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INTERIM REPORT OF THE

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Prepared by

Jonathan Sperber, Staff

at the direction of

Representative Mike Davis, Chairman
House Special Committee on Oil and Gas

January 22, 1986

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STATE OF ALASKA

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JUNEAU, ALASKA 99811
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HOUSE SPECIAL COMMITTEE ON OIL AND GAS

MEMORANDUM

From: Jonathan Sperber, Committee Aide

To: Rep. Mike Davis, Chairman
House Special Committee on Oil and Gas

Re: Interim Activities of the House Special Committee on Oil and Gas

Date: January 22, 1986

The House Special Committee on Oil and Gas focused on the following issues during the interim: the TAPS tariff case, proposals to sell royalty oil to certain in-state refiners, state policy regarding the taking and disposition of royalty oil and gas, projected development of North Slope oilfields, and the unpermitted release of oil and hazardous substances.

The committee held three public hearings in Anchorage on these issues, and all meetings were teleconferenced to Juneau, Fairbanks, Kenai, Valdez and other sites. The committee chairman also moderated a public meeting in Fairbanks regarding a proposal by Arctic Energy Corporation to build a refinery in Fox.

Related activities included attending conferences sponsored by industry and government relating to Arctic drilling technology, the disposal of hazardous wastes and drilling muds, pipeline ratemaking, and marginal oilfield development. The committee chairman also participated in all meetings of the Alaska Royalty Oil and Gas Development Advisory Board during this time.

Information gained through these meetings and conferences was supplemented by on-site visits to the North Slope oilfields, MAPCO's and Petro Star's North Pole refineries, Tesoro's Kenai refinery, one of Shell's Cook Inlet platforms, and one of Chevron's oil tankers.

The trip to the North Slope included visits to Milne Point, Endicott, Lisburne, Kuparuk and West Sak, a flight over Union's drill ship and several exploration islands, and a tour through the West Dock waterflood facility.

The committee drafted two major pieces of legislation as a result of these interim activities. These include one bill which would create a new chapter within AS 38 relating to the taking and disposition of royalty oil and gas, and another bill which would establish a funding mechanism for responding to the release of oil and hazardous substances. A third bill, presently in draft form, would direct the Alaska Power Authority to fund a comprehensive feasibility study regarding the use of North Slope natural gas to produce cogenerated electricity.

HB 495
Question and Answer Overview

What does HB 495 seek to accomplish?

HB 495 attempts to clarify state policy and administrative procedures regarding the taking and disposition of royalty oil and gas. This clarification is intended to facilitate the procurement of royalty oil and gas by eligible purchasers, while also improving the working relationship between industry, the legislature, and the administration.

In order to effect these changes, HB 495 isolates oil and gas royalties from other royalty resources in AS 38. A new chapter comprised in part of sections of AS 38.05 and AS 38.06 would deal exclusively with the taking and disposition of royalty oil and gas. This new chapter, AS 38.16, would also consolidate criteria regarding the sale of royalty oil and gas into a single section.

The revisor of statutes has also been asked to consider rearranging certain sections of AS 38.05 in order to further clarify the requirements and procedures set forth in this chapter.

What are the major policy and procedural issues addressed in the bill?

HB 495 focuses on several issues of consequence to the state. Following is a brief outline of the policy changes proposed in the bill.

1. Clear direction is given to the commissioner of DNR regarding the taking and disposition of royalty oil and gas. Central to this policy is the maximization of state revenues, with secondary goals being to expand foreign markets and to supply existing and new in-state refineries and utilities with royalty oil at current market value.

2. The commissioner of DNR must submit an annual report to the legislature delineating the status of all state-owned royalty oil and gas production and disposition. The report must be submitted no later than the 15th day of each regular session.

3. The state reserves the right to purchase residual oil from in-state refiners.

4. Language is deleted that allowed royalty oil or gas taken in kind to be exported from the state only after the commissioner made a determination that "the royalty-in-kind oil or gas is surplus to the present and projected intrastate domestic and industrial needs" of the state.

5. The term of a competitively-bid disposition of royalty oil or gas which may take place without legislative approval is extended to two years from the current one year limitation.

6. The commissioner of DNR must make public written findings and conclusions relating to non-competitive dispositions of royalty oil and gas.

7. The Alaska Royalty Oil and Gas Development Advisory Board is transferred to the Department of Natural Resources from the Department of Commerce and Economic Development.

8. All oil and gas exploration incentives are retained, with the exception that royalties on oil and gas cannot be reduced below 12.5 percent.

9. An assignment of unrefined royalty oil purchased from the state is prohibited unless certain minimum benefits to citizens of the state are met.

10. Prior to disposing of royalty oil or gas, consideration must be given not only to a prospective purchaser's ability to provide significant price and supply benefits to citizens of the state, but also to the degree of certainty and intent of the prospective purchaser that these benefits will be provided.

11. Prior to disposing of royalty oil or gas, consideration must also be given to the local or regional desirability of the disposition.

12. DNR may provide by regulation for the confidentiality of documents and records in the same manner that this is presently done by the royalty board. In neither case should these confidentiality provisions preclude proper legislative review of proposed sales of royalty oil or gas.

HB 495
Sectional Analysis

* Section 1.

Chapter 16. Taking and Disposition of Royalty Oil and Gas.

HB 495 isolates oil and gas royalties from other royalties in AS 38, and clarifies state policy for the taking and disposition of royalty oil and gas. Chapter 16 is a new chapter comprised, in part, of sections of AS 38.05 and AS 38.06.

Sec. 38.16.010. Directs the state to maximize revenues related to the taking and disposition of royalty oil and gas. Secondary goals are to supply existing in-state refineries and utilities with royalty oil or gas at current market value, supply new in-state refineries and utilities with royalty oil at current market value, and expand foreign markets for royalty resources.

Sec. 38.16.020. Rewording, without substantive change, of the provision that the state give preference to taking its royalty in kind. [AS 38.05.182(a)]

Sec. 38.16.030. (a) Rewording, without substantive change, of the provision that the state give preference to disposing of its royalty by competitive bid to the highest bidder. [AS 38.05.183(a)]

(b) Rewording to clarify that a single competitive bid may be rejected. [AS 38.05.183(b)]

(c) The commissioner must make public written findings and conclusions relating to dispositions of oil or gas which are to be made other than by competitive bid.

Sec. 38.16.040. This section consolidates criteria for the commissioner and the board to consider when reviewing propsals to dispose of royalty oil or gas non-competitively. Changes to these criteria are:

(1) Cash value for the oil or gas shall not be below current market value. [AS 38.05.183(e)]

(2) No substantive change. [AS 38.05.183(e) and AS 38.06.070(a)]

(3) Consideration of projected local and regional economic benefits of refining or processing oil or gas in state. [AS 38.05.183(e) and AS 38.06.070(a)]

Sec. 38.16.040. (Continued)

(4) No substantive change. [AS 38.06.070(a)]

(5) No substantive change. [AS 38.06.070(a)]

(6) No substantive change. [AS 38.06.070(a)]

(7) Consideration must be given not only to a prospective purchaser's ability to provide significant price and supply benefits to citizens of the state, but also to the intent and degree of certainty that these benefits will be provided.

Sec. 38.16.050. (a) No substantive change. [AS38.05.183(f)]

(b)(1) Prohibits an assignment of unrefined royalty oil purchased from the state unless certain minimum benefits to citizens of the state are met.

(b)(2) Reserves to the state the right to purchase residual oil from in-state refiners.

Sec. 38.16.060. Deletes language allowing royalty oil or gas taken in kind to be exported from the state only after the commissioner has made a determination that "the royalty-in-kind oil or gas is surplus to the present and projected intrastate domestic and industrial needs" of the state. [AS 38.05.183(d)]

Sec. 38.16.070. Subsection (c)(2) of this section extends the term of a competitively-bid disposition of royalty oil or gas which may take place without legislative approval to two years from one year. [AS 38.06.055]

Sec. 38.16.080. Requires the commissioner to submit a royalty oil and gas report to the legislature no later than the 15th day of each regular legislative session.

Sec. 38.16.090. The department may provide by regulation for the confidentiality of documents and records. Similar provisions remain in effect for the board under AS 38.06. [AS 38.06.060]

Sec. 38.16.900. Definitions.

* Section 2.

Sec. 38.05.020. (b) Technical change, referencing AS 38.16.

* Section 3.

Sec. 38.05.035. Technical change, reflecting Ch. 64 SLA 85 (HB 103).

* Section 4.

Sec. 38.05.036. (a) Technical change, referencing AS 38.16.

* Section 5.

Sec. 38.05.036. (b) Technical change, referencing AS 38.06.060 and AS 38.16.090.

* Section 6.

Sec. 38.05.069. (f) Technical change, referencing AS 38.16.

* Section 7.

Sec. 38.05.135. (a) Retains all exploration incentives, with the exception that royalties on oil and gas cannot be reduced below 12.5 percent.

* Section 8.

Sec. 38.05.140. (c) Technical change, deleting language relating to oil and gas lease acreage. This language is transferred to the new subsection AS 38.05.180(aa).

* Section 9.

Sec. 38.05.180. (l) Technical changes regarding the state's ability to store or trade its royalty share. Also adds a provision requiring the commissioner to make written findings prior to storing or trading the state's royalty share.

* Section 10.

Sec. 38.05.180. (q) Technical change, referencing the new subsection AS 38.05.180(aa).

* Section 11.

Sec. 38.05.180. (r) Technical change, referencing the new subsection AS 38.05.180(aa).

* Section 12.

Sec. 38.05.180. (t) Technical change, referencing the new subsection AS 38.05.180(aa).

* Section 13.

Sec. 38.05.180. Technical change, adding the new subsection (aa).

* Section 14.

Sec. 38.05.182. (a) References to oil and gas are deleted from this subsection relating to the taking of royalty.

* Section 15.

Sec. 38.05.182. The new subsection (c) is added, stating this this section does not apply to royalty oil or gas.

* Section 16.

Sec. 38.05.183. (a) The commissioner is not required to provide written notice to the royalty board regarding the non-competitive sale of non-oil or -gas royalty.

* Section 17.

Sec. 38.05.183. (b) The commissioner is not required to provide written notice to the royalty board regarding the rejection of a competitive bid for non-oil or -gas royalty. Language is changed to clarify that a single bid may be rejected without necessitating the rejection of all bids involved in the sale.

* Section 18.

Sec. 38.05.183. (c) The commission is not required to provide written notice to the royalty board regarding the determination upon which the decision was based to sell non-oil or -gas royalty non-competitively.

* Section 19.

Sec. 38.05.183. A new subsection (h) is added, stating this this section does not apply to royalty oil or gas. Disposition of royalty oil and gas, including requirements that the commissioner provide written notice to the royalty board, is addressed in AS 38.16.030 and AS 38.16.040.

* Section 20.

Sec. 38.06.010. The purpose of AS 38.06 is expanded to include local or regional desirability as a major consideration for the disposition of royalty oil or gas. Also included is a technical change referencing AS 38.16.

* Section 21.

Sec. 38.06.020. The Alaska Royalty Oil and Gas Development Advisory Board is transferred to the Department of Natural Resources from the Department of Commerce and Economic Development.

* Section 22.

Sec. 38.06.040. Technical changes, referencing AS 38.16.

* Section 23.

Sec. 38.06.050. Technical changes, referencing AS 38.16.

* Section 24.

Sec. 38.06.070. Subsection (a) is deleted, and the substance of this subsection is transferred to AS 38.16.040. The board may recommend that refiners proposing to distribute and sell refined products and by-products in-state provide significant price and supply benefits to the citizens of the state.

