic terms. It  
22 spells out the impact on the State and, likewise, the  
23 impact on our industry. I would like to submit this  
24 for your record in this Committee but for settlement  
25 purposes only and the discussions attendant to that.

1 MR. RAY:

2 Sir, if I might -- just to identify this for everybody,  
3 for all of us -- is this the analysis of the House  
4 Committee Substitute for Senate Bill 524? Is that what  
5 you're talking about, sir?

6 MR. DONALDSON:

7 No, it's in Chapter 21, lawsuit analysis, summary of  
8 proposed compromise, dated June 19, 1981. It is a  
9 one page executive summary of the settlement compromise  
10 that we have been discussing for about 5 weeks. It's  
11 simply a convenient synopsis of it because there are a  
12 number of facets to it. I won't go through it. The  
13 points are obvious, but I thought you might like to have  
14 it as a reference. From SOHIO's standpoint, this  
15 proposal is still on your table. There comes a moment  
16 in time when a matter is capable of resolution. I think  
17 the moment on this matter is now. We certainly tried  
18 to find a way, and our best effort is before you. I  
19 believe it is a workable answer for all of us. But the  
20 choice, of course, is yours. You might ask what the  
21 alternate choice or choices are. There are a number of  
22 them but, perhaps, the principal one is this grab bag or  
23 catch-all of ideas that has been alluded to. Let me speak  
24 to that. We've waited from day to day for a couple of weeks  
25 and through a number of postponements, and we just had a

1 chance to look at this this morning, scrambled to see  
2 what it said and to prepare some testimony in response  
3 to it. There are a number of important last minute changes  
4 in it. It is quite different from, the settlement that that  
5 summary shows. A principal thrust of this appears to be  
6 another form of backstop legislation designed to  
7 maintain for the State virtually all of the revenues  
8 produced by the oil and gas income tax which is now in  
9 the courts. The principal thrust of this new draft  
10 continues to be directed at Prudhoe Bay, a single oil  
11 field. Its basic tax mechanism is to reduce, and hopefully  
12 legitimize, the present oil and gas income tax and  
13 recover the same revenue by substantially increasing the  
14 State's severance tax. In addition, this proposal puts  
15 new economic pressure on marginal oil fields that have been,  
16 or may be, found in Alaska, thus discouraging that part  
17 of the State's future as we would see it. This bill also  
18 drops, or omits, the idea of an investment tax credit  
19 that so many here in Alaska in the last couple of weeks  
20 have found quite attractive. A few words should also be  
21 said about the effect of this proposal on the settlement  
22 negotiations, such as they have been, and the pending  
23 litigation. First, I would have to tell you that our  
24 settlement proposal would be withdrawn for all purposes.  
25 It should not be considered, in any way, as a starting

1 point for next summer or for next year. Second, you  
2 shouldn't be surprised if we amend our complaint in the  
3 pending litigation. This was the question that you  
4 asked a few moments ago, Senator - I'd like to speak  
5 directly to that. This backstop legislation is so  
6 inextricably intertwined with the present tax law and  
7 the legislative history of this session, that virtually  
8 all of the same legal issues we have raised in that  
9 pending case will apply to this new backstop. Third,  
10 and perhaps even more importantly, the drift of this  
11 litigation that's in the courts now, and such a backstop  
12 tax, whether it's this grab bag that has been referred to,  
13 although I hate to characterize it as such, or former  
14 H.B. 200, the reserves tax type backstop, will put in  
15 issue, in my judgment, the whole of Alaska's oil and gas  
16 tax structure, not just its present income tax law,  
17 and not just a backstop bill. If you like I will give  
18 you the rest of the theory and then you can cross  
19 examine me, sir. The cumulative effect ...

20 MR. RAY:

21 Do you want to speak now, Representative?

22 MR. GARDINER:

23 No, I'll go with his ...

24 MR. RAY:

25 Go ahead, sir.

1 MR. DONALDSON:

2 I might shorten it a little bit. The cumulative effect  
3 of all the State's tax increases over the last 12 years  
4 capped by the State's decision that it is entitled to  
5 at least 30% of the net income from the Prudhoe Bay  
6 oil field as its fair share, and that it will act to  
7 maintain and protect this share through a backstop bill  
8 raises this new issue. In plain terms, the State has  
9 said, and is saying, that its backstop approach is not  
10 a genuine tax, but is simply a taking of a predetermined  
11 share of a property it sold over 12 years ago through its  
12 oil and gas tax leases.

13 MR. GARDINER:

14 Mr. Chairman. You brought up this issue before, or I  
15 should say threat that if we pass the backstop bill,  
16 which doesn't increase the State's take from what it is  
17 presently getting, that you would then litigate the  
18 total State taxation policy. My question to you is that  
19 if that is the case, why aren't you doing that now?  
20 If that is such a good thing to be doing, why aren't  
21 you doing that now?

22 MR. DONALDSON:

23 There are two reasons. First, our counsel are actually  
24 working on that as an amended complaint. Secondly,  
25 every time the subject of litigation comes up in one of

1 these hearings, the word goes out that somehow we are  
2 making a threat or we are being arrogant or we are being  
3 outrageous. Those are the terms that are applied. On  
4 the other hand, if we don't now tell you what we are really  
5 preparing at home, some day you may come as say why in  
6 the world didn't you tell us. I'm in a box. I hesitate  
7 to get into these subjects. That's the reason we  
8 haven't done so in the courts so far, Mr. Gardiner.

9 MR. GARDINER:

10 Well, my question is why didn't you do it last year?  
11 We haven't raised any new taxes last year, right? So  
12 the level of taxation that you had last year and the  
13 year before, and the year now, is the same level.  
14 Or is it suddenly because there's a proposed bill in  
15 the legislature, and the legislature and the Governor  
16 said in the statement that they intend to maintain  
17 the same level of revenue, not up, not down. Suddenly  
18 now the boogiemán of - we're going to take on the  
19 whole tax structure comes up. If that was such a  
20 good legal idea why didn't you bring it up two years  
21 ago or last year or in January?

22 MR. DONALDSON:

23 Two things have happened since then. First is that the  
24 intent or purpose of the State in nailing down this  
25 predetermined come-to-30%, or whatever it is, share has been

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1 etched pretty indelibly on the public record. You  
2 are manufacturing evidence for us right and left.  
3 And secondly, the direction of recent Supreme Court  
4 opinions, and cases now pending before us, give us  
5 substantial encouragement now to put this into the  
6 case. Both things are involved very much in our  
7 homework. I don't want to kid you about it. Those  
8 are the two key things. That really does explain the  
9 timing factor as we would see it.

10 MR. RAY:

11 I really don't find anything offensive as far as his  
12 job of threatening the State -- if he wants to threaten  
13 the State, it is certainly within his rights to threaten  
14 the State at any time he wants to. I don't see anything  
15 wrong with that, Representative.

16 MR. GARDINER:

17 Mr. Chairman, a couple of other questions on the  
18 settlement. The first question I have is the question  
19 I asked previously about whether, in the settlement bill  
20 that you propose, whether you feel that this modified  
21 apportionment formula is something that is legal,  
22 constitutional, that's going to stand up in court,  
23 whether it fairly represents your business activities  
24 in the State, since that's one basis it could be  
25 attacked on, that's what you are attacking us on now?

1 MR. DONALDSON:

2 From the standpoint of our own company, if we should  
3 settle this and dismiss with prejudice, we would not  
4 challenge it. Nor would we do something by indirection.  
5 Secondly, and going back on my own training as a lawyer,  
6 the Supreme Court has made it pretty clear that there  
7 must be some apportionment to be constitutional today.  
8 Chapter 21, today, has no apportionment. This modified  
9 apportionment approach goes a very long way to safe  
10 ground -- nothing, I guess, is 100% safe, but you are well  
11 within the area of an acceptable risk as government,  
12 in my judgment. No charge for the legal opinion.  
13 I might also point out, if you went back to a standard  
14 apportionment formula, you have no risk at all.

15 MR. GARDINER:

16 What about the issue of discrimination. That's, again,  
17 an issue that has been brought up in Chapter 21.  
18 Again, this formula is not going to apply to every  
19 taxpayer in the State. So do you think, you or  
20 someone else who might file suit against us would have  
21 a good legal case, in fact, that this is discriminatory?

22 MR. DONALDSON:

23 I can't speak with authority for any other company but  
24 my own. I can tell you that our company and the others  
25 associated in our present litigation have given this a

1 very thorough look. If we go to the settlement that  
2 we have put on the table, I don't think you have that  
3 problem. Almost any of the other alternatives that  
4 Senator Dankworth alluded to have the litigation  
5 potential that I have just addressed.

6 MR. RAY:

7 Could I identify just one more time -- the settlement  
8 that you are talking about, the original settlement  
9 not the -- what Senator Dankworth put out here as  
10 a Free Conference Committee Substitute.

11 MR. DONALDSON:

12 The settlement I have talked about is summarized on  
13 this one page, Senator Ray.

14 MR. RAY:

15 Okay. This whole -- we are getting so many papers  
16 here, it's hard to keep the identification factor.

17 MR. GARDINER:

18 Thank you.

19 MR. DANKWORTH:

20 Mr. Donaldson, speaking first to the first settlement  
21 agreement which you and I have spent a lot of time  
22 working on and tried to get to this point -- taking  
23 that aside, whether we think we've got the votes for it  
24 or do or don't -- at any rate, setting that aside, and  
25 let's speak to what I was going to put on the table as

1 a proposal amendment number 2 which is the -- what do  
2 you call it when you kind of throw everything in the  
3 same -- catch-all. I didn't really perceive it that  
4 way but, at least -- tell me where I'm wrong in my  
5 analysis in what I set out to do with this when I said  
6 that -- under that bill it would do away with Title 21.  
7 That seems to be one thing we wanted to do away with.  
8 These are the things that I thought the industry was  
9 interested in doing. It would give away -- it would  
10 take away Title 21 which we are in court on. It would  
11 repeal the windfall profits tax, which is considered  
12 unfair. It would hold -- you would gain approximately  
13 \$300 million between now and 1985 on it. We would  
14 not have put into place a reserves tax which I personally  
15 have a great deal of problems with. I think, basically,  
16 it would get into a State property tax that I was  
17 wanting to avoid very much. But when you look at those  
18 alternatives, I can't help but think -- and, of course,  
19 also, that bill puts into place a proposed relief or  
20 tax, income tax, for smaller businesses or corporations  
21 which has not a great deal to do with 524, what we  
22 were talking about. But I thought, at least, it made  
23 it consistent that we didn't just give away the money -  
24 we put a sliding, graduated scale for taxes in there  
25 on all corporations or businesses. I don't know. It was

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1 my intent when I proposed that, looking at all the  
2 options that were coming down here, at the end of the  
3 session, that that was the one that we probably could  
4 address as many concerns as everybody -- nobody got  
5 anything that they wanted, but at least it was as much  
6 and as close to trying to give everybody something  
7 that would hold the revenue then under \$300 million --  
8 the oil companies would at least pick up \$300 million,  
9 and it would stop the reserves tax - that's what I was  
10 interested in doing. I realize that it creates some  
11 other problems. It's not a settlement agreement.  
12 We didn't agree to get out of court or anything like  
13 that. But that was the reason that I'm proposing this  
14 settlement agreement. So far, if I understand your  
15 testimony, and the one I believe I told you both here  
16 and in private, that the most desirable, of course, is  
17 the one that I am not convinced at all that is  
18 passable this year. And that's the settlement agreement  
19 that we worked on. Mr. Chairman, it's going to be worth  
20 just a minute for me to talk about, for the Committee's  
21 sake, to bring you up to date on the conversations  
22 that have transpired. Originally, all of us agreed --  
23 we generally perceived, I think, that we did not want  
24 the State to lose any revenue. Then somewhere along the  
25 line we perceived that the fair share for Alaska is 30%.

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1 That's what I ask you fellows to do. You go out and  
2 find a formula that will come up with 30% and you did  
3 that in the settlement agreement. I think what  
4 caused some of the problem is that, after we got into  
5 that, we found out that Alaska would get more than  
6 30%. It was about 31.8%, which is about \$1.3 billion  
7 or better. In the meantime, of course, we had all  
8 mutually agreed, in the statement that you referred  
9 to, that there would be no substantial reduction  
10 in the revenue. And politically, that's where we got  
11 into trouble. You fellows have certainly met your  
12 requirement and went out and brought back 30%.  
13 But then again that's what Ed Dankworth said, that  
14 I was going to get out and get 30% because that's the  
15 figure that's perceived to be the right one and you  
16 met your commitment. No one else agreed to the  
17 30%. Most of them agreed that we would not take any  
18 substantial reduction in revenue. I just wanted to  
19 make it clear that there is a little bit of difference  
20 in what I perceived at the time to be 30%. I am not  
21 going to take all the blame for the 30%. I have heard  
22 the Commissioner of Revenue use it. I've heard the  
23 Governor use it. I've heard a lot of people -- because  
24 I think, we all perceive that 30% is what we were  
25 getting at. So, at least, so there won't be left in anyone's

1 mind any idea that there was, that we were trying to  
2 be deceitful about 30%. I hope you understand that.  
3 That was originally what I perceived to be Alaska's  
4 present share. At any rate, I did want to comment  
5 that I had proposed, right down to the wire if I knew  
6 that the settlement agreement is not going to pass --  
7 200 I can't stand. I don't like that one. I can't  
8 afford to do nothing. You can but Alaska can't.  
9 I thought that the middle ground that I proposed,  
10 while it has its faults so far as you're concerned, it  
11 certainly has its faults so far as the State's concerned -  
12 we would be losing another \$300 million over the next  
13 3 or 4 years and we are still in court. Nobody wins  
14 by that. I just wanted to make clear to the Committee  
15 that it took a lot of work to come to -- to even get  
16 this settlement.

17 MR. DONALDSON:

18 May I respond to your comment? Looking at this potluck  
19 of provisions in the bill that you have just described -  
20 there's some very good things in it.

21 MR. RAY:

22 Pardon, sir?

23 MR. DONALDSON:

24 I was just waiting for him to finish.

25 MR. DANKWORTH:

No, sir. You go ahead.

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1 MR. DONALDSON:

2 I was going to say, in response to your comment about  
3 the bill, there's some very good things in it. You have  
4 mentioned the lower rates to small companies. I think  
5 it probably solves a 7(i) problem that the Commissioner  
6 has testified to. There is some treatment in there  
7 of the Cook Inlet gas problem, and those things make  
8 sense. When we were talking about the settlement, from within  
9 our own company's perspective, we are looking at a  
10 suit presently in court, as you know we think we have  
11 a much better than even chance of winning, and we said  
12 if you can find some middle ground, maybe split our  
13 differences down the middle, okay. As we ratcheted up  
14 the percentage of severance tax, we went from a 50:50  
15 split to a 60:40 to a now something better than a  
16 70:30 in the State's way. Your question is, doesn't this  
17 mix of ideas do it perhaps? It's not a 50:50, not a  
18 60:40, not a 70:30 - it's about a 94:6 split. Obviously  
19 I think our management feel they can afford to litigate  
20 if that's the answer. It has the other two aspects  
21 that probably need further attention. And that is, it  
22 does raise taxes on marginal fields and wells in  
23 Alaska, whether it's us or a smaller company that is  
24 impacted by that. I'm not sure that's the wisest  
25 way to deal with that kind of a problem. And finally,

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1           apart from the 94:6 division of the dollars at risk,  
2           it drops the investment tax credit idea which nobody  
3           could put a dollar to, but we thought was in the  
4           interest of almost everybody - the State, companies,  
5           and otherwise, up here, for the longer term. It's  
6           seed money for the future and obviously that's not a  
7           part of this provision. I understand the pieces.  
8           I don't see us settling the lawsuit. I see us going  
9           ahead on pretty much the grounds I sketched out for you.  
10          I'm glad to have the opportunity to tell you about it.

