

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672
1494 SCOMM 55: JNT. SPEC. COMM. ON STATE TAX POLICY, 1986-1987

1294

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

1 (4) to avoid discouraging the development of economic diver-
2 sification and the development of natural gas production in the state;

3 (5) to avoid creating a conflict with federal law by exempt-
4 ing from this tax property received under the Alaska Native Claims Set-
5 tlement Act.

6 Sec. 43.58.021. AD VALOREM TAX. (a) Beginning July 1, 1981, an
7 annual tax is levied each tax year on the full and true value of tax-
8 able property under this chapter.

9 (b) The rate of levy is 25 mills, unless a different rate is en-
10 acted for a tax year no later than the last day of February in that tax
11 year.

12 Sec. 43.58.031. EXEMPTIONS. The following property that would
13 otherwise be taxable property is exempt from taxation under this chap-
14 ter:

15 (1) an interest of the United States or the state;

16 (2) property exempt from state taxation under the laws of
17 the United States including the exemption of property, whether devel-
18 oped or leased to third-parties, under sec. 21(d) of the Alaska Native
19 Claims Settlement Act (P.L. 92-203, 85 Stat. 688, 43 USC 1601, et.
20 seq.), except that leaseholds and similar interests held in the exempt
21 property by third-parties shall be taxable to the extent of those in-
22 terests;

23 (3) that portion of the full and true value of taxable prop-
24 erty attributable to gas reserves.

25 Sec. 43.58.041. CREDITS. (a) The amount of tax under AS 43.21
26 paid during a tax year (as defined in AS 43.58.151(9)) by a taxpayer or
27 the taxpayer's consolidated business for tax periods under AS 43.21 be-
28 ginning after December 31, 1980, is allowed as a credit against the tax
29 levied under this chapter in the tax year for the taxpayer's taxable

1 property. The credit may not exceed the total amount of tax due for
2 the tax year under this chapter for all of the taxpayer's taxable prop-
3 erties.

4 (b) In addition to the credit allowed under (a) of this section,
5 the amount of tax paid under AS 43.21 by a taxpayer or the taxpayer's
6 consolidated business before July 1, 1981, is allowed as a credit
7 against the tax levied under this chapter for the taxpayer's taxable
8 properties.

9 (c) In applying the credits under (a) and (b) of this section,
10 the credit allowed under (a) of this section shall be applied before
11 applying any credit under (b) of this section. Credit under (b) of
12 this section shall be applied only to the extent that the combined
13 amount of applied credit under (a) and (b) of this section does not ex-
14 ceed three-quarters of the total amount of tax levied under this chap-
15 ter for all of the taxpayer's taxable properties. If the amount of the
16 credit under (b) of this section exceeds the amount that may be applied
17 for a tax year against the tax levied under this chapter, then the ex-
18 cess credit under (b) of this section may be carried forward and ap-
19 plied in subsequent tax years until it has been exhausted.

20 (d) For purposes of determining and applying credits under this
21 section, tax paid by a taxpayer under AS 43.20 shall be treated the
22 same as if it had been paid under AS 43.21, but only if the taxpayer
23 would have been subject to AS 43.21 had the taxpayer been a corporation.

24 (e) If the income tax liability of a taxpayer or the taxpayer's
25 consolidated business under AS 43.20 or AS 43.21 for a tax period is
26 redetermined and adjusted after the credit for that tax period has been
27 applied under this section, or if the income tax liability of the tax-
28 payer or the taxpayer's consolidated business is redetermined under
29 AS 43.20 and adjusted after the credit for that tax period has been ap-

1 plied under this section, then the taxpayer's tax liability under this
2 chapter for the tax year in which the credit was applied shall be rede-
3 termined, taking into account the adjustment to the taxpayer's income
4 tax liability.

5 Sec. 43.58.051. ASSESSMENT. (a) The department shall assess
6 taxable property under this chapter to the owner of it at its full and
7 true value as of July 1 of each tax year.

8 (b) The full and true value of taxable property under this chap-
9 ter is the estimated price which the property would bring for its prov-
10 en reserves in an open market and under the then prevailing market con-
11 ditions in a sale between a willing seller and a willing buyer both
12 conversant with the property and with prevailing values. In determin-
13 ing this value, the department shall consider all factors which may be
14 known by the department to affect the value of taxable property, in-
15 cluding but not limited to the discounted present value of the expected
16 future net income from the proven reserves of the taxable property.

17 (c) In assessing taxable property under this chapter, the depart-
18 ment may not include the assessed value of property subject to tax un-
19 der AS 43.56.

20 (d) In discounting the expected future net income from the tax-
21 able property to its present value under (b) of this section, the de-
22 partment shall presume that the appropriate discount rate is 10 per-
23 centage points above the rate of inflation in the implicit GNP deflator
24 over the five calendar years immediately preceding the assessment date.
25 A taxpayer may rebut this presumption only by proving to the department
26 by clear and convincing evidence that the use of the presumed discount
27 rate in the valuation of the property would result in constructive
28 fraud. In this subsection, "implicit GNP deflator" means the deflator
29 for the gross national product published by the United States Depart-

1 ment of Commerce.

2 Sec. 43.58.061. ASSESSMENT ROLL. The department shall prepare
3 annually the assessment roll for taxation under this chapter. The roll
4 shall contain:

- 5 (1) a description of all taxable property;
6 (2) the assessed value of all taxable property; and
7 (3) the names and addresses of persons owning or otherwise
8 holding an interest in taxable property.

9 Sec. 43.58.071. ASSESSMENT NOTICE. On or before October 15 of
10 each tax year, the department shall send to every owner of taxable
11 property named in the assessment roll a notice of assessment showing
12 the assessed value of the property. The notice of assessment is effec-
13 tive on the date of its mailing.

14 Sec. 43.58.081. APPEAL. (a) A person aggrieved by the action of
15 the department in making an assessment may appeal that action and ob-
16 tain a formal hearing upon its validity before the department by filing
17 written objections to the assessment not later than 20 days after the
18 effective date of the assessment notice.

19 (b) The procedures for conduct of the formal hearing shall be in
20 accordance with AS 43.05.240. At the hearing the appellant bears the
21 burden of proof. In the absence of this proof the assessment is to be
22 upheld by the department. If the department, after hearing, determines
23 that a correction of the assessment is warranted, the department shall
24 correct the assessment and the assessment roll.

25 (c) Within 30 days after the decision by the department following
26 the hearing, a person aggrieved by that decision may appeal to the su-
27 perior court.

28 Sec. 43.58.091. CERTIFICATION. On or before February 1 of the
29 tax year, the department shall certify the final assessment roll. The

1 department shall mail to the owner, operator, or other person filing a
2 return and paying tax on the taxable property a statement of the amount
3 of tax due no later than March 15 of the tax year.

4 Sec. 43.58.101. SUPPLEMENTAL ASSESSMENT ROLLS. The department
5 shall include property omitted from the assessment roll on a supple-
6 mental roll, using the procedures set out in this chapter for the
7 original roll.

8 Sec. 43.58.111. INVESTIGATION. (a) The department may make an
9 investigation of property on which a return has been filed or on prop-
10 erty for which no return has been filed. In either case, the depart-
11 ment shall make its own valuation of the taxable property, which is
12 prima facie evidence of full and true value.

13 (b) An employee or agent of the department may enter any premises
14 necessary for the investigation during reasonable hours and may examine
15 property and other appropriate records. The owner of taxable property,
16 upon request, shall furnish to the employee or agent of the department
17 reasonable assistance required for the investigation. If an employee
18 or agent of the department seeking to enter any premises necessary for
19 an investigation under this section or to obtain reasonable assistance
20 required for an investigation under this section is refused such entry
21 or assistance, the superior court may, after reasonable notice to and
22 hearing of the owner, order the owner to allow the entry or to furnish
23 the assistance.

24 (c) For the purpose of the investigation, the owner, operator, or
25 other person filing a return and paying the tax on the taxable property
26 or his representative may be required to present himself for examina-
27 tion under oath by the department.

28 Sec. 43.58.121. LIMITATIONS ON ASSESSMENT, COLLECTION, AND REFUND
29 OF TAXES. The limitations on assessment, collection, and refund of

1 taxes under AS 43.05.260, 43.05.270, and 43.05.275 apply to the tax
2 levied under this chapter except that a redetermination of tax under
3 AS 43.58.041(d) is not subject to these limitations.

4 Sec. 43.58.131. RETURNS AND PAYMENT OF TAX. (a) A return of
5 taxable property shall be submitted no later than August 1 on the form
6 prescribed by the department based on property values existing on July
7 1 of each tax year

8 (1) by a person who is the owner of the property, or who
9 controls that property as agent, or on account of any other person;

10 (2) by a guardian or other person who has charge of taxable
11 property belonging to a minor or other person;

12 (3) by the trustee of a trust estate holding taxable proper-
13 ty in trust for the benefit of another person;

14 (4) by the executor or administrator of a deceased person's
15 estate which includes taxable property;

16 (5) by the receiver of a corporation having taxable property.

17 (b) The person required to submit the return specified under (a)
18 of this section is primarily liable for payment of the tax levied by
19 this chapter. The persons or estates specified in (a)(2) - (5) of this
20 section in whose behalf the tax levied by this chapter is to be paid
21 are secondarily liable for payment of the tax. With the written
22 approval of the department, an operator or nonoperator of the lease or
23 property may submit returns or make payment of the tax levied under
24 this chapter on behalf of himself and such other persons as the depart-
25 ment may approve.

26 (c) The tax levied under this chapter is payable to the depart-
27 ment on or before June 30 of each tax year or in installments, includ-
28 ing prepayments, at the times and under the conditions the department
29 may by regulation require. This tax is payable on the due date set out

1 in this subsection or at the times required by the department under its
2 regulations even though the assessment is under appeal or the validity,
3 enforceability, or application of this chapter or any provision of this
4 chapter is challenged before the department or in the courts.

5 (d) With the prior written approval of the department, a person
6 submitting returns or making payments as required under this chapter
7 for more than one taxable property may regard those properties as a
8 single taxable property for purposes of submitting those reports or
9 making those payments.

10 (e) Any person making payment of the tax levied under this chap-
11 ter on behalf of one or more other persons owning or otherwise holding
12 an interest in a taxable property may withhold a proportionate share of
13 the payment from any proceeds or other benefits from the taxable prop-
14 erty owed to any person on whose behalf the payment is made. Unless
15 otherwise specifically provided by written contract or agreement, the
16 person so withholding a proportionate share of the tax levied under
17 this chapter incurs no liability to those from whom it is withheld by
18 virtue of having made the withholding.

19 (f) By written notice the department may require a person filing
20 a return to submit additional information to the department within 30
21 days.

22 Sec. 43.58.141. REGULATIONS. The department may adopt regula-
23 tions in accordance with the Administrative Procedure Act (AS 44.62) as
24 appropriate to administer and enforce this chapter.

25 Sec. 43.58.151. DEFINITIONS. In this chapter:

26 (1) "commercial production" means the production of oil or
27 gas for purposes of sale or other beneficial use, except when the sale
28 or beneficial use is incidental to the testing of an unproven well or
29 unproved completion interval;

1 (2) "department" means the Department of Revenue;

2 (3) "gas" means all hydrocarbon substances not defined as
3 oil in this chapter;

4 (4) "oil" means crude petroleum and other hydrocarbons re-
5 gardless of gravity which, when recovered, are recovered at the well-
6 head in liquid form, and the liquid hydrocarbons known as distillate or
7 condensate that are recovered by separation from gas other than at a
8 gas processing plant;

9 (5) "operator" means the person conducting the exploration,
10 development, or production operation for a property;

11 (6) "property" means any right, title, or interest in or the
12 right to produce or recover oil or gas including:

13 (A) a mineral interest;

14 (B) a leasehold interest;

15 (C) a working interest, royalty interest, overriding
16 royalty interest, production payment, net profit interest, or any
17 other interest in a lease, concession, joint venture, or other
18 agreement for oil and gas exploration, development, or production;

19 (D) a working interest, royalty interest, overriding
20 royalty interest, production payment, net profit interest, or any
21 other interest in an agreement for unitization or pooling under
22 the provision of sec. 614(b)(3) of the Internal Revenue Code of
23 1954 as defined on the effective date of this paragraph;

24 (7) "proven reserves" means the volumes of oil and gas in a
25 known deposit which geological and engineering information indicate to
26 be recoverable in the future under prevailing economic conditions and
27 technology;

28 (8) "tax year" means a calendar period beginning on July 1
29 of one calendar year and ending on June 30 of the following calendar

1 year;

2 (9) "taxable property" means a property having commercial
3 production.