* Section 25.

Sec. 38.06.080. Definitions.

* Section 26.

Sec. 43.05.010. (16) Technical change referencing AS 38.16.

* Section 27.

Sec. 44.62.175. (a) Technical change referencing AS 38.16.030. Also requires that notice of findings required to be made public by the commissioner be published in the Alaska Administrative Journal.

* Section 28.

Sec. 38.05.183. Subsections (d), (e), (f) and (g) are repealed in order that this section exclusively address the sale of non-oil and -gas royalty. The sale of oil and gas royalty is addressed in AS 38.16.030 and AS 38.16.040.

Sec. 38.06.055. This section is repealed, and provisions regarding legislative approval of royalty oil and gas contracts are transferred to AS 38.16.070.

* Section 29.

Sec. 01.10.070. (c) Provides for an immediate effective date.

10.

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

November 12, 1985

Mr. David Dierdorff, Revisor of Statutes
Division of Legal Aervices
Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99811

Dear Mr. ~~Dierdorff~~, David

Enclosed is a copy of draft legislation that is presently being placed into bill form by legislative counsel Terry Bannister. I believe that the clarity of AS 38.05 would be enhanced by rearranging certain sections and subsections within the chapter, though I would prefer these changes to be made by revision rather than by legislation. I therefore ask that you take the following proposals into consideration:

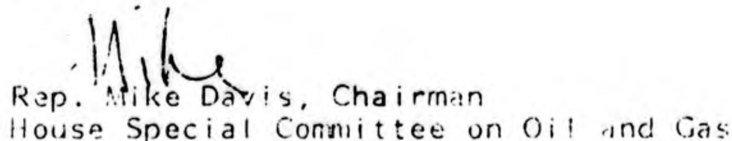
1. Transfer AS 38.05.140(a) and (b) to the new subsections AS 38.05.150(f) and (g), respectively.

2. Transfer AS 38.05.140(c) to the new subsections AS 38.05.155(c), 38.05.165(d), and 38.05.180(aa), as appropriate.

3. Transfer AS 38.05.140(f) to the new subsection AS 38.05.184(h).

4. Renumber AS 38.05.181 to AS 38.05.177 in order to segregate oil and gas from other mineral resources.

Sincerely,



Rep. Mike Davis, Chairman
House Special Committee on Oil and Gas

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM December 10, 1985

SUBJECT: Renumbering in AS 38.05
(W.O. 14-1399)

TO: Rep. Mike Davis
Chairman, House Special Committee on
Oil and Gas

FROM: David R. Dierdorff
Revisor of Statutes

I have reviewed your request for reorganization and renumbering of certain provisions in AS 38.05.140 and 38.05.181. Your request makes a lot of sense and if your bill (W.O. 14-1399) is passed by the 14th legislature, I will do the reorganization in connection with the transmittal of the bill to the Michie Company.

If your bill does not become law, I will make a note to our AS 38 file that the reorganization should be accomplished when the title pamphlet is next replaced.

If I can be of further assistance, please advise.

DRD:mkr
M1:125

1 IN THE HOUSE BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

2 HOUSE BILL NO. 495

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state oil and gas interests; and
7 providing for an effective date."

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

9 * Section 1. AS 38 is amended by adding a new chapter to read:

10 CHAPTER 16. TAKING AND DISPOSITION OF ROYALTY OIL AND GAS.

11 Sec. 38.16.010. LEGISLATIVE FINDINGS RELATING TO ROYALTY OIL AND
12 GAS. (a) The legislature finds that it is in the best interest of
13 the state and the citizens of the state that the state take and dis-
14 pose of royalty oil and gas in a manner that maximizes state revenue.

15 (b) To the extent consistent with the primary goal of maximizing
16 state revenue, the secondary goals for the state in the taking and
17 disposition of royalty oil and gas are to

18 (1) supply existing in-state refineries and oil- or gas-
19 based utilities with oil or gas at the current market value for the
20 oil or gas;

21 (2) promote new in-state refineries and oil- or gas-based
22 utilities that are economically feasible at the current market value
23 for oil or gas without the new refineries or utilities relying on
24 royalty oil or gas contracts;

25 (3) expand the foreign market for the resources of the
26 state.

27 Sec. 38.16.020. TAKING OF ROYALTY IN KIND. The state shall take
28 in kind an oil or gas royalty provided for in AS 38.05.180, unless the
29 commissioner determines that taking the royalty in value would be in

1 the best interest of the state.

2 Sec. 38.16.030. METHOD OF DISPOSITION OF ROYALTY. (a) The
3 commissioner shall make a disposition of royalty oil or gas obtained
4 by the state under AS 38.05.180 by competitive bid to the highest
5 responsible bidder, unless the commissioner determines, after prior
6 written notice to the board, that competitive bidding is not in the
7 best interest of the state or that no competition exists.

8 (b) When competitive bids are required, the commissioner may,
9 after prior written notice to the board, reject a bid if the
10 commissioner determines that acceptance of a bid would not be in the
11 best interest of the state due to the amount of the bid, the lack of
12 responsibility of the bidder, or other reasons consistent with the
13 criteria set out in AS 38.16.040.

14 (c) If the commissioner determines that a disposition of oil or
15 gas is to be made other than by competitive bid, the commissioner
16 shall make public in writing the specific findings and conclusions
17 that are the basis for the determination.

18 Sec. 38.16.040. CRITERIA FOR DISPOSITION OF NONCOMPETITIVELY BID
19 ROYALTY OIL OR GAS TAKEN IN KIND. When the state does not use compet-
20 itive bidding to dispose of royalty oil or gas taken in kind by the
21 state under AS 38.16.020, the commissioner shall make the disposition
22 of royalty oil or gas to the prospective purchaser whose proposal
23 offers the maximum revenue or other benefits to citizens of the state.
24 When making an award under this subsection, the commissioner shall
25 consider the following criteria:

26 (1) the cash value offered, which, notwithstanding AS 38.-
27 05.810(a), may not be less than the current market value of the royal-
28 ty oil or gas;

29 (2) the projected effects of the disposition of royalty oil

or gas on the revenue needs and projected fiscal condition of the state;

(3) the projected benefits to local and regional economies of the state of refining or processing the oil or gas in the state;

(4) the projected additional costs and responsibilities that the state and affected political subdivisions of the state may suffer due to the development related to the disposition of royalty oil or gas;

(5) the projected social effects of the disposition of royalty oil or gas;

(6) the projected environmental effects of the disposition of royalty oil or gas;

(7) the ability, intent and degree of certainty of the prospective purchaser to provide refined products or by-products for distribution and sale in the state with significant price and supply benefits for the citizens of the state;

(8) the local or regional desirability of the disposition of royalty oil or gas.

Sec. 38.16.050. CONTRACT PROVISIONS. (a) The commissioner may not enter into a contract for a disposition of royalty oil or gas obtained by the state under AS 38.05.180 unless the contract provides that an amendment of the contract that appreciably reduces the consideration received by the state requires the prior approval of the legislature.

(b) A disposition of royalty oil obtained by the state under AS 38.05.180 must

(1) prohibit an assignment of unrefined royalty oil purchased from the state unless the assignor or assignee demonstrates to the satisfaction of the commissioner that

1 (A) the assignment will result in a significant in-
2 crease of direct monetary benefit to energy consumers in the
3 state; and
4 (B) the total direct monetary benefit to energy con-
5 sumers in the state from the assignment will outweigh the mone-
6 tary benefit to the assignor and assignee; and
7 (2) reserve to the state the right to purchase residual oil
8 from in-state refiners when the residual oil is a by-product of a
9 disposition of royalty oil by the state.
10 Sec. 38.16.060. DISPOSITION OF ROYALTY OIL OR GAS FOR EXPORT. A
11 disposition of royalty oil or gas taken in kind by the state under
12 AS 38.16.020 may not be made for export from the state unless the
13 commissioner determines that the disposition of royalty oil or gas is
14 in the best interest of the state and makes public in writing the
15 specific findings and reasons that are the basis for the determina-
16 tion.
17 Sec. 38.16.070. LEGISLATIVE APPROVAL. (a) In addition to the
18 recommendation by the board required under AS 38.06.050, the commis-
19 sioner may not enter into a disposition of royalty oil or gas obtained
20 by the state under AS 38.05.180 without the prior approval of the
21 legislature by enactment of legislation.
22 (b) The commissioner shall notify the board in writing of a
23 determination by the commissioner that a disposition of royalty oil or
24 gas requires legislative approval.
25 (c) The provisions of (a) of this section do not apply to
26 (1) the disposition of royalty oil or gas for one year or
27 less if the disposition is entered into to relieve storage or market
28 conditions;
29 (2) the disposition of royalty oil or gas for two years or

1 less if the disposition is bid competitively; or

2 (3) contracts for the disposition of royalty oil or gas
3 that specify the sale and delivery of not more than

4 (A) 400 barrels of crude oil per day;

5 (B) 460 barrels of natural gas liquids per day; or

6 (C) 2,400 Mcf of natural gas per day.

7 (d) A disposition of royalty oil or gas under (c)(1) or (c)(2)
8 of this section may not be continued after the end of one year or
9 renewed with the same party without the prior approval of the legisla-
10 ture under (a) of this section. This subsection does not apply to a
11 sequential competitively bid disposition of royalty oil or gas made
12 with the same party under (c)(1) of this section.

13 Sec. 38.16.080. REPORT BY COMMISSIONER. The commissioner shall
14 submit to the legislature between the first and the 15th day of each
15 regular legislative session a royalty oil and gas report that includes

16 (1) the royalty status of all producing royalty oil and gas
17 leases;

18 (2) proposed dispositions of royalty oil and gas;

19 (3) for each noncompetitively bid disposition of royalty
20 oil or gas the findings of the commissioner on the criteria in AS 38.-
21 16.040;

22 (4) an evaluation of the economic consumer benefits
23 resulting from in-state refiners and processors currently receiving
24 royalty oil or gas; and

25 (5) the volume, percentage, and reported value of royalty
26 oil and gas

27 (A) being taken in kind and in value;

28 (B) purchased by in-state refiners and processors;

29 (C) actually refined or processed in the state;

1 (D) sold on a competitive and noncompetitive bid
2 basis; and
3 (E) purchased by foreign nations.
4 Sec. 38.16.090. CONFIDENTIALITY. Notwithstanding AS 09.25.-
5 110 - 09.25.120, the department may provide by regulation for the
6 confidentiality of those documents and records in the possession or
7 control of the department that contain confidential business or mar-
8 keting information when the protection of the information is essential
9 to the person who has submitted the information to the department, or
10 when the department determines that protection of the information is
11 essential to the best interest of the state. Confidentiality under
12 this section does not preclude proper review by the legislature.
13 Sec. 38.16.900. DEFINITIONS. In this chapter
14 (1) "board" means the Alaska Royalty Oil and Gas Develop-
15 ment Advisory Board;
16 (2) "commissioner" means the commissioner of natural re-
17 sources;
18 (3) "department" means the Department of Natural Resources;
19 (4) "dispose of" or "disposition of" royalty oil or gas
20 means the sale, exchange, or other alienation by the state of royalty
21 oil or gas or of an interest in royalty oil or gas, and includes the
22 waiver of a present or future right to take future production of oil
23 or gas as a royalty; and
24 (5) "interest" in royalty oil or gas includes the right to
25 take future production of oil or gas as a royalty.
26 * Sec. 2. AS 38.05.020(b) is amended to read:
27 (b) The commissioner may
28 (1) establish reasonable procedures and adopt reasonable
29 regulations necessary to carry out this chapter <u>and AS 38.16</u> and,

whenever necessary, issue directives or orders to the director to carry out specific functions and duties; regulations adopted by the commissioner shall be adopted under the Administrative Procedure Act (AS 44.62); orders by the commissioner classifying land, issued after January 3, 1959, are not required to be adopted under the Administrative Procedure Act (AS 44.62);

(2) enter into agreements considered necessary to carry out the purposes of this chapter and AS 38.16, including agreements with federal and state agencies;

(3) review an [ANY] order or action of the director;

(4) exercise the powers and do the acts necessary to carry out the provisions and objectives of this chapter and AS 38.16;

(5) notwithstanding the provisions of another [ANY OTHER] section of this chapter, grant an extension of the time within which payments due on a [ANY] lease or sale of state land, minerals, or materials may be made, including payment of rental and royalties, on a finding that compliance with the requirements is or was prevented by reason of war, riots, or acts of God;

(6) classify tracts for agricultural uses and require the prequalification, including the submission of conservation plans, development plans, or other plans, schedules, or programs, of persons who apply to participate in an agricultural development project under AS 44.33.475;

(7) waive, postpone, or otherwise modify the development requirements of a contract for the sale of agricultural land if

(A) the land is inaccessible by road; and

(B) transportation, marketing, and development costs render the required development uneconomic.