11 MR. DANKWORTH:

12          You are certainly right. I wouldn't dare propose this  
13          as a 94:6 settlement if I thought this was a settlement  
14          agreement. I'm not using the word settlement with this  
15          statement because we are long past the point where I  
16          think we can call it a settlement agreement.  
17          That we either adapt to your bottom line. I'm sincere  
18          when I think you went to that bottom line. It's not  
19          a 94:6. It's just another proposal for the present time  
20          retain -- we would be giving up somewhere between  
21          \$300 million or perhaps more, I don't know. I suppose  
22          the tax credit is always a bargaining position that  
23          perhaps could be used in the future years, I don't know.  
24          But as I see it, it does make moot your case in court  
25          in the sense that we do get away with Title 21, we do

1 away with the tax. Those are things you, apparently, went  
2 to court on. Now you will continue in court to try to  
3 recover the \$1.5 billion that is still on the table.  
4 That's the only reason to stay in court, unless you  
5 file another case. If you lose that, of course, that's  
6 another issue. It's not a settlement to get us out of  
7 court. But I think that there are -- in looking at  
8 all of these different proposals, at least, I want you  
9 to know it was my intent to stop what I considered  
10 some things that I didn't like and you didn't like.  
11 You can't have it all. I think, probably, when it  
12 comes down, everybody lost and gained a little bit.  
13 I'm offering this, not as a settlement agreement -- I  
14 understand very well that this is not a settlement and  
15 I knew when I was going to offer it that the oil  
16 industry is not going see this as good legislation.  
17 But, after all, we do protect Alaska's interest too.  
18 This is an avenue that I think, probably before the  
19 meeting is over, I'm going to at least propose that  
20 as an amendment. I'm doing it in preference to 200 --  
21 I don't believe that there is any chance that the  
22 difference between the \$1.4 or \$1.8 billion, whichever  
23 you want, between the 30% and the 31.8%. I'll let  
24 other Senators address this if they care to. I want to  
25 speak on the Senate side. I couldn't find enough

1 support for that, that I could risk if we were to take  
2 this Committee meeting here at the last of the session  
3 and go there and not have the votes to pass it, then  
4 we are in a position to do nothing. Do nothing means  
5 that the State of Alaska is out here with over \$2 billion  
6 by the time we get back, in to revenue without any  
7 backup position, and no escrow account or anything.

8 Fiscally, all of us are not going to let the State get  
9 in that position. Those are problems you are very  
10 well aware of, that we're up against it to the last  
11 day. Thank you for your comments on it anyway.

12 MR. RAY: *[unclear]*

13 I see it just a little bit different than the Senator  
14 here. As far as I'm concerned, if we don't do anything  
15 this year, I'm sure that the Governor, as a prudent  
16 man, will take \$400 million out of the capital budget  
17 and the operating budget and have that sitting there  
18 ready for us when we come back next year. It'll mean  
19 a loss of revenue to individual legislators or to the  
20 districts, but it will be a protection of the people  
21 and it's one that, I suppose, anybody that is responsible  
22 for the handling of other people's money that they take  
23 the idea that they're going to have that backup there that's  
24 going to be there, the money that we are generating now.  
25 As far as your -- I don't like to call it a threat, although

1 that was plainly what it -- that was plainly what it was,  
2 but I don't like to call it that. Nobody worries about  
3 threats of other people unless they have reason to.  
4 I think that the oil companies have just as much reason  
5 to be in Alaska as we have reason to have them here.  
6 Of course, it just goes down to the point, if you don't  
7 want to be reasonable then I suppose you will have to  
8 be anyway you have to be, and the State will have to be  
9 any way they have to be. As far as the implied threats,  
10 or the -- whatever you were doing -- I don't think  
11 that's going to make any difference because you are in  
12 a position of representing stockholders also, and it's  
13 your job to get the best return under the best conditions  
14 that you can for your people. And that's what you are  
15 going to do, whether it means a lawsuit or anything else.  
16 If you can settle it thus, amiably and properly  
17 with everything -- I think that's the best course.  
18 But if you want to take the hard course, I'm certain  
19 that the State will be prepared to meet any contingency.

20 MR. DANKWORTH:

21 Mr. Donaldson, thank you very much for your response on  
22 that.

23 MR. RAY:

24 ... for his honest approach. Welcome, honesty is the  
25 best thing to get -- smooth words and the rest of it

1 doesn't really come down until you actually see what's  
2 facing you.

3 MR. DONALDSON:

4 Just in conclusion, please understand, for the next few days,  
5 that - whatever you want to call it - compromise is on  
6 the table and then it's gone. I happen to think it's a  
7 reasonable approach; I happen to think it gives the state a  
8 good deal of security for 95 percent of its revenue flow,  
9 the glass is much more than half-full and part-empty - you  
10 always talk about the empty part but there's a ton of money  
11 flowing into your hands for wise management that you're taking  
12 the cloud off of; we thought it was reasonable from that  
13 standpoint. You know we have a long-term interest in Alaska,  
14 that doesn't basically change. We will probably go on back  
15 to court and ask these questions; we'll take that when it  
16 comes. But the choice is yours, and we thought we were very  
17 close to what the state wanted and what we thought we could do.  
18 I hope you'll still give it a little further thought before  
19 you make your final decision.

20 MR. RAY:

21 Well, you brought up another good point. Maybe we should  
22 get this settled once and for all so you will know  
23 where your limitations and what the State's limitations --  
24 maybe you should go through with the lawsuit  
25 and let you, whoever wins win and we'll know exactly what

1 happens. Then you won't have to apologize to anybody,  
2 and we don't have to apologize to anybody. That's another  
3 thought.

4 MR. DONALDSON:

5 We're perfectly prepared to do that as you know. As  
6 Mr. Taylor said, each year that passes it gets extremely  
7 difficult to forget an awful lot of past because those  
8 dollars pile up. It almost gets to the place where  
9 you have to call us, we can't come back.

10 MR. RAY:

11 We appreciate it.

12 MR. DONALDSON:

13 Thank you very much.

14 MR. RAY:

15 Thank you, sir.

16 MR. DANKWORTH:

17 Thank you, Mr. Donaldson. I have just one statement  
18 along with the Chairman's, and that is I do think it  
19 is important to settle this. I really wish we could.  
20 I think it is going to be harder next year. But I don't  
21 know, the Senator might want to -- I don't know  
22 whether he wants to propose -- comment. But I have  
23 tried. People will tell you. I have gone to these  
24 Senators, and I've talked about a \$1.3 billion  
25 reduction between now and 1985. Personally, I don't

1 think that is an option you can sell at least in the  
2 Senate this year. We do have some time left. I don't  
3 know whether he wants to comment, but I have  
4 not found anybody in the Senate who is willing --  
5 perhaps I'm talking to the wrong ones -- that felt  
6 that that was an option. That's what forced me into  
7 this position to stop the backstop.

8 MR. RAY:

9 I think -- just to respond, Senator -- You were, more  
10 or less, given a direction by the leadership in the  
11 Senate to do certain things. You did that. You came  
12 back -- if there was anybody that you could have got  
13 that would have presented your case more honestly, or  
14 more forcefully, was Senator Dankworth. He did that.

15 MR. DONALDSON:

16 He did. No question about it.

17 MR. RAY:

18 He was told very politely, thank you for your work but  
19 it isn't satisfactory to a majority of the Senate.  
20 That's about what it comes down to. Politely. Nobody  
21 blames you people for trying to do what you're doing  
22 for your own stockholders. Nobody blames you for  
23 trying to get the last dollar that you can get for your  
24 stockholders. We all understand that. It's your job.  
25 But you have to understand, conversely, it's our job to see

1 that our stockholders get value received for their  
2 natural resource. It isn't something that should denigrate  
3 down to a fist-shaking or anything else. It's something  
4 that calm and study and see if we can't reach a compromise,  
5 hopefully in our benefit - that's the way I see it, and  
6 you see it, hopefully, in your benefit. It's just a  
7 common ordinary occurrence in the business world. If I  
8 thought this would be the last I would ever see you  
9 people in court, hell, I'd sign right now. But you'll be  
10 back tomorrow and once you settle this you'll be back  
11 with something else. That again is your job to do that --  
12 for every action there is a reaction. And that's what  
13 we are doing.

14 MR. DONALDSON:

15 Since we're in good discussion here and going a long way  
16 to try and understand each other. There are probably  
17 two more things just to add to your record. And both  
18 brief. One is that an industry, a company, doesn't  
19 understand, when someone approaches it -- and I'm not  
20 finding fault -- and says this is what it takes to settle.  
21 And we said we'll settle. And then have the other  
22 party, sort of, walk away, for whatever reasons.  
23 It's very hard for business to understand that type of  
24 negotiation. So there's a great deal of frustration  
25 among our home offices, as you might expect. Second thing,

1 if you look at the net profit from a Prudhoe Bay oil  
2 field. Today, under present federal law, the federal  
3 government is taking about 45%. Today, under present  
4 Alaskan law, the State of Alaska is taking something  
5 over 30%. The companies who have taken all the risk,  
6 done all the financing, are ground down to 23% or 24%.  
7 Things seem out of balance. This is another factor  
8 that may well be a driving force in our own analysis  
9 of trying how to solve the problem. Those two things  
10 may add a little bit to your perspective, but you  
11 know basically where we have come from, and you're right -  
12 we do have to represent our own shareholders.

13 MR. RAY:

14 Well, you shouldn't be disheartened, although it could  
15 be frustrating. You have to understand that when you  
16 are dealing with the legislature you are dealing  
17 primarily with a committee. You are dealing with a  
18 committee of 20 people in the Senate, and 40 in the  
19 House. And sometimes those committees are not generally  
20 in agreement. The whole thing is in any of our  
21 relations, I think really -- what's the old saw --  
22 reasonable men can certainly disagree but disagreeable  
23 men can never reason. I hope that we always are  
24 reasonable men.

25 MR. DONALDSON:

I appreciate that. Thank you, sir.

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1 MR. RAY:

2 Thank you very much again. Mr. Showalter, did you  
3 want to give testimony, sir? Is there anybody here  
4 from ARCO? Dave? Excuse me, I'm sorry.

5 MR. HARBOUR:

6 Mr. Chairman, before I introduce myself, may I say  
7 that my remarks were predicated on an assumption that  
8 perhaps the Commissioner of Revenue would have given  
9 a description of the material on the table. If it  
10 pleases the Chair, I'd be happy to defer to the  
11 Commissioner until I give my own testimony. Or I can  
12 give it now - it's your pleasure.

13 MR. RAY:

14 Whatever your desire, sir. I'm sure -- we are here  
15 to listen to you. You can pick and choose within the  
16 limitations, and that's certainly within the limitations  
17 as far as I can determine.

18 MR. HARBOUR:

19 ... you are agreeable to hear the Commissioner and then  
20 my testimony?

21 MR. RAY:

22 We might be hearing him next year. That was just a  
23 joke. Take it easy, David.

24 MR. HARBOUR:

25 I'm glad you identified it, Senator.

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1 MR. RAY:

2 Just to allow the -- there is a request from some of  
3 the people from the Cook Inlet Region Inc. that would  
4 like to talk. Is there anybody here from Cook Inlet?

5 UNIDENTIFIED SPEAKER:

6 Cook Inlet Region has no testimony to give.

7 MR. RAY:

8 All right. Is there anybody else who would like to give  
9 testimony previous to the time we again hear the Commissioner  
10 of Revenue?

11 MR. BAUMAN:

12 Excuse me. I would like to speak briefly, if I could, on  
13 behalf of Amerada Hess.

14  
15 (Testimony not requested)

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1 MR. RAY:

2 Commissioner, I don't want to rush you but if you could  
3 keep to the specifics so -- because both houses have to  
4 be back in at 5:00. We would like to get a considerable  
5 amount of your testimony in here so that we can understand  
6 it.

7 COMMISSIONER WILLIAMS:

8 Thank you, Mr. Chairman. I'll try to keep my remarks  
9 brief. For the record, my name is Tom Williams. I'm  
10 Commissioner of Revenue. A question of the Chairman  
11 first - would you like me, at all, to respond to  
12 Mr. Bauman's remarks that were just made here? Or would  
13 you rather have me quickly describe this tax to lay  
14 the foundation, the predicate, for Mr. Harbour's  
15 testimony.

16 MR. RAY:

17 I would -- Senator: No, I would just as soon you would  
18 get to the main point. We understand what Mr. Bauman's  
19 problem is and we can address that in short order.  
20 We understand that very well.

21 COMMISSIONER WILLIAMS:

22 The idea of the settlement is, has been fairly well  
23 discussed already before. The ingredients are basically  
24 as follows: first, that the companies would walk away --  
25 these three companies anyway, who together account for over  
90% of the tax payments under Chapter 21 -- that they

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1 would walk away from the taxes they have paid in the  
2 past, and the taxes they will pay for the remainder of  
3 this tax year. That is, for tax liability that accrues  
4 through December 31, 1981. That money they would no  
5 longer claim. They would dismiss their lawsuit with  
6 prejudice which would mean that, as far as they are  
7 concerned, the legal doctrine of res judicata would apply.  
8 They could not come back in and claim it. Even if  
9 someone else subsequently came in and challenged Chapter  
10 21 and proved to be successful - as to these 3 parties,  
11 their claims are over with forever. That's one benefit  
12 the State would receive from the settlement. Another  
13 benefit that the State would receive is that the  
14 severance tax would go to a nominal rate of 15% instead  
15 of its rate of 12.25% at the present time. In exchange  
16 for this, the State would give up the principle of  
17 separate accounting starting with tax years beginning  
18 next year 1982. We'd surrender separate accounting,  
19 go back to the concept of apportionment, which is basically  
20 looking at a worldwide pie of income and using a formula  
21 to calculate how wide a slice the State is entitled to  
22 take out of that and say that's Alaska income. Then we  
23 tax it. The apportionment formula will not attribute to  
24 Alaska as many dollars as the separate accounting  
25 approach attributes to Alaska. The tax will have a

1 significant reduction. This reduction is only partly  
2 offset in future years by the increase in the severance  
3 tax. The net result has been calculated to be, between  
4 now and 1985, about \$1.374 billion would be the total  
5 amount of that difference. That is, between now and  
6 1985 the State would receive \$1.3 billion, almost  
7 \$1.4 billion, less under the settlement than it would  
8 receive under Chapter 21, assuming, of course, that  
9 Chapter 21 is ultimately upheld. The other ingredient  
10 in the settlement is a 10% investment tax credit for  
11 investments made in Alaska. This is a difficult one  
12 to quantify because it is very hard to guess for sure  
13 the precise timing of when investments will be brought  
14 on stream. It's patterned after the federal investment  
15 tax credit which says you don't get the credit until  
16 you actually place your facility into operation. For  
17 instance, when TAPS was being constructed, Trans-Alaska  
18 Pipeline System, presumably the credits were accruing  
19 until June 20, 1977 when oil started to be put into that  
20 pipeline and it began operation. Until that time all  
21 the expenditures in '76, '75, '74 and back to '69 or '70,  
22 were piling up, but could not actually have been used.  
23 The tax credit mechanism is a very difficult one for us  
24 to forecast. It's hard to quantify. But it is possible  
25 that we would see as much as \$5 billion of qualified

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1 investment coming on stream in the State between now  
2 and 1985. If that were so, then there would be \$500 million  
3 of additional tax credits that would represent revenues  
4 foregone, if you will, from the present course that the  
5 State is on. That, in basic summary, is what the  
6 settlement is. On the one hand, you gain the certainty  
7 with respect to the revenues that have been collected,  
8 at least 93% of them. You gain, not quite such a degree  
9 of certainty with respect to future revenues under the  
10 income tax because even though these 3 may not challenge  
11 it, it is possible that others may. But I think they  
12 will lose. So it's a question of how slight you think  
13 the risk is that an apportionment formula will be upset  
14 in the future. I think that is a very small risk, and  
15 so there is very little likelihood that these companies  
16 would stand to benefit if some third party came in and  
17 litigated the apportionment formula in the settlement  
18 bill. It's mostly a question of dollars and cents.  
19 From our point of view in the administration, we go back  
20 to the principles that were set out in the joint  
21 statement in March of this year. Perhaps, it is worth  
22 recalling exactly what those, what was said then. It  
23 would have helped if I had it at the top. Well, I won't  
24 take time searching for it. The basic idea that was  
25 said then, I can't quote it verbatim, is that the

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1 sentiment was expressed that the present level of  
2 revenues being taken by the State from the oil and gas  
3 industry was at an acceptable level - it was not  
4 unreasonably onerous and it was not unreasonably light.  
5 People felt comfortable with it. It was felt that any  
6 increase in the level of taxation was inappropriate at  
7 this particular time. By the same token, the statement  
8 goes on and says it was felt that a decrease, a  
9 significant decrease, is inappropriate at this time.  
10 I think the phrase is unwarranted and unsupported by a  
11 majority of Alaskans. This settlement -- if you divide  
12 it out -- works out to an average of about \$400 million  
13 a year, not counting the imponderable in the investment  
14 tax credit. That is a lot of money. Whether that is a  
15 material reduction in the State's revenues is a  
16 different question. That's one that ...

