

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672
1532 SCOMM 57: SENATE SPECIAL COMMITTEE ON OIL & GAS, 1987-1988 1329



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3/17/92
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SCOMM 57: SENATE SPECIAL COMMITTEE ON OIL & GAS, 1987-88

MEMBERSHIP:

SENATOR BETTYE FAHRENKAMP, CHAIR
SENATOR JACK COGHILL
SENATOR PAUL FISCHER

Established by Senate Resolve No. 3, 1987 (SR 4)

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James M. Butler
Signature of Camera Operator

3/17/92
Date

SB

49



ALASKA STATE LEGISLATURE

SENATE SPECIAL COMMITTEE ON OIL AND GAS

Senator Bettye Fahrenkamp
Chairman
Senator Jack Coghill
Senator Paul Fischer

P.O. Box V, State Capitol
Juneau, Alaska 99811
(907) 465-3834

MEMORANDUM

TO: Members, Senate Special Committee on Oil and Gas

FROM: Committee Staff

RE: Committee Meeting, March 31, 1987

DATE: March 30, 1987

On Tuesday, March 31, at 3:30 pm in the Beltz Room, the Senate Special Committee on Oil and Gas will hear SB 49, Relating to the waste of oil and gas.

The Alaska Oil and Gas Conservation Commission is an independent agency whose mandate is to conserve and prohibit the waste of oil and gas. For field conservation purposes, the commission has the authority to regulate the quantity and rate of oil and gas production. DNR also has a similar authority under AS 38.05.180(q).

Current statute, under Title 31, defines "waste" only in terms of physical waste. Several oil producing states, including Texas, Oklahoma, Louisiana, Kansas, and New Mexico, define "waste" to include economic waste. This provision protects the financial interests of the states by ensuring that royalty oil will not be produced at a time when poor market demand would result in an unreasonably low price. For the state of Alaska, this may expand our options for dealing with an oil price collapse during which the wellhead price for oil approaches zero.

Two important considerations will be the impacts of this proposal on oil producers and carriers and the ability of the commission to execute the policy with existing resources.

1 IN THE SENATE

BY KERTTULA

2

SENATE BILL NO. 49

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the waste of oil and gas."

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

8 * Section 1. AS 31.05.170(14) is amended to read:

9 (14) "waste" [MEANS, IN ADDITION TO ITS ORDINARY MEANING,
10 "PHYSICAL WASTE" AND] includes

11 (A) the inefficient, excessive, or improper use of, or
12 unnecessary dissipation of, reservoir energy; and the locating,
13 spacing, drilling, equipping, operating or producing of any oil
14 or gas well in a manner that [WHICH] results or tends to result
15 in reducing the quantity of oil or gas to be recovered from a
16 pool in the [THIS] state under operations conducted in accordance
17 with good oil field engineering practices;

18 (B) the inefficient above-ground storage of oil; and
19 the locating, spacing, drilling, equipping, operating or produc-
20 ing of an oil or gas well in a manner causing, or tending to
21 cause, unnecessary or excessive surface loss or destruction of
22 oil or gas;

23 (C) producing oil or gas in a manner causing unneces-
24 sary water channeling or coning;

25 (D) the operation of an oil well with an inefficient
26 gas-oil ratio;

27 (E) the drowning with water of a pool or part of a
28 pool capable of producing oil or gas, except insofar as and to
29 the extent authorized by the commission;

- 1 (F) underground waste;
2 (G) the creation of unnecessary fire hazards;
3 (H) the release, burning, or escape into the open air
4 of gas, from a well producing oil or gas, except to the extent
5 authorized by the commission;
6 (I) the use of gas for the manufacture of carbon
7 black, except as provided in this chapter;
8 (J) the drilling of wells unnecessary to carry out the
9 purpose or intent of this chapter;
10 (K) the production of oil or gas in excess of trans-
11 portation facilities, market facilities, or reasonable market
12 demand.

MODEL STATUTE

A FORM
FOR AN OIL AND GAS
CONSERVATION STATUTE
1981

RECEIVED
Department of Law

APR 16 1981

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska



Published and Distributed by:
INTERSTATE OIL COMPACT COMMISSION
Box 53127
OKLAHOMA CITY, OKLAHOMA 73152

MODEL STATUTE

Oil or Gas which is a common source of supply, or several such accumulations which by rule or order of the Commission are allowed to be produced on a commingled basis and are treated by the Commission as a common source of supply.

1.1.18 "Waste" means and includes:

- (1) the inefficient, excessive, or improper use, or the unnecessary dissipation, of reservoir energy;
- (2) the inefficient storing of Oil or Gas;
- (3) the locating, drilling, equipping, operating, or producing of any Oil or Gas well in a manner that causes or tends to cause reduction in the quantity of Oil or Gas ultimately recoverable from a Reservoir under prudent and proper operations, or that causes or tends to cause unnecessary wells to be drilled, or that causes or tends to cause the loss or destruction of Oil or Gas either at the surface or subsurface.
- (4) the production of Oil or Gas in excess of (a) transportation, marketing, or storage facilities; (b) Reasonable Market Demand; or (c) the amount reasonably required to be produced in

1 the proper drilling, completing, testing, or
2 operating of a well or otherwise utilized on
3 the lease from which it is produced; and
4

5 (5) underground or above ground waste in the pro-
6 duction or storage of Oil or Gas, however
7 caused, and whether or not defined in other
8 subdivisions hereof.
9

10 SECTION 2. WASTE PROHIBITED.
11

12 2.1 The Waste of Oil and Gas is prohibited.
13

14 SECTION 3. AUTHORITY OF THE COMMISSION.
15

16 NOTE: Provisions for the creation and form of an oil and gas
17 conservation commission or the delegation of authority to some
18 existing commission, or with respect to such subjects as selection
19 of commissioners, what constitutes a quorum, selection and
20 training of trial examiners and other staff, salaries and
21 financing are considered to be separate matters that will vary
22 materially in different states and are not included in this form.
23 Procedural matters, such as notice and hearing requirements, rules
24 of evidence, and rulemaking procedures are also not included.
25 Many of these matters are already covered by state administrative
26 procedures acts.
27

28 3.1 This Act shall apply to all lands located in the State, how-

OTHER STATES WITH "MARKET DEMAND WASTE"

§ 71

LANDOWNER'S DUTIES

Ch. 5

underground waste and surface waste, but these terms are not always defined.⁵ Some of the statutes define waste as including market demand waste^{5.1} and the abuse of correlative rights of landowners in the common source of supply.^{5.2} Most of the modern statutes give an administrative agency the jurisdiction and authority necessary for their effective enforcement^{5.3} and in addition give the

rado, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Maryland, Michigan, Mississippi, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Washington, Wyoming and Alberta cited in footnote 2, supra.

Mississippi Code 1942, § 6182-01 negatives the intent and purpose of the conservation act "to require or permit the proration or distribution of the production of oil and gas among the fields and pools of Mississippi, on the basis of market demand."

5. See the Alabama, Arkansas, Colorado, Florida, Georgia, Illinois, Kansas, Michigan, Nebraska, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Washington and Wyoming cited in footnote 2, supra.

5.2 Ark.—Stats. § 53-100 I (3) defines waste as including: "Abuse of correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate, and unratable withdrawals; causing undue drainage between tracts of land."

5.1 Ala.—Code 1940, Tit. 26, § 179 (25) I (12).

Ariz.—A.C.A.1939, § 11-1702.

Kan.—G.S.1949, 55-602 and 55-702.

La.—LSA-R.S. 30:3(1) (b).

Mich.—Comp.Laws 1948, § 319.2, 1 (1) (2) (3) and § 319.54.

N.M.—1941 Comp. § 69-203.

N.D.—Laws 1953, ch. 227, § 3, 1, e.

Okl.—52 Okl.St. Ann. §§ 86.2, and 86.3.

Tex.—Vernon's Ann.Civ.St. art. 6008, § 3(h) and art. 6014(j).

Wash.—Laws 1951, Ch. 146, § 3, 1(j).

Alberta—Rev.St.1942, ch. 66, § 2(1) (iv).

In Kansas and Michigan market demand waste is limited to the production of oil.

For similar provision see

Ala.—Code 1940, Tit. 26, § 179(25) I (3).

Fla.—F.S.A. § 377.10(10) (k).

Ga.—Code Ann. § 43-702 I (3).

N.C.—G.S. § 113-359(1) (3).

5.3 Ala.—Code 1940, Tit. 26, § 180-32.

Ariz.—A.C.A.1939, § 11-1704.

Ark.—Ark.Stats. § 53-111.

Cal.—Public Resources Code, §§ 3200 to 3230, gives commissioners authority to supervise drilling and production operations.

Colo.—Laws 1951, ch. 220, §§ 7a and 8.

Fla.—F.S.A. § 377.24.

ALASKA OIL & GAS CONSERVATION COMMISSION

§ 31.05.030

OIL AND GAS

§ 31.05.030

land. The authority of the commission further applies to all land included in a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p). (§ 1 ch 158 SLA 1978; am § 32 ch 94 SLA 1980)

Sec. 31.05.030. Powers and duties of commission. (a) The commission has jurisdiction and authority over all persons and property, public and private, necessary to carry out the purposes and intent of this chapter.

(b) The commission shall investigate to determine whether or not waste exists or is imminent, or whether or not other facts exist which justify or require action by it.

(c) The commission shall adopt regulations and orders and take other appropriate action to carry out the purposes of this chapter.

(d) The commission may require

(1) identification of ownership of wells, producing leases, tanks, plants and drilling structures;

(2) the making and filing of reports, well logs, drilling logs, electric logs, lithologic logs, directional surveys, and all other subsurface information on a well drilled for oil or gas, or for the discovery of oil or gas, or for geologic information, and the required reports and information shall be filed within 30 days after the completion, abandonment, or suspension of the well;

(3) the drilling, casing and plugging of wells in a manner that will prevent the escape of oil or gas out of one stratum into another, the intrusion of water into an oil or gas stratum, the pollution of fresh water supplies by oil, gas or salt water, and prevent blowouts, cavings, seepages and fires;

(4) the furnishing of a reasonable bond with sufficient surety conditions for the performance of the duty to plug each dry or abandoned well or the repair of wells causing waste;

(5) the operation of wells with efficient gas-oil and water-oil ratios, and may fix these ratios;

(6) the gauging or other measuring of oil and gas to determine the quality and quantity of oil and gas;

(7) every person who produces oil or gas in the state to keep and maintain for a period of five years in the state complete and accurate records of the quantities of oil and gas produced, which shall be available for examination by the Department of Natural Resources or its agents at all reasonable times;

(8) the measuring and monitoring of oil and gas pool pressures;

(9) the filing and approval of a plan of development and operation for a field or pool in order to prevent waste, insure a greater ultimate recovery of oil and gas, and protect the correlative rights of persons owning interests in the tracts of land affected.

(e) The commission may regulate, for conservation purposes

(1) the drilling, producing and plugging of wells;
 (2) the shooting and chemical treatment of wells;
 (3) the spacing of wells;
 (4) the disposal of salt water, nonpotable water and oil field wastes;
 (5) the contamination or waste of underground water;
 (6) the quantity and rate of the production of oil and gas from a well or property; this authority shall also apply to a well or property in a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p).

(f) The commission may classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

(g) When the commission finds sufficient likelihood of an unexpected encounter of oil, gas, or other hazardous substance as a result of well drilling in an area of the state, the commission may, by regulation, designate the area and specify a depth in the area as one in which wells or any boring into the soil in excess of the specified depth but not otherwise subject to this chapter are subject to the regulations and requirements adopted under this section. The designation of an area or specification of a depth under this subsection does not constitute a certification that no hazardous substance will be encountered in another area or at a lesser depth, and the state is not liable for any damages arising from such an unexpected encounter of a hazardous substance.

(h) The commission may take all actions necessary to allow the state to acquire primary enforcement responsibility under 42 U.S.C. 300h-4 (Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f-300j), for the control of underground injection related to the recovery and production of oil and natural gas. (§ 4 ch 40 SLA 1955; am § 2 ch 75 SLA 1960; am § 1 ch 209 SLA 1970; am § 1 ch 87 SLA 1977; am §§ 1, 2 ch 160 SLA 1978; am § 1 ch 91 SLA 1984)

Effect of amendments. — The 1984 amendment added subsection (h).

Sec. 31.05.035. Confidential reports. (a) For all wells for which a permit to drill has been issued by the commission since January 3, 1959, the commission may require:

(1) the making and filing of reports, well logs, drilling logs, electric logs, lithologic logs, directional surveys, and all other subsurface information on a well drilled for oil or gas, or for the discovery of oil or gas, or for geologic information; and

(2) the filing of flow test information and all logs, except experimental logs and velocity surveys run on a well and not required by (1) of this subsection;

(3) the information or (2) of the

(b) Report section statement, or the completed

(c) The be kept unless the reports are natural contain information all affected permission Well location reports required filing be classified means voluntary after the v

(d) Engineering (a) of this kept confidential

(e) Not be denied 31.05.030 (§ 2 ch 20 SLA 1984.

Effect of 1984 amendment in subsection "resources" a.

Cited in Borough, Supp. 5550, 5558),

DNR's authority

§ 38.05.180

PUBLIC LANDS

§ 38.05.180

of the lessees, in connection with the institution and operation of a cooperative or unit plan as the commissioner determines necessary or proper to secure the proper protection of the public interest. The commissioner may require oil and gas leases issued under this section to contain a provision requiring the lessee to operate under a reasonable cooperative or unit plan, and may prescribe a plan under which the lessee must operate. The plan must adequately protect all parties in interest, including the state.

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

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

(s) When separate tracts cannot be individually developed and operated in conformity with an established well-spacing or development program, a lease, or a portion of a lease, may be pooled with other land, whether or not owned by the state, under a communization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the commissioner to be in the public interest. Operations or production under the agreement are considered as operations or production as to each lease committed to the agreement.

(t) The commissioner may prescribe conditions and approve, on conditions, drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, when, in the discretion of the commissioner, the conservation of natural resources or the public convenience or necessity requires it or the interests of the state are best served. All leases operated under approved drilling or development contracts and interests under them, are excepted in determining holding or control under AS 38.05.140.

(u) To avoid waste or to promote conservation of natural resources, the commissioner may authorize the subsurface storage of oil or gas whether or not produced from state land, in land leased or subject to lease under this section. This authorization may provide for the payment of a storage fee or rental on the stored oil or gas, or, instead of the fee or rental, for a royalty other than that prescribed in the lease when the stored oil or gas is produced in conjunction with oil or gas not previously produced. A lease on which storage is so authorized



**Senate Special Committee
On Oil and Gas**

SB 49

3/31/87 -

If This comes up again...