4 * Sec. 9. AS 43.58.041 has been included in sec. 8 of this Act so that
5 persons subject to the tax under AS 43.21 will not bear the cumulative bur-
6 den of both the tax under AS 43.21 and AS 43.58. It is the intent of the
7 legislature that the inclusion of this section granting tax credits does not
8 in any manner change the intent, validity, or enforceability of the basic ad
9 valorem tax imposed by this Act. If the inclusion of AS 43.58.041, or any
10 portion of it, results in a judicial decision that the ad valorem tax im-
11 posed by this Act is invalid, then AS 43.58.041, or that portion of it that
12 causes the invalidity, is void and of no effect, and AS 43.58, enacted in
13 sec. 8 of this Act, shall be read as if that section or that portion of it
14 had never been included.

15 * Sec. 10. If an exemption under AS 43.58.031(1), (2), or (3) is held
16 invalid by a final judgment of a court from which an appeal is not taken,
17 then that exemption is void, and AS 43.58, enacted in sec. 8 of this Act,
18 shall be read as if that exemption had never been included.

19 * Sec. 11. If the method of determining taxable income under either
20 AS 43.21.020 or 43.21.030 is held invalid by a final judgment of a court
21 from which an appeal is not taken, and if as a result of that judgment a
22 corporation, whether or not a party named in that judgment, receives a re-
23 fund of taxes or estimated taxes paid under AS 43.21, then the provisions of
24 AS 43.20 apply to that corporation for the entire period for which it re-
25 ceives the refund.

26 * Sec. 12. (a) Notwithstanding the provisions of AS 43.58.021(b), en-
27 acted in sec. 8 of this Act, the rate of levy under AS 43.58 for the tax
28 year beginning July 1, 1981, is 30 mills.

29 (b) Notwithstanding the provisions of AS 43.58.041(c), enacted in sec.

1 8 of this Act, for the tax year beginning July 1, 1981, credit under AS 43.-
2 58.041(b) shall be applied only to the extent that the combined amount of
3 applied credit under AS 43.58.041(a) and (b) does not exceed two-thirds of
4 the total amount of tax levied under AS 43.58 for all of the taxpayer's tax-
5 able properties.

6 * Sec. 13. AS 43.21.040(d) and (e) are repealed.

7 * Sec. 14. AS 43.55.011(d), 43.55.012(a), 43.55.018, 43.58.010, 43.58.-
8 020, 43.58.030, 43.58.040, 43.58.050, 43.58.060, 43.58.070, 43.58.080, 43.-
9 58.090, 43.58.100, 43.58.110, 43.58.150, 43.58.160, 43.58.170, 43.58.180,
10 43.58.190, and 43.58.200 are repealed.

11 * Sec. 15. Sections 1 - 7, 11, and 13 of this Act are retroactive to
12 January 1, 1978, and apply to tax years beginning after December 31, 1977.

13 * Sec. 16. Sections 8, 12, and 14 of this Act take effect July 1, 1981.

14 * Sec. 17. Sections 9, 10, and 15 of this Act take effect immediately in
15 accordance with AS 01.10.070(c).
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No. 43
SSNB
200

HOUSE JOURNAL
SUPPLEMENT
FISCAL IMPACT OF SSNB 200
("High-Price" Case)
(Page 3 of 3)

May 19, 1981

	FY 82	FY 83	FY 84	FY 85
Present AS 43.21	1177	1491	1751	2042
"Morts" Deduction	33	37	40	44
Windfall Profit Tax	333	490	622	704
AS 43.50 Deduction 1/	17	65	71	107
	303	600	733	935
New AS 43.21	794	891	1018	1107
Gross AS 43.50 2/	2164	2075	2262	1924
"Sec. 41(a) Credit" 3/	794	891	1018	1107
"Sec. 41(b) Credit" 3/	650	594	0	0
Net AS 43.50	722	590	1244	817

- 1/ Equals 1/4 of current year's net AS 43.50 plus 3/4 of previous year's net AS 43.50, times 9.4 percent.
- 2/ Computed using a 19% discount rate, 30 mills in first year, 25 mills in next two years, and 20 mills thereafter.
- 3/ FY 82 credits together equal 2/3 of gross AS 43.50; FY 83 "Sec. 41(b) credit" equals remaining credit from an original amount of 1244.

HOUSE JOURNAL SUPPLEMENT

May 19, 1981

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FISCAL NOTE

A. REQUEST
Requester: SSNB 200
Requesting Agency: All Divisions in the Dept.
Requested by: Special Tax Pipeline Committee

B. FISCAL DETAIL
Agency Affected: Department of Transportation
Program Category Affected: Transportation
Basis: Computation of Subsidy Costs
(Note: If more than one basis is affected, separate line items must be provided for each.)
Excluded: None

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
COMMODITIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS & INCOME	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
CURRENT FUND	0	0	0	0	0	0
DEBT SERVICE	0	0	0	0	0	0
DEBT SERVICE (Capital)	0	0	0	0	0	0

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
SCHOLARSHIP	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

For the first year, costs for consultants will be higher than in the future. We estimate 123 days of consultant time at \$450/day plus travel outside and in Alaska. An additional 70 days of time preparing for reports is anticipated. Total consultant costs would therefore be \$80,750 for the first year. Travel by Division staff would add another \$7,000 to the first year. For later years, we assume contract time and travel will drop to about \$62,000 in FY 81. After that, we have added a 700 per year inflation (electricity, food, and per diem). No new positions are needed, although some reassignment of responsibilities may occur.

IV. DATE: 5/14/81 PREPARED BY: [Signature]

ALASKA STATE LEGISLATURE, TWELFTH LEGISLATURE
JOINT GAS PIPELINE FINANCING COMMITTEE

TRANSCRIPT OF PROCEEDINGS

MAY 20, 1981

Carstairs
May
20-26
1981

COMMITTEE PRESENT:

Representative Terry Gardiner, Chairman
Senator Michael Colletta
Senator Bettye Fahrenkamp
Senator Charles Parr
Senator John Sackett
Representative Hugh Malone
Representative Anthony Vaska
Representative Brian Rogers
Representative Joe Hayes
Representative Richard Randolph
Representative Sam Cotten

P R O C E E D I N G S

5/20/81

MR. GARDINER:

... joint meeting of the House and Senate Gas Pipeline Financing Committee. The subject of today's meeting is to take testimony on Sponsor Substitute for House Bill 200. Commissioner Williams will be the first person to testify today. The Commissioner will probably go into it -- but this Sponsor Substitute was the Bill that is an outgrowth of the report that we reviewed at the last meeting that was prepared by the Committee and this Bill was drafted by the Commissioner with the other members of the Administration and the consultants that had worked on the previous report for the Legislature. So now I will turn it over to the Commissioner.

Commissioner Williams:

Thank you Mr. Chairman. I apologize to the members of the Committee for being just a little late finishing the last part of the presentation. For the record my name is Tom Williams and I'm Commissioner of Revenue. The Sponsor Substitute for H.B. 200 has been introduced by the Governor and obviously then I'm -- I support him. The -- this Bill is in response to -- or is an outgrowth of the joint meeting that was held earlier in the session between the Governor and the legislative leader-

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3 ship of both houses at which time the sentiment was expressed
4 that the state is currently taking a fair share of the gross
5 revenue from the oil resources of the state. Pursuant to that
6 agreement we have been looking to find ways to protect the
7 major revenue source that is currently supporting the state,
8 namely, the oil and gas corporate income tax. As I testified
9 earlier to this committee, when Mr. Messenger made the
10 presentation of his first report, there are two kinds of
11 risks involved here. First is the risk inherent in the size
12 of the share that we decide to take. That's approximately
13 30%. That, essentially, from our point of view, is a figure
14 that's been settled on. Our problem has been instead not to
15 eliminate that risk, since the only way we could eliminate
16 it is to take a smaller percentage. Rather, our task has been
17 how to eliminate any other extraneous risk from coming into
18 the source of revenue. With the oil and gas income tax there
19 is extraneous risk. Namely, since the time that tax was passed
20 in 1978, the Supreme Court has come out with a couple of
21 decisions that leave in question whether the method used to
22 determine taxable income on an oil and gas corporation is
23 permissible under the principles that the Court has set out
24 pursuant to the U.S. Constitution. Mr. Messenger's report,
25 in which I concurred, recommended that a reserves tax used as a

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3 back-up to the income tax had adequate revenue generation
4 potential to protect the income stream that we are now
5 getting from the oil and gas corporate income tax.
6 If I may, Mr. Chairman, I'm going to get up from time to
7 time and walk over and show on the pictures that I've
8 rudely sketched out here. This is what we mean by the
9 backstop approach. I apologize for folks sitting next...
10 Right now, in red, this represents the income stream in a
11 year under AS 43.21, the oil and gas corporate income tax.
12 Now the original version of this bill, which the Governor
13 introduced, proposed to make certain technical changes to
14 clean up what we called warts in our case and hence the
15 term "warts" up here. There are technical changes to
16 -- they don't have major revenue consequences but they do
17 have inadvertent consequences that make for bad facts.
18 They weren't originally intended, I don't believe, when
19 the law was passed and so it's still by way of a clean up
20 measure. Also was the question of the windfall profits
21 tax and whether that should be allowed as a tax deduction.
22 As you recall, there was no such thing as a windfall
23 profits tax when -- it wasn't even dreamed of at the time
24 that the original bill was drafted. Because it was so
25 finely drafted, there was no provision in there to allow

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3 that as a deduction, and to many this seems unfair
4 since it is in fact a cost that's associated with
5 oil and gas operations up here. So if we look at this
6 dotted area as being the amount of revenue represented
7 by the "warts" of the windfall profits tax. Then here
8 is the rest that will actually be paid under AS 43.21,
9 the oil and gas corporate income tax. This solid
10 area here. Backstopping this, if you will, is the
11 reserves tax. Mr. Messenger's report concluded, first,
12 that the overall size of the reserves tax would be
13 at least the same or on the same order of magnitude
14 as the overall size of the revenue that we are
15 collecting under the present version of AS 43.21.
16 That is, the amount they would pay plus the amount
17 of the "warts", and the amounts of the windfall profits
18 tax. The trick then is how to backstop this. Well,
19 it's really not that big a trick. The actual amount
20 that gets paid under 43.21, the net amount, is a
21 credit, dollar for dollar against the reserves tax
22 liability. So this portion of the reserves tax
23 amount is not in fact paid by the oil and gas
24 companies. This amount here is paid by the oil
25 industry under 43.21. The excess amount, the extra

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3 amount of reserves tax over and above the amount of the
4 credit is an actual liability. So they will pay this
5 portion of the reserves tax. When you add this
6 portion to this portion the sum is the same size
7 rectangle as you had with your original revenue
8 stream. And that in fact is what we were trying to
9 do -- we were trying to preserve the revenue stream
10 that we see under 43.21 as it is now before making
11 any "warts" corrections and before making any
12 allowance for the windfall profits tax. That was
13 the mission, that was the understanding we had --
14 that was the substance of the joint statement made
15 earlier in the session. So this is the basic
16 approach that the Committee Substitute now incor-
17 porates: a reserves tax with a credit for the
18 actual payments here and payment here to offset
19 the foregone income from the new deductions.
20 Now it is important to know how this works. In
21 the event that there is an adjustment in the amount
22 of tax actually paid - for instance, as the bill
23 provides, if for some reason 43.21 is declared
24 unconstitutional, or is stricken down for other
25 reasons, there is a provision in there that their

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page 5

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3 liability in the industry will revert back to 43.20,
4 which is the standard, ordinary income tax. We
5 believe 43.20 is defective when it is applied to
6 extractive multi-state industries like oil and gas.
7 But it is possible that it could fall back to 43.20.
8 If it did this amount of payment would drop. And
9 the amount of credit, of course, correspondingly,
10 would drop so that the amount of actual liability
11 being paid under the reserves tax would increase
12 as the credit decreases. Thus, even if there is
13 a court decision against us, the mechanism is in
14 place with the passage of this bill to protect the
15 full amount here. Once again, you'll have some
16 sliver being paid under an income tax - you'll have
17 the remainder being paid under the reserves tax.
18 That's the basic approach, the basic idea behind the
19 backstop. Now what are the dollars and cents
20 effects. We have under -- we will retain some
21 consultants who work with the staff within the
22 Department of Revenue to project out. Naturally,
23 there's a lot of work involved in making a reserves
24 tax estimate because, since there aren't a lot of
25 sales and exchanges of fields like Prudhoe Bay,

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page 6

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3 in fact it's unique, you have to approximate by
4 other methods what a willing buyer and a willing
5 seller would sell it for. This means projecting
6 forward the income stream, the gross income, the
7 operating costs, and discounting future income
8 to a present value. Of course, that basically
9 reflects the cost of money plus inflation with some
10 real return as a reward for risk plus inflation -
11 whatever it may be, but you have a discount factor
12 because a dollar one year from now is worth less
13 than a dollar today because I can invest the dollar
14 during that year. That's the basic idea of the
15 present value. This is the bottom line. We projected
16 with a high price assumptions, which are optimistic -
17 they are reasonable but optimistic - and we projected
18 a low price case which is also reasonable and I would
19 not say is pessimistic either - I would say it is
20 simply conservative. This represents what happens
21 with the low price case. This is the bottom line
22 effect, if you will. In FY 82, with a 30 mill rate
23 as provided in the tax, you come out essentially a push,
24 \$7 million ahead, which statistically speaking given
25 the uncertainty is an insignificant difference.

