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1.5 - Categories of Companies

To gain further insight into the financing of petroleum industry activities, one can break oil companies into four separate categories:

a) The oil majors - with public ownership of their shares (nearly all such companies seem to have a presence in Alaska)

b) The independents - with public ownership of their shares (noticeably absent from Alaska)

c) The private, smaller type, firms - with no public ownership of their shares (again noticeably absent from Alaska)

d) The state oil companies

Examples of category d are Statoil in Norway, Pertamina in Indonesia, and Petrocanada - the last of which is to be privatised soon.

1.6 - Freedom of Investment by Non-indigenous Companies

When international comparisons are drawn, a premium has to be attached to investment in a location where no barriers to investment exist for foreign oil companies who wish to enter the region. In this respect Alaska (being part of the United States) contrasts sharply with countries such as Canada, for instance, where a foreign oil group can hold only 30% of an existing oil and gas company, unless the Canadian firm being acquired is in grave financial difficulty.

When a company invests in Alaska, they have the implicit assurance that at any time they can sell their entire assets and investments in Alaska without any government interference. Hence, their sale to a foreign (i.e. non-US company) would not be prevented, should a favourable offer be presented. For it could prolong the sale considerably if the vendor has to wait for an indigenous buyer. Moreover, it would dampen the price if there is an absence of global competition.

This aspect is a significant advantage for Alaska and makes it clearly a superior region compared to its neighbour Canada, or Australia, as an investment climate in which to operate. Barriers to foreign investment as imposed by the government body "Investment Canada" are further discussed in Section 3.2. Furthermore, an account will be given of the harrowing experience of a Canadian oil and gas company with the Government of Canada at the time when a British firm was acquiring half of their corporation.

1.7 - Foreign Exchange Control

The absence of foreign exchange control in Alaska is an advantageous factor for industry and as an investment climate can command a premium. For when a country restricts the outward flow of foreign exchange it is always a worry for the company concerned whether they can repatriate their entire post-tax profit or capital if need be. This imposes an implicit limit on the company, forcing it to reinvest its profit within the country concerned.

Such a restriction exists in many parts of the world where there are petroleum reservoirs. It is not confined to the Third World, where export earnings fall short of their import requirements; it is prevalent in certain OECD countries where oil exploration and production take place.

In Australia there was an element of foreign exchange control up to 1982. It was monitored by a government agency known as the Foreign Investment Review Board. Any transfer of sums larger than A$10,000 out of Australia had to be cleared by FIRA.

In France, to take another example, until the beginning of 1990 a foreign oil firm operating in the Paris Basin would need to get clearance from the French Treasury in order to repatriate profits and assets to the parent company. The law has been more stringent for companies whose parents are not regarded as part of the European Community, such as a US group. Of course it should be pointed out that within the European Community there are plans to phase out all foreign exchange controls before 1992. In the UK, as in the United States, at present there is no foreign exchange control.

In most of the less developed countries, however, such as practically all of Africa, parts of the Middle East and parts of the Far East, there is some element of foreign exchange control. This in turn prohibits the availability of finance. Hence, bank loans are either not available for smaller companies or are not advanced on a non-recourse basis.

There have been cases when, even if the World Bank acts as a backer and provides a guarantee for such companies, most financial institutions are not willing to provide loans for investment in oil projects. Examples are countries such as Senegal, Gabon and the like.

Occasionally an oil company can access 'blocked funds' in exchange controlled countries, such as India or parts of Africa. These funds can be acquired for less than the principal of the loan. Here the owner of such funds is willing to release them for a lower amount in order to get them out of the country. But these are exceptions rather than the rule.

1.8 - Premium for Political Stability

Political stability is a crucial factor for lending purposes. In recent years many banks have lost a great deal of money on Third World debts which have had to be written off. So banks at board level have made a conscious decision not to finance projects in certain parts of the world that have 'Country Risks'. They treat them as restricted zones for funding purposes.

This in reality means: no matter how good the geology of the field or how handsome the prospects of the cash flow, when the request for finance for development of a field is placed in front of the credit department of a bank, the loan is turned down. Also this has been applicable to date to most of the centrally planned areas, for example Hungary.

[This is based on the consultant's personal experience. In May 1988, the Chairman of the Council of Ministers of Hungary paid a visit to Britain as a guest of the Prime Minister. At that time I was executive director of an investment bank in London. The Hungarian Council Chairman paid me a visit at the bank and invited me to advise them on their macroeconomic modelling efforts. I mentioned his visit to the chairman of our bank and asked if he was interested in meeting him. The answer was, "We wouldn't be prepared to lend such countries a penny. So what would be the point of meeting him?" (Incidentally, it should be pointed out that Hungary has a certain amount of oil and gas assets and Occidental has been the chief foreign investor.)]

Broadly speaking, in areas where 'Country Risks' exist for the purpose of external finance, oil companies have to use their internal finance. This factor tends to limit the industry to the oil majors or very large independents wherever there is an element of political instability.

Again, for Alaska this is an advantageous factor being excluded from such zones and as an investment climate it is a superior region.

1.9 - Stability of the Currency

Another factor is the stability of the currency of the country. A fair amount of hedging is required for the forward sale of the oil concerned when a currency is unstable. Usually, the more volatile the currency, the more the cost of the hedging.

For instance, the Australian dollar is regarded as internationally more unstable compared with the US dollar, and, hence, there has always existed a degree of concern about debt-financing in foreign currency.

The escalation of the Australian interest rate in 1989 to around 20% has created an overvalued currency. This implies once interest rates fall (though currently they have been reduced marginally to the current range of 17½ to 19%), a downturn in the Australian dollar is to be expected. Since the sale of crude oil is denominated in US dollars, a depreciation in the Australian dollar will in turn mean a decline in revenue for the Australian oil and gas companies.

This problem does not arise so much in the case of Alaska. The prices of crude oil and related petroleum products (being internationally traded commodities) are denominated in dollars. At the same time the revenues on oil industry activities in Alaska are earned in dollars. If the parent of a company is based outside the United States, however, and wants to repatriate the profits, some degree of hedging against movements in the dollar would be undertaken by the company.

1.10 - Modes of Oil Industry Finance

External financing for the oil industry has become more and more sophisticated over the years. New ideas have been emerging - perfecting the techniques of finance to suit the needs of the industry more closely.

It is preferable for companies to seek long term external funds - matching the life of their debt to their future production profile. This is not, of course, always feasible but companies try to get as close to it as possible. Modes of finance are many. A brief account of some of the different options for external finance open to companies is given below.

i) Equity Finance

This is when a company raises funds by way of an issue of its stock to finance a specific acquisition or development project. It is carried out through either a rights issue or treasury issue and is usually underwritten by one or a group of investment banks.

ii) Private Placement

Through this method both equity finance and debt finance can be arranged for specific purposes, e.g. the construction of a cross-country pipeline for oil and gas. For equity finance the private placement market comprises mainly large pension funds and insurance companies. This enables companies to raise cash without resort to public quotation.

Loans of fixed maturities can be secured whereby an issue of interest-bearing debt is privately placed with financial institutions without resort to public issues in capital markets. For example, a UK independent completed a $75 million five-year loan in 1987 through a private placement with seven Japanese trust and banking institutions.

iii) Bonds

A company can raise finance through an issue of a long-term (ten years, say) bond from a financial market. Where the bond is issued in a foreign market, the currency exposure is usually hedged.

iv) Banking Facility

This is a special arrangement with a bank where a fixed amount of credit is granted for a fixed period of time. The longer the maturity of the facility the better for the company. For instance, the European Investment Bank in December 1987 granted an oil company a £50 million facility of up to 14 years.

v) 'Charter' or Contractor Finance

This is one of the more innovative type of financing for field development that has taken place in the UK recently. Under this scheme the development of the an oil field is subcontracted to a contractor who in turn takes out the finance. The loan is then repaid out of the cash flow of the field by the contractor. In other words the finance is for 'renting' of the equipment such as chartering a drilling rig, etc. Thus the repayment of the capital is limited to the production levels of the field.

For every barrel the company pays the contractor a sum agreed a priori and the contractor in turn pays the financier.

This method was tried for the development of the Emerald field in the North Sea. Emerald has reserves of around 30 million barrels and a life of 5-7 years with a development cost of around £120 million. The contractor's finance was guaranteed by the UK government through the Department of Trade and Industry. Moreover, in the case of Emerald, the oil was forward sold to another company with a minimum agreed price.

The purpose of mentioning this type of funding is not for its frequent use. But it is intended to bring to the attention of the Legislature the most up-to-date information about the more creative types of financing for the development of some of the more marginal fields.

vi) Project Financing

"Project financing" is a form of loan increasingly used for natural resource development. As far as definition is concerned, it is a type of funding which must meet the following requirement: a) it is used primarily for the purchase of equipment, knowhow and machinery associated with a certain project, b) the duration of the loan is linked to the capability of the project to produce adequate cash flow for repayment of the loan, c) if the loan is in foreign currency, the project should produce adequate foreign exchange to meet repayments.

Effectively, this method enables reliance upon a free-standing investment such that its cash flow is isolated and specifically assigned to the project. The revenue is used for the payment of the project and does not accrue to the parent. This allows the lender to liquidate a mortgaged security in the case of default or cash flow interruption.

The move into expensive offshore production and other costly areas has created the need for such loan finance, and the oil majors have been able to raise their funds on the finest terms.

vii) Limited Recourse Finance

Under this scheme there is no recourse to the other assets of the company. It has gained increasing prominence as a preferred method for the funding of very large natural resource projects involving substantial capital investment. The assigned cash flow and associated costs are not included in the profit and loss account of the company. Also the related assets are excluded from the balance sheet.

This is a financing method used for the UK Brae fields (South, Central and North Brae).

1.11 - Interaction of Banks with the Oil Sector

In recent years the international financial sector has become a great deal more sophisticated, as well as aggressive, in its interaction with the oil and gas industry. A large number of major banks (both corporate and investment banks) have developed extensive in-house expertise and capabilities in this area. Thus, the initiation of finance is no longer a one-way route where an oil company first approaches the financier. Rather, it has developed into a two-way system. In fact more and more the direction of approach is reversed and the first steps are taken by the banks to initiate deals.

A bank can now 'create a deal' and plant the seeds of a transaction within the oil companies. Hence, a company is presented with both the asset and the financing that would accompany it as a package. Such oil assets can be in the form of a producing field, proven and undeveloped reserves, or exploration acreage, as well as shares of a particular company. Thus, companies in many cases simply respond to opportunities presented to them. The term 'opportunities' in this instance embraces a variety of activities, viz. development of a field, farm-ins, acquisition of a producing asset, or even exploration.

If a banker, say, approaches an oil company with a financial package to invest in Alaska (be it in the form of any of the above activities), the company may not instantaneously respond and quite possibly may turn down the deal. But the information regarding the deal acts as a reminder for the company of the existence of some potential opportunities in the region. It triggers further thought and awareness and may later lead into another completely different transaction.

In the case of Alaska there isn't the same frequency of such reminders presented to the rest of the world's oil and gas industry (as, say, in the UK).

1.12 - Comments on the Financing of Individual Fields in the Countries under Comparison

For the development of a field as large as Prudhoe, there would be ready finance available in all the four countries concerned. We shall concentrate on financing of fields which have to be developed, namely West Sak, Niakuk and Seal Island.

i) UK

A comparable field in the UK to Prudhoe, though much smaller in reserve size, would be the Forties field offshore in the North Sea. It should be pointed out the British government's policy of enhancing activity in the North Sea has been such that all exploration expenditure can be offset against Petroleum Revenue Tax.

Thus, when the Forties field became PRT-paying the operator of the field sold a small number of ½% and ¼% units of the field. These so-called 'Forties Units' were attractive as tax shelter and were bought by companies who could offset their exploration expenditure against the PRT liabilities of these small units. Forties Units have been ideal for foreign petroleum companies entering the UK for the first time or for independents wishing to expand their exploration activities.

The reserve estimates of the Forties field were raised in 1988 from 2,391 to 2,470 million barrels. By the end of 1988, approximately 1,909 million barrels had been extracted, leaving 561 million barrels. The average daily production of the Forties field in 1988 was 290,000 barrels per day. Thus a ½% unit held by an independent company amounted to 1,450 barrels per day of production. The Forties Units were traded at between £5 million and £3.5 million during 1988.

For the other fields, finance would be available on a 40 : 60 basis, whereby 60 per cent of the required finance would be available on a limited recourse basis. For the Seal Island field which has considerable risk one could attain 'Charter finance' if the price of oil rose considerably from its current level.

ii) Australia

Before discussing the financing of the smaller fields in Australia , it may be useful to give some background to the Australian oil and gas scene. It is a combination of a large number of junior oil companies with a market value of less than A$25 million and a small number of major oil companies.

The current economic climate, while adversely effecting the indigenous sector, has created favourable conditions for foreign investors. A cash-rich company has abundant opportunities for farm-ins with generous terms. There are also attractive acquisition possibilities of oil and gas assets.

The most likely financing route available for the development of the smaller fields by the independent companies would be through venture capital on the basis of 20 : 80. That is to say, 20% would be laid down by the owner of the reserves and 80% by the venture capitalist. If the development of the fields is undertaken by an oil major, an issue of medium-term notes seems to be the preferred route. In December 1989 a subsidiary of one of the oil majors offered to the market A$100 million of corporate bonds maturing in 1995 with a coupon rate of 14%. This was part of the company's financing package for their investments in 1989 and 1990. The gearing of this subsidiary is around 40%.

iii) Indonesia

Finance available for foreign companies to invest in the fields in Indonesia would be primarily granted on a corporate basis rather than localised to the assets in the country. Foreign companies who have invested in Indonesia over the past years have raised their loans on a corporate basis and have not obtained them on the basis of non-recourse limited finance. In fact, the financial community ranks Indonesia last for funding purposes, behind the UK, Norway and Australia. In this respect, Japanese banks have a different attitude. Their behaviour is more unique to themselves and differs to some extent from the rest of the financial community.

iv) Norway

The Norwegian banking sector has suffered major losses in the past three years. The collapse of oil prices in 1986 brought about losses on both loans and guarantees. The tide is just beginning to turn as a result of a great deal of rationalisation within the banking sector. The national oil company Statoil holds most of its long-term debt in foreign currency.

Recent acquisitions in the oil sector have been financed through internal cash flow of the companies. For instance in March 1990 a Finnish oil company, acquired the Norwegian arm of an American oil company.

Two - OTHER ASPECTS OF OIL INDUSTRY INVESTMENT

It is essential for politicians and civil servants not to review a tax structure in isolation from other aspects of petroleum industry investment. These 'other' aspects throw light on why companies may leave a certain area, and what other factors may influence their investment decisions besides tax.

2.1 - Strategic Decisions of Companies

The exiting of a company from a region may be construed by some as the result of excessive taxes. However, if one looks beneath the surface, it may turn out to be a strategic issue.

If one is led to believe that a certain oil major, say, is leaving Alaska, one has to closely examine the nature of the assets they are selling. Is it just downstream (namely refining and marketing), as it was in the case of one company recently, or is it upstream (exploration and production)? As far as is known the company concerned was planning to maintain its exploration acreage in Alaska. The production it was intending to sell (which it subsequently withdrew), was small and could have been part of its restructuring strategy. Companies periodically undertake a program of rationalisation and pull out of certain areas in order to consolidate some of their other activities. If they have a small operation in a particular region, it makes economic sense to withdraw and consolidate their resources and efforts in areas where they have bigger production and leases.

This does not mean that oil and gas activities in that area are inherently undesirable for the entire oil industry - or that the undesirability of the tax is the prime factor responsible for the exodus of a particular oil company.