17 MR. RAY:

18 What's the percentage?

19 COMMISSIONER WILLIAMS:

20 Overall it works out to a 5.2% reduction in the total  
21 revenues that the State is contemplating to get from the  
22 industry through 1985. In terms of this particular tax  
23 and the amount that is at issue here, we are foregoing  
24 27% of the tax in exchange for security on the 73%.  
25 In our view it is an expensive price tag. However, the

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1 mythical 30% figure has developed in conversations -- and  
2 I believe over a longer time period, our present level  
3 of 31.8 will, in fact, go down. So that if you look  
4 at a period of a longer duration, say to the end of  
5 the '90s, that you'll see we're right at the 30% number  
6 This number was not just pulled out of a hat. As fields  
7 age they become less profitable, hence the income tax  
8 will be representing, in future years, a smaller and  
9 smaller portion of the value of the production.  
10 Similarly, the economic limit factor in the severance  
11 tax will gradually begin to have an increasing effect  
12 on the severance tax rate, drawing it down toward zero  
13 as the economic limit is approached, and thus the  
14 severance tax will also be declining over time. It will  
15 represent a smaller and smaller proportion in those later  
16 years. Looking at the long scale, I think we are at  
17 30%. In the short term, we find we are at 31.8%. The  
18 settlement agreement preserves the 30%.

19 MR. DANKWORTH:

20 I have one question, Tom. I don't want to interrupt your train of thought.  
21 Also, is the \$1.8 billion -- I think it's about \$1.8 billion  
22 that we would be collecting on the windfall profits  
23 tax between now and 1985. Under the settlement  
24 agreement, we would be losing 1.3. It depends  
25 on where you're coming from. Some perceive that tax to

1 be unfair. Every state in the Union, except, I think,  
2 Minnesota, and they don't have oil -- if we were to perceive  
3 the windfall profits tax was unfair -- that was the  
4 position of the State, \$1.8 billion, that would put us  
5 truly back to about 30%. In fact, \$1.3 billion puts us  
6 back at 30%. I suppose somewhere, maybe, a little below  
7 30% -- if we said the windfall profits tax was not a --  
8 we should give them the credit for the windfall profits tax.  
9 I'm just kind of backing up your argument because I  
10 think, probably, 30% didn't just come out of the air.  
11 It depends on what you think is fair. Go ahead.

12 COMMISSIONER WILLIAMS:

13 Basically, the point I was reaching is, where does the  
14 administration stand.

15 MR. RAY:

16 If you could contain yourself until tomorrow, Mr. Williams...

17 COMMISSIONER WILLIAMS:

18 Certainly. There's no suspense for me.

19 MR. RAY:

20 ... because there are some of us that haven't had the  
21 benefit of looking at this for any length of time. I  
22 think it would be fair to look at the suggestion by  
23 Senator Dankworth in comparison with the, I believe it  
24 is the H.C.S. for 524, and also look at the settlement,  
25 and also look at the no settlement, look at the warts,

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1 and look at the -- whatever else there is to look at.  
2 Both houses are going back at 5:00. If it's agreeable  
3 with the Committee, how about 2:00 tomorrow? Is that  
4 convenient with everybody? Pat? Pardon? At what  
5 time? Possibly we could ... Do you want to come back  
6 at 3:00? 3:00 tomorrow? We have to do it sometime  
7 tomorrow. We either turn it down entirely or to adopt  
8 one of the suggestions. Sir?

9 UNIDENTIFIED SPEAKER:

10 How about if we just say right after the joint session?  
11 Or is that not specific enough for everybody involved?

12 MR. RAY:

13 That's close enough. If it's 2:45 could we wait for  
14 3:00? What I'm trying to do -- as far as the legislators,  
15 we can meet in a telephone booth and cut the deal.  
16 But we want to give you industry people the full operation  
17 so that if you have anything you want to say -- we don't  
18 believe it but we are going to listen. Ed believes it.  
19 I want to say one more time, there's been a lot --  
20 probably, some strange questions or remarks made about  
21 Ed Dankworth, but I can tell you that the majority of them  
22 are not true. We'll meet at 3:00.

23  
24 (meeting adjourned at 4:45 p.m. June 22, 1981)  
25

C E R T I F I C A T E

1  
2 STATE OF ALASKA )  
3 FIRST JUDICIAL DISTRICT ) : SS.

4 I, JUDITH R. JONES, a Notary Public, duly commissioned and  
5 qualified in and for the State of Alaska, do hereby certify  
6 that the foregoing June 22, 1981 meeting of the Free Conference  
7 Committee on Senate Bill 524 was recorded by me and thereafter  
8 transcribed by me or someone under my direction.

9 I further certify that the transcript, consisting of 62  
10 pages, is a full, true and correct transcript of the  
11 proceedings.

12 I further certify that I am not a relative of any of the  
13 parties nor financially or in any other way interested in the  
14 outcome of the proceedings.

15 IN WITNESS WHEREOF, I have hereunto set my hand and  
16 affixed my notarial seal this \_\_\_\_ day of July, 1981.

17  
18  
19 \_\_\_\_\_  
Notary Public, State of Alaska  
My Commission Expires: 11/30/84

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ALASKA STATE LEGISLATURE, TWELFTH LEGISLATURE  
FREE CONFERENCE COMMITTEE ON SENATE BILL 524

TRANSCRIPT OF PROCEEDINGS

JUNE 23, 1981

COMMITTEE PRESENT:

Representative Bill Ray, Chairman  
Senator Ed Dankworth  
Senator Don Bennett  
Representative Terry Gardiner  
Representative Rick Halford  
Representative Patrick O'Connell

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P R O C E E D I N G S

6/23/81

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MR. RAY:

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The Free Conference on Senate Bill 524 will please come to order. Mr. Harbour? Please identify yourself for the record, sir, and proceed with your testimony.

5

6

7

MR. HARBOUR:

8

Thank you, Mr. Chairman. For the record, my name is Dave Harbour. I'm Director of Alaska Government Relations for Atlantic Richfield Company. And I'm joined today by Jim Egan who is with our Anchorage tax department. Mr. Chairman, together we are grateful for the opportunity to address this Free Conference Committee on the subject of the various pieces of legislation before you. I will present you at the end of this discussion with copies of a formal position paper that our company has prepared. But in the interest of time and also in the interest of a little more dialogue, would like to be more informal with my remarks and at the conclusion of them would value the opportunity to answer any questions that may be presented. There are three pieces of testimony, or three pieces of legislation before the Committee today that result from the Chapter 21 crisis. One is the backstop or reserves tax version; another is a proposed compromise or settlement position; another is an amended version of

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1 that particular legislation but would not result in  
2 settlement. First, I'd like to say that in testimony  
3 that our company provided in May to the Joint Gas Pipeline  
4 Committee -- at that time we expressed opposition to the  
5 backstop or reserves tax approach, and I'd like to  
6 reiterate our position that we believe that legislation is  
7 not in the interest either of the companies involved or  
8 the State itself for, indeed, it is not truly a backstop  
9 tax that would stop back the revenues that the State is  
10 achieving in a direct way but actually would be a real  
11 tax increase resulting in the imposition of an even  
12 higher tax burden on Alaska's oil industry. The proposed  
13 legislation does not resolve the issues currently being  
14 litigated in our constitutional challenge, but even  
15 guarantees that that controversy will continue and be  
16 expanded particularly through provisi of those activities  
17 for determining the millage as well as the valuation on  
18 the reserves or property. In fact, my attorneys have  
19 instructed me that there are -- may very well be raised  
20 new constitutional issues which could possibly place the  
21 Alaska tax structure into controversy. Now secondly with  
22 regard to the compromise or settlement bill produced by  
23 Senator Dankworth, we feel that it is required that our  
24 company and industry come the better part of the way to  
25 reach that particular settlement understanding. The State

1 receives far more of the revenues at stake than does the  
2 industry and retains all of the revenue collected as a  
3 result of Chapter 21 payments since 1978, eliminating  
4 the possibility that at some point in the future it may  
5 be required to refund billions of dollars to the companies  
6 involved along with attendant interest payments. Now,  
7 in regard to this compromise or settlement concept that  
8 has been developed, there are two questions that may be  
9 asked. First, why should the companies involved - and  
10 I believe, Mr. Chairman, you asked this question yourself -  
11 be willing to settle on this basis when, as stated  
12 above, the State receives the vast portion of the  
13 settlement agreement. For one, the legislature -- the  
14 legislation would return to the companies at least a  
15 portion of those revenues at risk. Secondly, it would  
16 provide a more stable tax and investment climate for the  
17 company to do business in. It would take the companies  
18 as well as the State out of litigation - in our case  
19 litigation with our largest royalty owner and put us  
20 perhaps on a course of working more closely together  
21 toward mutual goals. A second question that may be asked  
22 is, what are the benefits that accrue to the State as a  
23 result of that proposed settlement? Clearly, the State  
24 would receive, Mr. Chairman, over 70% of the revenues  
25 at stake. Furthermore, the State continues to receive

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1 approximately 30% of the revenues from Prudhoe Bay as a  
2 result of that agreement, a share which is greater than  
3 that received by the industry which is producing the  
4 resource. The State frees itself from the litigation. And  
5 there's another aspect which is -- a number of State  
6 leaders over a period of the last few months and years  
7 have expressed dismay that as a result of this original  
8 legislation, Chapter 21, the State is taking a tax on  
9 the federal windfall profit tax paid to the federal  
10 government as opposed to the income of the State.  
11 Mr. Chairman, this settlement agreement, as negotiated,  
12 would require the State to give up less than if it  
13 provided the windfall profits tax deduction to the  
14 companies involved. And lastly, it's becoming increasingly  
15 apparent that the economy of the State as well as the  
16 destiny of the State and the oil industry are becoming  
17 absolutely linked. And this compromise, as we see it,  
18 would demonstrate to those not only in my business but  
19 also in other businesses that the State has a desire to  
20 achieve a predictable, stable tax policy, thus adjusting  
21 the atmosphere toward encouraging long term economic  
22 development in our State. Yesterday morning Jim and I  
23 learned of a third proposal before the Committee. It is  
24 a mutation of the compromise bill which would not permit  
25 settlement and which has a number of defects, although

1 somewhat less serious than those posed by the proposed  
2 reserves backstop bill. First, it would act as a  
3 disincentive to the discovery and production of new fields  
4 not only by raising the effective severance tax rate from  
5 12.5 to 15% after 5 years of commercial production, but  
6 by eliminating the economic limit factor for the first 10  
7 years of commercial production. Secondly, with regard  
8 to new or marginal fields particularly, we would find  
9 them less likely to achieve production since the  
10 severance tax effective rate increases initially and also  
11 after 5 years of production. Thirdly, it eliminates the  
12 investment tax credit provision of the compromise bill  
13 not only for my business but also for all Alaskan businesses,  
14 thus removing the incentive for increased investment in  
15 Alaska which ultimately produces more income for the  
16 State. And fourthly, it is a rejection of the settlement  
17 of current litigation. Mr. Chairman, the time has come,  
18 in our opinion, to clear the air and to remove that  
19 adversarial relationship which is -- has been shared by  
20 the tax collecting and the tax producing entities of our  
21 State for so many years. And although, as discussed,  
22 the settlement reflected in the Dankworth compromise  
23 heavily favors the State interest we agree to it, if it is  
24 enacted in the present form. Atlantic Richfield Company  
25 would immediately dismiss its lawsuit challenging the

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1 constitutional of Chapter 21. It would relinquish its  
2 claim on taxes paid under that authority since 1978.

3 Mr. Chairman, though it is not easy - an easy compromise  
4 probably for any of the parties to contemplate, in our  
5 opinion and after working with it for so long and hard,  
6 it is a good faith and fair compromise - one that, we  
7 think, will ultimately be supported by the respective  
8 citizens and shareholders of those of us sitting around  
9 the table. I appreciate the opportunity to be here.  
10 And I'd be happy to answer any questions.

11 MR. RAY:

12 Thank you, Mr. Harbour. Did I understand you to say  
13 that you believe that the settlement would be in the best  
14 interest of the people of the State? And that they would  
15 welcome that opportunity to have it settled?

16 MR. HARBOUR:

17 It's my experience in speaking with a number of citizens  
18 of our State as well as organizations that there is a  
19 feeling that the adversity that emanates from the current  
20 legal activity should not exist, and thus the people  
21 would support a dismissal of that suit. Yes, sir.

22 MR. RAY:

23 Would you support a Statewide referendum for that question?  
24 To allow the people by their vote instead of just by  
25 public relations returns; people themselves allow them a

1 vote to say we think that the settlement is just or we  
2 don't think that the settlement is just.

3 MR. HARBOUR:

4 Senator Ray, if in 1978, prior to the passage, the last  
5 days of the legislative session without public hearing,  
6 you were to have asked me if Chapter 21, the proposed  
7 Chapter 21, should have been put before the people at  
8 that time, I probably would have been inclined to agree.  
9 Now that, at that time, did not receive public hearing.  
10 The legislature acted in its right to develop State policy  
11 with respect to taxation, and it seems to me that the  
12 legislature, having developed that policy, is in a position  
13 now to correct that policy. Do I favor going to the  
14 people? I wouldn't be against it, but I have to tell you  
15 that I think that all of the ingredients are here for  
16 the settlement -- all of those who know the case best in  
17 the legislature and in the administration have worked long  
18 and hard on it, and have far more material available to  
19 it and resources available to them than the public has.

20 MR. RAY:

21 Well, I would think that you would advocate it. I don't know  
22 if you are a part of the public relations campaign that is  
23 being put out by some of the industry, but it appears that  
24 they are putting out, and have been for a good set of  
25 time -- our friend Mr. Taylor, there, has been very vocal

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1 and put the little things in the paper - write in this and  
2 send it in if you think that we are doing -- so I would think  
3 that from your industry's initial petitioning of the  
4 public through the media that you would welcome the  
5 opportunity. Perhaps the legislature is wrong. Perhaps  
6 it should be the people themselves who make the determination  
7 on 6 or \$8 billions. I don't know. I'm just asking.

8 MR. HARBOUR:

9 You make a good point, Senator, but I will tell you that --  
10 you know, no place else in the country does this kind  
11 of a situation exist. That is, of year after year, a  
12 state's major industry, the oil industry, facing tax  
13 increases. And, in my opinion, my personal opinion, the  
14 reason that we don't find that in other areas of the  
15 country is because much of the production takes place on  
16 private lands. And so there are a number of royalty  
17 owners - in fact, just myriad of royalty owners. So  
18 that if a state attempts to change policy that appears  
19 not to be fair in the best interests of the citizens, a  
20 vast constituency rises up. In our State, the entity  
21 that owns the land is also the entity that has the power  
22 to tax the land. And there is no direct constituency  
23 in between. And therefore, I consider it a requirement  
24 and a responsibility to communicate the problems that we  
25 see developing with the constituencies that do exist.

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1 And we do that. And I make speeches. And I talk with  
2 people. And I find that the return on that is almost  
3 universally supportive of a more stable investment climate  
4 as reflected in the State's tax policy.

5 MR. RAY:

6 You are a nice fellow, and they don't like to hurt your  
7 feelings.

8 MR. HARBOUR:

9 Thank you, sir.

10 MR. DANKWORTH:

11 Dave, go back over the four reasons on what I might call,  
12 not the settlement agreement, but on what I proposed as  
13 a possible amendment number 2 yesterday -- compromise.  
14 You mentioned four reasons why you didn't think that that  
15 was an acceptable agreement. I had one that you said  
16 that it destroys the incentive after 5 years which -- I  
17 understand what you mean by that. What was number 2?

18 MR. HARBOUR:

19 The second had to do, Senator, with marginal fields. That is,  
20 that marginal fields might be expected to have a lower  
21 likelihood of production since, when first coming under  
22 commercial production they -- although at 12.25% rate --  
23 they have that initial increase that's owing to the  
24 elimination of the economic limit factor. And then after  
25 5 years another increase which is the 15% severance tax rate.

1 MR. DANKWORTH:

2 If I could find a way to take care of that that would, at  
3 least on the marginal fields, that would eliminate the  
4 number 2 I'm going to assume, if that's what your problem  
5 was there. Number 3 was the investment credit. That's  
6 not in existence now, and while it was in the settlement  
7 agreement, so was it in the settlement agreement that we  
8 get out of court and that we do a whole lot of other  
9 things, but I'm trying to confuse -- I don't want to  
10 confuse what I offered there as not necessarily part of  
11 the settlement agreement because that is not a settlement  
12 agreement that I was offering as amendment number 2.  
13 The first one was. So I didn't want the public to feel  
14 that you were saying that my second amendment is part of  
15 a settlement agreement, because I think you clearly say  
16 it's not, even though you may prefer it to some others -  
17 that's not an agreement. What was the fourth one? It  
18 was -- and I didn't understand when you said it's a  
19 rejection of current litigation.