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3 In FY 83 it's a modest decline of \$67 million. That is
4 to say, the reserves tax will fall short by about
5 \$67 million using a 25 mill rate from what the oil
6 and gas corporate income tax would have generated
7 before any "warts" were taken off or before the
8 windfall profits tax deduction was allowed. \$67 million
9 net change. Again, considering the fact that we are
10 talking about something well over a \$1 billion, a
11 \$67 million difference is small in the overall scale.
12 In fiscal year '84, again with a 25 mill rate, the
13 difference is \$49 million. Once again the
14 reserves tax would fall slightly short if it stayed
15 at the default rate of 25 mills. In both of these
16 years, these could be eliminated if one wished to
17 by slightly adjusting the millage rate. In fact, the
18 tax mechanism provides that the assessment -- the
19 preliminary assessment is to be done in October, the
20 final assessment, the certified amount, the assessed
21 value will be certified no later than February 1
22 which will give the legislature four weeks before
23 we have to start to get ready to mail out the tax
24 bills, in which to modify the tax rate so that if it
25 decides it doesn't want to leave this \$67 million, or

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3 if it doesn't want to leave this \$49 million, it can
4 nudge the rate up. Similarly, when we get to the
5 high price case you will see there will be possibilities
6 for nudging the rate down also. It can be adjusted
7 both ways, just by adjusting the millage. This is
8 exactly the way the property tax works here in the
9 municipality of Juneau. My property, my house, gets
10 assessed by the assessor and I have an opportunity
11 to protest my assessment, and then the municipal
12 finance committee decides how much money they need
13 and Harry Aase will work with the rest of
14 them and decide how many mills they need to generate
15 the revenue they want from that assessed value. They
16 then impose the levy. This is going to be the same
17 sort of mechanism. Unlike before, where the millage
18 rate was set in advance, the pressure was entirely
19 on the assessor. His decision determined what the
20 tax liability was going to be. Now he is freer to
21 come in with a real assessed value, what he believes
22 it to be, the legislature has ample time in which
23 to respond. because, in fact, well before February 1
24 we will have a good idea what the assessed values
25 will be for all properties except for those that are

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3 under appeal. The total, by the way, as you can see
4 over a period, for the low price case, in this year we
5 dropped the millage down to 20 mills on the assumption
6 that there is a legislative policy of preserving
7 parity between the millage rate between the reserves
8 tax and the ad valorem tax on hardware, the equipment and the
9 pipeline and so on. That's been an assumption we've
10 made - it is not in fact in the statute, but the
11 legislature would be free to lower the millage to 20
12 mills and that's what would happen in this case. If,
13 on the other hand, the legislature kept the millage at
14 25 this would no longer be in the red. This would be
15 a black number showing a positive increase and the
16 total negative amount over a four year period would be
17 reduced. When we look at the high price case, we see,
18 first of all, that 30 mills offsets the income tax and
19 exceeds it by \$100 million. So if the assessed value
20 comes in by next January at the level indicated in the
21 preliminary analysis that we've done, and bear in mind
22 it could be higher or it could be lower depending on what
23 the market conditions are, but if it comes in at that
24 level, once again, the opportunity would exist for the
25 legislature to say "No, we didn't mean for this tax to

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3 increase the liability of the oil and gas industry, we
4 meant simply to preserve our revenues stream, our basic
5 revenue stream." And so the millage could be adjusted
6 down here perhaps to 29 or 28 and a fraction - whatever
7 it would take. This would be, once again, a push 0.
8 In fiscal year '83, dropping down to 25 mills, results
9 again practically in a push minus \$10 million.
10 Statistically that is too small to be significant. In
11 fiscal year '84 you can see what happens with a
12 continued 25 mill rate. The tax over generates, over
13 compensates, for the backstop by \$511 million.

14 MR. COTTEN:

15 What makes it go up right there? Do you anticipate
16 something that ...

17 COMMISSIONER WILLIAMS:

18 Well, it reflects the payoff of prior corporate
19 income tax credits. We have a credit mechanism, both
20 for current income taxes that they will be paying, plus
21 there is also the back taxes, \$1.5 billion that has been
22 paid in prior to this point. That is going to be allowed
23 as a credit against reserves tax liability. In the
24 first year that credit is not exhausted until very nearly
25 the end of fiscal year '84. In this year the credit

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3 in fact is used up in this year, and this anomaly
4 results in the fact that there is no more credit
5 available from the 1978-79-80 tax years. Depending
6 on how quickly the credit is used up one can adjust
7 the millage rate back down to restore the status quo.
8 Now, if the millage is lowered to 20 mills, again, if
9 this figure reflects 20 mills to simply be consistent
10 with the table preceeding it, you would be behind
11 again by \$118 million which shows that probably
12 something between 20 and 25, perhaps 22 or 21.5
13 mills would get this just about to zero again.
14 Using the same consistent assumptions we had in the
15 low price case, you can see that it could end up at as
16 much as a \$483 million gain over the four year period,
17 assuming there was no modification in the millage
18 rates whatsoever. This case is high - it is an
19 optimistic price case and given the way the world
20 looks right now I would have to say that the earlier
21 page looks more likely than this page, particularly
22 when you are getting out into this area because that's
23 when your assumptions or different assumptions have
24 had a chance to compound themselves for a couple of
25 years and the gap starts to widen between your

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3 assumptions. Let me just show you how, taking the
4 low price case, how we calculated those revenue effects.
5 I was giving you the bottom line. Now let's see
6 exactly how that bottom line was calculated. This is
7 the analysis of it with the low price case. This is
8 our present projection -- well, this is not an official
9 revenue forecast, this is what our consultants
10 developed for purposes of this analysis -- as a
11 projection of what the present oil and gas income tax
12 would have "warts" and all, no windfall profits tax
13 deduction, the present law as it is on the books.
14 You can see it is \$1142 million in fiscal year '82,
15 \$1356 million in '83, \$1474 million in '84 and
16 \$1535 million in '85. This is the target, this is
17 the income stream that we are going to try to match
18 with a reserves tax.

19 MR. ROGERS:

20 Tom, does that differ very significantly from you
21 revenue projections in-house.

22 COMMISSIONER WILLIAMS:

23 Ours would be slightly higher than this. We are still
24 waiting for the OPEC meeting which I think is next week.
25 We will be in a much better position if there are

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3 any announcements about production rates or price
4 increases at that time to be able to answer that.
5 This is how it is, the oil and gas corporate income
6 tax, as it is written right now. This is what we came
7 up with as what it would generate under the bill.
8 You would allow the windfall profits tax, you allow
9 the "warts", and for any uncredited reserves tax that
10 they actually paid, that would be a cost too, and that
11 would be a deduction as well. The new income tax
12 would be down, you can see, quite a lot from \$1142 down
13 to \$787, from \$1356 down to \$860 you can see as it goes
14 through time. Very significant drops in the income
15 tax by allowing these deductions. However, the new
16 reserves tax would be \$600 million in the first year,
17 then dropping reflecting the lower millage rate, to
18 \$429 million, rising with the same millage rate. Now
19 some people will say "Now why does that happen? We're
20 getting closer to the decline in the Prudhoe Bay curve
21 Why is that happening?" It's because you are also getting
22 closer to the phase-out of the windfall profits tax
23 under present law. A phase-out of the windfall profits
24 tax has a larger impact on the present value of the
25 income stream than the approach of the decline of the curve.

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3 This one would increase still more -- I'm sorry, this
4 one would increase still more -- but this is figured
5 at 20 mills. It would be larger if you were at 25.
6 The retroactive application of the "warts", that is,
7 allowing the cap to be removed on interest and so on
8 that was in the original version of H.B. 200. That
9 would apply retroactively to tax year '78-79 and '80.
10 It would show up as a revenue effect probably in fiscal
11 year '82, just given the nature of things. So that is
12 minus \$83 million. We have forecasted a lower effect
13 due to the removal of the interest ceiling in the
14 original fiscal note. That one assumed
15 \$50 million in the current year, rising by 10% a year
16 thereafter. That represents the extreme worst possible
17 case. We believe that it is much more likely that the
18 effect of that will be half that amount - \$25 million,
19 rising by 10% a year. This reflects that lower level
20 of removing that particular "wart". The retroactive
21 application of the windfall profits tax is estimated to
22 be \$156 million, \$3.3 million from the fiscal year 1979,
23 the remainder, \$153 million, from fiscal year 1980, tax
24 year '80 rather. These would be recognized in fiscal
25 year 1982 which would mean shortly after the 1st of July.

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3 The net cash flow, the new cash flow, that we would have
4 under the bill is, of course, adding these four numbers
5 together. It comes out to \$1149 million. \$1149 is
6 \$7 million larger than the \$1142 million we were trying
7 to match. And there we get \$7 million, and if we
8 put back \$2 million -- you will recall that was
9 exactly what I said was the revenue change. This is
10 the bottom line number -- what does the bill do to
11 revenues. In fiscal year '83 you add the numbers up --
12 of course, there is no more retroactive "warts" or
13 windfall profits tax being taken - that was all taken
14 in the first year so those are zero in '83 and thereafter.
15 You basically are then looking at the new reserves tax and the
16 new income tax combined, what the net payments are under
17 those. You can see that this comes out at \$67 million
18 less, \$1289 from \$1356 million, \$49 million less in
19 '84, and \$55 million less in 1985. Time did not allow
20 me to prepare a similar table in this format -- on the
21 next pages where it would have been is blank -- that
22 would have been for the high case. But there just
23 wasn't time before the hearing started. The high case
24 has a similar analysis that leads to the bottom line
25 that I presented to you earlier. I can make that available,

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3 of course. Copies of this analysis can be made available
4 as soon as the hearing lets out and we will mail them
5 to members of the Committee. So much for the dollars and
6 cents right now. I'd like, if I may, Mr. Chairman, to talk
7 a little about some of the policy questions here and some
8 of the particular provisions involved in the bill. Most
9 particularly, I think it is important to look on pages
10 6, 7, and 8 - the findings and purposes that would be
11 codified in the reserves tax chapter. I think that
12 these are probably all familiar to all of you. However,
13 just for the sake of the record, I will run through
14 them because I think it is important that everyone under-
15 stand what the justifications are for this action.
16 The first finding is that since statehood the level of
17 services and facilities available to the public the state
18 has been able to provide has been below that that other
19 states have been able to provide. The reason is that
20 Alaska has never had as much money, not enough money
21 to provide it. Second, even today there are inadequate
22 facilities, which people may reasonably expect, are
23 inadequate in comparison with other states. These include,
24 and it is not an exhaustive list, public transportation --
25 all you have to do is try to drive to Juneau or all you