Example: In 1988 one of the largest independent oil companies in the UK examined its international portfolio of assets and decided to sell its small interests in countries such as Holland, Ireland, etc. It chose to consolidate its assets in the UK North Sea. So when it put up for sale its Dutch exploration interests, it was faced with a very keen interest from a European company who had made a decision at board level to expand their Dutch activities.

In fact the European firm was so keen to acquire the interest and conclude the deal that they bid considerably above the initial price the British independent had in mind. In the end,

however, the British independent did not sell. It arranged a swop of the Dutch assets with another company. This made sense, for the cash receipts would have been subject to capital gains tax.

In short the British independent's decision to exit the Netherlands was in no way a reflection on the Dutch oil and gas taxation regime. On the contrary, the Netherlands has become quite an attractive area for the industry to enter in recent years (further explained in section 2.5 where we look at two more tax jurisdictions relevant for comparison with Alaska).

2.2 - Existence of Production Quotas

Another element is production control imposed by OPEC within the thirteen member countries. For a company to operate in any one of these countries where production quotas are imposed is anything but the best investment climate. Any given field has an optimal depletion rate with which one should not interfere, as far as optimal reservoir management is concerned. This was confirmed by the reservoir engineers during the consultants' visit to Prudhoe Bay. [In Iran, for example, as a result of continuous cutbacks (due either to the Gulf War or OPEC quotas) and, hence, poor reservoir management, a great deal of the country's reserves have diminished.]

Clearly, an OPEC member country with a quota system, such as Indonesia, is an inferior region compared to Alaska where no production restriction exists.

2.3 - Consequences of Cutbacks in Production

Within the non-OPEC countries chosen, Norway has in the past three years been trying to help OPEC with some self-imposed "cutbacks". This voluntary restraint during 1989 was 7.5%. For 1990 Norway has restricted oil companies to producing at 95% capacity.

Although the effective cutback has been on the growth of production and not on the actual level of production, this again is both destabilizing and undesirable from the oil industry's viewpoint. Once an oil company has undertaken the investment in a field it should be allowed to produce at the optimal rate. Cutbacks would be simply eating into the profits of the industry.

2.4 - Mixture of Companies Active in an Area

In drawing up tax comparisons between different countries, it is essential that one also looks at the mixture of different companies active in the petroleum sector of those regions. For any changes in the oil taxation could affect them differently. It is important to study how many lose and how many gain.

This dimension of the analysis is particularly relevant if the government is conscious of the absence of oil independents and wants to encourage investment in the area by smaller companies.

The distribution and mixture of the licence holders for some of the countries examined in this study are given here. These tax jurisdictions are: the UK, Norway, Australia and the Netherlands.

i) In the UK there are a total of 118 licence holders of which 39 companies hold around 94% of the total licences. These companies would be categorised as the principal licence holders. What is significant is that the remaining 6% of the total area leased is held by 79 licence holders. This reflects the large number of independents active in the UK part of the North Sea.

ii) In Norway there are a total of 38 licence holders of which 17 companies hold over 96% of the total leases as the principal licence holders. Less than 4% of the total area leased is held by 21 licence holders. The number of independents in Norway is substantially below that of the UK. This is significant - considering that Norway will be the largest oil and gas producer in Europe after 1994.

iii) There are over two hundred participants in the Australian industry of which less than a hundred are actual owners of oil and gas reserves. Despite the large number of players, 86% of the oil and gas reserves is in the hands of nine companies. Among these nine significant owners of the reserves are three Australians and the rest are international majors.

iv) In the Netherlands there are a total of 64 licence holders of which 20 companies hold around 85% of the total leases as the principal licence holders. Less than 15% of the total area leased is held by 44 licence holders. What contrasts Holland with the other two is the lower concentration of the principal licencees - 85% against 94% in the UK and 96% in Norway.

The consultant has not been able to obtain the comparable distribution figures for Alaska. This comparison could be carried out perhaps at a later date with the help of the Department of Natural Resources.

2.5 - A Look at Two More Tax Jurisdictions Relevant for Comparison with Alaska: The Netherlands and Canada

At the January meeting of the International Tax Comparison Committee it was requested that the comparative study of taxation for Alaska should include a brief review of the tax and industry activities in two more regions: The Netherlands and Canada.

i) Dutch Petroleum Taxes and Environment

Although Dutch offshore activities can be regarded as being in the mature phase, the oil industry has witnessed a growing number of takeovers. Moreover, assets have been changing hands more frequently in recent years. It is evident that interest in the Netherlands is rising and oil companies, both large and small, have paid premium prices for the purchase of assets in this area. A good example is the purchase of such assets by a British independent in October 1988.

Furthermore, when the Dutch seventh round of licensing took place during 1988 (over the period 1 October to 30 December), 115 applications were received from 23 different consortia amounting to 59 different companies. A brief overview of the Dutch taxation system is given below.

Netherlands Fiscal Regime

The Dutch Petroleum Tax Regime has two main components which are mutually dependent. Thus the computation of the tax liability is in a way similar to the solution of a simultaneous equations system. There are two types of licences - 'old' and 'new'. This distinction essentially amounts to a ring fence whereby losses from one group cannot be offset against profits from another.

a) Royalty:

Royalty is charged on a field depending on its production rate and the time when the licence was first awarded. The rate is halved if there is state participation in a given licence. Royalty rate does not exceed 16%.

b) Profit Share Tax (PST):

Due to the simultaneity problem mentioned above, it becomes imperative to compute provisional values of profit share tax and corporation tax (explained below). Thus, the provisional PST estimate is income less royalty, operating cost, depreciation and uplift. Uplift is at the rate of 70% for new licences and 50% for old licences. When the provisional corporation tax calculation has been made the final liability of PST can be computed taking the provisional CT into account. PST is paid in two instalments with on average a delay of about seven months.

c) Corporation Tax (CT):

Corporation Tax is provisionally calculated on approximately the same basis as PST and is not subject to any ring fence provisions. Once the final PST calculation has been made, liability for CT can be calculated with the PST incurred removed from the income liable for taxation. CT is payable on average 18 months after liability is incurred. From March 1988 Corporation Tax has been 35%.

ii) Canadian Petroleum Taxes and Environment:

When examining the Canadian system it is important to note that the country has a very heterogeneous mixture of fields located in different parts of the country. There are considerable variations in field sizes and field costs.

The oil and gas fiscal system underwent major revisions from the mid-1980s which were introduced by both the Provincial Governments of Canada and the Federal Government. The prime intention of this revision was to devise a system that was geared to market forces in the oil and gas industry.

Most significant was the abolition of Petroleum & Gas Revenue Tax (PGRT) both for new fields (with effect from 1985), and for fields already in production (with effect from 1988). The PGRT on the latter category was gradually reduced to zero over a period of three years.

Parallel to the cut in taxes was the removal of investment tax credit in 1988. By the summer of 1989 Corporate income tax became 33%. Currently no provincial taxes exist for offshore oil production.

In Alberta, the current provincial royalty formula takes account of three major factors: i) the time of discovery, ii) the level of oil prices, and iii) the volume of well production. The major tax reliefs are royalty holiday, royalty tax credit and royalty rebates.

The reformed tax system (after the National Energy Program of 1985) applied to Alberta is quite complex and details of the structure of the tax are beyond the scope of this report. [For further information see Dept. of Energy, Mines & Resources of Canada Report (1985): The National Energy Program (Ottawa, Canada).]

The tax scheme introduced after the National Energy Program provides incentives for further exploration particularly in Alberta. Indeed, compared to most oil producing regions of the world, the Canadian tax system is more conducive to exploration activities.

Three - INTERACTION OF GOVERNMENT AND OIL INDUSTRY

It has happened in many regions that at the time licences for exploration and development of fields are given, the government of a particular region has had a fairly lax attitude towards taxes and royalties. Once the industry has taken all the risks and sunk funds into investment - having found it profitable on the basis of the initial calculation - the government then revises the tax upward (sometimes gradually and sometimes more steeply) and prevents the investors from acquiring the rewards for which they took the initial risks. This happened in the 1970s in Britain as a result of decisions taken by the Labour Government which was in power between 1974 and 1979.

3.1 - BRITAIN

The deterioration of relations between the British Government and the oil industry during the 1970s can best be explained through the experiences of an American oil independent called Mesa Petroleum [as narrated by the company chairman T. Boone Pickens Jr. in Boone (1978), Hodder & Stoughton Ltd., Great Britain, pp 112 - 121]. Mesa Petroleum, now worth around $3 billion, both entered and exited the UK North Sea during that decade.

After the discovery of oil in the North Sea in 1965, the British Government gave 50,000-acre tracts free to any company who undertook to carry out exploration in that region. Mesa Petroleum obtained two licences in the early 1970s and explored for two years. By the mid-1970s they had a discovery. This was the Beatrice field, named after the chairman's wife.

While the American independent was exploring and spending millions of dollars, a new Labour Government came into power in 1974 and the rules changed. They created a state oil company named the British National Oil Corporation (BNOC). Oil companies were told then that they had to negotiate with BNOC who wanted "participation".

Mesa protested to the UK Government that they had signed an agreement with their company. The response they received was, says the chairman of the company, "If I didn't like the terms, they could make things a lot worse for us".

Mesa entered into a series of long and arduous negotiations with the UK Department of Energy and was finally told by an official there, "You might as well give up. This has been decided." BNOC took a twenty percent interest in the field. To Mesa this was an unusual 'collaboration', since the new partner had no financial risk but had a veto power on everything. This included Mesa's expenditure. They discovered that "the original partners of the field would continue to share all the risks and costs of developing the field". As Mesa's chairman put it, "This was the British idea of partnership".

The BNOC representatives were present at all the operator meetings and applied their veto power wherever they chose.

The Labour Government's treatment of the industry worsened with successive upward revisions of taxes in those years to the point that the oil companies felt they left little reward for taking risks.

In 1978 Mesa complained to an official of the Department of Energy how they were wasting their money on the one hand and increasing their taxes on the other, leaving them with little profit. This could force them to leave.

The official replied, "Oh you'll stay. We have studied people like you. You are an entrepreneur. You have to keep risking your money, because that's the way you are". That statement turned out to be the straw that broke the camel's back. Mesa at that point made a final decision to leave the UK and sell off their North Sea operation. "If there is no profit, an entrepreneur isn't going to be interested very long," said the chairman of Mesa to the DOE official.

BNOC had the option to buy the production from any field, should a partner wish to sell. This proved another arduous and agonising ordeal for Mesa when negotiating a price with the state oil company. Mesa finally left Britain in 1979 with $31.2 million profit. But to them this was not such a good deal, for they sold their largest discovery at a wholesale price.

When the Conservatives came to power in 1979, after an initial phase of tax increases, the petroleum fiscal policy was reversed and the system became more profit oriented. Downward revisions were introduced year after year. Accordingly, exploration and development activities in the UK side of the North Sea responded positively as shown in Fig. 1 and Fig. 2.

Parallel to the increased level of activities was a reduction in UK government revenue from the oil and gas sector as portrayed in Table 1. This decline in revenue, which is partly due to the collapse of oil prices in 1986 and partly due to reduced production, reflects the magnitude of exploration costs offset against taxation. Moreover, Fig. 3 shows that the substantial drop in UK government revenue is not matched by a significant fall in oil and gas production during the years 1986,'87 and '88. The fall in production in 1988 was partly due to the shutdown of fields caused by accidents such as that of the Piper Alpha field.

In 1988 at a gathering organised by the consultant, the Labour Party Spokesman for Energy addressed some two hundred senior executives of the oil industry. His only message seemed to be "Tell us what you want and we shall act upon it." This was interpreted by the attendants as a sign that the Labour Party had no clear direction. Many of the participants left the meeting relieved that the Labour Party were not in power, not having forgotten the party's grim policies of the mid- and late 70s.

Presently the UK is one of the most attractive regions for exploration and development from a taxation point of view. Suffice it to say, the shortfall in revenue from the oil and gas sector could be readily absorbed by the government, for it coincided with its privatisation of many large corporations, such as British Gas, British Telecom, British Airports Authority, etc.

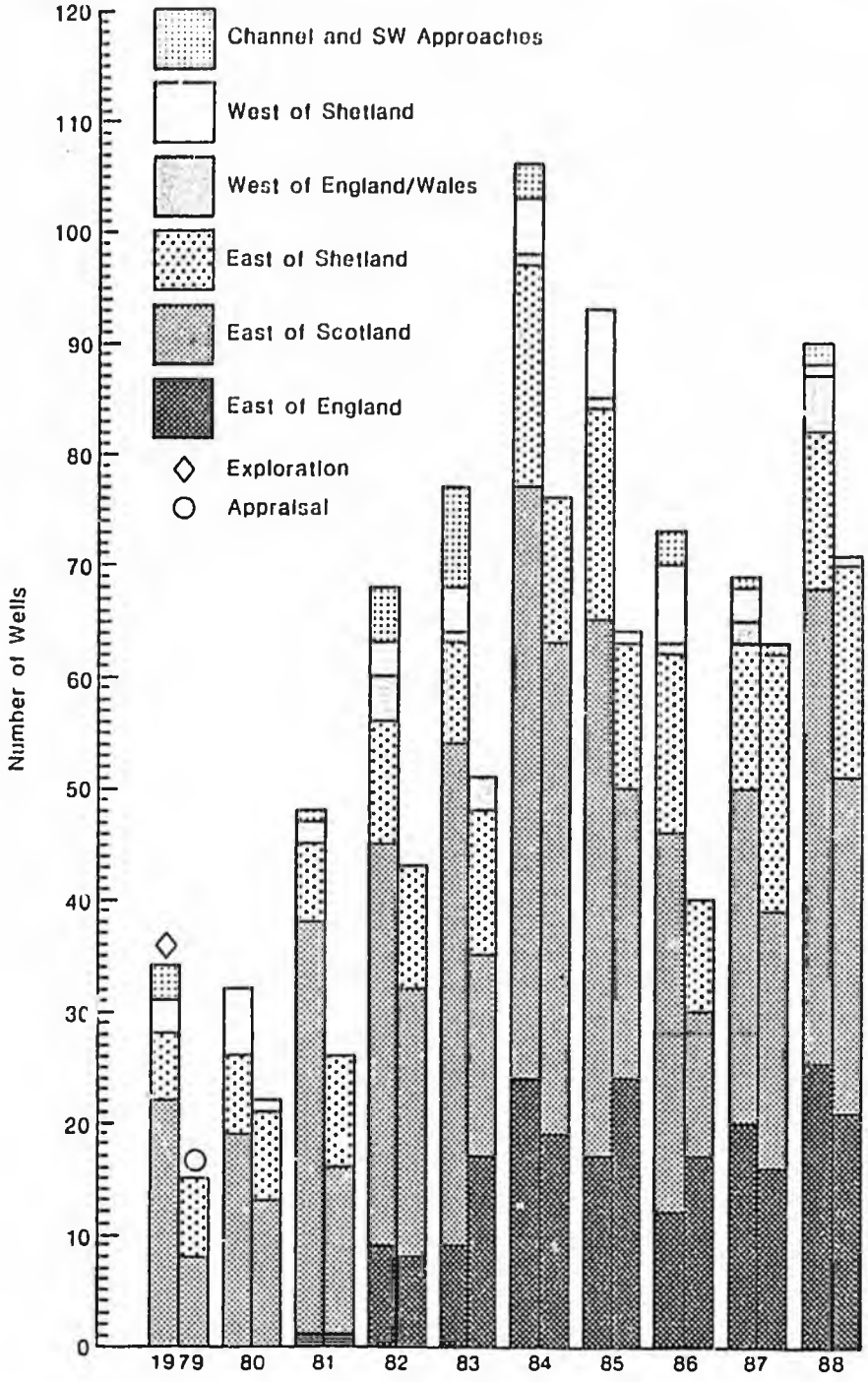
If one looks at forecasts made for the UK future oil production profile made in the early 1980s, a sharp decline was foreseen for the end of the decade with the peak projected for 1984/5. In fact this trend proved incorrect and the decline has been much less severe. This can to some extent be attributed to the continual revision of taxes and, hence, encouragement given towards further investment by the government.

