ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8191 HOUSE STATE AFFAIRS

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tax system and scares off those investments, the cost to the State in terms of lost taxes and royalties from that production will exceed any extra taxes that Alaska might gain by adopting SB 185 and trying to administer its taxes by hindsight.

So far I've been talking about the problems with sections 2 and 3 of SB 185. Before I move on to other parts of the bill, let me make two final points. One, why is section 3 necessary? The Department of Revenue controls the pace of the tax appeals process within the Department. Under the Department's own regulations, 15 AAC 05.030(e) - (g), the administrative hearing officer sets the schedule. If a taxpayer tried to drag the hearing out unduly, the hearing officer has the authority to cut off "[i]rrelevant and unduly repetitious evidence[.]" 15 AAC 05.030(h). So if the Department, not the taxpayer, controls the schedule and pace of the tax appeal, why can't the Department make sure it gets the hearing done within six years? Why does it need SB 185 to keep the clock from starting for the six years until the hearing is over and the Department issues its formal decision? And if the Department does somehow find it needs more than six years to get done with a tax appeal, why doesn't it just ask taxpayers for an extension of the six-year period?

The second point I'd like to make about sections 2 and 3 is that they are limited only to certain oil and gas taxes — namely, the separate-accounting income tax that was repealed in 1981, and the production tax. It's not a very friendly message that the State is sending to the petroleum industry if it changes the rules of the game just for us and no one else. In fact, it's one more bit of Alaska's competitive edge that would be thrown away. Why do this and invite at the same time litigation over whether it's constitutional to discriminate this way against one group of taxpayers?

Now I would like to discuss the retroactivity of SB 185, which is in section 4 of the bill. Not only are the proposed changes to the statutes of limitation bad policy on a prospective basis, but section 4 would make them retroactive by more than 18 years to the beginning of 1976.

There are three fundamental problems with this retroactivity. One, there is already litigation pending over the three-year statute of limitations. In fact, the Alaska Supreme Court is due to hear the case on the three-year statute in May. Adopting SB 185 retroactively would interfere in the orderly judicial resolution of that litigation. The courts are, under our constitutional system of government, the arbiter of what the statutes mean. We don't think it is appropriate to change the language of a statute retroactively and certainly not before the courts have had the chance to rule on what it means.

The second fundamental problem is that such extreme retroactivity simply goes too far. For some taxpayers, one or both of the statutes of limitations has expired, and they now have certain rights that have vested as a result. To take away those rights retroactively and without compensation as SB 185 would do is, we believe, unconstitutional.

The third fundamental problem with retroactivity relates to wise tax policy. Suppose the courts ultimately decide it is within Alaska's constitutional powers to reach back more than 18 years and change the rules of the game. Is this the stability that invites people to invest in Alaska? No, it isn't. For if the State can do it to oil companies, nothing will keep it from being able to do it legally to miners, fishermen, timber interest, investors in a Gas Pipeline, or the general public at large. Not only will SB 185 cast a pall over the oil industry here, but

over all private sectors of the state economy. Don't cripple Alaska's future through a misguided attempt to change the past.

Before I close, I need to correct the record on a number of statements in the findings and purposes of section 1 that are inaccurate, incomplete or simply untrue.

First, on lines 6 and 7 of page 1, the finding asserts that the Department has taken a certain position, described in the next three lines, in the context of the separate-accounting income tax under former AS 43.21 and the production tax under AS 43.55. This is incomplete. We believe the Department also takes this position on the income tax under AS 43.20, and may also take it for other taxes that we are unfamiliar with. We fail to see why the findings on this point, if true, should be limited to just the two oil and gas taxes.

Second, on line 11 of page 1, the finding asserts that the Department's interpretation of AS 43.05.260 is correct. This is either false or misleading. The Superior Court has ruled that the Department's interpretation of AS 43.05.260 is incorrect. While the Department's appeal of that decision to the Alaska Supreme Court is still pending, the current law of the case is that the Department is wrong.

Third, on lines 12-14 of page 1, the finding asserts that this is a clarification. In last year's hearings, Attorney General Cole testified that while working on tax claims and assessments, he found "corrections" that needed to be made to the procedural tax statutes, procedures and regulations to "balance the scales" as he put it. Corrections are not clarifications. The finding also asserts that the Department's position is a "long-standing administrative interpretation" justifying the retroactivity of SB 185 to the date of enactment of AS 43.05.260, the three-year statute of limitations. It is simply not true that the Department's

position is long-standing. It apparently dates back no earlier than May 1989 and certainly does not date back anywhere near to the 1976 enactment date of the statute. Let me give you the facts to prove this.

Under AS 43.21 taxpayers filed their tax returns no later than April 15 of the year following their tax year, and the Department issued tax assessments based on those returns no later than August 15 of the year following the tax year. 15 AAC 21.700. The assessments issued by the Department on August 15, 1978 and each year thereafter while AS 43.21 was in effect all said that the assessed amount of tax "may change as the result of any audit findings within three years of the date of this notice of assessment." The regulation also said, "Returns and assessments under this section are subject to amendment for three years from the date of the original notice of assessment." 15 AAC 21.700(e). In other words, the Department's own assessment notices as well as its regulations said that the separate-accounting tax assessment for the 1978 tax year, for example, was subject to amendment until August 15, 1982 — the third anniversary of the August 15, 1979 tax assessment for the 1978 tax year. This is not consistent with the position that the Department may amend an assessment "at any time during the administrative consideration of an appeal[.]" And so any "long-standing" position on the three-year statute certainly does not relate back to the 1978-81 period when the Department was actively administering the tax.

Further evidence that the Department's position is of a much more recent date comes from a letter sent by the Department to oil and gas taxpayers seeking their comments to help the Department formulate a position as to the proper interpretation of the three-year statute. That letter, dated March 25, 1988, said, "Your participation is invited in order to assist the Commissioner in focusing on the broader implications of various possible rulings on the statute of limitations."

There were "various possible rulings" still open at that time, or the Department would not have asked taxpayers for their input. And if there were "various" rulings still open, that implies that no ruling or position had yet been formally taken.

The Department explicitly confirmed that it had taken no formal position on the three-year statute of limitations in 1987 and 1988 in the course of litigation by Standard Alaska Production Company. In 1985 auditors in the Department had issued a new tax assessment for separate-accounting for the 1978 tax year, which was already the subject of appeal by Standard for an earlier assessment for that year. The new assessment was after the three-year period had expired, but the auditors asserted that the three-year statute didn't bar them from issuing the new assessment so long as the appeal of the earlier one was still within the Department. Standard sued in March 1987 for declaratory judgment, asking the courts to rule on the question whether the three-year statute barred the new assessments or not. The Attorney General, acting on behalf of the Department, argued to the courts that they should not hear Standard's case before Standard had completed its appeal before the Department. The Alaska Supreme Court summarized these arguments as follows:

> The Department moved to dismiss Standard's complaint on the ground that Standard "ha{d} not yet exhausted its administrative remedies." It argued that no official Department view as to Standard's limitations claims had yet been formulated ...

The case is *Standard Alaska Production Co. v. Dept. of Revenue*, decided April 21, 1989 and reported in Volume 773 of the Second Series of the Pacific Reporter, beginning at page 201. The quotation appears on page 204. So unless the Department was misrepresenting the situation to the courts in that case, it had not yet formulated an official view about the three-year statute of

limitations as late as 1988 when the case was being briefed and argued before the Alaska Supreme Court. In fact, if the Department had formulated an official position while that Court's decision was pending, it had a duty to disclose that material development to the Court. So one may presume from the Department's silence that it still did not have a formal position on the three-year statute of limitations as late as April 21, 1989, when the Alaska Supreme Court issued its decision in *Standard*.

The first time that the Department formally took a position was indeed a few weeks after the Supreme Court decided the *Standard* case. On May 26, 1989, the Department issued its formal hearing decision in Exxon's appeal over separate-accounting for its 1978 tax year. In the *Exxon* decision, the Department formally took the position that the three-year statute does not bar it from issuing a new assessment for additional taxes while the tax period is under appeal before the Department for an earlier assessment. Thus, contrary to the "findings" in SB 185, the Department did not adopt its interpretation of the three-year statute until May 1989. Perhaps a little less than five years is long enough to characterize this position as "long-standing," but it in no way is long enough to justify going back over 13 years earlier to amend the statute on the basis of that "long-standing" position.

A fourth inaccuracy in the findings appears in lines 8-9 on page 2 of SB 185. It says the Department's audits have been so lengthy because its ability to audit the separate-accounting and production taxes "throughout the 1970's and 1980's ... was constrained by its audit resources[.]" In one sense that statement is true because any limit on the resources available could theoretically operate as a constraint But the statement is misleading because it implies that the constraint was material and kept the Department from acting faster. In fact,

however, the public record shows that, in every Session of the Legislature since North Slope production began, the Department has received virtually every dollar they asked for in the governor's budget proposals for oil and gas audits. The Attorney General has informed the Legislature that the State of Alaska has spent over $176 million in outside legal fees and costs for litigation involving oil and gas royalty and tax issues since 1977. As finding (a)(7) on lines 2-3 on page 3 of the bill indicates, all of the disputes in the production tax and by far the largest disputes in separate-accounting are over the value at the point of production of oil and gas, which was the key issue in the North Slope royalty litigation as well. Surely the Department shared in and benefited from the fruits of this massive investment. Any "constraint" on the Department therefore was at such a high level that it is almost absurd to call it a "constraint" at all.

A fifth misleading "finding" in SB 185 appears on lines 10-14 on page 2. The finding says the length of these tax audits was caused in part by "taxpayers' requested suspension of action on assessments pending the outcome of a challenge to the constitutionality of the separate accounting method[.]" It is true taxpayers asked for suspension of action on their separate-accounting assessments, but the fact is the Department did not stop auditing taxpayers nor did it suspend action on the assessments. Standard Alaska Production Company, for example, was issued assessments in 1981, 1984 and 1985 for separate-accounting for the 1978 tax year; it received an assessment in 1984 for separate accounting for the 1979 and 1980 tax years; and it received an assessment in 1986 for production tax for the months from January 1979 through December 1982. Exxon also had similar experiences during this period. This was all while the litigation was pending. Contrary to what the "finding" says, the

taxpayers' requests for action to be suspended did not slow the Department down at all.