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have to do is try to drive to Nome for that matter, or try to drive out to southwestern Alaska - you can't do it. You can't take the train. Oftentimes you can't fly because the airport may not be up to standard, or it may be dangerous to do so. Inadequate public health care facilities. I remember the time I was in Fort Yukon and a person there had been shot and was waiting two days for the plane to get in so they could get hospitalization. That hasn't changed. There are still problems out there. Inadequate communications facilities. Anybody try dialing out of 465 number in the past few days - except at lunch hour it's hard to get an outside line for long distance. Inadequate public education facilities - that's something that we've been working on. The so-called Molly Hootch schools. But they are not all built. The problem is not just in the rural areas. There is a tremendous amount that remains to be done in public education. Inadequate levels of police protection. A state this size and the size of the police and fire that we have - it's an impossible task to provide the same degree of protection and coverage and service as other states can. Overburdened justice facilities - I think the Chief Justice in his speech State of Judiciary has shown there has been progress

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3 there, but there still remains a problem. Inadequate
4 energy facilities, of course, there's alternative
5 energy sources that are sustainable such as wind, and
6 also hydro. It's incredible that our two largest
7 population centers are not linked together in an energy
8 grid. That's something that everybody in the lower 48
9 takes as granted. The entire east coast is linked in an
10 energy grid. Finally, an economy overly dependent on
11 non-renewable resource development. Well, that speaks
12 for itself. Will we or nil we, we are producing an
13 extremely valuable resource belonging to the state and
14 it's such a large resource and such a valuable resource
15 that it is more than 90% of the total amount of money
16 that state is receiving. It is important, since this
17 resource is a one-time-only resource, that we prepare
18 for the day when it begins to be exhausted, that
19 production rates can no longer be sustained and that
20 other sources of revenue and other sources of economic
21 activity be in place at that time. This is critical -
22 without that we are doomed. As all of you know, as I
23 said in the beginning of my remarks, one of the reasons
24 that has stimulated us to do the analysis we have done
25 and carry on this project is the litigation that raises

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3 a substantial question. I believe we will win. But I
4 also believe that we should not play craps with \$9 billion.
5 Even if we had a 90% or 95% chance of winning, the
6 consequences are too severe if we should happen to crap
7 out. There is really no other activity up here that could
8 sustain the major portion of the revenues that we need
9 to protect. By far our largest industry and our most
10 valued industry is the petroleum industry. They are the
11 source of the revenues that we are seeing now. If we were
12 to attempt to backstop the oil industry's income tax by
13 imposing taxes on timber or on fisheries or on mining or
14 on any other activity up here, tourism, if we were to do it
15 on all of them together we couldn't begin to approach
16 the amount of revenues that in fact we need to backstop.
17 Consequently, that is really not a viable alternative
18 that is open to us at this time. We also have seen that
19 the present level of taxation on the industry is not so
20 onerous that the industry has abandoned hope on Alaska.
21 We have seen active bids just two weeks ago or in the
22 last two weeks in the north Cook Inlet. We earlier saw
23 major interest in a Beaufort Sea sale. The point is,
24 where the resources are there will be interest if you don't
25 get to the point of being confiscatory. This tax was in

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3 place - people knew what those costs are and still they
4 were willing to bid as high as 79% of the net profits
5 from the lease and pay a 20% royalty and pay a fixed
6 bonus in the millions of dollars for a given tract.
7 I think that speaks for itself. We have not totally
8 discouraged industry - in fact, that we still provide,
9 of the major areas of the world, perhaps the most
10 hospitable rather than hostile economic climate, other
11 than of course our physical climate which we can do
12 nothing about. One of the problems that does exist,
13 I think, is that we find in the two areas where we do
14 have significant amounts of proven gas reserves, it is
15 very difficult to develop a market for natural gas.
16 The pipeline, of course, is -- the financing is in
17 difficulty, there's talk of decontrol and the cost of
18 the pipeline are such that there will be very little
19 wellhead value perhaps after the costs of transportation
20 are deducted from the price when it is delivered to
21 market. To oppose the reserve tax at this time makes
22 the economic development of those gas reserves even
23 more marginal. In the Cook Inlet we also see
24 substantial quantities of gas known to exist, yet, the
25 Pacific-Alaska LNG project has been on the boards for years

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3 and is still tied up, partly in litigation, but also
4 there are questions about the adequacy of the reserves
5 to cover it and there are problems with the basic
6 economics of the project. To include a reserves tax on that
7 could jeopardize a project. It could also jeopardize
8 the development of the natural resource there for other
9 economic activity since the fields do seem to be so
10 marginal or they would have been developed by this time -
11 to impose a reserves tax on that may well jeopardize
12 their viability and consequently this bill does
13 provide for an exemption of reserves from the reserves --
14 gas reserves, I mean, from the ad valorem tax on the
15 reserves. Finally, we get to a question of lands that
16 are received by regional corporations under the Alaska
17 Native Claims Settlement Act. This is probably the most
18 difficult aspect of this Sponsor Substitute bill to
19 understand at first sight and once again I have a little
20 chart which shows what happens with the money that
21 native corporations receive from lands that it has
22 obtained under the Alaska Native Claims Settlement Act.
23 Those are supposed to be oil wells. This is ANCSA land -
24 Alaska Native Claims Settlement Act lands. The income
25 comes into the regional corporation that owns it. 70%

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3 of the income that comes in to the regional corporation
4 is required to be shared under the provisions of
5 section 7(i) of the Native Claims Settlement Act.
6 That is an absolute condition, it is an absolute
7 obligation of the native corporation, the native regional
8 corporation to pay and to share. This sharing then goes
9 among all 12 of the original regional corporations on the
10 basis of the number of shareholders they have. I didn't
11 draw twelve circles here but you can easily see the idea -
12 the money goes back to all twelve regions, including
13 the original region. Under other subsections of section
14 7, each region is in turn required to share one half
15 of the amount it gets here - it is supposed to divide
16 that one half among the village corporations that it has.
17 The village corporations in turn can pass that on to
18 their shareholders. One of the questions is, how should
19 this type of income, which is in black, be treated under
20 the oil and gas income tax, or how should income tax be
21 applied to it. Clearly, this part, which is in red, falls
22 within the purview of AS 43.21, the oil and gas corporate
23 income tax and the regional corporation or its subsidiary
24 that holds the mineral interest in this land is the tax-
25 payer under AS 43.21. It is under 43.21. Since it is

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3 statutorily obligated to distribute 70% of the money
4 that comes in, the bill provides for recognition of
5 that fact and allows them to deduct the 70% in fact
6 that it is distributing. 30% remains with them and
7 that will be taxable to them under 43.21. What about
8 the shared income? Should all these regions and all
9 their respective village corporations be under 43.21
10 or should they be under 43.20? There is no difference
11 in terms of the amount of tax they are going to pay.
12 They are all Alaskan corporations so all of them are
13 going to be paying the full 9.4% rate except on the
14 first \$50,000 of course, that is 5.4%. They are going
15 to pay the same rate the oil companies do - and as this
16 regional corporation does on its 30% that it retains --
17 it is 9.4%. The question basically is going to be,
18 should 200 or so village and regional corporations have
19 to fill out the 75 page form with all sorts of information
20 about production costs, depreciation, and intangible
21 drilling costs, capitalized interest and everything else
22 which they know nothing about - all they know is they
23 are getting money out of this pool. That is all they see.
24 They can fill all that out and put in zeros, or they can
25 fill out the simple, regular corporate tax return. Their

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3 liability is going to be the same on this income that
4 they get. Absolutely the same. Rather than put them
5 to that inconvenience, rather than go through such an
6 elaborate application of 43.21, the Sponsor Substitute
7 suggests drawing the line here. The area in red is
8 oil and gas related -- it is chapter 21. Income to
9 the region owning the land is 43.21 income. The
10 disbursement from the region into the sharing pool
11 is deductions under 43.21. But for the recipients
12 of the shared income, whether they are regions or
13 they are villagers, it is regular income since they
14 are going to pay the same amount of tax. It is not
15 going to put them to all the hassle of filling out
16 the elaborate forms and complying with, Lord knows,
17 how much more complicated regulation there seems to
18 be. Regulations are not complicated - in fact, for
19 these people because they're just receiving it. Regulations are
20 complicated only when you've got a direct interest in oil and gas production.
21 We think that makes sense. Therefore, when you get to
22 the very first section of the bill -- on page one,
23 starting on line -- well, I guess it is line 17 --
24 17 and a half -- the underlined portion there, income
25 from sharing in the 70% of a native regional corporation's

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3 revenue that is required to be divided under section 7(i)
4 of the Native Claims Settlement Act is taxable income
5 under this chapter, meaning 43.20. That's just what I
6 was describing - that says, the lines in black there,
7 the income represented by the black lines, black arrows,
8 on that chart, is going to be 43.20 income. Still taxed
9 at the same rate but 43.20. For the corporation that is
10 the regional corporation, for the 30% that it retains,
11 it is going to be taxed under 43.21, just the same as
12 an oil company. And that's how that works. If I may,
13 I'd like to run briefly through, section by section
14 briefly, summarizing what the effects will be of the
15 various provisions. I have already covered some of them.
16 I don't believe this will take more than 10 minutes to
17 run through section by section. The first section, of
18 course, includes what I just was talking about - the
19 treatment of the income that is shared, the section 7(i)
20 shared income. In addition, it just makes some
21 technical changes earlier in the provision of 43.20.011(e)
22 to make it parallel and consistent with the corresponding
23 provisions regarding the application of chapter 21.

24 MR. GARDINER:

25 Tom, I have one question here where it sets a rate. I was

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3 wondering on other jurisdictions which have ad valorem
4 taxes - we already have one on the (indisc.), I guess.
5 Do any of those jurisdictions administer -- like
6 municipalities administer property taxes in the state --
7 setting a millage rate annually?

8 COMMISSIONER WILLIAMS:

9 Yes. Most jurisdictions, in fact, -- well, most
10 jurisdictions that I'm familiar with anyway, find out
11 what the assessment roll is and determine how much
12 revenue they wish to collect in order to implement the
13 various programs they have and then factor the millage
14 and impose the millage each year that produces the
15 desired amount of income from the ad valorem tax.
16 They are, of course, tempered by the fact that if they
17 impose it too high they may face a recall or they may
18 lose in a later election.

19 MR. GARDINER:

20 But earlier you explained they way it is scheduled is
21 that even if though this does not provide a mechanism
22 whereby the legislature annually sets it because of the
23 time frame when it is imposed. We, in effect, could
24 each year, as the legislature met, if our predictions are off,
25 we could raise or lower it ...

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3 COMMISSIONER WILLIAMS:

4 Yes. You could and you should review it. The point
5 is that in the event that you fail to take action rather
6 than have no rate for that year, the statute contemplates
7 having a particular rate. That's what the rate is
8 unless you act.

9 MR. MALONE:

10 Let me -- the current ad valorem hardware tax -- we don't
11 have that provision that unless a different rate is
12 enacted ...

13 COMMISSIONER WILLIAMS: .

14 That is correct. And that's, Mr. Chairman, one of the
15 problems with the administration of the ad valorem tax.
16 It means the last element of the calculation is the assessor's
17 opinion about what the value is of the property. Where
18 you have property regularly being sold, bought and sold
19 of like types, then that's no problem. But what is the
20 value of the Trans-Alaska pipeline system. No interest
21 in that has been sold. None has been offered for sale
22 recently. No one has offered to buy it recently.
23 There is not anything in the world comparable to it.
24 Therefore, there is a lot of pressure there because there
25 is a fairly broad range of subjectivity that the assessor

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3 has to apply his discretion in coming up with the
4 assessed value of the Trans-Alaska pipeline. When he
5 is providing the last element to the equation and he
6 can see for every million dollars or 10 million dollars
7 of assessed value he puts on, that results in a direct
8 dollar for dollar increase 2% of the amount of assessment.
9 Two cents on every dollar that he placed, that is 2 cents
10 more that is going to be paid. It naturally tempers and
11 has an influence, not only because -- well, primarily
12 because the assessor is also responsible for presenting to
13 you projections about what he thinks the tax is going
14 to bring in. He is not going to do it just for the current
15 year - he has to do it for next year and the year after
16 as well. When we fall short by \$160 million, there's
17 trouble. This time it didn't happen with property tax.
18 But the same sort of pressure is there on the assessor.

19 MS. FAHRENKAMP:

20 Mr. Chairman, I was curious, since we are going through
21 an analysis and many of us have committee meetings
22 in five minutes, we will have question time tomorrow?