1) get fiscal note

2) define "reasonable market demand"

consider the possibility that a producer's field costs might decrease over time. In 1986, for example, Arco lowered its operating expenses in the Kuparuk field by 40% in response to lower oil prices.⁵ However, the Industrial Commodities Index component of the field cost allowance formula does not fully reflect this decrease in operating expenses. The index also fails to reflect the changing economics of the petroleum industry as accurately as other indices, such as the Fuels and Related Products and Power Index. For example, the August 1986 Industrial Commodities Index was at 95% of the 1985 annual level, the August 1986 Fuels and Related Products and Power Index was at 69% of the 1985 annual level, and Fall 1986 operating expenses in the Kuparuk field were at 60% of the 1985 annual level. A situation may therefore occur in which a producer's field cost allowance will continue to rise under the settlement agreement with the state, even though actual field costs have decreased.

The legislature may wish to investigate the possibility of revising the field cost agreements for Prudhoe Bay and Kuparuk at such time as the operators of these units may seek to have the state revise other terms of their unit agreements. In the event that such action is taken, consideration should be given to reviewing several different indices as possible alternatives to the Industrial Commodities Index.

Economic Waste

The waste of oil and gas from field production in Alaska is prohibited under AS 31.05.095. Although Title 31 defines "waste" strictly in terms of physical waste, it may be in the state's best interest to also have the authority to prohibit economic waste. In this context, economic waste refers to production in excess of market demand.

The Alaska Oil and Gas Conservation Commission (AOGCC) is an independent quasi-judicial agency that is charged, in part, with determining whether physical waste from oil or gas

production exists or is imminent, and preventing such waste from occurring. The commission, for field conservation purposes, is also provided with the authority to regulate the quantity and rate of oil and gas production. DNR has a similar authority to regulate production under AS 38.05.180(q).

Related charges of the AOGCC are to regulate well drilling and well injections, authorize the establishment of drilling units, and protect the correlative rights of lessees. The language establishing the statutory framework of the AOGCC is similar to that which established the Interstate Oil Compact Commission and conservation commissions in other oil producing states. The commission is funded by revenues from the oil and gas regulation and conservation tax (AS 43.57), which is levied upon producers at the rate of one-eighth of one cent per barrel of production.

Several states, including Texas and Oklahoma, define "waste" to include oil production that is surplus to reasonable market demand. This provision protects the financial interests of the states and other royalty owners by ensuring that royalty oil or gas will not be produced at a time when poor market demand would result in an unreasonably low price for the commodities. By incorporating a similar provision into Alaska state law, it may be possible to mitigate some of the negative effects that result from a condition of market surplus. With such a law in place, the state's options would be expanded for dealing with the type of situation that occurred in 1986, in which Saudi Arabia glutted the world market to such an extent that the reported wellhead value of some of the oil produced from the Milne Point field was zero.

Consideration must also be given to the possible adverse effects of limiting production. Potential impacts include financial difficulties that may be faced by oil producers and carriers by the temporary reduction of production levels, and the possibility that reduced production could be an influencing factor in the shut-in of a marginal oil field.

The following statutory language would expand the

definition of "waste" to include economic waste:

1. AS 31.05.170(14) is amended, and a new subsection (K) is added, to read:

(14) "waste" [MEANS], in addition to its ordinary meaning, ["PHYSICAL WASTE" AND] includes

(K) the production of oil or gas in excess of transportation or market facilities or reasonable market demand.

Production Rates

The state's ability to influence the quantity and rate of oil production could be an important component of the state's revenue strategy. By decreasing production rates when oil approaches a zero wellhead value, the state would be able to retain its royalty oil until prices rise. Decreasing production rates might be preferable to storing the oil, since this alternative does not have the direct costs associated with storage. As with underlifting and other storage methods, consideration must be given to the degree of likelihood that the price of oil will rise in the future. Consideration should also be given to the possible negative impacts that reduced production levels may have upon oil producers and carriers.

AS 38.05.180(q) provides that a unit plan may contain a provision vesting the commissioner of DNR, or a person, committee, or state agency with the authority to modify from time to time the quantity and rate of production under the plan. Unfortunately, the state has effectively waived this authority for Prudhoe Bay and Kuparuk by including a provision in the unit agreements that severely limits the state's power to curtail production rates for these fields. In order to enhance the state's authority over the quantity and rate of oil production in other units, AS 38.05.180(q) could be amended to require that future leases and unit plans allow the state to modify these rates. Further protection could be provided by establishing a minimum production price or value,

below which the state's share of oil would not be produced.

A statutory requirement could also be enacted to provide that lease forms and unit agreements establish a price level below which the state's royalty oil would not be produced. In this manner, the state would not be forced to either sell its oil at an excessively low price or pay for storage costs during times of unreasonable market conditions. The Alaska Oil and Gas Conservation Commission may regulate the quantity and rate of oil and gas production under AS 31.05.030(e)(6), although this authority is granted for field conservation purposes only.

The following statutory amendments would remedy the problems outlined above, especially with regard to new leases:

1. AS 38.05.180(q) is amended to read:

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

2. AS 38.05.180 is amended by adding a new subsection (aa) to read:

(aa) In order to prevent economic waste, a lease or a unit plan issued or authorized by this section shall contain a provision vesting the commissioner with the authority to reduce or suspend oil production when the reported price or value for production from the land issued under the lease or authorized by the unit plan is less than \$1.00 per barrel at the well, or when there is no reasonable market for the oil. For the purposes of this section, the price or value of oil at the well is in addition to the producers' field cost

allowance, if any, and the \$1.00 value is the June 1987 value adjusted according to a price index determined by the Department of Revenue. Notwithstanding (m) of this section, a lease shall not terminate or be forfeited by such reason of suspension, provided that the lessee resumes operations within a reasonable time after removal of such cause. The provisions of this section concerning cooperative or unit plans are in addition to and do not affect AS 31.05.

AS 31.05.110(q) is repealed and reenacted to read:

(q) In order to prevent economic waste, a unit plan is authorized by this section shall contain a provision giving the commission with the authority to suspend oil production when the price or value of oil from the land contained in a unit plan is less than \$1.00 per barrel at the well, or there is no reasonable market for the oil. For the purpose of this section, the price or value of oil at the well in addition to the producers' field cost allowance, if any, the \$1.00 value is the June 1987 value, to be adjusted to the index determined by the Department of Revenue.

AS 31.05.110 is amended by adding a new subsection (r) to read:

(r) This section applies to all involuntary units formed in the state. Subsections (a) and (g) - (q) of this section apply to all voluntary units formed in the state and to a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 31.05.180(p).

Endnotes

1. Atlantic Richfield Co., 1985 Third Quarter Report, p. 6 & 11.
2. Department of Revenue internal memorandum from Roger Marks, August 6, 1986, p. 1.
3. The information in this section is largely based on the following document:

STATE OF ALASKA

RECEIVED

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FEB 17 1977

February 14, 1977

Division of Oil and Gas Conservation
Anchorage

Mr. Hoyle Hamilton
Director, Division of
Oil and Gas Conservation
Dept. of Natural Resources
3001 Portupine Drive
Anchorage, Alaska 99501

RE: ECONOMIC WASTE UNDER
AS 31

JAY E. HAMMOND, GOVERNOR

DR	
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C ENG	
1 ENG	
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Dear Hoyle:

You have asked if AS 31.05 permits the Conservation Committee to consider "economic waste" as well as physical waste. It is my conclusion that the Conservation Committee is allowed to consider economic factors in its establishment of conservation practices but that the term "economic waste" must be defined and the question related to a specific regulatory decision before a more meaningful legal opinion is possible.

I.

Brief History of Conservation Regulation

It will be helpful to an understanding of AS 31.05 to review briefly the history of oil and gas conservation regulation by states.* This is appropriate and useful because Alaska's conservation statute contains many of the same clauses and provisions found in the IOCC model statute and/or other state conservation statutes.

*/ This review is taken principally from S. McDonald, Petroleum Conservation in the United States: An Economic Analysis (1971); see also, Interstate Oil Compact Commission, A Study of Conservation of Oil and Gas in the United States (1964).

Initial conservation legislation was designed to prevent damage to other resources caused by oil and gas production and to eliminate certain obvious and easily preventable losses of natural gas. These initial conservation statutes usually established regulations applicable to individual wells (rather than whole reservoirs) and prohibited specific practices or conversely required certain specific practices, such as for example, requiring the proper casing and plugging of wells to prevent interchange of fluids among reservoirs or the contamination of ground water supplies, or to prevent natural gas leaks. Later regulatory statutes usually retained the specific prohibitions of the earlier statutes but also included a general prohibition against waste which was defined in broad terms (or more often undefined). Thus, many state conservation statutes (including Alaska's) contain something of a collection of specific prohibitions and some rather broad, but undefined limitations.*

Conservation legislation, no doubt, was necessary because some operators in their haste to produce oil, employed poor production techniques and disregarded the impact of those practices on other resources (e.g. on ground water). However, another consideration was even more significant. Multiple ownership of the land overlying oil reservoirs combined with the rule of capture** to create an overpowering incentive for each owner of a lease to produce as

*/ AS 31.05.020 provides: "The waste of oil and gas in the state is prohibited." "Waste" is defined by AS 31.05.170(11) which because of its length is attached as appendix A hereto.

**/ The rule of capture says that whoever produces the oil owns it, regardless of where it is located underground. Railroad Commission v. Rowan & Nichols Oil Co., 310 U.S. 573 (1939).

much oil as rapidly as possible. This resulted in a number of production practices which frequently caused unnecessary capital expenditures and/or the loss of large quantities of oil. For example, since each producer was competing with other producers in the same reservoir, he would usually drill as many wells as possible and operate each well as long as possible. This meant that more wells would be drilled than were actually required to produce all the oil which could be produced from a reservoir; and even more significantly, it usually meant reservoir pressure would be rapidly depleted resulting in less total oil being produced from the reservoir than could have been produced if production had been coordinated. Similarly, large quantities of oil were lo[†]aded in above ground earthen storage reservoirs which were used because they were the fastest and cheapest way to store the rapidly produced oil. The more modern regulatory statutes (those enacted or amended after 1930) were intended to give state regulators more power to control production practices so as to prevent losses of oil and gas, resulting from the competitive race to produce oil as rapidly as possible from each reservoir.

The methods of production control employed by various state regulators have involved a number of overlapping and/or alternative approaches. One of the earliest approaches and also one of the simplest and most widely accepted regulatory methods has been to control the number and spacing of wells. Every state which has a conservation statute expressly authorizes the control of well spacing.* A second method of regulation has been to control directly the quantity of oil and/or gas produced. In practice, this type of regulation has

*/ IOCC, A Study of Conservation of Oil and Gas in the United States, at 180 (1964).

taken two distinct forms, each of which will be discussed in greater detail below. A third method of regulation has been to authorize voluntary or compulsory unitization, and a fourth method of regulation has been to require the use of secondary recovery techniques. Many state statutes authorize one or more of these methods (several authorize all four methods), with individual states relying to varying degrees upon each method.

Direct Control of Production and "Economic Waste"

In the early years of the industry, the price of oil often was very low because producers, in their haste to capture as much oil as possible, frequently produced oil far in excess of market demand. Low prices, of course, meant little profit for the industry and also little revenue for those states which depended heavily on royalty payments and taxation of the oil industry for their income. Out of this situation emerged the concept of "economic waste", that is, the production of oil (or gas) in excess of market demand. In 1915 the Oklahoma conservation statute was amended to prohibit "economic waste" (which was not defined) and on the basis of that language, the Oklahoma regulatory agency adopted a regulatory scheme which allowed the agency to establish a statewide production limit and allocate production back to each well so that total production would not exceed that limit. Although this method of regulation effected prices (many persons charged it fixed prices), limiting production to market demand was found by the courts to be a valid method of preventing waste. Julian Oil and Royalties Co. v. Capshaw, 292 P. 841 (1930); Champlin Refining Co. v. Oklahoma Corp. Commission, 286 U.S. 210 (1932). In Texas, a 1929 amendment to the conservation statute expressly stated that the prohibition against waste was not to be construed to mean "economic waste."

After the 1929 amendment, suits were filed challenging Texas's policy of limiting oil production to market demand. In one case, the court held Texas' regulatory approach valid despite the statutory reference to "economic waste." Danciger Oil and Refining Co. v. Railroad Commission, 49 S.W.2d 837 (1932). In a second case, however, the court held that the Railroad Commission's orders were intended to prevent "economic waste", and that this was in violation of the 1929 amendment. Alfred Macmillan v. Railroad Commission, 51 F.2d 400 (1931). In response to the MacMillan decision, the Texas legislature repealed the reference to "economic waste" and authorized the prohibition of "production of crude petroleum oil in excess of transportation or market facilities or reasonable market demand". Since the MacMillan case, the practice has been to avoid use of the term "economic waste" in conservation statutes.* Rather those states which employ a market demand method of production control have adopted such a regulatory policy through the use of language similar to that in the Texas statute.**

In the light of the above legal history, it is my conclusion that the term "economic waste", when used in reference to oil and gas conservation practices, is best understood to mean regulation which limits production to market demand.***

*/ Only four state statutes use the term "economic waste." The Oklahoma and Kansas statutes each prohibit "economic waste", while the statutes of Illinois and Kentucky prohibit limitation of production to prevent or control "economic waste." IOCC, at 188-89.

**/ Ibid. at 176-79.

***/ One commentator has written: "Despite its apparent breadth, the term 'economic waste' is usually employed narrowly to mean the sale of oil or gas at a price below full cost or actual value and/or the use of oil or gas in ways which fail fully to exploit its intrinsic value". S. McDonald, Petroleum Conservation in the United States; An Economic Analysis 127 (1971).

II.

While the above discussion answers the question you have asked, I believe it might be helpful to discuss "economic waste" as the term might be defined or perceived by others. This discussion, because it is unrelated to any particular regulatory problem is general.

Direct Production Control and
the Maximum Efficient Rate of Production

In those states which do not employ a market demand method of production regulation, production is regulated on a reservoir-by-reservoir basis, with total production from a reservoir being limited to the maximum efficient rate (MER). Typically, the MER is determined with respect to engineering factors rather than economic considerations. Thus, the MER is that rate which will maximize the total output of oil (in an oil reservoir). A rate which causes total oil production to diminish (because, say reservoir pressure is dissipated too rapidly) will be in excess of the MER and will not be allowed. Once the MER is established, shares of production are allocated to each producer and/or well.

Although in practice, engineering considerations have dominated the determination of the MER, it is clearly possible that economic criteria could equally be used as the efficiency criteria. If this were done, the regulatory agency might establish rates designed to maximize total present value rather than total output. Thus, at a time of declining real prices for oil (or perhaps ever slowly rising prices) the regulator might well determine that the MER was at a rate which

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sacrificed future oil production for increased present production.*

There is certainly nothing express in AS 31.05 which would prevent the Conservation Committee from implementing production control using economic, rather than engineering criteria, to determine the MER. Indeed, words such as "unnecessary", "inefficient", and "excessive" might well connote economic criteria (at least to an economist) rather than engineering criteria. Nevertheless, I believe use of economic criteria, rather than engineering criteria, would represent a drastic change in regulatory practice in Alaska (and anywhere else for that matter) and thus, should only be undertaken in response to clear legislative directive in the form of amendments to the conservation statute.