20 MR. HARBOUR:

21 The fourth item, the fourth aspect of this second proposal,  
22 Senator, is that it would not relieve the State of the  
23 legal activity that now surrounds it.

24 MR. DANKWORTH:

25 But it would make moot our case in court, would it not

1 so far? It does do away with Title 21 and it does do  
2 away with the windfall profits tax, and it does make moot  
3 most of the things that you are in court for other than the  
4 recovery of the \$1.4 or \$1.5 billion that we've already  
5 used, and of course, which we -- that bill does not  
6 require you to give up any rights to continue to pursue  
7 that so -- I guess what I'm making sure we do, Dave, is  
8 not -- for your sake as well as mine -- we're not  
9 trying to -- I didn't propose that as a settlement  
10 agreement because it is not one. And I was trying to --  
11 and we'll get to that later -- finding that which was  
12 least objectionable to you. Also under the agreement  
13 that I'm going to propose, you don't lose money. You  
14 make \$144 million between now and 1985 - there's no loss  
15 to you. The industry's picking up \$144 million.

16 MR. HARBOUR:

17 Senator, everything is relative when compared with the  
18 impact of Chapter 21, there is still a loss.

19 MR. DANKWORTH:

20 I understand, sir, and thank you.

21 MR. RAY:

22 Are there any other questions for Mr. Harbour?

23 Representative Gardiner?

24 MR. GARDINER:

25 Okay, one thing I'm not clear on the lawsuits here. If the

1 bill that Senator Dankworth is talking about that was  
2 in Committee yesterday, if that's passed what would you  
3 expect - is the industry going to litigate that?

4 MR. HARBOUR:

5 Representative Gardiner, I don't believe that the passage  
6 of such legislation would change the litigation as it  
7 affects Chapter 21 accruals to date. As to the future,  
8 there are still defects in that bill which would probably  
9 continue to be pursued in a legal arena. As to what form  
10 that might take, we would have to analyze that with our  
11 lawyers at the time of passage of the bill.

12 MR. GARDINER:

13 So you are saying that in respect to the current 43.21 suit, the  
14 company would continue that suit in court even though  
15 from here on out there's no revenue brought under it--  
16 you'd continue it for the back -- what you have already  
17 paid.

18 MR. HARBOUR:

19 I guess what I'm saying is that the conditions that gave  
20 rise to the Chapter 21 suit in the first place would not  
21 be eliminated in the past, all of them - neither would  
22 they all be eliminated for the future. But -- and also  
23 as of today, we've still been hearing about proposed  
24 changes in this legislation. So I can't be that certain  
25 with you until I see a final version and until it comes out.

1 But as soon as possible, I'd be happy to discuss that  
2 with you.

3 MR. GARDINER:

4 Mr. Chairman, my concern here with -- one of the things  
5 that we all think we'd like to do - at least I haven't  
6 heard anybody disagree with is - is to get out of court.  
7 If I understand what's being said here is, one, we are  
8 still going to be in court over 43.21, although it may  
9 only affect \$1.5 billion up to date, or whatever the  
10 number is -- but then this new bill that's proposed for  
11 us on the modified apportionment and other sections in  
12 it may have legal problems, that may cause another suit.  
13 So we have effectively, it's a possibility, ending up with  
14 two different suits on two different taxes. You  
15 know, unless the industry says they're not going to  
16 litigate them - which I'd like to hear, if they are not.

17 MR. HARBOUR:

18 Mr. Chairman, I think perhaps that since I didn't prepare  
19 this bill and didn't even see it until yesterday, that  
20 actually the administration would be better qualified  
21 to comment on that point, Representative Gardiner. But  
22 as -- one point that you make with respect to the modified  
23 apportionment also applies to the compromise package. And  
24 I believe that there was some legislative staff suggestion  
25 on that point of the modified apportionment change as it

1 applied to the compromise bill, is the point maybe you  
2 are making now with respect to the fact that that might  
3 cause future litigation. And as far as the settlement  
4 agreement goes, that's not the case because the companies  
5 would propose to drop suit in the event that passed. But  
6 furthermore, the apportionment scheme that's outline under  
7 the compromise and that is in some sense copied in the  
8 second version, is demonstrably more acceptable to the  
9 courts than is a direct accounting approach to taxation.

10 MR. RAY:

11 If there are no other questions I want to thank you very  
12 much, Mr. Harbour.

13 MR. HARBOUR:

14 Thank you, Senator.

15 MR. RAY:

16 Bill Hickman, Vice President and Treasurer, Alaska Gas  
17 and Service Company.

18 MR. HICKMAN:

19 Mr. Chairman, I'll be joined by Dick Barnes, Vice President of  
20 Alaska Interstate Company. We are part of a consolidated  
21 group of companies.

22 MR. RAY:

23 Okay.

24 MR. BARNES:

25 Mr. Chairman, the testimony issued so far in this hearing

1 by the industry has been mainly by the three...

2 MR. RAY:

3 Sir, you are Mr. Barnes?

4 MR. BARNES:

5 Yes, I am, sir.

6 MR. RAY:

7 Would you identify yourself for the record?

8 MR. BARNES:

9 Yes. For the record, my name is Richard F. Barnes,  
10 Vice President of Alaska Interstate Company. The testimony  
11 issued so far in this hearing by the industry has been  
12 mainly by the three major producers. We understand that  
13 there are currently 20 to 30 Chapter 21 taxpayers in the  
14 State. We are among that group due to our natural gas  
15 transmission line that is part of our Alaska Gas and  
16 Service Company business. As part of the 20 to 30  
17 taxpayers, we would like to share our perceptions on this  
18 subject. Alaska Interstate Company currently has two  
19 business interests in the State - Alaska Gas and Service  
20 Company serves about 45,000 customers, and also the  
21 State's largest electric utilities. Therefore, directly  
22 or indirectly, we serve almost everyone from Halibut Cove  
23 to Talkeetna in southcentral Alaska Gas' business  
24 is regulated by the APUC, the Alaska Public Utilities  
25 Commission. The rates that are allowed include operating

1 expenses such as income tax that would be perhaps increased  
2 or decreased due to proceedings here today. Ultimately,  
3 all the income taxes charged to the utility are passed  
4 on as rates to the customers. The other business interest  
5 that we have in the State at this time is part of the  
6 Dow-Shell project where Alaska Interstate's role is studying  
7 the southern section of the pipeline that would carry  
8 natural gas liquids from the vicinity of Fairbanks to a  
9 tidewater location. We believe that regulated utilities  
10 should not necessarily be taxed in the same manner as  
11 producers. They are very much different businesses.  
12 Typically, utilities have very little upside opportunity  
13 as in the case of the producers where they have seen broad  
14 increases in the value of their oil. We would like to  
15 discuss, for a minute, the effect that we see of the  
16 three pieces of legislation before us. The settlement bill  
17 as written would actually increase taxes to the utility  
18 and to its customers. It would be acceptable if it were  
19 amended to treat public utilities on a non-unitary or  
20 separate basis. The same is true on the Free Conference  
21 Committee Substitute as written would also negatively affect  
22 Alaska Gas customers and increase the taxes markedly. I  
23 would like to ask ...

24 MR. DANKWORTH;

25 Pardon me, just a moment. When you said Free Conference

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1 Committee Substitute are you talking about 524 or 202?

2 MR. BARNES:

3 Free Conference Committee Substitute for 524.

4 MR. DANKWORTH:

5 Yes. Okay. That's the reserve tax, the one that we are  
6 talking about here. I don't want to get confused when  
7 you are saying - you are testifying now to, what, 524?  
8 Senate Bill 524?

9 MR. BARNES:

10 Yes, sir.

11 MR. RAY:

12 We have two pieces of legislation that we are looking at  
13 as a Free Conference -- first, I guess it would be  
14 proper to say the House Committee Substitute for Senate  
15 Bill 524, and we also have another proposal which is a  
16 Free Conference Committee Substitute for Senate Bill 524.

17 MR. BARNES:

18 I believe that's one that I was speaking to that appears  
19 to be an amendment to the settlement bill. Okay.

20 MR. RAY:

21 That's the one with the ELF's in it.

22 MR. BARNES:

23 Yes, sir. I would like to ask Mr. Hickman to discuss  
24 the proposed change that we would offer to either of those  
25 bills which would affect the utility. And then ask ...

1 MR. GARDINER:

2 Do you have copies of this so we could look at it?

3 MR. BARNES:

4 Yes, sir. After discussing that then we would like to  
5 return to the third piece of legislation that has been  
6 discussed previously, the backstop bill.

7 MR. HICKMAN:

8 We believe that under the allocation formula set forth  
9 in either of the two bills mentioned, the settlement bill  
10 or the substitute for the settlement bill - the effect  
11 will be to allocate greater income into the utility  
12 business in the State of Alaska so that a public utility  
13 will pay a larger income tax and our rates will be  
14 affected by that so that we will, in effect, pay a larger  
15 tax than our tax would be if the utility were taxed on  
16 a separate company basis. We would propose an amendment  
17 to 43.20.065 which would add the following sentence: not  
18 withstanding other provisions of this Act, the taxable  
19 public utility income of a public utility regulated by  
20 the APUC will be determined pursuant to Alaska Statute  
21 43.19.010(18)(a) - that's the provision that provides for  
22 separate accounting treatment of a company and tax on that  
23 company's income based on its actual assets and activities  
24 within the State.

25 MR. RAY:

Commissioner Williams, would you come up here, please?

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1 Continue, sir.

2 MR. HICKMAN:

3 If those -- if either of those bills were modified or if  
4 this particular change were made, then either of the bills,  
5 we believe, would be acceptable to the utility and its  
6 customers since we would not be paying in excess of the  
7 statutory rate, 9.4% times the income generated by our  
8 activities in the State of Alaska as determined by the  
9 Alaska Public Utilities Commission. We do believe that  
10 the proposed substitute for the settlement bill has a  
11 detrimental effect not only to our utility, but possibly  
12 to other corporations in the State of Alaska - in that in  
13 the original settlement bill there is a provision for  
14 investment tax credit that goes beyond the provision  
15 that is in the present law, so that all taxpayers in the  
16 State, all corporate taxpayers, would receive an investment  
17 tax credit in some instances substantially greater than  
18 what they are presently entitled to. The proposed  
19 substitute for the settlement bill, while it reduces the  
20 effective tax rate in the lower brackets for a corporation  
21 operating within the State, it does not provide the  
22 investment tax credit that the settlement bill does.  
23 And to some extent, it may represent a tax increase to  
24 some corporations rather than a tax decrease to some  
25 corporations. It's -- we've only looked at this particular

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1 thing yesterday, and we're still uncertain as to all the  
2 effects that the bill may have - not only on our corporation  
3 but on other corporations in the State. However, our  
4 interests have to be directed primarily to our utility  
5 customers, and so from our standpoint if this amendment  
6 takes place, then it would have to remove our objections  
7 to those two bills.

8 MR. GARDINER:

9 Does this amendment, whether it is put in either bill,  
10 create any legal problems for the State that is going to  
11 make us vulnerable to anybody's attacks under equal  
12 protection or discrimination?

13 MR. HICKMAN:

14 I'm not an attorney. My guess is that - Mr. Williams should  
15 speak for himself, but - my guess is that some would say  
16 that by restricting public utility to those regulated by  
17 the Alaska Public Utilities Commission it may be that there  
18 are other public utilities which should similarly qualify  
19 and it might be discriminatory to that extent. If it was  
20 only public utility -- if we said only public utility,  
21 I don't know what the effect on State revenue would be,  
22 and whether other accommodations would have to be made to  
23 take care of that problem. That's -- again, I think  
24 Mr. Williams could best advise in that regard.

25 MR. BARNES:

Mr. Chairman, if you will, I'd like to review the so-called

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1 backstop bill as well, as to our interpretation how that  
2 would affect us. Okay. We see the -- what we have titled  
3 as the House Committee Substitute for Senate Bill 524  
4 as allowing non-unitary treatment of a utility such as  
5 Mr. Hickman has just spoken to. The effect being that the  
6 statutory rate would be charged against the operations, the  
7 income of the utility only, and we would not see allocation  
8 of income from outside of the State against a utility.

9 MR. RAY:

10 If this amendment was in there, would that take care of  
11 your problem? If your suggested amendment was incorporated  
12 in that bill, would that take care of your problem?

13 MR. BARNES:

14 It would not be necessary, we don't believe, under the  
15 House version of the backstop bill. The exemption of the  
16 natural gas reserves was something that, of course, we  
17 were glad to see added to the House version. We believe  
18 that it benefits the Alaska Gas Service Company customers.  
19 I think that it could benefit the ANCS (ph) line and  
20 could benefit natural gas liquid-based petrochemical  
21 development within the State. We recognize that it does  
22 not settle industry claims against the State which we  
23 would prefer to see settled in an amicable way. It does  
24 give, from what we have seen, the lowest effective tax  
25 rate to utility customers. This bill could use some other

1 technical amendments which we would like to suggest at  
2 a later time if the Committee desires to move toward that  
3 form of bill -- but we would not offer them at this time.

4 MR. RAY:

5 Thank you, sir. Are there any other questions from any  
6 members of the Committee? My thanks, and ... Senator?

7 MR. DANKWORTH:

8 ... one quick question. Clarify on the proposed -- not the  
9 settlement agreement but the proposed amendment to the  
10 settlement agreement - did you say that you determined  
11 you would take a loss? Or did you say that you are not  
12 for sure whether you would lose or not on the bill?

13 You just haven't had time ...

14 MR. HICKMAN:

15 We would lose on the settlement bill -- not on the  
16 settlement bill but on the proposed substitute for the  
17 settlement. We are a very capital intensive business.  
18 Our capital expenditures average, expansions to the  
19 gas plant, average between \$5 and \$8 million per year  
20 to serve that particular area. Under the proposed  
21 settlement that has been discussed we believe, if we  
22 interpret the bill correctly, we would have available  
23 to us an investment tax credit of approximately \$800,000  
24 which would reduce -- from \$500,000 to \$800,000 --  
25 which would reduce our income tax expense to that extent.

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1 That is an item that is also passed through to our  
2 customers through the regulatory process. Under the  
3 proposed substitute for that settlement bill, that  
4 investment tax credit disappears. Now that's whether or  
5 not the amendment goes in, Senator.

6 MR. DANKWORTH:

7 Were you here yesterday -- at the last meeting?

8 MR. HICKMAN:

9 Yes, sir, I was here yesterday afternoon from ...

10 MR. DANKWORTH:

11 Can you tell the Committee out of the options that are  
12 before the Committee which one are you supporting?

13 We got to make a decision, you know, and I just want to  
14 know what -- are you testifying against that particular  
15 piece, or are you testifying for 200? Or are you  
16 just making a statement and not testifying against any  
17 of the options?

18 MR. HICKMAN:

19 In range, or in order of preference, the most costly bill  
20 to us as a public utility in the State of Alaska, would  
21 be the last bill that we have seen which would be the  
22 Substitute -- proposed Substitute for the settlement,  
23 which we have titled as Free Conference Committee Substitute  
24 for Senate Bill 524. That would be the most costly to us.

25 MR. RAY:

That's the one you like least?

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1 MR. HICKMAN:

2 That's the one we like least, yes, sir. The others are  
3 probably about even in their application to our particular  
4 situation. And I don't think that we could really  
5 choose in tax effect between the others - it would depend  
6 on any particular given year, with the amendment as  
7 proposed.

8 MR. RAY:

9 With the amendment as proposed. The Free Conference  
10 Committee Substitute with the amendment - that wouldn't  
11 do you any good anyway right?

12 MR. HICKMAN:

13 It would be about 5 to \$800,000 more expensive than the  
14 other.

15 MR. RAY:

16 All right. Are you finished, sir? Thank you very much.  
17 I wonder if the Attorney General, the real Attorney  
18 General now, and the Commissioner of Revenue would take  
19 their places down at the end? This is a byword to the  
20 Committee, we know he is really it now, so better cool off.  
21 Sir? Did you have something, Senator, excuse me.

22 MR. DANKWORTH:

23 No, Mr. Chairman, other than to suggest -- and I had  
24 forgotten where he left -- we cut him off yesterday an  
25 his testimony -- and I can't remember where, at what bill

1 he was explaining in -- I thought ...

2 MR. RAY:

3 He hasn't started yet.

4 MR. DANKWORTH:

5 I don't know why, I thought he started yesterday.

6 MR. RAY:

7 No, he hasn't done anything really of any ... I think that  
8 possibly in order to expedite the business of the  
9 Committee that we get you both there and we'll start in  
10 asking you the questions, or you can take us through some  
11 of these proposals. I suppose that both of you speaking  
12 for the Governor, you might have a preference as to  
13 what the Governor wants. If you don't you shouldn't be  
14 there.