23 MR. GARDINER:

24 Yes, if we don't finish and people have questions
25 tomorrow should -- the Commissioner will be available tomorrow,

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I think ... I didn't ask him ...

4

MS. FAHRENKAMP:

5

I beg your pardon, if we don't finish ...

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MR. GARDINER:

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Are you going to be available tomorrow?

8

COMMISSIONER WILLIAMS:

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I certainly plan to be.

10

MR. GARDINER:

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If we have questions that we don't finish today we will

12

start off with those tomorrow.

13

MS. FAHRENKAMP:

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Obviously, there can be no finishing of questions with

15

five minutes left.

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MR. GARDINER:

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Yes. We can continue tomorrow. Representative Rogers.

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MR. ROGERS:

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Your suggestion of the annual -- the legislature annually

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setting a rate based on trying to get it to come out

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equivalent to the 43.21. That assumes the Department of

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Revenue would continue to calculate what the old 43.21

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would have brought in and adjust it to that level.

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I wonder if future legislatures would use the old 43.21

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as a yardstick. It seems to me that is one problem perhaps

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3 in assuming that 1984 or 1985 reduction of 20 mills. It
4 assumes that we are going to sit down and say, Gee, What
5 were we going to get under that old tax we had five years
6 ago?

7 COMMISSIONER WILLIAMS:

8 It won't be very hard to calculate at all because we know
9 what the gross production income is. Each one of the
10 "warts" that is representing a deduction will be a
11 deduction on the return. You can tell exactly what each
12 company is taking for that deduction. The windfall
13 profits tax would be an itemized deduction. You can tell
14 exactly what that would come to be. You would look at
15 their net liability and you could add back 9.4% of each
16 of those deductions for all the corporations. You would
17 be right back at where 43.21 is today. That would not be
18 hard. As for whether a future legislature would want to
19 use this as a yardstick or not, of course, this legislature
20 can't bind future legislatures with that regard. Anything
21 that we had as a structure today, future legislatures
22 could decide to go back from a 30% share as the fair
23 amount to 25% or they could advance it if they felt it
24 was appropriate to do there, although I wouldn't recommend
25 that at this time without more guidance from the U.S.

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Supreme Court on that.

MR. GARDINER:

Go ahead and continue.

COMMISSIONER WILLIAMS:

All right. Thank you Mr. Chairman. Section 3 amends the deductions from production income in coming up with net taxable production income under the income tax. The addition of the language "or incurred" after the word "paid", so that it is "taxes paid or incurred". Elsewhere it occurs -- well, still payments or taxes, that are paid or incurred -- that allows taxpayers who are on accrual basis of accounting rather than on a cash basis of accounting to recognize those costs in the tax year when they recognize them themselves for their internal accounting and for their federal reporting purposes. It is not a substantially important thing - it is simply convenience. In other provisions where we had the discretion, we have allowed them to do it on a cash or accrual basis under the regulations. Section 7 removes the cap on the interest limitation creating a presumption - the presumption is set forth in a new section 7 or new section F, I mean, which appears on the top of page 5. It just simply sets the criteria by which

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3 a corporation will be able -- or taxpayer -- will be
4 able to rebut the presumption. It is only a presumption
5 now instead of an absolute ceiling. Item 9, General
6 Overhead and Administrative Expense, once again, creates
7 a presumption and allows it to be rebutted under the
8 new subsection F. On page 4 we have the deduction for
9 this 70% amount, right here, that indicates a
10 regional corporation can deduct from its gross income,
11 the 100%, it can deduct the 70% it really doesn't see,
12 that it distributes out. The new number 11 allows for
13 the payment of the reserves tax, or deduction for the
14 reserves tax which exceeds the credits which are
15 applied. If I may go back to my first illustration,
16 you recall this is the reserves tax backstopping this
17 part was reflected by a credit, this was actual payment.
18 That's real cost out-of-pocket of the corporation. This
19 is what has been allowed under this new 11 to be a
20 deduction in computing their taxable production income.
21 Number 12, innocently enough, or innocent looking
22 enough section 4986 of the Internal Revenue Code imposes
23 the windfall profits tax.

24 MR. GARDINER:

25 So this is the mechanism by which they can deduct the

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windfall profits tax.

COMMISSIONER WILLIAMS:

That's exactly right. Item 12 there, on lines 23 through 26. I've already discussed section 4 of the bill that adds a new subsection (f) which provides for the rebutting of the presumptions that limit interest and administrative expense. Section 5 of the bill replaces -- this is under the portion of the income tax, the present income tax, where we use book income at the present time -- this would change it to be federal taxable income other than their income from the production or pipeline transportation of oil and gas.

MR. SACKETT:

What page are you on?

COMMISSIONER WILLIAMS:

I am now on page 5.

MR. GARDINER:

Line 7.

COMMISSIONER WILLIAMS:

This will eliminate the differential treatment between chapter 20 taxpayers and chapter 11 taxpayers with respect to income other than that earned from oil and gas or pipeline transportation in the state. Thus it becomes

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3 neutral to a taxpayer which chapter you fall under,
4 other than, of course, the income from production and
5 pipeline transportation. Section 6 allows -- well, it
6 makes explicit what we believe is already implicit
7 in the law. We've adopted a regulation to this effect.
8 This would provide clear statutory authority, clearer
9 statutory authority - I believe there is adequate
10 statutory authority, but it has been raised in the
11 lawsuit. Why leave a loose issue hanging. So this
12 makes explicit that the Commissioner of Revenue may
13 provide administrative relief in a case where a taxpayer
14 can demonstrate in fact that there is duplicative
15 taxation resulting from our tax scheme.

16 MR. MALONE:

17 Mr. Chairman, on that issue there, I think the authority
18 to provide administrative relief if in fact there is
19 over-taxation or unfair taxation - something beyond the
20 law going on - I think is in the present law. But has
21 administrative relief been applied for?

22 COMMISSIONER WILLIAMS:

23 Not at this time. That's one of the issues in the
24 case, Mr. Chairman. Whether in fact the administrative
25 remedies have been exhausted. The position of the

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3 litigants has been that our regulation, which offers
4 relief, lacks statutory authority, that we are powerless
5 to provide it.

6 MR. MALONE:

7 The State of Alaska, which is the taxing authority,
8 maintains and, apparently, is willing to offer
9 administrative relief. The taxpayer is saying that
10 they don't have the statutory authority to do it?
11 Is that ...

12 COMMISSIONER WILLIAMS:

13 That's correct.

14 MR. MALONE:

15 Thank you.

16 COMMISSIONER WILLIAMS:

17 Section 7 also relates to an issue in the lawsuit. Our
18 regulations -- this is on page 6, that's correct -- the
19 new language is in line 7. Our regulations require
20 quarterly payments of estimated tax. This is consistent
21 with the practice under the Internal Revenue Code, and
22 in fact, the Internal Revenue Code, when it refers to
23 installments does contemplate both installments after
24 the due date as well as prepayments before it.
25 Nevertheless, it has been raised in the lawsuit that this

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3 only means payments after the due date. Since we
4 were requiring installments of estimated tax before the
5 due date this amendment would provide clear statutory
6 authority for our regulation. It is just one more
7 loose issue in the case that I think is a rogue issue
8 but it is there nonetheless, and it is pointless to allow
9 it to continue. Section 8 enacts the new reserves tax.
10 I have already run through, briefly, the provisions in
11 43.58.011, which is the findings and purposes. If you go
12 to page 9, starting on line 6, you get to the operative
13 provisions of the tax. 43.21 imposes -- 43.58.021 imposes
14 the ad valorem tax for the first tax year beginning
15 July 1, 1981. This coincides with the State's fiscal
16 year. It allows, with this assessment date and this
17 beginning date for the tax year, it allows us to come in
18 with an assessed value in ample time for the legislature
19 to consider what the millage rate should be. Again,
20 with the January 1 deadline, and a June 30 payment period
21 under 43.56, which is how the other ad valorem tax is
22 structured, we essentially are given only half a year
23 in which to make the assessments, go through the appeals,
24 certify the final roll and send out the bills. This would
25 give us a whole year to do so. It is better.

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3 MR. COLLETTA:

4 Commissioner, is there a conflict between the reference
5 to transportation system of oil and gas on page 5, and then,
6 the exemption on page 8? Lines 9 and 10, Tom, on page 5,
7 and then go to lines 1, 2, 3, and 4 of page 8.

8 COMMISSIONER WILLIAMS:

9 No, that's not inconsistent, Mr. Chairman, because on page 5
10 the reference to income from pipeline transportation and
11 from worldwide production is reducing, it's a deduction,
12 an exclusion, from the worldwide pie of income that is to
13 be sliced under section 40. We've already accounted
14 for the Alaska pipeline income and the Alaska production
15 income and it's no longer appropriate to take a slice --
16 at least under this the conclusion follows that we
17 shouldn't be taking a slice out of that type of income
18 where they earn it in other jurisdictions. That is what
19 those lines on page 5 relate to. That is not
20 inconsistent with the finding on page 8, on lines 1-4,
21 that natural gas has been slow to develop up here.
22 It certainly has been slow to develop up here. We've
23 had partial development but it has not been -- you know,
24 there is still a lot undeveloped. Continuing on page 9,
25 then, lines 6-8 impose the tax. Lines 9-11 set the rate

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3 at 25 mills unless a different rate is set by the end
4 of February of the tax year. The reason the end of
5 February is important is simply that later on you will
6 see that we have to send the bill out by the 15th of
7 March. That gives us two weeks, once we know what the
8 millage is, assuming that if there were to be a change,
9 that would give us two weeks to get all the tax bills
10 prepared and out in the mail and meet our deadline.
11 It is a rule of practicality - whenever you are going
12 to have the tax bills get sent out then sometime before
13 that you have to say, Okay, this is what the millage is
14 going to be for that year. That is what this does. It
15 is obviously not a real attempt at the legislature to
16 limit itself - it is simply to make it clear how the
17 system works. This represents a practical deadline.
18 The legislature, of course, is free to rewrite the
19 provisions if, in the future, it chose to do so. But just
20 as an operating thing the ordinary expectation is that
21 by the end of February if you haven't changed the millage
22 rate it will be 25 mills. We'll send out the tax bills
23 accordingly. And we'll do so within two weeks. Section 31,
24 which is starting on lines 12-24 on page 9, provides for
25 exemptions from the reserves tax. It exempts the State's

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3 interest, since it is pointless to tax ourselves. It
4 exempts an interest owned by the United States, since
5 we cannot do so. It exempts property that we are pre-
6 empted from taxing by the laws of the United States -
7 this includes, native lands that have been exempted under
8 section 21(d) of the Alaska Native Claims Settlement
9 Act. When you read the Act it says that the developed
10 lands may be taxed by -- may be subject only to local
11 tax, is the only reference. Earlier in the legislative
12 history of the bill there are different versions that
13 make it clear that it was intended that the local
14 governing body, where the tax, where the shareholders
15 of the corporation would essentially be the constituency
16 of that local government. If they chose to tax them-
17 selves, that would be okay. It was not contemplated
18 in the history that the State do so. One has a lawsuit
19 if one wants to find out for sure whether that is in
20 fact a preemption or not. It is our opinion, it is my
21 opinion anyway, that as a matter of policy. We do
22 not have to engage in that. It may well be legal opinion
23 that we should not engage in that because of the risk
24 of loss. This simply says as a matter of policy that we
25 will not do so. There was a valid policy in the original

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3 decision of the Congress, and that we should respect
4 that, and that we probably are in fact preempted from
5 going contrary to that policy.

6 MR. ROGERS:

7 But later on in section 10 you do say that if that is
8 taken to court and we lose then it is stricken.

9 COMMISSIONER WILLIAMS:

10 That's correct.

11 MR. ROGERS:

12 You provided a backstop in case something goes
13 wrong.

14 COMMISSIONER WILLIAMS:

15 That's correct. The third exemption is gas reserves.
16 As I said, there has been some development of our gas
17 reserves but by far the largest portion of the
18 reserves in the State are undeveloped and it seems that
19 a reserves tax at this time could impair that development
20 unduly.

21 MR. ROGERS:

22 I'm concerned and perhaps jumping forward a little bit --
23 your definition of the word "gas" later on in the bill
24 is not oil, and then your definition of oil is crude
25 petroleum and other things separated from gas. It seems

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3 to me that those two end up running-round-robin.