A sixth erroneous finding appears in lines 18-20 on page 2 of SB 185, which says that the proposed change to the six-year statute of limitations "embodies the interpretation by and practice of the Department of Revenue since the enactment of AS 43.05.270" in 1976. The fact is the Department has never had any such interpretation or practice, or if it did, it never told any taxpayers about it. Unlike the separate-accounting tax regulations, for example, — which specifically say the assessment is open to audit adjustment for three years from the date of the original assessment — there is not now and has never been any regulation at all by the Department about the six-year statute. None for separate-accounting, none for production tax, none for any other specific tax, and none for taxes generally.

If you think about it for a moment, this lack of regulations isn't surprising. As I explained before, the Department controls the pace of tax appeals pending before it. So it is well within the Department's own control to make sure it issues its formal decisions in tax appeals within the six-year period. The six-year period should never be a problem if the Department is doing its job. Moreover, the statute says the six-year period can be extended by agreement with the taxpayer. Throughout the 1980s taxpayers in the oil and gas area regularly agreed to extend the three-year statute of limitations when the Department asked them to. There is no reason to think they wouldn't do the same with the six-year statute. But the Department never asked any of us to extend the six-year statute.

Only after the Department found that the six-year period had run out for some taxpayers and it had forgotten or otherwise failed to seek an extension of

that period from them, did the Department decide it needed to have an "interpretation" or "practice" regarding the six-year statute. This finding is a complete fabrication, especially to the extent it purports to justify making the changes to the six-year statute retroactive to 1976.

A seventh inaccurate finding appears in lines 21-30 on page 2 of the bill. It asserts that "often a tax levy cannot be made or a proceeding in court cannot be initiated" because the appeal of a tax assessment "begins a process that often takes several years to complete[,]" and because judicial resolution of the tax appeal "often lasts several more years" after the Department's final decision, and because starting a separate action in addition to the tax appeal "is impractical and an inefficient use of ... resources[.]" The administrative appeal of a tax assessment may take "several years" but that shouldn't be six years. As I just said, the Department controls the schedule for tax appeals before they go to court. Moreover, the fact that court appeals of a tax assessment may last "several more years" is irrelevant. When the tax appeal finally gets into court, that marks the beginning of a court proceeding under which any additional tax that is owed can be collected. The tax appeals statute, AS 43.05.240(d) says, "If after the appeal is heard it appears that the tax was correct, the court shall confirm the tax. If incorrect, the court shall determine the amount of the tax ..." It would be silly if the courts, having made these determinations, said they could not force the taxpayer to pay the tax. We believe the court proceeding to hear the taxpayer's appeal is indeed "a proceeding in court" under which the tax can be collected, which satisfies the requirements of AS 43.05.270. In other words, if the tax appeal makes it to court within six years of the assessment, the requirements of AS 43.05.270 are satisfied and the Department will be able to collect the correct amount of tax in the course of that judicial appeal. No second

court action is needed after the courts decide the tax appeal, and so it is irrelevant how long the courts take to hear that appeal. Thus, these factors cited in the finding do not support the conclusion that a court proceeding cannot be initiated within the six-year limitations period.

An eighth erroneous statement appears in lines 9-10 on page 3 in the "purposes" subsection of section 1 of the bill. It says the purpose of this legislation is "to validate and affirm the long-standing administrative interpretation and practices of the Department of Revenue[.]" As I have shown earlier, the Department did not adopt its present view of the three-year statute until May 26, 1989 when it issued its decision in Exxon's separate-accounting appeal. And in fact as late as April 21, 1989 the Department was, by its silence to the Alaska Supreme Court in the *Standard* case, implicitly denying that it had yet adopted an official view on this statute. And as I have also shown, it never had any position on the six-year statute until it found itself in trouble two or three years ago with this statute. Therefore, it is wrong to say that the purpose of this legislation is to validate and affirm "long-standing" positions when they are not long-standing at all.

Finally, I would draw your attention to one more inaccuracy in the bill, in lines 11-14 on page 3 in the "purposes" subsection of section 1. The bill says one of its purposes is "to resolve the inconsistent decisions" in the Tesoro Case and the Exxon Case. The Tesoro Case involved the six-year statute of limitations with respect to collection. The Exxon Case involves the three-year statute regarding tax assessments. With different statutes, there is no way the cases could be "inconsistent." And even if they were inconsistent, neither judge's decision sets any precedent that binds any other judge. In civil cases only the Alaska Supreme Court sets binding precedent. So in due course the Alaska

Supreme Court would reconcile whatever the inconsistency might have been. But, as it turns out, the State has settled the Tesoro Case, so there is nothing from that case that could cause an inconsistency with the Exxon Case.

I have gone on at some length rebutting the inaccurate, misleading or even false statements in the findings and purposes section of the bill because it is a very serious thing to play fast and loose with the truth as part of the justification for legislation. As recited in the findings and purposes, the major justifications for this legislation, and particularly its retroactivity, turn out to be untrue.

I believe the sponsors of this legislation are well-meaning and justifiably interested and concerned about the lengthy tax appeals that are going on. Unfortunately, their good intentions and sincere desire to improve the situation have not been well served by the parties who asked them to introduce this bill. The sponsors relied on those other parties to prepare accurate justifications for the bill. Those other parties did not do so. Instead, in drafting the findings and purposes for this bill, those parties indulged in the hyperbole and exaggeration that are common in legal advocacy before a court or administrative tribunal. Legislation is the solemn exercise of sovereign power by the People's elected representatives. It is not the place for exaggeration or hyperbole. SB 185 is a piece of bad legislation, but the findings and purposes that are offered to justify it are a travesty and an abuse against this Legislature.

In summary, SB 185 represents bad tax policy. The proposed change to the three-year statute of limitations would put taxpayers in jeopardy of increased tax claims at any time while their appeals are still before the Department. With the proposed change to the six-year statute, there would be no time limits on the

Department for processing tax appeals, and the present system of litigating tax disputes that are 10, 15 or more years old will be perpetuated. But even more destabilizing, these changes would be made retroactively by more than 18 years. And finally, SB 185 singles out just one industry - oil and gas - for these changes. All this sends a very hostile message about Alaska not only to the managements of the companies who are already here, but also to those who might be thinking about investing in Alaska.

On behalf of AOGA and its Tax Committee, I urge you to reject SB 185. Thank you.

File
SB-377

BP EXPLORATION

April 26, 1994

Dear Legislator:

This is to advise you of the most recent development in BP's efforts to resolve the dispute over retroactive legislation to amend the statutes of limitations for taxes. As you know, this legislation was introduced as SB 185 last year at the request of former Attorney General Cole. Last Friday the substance of SB 185 was added to SB 377 as a floor amendment in the Senate, and "CSSB 377 (FIN) am" is now in the House.

This bill comes at a time of low oil prices and lower North Slope production, further complicating current investment decisions that are necessary to secure future production. We are doing all we can to lower our operating costs and are working aggressively to remove the export ban on North Slope oil. This bill works against these efforts by amplifying the fiscal uncertainty that we have been encountering in Alaska.

Governor Hickel supports this legislation "because he does not want to see nearly $3 billion of state claims become barred from collection as the result of a mere technicality." We at BP oppose it because of the dangerous and destabilizing precedent it would set, and because the actual substance of the new retroactive rule is simply bad policy. Even the Administration concedes the latter point, inasmuch as they proposed and supported the amendments to SB 377 which would not apply that policy for the future.

To reassure the Administration that BP would not hide behind a "technicality" with respect to the claims against us, I offered the following alternative to SB 377 to Attorney General Botelho on Monday: BP would give a written commitment not to use the six-year statute of limitations to avoid payment of any tax that is finally determined to be due, if the Hickel Administration would support removal of all retroactive provisions from SB 377. This would allow the Supreme Court to rule on the case before it relating to the meaning of the three-year statute of limitations on assessments. Mr. Botelho turned me down. I also asked for an acknowledgment that the substance of the tax dispute between BP and the State is legitimate and not merely an attempt by BP to avoid paying taxes that are clearly owed. In response Mr. Botelho made it clear that the State's claims against BP are legitimately disputed and cannot be regarded in any sense as taxes owed.

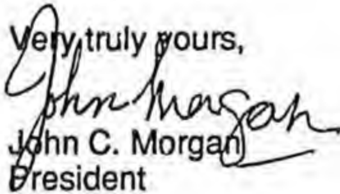
received
4/26/94

BP EXPLORATION

Having tried to deal with the concern to "keep the money on the table" other than by legislation, and having failed in that attempt, BP has no choice but to continue opposing SB 377. But one thing now is clear from the Attorney General's refusal: In pressing for this legislation, the Administration is not motivated by concern to keep the money on the table. So as you consider your position on this matter, please don't make up your mind on that basis.

We stand ready t continue our dialogue with the Hickel Administration to resolve this issue and, more importantly, to seek a solution to the long-standing dispute over our tax liability for past years. Thank you for your thoughtful consideration.

Very truly yours,



John C. Morgan
President

May 7, 1994 (C)

SECTIONAL ANALYSIS

FOR PROPOSED HOUSE CS FOR SENATE BILL NO. 377(STA)

(Draft Offered by the Administration)

Section 1. This section contains proposed legislative findings setting forth the Department of Revenue's interpretation of AS 43.05.260 and of AS 43.05.270. The proposed legislative findings conclude that the department's interpretation is correct and that it is in the public interest that AS 43.05.260 and AS 43.05.270 be clarified to reflect the department's interpretation. This section also sets forth the purpose of sections 2 and 3 of this bill, which is to validate and affirm the department's longstanding administrative interpretation and to clarify existing law that resulted in the inconsistent decisions in the state Superior court. This section also explains the purpose of the addition of a definition of "gas processing plant."

Section 2. This section adds language to AS 43.05.260(a) to clarify that for tax periods ending before January 1, 1993, the Department of Revenue may increase or decrease the amount of a tax due by issuing or amending an assessment under former AS 43.21 or AS 43.55 at any time during the administrative consideration of a taxpayer grievance on an assessment or a claim for credit or refund of a tax. This section also adds AS 43.05.260(a)(2) which provides that for tax periods beginning after December 31, 1993, the Department of Revenue may increase or decrease the amount of a tax due by issuing or amending an assessment within five years after a return is filed. After expiration of the five-year period, the department may not increase an assessment.