Having noted that the regulatory practice in Alaska and elsewhere is to use engineering, rather than economic criteria to determine the MER, it should not go unstated that economic considerations are involved in many conservation decisions at least in a gross sense. For example, where the Conservation Committee is considering whether to require a water injection program, it certainly must compare the cost

*/ The most striking difference between the use of engineering criteria and economic criteria may occur where a reservoir contains both oil and non-associated gas, and the production of one results in a diminishment of the other which can be produced. In that case, engineering criteria might call for maximization of total hydrocarbons (BTU's) while economic criteria would call for consideration of the present and probable future value (price) of each and maximization of the present value.

It should be noted that this is not the regulatory problem you face with the Prudhoe Bay field, since (based on my understanding) hydrocarbon production can be maximized provided gas production is held within reasonable bounds (which bounds may be zero if water flood is not employed; however, in that event, the field can be blown down once oil production ceases). Thus, if one is willing to indulge the assumption that gas prices will increase at a rate at least equal to the discount rate, the MER will be the same using either engineering or economic criteria.

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of such a program with the expected increase in recovered hydrocarbons.^{*} In doing so, the Conservation Committee need not adopt the economic criteria used by the producers, thus, a water injection program which the producer did not wish to undertake because the rate of return was too small (in their opinion) might still be required by the Conservation Committee. However, in the extreme case, where costs greatly exceeded any possible economic benefits to be derived, constitutional limitations likely would prevent the Committee from requiring an injection program.

Unitization of a Reservoir

One commentator has concluded that state conservation statutes "should require unitization of every oil reservoir within a reasonable time following discovery", and that such a statute "should supplant all present regulations (e.g. of well spacing and production rates) except those designed to protect other resources from damage by oil operations."^{*} The conclusion is incorrect because it embodies a false assumption (which will be discussed below) but it nevertheless highlights an important consideration. That is, by eliminating the competition among producers of oil from a reservoir, one eliminates most of the incentive to engage in "wasteful" practices. In a unitized reservoir, all producers will be better off if production is maximized.

If a unitized reservoir was unregulated, production rates would be determined in accordance with procedures adopted by the unit participants. In such case, one would expect the unit participants acting as profit maximizing entities to produce the reservoir in a fashion which

^{*}/ S. McDonald, Unit Operation of Oil Reservoirs as an Instrument of Conservation, 49 Notre Dame Lawyer 305 (1973).

maximized the reservoir's present value.* Such rate of production likely would not correspond to the MER as determined by engineering principles. The public's interest ~~interest~~ in the production of nonrenewable oil and gas resources will correspond exactly with the producers' interest only in the hypothetical world of economists where competition is infinite and institutional constraints nonexistent. In practice, the public's interest may be served by requiring the operators of a unitized reservoir to operate at a rate different from that which they would choose on their own. For example, the unit operators may decide against fluid injection because the anticipated rate of return is too low (in their view). The public's interest, however, might best be served by requiring an injection program. Or to give another example, where oil prices are controlled, maximization of present value by the producers likely will run counter to the public's interest.

Regulators of unitized fields have in the past required maximization of hydrocarbons while considering at least in gross terms economics factors. As before, regulators could well require maximization of other objective criteria. However, I would not advise such a course of action without clear Legislative direction in the form of amendments to the present conservation statute.

*/ For various reasons in practice production rates may not be such as to maximize present value. For example, integrated producers may be facing crude shortages and willing to sacrifice future revenues while others may face a glut situation. The actual rate may represent a compromise. Some producers may want to hold back production to speculate on future market conditions, while others may prefer to follow less venturesome corporate policies. In short, producers may each have different discount rates.

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Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

Frederick H. Boness

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Assistant Attorney General

FHB:bvd

IV. REPRESENTING LANDOWNERS BEFORE OIL AND GAS CONSERVATION COMMISSIONS

A. Introduction

Oil and gas conservation commissions are charged with implementing and enforcing the public policy of preventing the waste of oil and gas, as expressed in legislative enactments, and protecting the correlative rights of persons owning interests in oil and gas, as required under the United States Constitution and the constitutions of many states.³³⁸ The following is a primer of oil and gas conservation law and a brief discussion of the role of a lessor's attorney in oil and gas conservation proceedings.³³⁹ Much more can and should be written to assist attorneys in effectively representing lessors before conservation commissions.

³³⁸ For example, N.D. Cent. Code § 38-08-01(1980) provides:

It is hereby declared to be in the public interest to foster, to encourage, and to promote the development, production, and utilization of natural resources of oil and gas in the state in such a manner as will prevent waste; to authorize and provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas be had and that the correlative rights of all owners be fully protected. . . .

³³⁹ For more information on this subject see Balkovatz, "Practice and Procedure Before Oil and Gas Commissions—Some Nuts and Bolts," 25 *Rocky Mt. Min. L. Inst.* 14-1 (1979) [hereinafter cited as Balkovatz]; McClintock, "Presenting a Case Before a State Conservation Commission," 15 *Rocky Mt. Min. L. Inst.* 243 (1969) [hereinafter cited as McClintock]; Robinson, "Procedures for Establishing a Drilling Unit," 2 *Rocky Mt. Min. L. Inst.* 353 (1956); Williams & Porter, "Practice Before the Wyoming Oil and Gas Conservation Commission," 10 *Land & Water L. Rev.* 353 (1975) [hereinafter cited as Williams & Porter]. These articles are geared toward assisting the attorney who represents an operator, but they may be of help to the lessor's attorney as well.

B. A Primer on Oil and Gas Conservation

1. *Spacing and the Prevention of Waste (Market Demand Prorationing)*

The early belief about the nature of oil and gas was that it flowed beneath the surface in a sporadic and unpredictable manner. Early court cases treated oil and gas as if it were a wild animal³⁴⁰ capable only of being "captured" and "reduced" to ownership by virtue of actual possession.³⁴¹ These views brought about a central principle of oil and gas law—the "rule of capture." Simply stated, the rule of capture allows a mineral owner the unqualified right to drill and capture as much oil and gas as he could reduce to possession, notwithstanding the fact that some of the oil and gas may have migrated from the lands of another. The remedy for neighboring landowners was to do likewise.³⁴²

As a result of these early beliefs and legal theories regarding the nature of oil and gas and the rule of capture, many early oil fields were developed by drilling wells as close together as physically possible. This rapid and unregulated development had several adverse effects. Produced oil was "wasted" at the surface due to a proliferation of wells, pipes, and tanks. More significantly, reservoir pressure (also called reservoir energy), which causes the natural flow of oil to the surface, quickly dissipated and field production rapidly declined. Finally, production of oil far exceeded the demand, causing rapid price declines. Fewer wells would have preserved field pressures, caused less physical waste of oil at the surface, supplied oil more in response to actual de-

³⁴⁰ See *State v. Ohio Oil Co.*, 150 Ind. 21, 49 N.E. 809 (1898).

³⁴¹ See *Kelly v. Ohio Oil Co.*, 57 Ohio 317, 49 N.E. 399 (1897).

³⁴² See *Stephens County v. Mid Kansas Oil & Gas Co.*, 113 Tex. 160, 254 S.W. 290 (1923).

mand, and returned more oil for each dollar invested in drilling.³⁴³

When the oil industry was on the verge of economic collapse in the 1930's due to excessive and wasteful production practices, states began to regulate production from oil fields. State legislatures established oil and gas "conservation" commissions or boards to regulate production.³⁴⁴ The goal of these bodies was to limit oil production so that demand and supply would balance at a point that would prevent economic waste or, in other words, the collapse of the industry due to the inability to make a profit. This limiting of production was called "market demand prorationing." This regulatory policy was based, essentially, on the premise "more wells, more oil,"³⁴⁵ but the number of wells and the production from the wells was limited so that the price of oil would not fall below the break-even point for well operators. "Well spacing units," which provided a minimum area for a well, typically ten acres, were created and production "allowables" were established as the benchmarks of market demand prorationing.³⁴⁶

³⁴³ See generally Interstate Oil Compact Commission, *A Study of Conservation of Oil and Gas* (I.O.C.C. 1964); Berger & Anderson, *Modern Petroleum, A Basic Primer of the Industry* (F.P.C. 1978); O'Neil, "A Mad Rush For Black Gold," *The End And the Myth* (Time-Life 1979).

³⁴⁴ In order to assure a nation-wide conservation effort and to prevent federal preemption, producing states entered into a compact, the Interstate Oil Compact Commission, which has been approved by Congress.

³⁴⁵ Williams, "Well Spacing—A Reappraisal," 1957-58 *ABA Mineral and Natural Resources Law Section* 44, 46 [hereinafter cited as Williams, "Well Spacing"].

³⁴⁶ The need for market demand prorationing greatly declined after the Arab Oil Embargo in 1973. Some conservation commissions still prorate to control the flaring of gas and because of limited refinery capacities, limited pipeline capacities, excess supplies in some marketing areas, and other reasons. Prorationing hearings can be very controversial primarily because several methods for computing well "allowables" are possible.

In addition, conservation laws prohibit common purchasers of crude oil from discriminating against any producer or royalty owner. These laws were promulgated to stop large integrated oil companies from monopolizing the produc-

As the oil industry grew, so did scientific knowledge about the nature of oil and gas. Typically, oil and gas are found in reservoir "traps" and remain stagnant until disturbed by a sudden change in pressure such as a drill bit penetrating the "trap." Thus, oil does not flow sporadically and unpredictably, as once thought. Second, it was found that reservoir pressure and the strata's permeability and porosity greatly affect the ability to extract the oil. These factors are very significant in determining how many acres a single well can efficiently and effectively drain.

This increased scientific knowledge resulted in a change in regulatory policy. No longer were the size of well spacing units determined solely by how many wells a given field could economically support. Rather, well spacing units were established on the basis of how many wells would be needed to "efficiently and effectively drain" a field. Geologists and petroleum engineers found that one well, under the right conditions, could drain a large area. The old adage, "more wells, more oil," was discarded; instead, scientists recognized that more wells may mean less oil due to rapid declines in reservoir pressures.

Today, "waste" means more than producing oil and gas at an economic loss and losing oil and gas at the surface. Waste now includes the drilling of "unnecessary" wells and the waste of oil and gas in the ground. Drilling unnecessary wells is an economic waste of investment capital and actually decreases the ultimate recovery of oil and gas from a field due to resulting rapid declines in reservoir energy. As a result, wider spacing patterns are

tion and marketing of oil. Under these laws, purchasers have to buy a fair share of production from each producer. This is commonly called "ratable taking."

THE LAW OF OIL AND GAS

A TREATISE COVERING
THE LAW RELATING TO THE PRODUCTION OF OIL AND
GAS FROM PUBLIC AND PRIVATE LANDS AND
THE TRANSPORTATION THEREOF

WITH
STATUTES AND REGULATIONS
FORMS

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Volume 1
Sections 1-86

KANSAS CITY, MO.
VERNON LAW BOOK COMPANY

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§ 85.049. Hearing.

(a) On verified complaint of any person interested in the subject matter that waste of oil or gas is taking place in this state or is reasonably imminent, or on its own initiative, the commission, after proper notice, may hold a hearing to determine whether or not waste is taking place or is reasonably imminent and if any rule or order should be adopted or if any other action should be taken to correct, prevent, or lessen the waste.

(b) The hearing shall be held at the time and place determined by the commission.

§ 85.050. Procedure at hearing.

(a) At the hearing, interested parties shall be entitled to be heard and to introduce evidence and require the attendance of witnesses.

(b) The production of evidence may be required as provided by law.

§ 85.051. Adoption of rule or order.

If the commission finds at the hearing that waste is taking place or is reasonably imminent, it shall adopt a rule or order in the manner provided by law as it considers reasonably required to correct, prevent, or lessen the waste.

§ 85.052. Compliance with rule or order.

From and after the promulgation of a rule or order of the commission, it is the duty of each person affected by the rule or order to comply with it.

§ 85.053. Distribution, proration, and apportionment of allowable production.

(a) If a rule or order of the commission limits or fixes in a pool or portion of a pool the production of oil, or the production of gas from wells producing gas only, the commission shall distribute, prorate, or otherwise apportion or allocate the allowable production among the various producers on a reasonable basis.

(b) When, as provided in Subsection (b) of Section 85.046 or Subsection (b) of Section 86.012 of this code, as amended, the commission has permitted production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas, the commission may distribute, prorate, apportion, or allocate the production of such commin-

(Rel. 11-10/82 Pub.455)

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owned properties in any pool be unitized under one management, control, or ownership;

(8) surface waste or surface loss, including the temporary or permanent storage of oil or the placing of any product of oil in open pits or earthen storage, and other forms of surface waste or surface loss including unnecessary or excessive surface losses, or destruction without beneficial use, either of oil or gas;

(9) escape of gas into the open air in excess of the amount necessary in the efficient drilling or operation of the well from a well producing both oil and gas;

(10) production of oil in excess of transportation or market facilities or reasonable market demand, and the commission may determine when excess production exists or is imminent and ascertain the reasonable market demand; and

(11) surface or subsurface waste of hydrocarbons, including the physical or economic waste or loss of hydrocarbons in the creation, operation, maintenance, or abandonment of an underground hydrocarbon storage facility.

(b) Notwithstanding the provisions contained in this section or elsewhere in this code or in other statutes or laws, the commission may permit production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas where the commission, after notice and hearing, has found that producing oil or gas or oil and gas in a commingled state will prevent waste, promote conservation, or protect correlative rights.

§ 85.047. Exclusion from definition of waste.

The use of gas produced from an oil well within the permitted gas-oil ratio for manufacture of natural gasoline shall not be included in the definition of waste.

§ 85.048. Authority to limit production.

(a) Under the provisions of Subsection (10), Section 85.046 of this code, the commission shall not restrict the production of oil from any new field brought into production by exploration until the total production from that field is 10,000 barrels of oil a day in the aggregate.

(b) The commission's authority to restrict production from a new field under other provisions of Section 85.046 of this code is not limited by this section.

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trolling a condition in any local area or preventing a violation in any local area, then on the complaint of a person that the same or similar conditions exist in some other local area and the promulgation and enforcement of the rule could be beneficially applied to that additional area, the commission shall determine whether or not those conditions do exist, and if it is shown that they do, the rule or order shall be enlarged to include the additional area.

§ 85.044. Exempt purchases.

The provisions of Sections 85.041 through 85.043 of this code do not apply to the purchase of products of oil if made by the ultimate consumer from a retail distributor of the products.

§ 85.045. Waste illegal and prohibited.

The production, storage, or transportation of oil or gas in a manner, in an amount, or under conditions that constitute waste is unlawful and is prohibited.

§ 85.046. Waste.