15 COMMISSIONER WILLIAMS:

16 We have a communication.

17 MR. RAY:

18 All right. Perhaps we should hear that before we -- do you  
19 have a communication from the Governor, Commissioner Williams?

20 MR. CONDON:

21 He does.

22 MR. RAY:

23 General?

24 COMMISSIONER WILLIAMS:

25 Thank you. We do indeed. We apologize that

1 the members have not had a chance to receive these yet.  
2 They are in the process of being run off. Let me read  
3 for the sake of the record the Governor's letter. It's  
4 dated June 23, 1981. It says: "Let me make my position  
5 clear on the oil tax issue. There are two criteria which  
6 any legislation must meet to be acceptable. One, it must  
7 not permit the State's share to fall beneath 30%. Two,  
8 it must improve our legal position. Legislation which  
9 fails to meet either objective would be subject to veto.  
10 Additionally, it would be desirable to, three, extinguish  
11 litigation. And four, reduce the likelihood that the oil  
12 tax issue will continue to be a perennial political  
13 liability for those in public office. Several options  
14 could at least meet the first two criteria. These include:  
15 one, passage of the backup tax as in House Bill 200.  
16 However, while improving our legal position, this would  
17 likely increase public responsiveness to the oil companies'  
18 amplified charges of, quote, unfair treatment, unquote.  
19 Certainly efforts would increase to secure an even larger  
20 percentage of the State's current share than with the  
21 companies' so-called settlement proposal. Two, pass the  
22 settlement proposal. This could resolve the litigation.  
23 However, I am advised it could reduce the State's share  
24 below 30% should certain Reagan tax proposals be adopted  
25 unless it is crafted so as to avoid that effect." I might add

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1        parenthetically here that I believe the version of the  
2        settlement bill that is before the Committee -- one of  
3        the versions anyway -- does have provisions included in  
4        there that would avoid those effects of the capital  
5        recovery allowance which is super-accelerated depreciation.

6        MR. RAY:

7        Which one are you talking about, sir, so we can identify it?

8        COMMISSIONER WILLIAMS:

9        The one that I know is in there is in, I would call,  
10       Dankworth 2. It's the modified settlement with the  
11       ELFs in it. To continue on with the Governor's letter:  
12       "The third option that would meet the basic two criteria  
13       in order to avoid being vetoed. The third one: the  
14       basic -- this would be the enactment of a basic settlement  
15       proposal plus an adjusted ELF factor." Essentially this  
16       is what I just referred to. "This approach would not  
17       assure settlement but would reduce prospective State  
18       revenue losses. Four, a public vote on House Bill 200  
19       versus the settlement. This could be on the ballot in a  
20       special election this fall. No matter what the public's  
21       response, it could largely remove this issue from the  
22       political arena. Approval of the industry's proposed  
23       settlement or endorsement of House Bill 200 would place  
24       the public stamp of approval on whichever approach were  
25       selected by the voters."

1 MR. RAY:

2 I didn't get the first part of that. What did he say?

3 COMMISSIONER WILLIAMS:

4 Whichever way it went, it would have ...

5 MR. RAY:

6 He wants a vote? Is that what you are saying?

7 COMMISSIONER WILLIAMS:

8 That's the fourth option that would meet his two criteria  
9 in order to avoid a veto. "It is doubtful that even massive  
10 lobbying efforts from either side could easily persuade  
11 future legislatures to fly in the face of that public  
12 position. Since the latter approach is the only one which  
13 meets all four objectives, it is my preference. Least  
14 acceptable is do nothing. While this may seem the easiest  
15 way to deal with this issue in the short term, it would  
16 assure continuation of litigation, acceleration of the  
17 industry's propaganda efforts designed to roll back the  
18 State's share even further and thus continue this as a  
19 major campaign issue." It would further necessitate --  
20 I'm sorry -- "it would necessitate reduction of the proposed  
21 fiscal year '82 budget by at least another \$350 million  
22 for a rainy day should we lose in court. Accordingly,  
23 let me urge you to pass any one of the above four  
24 proposals for which there are the votes. As the only option  
25 having already passed one house, the simplest, of course,

1 while not my first choice, would be for the Senate to  
2 adopt House Bill 200. Thus, should other options not be  
3 possible, at the very least, do that. Sincerely, Jay S.  
4 Hammond, Governor."

5 MR. GARDINER:

6 Commissioner, there's one alternative I'm not sure that  
7 I heard in there which was the alternative, I think,  
8 originally suggested by the Attorney General, at least  
9 that's the first time I remember hearing it although  
10 people talked about it a lot -- and that would be a  
11 piece of legislation that very simply passed the so-called  
12 warts, granted the windfall profits tax exemption to the  
13 producers which they have long told us that they desire to  
14 have, and thirdly, to raise the severance tax in an  
15 appropriate manner that would offset the revenue loss.  
16 With that simple thing, the State would, as I understand it,  
17 as argued previously by the Attorney General, improve its  
18 position in the court because of, one, the warts and the  
19 windfall profits tax argument would not longer exist in  
20 court. And two, less revenue would be at risk because it  
21 would now -- 40% of the revenue coming in, it would be  
22 coming in under the severance tax rather than 43.21.  
23 And thirdly, the industry would have a net tax relief of  
24 something like \$150 million a year because of the offset  
25 of the federal taxes. Even though the State would not lose

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1 revenue, the industry would gain \$150 million a year. I  
2 did not hear you refer to that alternative in there and  
3 I wondered if there's any reason for objection to that, or  
4 whether that alternative meets the criteria as described  
5 in the letter.

6 COMMISSIONER WILLIAMS:

7 With respect to the two essential criteria, since it  
8 preserves essentially the same amount of revenue, and the  
9 present level of revenue is over 30%, it would meet the  
10 first criterion, that is, the State's share would not fall  
11 and - our revenue would be preserved. Second, it would  
12 simplify the lawsuit, and to that extent improve our legal  
13 position. The basic question of separate accounting versus  
14 apportionment, of course, would remain. But I think probably  
15 it -- on that second criterion, it marginally meets that  
16 as well. It does not meet the third criterion of  
17 extinguishing litigation. I don't think they will settle  
18 the case. And fourthly -- well, people can make their  
19 individual judgment about whether it reduces or continues  
20 the likelihood that the oil tax will remain a perennial  
21 political issue. Those are the four criteria. It does  
22 meet the two that are essential to avoid a veto.

23 MR. RAY:

24 Commissioner, in the -- do you have a copy of all this  
25 stuff? Free Conference Committee Report -- Committee

1 Substitute I guess you'd say. In there they have a  
2 section 3 which is a -- it has to do with the income tax  
3 rate. What would that do if that was incorporated into  
4 the House Committee Substitute for 524?

5 COMMISSIONER WILLIAMS:

6 Sections 3 and 4 both provide for a graduated rate  
7 schedule. And basically, it affects both oil companies  
8 and non-oil companies since they would all come under  
9 Chapter 20. For the non-oil companies it would probably  
10 result in a reduction in the first year -- well, in FY '83 --  
11 of perhaps \$5 million, \$6 million the next year, and  
12 \$7 million the final year. That's the combined effect  
13 between section 3 and section 4. In section 3 there's  
14 provision for two brackets that are not present in  
15 section 4, and so for fiscal year '82 which is when section 3  
16 would primarily be in effect those different brackets  
17 probably wipe out any cost that would result there. We  
18 would assume that the fiscal impact would be zero there  
19 as a result of 3. Fiscal impact in 1982 -- the same  
20 fiscal impacts as I described before for '83, '84, and '85.

21 MR. RAY:

22 That would seem to be, at least, in my estimation, a  
23 desirable inclusion in the Committee Substitute, speaking  
24 for myself. Senator?

25 MR. DANKWORKTH:

Are we talking about -- maybe I didn't understand -- were

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1 you talking then about the warts bill; including the warts  
2 and raising the severance tax? What would that do, if  
3 we were to do that and adopt that - what would be the  
4 security of the State so far as -- our position on 21  
5 would continue in court and we would continue to have  
6 liabilities, wouldn't we? Or the amount of money at risk  
7 would continue to grow, would it not?

8 MR. CONDON:

9 Yes. Under -- if I can refer to -- just make a comparison  
10 between proposal number 5 -- it's not mentioned in the  
11 Governor's letter but which Representative Gardiner  
12 mentioned -- and Dankworth 2, for shorthand The switch  
13 from -- at the time the switch from separate accounting  
14 to apportionment takes place, there will be approximately  
15 \$2 billion at risk as a result of taking the separate  
16 accounting approach. And that will remain at risk throughout  
17 the remainder of the litigation - there are some provisions  
18 in this bill which would reduce that some, and I'll get  
19 to them in a moment. If the switch is made that is  
20 suggested by Representative Gardiner and the windfall profits  
21 tax deduction is granted but separate accounting is  
22 continued, then we would continue to pile up a risk as a  
23 result of the separate accounting. And the numbers for  
24 FY 82 would be approximately \$300 million, and then in  
25 FY 83 would be \$698, FY 84 798, and FY 85 829. I mean,

1 those kinds of numbers are what we are looking at in  
2 terms of the continued amount that would be collected  
3 pursuant to the separate accounting approach during those  
4 years.

5 MR. DANKWORTH:

6 Then basically, if we were to accept that approach then  
7 we are going to have to reevaluate whether we have an  
8 escrow account or a backstop or some kind of backup  
9 position for the State.

10 MR. CONDON:

11 If you look at the numbers for FY 82, you would be  
12 protecting about \$320 million worth of anticipated revenue  
13 if you took proposal 5. And I discussed this matter with  
14 the Governor and he does not believe that an escrow would  
15 be required in FY 82, but thereafter, FY 83 and 84, the  
16 Governor believes that an escrow should be established  
17 until the litigation is resolved.

18 MR. GARDINER:

19 Yes, I don't -- I think I agree with that point, that the  
20 objective of that bill is not that it eliminates all  
21 risk, but on the other hand I haven't heard anybody say  
22 that they are going to settle the 43.21 suit for the  
23 \$2 billion in the back, or they are not going to attack  
24 the modified apportionment because it is a unique thing -  
25 nobody else has an apportionment formula like this one that's

1 being proposed, and there's the question of a whole new  
2 tax structure that could be litigated. And, you know, if  
3 people would tell me they aren't going to litigate this  
4 new bill then maybe I wouldn't worry about that. One  
5 of the arguments against the backstop that I heard people  
6 say, well, we are going to have two court suits. And I  
7 think that's what we are looking at here. And maybe  
8 they're different types of tax structure, but I think one  
9 of the answers from the industry is that, you know, they  
10 might just litigate the whole tax structure of the  
11 State if this continues on and there's not a reduction  
12 there. I don't know what that means, but it has been  
13 brought up at two different hearings. But, do you think  
14 there's any risk with the modified apportionment? Is  
15 the revenue that is brought under there at risk? Or is  
16 there nothing to worry about?

17 MR. CONDON:

18 Of course there is some risk. It is a reduced risk, in  
19 my opinion, from the separate accounting approach. So the  
20 Dankworth 2 presents fewer risks than so-called option 5.

21 MR. RAY:

22 Mr. Condon, I'd like to go back to section 3 and 4, and  
23 perhaps you can tell me, what harm or damage would this  
24 do to any of our cases or any of our suits, or anything else,  
25 if this was incorporated in the House Committee Substitute?

1 MR. CONDON:

2 Sections 3 and 4?

3 MR. RAY:

4 Yes.

5 MR. CONDON:

6 I do not think sections 3 and 4 increase the risk. They  
7 are, I believe, an attempt to treat corporations even  
8 handedly across the board, and I don't see any legal  
9 problems with their adoption.

10 MR. RAY:

11 And you don't see any loss of revenues, Commissioner?  
12 Appreciably.

13 COMMISSIONER WILLIAMS:

14 No appreciable loss. As I say, on the order of \$5 or  
15 \$6 million a year after next fiscal year.

16 MR. RAY:

17 That looks very attractive to me in some form. I don't  
18 know why we ... Senator?

19 MR. DANKWORTH:

20 Well, it certainly is. It's an option, but I did want to  
21 bring up -- while that might solve Chapter 21, what would  
22 be the effect of that on the native corporations in  
23 Cook Inlet and other places? We would be, in effect,  
24 raising the severance tax to 15. I just wondered if we  
25 put the so-called warts package in this, have you had time

1 to evaluate what effect that would have? It may be an  
2 unfair question if you ...

3 COMMISSIONER WILLIAMS:

4 Well, it's difficult to respond to the question, Senator,  
5 because I'm not sure exactly what -- how comprehensive  
6 the severance tax treatment Representative Gardiner  
7 might be proposing. If he's proposing a simple raise  
8 from 12.25 to 15% in the statute, then there's an effect.  
9 But there are ways that that effect can be mitigated  
10 for frontier areas or for marginal fields. And I'm not  
11 sure how comprehensive his proposal is since the central  
12 idea has only been set out and I haven't seen the detail.

13 MR. RAY:

14 And the warts, the warts deal would -- what's the final  
15 analysis of -- give me a money figure and -- General  
16 would you give us a legal opinion on what it would do?  
17 First give us a money opinion or a money figure,  
18 Commissioner?

19 COMMISSIONER WILLIAMS:

20 Of what Representative Gardiner is proposing?

21 MR. RAY:

22 On the warts, yes.

23 COMMISSIONER WILLIAMS:

24 Are we talking just the warts or the warts package? I'm  
25 sorry, I don't mean to be evasive on this, but we don't ...

1 MR. RAY:

2 If we incorporated the warts into House Bill -- or Senate  
3 Bill 524.

4 COMMISSIONER WILLIAMS:

5 Well, they are already there.

6 MR. RAY:

7 Yes, well, that's what I mean -- is it -- what is the  
8 problem then?

9 COMMISSIONER WILLIAMS:

10 If it is only the warts by themselves in the first fiscal  
11 year -- and a windfall profit tax - that will come to  
12 \$494 million ...

13 MR. RAY:

14 That we would lose?

15 COMMISSIONER WILLIAMS:

16 That you would forego, that's correct.

17 MR. RAY:

18 And we don't pick up anything back with any of the other  
19 taxes, right?

20 COMMISSIONER WILLIAMS:

21 You only asked me about warts - that's the cost of warts.  
22 If you raise this production tax that could recover  
23 \$501 million back.

24 MR. RAY:

25 We'd get it all back is what I'm saying.

1 COMMISSIONER WILLIAMS:

2 That's correct, if you do both.

3 MR. RAY:

4 And that's incorporated now in the House Committee  
5 Substitute? Or is that Gardiner's proposal now? See,  
6 we are getting so many different kites flying in the air  
7 that it is hard to identify them.

8 MR. GARDINER:

9 Mr. Chairman, this, you know -- whatever you think is an  
10 appropriate time, I would hand out copies of this proposal  
11 which is pretty simple, and go through it and -- but  
12 whenever you think that's appropriate so there's not so  
13 much confusion.

14 MR. RAY:

15 It's appropriate anytime in this Committee to make any  
16 suggestions that you want, and if you have something in  
17 writing that makes it even more appreciative.

18 MR. GARDINER:

19 Well, I'll hand it out.

20 MR. RAY:

21 Yes, I've been waiting for a copy of the Governor's letter  
22 there, Commissioner, if you could find it. If you can't  
23 we'll get it -- somebody will get up and copy that for  
24 us.

25 MR. GARDINER:

Mr. Chairman, I've put a star at the top just so you

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1 could identify it, because they all say Free Conference.  
2 Sorry, I only had 10 copies. Mr. Chairman, most of the  
3 bill is the so-called warts which are the ones that were  
4 modified in the House as per the recommendations of the  
5 Commissioner of Revenue. What this actually proposes  
6 is that the -- well, also on page 7 it has the same  
7 proposals that appeared in other drafts of the bill  
8 lately - the modified, from zero to 9.4% and 43.20 scale  
9 on the income tax -- that's the same as appeared in  
10 some of the other bills.

11 MR. RAY:

12 Might I suggest, Representative Gardiner, because we are  
13 getting down to a time crunch here -- if you could just  
14 delineate what your things are, and if we have a  
15 problem with it we can pick up on them and then you  
16 can argue at length. Okay?