4 It would be on page 16, lines 4-8.

5 COMMISSIONER WILLIAMS:

6 Well, those -- they really don't. Those definitions,
7 one saying what oil is and then saying gas is not oil.

8 In fact, have been used in production tax and there is
9 a reference to a gas processing plant. But that's fairly

10 clear what is meant by that - that's the liquid
11 extraction plant that you see in the Cook Inlet area.

12 There are two of those there. It would be any field
13 conditioning plant readying the gas at Prudhoe Bay

14 for delivery into the next facility down stream from
15 the fuel production facility. It does say that it's --

16 well, it says other hydrocarbons regardless of gravity
17 implicit, it's API gravity. Necessarily then you are
18 a liquid hydrocarbon, not in a gaseous state, although
19 you can originally recover it in a gaseous state.

20 A number of these have a boiling point close to room
21 temperature and others evaporate quickly at room

22 temperature so they exist partly in gas and partly in
23 liquid. It's the liquid state here that we are referring

24 to. Section 41, going back on page 9, section 41(a)

25 allows the current year tax under 43.21 to be a credit

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3 against the reserves tax liability. Section 41(b) allows
4 income tax payments in the past under chapter 21 for the
5 tax years 78-79-80, and in fact the first quarterly
6 estimate for tax year '81. Those past tax payments
7 will be also allowed as a different kind of credit
8 against the tax liability. The distinction between
9 the two types of credit becomes clear in subsection (c).
10 The current year, section (a) credit if you will, only
11 can be applied against the reserves tax, the current
12 reserves tax. The past year tax credits, the tax
13 credits for past income tax payments, can be carried
14 forward and are to be carried forward until they are
15 completely used up. Since it is contemplated that the
16 reserves tax will be as large, or larger, than the
17 income tax during all or most of the period while
18 litigation may be pending on the income tax, there is
19 no danger that the section (a) credits will in fact -- they will
20 be fully used up each year, we expect. In fact, there
21 will be enough left over to allow the application of
22 section (b) credits and use that up either by the end
23 of fiscal year '83 or by the end of fiscal year '84,
24 which I described earlier. Section (d) allows individual
25 persons or trusts that engage in oil or gas production

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3 or pipeline transportation to take credits for the tax
4 and say they are not corporations - they were not subject
5 to chapter 21. But they were in the same shoes as a
6 chapter 21 taxpayer otherwise. They paid income tax
7 and they engaged in the same activity. This allows for
8 the credit of the tax that they paid under chapter 20
9 simply by virtue of the fact that they were individuals or
10 a trust rather than having been corporations. In fact;
11 this will only apply to the 1978 tax year because for
12 corporations and fiduciaries the income tax was repealed
13 starting with the tax year 1979.

14 MR. COTTEN:

15 Can you give us an example of somebody who might fall
16 under that category?

17 COMMISSIONER WILLIAMS:

18 I can't really tell you a name because -- yes I can. If
19 you think of the interest at Prudhoe Bay. Of course, you
20 have -- I'm not confirming if they have paid taxes
21 under 20 or 21 because that may be confidential
22 information -- but look at the ownership at Prudhoe Bay.
23 You find there is ARCO, there is SOHIO, there's Exxon,
24 there's Phillips, Mobil, there's Chevron and so on, and
25 then there's the Nelson Bunker Hunt interest, William

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Herbert Hunt Trust estate, another Hunt Trust estate, Hunt Industries and Placid Oil - some of those may be corporations and some of those may have been under chapter 20.

MR. COTTEN:

So if they now fall under the requirements of the reserves tax and they paid tax under 43.20 then they would be the same as if they paid under chapter 21 as far as the credits are concerned.

COMMISSIONER WILLIAMS:

That's correct. That's to afford equal treatment to people -- because all people are subject to the reserves tax regardless of whether they are corporations or not.

MR. COTTEN:

Thank you Mr. Chairman.

MR. ROGERS:

So an individual who is now not paying any income tax could essentially deduct an amount from the reserves equivalent to what they would have paid?

COMMISSIONER WILLIAMS:

No. The only deduction is actual payments. If his income tax payments are now zero, his deduction is zero. His credit is zero.

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3 MR. ROGERS:

4 ...net increase in taxes. Overall, the backstop ends
5 up hitting the industry as a whole at approximately the
6 same level. For those sole proprietorships or individually
7 owned, their effective tax rate will increase.

8 COMMISSIONER WILLIAMS:

9 It will be restored to a comparable level as those who
10 happen to be corporations engaged in the same activity.
11 You see, what happened with the repeal of the individual
12 income tax is that these people were -- their tax
13 liability under chapter 20 was repealed. A new tax
14 liability is now being imposed on the industry as a
15 whole without differentiation to the happenstance
16 of whether a taxpayer is a corporation or not.

17 MR. ROGERS:

18 Can you provide the Committee with how many people or
19 the number of how many people will be involved...

20 COMMISSIONER WILLIAMS:

21 To the best of my knowledge it's only the interests in
22 Prudhoe Bay that are individuals. Or trusts.
23 Subsection (e) provides that if there is an adjustment
24 in the tax year, in the income tax liability, after the
25 credit for that tax year has already been taken, that the

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3 credit is to be adjusted to reflect whatever adjustment
4 that was made in the original tax liability. On page 11,
5 the assessment requires first, in subsection (a), that
6 the Department will assess taxable property as of July 1
7 each year. Section (b) sets out what the standard is in
8 assessing it. The full and true value being the
9 estimated price that the property would bring between a
10 willing buyer and a willing seller and they both know what
11 they are doing. The Department is to consider all factors
12 that may affect the value of the property and then
13 specifically, but not limited to, the Department is to
14 consider discounted present value of the expected future
15 net income from the proven reserves. Subsection (c)
16 is something that we did in the original reserves tax too,
17 namely, in assessing the income -- if we look at an
18 income stream we are not including in the assessed value
19 of the reserves the value represented by the hardware
20 that is already in place and which is already being
21 taxed under 43.56. We deduct that assessed value out -
22 it gets taxed under 43.56. The remaining value is what
23 is taxed under the reserves tax. In section (d) there
24 is a presumption about what the discount rate should
25 be when discounting to present value. The discount rate

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3 is presumed to be 10 percentage points over the rate
4 of inflation, the average rate of inflation over the
5 preceding five years as measured by the implicit
6 GNP deflator, which is published by the U.S. Department
7 of Commerce. There is provision in there about the
8 standard of proof that a taxpayer must meet in order
9 to rebut that presumption. By the way, that standard
10 of proof seems to be consistent with what the case
11 laws have held as the standard for a taxpayer to
12 rebut an assessor's decision. It is not something
13 which we made up - it is something consistent with
14 precedent. In section 61 on page 12 provides that we
15 prepare an assessment roll which sets out -- this is
16 the ordinary assessment roll that any municipality or
17 taxing jurisdiction with a property tax does. You set
18 out a description of the property, the value of the
19 property and the names of the people who are going to --
20 who own it. Section 71 requires that by the 15th of
21 October we send a notice out to the owners of the
22 property - a preliminary assessment, what we think it is
23 worth.

24 MR. ROGERS:

25 Is that a public record.

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3 COMMISSIONER WILLIAMS:

4 Yes. By the 15th of October for each year we send
5 out our preliminary estimate of what the assessed
6 value is. That is the same thing as the notice
7 that you get if you live in Anchorage or you live in
8 Juneau - you probably have gotten already your notice
9 of assessment. That's all it is. It simply says what
10 the assessed value is. Preliminarily. If the taxpayer
11 disagrees, then he proceeds under section 81 that starts
12 on line 14 on page 12. Then 20 days, he may appeal the
13 assessment. The appeal will be in a formal hearing
14 under the regular procedures for tax appeals provided
15 in 43.05.240. At the hearing the appellant will bear the
16 burden of proof and if he fails to present any proof as
17 -- to justify a different value then he has failed
18 to meet the burden and failing to meet the burden means
19 the assessment is to be upheld. On the other hand, if he
20 does meet his burden of proof and the Department determines
21 that a correction should be made, then the Department
22 must make it. If after the appeal, the taxpayer is still
23 dissatisfied with the Department's decision then he
24 has 30 days in which to get into court. Section 91 of --
25 the new section 91 of the tax provides that by the 1st of

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3 February, at the latest, we certify the final assessment
4 roll. This, again, is a public document. This will be --
5 the final roll, will be in fact what determines the
6 liability at 25 mills. From that the legislature will
7 be able to determine whether an adjustment is warranted
8 in the millage rate. Obviously, if there are any material
9 differences we would notify the legislature earlier
10 rather than waiting right up to the 1st of February, of
11 those differences. Section 101 allows for supplemental
12 assessment rolls - that's simply if there is something
13 out there that no one reported to us and we weren't aware
14 of it ourselves, and later on we find out that it is there
15 and should have had an assessment, then we can put them
16 on an assessment roll. They don't escape taxation for
17 that year. Section 111 is standard language allowing
18 us to conduct investigations. It is essentially the same
19 as section 110 in the present 48558 which was used when
20 the reserves tax was active in '76 and '77. Section 121
21 simply provides that the standard limitations on
22 assessment collection and refund for taxes apply to
23 this tax, except that a redetermination of tax is not
24 subject to those limitations redetermination of
25 reserves tax. Meaning if there is an adjustment in the

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3 credit against the reserves tax then you can recover
4 the change in the actual tax liability. Going back here
5 again, that is simply to say, if this changes up or
6 down, then the amount of actual liability that is paid
7 will still be free to go up or down regardless of what
8 those other provisions may provide. We are not cut off
9 by the statute of limitations. If there were a court
10 decision and it came down more than three years after
11 the original payment - we could still adjust the
12 payment either upward or downward. Section 131 is
13 parallel to the existing provisions in the reserves
14 tax about who pays the tax. Section 141, on page 15
15 starting on line 22, says the Department may adopt
16 regulations to implement the tax. And section 151
17 contains definitions of the various terms that have
18 been used. I think we already discussed the definition
19 of gas and oil. Section 9 of the bill, starting on
20 line 4 of page 17, is statement of intent about the
21 credit provisions. It is basically an explicit
22 statement of intent, an intent to be severable, that
23 if 43.58.041, the credit provisions, in any way
24 imperil the basic tax structure, then that portion is
void. The credit provision is void. Similarly, in

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3 section 10 of the bill, if one of the three exemptions
4 from reserves tax is held invalid or if any, one or more
5 are held invalid, and that is a final decision, then
6 that's a void exemption. There is the intention that it
7 be severable rather than all or nothing for the basic
8 tax itself. Section 11 makes it clear that if the
9 separate accounting approach that is used in chapter 21
10 for income tax purposes is declared to be invalid,
11 which is the risk that we have from the Mobil and Exxon
12 cases that the Supreme Court decided last year - if that
13 risk comes about then nevertheless corporations are
14 liable under the regular income tax rather than having
15 no income tax liability whatsoever. That should be
16 implicit, but this section is in here to make it
17 absolutely clear that that is the intent. Section 12
18 provides that even though the standard levy is 20 mills
19 for the -- 25 mills for the reserves tax, the first
20 tax year it will be 30 mills. (d) of section 12
21 limits the amount of credit that may be applied.
22 Ordinarily, the credit may be applied so that when you take
23 current year credits, which may be this much, plus past
24 year tax credits, that the total amount of credit may
25 not exceed three quarters of the overall liability.

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3 In other words, payment will equal 25%, at least, of
4 the gross reserves tax liability. This exception says
5 that for the first year, instead of being 25%, the
6 minimum payment will be at least one third of the gross
7 liability, and so the combination of credits for past
8 income tax payments as well as the current year income
9 tax payment may not exceed two thirds of the reserves
10 tax liability. This allows us to come so close, in fact,
11 to a push situation between revenues under this bill and
12 revenues that we would receive under chapter 21, the
13 income tax with no further changes.

14 MR. ROGERS:

15 Without that section (b) we would be receiving less
16 income from -- in FY 82 than under the current law --
17 that would be made up in future years, is that right?

18 COMMISSIONER WILLIAMS:

19 That would be made up in future years, but you would have
20 a couple of hundred million dollars, 250 or thereabouts,
21 million dollars less revenue in fiscal year '82.

