

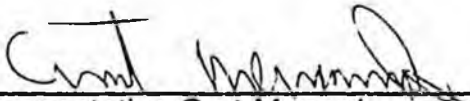
ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
6065 HOUSE RESOURCES

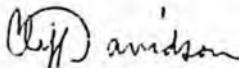
~~4/69~~

Letter of Intent  
for  
CSSB277 (Resources)

It is the intent of the Legislature that, within the context of its prescribed duties, the major goal of the commission should be to provide the state and federal governments with specific recommendations which will dramatically improve the management, handling and transportation of oil and other hazardous substances throughout Alaska. Because achievement of ~~the~~ goal will require congressional action as well as state legislation, the commission should include within its work plan coordination and consultation with other coastal states.

It is the intent of the Legislature that, in addition to the prescribed deadline for its report, the commission should structure a work plan which will permit submission of specific recommended legislation to the Legislature by January 8, 1990.

  
\_\_\_\_\_  
Representative Curt Menard  
Co-Chairman

  
\_\_\_\_\_  
Representative Cliff Davidson  
Co-Chairman

# Alaska State Legislature

Chairman  
(907) 465-4523



Jan Faiks  
Post Office Box V  
Juneau, Alaska 99811

May 1, 1989

## Senate Judiciary Committee

### MEMORANDUM

TO: ✓ Representative Cliff Davidson, Co-Chairman  
Representative Curt Menard, Co-Chairman  
House Resources Committee

FROM: Senator Jan Faiks

SUBJECT: CS Senate Bill 277 - Commission to Investigate the Valdez  
Oil Discharge

CS Senate Bill 277 (Finance) received unanimous approval by the Senate last Saturday. It has been referred to the House Resources Committee for its consideration. I would appreciate the opportunity to discuss the legislation with the committee at its earliest convenience.

The bill is modeled after the executive order which established the Presidential Commission on the Space Shuttle Challenger Accident. It is my hope that by establishing a similar mechanism, Alaskans will be able to examine the facts and circumstances leading to the spill as well as develop recommendations on steps which can be taken to minimize the possibility of a similar accident occurring again in the future.

For your reference, attached is a sectional analysis of the bill, as well as a copy of the Presidential Commission's executive order and summary of the commission's report on the Challenger accident.

#### Members

Mike Szymanski, Vice-Chairman • Rick Halford • Drue Pearce • Pat Rodey

#### Out of Session

3111 C Street, Anchorage, Alaska 99503 • (907) 561-7610

# Alaska State Legislature

JUDICIARY  
CHAIRMAN  
907-465-4523



JAN FAIKS  
POST OFFICE BOX V  
JUNEAU, ALASKA 99811

## Senate

### CS Senate Bill 277 (Finance) Sectional Analysis

Establishing a commission to investigate the Exxon Valdez oil spill disaster and to recommend changes needed to minimize the possibility and effects of similar oil spills; and providing for an effective date

#### Section 1. VALDEZ OIL DIASTER REVIEW COMMISSION.

(a) The 7 member commission is established in the Office of the Governor.

(b) Members, appointed by the Governor, must include:

(1) a distinguished Alaskan committed to impartial fact finding and who is not a state or federal employee or an employee of a company that is part of the oil industry to serve as chair; and

(2) 6 persons not affiliated with any party directly related to the disaster, including one wit relevant scientific and technical knowledge and one with business experience involving petroleum production or transportation.

(c) The panel may hire staff to perform its duties.

(d) Non-governmental commission members are entitled to \$150 per day while on commission business in addition to per diem and travel expenses.

#### Section 2. DUTIES OF THE PANEL.

OUT OF SESSION

3111 C STREET ANCHORAGE, ALASKA 99503 907-561-7610

(a) The panel shall gather information relating to:

- (1) events leading up to the Valdez spill
- (2) efforts to contain and clean up the oil discharged
- (3) short and long term effects of the spill on the natural resources and the economy of the state.

(b) The panel's report shall be submitted by March 1, 1990 and will include findings and recommendations on:

- (1) factual chain of events preceding the grounding of the Exxon Valdez and the extent oil industry and governmental practices or law should be changed to minimize the potential for future similar events;
- (2) containment and clean up actions, the extent to which current technology was available and used, and ways to improve spill response;
- (3) environmental and economic effects of the oil discharge;
- (4) recommendations on steps to be taken to ensure proper management, handling, and transportation of crude oil in the future

### **Section 3. INVESTIGATIONS; HEARINGS.**

(a) - (c) The panel may issue subpoenas, administer oaths, hold hearings and conduct investigations related to its duties.

(d) State agencies shall, to the extent permitted by law, cooperate with the panel and provide information requested.

(e) Meetings of the commission are governed by the Open Meetings Act.

### **Section 4. Panel Termination**

The panel sunsets twenty days after submission of its report (March 21, 1990).

### **Section 5. Effective Date**

Immediate effective date.

January 29, 1986, which established  
the Presidential Commission on the Space Shuttle Challenger Accident

EXECUTIVE ORDER

PRESIDENTIAL COMMISSION ON THE  
SPACE SHUTTLE CHALLENGER ACCIDENT

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to establish a commission of distinguished Americans to investigate the accident to the Space Shuttle Challenger, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established the Presidential Commission on the Space Shuttle Challenger Accident. The Commission shall be composed of not more than 20 members appointed or designated by the President. The members shall be drawn from among distinguished leaders of the government, and the scientific, technical, and management communities.

(b) The President shall designate a Chairman and a Vice Chairman from among the members of the Commission.

Sec. 2. Functions. (a) The Commission shall investigate the accident to the Space Shuttle Challenger, which occurred on January 28, 1986.

(b) The Commission shall:

- (1) Review the circumstances surrounding the accident to establish the probable cause or causes of the accident; and
- (2) Develop recommendations for corrective or other action based upon the Commission's findings and determinations.

(c) The Commission shall submit its final report to the President and the Administrator of the National Aeronautics and Space Administration within one hundred and twenty days of the date of this Order.

sec. 3. Administration. (a) The heads of Executive departments and agencies shall, to the extent permitted by law, provide the Commission with such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

(c) To the extent permitted by law, and subject to the availability of appropriations, the Administrator of the National Aeronautics and Space Administration shall provide the Commission with such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions.

Sec. 4. General Provisions. (a) Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act which are applicable to the Commission, except that of reporting annually to the Congress, shall be performed by the Administrator of the National Aeronautics and Space Administration, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall terminate 60 days after submitting its final report.

*Ronald Reagan*

THE WHITE HOUSE,

February 3, 1986.

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*Report to the President*

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*By The*  
**PRESIDENTIAL  
COMMISSION**  
*on the Space Shuttle  
Challenger Accident*

June 6th, 1986  
Washington, D.C.

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## Presidential Commission on the Space Shuttle Challenger Accident

### William P. Rogers, Chairman

Former Secretary of State under President Nixon (1969-1973), and Attorney General under President Eisenhower (1957-1961), currently a practicing attorney and senior partner in the law firm of Rogers & Wells. Born in Norfolk, New York, he was awarded the Medal of Freedom in 1973. He holds a J.D. from Cornell University (1937) and served as LCDR, U.S. Navy (1942-1946).

### Neil A. Armstrong, Vice Chairman

Former astronaut, currently Chairman of the Board of Computing Technologies for Aviation, Inc. Born in Wapakoneta, Ohio, Mr. Armstrong was spacecraft commander for Apollo 11, July 16-24, 1969, the first manned lunar landing mission. He was Professor of Aeronautical Engineering at the University of Cincinnati from 1971 to 1980 and was appointed to the National Commission on Space in 1985.

### David C. Acheson

Former Senior Vice President and General Counsel, Communications Satellite Corporation (1967-1974), currently a partner in the law firm of Drinker Biddle & Reath. Born in Washington, DC, he previously served as an attorney with the U.S. Atomic Energy Commission (1948-1950) and was U.S. Attorney for the District of Columbia (1961-1965). He holds an LL.B. from Harvard University (1948) and served as LT, U.S. Navy (1942-1946).

### Dr. Eugene E. Covert

Educator and engineer. Born in Rapid City, South Dakota, he is currently Professor and

Head, Department of Aeronautics and Astronautics, at Massachusetts Institute of Technology. Member of the National Academy of Engineering, he was a recipient of the Exceptional Civilian Service Award, USAF, in 1973 and the NASA Public Service Award in 1980. He holds a Doctorate in Science from Massachusetts Institute of Technology.

### Dr. Richard P. Feynman

Physicist. Born in New York City, he is Professor of Theoretical Physics at California Institute of Technology. Nobel Prize winner in Physics, 1965, he also received the Einstein Award in 1954, the Oersted Medal in 1972 and the Niels Bohr International Gold Medal in 1973. He holds a Doctorate in Physics from Princeton (1942).

### Robert B. Hotz

Editor, publisher. Born in Milwaukee, Wisconsin. He is a graduate of Northwestern University. He was the editor-in-chief of *Aviation Week & Space Technology* magazine (1953-1960). He served in the Air Force in World War II and was awarded the Air Medal with Oak Leaf Cluster. Since 1982, he has been a member of the General Advisory Committee to the Arms Control and Disarmament Agency.

### Major General Donald J. Kutyna, USAF

Director of Space Systems and Command Control, Communications. Born in Chicago, Illinois, and graduate of the U.S. Military Academy, he holds a Master of Science degree from Massachusetts Institute of Technology (1965). A command pilot with over 4,000 flight

hours, he is a recipient of the Distinguished Service Medal, Distinguished Flying Cross, Legion of Merit and nine air medals.

**Dr. Sally K. Ride**

Astronaut. Born in Los Angeles, California, she was a mission specialist on STS-7, launched on June 18, 1983, becoming the first American woman in space. She also flew on mission +1-G launched October 5, 1984. She holds a Doctorate in Physics from Stanford University (1978) and is still an active astronaut.

**Robert W. Rummel**

Space expert and aerospace engineer. Born in Dakota, Illinois, and former Vice President of Trans World Airlines, he is currently President of Robert W. Rummel Associates, Inc., of Mesa, Arizona. He is a member of the National Academy of Engineering and is holder of the NASA Distinguished Public Service Medal.

**Joseph F. Sutter**

Aeronautical engineer. Currently Executive Vice President of the Boeing Commercial Airplane Company. Born in Seattle, he has been with Boeing since 1945 and was a principal figure in the development of three generations of jet aircraft. In 1984, he was elected to the National Academy of Engineering. In 1985, President Reagan conferred on him the U.S. National Medal of Technology.

**Dr. Arthur B. C. Walker, Jr.**

Astronomer. Born in Cleveland, Ohio, he is currently Professor of Applied Physics and was formerly Associate Dean of the Graduate Divi-

sion at Stanford University. Consultant to Aerospace Corporation, Rand Corporation and the National Science Foundation, he is a member of the American Physical Society, American Geophysical Union, and the American Astronomy Society. He holds a Doctorate in Physics from the University of Illinois (1962).

**Dr. Albert D. Wheelon**

Physicist. Born in Moline, Illinois, he is currently Executive Vice President, Hughes Aircraft Company. Also a member of the President's Foreign Intelligence Advisory Board, he served as a consultant to the President's Science Advisory Council from 1961 to 1974. He holds a Doctorate in Physics from Massachusetts Institute of Technology (1952).

**Brigadier General Charles Yeager, USAF (Retired)**

Former experimental test pilot. Born in Myra, West Virginia, he was appointed in 1985 as a member of the National Commission on Space. He was the first person to penetrate the sound barrier and the first to fly at a speed of more than 1,600 miles an hour.

**Dr. Alton G. Keel, Jr., Executive Director**

Detailed to the Commission from his position in the Executive Office of the President, Office of Management and Budget, as Associate Director for National Security and International Affairs; formerly Assistant Secretary of the Air Force for Research, Development and Logistics; and Senate Staff. Born in Newport News, Virginia, he holds a Doctorate in Engineering Physics from the University of Virginia (1970).

	Executive Secretary	White House MAJ, USA/OMB
<b>Special Assistants</b>		
Marie C. Hunter	Executive Assistant to the Chairman	Rogers & Wells
M. M. Black	Personal Secretary to Vice Chairman & Executive Director	OMB
Mark D. Weinberg	Media Relations	White House
Herb Hetu	Media Relations	Consultant
John T. Shepherd	NASA Tasking Coordination	CAPT, USN (Ret)/Atty.

**Administrative Staff**

Stephen B. Hyle	Administrative Officer	LTC, USAF
Patt Sullivan	Administrative Assistant	NASA
Marilyn Stumpf	Travel Coordination	NASA
Joleen A. B. Bottalico	Travel Coordination	NASA
Jane M. Green	Secretary	NASA
Lorraine K. Walton	Secretary	NASA
Vera A. Barnes	Secretary	NASA
Virginia A. James	Receptionist	Contract Support

**Investigative Staff**

William G. Dupree	Investigator, Development and Production	DOD IG
John B. Hungerford, Jr.	Investigator, Development and Production	LTC, USAF
John P. Chase	Investigator, Pre-Launch Activities	MAJ, USMC/DOD IG
Brewster Shaw	Investigator, Pre-Launch Activities	LTC, USAF/NASA Astronaut
John C. Macidull	Investigator, Accident Analysis	FAA/CDR, USNR-R
Ron Waite	Investigator, Accident Analysis	Engineering Consultant
John Fabian	Investigator, Mission Planning and Operations	COL, USAF/Former Astronaut
Emily M. Trapnell	Coordinator, General Investigative Activities	FAA Atty.
Randy R. Kehrl	Evidence Analysis	DOJ Atty.
E. Thomas Almon	Investigator	Special Agent, FBI
Patrick J. Maley	Investigator	Special Agent, FBI
John R. Molesworth, Jr.	Investigator	Special Agent, FBI
Robert C. Thompson	Investigator	Special Agent, FBI
Dr. R. Curtis Graeber	Human Factors Specialist	LTC, USA/NASA
Michael L. Marx	Metallurgist	NTSB

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William Bauman	Writer	CAPT, USAF/USAF
Frank Gillen	Word Processing Supervisor	Contract Support
Lawrence J. Herb	Art Layout	Free Lance
Willis Rickert	Printer	NASA
Lynne Komai	Design	Contract Support

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---

Clarisse Abramidis	Case Manager	DOJ
Fritz Geurtsen	Project Manager	DOJ
John Dunbar	Contract Representative	Contract Support
Valarie Lease	Support Center Supervisor	Contract Support
Stephen M. Croll	Correspondence Support	Contract Support

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### Independent Test Observers

---

Eugene G. Haberman	Rocket Propulsion Lab	USAF
Wilbur W. Wells	Rocket Propulsion Lab	USAF
Don E. Kennedy	TRW Ballistic Missile Office	Pro Bono
Laddie E. Dufka	Aero space Corp	Pro Bono
Mohan Aswani	Aero space Corp	Pro Bono
Michael L. Marx	Metallurgist	NTSB

## An Overview

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President Reagan, seeking to ensure a thorough and unbiased investigation of the Challenger accident, announced the formation of the Commission on February 3, 1986. The mandate given by the President, contained in Executive Order 12546, required Commission members to:

- (1) Review the circumstances surrounding the accident to establish the probable cause or causes of the accident; and
- (2) Develop recommendations for corrective or other action based upon the Commission's findings and determinations.