* Sec. 3. AS 38.05.035 is amended by adding a new subsection to read:

(g) The provisions of (e) of this section do not apply to royalty on oil or gas obtained by the state under AS 38.05.180.

* Sec. 4. AS 38.05.036(a) is amended to read:

(a) The Department of Revenue shall audit reports, payments, and payments due relating to royalty and net profits under oil and gas contracts, agreements, or leases under this chapter and AS 38.16.

* Sec. 5. AS 38.05.036(b) is amended to read:

(b) The Department of Revenue may inspect all reports and other information filed in support of or relating to royalty and net profits payments, whether or not the [THAT] information is confidential, and shall hold the [THAT] information confidential to the extent required under oil and gas agreements, contracts, or leases, or by this chapter, AS 38.06.060, AS 38.16.090, or AS 43.05.230.

* Sec. 6. AS 38.05.069(f) is amended to read:

(f) Nothing in (c) of this section affects the disposal of minerals under AS 38.05.135 - 38.05.183 or AS 38.16.

* Sec. 7. AS 38.05.135(a) is amended to read:

(a) Except as otherwise provided, valuable mineral deposits in land belonging to the state are [SHALL BE] open to exploration, development, and the extraction of minerals. All land, together with tide, submerged, or shoreland, to which the state holds title [TO] or to which the state may become entitled, may be obtained by permit or lease for the purpose of exploration, development, and the extraction of minerals. Except as specifically limited by AS 38.05.135 - 38.05.181, land may be withheld from lease application on a first-come, first-served basis, and offered only on a competitive bid basis when determined by the commissioner to be in the best interests of the state. In unproven areas the commissioner may offer additional incentives [, INCLUDING A REDUCTION OF ROYALTY TO A MINIMUM OF FIVE PERCENT

1 IN THE CASE OF OIL AND GAS,] and other terms in and granting a permit
2 or lease for exploration and development whenever it appears to be in
3 the best interests of the state to do so.
4 * Sec. 8. AS 38.05.140(c) is amended to read:
5 (c) A person may not take or hold at one time phosphate leases
6 on state land exceeding in the aggregate 10,240 acres. A person may
7 not take or hold sodium leases or permits during the life of sodium
8 leases on state land exceeding in the aggregate acreage 5,120 acres,
9 except that the commissioner may, where it is necessary in order to
10 secure the economic mining of sodium compounds, permit a person to
11 take or hold sodium leases or permits for up to 15,360 acres. [A
12 PERSON MAY NOT TAKE OR HOLD AT ANY ONE TIME OIL OR GAS LEASES EXCEED-
13 ING IN THE AGGREGATE 500,000 ACRES GRANTED ON TIDE AND SUBMERGED LAND
14 AND 500,000 ACRES ON ALL LAND OTHER THAN TIDE AND SUBMERGED LAND,
15 INCLUDING LEASES HELD BOTH AS LESSEE AND UNDER OPTION OR OPERATING
16 AGREEMENT FROM OTHERS. WHERE MORE THAN A SINGLE PERSON HOLDS AN
17 INTEREST IN AN OIL OR GAS LEASE, EACH PERSON SHALL BE CHARGED ONLY
18 WITH THAT PERCENTAGE OF THE TOTAL ACREAGE WHICH CORRESPONDS TO ITS
19 PERCENTAGE SHARE OF THE TOTAL BENEFICIAL INTEREST IN THE LEASE.]
20 * Sec. 9. AS 38.05.180(1) is amended to read:
21 (1) Subject to the provisions of AS 31.05, the commissioner has
22 discretion to enter into an agreement whereby, with the consent of the
23 lessee, all or part of the state's royalty share of oil and gas pro-
24 duction may be stored or retained in storage by the lessee, or the
25 commissioner may enter into an agreement with one or more of the
26 affected field lease holders to trade all or part of the current
27 royalty production from a field for a like amount, kind, and quality
28 of future production, if the commissioner makes a written finding [ON
29 THE CONDITION] that the state receives back its stored or traded

royalty share before 80 percent of the estimated life of the field is depleted, considering the engineering constraints and other relevant factors [DURING THE FIRST HALF OF THE ESTIMATED FIELD LIFE OR NO LATER THAN 15 YEARS AFTER START OF PRODUCTION, WHICHEVER IS SOONER].

* Sec. 10. AS 38.05.180(q) is amended to read:

(q) A plan authorized by (p) of this section that [, WHICH] includes land owned by the state, may contain a provision vesting the commissioner, or a person, committee, or state agency, with authority to modify from time to time the rate of prospecting and development and the quantity and rate of production under the plan. All leases operated under a plan approved or prescribed by the commissioner are excepted in determining holdings or control under (aa) of this section [AS 38.05.140]. The provisions of this section concerning cooperative or unit plans are in addition to and do not affect AS 31.05.

* Sec. 11. AS 38.05.180(r) is amended to read:

(r) Producing acreage on a known geologic structure of a producing oil or gas field is excluded from chargeability as against the acreage limitation provisions of (aa) of this section [AS 38.05.140].

* Sec. 12. AS 38.05.180(t) is amended to read:

(t) The commissioner may prescribe conditions and approve, on conditions, drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, when, in the discretion of the commissioner, the conservation of natural resources or the public convenience or necessity requires it or the interests of the state are best served. All leases operated under approved drilling or development contracts and interests under them, are excepted in determining holding or control under (aa) of this section [AS 38.05.-140].

* Sec. 13. AS 38.05.180 is amended by adding a new subsection to read:

1 (aa) A person may not take or hold at one time oil or gas leases
2 exceeding in the aggregate 500,000 acres granted on tide and submerged
3 land and 500,000 acres on all land other than tide and submerged land,
4 including leases held both as lessee and under option or operating
5 agreement from others. Where more than one person holds an interest
6 in an oil or gas lease, each person shall be charged only with that
7 percentage of the acreage that corresponds to the person's share of
8 the total beneficial interest in the lease.
9 * Sec. 14. AS 38.05.182(a) is amended to read:
10 (a) A [ANY] royalty provided for in AS 38.05.135 - 38.05.181 may
11 be taken in kind rather than in money if the commissioner determines
12 that the taking in kind would be in the best interest of the state.
13 [HOWEVER, ROYALTIES ON OIL AND GAS SHALL BE TAKEN IN KIND UNLESS THE
14 COMMISSIONER DETERMINES THAT THE TAKING IN MONEY WOULD BE IN THE BEST
15 INTEREST OF THE STATE.]
16 * Sec. 15. AS 38.05.182 is amended by adding a new subsection to read:
17 (c) This section does not apply to a royalty on oil or gas
18 obtained by the state under AS 38.05.180.
19 * Sec. 16. AS 38.05.183(a) is amended to read:
20 (a) The sale, exchange, or other disposal of a mineral obtained
21 by the state as a royalty under this chapter [AS 38.05.182], or the
22 sale, exchange or other disposal in whole or in part of a right to
23 receive future mineral production under a state lease under this
24 chapter, shall be by competitive bid and the sale, exchange or other
25 disposal made to the highest responsible bidder, except that competi-
26 tive bidding is not required when the commissioner [, AFTER PRIOR
27 WRITTEN NOTICE TO THE ALASKA ROYALTY OIL AND GAS DEVELOPMENT ADVISORY
28 BOARD UNDER AS 38.06.050,] determines that the best interest of the
29 state does not require it or that no competition exists.

* Sec. 17. AS 38.05.183(b) is amended to read:

(b) When competitive bids are required, the commissioner [, AFTER PRIOR WRITTEN NOTICE TO THE ALASKA ROYALTY OIL AND GAS DEVELOPMENT ADVISORY BOARD,] may reject a bid [ALL BIDS] on a determination that because of the amount of the bid or [BIDS,] the lack of responsibility on the part of the bidder, [BIDDERS, OR FOR REASONS CONSISTENT WITH THE CRITERIA SET OUT IN AS 38.06.070,] the acceptance of the bid [BIDS] would not be in the best interest of the state.

* Sec. 18. AS 38.05.183(c) is amended to read:

(c) If the commissioner determines that a sale, exchange, or other disposal of a mineral obtained by the state as a royalty under this chapter [AS 38.05.182] or of a right to receive future mineral production under a state lease under this chapter shall be made other [OTHERWISE] than by competitive bid, [AND THE ALASKA ROYALTY OIL AND GAS DEVELOPMENT ADVISORY BOARD HAS BEEN NOTIFIED IN WRITING OF THAT DETERMINATION,] the commissioner shall make public in writing the specific findings and conclusions on [UPON] which the [THAT] determination is based.

* Sec. 19. AS 38.05.183 is amended by adding a new subsection to read:

(h) This section does not apply to a royalty on oil or gas obtained by the state under AS 38.05.180.

* Sec. 20. AS 38.06.010 is amended to read:

Sec. 38.06.010. PURPOSE. It is the purpose of this chapter to facilitate the wise development of Alaska's oil and gas royalty interests by providing means and procedures for [SALES, EXCHANGES OR OTHER] disposition of those interests in ways calculated to promote private economic growth consistent with applicable environmental standards, local or regional desirability, and public fiscal stability, and in accordance with AS 38.16 [AS 38.05.183].