22 Section 13 was in the original bill that repeals 43.21.040(d)
23 and (e). I don't have those -- I failed to bring those
24 provisions with me. I believe I explained those in
25 earlier testimony. One of those, I think, is the -- relates

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3 to OCS. I think they may both relate to that - I'm not
4 sure. It's not simply technicality, but it -- these are
5 for purposes of strengthening the case over 43.21.

6 They are basically what?

7 MR. GARDINER:

8 Compensation and the property issues in ...

9 COMMISSIONER WILLIAMS:

10 Fine. Then there is a bunch of repealers. The first
11 two are simply 43.55.011(d) - is now a moot provision
12 of the statute - it required that there be a payment
13 of a nickel a barrel into the Native Claims Settlement
14 Fund for each barrel that was subject to a cents per
15 barrel tax, since the Native Claims Fund liability
16 has been fully paid that provision is no longer an
17 operative item in the law and it's best just to repeal
18 that from the books. 43.55.012(a) requires the
19 Department to make a recommendation each year about cents
20 per barrel rates and report on -- in light of current
21 market conditions and everything else. Everybody seems
22 quite comfortable with the percentage of value tax and
23 in fact, in light of the effects it would have on the
windfall profits tax, cents per barrel increases are
deemed to be discriminatory against the windfall portion

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3 and therefore not deductible under the windfall profits
4 tax. Any change in those rates now would invite a new
5 issue into whatever litigation may be pending. It is
6 best, in effect, to treat that as a dead letter and
7 repeal that. 43.55.018 relates to the application of
8 early development incentive credits against the
9 production tax for reserves tax payments when the
10 reserves tax was in effect in '76 and '77. That is no
11 longer part of this structure, and so it is repealed.
12 All of the present provisions of 43.58 are repealed
13 and the reason that was done was because of the provision,
14 I think in section 170 of chapter 58, which says this
15 act expires on June 30, 1978 or whatever it is. There is
16 an expiration date, anyway, there, so there is some
17 question whether that operated to repeal all the other
18 provisions or not. That is why we set out a whole new
19 series of things that are essentially parallel so
20 that you find counterparts. The old 43.58.010 is now
21 43.58.011, and so on down through. That is simply to
22 avoid any question about whether existing provisions
23 are repealed or not repealed. They are repealed -
24 the new ones are enacted. The "warts" part of this
25 bill and the windfall profits tax exemption are made

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retroactive to the beginning of 43.21 under section 15 of this bill. The reserves tax provisions take effect on July 1. The Act itself has an immediate effective date. And that only took 35 minutes!

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MR. GARDINER:

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Since several people have meetings to go to, we will come back at 12:30 tomorrow. We do have a lot of people to testify so we will try to start on time and take any questions of the Commissioner that people have first, then we will go on. Most of the people who are testifying, I think, all of them, are from out of town tomorrow. As a courtesy to them, if everybody ... If people want to leave their folders, we will have them available.

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MR. MALONE:

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Mr. Chairman, before you adjourn, it might be helpful to the Commissioner if people have some involved questions they should get them to you or to the Commissioner as early as possible.

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MR. GARDINER:

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That's a good suggestion. Maybe you could give any questions people have to Mark so he may have answers prepared.

(Meeting adjourned 2:00 p.m. May 20)

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C E R T I F I C A T E

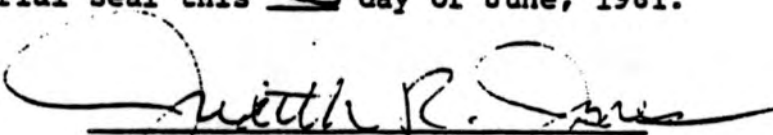
STATE OF ALASKA)
: SS.
FIRST JUDICIAL DISTRICT)

I, JUDITH R. JONES, a Notary Public, duly commissioned and qualified in and for the State of Alaska, do hereby certify that the foregoing May 20, 1981 meeting of the Joint Gas Pipeline Financing Committee was recorded by me and thereafter transcribed by me or someone under my direction.

I further certify that the transcript, consisting of 56 pages, is a full, true and correct transcript of the proceedings.

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

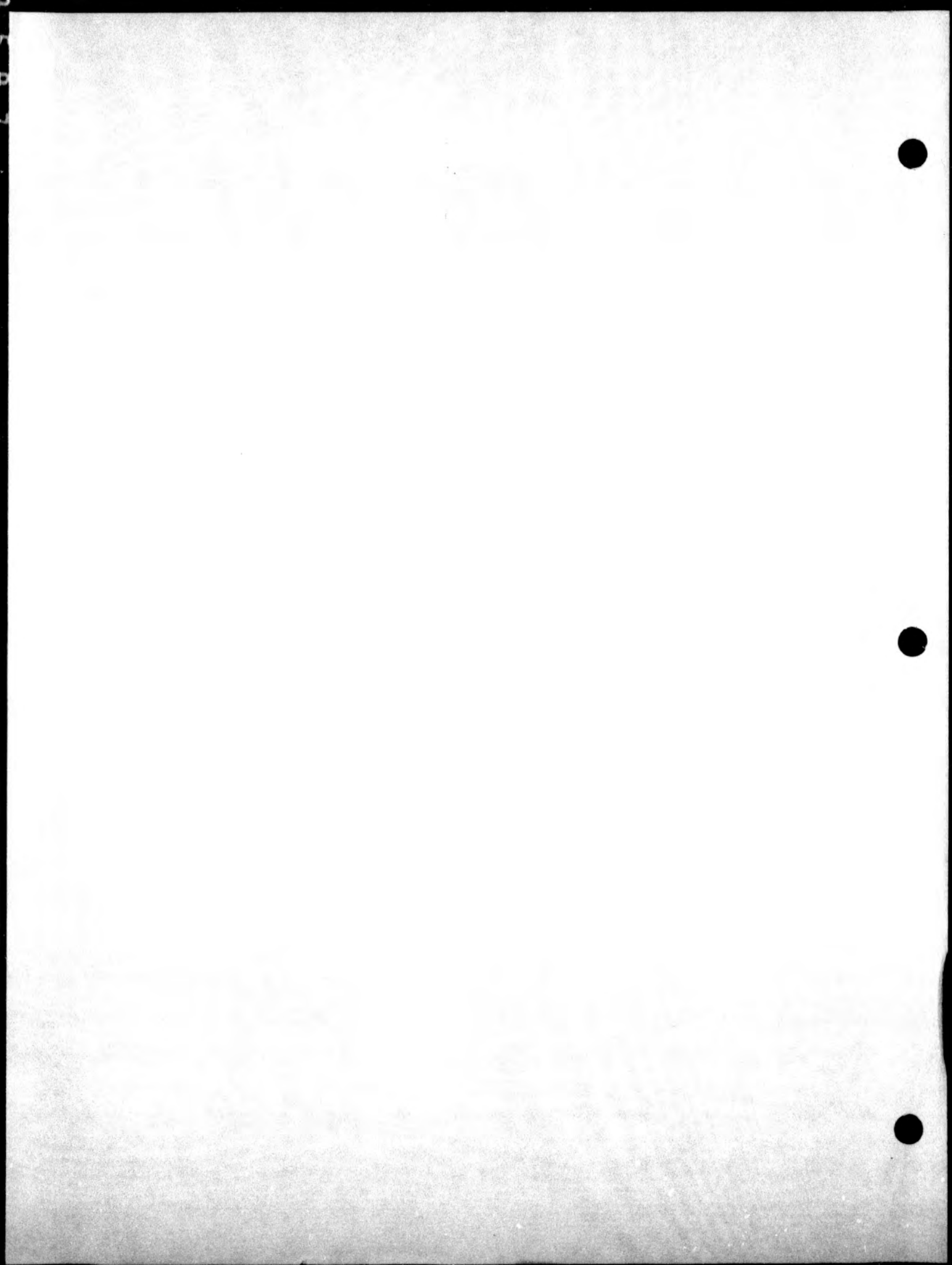
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 25th day of June, 1981.


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

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JUDY JONES
286-8846



1 ALASKA STATE LEGISLATURE, TWELFTH LEGISLATURE
2 JOINT GAS PIPELINE ~~FINANCING~~ COMMITTEE
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6 TRANSCRIPT OF PROCEEDINGS

7 MAY 21, 1981
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16 COMMITTEE PRESENT:

17 Representative Terry Gardiner, Chairman
18 Senator Michael Colletta
19 Senator Bettye Fahrenkamp
20 Senator Charles Parr
21 Senator John Sackett
22 Representative Hugh Malone
23 Representative Anthony Vaska
24 Representative Brian Rogers
25 Representative Joe Hayes
Representative Richard Randolph
Representative Sam Cotten

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LUCY JONES
586-6846

P R O C E E D I N G S

5/21/81

MR. ROGERS:

...meeting of the Joint Gas Pipeline Committee, taking testimony on S.S.H.B. 200. We begin with Tom Williams, and take any questions that members might have of Tom from yesterday's testimony.

MR. COLLETTA:

Mr. Chairman, if I might, we had to postpone testimony yesterday. We do have folks that came from out of town. It would just seem at least we should ask for those who might have time constraints, to allow them to make their presentations.

MR. ROGERS:

Is that acceptable to the other members of the Committee, to take the out of town experts. I think there may be a fair number of questions. We will hold off then on your testimony, Commissioner, if that's all right.

COMMISSIONER WILLIAMS:

Fine.

MR. ROGERS:

We will start out then with Hameed Ahmed (ph). Say your name and affiliation in front of the Committee.

MR. AHMED:

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JUDY JONES
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3 To the Chair and distinguished members of the Committee,
4 my name is Hameed Ahmed. I am a citizen of
5 Anchorage, Alaska. A small businessman in Anchorage,
6 Alaska, Treasurer of the Alaska Black Caucus. The reason
7 I am here to give testimony today is the fact that it is
8 amazing me that the position the State of Alaska is taking
9 that it is leading us closely into what we consider and
10 what the Black community considers a socialistic state,
11 where the government begins to tax for the sake of taxing.
12 We are not against taxing but we are against inequitable
13 and discriminatory taxes against one particular industry-
14 especially when this industry has been singled out to
15 take the brunt of that tax burden. We were wondering
16 if this tax that you are going to place on that one
17 particular industry is going to be placed on other
18 industries because of a particular classification.
19 This classification, you claim, is because that those
20 resources that they are producing happens to be non-
21 renewable resources. Are you going to tax the rest
22 of the non-renewable resources in the State of Alaska
23 this way? This is one of the reasons we feel that this
24 tax is unjust. The other is that for this tax to
25 exist for the sake of saying, and from what I've heard

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3 from some of our legislators to the effect that oil
4 companies are getting filthy rich, it seems to be on
5 the other side also of the coin that the oil companies
6 are going to be the savior of our State. Not only the
7 savior of the State but the savior of the country, in
8 that we should take an attitude that would create an
9 atmosphere of investment in the economy of this State
10 by giving the industries a fair taxable law. From what
11 we've heard so far, this is why we are enjoining on this
12 State to please find and give just and equitable taxation,
13 not for the sake of taxation but because it is needed
14 according to constitutional law. We were told in --
15 I've always learned in the constitutional law that we
16 tax for the sake of providing for the common defense
17 and promoting the general welfare of any state or
18 municipality of the country. To us this does not seem to
19 be the purpose. We are not opposed to private enterprise.
20 If there are some who feel that we are, the Blacks of the
21 State of Alaska, are not opposed to private enterprise.
22 But we are very sensitive to the fact that if our State
23 government is going to become so strong that it is going
24 to take a socialist attitude, we feel it is to the
25 detriment of the total economy of the State and its people.

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3 We ask that the current tax law, chapter 21, be repealed.
4 That if any tax be made, that it be made equitable and
5 justifiable across the board. Thank you.

6 MR. ROGERS:

7 Any questions from the members of the Committee? Thank
8 you.

9 MR. RANDOLPH:

10 I'd just like to commend the speaker. I think you are
11 the first person to come before us expressing the attitude
12 that you have expressed because we've heard to date from
13 legislators and administrative speakers. Just to expand
14 on your attitude of whether or not the same degree of
15 taxation is leveled on every non-renewable resource industry
16 in this State, I'd ask a further question, when the non-
17 renewable resource run out is this level of taxation
18 going to be forced upon all industries in the State to keep
19 up the spending that we have become accustomed to at that
20 point. I thank you for your testimony....