Following their swearing in by Chairman Rogers on February 6th, Commission members immediately began a series of hearings during which NASA officials outlined agency procedures covering the Shuttle program and the status of NASA's investigation of the accident.

Shortly thereafter, on February 10th, Dr. Alton G. Keel, Jr., Associate Director of the Office of Management and Budget, was appointed Executive Director. Dr. Keel began gathering a staff of 15 experienced investigators from various government agencies and the military services, and administrative personnel to support Commission activities.

During a closed session on February 10, 1986, the Commission began to learn of the troubled history of the Solid Rocket Motor joint and seals. Moreover, it discovered the first indication that the contractor, Morton Thiokol, initially recommended against launch on January 27, 1986, the night before the launch of 51-L, because of con-

cerns regarding low temperature effects on the joint and seal. To investigate this disturbing development, additional closed sessions were scheduled for February 13th and 14th at Kennedy. The February 13, 1986, session was an extensive presentation of film, video and telemetry data relating to the Challenger accident. It provided the Commission the first evidence that the Solid Rocket Motor joint and seal may have malfunctioned, initiating the accident.

The session on February 14th included NASA and contractor participants involved in the discussion on January 27, 1986, not to launch 51-L. After testimony was received, an executive session of the Commission was convened. The following statement was subsequently issued by the Chairman on February 15, 1986, reflecting the conclusion and view of the Commission:

"In recent days, the Commission has been investigating all aspects of the decision making process leading up to the launch of the Challenger and has found that the process may have been flawed. The President has been so advised.

"Dr. William Graham, Acting Administrator of NASA, has been asked not to include on the internal investigating teams at NASA, persons involved in that process.

"The Commission will, of course, continue its investigation and will make a full report to the President within 120 days."

The role of the Commissioners thus changed from that of overseers to that of active investigators and analysts of data presented by NASA and its contractors.

The Commission itself divided into four investigative panels:

1. Development and Production, responsible for investigating the acquisition and test and evaluation processes for the Space Shuttle elements;
2. Pre-Launch Activities, responsible for assessing the Shuttle system processing, launch readiness process and pre-launch security;
3. Mission Planning and Operations, responsible for investigating mission planning and operations, schedule pressures and crew safety areas; and
4. Accident Analysis, charged with analyzing the accident data and developing both an anomaly tree and accident scenarios.

By February 17th, the panel organization had been finalized and, on February 18th, Chairman Rogers described the Commission's new approach before Congress. Working groups were sent to Marshall, Kennedy and Thiokol to analyze data relating to the accident and to redirect efforts. NASA's investigation was also reorganized to reflect the structure of the Commission's panels.

A series of public hearings were planned on February 25th, 26th and 27th to assure an orderly and fair presentation of all the facts that the Commission had discovered concerning the launch decision making process for flight 51-L. At these hearings, additional information about the launch decision was obtained from the testimony of Thiokol, Rockwell and NASA officials. Details about the history of problems with the then suspect Solid Rocket Motor joints and seals also began emerging and served to focus the Commission's attention on a need to document fully the extent of knowledge and awareness about the problems within both Thiokol and NASA.

Following these hearings, a substantial portion of the investigative efforts of the Commission was conducted by the separate panels in parallel with full Commission hearings.

The Accident Analysis Panel, chaired by Major General Donald Kutyna, made several trips to both Kennedy and Marshall and traveled to Thiokol facilities in Utah to review photographic and telemetric evidence as well as the results of the salvage operation and to oversee the tests being conducted by NASA and Thiokol engineers.

The Accident Analysis Panel followed standard investigative procedures. An extensive effort

was needed to establish the design, manufacturing and processing baseline configuration of the Shuttle vehicle for STS 51-L. A data base was established for the examination and analysis of information related to all flight elements and segments. From these data and a compilation of possible and observed deviations from the norm, scenarios that might have led to the accident were developed. Tests and analyses were then performed to determine the specific scenarios most likely to have caused loss of Challenger.

Early in March, at the request of the Chairman, this group assembled and directed the Commission's independent team of technical observers with extensive experience in Solid Rocket Motor technology and accident investigation to validate and interpret the tests and analyses performed on the Thiokol motor by NASA and Thiokol.

The Development and Production Panel, chaired by Joseph Sutter, centered its investigation on the production and testing activities of the Shuttle element contractors. Starting at Johnson, the panel and staff investigators looked at how these contractors and their NASA counterparts interact.

They next traveled to the Wasatch plant of Thiokol in Promontory, Utah. Thiokol personnel briefed the group on the details of the design, manufacturing, verification and certification of the Solid Rocket Motors. Similar sessions took place in April in Downey, California, at the headquarters of Rocketdyne, Inc., the Shuttle main engine contractor; in Canoga Park, California, at the facilities of Rockwell International, the Orbiter contractor; in Michoud, Louisiana, at the plant of Martin Marietta, the External Tank contractor; and in Berea, Kentucky, at the facilities of Parker Seal Company, the manufacturers of the O-ring seals of the Thiokol Solid Rocket Motors.

In addition, the panel traveled to Marshall to learn about Marshall's interaction with Thiokol and to discuss issues that had been raised during the visits to the contractors' plants.

The Pre-Launch Activities Panel, chaired by David Acheson, centered its investigation at Kennedy where the Shuttle elements are assembled and all other final launch preparations are completed. This panel, in conjunction with the Mission Planning and Operations Panel, chaired by Dr. Sally Ride, met with its NASA counterparts in early March. This series of meetings identified for the Commission the various aspects of the pre-

launch process that required thorough review, not only for the purpose of the Challenger accident investigation but also to increase safety margins for the future.

Later in March the Pre-Launch Panel again met at Kennedy to receive the NASA Team's preliminary reports and to focus on the spare parts issue and Solid Rocket Booster assembly operations. Panel members also met with contractor personnel involved in Shuttle processing and Kennedy security work.

After the joint meeting at Kennedy with the Pre-Launch Activities Panel, the Mission Planning and Operations Panel traveled to Johnson to begin working with its NASA counterparts and to initiate its own investigative efforts. A specific focus of its work was the mission planning and crew preparation for STS 51-L and details of NASA's safety, reliability and quality assurance programs. Later meetings at both Johnson and Marshall dealt with range safety, weather criteria for launch, flight delays and hardware testing.

While the work of the individual panels and their investigative staffs was ongoing, a general investigative staff began a series of individual interviews to document fully the factual background of various areas of the Commission's interest, including the telecon between NASA and Thiokol officials the night before the launch; the history of joint design and O-ring problems; NASA safe-

ty, reliability and quality assurance functions; and the assembly of the right Solid Rocket Booster for STS 51-L. Subsequent investigative efforts by this group were directed in the area of the effectiveness of NASA's organizational structure, particularly the Shuttle program structure, and allegations that there had been external pressure on NASA to launch on January 28th.

More than 160 individuals were interviewed and more than 35 formal panel investigative sessions were held generating almost 12,000 pages of transcript (Table 1 and Table 2). Almost 6,300 documents, totaling more than 122,000 pages, and hundreds of photographs were examined and made a part of the Commission's permanent data base and archives. These sessions and all the data gathered added to the 2,800 pages of hearing transcript generated by the Commission in both closed and open sessions.

In addition to the work of the Commission and the Commission staff, NASA personnel expended a vast effort in the investigation. More than 1,300 employees from all NASA facilities were involved and were supported by more than 1,600 people from other government agencies and over 3,100 from NASA's contractor organizations. Particularly significant were the activities of the military, the Coast Guard and the NTSB in the salvage and analysis of the Shuttle wreckage.

Table 1

## Commission Investigative Interviews

Interviews of January 27, 1986  
Teleconference (8:15 PM EST)

### Participants

Ben Powers	John Schell	William Macbeth	Jerry E. Mason
Frank Adams	Keith Coates	Brian Russeil	Robert Lund
Larry Wear	George Hardy	Jack Kapp	Joseph Kilminster
James Smith	Jud Lovingood	Ron Ebeling	Roger Boisjoly
Boyd Brinton	Jack Buchanan	Calvin Wiggins	Arnold Thompson
Robert Schwinghamer	Allan McDonald	Larry Sayer	Jerry Peoples
William Reihl	Carver Kennedy	Joel Maw	James Kingsourv
Wayne Little	Cecil Houston	Kyle Speas	
John Q. Miller	Lawrence Mullov	Jerry Burn	
John McCarty	Stanley Reinartz	Don Keener	

Doug Baily April 27

Senator Faiks -

The problem is the dual  
appointment procedure. -

By the Governor & the Legislature  
which may well (and probably  
does) violate separation of  
power. While this problem is  
often "overlooked" - here, where  
the panel has the subpoena  
power there will likely be  
efforts to block the investigation.  
I expect, if challenged, the  
Commission in this form will  
be declared invalid.

RECEIVED

APR 28 1989

CS SB 277

JAN FAIKS

6-1209M  
Lauterbach  
5/4/89

Original sponsors: Faiks, Halford,  
Kelly, et al.

1 IN THE SENATE BY THE RESOURCES COMMITTEE  
2 HOUSE CS FOR CS FOR SENATE BILL NO. 277 (Resources)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a commission to investigate the  
7 Exxon Valdez oil spill disaster and to recommend  
8 changes needed to minimize the possibility and ef-  
9 fects of similar oil spills; and providing for an  
10 effective date."

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

12 \* Section 1. ALASKA OIL SPILL COMMISSION. (a) There is established in  
13 the Department of Administration the Alaska Oil Spill Commission consisting  
14 of seven distinguished members appointed by the governor.

15 (b) The members must include

16 (1) five state residents with broad experience or expertise in  
17 one or more of the following areas: physical or biological science, oil  
18 transportation, fisheries, economics, sociology, or law; these members may  
19 not be federal or state employees or employees of a political subdivision  
20 of the state or <sup>an employee or contractor of the oil industry</sup> ~~be~~ employees or independent contractors of any corporation  
21 directly involved in the Exxon Valdez oil spill disaster;

22 (2) two persons who are recognized nationally for their exper-  
23 tise in science, technology, or management and are not employees of a  
24 governmental entity.

25 (c) The commission members shall elect from among themselves a chair  
26 and vice-chair.

27 (d) The commission may hire staff it considers necessary to perform  
28 its duties, including legal counsel.

29 (e) Members of the commission serve without compensation, but are

1 entitled to <sup>2000</sup>~~\$300~~ a day while on commission business plus per diem and  
2 travel expenses authorized for boards and commissions under AS 39.20.180.

3 (f) The commission shall meet regularly to direct its investigation,  
4 hold hearings, review progress, and draft final recommendations.

5 \* Sec. 2. DUTIES OF THE COMMISSION. (a) The commission shall gather  
6 information relating to

7 (1) the series of events that allowed the Exxon Valdez oil  
8 discharge on March 24, 1989, to occur; and

9 (2) the ensuing efforts to contain and clean up the oil dis-  
10 charged.

11 (b) By December <sup>15</sup>~~15~~, 1989, the commission shall submit a report to the  
12 governor and to the legislature containing its findings and recommendations  
13 on

14 (1) the containment and cleanup actions that were taken or not  
15 taken after the discharge, the extent to which current technology was  
16 available and used, and ways to improve oil spill response technology and  
17 procedures;

18 (2) steps that should be taken by all levels of government and  
19 by the oil industry to ensure proper management, handling, and transporta-  
20 tion of crude and refined oil and to improve the statewide ability of  
21 industry and governmental agencies to respond to oil discharges;

22 (3) the extent to which oil industry practices and governmental  
23 practices or laws should be changed to minimize the potential for future  
24 events similar to the grounding of the Exxon Valdez; and

25 (4) legislative proposals to encourage and fund prevention,  
26 response, cleanup, and mitigation of all future discharges of oil.

27 \* Sec. 3. INVESTIGATIONS; HEARINGS. (a) The commission may issue  
28 subpoenas, administer oaths, hold hearings, and conduct investigations  
29 related to its duties.

1 (b) The commission may compel the attendance of witnesses and produc-  
2 tion of papers, books, records, accounts, documents, and testimony, and may  
3 have the deposition of witnesses taken in a manner prescribed by court rule  
4 or law for the taking of depositions in civil actions when consistent with  
5 the duties assigned to the commission.

6 (c) On a majority vote of the commission, subpoenas and subpoenas  
7 duces tecum may be issued and served in the manner prescribed by AS 44.62.-  
8 430(b) and (c) and court rule. The failure, refusal, or neglect to obey a  
9 subpoena is punishable as contempt in the manner prescribed by law or court  
10 rule. The superior court may compel obedience to the commission's subpoena  
11 in the same manner as prescribed for obedience to a subpoena issued by the  
12 court.