Table 1: TAXES AND ROYALTIES ATTRIBUTABLE TO UK AND UKCS OIL AND GAS

Financial Year	1979/80	1980/1	1981/2	1982/3	1983/4	1984/5	1985/6	1986/7	1987/8	1988/9 (prov)
(£ Million)										
Royalty	628	992	1396	1632	1904	2426	2057	919	1024	600
Supplementary Petroleum Duty	-	-	2025	2395	-	-	-	-	-	-
Petroleum Revenue Tax	1435	2410	2390	3274	6017	7177	6375	1188	2296	1300
Corporation Tax	250	341	681	521	877	2425	2917	2683	1350	1300
Total Revenues	2313	3743	6492	7822	8798	12028	11349	4790	4670	3200

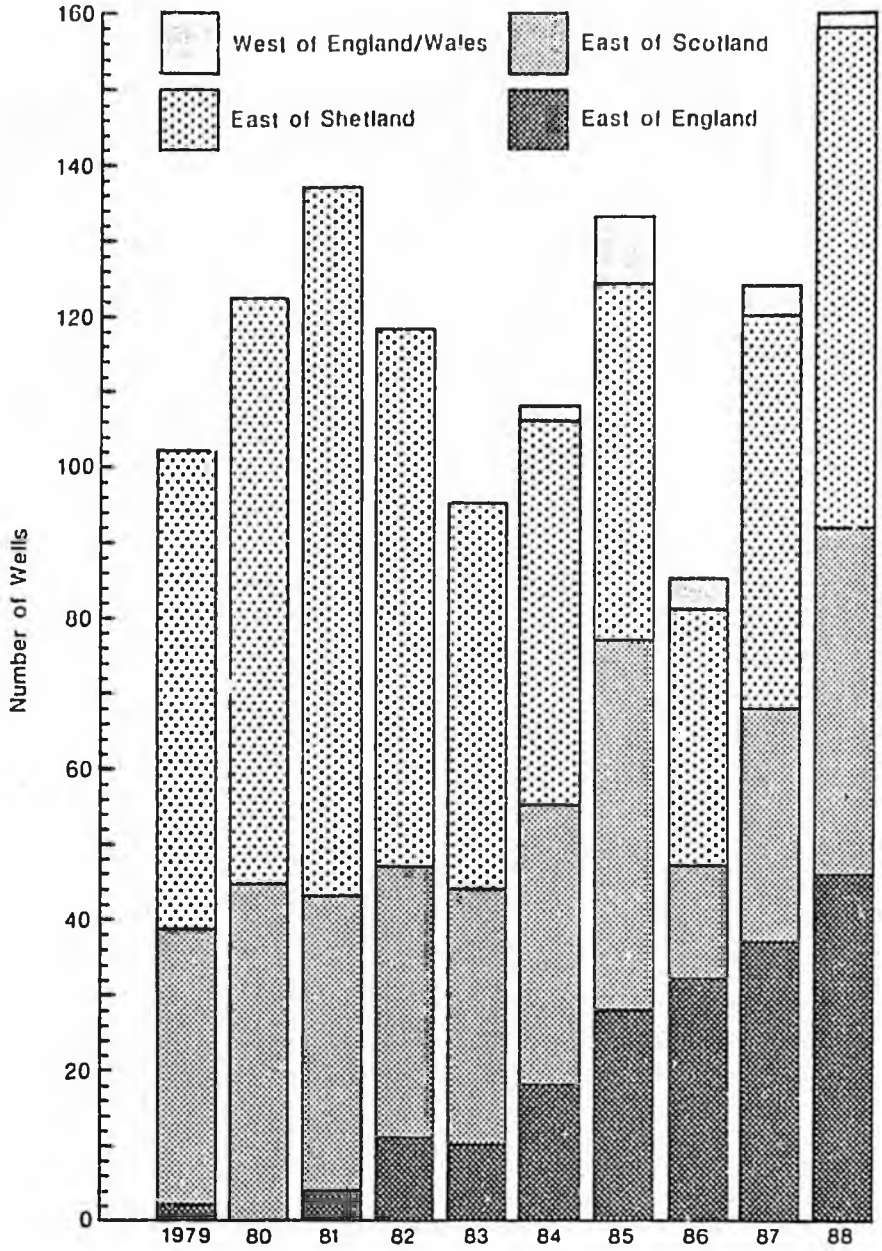
Source: UK Department of Energy, The Development of Oil & Gas Resources of the United Kingdom, London, HMSO, April 1989.

Fig. 1: OFFSHORE EXPLORATION AND APPRAISAL WELL DRILLING



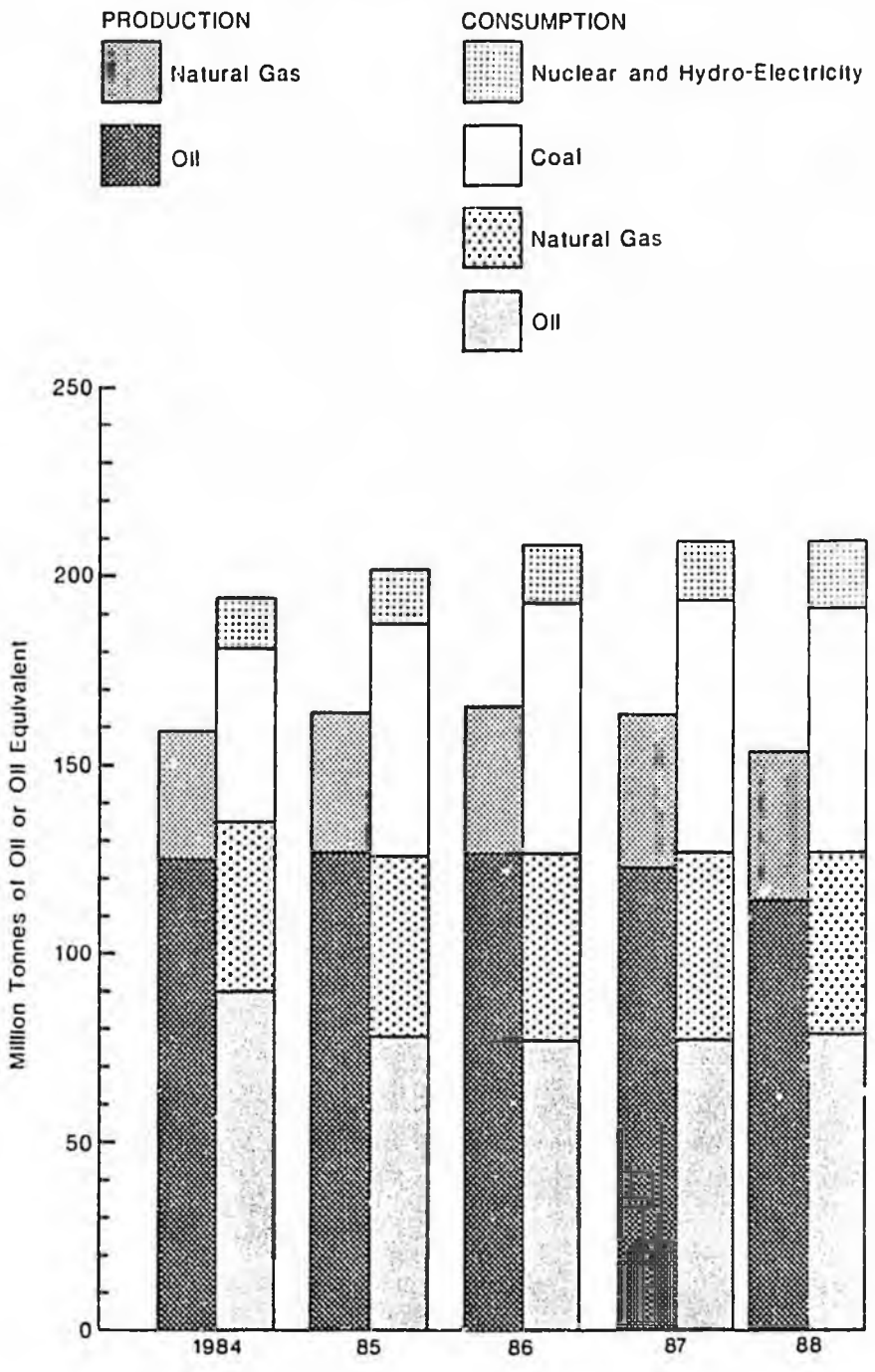
Source: UK Department of Energy, The Development of Oil & Gas Resources of the United Kingdom, London, HMSO, April 1989.

Fig. 2: OFFSHORE DEVELOPMENT WELL DRILLING



Source: UK Department of Energy, The Development of Oil & Gas Resources of the United Kingdom, London, HMSO, April 1989.

Fig. 3: UKCS AND ONSHORE OIL AND GAS PRODUCTION COMPARED WITH UK TOTAL PRIMARY FUEL CONSUMPTION



Source: UK Department of Energy, The Development of Oil & Gas Resources of the United Kingdom, London, HMSO, April 1989.

3.2 - CANADA

In July 1987 a British company made an offer to purchase 50 per cent of the shares of a publicly quoted Canadian oil and gas company. The company, worth then about C$800 million, was based in Alberta and owned substantial assets in the UK North Sea, which were of interest to the large British company.

The offer was approved by the Board of Directors of the Canadian company and the British firm was led to believe that the acquisition would be approved by the Canadian Government.

About a year prior to the offer, the Canadian Government had decided to reverse its interventionist policies and had opted to actually encourage foreign investment in Canada. It changed the name of the quango hitherto called "FIRA" (a foreign investment review body) to "Investment Canada". Indeed, the name itself had the connotation that the state was in favour of the flow of capital to the country. But this turned out not to be the case when the British firm's offer was presented for government approval. The former was given a great deal of trouble having already announced the deal to its shareholders.

The executives of the Canadian firm had to carry ou' tiresome negotiations trying to untangle the bureauc' n Ottawa while at the same time maintaining the inte' nd goodwill of the British investing firm.

In the end the government in Ottawa did not give i' d the British company had to split its 49% shareholding to ' voting shares and the remaining 19% non-voting Z shares.

Following this incidence, and to avoid further adverse publicity, the Canadian Government attempted to r' generate interest and encourage the flow of investment from abro ad.

In November 1987 a Belgian oil and gas company attempted to enter Canada by making acquisitions. Again the barriers posed by the government forced the company to return empty-handed.

The Canadian protectionist policies have indeed been damaging and counter-productive. Presently the government is in severe financial difficulty suffering from a large budget deficit. Somehow the policy-makers seem to ignore the economic reality that the lower the level of investment, the lower the level of activity, and, hence, the less tax revenue available for government. Today the public sector debt-servicing burden in Canada is ten times higher than in 1975. Thus, to reduce the deficit a 7 per cent goods and services tax is to be introduced from January 1991.

3.3 - AUSTRALIA

Australia is a federation of six States and two Territories (Canberra, known as the Australian Capital Territory, and the Northern Territory).

In an effort to improve the mounting balance of payments deficit, the Australians imposed a revenue tax on production at the time of high oil prices. This tax has not been reduced proportionally as the price of oil halved.

In June 1987, the Australian government introduced some tax concessions where the excise tax was to be cut from 80% in 1986/87 to 75% in 1989/90.

These modifications were not, however, considered adequate. For the combination of the excise tax and the corporation tax brought the government take on a barrel of oil to 88%. The industry tried to exert further pressure on the government to ease oil taxation.

In November 1988 some 25,000 barrels of production in the Bass Strait was shut down. Following this, in January 1989, the Australian government proposed a new sliding scale of taxes for certain fields in the Bass Strait (regarded as a mature area for so called "old oil").

The new arrangement was announced as a "non-negotiable" sliding scale to replace the existing 77% rate that applied to half of the Bass Straight oil. The range of the sliding scale was between 77% at an oil price of above A$21 a barrel and a minimum of 55% if the price dropped to A$8.

In May 1989 a European oil giant put up for sale all its Australian oil and gas production assets, after 27 years of exploration search. A statement made by the head office of the company said these assets were no longer within the international policy of the group.

The sale of the above assets coincided with another divestment: that of a UK independent of its Eastern Australia assets, although it should be pointed out that the company in question has simultaneously been expanding its North Western Australian activities.

Finally, another burden imposed by the state has been the policy of high interest rates pursued in Australia since last year. Thus, oil and gas investments that have required corporate financing or project financing have had to be postponed.

In June 1989 the government in Canberra launched a review of Australia's crude oil tax. The study is to be completed by mid-1990.

Table 2: AUSTRALIAN GOVERNMENT REVENUE FROM CRUDE OIL, NATURAL GAS & LPG

(A$million)	1983/4	84/5	85/6	86/7	87/8
COMMONWEALTH					
Crude oil excise	3593.6	4041.8	4310.6	2195.4	-
LPG excise	92.9	69.4	81.9	37.6	-
Crude oil & LPG total	3686.5	4111.2	4392.5	2233.0	2193.7
Crude oil & LPG refunds	12.5	3.5	102.1	236.6	71.0
Total	3699.0	4114.7	4494.6	2469.6	2264.7
VICTORIA					
Royalties on production	173.7	197.5	202.8	147.3	144.1
Total	173.7	197.5	202.8	147.3	144.1
QUEENSLAND					
Royalties crude oil	2.2	18.9	32.6	17.6	22.7
Royalties natural gas	2.5	2.6	3.2	2.3	3.6
Royalties LPG	-	-	-	-	0.2
Total	4.7	21.5	35.8	19.9	26.5
SOUTH AUSTRALIA					
Royalties on production	11.1	24.3	47.5	26.3	28.8
Total	11.1	24.3	47.5	26.3	28.8
WESTERN AJSTRALIA					
Royalties crude oil	14.8	13.8	29.3	21.9	23.8
Royalties natural gas	3.4	3.8	3.6	4.8	4.9
Royalties condensate	-	-	-	-	1.3
Total	18.2	17.6	32.9	26.7	30.0
NORTHERN TERRITORY					
Royalties crude oil	-	0.8	2.1	1.3	0.6
Royalties natural gas	-	0.1	0.1	0.5	1.0
Total	-	0.9	2.2	1.8	1.6
TOTAL AUSTRALIA	3906.7	4376.5	4815.8	2691.6	2495.7

Source: Australian Bureau of Statistics (annual reports and budget papers of relevant State and Northern Territory departments).

3.4 - NORWAY

Oil and gas production commenced in 1971 when the Ekofisk field started production. In Norway the state (through 'tatoil) participates directly on the investment side of the siness. Statoil has gone through a change of organisation and after a period of overrunning cost, the company is quite profitable now. However, privatising this company is not likely to happen in the near future.

The former Norwegian Minister (of the Labour Party) who was in power until Autumn 1989, was a strong advocate of regulating the offshore oil and gas developments and carried out interventionist policies. For instance, the sales of Norwegian gas are negotiated only by three domestic companies. These restricting policies brought about a reduction in activity in Norway and reduced exploration activities. Compared to the UK North Sea, where on average 160-170 wells are drilled each year, in Norway the number has been dwindling rapidly from 50 exploration wells in 1985 to around 25 in 1989.