Section 3. This section adds language to AS 43.05.270(a) to clarify the six-year limitation on collection of taxes after assessment. Under this section, the limitation period does not begin to run until the final administrative determination of a grievance if the taxpayer files a grievance from an assessment or the final judicial resolution of an appeal if the taxpayer appeals from a final adjudicative determination of a grievance.

Section 4. This section adds language to establish a statutory methodology for establishing prevailing value for oil production tax purposes. This section will provide a means by which a taxpayer will be able to determine a sales price for purposes of determining its tax liability under AS 43.55. This section adds a provision to establish methods for determining the prevailing value for gas for production tax purposes.

Section 5. This section amends the definition of "gross value at the point of production." The amendment places a limitation on a reasonable processing allowance not to exceed $1 per barrel of plant liquid sold.

Section 6. This section adds definitions for "condensate," "distillate," and "gas processing plant." The addition of the definitions are intended to reduce litigation over these issues.

Section 7. This section makes AS 43.05.260(a)(1), enacted by sec. 2, and sec. 3, retroactive to January 1, 1976.

Section 8. This section makes definition sections at secs. 5 and 6 of the bill retroactive to January 1, 1985.

Section 9. This section makes new AS 43.55.146, prevailing value for gas, applicable to gas produced in the state after December 31, 1994.

Section 10. This section provides that provisions of the bill are not severable.

Section 11. This section provides that all provisions of the bill, but AS 43.55.145, enacted by sec. 4 of this Act, takes effect immediately under AS 01.10.070(c).

Section 12. This section provides that the provisions of sec. 4 establishing methods for determining the prevailing value of oil in AS 43.55.145 take effect only when taxpayers resolve all outstanding assessments pending under former AS 43.21 (separate accounting income tax), including interest.

HOUSE STATE AFFAIRS COMMITTEE

DATE 5/7/94

TAPE NO. 94-55

TIME CALLED TO ORDER 2:32 am/pm (pm circled) TIME ADJOURNED 4:16 am/pm (pm circled)

ROLL CALL:	PRES	ABST	TIME ARRVD	JOINT MBRS PRST
AL VEZEY	✓			
PETE KOTT	✓			
JERRY SANDERS	✓		2:34	
GARY DAVIS	✓			
HARLEY OLBERG	✓			
BETTYE DAVIS	✓			
FRAN ULMER	✓			

BILL NO.	SHORT TITLE	ACTION TAKEN
(1) SB377	State Agency Fiscal Procedures	HELD

OTHER:

SPECIAL ANNOUNCEMENTS:

PROPOSED

HOUSE CS FOR SENATE BILL NO. 377(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the limitations period for assessments for certain state taxes,**
2 **and for collection, after assessment, of taxes due the state; relating to valuation**
3 **of oil and gas under AS 43.55; adding certain definitions applicable to oil and**
4 **gas production taxes; and providing for an effective date."**

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

6 *** Section 1.** LEGISLATIVE FINDINGS AND PURPOSES RELATED TO SECTIONS
7 2, 3, and 5 - 7. (a) The legislature finds that
8 (1) with respect to income taxes imposed under former AS 43.21 and oil and
9 gas production taxes imposed by AS 43.55,
10 (A) the Department of Revenue has interpreted AS 43.05.260 to permit
11 it to issue an amended assessment at any time during the administrative consideration
12 of an appeal or of a claim for credit or refund;
13 (B) the department's interpretations of AS 43.05.260 and 43.05.270 are
14 correct; and

1 (C) it is in the public interest that AS 43.05.260 and 43.05.270 be
2 clarified by amendment, effective from the date of enactment of those sections, to
3 reflect these longstanding administrative interpretations;
4 (2) the legal and factual issues arising out of the separate accounting methods
5 used in the levy and collection of income taxes imposed under former AS 43.21 and oil and
6 gas production taxes imposed by AS 43.55 are complex and require lengthy audits by the
7 Department of Revenue to accurately determine the amount of the taxes that are due the state
8 from the respective levies;
9 (3) two other factors have contributed to the lengthy period required to issue
10 accurate tax assessments for the taxes imposed by former AS 43.21 and AS 43.55:
11 (A) throughout the 1970's and the 1980's, the Department of Revenue's
12 ability to audit these tax returns effectively was constrained by its audit resources; and
13 (B) subsequent to the enactment of former AS 43.21 in 1978, taxpayers
14 requested suspension of action on assessments pending the outcome of a challenge to
15 the constitutionality of the separate accounting method as applied to the levy and
16 collection of the income tax; litigation arising out of this challenge was filed in 1979
17 and concluded in 1986;
18 (4) the six-year limitation on the collection of taxes, as applicable to income
19 taxes imposed by former AS 43.21 and production taxes imposed by AS 43.55, should be
20 amended retroactively to clarify that the limitation on collections is tolled during any
21 administrative or judicial consideration of an assessment; the adoption of the amendment
22 embodies the interpretation by and practice of the Department of Revenue since the enactment
23 of AS 43.05.270 by sec. 1, ch. 94, SLA 1976;
24 (5) often a tax levy cannot be made or a proceeding in court cannot be initiated
25 for the collection of unpaid taxes within six years after the assessment of that tax because
26 (A) the protest of an assessment begins a process that often takes
27 several years to complete;
28 (B) after a final administrative decision on a protest has issued, judicial
29 resolution of the protest often lasts several more years; and
30 (C) commencement of a separate collection action while an
31 administrative or judicial appeal of a taxpayer's protest of an assessment is pending

1 is impractical and an inefficient use of the resources of the executive and judicial
2 branches of the state government;
3 (6) substantial taxes assessed under former AS 43.21 and under AS 43.55
4 remain uncollected;
5 (7) these uncollected taxes are in large part the result of disputes over value
6 at the point of production for oil and gas produced in the state;
7 (8) substantial public revenue is at risk in the litigation to which reference is
8 made in (b)(2) of this section, and it is contrary to the public interest to allow these revenues
9 to go uncollected;
10 (9) because the department has had difficulties in obtaining information and
11 completing audits within the three-year period set out in AS 43.05.260(a) and has had to
12 amend assessments based on information developed during taxpayer appeals to reflect the
13 correct amount of tax due, a longer statutory period for assessments should be provided for
14 tax periods beginning after December 31, 1993;
15 (10) taxpayers also have an interest in finality and certainty with respect to the
16 amount of taxes due the state, and that interest will be promoted by having a five-year statute
17 of limitations on assessments, except as otherwise authorized by AS 43.05.260(c), after which
18 time no increases in the amount due the state will be allowed; and
19 (11) it is in the public interest to amend AS 43.05.260(a) regarding tax periods
20 beginning after December 31, 1993, to provide for the issuance and amendment of assessments
21 within five years from the date the taxpayer's return is filed, except as provided in
22 AS 43.05.260(c).
23 (b) The purposes of the amendment of AS 43.05.260(a), made by sec. 2 of this Act,
24 and of AS 43.05.270(a), made by sec. 3 of this Act, are
25 (1) to validate and affirm the longstanding administrative interpretation and
26 practices of the Department of Revenue in assessing and collecting taxes;
27 (2) to clarify existing law that resulted in the inconsistent decisions of the state
28 Superior Court reached in Tesoro Petroleum Corporation, et al., v. State of Alaska, Department
29 of Revenue, Superior Court No. 3AN-89-7130 Civ., and State of Alaska, Department of
30 Revenue v. Exxon Corporation, et al., Superior Court No. 3AN-89-5215 Civ.; and
31 (3) to make changes to the statute of limitations for assessments in

1 AS 43.05.260 to allow the Department of Revenue five years from the date the taxpayer's
2 return is filed to complete its audit and issue or amend an assessment, for tax periods
3 beginning after December 31, 1993.
4 (c) The legislature finds that, with respect to oil and gas production taxes imposed by
5 AS 43.55,
6 (1) the Department of Revenue has interpreted the term "gas processing plant"
7 as that term is used in AS 43.55.900(6), (7)(B) and (C), and (10) to require satisfaction of
8 three tests: (A) the facility recovers liquid hydrocarbons that are not recoverable by means
9 of mechanical separation without resorting to extraneous refrigeration, adsorption, or
10 absorption; (B) the liquid hydrocarbons recovered from the facility are sold or marketed as
11 ethane, propane, isobutane, butane, natural gasoline, or mixtures of these rather than as crude
12 oil, gaseous natural gas, or other products; and (C) the primary purpose of the facility is to
13 recover such gas components rather than to facilitate or increase the production of crude oil
14 or to serve some other purpose; and
15 (2) it is in the public interest that AS 43.55.900 be clarified by amendment,
16 by adding a new paragraph that specifically defines "gas processing plant" consistent with the
17 understanding of that term as generally used in the industry.
18 * **Sec. 2.** AS 43.05.260(a) is amended to read:
19 (a) Except as provided in (c) of this section and AS 43.20.200(b), the amount
20 of a tax imposed by this title must be assessed
21 **(1) for tax periods ending before January 1, 1994,** within three years
22 after the return was filed, whether or not a return was filed on or after the date
23 prescribed by law**; however, at any time during the administrative consideration**
24 **of a taxpayer grievance or of a claim for credit or refund, based upon a tax**
25 **imposed by former AS 43.21 or by AS 43.55, the department may increase or**
26 **decrease the amount of tax due by issuing or amending an assessment;**
27 **(2) for tax periods beginning after December 31, 1993, within five**
28 **years after the return was filed, whether or not a return was filed on or after the**
29 **date prescribed by law; the department may increase or decrease the amount of**
30 **tax due by issuing or amending an assessment within the five-year period; after**
31 **that five-year period, the department may not increase an assessment under this**