13 (d) State agencies shall, to the extent permitted by law, cooperate  
14 with the commission and provide it with information it requests for carry-  
15 ing out its duties.

16 (e) The commission is subject to AS 44.62.

17 \* Sec. 4. This Act is repealed January 30, 1990.

18 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).  
19  
20  
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25  
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29

**S B**

**299**

# HOUSE COMMITTEE REPORT

(9)

Date Referred: May 1, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 5-3-89

The RESOURCES Committee considered:

CSSB 299 (FIN) am

CS FOR SENATE BILL NO. 299 (Finance) am

[OIL & GAS PROPERTIES PRODUCTION TAX]

"An Act omitting from the calculation of the gross value of oil, for purposes of administration of the oil and gas properties production tax, certain costs, losses, damages, and expenses relating to catastrophic oil discharges from vessels; and providing for an effective date."

**RECOMMENDATIONS:**

be replaced with H CS CS SB 299 (Res)  the same title  a new title

have attached amendment(s)

do pass

do not pass

no recommendation

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: Senate letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

zero with analysis \_\_\_\_\_

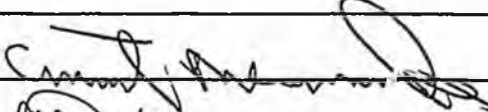
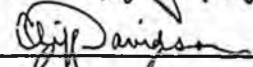
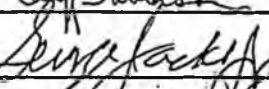
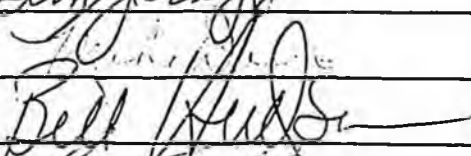
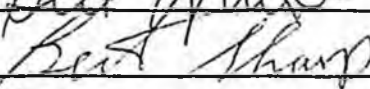
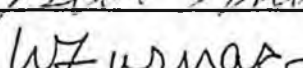
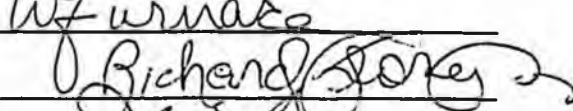
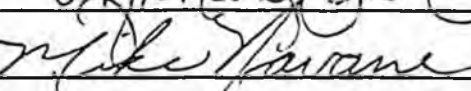
zero fn/analysis Res. 4/28/89

**SIGNING DO PASS:**

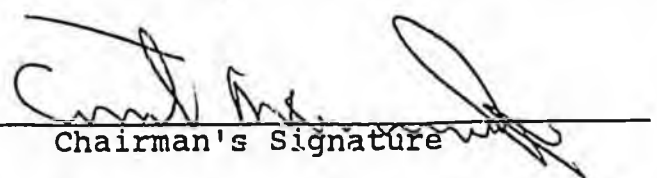
**SIGNING:**

(Check approp. column)

Do Not  
Pass  
No Rec  
Amend

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\_\_\_\_\_  
  
 Chairman's Signature

By the Senate Finance Committee

LETTER OF INTENT - SB 299

The Alaska State Legislature believes the expenses and costs referred to in SB 299 are not presently allowable as reasonable costs of transportation for determination of the gross value of oil or gas under AS 43.55.150(a). The purpose of passing SB 299 is to avoid lengthy and costly litigation by clarification of this point.

*Senate Letter of Intent adopted 4/29*

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act Amending the Manner of  
Calculating Gross Value of Oil & Gas  
Production  
Sponsor: Sturqulewski, Kerttula  
Requestor: \_\_\_\_\_

Agency Affected: Department of Revenue  
BRU: Oil and Gas Audit Division

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	5,000	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: Attach a separate page for analysis.  
SEE ATTACHED

Prepared By: Chuck Logsdon  
Division: Oil and Gas Audit Division

Phone: 277-5627  
Date: April 21, 1989

Approved by Commissioner: Hugh Malone  
Agency: Department of Revenue

Date: 4/21/89

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Chances in CSSB 299 (Fin) have no  
fiscal impact. This fiscal note  
is appropriate. 4/28/89 *ml*

ANALYSIS:

This bill would disallow, in the calculation of gross value at the point of production, any increase in transportation cost associated with a catastrophic oil discharge. At this time, it is unclear what impact the Valdez spill will have on these costs (vessel repair or incremented chartering costs). If these costs amount to \$50 million and are included in the calculation of reasonable transportation costs, the severance tax would be reduced by \$5.5 million.

Amendment to Senate Bill 299

By Davidson

Page 2, Line 6

Delete "the first day of the month in which it takes effect"  
and insert "March 1, 1989"

Page 2, Line 7

Delete "on or after that date", and insert "after February 28,  
1989"

CD - Mo. Qv D -

wf. Objeed

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n -

# Alaska State Legislature

SENATOR  
ARLISS STURGULEWSKI  
Senate President Pro Tempore  
Chairman, Senate Rules Committee



2937 SHELDON JACKSON STREET  
ANCHORAGE, ALASKA 99508

White in Juneau  
P.O. BOX 5  
JUNEAU, ALASKA 99801  
(907) 465 3818

Senate

M E M O R A N D U M

May 2, 1989

TO: Rep. Cliff Davidson  
Rep. Curt Menard  
Co-Chairs, House Resources Committee

FROM: Arliss Sturgulewski  
Senate Rules Chair *AS*

RE: CS SB 299 (Fin)am  
"An Act omitting from the calculation of the gross value of oil, for purposes of administration of the oil and gas properties production tax, certain costs, losses, damages, and expenses relating to catastrophic oil discharges from vessels; and providing for an effective date."

SB 299 is a simple bill with a long title. At a minimum it will save the state from a lengthy and costly legal dispute and it may save the state approximately five and a half million dollars.

The state's severance tax on oil is based on the wellhead value of oil. The wellhead value is established by subtracting transportation costs from the price of oil. There is a possibility that companies may attempt to claim the costs of tanker repair, incremental tanker charter costs to replace the damaged tanker, and selected cleanup costs as transportation costs to be deducted when establishing wellhead value.

SB 299 prevents any of these costs incurred in connection with a catastrophic oil discharge into the marine or inland waters of the state from being allowed by the Department of Revenue as reasonable costs of transportation. The Department of Revenue was concerned about this potential loss of severance tax.

It was also worried, however, that the existence of this bill, if it did not pass this session, would be used as evidence in a legal dispute that there is a presumption these costs are deductible. We have attached a letter of intent which addresses Revenue's concerns to the department's satisfaction on this issue. It is important that this letter of intent continue with this bill.

I urge your swift action on this legislation. Thank you.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act Amending the Manner of  
Calculating Gross Value of Oil & Gas  
Production  
Sponsor: Sturquilewski, Kerttula  
Requestor: \_\_\_\_\_

Agency Affected: Department of Revenue  
BRU: Oil and Gas Audit Division

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	5,200	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: Attach a separate page for analysis.

SEE ATTACHED

Prepared By: Chuck Loisdon  
Division: Oil and Gas Audit Division

Phone: 277-5627  
Date: April 21, 1989

Approved by Commissioner: Hugh Malone  
Agency: Department of Revenue

Date: 4/21/89

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Changes in CSSB 299 (Fin) have no  
fiscal impact. This fiscal note  
is appropriate. 4/28/89 *ee*

ANALYSIS:

This bill would disallow, in the calculation of gross value at the point of production, any increase in transportation cost associated with a catastrophic oil discharge. At this time, it is unclear what impact the Valdez spill will have on these costs (vessel repair or incremented chartering costs). If these costs amount to \$50 million and are included in the calculation of reasonable transportation costs, the severance tax would be reduced by \$5.5 million.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Department of Revenue  
 Title: Amending manner of calculating BRU: Oil and Gas Audit Division  
gross value of oil & gas production  
 Sponsor: Sturqulewski, Kerttula Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	5,500	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: Attach a separate page for analysis.

SEE ATTACHED

Prepared By: Chuck Logsdon  
 Division: Oil and Gas Audit Division

Phone: 277-5627

Date: April 25, 1989

Approved by Commissioner: Hugh Malone  
 Agency: Department of Revenue

Date: 4/27/89

Distribution (by preparer):

Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

**RECEIVED**  
 APR 27 1989

page 1 of 2

LEGISLATIVE FINANCE

SB 299  
ANALYSIS

This bill would disallow, in the calculation of gross value at the point of production, any increase in transportation cost associated with a catastrophic oil discharge. At this time, it is unclear what impact the Valdez spill will have on these costs (vessel repair or incremented chartering costs). If these costs amount to \$50 million and are included in the calculation of reasonable transportation costs, the severance tax would be reduced by \$5.5 million. This analysis assumes that under current interpretation costs incurred in cleaning up a catastrophic oil discharge are clearly not associated with the reasonable costs of transportation.

By the Senate Finance Committee

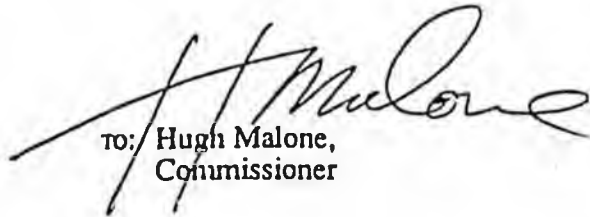
LETTER OF INTENT - SB 299

The Alaska State Legislature believes the expenses and costs referred to in SB 299 are not presently allowable as reasonable costs of transportation for determination of the gross value of oil or gas under AS 43.55.150(a). The purpose of passing SB 299 is to avoid lengthy and costly litigation by clarification of this point.

*Amale Letter of Intent adopted 4/29*

# MEMORANDUM

State of Alaska  
Department of Revenue

  
TO: Hugh Malone,  
Commissioner

DATE: April 14, 1989

FILE NO:

THRU: Bill Floerchinger,  
Director

TELEPHONE NO: 277-5627

SUBJECT: Exxon Valdez  
Revenue Impact

FROM: Chuck Logsdon,  
Petroleum Economist  
Ron Bitzer,  
Senior Appeals Officer

Please see  
2nd page

The drama of the oil spill at Valdez continues to unfold with Exxon currently making emergency repairs in Alaskan waters to the disabled tanker prior to moving it to dry dock. Owing to the restrictions in place on tanker movement into and out of Valdez, TAPS throughput was reduced significantly over the last two weeks. This memo attempts to estimate the revenue impact of the spill.

The primary impact of the spill on State revenue is the production slowdown it caused. Both royalty and severance income is determined by how many barrels are produced. Although the oil will eventually be produced at a later date the inability of the producers to "bank" excess production to cover unexpected shortfalls means we may not see those barrels until the end of the field life. The consequence is reduced cash flow to the State and the producers.

The throughput in the pipeline was back up to 2.0 million bbl/day by April 5. This results in an estimated production disruption since March 24, 1989 of roughly 12 million barrels. The cost of this lower production in terms of reduced severance tax and royalties is approximately \$30 million assuming oil prices of \$12.00/bbl at the North Slope wellhead (\$17.50/bbl U.S. Gulf).

The effect of the spill on FY 1989 estimates of general fund unrestricted revenues will obviously depend on the oil price used by the producers to calculate their severance tax and royalty payments in March and April. On the non-oil side, fears of contaminated fish have already led to falling prices and reduced tax collections, while the impacts on the upcoming tourist season are even more problematical. We are preparing an estimate of FY 1989 revenues based on as much actual data as can be obtained, and plan on releasing this estimate May 1, 1989.

Other possible revenue effects of the oil spill are as follows:

1. Exxon may argue that no severance taxes or royalties are due for the oil spilled since that oil was never carried to market. Although the State would argue that severance taxes are payable on barrels produced not barrels sold, the taxes at stake amount to approximately \$325,000. The in-value royalty at stake would be approximately \$185,000. (The potential royalty impact would exclude the roughly one-half of our royalties taken as in-kind barrels and already sold by the State at Pump Station #1.)

2. The loss of the oil and the cost of the spill to Exxon might be a deduction for State income tax purposes. Since the State income tax is based on apportioned income and Exxon's apportionment factor is very low, this revenue impact should be quite small.

3. The lower production this year as a result of the spill will reduce TAPS throughput. Because of the ratebase formula used to calculate the tariff, this will tend to raise the TAPS tariff assuming that pipeline costs stay about the same. In fact pipeline costs may be higher should new regulations require Alyeska to increase their spill response capabilities. The net result is that the TAPS tariff may increase slightly as a result of the spill. This will tend to reduce the wellhead value of production which is the basis for royalty and severance tax collections. At this time it is not possible to estimate what this cost will be.

4. The cost of the repairs to the Exxon Valdez will affect the netback cost in the future. These repairs are estimated in excess of \$20 million and could take the vessel out of service for a period in excess of one year. These costs would generally be accumulated until the repairs are completed. At the time that these repairs are completed, they would then be expensed over the year in which the repairs were completed which would result in reduced production taxes. Due to the extensive nature of the repairs, it could be argued that these repairs should be capitalized and then deducted over the remaining life of the vessel. In either case the production tax would be affected depending upon which method was used.

5. As a result of the damage to Exxon Valdez, Exxon will have to charter additional vessels to make up for the lost capacity while the vessel is being repaired. It is estimated at the present time that these repairs could take up to one year to complete. The actual additional cost will vary depending upon the availability of additional vessels. If Exxon is able to time charter vessels for the entire period the cost will be less than if Exxon uses spot charters. It is not known at this time if Exxon has additional capacity available to it which it is not using at the present time.

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 1800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 21, 1989

SUBJECT: Retrospective application of Senate  
~~Bills 286 and 299~~

TO: Senator Arliss Sturgulewski

FROM: Jack Chenoweth  
Legislative Counsel 

Each of the two above-captioned bills has a retroactivity feature. ~~The state's net income tax is computed and paid on an annual basis. Senate Bill 286, amending the net income tax, applies the changes made in that bill back to income earned since the start of this calendar year.~~ The oil and gas properties production (i.e. "severance") tax is due and payable monthly. 1/ Senate Bill 299, amending the chapter that imposes the severance tax, applies the changes made in that bill back to production from the first day of the month in which the Act takes effect.