17 MR. GARDINER:

18 Okay. What it basically does is set the severance at  
19 13.5% and modifies the ELF in similar ways that Senator  
20 Dankworth's bill and other proposals have modified the  
21 ELF. Okay, that -- and it grants the windfall profits  
22 tax exemption. And that's it in terms of what it really  
23 does. Now, in terms of the financial effect, it basically  
24 zeroes out the revenue exchange, although it has some  
25 cash flow where the State loses some money in the early

1 years and then catches up. And that's because the windfall  
2 profits tax exemption is retroactive and goes back and  
3 picks up the time that the -- in which the industry has  
4 been paying under that. I think that also helps the suit point  
5 argument that a lot of people made that that's not the  
6 strongest point in our case presently. So that removes  
7 that issue as an argument. But the fact of it, because  
8 we are increasing tax under the severance and it is  
9 deductible up to 15%, that additional severance would  
10 be deductible against federal taxes thereby reducing  
11 the company's federal tax liability. So from my point  
12 of view that has the beneficial effect of reducing the  
13 company's liability while not reducing the State's  
14 revenue, and that may seem appropriate since the federal  
15 government is getting more than the State and the industry  
16 anyway. So that's it, basically.

17 MR. RAY:

18 Could we have the reaction of both the Attorney General  
19 and the Commissioner on this proposal? Or is it too  
20 soon for you to make any statement?

21 MR. CONDON:

22 From a legal perspective I think the only reaction that I  
23 can make at this point is just to remake the same point  
24 I made earlier, and that is, that it reduces the risk but  
25 it continues to allow the risk money that's at risk to pile

1 up in future years as far as the separate accounting issue  
2 is concerned. By way of comparing it to so-called  
3 Dankworth 2.

4 MR. RAY:

5 And what does that do as far as the Governor is concerned?

6 MR. CONDON:

7 Well, as far as the Governor is concerned, this -- without  
8 knowing exactly what the revenue impacts of this are  
9 going to be, but if they are close to the numbers that I  
10 used on a different production tax, and anticipated  
11 production tax rates, there would be no necessity for  
12 an escrow this year; there would be a necessity for  
13 escrows in future years.

14 MR. RAY:

15 Commissioner, what do you say? Do you know anything  
16 about it?

17 COMMISSIONER WILLIAMS:

18 Well, this is the first I've seen of it but in terms of  
19 your concern about marginal properties that might be  
20 coming on stream, this has several positive features  
21 which are worth emphasizing. First is the lower rate for  
22 the first 5 years, which certainly helps. It starts  
23 at 12.25, which is the present level. In addition, where  
24 you are truly marginal, your ratio of PEL to TP in the  
25 formula there - production at the economic limit to total

1 production - is going to tend to be small. And -- is  
2 going to tend to be large, rather. And squaring that  
3 is going to give you the relief that you are looking forward  
4 to affording in the economic limit factor. The purpose  
5 of the economic limit factor is to try to scale things  
6 down as the economics deteriorate. If they start off  
7 being weak, you want to have it scaled down. This is one  
8 way. I believe this formula moves in that direction and  
9 furthers that.

10 MR. RAY:

11 Is there a constitutional challenge to the ELF?

12 COMMISSIONER WILLIAMS:

13 Mr. Chairman, anybody with a filing fee can  
14 bring a suit.

15 MR. RAY:

16 I didn't ask you that Commissioner. You know what I'm  
17 asking you.

18 COMMISSIONER WILLIAMS:

19 Well, it's an important thing to remember, though, that  
20 we talk about litigation and there are litigations that  
21 are serious; there are those that have only a colorable  
22 nature to them; and there are those that are frivolous.  
23 I would think that this, in my own opinion -- they would  
24 have a hard case, it would be a poor case. I wouldn't  
25 want to take theirs on.

1 MR. RAY:

2 Okay. Senator Dankworth.

3 MR. DANKWORTH:

4 Well, we've probably discussed this -- unless somebody  
5 else has some other questions -- you did say that  
6 just so everyone knows that if we were to adopt this, we  
7 will have to put somewhere between \$500 and \$1 billion  
8 a year after next year into an escrow account, or  
9 something; we are going to have set it in escrow until we  
10 get this resolved. There will be that much less revenue,  
11 if I am understanding this correctly.

12 MR. RAY:

13 Did you want somebody to respond, Senator?

14 MR. DANKWORTH:

15 No, I wanted to make sure everybody understood that was one  
16 of the things that I think has already been said, that that  
17 would be required. What I really want to say, if -- I  
18 didn't know, maybe we were going to take number 5 and  
19 put it ahead of the other proposals I had on the board,  
20 but I would like to have him discuss, while we have the  
21 time, my proposed amendment number 2.

22 MR. RAY:

23 I have no problem with that, Senator.

24 MR. DANKWORTH:

25 Unless there are any other questions on this one?

1 MR. GARDINER:

2 Mr. Chairman, just one little comment before we move on.  
3 I don't want anybody to think that I dreamed up a new  
4 brainstorm and suddenly slid this in. This is probably  
5 the oldest proposal cruising around. And I promise not  
6 to get the Attorney General in trouble, but this was  
7 not originally thought up or suggested by myself - it  
8 was suggested by the administration some months ago as a  
9 simple approach because we were probably going to get  
10 into all these convoluted other proposals, and this was  
11 the simplest and easiest approach. I didn't agree with  
12 that in February. But I do now. So it's not a new  
13 proposal in that sense. It's merely that I brought it  
14 up - that's the only thing that has changed.

15 MR. RAY:

16 Senator Dankworth, did you want to go back and try yours  
17 again? Is that it?

18 MR. DANKWORTH:

19 No, I never have tried it, Mr. Chairman. It has never  
20 been explained. That's why I wanted to start in now.  
21 I have asked that - in my proposal - there be some  
22 amendments made to cover some areas -- and I'd like to  
23 throw that one out, and basically -- we'll pass these  
24 out -- and then I want to explain.

25 MR. RAY:

Is this going to be a new one, is that it, sir? In place ...

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1 MR. DANKWORTH:  
2 ... number 2 ...  
3 MR. RAY:  
4 In place of the one that you have now, is what I'm saying.  
5 MR. DANKWORTH:  
6 That's right.  
7 MR. RAY:  
8 All right.  
9 MR. DANKWORTH:  
10 I'll mark it number 3 if that helps. Thank you.  
11 MR. RAY:  
12 I'll label this so we'll all have it together - this  
13 is Dankworth 2.  
14 MR. DANKWORTH:  
15 No, it's Dankworth 3. The settlement was 1, Mr. Chairman.  
16 Then there was an amendment .  
17 MR. RAY:  
18 But the settlement was not in the form. This is in the  
19 form.  
20 MR. DANKWORTH:  
21 No, I had the settlement in the form, sir.  
22 MR. RAY:  
23 Did you?  
24 MR. DANKWORTH:  
25 I'm sorry if I didn't furnish you a copy ...

1 MR. RAY:

2 All right, Dankworth 3. Christians, nothing. Has everybody  
3 got a copy that needs a copy? Speak, Senator.

4 MR. DANKWORTH:

5 If you would -- I don't have any preference who starts --  
6 probably it would be good for Commissioner Williams  
7 to -- since we all helped draft this thing from different  
8 pieces of proposals that's come a long while -- they  
9 may call this Dankworth number 3. And there's nothing  
10 original about a lot of these proposals. They are all  
11 just kind of brought together as I think probably an acceptable  
12 solution to everything, but not real acceptable to  
13 anybody. If it was acceptable to anybody and they were  
14 very joyous about it, I'd want to go back and renegotiate  
15 it. But at least this I would like for you to explain  
16 if you would, Mr. Williams - go through what this bill  
17 does.

18 COMMISSIONER WILLIAMS:

19 Okay. First of all, Mr. Chairman, let me explain where  
20 this bill differs from Dankworth 2.

21 MR. RAY:

22 That's the main thing.

23 COMMISSIONER WILLIAMS:

24 It differs from it in section 13 which in Dankworth 3 starts  
25 on page 14.

1 MR. DANKWORTH:

2 You'll have to remember that Dankworth number 2 has  
3 never been explained. We've just referred to it.

4 COMMISSIONER WILLIAMS:

5 I understand that. But I want to first explain what the  
6 difference is because I believe the concept of Dankworth 2  
7 has been discussed. Section 13 modifies the economic  
8 limit factor in the present law. Under Dankworth 2 it  
9 simply was going to be made an economic limit factor of  
10 1 for the first 10 years after a property came into  
11 production. And then it would go back to the standard  
12 formula. This one does much the same thing. It uses  
13 the same formula as in the present law. It provides  
14 that the economic limit factor will be 1 for the first  
15 10 years if, and only if, the field is not so -- is not  
16 a marginal field. And the criterion of whether it is a  
17 marginal field or not is when you calculate what its  
18 economic limit factor in the formula would be, if it  
19 ends up being .7 or above it's not marginal. Therefore,  
20 its economic limit factor is 1 for the first 10 years.  
21 If it comes out that it is .7 or less then it is a marginal  
22 field, and it should have the relief right from the  
23 beginning that the economic limit factor is designed to  
24 give. That's the break even point, then, as an indicator  
25 of the economic strength of a field as it is coming on

1 stream. If its formula economic limit factor is below .7  
2 then it gets its formula economic limit factor because it  
3 needs that relief. If it's at .7 or higher -- I'm sorry,  
4 if it's over .7, then for the first 10 years the economic  
5 limit factor will be 1. That means that for the  
6 stronger fields, for the first 5 years, they will be taxed  
7 at a flat rate of 12.25% with no reduction, and then  
8 for the next 5 years, they will be taxed at 15%, with no  
9 reduction, and then finally, starting in the 11th year,  
10 they'll go back to the standard formula. For the marginal  
11 fields for the first 5 years there would be at 12.25% times  
12 their ELF, whatever it is, that's less than .7. And  
13 then it goes to 15% times the ELF, whatever it is, which  
14 is .7 or less. And then it goes to the standard formula,  
15 period, just as it has been. That's the difference  
16 between Dankworth 3 and Dankworth 2. Now, Dankworth 2  
17 sets out in section -- well, first of all, there are  
18 three sections that deal with ordinary corporations.  
19 The first one is a wart - this is in section 2 - and it's  
20 the retroactive wart - it just simply makes the provisions  
21 in 43.20 parallel to the provisions in Chapter 21 about  
22 who is subject to which Chapter. Section 3 we've already  
23 discussed - this introduces a new graduated, stair-step,  
24 progressive rate schedule for corporations - the more they  
25 make the higher their bracket becomes. This one would,

1 section 3 is made retroactive to the start of this year  
2 and it applies only to this year. The tax rate can go  
3 as high as 11% for taxpayers making over \$2 million.

4 MR. GARDINER:

5 Does that create any legal vulnerability, the fact  
6 that you are retroactively putting in a higher rate  
7 for just one year?

8 COMMISSIONER WILLIAMS:

9 We are in the middle of the year.

10 MR. GARDINER:

11 Yes, I know, but does that -- I might, as a taxpayer, if  
12 you did that to me, say that wasn't the neatest idea in  
13 the world. Why are you -- I would argue, well, why are  
14 you coming in 11% this year if 9% is going to be good  
15 enough for all the years to come? Maybe you just want  
16 to gouge me now, and besides that you're making it  
17 retroactive.

18 COMMISSIONER WILLIAMS:

19 On the other hand, you are also giving relief at the  
20 lower end of the scale - it will depend on how much you  
21 are making. Perhaps a simpler thing to do is to defer the  
22 tax relief so that people don't see it until they file  
23 their returns in April of 1983.

24 MR. GARDINER:

25 I'm just being argumentative as to whether it is legally

1 vulnerable.

2 COMMISSIONER WILLIAMS:

3 I understand, and that's the alternative.

4 MR. CONDON:

5 I don't think it is legally vulnerable. There have been  
6 previous occasions, as you well know, when we've changed  
7 the tax half way through the year and it has been  
8 retroactive to the beginning of the year. As a matter  
9 of fact that's how we got into Chapter 21.

10 MR. GARDINER:

11 And they didn't like that.

12 MR. CONDON:

13 Well.

14 MR. RAY:

15 Gentlemen, if I could ask you on the Dankworth 3 - does  
16 this meet the first criteria, that it does not permit the  
17 State's share to fall below 30%?

18 COMMISSIONER WILLIAMS:

19 That's correct.

20 MR. RAY:

21 Does it meet the second criteria, it must improve our  
22 legal position?

23 COMMISSIONER WILLIAMS:

24 Yes, it does.

25 MR. RAY:

Does it do anything with litigation?

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1 COMMISSIONER WILLIAMS:

2 Well, no. Probably not.

3 MR. DANKWORTH:

4 It doesn't get us -- what do you mean it doesn't improve  
5 litigation? It does set moot the case in court, doesn't  
6 it? It does involve the litigation to some extent, doesn't  
7 it?

8 COMMISSIONER WILLIAMS:

9 I said it improved our legal position. And that's number 2.  
10 But to extinguish litigation - I assume they will continue  
11 to fight over the money that has been paid in under  
12 Chapter 21.

13 MR. DANKWORTH:

14 Okay. I'm sorry. I didn't ...

15 MR. RAY:

16 Does the -- what does the Gardiner proposal -- does that  
17 meet the first criteria?

18 COMMISSIONER WILLIAMS:

19 Yes.

20 MR. RAY:

21 Does it meet the second criteria?

22 COMMISSIONER WILLIAMS:

23 Yes.

24 MR. RAY:

25 How about the third? Do you extinguish the litigation?

1 COMMISSIONER WILLIAMS:

2 No.

3 MR. GARDINER:

4 I don't think anything except the industry settlement  
5 would do that.

6 MR. RAY:

7 Maybe we ought to outlaw them.

8 COMMISSIONER WILLIAMS:

9 The election would also do that -- could do it.

10 MR. RAY:

11 It's too much trouble. The State should get out of the  
12 oil business. They cause too much trouble.

13 COMMISSIONER WILLIAMS:

14 Mr. Chairman? May I continue on with the explanation of  
15 the bill, or am I cutting off your ...

16 MR. RAY:

17 Do you really want to, Senator?

18 MR. DANKWORTH:

19 Well, it's pretty important, and I intend to move this  
20 as an amendment to the bill. And if you'd like, if the  
21 members are satisfied with it, I ...

22 MR. RAY:

23 Well, it's of no consequence to me whatever ...

24 MR. DANKWORTH:

25 I would like to pursue it, and as rapidly as possible.

1 I think what the Chairman is saying is let's don't repeat  
2 old stuff.

3 MR. RAY:

4 What I'd really like to do is to have you make a  
5 comparison between the Gardiner proposal and the Dankworth  
6 proposal, if you could?

7 COMMISSIONER WILLIAMS:

8 The biggest difference, probably, is going to be the fact  
9 that you continue to have the principle of separate  
10 accounting be applied in the future, and therefore liability  
11 under separate accounting, or exposure to liability under  
12 separate accounting continues to pile up. Although that  
13 means in fiscal year '82, perhaps, it's not necessary to  
14 have an escrow, and strictly speaking it would be  
15 necessary to have one of about \$35 million, but that's  
16 small compared to the escrow that you are going to need  
17 the next year which is several hundred million dollars,  
18 and then several hundred million dollars more the following  
19 year, to simply be prudent and have the money set aside  
20 in the event that separate accounting is struck down.  
21 Dankworth 3 goes to a different formula. It's no longer  
22 the question of separate accounting. It goes to the  
23 question of a formula. Lots of states have unique  
24 formulas. Iowa has a unique formula and it was upheld  
25 by the U.S. Supreme Court. Its formula looks only at sales.

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1 New York has a unique formula. It has got the standard  
2 three factors but it double counts sales. Florida, I  
3 think, double counts property. The states have a great  
4 deal of latitude to adjust their formulas. Now, it's true  
5 our formula will also be unique. But I think there's a  
6 reasonable basis for it when you are -- which will  
7 sustain it when you are dealing with a depleting asset.  
8 The standard three factors just don't apply to an  
9 extractive industry. Payroll doesn't apply here because  
10 this industry is highly capital intensive. Payroll  
11 overstates the extent of their business activity here.  
12 Sales -- by the oil companies' own accounting, two thirds  
13 of their profits comes from their production, not from  
14 their sales.

15 MR. RAY:

16 Stick to the 2, will you. Are you still talking  
17 about the 2; comparison between Dankworth and Gardiner's?

18 COMMISSIONER WILLIAMS:

19 Yes.

20 MR. RAY:

21 All right.

22 COMMISSIONER WILLIAMS:

23 And finally, you know, land -- I'm just justifying the  
24 formula, explaining why -- well, I can cut it short.

25 MR. GARDINER:

I think there's this issue of the escrow. I agree under what

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1 I propose, which was proposed by the administration,  
2 there would be potentially a need for a future escrow.  
3 Would we need an escrow if the modified apportionment  
4 bill was seriously attacked by the producers in court?  
5 Would you advocate an escrow then?