1 * Sec. 21. AS 38.06.020 is amended to read:
2 Sec. 38.06.020. ESTABLISHMENT. There is established in the
3 Department of Natural Resources [COMMERCE AND ECONOMIC DEVELOPMENT]
4 the Alaska Royalty Oil and Gas Development Advisory Board.
5 * Sec. 22. AS 38.06.040 is repealed and reenacted to read:
6 Sec. 38.06.040. POWERS AND DUTIES OF THE BOARD. (a) The board
7 shall
8 (1) in accordance with the criteria set out in AS 38.06.070
9 and AS 38.16.040, develop a plan for the wise development of the
10 state's royalty oil and gas interests; the plan of development must be
11 consistent with
12 (A) growth of the private sector of the economy;
13 (B) environmental standards required by law; and
14 (C) public fiscal stability;
15 (2) hold public hearings to determine whether a proposed
16 disposition of royalty oil or gas complies with the criteria in
17 AS 38.16.040;
18 (3) examine a proposed disposition of royalty oil or gas
19 and recommend that the legislature approve or disapprove the proposed
20 disposition of royalty oil or gas; and
21 (4) recommend to the commissioner conditions for the dispo-
22 sition, delivery, transportation, refining, or processing of the
23 royalty oil or gas.
24 (b) The board may
25 (1) direct the commissioner to solicit development plans or
26 bids consistent with the criteria set out in AS 38.06.070 and
27 AS 38.16.040 for the disposition of royalty oil or gas obtained by the
28 state under AS 38.05.180;
29 (2) employ an executive director, and contract for the

1 services of professionals, persons with knowledge of economics and
2 other disciplines, and persons with technical skills who may be
3 necessary to assist the board in the exercise of its powers and
4 duties; and
5 (3) adopt regulations under the Administrative Procedure
6 Act (AS 44.62) that are necessary to exercise its powers and duties.
7 * Sec. 23. AS 38.06.050 is repealed and reenacted to read:
8 Sec. 38.06.050. BOARD REVIEW AND RECOMMENDATION REQUIRED. If
9 legislative approval is required by AS 38.16.070, the commissioner may
10 not dispose of royalty oil or gas without prior review of the proposed
11 disposition of royalty oil or gas by the board. The written
12 recommendation of the board on the proposed disposition of royalty oil
13 or gas shall be submitted to the legislature at the time the
14 legislation approving the proposed disposition of royalty oil or gas
15 is introduced in the legislature.
16 * Sec. 24. AS 38.06.070 is repealed and reenacted to read:
17 Sec. 38.06.070. CRITERIA. In the exercise of the powers of the
18 board under AS 38.06.040(a) and 38.06.050, the board
19 (1) may, when it is economically feasible and in the public
20 interest, recommend to the commissioner as a condition of the disposi-
21 tion of royalty oil or gas that
22 (A) the oil or gas be refined or processed in the
23 state;
24 (B) the purchaser be a refiner who provides refined
25 products or by-products for distribution and sale in the state
26 with significant price and supply benefits to the citizens of the
27 state; or
28 (C) the purchaser construct a processing or refining
29 facility in the state;

1 (2) shall report fully to the department on each criterion
2 in AS 38.16.040 and in (1) of this section for each disposition of
3 royalty oil or gas that requires legislative approval under AS 38.16.-
4 070; the report shall be submitted to the legislature for review when
5 the legislation approving the proposed disposition of royalty oil or
6 gas is introduced in the legislature.
7 * Sec. 25. AS 38.06.080 is amended by adding new paragraphs to read:
8 (3) "commissioner" means the commissioner of natural re-
9 sources;
10 (4) "department" means the Department of Natural Resources;
11 (5) "dispose of" or "disposition of" royalty oil or gas
12 means the sale, exchange, or other alienation by the state of royalty
13 oil or gas or of an interest in royalty oil or gas, and includes the
14 waiver of a present or future right to take future production of oil
15 or gas as a royalty;
16 (6) "interest" in royalty oil or gas includes the right to
17 take future production of oil or gas as a royalty.
18 * Sec. 26. AS 43.05.010(16) is amended to read:
19 (16) audit reports, payments, and payments due relating to
20 royalty and net profits under oil and gas contracts, agreements, or
21 leases under AS 38.05 and AS 38.16;
22 * Sec. 27. AS 44.62.175(a) is amended to read:
23 (a) The lieutenant governor shall publish or contract for the
24 publication of the Alaska Administrative Journal. The journal shall
25 be published weekly. The journal must include
26 (1) notices of proposed actions given under AS 44.62.-
27 190(a);
28 (2) notices of state agency meetings required under AS 44.-
29 62.310(e), even if the meeting has been held;

(3) notices of solicitations to bid issued under AS 37.-05.230 and AS 38.16.030;

(4) notices of state agency requests for proposals issued under AS 18.55.255, 18.55.320; AS 19.10.190; AS 19.40.020; AS 35.15.-030; AS 36.98.030; AS 37.05.230, 37.05.315(d); AS 38.05.120; and AS 43.40.010;

(5) executive orders and administrative orders issued by the governor;

(6) written delegations of authority made by the governor or the head of a principal department under AS 44.17.010;

(7) the text or a summary of the text of a regulation or order of repeal of a regulation for which notice is given under AS 44.62.190(a), including an emergency regulation or repeal whether or not it has taken effect;

(8) a summary of the text of recently issued formal opinions and memoranda of advice of the attorney general; [AND]

(9) a list of vacancies on boards, commissions, and other bodies whose members are appointed by the governor;

(10) a notice of the findings required to be made public by the commissioner of natural resources under AS 38.16.030 and 38.16.-060.

* Sec. 28. AS 38.05.183(d), (e), (f), and (g); and AS 38.06.055 are repealed.

* Sec. 29. This Act takes effect immediately in accordance with AS 01.-10.070(c).

HB 470
Question and Answer Overview

Why is there a need for the Oil and Hazardous Substance Release Response Fund?

Releases of oil and hazardous substances pose a direct threat to the public health, environment, and economy of the state. HB 470 would provide ADEC with the statutory authority and readily available funding necessary to contain and cleanup releases of these materials. The response fund would allow ADEC to respond to future releases of oil and hazardous substances, as well as to cleanup existing sites.

What is the relationship between the response fund and the federal 'Superfund' program?

The 'Superfund' is directed toward the nationwide cleanup of existing sites. The Environmental Protection Agency evaluates these sites on a national priority basis to determine which sites which will receive federal funding. Because this ranking system is biased in favor of densely populated areas, Alaska is expected to receive only slight assistance from the 'Superfund'. HB 470 does make provision, however, for the federal requirement that states provide matching funds of between 10 percent and 50 percent of site cleanup costs in order to receive 'Superfund' money.

Who decides which sites will be cleaned up?

The commissioner of ADEC is given the authority to determine which sites will be cleaned up. The commissioner may also, by regulation, develop criteria for prioritizing the cleanup of existing sites. It is the intent of this legislation, however, that money in the response fund always remain available for the containment and cleanup of future releases of oil and hazardous substances.

When would the response fund be used?

Persons responsible for the release of oil or hazardous substances must notify ADEC of the release and then begin containment and cleanup efforts. ADEC may use money from the response fund for these purposes, however, if the responsible party's containment and cleanup efforts are inadequate or if the cause of the release is unclear or unexplained.

How does the funding mechanism of the response fund work?

The Oil and Hazardous Substance Release Response Fund is modeled after the Disaster Relief Fund and the Fire Suppression Fund. These three funds are also similar in that they are all directed toward the abatement of emergency situations. The response fund allows the governor to transfer up to $10 million during a fiscal year from the emergency operating expenses account to the fund, and money remaining in the fund at the end of a fiscal year remains available for expenditure in successive fiscal years.

The response fund may also receive legislative appropriations based on federal grants, money recovered from responsible parties for containment and cleanup, money recovered from responsible parties for fines, penalties or damages, and other sources.

What level of accounting oversight is provided for?

The response fund is administered by ADEC, although the commissioner of the Dept. of Revenue is custodian of the fund. Accounting records are maintained by ADEC, and the commissioner of ADEC must consult with the Governor and the commissioner of the Dept. of Revenue before adopting regulations governing fund accounting. The commissioner must also submit a fiscal report regarding the response fund to the Governor and the Legislature no later than the 10th day of each regular legislative session.

How does the response fund affect businesses and local communities?

The commissioner may enter into agreements with businesses, municipalities, unincorporated communities and other entities in order to facilitate a coordinated and effective oil and hazardous substance release response in the state. Agreements may also be entered into that provide for oil and hazardous substance release notification procedures or the cooperative review of oil and hazardous substance release contingency plans.

What provisions are made for the training and safety of workers cleaning up these materials?

Money from the response fund may be used to facilitate the efforts of the Department of Labor to assist employers in developing safety education programs for employees who may be called upon to respond to a release of oil or a hazardous substance.

How does the response fund affect existing state programs?

The state is attempting to gain federal authorization to establish a state-controlled hazardous waste management program (RCRA). Negotiations between the state and the Environmental Protection Agency would not be affected by establishment of the response fund. Industry requirements regarding RCRA authorization would also remain unaffected by creation of the fund.

The Oil Spill Mitigation Account would be repealed immediately upon the effective date of the Oil and Hazardous Substance Release Response Fund.

HB 470
Sectional Analysis

* Section 1.

Chapter 8. Oil and Hazardous Substance Releases.

Sec. 46.08.005. Statement of purpose declaring the release of oil or hazardous substances into the environment to be a threat to the public health and welfare, environment, and economy of the state. Concludes that it is in the best interest of the state to have funds readily available for ADEC to respond to releases of these materials.

Sec. 46.08.010. Establishes the Oil and Hazardous Substance Release Response Fund. The fund is administered by ADEC, although the Dept. of Revenue is custodian of the fund.

Sec. 46.08.020. Lists sources from which the legislature may appropriate money to the fund. Sources include the state and federal governments, money recovered from parties responsible for a release of oil or hazardous substances for containment and cleanup expenses, and fines, penalties, or damages received from a party responsible for such a release.

Sec. 46.08.030. (a) Statement of legislative intent that funds for the abatement of a release of oil or a hazardous substance will always be available.

(b) The commissioner shall use money appropriated to the department for response to releases of oil or hazardous substances before using money in the fund for such purposes. Money may also be available to respond to a release through the Disaster Relief Fund if the governor proclaims such a release to be a disaster emergency under AS 26.23.

Sec. 46.08.040. Lists acceptable uses of money from the fund, subject to the approval of the governor. These uses are to contain and cleanup releases or threatened releases of oil or hazardous substances, conduct work associated with such a release or threatened release, assist the Dept. of Labor in working with employers to develop employee safety education programs, provide matching funds for federal oil discharge and 'Superfund' (CERCLA) programs, and recover costs resulting from the release or threatened release of oil or hazardous substances.

Sec. 46.08.050. Delineates accounting procedures of the fund. Accounting records are maintained by ADEC, and by July 1 of each year the department must determine projected costs of the fund for the next fiscal year. The commissioner must adopt rules governing fund accounting, but shall consult with the governor and the commissioner of the Dept. of Revenue before adopting regulations in this regard.

Sec. 46.08.060. No later than the 10th day of each regular legislative session, the commissioner must submit a fiscal report to the legislature and the governor. The report must include the amount of money expended from the fund, and the amount and source of money recovered or received by the fund, during the previous fiscal year.

Sec. 46.08.070. (a) The commissioner is directed to seek reimbursement for costs incurred in the containment or cleanup of releases.

(b) At the request of the commissioner, the attorney general may attempt to recover money expended by the department in responding to releases or threatened releases of oil or hazardous substances.

Sec. 46.08.080. The commissioner shall adopt regulations in order to carry out the provisions of this chapter.

Sec. 46.08.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

* Section 2.

Chapter 9. Hazardous Substance Release Control.

Note: AS 46.09 is modeled after AS 46.04 (Oil Pollution Control).

Sec. 46.09.010. A person in charge of a unit from which a hazardous substance is released must promptly notify ADEC of the release. Persons may, however, enter into agreements with the commissioner for the periodic reporting of a controlled release of hazardous substances if the release is not into the waters of the state.

Sec. 46.09.020. (a) A person responsible for a release must make reasonable efforts to contain and cleanup the release unless the commissioner determines that containment and cleanup is either technically infeasible, or that such action would create greater environmental harm than the release itself.

(b) The commissioner must adopt regulations prescribing procedures and methods for containing and cleaning up releases and for disposing of wastes from a release.

(c) The commissioner, upon determining that containment and cleanup activities by a responsible party are inadequate, may order the person to cease the activity and ADEC may then take over the containment and cleanup operation.