(a) The term "waste," among other things, specifically includes:

(1) operation of any oil well or wells with an inefficient gas-oil ratio and the commission may determine and prescribe by order the permitted gas-oil ratio for the operation of oil wells;

(2) drowning with water a stratum or part of a stratum that is capable of producing oil or gas or both in paying quantities;

(3) underground waste or loss, however caused and whether or not the cause of the underground waste or loss is defined in this section;

(4) permitting any natural gas well to burn wastefully;

(5) creation of unnecessary fire hazards;

(6) physical waste or loss incident to or resulting from drilling, equipping, locating, spacing, or operating a well or wells in a manner that reduces or tends to reduce the total ultimate recovery of oil or gas from any pool;

(7) waste or loss incident to or resulting from the unnecessary, inefficient, excessive, or improper use of the reservoir energy, including the gas energy or water drive, in any well or pool; however, it is not the intent of this section or the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, to require repressuring of an oil pool or to require that the separately

(Rel. 11-10/82 Pub. 453)

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gled separate multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas as if they were a single pool; provided, however, that:

(i) the commingling and distribution, proration, apportionment, or allocation of separate accumulations with commission established discovery dates after January 1, 1940, and prior to June 1, 1945, shall not serve to expand, add to, or extend the vertical or areal extent of any single pool;

(ii) such commingling shall not cause the allocation of allowable production from a well producing from any separate accumulation or accumulations to be less than that which would result from the commission applying the provisions of Section 86.095 of this code to such accumulation or accumulations;

(iii) the allocation of the allowable for such commingled production shall be based on not less than two factors which the Railroad Commission shall take into account as directed by Section 86.089 of this code; and

(iv) No gas well in any field falling within the classification under Subdivision (i) above where commingled separate accumulations of gas are being prorated under the authority granted by this Subsection (b) shall be assigned an allowable in excess of its production during the most recent production period reported to the commission and in the absence of any reported production the assigned allowable shall not exceed the open-flow potential of such well as reported to the commission; provided, however, that the commission may, if it finds special conditions require such, make a greater assignment.

§ 85.054. Allowable production of oil.

(a) To prevent unreasonable discrimination in favor of one pool as against another, and on written complaint and proof of such discrimination, the commission may allocate or apportion the allowable production of oil on a fair and reasonable basis among the various pools in the state.

(b) In allocating or ascertaining the reasonable market demand for the entire state, the reasonable market demand of one pool shall not be discriminated against in favor of another pool.

(c) The commission shall determine the reasonable market demand of the respective pool as the basis for determining the allotments to be assigned to the respective pool so that discrimination may be prevented.

(Rel. 11-10/82 Pub. 455)

§ 38.05.180

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commissioner may also provide for credits to be earned by persons performing geophysical work on state land, if that work is performed during the two seasons immediately preceding an announced lease sale and on land included within the sale area and the geophysical information is made public following the sale. Credits may not exceed 50 percent of the cost of the drilling or geophysical work. Credits may be used during a limited period established by the commissioner and may be assigned during that period. Credits may be applied against (1) oil and gas royalty and rental payments payable to the state or (2) taxes payable under AS 43.55. A credit may not exceed 50 percent of the payment toward which it is being applied. Amounts due the Alaska permanent fund (AS 37.13.010) shall be calculated before the application of credits under this subsection.

(j) To prolong the economic life of an oil and gas field, the commissioner shall adopt regulations for all bidding methods to allow reduction of royalty on leases within the field to compensate for increasing costs in the later stages of production decline. The commissioner may not grant a reduction of royalty until two years' initial production from the field has occurred and each lessee requesting the reduction has made a clear showing that the revenue from all hydrocarbons produced from the field is insufficient to produce a reasonable rate of return with respect to that lessee's total investment in the field.

(k) The commissioner shall define all terms and adopt all regulations necessary for a reasonable understanding and evaluation of a particular bidding method before the public announcement of the terms of proposed sale employing that method.

(l) Subject to the provisions of AS 31.05, the commissioner has discretion to enter into an agreement whereby, with the consent of the lessee, the state's royalty share of oil and gas production may be stored or retained in storage by the lessee, or the commissioner may enter into an agreement with one or more of the affected field lease holders to trade current royalty production from a field for a like amount, kind, and quality of future production, on the condition that the state receives back its stored or traded royalty share during the first half of the estimated field life or no later than 15 years after start of production, whichever is sooner.

(m) An oil and gas lease must cover a reasonably compact area not exceeding 5,760 acres, and may be for a maximum period of 10 years, except that the commissioner may issue a lease for a period not less than five years upon a finding that it is in the best interests of the state. An oil and gas lease shall be automatically extended if and for so long thereafter as oil or gas is produced in paying quantities from the lease or if the lease is committed to a unit approved by the commissioner. A lease issued under this section covering land on which there is a well capable of producing oil or gas in paying quantities does not expire because the lessee fails to produce oil or gas unless the lessee is allowed

§ 31.05.110

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(m) Operations carried on under and in accordance with the plan of unitization shall be regarded and considered as a fulfillment of a compliance with all of the provisions, covenants and conditions, express or implied, of the several oil and gas leases upon lands included within the unit area, or other contracts pertaining to the development of it insofar as the leases or other contracts may relate to the pool or portion of it included in the unit area. Wells drilled or operated on any part of the unit area no matter where located shall for all purposes be regarded as wells drilled on each separately owned tract within the unit area.

(n) Nothing in this section or in any plan of unitization shall be construed as increasing or decreasing the implied covenants of a lease in respect to a common source of supply or lands not included within the unit area of a unit.

(o) The unit area of a unit may be enlarged to include adjoining portions of the same pool, including the unit area of another unit, and a new unit created for the unitized management, operation and further development of the enlarged unit area, or the plan of unitization may be otherwise amended, or the unit area contracted, all in the same manner, upon the same conditions and subject to the same limitations as provided with respect to the creation of a unit in the first instance.

(p) An aliquot of unit production may be underlifted or overlifted from a unit established under this chapter or AS 38.05.180(p) only when it does not create waste, except the commissioner may permit underlifting or overlifting for temporary periods for the purpose of accommodating extraordinary disruptions to an interest owner's production disposal system. Underlifted oil may be recovered by an interest owner at a daily rate not to exceed 10 percent of the owner's working or royalty interest share of daily production at the time of underlift recovery. This subsection applies to all units created after June 30, 1978.

(q) This section applies to all involuntary units formed in the state. Subsections (a) and (g) — (p) of this section apply to all voluntary units formed in the state and to a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p). (§ 7 ch 40 SLA 1955; am §§ 8 — 13, 17 ch 160 SLA 1978; am § 33 ch 94 SLA 1980)

Cross references. — For provisions regarding oil and gas leasing, see AS 38.05.180.

Legislative history reports. — For conference committee letter of intent re-

lating to the 1978 repeal of subsection (d) (sec. 17, ch. 160, SLA 1978 — HB 815), see 1978 House Journal, p. 1720.

Collateral references. — Operator's or lessee's responsibility for production of oil

A FORM
FOR AN OIL AND GAS
CONSERVATION STATUTE
1981



Published and Distributed by
The Interstate Oil Compact Commission
Post Office Box 53127
Oklahoma City, Oklahoma 73152

1 Oil or Gas which is a common source of supply, or
2 several such accumulations which by rule or order
3 of the Commission are allowed to be produced on a
4 commingled basis and are treated by the Commission
5 as a common source of supply.
6

7 1.1.18 "Waste" means and includes:
8

- 9 (1) the inefficient, excessive, or improper use,
10 or the unnecessary dissipation, of reservoir
11 energy;
12
13 (2) the inefficient storing of Oil or Gas;
14
15 (3) the locating, drilling, equipping, operating,
16 or producing of any Oil or Gas well in a man-
17 ner that causes or tends to cause reduction in
18 the quantity of Oil or Gas ultimately recover-
19 able from a Reservoir under prudent and proper
20 operations, or that causes or tends to cause
21 unnecessary wells to be drilled, or that
22 causes or tends to cause the loss or destruc-
23 tion of Oil or Gas either at the surface or
24 subsurface.
25 (4) the production of Oil or Gas in excess of (a)
26 transportation, marketing, or storage facili-
27 ties; (b) Reasonable Market Demand; or (c) the
28 amount reasonably required to be produced in

trolling a condition in any local area or preventing a violation in any local area, then on the complaint of a person that the same or similar conditions exist in some other local area and the promulgation and enforcement of the rule could be beneficially applied to that additional area, the commission shall determine whether or not those conditions do exist, and if it is shown that they do, the rule or order shall be enlarged to include the additional area.

§ 85.044. Exempt purchases.

The provisions of Sections 85.041 through 85.043 of this code do not apply to the purchase of products of oil if made by the ultimate consumer from a retail distributor of the products.

§ 85.045. Waste illegal and prohibited.

The production, storage, or transportation of oil or gas in a manner, in an amount, or under conditions that constitute waste is unlawful and is prohibited.

§ 85.046. Waste.

(a) The term "waste," among other things, specifically includes:

(1) operation of any oil well or wells with an inefficient gas-oil ratio and the commission may determine and prescribe by order the permitted gas-oil ratio for the operation of oil wells;

(2) drowning with water a stratum or part of a stratum that is capable of producing oil or gas or both in paying quantities;

(3) underground waste or loss, however caused and whether or not the cause of the underground waste or loss is defined in this section;

(4) permitting any natural gas well to burn wastefully;

(5) creation of unnecessary fire hazards;

(6) physical waste or loss incident to or resulting from drilling, equipping, locating, spacing, or operating a well or wells in a manner that reduces or tends to reduce the total ultimate recovery of oil or gas from any pool;

(7) waste or loss incident to or resulting from the unnecessary, inefficient, excessive, or improper use of the reservoir energy, including the gas energy or water drive, in any well or pool; however, it is not the intent of this section or the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, to require repressuring of an oil pool or to require that the separately

owned properties in any pool be unitized under one management, control, or ownership;

(8) surface waste or surface loss, including the temporary or permanent storage of oil or the placing of any product of oil in open pits or earthen storage, and other forms of surface waste or surface loss including unnecessary or excessive surface losses, or destruction without beneficial use, either of oil or gas;

(9) escape of gas into the open air in excess of the amount necessary in the efficient drilling or operation of the well from a well producing both oil and gas;

(10) production of oil in excess of transportation or market facilities or reasonable market demand, and the commission may determine when excess production exists or is imminent and ascertain the reasonable market demand; and

(11) surface or subsurface waste of hydrocarbons, including the physical or economic waste or loss of hydrocarbons in the creation, operation, maintenance, or abandonment of an underground hydrocarbon storage facility.

(b) Notwithstanding the provisions contained in this section or elsewhere in this code or in other statutes or laws, the commission may permit production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas where the commission, after notice and hearing, has found that producing oil or gas or oil and gas in a commingled state will prevent waste, promote conservation, or protect correlative rights.

§ 85.047. Exclusion from definition of waste.

The use of gas produced from an oil well within the permitted gas-oil ratio for manufacture of natural gasoline shall not be included in the definition of waste.

§ 85.048. Authority to limit production.

(a) Under the provisions of Subsection (10), Section 85.046 of this code, the commission shall not restrict the production of oil from any new field brought into production by exploration until the total production from that field is 10,000 barrels of oil a day in the aggregate.

(b) The commission's authority to restrict production from a new field under other provisions of Section 85.046 of this code is not limited by this section.

§ 30.36A

POOLING AND UNITIZATION

30-814

§ 86.2. Waste of oil—Defined—Prohibited—Prevention—Protection of fresh water strata and oil or gas bearing strata.

The term "waste", as applied to the production of oil, in addition to its ordinary meaning, shall include economic waste, under-ground waste, including water encroachment in the oil or gas bearing strata; the use of reservoir energy for oil producing purposes by means or methods that unreasonably interfere with obtaining from the common source of supply the largest ultimate recovery of oil; surface waste and waste incident to the production of oil in excess of transportation or marketing facilities or reasonable market demands. The production of oil in the State of Oklahoma in such manner and under such conditions as to constitute waste as in this Act defined is hereby prohibited, and the Commission shall have authority, and is charged with the duty, to make rules, regulations, and orders for the prevention of such waste, and for the protection of all fresh water strata and oil or gas bearing strata encountered in any well drilled for oil or gas.

(Text continued on page 30-815)

A FORM FOR AN OIL AND GAS CONSERVATION STATUTE

by

T. MURRAY ROBINSON, *Chairman*, E. J. COYLE,

ROBERT E. HARDWICKE, GEORGE W. HAZLETT,

ROSS L. MALONE JR., BLAKELY M. MURPHY,

E. LELAND RICHARDSON, AND S. L. DIGBY

*a Drafting Subcommittee of the Legal Committee, The Interstate
Oil Compact Commission*



The Interstate Oil Compact Commission, Oklahoma City, Oklahoma.

1950

1. as cycling of gas, the maintenance of pressure, and
2. the introduction of gas, water, or other substances
3. into producing formations; and (e) disposal of salt
4. water and oil field wastes.
5. (3) To limit and to allocate the production of oil and
6. gas from any field, pool, or area.
7. (4) To classify wells as oil or gas wells for purposes
8. material to the interpretation or enforcement of
9. this Act.
10. (5) To promulgate and to enforce rules, regulations,
11. and orders to effectuate the purposes and the in-
12. tent of this Act.
13. SECTION 3. It shall be unlawful to commence operations for
14. the drilling of a well for oil or gas without first giving to the
15. Commission notice of intention to drill, or without first obtain-
16. ing a permit from the Commission, under such rules and regu-
17. latins as may be prescribed by the Commission.
18. SECTION 4. A. The Commission shall limit the production of
19. oil and gas to that amount which can be produced without waste,
20. and which does not exceed the reasonable market demand.
21. B. Whenever the Commission limits the total
22. amount of oil or gas which may be produced in the state, the
23. Commission shall allocate or distribute the allowable produc-
24. tion among the pools therein on a reasonable basis, giving,
25. where reasonable under the circumstances to each pool with
26. small wells of settled production, an allowable production
27. which prevents the general premature abandonment of the
28. wells in the pool.
29. C. Whenever the Commission limits the total
30. amount of oil or gas which may be produced in any pool in
31. this state to an amount less than that amount which the pool
32. could produce if no restriction was imposed (which limitation
33. is imposed either incidental to, or without, a limitation of the
34. total amount of oil or gas produced in the state), the Commis-

*shall limit
production to amount
produced w/o waste
& does not exceed
market demand*

**A FORM
FOR AN OIL AND GAS
CONSERVATION STATUTE
1959**



Published and Distributed by
THE INTERSTATE OIL COMPACT COMMISSION
Oklahoma City 5, Oklahoma

A FORM FOR AN OIL AND GAS CONSERVATION STATUTE

(1959 Revision)

1 Preface

2 In approving this form, neither the Legal Committee nor the Compact Commission is
3 committed to, or necessarily recommends, all of the provisions of the form. For ex-
4 ample, some states may not choose to provide for compulsory unitization or the forced
5 pooling of separate interests in spacing units. Other states may not choose to adopt
6 other provisions of the form. Suitable provisions covering all such subjects are, how-
7 ever, included for the information and use as a guide to any state desiring to consider
8 or adopt legislation to include any or all of such subjects.