Table 3: ROYALTIES IN 1987 AND 1988 (NOK MILLION)

		1987	1988
OIL	Ekofisk/Valhall/Ula	1190.8	1029.1
	Statfjord	4832.6	3321.9
	Murchison	14.5	21.5
	Heimdal	-12.4	-0.3
	Oseberg	33.0	12.9
	Gullfaks	82.5	165.2
GAS/NGL	Ekofisk Fields	545.3	415.7
	Valhall	14.7	0.4
	Ula	-2.6	-1.2
	Frigg/Ne Frigg/Odin	785.0	521.4
	Statfjord	5.6	0.0
	Murchison	-0.3	0.2
	Heimdal	27.8	-6.0
	Gullfaks	0.0	0.0
TOTAL ALL FIELDS		7516.7	5480.9

Source: The Norwegian Petroleum Directorate, Annual Report 1988.

Table 4: CENTRAL GOVERNMENT INCOME FROM OIL ACTIVITIES IN NORWAY, 1981-1988

Year	1981	1982	1983	1984	1985	1986	1987	1988
(Million kroner)								
Royalty	3639	5308	7663	9718	11626	8211	7517	5481
Special tax on oil income	4955	8062	8870	11078	13013	9996	3184	1072
Ordinary tax on property, capital and income	9912	13804	14232	18333	21809	17308	7137	5129
Area tax, etc.	63	69	75	84	219	237	243	184
Total	18569	27243	30840	39213	46667	35752	18081	11866

Source: Norwegian Central Government Account.

In 1987/88 there were major revisions to the Norwegian tax regime in order to induce development of new fields. But a suspicion has existed on the part of industry that the Norwegian government had simply modified the tax law with a view to making certain petroleum development projects more attractive. Industry has felt that the modification would disappear as soon as the projects had been developed and profitable production started flowing.

Whereas in the UK part of the North Sea the relationship between industry and the government has been quite good in the '80s, in Norway there are cases of litigation between the government and the oil industry. For example, in December 1989 partners of the state oil company on the Ula field took their claim regarding excessive pipeline tariffs to arbitration. The field's operator, a British company, pleaded that the tariffs charged by the state oil company for the use of its pipeline (i.e. the Ula/Ekofisk line) are unreasonably high. Thus, the partners are demanding a 50% reduction on the tariffs on the grounds that they were set when the price of oil was around $30 a barrel. The state oil company, on the other hand, argues that the alternative of buoy-loading or construction of a line owned by all the Ula partners was presented to the partners. Yet, they all opted for the state oil company to build the entire pipeline alone.

A new Minister of Petroleum and Energy was appointed in October 1989 when the Centre Party came into power (as part of a new non-socialist coalition). Following his appointment some oil companies began to lobby the government for modifications in licensing terms enabling them to take greater risks. In November 1989 the new minister indicated that he would be "open to companies' creativity, if this can stimulate exploration which otherwise would not have taken place". Subsequently, he introduced revisions to the terms of some of the existing licences. At the end of November 1989 he confirmed "the dropping of the state's right to have its exploration costs met - or carried - by other partners in the block".

3.5 - INDONESIA

Indonesia produces 1.7 million barrels per day in line with its OPEC quota. During the fiscal year 1988/89 the government revenue from oil and LNG (as shown in Table 5 below) comprised 41% of the total domestic revenues collected. With the weaker oil prices during 1988 the hydrocarbon revenue for the year 88/89 fell by 5%. This income is expected to rise by 36% in the year 89/90.

Table 5: INDONESIAN DOMESTIC REVENUE FISCAL YEAR 1988/89

	(in trillion rupiah)		(billion US dollars)	
Hydrocarbon revenues		9.5		5.6
Oil	8.3		4.9	
LNG	1.2		0.7	
Non-hydrocarbon		13.5		8.0
Total domestic revenue		23.0		13.6

Daily average production of oil during 1989 was 809,050 and the yearly production of liquefied petroleum gas has been 18.5 million of LNG.

A split of 85 : 15 (between government and industry) existed until August 1988. But for frontier areas the government offered a revised profit-sharing arrangement. Under this scheme, at lower quantities of oil production, a bigger share was to be attributed to the company and the reverse was to take place at higher production.

This change was necessary because the 85 : 15 split did not differentiate between the high cost and low cost fields.

In February 1989, the government improved the production sharing agreement further by giving an investment credit for deep sea contracts. At the same time the gas pricing policy was changed and was based on the production cost of different fields instead of the previous basis, namely, the type of the end user.

Although these revisions were welcomed by industry, the general reaction is that a great deal more revisions would be required to attract significant expenditure on exploration. There is a belief by oil producers that the improved terms have to apply to existing contract areas where actual production and enhanced recovery take place. Nevertheless, the number of foreign companies keen to sign contracts has been rising. There are altogether more than forty foreign companies active in Indonesia.

3.6 - MECHANISMS THAT IMPROVE INDUSTRY/GOVERNMENT RELATIONS

The relationship between industry and government improves only through closer contacts and frequent informal meetings. In the UK the Secretary of State for Energy or the Junior Ministers of the Department of Energy are often invited to informal lunches by both industry and the financial community. On these occasions companies are able to express their views freely and the government is able to 'hear'.

Usually when the invitation is from industry it is arranged by a single company and its views, which contain information of a proprietary nature, can be expressed openly without the presence of competitors. Government officials (be it Ministers or Members of Parliament concerned with the oil industry) are accompanied by their advisors who would supply them with necessary information should a specific issue be raised. In addition Ministers are accompanied by their Parliamentary Private Secretary who is another Member of Parliament.

There seems to be a lack of such opportunities in Alaska. It is helpful to allow industry the chance for such meetings on a single company basis due to the confidential nature of the business information. Moreover, opportunities have to be given to the financial community to host lunches with both government officials and representatives of industry present. This eases the flow of information and forward movement of activity. Moreover, the private sector can gain useful knowledge and advice from the government.

In Norway there is a government body, the Norwegian Petroleum Directorate, which acts as coordinator between different departments. It was set up in 1973 and has regular meetings with both industry and different government departments. With the expertise, experience and interdisciplinary insights it represents, it evaluates economic, technological and safety-related aspects of the petroleum resources.

As far as attraction of overseas companies is concerned there seems to be a perception on the part of the Government of Alaska that it cannot be seen to promote investment from abroad into the state. This is in sharp contrast with most countries where public sector officials actively promote foreign investment. In the UK even the Prime Minister makes frequent trips abroad specifically discussing the issue of the flow of investment into the United Kingdom. The same is true of Norway, Australia and Indonesia.

Four - COORDINATED GOVERNMENT POLICY

A striking feature of the Alaskan oil and gas scene is the lack of coordination between different government agencies active in the sector. It has been clear to the consultant through various contacts with representatives of the state government that there is an absence of an exchange of information and ideas on a constructive basis.

In the United Kingdom the Inland Revenue is under the direct auspices of the Treasury which in turn determines the taxation structure.

The former also works very closely with the Department of Energy (DOE) in formulating taxation policy. Naturally the Inland Revenue is privy to confidential information which it does not divulge to the DOE. However, it is able to receive the advice and recommendations of the latter as to what type of tax relief could further stimulate activity in the oil and gas sector. This is then fed to the Treasury through the computations put forward by the Inland Revenue. Finally the the Chancellor of the Exchequer decides upon the necessary tax revisions and announces them in the Budget each year in March.

An official of the Inland Revenue or the Treasury is often present at the meetings of the Department of Energy with the financial community or industry. Moreover, there is a liaison between the Department of Trade and Industry (DTI) and the Department of Energy. Where an oil development project cannot get off the ground because the contractors require financial guarantees, the DTI undertakes the necessary guarantees.

An example is the development of the Emerald field. Following the approval of the Annex B (i.e. the development consent) by the Department of Energy, assistance came from the Department of Trade and Industry. As the chairman of the operator of the field stated in their 1988 Annual Report, "The contractor's finance could not have been completed without the support of the Department of Trade and Industry, who guaranteed a £94 million package of equipment and service from British suppliers." This created 2,000 jobs for the industry in the UK.

As far as the relationship between the Alaskan Department of Natural Resources (DNR) and the Department of Revenue, there should be more coherence between their respective policies for the best interests of the state. Specifically, the former can formulate tax policies with the help of the latter to achieve the highest level of exploration and development. Accordingly, the DNR can encourage further development of the petroleum sector by the awarding of licences through a merit system. Companies acting in the best interests of the state would be given preference in the granting of new licences.

Moreover, the entry of the smaller explorers would be brought closer by relaxing some of the terms stipulated for new acreage releases. Many junior oils are looking at investment outside their own countries, having found their domestic opportunities dwindling, e.g. in Australia.

It would be useful if there were a review of work commitments by the Alaskan Department of Natural Resources as to how companies have utilised their exploration licences and how much actual drilling has been performed. There seems to be a belief in the Department of Natural Resources in Alaska that everything should be left to the market and the companies know best. If companies are not exploring, there must be a good economic reason for it. This is not necessarily true. What holds at microeconomic level does not necessarily hold at macroeconomic level, and, in a competitive market, what is good for one company may not be good for another.

Five - ENCOURAGEMENT/ROLE OF INDEPENDENTS

As far as encouragement of the independents into Alaska is concerned, perhaps there are some lessons to be learnt from the UK.

A Select Committee was set up by the UK Government in 1988 which examined the future of the British independents. The main finding of the study was that the independents have made a significant contribution to the development of oil and gas in Britain. Furthermore, the report recognised the importance of their ongoing role. The committee concluded that they wished to see an enhanced capability for the independents.

The UK Department of Energy has been encouraging the development of small British independents by granting them approval to act as field operators. This is a change of policy on the part of the government in recent years, for historically the responsibility of acting as an offshore field operator has been placed in the hands of the oil majors.

Six - CONCLUDING REMARKS

There would be a great many petroleum companies worldwide who would be interested in entering Alaska. Thus, if faced with the threat of closure or departure by some companies, the government of Alaska should be reassured that there would be others willing to enter the region should the opportunity present itself. In addition there would be abundant external finance available for investment.

In the international petroleum scene today there are always companies who are willing to offer prices over and above what would be classed as 'commercial terms'. They pay such prices in order to achieve their longer term objectives of expanding their upstream positions.

Furthermore, it would be just as effective to introduce the foreign banking community to Alaska, as it is to expose the industry worldwide to Alaska. For the bankers themselves would carry out half the task of encouraging further investment into Alaska through their own fervour for initiating deals, as explained in detail in section 1.11.

This should not be misinterpreted as saying the State of Alaska is short of capital and, hence, so few oil companies are active in the region. Rather, the call for energy-oriented bankers is for their ability to circulate further information about opportunities in Alaska among the international oil industry. The stimulus the financial community is able to make can be quite effective for the encouragement of newcomers into Alaska. The term 'opportunities' in this instance embraces a variety of activities, viz. development of a field, farm-ins, acquisition of a producing asset, or even exploration. Accordingly the investment by the newcomer would be undertaken to suit the company concerned.

It would be up to the Government of Alaska to bring the opportunities to the attention of both foreign oil companies and the foreign banking communities. One possible way would be through sponsoring various conferences on 'The Oil and Gas Scene in Alaska' - inviting both a large number of oil companies absent from Alaska as well as the energy-oriented international banking community. The desired result would not be instantaneous. Such an initiative would be a starting point that can bring about further awareness for outsiders. But the reminders have to continue in a frequent manner if the momentum is not to be lost.

All the government would be doing in this case would be to create the environment - reminding the independents that their presence would be desirable. The rest of the thinking would be done by industry if the environment is found conducive to investment.

The superiority of Alaska as an investment region can be summarised by way of a checklist, itemised in Sections 1.6, 1.7, 1.8, 1.9, 2.2, and 2.3 above.

For funding purposes the ranking given by the financial community is the following: 1) UK, 2) Norway, 3) Australia and 4) Indonesia.

Suffice it to say when an oil company considers entering a new area tax is but one factor out of many. When it contemplates exiting, tax may be the only factor.

In examining Alaskan taxes one has to ask the question: does the fiscal system guarantee a maximum tax payable on a given field? This guarantee exists in the British system by way of a tax clause known as "safeguard". Such a provision acts as a check between the flow of income in relation to the capital sunk in the project and, hence, the payment of tax.

Another factor when examining the Alaskan Tax system is to see whether there is consideration for profitability of a field by specifically looking at the payback period, i.e. when it breaks even. This provision is met in the UK tax system by allowing uplift of 35% on capital expenditure until the field reaches payback.

In analysing the effect of a change in oil taxes it is important to study the different characteristics of the companies active in the State and compare the mixture with other areas. Any changes in the oil taxation have to be examined in relation to the balance of the losers and gainers (see Section 2.4).

If the government is concerned about its immediate income as well as the future of oil activity in Alaska, there is one strategy that can be considered. That is a tax change which is revenue neutral and at the same time makes the tax system more related to profits of a given field. This can ensure that there is no immediate loss of revenue. At the same time it gives the industry the comfort that if profits decline (as a result of oil price falls or cost escalation), they pay less tax.

The neutrality of revenue can be achieved through, say, abolition or reduction of royalty and simultaneous reduction of allowances. In the case of the UK it was done through halving of oil allowances. If Alaska does not have an oil allowance, then it can be done through perhaps reduction of cost allowances.

A key question is whether there is any evidence that the current Alaskan fiscal regime has deterred investment from the State. Have there been opportunities to invest which have been refused by industry?

The state government should have the authority to reduce the royalty/tax if it believes this would lead to the recovery of petroleum which would otherwise not materialise. This happens in other jurisdictions, e.g. in Australia the Commonwealth Government has such a power.

Finally, an issue of concern is how much has the state of Alaska helped the oil industry tax-wise since the collapse of oil prices in 1986 up to the present compared to other tax jurisdictions. As everyone knows, the price of oil went from the mid-twenties dollar a barrel in 1985 down to as low as $8 in 1986 and oscillated between $22 and $12 since then. Has there been a downward revision of tax or up-front relief during this period?

Although since the collapse of oil prices in 1986 there haven't been much external funds available for pure exploration (particularly for start up positions), this picture is expected to change in the 1990s.

It is almost inevitable that the commercial interests of a company may differ periodically from that of the state. Tension may arise from time to time between the government of the country in which it operates (in particular the Department of Revenue) and the company.

The Group Managing Director of the Royal Dutch Shell Group, John Jennings, made an interesting statement in a recent speech which has an important message for both the industry and for governments. "Mechanisms are available," he said, "which effectively meet the legitimate aims and aspirations of all, without any of them [resource holders or investors] being required to forego what they have come to regard as essential rights and controls". In the opinion of this consultant one of the most effective methods is the continual dialogue between the state and the industry.

ment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

(June 25, 1947, c. 125, § 8, as added Oct. 21, 1972, P. L. 92-516, § 2, 86 Stat. 987.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Prior to the enactment of Act Oct. 21, 1972, Act June 25, 1947, commonly known as the Federal Insecticide, Fungicide, and Rodenticide Act, was classified as 7 USCS §§ 135 et seq.; see notes to former 7 USCS §§ 135 et seq.

Effective date of section:

For the effective date of this section, see § 4 of Act Oct. 21, 1972, P. L. 92-516, 86 Stat. 998, set out at 7 USCS § 136 note.

CODE OF FEDERAL REGULATIONS

Books and records of pesticide production and distriction, 40 CFR Part 169.

CROSS REFERENCES

This section is referred to in 7 USCS §§ 136j, 136o

RESEARCH GUIDE

Annotations:

Adequacy, under Federal Constitution, of immunity granted in lieu of privilege against self-incrimination—Supreme Court cases. 32 L Ed 2d 869.