(d) The commissioner may immediately undertake the containment and cleanup of a release if the cause of the release is unclear or unexplained. The same restrictions delineated in (a) of this section apply in this situation.

(e) The commissioner may enter into agreements with persons, including public or private corporations, municipalities, and unincorporated communities, in order to facilitate a coordinated and effective hazardous substance response in the state, provide for cooperative hazardous substance release notification procedures, or provide for cooperative review of hazardous substance contingency plans submitted to the department.

Sec. 46.09.030. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency, the commissioner may assist the adjutant general (Division of Emergency Services) in the relief of the emergency.

Sec. 46.09.040. The commissioner may contract with a person, including a public or private corporation, municipality or unincorporated community, for personnel, equipment, or services in order to carry out the purposes of this chapter. If such a contract is infeasible, the commissioner may establish and maintain personnel, equipment, and supplies for containment and cleanup purposes.

Sec. 46.09.050. ADEC employees designated by the commissioner as enforcement officers for the purposes of this chapter are also peace officers of the state.

Sec. 46.09.060. For the purposes of this chapter, the commissioner may enter into agreements, arrangements, or compacts with other states or countries.

Sec. 46.09.070. In the event of a regulatory conflict between the state and a municipality regarding the containment and cleanup of releases, the provisions of this chapter or regulations adopted by the commissioner prevail.

Sec. 46.09.080. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.09.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

* Section 3.

Sec. 26.23.230. (1) The definition of "disaster" is expanded to include the release of a hazardous substance.

* Section 4.

Sec. 37.05.159. (g) The governor may transfer a maximum of $10 million during a fiscal year from the reserve for emergency operating expenses account to the fund.

* Section 5.

Sec. 44.19.050. The definition of "disaster" is expanded to include the release of a hazardous substance.

* Section 6.

Sec. 46.03.290. (a) Departmental findings regarding the declaring of an emergency are expanded to include oil and hazardous substances.

* Section 7.

Sec. 46.03.760. (a) Provides for civil liabilities for persons violating provisions of AS 46.09.

* Section 8.

Sec. 46.03.765. The superior court has jurisdiction to enjoin a violation of AS 46.09.

* Section 9.

Sec. 46.03.780. (a) Liability to the state for damages for injury or degradation to the environment in violation of AS 46.09.

* Section 10.

Sec. 46.03.790. (a) A person who negligently violates a provision of AS 46.09 is guilty of a class B misdemeanor.

* Section 11.

Sec. 46.03.790. (b) A person who knowingly violates a provision of AS 46.09 is guilty of a class A misdemeanor.

* Section 12.

Sec. 46.03.790. (d) A person who fails to provide or falsely states information required under AS 46.09 is guilty of a misdemeanor and, upon conviction, may be punished by a fine of not more than $25,000 or by imprisonment for not more than one year, or both.

* Section 13.

Sec. 46.04.010. ADEC is directed to promptly seek reimbursement for expenses incurred in the containment or cleanup of oil discharges, and the commissioner may request the attorney general to assist in the recovery of funds from responsible parties. Money received by ADEC under this section may be appropriated by the legislature to the response fund.

* Section 14.

Sec. 46.03.758. (k) The Oil Spill Mitigation Account is repealed.

* Section 15.

Sec. 01.10.070. (c) Immediate effective date.

36.

Introduced: 1/13/86
Referred: Resources and Finance

BY DAVIS, KOPONEN, HURLEY, SZYMANSKI, GOLL, GRUENBERG, JENKINS, NAVARRE, SUND, MARROU, GRUSSENDORF, PIGNALBERI AND M.M. MILLER

1 IN THE HOUSE

2 HOUSE BILL NO. 470

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the release of oil and hazardous
7 substances; and providing for an effective date."

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

9 * Section 1. AS 46 is amended by adding a new chapter to read:

10 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

11 Sec. 46.08.005. PURPOSE. The legislature finds and declares
12 that the release of oil or hazardous substances into the environment
13 presents a real and substantial threat to the public health and wel-
14 fare, to the environment, and to the economy of the state. The legis-
15 lature therefore concludes that it is in the best interest of the
16 state and its citizens to provide a readily available fund for the
17 payment of the expenses incurred by the Department of Environmental
18 Conservation in the protection of the environment of the state from
19 the release of oil or hazardous substances.

20 Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in
21 the state general fund the oil and hazardous substance release re-
22 sponse fund. The fund shall be administered by the commissioner of
23 environmental conservation, but the commissioner of revenue shall be
24 the custodian of the fund.

25 (b) Money from an appropriation made to the fund remaining in
26 the fund at the end of a fiscal year remains available for expenditure
27 in successive fiscal years.

28 Sec. 46.08.020. FINANCING OF THE FUND. The legislature may
29 appropriate from the following sources to the fund:

1 (1) money received from federal, state, or other sources or
2 from a private donor;
3 (2) money recovered or otherwise received from parties
4 responsible for the containment and cleanup of oil or a hazardous
5 substance at a specific site, but excluding funds from performance
6 bonds and other forms of financial responsibility held in escrow
7 pending satisfactory performance of a privately financed response
8 action;
9 (3) fines, penalties, or damages recovered under this
10 chapter or other law for costs incurred by the state as a result of
11 the release or threatened release of oil or a hazardous substance.
12 Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS
13 SUBSTANCE RELEASES. (a) It is the intent of the legislature and
14 declared to be the public policy of the state that funds for the
15 abatement of a release of oil or a hazardous substance will always be
16 available.
17 (b) Notwithstanding the establishment of the fund under AS 46.-
18 08.010, the commissioner shall, to the extent available, prefer funds
19 appropriated to the department in the abatement of a release of oil or
20 a hazardous substance. If appropriated funds are not available, then
21 the commissioner may use money from the fund or, if the governor
22 issues a proclamation of a disaster emergency under AS 26.23, funds
23 available for disaster relief under AS 26.23.050 may be used in the
24 abatement of a release of oil or a hazardous substance.
25 Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval
26 of the governor, the commissioner may use money from the fund to
27 (1) contain and clean up releases or threatened releases of
28 oil or a hazardous substance;
29 (2) undertake plans, inspections, sampling, tests,

1 investigations, surveys, analyses, engineering, construction, operations, and maintenance necessary or appropriate to contain and clean up releases or threatened releases of oil or hazardous substances;

(3) facilitate the efforts of the Department of Labor under AS 18.60 to assist employers to develop safety education programs for employees who may be called upon to respond to a release of oil or a hazardous substance;

(4) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation and Liability Act of 1980); and

(5) recover the cost to the state or to a municipality of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance.

Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall maintain accounting records showing the income and expenses of the fund.

(b) By July 1 of each year, the department shall determine the projected cost for the following fiscal year of monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the fiscal year.

(c) The commissioner shall consult with the commissioner of revenue and the governor before adopting regulations governing fund accounting. The department shall develop procedures and adopt rules governing the expenditure of, and accounting for, money expended from the fund, and may not delay implementation of this chapter pending the effective date of the procedures and rules.

(d) The proper state officer shall pay disbursements from the fund on presentation of vouchers signed by the governor or the

1 governor's authorized representative.
2 Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner
3 shall submit a report to the governor and to the legislature not later
4 than the 10th day following the convening of each regular session of
5 the legislature. The report may include information considered sig-
6 nificant by the commissioner but must include:
7 (1) the amount of money expended under AS 46.08.040 during
8 the preceding fiscal year; and
9 (2) the amount and source of money received and money
10 recovered during the preceding fiscal year as specified in AS 46.08.-
11 020.
12 Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)
13 The commissioner shall seek reimbursement promptly under this section,
14 AS 46.03.760(e), or federal law for the cost incurred in the cleanup
15 or containment of oil or a hazardous substance that has been released.
16 (b) The attorney general, at the request of the commissioner,
17 may seek to recover money expended by the department under this chap-
18 ter or other law to contain and clean up oil or a hazardous substance
19 that has been released or to control the threatened release of oil or
20 a hazardous substance.
21 Sec. 46.08.080. REGULATIONS. The commissioner shall adopt
22 regulations necessary to implement the provisions of this chapter.
23 Sec. 46.08.900. DEFINITIONS. In this chapter
24 (1) "commissioner" means the commissioner of environmental
25 conservation;
26 (2) "containment and cleanup" includes the direct and
27 indirect efforts associated with the prevention, abatement, contain-
28 ment, or removal of a hazardous substance, the restoration of the
29 environment to its former state, and incidental administrative costs;

4c.

1 (3) "department" means the Department of Environmental
2 Conservation;
3 (4) "employee" means a person who works for an employer in
4 a place that is not used primarily as a personal residence;
5 (5) "employer" means a person, including the state and a
6 political subdivision of the state, who has one or more employees
7 working in a place that is not used primarily as a personal residence;
8 (6) "fund" means the oil and hazardous substance release
9 response fund;
10 (7) "hazardous substance" means
11 (A) an element or compound that, when it enters into
12 or on the surface or subsurface land or water of the state,
13 presents an imminent and substantial danger to the public health
14 or welfare, or to fish, animals, vegetation, or any part of the
15 natural habitat in which fish, animals, or wildlife may be found;
16 (B) a substance defined as a hazardous substance under
17 state or federal law or by regulations adopted under state or
18 federal law;
19 (8) "oil" means petroleum products of any kind and in any
20 form, whether crude, refined, or a petroleum by-product, including
21 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily
22 refuse, oil mixed with other wastes, liquified natural gas, propane,
23 butane, and other liquid hydrocarbons regardless of specific gravity;
24 (9) "release" means an intentional or unintentional release
25 into the environment of the state.
26 * Sec. 2. AS 46 is amended by adding a new chapter to read:
27 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.
28 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)
29 Except as provided in (b) of this section, a person in charge of a

1 vehicle, vessel or container from which, or a place at which, a haz-
2 ardous substance is released shall report the release to the depart-
3 ment promptly after learning of the release.
4 (b) The commissioner may enter into an agreement with a person
5 for the periodic reporting of a controlled release of a hazardous
6 substance if the release is not into the water of the state.
7 Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS
8 SUBSTANCE. (a) A person who causes a release of a hazardous sub-
9 stance shall make reasonable efforts to contain and clean up the
10 hazardous substance promptly after learning of the release, unless the
11 commissioner determines
12 (1) after consulting the Environmental Protection Agency,
13 that containment or cleanup is technically infeasible; or
14 (2) that containment or cleanup would cause greater en-
15 vironmental damage than the release would cause if unabated.
16 (b) The commissioner shall adopt regulations prescribing proce-
17 dures and methods to be used in the containment and cleanup of a
18 hazardous substance and in the disposal of waste from the containment
19 or cleanup.
20 (c) If the commissioner determines that the containment or
21 cleanup of a hazardous substance undertaken is inadequate, the commis-
22 sioner may direct the person undertaking the containment or cleanup to
23 cease and may undertake the containment or cleanup directly or by
24 contract.
25 (d) If it appears to the commissioner that the cause or respon-
26 sibility for the release of a hazardous substance is unclear or unex-
27 plained, the commissioner may immediately undertake the containment
28 and cleanup of the release unless the commissioner determines
29 (1) after consulting the Environmental Protection Agency,

42.

1 that containment or cleanup is technically infeasible; or

2 (2) that containment or cleanup would cause greater en-

3 vironmental damage than the release would cause if unabated.

4 (e) The commissioner shall enter into agreement with the En-

5 vironmental Protection Agency, and may enter into agreements with

6 other persons, in order to

7 (1) facilitate a coordinated and effective hazardous sub-

8 stance response in the state; or

9 (2) provide for cooperative hazardous substance release

10 notification procedures.