Since retroactivity is common to both, let me discuss the common concept in the material that follows.

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1/ Under AS 43.55.020(a):

The gross production tax on oil or gas shall be paid monthly. The tax is due on the 20th day of each calendar month on oil or gas produced from each lease or property during the preceding month. If the tax is not paid before the end of the month in which it becomes due, the tax becomes delinquent.

Thus, tax liability is incurred and remitted on a monthly, not an annual basis. For oil production during December, 1988, the tax became due and payable January 20, 1989, and tax liability for oil production during January, 1989, becomes due and payable February 20, 1989.

A retroactive tax adjustment will apply if there is a valid public purpose served by giving retrospective effect to that adjustment. Here, the committee's deliberations may be critical. As the bills are considered, it would, in my judgment, be important to develop a record on which a court, if called upon to consider an argument, would conclude that there was a public purpose served by giving the amendments a retrospective effect.

A reasonable retrospective application will be sustained. The farther back the retroactive provision is given effect, the less likely a court would be to sustain the provision without a clear showing of public purpose. (To foreclose a claim altogether, in other legislation I have discouraged retrospective application of severance tax adjustments, for example, beyond the narrow period recognized under AS 43.55.-020(a), that is, a change amending the economic limit factor to be made retroactive only to the beginning of the month in which the bill is to take effect. That approach should not create any problems of retrospective applications since the tax liability would not have become due on that date.)

#### RETROSPECTIVE APPLICATION OF THE BILLS:

Tax statutes may be made retroactive. 2/ The threshold

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2/ This office has also recently considered proposed retrospective application of severance tax adjustments, specifically relying on the federal and state constitutional prohibitions against passage of ex post facto laws. There are two ex post facto law prohibitions of the federal constitution. Article I, section 9, clause 3 is a limitation on the federal government, while article I, section 10, clause 1 imposes a similar limitation on the states. Alaska's constitution also contains a limitation in section 15 of article I.

Our previous conclusion that federal and state constitutional prohibitions against enactment of ex post facto laws would support a challenge to the amendment's retrospective application was surely in error. Federal court decisions have limited the application of the limitations to criminal or penal

consideration is that the retrospective application of the measure must not impair an obligation of contract. The impairment of contract consideration appears to be inapplicable in this instance. Retrospective application of a newly-enacted statute may, in some instances, impair obligations of contract, in violation of article I, section 10 of the United States Constitution and article I, section 15 of the State Constitution. However, the Alaska Supreme Court appears to have cut off an impairment of contract argument applicable to retrospective application of a tax amendment in Atlantic Richfield Co. v. State, 705 P.2d 418 (Alaska, 1985). To the argument that the oil and gas corporate income tax then in litigation impaired the obligation of the state's underlying lease contracts, the court concluded that "[the] argument [was] without merit":

. . . No lease provision has been impaired. In entering into the leases the state could not, and did not, contract away its power as a sovereign to tax income earned in the state. Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 102 S.Ct. 894, 71 L.Ed.2d 21 (1982) disposes of this issue:

Contractual arrangements remain subject to subsequent legislation by the presiding sovereign. Even where the contract at issue requires payment of a royalty for a license or franchise issued by the government entity, the government's power to tax remains unless it "has been specifically surrendered in terms which admit of no other reasonable interpretation." St. Louis v. United R. Co., 210 U.S. 266, 280, 28 S.Ct. 630, 634, 52 L.Ed. 1054 (1908).

455 U.S. at 148, 102 S.Ct. at 907, 71 L.Ed.2d at 36 (citations omitted); see also Exxon v. Eagerton, 462

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statutes, concluding that retrospective tax legislation is not prohibited by the ex post facto clause. Personal Finance Co. v. United States, 86 F. Supp. 779 (D.Del., 1949). See 16A Am. Jur. 2d secs. 636, 677. Decisions in other state courts have similarly concluded. Parlato v. McCarthy, 69 A.2d 648 (Ct., 1949), Walker v. Commonwealth, 130 S.W.2d 27 (Ky., 1939). The Alaska Supreme Court has not extended application of the state constitutional ex post facto prohibition beyond penal or criminal matters. Danks v. State, 619 P.2d 720 (Alaska, 1980); Creekpaum v. State, 753 P.2d 1139 (Alaska, 1988).

U.S. at 187-94, 103 S.Ct. at 2304 - 2307, 76 L.Ed.2d at 508-12.

705 P.2d 418, at 438.

\*

If legislation acts retrospectively, the nature and duration of its retrospective application should be reasonable. The arguments favoring a reasonable retrospective operation arise out of the equal protection and due process clauses of the state and federal constitutions.

Federal equal protection considerations:

State legislation retroactively imposing a tax is not necessarily and certainly invalid under the equal protection clause of the Fourteenth Amendment to the federal constitution. The inquiry to be made is one of whether the retroactivity impairs substantial, vested rights, and is reasonable in the circumstances. As to retroactively imposed new taxes, the courts have been reluctant to find a violation because of the impairment of a vested right. Welch v. Henry, 305 U.S. 134, 83 L.Ed. 87, 59 S.Ct. 121 (1938), rehearing denied 305 U.S. 675, 83 L.Ed. 437, 59 S.Ct. 250 (1938). <sup>3/</sup> Several state courts have agreed. See Garrett

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<sup>3/</sup> In Welch, the United States Supreme Court concluded that a Wisconsin state statute, enacted in 1935 and operating retrospectively to tax corporate dividends earned in 1933 which, when received, were deductible from gross income, did not violate the equal protection clause. The tax rates applied to the dividends differed from the rates applicable to other types of taxable income. As to the retrospective application of the new tax to dividends that were, when earned, exempt from tax, the court noted that:

The equal protection clause does not preclude the legislature from changing its mind in making an otherwise permissible choice of subjects of taxation. The very fact that the dividends were relieved of tax [in 1933], when the need was less, is basis for the legislative judgment that they should bear some of the added burden when the need is greater.

April 21, 1989

Freight Lines v. State Tax Commission, 135 P.2d 523, at 526, 527 (Utah, 1943); Colonial Pipeline Co. v. Commonwealth, 145 S.E.2d 227 (Va., 1965), reh. den. (1966), app. dismissed, 384 U.S. 268, 16 L.Ed.2d 523, 86 S.Ct. 1476 (1966). 4/

---

Numerous retroactive revisions of the federal and Wisconsin revenue laws . . . have imposed taxes on subjects previously untaxed and shifted the burden of old taxes by changes in rates, exemptions, and deductions. It has never been thought that such changes involve a denial of equal protection if the new taxes could have been included in the earlier act when adopted. If some retroactive alteration in the scheme of a tax act is permissible, as is conceded, it seems plain that validity, so far as equal protection is concerned, must be determined, as in the case of any other tax, by ascertaining whether the thing taxed falls within a distinct class which may rationally be treated differently from other classes. If such changes are forbidden in the name of equal protection, legislatures in laying new taxes would be left powerless to rectify to any extent a previous distribution of tax burdens which experience had shown to be inequitable, even though constitutional.

83 L.Ed. 87, at 92.

4/ In Garrett Freight Lines v. State Tax Commission, 135 P.2d 523 (Utah, 1943), the Utah Supreme Court, called upon to determine whether an excise tax levied on the use of diesel motor fuel that was used prior to the date the legislative act became law, found no equal protection violation:

It is well settled that a tax does not necessarily violate the Federal Constitution merely because it contains retroactive features. Milliken v. United States, 283 U.S. 15, 21, 51 S.Ct. 324, 75 L.Ed. 809 [(U.S., 1931)]; Billings v. United States, 232 U.S. 261, 34 S.Ct. 421, 58 L.Ed. 596 [(U.S., 1914)]; Welch v. Henry, 305 U.S. 134, 59 S.Ct. 121, 125, 83 L.Ed. 87 [(U.S., 1938)] . . . .

Neither the Federal Constitution nor the Utah

Federal due process considerations:

Retroactive imposition of a tax is not necessarily a violation of the due process clause of the Fourteenth Amendment to the federal constitution. The leading case is Welch, cited earlier, in which the United States Supreme Court determined:

The objection chiefly urged to the taxing statute is that it is a denial of due process of law because in 1935 it imposed a tax on income received in 1933. But a tax is not necessarily unconstitutional because retroactive. Milliken v. United States, 283 U.S. 15, 21, 75 L.Ed. 809, 814, 51 S.Ct. 324 [(1931)], and cases cited. Taxation is neither a penalty imposed on the taxpayer nor a liability which he assumes by contract. It is but a way of apportioning the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burdens. Since no citizen enjoys immunity from that burden, its retroactive imposition does not necessarily infringe due process, and to challenge the present tax it is not enough to point out that the taxable event, the receipt of income, antedated the statute.

83 L.Ed. 87, at 93. But the assertion that due process is not violated is not absolute and, the court has said that

In each case it is necessary to consider the nature of the tax and the circumstances in which it is laid before it can be said that its retroactive application is so harsh and oppressive as to transgress the constitutional limitation.

Id.

Similarly, in Garrett Freight Lines, earlier cited, the Utah Supreme Court determined that the due process clause is not

---

Constitution has any provision in terms prohibiting retroactive legislation -- excepting that which forbids the enactment of ex post facto laws. [Citations omitted.] That clause relates to criminal and penal matters and does not affect legislation such as the statute here involved. Calder v. Bull, 3 Dall. 386, 390, 1 L.Ed. 648, 1 Kent Commentaries 409; 3 Story on Constitution 212; 18 C.J.S. Constitutional Law, sec. 435, p. 886.

a limitation on the state's ability to retrospectively impose a tax:

Although basing its case upon the due process clause, appellant does not show wherein the tax constitutes any arbitrary and oppressive discrimination except to assert that a tax based upon a transaction consummated prior to passage of the act amounts to a taking of property without due process. It has many times been questioned whether the due process clause constitutes any limitation upon the taxing power. In this connection we quote from Mr. Justice Sutherland of the United States Supreme Court in an opinion upholding the validity of a statute of the State of Washington levying a tax upon the sale of oleomargarine:

Except in rare and special instances, the due process of law clause contained in the Fifth Amendment is not a limitation upon the taxing power conferred upon Congress by the Constitution. \* \* \* And no reason exists for applying a different rule against a state in the case of the Fourteenth Amendment. \* \* \* That clause is applicable to a taxing statute such as the one here assailed only if the act be so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power, but constitutes, in substance and effect, the direct exertion of a different and forbidden power, as, for example, the confiscation of property. \* \* \* Collateral purposes or motives of a Legislature in levying a tax of a kind within the reach of its lawful powers are matters beyond the scope of judicial inquiry. \* \* \* Nor may a tax within the lawful power of a state be judicially stricken down under the due process clause simply because its enforcement may or will result in restricting or even destroying particular occupations or businesses, \* \* \* unless, indeed, as already indicated, its necessary interpretation and effect be such as plainly to demonstrate that the form of taxation was adopted as a mere disguise, under which there was exercised, in reality, another and different power denied by the Federal Constitution to the state.

A. Magnano Co. v. Hamilton, 292 U.S. 40, 54 S.Ct. 599, 601, 78 L.Ed. 1109.

Garrett Freight Lines, 135 P.2d 523, at 527.

Courts have, however, considered retrospective tax legislation unconstitutional as a violation of the due process clause when, as Welch concludes, in light of "the nature of the tax and the circumstances in which it is laid," the legislation is "so harsh and oppressive as to transgress [that] constitutional limitation." Welch v. Henry, 305 U.S. 134, 59 S.Ct. 121, 83 L.Ed. 87, at 93. The question is typically one of the degree of harshness, based upon consideration of factors such as (1) the effect of the retroactive application of legislation amending a tax on a taxpayer's voluntary act that was influenced by the taxpayer's understanding of tax incidence or consequence at the time of that act, especially if the tax to be imposed or amended is "novel," (2) the sufficient certainty of the taxpayer's expectation of money that is jeopardized by the retroactive legislation, (3) the length of the period of the legislation's retrospective application, and (4) the importance of the public purpose to be served by the action. The first three elements are, to some degree, based on the taxpayer's expectations, while the fourth involves a determination of a public interest that necessitated the actual enactment.

Computation and payment of the severance tax is not greatly determinative of taxpayers' taxable activities that generate the tax liability, nor does this proposed legislation seem to strike at activities of a taxpayer that reasonably relied on the current severance tax rates before this bill proposed amendment of that tax. It is the length of the period of the legislation's retrospective application and the importance of the public purpose to be served that need be most carefully considered.

State due process and equal protection considerations:

Nothing in my quick research suggested that an analysis under the state's "due process" clause, article I, section 7, would reach a conclusion at variance with the decisions based on the comparable federal provision discussed above.

State "equal protection" analysis differs, though the conclusion reached under that analysis is consistent with the conclusions reached under the analysis applicable to the federal provisions. In State v. Erickson, 574 P.2d 1 (Alaska, 1976), the court established a "single test"

Senator Arliss Sturgulewski  
Page 9  
April 21, 1989

approach for state-constitution based equal protection analysis, essentially requiring that the court (1) ascertain the purposes of the legislation to determine whether they are legitimate; (2) determine whether the means chosen to accomplish the objectives actually do so; and (3) balance the importance of the state's interest against the constitutional right involved. The state has plenary authority to tax. Assuming an adequate record, adding to tax liability on the income and severance taxes payable by major producers seems to bear a strong correlation to the state's efforts to impose a tax burden on those who are principally responsible for conducting marine operations in a way that is environmentally safe. By that analysis, if the retrospective application of the change is reasonable, the court should reject any state constitutional equal protection-based claim.