INTERPRETIVE NOTES AND DECISIONS

Evidence obtained by government from visits to consignees was admissible, even though addresses and names had been acquired from inspection of records of defendant. United States v Weinreb (1951, DC NY) 99 F Supp 763.

§ 136g. Inspection of establishments, etc.

(a) In general. For purposes of enforcing the provisions of this Act [7 USCS §§ 136 et seq.], officers or employees duly designated by the Administrator are authorized to enter at reasonable times, any establishment or other place where pesticides or devices are held for distribution or sale for the purpose of inspecting and obtaining samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices.

Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge of the establishment or other place where pesticides or devices are held for distribution or sale, appropri-

ate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If an analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(b) **Warrants.** For purposes of enforcing the provisions of this Act [7 USCS §§ 136 et seq.] and upon a showing to an officer or court of competent jurisdiction that there is reason to believe that the provisions of this Act [7 USCS §§ 136 et seq.] have been violated, officers or employees duly designated by the Administrator are empowered to obtain and to execute warrants authorizing—

(1) entry for the purpose of this section;

(2) inspection and reproduction of all records showing the quantity, date of shipment, and the name of consignor and consignee of any pesticide or device found in the establishment which is adulterated, misbranded, not registered (in the case of a pesticide) or otherwise in violation of this Act [7 USCS §§ 136 et seq.] and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device; and

(3) the seizure of any pesticide or device which is in violation of this Act [7 USCS §§ 136 et seq.].

(c) **Enforcement.** (1) Certification of facts to Attorney General.—The examination of pesticides or devices shall be made in the Environmental Protection Agency or elsewhere as the Administrator may designate for the purpose of determining from such examinations whether they comply with the requirements of this Act [7 USCS §§ 136 et seq.]. If it shall appear from any such examination that they fail to comply with the requirements of this Act [7 USCS §§ 136 et seq.], the Administrator shall cause notice to be given to the person against whom criminal or civil proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Administrator it appears that the provisions of this Act [7 USCS §§ 136 et seq.] have been violated by such person, then the Administrator shall certify the facts to the Attorney General, with a copy of the results of the analysis or the examination of such pesticide for the institution of a criminal proceeding pursuant to section 14(b) [7 USCS § 136 *l* (b)] or a civil proceeding under section 14(a) [7 USCS § 136*l* (a)], when the

Administrator determines that such action will be sufficient to effectuate the purposes of this Act [7 USCS §§ 136 et seq.].

(2) Notice not required.—The notice of contemplated proceedings and opportunity to present views set forth in this subsection are not prerequisites to the institution of any proceeding by the Attorney General.

(3) Warning notices.—Nothing in this Act [7 USCS §§ 136 et seq.] shall be construed as requiring the Administrator to institute proceedings for prosecution of minor violations of this Act [7 USCS §§ 136 et seq.] whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

(June 25, 1947, c. 125, § 9, as added Oct. 21, 1972, P. L. 92-516, § 2, 86 Stat. 988.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Prior to the enactment of Act Oct. 21, 1972, Act June 25, 1947, commonly known as the Federal Insecticide, Fungicide, and Rodenticide Act, was classified as 7 USCS §§ 135 et seq.; see notes to former 7 USCS §§ 135 et seq.

Effective date of section:

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CROSS REFERENCES

This section is referred to in 7 USCS § 136j

RESEARCH GUIDE

Am Jur:

61 Am Jur 2d, Pollution Control § 105

§ 136h. Protection of trade secrets and other information

(a) In General. In submitting data required by this Act [7 USCS §§ 136 et seq.], the applicant may (1) clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information and (2) submit such marked material separately from other material required to be submitted under this Act [7 USCS §§ 136 et seq.].

(b) Disclosure. Notwithstanding any other provision of this Act [7 USCS §§ 136 et seq.], the Administrator shall not make public information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this Act [7 USCS §§ 136 et seq.], information relating to formulas of products acquired by authorization of this Act [7 USCS §§ 136 et seq.] may be revealed to any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.

(c) Disputes. If the Administrator proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under subsection (b), he shall notify the applicant or registrant, in writing, by certified mail. The Administrator shall not thereafter make available for inspection such data until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in an appropriate district court for a declaratory judgment as to whether such information is subject to protection under subsection (b).

(June 25, 1947, c. 125, § 10, as added Oct. 21, 1972, P. L. 92-516, § 2, 86 Stat. 989.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Prior to the enactment of Act Oct. 21, 1972, Act June 25, 1947, commonly known as the Federal Insecticide, Fungicide, and Rodenticide Act, was classified as 7 USCS §§ 135 et seq.; see notes to former 7 USCS §§ 135 et seq.

Effective date of section:

For the effective date of this section, see § 4 of Act Oct. 21, 1972, P.L. 92-516, 86 Stat. 998, set out at 7 USCS § 136 note.

CROSS REFERENCES

This section is referred to in 7 USCS §§ 136a, 136e

RESEARCH GUIDE

Forms:

9 Federal Procedural Forms L Ed, Environmental Protection §§ 29:252, 29:257.

INTERPRETIVE NOTES AND DECISIONS

1. Identification of data
2. Relief

1. Identification of data

Neither provision for compensation provided for in 7 USCS § 136a(c)(1)(D) nor that for nonconsideration of data protected by 7 USCS § 136h(b) can have any meaning or chance of actual application without specific delineation and identification of data which is to be used to support application for registration; specific identification is required in order to establish data involved and ownership of data. Dow Chemical Co. v Train (1976, DC Mich) 423 F Supp 1359.

2. Relief

In granting preliminary injunction, Federal District Court required that administrator of Environmental Protection Agency allow 60 days, after plaintiff had received notice specifically identifying information on which applicant seeks to rely, in which plaintiff may make any claim that information is protected from consideration by reason of 7 USCS §§ 136h(b) and 136a(c)(1)(D). Dow Chemical Co. v Train (1976, DC Mich) 423 F Supp 1359.

RESEARCH GUIDE

Am Jur:
61A Am Jur 2d, Pollution Control §§ 3, 247, 248, 254, 265.

Law Review Articles:
Hazardous Waste Management: A Symposium. 9 Capitol U L Rev 425, Spring, 1980.
Goldfarb, Hazards of Our Hazardous Waste Policy. 19 Natural Resources J 389, 1979.
Private Nuisance Approach to Hazardous Waste Disposal Sites. 7 Ohio North L Rev 86, Jan 1980.

§ 6927. Inspections

(a) **Access entry.** For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this title [42 USCS §§ 6901 et seq.], any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes and permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the development of any regulation or enforcing the provisions of this title [42 USCS §§ 6901 et seq.], such officers, employees or representatives are authorized—

(1) to enter at reasonable times any establishment or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from;

(2) to inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(b) **Availability to public.** (1) Any records, reports, or information obtained from any person under this section [(including records, reports, or information obtained by representatives of the Environmental Protection Agency)] shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information [informs], or particular

part thereof, to which the Administrator (or the State, as the case may be), or any officer, employee or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18 of the United States Code [18 USCS § 1905], such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act [42 USCS §§ 6901 et seq.], or when relevant in any proceeding under this Act [42 USCS §§ 6901 et seq.].

(2) Any person not subject to the provisions of section 1905 of title 18 of the United States Code [18 USCS § 1905] who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than $5,000 or to imprisonment not to exceed one year, or both.

(3) In submitting data under this Act [42 USCS §§ 6901 et seq.] a person required to provide such data may—

(A) designate the data which such person believes is entitled to protection under this subsection, and

(B) submit such designated data separately from other data submitted under this Act [42 USCS §§ 6901 et seq.].

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this Act [42 USCS §§ 6901 et seq.] shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(Oct. 20, 1965, P. L. 89-272, Title II, Subtitle C, § 3007, as added Oct. 21, 1976, P. L. 94-580, § 2, 90 Stat. 2810; Nov. 8, 1978, P. L. 95-609, § 7(j), 92 Stat. 3082; Oct. 21, 1980, P. L. 96-482, § 12, 94 Stat. 2339.)

HISTORY: ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

In subsec. (b), the bracketed word "informs" is inserted as the probable intent of Congress.

The phrase "(including records, reports, or information obtained by representatives of the Environmental Protection Agency)" appears in brackets in subsec. (b)(1) to conform to the probable intent of Congress, since Act Oct. 21, 1980, P.L. 96-482, § 12(b)(4), 94 Stat. 2339, which amended this section (see the 1980 Amendments note to this section), directed that such phrase be inserted in subsec. (b)(1), but did not specify the point of insertion.

HB 411

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM April 16, 1990

SUBJECT: SCS CSHB 411(Judiciary), 1990 Revisor's Bill

TO: Senator Jan Faiks
Chair, Senate Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

This memorandum discusses the enclosed committee substitute for the 1990 Revisor's Bill (HB 411), prepared after the subcommittee meeting on April 12. The following sections in SCS CSHB 411(Jud) were not in the bill as passed by the House: 13, 21, and 25.

To assist in understanding the bill, I have summarized the contents by grouping sections that have similar effects.

Sections that delete or repeal obsolete provisions: Sections 5, 10, 14, 15, 26, 27, 29 - 32, and 34 - 38 delete or repeal provisions that have become obsolete either through the passage of time or other legislative action.

Sections that update obsolete or archaic provisions, or improve the style of the statutes: Sections 1, 3, 8, 9, 12, 16 - 18, 20, 21, 25, and 33 substitute new provisions for provisions that are obsolete, archaic, or otherwise outdated, including improvements in the style of language for purposes of clarity.

Sections that eliminate conflicts with other laws: Sections 4, and 22 - 24 harmonize laws dealing with the same subject. Section 2 conforms the text of a law to its judicial interpretation.

Sections that correct errors or oversights: Sections 6, 7, 11, 13, and 18 correct errors or oversights in drafting.

SECTIONAL ANALYSIS

Section 1. This amendment, relating to the proper form for citation of provisions in the Alaska Statutes, reflects the fact that the form actually used for citation of the single digit titles of AS has been, for example, AS 01, AS 02, etc. Until the mid-1970's, the Legislative Drafting Manual gave drafters a choice between AS 1 or AS 01, etc., but for the past fifteen years the double digit form has been the legislative standard. Now that the world of data processing has enveloped us, it is important that we make the use of the double digit citation form official.

Sec. 2. The proposed amendment to AS 12.55.165 incorporates references to provisions enacted after 1982 within the internal reference. In Edwin v. State, 762 P.2d 499 (1988), the Alaska Court of Appeals held that sentences under AS 12.55.125(e)(3), and, by extension, (d)(3), are subject to referral to a three-judge panel under AS 12.55.165. The court read the sentencing statutes as a whole and concluded that the failure to incorporate references to the added provisions was a legislative oversight. The court invoked the doctrine that statutes should be construed "to avoid absurd results." 762 P.2d at 502. See also the November, 1989 Report to the Legislature Examining Court Decisions, page 42.

Sec. 3. This amendment is proposed to ensure that recipients of a Winn Brindle memorial scholarship loan may attend an accredited "school" (as permitted under AS 14.43.300(b)(5)) and are not required to attend a "college" or "university." The amendment should have been made in 1986 when the Winn Brindle memorial scholarship loan program was enacted. The amendment has been reviewed and approved by the Postsecondary Education Commission.

Sec. 4. AS 16.05.900(24) defines "resident" as a person who has maintained a permanent place of abode in the state for 12 consecutive months. Thus, the use of "has been a resident for one year or more" in AS 16.05.400(b) is redundant. The problem dates back to the 1983 amendment, which substituted "one year" for "30 consecutive years."

Sec. 5. The material to be deleted relates only to the initial terms of appointees.

Sec. 6. As enacted, a portion of this provision applied to children "between" the ages of four and six. Taken literally, that means it applies only to five-year olds. The legislature obviously intended that children aged four through six be included, and the proposed amendment would make that clear.

Sec. 7. The amendment would correct an erroneous reference in the original enactment.

Sec. 8. The 1978 revision of the criminal code introduced the crime of unsworn falsification. AS 28.35.130, which predates statehood, should have been amended at that time. A conviction for perjury could not be sustained under the circumstances described in AS 28.35.130, but a violator could be prosecuted for unsworn falsification. Thus the proposed substitution of terms.

Sec. 9. As enacted, "cancel" was defined as a noun. The amendment changes the definition to that of a verb, which is consistent with the usage of the term.

Sec. 10. The material to be deleted relates only to the initial terms of appointees.

Sec. 11. The language proposed for deletion adds nothing to the provision and, in any event, is confusing because it is incomplete.

Sec. 12. The amendment to the internal reference picks up two sections of AS 39.20 that need to have these definitions apply to them.

Sec. 13. Section 13 clarifies AS 41.21.302(c), as amended by a House floor amendment during the consideration of HCS CSSB 42(Fin), which became ch. 14, SLA 1990. Without this clarification, the Department of Natural Resources will not have clear direction as to the deadlines for preparation of state marine park management plans. The proposed language is based upon what I believe the legislature intended in approving HCS CSSB 42(Fin) am H. Section 39 of the bill gives this

section an effective date that is the same as that of ch. 14, SLA 1990.

Sec. 14. The material to be deleted relates only to the initial terms of appointees.

Sec. 15. There is no substantive need to retain the reference to "January 1, 1971" in this provision.

Sec. 16. The proposed amendment eliminates language that is redundant to AS 42.05.121(b) and rewrites other language to conform to modern drafting style.

Sec. 17. The amendment is proposed to clarify some archaic language.

Sec. 18. The amendment updates the reference to municipalities.

Sec. 19. The amendment, proposed by the APUC, would add language ("to the public for compensation") to AS 42.05.720(4)(F) that appears in each of paragraphs (4)(A) - (E). It is apparent that the omission of the language from (4)(F) was an oversight. The amendment would eliminate a source of confusion and misunderstanding.

Sec. 20. The amendment updates the reference to municipalities.

Secs. 21 and 25. These bill sections, requested by Assistant Attorney General Jeff Bush, substitute the term "subpoena" for "summons" in one of the general provisions for administration of the state's tax laws and one provision dealing with the estate tax. The term "summons" is not used in civil procedure or administrative practice, except in connection with a "summons and complaint."

Secs. 22 - 24. These three sections, together with the repeal of AS 43.05.120 proposed in sec. 38, represent an effort to resolve some inconsistencies and redundancies in four provisions of AS 43.05 relating to criminal penalties. AS 43.05.290, enacted in 1980, was intended to serve as the basic penalty provision for all of the tax laws. When that was enacted, however, three provisions dating from 1945 that contain criminal penalties, AS 43.05.110, 43.05.120, and 43.05.130, were not amended.

In sec. 22, a new section is proposed reenacting the substantive prohibitions of AS 43.05.120, which would be repealed. The new section is located immediately after the two AS sections that it relates to. A violation of AS 43.05.075(1) would be a class A misdemeanor under AS 43.05.290(c), while a violation of AS 43.05.075(2) would be a class A misdemeanor under AS 43.05.290(f). A violation of either with respect to a material matter and with the requisite intent would be a felony under AS 43.05.290(e).

Section 23 amends AS 43.05.110 to delete the language establishing a violation as a misdemeanor (which would be interpreted as a class A misdemeanor under AS 11.81.250(c)). A violation of AS 43.05.110 would be punishable as a class A misdemeanor under AS 43.05.290(c).

Section 24 amends AS 43.05.130, which currently provides a penalty of up to $1,000, but no jail term, for any violation of AS 43.05.010 - 43.05.130, or a regulation adopted under those provisions. This is obviously inconsistent with existing AS 43.05.110 and 43.05.120, and conflicts with AS 43.05.290 as well. The amendment proposes to resolve this by limiting its application to violations that do not amount to violations under AS 43.05.290.