11 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may

12 request the governor to determine that an actual or imminent release

13 of a hazardous substance constitutes a disaster emergency under

14 AS 26.23. If the governor declares a disaster emergency under

15 AS 26.23, the commissioner may assist the adjutant general in the

16 relief of the emergency.

17 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.

18 The commissioner may contract with a person or a municipality of the

19 state for personnel, equipment, or services that may be useful to

20 carry out the requirements of this chapter. If the commissioner

21 determines that it is infeasible to contract with a person or a munic-

22 ipality in the state, the commissioner may establish and maintain

23 containment and cleanup personnel, equipment, and supplies necessary

24 to carry out the requirements of this chapter.

25 Sec. 46.09.050. PEACE OFFICERS. Employees of the department

26 designated by the commissioner as enforcement officers in the imple-

27 mentation of this chapter are peace officers of the state.

28 Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter

29 into supplementary agreements, reciprocal arrangements, and compacts

1 with another state or country for the implementation of this chapter
2 subject to the approval of the Congress of the United States, if
3 required, under the Constitution of the United States.
4 Sec. 46.09.070. MUNICIPAL POWERS. (a) If a provision of this
5 chapter or of a regulation adopted by the commissioner under this
6 chapter conflicts with the charter, ordinance, or regulation of a
7 municipality of the state, the provision of this chapter or of the
8 regulation adopted by the commissioner under this chapter prevails.
9 (b) Except as provided in (a) of this section, a municipality of
10 the state may exercise its police power within the area of the munic-
11 ipality.
12 Sec. 46.09.080. REGULATIONS. The commissioner shall adopt
13 regulations necessary to implement the provisions of this chapter.
14 Sec. 46.09.900. DEFINITIONS. In this chapter
15 (1) "commissioner" means the commissioner of environmental
16 conservation;
17 (2) "containment and cleanup" includes the direct and
18 indirect efforts associated with the prevention, abatement, contain-
19 ment, or removal of a hazardous substance, the restoration of the
20 environment to its former state, and incidental administrative costs;
21 (3) "department" means the Department of Environmental
22 Conservation;
23 (4) "hazardous substance" means
24 (A) an element or compound that, when it enters into
25 or on the surface or subsurface land or water of the state,
26 presents an imminent and substantial danger to the public health
27 or welfare, or to fish, animals, vegetation, or any part of the
28 natural habitat in which fish, animals, or wildlife may be found;
29 or

1 (B) a substance defined as a hazardous substance under
2 state or federal law or by regulations adopted under state or
3 federal law;
4 (6) "release" means an intentional or unintentional release
5 into the environment of the state.
6 * Sec. 3. AS 26.23.230(1) is amended to read:
7 (1) "disaster" means the occurrence or imminent threat of
8 widespread or severe damage, injury, or loss of life or property
9 resulting from any natural or nonmilitary man-made cause including,
10 but not limited to, fire, flood, earthquake, landslide, mudslide,
11 avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL
12 OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT
13 DANGER OR DAMAGE], volcanic activity, epidemic, air contamination,
14 blight, infestation, explosion, riot, equipment failure, or shortage
15 of food, water, fuel, or clothing, or the release of oil or a hazard-
16 ous substance requiring prompt action to avert environmental danger or
17 damage;
18 * Sec. 4. AS 37.05.159 is amended by adding a new subsection to read:
19 (g) Notwithstanding the provisions of (b) of this section and
20 AS 37.07.080(e), the governor may transfer a maximum of $10,000,000
21 during a fiscal year from the reserve for emergency operating expenses
22 account to the oil and hazardous substance release response fund
23 (AS 46.08).
24 * Sec. 5. AS 44.19.050 is amended to read:
25 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,
26 "disaster" means the occurrence or imminent threat of widespread or
27 severe damage, injury, or loss of life or property resulting from any
28 natural or man-made cause including, but not limited to, fire, flood,
29 earthquake, landslide, avalanche, wind-driven water, weather

1 condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING
2 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air
3 contamination, blight, infestation, explosion, [OR] riot, or the
4 release of oil or a hazardous substance requiring emergency action to
5 avert environmental danger or damage.
6 * Sec. 6. AS 46.03.290(a) is amended to read:
7 (a) When the department finds that an actual or imminent dis-
8 charge of oil, a hazardous substance, or low level radioactive mate-
9 rials to the air, water, land or subsurface land of the state poses an
10 immediate threat to the public health or welfare, or the environment
11 of the state, it may issue an order declaring an emergency and direct-
12 ing a person or persons to take action the department believes neces-
13 sary to meet the emergency, and protect the public health, welfare, or
14 environment.
15 * Sec. 7. AS 46.03.760(a) is amended to read:
16 (a) A person who violates or causes or permits to be violated a
17 provision of this chapter other than AS 46.03.250 - 46.03.314, or a
18 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of
19 the department, or a permit, approval, or acceptance, or term or
20 condition of a permit, approval, or acceptance issued under this
21 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the
22 state for a sum to be assessed by the court of not less than $500 nor
23 more than $100,000 for the initial violation, nor more than $5,000 for
24 each day after that on which the violation continues, and that shall
25 reflect, when applicable,
26 (1) reasonable compensation in the nature of liquidated
27 damages for any adverse environmental effects caused by the violation,
28 that shall be determined by the court according to the toxicity,
29 degradability and dispersal characteristics of the substance

46.

1 discharged, the sensitivity of the receiving environment, and the
2 degree to which the discharge degrades existing environmental quality;
3 (2) reasonable costs incurred by the state in detection,
4 investigation, and attempted correction of the violation;
5 (3) the economic savings realized by the person in not
6 complying with the requirement for which a violation is charged.
7 * Sec. 8. AS 46.03.765 is amended to read:
8 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-
9 tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09
10 or of a regulation, a lawful order of the department, or permit,
11 approval, or acceptance, or term or condition of a permit, approval,
12 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.
13 In actions brought under this section, temporary or preliminary relief
14 may be obtained upon a showing of an imminent threat of continued
15 violation, and probable success on the merits, without the necessity
16 of demonstrating physical irreparable harm. The balance of equities
17 in actions under this section may affect the timing of compliance, but
18 not the necessity of compliance within a reasonable period of time.
19 * Sec. 9. AS 46.03.780(a) is amended to read:
20 (a) A person who violates a provision of this chapter, [OR]
21 AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this
22 chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an
23 order, permit, or other determination of the department made under the
24 provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively,
25 and thereby causes the death of fish, animals, or vegetation or other-
26 wise injures or degrades the environment of the state is liable to the
27 state for damages.
28 * Sec. 10. AS 46.03.790(a) is amended to read:
29 (a) Except as provided in (d) - (f) of this section, a person

1 who negligently violates a provision of this chapter, [OR] AS 46.04,
2 or AS 46.09, or of a regulation, lawful order of the department, or
3 permit, approval, or acceptance, or term or condition of a permit,
4 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
5 AS 46.09 is guilty of a class B misdemeanor.
6 * Sec. 11. AS 46.03.790(b) is amended to read:
7 (b) Except as provided in (d) - (f) of this section, a person
8 who knowingly violates a provision of this chapter, [OR] AS 46.04, or
9 AS 46.09, or of a regulation, lawful order of the department, or
10 permit, approval, or acceptance, or term or condition of a permit,
11 approval, or acceptance issued under this chapter, [OR] AS 46.04, or
12 AS 46.09 is guilty of a class A misdemeanor.
13 * Sec. 12. AS 46.03.790(d) is amended to read:
14 (d) Notwithstanding (a) and (b) of this section, a person who
15 fails to provide or falsely states information required under AS 46.-
16 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,
17 upon conviction, is punishable by a fine of not more than $25,000, or
18 by imprisonment for not more than one year, or by both. Each unlawful
19 act constitutes a separate offense.
20 * Sec. 13. AS 46.04.010 is amended to read:
21 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-
22 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-
23 760(e), AS 46.08.070, or from an applicable federal fund, for the
24 expenses it incurs in cleaning up or containing a discharge of oil.
25 If the department obtains reimbursement for a portion of its expenses
26 from a federal fund, the remainder of the expenses incurred may be
27 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by
28 the department under this section shall be deposited in the general
29 fund and may be appropriated by the legislature to the oil and

1 hazardous substance release response fund (AS 46.08).

2 * Sec. 14. AS 46.03.758(k) is repealed.

3 * Sec. 15. This Act takes effect immediately in accordance with AS 01.-

4 10.070(c).

STATE OF ALASKA

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

MEMORANDUM

From: Rep. Mike Davis, Chairman

To: Members of the House Special Committee on Oil and Gas

Re: TAPS Tariff Case

Date: January 22, 1985

The House Special Committee on Oil and Gas is not convinced that the TAPS Settlement Agreement is in the best interest of the state. The committee also believes that the Department of Law should cease pursuing settlement with Sohio and Amerada Hess, and that the department should instead continue to litigate the case with these parties.

The state has offered Sohio and Amerada Hess the opportunity to sign the settlement by February 12. The state will return to litigation with these carriers if they do not become party to the settlement by that date. The state is averse to requesting that FERC impose the settlement on these companies in the belief that an imposed settlement would be subject to legal challenge. FERC may, however, elect to impose the settlement at any time.

Unfortunately, the leverage of a drop-dead date works to the advantage of the carriers rather than to the benefit of the state. Having been given a deadline by which to sign the settlement, it benefits the companies to continue negotiating a settlement during the next few weeks in the hope of extracting concessions from the state, rather than to settle at this time.

The specific reasons given as to why the state should settle the TAPS case, all of which date back to the rejection of an earlier proposed settlement in the Spring of 1982, are as follows: certainty of revenue, presumed uncollectibility of refunds, marginal field development, stable tariffs in the outyears, and the deferring of revenues.

These elements, which comprise the basis for the settlement, deserve reexamination in light of changes which have taken place within the oil industry and the state's budget outlook since negotiations on the present settlement began four years ago.

On June 28, 1985 FERC issued the Williams II decision in regard to the Williams Brothers Co. pipeline ratemaking case. The most significant aspect of Williams II from the state's perspective was FERC's rejection of Modern Valuation, the industry's favored methodology. By adopting a modified Trended Original Cost (TOC) methodology, regardless of how this methodology may differ from a TAPS application, the committee believes that the state has gained a tremendous amount of certainty regarding its litigation position.

The uncanny timing of several carriers signing the settlement within days of the Williams II decision also indicates that these carriers felt they had little chance of winning through litigation, and that settlement was their preferred alternative.

In response to legislative concerns regarding the settlement, the Department of Law this summer requested the Department of Revenue to analyze the TAPS case in terms of uncertainty caused by continued litigation. The memorandum requesting this analysis also described in detail how such an analysis might be conducted.

The result of this request was a report issued by the Department of Revenue on November 14. Rather than review the settlement in regard to the state's Depreciated Original Cost (DOC) litigation position, however, the report focuses on comparisons of the potential revenue outcome of the settlement to Williams II. This comparison between two TOC methodologies, one of which has no direct application to TAPS, is of limited benefit in analyzing the settlement.

The Department of Revenue report is also surprising in that reference to refunds is omitted from an enumeration of those factors of greatest concern to the case. A statistical analysis of the collectibility of refunds also assumes a low likelihood that refunds would be collected by the state.

The presumed uncollectibility of refunds has often been cited by the state as one of the primary reasons why the state should abandon litigation in favor of settling the TAPS case. The reasoning in this regard has been that FERC would not subject the carriers to paying out large refunds to shippers, although little basis has been provided for this assumption.