1 subsection. [IF THE TAX IS NOT ASSESSED BEFORE THE EXPIRATION OF
2 THE THREE-YEAR PERIOD, PROCEEDINGS MAY NOT BE INSTITUTED IN
3 COURT FOR THE COLLECTION OF THE TAX.]
4 * **Sec. 3.** AS 43.05.270(a) is amended to read:
5 (a) When the assessment of a tax imposed by this title has been made within
6 the period of limitation under AS 43.05.260, the tax may be collected by levy or by
7 a proceeding in court [, BUT ONLY] if the levy is made or the proceeding is begun:
8 (1) within six years after **the latest of any of the following:**
9 **(A)** the assessment of the tax;
10 **(B) the final administrative determination of the grievance,**
11 **if the taxpayer files a grievance from an assessment; or**
12 **(C) the final judicial resolution of an appeal, if the taxpayer**
13 **appeals from a final adjudicative determination of a grievance;** or
14 (2) before the expiration of a period for collection agreed upon in
15 writing by the department and the taxpayer before the expiration of the six-year period;
16 a period agreed upon may be extended by subsequent agreements in writing made
17 before the expiration of the period previously agreed upon [; THE PERIOD
18 PROVIDED BY THIS PARAGRAPH DURING WHICH A TAX MAY BE
19 COLLECTED BY LEVY MAY NOT BE EXTENDED OR CURTAILED BECAUSE
20 OF A JUDGMENT AGAINST THE TAXPAYER].
21 * **Sec. 4.** AS 43.55 is amended by adding new sections to read:
22 Sec. 43.55.145. PREVAILING VALUE FOR OIL. (a) The department shall
23 adopt regulations to determine a methodology for calculating the prevailing value of
24 oil produced in each field or area of the state for each destination area to which the
25 oil is delivered. Before each October 30, the department shall annually review and
26 determine if any adjustments are necessary to the methodology established by
27 regulation under this section.
28 (b) The regulations adopted by the department under (a) of this section shall
29 determine the prevailing value of oil using the
30 (1) current value or average of current values for oil of like kind,
31 character, and quality produced from each field or area in the state;

1 (2) current values or average of current values for two or more types
2 of domestic or foreign oil selected by the department which are not produced in the
3 state; or
4 (3) any combination of the methods set out in this subsection.
5 (c) The department may average or assign different weights to the oils selected
6 under (b) of this section. The department may adjust the amounts calculated under (b)
7 of this section to account for differences in oil types and destination areas.
8 (d) For purposes of this section, "current value" includes spot or other current
9 prices or assessments publicly reported.
10 AS 43.55.146. PREVAILING VALUE FOR GAS. (a) The department shall
11 adopt regulations to determine a methodology for calculating the prevailing value of
12 gas produced in each field or area of the state for each destination are to which the gas
13 is delivered. Before each October 30, the department shall annually review and
14 determine if any adjustments are necessary to the methodology established by
15 regulation under this section.
16 (b) The regulations adopted by the department under (a) of this section shall
17 determine the prevailing value of gas using
18 (1) the current value or average of current values for gas of like kind,
19 character, and quality produced from each field or area in the state;
20 (2) the current values or average of current values for two or more
21 types of domestic or foreign gas selected by the department which are not produced
22 in the state;
23 (3) an indexing method based on current value determined by the
24 department for a given reference period that varies with a second measure of current
25 value selected by the department;
26 (4) the method used to value gas for royalty purposes; or
27 (5) any combination of the methods set out in this subsection.
28 (c) The department may average or assign different weights to the gas selected
29 under (b) of this section. The department may adjust the amounts calculated under (b)
30 of this section to account for differences in gas types and destination areas.
31 (d) For purposes of this section, "current value" includes the

1 (1) weighted average of reported prices by all producers in the field or
2 area delivered in the same destination area;
3 (2) spot prices of gas or spot prices of oil or oil products (adjusted for
4 BTU equivalency) as publicly reported; or
5 (3) market-related term prices of gas in the field or area delivered into
6 the same destination area.
7 * **Sec. 5.** AS 43.55.900(7) is amended to read:
8 (7) "gross value at the point of production" means
9 (A) for oil, the value of the oil at the point where it is metered
10 or measured (by automatic custody transfer meter, tank gauge, or other method
11 approved by the commissioner) in a condition of pipeline quality on the
12 premises of the lease or property from which it is recovered; however, if the
13 oil is not of pipeline quality when it is removed from the premises of the lease
14 or property from which it is recovered, or if the oil recovered from a lease or
15 property is not metered or measured (by automatic custody transfer meter, tank
16 gauge, or other method approved by the commissioner) on the premises of the
17 lease or property from which it is recovered, then the gross value at the point
18 of production is the value of that oil at the off-premises location where the oil
19 is first metered or measured (by automatic custody transfer meter, tank gauge,
20 or other method approved by the commissioner) in a condition of pipeline
21 quality;
22 (B) for gas recovered from or in association with oil, the value
23 of the gas at the point where it is accurately metered or measured after
24 separation from the oil; for gas run through a gas processing plant, the gross
25 value at the point of production is the full consideration received by the
26 producer for the gas if sold in an arm's length transaction or, in the absence of
27 an arm's length transaction, is the sum of the value of the liquids extracted
28 from the gas at the plant **and sold** and the value of the residue gas **sold**, less
29 a reasonable allowance**, which may not exceed $1 per barrel of plant liquid**
30 **sold,** for processing the gas at the plant and for transporting the gas to the plant
31 from the premises upon which the oil production operation is conducted; and

1 (C) for gas not recovered from or in association with oil, the
2 value of the gas at the point where it is accurately metered or measured or the
3 value of the gas at the point of sale, if any, on the premises of the lease or
4 property from which the gas is recovered, whichever is the higher value; for
5 gas run through a gas processing plant, the gross value at the point of
6 production is the full consideration received by the producer for the gas if sold
7 in an arm's length transaction or, in the absence of an arm's length transaction,
8 is the sum of the value of the liquids extracted from the gas at the plant **and**
9 **sold** and the value of the residue gas **sold**, less a reasonable allowance**, which**
10 **may not exceed $1 per barrel of plant liquid sold,** for processing the gas at
11 the plant and for transporting the gas to the plant from the point where it was
12 accurately metered or measured;
13 * **Sec. 6.** AS 43.55.900 is amended by adding new paragraphs to read:
14 (17) "condensate" means all hydrocarbons, including scrubber liquids,
15 recovered in liquid form from a gaseous stream by mechanical separation without
16 resort to extraneous refrigeration, adiabatic expansion through a Joule-Thompson valve
17 following artificial compression, turbo-expansion, aerial cooling below the temperature
18 at which hydrates or ice would form in the gas stream, osmosis, adsorption, or
19 absorption; if a gas stream moves to a gas processing plant without having passed
20 through a prudently operated mechanical separation unit, that portion of the liquid
21 hydrocarbons extracted at the gas plant that could have been extracted through a
22 mechanical separation unit by a prudent operator will be treated as condensate;
23 (18) "distillate" has the meaning given the term "condensate" in this
24 section;
25 (19) "gas processing plant" means a facility, other than a liquified
26 natural gas plant, in which liquid hydrocarbons are extracted and separated from a
27 stream of gas by one or more of the following means: refrigeration, adiabatic
28 expansion through a Joule-Thompson valve following artificial compression, turbo-
29 expansion, osmosis, adsorption, or absorption.
30 * **Sec. 7.** AS 43.05.260(a)(1), enacted by sec. 2 of this Act, and sec. 3 of this Act are
31 retroactive to January 1, 1976.

1 * **Sec. 8.** Sections 5 and 6 of this Act are retroactive to January 1, 1985.

2 * **Sec. 9.** AS 43.55.146, enacted in sec. 4 of this Act, applies to gas produced in the state
3 after December 31, 1994.

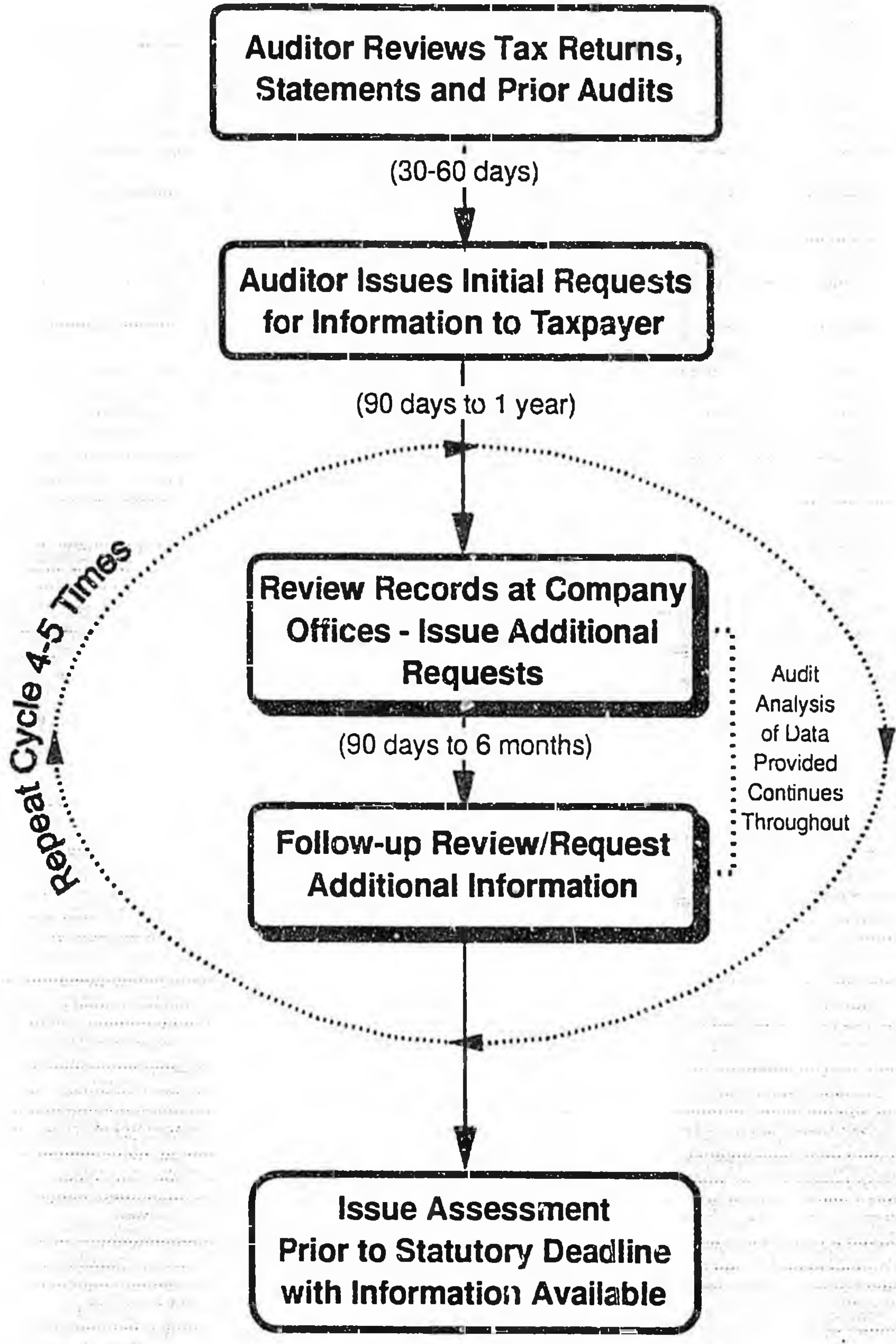
4 * **Sec. 10.** PROVISIONS NOT SEVERABLE. Notwithstanding AS 01.10.030, the
5 provisions of this Act are not severable.