JC:gc  
WKG9/099

Enclosure

BILL: SB 299  
 NAME: CSSB 299(FIN) AM  
 TITLE: "An Act omitting from the calculation of the gross value of oil, for purposes of administration of the oil and gas properties production tax, certain costs, losses, damages, and expenses relating to catastrophic oil discharges from vessels; and providing for an effective date."  
 < REFER TO BILL TEXT (PF5) FOR COMPLETE TITLE >

PRIME SPONSOR: STURGULEWSKI  
 CO-SPONSOR: KERTTULA

FUNDING : \$000 GENERAL(FNOTE) \$000 OTHER(FNOTE)

CURRENT STATUS: (H) RES STATUS DATE: 04/29/89  
 THEN FIN

HEARING:(H) RES MAY 03 03:00 PM CAPITOL ROOM 124

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU	TEXT	PRINT	BWD	FWD		FIRST	LAST	QUIT
SB 299					Bill/Resolution	Floor	Action			Page 2	of 3

Current Status: (H) RES

	Jrn-Date	Jrn-Page	Action
1	04/20/89	1329	(S) READ THE FIRST TIME - REFERRAL(S)
2	04/20/89	1329	(S) FINANCE
3	04/28/89	1507	(S) FIN RPT CS 2DP 3NR NEW TITLE
4	04/28/89	1507	(S) FN TO SB AND CS PUBLISHED (REV)
5	04/28/89	1507	(S) LETTER OF INTENT WITH FIN REPORT
6	04/29/89	1521	(S) RULES TO CALENDAR
7	04/29/89	1521	(S) READ THE SECOND TIME
8	04/29/89	1522	(S) FIN CS ADOPTED UNAN CONSENT
9	04/29/89	1522	(S) AM NO 1 MOVED BY UEHLING
10	04/29/89	1522	(S) AM NO 1 ADOPTED UNAN CONSENT
11	04/29/89	1522	(S) ADVANCED TO THIRD READING UNAN CONSENT
12	04/29/89	1522	(S) READ THE THIRD TIME CSSB 299(FIN) AM
13	04/29/89	1522	(S) LETTER OF INTENT MOVED
14	04/29/89	1522	(S) (S) ADOPTED FIN LETTER OF INTENT
15	04/29/89	1523	(S) PASSED Y19 N- A1
16	04/29/89	1523	(S) EFFECTIVE DATE SAME AS PASSAGE
17	04/29/89	1523	(S) HALFORD NOTICE OF RECONSIDERATION
18	04/29/89	1533	(S) RECON TAKEN UP SAME DAY UNAN CONSENT

Selection=>

PF1	PF2	PF3	PF4	PF5	PF6	PF7	PF8	PF9	PF10	PF11	PF12
HELP		EXIT	MENU	TEXT	PRINT	BWD	FWD	CMT/JRNL	FIRST	LAST	QUIT
SB 299					Bill/Resolution	Floor	Action			Page 3	of 3

Current Status: (H) RES

	Jrn-Date	Jrn-Page	Action
1	04/29/89	1533	(S) (S) ADOPTED FIN LETTER OF INTENT
2	04/29/89	1533	(S) PASSED ON RECONSIDERATION Y19 N1
3	04/29/89	1534	(S) EFFECTIVE DATE SAME AS PASSAGE
4	04/29/89	1552	(S) TRANSMITTED TO (H)
5	04/29/89	1371	(H) READ THE FIRST TIME - REFERRAL(S)
6	04/29/89	1371	(H) RESOURCES, FINANCE

Amendment to Senate Bill 299

By Davidson

Page 2, Line 6

Delete "the first day of the month in which it takes effect"  
and insert "March 1, 1989"

Page 2, Line 7

Delete "on or after that date", and insert "after February 28,  
1989"

Mr. Chairman,

I propose an amendment to SB299.

I would like to change the

language on pg 2, lines 6-7

to make this Act retroactive

until March 1, 1989

and not the first day of

the month in which this Act

takes effect, which would be

May 1. I feel making this

BSN: 661

ALASKA HOUSE OF REPRESENTATIVES  
HCS CSSB 259(RES)

1ST SESSION 16TH LEG

5/ 8/89 4:55 PM

		26 YEAS	10 NAYS	1 EXC	3 ABS		
N	BARNES	Y	DONLEY	N	HUDSON	N	FETTYJOHN
Y	BOUCHER	Y	ELLIS	Y	JACKO	Y	PHILLIPS
Y	BOYER	Y	FINKELSTEIN	Y	KOPONEN	A	RIEGER
Y	BROWN	Y	FOSTER	A	LARSON	Y	SHARP
E	CATO	N	FURNACE	N	LEMAN	N	SHULTZ
Y	COLLINS	Y	GOLL	Y	MACLEAN	Y	SWACKHAMMER
Y	COTTEN	Y	GRUENBERG	N	MARTIN	N	TAYLOR
Y	DAVIDSON	Y	GROSSENDORF	Y	MENARD	Y	ULMER
N	DAVIS, D.	N	HANLEY	Y	MILLER	Y	WALLIS
Y	DAVIS, M.	A	HOFFMAN	Y	NAVARRE	Y	ZAWACKI

+ VOTED FOR

CHANGED VOTE

BSN: 662

ALASKA HOUSE OF REPRESENTATIVES  
HCS CSSB 299(RES) EFD

1ST SESSION 16TH LEG

5/ 8/89 4:56 PM

25 YEAS 11 NAYS 1 EXC 3 ABS

N	BARNES	Y	DONLEY	N	HUDSON	N	PETTYJOHN
Y	BOUCHER	Y	ELLIS	Y	JACKO	Y	PHILLIPS
Y	BOYER	Y	FINKELSTEIN	Y	KOPONEN	A	RIEGER
Y	BROWN	Y	FOSTER	A	LARSON	Y	SHARP
E	CATO	N	FURNACE	N	LEMAN	N	SHULTZ
N	COLLINS	Y	GOLL	Y	MACLEAN	Y	SWACKHAMMER
Y	COTTEN	Y	GRUENBERG	N	MARTIN	N	TAYLOR
Y	DAVIDSON	Y	GROSSENDORF	Y	MENARD	Y	ULMER
N	DAVIS, C.	N	HANLEY	Y	MILLER	Y	WALLIS
Y	DAVIS, M.	A	HOFFMAN	Y	NAVARRE	Y	ZANACK

VOTED FOR

CHANGED VOTE

**S B**

**359**

# HOUSE COMMITTEE REPORT

(9)

Date Referred: April 27, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 5/2/90

The RESOURCES Committee considered: CSSSSB 359(FIN)(title am)  
CS SSSB 359 (Fin)(title am) MUNICIPAL ASSISTANCE: OIL RESPONSE FUND  
 "An Act concerning the exercise of authority and recovery of damages by the state and its municipalities and villages in matters relating to environmental conservation; relating to state assistance to municipalities and villages for expenses for prevention and abatement of environmental degradation; authorizing the commissioner of community and regional affairs to make grants from the oil and hazardous substance release response fund to assist in costs relating to a disaster emergency; and providing for an effective date."

**RECOMMENDATIONS:**

- be replaced with CSSSSB 359(FIN)(title am) [ the same title  
 [ ] a new title
- [ ] have attached amendment(s)
- [ ] do pass
- [ ] do not pass
- [ ] no recommendation
- individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

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

- [ ] fiscal impact \_\_\_\_\_ [ ] fiscal note(s) \_\_\_\_\_
- [ ] zero fiscal note \_\_\_\_\_ [] zero fiscal note(s) 4/23/90 Dept. of Admin
- [ ] zero with analysis \_\_\_\_\_ [ ] zero fn/analysis \_\_\_\_\_

**SIGNING DO PASS:**

\_\_\_\_\_  
 (MEMARI)  
 \_\_\_\_\_  
 DAVIDSON  
 \_\_\_\_\_  
 JACKO  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SIGNING:**  
 (Check appropr. column)

	Do Not Pass	No Rec	Amend
_____ DAVIS			
_____ WARREN		X	
_____ SHARP		X	
_____ HUDSON			X
_____			
_____			
_____			
_____			

\_\_\_\_\_  
 Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Administration  
 Title: An Act concerning authority by BRU: Central Administration  
State and its municipalities related to \* Administrative Services  
 Sponsor: Szymanski, Adams Components: Municipal Grants  
 Requestor: \_\_\_\_\_

\* environmental conservation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

There currently exists a fund used in making grants to municipalities and village councils for those costs attributed to oil and hazardous substance release response. The fund is administered solely by the Department of Community and Regional Affairs. This bill would create an additional fund, the same in all respects except that its use would be for oil and hazardous substance municipal impact. The new fund would also be administered only by the Department of Community and Regional Affairs. There is not anticipated to be any involvement by the Department of

Administration Municipal Grants Program

Prepared by: Mike Maher *Mike Maher* Phone: 465-2277  
 Division: Administrative Services Date: 01/17/90

Approved by Commissioner: Frank S. Baxter *Frank S. Baxter* Date: 1/14/90  
 Agency: Department of Administration

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Changes in SSSB 359 (Fin)  
 have no fiscal impact.  
 This fiscal note is  
 appropriate. 4/23/90 *mm*

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSSSB 359 (Finance) (title am)

Page 2, line 2, after "boundaries;":

Delete "however, this paragraph does not authorize a municipality to enforce an ordinance outside its boundaries to regulate exploration, development, or production of oil, gas, or minerals in a manner inconsistent with the state's management of those resources when the state is the owner of the land, tideland, or submerged land;"

Amendment to CSSSSB 359 (Finance)(title am)

By the Resources Committee

Page 4, Line 11, after "AS 26.23.020,"

Insert "and subject to consultation with commissioner of environmental conservation as to the amount of money in the fund that may be used to make grants,"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSSSB 359 (Finance) (title am)

Page 8, line 10:

After "money":

Insert "in the fund that is"

After "available":

Delete "in the fund"

Insert "to the commissioner to expend under AS 29.60.510(b)"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSSSB 359 (Finance) (title am)

Page 9, lines 25 - 26:

Delete ", or to the natural resources that are owned by a village"



# Alaska State Legislature

Senator Mike Szymanski

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165 E. Parks Highway  
Wasilla, Alaska 99687  
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## SECTIONAL ANALYSIS CSSSSB 359 (FINANCE)(TITLE AM)

(For purposes of simplicity, reference is made to this bill as the oil spill municipal impact legislation)

### SECTIONS 1 - 4

These sections extend the authority of municipalities to exercise containment and clean-up authority. The municipalities may thus enforce ordinances relating to containment and clean-up to be exercised outside their boundaries. Requires that the exercise of this authority must be consistent with directives in regional master plans if these plans have been prepared and are in place.

### SECTION 5

Establishes an oil and hazardous substance municipal impact assistance program. Sets out a statement of purpose and policy. Provides that assistance is to be provided for municipalities and villages affected by a release of oil or hazardous substances that "demonstrate [to the Department of Community and Regional Affairs] extraordinary expenditures that are beyond the reasonable capability of the municipality or village to meet from the municipality's or village's current revenue sources..

Impact assistance is limited to not more than \$10 million of the unrestricted balance of the oil and hazardous substance release response fund, and is available only when the governor has first declared a disaster emergency under AS 26.23. Impact assistance is available only for the functions, services, and purposes enumerated in AS 29.60.520.

Proposed AS 29.60.530 sets out criteria by which the Department of Community and Regional Affairs is to evaluate requests for assistance;

the legislation makes clear that the Department need not accept a request as submitted but may reduce or eliminate elements of the application. The section also directs the department to adopt regulations by which to rank applications when amounts of impact assistance requested exceed amounts available to the department from the fund.

"Boilerplate" provisions appear in AS 29.60.540 ("limitations on grant uses"), AS 29.60.550("records"), AS 29.60.560(annual report), and AS 29.60.580 (adoption of implementing regulations). AS 29.60.570 separately requires the Commissioner of Community and Regional Affairs to complete an impact assessment whenever the governor issues a disaster emergency declaration based on a discharge of oil or a hazardous substance. This assessment may be accomplished by contracting with a municipality or other entity for the assessment, or by making a grant to a municipality or other entity; however, only ONE assessment may be completed for each declaration of a disaster emergency.

AS 29.60.590 authorizes recovery of grant money paid under AS 29.60.500-AS 29.60.599 if the commissioner determines that the municipality or village receiving the grant is responsible for the underlying spill. This was added by the Senate Oil and Gas Committee to address the committee's concern that a municipality or village not benefit from an impact assistance grant if the discharge is eventually shown to be the recipient's responsibility.

AS 29.60.599 sets out definitions of terms used in the establishment of this grant process.

## SECTION 6

The amendment made by this section is intended to make clear that a person who violates AS 46.03 in causing a spill is liable to the state for those amounts expended. This was included because of questions raised regarding the specific authority of the state to recover amounts expended in this area.

## SECTION 7

Amends the strict liability section, AS 46.03.822, to clarify the expenditures and the parties that are intended to be covered by this

section. Clarifies that "damages" includes the "additional costs of a function or service, including administrative expenses for the incremental costs of providing the function or service, that are incurred by the state, a municipality or a village with regard to the release of oil or a hazardous substance.

#### SECTION 8

Adds "village" to the list of entities who, under AS 46.03.822(h), are not generally liable for containment and clean-up actions taken unless done as a result of gross negligence or intentional misconduct.

#### SECTION 9

Provides definitions for the terms "service" and "village" that are introduced into amendments made to AS 46.03 by Bill Sections 6-8.

SECTIONS 10 - 12 make amendments to AS 46.04.

#### SECTION 10

Directs that, in fulfilling responsibilities under AS 46.04.020(e), relating to preparation of memoranda of understanding and cooperative agreements, and obligations incurred under those documents, the Department of Environmental Conservation shall first "consult with the governing bodies of municipalities and villages."

#### SECTION 11

Amends the term "containment and cleanup" applicable to the chapter to clarify the kinds of qualifying expenses relating to containment and cleanup within the phrase.

#### SECTION 12

Provides definitions for the terms "service" and "village" that are introduced in amendments made to AS 46.04 by bill sections 10 and 11.

SECTIONS 13 - 17 make amendments to AS 46.08.