6 COMMISSIONER WILLIAMS:

7 My reaction would be, looking at it from the Department's  
8 point of view, I would think that I would recommend an  
9 escrow no more than I would in the case of the backstop  
10 tax. That is, no, I would not recommend an escrow.

11 MR. CONDON:

12 Do you want my recommendation? My recommendation would  
13 be no too.

14 MR. RAY:

15 In your judgment, which, from the position of the  
16 administration, would you approve - the Dankworth 3 or  
17 the Gardiner approach?

18 MR. CONDON:

19 From the position of the administration, we think the  
20 Dankworth 3 is more desirable, assuming that it will  
21 pass.

22 MR. RAY:

23 What do you think, Commissioner Williams?

24 COMMISSIONER WILLIAMS:

25 That's correct. I concur.

1 MR. RAY:

2 Are you back to doing nothing now, is that it?

3 COMMISSIONER WILLIAMS:

4 If Dankworth 3 will not pass.

5 MR. RAY:

6 That's the most desirable - or that's the least desirable,  
7 and that's the end result it might be - is nothing.

8 MR. CONDON:

9 Well, if Dankworth 3 will not pass then pass Gardiner 1.

10 MR. DANKWORTH:

11 That one won't pass.

12 MR. HALFORD:

13 I've got a question with regard to Dankworth 3. There's  
14 some indication that there would be an actual tax increase  
15 on other non-oil businesses in the State, and on a  
16 retroactive basis. If that increase is part of what  
17 we're paying the bill with, how much is it? And what  
18 happens if you take it out?

19 COMMISSIONER WILLIAMS:

20 You mean in section 3 there - that increase that goes up  
21 to the 11%?

22 MR. HALFORD:

23 Right. 11%.

24 COMMISSIONER WILLIAMS:

25 It'll cost you \$140 million because the tables apply to all

1 corporations.

2 MR. HALFORD:

3 Right. If you don't make it retroactive, what is the cost?

4 COMMISSIONER WILLIAMS:

5 Half of that.

6 MR. HALFORD:

7 140 per year.

8 COMMISSIONER WILLIAMS:

9 In this fiscal year 1982, coming up.

10 MR. RAY:

11 Would you repeat that again? I didn't quite get that.

12 COMMISSIONER WILLIAMS:

13 Essentially, the question was if we only adopted section 4  
14 instead of section 3 in Dankworth 3, what would the revenue  
15 effect be coming up? There's a revenue effect that would occur  
16 only in fiscal year '82, and that would be a reduction, by  
17 not enacting section 3 -- a reduction of about \$140 million  
18 in fiscal year '82. If you made it -- if you adopted  
19 section 3 starting July 1, then you'd have half, roughly  
20 half.

21 MR. HALFORD:

22 How does that \$140 million breakout in terms of what  
23 industries, who pays the bill -- where does it breakout?

24 COMMISSIONER WILLIAMS:

25 90% of our revenue comes from the oil industry.

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1 MR. DANKWORTH:

2 I wanted to -- did you have an opportunity, Commissioner  
3 Williams, on the oil and gas service company, talked about  
4 a proposed amendment which would probably fit in here --  
5 did you have a chance at all to review that? Or would you  
6 be able to comment on it at this time?

7 COMMISSIONER WILLIAMS:

8 Yes.

9 MR. DANKWORTH:

10 Would you?

11 COMMISSIONER WILLIAMS:

12 Yes, I would. First of all, the amendment as proposed  
13 would cause a great deal of confusion because of the  
14 consolidation of the Alaska Pipeline Commission with the  
15 Alaska Public Utilities Commission. And this says that it's  
16 a taxable public utility income of a public utility  
17 regulated by the APUC will be determined pursuant to separate  
18 accounting, essentially, is what it's saying. The  
19 question will then be whether the, you know -- we've got  
20 separate accounting on oil pipelines now. It's contemplated  
21 that it's going to trans -- may transfer over if Dankworth 3  
22 is adopted. This would be inconsistent with that transfer,  
23 number 1. Number 2, I think that there may be a problem  
24 when you are talking about only utilities that are regulated  
25 by the State of Alaska. That's, by definition, in-state, and

1 you may have a challenge on its face of tax treatment  
2 in-state versus out-of-state taxpayers. Number 3, the  
3 relief that they are talking about - 43.19.010(18)(a)-  
4 is really -- 43.19.010 article 4 section 18(a) -- and  
5 that's power that the Commissioner already has, and that  
6 they can already seek relief under in the statutes. It  
7 says,"if the allocation and apportionment provisions of  
8 this article do not fairly represent the extent of the tax-  
9 payer's business activity in the State, the taxpayer may  
10 petition for, or the tax administrator may require, in  
11 respect to all or any part of the taxpayer's business  
12 activity, if reasonable, (a) separate accounting." So it  
13 can get the relief administratively. If they fail to get  
14 the relief, or they are unsatisfied with the administrative  
15 relief, there are provisions to take it to court. It's  
16 not necessary to create all these legislative problems  
17 with the bill, I don't think.

18 MR. GARDINER:

19 With this 10 year exemption business, what happens to the  
20 State's revenues after Prudhoe Bay gets its 10 years in?  
21 What's going to be the loss in State revenue during those  
22 years?

23 COMMISSIONER WILLIAMS:

24 There will be a drop as there would be with any other field  
25 that's discovered in the future whose initial economic limit

1 factor is robust, over .7, will be at 1 for those first  
2 10 years, and then it will fall back. In the case of  
3 Prudhoe Bay, I don't know -- probably, the economic limit  
4 factor in 1987 will be .6 or .7, and maybe .8, and if that's  
5 the case it would drop by 20% when the 10 years run out --  
6 20 to 30%.

7 MR. RAY:

8 Commissioner, there's been a suggestion that the Dankworth --  
9 both 2 and 3 -- that it would make a substantial increase  
10 on the taxes on pulp mills, airlines, ALASCOM -- is this  
11 true?

12 COMMISSIONER WILLIAMS:

13 Well, I certainly can't answer the question about ALASCOM,  
14 since you mentioned them by name, but I can -- I don't  
15 know what the net profits are of pulp mills. I know they  
16 have high grosses, but they have small nets. And this is  
17 net income - this is not gross income. So if there...

18 MR. RAY:

19 You can't answer that competently, at this time, right?

20 COMMISSIONER WILLIAMS:

21 I think that to get into specifics -- first of all, I don't  
22 have the information with me. And second of all, I probably  
23 would start verging on confidential information of individual  
24 taxpayers.

25 MR. RAY:

Don't get too slippery, Commissioner.

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1 COMMISSIONER WILLIAMS:

2 I try not to.

3 MR. GARDINER:

4 Mr. Chairman, since yesterday was the first day we had to  
5 start looking at this bill, I -- the reason I ask the  
6 question was my information indicated that the -- when this  
7 ELF thing kicks in in 1987, when Prudhoe Bay has got its  
8 10 years in, that the revenue drop in the next 3 years  
9 would be in the order of \$500 million a year. I don't know  
10 whether that's correct or not. The Commissioner did say  
11 there will be a drop - he said 20% - I don't know the  
12 numbers well enough to know if that's the case or not. But  
13 I would like to know the exact answer to that, and if my  
14 numbers that I've got aren't correct, I would like to get  
15 some numbers from the Commissioner in terms of what he  
16 calculates the drop would be at that point.

17 COMMISSIONER WILLIAMS:

18 Mr. Chairman, I'm not in a position to dispute Representative  
19 Gardiner's numbers. The point is no one knows how many  
20 wells will be drilled in 1987. I can develop a drilling  
21 scenario that would have the ELF at .5. If the point is that  
22 you believe the revenues will fall in half, you can justify  
23 that and I can't dispute it. The fact is, though, that they  
24 will revert back then to the curve that we have under the  
25 present law.

1 MR. GARDINER:

2 Maybe we won't have a 43.21.

3 COMMISSIONER WILLIAMS:

4 Oh, we probably could by then because we will have a decision.

5 MR. RAY:

6 Do you have your copy of Dankworth 3 there?

7 COMMISSIONER WILLIAMS:

8 Yes, I do.

9 MR. RAY:

10 On page 3, line 8 - if you would change the figures -- or  
11 on line 9 - if you would change the \$2 million to \$4 million;  
12 and on line 10, from \$2 million to \$4 million what  
13 would that do, if anything?

14 COMMISSIONER WILLIAMS:

15 In the overall scheme of things, I don't think the effect  
16 will be very large. I don't know off the top of my head  
17 how many taxpayers there are who fall in that category but  
18 there are probably, maybe, a few dozen, perhaps as many  
19 as a hundred. And it's not going to be a major revenue  
20 adjustment - several hundred thousand dollars, maybe a  
21 million.

22 MR. RAY:

23 It is my hope -- of course, I just express it -- the body  
24 is certainly open for motions at any time. I would think  
25 that perhaps any proposal that might be forthcoming at this

1 time could not garner the votes on either side, or, I mean,  
2 on both sides. So if there are motions I will accept a  
3 motion, but I would say that possibly we cannot finish  
4 this until tomorrow. Senator Dankworth?

5 MR. DANKWORTH:

6 If I understand you, Mr. Chairman, you would entertain a --  
7 if I cared to I could move an amendment that we -- you don't  
8 want to vote on it until tomorrow.

9 MR. RAY:

10 Sir, it's not within my prerogative to tell the Committee  
11 what to do. I appreciate your concern and consideration.  
12 I would just as soon not vote on it. That does not preclude  
13 you from offering it, and requesting a vote.

14 MR. DANKWORTH:

15 Well, sir, and I respect that, and I have no problem waiting  
16 until tomorrow for the vote but for the purpose of discussion,  
17 and so that we could offer some amendments, I would like  
18 at least to make a statement to the Committee - that at the  
19 next meeting, so we probably won't be able to take lengthy  
20 testimony considering the work tomorrow, I would like to  
21 tell the Committee that I intend to propose Dankworth number 3  
22 as an amendment to 524 tomorrow. And I intend to try to  
23 amend it to include, on page 3, raising that to \$4 million  
24 on line 9; and raising the figure of \$2 million on line 10  
25 to \$4 million. And those amendments I would make -- so with

1 that I won't make the motion -- defer it until tomorrow.

2 MR. RAY:

3 Senator, I would accept a motion -- as far as changing  
4 the body of the bill, we can amend it anything after the  
5 title and just substitute the Gardiner proposal, or the  
6 Halford -- whatever, we could do that. It's just a matter  
7 of semantics. It is not my intent to take any public  
8 testimony tomorrow. I think we have heard from anybody  
9 that has wanted to testify on this that wishes, and I think  
10 it's time that, because of the shortness of the, expected  
11 shortness of the session -- sir?

12 MR. DONALDSON:

13 I don't believe we have further testimony, but we would  
14 be willing to answer questions should the Committee have  
15 them tomorrow or ...

16 MR. RAY:

17 We'll try not to have any for you, sir. We stand -- how  
18 about 2:00 tomorrow? Give you enough time to get this  
19 thing done? 1:00 tomorrow? We stand adjourned until 1:00  
20 tomorrow.

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22 (meeting adjourned -- 4:45 p.m.)  
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C E R T I F I C A T E

STATE OF ALASKA )  
 : SS.  
FIRST JUDICIAL DISTRICT )

I, JUDITH R. JONES, a Notary Public, duly commissioned and qualified in and for the State of Alaska, do hereby certify that the foregoing June 23, 1981 meeting of the Free Conference Committee on Senate Bill 524 was recorded by me and thereafter transcribed by me or someone under my direction.

I further certify that the transcript, consisting of 64 pages, is a full, true and correct transcript of the proceedings.

I further certify that I am not a relative of any of the parties nor financially or in any other way interested in the outcome of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this \_\_\_\_ day of July, 1981.

\_\_\_\_\_  
Notary Public, State of Alaska  
My Commission Expires: 11/30/84

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1 ALASKA STATE LEGISLATURE, TWELFTH LEGISLATURE  
2 FREE CONFERENCE COMMITTEE ON SENATE BILL 524  
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7 TRANSCRIPT OF PROCEEDINGS

8 JUNE 24, 1981  
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17 COMMITTEE PRESENT:

18 Senator Bill Ray, Chairman  
19 Senator Ed Dankworth  
20 Senator Don Bennett  
21 Representative Terry Gardiner  
22 Representative Patrick O'Connell  
23 Representataive Richard Halford

24 OTHER LEGISLATORS PRESENT:

25 Representative Hugh Malone

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PROCEEDINGS

6/24/81

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MR. RAY:

The Free Conference Committee on House Committee Substitute for Senate Bill 524 please come to order. Commissioner Williams? With the agreement of the Committee it's the request of the Commissioner to make a few remarks.

COMMISSIONER WILLIAMS:

Thank you, Mr. Chairman. What I'd like to do is very briefly explain the rationale for the 3 factors that are used in the formula for apportionment in the bill that was referred to yesterday as Dankworth 3. Under the Multistate Tax Compact the 3 standard factors that are used for measuring business income in a state are the ratio of property, payroll and sales in that state to the worldwide property, payroll and sales. And then you take the average of those 3 ratios, and that gives you your apportionment factor. With respect to an industry such as oil and gas, particularly the oil and gas industry, those factors are not completely appropriate for the circumstances. That's why one of them is deleted in the version of the bill, and is replaced with an extraction factor. What happens is payroll is deleted so you have a property factor and a sales factor, but you do not have payroll - instead you have extraction. The reason for this

1 is simply -- well, first let me explain the deletion of  
2 the payroll factor. The reason for the deletion of the  
3 payroll factor is this is an enormously capital intensive  
4 industry. When you compare their capital investment per  
5 employee vis-a-vis other industrial corporations you find  
6 that the ratio is 4 to 5 times higher. And that's something  
7 that has held up over the last 5 years. That is to say,  
8 they have 4 or 5 times as much capital per employee as  
9 a steel mill or car manufacturer, something like that --  
10 this is on average. The -- to give equal weight then to  
11 payroll -- well, before I get to that. They have this  
12 enormous capital intensiveness; they have very large  
13 sales, of course, yet their profitability per dollar of  
14 assets is about the same as the industry, as American  
15 industry all together. It's a few percent difference,  
16 but it's not grossly out of line. Similarly, their return  
17 on their sales volume as a percentage is not very  
18 different from their return on sales that industrial  
19 corporations in the United States generally have. When you  
20 look at return per number of employees, once again, you  
21 find that the factor is very, very much higher - by a  
22 factor of 4 or 5 dollars of profit per employee rather  
23 than you have dollars of profit per employee for industry  
24 as a whole. What this means, then, is that if you give  
25 equal weight to the payroll, which is essentially how many

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1 employees you have in a state versus all the employees  
2 everywhere of the firm, you are overstating the amount  
3 of business income attributable to those employees. Thus,  
4 we believe that it is appropriate to delete the factor,  
5 and support its deletion. Now replacing it with an  
6 extraction factor is to remedy a defect that you  
7 have in the property factor. The property factor works  
8 fine when you have an ordinary business that is simply  
9 using land - you look at the value of land; you look at  
10 the value of the buildings on it; and that ratio is  
11 used. For a steel mill that works very fine. And after  
12 a hundred years or 50 years when the steel mill is all  
13 done producing steel, you still have the land behind.  
14 You haven't destroyed or consumed the land. It's a very  
15 big difference when you have an oil field. After 50 years  
16 the oil is gone. You still have the use of the land, and  
17 so when the production equipment is taken away you can  
18 put something else in. But something that was there is  
19 gone, and gone forever - or at least for 50 million years.

20 MR. RAY:

21 Could I interrupt you? Would you please close the door?  
22 There's a considerable amount of noise here and some of us can't  
23 hear too good. Thank you very much. I'm sorry, Commissioner.

24 COMMISSIONER WILLIAMS:

25 That's okay. Thank you. So the purpose of an extraction

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page 3

1 factor, then, is to recognize the limitation of the  
2 traditional property factor. That property reflects the  
3 use of the property and the man-made things that are  
4 placed on the property. But it does not adequately  
5 reflect the fact that in an extractive industry you are  
6 removing something from the land that is no longer there.  
7 So it seems to us to be appropriate, again, to recognize  
8 that fact and incorporate an extraction factor. That's  
9 basically the gist of my comments today. Unless there  
10 are questions, that's all I have.