6 * **Sec. 11.** Sections 1 - 3 and 5 - 12 and AS 43.55.146, enacted by sec. 4 of this Act take
7 effect immediately under AS 01.10.070(c).

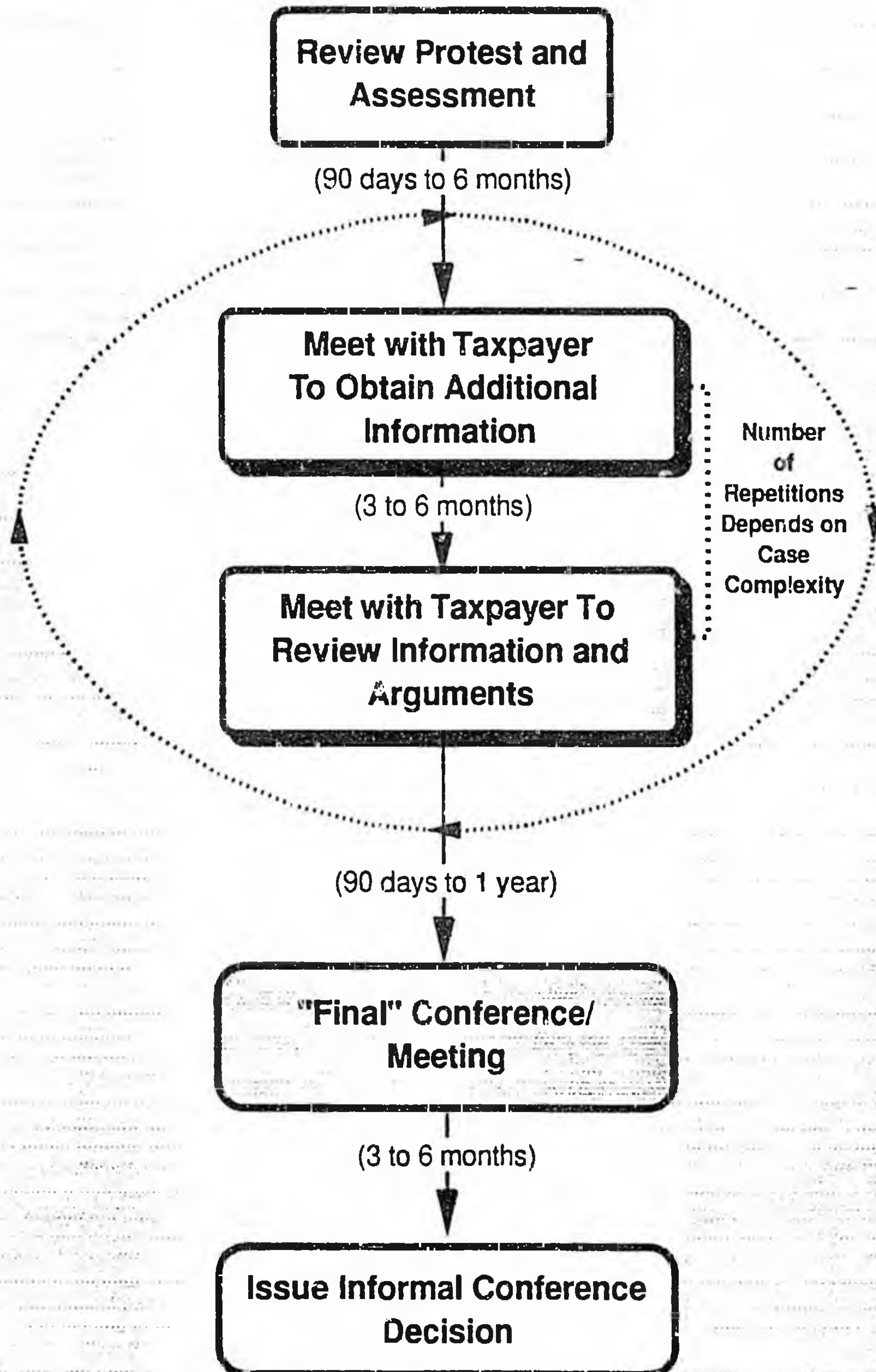
8 * **Sec. 12.** AS 43.55.145, enacted by sec. 4 of this Act, takes effect 30 days after the date
9 that the commissioner of the Department of Revenue certifies to the revisor of statutes that
10 all outstanding assessments of taxes, including interest, levied under former AS 43.21 are
11 completely resolved by final payment, compromise, or final judgment by a court of competent
12 jurisdiction.

Attachment #1

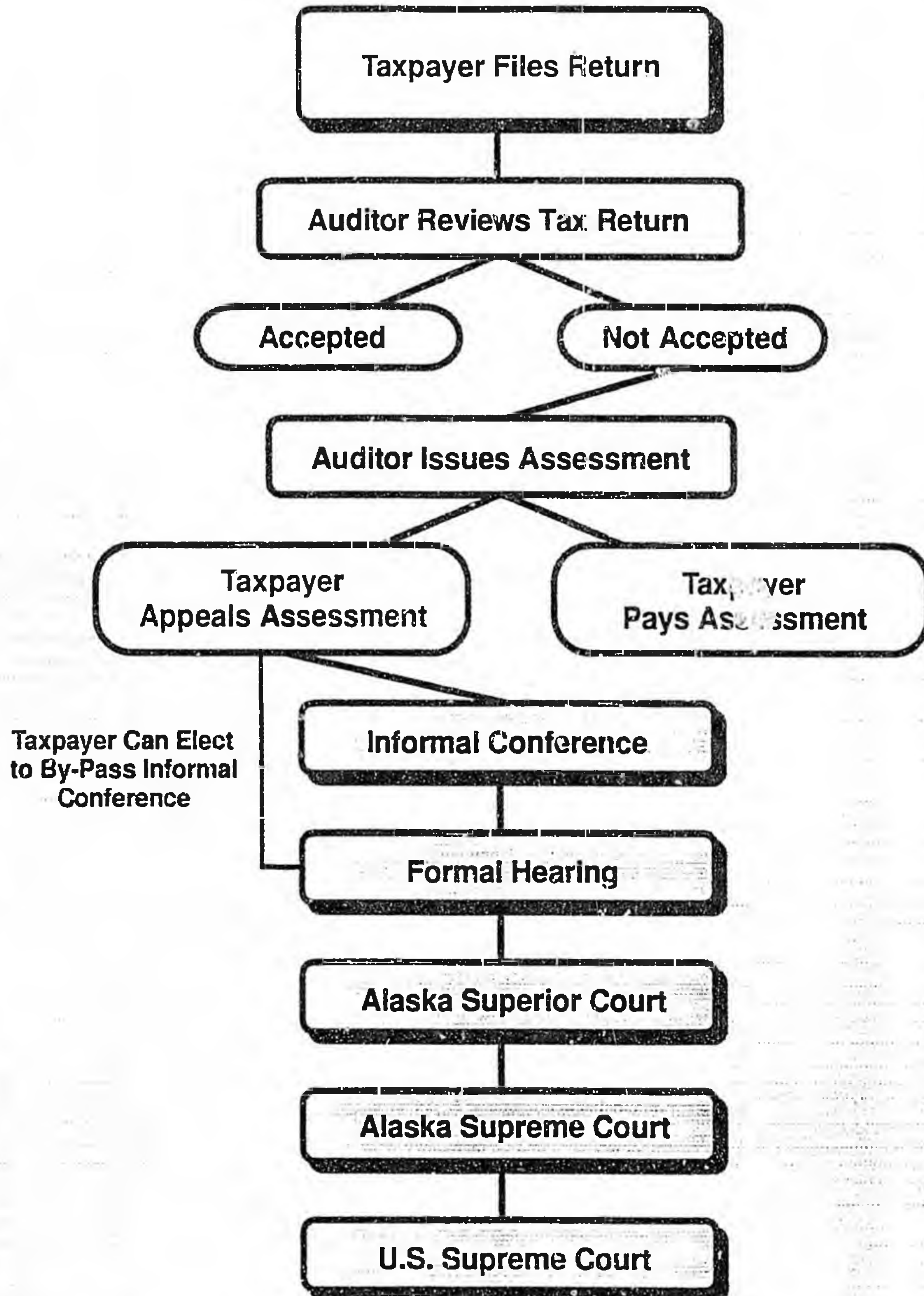
Department of Revenue's Audit Process



Department of Revenue's Informal Conference Process



Department of Revenue's Appeals Process



Oil and Gas Division Historical Information

(Calendar Year Basis)

		1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994 (e)
1	Number of Taxpayers (a)	41	41	43	47	19	19	20	20	18	16	17	18	18	18	19	19	18
2	Tax Dollars Collected (b)	$263	$669	$1359	$2110	$2404	$1223	$1379	$1328	$901	$998	$1050	$996	$1374	$1067	$1163	$1057	$239
3	Number of Audits Issued (c)	35	47	40	46	25	22	20	24	20	12	9	10	6	5	1	0	0
4	Number of Amended Assessments	19	22	17	12	6	2	2	1	0	0	0	0	0	0	0	0	0
5	Number of Taxpayers with Cases in Court (d)	1	1	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6	Number of Taxpayers with Open Cases	2	3	4	5	5	5	5	8	9	6	6	6	6	5	1	0	0
7	Closed Audits	32	43	33	41	20	17	15	16	11	6	3	4	0	0	0	0	0
8	Auditors/ Appeals Staff	0	5	5	6	8	10	10	10	10	14	18	23	24	22	21	21	21