It is also worth noting that several months ago Exxon was ordered by the courts to refund $1.2 billion to utilities as a pass-through to consumers for money received through price-fixing. More recently, Texaco was ordered to pay Pennzoil several billion dollars in reparation for takeover attempts of Getty Oil. Because the state is not collecting full refunds, the federal government is also receiving less than full windfall profits on pre-1982 oil.

Promoting marginal field development is another important factor relating to the settlement. North Slope oilfield economics have changed dramatically, however, in the time since settlement negotiations began in 1982. During the time of spiralling oil prices, concern was expressed that the state not exploit too great a share of its oil at a price which was certain to increase in the future.

A recent decline in oil prices has made the development prospects of marginal fields even more marginal, though, while at the same time resulting in lower state revenues from Prudhoe Bay and Kuparuk. To what extent, then, is the state subsidizing marginal field development through the settlement by paying carriers excessive tariffs? An important question which has not been adequately addressed is what the cost comparison is between this indirect subsidy and the revenues which would accrue to the state through development of these fields.

Another important consideration is that marginal fields, as all oilfields, are most expensive in their initial exploration and development phases since money must be provided on an up-front basis for these activities. Tariffs, on the other hand, are a relatively minor operations cost paid out over time on a per-barrel basis. It is deceptive and incorrect to look at overall projected tariff costs associated with a field and then treat these costs, and their timing, with the same degree of importance as exploration and development.

Arctic Slope Regional Corporation (ASRC) attorneys argue that the settlement debt equity provisions and a guaranteed after-tax profit of 35 cents per barrel would allow excessive future tariffs, and therefore impede marginal field development. ASRC economists also note problems with the allocation of fixed operating costs of the pipeline as provided in the settlement, stating that this cost allocation would create a disincentive for carriers to lower their tariffs in the future.

The problem, then, is that the after-tax profit agreed to in the settlement precludes the state from knowing what the carriers' rate-of-return will be, establishes a tariff that does not meet the standard of being just and reasonable, and does not necessarily attain the goal of promoting marginal field development. A factor directly related to this situation is that the development of marginal fields is far more sensitive to the price of oil than to the certainty of future tariffs.

In terms of revenue certainty and the deferring of state revenue, it should be noted that revenue from the TAPS case is not critical to the running of state government at this time, nor is it expected to be critical in the future. Although no one wishes to prolong the TAPS case longer than necessary, the apparent urgency of settling the case in order to gain future revenue certainty is far from being a fiscal necessity.

Having already signed with two-thirds of the TAPS owners, however, the state has already secured two-thirds of the revenue security that it has sought. Surely, the state can continue to litigate with Sohio and Amerada Hess in the hope of receiving at least some of the pre-1982 excess tariffs that have been paid by the state.

By refraining from continuing litigation, the state increases the opportunity for FERC to impose the settlement on the remaining parties. By continuing litigation, the state would enhance its opportunity to increase revenues received from Sohio and Amerada Hess, maintain the degree of certainty already received from parties that have signed the settlement, and minimize the chance of entering into an imposed settlement that could lead to greater expense and uncertainty to the state in the future.

In a settlement which consists of different agreements with different signatories and which fails to provide for just and reasonable tariffs, the state is certainly not precluded from continuing to litigate with those parties who, having been given the opportunity to sign or further negotiate the settlement for months, have refused to do so.

Problems remain in state's settlement of TAPS suit

By MIKE DAVIS

As chairman of the House Special Committee on Oil and Gas, I conducted several hearings on the TAPS tariff case. These hearings received only scant coverage in the news media, even though the final outcome of the settlement has enormous financial implications to the state's future.

It is perhaps the complexity of the Trans-Alaska Pipeline (TAPS) tariff case which has been responsible for the lack of media coverage on this issue. The TAPS case involves tariffs imposed by the owners of the Trans-Alaska Pipeline System on oil shipped through the pipeline since 1977.

As of today, five of the eight Trans-Alaska Pipeline owners have signed a TAPS tariff settlement with the state. These actions were taken by the administration without authorization or a resolution of support from the legislature.

The House Special Committee on Oil and Gas conducted its own investigation into the TAPS tariff case. Contrary to the Daily News' recent editorial, members of the committee had questions regarding several major aspects of the proposed settlement.

In order to gain a more thorough understanding of the tariff case, members of the committee met with several former Federal Energy and Regulatory Commission (FERC) commissioners, attended a national pipeline

rate-making conference, and met with the state's lead counsel in Washington, D.C., on the case.

As recently as 1982, the legislature rejected an earlier TAPS tariff settlement. This was due to the short duration of the proposed settlement, and the failure of the settlement to provide for low tariffs through the end of t[illegible] century. The legislature directed the administration to come up with a settlement that encouraged the future development of marginal oil fields and deferred income from the major producing fields to the 1990s.

The Department of Law proceeded to work on a new settlement that would follow this legislative intent. The directives given to the administration were achieved in this settlement.

However, there are problems in the settlement that were identified by the House Special Committee on Oil and Gas.

These problems are as follows:

- **Refunds**: Under the proposed settlement, the state would waive its claim to an estimated $900 million in refunds, resulting from excessive tariffs paid from 1977 through 1982. In exchange for foregoing these refunds, the state relies on anticipated benefits from lower tariffs in the future. This is referred to as "front-end loading" the tariff.
- **Rate Base**: The state has argued in the TAPS tariff case that Trans-Alaska Pipeline construction costs contained at least $1.6 billion in imprudent cost overruns. In the settlement, however, the state settled for a $450 million rate base reduction for these overruns. This will result in higher tariffs and, consequently, less revenue to the state.
- **Discount Rate**: The settlement assumed a real interest rate of zero, meaning that money earned by the state would not earn any interest beyond inflation. As noted by the Department of Revenue, state investments such as the Alaska Permanent Fund earn significant income beyond inflation. Therefore, projections of even a moderate discount rate significantly lower the benefits that the settlement actually offers.
- **Marginal Fields**: The Arctic Slope Regional Corporation (ASRC) has filed a formal statement of opposition to the proposed settlement. ASRC argues that potential North Slope producers are jeopardized by the after-tax profit guaranteed to the TAPS owners as part of the settlement. ASRC believes that the proposed after-tax profit of 35 cents per barrel would preclude the development of otherwise economic fields.
- **FERC Approval**: The proposed settlement, even if signed by all of the pipeline owners, will not have the force of law unless approved by FERC. There may be challenges to the settlement and, even if there are no challenges, FERC must determine that the proposed rate is 'just and reasonable.'

The State of Alaska has sought a settlement in order to resolve a case which has lasted for eight years, cost the state $36 million, has not been dealt with in a timely manner by FERC, and would likely take several more years to resolve in the courts. If FERC does not approve the settlement, the state could still find itself spending several additional years arguing its case.

Given the complexity of this case and the likelihood that the settlement will be challenged, it is possible that this issue may be before the next session of the legislature. If this occurs, I intend to introduce a resolution that requires legislative approval of this settlement.

☐ Mike Davis, a Democrat from Fairbanks, is chairman of the House Special Committee on Oil and Gas.

anel says hold off n TAPS settlement

ATTI EPLER ADN 7/17/85
News business reporter

ne House Oil and Gas mittee moved Tuesday to Gov. Bill Sheffield to ontinue his administras attempts to settle the ibillion dollar trans-Alasipeline tariff case.

fter a public hearing, the nittee asked its staff to a strongly worded letter ig the governor to hold igning any more settle- agreements with the pipeline's owners.

So far, six of the eight companies that own the pipeline have signed agreements. The agreements would end the long and expensive dispute between the state and the pipeline owners over how much the owners charge to move oil from the North Slope to Valdez.

The state has argued for lower transportation charges, called tariffs, because high tariffs reduce the state's income from royalties and taxes.

For every penny increase in the TAPS tariff, the state loses $1.6 million a year in revenue. The rates the owners charge are as much as $4 higher than the state thinks they ought to be.

Testimony at Tuesday's hearing indicated a recent decision by the Federal Energy Regulatory Commission — which regulates oil pipelines and tariffs — significantly improves the state's position in the case. That decision, if applied to TAPS, increases the chance of the state gaining billions of dollars more by continuing to challenge tariffs set by pipeline owners than by settling.

Last month, the commission issued a ruling in a Lower 48 pipeline case that said, in part, that pipeline tariffs should be based on the original construction cost of a pipeline rather than what it would cost to replace it.

State officials have said they decided to settle the TAPS case because they feared the commission would rule against them. The settlement, they said, was an attempt to get a better deal than they thought the commission would give them.

The state has said the settlements will bring a guaranteed $4.6 billion to the state treasury, while continuing the case is a risky gamble for $7 billion.

But the commission ruling in the Williams Pipe Line Co. case was more in line with what the state had wanted all along, and less in favor of the pipeline companies.

The decision has had state officials, legislators and consultants scrambling for the past couple of weeks, trying to estimate how much money the state might receive if it decided to continue its challenge rather than settle.

The House committee's consultant, Jamie Love, said the state could receive as much as $3 billion by the end of 1985, based on the method of figuring pipeline tariffs set out by the commission. That compares with about $300 million the state would receive by the end of the year under the settlement, he said.

Love also said he thinks the state will do even better because there are elements involved in the TAPS case that are unique to Alaska and must be taken into account by the commission.

Assistant Attorney General Robert Maynard and other state attorneys declined to publicly release their figures on the value of the Williams decision to the state. Maynard said, however, the state's figures were not drastically different from Love's.

Both Love and Maynard cautioned, however, that precise figures are not available because there are a number of variables involved in figuring the result of continuing the case.

Robert Loeffler, an attorney hired by the state to work on the TAPS case, said it still is unclear whether the Williams methodology will be applied to TAPS. He told legislators each pipeline case will have to be decided individually by the commission.

Maynard added that state attorneys still are hesitant to trust the commission, despite the favorable Williams ruling.

Of the eight pipeline owners, two — Sohio Pipe Line Co. and Amerada Hess Pipeline Corp. — have refused to sign settlement agreements. Sohio officials have said the proposed settlement unfairly burdens companies that shipped oil through the pipeline in the early years, and benefits those who might use the line in later years.

The companies that have settled are Arco Pipe Line Co., BP Pipelines Inc., Phillips Alaska Pipeline Corp., Union Alaska Pipeline Co., Mobil Alaska Pipeline Co. and Exxon Pipeline Co.

The settlements still must be approved by the federal energy commission. The commission has until Nov. 30 to register approval. If it doesn't do so, the state or the pipeline owners can withdraw from the settlements.

Alaska State Legislature

House of Representatives

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

House Special Committee on Oil and Gas

July 18, 1985

Governor Bill Sheffield
Third Floor, Capitol Building
Juneau, Alaska 99811

Dear Governor Sheffield:

The House Special Committee on Oil and Gas has conducted extensive inquiry into the TAPS tariff case during the past several months. Public hearings and committee research have largely been directed toward reviewing the state's litigation and settlement positions within the framework of the 1982 Williams pipeline ratemaking methodology set forth by the Federal Energy Regulatory Commission.

The settlement of the TAPS case seemed at the time to be a correct and reasonable move for the state, given the possibility of a ruling from FERC that would follow the 1982 Williams decision. We were concerned that FERC might adopt a tariff methodology that would not only eliminate current refunds, but that would also result in high tariffs in the later years of pipeline operation.

The state's litigation position improved in 1984 when a U.S. Circuit Court of Appeals decision rejected the 1982 Williams decision. There continued to be a great deal of uncertainty among legislators, however, regarding FERC's response to the Circuit Court's remand of the case, the timing of a FERC decision, and the risks faced by the state through continued litigation.