## SECTION 13

The additional language inserted in AS 46.08.040 by this section authorizes the Commissioner of Community and Regional Affairs to draw from the oil and hazardous release response fund to make grants under the impact assistance program (AS 29.60.500-AS 29.60.599) and for completing impact assessments required by AS 29.60.570. The amendment to paragraph (4) clarifies that state impact assistance payable to villages is allowable as recoverable cost for which the balance of the fund may be used by the commissioner of Environmental Conservation.

## SECTION 14

Under AS 46.08.070(c), provides for a system of cash advances to municipalities and villages to support emergency first response initiatives. This was to enable the communities to have funding readily available for emergency first response expenditures.

## SECTION 15

Parallels provisions in AS29.60.590 in Section 5 . Authorizes the recovery of the advancements or reimbursement if the Commissioner determines that the municipality or village receiving the funds is responsible for the spill.

SECTION 16 and SECTION 17 parallel those changes made to AS 46.04 by bill SECTIONS 11 and 12 and are included for substantially similar reasons.

SECTIONS 18 - 20 make amendments to AS 46.09.

## SECTION 18

The amendment extends the authority of a municipality to act under all pertinent environmental-related chapters within AS 46 that are exercisable within the municipality's boundaries.

SECTION 19 and SECTION 20 parallel those made to AS 46.04 by bill Sections 11 and 12 and are included for substantially similar reasons.

SECTION 21.

Makes Sections 7 and 9, the strict liability provisions retroactive to March 24, 1989.

SECTION 22

All other sections are given an immediate effective date.

# Alaska State Legislature

Senator Mike Szymanski

While in Session  
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(907) 476 6431

## SPONSOR STATEMENT

CSSSSB 359 (Finance), Municipal Impact Legislation

This legislation was drafted in response to the concerns expressed by the "oiled mayors" of the communities affected by the March 24 Exxon Valdez oil spill. Funds were provided by the State Department of Environmental Conservation to the communities for their emergency first response expenses, such as the purchase of boom material, etc.

However, these communities also experienced far-ranging social and economic impacts as a result of the spill; there was an increased need for health services, an increase in public safety services, public utility services, housing services and an increased usage of public facilities, such as harbors. Communities that rely on subsistence foods found themselves unable to harvest the fish and game because of the danger of toxicity.

These increased services placed an incredible burden on the communities, and there was no state fund or mechanism in place to assist the communities with the costs of these additional and incremental services which had been incurred. Additionally, there is also going to be a loss of revenue, such as that generated by the raw fish tax, inasmuch as so much fishing time was lost. True, Exxon did reimburse the communities for some of their costs but not all of the costs were covered and the need still exists.

Of major consideration is the question, "What if it had not been Exxon?" What if the spill had been caused by a company with far fewer resources? What if there had been no claims process in place?

The Oil Spill Commission recognized this "gap" and addressed the need for local service impact funding in Recommendations 53 and 54 of the Commission Report; specifically, the Commission recommended that a separate fund be created to help local governments with the unreimbursable costs caused by an oil or hazardous substance release.

CSSSSB 359 (Finance) addresses the above concerns and needs by:

- 1) broadening the powers of municipalities and villages under AS 29 and under AS 46 to enable them to more effectively deal with the release or threatened release of oil or a hazardous substance;
- 2) Establishes a system of municipal grants under the Department

Senate District E

Wasilla Borough • Sitka Anchorage • Bird Island • Cordwood • Nikiski • Cooper Landing • Hope • Seward • Prince William Sound

of Community and Regional Affairs which are to be triggered by a declaration of a disaster emergency by the Governor. The legislation establishes criteria for evaluating whether a grant is to be made to a municipality or village. These grants are not for emergency first response but rather for the additional and incremental costs of functions and services which arise out of the release of oil or a hazardous substance:

From the \$50 million fund which was established last year from the \$.05 per barrel surcharge (part of the 470 Fund), up to \$10 million would be available for these municipal impact grants.

3) Under Title 46, the legislation authorizes the Department of Environmental Conservation to "advance" money to a municipality or village for emergency first response. This is in addition to the Department's existing authorization to reimburse a municipality for these same expenditures.

**S B**

**364**

# HOUSE COMMITTEE REPORT

(9)

Date Referred: March 29, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 4-10-90

The RESOURCES Committee considered:

CSSB 364(FIN)

CS SB NO. 364 (Finance)

INSPECTION OF SLAUGHTERED REINDEER

"An Act relating to inspection of slaughtered reindeer; and providing for an effective date."

## RECOMMENDATIONS:

- [ ] be replaced with \_\_\_\_\_ [ ] the same title  
[ ] \_\_\_\_\_ [ ] a new title
- [ ] have attached amendment(s)
- [X] do pass
- [ ] do not pass
- [ ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s):  
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [ ] fiscal impact \_\_\_\_\_
- [ ] zero fiscal note \_\_\_\_\_
- [ ] zero with analysis \_\_\_\_\_

- [X] fiscal note(s) 3/28/90 DEC
- [ ] zero fiscal note(s) \_\_\_\_\_
- [ ] zero fn/analysis \_\_\_\_\_

## SIGNING DO PASS:

[Signature] MENARD

[Signature] DAVIDSON

[Signature] DAVIS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u> NAIDAGE	X		
<u>[Signature]</u> SHARP	X		
_____			
_____			
_____			
_____			
_____			
_____			

[Signature]  
Chairman's Signature



Official Business

# Alaska State Legislature

## Senate

P.O. BOX V  
State Capitol  
Juneau, Alaska 99811

### SPONSOR STATEMENT

#### SENATE BILL 364

#### STATE INSPECTION OF SLAUGHTERED REINDEER

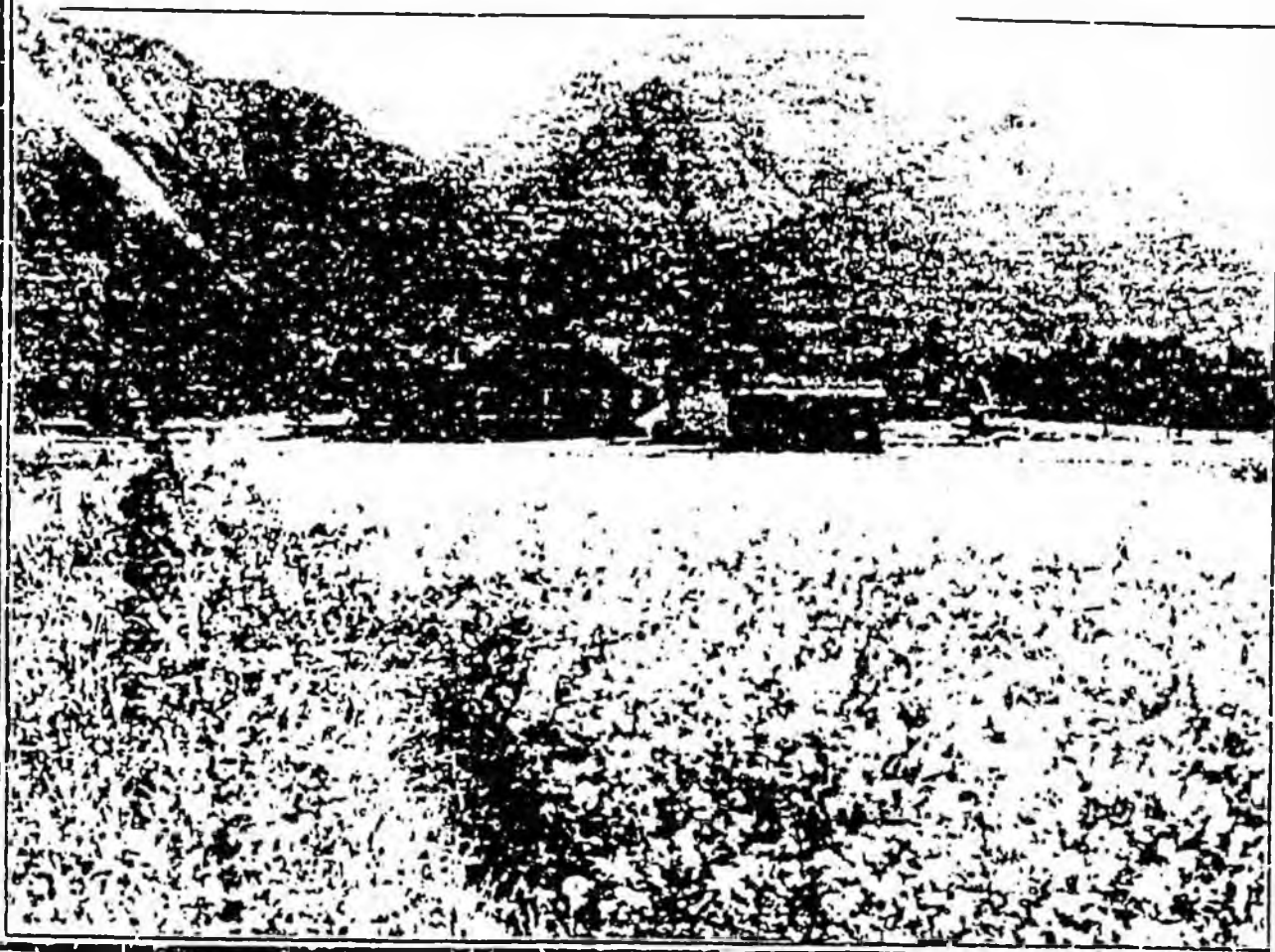
Senate Bill 364 would allow the state to inspect reindeer meat for use in meat products like sausage. This inspection is mandated by the federal government, but the federal government provides no funding for the inspection. Senate Bill 364 would provide the reindeer herders with greater economic opportunity and the Alaska meat-processing industry with national and international markets.

With the passage of this legislation, the reindeer industry is put in a position of potential for phenomenal growth, through meat, blood, hide and horn sales. While there are current markets for reindeer products, these markets are in their infancy. Meat inspection is the key to further developing these markets.

I urge passage of Senate Bill 364.

  
\_\_\_\_\_  
Senator Jay Kerttula

# An Economic Assessment of Alaskan Agriculture



Department of Commerce  
and Economic Development  
Division of Finance and Economics  
for  
The Alaska Agricultural Action Council

December 1983

## Potential For a Reindeer Industry in Alaska

by Edward L. Arobio\*

### Summary

The reindeer industry in Alaska is generally confined on or adjacent to the Seward Peninsula. Current estimates of the reindeer population on the Peninsula are between 20,000 and 27,000 head.

Reindeer graze on lands managed by the State of Alaska, the Bureau of Land Management, and the National Park Service. Annual permits are required from these agencies to graze reindeer.

Reindeer herding in Alaska is for most herders a part-time activity. Herds are extensively managed, graze over a wide area, and during much of the year, are left untended.

Products from reindeer herds include meat and antlers. Most meat is marketed in the local towns and villages of northwest Alaska. Antlers are harvested for foreign markets with the major markets in Korea, Taiwan, China, and Japan.

Range suitable for reindeer grazing in Alaska has been estimated at about 110 million acres. This area is along the coast from southwestern Alaska to the North Slope. However, institutional constraints probably limit reindeer herding in Alaska under extensive grazing operations to the Seward Peninsula and some coastal islands.

The Seward Peninsula can support additional numbers of reindeer when considering the availability of forage. Potentially, 50,000 to 75,000 head could graze the areas now under permit. Output from herds can increase through either additional herd numbers, more intensive management of herds, or both. Potential meat production resulting from increased numbers of animals and more intensive management have been estimated at between 475,000 and 800,000 pounds annually.

Markets exist in Alaska for additional outputs of meat. Markets for increased output of antlers may not exist without a decrease in prices received by herders for this product.

\*Agricultural Economist, Alaska Agricultural Action Council/  
Department of Commerce and Economic Development

## Introduction

The reindeer industry in Alaska is generally confined on or adjacent to the Seward Peninsula. Current estimates of the reindeer population on the Peninsula are between 20,000 and 27,000 head. <sup>8/3/</sup> Grazing permits in this area are held by one Native regional corporation, one Native village corporation, and twelve individuals.\*/ Additional herds in Alaska are located at the villages of Stebbins and Shaktolick, and on Nunivak, St. Lawrence, Hagemeister and Umnak Islands.

## Herd Management

For the most part, reindeer graze on lands managed by the State of Alaska, the Bureau of Land Management, and the National Park Service. Annual permits are required from these agencies to graze reindeer. Only limited grazing now takes place on Native owned land. However, as the ownership of more lands is transferred to Native village corporations and Native regional corporations as a result of ANCSA, agreements will be needed between herders and these corporations if current grazing operations are to remain unchanged.

Reindeer herding in Alaska is for most herders a part-time activity. They view the herding of reindeer as only one of many annual activities. Herds are extensively managed, graze over wide areas, and during much of the year are left untended.

Products from reindeer herds include meat and antlers. Production figures for meat have not been available since 1977. During the period 1968-1977, data are available for eight of ten years.<sup>5/</sup> Average production during this period was 246,000 pounds of carcass meat per year with an average value at \$150,000. In recent years, annual production has probably maintained at least this level and may have expanded somewhat, due primarily to development of the NANA Corporation herd. This herd is the largest and most intensively managed herd on the Peninsula.

Currently, the more valuable reindeer product on a per pound basis is velvet (wet) antlers. These antlers are removed during handlings that take place from the middle of June to the middle of July. Again, data on the quantity of production has not been available since 1977. At that time approximately 15,000 pounds were harvested.<sup>5/</sup> In that year, herders received between \$8 and \$23 per pound for wet antlers. In more recent years, herders have been received from \$30 to \$40 per pound. Based on 15,000 pounds of annual production, the value of the antlers would range between \$450,000 and \$600,000.

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\*/The herding of reindeer in Alaska is limited to Native peoples of the State.

Information on the returns to reindeer herd operations are limited. However, a recently published article estimated costs and returns for three herd sizes<sup>6/</sup> (Table 1). These were based on herds that were managed on a part-time basis.

Table 1. Annual Cost of Production and Returns for Extensively Managed Alaskan Reindeer Herds, 1977.