The Departments of Law and Revenue have reviewed and approved these proposals.

Secs. 26 and 27. Following the 1981 repeal of AS 43.55.012(a), the references to adjustment of the gas production tax under AS 43.55.012 that appear in AS 43.55.016(c) and 43.55.020(e) became meaningless. These two bill sections delete the obsolete references.

Sec. 28. The material proposed for deletion is redundant to general provisions in AS 43.15.010.

Secs. 29 - 32. The material to be deleted relates only to the initial terms of appointees.

Sec. 33. The amendment updates an obsolete reference to federal poverty guidelines.

Secs. 34 - 37. The material to be deleted relates only to the initial terms

of appointees.

Sec. 38. This section proposes the following obsolete or otherwise unnecessary provisions for repeal:

AS 23.15.520(3) defines "registration fee," a term that does not appear in any provision to which the definition applies.

AS 23.35.150(2) and (4) define "commissioner" and "department" respectively, terms that are defined for all of AS 23 in AS 23.46.010.

AS 39.50.200(b)(47) refers to the Alaska Resources Corporation, which was repealed July 1, 1989.

AS 42.40.920(a) relates to the Alaska Transportation Commission and was rendered obsolete by the 1982 repeal, by initiative, of all provisions relating to the ATC.

AS 43.05.010(17) relates to powers of the commissioner of revenue in connection with assets of the former Alaska Resources Corporation. The amendment of sec. 17, ch. 161, SLA 1984 by sec. 1, ch. 17, SLA 1989 makes AS 43.05.010(17) unnecessary, as the codified law gives the commissioner and the department adequate authority to wind down the affairs of ARC.

AS 43.05.120, AS 43.20.340(3), AS 43.23.095(2) and (3), AS 43.31.420(2), AS 43.55.900(5) AS 43.56.210(3), AS 43.75.140(2), and AS 43.80.100(3) all contain definitions of "commissioner" or "department," terms that are defined for all of AS 43 in AS 43.99.950.

AS 44.47.310(5) contains a definition of "department" that is redundant.

AS 47.07.020(b)(10) and 47.07.035(17) relate to medical assistance for certain children and pregnant women that were optional services under state law, but are now mandated services under recent amendments to federal law; the state will provide the services under AS 47.07.020(a) and other provisions of AS 47.07.

Sec. 39. Gives sec. 13 a June 14, 1990, effective date so that the amendment will take effect when ch. 14, SLA 1990 takes effect.

Sec. 40. The rest of the Act is given an immediate effective date by this section.

DRD:lmb
900010.LMB

Original sponsor(s): Rules/Legislative Council

IN THE HOUSE BY THE JUDICIARY COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 411 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

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

* Section 1. AS 01.05.011 is amended to read:

Sec. 01.05.011. DESIGNATION AND CITATION. The bulk formal revision of Alaska law adopted and enacted into law by AS 01.05.006 and as amended and supplemented is known as the "Alaska Statutes" and may be cited "AS" followed by the number of the title, chapter, and section, separated by periods. For example, [EXAMPLE:] this title may be cited "AS 01 [AS 1]"; this chapter may be cited "AS 01.05"; this section may be cited "AS 01.05.011." Except as otherwise indicated by the context, citations in accordance with this section include amendments and reenactments of the provision cited.

* Sec. 2. AS 12.55.165 is amended to read:

Sec. 12.55.165. EXTRAORDINARY CIRCUMSTANCES. If the defendant is subject to sentencing under AS 12.55.125(c), (d), (e), or (i) [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), OR (i)] and the court finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155 or from imposition of the presumptive term, whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-

judge panel for sentencing under AS 12.55.175.

* Sec. 3. AS 14.43.300(d) is amended to read:

(d) The recipient must at all times continue to be enrolled as a full-time student in good standing at an accredited <u>postsecondary institution that is appropriate to the memorial scholarship received</u> [COLLEGE OR UNIVERSITY].

* Sec. 4. AS 16.05.400(b) is amended to read:

(b) A sport fishing, hunting, or trapping license is not required of a resident who is 60 years of age or more [AND HAS BEEN A RESIDENT FOR ONE YEAR OR MORE]. The commissioner shall issue a permanent identification card without charge to persons who qualify by age and residence and who complete the forms required by the commissioner for implementation of this subsection. A person who is issued a permanent identification card under this subsection shall have it in possession while sport fishing, hunting, or trapping.

* Sec. 5. AS 23.15.230 is amended to read:

Sec. 23.15.230. APPOINTMENT OF COMMITTEE. The governor's committee consists of not more than 12 members appointed by the governor for <u>staggered terms</u> [A TERM] not exceeding three years. The committee shall be composed of state leaders of industry, business, agriculture, labor, veterans, women, religious, educational, civic, fraternal, welfare, scientific, military, medical, and other professions, or as many of these and like categories as may be feasibly represented. [THE INITIAL MEMBERS SHALL BE APPOINTED FOR TERMS OF ONE, TWO, AND THREE YEARS AS DESIGNATED BY THE GOVERNOR.] A member may be reappointed and a vacancy shall be filled by the governor.

* Sec. 6. AS 28.05.095(a) is amended to read:

(a) Except as provided in (b) of this section, a driver may not transport a child under the age of seven in a motor vehicle unless the

driver has provided and properly secured each child as described in this subsection. If the child is less than four years of age, the child shall be properly secured in a child safety device meeting the standards of the United States Department of Transportation for a child safety device for infants. If the child is [BETWEEN] four through [AND] six years of age, the child shall be properly secured in a child safety device approved for a child of that age and size by the United States Department of Transportation or in a seatbelt, whichever is appropriate for the particular child.

* Sec. 7. AS 28.33.010(d) is amended to read:

(d) A policy of insurance, surety bond, or other form of security may not be cancelled on less than 30 days' written notice to the department. This requirement must be clearly stated in the policy or endorsement for an insurance policy submitted as proof of financial responsibility under (b)(1) of this section [AS 42.30.225(a)(1)]. The 30-day notice period is measured from the date on which the department receives notice.

* Sec. 8. AS 28.35.130 is amended to read:

Sec. 28.35.130. FALSE REPORT OR DESTRUCTION OF EVIDENCE. An officer or person who knowingly makes or subscribes a false report concerning an investigation of a vehicle or damage or injury caused by a vehicle, as provided in this chapter, is guilty of unsworn falsification [PERJURY]. A person who destroys, obliterates, conceals or removes, or who aids, abets, or assists in the destruction, obliteration, concealment, or removal from a vehicle, of evidence showing or tending to show that the vehicle collided with a person or property, is punishable by a fine of not more than $500, or by imprisonment for not more than six months, or by both.

* Sec. 9. AS 28.40.100(a)(1) is amended to read:

(1) "cancel" means to annul or terminate, [THE ANNULMENT OR TERMINATION] by formal action of the department, [OF] a certification, registration, license, permit or privilege issued or allowed under this title or regulations adopted under this title, because of an error or defect in the document issued or the application for issuance or because the person holding the document is no longer entitled to it;

* Sec. 10. AS 31.05.007(a) is amended to read:

(a) The term of office of each member is six years. [THE GOVERNOR SHALL DESIGNATE WHO AMONG THE INITIAL APPOINTEES SHALL SERVE RESPECTIVELY FOR TERMS OF TWO YEARS, FOUR YEARS AND SIX YEARS.] A commissioner, upon the expiration of a term, shall continue to hold office until a successor is appointed and qualified.

* Sec. 11. AS 36.30.015(e) is amended to read:

(e) The boards of directors of the Alaska Railroad Corporation and the Alaska State Housing Authority shall adopt procedures to govern the procurement of supplies, services, professional services, and construction [BY THE CORPORATION]. The procedures must be substantially equivalent to the procedures prescribed in this chapter and in regulations adopted under this chapter.

* Sec. 12. AS 39.20.190 is amended to read:

Sec. 39.20.190. DEFINITIONS. In AS 39.20.110 - 39.20.190 [AS 39.20.110 - 39.20.170]

(1) "employee" or "state employee" means a person employed by a state agency;

(2) "official" or "state official" means the appointive head of a state agency;

(3) "official travel" means travel inside or outside the state on official business of the state, for which payment or

reimbursement is expected or authorized;

(4) "per diem allowance" means a daily flat rate of payment instead of actual expenses;

(5) "state agency," "agency," or "department" means department, office, institution, board, commission, bureau, division, or other administrative unit forming the state government;

(6) "subsistence" means lodging, meals, and other necessary expenses incidental to the personal sustenance or comfort of the traveler;

(7) "traveler" means the official or employee engaged in official travel for the state.

* Sec. 13. AS 41.21.302(c), as amended by sec. 1, ch. 14, SLA 1990, is amended to read:

(c) The Department of Natural Resources shall develop a management plan for each marine park unit of the Alaska state park system to determine the specific purposes and uses for the unit [WITHIN FIVE YEARS]. The commissioner shall give written notice and consult with the Department of Fish and Game, proximately located municipalities of the state, proximately located private landowners, the United States Forest Service, organizations concerned with conservation, recreation, and tourism, and other interested parties during the preparation of a management plan for a marine park unit of the Alaska state park system. A management plan required under this subsection shall be completed by June 14, 1995, for each marine park unit established before June 14, 1990, and within five years of the establishment of the unit for units established after June 13, 1990.

* Sec. 14. AS 42.05.030(a) is amended to read:

(a) The term of office of each member is six years. [THE GOVERNOR SHALL DESIGNATE WHO AMONG THE INITIAL APPOINTEES SHALL SERVE,

RESPECTIVELY, FOR TERMS OF TWO YEARS, FOUR YEARS AND SIX YEARS.] A commissioner, upon the expiration of a term, shall continue to hold office until a successor is appointed and qualified.

* Sec. 15. AS 42.05.221(a) is amended to read:

(a) A public utility may not operate and receive compensation for providing a commodity or service [AFTER JANUARY 1, 1971] without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require or will require the service. Where a public utility provides more than one type of utility service, a separate certificate of convenience and necessity is required for each type. A certificate must describe the nature and extent of the authority granted in it, including, as appropriate for the services involved, a description of the authorized area and scope of operations of the public utility.

* Sec. 16. AS 42.05.221(e) is amended to read:

(e) If the [THE] commission employs [MAY EMPLOY] professional consultants to assist it in administering [THE PROVISIONS OF] this section, it [AND] may apportion the expenses relating to their employment [THIS ADMINISTRATION] among the competing utilities [INVOLVED].

* Sec. 17. AS 42.05.351 is amended to read:

Sec. 42.05.351. TESTING OF APPLIANCES. The commission shall provide for the examination and testing of appliances used for the measuring of a service of a public utility and may purchase equipment, apparatus, and standards required for this purpose. The commissioner of commerce and economic development may assign the examination and testing function to the section of weights and measures. Upon the payment of a reasonable fee established by the commission, a consumer may have an [THE] appliance that [, WHICH] is used by the consumer [,] tested. The commission shall establish by regulation allowable

tolerances with respect to the functioning or operation of the appliance. If the measuring appliance does not perform within these tolerances, the utility concerned shall pay the costs of the test by reimbursing the person requesting the test for the fee paid by that person. This reimbursement shall be made no later than at the time of the next regular billing following the test.

* Sec. 18. AS 42.05.641 is amended to read:

Sec. 42.05.641. REGULATION BY MUNICIPALITY. The commission's jurisdiction and authority extend to public utilities operating within a municipality [CITY OR BOROUGH], whether home rule or otherwise. In the event of a conflict between a certificate, order, decision, or regulation of the commission and a charter, permit, franchise, ordinance, rule, or regulation of such a local governmental entity, the certificate, order, decision, or regulation of the commission shall prevail.

* Sec. 19. AS 42.05.720(4) is amended to read:

(4) "public utility" or "utility" includes every corporation whether public, cooperative, or otherwise, company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant, pipeline, or system for

(A) furnishing, by generation, transmission, or distribution, electrical service to the public for compensation;

(B) furnishing telecommunications service to the public for compensation;

(C) furnishing water, steam, or sewer service to the public for compensation;

(D) furnishing by transmission or distribution of natural or manufactured gas to the [ALASKA] public for

compensation;

(E) furnishing for distribution or by distribution petroleum or petroleum products to the [ALASKA] public for compensation when the consumer has no alternative in the choice of supplier of a comparable product and service at an equal or lesser price;

(F) furnishing collection and disposal service of garbage, refuse, trash, or other waste material to the public for compensation;

* Sec. 20. AS 42.06.230(b) is amended to read:

(b) The commission's jurisdiction and authority extend to an oil or gas pipeline facility operating in a municipality [CITY OR BOROUGH], whether home rule or otherwise. If a conflict between a certificate, order, decision, or regulation of the commission and a charter, permit, franchise, ordinance, rule, or regulation of such a local governmental entity occurs, the certificate, order, decision, or regulation of the commission prevails.

* Sec. 21. AS 43.05.040 is amended to read:

Sec. 43.05.040. INSPECTION OF RECORDS OR PREMISES AND ISSUANCE OF SUBPOENAS [SUMMONS]. (a) The department may examine the books, papers, records, or memoranda of any person to ascertain the correctness of a return filed or to determine whether a tax or a payment for oil or gas royalty or net profits shares under a contract, agreement, or lease under AS 38.05 is due, or in an investigation or inspection in connection with tax matters or matters relating to oil and gas royalty or net profits under contracts, agreements, or leases under AS 38.05. The records and the premises where a business is conducted shall be open at all reasonable times for official inspection, and the department may subpoena [SUMMON] any person to appear and produce

books, records, papers, or memoranda bearing upon tax matters or matters relating to oil and gas royalty or net profits under contracts, agreements, or leases under AS 38.05, and to give testimony or answer interrogatories under oath respecting tax matters or matters related to oil and gas royalty or net profits under contracts, agreements, or leases under AS 38.05, and the department may administer oaths to persons who are so subpoenaed [SUMMONED].

(b) A subpoena [SUMMONS] may be served by the commissioner of public safety or a peace officer designated by the commissioner of public safety or by a person designated by the Department of Revenue. If a person who is subpoenaed [SUMMONED] neglects or refuses to obey the subpoena [SUMMONS] issued as provided in this section, the department may report the fact to the superior court and the court may compel obedience to the subpoena [SUMMONS] to the same extent as witnesses may be compelled to obey the subpoenas of the court.

* Sec. 22. AS 43.05 is amended by adding a new section to read:

Sec. 43.05.075. CONCEALING OR FALSIFYING EVIDENCE. A person may not knowingly, in connection with a compromise or offer of a compromise under AS 43.05.070 or in connection with a closing agreement or offer to enter a closing agreement under AS 43.05.060,

(1) conceal from an officer or employee of the state property belonging to the estate of the taxpayer or other person liable for the tax; or

(2) receive, destroy, mutilate, or falsify a book, document, or record or make a false statement under oath relating to the estate or the financial condition of the taxpayer or other person liable for the tax.

* Sec. 23. AS 43.05.110 is amended to read:

Sec. 43.05.110. PROPERTY IN POSSESSION OF DECEASED EMPLOYEE.

The personal representative of a deceased employee of the department who has possession or control of a tax list, record, return, paper, document, or book or money collected shall deliver it to the department. [A PERSONAL REPRESENTATIVE WHO REFUSES OR WILFULLY FAILS TO DO SO IS GUILTY OF A MISDEMEANOR.]

* Sec. 24. AS 43.05.130 is amended to read:

Sec. 43.05.130. PENALTY [MISDEMEANOR]. A person who, by conduct not described in AS 43.05.290, violates a provision of AS 43.05.010 - 43.05.130 or a regulation adopted under those provisions [IT] is subject to a civil penalty of not more than $1,000 for each violation [GUILTY OF A MISDEMEANOR, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN $1,000 FOR EACH OFFENSE].