On June 28, the FERC announced that it had revised its pipeline ratemaking method in regard to the Williams Pipe Line Co. (WilliamsII). It now appears that the tariffs under Williams II would be lower than the proposed settlement tariffs through 1993, and that outyear tariffs would not be as high as the tariffs that were feared under the Williams I decision. This could result in a substantial net gain to the state, relative to the settlement, in refunds and additional taxes and royalties.

Although we do not believe the Williams II decision is the best outcome for the state, or even necessarily the most likely outcome of further litigation, we do think that within the framework of Williams II the state has the flexibility to argue for a tariff that meets the state's objectives of protecting shippers from unjust and unreasonable tariffs, while also providing a long-term tariff structure that encourages the orderly development of North Slope oil resources.

Specifically, the state could argue for a more rapid depreciation schedule under a Williams II trended equity rate. This action would lower outyear tariffs while still resulting in an overall tariff structure that is lower over the entire life of TAPS, thus resulting in higher state revenues than provided in the settlement. In short, the June 28, 1985 Williams II FERC decision and our review of the 1984 Circuit Court's remand decision have caused us to dramatically revise our assessment of the downside risk to further litigation and the benefits of the proposed settlement.

Moreover, analysis of the rationale behind Williams II suggests that this decision may not be applied to Alaska, and that the TAPS tariff case may be resolved under an even more favorable methodology to the state. The key disadvantage of Williams II is the use of a trended equity portion of a pipeline rate base, which was justified for Lower-48 pipelines where new pipelines face competition from older ones, and the trending of the rate base results in a more level tariff structure.

This situation is quite different from Alaska's, in which the TAPS owners are not realistically expected to face competition from a new pipeline. Also, the unique production profile from the North Slope would result in an uneven tariff which, under a trended rate base, increases in real terms over time. Consequently, the specific objective sought by FERC -- a level tariff -- is not served by a trended rate base for TAPS. The State of Alaska is therefore in a strong position to continue to press for a rate base that is based on depreciated original cost (DOC), which is and always has been the preferred ratemaking methodology from the state's point of view.

The House Special Committee on Oil and Gas commends the good faith efforts of the Office of the Governor and the Department of Law in negotiating the TAPS settlement, and the willingness of your office and the administration to work with the committee on this issue. However, in light of recent significant developments with the TAPS case, the committee recommends that reconsideration be given to the current pursuit of the settlement, in favor of continued litigation based on just and reasonable tariff rates.

The committee also recommends that the Department of Law not sign the settlement with any additional pipeline owners until, under your direction to the administration, comparisons are made of the different tariff profiles under different versions of the Williams II and DOC methodologies, including tariffs based on more rapid depreciation schedules. Based on these tariff profiles, estimates should also be made of (1) the ownership shares and total volume of future oil production (2) the state's interest in future production through taxes, royalties, and net profit share agreements and (3) the impact of different tariff structures on the state treasury and future North Slope oil production.

Sincerely,

Rep. Mike Davis, Chairman

Rep. Sam Cotten, Vice-chairman

Rep. Andre Marrou

Rep. Marco Pignalberi

Rep. Pat Pourchot

Rep. Mike Szymanski

Rep. John Sund

BILL SHEFFIELD
GOVERNOR

58.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 22, 1985

The Honorable Mike Davis
Chairman
House Special Committee on Oil and Gas
315 Barnett Street, Room 103
Fairbanks, AK 99701

Dear Representative Davis and
Members of the Committee:

Thank you for your letter and recommendations of July 18 concerning the pending TAPS settlement. I agree that a full review of the settlement, in light of the recent decision by the Federal Energy Regulatory Commission (FERC) in the Williams Bros. case, is appropriate, and I have already directed that such a review be undertaken not only for the TAPS case, but also for other Alaska oil pipelines such as Kuparuk and the proposed Continental pipeline to Milne Point.

As you point out, the TAPS settlement was a correct and reasonable move for the State at the time it was signed with 65 percent of the owners of the pipeline. It secured $4.6 billion of the potential $7.0 billion in 1985 dollars at stake; it assured low tariffs for the critical decades ahead (thereby increasing the chance of developing North Slope reserves and also assuring substantial revenues in those decades); and it also brought extremely costly and complex litigation to an end, litigation that has already lasted seven years and is expected to take about five to ten more years to resolve. The settlement was a prudent course of action given the then-perceived risks and length of continued litigation.

The recent Williams Bros. decision appears to have altered the odds of continued litigation in the State's favor. Although a very sketchy decision, and not totally in the State's favor, it appears to have narrowed the risk of continued litigation. Some of the potential disastrous results faced by the State only a few months before now appear to have disappeared. In light of the new landscape,

I agree with your recommendation that we proceed cautiously and not settle with additional pipeline owners until a full review of the settlement and the alternatives have been completed.

The State does, however, have a signed agreement with 65 percent of the pipeline owners. Whatever the results of the analysis, the State will stand by its agreement. This includes doing nothing to directly or indirectly subvert the approval process before the FERC. While the State may be less enthusiastic for the settlement, the obligations of good faith and fair dealing are of the highest importance both in these and other dealings by the State.

Nor is it a foregone conclusion that a full review of the settlement will lead to a preference for continued litigation with the remaining pipeline companies or, if FERC approval does not occur within the agreed deadlines, with the other companies.

First, the settlement produces results that are acceptable in and of themselves. The goals of our negotiations were originally designed to achieve independent State policies. They were not selected based on the odds of winning or losing the litagation. However, odds of winning the litigation were used as a check on the settlement objectives. The recent change in the odds of litigation does not alter the underlying acceptability of the settlement -- it only means that we have the chance of getting something better. Whether that chance should be taken is not a black and white question.

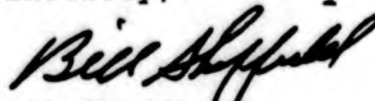
Second, a few weeks ago the judge in the TAPS case estimated that it would take at least another ten years to resolve the case. The recent Williams decision, while certainly a swing in the State's direction, is at least the third swing of the pendulum in only the last four years. Much can happen in ten years, including the potential for Congressional deregulation of oil pipelines. Victory is not just around the corner, it is still miles away.

Also, the settlement secures hundreds of millions of dollars for the State annually both now and over the next decade. While the Williams Bros. decision gives the State the opportunity for much more, that money won't be seen for at least a decade if the TAPS judge is correct about the timing. And, although the Williams Bros. decision makes that huge potential refund sum more probable, it is still not assured.

Finally, the Williams Bros. decision leads to relatively higher tariffs in later years, usually 50-100 percent higher than the settlement after 1991-1993. Past State policy has expressed an overwhelming preference for low tariffs in later years to encourage additional development of the North Slope. While the potential large refunds might outweigh that interest, given the remaining uncertainties, the balance may still be in favor of the settlement.

In other words, these and other considerations do not make the decision an easy one -- detailed study and review is called for. I will certainly include your specific suggestions for study topics in our review, if they have not already been included. I appreciate the careful attention your committee, and other members of the Legislature, have given to this important topic. I will continue to work with you in resolving this long, complex, and often frustrating matter.

Sincerely,



Bill Sheffield
Governor

Alaska State Legislature

House of Representatives

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

October 11, 1985

Mr. Kenneth F. Plumb, Secretary
Federal Energy Regulatory Commission
825 North Capital St., N.E.
Washington, D.C. 20426

Dear Sir:

We are writing in regard to the Trans Alaska Pipeline System (TAPS) settlement agreement that is currently under review by the FERC. Members of the Alaska House of Representatives have taken a special interest in the TAPS case because we are concerned about how the six-company settlement will affect the state.

We are aware that the comment and reply periods have closed, but we request that you allow our comments to be entered into the record at this time.

It has been our posit[illegible]on that the state would be better off continuing to litigate than to settle. However, we have confidence in the state's lead TAPS council, Bob Maynard, and decided not to protest the state's position at the time the settlement was signed and submitted to you.

Although we continue to respect Mr. Maynard and his work on the TAPS case, several events have now caused us to reconsider our position not to criticize the settlement. The first two concern timing. It appears that the "Williams II" decision may give a much better outcome to the state than the settlement position -- this decision was issued on June 28, 1985, the same day the state's settlement was submitted to you.

In addition, we are uncomfortable with the timing of Exxon Pipeline Company, Mobil Alaska Pipeline Company and Union Alaska Pipeline Company in reaching a settlement agreement with the state. These three companies reached an agreement with the state on June 21, 1985 -- only seven days before the Williams II decision was officially announced.

A third development of note is a critique of the settlement, issued this summer by economist James Love, entitled "An Analysis of the TAPS Tariff Settlemen..." The study compares the state's litigation position and a Williams II scenario with the settlement. Mr. Love concludes that the settlement is by far the worst of the three scenarios for the state. Although the factual basis of Mr. Love's conclusions is controversial, we think the report indicates that differing analyses of the settlement are possible and that the settlement may not be in the state's best interests.

Finally, one of the original assumptions in developing the settlement was that "development interests," i.e. incentives for exploration and development of new fields and resultant production, would be enhanced by the proposed settlement's tariff curve. We now feel that the settlement may not meet this all-important goal. In fact, Alaska's Department of Revenue is currently analyzing the settlement in light of the Williams II decision and is considering this very question.

These events indicate to us that continued pursuit of the settlement may not be in the state's best interest. We believe that the uncertainty of continued litigation is preferable to the uncertainty of the settlement's benefits to the state and, therefore, we ask that you do not give the settlement your approval.

We hereby certify that a copy of these comments has been served upon all parties of record in the above proceeding in the docket No. OR78-1 et. al. by first class mail, postage prepaid on this 11th day of October, 1985.

Sincerely,

Ben Grussendorf – by LWC
Ben Grussendorf
Speaker

Don Clocksin
Don Clocksin
Majority Leader

Al Adams
Al Adams
Chair, Finance Committee

Mike Davis
Mike Davis
Chair, Oil & Gas Committee

Sam Cotten
Sam Cotten
Chair, Finance Subcommittee on Oil & Gas
Vice Chair, Oil & Gas Committee

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

OFFICE OF THE GENERAL COUNSEL

OCT 30 1985

Honorable Mike Davis
Alaska State Legislature
House of Representatives
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Mr. Davis:

This is in response to your letter of October 11, 1985, to Mr. Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, in which you presented your views opposing the Trans Alaska Pipeline System (TAPS) settlement agreement. As you are aware, the time period had already closed for receiving comments on the settlement agreement. Therefore, we were unable to enter your letter into the official TAPS record.

Moreover, your concern focused on the apparent assumption that the methodology adopted by the Commission in the Williams II decision would be applied to TAPS. In my opinion, that assumption is misplaced which I had publicly pointed out to the participating parties. The Williams II methodology is applicable to pipelines in the lower forty-eight states which operate in a truely competitive environment. However, it is almost uniformly recognized that TAPS is unique. It was built under unique circumstances and required unique engineering and construction techniques. Therefore, in my view it required its own unique solution which presented itself in the context of the rate case settlement. The Commission apparently agreed, as is discussed more fully in the order approving the settlement.

On October 23, 1985, the Commission unanimously voted to accept the order approving settlement as to the six settling parties, and remanded the proceedings as to non-settling parties to the administrative law judges for expedited processing. A copy of the Commission's order is enclosed.

I hope this information is helpful to you. If I can be of further assistance to you in this or any other Commission matter, please let me know.

Sincerely yours,

William H. Satterfield
General Counsel

Enclosure