(a) Includes both AS 43.55 and AS 43.21, 1978-1981
(b) Includes payments and settlements for this calendar year - Millions of Dollars
(c) May include separate Oil and Gas Assessments for the same taxpayer in some years
(d) Either in court or issues reserved pending court decision
(e) Reflects information available through 4/20/94

Attachment #2

written order denying the motion. (Eff. 12/26/80, Register 76; am 4/21/88, Register 106)

Authority: AS 43.05.010, AS 43.05.080, AS 43.05.240, AS 43.23.015, AS 43.55.110, AS 43.56.200

15 AAC 05.040. APPEAL OF FINAL DECISION OF DEPARTMENT. A person who disagrees with and wishes to appeal the final administrative decision of the department must within 30 days after the date of the decision, file an appeal with the superior court in the judicial district in which the person resides. Any taxes, license fees, penalties, and interest declared in the final administrative decision to be due must be paid within 30 days after the date of the decision, or a bond must be filed with the court in accordance with the Alaska Court rules of appellate procedure. (Eff. 5/31/78, Register 66; am 12/26/80, Register 76; am 4/21/88, Register 106)

Authority: AS 43.05.010, AS 43.05.080, AS 43.05.240, AS 43.23.015, AS 43.55.110, AS 43.56.200

15 AAC 05.050. TAXPAYER PROTEST WHEN DEPARTMENT FAILS TO TAKE PROMPT ACTION ON A REFUND CLAIM OR A PROTEST. (a) If the department fails to act on a refund claim within six months from the date of filing the claim, the taxpayer may file a protest under 15 AAC 05.010. A protest filed under this section must include the date the claim was filed and the fact that the taxpayer has not received a notice of disallowance of the claim for refund or credit.

(b) A taxpayer who requested an informal conference as provided in 15 AAC 05.020 and who believes that the conference officer is unduly delaying the hearing process, may notify the commissioner and request a formal hearing under 15 AAC 05.030.

(c) The commissioner or the hearing officer will acknowledge a request for a formal hearing under 15 AAC 05.030 within 30 days. If a taxpayer who has requested a formal hearing under 15 AAC 05.030 believes that the hearing officer or other department representative is unduly delaying the hearing process, the taxpayer may notify the commissioner. If the commissioner determines that the interests of justice would be served, he or she will order that appropriate relief be granted including an order to the hearing officer to issue a decision by a date specified by the commissioner. (Eff. 5/31/78, Register 66; am 12/26/80, Register 76)

Authority: AS 43.05.080, AS 43.05.240, AS 43.15.010

HOUSE STATE AFFAIRS COMMITTEE

DATE:

PLACE: Capitol, Room 102

SUBJECT OF MEETING: SB-377

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Becky Gay	KDLinic	121 W. Fireweed	99503		276 0700	Y	N	377
John Pilkington	DOR OIL & GAS	550 W 7TH AVE	99501		276 1363	(Y)	N	
Darrel Rexwinkel	DOR	SOB			2300	(Y)	N	377
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

Page ___ of ___

HOUSE STATE AFFAIRS COMMITTEE

DATE:

PLACE: Capitol, Room 102

SUBJECT OF MEETING: SB-377

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Tom Williams	BP	PO Box 196612 Anch. AK	99515		564-5955	(Y)	N	SB 377
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

HOUSE STATE AFFAIRS COMMITTEE

DATE:

PLACE: Capitol, Room 102

SUBJECT OF MEETING: SB 377

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
JOHN PILKINTON	ĐOR OIL & GAS	550 W. 7TH ANCHORAGE	99501	337-6859	276-2362	(Y)	N	SB377
Walt Furnace	the Alliance	4220 B st Anch AK	99503	563-2226		(Y)	N	SB377
PAUL WESSELLS	AOGA	121 FIREWEED LANE ANCHORAGE				Y	N	SB377
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

Nabors Alaska Petroleum Services
A NABORS INDUSTRIES Company

Nabors Alaska
Petroleum Services, Inc.
4300 B Street
Anchorage, Alaska 99503
907-561-4448

May 4, 1994

Dear Representative Vezey:

I'm writing to thank you for the courage you have demonstrated in taking a stand on SB 377. We badly need fairness in our tax system and there are portions of SB 377 that don't meet that standard, particularly the section which permits the state to revise an assessment long after any reasonable statute of limitations has expired.

These issues are very complex and I can understand the Governor's frustration. However, legislation that is inherently unfair is not the answer. **PLEASE CONTINUE TO OPPOSE SB 377.**

Very truly yours,

Mark L. Lindsey

Mark L. Lindsey
Vice President - Finance

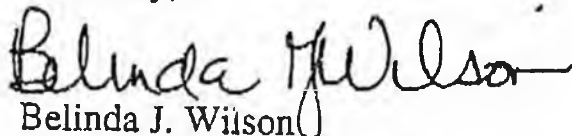
LETTERS OF OPPOSITION

May 4, 1994

Rep. Al Vezey

I strongly oppose SB 377, and appreciate your efforts on this issue. It is with great respect that I feel you do not cave into the threat of Governor Hickel's threat to creat a special session. I ask that you vote no on SB377

Sincerely,



Belinda J. Wilson
13251 McCabe Circle West
Anchorage, Alaska 99516

ALASKA
INTERSTATE
CONSTRUCTION, INC.

649 W. 54th Ave.
P.O. Box 233769
Anchorage, Alaska 99523-3769
(907) 562-2792 • TELEPHONE
(907) 562-4179 • FACSIMILE

Transmitted via fax: 465-3258
Hard copy to follow via US Mail

Letter No. AIC-94-067

May 4, 1994

STATE CAPITOL
Juneau, AK. 99801

Attention: Mr. Al Vezey

Reference: SB 377

Dear Al,

First and foremost I want to thank you for your continued support of the industry. We are strongly opposed to SB 377 and can't believe that Governor Hickel wants to run the few remaining oil companies out of the state.

Thank you for sticking with us and not letting the Daily News or Governor Hickel interfere with your wise decisions.

Sincerely,

ALASKA INTERSTATE CONSTRUCTION, INC.

John C. Ellsworth
President

JCE:cs

NORCON, INC.

POST OFFICE BOX 190947
ANCHORAGE, ALASKA 99519
PHONE (907) 563-5668
FAX ~~[illegible]~~ 563-6147

FACSIMILE

DATE: 5-4-94

TO: FAX NUMBER 465-3258

NAME Rep. Al Vezey

COMPANY

FROM: Sharon Dambetty
7816 Rayman
Anchorage

NORCON'S FAX: 907-563-6147

COMMENTS:

I oppose SB377 - do not give in to Governor Hickel's threat to call a special session. Vote NO on SB377

Thank you

THIS FAX IS 1 PAGES, INCLUDING THIS COVER PAGE.

If you do not recieve all pages in good condition or need additional information, please call Sharon at 907-563-5668.

NORCON LTR.

OFFICIAL BUSINESS

Alaska State Legislature

Speaker of the House of Representatives

REPRESENTATIVE
RAMONA L. BARNES
DISTRICT 22

ANCHORAGE
P.O. BOX 103382
ANCHORAGE, ALASKA 99510
(907) 337-7737
(907) 561-2036

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3438

May 4, 1994

Governor Walter J. Hickel
P. O. Box 110001
Juneau, AK 99811-0001

Dear Governor Hickel:

Governor, to get out of this mess, I know you have to emerge with a win. That's fine with me _if_ we can do it without risking the future of this state.

So I've been thinking about why you want this retroactive part of the legislation. It's so you can keep a strong bargaining position with the oil companies. You want a fair settlement for the State. So do I. Even the oil companies want a settlement. And, I think we all want a settlement that will provide certainty for the future.

The big issue in the back taxes is the value of the oil. You, Governor, have settled this question for past royalties. We in the House have a hard time seeing how the oil could have one value for royalties and a different one for taxes. And that's why HB 547 was introduced. It would use the royalty settlements as the basis for settling taxes.

I'm told that the objection to HB 547 comes from the so-called "value over ceiling" issue. Back in the 1970s and early 80s, state royalty oil was subject to federal price controls. So the State did not seek royalty value over the federal price ceiling in the royalty lawsuit. But the State says the taxable value isn't limited this way, and the courts so far have agreed.

Okay, let's preserve this issue for the State. But we in the House want to focus on resolving the underlying disputes, not on the legal procedures for litigating them to the bitter end.

Our proposal has four parts: First, let's start from the Administration's May 2nd proposals for HB 547 to change the statute of limitations for the future, avoid disputes over natural gas liquids, and use regulations to set clear valuation rules for the future. I understand the Department of Revenue is very close to having clear rules ready for adoption. This will help give industry some of the certainty they need to continue investing here.

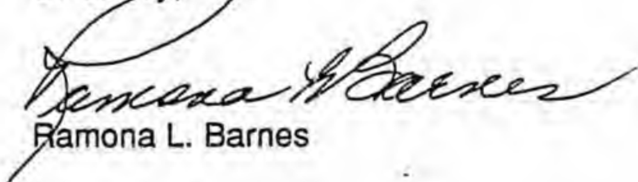
Second, let's use the royalty settlements as the basis for settling back taxes for all the oil except the oil involved in the "value over ceiling" issue. That's a win for you because it gets you what you're really after — a fair settlement for the State. BP and Exxon paid millions in royalties on that basis and will pay millions more for taxes.

Third, we'll reserve the "value over ceiling" issue and all the tax issues unrelated to value, for you and the companies to negotiate.

Fourth, to make sure the oil companies do negotiate in good faith without hiding behind the statute of limitations, let's make them sign an agreement not to use the statute while negotiations are under way. They say they're willing to come out from behind the statute of limitations and negotiate with you, so let's give that a try and avoid the need for retroactive legislation right now. If that doesn't work, <u>then</u> you can call a Special Session. I believe the House would be more interested in considering retroactive legislation at that time, knowing that this voluntary approach to getting around the statute of limitations didn't work.

If this is acceptable to you, Governor, then let's get the Attorney General and the industry to sit down in a room together this afternoon and keep them there until they hammer out the language for HB 547 to carry out these principles.

Sincerely,



Ramona L. Barnes

Speaker of the House

SB-377

OUTLINE OF PROPOSED COMPROMISE

I. Adopt Administration's proposals for 5-year statute on assessment and 6-year statute on collection, on a prospective basis beginning 1/1/94. No retroactive provisions relating to the statute of limitations; no amendments to AS 43.05.260 affirming purported "longstanding" practices of the Department of Revenue; and no legislative findings and purposes.