* Sec. 25. AS 43.31.051(b) is amended to read:

(b) If a person subpoenaed [SUMMONED] to appear under this chapter to testify, or to produce books, papers, or other data, refuses to do so, the superior court in the judicial district in which the person resides has jurisdiction by appropriate process to compel the attendance, testimony, or production of books, papers, or other data.

* Sec. 26. AS 43.55.016(c) is amended to read:

(c) The cents-per-Mcf amount equals $.064 per 1,000 [THOUSAND] cubic feet of taxable gas produced from the lease or property [AS ADJUSTED BY AS 43.55.012].

* Sec. 27. AS 43.55.020(e) is amended to read:

(e) Gas produced in excess of that needed for safety purposes, except gas used in the operation of a lease or property in drilling for or producing oil or gas, or for repressuring, is considered, for the purpose of AS 43.55.011 - 43.55.150 and in the amount used, as gas produced from a lease or property. Gas flared beyond the amount

authorized for safety by the Alaska Oil and Gas Conservation Commission under AS 31.05 is considered as gas produced, except that it is subject to a penalty equal to the tax computed under AS 43.55.016 [AS ADJUSTED BY AS 43.55.012] per 1,000 [THOUSAND] cubic feet of gas for the month in which the gas was flared.

* Sec. 28. AS 43.55.090 is amended to read:

Sec. 43.55.090. REFUNDS. In case of overpayment, duplicate payment or payment made in error, the department may refund the amount of the overpayment under AS 43.15.010 [ISSUE A CERTIFICATE STATING THE FACTS AND THE AMOUNT OF THE REFUND TO WHICH THE TAXPAYER IS ENTITLED. UPON PRESENTATION OF THE CERTIFICATE TO THE DEPARTMENT OF ADMINISTRATION, THE DEPARTMENT OF ADMINISTRATION SHALL ISSUE A WARRANT FOR THE REFUND. THE REFUND SHALL BE PAID OUT OF THE UNAPPROPRIATED GROSS PRODUCTION TAX IN THE TREASURY].

* Sec. 29. AS 44.19.104(a) is amended to read:

(a) Members serve for overlapping four-year terms. [THE FIRST MEMBERS APPOINTED SERVE FOR ONE, TWO, THREE AND FOUR-YEAR TERMS AS DETERMINED BY THE GOVERNOR.] The chairman serves for a term set by the commission, not to exceed four years.

* Sec. 30. AS 44.19.155(b) is amended to read:

(b) Each public member appointed by the governor under (a)(1) of this section serves a term of two years and until a successor is appointed and qualified [, EXCEPT THAT THE TERM OF OFFICE OF A PUBLIC MEMBER FIRST APPOINTED UNDER (a)(1)(A), (a)(1)(C), (a)(1)(E) AND (a)(1)(G) OF THIS SECTION SHALL BE ONE YEAR]. A public member may be reappointed.

* Sec. 31. AS 44.21.258(b) is amended to read:

(b) The members of the commission shall serve staggered terms of five years [, WITH THE INITIAL TERMS DETERMINED BY LOT].

* Sec. 32. AS 44.27.043 is amended to read:

Sec. 44.27.043. TERMS OF OFFICE. The term of office of each member is three years [; HOWEVER, OF THE MEMBERS FIRST APPOINTED, THREE ARE TO BE APPOINTED FOR TERMS OF ONE YEAR, FOUR FOR TERMS OF TWO YEARS, AND FOUR FOR TERMS OF THREE YEARS]. All vacancies are to be filled for the balance of the unexpired term in the same manner as original appointments.

* Sec. 33. AS 44.33.310(3) is amended to read:

(3) "economic disaster" means that the annual income to workers in the designated area dropped below the average annual income for the base period for workers in the designated area and the drop in income is of such magnitude that the average family income of all residents of the designated area as determined by the department is below the poverty guidelines issued by the federal Department of Health and Human Services [FEDERAL SOCIAL SECURITY ADMINISTRATION POVERTY GUIDELINE], adjusted by the department to reflect subsistence economic patterns and appropriate cost-of- living differentials; the availability of alternate employment shall be considered in determining whether an economic disaster has occurred under this paragraph.

* Sec. 34. AS 44.46.030(c) is amended to read:

(c) [OF THE MEMBERS OF THE BOARD FIRST APPOINTED BY THE GOVERNOR, THREE SHALL BE APPOINTED FOR A TERM OF ONE YEAR; THREE FOR A TERM OF TWO YEARS; AND TWO FOR A TERM OF THREE YEARS. THE INITIAL TERMS BEGIN ON JULY 1, 1971. THEREAFTER, ALL APPOINTMENTS SHALL BE MADE FOR TERMS OF THREE YEARS BEGINNING ON JULY 1 OF THE YEAR IN WHICH THE APPOINTMENT IS MADE.] Members of the board serve at the pleasure of the governor for staggered terms of three years. In the case of a vacancy other than one arising by expiration of term, an appointment to fill the vacancy shall be made for the remainder of the unexpired

term.

* Sec. 35. AS 44.85.030 is amended to read:

Sec. 44.85.030. MEMBERSHIP AND VACANCIES. The bond bank authority consists of the following five directors: the commissioner of revenue, the commissioner of community and regional affairs, who shall each be a director ex officio with voting privileges, and three directors appointed by the governor. The appointment of each director other than the commissioner of revenue and the commissioner of community and regional affairs is subject to confirmation by the legislature. The three directors appointed by the governor serve at the governor's pleasure for four-year terms. They must be residents of the state and qualified voters at the time of appointment and shall comply with the requirements of AS 39.50 (conflict of interest). [THE DIRECTORS FIRST APPOINTED SHALL HAVE TERMS OF TWO, THREE AND FOUR YEARS RESPECTIVELY.] Each director shall hold office for the term of appointment and until a successor has been appointed and qualified. A director is eligible for reappointment. A vacancy in a directorship occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only. Each director before entering upon the duties of office shall take and subscribe to an oath to perform the duties faithfully, impartially, and justly to the best of the director's ability. A record of the oath shall be filed in the office of the governor.

* Sec. 36. AS 44.88.030(c) is amended to read:

(c) Members of the authority described in (a)(2) and (a)(3) of this section serve two-year terms. [HOWEVER, THE INITIAL APPOINTMENT OF ONE MEMBER DESCRIBED IN (a)(3) OF THIS SECTION SHALL BE FOR A ONE-YEAR TERM.]

* Sec. 37. AS 47.30.050(a) is amended to read:

(a) Council members serve staggered terms of [MEMBERS' TERMS ARE] three years. [OF THE INITIAL APPOINTEES, ONE-THIRD SHALL BE APPOINTED FOR ONE-YEAR TERMS, ONE-THIRD FOR TWO-YEAR TERMS, AND ONE-THIRD FOR THREE-YEAR TERMS.]

* Sec. 38. AS 23.15.520(3); AS 23.35.150(2), 23.35.150(4); AS 39.50.-200(b)(47); AS 42.40.920(a); AS 43.05.010(17), 43.05.120; AS 43.20.340(3); AS 43.23.095(2), 43.23.095(3); AS 43.31.420(2); AS 43.55.900(5); AS 43.56.-210(3); AS 43.75.140(2); AS 43.80.100(3); AS 44.47.310(5); AS 47.07.-020(b)(10), and 47.07.035(17) are repealed.

* Sec. 39. Section 13 of this Act takes effect June 14, 1990.

* Sec. 40. Except for sec. 13 of this Act, this Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3800

MEMORANDUM

March 20, 1990

SUBJECT: Enclosed amendment for CSHB 411(Jud) (6-1772Ea)

TO: Senator Jan Faiks
Chair, Senate Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

Enclosed for your consideration is an amendment to CSHB 411(Jud), the 1990 revisor's bill. I don't believe I will have any further amendments to the bill. I look forward to meeting with your committee to discuss the bill and the proposed Senate amendments.

Sectional Analysis of Amendment

Sec. 13. New bill sec. 13 proposes to clarify AS 41.21.302(c), as amended by a House floor amendment during the consideration of HCS CSSB 42(Fin), which became ch. 14, SLA 1990. Without this clarification, the Department of Natural Resources will not have clear direction as to the deadlines for preparation of state marine park management plans. The proposed language is mine and is based upon what I believe the legislature intended in approving HCS CSSB 42(Fin) am H.

Secs. 21 and 25. These new bill sections, requested by Assistant Attorney General Jeff Bush, substitute the term "subpoena" for "summons" in one of the general provisions for administration of the state's tax laws and one provision dealing with the estate tax. The term "summons" is not used in

civil procedure or administrative practice, except in connection with a "summons and complaint."

The remaining amendments, to page 8, lines 5 and 23 - 27, make technical changes requested by Assistant Attorney General Laurie Otto.

If your committee adopts proposed bill sec. 13, I will further amend the bill to provide a June 14, 1990 effective date for that section.

DRD:lmb
900008.lmb

Enclosure

cc: Art Peterson

6-1772Ea
Dierdorff

A M E N D M E N T

OFFERED IN THE SENATE JUDICIARY COMMITTEE

TO: CSHB 411 (Judiciary)

Page 5, after line 11:

Insert a new bill section to read:

"* Sec. 13. AS 41.21.302(c), as amended by sec. 1, ch. 14, SLA 1990, is amended to read:

(c) The Department of Natural Resources shall develop a management plan for each marine park unit of the Alaska state park system to determine the specific purposes and uses for the unit [WITHIN FIVE YEARS]. The commissioner shall give written notice and consult with the Department of Fish and Game, proximately located municipalities of the state, proximately located private landowners, the United States Forest Service, organizations concerned with conservation, recreation, and tourism, and other interested parties during the preparation of a management plan for a marine park unit of the Alaska state park system. A management plan required under this subsection shall be completed by June 14, 1995, for each marine park unit established before June 14, 1990, and within five years of the establishment of the unit for units established after June 13, 1990."

Renumber the following bill sections accordingly.

Page 8, after line 2:

Insert a new bill section to read:

"* Sec. 21. AS 43.05.040 is amended to read:

Sec. 43.05.040. INSPECTION OF RECORDS OR PREMISES AND ISSUANCE OF SUBPOENAS [SUMMONS]. (a) The department may examine the books, papers, records, or memoranda of any person to ascertain the correctness of a return filed or to determine whether a tax or a payment for oil or gas royalty or net profits shares under a contract, agreement, or lease under AS 38.05 is due, or in an investigation or inspection in connection with tax matters or matters relating to oil and gas royalty or net profits under contracts, agreements, or leases under AS 38.05. The records and the premises where a business is conducted shall be open at all reasonable times for official inspection, and the department may subpoena [SUMMON] any person to appear and produce books, records, papers, or memoranda bearing upon tax matters or matters relating to oil and gas royalty or net profits under contracts, agreements, or leases under AS 38.05, and to give testimony or answer interrogatories under oath respecting tax matters or matters related to oil and gas royalty or net profits under contracts, agreements, or leases under AS 38.05, and the department may administer oaths to persons who are so subpoenaed [SUMMONED].

(b) A subpoena [SUMMONS] may be served by the commissioner of public safety or a peace officer designated by the commissioner of public safety or by a person designated by the Department of Revenue. If a person who is subpoenaed [SUMMONED] neglects or refuses to obey the subpoena [SUMMONS] issued as provided in this section, the department may report the fact to the superior court and the court may

compel obedience to the subpoena [SUMMONS] to the same extent as witnesses may be compelled to obey the subpoenas of the court."

Renumber the following bill sections accordingly.

Page 8, line 5:

Delete "wilfully"

Insert "knowingly"

Page 8, lines 23 - 27:

Delete all material, and insert:

"Sec. 43.05.130. PENALTY [MISDEMEANOR]. A person who, by conduct not described in AS 43.05.290, violates a provision of AS 43.05.010 - 43.05.130 or a regulation adopted under those provisions [IT] is subject to a civil penalty of not more than $1,000 for each violation [GUILTY OF A MISDEMEANOR, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN $1,000 FOR EACH OFFENSE]."

Page 8, after line 27:

Insert a new bill section to read:

"* Sec. 25. AS 43.31.051(b) is amended to read:

(b) If a person subpoenaed [SUMMONED] to appear under this chapter to testify, or to produce books, papers, or other data, refuses to do so, the superior court in the judicial district in which the person resides has jurisdiction by appropriate process to compel the attendance, testimony, or production of books, papers, or other

data."

Renumber the following bill sections accordingly.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM February 16, 1990

SUBJECT: CSHB 411(Judiciary), 1990 Revisor's Bill

TO: Representative Peter Goll
Representative Max Gruenberg
Co-Chairs, House Judiciary Committee

FROM: David R. Dierdorff
Revisor of Statutes

This memorandum discusses the enclosed committee substitute for the 1990 Revisor's Bill (HB 411), prepared after the subcommittee meeting on February 9. The following sections in CSHB 411(Jud) were not in the bill as introduced: 1, 18, and 20 - 25. In addition, several provisions have been added to the repealer (sec. 35). The Department of Law has reviewed all provisions in CSHB 411(Jud).

To assist in understanding the draft, I have summarized the contents by grouping sections that have similar effects.

Sections that delete or repeal obsolete provisions: Sections 5, 10, 13, 14, 23, 24, 26 - 29, and 31 - 35 delete or repeal provisions that have become obsolete either through the passage of time or other legislative action.

Sections that update obsolete or archaic provisions, or improve the style of the statutes: Sections 1, 3, 8, 9, 12, 15 - 17, 19, and 30 substitute new provisions for provisions that are obsolete, archaic, or otherwise outdated, including improvements in the style of language for purposes of clarity.

Sections that eliminate conflicts with other laws: Sections 4, and 20 - 22 harmonize laws dealing with the same subject. Section 2 conforms the text of a law to its judicial interpretation.

Sections that correct errors or oversights: Sections 6, 7, 11, and 18 correct errors or oversights in drafting.

SECTIONAL ANALYSIS

Section 1. This amendment, relating to the proper form for citation of provisions in the Alaska Statutes, reflects the fact that the form actually used for citation of the single digit titles of AS has been, for example, AS 01, AS 02, etc. Until the mid-1970's, the Legislative Drafting Manual gave drafters a choice between AS 1 or AS 01, etc., but for the past fifteen years the double digit form has been the legislative standard. Now that the world of data processing has enveloped us, it is important that we make the use of the double digit citation form official.

Sec. 2. The proposed amendment to AS 12.55.165 incorporates references to provisions enacted after 1982 within the internal reference. In Edwin v. State, 762 P.2d 499 (1988), the Alaska Court of Appeals held that sentences under AS 12.55.125(e)(3), and, by extension, (d)(3), are subject to referral to a three-judge panel under AS 12.55.165. The court read the sentencing statutes as a whole and concluded that the failure to incorporate references to the added provisions was a legislative oversight. The court invoked the doctrine that statutes should be construed "to avoid absurd results." 762 P.2d at 502. See also the November, 1989 Report to the Legislature Examining Court Decisions, page 42.

Sec. 3. This amendment is proposed to ensure that recipients of a Winn Brindle memorial scholarship loan may attend an accredited "school" (as permitted under AS 14.43.300(b)(5)) and are not required to attend a "college" or "university." The amendment should have been made in 1986 when the Winn Brindle memorial scholarship loan program was enacted. The amendment has been reviewed and approved by the Postsecondary Education Commission.

Sec. 4. AS 16.05.900(24) defines "resident" as a person who has maintained a permanent place of abode in the state for 12 consecutive months. Thus, the use of "has been a resident for one year or more" in AS 16.05.400(b) is redundant. The problem dates back to the 1983 amendment, which substituted "one year" for "30 consecutive years."