11 MR. RAY:

12 Are there any questions from members of the Committee?

13 Thank you very much, Commissioner.

14 COMMISSIONER WILLIAMS:

15 Thank you, Mr. Chairman.

16 MR. RAY:

17 Gentlemen, we're in the position now -- sir?

18 MR. MALONE:

19 Thank you, Mr. Chairman. I do have a question on the  
20 proposal that the Commissioner is speaking to.

21 MR. RAY:

22 I'm sorry, Representative Malone. I ...

23 MR. MALONE:

24 Thank you, Mr. Chairman. Commissioner Williams, in the  
25 compromise proposal, I guess number 3 is being described,

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1 if I've got the right lingo,  
2 how would the new proposed tax law discriminate between  
3 companies that may be engaged in several types of businesses,  
4 including oil and gas, and those that are engaged in oil  
5 and gas? In other words, how would you know where to  
6 apply the apportionment formula to their income if you have  
7 a consolidated return, if a company has had some oil and  
8 gas business and then some other business activity that  
9 was not oil and gas - how would you break out the  
10 apportionment formula to concentrate that on their single  
11 tax return?

12 COMMISSIONER WILLIAMS:

13 The Department always has had the option of allowing the  
14 individual entities to report on their own return, and,  
15 in fact, for instance, in the split between those, under  
16 present law, those who are engaged in oil and gas are under  
17 Chapter 21. They file a return under Chapter 21 with  
18 all the calculations under that Chapter. If they are  
19 part of a consolidated business, and there are other  
20 corporate entities in the State who are also in that  
21 consolidated business that aren't engaged in Chapter 21  
22 activities, they file separate returns under Chapter 20.  
23 The Department can require combined returns from those  
24 other taxpayers, or it can allow separate returns to be  
25 filed for each of those taxpayers. That rule would

1 presumably continue under this. There would be no reason  
2 for it not to.

3 MR. MALONE:

4 Okay, so if you had a company that was engaged in various  
5 types of businesses, and they were subject to apportionment,  
6 being, say, a company that had reason to use some  
7 apportionment for their income, then how would the  
8 extraction factor fit in? It would only fit in to that  
9 portion of their income that came from oil and gas? Or  
10 would it cover those portions of their income that came from  
11 other types of activities as well? Or would you use a  
12 standard 3 factor apportionment formula there? That's a question, again,  
13 how would you break that out?

14 COMMISSIONER WILLIAMS:

15 It would depend on the individual circumstances of a  
16 corporation. But if it was appropriate in a given set  
17 of circumstances you could look at -- let's say they were  
18 in a mercantile enterprise, selling curtains -- and  
19 it was appropriate in those circumstances to look at  
20 the curtain sales separately we could apply the 3 factors  
21 to the curtain business, and apply the other, the special  
22 factors here to the oil and gas business income. The  
23 Internal Revenue Code talks about unitary businesses,  
24 and although we are using the term here consolidated  
25 business, we are using that in a sense of who you can look

1 to gather to combine, in looking at that business.  
2 Typically, for instance, where you have an oil company  
3 and it owns a department store chain, the oil company is  
4 engaged in one unitary business - the department store  
5 chain is a different unitary business, and it would report  
6 separately. And that would probably continue. They would  
7 be different businesses.

8 MR. MALONE:

9 Well, what I'm getting at is that, you move away from the  
10 standard 3 factor apportionment and put in an extraction  
11 factor. And then you have a business that may be engaged  
12 in various lines -- which one applies? And if the  
13 extraction factor is carried over to the total income,  
14 where, in fact, it might not make sense to apply it there --  
15 whether that puts anything other than the conventional  
16 3 factor formula in sort of a dangerous position?

17 COMMISSIONER WILLIAMS:

18 The way we would resolve that is either on an individual  
19 case basis, or perhaps by regulation. I'll clarify it  
20 to make it clear that the intent is to look at the type  
21 of business. If you have an enterprise that's, as I say,  
22 engaged in a mercantile operation of some sort, and another  
23 one that's -- and part of its activity is as a wholly  
24 owned subsidiary -- yet it is primarily also engaged in  
25 oil and gas, you look at the type of business that it's

1 engaged in. You could, under the appropriate facts, say, the  
2 mercantile business, department store or whatever it was,  
3 was one unitary business, and the oil and gas was the other  
4 unitary business. You then look at the business income  
5 of the oil and gas unitary business and apply the 3 factors  
6 under this section 72 and come up with the oil and gas  
7 business income that was earned here. When you got over  
8 to the mercantile unitary business, you would apply the  
9 standard 3 factors, since the oil and gas factors aren't  
10 apposite there, and you look at the mercantile business income,  
11 apportion it according to the mercantile factors, the  
12 standard 3 factors, and that would be the taxable income  
13 from the mercantile business.

14 MR. MALONE:

15 Thank you, Mr. Chairman. I don't have any further  
16 questions along that line. I would say, though, that  
17 I think that that is a serious issue when moving to a  
18 apportionment factor that may not be applicable to all  
19 the types of business operations that a company is engaged  
20 in. I think that that at least raises a question in my  
21 mind as to how something like that would work.

22 MR. GARDINER:

23 Mr. Chairman, I don't have any more questions on ...

24 MR. RAY:

25 Were you trying to get my attention for some reason?

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MR. GARDINER:

No. I will at some point when you are done here.

MR. RAY:

Well, then it would be within my prerogative to ask the Committee at this time if they have any considerations, or any proposals? Senator Dankworth?

MR. DANKWORTH:

Thank you, Mr. Chairman. As we discussed when I first started, when we first opened that Committee, that I had laid a couple of amendments of different types on the table for our discussion over the last few days. One was the settlement agreement. I think that's had pretty thorough discussion. The second one was a proposed settlement -- excuse me, I don't mean the word settlement. It's a compromise amendment taken from the settlement agreement. And the third one is the one that-- there were some corrections that were made, including the Halford amendment on page 3 -- that's before us now, and I was just laying on the table, if it's permissible from the Chair, that I'd like to offer that now as a Substitute for the Committee, to consider that as a Substitute for the Free Conference Substitute for Senate Bill 524.

MR. RAY:

Is that a motion, sir?

MR. DANKWORTH:

That's a motion.

1 MR. RAY:

2 Is there any objection?

3 MR. GARDINER:

4 Yes. Mr. Chairman, I'd like to offer -- if that's being  
5 offered as an amendment to -- the only way I can do it  
6 is offer an amendment to an amendment -- a couple other --  
7 one bill that I offered yesterday to the Committee, and  
8 a variation of that bill. So if that's the way you'd  
9 like to conduct it.

10 MR. RAY:

11 Well, I suppose that it would be proper to move any  
12 proposal that you have as an amendment and it's the  
13 will of the body which one they pick or choose. I would  
14 imagine, then, that a majority of 2 from each side  
15 would make a determination as to which proposal would be  
16 considered. We have a proposal before the Committee at  
17 this time. I know that I am stepping outside of my  
18 authority, but if I could ask you, Representative  
19 Gardiner, does your amendment have any significant changes  
20 other than what we have discussed yesterday?

21 MR. GARDINER:

22 Yes. Mr. Chairman, I have a proposal I made yesterday  
23 and a variation of that that meets the third criteria of  
24 the Governor's letter that none of the other proposals  
25 that we've had before us do. That's why I would ...

1 MR. RAY:

2 And then it would be up to me to request that Senator  
3 Dankworth, or to ask his feelings if he wants to hold  
4 his motion in abeyance to give you opportunity to talk  
5 to the Committee or to make a presentation to the  
6 Committee. Otherwise, we have a motion pending.  
7 Senator?

8 MR. DANKWORTH:

9 Mr. Chairman, if Representative Gardiner would like to  
10 discuss another proposal, I'd be glad to withdraw my  
11 motion to adopt the position I have for the purposes of  
12 letting him discuss his amendment. If he wants to  
13 move his, then fine.

14 MR. RAY:

15 Then I would ask, because of the time constraints, and,  
16 of course, that to the will of the Committee that we  
17 address the portion that we have not addressed previously,  
18 if that's agreeable with the Committee.

19 MR. GARDINER:

20 Okay. There's a one page sheet that makes it real simple.  
21 It just compares what I offered yesterday, and what I'm  
22 offering today, and Senator Dankworth's bill, five of  
23 the Governor's criteria that he stated in his letter.  
24 Mr. Chairman, I think the difference -- the one criteria  
25 in the Governor's letter that is not met, I think, by both

1 the proposal that I made, which I'm calling compromise  
2 1, there yesterday, is the protection of the revenues at  
3 risk. Under both the approach I offered yesterday and  
4 under Senator Dankworth's bill as offered, the existing  
5 money under 43.21, which the Attorney General said will  
6 be \$2 billion -- we'll just have to litigate that and  
7 see what happens -- it puts a lid on it. But that  
8 \$2 billion is still at risk. And we're not going to know  
9 for some years what happens to that \$2 billion. It does  
10 have the benefit of, you know, cutting off increased  
11 risk. But we will have \$2 billion at risk. What compromise  
12 2 there does is it puts in a backstop, which is repealed  
13 in 1985, which is at the time people estimate the suit  
14 will be resolved -- but it has the effect of simply  
15 backstopping those revenues at risk under 43.21 that has  
16 no collection caused under it. It's at 17 mills, rather  
17 than at the 30 and 20 that was in the original backstop  
18 bill which the House passes. So that has the effect --  
19 they credit everything that they pay under 43.21 against  
20 the reserve tax of 17 mills. It grants them the warts  
21 and the windfall profits deduction as in the other bill.  
22 But I think that's an important criteria. One of things  
23 that's not, again, backstopped beyond the \$2 billion is any  
24 new suit generated over the bill that Ed has offered,  
25 over the new apportionment formula, whatever is litigated

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1 over that will be at risk. We don't know whether that will  
2 be litigated because it isn't in law yet. And we won't  
3 know maybe for a while. But this second bill, I think, meets  
4 the original criteria - it protects the State's revenues  
5 in a better format than either of the bills. It improves  
6 our legal position by passing the warts and granting the  
7 windfall profits deduction. But it goes to a third  
8 criteria, and that is it totally protects the revenues  
9 at risk, that I don't think the other bills do.

10 MR. MALONE:

11 Thank you, Mr. Chairman. I'd like to speak to the  
12 proposal also. The -- as Representative Gardiner outlined,  
13 in the alternate proposal the revenues collected under  
14 43.21, with the technical amendments and the windfall  
15 profits tax exemption provided, the remaining revenues  
16 would be protected under the proposal, at least to some  
17 degree. Not at 100%, but by the time that the tax expires --  
18 that the reserves tax would expire -- there would be a very  
19 small amount of uncovered revenues. I think that that's  
20 an important question. Right now the liability that exists there  
21 is on the order of \$1 billion and will climb rapidly.  
22 Or if it doesn't climb rapidly, then we face, because of  
23 a new apportionment formula, then I think that we face  
24 possible legal problem with the new apportionment formula.  
25 I think that the, basically the approach is to use the

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1 severance tax to offset at least a portion of the revenues  
2 from the windfall profits tax deduction and the technical  
3 amendments. And then use a reserves tax to offset all but  
4 not -- a portion of but not all of the revenues collected  
5 under 43.21. That has the advantage of not raising any  
6 new issues, or giving any real potential for new issues  
7 arising because the basic parts of the law aren't being  
8 completely rewritten, they're just being cleaned up. And  
9 protects the State's income through a very traditional --  
10 or most of the State's income collected under the remaining  
11 provisions of 43.21 -- under a very traditional form of  
12 state and local government taxation. I think that the  
13 approach has the certainty that would be needed, and I  
14 think if that approach were adopted by this Conference  
15 Committee, and adopted by the legislature, I think it  
16 would eliminate the need to address this question again  
17 in this legislature.

18 MR. RAY:

19 Commissioner Williams, have you had an opportunity to look  
20 at this proposal at all?

21 COMMISSIONER WILLIAMS:

22 Just now.

23 MR. RAY:

24 Is there any discussion on the proposal? Are there any  
25 questions by any of the members to the proposer? That's

1 the end of your presentation, sir?

2 MR. GARDINER:

3 Yes. I'd just say one thing. I think it covers that  
4 one criteria that the other bills we are looking at  
5 doesn't - that protects the State's revenues at risk.  
6 You know, people have talked about reserve accounts  
7 and what about that \$2 billion hanging out there, and  
8 what about new suits -- and I think that that's where  
9 this bill goes farther than the other bills, and it still  
10 has the same financial impact on the producers that the  
11 other bills have. You know, we are basically not  
12 arguing over how much -- you know, the bills have about  
13 the same revenue effect. But the question is, how much  
14 it protects what's at risk. And I think this goes further.

15 MR. RAY:

16 Representative Malone, did you have something further?

17 MR. MALONE:

18 No, I think Representative Gardiner said -- I think the  
19 other thing is that no new issues would be introduced into  
20 possible litigation. That's another advantage of this  
21 bill.

22 MR. RAY:

23 That ends the discussion on the proposals. Is there any  
24 discussion from any of the members on any of the proposals?  
25 Are there any questions necessary to be answered? The

1 Chair is open for motions. Senator?

2 MR. DANKWORTH:

3 Mr. Chairman, I'd like at this time to -- after hearing  
4 that discussion -- I'd like to replace my motion that I  
5 just had prior to that discussion. And that we adopt  
6 that which has been passed out and better known, I suppose  
7 as Dankworth 3, and have that as the Committee Substitute  
8 for Senate Bill 524, I suppose, would be the motion, or  
9 let it be Free Conference Committee Substitute for Senate  
10 Bill 524.

11 MR. RAY:

12 For identification purposes, the proposal that is being  
13 suggested is this Dankworth 3.

14 MR. GARDINER:

15 Is that changed from yesterday?

16 MR. DANKWORTH:

17 Yes, it did. It had -- the only addition has been that --  
18 and I think I spoke to it a moment ago -- is that it  
19 has the Rick Halford -- on here ...

20 MR. RAY:

21 The changes in this bill, to my knowledge, are on page 3.  
22 Lines 9 and 10 have been changed to 4 million -- from 2 million  
23 to 4 million.

24 MR. DANKWORTH:

25 With that, sir, I move the Committee Substitute.

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MR. RAY:

The motion before the Committee is to adopt Dankworth 3 as Free Conference Committee Substitute for Senate Bill 524. Is there discussion? Are you ready to vote? Stand at ease. The Committee will come back to order. There is a technical change on page 15, line 5. A "b" should be "h". Line 15, I'm sorry. They haven't any "b". I thought it was pretty far down on the page to be 5, but I thought...

MR. GARDINER:

"H"?

MR. RAY:

"H". It should be "h" instead of "b". Is that change agreeable with the Committee? Is there an objection to that? We have the motion before us is for the adoption of Free Conference Committee Substitute for Senate Bill 524. And that Substitute is the Dankworth 3 amended. Are you ready for the vote? All those in favor do so by holding up your right hand. All those opposed. Let it show that the 3 Senate members were in favor. Representative Halford and Representative O'Connell were in favor. Representative Gardiner was opposed. Does anybody want to change their vote? Then the Free Conference Committee Substitute has been adopted. Yes.

1 (conversation between Mr. Ray and Mr. Dankworth)

2 MR. RAY:

3 Before I sign this I am going to take the privilege of  
4 the, as the Committee Chairman. I have a few words to  
5 say. I personally feel that, as a legislator and as a  
6 member of this legislature, that I owe an apology to  
7 the people of this State for the manner in which we have  
8 handled this entire oil taxation policy. I believe  
9 that until such time as we can establish in a competent  
10 court of jurisdiction, a firm taxing policy so  
11 that we know exactly what we are doing, we will never  
12 have any fiscal responsibility, we'll never have anything.  
13 That was one of my preferences as far as the settlement  
14 is concerned. I will be more than happy to go to a  
15 settlement in a court of law. That doesn't bother me a  
16 bit. In fact, I think it would assist us, as legislators,  
17 to make that determination so we'll know once and for all  
18 exactly where we stand and what we can do. 'Til that  
19 time any settlements and continual tinkering and fooling  
20 around with this thing, we'll never get anywhere. That's  
21 my own personal opinion. If I owe an apology to the  
22 Committee - you have it. 24th today? Copies of the  
23 Free Conference Committee report. The meeting is adjourned.

24 (meeting adjourned)  
25

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C E R T I F I C A T E

STATE OF ALASKA )  
 : SS.  
FIRST JUDICIAL DISTRICT )

I, JUDITH R. JONES, a Notary Public, duly commissioned and qualified in and for the State of Alaska, do hereby certify that the foregoing June 24, 1981 meeting of the Free Conference Committee on Senate Bill 524 was recorded by me and thereafter transcribed by me or someone under my direction.

I further certify that the transcript, consisting of 18 pages, is a full, true and correct transcript of the proceedings.

I further certify that I am not a relative of any of the parties nor financially or in any other way interested in the outcome of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this \_\_\_\_ day of July, 1981.

\_\_\_\_\_  
Notary Public, State of Alaska  
My Commission Expires: 11/30/84

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