Item	Size of Operation		
	1,000	2,000	3,000
Investment	\$105,000	\$205,000	\$305,000
Cash Revenues	24,300	48,640	70,700
Cash Expenses	20,900	31,600	41,600
Depreciation	500	500	500
Interest on Capital at 6%	6,300	10,300	18,300
Return to Owner Labor and Management	<\$3,400>	\$4,240	\$12,560

Source: Thomas, W.C., E.L. Arobio, L.L. Naylor, and R.O. Stern. 1983. An Alternative Management System for Alaska Reindeer Herds. Agricultural Systems 11: 1-6.

#### Marketing

Because of the limited production of meat from Alaskan herds, most meat is marketed in the local towns and villages of northwest Alaska. Meat marketing has traditionally been done by the individual herd owner. The reindeer are normally slaughtered in the field and field dressed. The meat then moves to the villages and can be distributed as wage-meat payments, direct sales to village residents, or sales to village stores. Larger herd owners also make sales to stores in Nome and Kotzebue. Small quantities occasionally do move to Anchorage or Fairbanks and at times have gone to the "Lower 48".

Antlers are harvested for foreign markets. The normal procedure is for herders to sell the harvested antler on a wet basis to buyers just after harvesting. The buyers will then dry and process the antlers and export the product for use in oriental medicines. Contrary to popular belief, deer antlers, including reindeer antlers, are not used as aphrodisiacs but as medicines. The major markets for antlers are located in Korea, Taiwan, China, and Japan.

While it is likely that meat production can be expanded without the price to the producer suffering, the situation is different for antlers. Reindeer antler is only one of several types of deer antlers that are used in Oriental medicines. Reindeer antlers, because their use only began in the early 1960s, have a limited history and are not considered by buyers to be the best antler. In addition, reindeer antlers suffer from intense competition from other countries.

The leading antler exporting country in the world is New Zealand. Most of the antler coming from New Zealand is harvested from Red Deer. The antler from Red Deer is considered superior to reindeer antler. Deer in New Zealand are raised in a controlled situation and instead of grazing freely on an open range, they graze in fenced pastures, free from predators. By the mid 1980s, deer herds in New Zealand may total 500,000 head.<sup>4/</sup>

It has been estimated that Alaska has less than one percent of the possible worldwide production of deer antlers.<sup>4/</sup> For this reason and because reindeer antler is considered inferior to other types, the price for reindeer antlers received by Alaskan herders may suffer a long-term decline if antler production from Alaskan herds is expanded significantly.<sup>7/</sup> Long-term growth in output from Alaskan herds will have to be based on meat production.

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# ESKIMOS, REINDEER AND LAND

by  
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James V. Drew, Director

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## CHAPTER VII

### MARKETING OF REINDEER PRODUCTS

This chapter is concerned with the marketing of reindeer products. Topics to be discussed include the marketing of reindeer meat, the marketing of velvet antler, and the combined value of all reindeer products sold or used in the home by herd owners. In our discussion of reindeer meat marketing, we will consider the time of year and methods by which reindeer are slaughtered and meat distributed, the quantity and value of the reindeer meat produced in Alaska and the Seward Peninsula from 1960 to 1977, the prices received by herd owners for carcass reindeer meat, and the protein contribution of reindeer meat to residents of northwest Alaska. The analysis of velvet-antler marketing will focus on antler-harvesting procedures, a summary of prices received by herd owners for this product over the last several years, and the quantity and value of velvet-antler production in Alaska for the years 1975-1977. The last major topic, value of reindeer products, describes the quantity and value of all reindeer products produced from all Alaska reindeer herds between 1972 and 1977 and gives the quantity and value of reindeer product sales from the Seward Peninsula for 1975-1977.

#### Marketing of Reindeer Meat

Through 1977, the main product from Alaska reindeer herds in terms of quantity and value of production was carcass reindeer meat. In 1977, Alaska reindeer herd owners produced 312,000 pounds of dressed reindeer meat and sold 256,000 pounds (Alaska Crop and Livestock Reporting Service, 1978). The remaining 56,000 pounds were used by herd owners in the home and as payment for labor used during normal herd operations. The main source of carcass reindeer meat is steers, although some bulls, cows, and calves are included in any year's total production. The bulk of the slaughtering activity occurs in October through February. A variable number of reindeer can be slaughtered throughout the year, however. Although a reindeer carcass can weigh 150 pounds and more, the total recent production figures for Alaska indicate an average of approximately 120 pounds per carcass. (This average weight is based on field observation, individual herd records, and the U.S. Department of the Interior, BIA, Annual Land Operation Reports 1960-1971.)

## Marketing Methods

In 1977, all herd owners on the Seward Peninsula butchered and marketed their own reindeer, with the exception of two who sold live reindeer and the buyers butchered and marketed these reindeer. An estimated 80 to 90 percent of the reindeer meat sold in the past few years from Seward Peninsula herds has been consumed within the region. The remaining reindeer meat produced in recent years has gone to Anchorage and the "lower 48 states." That portion going to Anchorage has been used in the making of sausage while the meat going to the "lower 48" has been marketed as a specialty meat.

All slaughtering of reindeer on the Seward Peninsula is done in the field. Even those reindeer carcasses that will leave northwest Alaska, and which therefore must be government inspected, are killed in the field and then brought to the Nome reindeer slaughter plant for inspection. The majority of slaughtering takes place during the winter months when herders have a mobility advantage over the reindeer. With the use of snow machines, herders can move faster than reindeer over the snow-covered ground. Two other reasons account for the slaughtering of reindeer during winter months. First, if the slaughtering can be accomplished during the first part of winter, the reindeer will be in their best condition following summer weight gains. Second, slaughtering in subfreezing temperatures quickly freezes carcasses for delivery to buyers. For these reasons, most of the reindeer slaughtering takes place from October through February. Slaughtering does occur at other times of the year on a limited basis, mainly for the owner's home consumption. The exact time when each herd butchers depends on individual preference, the location of the reindeer, weather, and availability of labor.

As has been noted before, the production from individual herds is distributed in a number of ways (Olson, 1969). At the village level, reindeer meat is distributed: 1) as wage-meat payments; 2) as sales to village residents; and 3) as sales to village stores. Owners of the larger herds also sell meat to the region's two largest population centers, Nome and Kotzebue.

The first of the village distribution channels involves wage-meat payments and herd owner home use. Many village residents receive part of their yearly meat supply by working for a herd owner at handlings or butcherings and receiving reindeer meat as payment in lieu of cash. Herd owners value reindeer meat as wages at current market price. But often herd owners will "overpay" workers by providing them with more meat than they have earned by their time

actually worked. Acting as village residents. Reindeer herds of Shishmaref, Wainwright, and Bucklar. The population of these villages is approximately 400. The per capita income mounted to approximately \$1,000 per village resident.

A second method of distributing reindeer meat is the form of a wage-meat payment. The back of a pickup truck is used to transport reindeer into the village stores.

A final method of distributing reindeer meat is through village stores. There are ten village stores and ten quarters in the village. In 1977, this production was sold to the village stores for 6 months since the first of the year. If reindeer meat storage were available, it is difficult to determine the best condition for

Herd owners sell all their reindeer meat as wage-meat payments, wage-meat payments to village residents. Large herds also sell reindeer meat to village stores. Alaska: Nome and Kotzebue. In 1976, the price of reindeer meat, in retail cuts sold in Nome and Kotzebue, Alaska, was \$1.90 per pound.

actually worked. An explanation for this behavior is herd owners acting as village *umialiks*. (See Chapter VI).

Reindeer herds on the Seward Peninsula are based at the villages of Shishmaref, Wales, Brevig Mission, Koyuk, Golovin, Teller, Deering, and Buckland, and at the towns of Nome and Kotzebue. The population of the villages is estimated to total 1,233 people. In 1976, approximately 400 reindeer carcasses were used by herd owners in these villages specifically for home consumption and labor payment. The per capita consumption from this method of distribution amounted to approximately .32 reindeer carcass (39 pounds) per village resident.

A second method of village distribution is sales directly to village residents. In one instance in the summer of 1977, this took the form of a herd owner taking orders for reindeer meat from the back of a pickup truck as he was bringing the carcasses of four or five reindeer into the village. Through August of 1977, herd owners were selling reindeer meat to village residents for 85 cents per pound.

A final type of village distribution is the sale of carcasses to village stores. These stores usually sell reindeer meat as sides or quarters and ten cents per pound is added to the price exacted by the herd owner as a handling charge. In 1976 and the first half of 1977, this produced a price at village stores of 95 cents per pound. Villages stores generally have reindeer meat only during the winter months since they have little or no cold storage facilities. It is doubtful if reindeer meat would be available in the summer even if more storage were available. There are basically two reasons for this. First, it is difficult to slaughter reindeer in the summer because of the problems in getting close to them, and second, reindeer are in the best condition for slaughter in the first part of winter.

Herd owners with less than 1,000 reindeer generally distribute all their reindeer meat in the village through either home consumption, wage-meat payments, sales to village stores, or sales to village residents. Larger herd owners, besides using these same channels, also sell reindeer meat to the two population centers of northwest Alaska: Nome and Kotzebue, and at times also make sales out of the region. In 1976, Nome stores sold approximately 100,000 pounds of reindeer meat, while stores in Kotzebue sold approximately 54,000 pounds of reindeer meat. During the winter of 1976-1977, reindeer retail cuts sold for approximately \$1.70 per pound as stew meat, \$1.90 per pound as shoulder cuts, and \$2.00 per pound as hind cuts in Nome and Kotzebue. Prices for a competing source of protein in Nome, Alaska, were given in the March 1977 *Quarterly Food Price*

*Index.* They were \$2.99 per pound for beef round steak, \$2.04 per pound for beef chuck roast, and \$1.79 per pound for beef hamburger (Thomas, 1977). As with village stores, reindeer meat is generally available only in Nome and Kotzebue stores during winter months. These stores would like to carry reindeer meat on a year-round basis; however, production is not large enough to meet this desire. Freezer facilities in the towns are sufficient to hold a large supply of reindeer meat during the summer months. These towns are also not subjected to the frequent power outages which the villages experience.

In the winter of 1976-1977, in contrast to other owners, two herd owners marketed their excess reindeer as live reindeer, thus eliminating the the problems of butchering and making marketing arrangements. These two herd owners received \$70 per head for these live reindeer. If the reindeer averaged 120 pounds per carcass, these owners received 60 cents per pound for the dressed meat. However, they did not pay any costs of slaughter. This marketing option may be currently available only to these two owners as they manage their herding operations on the one area of the Seward Peninsula which has a road system. This makes it relatively easy and inexpensive for meat buyers to reach the reindeer.

#### Alaska Reindeer Meat Production: 1960-1977

Total production, sales, and home and herd use of reindeer slaughtered by Alaska reindeer herd owners for the years 1960-1977 are provided in Table 18. This period was characterized by generally increasing production until 1968, at which time a general decline can be noted. From 1960 through 1968, except for the years 1962 and 1967, total production increased yearly. In 1968, total production amounted to 754,000 pounds of dressed reindeer meat, 608,000 pounds of sales, and 146,000 pounds of reindeer meat used in home and herd operations. During this same period, the value of production generally increased, with the value of production estimated to be \$324,000 in 1968.

From 1969 through 1977, production generally declined with 1976 being the low point when only 286,000 pounds of production occurred: 234,000 pounds of sales and 52,000 pounds of home and herd use. In 1977, production rebounded over the previous year as 312,000 pounds of production was accomplished. The value of production followed the quantity of production through 1972. However, in 1973, although production was lower than the previous year, the value of this production was \$16,000 greater. Again in

Table 18. Production and Sale of Reindeer Meat by Alaskan Reindeer Herders, 1960-1977.

Year	Total Production		Sales		Home and Herd Use	
	Pounds Dr. Wt. <sup>a</sup>	Value (\$) <sup>b</sup>	Pounds Dr. Wt. <sup>a</sup>	Value (\$) <sup>b</sup>	Pounds Dr. Wt. <sup>a</sup>	Value (\$) <sup>b</sup>
1977	312	275	256	225	56	50
1976	286	243	234	199	52	44

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1977	312	275	256	225	56	50
1976	286	243	234	199	52	44
1975	345	308	287	257	58	51
1974	300	205	220	150	80	55
1973	324	182	261	144	63	32
1972	328	166	239	121	89	45
1971	456	235	365	188	91	47
1970	615	300	479	241	136	59
1969	585	277	458	219	127	58
1968	754	324	608	260	146	64
1967	692	265	517	188	175	77
1966	701	249	546	190	155	59
1965	637	242	522	200	115	42
1964	660	254	504	195	156	59
1963	490	179	394	138	96	41
1962	482	182	372	139	110	43
1961	485	181	364	136	121	45
1960	450	180	330	132	120	48

<sup>a</sup> Dr. Wt. = Dress Weight (in thousands of pounds).

<sup>b</sup> (in thousands of dollars).

Source: Alaska Crop and Livestock Reporting Service 1973-1978.

1974, production fell but the value of the production increased over the previous year. The largest slaughter since 1971 occurred in 1975. This factor, combined with increased meet prices, raised the value of reindeer meat produced in Alaska to \$308,000, a figure only exceeded by the value of the 1968 production. The 1968 slaughter was 409,000 pounds greater than the quantity of reindeer meat produced in 1975. In both 1976 and 1977, meat production was below the level of 1975 with per pound carcass meat values remaining relatively stable in these years.

As with total reindeer numbers in Alaska, the overall decline in reindeer meat production between 1960 and 1977 was caused largely by the decline of the Nunivak Island reindeer herd, instead of a general decline in reindeer numbers in all areas of Alaska. In 1960, the Nunivak herd totaled 16,000 reindeer, of which 1,625 were butchered. In 1964, this herd totaled 13,200 reindeer, and of this number 2,826 were butchered; while in 1968 the herd totaled 10,200 and 1,749 reindeer were butchered. However, in 1976, this herd had decreased to 4,000 reindeer, of which only 301 were butchered. The 1977 slaughter consisted of 187 reindeer. If these carcasses averaged 120 pounds, Nunivak accounted for 195,000 pounds of the reindeer meat slaughter in Alaska in 1960, 339,120 pounds in 1964, 209,880 pounds in 1968, 36,120 pounds in 1976, but only 22,440 pounds in 1977.