9 Title of Act

10 NOTE: Since the requirements for a title or caption of a statute vary materially in the
11 different states and cannot properly be written until the provisions of a statute are settled,
12 no suggestions are given with respect to a proper title or caption.

13 Declaration of Purpose

14 The prevention of Waste of Oil and Gas and the Protection of Correlative Rights are de-
15 clared to be in the public interest. The purpose of this Act is to prevent such Waste
16 and to Protect Correlative Rights.

17 SECTION 1. DEFINITIONS.

18 1.1 Unless the context otherwise requires, the terms defined in this section shall have
19 the following meaning when used in this Act:

20 1.1.1 "Waste" means and includes:

- 21 (1) physical waste, as that term is generally understood in the oil and
22 gas industry;
- 23 (2) the inefficient, excessive, or improper use, or the unnecessary
24 dissipation of, reservoir energy;
- 25 (3) the inefficient storing of Oil or Gas;
- 26 (4) the locating, drilling, equipping, operating, or producing of any
27 Oil or Gas well in a manner that causes, or tends to cause, reduc-
28 tion in the quantity of Oil or Gas ultimately recoverable from a
29 Pool under prudent and proper operations, or that causes or tends
30 to cause unnecessary or excessive surface loss or destruction of
31 Oil or Gas;
- 32 (5) the production of Oil or Gas in excess of (a) transportation or mar-
33 keting facilities; (b) Reasonable Market Demand; (c) the amount
34 reasonably required to be produced in the proper drilling, com-
35 pleting, or testing of the well from which it is produced; or (d)
36 Oil or Gas otherwise usefully utilized; except Gas produced from
37 an Oil well or Condensate well pending the time when with reason-
38 able diligence the Gas can be sold or otherwise usefully utilized on
39 terms and conditions that are just and reasonable; and
- 40 (6) underground or above ground waste in the production or storage of
41 Oil, Gas, or Condensate, however caused, and whether or not
42 defined in other subdivisions hereof.

(Kansas 1964)

tion in a gas field because some producers desired to deplete the gas at a very low rate regardless of the reason.

When waste, market demand, and correlative rights are in conflict the Commission must determine which is to be given preference. If the decision of the Commission is supported by evidence, the courts cannot interfere.

The orders of the Commission, under consideration, are not subject to the objection that they do not properly protect correlative rights under the facts disclosed by the record.

[17] The appellees contend that the orders of the Commission violate the commerce clause of the federal constitution and the Natural Gas Act.

Our attention is called to the fact that the subject of regulating interstate commerce is committed by the United States Constitution to the control of the federal government. (*Oklahoma v. Kansas Nat. Gas Co.*, 221 U.S. 229, 31 S.Ct. 564, 55 L.Ed. 716; *Pennsylvania v. West Virginia*, 262 U.S. 553, 43 S.Ct. 658, 67 L.Ed. 1117; and *Pennsylvania Gas Co. v. Public Service Comm.*, 252 U.S. 23, 40 S.Ct. 279, 64 L.Ed. 434.) Also, that the states have no authority, even in the absence of federal legislation, to regulate sales of gas for transportation and resale in interstate commerce. (*Missouri ex rel. Barrett v. Kansas Natural Gas Co.*, 265 U.S. 298, 44 S.Ct. 544, 68 L.Ed. 1027. *Public Util. Comm. of Rhode Island v. Attleboro Co.*, 273 U.S. 83, 47 S.Ct. 294, 71 L.Ed. 549; and *State Corp. Comm'n of Kan. v. Wichita Gas Co.*, 290 U.S. 561, 54 S.Ct. 321, 78 L.Ed. 500.) We are further informed that the states cannot so regulate under its police power as to place an undue burden on interstate commerce. (*Dahne-Walker Milling Co. v. Bondurant*, 257 U.S. 282, 42 S.Ct. 106, 66 L.Ed. 239; and *Lemke v. Farmers Grain Co.*, 258 U.S. 50, 42 S.Ct. 244, 66 L.Ed. 458.)

No one appears to question these general propositions of law. However, they are not applicable here. The Commission's orders

are not directed to the pipeline companies. The pipeline companies are not required to do anything, neither are they restricted in any way. None of the pipeline companies, except Panhandle, claim they are not able to take enough gas under the Commission's order to meet their present market demands. Panhandle is before this court in support of the Commission's action.

The facts in this case present a much different situation than those which existed in *Northern Natural Gas Co. v. State Corp. Comm'n of Kansas*, 372 U.S. 84, 83 S.Ct. 646, 9 L.Ed.2d 601. In the *Northern Natural Gas* case the Commission's order was directed to the pipeline company in an attempt to force it to take gas ratably from the wells to which it was connected in the Kansas-Hugoton Field.

The Commission's orders now before us are addressed only to the producers. The producers are not complaining and the royalty owners are supporting the Commission's action. The Commission's orders in no way attempt to regulate the sale or transportation of gas. The Supreme Court of the United States clearly stated the applicable law in *Champlin Ref. Co. v. Corporation Commission*, 286 U.S. 210, 52 S.Ct. 559, 76 L.Ed. 1062:

"Plaintiff contends that the act and proration orders operate to burden interstate commerce in crude oil and its products in violation of the commerce clause. Const.U.S. art 1, § 8, clause 3. It is clear that the regulations prescribed and authorized by the act and the proration established by the commission apply only to production and not to sales or transportation of crude oil or its products. Such production is essentially a mining operation, and therefore is not a part of interstate commerce, even though the product obtained is intended to be and in fact is immediately shipped in such commerce. *Oliver Iron Co. v. Lord*, 262 U.S. 172, 178, 43 S.Ct. 526, 67 L.Ed. 929; *Hope Gas Co. v. Hall*, 274 U.S. 284, 288, 47 S.Ct. 639, 71 L.Ed. 1049; *Foster Com-*

tain Packing Co. v. Haydel, 278 U.S. 1, 10, 49 S.Ct. 1, 73 L.Ed. 147; Utah Power & Light Co. v. Pfof, supra [286 U.S. 165, 52 S.Ct. 548, 76 L.Ed. 1038]. No violation of the commerce clause is shown." (286 U.S. p. 235, 52 S.Ct. p. 565, 76 L.Ed. 1062.)

Appellees contend:

"It is abundantly clear * * * that the jurisdiction over sales of natural gas for resale in interstate commerce pursuant to the Natural Gas Act is exclusively in the Federal Power Commission. The Natural Gas Act was passed pursuant to the Commerce Clause contained in the United States Constitution and obviously was intended to occupy the entire area—the area involved in the instant appeals."

The Natural Gas Act and the decisions do not support the contention. Congress has not occupied the field in the area of state control of the production of natural gas. The Natural Gas Act specifically exempts from its coverage the production or gathering of natural gas. (15 U.S.C.A. § 717b.)

In *Panhandle Eastern Pipe Line Co. v. Public Service Comm'n*, 332 U.S. 507, 68 S.Ct. 190, 92 L.Ed. 128, the court reviewed the legislative history of the Natural Gas Act and said:

"* * * Three things and three only Congress drew within its own regulatory power, delegated by the Act to its agent, the Federal Power Commission. These were: (1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale." (332 U.S. p. 516, 68 S.Ct. p. 195, 92 L.Ed. 128.)

The court further said:

"Moreover, this unusual legislative provision was not employed with any view to relieving or exempting any segment of the industry from regulation. The Act, though extending federal reg-

ulation, had no purpose or effect to cut down state power. On the contrary, perhaps its primary purpose was to aid in making state regulation effective, by adding the weight of federal regulation to supplement and reinforce it in the gap created by the prior decisions." (332 U.S. p. 517, 68 S.Ct. p. 195, 92 L.Ed. 128.)

The regulation of the production of gas was clearly left within the jurisdiction of the states.

[18] The appellees last contend that the orders of the Commission violate the fourteenth amendment to the United States Constitution which provides, "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *" and article 1, section 10 which provides, "No State shall * * * pass any * * * Law impairing the Obligation of Contracts. * * *"

Appellee's contention appears to be bottomed on the proposition that they have contracts to purchase the gas produced from certain leases in the field and they therefore have the right to determine the allowable production therefrom through their nominations, without interference by the Commission. Also, that their gas purchase contracts have various provisions which may be affected if their ability to determine the allowables is disturbed.

Individuals cannot by private contracts destroy the right of the state to exercise reasonable police power for the welfare of the public. It has been said, "* * * that an exercise of public policy cannot be resisted because of conduct or contracts done or made upon the faith of former exercises of it, upon the ground that its later exercises deprive of property or invalidate those contracts. *Louisville & Nashville Railroad Co. v. Mottley*, 210 U.S. 467, 31 Sup.Ct. 265, 55 L.Ed. 297, 34 L.R.A. (N.S.) 671." (*Thornon v. Duffy*, 254 U.S. 361, 369, 41 S.Ct. 137, 65 L.Ed. 304.) (S.Ct., also, 16 C.J.S. Constitutional Law § 18-182, 915 and 917; *Phillips Petroleum Co.*

prior to the entry of such plea." (175 Kan. p. 885, 267 P.2d p. 489.)

For other decisions of like import see *Uhock v. Hand*, 182 Kan. 419, 424, 320 P.2d 794, and *McGee v. Crouse*, 190 Kan. 615, 617, 376 P.2d 792.

[5] A further claim advanced by appellant is that he did not commit the offense of burglary in the nighttime even though he was specifically charged in the information with that crime and entered a plea of guilty thereto. This claim lacks merit and cannot be upheld. Under our decisions the guilt or innocence of one accused or convicted of crime is not justiciable in a habeas corpus proceeding. See *Fisher v. Fraser*, 171 Kan. 472, 233 P.2d 1066, 20 A.L.R.2d 699; *Martin v. Edmondson*, 176 Kan. 374, 270 P.2d 791; *Hartman v. Edmondson*, 178 Kan. 164, 283 P.2d 397.

Appellant devotes much time and space to a charge regarding the failure of his court appointed counsel to faithfully, conscientiously, intelligently and honestly perform his obligations as his attorney in the Elk County district court. Except to say it was all based upon his own uncorroborated statements in the court below, and completely refuted by other facts and circumstances of record, we are not disposed to burden our reports with a detailed statement of the evidence adduced by him in support of this position.

[6] A further short and simple answer to this claim is that under our decisions (See, e. g., *McGee v. Crouse*, supra.), it is presumed an attorney appointed to represent an accused in a criminal case discharged all duties imposed upon him by our statute (G.S. 1949, 62-1304), and this presumption is not overcome by the uncorroborated statements of the petitioner in a habeas corpus proceeding.

[7] Another answer, equally decisive, is to be found in our numerous decisions holding that the unsupported and uncorroborated statements of the petitioner in a habeas corpus proceeding do not sustain the burden of proof or justify the granting of a writ where, as here, the judgment

rendered is regular on its face and entitled to a presumption of regularity and validity. For just a few of our cases so holding see *Johnson v. Crouse*, 191 Kan. 694, 697, 383 P.2d 978; *Uhock v. Hand*, 182 Kan. 426, 320 P.2d 800, supra; *Prater v. Hand*, 185 Kan. 405, 407, 345 P.2d 634; *Engling v. Edmondson*, 175 Kan. 885, 267 P.2d 489, supra.

In conclusion it may be stated that, after careful examination of a confusing and unsatisfactory record, we find nothing in this appeal which warrants or permits a conclusion the trial court erred in denying the application for a writ of habeas corpus and remanding the petitioner to the custody of the respondent.

Therefore such judgment must be and it is affirmed.



192 Kan. 2

COLORADO INTERSTATE GAS COMPANY, Appellee,

v.

The STATE CORPORATION COMMISSION of the State of Kansas, Southwest Kansas Royalty Owners Association, and Panhandle Eastern Pipe Line Company, Appellants, Cross-Appellants, and Cross-Appellees (two cases).

NORTHERN NATURAL GAS COMPANY, a corporation, Appellee,

v.

The STATE CORPORATION COMMISSION of the State of Kansas, Southwest Kansas Royalty Owners Association, and Panhandle Eastern Pipe Line Company, Appellants, Cross-Appellants, and Cross-Appellees (two cases).

Nos. 41515, 41516, 41535, 41536.

Supreme Court of Kansas,

Nov. 2, 1963.

Rehearing Denied Jan. 3, 1964.

Review proceedings challenged orders of the State Corporation Commission estab-

underground waste and surface waste, but these terms are not always defined.⁵ Some of the statutes define waste as including market demand waste^{5.1} and the abuse of correlative rights of landowners in the common source of supply.^{5.2} Most of the modern statutes give an administrative agency the jurisdiction and authority necessary for their effective enforcement^{5.3} and in addition give the

rado, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Maryland, Michigan, Mississippi, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Washington, Wyoming and Alberta cited in footnote 2, *supra*.

5. See the Alabama, Arkansas, Colorado, Florida, Georgia, Illinois, Kansas, Michigan, Nebraska, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Washington and Wyoming cited in footnote 2, *supra*.

5.1 Ala.—Code 1940, Tit. 26, § 179 (25) I (12).

Ariz.—A.C.A.1939, § 11-1702.

Kan.—G.S.1949, 55-602 and 55-702.

La.—LSA-R.S. 30:3(1) (b).

Mich.—Comp.Laws 1948, § 319.2, 1 (1) (2) (3) and § 319.54.

N.M.—1941 Comp. § 69-203.

N.D.—Laws 1953, ch. 227, § 3, 1, c.

Okl.—52 Okl.St. Ann. §§ 86.2, and 86.3.

Tex.—Vernon's Ann.Civ.St. art. 6008, § 3(h) and art. 6014(j).

Wash.—Laws 1951, Ch. 146, § 3, 1(j).
Alberta—Rev.St.1912, ch. 66, § 2(1) (iv).

In Kansas and Michigan market demand waste is limited to the production of oil.

Mississippi Code 1942, § 6132-01 negatives the intent and purpose of the conservation act "to require or permit the proration or distribution of the production of oil and gas among the fields and pools of Mississippi, on the basis of market demand."

5.2 Ark.—Stats. § 53-109 I (3) defines waste as including:

"Abuse of correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate, and unratable withdrawals causing undue drainage between tracts of land."

For similar provision see

Ala.—Code 1940, Tit. 26, § 179(25) I (3).

Fla.—F.S.A. § 377.19(10) (k).

Ga.—Code Ann. § 43-702 I (3).

N.C.—G.S. § 113-389(I) (3).

5.3 Ala.—Code 1940, Tit. 26, § 189-32.

Ariz.—A.C.A.1939, § 11-1704.

Ark.—Ark.Stats. § 53-111.

Cal.—Public Resources Code, §§ 3200 to 3236, gives commissioners authority to supervise drilling and production operations.

Colo.—Laws 1951, ch. 220, §§ 7a and 8.

Fla.—F.S.A. § 377.22.