II. Adopt Administration's basic proposal on gas processing plants and gas plant liquids.

III. Adopt Administration's proposal, with non-substantive clarifying changes, for establishing through regulations a methodology for valuing oil in the future. [ALTERNATIVE: Allow royalty settlement amounts to be used as the taxable value prospectively, as currently proposed in HB 547.]

IV. Allow past royalty settlement prices to be used as the final taxable value of oil for purposes of AS 43.55 and former AS 43.21, except for oil to which the state's claims for value over ceiling price apply.

V. Items 1 - IV would be embodied in "compromise" legislation, which both industry and the Administration would support.

VI. BP commits to exercise the option to use royalty settlement prices for past oil taxes, assuming the "compromise" legislation passes and becomes law.

VII. BP agrees not to claim defenses based on AS 43.05.260 and AS 43.05.270 in settlement negotiations.

VIII. The Department of Revenue agrees to adopt regulations similar to those under consideration in the state-industry working groups reviewing the Department's proposed new production tax regulations.

IX. Items V - VIII would be embodied in a "memorandum of understanding" executed by the Attorney General on behalf of the State and by duly authorized representatives of BP.

OUTLINE OF PROPOSED COMPROMISE w/ HB 547

SENATE BILL 377(FIN) am - STATE AGENCY FISCAL PROCEDURES - SECTIONAL

Section	Department	Brief Description	Revenues (or savings)
1		Findings related to sections 8 and 9 of this bill	
2	Administration	Limits the life of a warrant to one year	
3	Administration	Eliminates the ability to sweep appropriations to finance the working reserve account	
4	Governor's Office	Requires the Governor to identify amounts to be repaid to the Constitutional Budget Reserve Fund when submitting operating budget recommendations	
5	Various	Prorates the payment of grants if appropriations are determined to be inadequate	
6	Administration	Allows payment of obligations from current year's appropriation if the obligation date is not more than 4 years rather than 2 years old. This would reduce the annual request for miscellaneous claims supplemental appropriation	
7	Administration	Terminating non-covered employees would be paid based on hours of annual/personal leave accumulated at separation date. Currently, these employees are paid for hours accumulated and state holidays that would have occurred had the employee been on leave	147.7
8-9	Revenue	Extends the period of time for which oil and gas tax assessments may be levied	
10	Revenue	Limits the life of a Permanent Fund Dividend warrant to one year and brings this statute in line with section 1	

SENATE BILL 377(FIN) am - STATE AGENCY FISCAL PROCEDURES - SECTIONAL

Section	Department	Brief Description	Revenues (or savings)
11	Health & Social Services	Provides statutory for grants under the Infant Learning Program	
12	Administration	Repeals AS 39.20.250(b) that provides for recovery of terminal leave payments and restoration of equivalent leave credit if an employee is reemployed during the period covered by terminal leave - see section 7	
13		Protects those sections that do not violate the single subject rule	
14		Makes sections 8 and 9 retroactive to January 1, 1976	
15		Makes sections 8, 9, 13 and 14 effective immediately	
16		Provides for a July 1, 1994 effective date all other sections	

CITY OF FAIRBANKS
James C. Hayes, Mayor
410 CUSHMAN STREET
FAIRBANKS, ALASKA 99701-4683
OFFICE: 907-459-6793
HOME OFFICE: 907-456-8637

May 3, 1994

The Honorable Al Vezey
State Capitol
Juneau, AK 99811-1182

Dear Al:

I have followed the saga of Senate Bill 377 with interest. It is in our constituents best interests that Senate Bill 377 be considered and passed by the legislature. Contrary to much of the rhetoric I have heard, the point of the bill is only to allow the State to collect taxes owed.

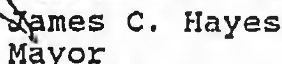
Apparently the Alaska Department of Revenue failed to determine within the statutorily prescribed period the exact amount of taxes owing by the oil companies. However, it cannot be denied that the oil companies do owe some amount of taxes for the oil produced during the periods in question. The question you and your colleagues should debate and decide is whether the arbitrary bar of the statute of limitations will continue to impede the state from its day in court. I believe, and I think a vast majority of the public concurs, it is only fair that the oil companies pay the taxes due on the public resources taken. If the bill is not passed the result will be a windfall to the Alaskan oil industry with your constituents shouldering a greater burden to fund local and state government.

In closing, I urge you to work for the passage of SB 377 to allow the State to collect the taxes owing.

Thank you for your positive consideration and with kindest personal regards, I remain

Sincerely,

City of Fairbanks



James C. Hayes
Mayor

MAY 20, 1994

DEAR REPRESENTATIVE VEZEY:

I AM WRITING TO ENCOURAGE YOU TO OPPOSE SENATE BILL 377 FOR THE FOLLOWING REASONS.

THIS BILL DOES NOTHING TO ADDRESS THE FUNDAMENTAL ISSUES WHICH HAVE PERPETUATED THIS DISPUTE FOR MANY YEARS. THERE ISN'T A CLEAR CONSISTENT FORMULA FOR DETERMINING THE VALUE OF A BARREL OF OIL. THE CURRENT DIFFERENCE OF OPINION WILL FOREVER BE THE PLAYGROUND OF AUDITORS AND ATTORNEYS UNTIL THE FUNDAMENTAL [illegible] IS CORRECTED. SENATE BILL 377 DOES NOTHING TO SOLVE THE [illegible]

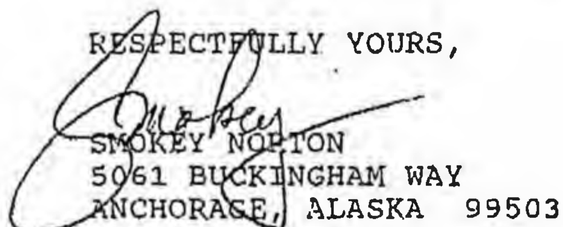
I DON'T BELIEVE THE LEGISLATIVE PROCESS SHOULD ENACT LAWS THAT TILT THE DANCE FLOOR RETROACTIVELY. SB 377 IS POOR PUBLIC POLICY REGARDLESS OF THE INDUSTRY IT IMPACTS OR THE MONIES AT STAKE.

GOVERNOR HICKEL HAS RECENTLY CHARACTERIZED TAXES IN DISPUTE AS RENTS DUE. THE GOVERNOR HAS GROSSLY OVERSIMPLIFIED THE ISSUES. THE TAX ISSUES ARE COMPLICATED BUT TO DESCRIBE TAXES IN DISPUTE AS TAXES DUE IS CARELESS SELF SERVING RHETORIC.

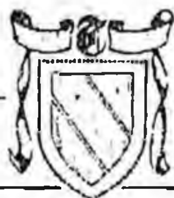
THE GOVERNOR IS CONVINCED THIS BILL IS PROTECTING THE INTERESTS OF THE STATE. I'M SURE YOU FEEL THE SAME OBLIGATION IN THE CONDUCT OF YOUR WORK IN JUNEAU. I COMMEND THAT SENSE OF DUTY BUT SB 377 IS A POOR SOLUTION BEING OFFERED. THE NATURE OF THE CURRENT DISPUTE MIGHT BE BEST LEFT TO THE COURTS TO DECIDE WHILE YOU LAWMAKERS CONSIDER LEGISLATION THAT WILL LESSEN THE OPPORTUNITY FOR SIMILAR DISPUTES IN THE FUTURE.

I WOULD ENCOURAGE YOU TO AVOID THE EASY AVENUE OUT OF THIS TAX DISPUTE BETWEEN THE STATE OF ALASKA AND THE OIL COMPANIES. YOU HAVE BEEN DRAWN INTO THIS DISPUTE ELLIPTICALLY AND I WOULD ENCOURAGE YOU TO THOROUGHLY RESEARCH THE FUNDAMENTAL DYNAMICS AT THE CORE OF THIS ISSUE AND THEN OFFER SOLUTIONS THAT WILL MEET LESSEN THE OPPORTUNITY FOR SIMILAR DISPUTE IN THE FUTURE. SB 377 ISN'T THE ANSWER!

RESPECTFULLY YOURS,



SMOKEY NORTON
5061 BUCKINGHAM WAY
ANCHORAGE, ALASKA 99503



CHANNEL CORPORATIONS

Channel Construction, Inc.
Channel Landfill
W.R. Tonsgard Logging, Inc.
Channel Sanitation, Inc.
Solid Waste Solutions, Inc.
Channel Equipment Rental, Inc.

W.R. "SHORTY" TONSGARD, CHAIRMAN of BOARD

May 5, 1994

The Honorable Al Vezey
Alaska State Legislature
Juneau, AK 99801

Dear Representative Vezey:

I am writing in support of Senate Bill 377, for which I request you exert your considerable influence so it may receive House action. While I am not part of your constituency, I make this plea to you as a fellow Alaskan.

I believe it is only fair and just that Alaska receive the $3 billion in outstanding taxes owed by the oil industry and that time not run out for its payment. Our State sorely needs what is rightfully hers.

Thank you.

Very truly yours,

W.R. [signature]

W. R. Tonsgard, Jr.
Chairman of the Board

WRT:dk

(907) 780-4224 • P.O. Box 21267 • JUNEAU, ALASKA 99802

charbettisworth
bettisworth
and
company inc.
p.o. box 73209 fairbanks, alaska 99707-3209
architecture • planning • project development
ph. 907-456-5780/fax 907-451-8522

MEMORANDUM

Date: May 5, 1994
To: Honorable Ramona Barnes,
Speaker of the House of Representatives

Representative Al Vezey
Representative Gene Therriault
Representative Jeannette James

From: CB Bettisworth CBB.

Re: SB 377

I understand that the House of Representatives is refusing to consider SB 377. I thing it is wrong that the oil industry through you should be able to stone wall this legislation. They do not have the States best interest in mind. They are trying to get out of what they legitimately owe. For you to take part in this activity indicates that you also do not have the State's best interest in mind.

Taxes are not generally what drive the oil industries progress in Alaska; world oil prices do. We are not increasing the industries taxes by this legislation, we are only trying to get them to pay those taxes which are already due.