21 MR. AHMED:

22 Thank you, sir. There is one other think I would like
23 to add if the Chair doesn't mind. One of the things that
24 the State of Alaska is trying to get away from, which
25 I hope is, is this attitude that we are considered as

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3 the blue-eyed Arabs of the West. This is the theme in the
4 lower 48, that we are the blue-eyed Arabs of the West.
5 Are we going to do that - are we acting like we are a third
6 world country that we are going to build with the oil
7 industry, like the foreign countries are doing with them.
8 Is this the attitude that we are going to take? This is
9 an industry that has kept this country going, that has
10 taken us through many wars and we have been fortunate
11 enough that this industry has been able to keep the enemy
12 away from our shores. Is this what they are going to get
13 in return? And the other is, is the discouragement of
14 the incentive of American people to have the desire to
15 assert themselves and become affluent or become wealthy.
16 It seems to be that it is becoming immoral to become rich.
17 And that disturbs me. Thank you.

18 MR. ROGERS:

19 Representative Malone.

20 MR. MALONE:

21 Thank you Mr. Chairman. Mr. Ahmed in the comments here,
22 do you have any information that indicates that the
23 State's taxing policy, or current laws, have in fact provided
24 a disincentive to companies operating in Alaska to the point
25 where any specific project or proposal has not gone forward?

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3 MR. AHMED:

4 Well, I would like to say it this way - there are some
5 projects recently -- let's take for instance -- I'm not
6 that great an expert -- I'm just talking about the
7 atmosphere of building an economy or exploration, or
8 building an economy in any area. In practically every
9 area in the United States, even in foreign countries,
10 most of them have given industry some type of a tax
11 treatment that was amenable to building an economy in
12 that state, and contributing toward the prosperity of
13 it. But it seems to me that this state or the
14 administration desires to discourage a viable economic
15 way of life in the State of Alaska. The other part that
16 I am afraid of more than anything else, is that this great
17 wealth that we are absorbing is becoming to give some
18 of our legislators the attitude that the State is going
19 to be a great plantation run, a patron,
20 a hacienda run state. That's what disturbs me. It
21 disturbs me immensely. If we talk about the oil industry and
22 we talk about how great or how rich the oil industry is,
23 we must remember that they came here and they took the risk
24 of drilling for that oil, that the investors, American
25 investors, who are citizens of the United States, took that

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3 calculated risk, and we from the front end told them that
4 we wanted 12.5%, and they agreed to that. Then we
5 decided that we said we want a severance tax, because you
6 said, and this is my personal opinion, that you have
7 decided that since you have created prosperity for us
8 and now that is going to diminish in X amount of years, I'm
9 going to penalize you for doing so. So you have a penalty
10 for letting my wealth run out. And I'm just wondering
11 if this is fair. On top of that now, our administration
12 desires to give a reserves tax so they call. This reserves
13 tax has been placed on that other tax. And taxation without
14 representation and fair taxation is what this country
15 was founded on. I'm wondering if the State of Alaska
16 remembers the Boston Tea Party. This is what I'm concerned
17 with. It isn't whether the projects that we have now, sir,
18 we are talking about the atmosphere in the business world
19 that it's going to create. The State of Alaska has broken
20 some of its own agreements with other states in relation
21 to industrial taxation. How long shall we do that? What
22 type of credibility are we going to hold in the business
23 world if we keep abrogating or strickly overlooking
24 agreements that we have made. This is what we are
25 concerned about.

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JUDY JONES
CBA, PBA

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3 MR. ROGERS:

4 Representative Malone.

5 MR. MALONE:

6 Mr. Ahmed , do you have information on specific
7 projects that have not gone forward because of Alaska's
8 taxation policies? Because we hear this a lot, that we
9 are discouraging this and we are discouraging that, but
10 when we ask just what are these proposals that are being
11 discouraged people say, well, it's the atmosphere or
12 the climate. As far as I know, in Alaska today, the oil
13 industry, in particular, is making a healthy profit.
14 I think, of course, that they should make a health profit -
15 that is the basis of business around the world. But I
16 can't find where they are being discouraged.

17 MR. AHMED:

18 We are not talking about the discouragement. We are talking
19 about, one, it will be discouraging if industries who
20 are attempting to do exploration in the State of Alaska are
21 finding that their expenses are going to be much higher
22 than it would to explore in some other area. It doesn't
23 matter if it is happening now. There are some industries
24 but I do not want to quote because I only like to speak
25 what I know. Let's take for instance, Alpetco. The climate

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does not seem right that they would be able to do whatever they are doing. Unquote. What I'm saying is the atmosphere that we are building here because we feel as a State or the administration feels that we have the right to tax - is the tax justifiable? That's what we say that is wrong. It is not equitable. You are saying that one industry should be taxed greater than the other. And that is all that we ask. We do not feel that all of those monies going into the coffers of the State will alleviate the problems that the State will have. We believe in the private enterprise, free enterprise system. Our government is built on the fact that industries create jobs - jobs have citizens who pay taxes - taxes are appropriated by the government for needed purposes to promote the general and social welfare. It seems to me that our State desires to turn that around. The tail is trying to wag the dog.

MR. ROGERS:

Representative Malone.

MR. MALONE:

Mr. Chairman, First, the oil industry is not the only industry that has taxes that are specific to that type of operation. In Alaska we have the raw fish tax

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3 on the fisheries. We have a tax on banks that's
4 different from the regular income tax. We have other taxes
5 that are taking into account the special operations of
6 a particular business. I don't know about -- you say that
7 because something is different it is discriminatory -
8 sometimes, something is different because it fits the case
9 better than what might apply in other places.

10 MR. AHMED:

11 In this case, sir, it doesn't apply to constitutional
12 law. The purposes of taxes are to be propagated because
13 of one thing, or to be implemented because of one thing -
14 the actual need of the tax. Is the excess tax that
15 you are asking from the oil industry now needed? The
16 second is, if so, shall every industry, because you
17 predicated it on one thing, that it was non-renewable
18 resources. Are all other non-renewable resource industries
19 going to be taxed the same? That's all that we are
20 asking.

21 MR. ROGERS:

22 We do need to move. We have some other question here.

23 MR. AHMED:

24 Thank you.

25 MR. GARDINER:

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3 Representative Malone.

4 MR. MALONE:

5 Mr. Chairman, one other point that I'd like to go over
6 with Mr. Ahmed. The -- it's not unusual that the amount
7 a taxpayer has to pay varies with the amount of money
8 the taxpayer is making - that's the foundation of
9 income taxes generally. Some other types of taxes work
10 more or less that way, even property taxes. If you have
11 a lot of money and own a big house you pay more in
12 property taxes than a person who can only afford to live
13 in a mobile home. I submit here, that it should be taken
14 into account that one of the reasons that such large
15 revenues are paid is because there are very high profits.
16 Coming to the other question, what is the purpose of
17 collection of revenues. It would be, I think, in some ways,
18 something that a lot of legislators would like to know is
19 just where they should reduce the pattern of State
20 expenditures. Different people have different ideas on
21 that -- loan programs could be eliminated. Hydroelectric
22 projects could be eliminated. Agricultural development
23 could be eliminated. But they all seem to have their
24 adherents. There are public purposes that have been
25 determined - at least the public testimony by the elected

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3 representatives of the people for the revenues that are
4 being generated.

5 MR. AHMED:

6 Your point is well taken, sir, but we are still talking
7 about the inequity of the tax. A property tax that is placed
8 is still placed through the knowledge of the amount of
9 taxation that is needed to fit those particular programs.
10 This has not been spelled out, as far as I could read it,
11 was not spelled out as to why this tax was needed. It was
12 just saying that, we heard that those reserves are going
13 to run out and therefore we are going to tax them. To me
14 it is a taxation that is totally discriminatory. When you
15 are saying that it shall not be placed on any other
16 industry. That's all that we are saying. And we are so
17 afraid because we have not seen what is come from this
18 august body yet, what are we going to do with the wealth
19 that we do have. Shall it be moved through the system,
20 through free enterprise, or shall it be doled out from the
21 administrators. We feel that it is a very dangerous
22 precedent, and we are afraid of it.

23 MR. GARDINER:

24 Representative Vaska.

25 MR. VASKA:

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3 Thank you Mr. Chairman. Representative Malone asked
4 has asked several of the questions that I wanted to know,
5 but, do you think that the public ownership of a resource
6 found in the State of Alaska should be distributed
7 along percentage lines that don't equal the distribution
8 that the State is asking for? In other words, the State
9 should own one third of the petroleum reserves at this
10 point, whatever form it takes - whether it is taxes or
11 whether it is royalty in-kind. If so, I hear you saying
12 that the level of taxation should at such level that
13 it encourages development. If that is your case, do you
14 also favor controlling the amount of profit on the same
15 resources?

16 MR. AHMED:

17 Sir, first, we have to define the word "own". First,
18 the State of Alaska -- the oil companies paid for the
19 right to drill on an unknown factor. The State was not
20 involved in that calculated risk. They paid for the
21 lease. We agreed to a 12.5% royalty. That when it was
22 discovered and produced, that we were to receive that
23 amount. Since that time, the taxes against the oil
24 industry has changed to fit the whims of our administration.
25 This is all that we are talking about - is the fairness

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3 in taxation. When you say "ownership", when did you
4 start owning, and when did the oil companies start owning,
5 because according to the contract we only own 12.5%.
6 We conveyed the production rights to the oil companies.
7 And besides that, we, the State of Alaska, has agreed
8 to a certain taxing policy that we have partially
9 abrogated again. The multi-state tax law that we agreed
10 to carry out. Do you think that our colleagues in that
11 particular area condone what we are doing now? It is not
12 the matter as to whether you don't have the right to tax,
13 the matter is what is equitable and moral and justifiable.
14 This is what we are saying. And if most of us sitting
15 here claim that, if we want to go according to moral law,
16 the Bible, the only place I saw in it was a tithe, a
17 tenth. It didn't say take all. Nor did it say stop
18 private enterprise. And that is what we are afraid of.
19 How many more industries in this State shall have to
20 go through this? The climate is terrible. No industry
21 shall desire to invest money in this State as long as
22 they don't know where they stand. Even in the Middle
23 East, the oil companies knew where they stood until a
24 particular crisis came. It was never changed until the
25 Israeli crisis of June - most of it remained the same.

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3 But we are not a third world country. We are Alaska,
4 the 50th state in the Union. Are you clear about the
5 ownership? I thought the oil companies own the oil
6 once they found it because they had the right to it.
7 And they agreed to a 12.5% royalty. Then we came up
8 with the severance tax, and all of those come off of the
9 top. What industries paid more money off of the top to
10 perform than oil industries? And now you come up with
11 the reserves tax.

12 MR. GARDINER:

13 ...further questions from Committee members? Thank you.
14 We do have quite a few more people to testify today.

15 MR. AHMED:

16 Thank you.

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18 MR. ROGERS:

19 Thank you very much. I'm not sure -- Carl Banman?
20 Bauman?

21 MR. BAUMAN:

22 I'd like to thank the Committee for taking me out of turn.
23 My name is Carl Bauman. I'm a member of the law firm of
24 Hughes, Thorsness, Gantz, Powell and Brundine, and I'm here
25 on behalf of Amerada Hess Corporation today. Amerada Hess

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3 Corporation is deeply concerned about the reserves tax.
4 But we believe that other companies with the larger presence
5 in the State at the present time will address that tax -
6 and I'm here really on a very specific issue. Amerada Hess
7 is particularly impacted by the fact that under the
8 present statutes, you do not have, or you do not allow
9 an interest deduction on inter-company transactions
10 within a consolidated business with respect to the
11 determination of pipeline transportation income. In the
12 present bill that is before the Committee, the rules
13 with respect to inter-company transactions on interest
14 are being relaxed with respect to the production tax
15 context, but they are not being changed at all with
16 respect to the pipeline transportation income context.
17 That presents a basic unfairness to Amerada Hess
18 Corporation. If I could go to the background, just
19 briefly. Amerada Hess Pipeline Corporation obtained a
20 1.5% equity interest in the Trans-Alaska pipeline in 1977.
21 They obtained that from their parent corporation.
22 To do so they financed that largely through a long-term
23 promissory note that they obtained from their parent
24 corporation. We are talking something in the area of
25 \$100 million over a period of time. They obtained that at

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