THE LAW OF OIL AND GAS

A TREATISE COVERING
THE LAW RELATING TO THE PRODUCTION OF OIL AND
GAS FROM PUBLIC AND PRIVATE LANDS AND
THE TRANSPORTATION THEREOF

WITH
STATUTES AND REGULATIONS
FORMS

BY
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Volume 1
Sections 1-86

KANSAS CITY, MO.
VERNON LAW BOOK COMPANY

Alberta—St.1957, c. 63, § 2(u), sets out eight acts and practices which are designated as "wasteful operations".

Sask.—Rev.St.1953, c. 327, §§ 2(1), 16(a), (b), (c), (d) and (e).

Utah—U.C.A.1953, 40-6-4(k) and (1).

5. Alaska.

Manitoba—St.1959, c. 38, § 57(l).

Utah.

5.1 Ariz.—A.R.S. § 27-501(20)(e).

Manitoba—St.1958, c. 38, § 57(m)(vii).

Neb.—Laws 1959, ch. 262, § 3(1).

Sask.—Rev.St.1953, c. 327, §§ 2(1), 16(e).

Utah—U.C.A.1953, 40-6-4(1).

5.2 Colo.—C.R.S. '53, 100-6-3(12)(c).

Neb.—Laws 1959, ch. 262, § 3(1)(c).

Sask.—Rev.St.1953, c. 327, § 3, states that one of the purposes of the act is the protection of correlative rights.

5.3 Alaska—Laws 1955, ch. 40, § 4, 1 and 2, 3 and 4.

Alberta—St.1957, c. 63, § 17.

Ariz.—A.R.S. § 27-503.

Colo.—C.R.S. '53, 100-6-7 and 100-6-8.

Ky.—KRS 353.530, 353.540, 353.550 and 353.560.

Manitoba—St.1955, c. 45, § 59, as amended by St.1959, c. 38.

Md.—The section of the Maryland statute here cited was repealed by Maryland Laws 1956, ch. 88.

Neb.—Laws 1959, ch. 262, § 5(1)(2). Section 57-215, R.S.1959, was repealed by the 1959 conservation act.

Or.—ORS 520.045, 520.055 and 520.095.

Sask.—Rev.St.1953, c. 327, §§ 5 to 8.

S.D.—SDC 1960 Supp. 42.0706.

Tex.—Delhi-Taylor Oil Corp. v. Gregg, Civ.App.1960, 337 S.W.2d 216, affirmed Gregg v. Delhi-Taylor Oil Corp., 1961, 344 S.W.2d 411, 162 Tex. 26.

Holmes v. Delhi-Taylor Oil Corp., Civ. App.1960, 337 S.W.2d 479.

Delhi-Taylor Oil Corp. v. Gregg, Civ. App.1960, 337 S.W.2d 222.

State v. Harrington, 1966, 407 S.W.2d 467, certiorari denied 87 S.Ct. 977, 386 U.S. 944, 17 L.Ed.2d 874.

Utah—U.C.A.1953, 40-6-3 and 40-6-5.

6. Alberta—St.1957, c. 63, § 34.

Ariz.—A.R.S. §§ 27-515 and 27-516.

Colo.—C.R.S. '53, 100-6-15.

Ky.—KRS 353.670.

Manitoba—St.1955, c. 45, § 59, as amended by St.1959, c. 38.

Md.—The cited section of the Maryland statute was repealed by Laws 1956, ch. 88, § 3.

Neb.—Laws 1959, ch. 262, § 5(3).

Ontario—The Ontario Fuel Board Act, 1954, c. 63, § 39, repealed all previous existing oil and gas legislation, consisting of The Fuel Supply Act, The Natural Gas Conservation Act, The Natural Gas Conservation Amendment Act, 1951, The Natural Gas Conservation Amendment Act, 1952 and The Well Drillers Act. The Fuel Board Act does not define and prohibit the waste of oil and gas but has the power, the drilling and operation of wells and the production, transmission, distribution, supply and use of natural gas. In the exercise of these powers it has authority to make and enforce regulations respecting these matters. The statute does not expressly define waste of oil and gas, it authorizes the board to make regulations for the conservation of oil and gas, § 35, and provides, § 32, that any person who is wasting or causing natural gas to be wasted is guilty of a criminal offence.

Or.—ORS 520.095.

Sask.—Rev.St.1953, c. 327, § 18, authorizes the Minister of Mineral Resources to make orders necessary to carry out the provisions of the statute, and § 19 authorizes the Lieutenant Governor to make orders and regulations for the same purpose. Many of the acts and practices authorized to be regulated by these two administrative agencies are the same. Chapter 328, § 3, of The Well Drillers Act, also authorizes the Minister

THE LAW
OF
OIL AND GAS

WITH FORMS
BY
W. L. SUMMERS

Volume 1
Sections 1 to 86

1986
Cumulative Pocket Parts

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Replacing prior Pocket Part in back of Volume

ST. PAUL, MINN.
WEST PUBLISHING CO.

1986

ing gas from the field, except in cases not here pertinent, shall take ratably from each owner in proportion to his interest and upon such terms as may be agreed upon; that if no agreement can be reached then the price and terms shall be such as may be fixed by the Corporation Commission after notice and hearing. 52 Okla.Stats. §§ 23-25, 231-233 (1941). These sections explicitly authorize the order requiring Cities to take gas ratably from Peerless and at a specific price. In 1915, Oklahoma strengthened its gas conservation laws by

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authorizing regulation of production of gas from a common source when production is in excess of market demand. 52 Okla.Stats. §§ 239-240 (1941). The Commission was authorized to limit the gas taken by any producer to "such proportion of the natural gas that may be marketed without waste" as the natural flow of gas at the wells of such producer bears to the total natural flow of the common source. In authorizing such regulation, the legislature declared that it acted "so as to prevent waste, protect the interest of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another." The Oklahoma Supreme Court construed the 1915 Act to permit the general order setting a minimum price in the field. It further ruled that economic waste was within the contemplation of the statute. Finally, with regard to state questions, it held that the orders did not violate the Oklahoma Constitution.

The Oklahoma court also concluded that the statutes so construed and the orders made thereunder do not violate the Federal Constitution on the grounds relied on by Cities Service. We agree.

II.

[3] The Due Process and Equal Protection issues raised by appellant are virtually without substance. It is now undeniable that a state may adopt reasonable regulations to prevent economic and physical waste of natural gas. This Court has upheld numerous kinds of state legisla-

tion designed to curb waste of natural resources and to protect the correlative rights of owners through ratable taking, *Champion Refining Co. v. Corporation Commission*, 1932, 286 U.S. 210, 52 S.Ct. 559, 76 L.Ed. 1062, or to protect the economy of the state. *Railroad Commission of Texas v. Rowan & Nichols Oil Co.*, 1940, 310 U.S. 573, 60 S.Ct. 1021, 84 L.Ed. 1368. These ends have been held to justify

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control over production even though the uses to which property may profitably be put are restricted. *Walls v. Midland Carbon Co.*, 1920, 254 U.S. 300, 41 S.Ct. 118, 65 L.Ed. 276.

[4,5] Like any other regulation, a price-fixing order is lawful if substantially related to a legitimate end sought to be attained. *Nebbia v. People of State of New York*, 1934, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940 and cases therein cited. In the proceedings before the Commission in this case, there was ample evidence to sustain its finding that existing low field prices were resulting in economic waste and conducive to physical waste. That is a sufficient basis for the orders issued. It is no concern of ours that other regulatory devices might be more appropriate, or that less extensive measures might suffice. Such matters are the province of the legislature and the Commission.

We have considered the other arguments raised by appellant concerning Due Process and Equal Protection and find them similarly lacking in merit.

III.

[6-9] The Commerce Clause gives to the Congress a power over interstate commerce which is both paramount and broad in scope. But due regard for state legislative functions has long required that this power be treated as not exclusive. *Cooley v. Board of Wardens of Port of Philadelphia*, 1851, 12 How. 299, 13 L.Ed. 996. It is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce. *Parker v. Brown*, 1943,

317 U.S. 341, 63 S.Ct. 307, 87 L.Ed. 315; *Milk Control Board of Pennsylvania v. Eisenberg Farm Products*, 1939, 306 U.S. 346, 59 S.Ct. 528, 83 L.Ed. 752; *South Carolina State Highway Dept. v. Barnwell Bros.*, 1938, 303 U.S. 177, 58 S.Ct. 510, 82 L.Ed. 734. The only requirements consistently recognized have been that the regulation not discriminate against or place an embargo on interstate commerce, that it safeguard an obvious state interest, and that the local interest at stake outweigh

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whatever national interest there might be in the prevention of state restrictions. Nor should we lightly translate the quiescence of federal power into an affirmation that the national interest lies in complete freedom from regulation. *South Carolina State Highway Dept. v. Barnwell Bros.*, supra. Compare *Leisy v. Hardin*, 1890, 135 U.S. 100, 10 S.Ct. 681, 34 L.Ed. 128, decided prior to the *Wilson Act*, 26 Stat. 313, 27 U.S.C.A. § 121, with *In re Rahrer*, 1891, 140 U.S. 545, 11 S.Ct. 865, 35 L.Ed. 572, decided thereafter.

[10] That a legitimate local interest is at stake in this case is clear. A state is justifiably concerned with preventing rapid and uneconomic dissipation of one of its chief natural resources. The contention urged by appellant that a group of private producers and royalty owners derive substantial gain from the regulations does not contradict the established connection between the orders and a state-wide interest in conservation. Cf. *Thompson v. Consolidated Gas Utilities Corp.*, 1937, 300 U.S. 55, 57 S.Ct. 364, 81 L.Ed. 510.

[11, 12] We recognize that there is also a strong national interest in natural gas problems. But it is far from clear that on balance such interest is harmed by the state regulations under attack here. Presumably all consumers, domestic and industrial alike, want to obtain natural gas as cheaply as possible. On the other hand, groups connected with the production and transportation of competing fuels complain of the competition of cheap gas. Moreover, the wellhead price of gas is but a fraction of the price paid by domestic

consumers at the burner-tip, so that the field price as herein set may have little or no effect on the domestic delivered price. Some industrial consumers, who get bargain rates on gas for "inferior" uses, may suffer. But strong arguments have been made that the national interest lies in preserving this limited resource for domestic and industrial uses for which natural gas has no completely satisfactory substitute. See generally, *F. P. C., Natural Gas Investigation* (1948); *F. P. C. v. Hope Natural Gas Co.*, 1944,

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320 U.S. 591, 657-660, 64 S.Ct. 281, 313, 315, 88 L.Ed. 333 (dissenting opinion). Insofar as conservation is concerned, the national interest and the interest of producing states may well tend to coincide. In any event, in a field of this complexity with such diverse interests involved, we cannot say that there is a clear national interest so harmed that the state price-fixing orders here employed fall within the ban of the Commerce Clause. *Parker v. Brown*, supra; *Milk Control Board of Pennsylvania v. Eisenberg Farm Products*, supra. Nor is it for us to consider whether Oklahoma's unilateral efforts to conserve gas will be fully effective. See *South Carolina State Highway Dept. v. Barnwell Bros.*, supra, 303 U.S. at pages 190-191, 58 S.Ct. at pages 516, 517, 82 L. Ed. 734.

H. P. Hood & Sons v. Du Mond, 1949, 336 U.S. 525, 69 S.Ct. 657, 93 L.Ed. 865, is not inconsistent with this result. The Hood case specifically excepted from consideration the question here raised, whether price-fixing was forbidden as an undue burden on interstate commerce. Moreover, the Court carefully distinguished *Eisenberg*, which approved price regulations even though applied to a producer whose entire purchases of milk went directly, without processing, into interstate commerce. The vice in the regulation invalidated by Hood was solely that it denied facilities to a company in interstate commerce on the articulated ground that such facilities would divert milk supplies needed by local consumers; in other words, the regulation discriminated against interstate commerce. There is no such problem here.

The price regul. from the field, state or intrastate.

Appellant does not conflict with orders asserted by the 821 (1938), 15 15 U.S.C.A. § Power Commis these proceeding authorizes the field prices on

ducers, or leave is not before the.

We hold the Oklahoma Corporation orders, and the below should be Affirmed.

Mr. Justice that the alleged tions are frivolous therefore should

PHILLIPS PE OF C

Argue Dec

The Phillips application with of State of Okla orders adopted O.S. 1941, § 1 natural gas tax Field in Texas that the orders twentieth Amendment U.S.C.A. Supreme Court of 24 279, entered Commission's

stranger, Kelley was the United States official who held petitioners in custody. Any person held by the United States should be able to repose confidence in the Government official entrusted with his custody. There are obvious reasons why this should be true in the case of the foreign born, less familiar with our customs than are our native citizens.

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The Court also relies on the fact that the motions to set aside the judgments contain "no allegations of privity or any fiduciary relations existing" between petitioners and Kelley. Surely the liberalizing provisions of 60(b) should not be emasculated by common-law ideas of "privity" or "fiduciary relations." If relevant, however, I should think that the phrase "fiduciary relations" given its best meaning encompasses the relationship between petitioners and the official who held them in custody.

Finally, since the Court holds that the allegations of petitioners' motions were insufficient to justify the hearing of evidence by the District Court, I think it inappropriate for the Court to consider what purports to be its judicial knowledge of the cost of transcripts and the ability of litigants to file typewritten records and briefs. The motions refute any such knowledge on the part of these petitioners and I am satisfied that no such knowledge would be established if the District Court were permitted to try these cases.

The result of the Court's illiberal construction of 60(b) is that these foreign-born people, dependent on our laws for their safety and protection, are denied the right to appeal to the very court that held (on the Government's admission) that the judgment against their co-defendant was unsupported by adequate evidence. It does no good to have liberalizing rules like 60(b) if, after they are written, their arteries are hardened by this Court's resort to ancient common-law concepts. I would reverse.

340 U.S. 179

CITIES SERVICE GAS CO. v. PEERLESS OIL & GAS CO. et al.

No. 153.

Argued Nov. 9-10, 1950.

Decided Dec. 11, 1950.

The Peerless Oil & Gas Company filed an application with the Oklahoma Corporation Commission to require Cities Service Gas Company to connect its pipeline to applicant's gas well and to take and receive the natural flow of gas from applicant's well ratably with its taking gas from other wells of the Guymon-Hugoton Field in Texas County, Oklahoma, and to have minimum prices fixed. The State, on relation of Commissioners of the Land Office, intervened. The Supreme Court of Oklahoma, Welch, J., 220 P.2d 279, entered a judgment affirming the Commission's orders granting the application and the Cities Service Gas Company appealed. The Supreme Court, Mr. Justice Clark, held that the Commission's order did not contravene either the Fourteenth Amendment or Commerce Clause of the Federal Constitution.

Judgment affirmed.

1. Courts ⇨394(10, 15)

Where Supreme Court of Oklahoma upheld orders of Oklahoma Corporation Commission as against contentions that they contravened the Fourteenth Amendment and Commerce Clause of federal Constitution, a substantial federal claim had been duly raised and necessarily denied by highest state court, so that United States Supreme Court had jurisdiction thereof. 28 U.S.C.A. § 1257(2); U.S.C.A.Const. art. 1, § 8, cl. 3; Amend. 14.