#### Seward Peninsula Reindeer Meat Sales: 1960-1977

Reindeer meat sales by herds on the Seward Peninsula for the years 1960-1977 are given in Table 19. This table does not include the reindeer meat used by herd owners in home and herd operations. (Except for 1976, home and herd operation information has not been available since 1971. In 1976, approximately 400 carcasses [48,000 pounds] were used for these purposes.) The quantity of meat sales by Seward Peninsula herds did not decline from beginning to end for the period 1960-1977, although a decline was seen in production by Alaska reindeer herds as a whole. This occurred because reindeer numbers have remained relatively constant on the Peninsula since 1960, varying from a high of 22,168 in 1966, to a low of 16,369 in 1968. In 1976, the estimated number of reindeer was 17,425; while in 1977, reindeer were estimated at 17,800 animals.

The value of reindeer meat sales on the Seward Peninsula showed an overall increase during this period. In 1960, the value of

Table 19. Reindeer Meat Sales on Seward Peninsula, 1960-1977.

Year	Est. No. Reindeer on Seward Peninsula
1977	17,800
1976	17,425
1975	20,600
1974	n/a <sup>b</sup>
1973	17,397
1972	19,828
1971	n/a
1970	20,292
1969	17,009
1968	16,369
1967	18,795
1966	22,168
1965	18,944
1964	20,449
1963	18,880
1962	17,940
1961	16,405
1960	18,529

<sup>a</sup>Carcasses assumed to be available.

<sup>b</sup>n/a = data not available.

Sources: U.S. Dept. of the Interior, Alaska Reindeer Reports 1960-1977, Service 1977.

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Table 19. Reindeer Meat Sales by Seward Peninsula Reindeer Herders, 1960-1977.

Year	Est. No. Reindeer on Seward Pen.	Number Carcasses Sold	Pounds Meat Sold	Value (dollars)
1977	17,800	1,974	236,920 <sup>a</sup>	201,380
1976	17,425	1,820	218,400 <sup>a</sup>	185,640
1975	20,600	1,766	211,920 <sup>a</sup>	158,940
1974	n/a <sup>b</sup>	1,164	139,680 <sup>a</sup>	97,776
1973	17,397	n/a	n/a	n/a
1972	19,828	n/a	n/a	n/a
1971	n/a	2,263	271,560	141,211
1970	20,292	2,168	260,160	130,080
1969	17,009	1,792	215,040	103,219
1968	16,369	3,505	420,600	176,652
1967	18,795	2,434	292,080	105,148
1966	22,168	2,790	334,800	113,832
1965	18,944	1,527	183,240	69,631
1964	20,449	1,266	147,120	51,492
1963	18,880	1,043	125,160	46,309
1962	17,940	1,339	160,680	59,229
1961	16,405	912	109,440	40,492
1960	18,529	688	82,560	38,064

<sup>a</sup>Carcasses assumed to average 120 pounds, actual figures not available.

<sup>b</sup>n/a = data not available.

Sources: U.S. Dept. of the Interior, BIA, Annual Land Operation Reports 1960-1971, Alaska Crop and Livestock Reporting Service 1973-1978, Reindeer Herders, BLM Case Files.

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reindeer meat sales to herd owners on the Seward Peninsula amounted to \$38,064. In 1977, the value of reindeer meat sales was estimated at \$201,380, the highest value in all the listed years.

#### Price Received by Herders: 1960-1977

The average price per pound received by Alaska reindeer herd owners for reindeer meat for the years 1960-1977 is provided in Table 20. From 1960 through 1968, the price per pound remained

Table 20. Price per Pound Received by Herd Owners for Reindeer Meat, 1960-1977.

Year	Price per Pound (cents)	Year	Price per Pound (cents)
1977	85 <sup>a</sup>	1968	42
1976	85	1967	36
1975	75	1966	34
1974	70	1965	38
1973	55	1964	35
1972	51	1963	37
1971	52	1962	37
1970	50	1961	37
1969	48	1960	40

<sup>a</sup>January-August.

Sources: U.S. Dept. of the Interior, BIA Annual Land Operation Reports 1960-1971, Alaska Crop and Livestock Reporting Service 1973-1976, Reindeer Herders.

relatively stable, averaging 37 cents per pound. In 1969, the price rose 6 cents over the 1968 price of 42 cents. In the period 1970-1973, the price rose slowly, reaching 55 cents in 1973. The period from 1974-1977 was one of rapid changes. The 1974 price rose 15 cents. In 1975 and 1976, the price rose 5 cents and 10 cents, respectively, over the preceding year. In 1976, herd owners received 85 cents per pound for their reindeer meat. This price prevailed until the end of August, 1977.

There are a number of reasons suggested in economic theory for the increase in price received by Alaska reindeer herd owners for carcass reindeer meat (Burk, 1968). The following factors have tended to increase the consumer demand in northwest Alaska:

population growth in residents, increased received preference for creases of substitutes Arctic Caribou Herd. mated that the region (Mauneluk Association state-imposed hunting caribou. On the supply as evidenced by num showing some variatio since 1969, averaging Peninsula reindeer he stable reindeer supply

#### Protein Contribution

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population growth in the region, increased earned incomes of region residents, increased transfer payments such as food stamps, a perceived preference for reindeer and caribou meat, general price increases of substitutes for these meats, and the demise of the Western Arctic Caribou Herd. In 1974, the NANA Regional Corporation estimated that the region's residents consumed 14,000 caribou annually (Mauneluk Association, Inc., 1974). During the winter of 1976-1977, state-imposed hunting restrictions limited the harvest to 3,000 caribou. On the supply side, supplies of reindeer in northwest Alaska, as evidenced by numbers of animals annually slaughtered, although showing some variation up and down, have remained relatively stable since 1969, averaging an annual sale of 1,835 carcasses from Seward Peninsula reindeer herds. Increasing demand with a comparatively stable reindeer supply has put upward pressure on prices.

#### Protein Contribution of Reindeer

As noted earlier, the per capita consumption of reindeer meat on Seward Peninsula from wage-meats (400 carcasses) in 1976 was .32 carcasses per village resident per year (1,233 residents in the eight villages with herds) or approximately 39 pounds of reindeer meat. Sales to village residents and to village and town stores totaled approximately 1,550 animals in 1976, which, at an average of 120 pounds each, would represent some 186,000 pounds of meat. Combining the town (Nome and Kotzebue) population figures with those of the villages (6,249 people, 1975 figures) and totaling all reindeer meat consumed regardless of by what means it was obtained (approximately 234,000 pounds), yields a per capita consumption figure of 37 pounds for the Seward Peninsula. Thus, per capita consumption of reindeer meat in the towns and in the villages on Seward Peninsula from both wage-meats and purchases was about equal.

The figures for the villages reflect the payment of meat as wages to villagers. In the towns, there are few people who earn reindeer meat in this manner. Additionally, the figures for Nome and Kotzebue reflect a higher percentage of non-Natives in the population than do the figures for the villages. The non-Native buyers are probably following meat consumption patterns developed in the "lower 48," so they buy the customary meats rather than reindeer, which is a novelty to them. This implies that the per capita Native consumption of reindeer meat in the towns may actually be higher than in the villages. Part of the reason may be that people living in villages have a greater opportunity to obtain other traditional foods.



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Table 21. Composition of Foods, 100 Grams, Edible Portion.

Meat	Food			
	Moisture (percent)	Energy (calories)	Protein (grams)	Fat (grams)
Beef, Good Grade, raw, 100% lean <sup>a</sup>	72.1	139	21.8	5.1
Chicken, light meat without skin, raw <sup>a</sup>	73.7	117	23.4	1.9
Pork, fresh, carcass, raw, fat class (total edible 41% lean, 59% fat) <sup>a</sup>	33.4	553	9.1	57.0
Reindeer, raw flesh <sup>b</sup>	70.1	117	26.6	1.2

<sup>a</sup> Data from Watt et al., 1963: Table 1.

<sup>b</sup> Data from University of Alaska, 1973.

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### Harvesting of Reindeer Antler

Velvet antler can be harvested only at summer handlings. In order to overcome the traditional difficulties of summer herding, the herds are now driven into the corrals for antler harvesting by a helicopter swinging back and forth behind the reindeer. This is a faster method than the herding on foot which was used until a few years ago. Once a herd is corralled, the reindeer are pushed single file through a chute at the end of the corral. As each adult reindeer moves through the chute it is held by four men and most of its antler is removed using a hand-held cutter. A rubber band is twisted around the remaining antler to prevent excessive bleeding. The smaller calf antlers are left intact.

Antler is harvested at the end of June or during the first part of July because it is during this period that the antler is most desirable: it is the largest size possible, but the inside of the antler still has a spongy texture. If the antler is allowed to continue to develop, it eventually becomes completely ossified. For this reason, antler buyers prefer not to purchase antler after the middle of July.

### Price History

The price per pound received by reindeer herd owners for velvet antler has increased steadily in recent years. In 1969, herd owners received \$1.00 per pound. In 1972, the price rose to \$3.50 per pound; in 1975, to \$4.32 per pound; and by 1976, the price had risen to \$5.58 per pound. These price increases likely are a result of additional buyers attempting to purchase reindeer antlers. In 1977, two different prices were received. Except for one herd, all owners on the Seward Peninsula were under a multiyear contract and received \$8.00 per pound. One herd received \$23.76 per pound for its velvet antler production in 1977, the result of competitive bidding.

The sale of reindeer velvet antler has become an increasingly important source of income to Alaska reindeer herd owners. Based on information supplied by buyers and herd owners, the pounds and the value of sales for all Alaska reindeer herds for the years 1975-1977 are presented in Table 22. During these three years the quantity sold remained relatively stable. Price received, however, increased yearly, to where, in 1977, the value of sales more than doubled the 1975 level. The Seward Peninsula (Table 23) accounted for all sales

of velvet antler from Alaska for the years 1976 and 1977. In 1975, antler sales from Nunivak Island accounted for \$5,310 (8 per cent) of total sales.

Table 22. Velvet Antler Sales — Alaska, 1975-1977.

Year	Pounds	Sale Value
1977	15,037	\$171,673
1976	13,661	79,085
1975	15,058	65,829

Table 23. Velvet Antler Sales — Seward Peninsula, 1975-1977.

Year	Pounds	Sale Value
1977	15,037	\$171,673
1976	13,661	79,085
1975	14,173	60,519

#### Value of Reindeer Products

In 1977, the value of sales and home use of reindeer products from all Alaska reindeer herds was estimated to total \$471,000 (Alaska Crop and Livestock Reporting Service, 1978). Of this total, 95 percent (\$446,673) was derived from reindeer meat and velvet antler. Five percent (\$24,327) came from the production of hides, leggings (lower leg skins used for making mukluks), and meat byproducts. On the Seward Peninsula, the value of the 1977 meat and antler sales was estimated to total \$373,053.

The value of all reindeer products produced in Alaska for the years 1972-1977 is presented in Table 24. This production value includes reindeer meat and meat byproducts, velvet antler, and reindeer hides and leggings. It includes meat and meat byproducts used in the home and/or for herd operations. For the years 1972-1977, with the exception of 1977, the total value of all production increased yearly. This increased value was due largely to increased prices for reindeer meat and velvet antler. Reindeer meat production from all Alaska herds actually showed a downward trend in the years 1972-1977, as was discussed previously.

The value of reindeer meat sales and velvet antler sales on the Seward Peninsula for the years 1975 through 1977 is provided in Table 25. (This table was constructed with data from interviews gathered by interviewing herd owners and antler buyers, and the examination of BLM case files.) The value of hides and meat byproducts is not available, but likely accounted for only an additional four to five

Table 24. Value of Reindeer Products, Alaska, 1972-1977.

Year	Reindeer Meats and Byproducts	Velvet Antler	Hides and Leggings	Total
1977	\$275,000	182,000	166,000	\$623,000
1976	243,000	308,000	205,000	\$756,000
1975	308,000	182,000	166,000	\$656,000
1974	205,000	182,000	166,000	\$553,000
1973	182,000	166,000	166,000	\$514,000
1972	166,000	166,000	166,000	\$500,000

<sup>a</sup>Includes sale of live reindeer.  
Source: Alaska Crop and Livestock Reporting Service, 1978.

Table 25. Value of Reindeer Meat and Velvet Antler Sales on the Seward Peninsula, 1975-1977.

Year	Reindeer Meats and Byproducts	Velvet Antler	Total
1977	\$201,380	182,000	\$383,380
1976	185,600	308,000	\$493,600
1975	158,900	182,000	\$340,900

per cent of total value. In 1976, an increase of 41 percent in higher antler prices between 1975 and 1976 increased by approximately \$182,000. Reindeer meat production rose by \$92,573

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Sale Value
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79,085
60,519

Table 24. Value of Reindeer Production-Alaska, 1972-1977.

Year	Reindeer Meat	Antler, Hides and Meat Byproducts	Total
1977	\$275,000	\$196,000	\$471,000
1976	243,000	258,000 <sup>a</sup>	501,000
1975	308,000	83,500	391,500
1974	205,000	60,000	265,000
1973	182,000	34,000	216,000
1972	166,000	49,000	215,000

<sup>a</sup>Includes sale of live reindeer.

Source: Alaska Crop and Livestock Reporting Service 1973-1978.

Table 25. Value of Reindeer Product Sales -- Seward Peninsula,  
1975-1977.

Year	Reindeer Meat Sales	Antler Sales	Total
1977	\$201,380	\$171,673	\$373,053
1976	185,640	79,100	264,740
1975	158,940	60,500	219,440

per cent of total value. Sales in 1977 were \$108,313 greater than in 1976, an increase of 41 per cent. Most of the increase was due to higher antler prices between 1976 and 1977. Antler production increased by approximately ten per cent while the value of antler production rose by \$92,573, a 117 per cent increase.

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