Sec. 5. The material to be deleted relates only to the initial terms of appointees.

Sec. 6. As enacted, a portion of this provision applied to children "between" the ages of four and six. Taken literally, that means it applies only to five-year olds. The legislature obviously intended that children aged four through six be included, and the proposed amendment would make that clear.

Sec. 7. The amendment would correct an erroneous reference in the original enactment.

Sec. 8. The 1978 revision of the criminal code introduced the crime of unsworn falsification. AS 28.35.130, which predates statehood, should have been amended at that time. A conviction for perjury could not be sustained under the circumstances described in AS 28.35.130, but a violator could be prosecuted for unsworn falsification. Thus the proposed substitution of terms.

Sec. 9. As enacted, "cancel" was defined as a noun. The amendment changes the definition to that of a verb, which is consistent with the usage of the term.

Sec. 10. The material to be deleted relates only to the initial terms of appointees.

Sec. 11. The language proposed for deletion adds nothing to the provision and, in any event, is confusing because it is incomplete.

Sec. 12. The amendment to the internal reference picks up two sections of AS 39.20 that need to have these definitions apply to them.

Sec. 13. The material to be deleted relates only to the initial terms of appointees.

Sec. 14. There is no substantive need to retain the reference to "January 1, 1971" in this provision.

Sec. 15. The proposed amendment eliminates language that is redundant to AS 42.05.121(b) and rewrites other language to conform to modern drafting style.

Sec. 16. The amendment is proposed to clarify some archaic language.

Sec. 17. The amendment updates the reference to municipalities.

Sec. 18. The amendment, proposed by the APUC, would add language ("to the public for compensation") to AS 42.05.720(4)(F) that appears in each of paragraphs (4)(A) - (E). It is apparent that the omission of the language from (4)(F) was an oversight. The amendment would eliminate a source of confusion and misunderstanding.

Sec. 19. The amendment updates the reference to municipalities.

Secs. 20 - 22. These three sections, together with the repeal of AS 43.05.120 proposed in sec. 35, represent an effort to resolve some inconsistencies and redundancies in four provisions of AS 43.05 relating to criminal penalties. AS 43.05.290, enacted in 1980, was intended to serve as the basic penalty provision for all of the tax laws. When that was enacted, however, three provisions dating from 1945 that contain criminal penalties, AS 43.05.110, 43.05.120, and 43.05.130, were not amended.

In sec. 20, a new section is proposed reenacting the substantive prohibitions of AS 43.05.120, which would be repealed. The new section is located immediately after the two AS sections that it relates to. A violation of AS 43.05.075(1) would be a class A misdemeanor under AS 43.05.290(c), while a violation of AS 43.05.075(2) would be a class A misdemeanor under AS 43.05.290(f). A violation of either with respect to a material matter and with the requisite intent would be a felony under AS 43.05.290(e).

Section 21 amends AS 43.05.110 to delete the language establishing a violation as a misdemeanor (which would be interpreted as a class A misdemeanor under AS 11.81.250(c)). A violation of AS 43.05.110 would be punishable as a class A misdemeanor under AS 43.05.290(c).

Section 22 amends AS 43.05.130, which currently provides a penalty of up to $1,000, but no jail term, for any violation of AS 43.05.010 - 43.05.130, or a regulation adopted under those provisions. This is obviously inconsistent with existing AS 43.05.110 and 43.05.120, and conflicts with AS 43.05.290 as well. The amendment proposes to resolve this by limiting its application to violations that do not amount to violations under AS 43.05.290.

The Departments of Law and Revenue have reviewed these proposals.

Secs. 23 and 24. Following the 1981 repeal of AS 43.55.012(a), the references to adjustment of the gas production tax under AS 43.55.012 that appear in AS 43.55.016(c) and 43.55.020(e) became meaningless. These two bill sections delete the obsolete references.

Sec. 25. The material proposed for deletion is redundant to general provisions in AS 43.15.010.

Secs. 26 - 29. The material to be deleted relates only to the initial terms of appointees.

Sec. 30. The amendment updates an obsolete reference to federal poverty guidelines.

Secs. 31 - 34. The material to be deleted relates only to the initial terms of appointees.

Sec. 35. This section proposes the following obsolete or otherwise unnecessary provisions for repeal:

AS 23.15.520(3) defines "registration fee," a term that does not appear in any provision to which the definition applies.

AS 23.35.150(2) and (4) define "commissioner" and "department" respectively, terms that are defined for all of AS 23 in AS 23.46.010.

AS 39.50.200(b)(47) refers to the Alaska Resources Corporation, which was repealed July 1, 1989.

AS 42.40.920(a) relates to the Alaska Transportation Commission and was rendered obsolete by the 1982 repeal, by initiative, of all provisions relating to the ATC.

AS 43.05.010(17) relates to powers of the commissioner of revenue in connection with assets of the former Alaska Resources Corporation. The amendment of sec. 17, ch. 161, SLA 1984 by sec. 1, ch. 17, SLA 1989 makes AS 43.05.010(17) unnecessary, as the codified law gives the commissioner and the department adequate authority to wind down the affairs of ARC.

AS 43.05.120, AS 43.20.340(3), AS 43.23.095(2) and (3), AS 43.31.420(2), AS 43.55.900(5) AS 43.56.210(3), AS 43.75.140(2), and AS 43.80.100(3) all contain definitions of "commissioner" or "department," terms that are defined for all of AS 43 in AS 43.99.950.

AS 44.47.310(5) contains a definition of "department" that is redundant.

AS 47.07.020(b)(10) and 47.07.035(17) relate to medical assistance for certain children and pregnant women that were optional services under state law, but are now mandated services under recent amendments to federal law; the state will provide the services under AS 47.07.020(a) and other provisions of AS 47.07.

Sec. 36. The Act is given an immediate effective date by this section.

DRD:lmb
90007.LMB

CC: Art Peterson

Offered: 2/22/90
Referred: Rules

6-1772E

Original sponsor(s): Rules/Legislative Council

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 411 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

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

* Section 1. AS 01.05.011 is amended to read:

Sec. 01.05.011. DESIGNATION AND CITATION. The bulk formal revision of Alaska law adopted and enacted into law by AS 01.05.006 and as amended and supplemented is known as the "Alaska Statutes" and may be cited "AS" followed by the number of the title, chapter, and section, separated by periods. For example, [EXAMPLE:] this title may be cited "AS 01 [AS 1]"; this chapter may be cited "AS 01.05"; this section may be cited "AS 01.05.011." Except as otherwise indicated by the context, citations in accordance with this section include amendments and reenactments of the provision cited.

* Sec. 2. AS 12.55.165 is amended to read:

Sec. 12.55.165. EXTRAORDINARY CIRCUMSTANCES. If the defendant is subject to sentencing under AS 12.55.125(c), (d), (e), or (i) [AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), OR (i)] and the court finds by clear and convincing evidence that manifest injustice would result from failure to consider relevant aggravating or mitigating factors not specifically included in AS 12.55.155 or from imposition of the presumptive term, whether or not adjusted for aggravating or mitigating factors, the court shall enter findings and conclusions and cause a record of the proceedings to be transmitted to a three-

judge panel for sentencing under AS 12.55.175.

* Sec. 3. AS 14.43.300(d) is amended to read:

(d) The recipient must at all times continue to be enrolled as a full-time student in good standing at an accredited <u>postsecondary institution that is appropriate to the memorial scholarship received</u> [COLLEGE OR UNIVERSITY].

* Sec. 4. AS 16.05.400(b) is amended to read:

(b) A sport fishing, hunting, or trapping license is not required of a resident who is 60 years of age or more [AND HAS BEEN A RESIDENT FOR ONE YEAR OR MORE]. The commissioner shall issue a permanent identification card without charge to persons who qualify by age and residence and who complete the forms required by the commissioner for implementation of this subsection. A person who is issued a permanent identification card under this subsection shall have it in possession while sport fishing, hunting, or trapping.

* Sec. 5. AS 23.15.230 is amended to read:

Sec. 23.15.230. APPOINTMENT OF COMMITTEE. The governor's committee consists of not more than 12 members appointed by the governor for <u>staggered terms</u> [A TERM] not exceeding three years. The committee shall be composed of state leaders of industry, business, agriculture, labor, veterans, women, religious, educational, civic, fraternal, welfare, scientific, military, medical, and other professions, or as many of these and like categories as may be feasibly represented. [THE INITIAL MEMBERS SHALL BE APPOINTED FOR TERMS OF ONE, TWO, AND THREE YEARS AS DESIGNATED BY THE GOVERNOR.] A member may be reappointed and a vacancy shall be filled by the governor.

* Sec. 6. AS 28.05.095(a) is amended to read:

(a) Except as provided in (b) of this section, a driver may not transport a child under the age of seven in a motor vehicle unless the

driver has provided and properly secured each child as described in this subsection. If the child is less than four years of age, the child shall be properly secured in a child safety device meeting the standards of the United States Department of Transportation for a child safety device for infants. If the child is [BETWEEN] four through [AND] six years of age, the child shall be properly secured in a child safety device approved for a child of that age and size by the United States Department of Transportation or in a seatbelt, whichever is appropriate for the particular child.

* Sec. 7. AS 28.33.010(d) is amended to read:

(d) A policy of insurance, surety bond, or other form of security may not be cancelled on less than 30 days' written notice to the department. This requirement must be clearly stated in the policy or endorsement for an insurance policy submitted as proof of financial responsibility under (b)(1) of this section [AS 42.[illegible]25(a)(1)]. The 30-day notice period is measured from the date on which the department receives notice.

* Sec. 8. AS 28.35.130 is amended to read:

Sec. 28.35.130. FALSE REPORT OR DESTRUCTION OF EVIDENCE. An officer or person who knowingly makes or subscribes a false report concerning an investigation of a vehicle or damage or injury caused by a vehicle, as provided in this chapter, is guilty of unsworn falsification [PERJURY]. A person who destroys, obliterates, conceals or removes, or who aids, abets, or assists in the destruction, obliteration, concealment, or removal from a vehicle, of evidence showing or tending to show that the vehicle collided with a person or property, is punishable by a fine of not more than $500, or by imprisonment for not more than six months, or by both.

* Sec. 9. AS 28.40.100(a)(1) is amended to read:

(1) "cancel" means to annul or terminate, [THE ANNULMENT OR TERMINATION] by formal action of the department, [OF] a certification, registration, license, permit or privilege issued or allowed under this title or regulations adopted under this title, because of an error or defect in the document issued or the application for issuance or because the person holding the document is no longer entitled to it;

* Sec. 10. AS 31.05.007(a) is amended to read:

(a) The term of office of each member is six years. [THE GOVERNOR SHALL DESIGNATE WHO AMONG THE INITIAL APPOINTEES SHALL SERVE RESPECTIVELY FOR TERMS OF TWO YEARS, FOUR YEARS AND SIX YEARS.] A commissioner, upon the expiration of a term, shall continue to hold office until a successor is appointed and qualified.

* Sec. 11. AS 36.30.015(e) is amended to read:

(e) The boards of directors of the Alaska Railroad Corporation and the Alaska State Housing Authority shall adopt procedures to govern the procurement of supplies, services, professional services, and construction [BY THE CORPORATION]. The procedures must be substantially equivalent to the procedures prescribed in this chapter and in regulations adopted under this chapter.

* Sec. 12. AS 39.20.190 is amended to read:

Sec. 39.20.190. DEFINITIONS. In AS 39.20.110 - 39.20.190 [AS 39.20.110 - 39.20.170]

(1) "employee" or "state employee" means a person employed by a state agency;

(2) "official" or "state official" means the appointive head of a state agency;

(3) "official travel" means travel inside or outside the state on official business of the state, for which payment or

reimbursement is expected or authorized;

(4) "per diem allowance" means a daily flat rate of payment instead of actual expenses;

(5) "state agency," "agency," or "department" means department, office, institution, board, commission, bureau, division, or other administrative unit forming the state government;

(6) "subsistence" means lodging, meals, and other necessary expenses incidental to the personal sustenance or comfort of the traveler;

(7) "traveler" means the official or employee engaged in official travel for the state.

* Sec. 13. AS 42.05.030(a) is amended to read:

(a) The term of office of each member is six years. [THE GOVERNOR SHALL DESIGNATE WHO AMONG THE INITIAL APPOINTEES SHALL SERVE, RESPECTIVELY, FOR TERMS OF TWO YEARS, FOUR YEARS AND SIX YEARS.] A commissioner, upon the expiration of a term, shall continue to hold office until a successor is appointed and qualified.

* Sec. 14. AS 42.05.221(a) is amended to read:

(a) A public utility may not operate and receive compensation for providing a commodity or service [AFTER JANUARY 1, 1971] without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require or will require the service. Where a public utility provides more than one type of utility service, a separate certificate of convenience and necessity is required for each type. A certificate must describe the nature and extent of the authority granted in it, including, as appropriate for the services involved, a description of the authorized area and scope of operations of the public utility.

* Sec. 15. AS 42.05.221(e) is amended to read:

(e) If the [THE] commission employs [MAY EMPLOY] professional consultants to assist it in administering [THE PROVISIONS OF] this section, it [AND] may apportion the expenses relating to their employment [THIS ADMINISTRATION] among the competing utilities [INVOLVED].

* Sec. 16. AS 42.05.351 is amended to read:

Sec. 42.05.351. TESTING OF APPLIANCES. The commission shall provide for the examination and testing of appliances used for the measuring of a service of a public utility and may purchase equipment, apparatus, and standards required for this purpose. The commissioner of commerce and economic development may assign the examination and testing function to the section of weights and measures. Upon the payment of a reasonable fee established by the commission, a consumer may have an [THE] appliance that [, WHICH] is used by the consumer [,] tested. The commission shall establish by regulation allowable tolerances with respect to the functioning or operation of the appliance. If the measuring appliance does not perform within these tolerances, the utility concerned shall pay the costs of the test by reimbursing the person requesting the test for the fee paid by that person. This reimbursement shall be made no later than at the time of the next regular billing following the test.

* Sec. 17. AS 42.05.641 is amended to read:

Sec. 42.05.641. REGULATION BY MUNICIPALITY. The commission's jurisdiction and authority extend to public utilities operating within a municipality [CITY OR BOROUGH], whether home rule or otherwise. In the event of a conflict between a certificate, order, decision, or regulation of the commission and a charter, permit, franchise, ordinance, rule, or regulation of such a local governmental entity, the certificate, order, decision, or regulation of the commission shall prevail.

* Sec. 18. AS 42.05.720(4) is amended to read:

(4) "public utility" or "utility" includes every corporation whether public, cooperative, or otherwise, company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant, pipeline, or system for

(A) furnishing, by generation, transmission, or distribution, electrical service to the public for compensation;

(B) furnishing telecommunications service to the public for compensation;

(C) furnishing water, steam, or sewer service to the public for compensation;

(D) furnishing by transmission or distribution of natural or manufactured gas to the [ALASKA] public for compensation;

(E) furnishing for distribution or by distribution petroleum or petroleum products to the [ALASKA] public for compensation when the consumer has no alternative in the choice of supplier of a comparable product and service at an equal or lesser price;

(F) furnishing collection and disposal service of garbage, refuse, trash, or other waste material <u>to the public for compensation</u>;

* Sec. 19. AS 42.06.230(b) is amended to read:

(b) The commission's jurisdiction and authority extend to an oil or gas pipeline facility operating in a <u>municipality</u> [CITY OR BOROUGH], whether home rule or otherwise. If a conflict between a certificate, order, decision, or regulation of the commission and a charter, permit, francnise, ordinance, rule, or regulation of such a local