2. Commerce ⇨57

Constitutional law ⇨211, 278(1)

Mines and minerals ⇨92.4

The statutory grant of power to Oklahoma Corporation Commission to regulate the taking of natural gas from a common source of supply so as to prevent waste, protect interest of the public, and of those having a right to produce therefrom is not invalid as violative of either due process or equal protection provisions

MICHIGAN
COMPILED LAWS
Annotated

Under Arrangement of the Official
Compiled Laws of Michigan

Sections
311.1 to 322.End

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reservoir or reservoirs containing such oil or gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; however, "field," unlike "pool," may relate to 2 or more pools.

(f) "Product" means any commodity or thing made or manufactured from oil or gas, and all derivatives of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, naphtha, distillate, gasoline, casing-head gasoline, natural gas gasoline, kerosene, benzine, wash oil, waste oil, lubricating oil, and blends or mixtures of oil or gas or any derivatives thereof whether enumerated or not.

(g) "Owner" means the person who has the right to drill into and produce from any pool, and to appropriate the production either for himself or for himself and another or others.

(h) "Producer" means the operator, whether owner or not, of a well or wells capable of producing oil or gas or both in paying quantities.

(i) "Commission" means the commission of natural resources for the state of Michigan.

(j) "Supervisor" means the supervisor of wells as provided by this act.

(k) "Board" means the advisory board appointed, as provided in this act, by the supervisor of wells.

(l) "Waste" in addition to its ordinary meaning includes:

(1) "Underground waste" as those words are generally understood in the oil business, and in any event to embrace (1) the inefficient, excessive, or improper use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating, or producing of any well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recoverable from any pool, and (2) unreasonable damage to underground fresh or mineral waters, natural brines, or other mineral deposits from operations for the discovery, development, and production and handling of oil or gas.

(2) "Surface waste," as those words are generally understood in the oil business, and in any event to embrace (1) the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of gas, oil, or other product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating, or producing well or wells, or incident to or resulting from inefficient storage or handling of oil, (2) the unnecessary damage to or destruction of the surface, soils, animal, fish or aquatic life or property, or other environmental values from or by oil and gas operations; and (3) the drilling of unnecessary wells.

(3) "Market waste," which shall embrace the production of oil or gas in any field or pool in excess of the market demand as defined herein.

(m) The words "market demand" as used herein shall be construed to mean the actual demand for oil or gas from any particular pool or field for current requirements for current consumption and use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of oil or gas or the products thereof.

(n) "Illegal oil or gas" means oil or gas which has been produced by any owner or producer in violation of this act, rules promulgated pursuant to this act or orders of the supervisor.

(o) "Illegal product" means any product of oil or gas or any part of which was processed or derived in whole or part knowingly from illegal oil or gas.

(p) "Illegal conveyance" means any conveyance by or through which illegal oil or gas or illegal products are being transported.

(q) "Illegal container" means any receptacle which contains illegal oil or gas or illegal products.

(r) "Tender" means a permit or certificate of clearance for the transportation of oil or gas or products, approved and issued or registered under the authority of the supervisor.

Historical Note

Source:

P.A.1939, No. 61, § 2. Imd. Eff. May 3.

C.L.1948, § 319.2.

P.A.1966, No. 262, § 1. Imd. Eff. July 12.

C.L.1970, § 319.2.

P.A.1973, No. 61, § 1. Imd. Eff. July 19.

The 1966 amendment substituted "state geologist" for "director of conservation of Michigan".

The 1973 amendment substituted "a mixture of hydrocarbons and varying quantities of nonhydrocarbons in a gaseous state which may or may not be associated with oil, and including those liquids resulting from condensation" for "casing-head gas or gas produced incidental to the production of oil" in subd. (c); substituted "commission of natural resources" for "commission of conservation" in subd. (i); substituted "supervisor of wells" for "state geologists" in subd. (k); deleted "As used in this act, the term" preceding "waste" in the introductory language of subd. (l); deleted "casing-head" preceding "gas" in phrase "handling of oil or gas" in subd. (l)(1) and phrase "beneficial use, however caused, or gas, oil" in subd. (l)(2); inserted "or other environmental values" in subd. (l)(2); inserted phrase "or gas" in subds. (l)(3), (m), (n), (o), (p), (q), and (r); substituted "by any owner or producer in violation of this act, rules promulgated pursuant to this act or orders of the supervisor" for "within the state from any well or wells in excess of the amount allowed by any valid rule, regulation or order of the supervisor as distinguished from oil produced in the state not in excess of the amount so allowed, which is 'legal oil'" in subd. (n); deleted "as distinguished from 'legal product' which is a product processed or derived to no extent from illegal oil" at the end of subd. (o); and deleted "oil" preceding "products" in subds. (p) and (q).

Cross References

Commission of natural resources.

Appointment and terms prior to executive organization act, see § 299.1.

Appointments, membership and terms under executive organization act, see § 16354.

Establishment as head of department created under executive organization act, see § 16354.

Oil defined for severance tax, see § 205311.

Person defined for severance tax, see § 205312.

March 31, 1987

Senate Special Committee on Oil and Gas

SB 49, Relating to the waste of oil and gas.

TO TESTIFY:

SENATOR KERTTULA, Sponsor (or BETH)

STEVE PORTER, Assistant Attorney General, ANCHORAGE

Ask him to run through what options the state currently has for dealing with a situation where our wellhead value approaches zero value.

Would this proposed statutory change help to expand our options?

What other states have an "economic waste" statute?

How do they use it?

CHAT CHATTERTON, Commissioner, ALASKA OIL AND GAS CONSERVATION COMMISSION

What is the commission's position on this bill?

Are there other options for dealing with this low price problem?

What about underlifting?

How does the authority of the commission overlap with DNR's

a) for regulating production?

b) to shut in a field?

BILL VAN DYKE, Petroleum Manager, DEPARTMENT OF NATURAL RESOURCES

Does DNR have a position on the bill?

JIM PALMER, Standard Alaska Petroleum Company

BEV WARD, ARCO *Director Public Relations*

RICHARD BYRD, General Counsel to the INTERSTATE OIL COMPACT COMMISSION, (from KANSAS)

DEBRA VOGT, Assistant Attorney General

Are there potential constitutional questions raised here?

U.S. BRIEFS

Government

► **Minerals Management Service** will conduct meetings Dec. 2 in Fort Bragg, Calif., and Dec. 4 in Eureka, Calif., on the draft environmental impact statement (DEIS) for Offshore Northern California OCS Sale 91, scheduled for February 1989 (OG), Aug. 25, Newsletter). Deadline for written comments in Los Angeles is Dec. 10. The DEIS is due in August 1987 and the final EIS in March 1988.

► **Texas Railroad Commission (TRC)** received only 13 briefs from companies and associations about whether it should cut the state's monthly production allowable 10% in order to bolster oil prices. Two small independent producers and a Houston consultant filed briefs supporting the cut, while opposition came from Texas Mid-Continent Oil and Gas Association, Texas Independent Producers and Royalty Owners Association, and many of the major integrated petroleum companies. TRC indicated that the plan was unworkable and is expected to deny the application. The commission meets this week to decide Texas production allowables for December.

Processing

► **Unocal Corp.** started operation of its new tail gas sulfur removal technology, intended to replace the Stretford process, at its Santa Maria refinery in Arroyo Grande, Calif. Unocal claims Unisulf doesn't need to continually replace chemicals used and the resulting solution needs to be changed only once every 7-10 years compared with perhaps twice a year with Stretford. Colicensor is Ralph M. Parsons Co.

► **National Distillers & Chemical Corp. (NDCC)** completed

its purchase of Enron Chemical Co. from Enron Corp. for about \$570 million cash and the assumption of about \$34 million of industrial revenue bond debt (OG), Sept. 29, p. 42). The acquisition makes NDCC the biggest U.S. polyethylene producer at 3.2 billion lb/year.

Drilling-production

► **Seagull Energy Corp.** started up natural gas production of 20 MMcf/d from adjoining Gulf of Mexico fields Mustang Island Block 828 and Mustang Island Block 831, about 35 miles southeast of Corpus Christi, Tex. Start-up of the two fields boosted Seagull's net gas output by about 80% to 17 MMcf/d and its proved gas reserves by about half.

► **ARCO Alaska Inc.** let contracts totaling about \$3 million for work in Alaska's giant Prudhoe Bay oil field. Brown & Root USA Inc. won a contract for \$850,000 to install gas injection modules for Prudhoe's new central gas facility and production expansion drillsite modules. A \$750,000 contract went to Broderick-Aber for field pipe insulation. Gino J.V. netted a contract for \$695,000 for unspecified work on the crude topping plant at Prudhoe. Contracts for \$500,000 and \$200,000 went to H.C. Price to repair or replace flowlines.

► **Amoco Production Co.** produced nearly 11 bcf of carbon dioxide during October, a monthly record, at Bravo Dome CO₂ Gas Unit in Northeast New Mexico. The CO₂ is transported by pipeline to West Texas for enhanced oil recovery. Since completion of a 34 well expansion project in August, sales have exceeded 350 MMcf/d of CO₂. The 258 wells connected to sales produce an average 1.38 MMcf/d of CO₂.

Cumulative production since April 1984 exceeds 200 bcf at Bravo Dome, at 1.036 million acres the world's largest mineral unit.

Transportation

► **Exxon Shipping Co.** took delivery of the Exxon Valdez, the first of two 209,000 dwt, 987 ft long tankers being built for Exxon by National Steel & Shipbuilding Co., San Diego. The tankers will transport Alaskan North Slope crude from Valdez, Alaska, to Panama for further shipment to U.S. Gulf and East Coast markets.

► **GATX Terminals Corp.** linked its Carteret, N.J., petroleum products terminal to Sun Pipe Line Co.'s Eastern U.S. pipeline network. The effort will improve flexibility for GATX customers wanting to move products from the Philadelphia area to New York Harbor by reducing delivery time to 24 hr from 3 days by barge.

Petrochemicals

► **U.S. fertilizer production** was 8% lower in September 1986 than September 1985 and down 13% for July-September 1986, first 3 months of the fertilizer year. Fertilizer Institute says production of anhydrous ammonia, for which natural gas is a large feedstock, was down 7% in September and off 14% for July-September. Ammonia stocks grew by 22%.

Offshore

► **Southwest Research Institute, San Antonio,** plans a cooperative industry research project to establish the first comprehensive engineering database on offshore flexible pipe installations and performance. Research will focus on installation type and configuration, performance/chemical environments, mechanical in-

terfaces, hardware specifications, and field experience. Initial meetings are planned in London and Houston.

Marketing

► **ARCO** hiked the price of leaded regular gasoline 1.8¢/gal to the same price for its unleaded regular, in order to reflect the added costs of lead phasedown under Environmental Protection Agency rules. ARCO is the first West Coast company to equalize leaded and unleaded prices, having cut the price difference to 1.8¢/gal from 4.8¢/gal in August. Its premium unleaded grade will stay separately priced.

Acquisitions

► **PaineWebber/Geodyne Energy Income Production Partnerships I-D and I-E** acquired interests in 20 oil and gas producing wells mainly in Southwest Texas from Shell Western Exploration & Production Inc. for about \$11.7 million. The partnerships plans to spend about another \$30 million to acquire more properties, after spending about \$35.7 million for production to date.

► **Wintershall Corp., Denver,** completed the acquisition of the U.S. oil and gas assets of International Minerals & Chemical Corp. (OG), Oct. 6, p. 42). The purchase gives the unit of Wintershall AG, Kassel, West Germany, a Louisiana gas pipeline and boosts its U.S. production by 2,000 b/d of oil and 29 MMcf/d of gas, mostly in Louisiana.

Companies

► **Diamond Shamrock Corp.,** which reduced its common stock dividend earlier this year, has no plans for another dividend cut as incorrectly stated in an earlier report (OG), Nov. 10, p. 60).

3:40

PF✓
BF✓

SB 49

Beth Kurland -
~~part of~~ management of oil

only "state" oil not private.

definition of how to avoid "economic waste"
underlifting.

define 'market demand' -

if price goes below -

other states do include.

OK in 1915 -

has been upheld in courts

Fischer

how resolve conflicts between
state and producers -

what happens to long-term contracts?

Parker

negative royalty valuation
power to regulate production -
does not have options -

does have option to put into
unit plans.

Unit agreements have waived
in 1977, 1981 + ^{DB} ^{supra}

1979 M. Inc does allow

38.05.180 (L) -

underlift - can defer production
(but only w/ consent of producers)

Other states — OCC has powers
power is needed.

The Commission is the appropriate agency.

Character

commission deals w/ all beds

another approach.

Should require DNR ~~com~~ to
put in lease as well

History of conservation statutes.

- 1) produce as you please.
- 2) collapsed in 1930's
- 3) regulations prohibited physical waste.

Texas uses economic waste

would provocation work again?

U.S. controlled prices then regulating
production.

Industries in middle east were nationalized.

Demand increased. —

Unrestricted imports. —

→ Do not have resources to administer
no economists

→ Get fiscal note from AOGCE

Overlap — exists in Title 31 —
not more than 10% in unit.

Bill Van Dyke

existing statutes —

don't ~~allow~~ speak to "economic waste"
would take broader "police powers"

no position

Palmer could have devastating impact on
industry.

Royalty oil is under contract —
how would affect contract.

Ward Glaser & Johnson.

Unreasonable burden on producers —
reduced investment.
increase risk

definitions — what are goals?

Fischer

→ fiscal note —

→ definition of "reasonable market demand"

SAPCO — John Rader
for more info.

adjourned 4:15

SENATE BILL 49

MADAM CHAIRMAN. MEMBERS OF THE OIL & GAS COMMITTEE. MY NAME IS BEVERLY WARD. I AM DIRECTOR OF GOVERNMENT & COMMUNITY RELATIONS FOR ARCO ALASKA, INC. WE APPRECIATE THE OPPORTUNITY TODAY TO COMMENT ON SB 49. ON THE TELECONFERENCE LINE IN ANCHORAGE IS JOHN GLAESER AND DOUG JOHNSON, FROM OUR ANCHORAGE OFFICE, WHO WILL BE AVAILABLE FOR QUESTIONS IF NECESSARY.

SENATE BILL 49 WOULD AMEND THE ALASKA OIL AND GAS CONSERVATION ACT BY EXPANDING THE DEFINITION OF "WASTE" TO INCLUDE:

"(K) THE PRODUCTION OF OIL OR GAS IN EXCESS OF
TRANSPORTATION FACILITIES, MARKET FACILITIES,
OR REASONABLE MARKET DEMAND."

THE PASSAGE OF THIS BILL WOULD ALLOW THE COMMISSION INCREASED DISCRETIONARY AUTHORITY OVER OIL AND GAS OPERATIONS WITHIN THE STATE. THE LINKING OF PRODUCTION AND MARKET DEMAND IN THIS DEFINITION OF WASTEFUL PRACTICES WOULD CREATE THE BASIS FOR IMPLEMENTING PRODUCTION RESTRICTIONS WHENEVER THE COMMISSION DETERMINES THAT THE SUPPLY EXCEEDS "REASONABLE MARKET DEMAND." WHAT CONSTITUTES "REASONABLE MARKET DEMAND" IS NOT DEFINED AND THEREFORE LEFT TOTALLY TO THE DISCRETION OF THE COMMISSION. AS A RESULT, ONE COULD CONTEMPLATE A WIDE RANGE OF CIRCUMSTANCES THAT COULD TRIGGER PRODUCTION RESTRICTIONS, INCLUDING LOW OIL PRICES.

THE LONGER-TERM EFFECTS OF INTRODUCING THE CONCEPT OF ECONOMIC WASTE INTO ALASKA'S OIL AND GAS LAW WOULD LIKELY LEAD TO THE COMMISSION ESTABLISHING SOME TYPE OF PRORATIONING SYSTEM. THE EFFECT OF THIS TYPE OF ACTION WOULD PLACE AN UNREASONABLE BURDEN ON PRODUCERS. RECOGNIZING THAT THE LONG-TERM INTERESTS OF THE STATE AND THE PRODUCERS ARE GENERALLY THE SAME, THE STATE MUST BE WILLING TO STAND FAST IN THE BAD TIMES AS WELL AS SHARE IN THE GOOD TIMES, AND TO GIVE PRODUCERS CREDIT FOR MAKING PRUDENT DECISIONS REGARDING PRODUCTION FROM THEIR LEASES.

AN EXAMPLE OF THE EFFECTS OF PRORATIONING MIGHT BE A REQUIRED FIELD SHUT-DOWN BY THE STATE BECAUSE THERE IS NO "REASONABLE MARKET DEMAND" DUE TO LOW OIL PRICES. HOWEVER, IT MIGHT BE MORE REASONABLE AND ECONOMIC FOR THE PRODUCER TO CONTINUE TO PRODUCE DURING LOW OIL PRICES THAN TO SHUT DOWN AND RESTART WITH THE UPTURN IN OIL PRICES. AN ANALOGY MIGHT SUGGEST THAT THE STATE CLOSE ALL STATE OFFICES WHENEVER REVENUES DECLINE. THIS WOULD CLEARLY NOT BE IN THE BEST INTERESTS OF THE STATE DUE IN PART TO THE COSTS OF THE SHUTDOWN AND THE HIGH COST OF REHIRING AND RETRAINING STAFF WHEN REVENUES RETURN TO NORMAL.

IF PRORATIONING DUE TO ECONOMIC WASTE HAD BEEN IN EFFECT DURING 1986, PRODUCTION THEORETICALLY COULD HAVE BEEN MANDATORILY REDUCED (OR HALTED) WITH REDUCED OIL PRICES. THE RESULTS OF SUCH ACTIONS WOULD LIKELY HAVE BEEN AN INCREASE IN OIL SUPPLY TO THE MARKET BY OPEC AND A RESULTING LOSS OF MARKET SHARE BY ALASKAN PRODUCERS. THIS WOULD HAVE ONLY SERVED TO PROLONG AND INCREASE THE MAGNITUDE OF THE STATE'S REVENUE PROBLEMS. IT SHOULD ALSO BE NOTED THAT PRORATIONING DURING A PERIOD OF LOW OIL PRICES WOULD RESULT IN ADDITIONAL BUDGET CUTS AND PERSONNEL LAYOFFS BY THE PETROLEUM OPERATORS, FURTHER EXACERBATING A DIFFICULT SITUATION. ALASKA MUST PROTECT ITS MARKET SHARE FIRST AND THEN LEARN TO LIVE WITHIN THE PRICE RANGE DICTATED BY WORLD SUPPLY AND DEMAND.

PASSAGE OF SB 49 WOULD ALSO SIGNIFICANTLY AFFECT INDUSTRY ECONOMICS FOR CAPITAL PROJECTS. CAPITAL DOLLARS FOR MANY PROJECTS ARE SPENT YEARS IN ADVANCE OF PRODUCTION STARTUP. THE DEGREE OF PRE-PLANNING NECESSARY FOR LARGE SCALE PROJECTS IS ESPECIALLY GREAT ON THE NORTH SLOPE WHERE THERE ARE LONG LEAD TIMES FOR EQUIPMENT OR RESTRICTED CONSTRUCTION PERIODS. IT IS IMPORTANT THAT THE PRODUCTION ESTIMATES USED TO JUSTIFY THESE PROJECTS BE AS ACCURATE AS POSSIBLE. CURRENTLY, ESTIMATES OF PRODUCTION ARE BASED ON RESERVOIR PARAMETERS AND SOUND ENGINEERING PRINCIPLES, IN ACCORDANCE WITH THE COMMISSION'S REGULATIONS. INTRODUCING AN ADDITIONAL VARIABLE SUCH AS MANDATORY PRODUCTION RESTRICTIONS WOULD ADD CONSIDERABLE UNCERTAINTY AND MAKE PLANNING DIFFICULT, IF NOT IMPOSSIBLE. THIS WOULD TRANSLATE DIRECTLY INTO REDUCED OIL INVESTMENT IN THE STATE.

SINCE THE STATE ALSO NEEDS CONTINUING REVENUE, IT WOULD NORMALLY BE IN THE BEST INTEREST OF BOTH THE STATE AND THE INDUSTRY TO MAINTAIN PRODUCTION. ONLY UNDER THE MOST EXTREME (AND HOPEFULLY SHORT-TERM) CIRCUMSTANCES OF LOW TO NEGATIVE WELLHEAD PRICES, WOULD STATE AND INDUSTRY INTERESTS POSSIBLY DIVERGE. HOWEVER, THE VERY IMPORTANT CONSIDERATION OF THE LONG-TERM BEST INTERESTS OF THE STATE AND INDUSTRY WOULD STILL CLEARLY FAVOR CONTINUED PRODUCTION.

IN SUMMARY SB 49 WOULD PROVIDE NO DIRECT BENEFIT TO THE STATE OR INDUSTRY BUT COULD SIGNIFICANTLY INCREASE THE RISK INHERENT TO OPERATING IN THE HIGH COST ALASKA ENVIRONMENT. THIS WOULD BE DIRECTLY TRANSLATED INTO REDUCED OIL INVESTMENT IN THE STATE AND, THEREFORE, IS CLEARLY NOT IN THE LONG-TERM BEST INTERESTS OF EITHER THE STATE OR THE ALASKA OIL INDUSTRY.

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STANDARD
ALASKA PRODUCTION

Testimony of Standard Alaska Production Company
on SB49 before the Senate Oil and Gas Committee

Standard Alaska Production Company is very concerned with the potential effect of this amendment where temporary transportation of market conditions could be construed to preclude continued operation of fields in Alaska. If the Alaska Oil and Gas Conservation Commission is given the power to shut in production under standards as vaguely defined as are proposed in SB 49, the resulting uncertainty could have a devastating impact on oil and gas development in Alaska. Further, Standard fails to see any valid oil and gas conservation purpose which would be achieved through this legislation.

Senate Special Committee on Oil and Gas

Legislation Checklist

Bill number: SB 49

Sponsor: Kerttula

Date referred to committee: 1/19/87 Further referrals: LEC, Resources

Prior committee report:

Finance

Back up from sponsor:

Fiscal note(s):

Agency:

Requested:

Received:

Agency:

Requested:

Received:

Position paper(s):

Agency:

Requested:

Received:

Agency:

Requested:

Received:

Sectional Analysis:

Scheduled: 3/31 Heard: 3/31 Reported out:

Items for committee packet:

To Testify:

Chad Chaberton - 279-1433
333-8161 (h)

Bill Van Dyke - 561-2020

Other Contacts:

Richard Byrd (913) 242-1234
General counsel to IOCC

Steve Porter 276-3550

Bar Ward, ARCO

Jim Palmer SOUTHO

John Rader BRIDGE 258-1808

SB

70

Senate Special Committee on Oil and Gas

Legislation Checklist

Bill number: SB 70

Sponsor: L B + A

Date referred to committee: 1/26

Further referrals: SA, Resources

Prior committee report:

Finance

Back up from sponsor:

Fiscal note(s):

Agency: Revenue

Requested:

Received: 2/16

Agency:

Requested:

Received:

Position paper(s):

Agency:

Requested:

Received:

Agency:

Requested:

Received:

Sectional Analysis: (H) 702 (HB 58)

Scheduled: 2/17

Heard: 2/17

Reported out:

Items for committee packet:

To Testify:

Revenue — Commissioner Malone
Lam — Deborah Vogt

Other Contacts:

Barbara Herman — 277-8661

Jim Palmer

Bob Nelson

Mary Jensen

House Version HB 58

STATE OF ALASKA



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

SENATE SPECIAL COMMITTEE ON OIL AND GAS

MEMORANDUM

TO: Members, Senate Special Committee on Oil and Gas
FROM: Committee Staff
RE: Committee Meeting, February 17, 1987
DATE: February 16, 1987

On Tuesday, February 17, at 3:30 pm in the Beltz Room, the Senate Special Committee on Oil and Gas will hear SB 70, Relating to the disclosure of certain tax assessment information by the Department of Revenue.

Current law prohibits the Department of Revenue from providing the Legislature with certain confidential tax information. Some of this information may be necessary to ensure proper legislative oversight over the department's tax collection function. In addition, the information may be useful in considering changes to the current tax structure.

A committee substitute has been prepared that adopts changes made this session to the house version of the bill, HB 58. The bill would allow only legislators and designated staff to review confidential information in executive session. Criminal penalties for disclosure would be a class A misdemeanor.

Offered: 2/2/87
 Referred: Finance

Original sponsor: Rules/Legislative
 Budget and Audit

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SENATE
 IN THE HOUSE

OIL + GAS
 BY THE JUDICIARY COMMITTEE
 SENATE BILL 70 (Oil and Gas)
 CS FOR HOUSE BILL NO. 38 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA
 FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to confidential tax information of
 the Department of Revenue; and providing for an
 effective date."

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

* Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature
 finds that

(1) the majority of the state's revenue is derived from taxation;

(2) tax revenue enables the state to provide essential services
 to the citizens of the state to ensure the public health and welfare;

(3) the elected representatives of the people of the state must
 be assured that the state is receiving all of the income to which it is
 entitled and that the tax laws are operating in the manner intended by the
 legislature;

(4) the legislature must exercise its oversight authority to
 ensure that tax revenue collection by the Department of Revenue is efficient,
 fair, prompt, and in the best interest of the state;

(5) there is a legitimate and compelling governmental interest
 in the legislature having adequate access to tax-related information to
 allow responsible oversight;

(6) without sufficient information, the legislature cannot
 adequately determine that the state's tax revenue collection functions are
 properly administered and that tax revenue due the state is promptly received;

1 information contained in a report or return filed under AS 43 with the
2 Department of Revenue and furnished to the person under AS 43.05.-
3 230(h) or (i).

4 * Sec. 3. AS 24.60.060 is amended by adding a new subsection to read:

5 (b) A person to whom this chapter applies may not disclose tax
6 information contained within a report or a return filed under AS 43
7 with the Department of Revenue and furnished to the person under
8 AS 43.05.230(h) or (i).

9 * Sec. 4. AS 24.60 is amended by adding a new section to read:

10 Sec. 24.60.172. SPECIAL PROCEEDINGS BEFORE THE COMMITTEE.
11 Notwithstanding AS 24.60.170, if a complaint before the committee
12 involves an allegation that a person to whom this chapter applies has
13 disclosed tax information contained within a report or return filed
14 under AS 43 with the Department of Revenue and furnished to the person
15 under AS 43.05.230(h) or (i) and the taxpayer or a third party whose
16 tax information is alleged to have been improperly disclosed does not
17 agree to the public disclosure of the identity of the taxpayer, the
18 third party, or the tax information,

19 (1) the hearing may not be held in open session;

20 (2) a transcript containing confidential tax information
21 shall be edited to prevent the disclosure of the confidential informa-
22 tion;

23 (3) a decision, if made public, shall be edited to prevent
24 the disclosure of the tax information and to protect the identity of
25 the taxpayer or the third party; and

26 (4) a public statement may not contain information identi-
27 fying the taxpayer, a third party, or the tax information.

28 * Sec. 5. AS 43.05.230(f) is amended to read:

29 (f) An intentional [A WILFUL] violation of the provisions of

CORRECTION

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

Offered: 2/2/87
 Referred: Finance

Original sponsor: Rules/Legislative
 Budget and Audit

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 P. 5

~~IN THE HOUSE~~
 SENATE

~~CS FOR HOUSE BILL NO. 38 (Judiciary)~~
 BY THE JUDICIARY COMMITTEE
 OIL + GAS
 SENATE BILL 70 (Oil and Gas)

IN THE LEGISLATURE OF THE STATE OF ALASKA
 FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to confidential tax information of
 the Department of Revenue; and providing for an
 effective date."

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

* Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature
 finds that

(1) the majority of the state's revenue is derived from taxation;

(2) tax revenue enables the state to provide essential services to the citizens of the state to ensure the public health and welfare;

(3) the elected representatives of the people of the state must be assured that the state is receiving all of the income to which it is entitled and that the tax laws are operating in the manner intended by the legislature;

(4) the legislature must exercise its oversight authority to ensure that tax revenue collection by the Department of Revenue is efficient, fair, prompt, and in the best interest of the state;

(5) there is a legitimate and compelling governmental interest in the legislature having adequate access to tax-related information to allow responsible oversight;

(6) without sufficient information, the legislature cannot adequately determine that the state's tax revenue collection functions are properly administered and that tax revenue due the state is promptly received;

1 (7) tax returns and return information contain confidential
2 information, often regarding sensitive business information;

3 (8) taxpayers have protections against public disclosure of
4 certain tax information;

5 (9) exchange agreements with the Internal Revenue Service re-
6 quire that certain tax information not be publicly disclosed;

7 (10) protection of confidentiality fosters full disclosure by
8 taxpayers to taxing authorities and therefore promotes effective adminis-
9 tration of tax programs; and

10 (11) legislators and legislative employees who improperly dis-
11 close confidential tax information should be subject to the same sanctions
12 imposed against executive branch employees.

13 (b) The purpose of this Act is to ensure that

14 (1) the state is receiving all the tax revenue due the state;

15 (2) oversight of the tax revenue collection function is effec-
16 tively provided;

17 (3) tax revenue due to the state is available to provide for the
18 public health and welfare of the citizens of the state;

19 (4) taxpayers are protected from improper disclosure of tax
20 information;

21 (5) the exchange agreements with the Internal Revenue Service
22 regarding tax information are not jeopardized;

23 (6) tax programs are administered fairly; and

24 (7) the right of the people to privacy is recognized and may not
25 be infringed.

26 * Sec. 2. AS 24.10 is amended by adding a new section to article 2 to
27 read:

28 Sec. 24.10.070. CONFIDENTIALITY OF INFORMATION. A present or
29 former employee or agent of the legislature may not disclose tax