In addition to the above in the interested of saving the State money, I encourage you to approve SB 377 this legislative session, and avoid the expense of a special session.

Thank you for your consideration.

End of Memorandum

MAY 5 1994

May 5, 1994

Al Vesey
Alaska State House Of Representatives
State Capital
Juneau, AK 99501-1182

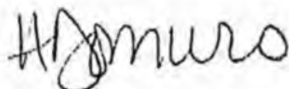
Dear Representative Vesey:

I would appreciate your support in not allowing SB 377 to become law. This bill would significantly reduce our ability to develop Alaska; would negatively impact Alaska employees and residents; would increase litigation costs and prolong negotiations; and most importantly, is bad public policy.

Your help in assuring that this bill does not become law will help to promote oil and gas exploration and development and further promote a stable environment for the oil industry.

Please register my opposition to SB 377.

Sincerely,



Heidi Tomuro
Anchorage

H.C. PRICE CO.

301 W. Northern Lights Blvd., Suite 300
Anchorage, Alaska 99503
(907) 278-4400 • Fax (907) 278-3255

May 4, 1994

Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

Attn: Representative Al Vezey

Subject: SB 377 and HB 547

Dear Representative Vezey:

I oppose SB 377 or any variant which extends the retroactivity of the state's right to audit the oil industry's taxes assessments. Governor Hickel is receiving bad advice on this matter, and it is now up to the House to insure our future by killing this tax initiative.

Let us not be so unfair and shortsighted as to kill our goose in order to extract a few golden eggs inside her. Let us nurture our goose, provide her with a comfortable nest, and allow her to thrive.

Under responsible management, our goose will continue to provide a steady stream of golden eggs in the future.

Let us send the right signal to our most important industry by keeping this bill in committee and passing the original version of HB 547, which will legislate an objective standard for oil valuation based upon the value of the State's royalty oil. Tax fairness and stability are the keys to attracting investment dollars to Alaska in the future.

Very truly yours,

H. C. PRICE CO.

Wes Nason

Al,
Keep up the good work.
Wes

Wesley P. Nason
General Manager

WPN/rr/166

POOL ARCTIC ALASKA

May 4, 1994

Representative Al Vezey
Room 102
State Capitol
Juneau, AK 99801-1182

Dear Representative Vezey:

I wish to forward Pool Arctic Alaska's opposition to SB 377. The passage of this Bill will severely damage Alaska's oil industry by forcing further investments to other parts of the world.

Pool Arctic Alaska is an Alaskan-owned drilling contractor employing 310 people, with a total payroll of $15 million. The passage of SB 377 will reduce our activity by at least 50% creating higher unemployment, lower state tax revenue, and fewer business opportunities for Pool Arctic Alaska and other oilfield oriented companies.

Your opposition to this Bill is very important to all Pool Arctic Alaska employees and to the future of the state of Alaska.

Sincerely,

Dale E. Larsen
V.P./General Manager

5801 Silverado Way • Anchorage, AK 99518 • Phone: (907) 561-7447
FAX Machines: Administration/Accounting (907)562-6049 • Operations/Construction (907) 562-6507

MAY 6 1994

ATTN: AL VEZEY

I OPPOSE SB377, PLEASE DO NOT GIVE IN TO GOVERNOR HICKEL'S THREAT TO CALL A SPECIAL SESSION.

VOTE NO ON SENATE BILL 377.

24 people sent this same opinion from Construction Machinery Inc. faxed to us this day!

Russell E. Spoonamore

RUSSELL E. SPOONAMORE

SCR

1

HOUSE COMMITTEE REPORT

(7)
Date Referred: February 10, 1993 FURTHER REFERRALS:

Date of Committee Action: 2-16-93

The STATE AFFAIRS Committee considered: SCR 1

SENATE CONCURRENT RESOLUTION NO. 1 TWENTY-SEVENTH ANNUAL BOYS' STATE

Relating to the twenty-seventh annual Boys' State.

RECOMMENDATIONS:
be replaced with ______ [ ] the same title [ ] a new title

[ ] have attached amendments(s)
[x] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the ______ Committee

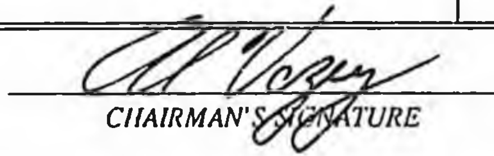
ADOPTS: ______ letter of Intent

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

[ ] fiscal impact ______ [ ] fiscal note(s) ______

[x] zero fiscal note ______ [ ] zero fiscal note(s) ______

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Al Vezey	X				
[illegible]	X				
[illegible]	✓				
[illegible]	✓				
[illegible] Sanders	✓				
Pete Rott	✓				



CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SCR 1
(S) Publish Date: 2-3-93

Revision Date: February 1, 1993
Title: "Relating to the 27th Annual Boys' State"
Sponsor: Senator Leman
Requestor: Senate State Affairs

Dept. Affected: NONE
BRU:
Component:
COMPONENT SERIAL NO. 1

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

	FY94	FY95	FY96	FY97	FY98	FY99
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY94	FY95	FY96	FY97	FY98	FY99
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact $ ______

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Portia Babcock, Committee Staff
Phone: 465-4522
Division: Senate State Affairs Committee
Date: February 1, 1993
Approved by Commissioner: Senator Loren Leman, Chairman
Date: February 1, 1993
Agency: Senate State Affairs Committee

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SCR

15

HOUSE COMMITTEE REPORT

(7)
Date Referred: March 11, 1994

FURTHER REFERRALS:

Date of Committee Action: 3-24-94

The STATE AFFAIRS Committee considered: SCR 15

SENATE CONCURRENT RESOLUTION NO. 15 TWENTY-EIGHTH ANNUAL BOYS' STATE

Relating to the twenty-eighth annual Boys' State.

RECOMMENDATIONS: [ ] the same title
be replaced with ______ [ ] a new title
[ ] have attached amendments(s)
[✓] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the ______ Committee

ADOPTS: ______ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact ______
[✓] zero fiscal note Senate STA Comm

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ______
[ ] zero fiscal note(s) ______

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Al Vezey	X				
Pete [illegible]	X				
John Sanders	✓				
[illegible] L. [illegible]	✓				
Hadley Ollberg	✓				
Betty Davis	X				

Al Vezey
CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: SCR 15
(S) Publish Date: 2-23-94

Revision Date: February 17, 1994
Title: "Relating to the twenty-eighth annual Boys' State"
Sponsor: Senator Phillips, Leman, Rieger, Ellis, Kertulla, Duncan
Requestor: Senate State Affairs Committee

Dept. Affected: None
BRU: n/a
Component: n/a
COMPONENT SERIAL NO. ---

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( )	-0-	-0-	-0-	-0-	-0-	-0-

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of any current year (FY94) cost: $ ---

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Portia Babcock, Committee Aide   Phone: 465-4522
Division: Senate State Affairs Committee   Date: February 17, 1994

Approved by: Senator Loren Leman, Chair   Date: February 17, 1994
Agency: Senate State Affairs Committee

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SCR

17

IOUSE COMMITTEE REP

(7)
Date Referred: March 11, 1994

FURTHER REFERRALS:

Date of Committee Action: 3-24-94

The STATE AFFAIRS Committee considered: CSSCR 17(STA) am

CS FOR SENATE CONCURRENT RESOLUTION NO. 17(STA) am HONORING TOMMY MOE

Honoring Alaskan Tommy Moe for winning gold and silver medals at the 1994 Winter Olympic Games in Lillehammer, Norway.

RECOMMENDATIONS:
be replaced with HCS CSSCR 17(STA) [✓] the same title [ ] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[✓] no recommendations
[ ] individual recommendations
[ ] additional referral to the ______ Committee

ADOPTS: ______ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact ______
[✓] zero fiscal note Senate (STA) committee

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ______
[ ] zero fiscal note(s) ______

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Al Vezey	X	Harry L. Davis		✓	
Pete Kott	X	Harley Olberg		✓	
Jerry Sanders	✓	Bettye Davis		✓	

Al Vezey
CHAIRMAN'S SIGNATURE

8-LS1751\O
Finley
3/24/94

HOUSE CS FOR CS FOR SENATE CONCURRENT RESOLUTION NO. 17(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS KERTTULA, Halford, Phillips, Kelly, Leman, Duncan, Taylor, Salo, Sharp, Miller, Pearce, Zharoff, Little, Jacko, Lincoln, Rieger, Donley, Ellis

REPRESENTATIVES Larson, Nicholia, Navarre, Toohey

A RESOLUTION

1 **Honoring Alaskan Tommy Moe for winning gold and silver medals at the 1994**
2 **Winter Olympic Games in Lillehammer, Norway.**

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 **WHEREAS** Alaskan Tommy Moe showed early promise as a world class skier; and
5 **WHEREAS** Tommy Moe displayed true Alaskan spirit in overcoming personal
6 hardships and difficulties to continue to develop his athletic skills; and
7 **WHEREAS** Tommy Moe and his father, Tommy Moe, Sr., exemplify the importance
8 of family support, love, and devotion -- values Alaskans hold dear; and
9 **WHEREAS** Tommy Moe never lost sight of his dream and persevered in bringing
10 honor and respect to the State of Alaska and the United States of America by winning a Gold
11 Medal in the Men's Downhill Skiing and a Silver Medal in the Men's Super-Giant Slalom in
12 the 1994 Winter Olympic Games in Lillehammer, Norway;
13 **BE IT RESOLVED** that the members of the Eighteenth Alaska State Legislature
14 reflect Alaska's pride by honoring Tommy Moe for his outstanding athletic achievement and,
15 in so doing, setting an example for Alaskans and Americans everywhere; and be it
16 **FURTHER RESOLVED** that the municipality of Palmer is hereby requested to

1 change its name to Moe Town; and be it

2 **FURTHER RESOLVED** that Girdwood is hereby requested to change its name to

3 Moeville; and be it

4 **FURTHER RESOLVED** that the Fairbanks North Star Borough is requested to

5 change the name of Birch Hill to Moe Hill and thereby make a mountain out of a Mo[illegible]

6 **COPIES** of this resolution shall be sent to Tommy Moe and the members of his

7 family.

FISCAL NOTE

No. 1

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: SCR 17
(S) Publish Date: 3-7-94

Revision Date: February 17, 1994
Title: "Honoring Alaskan and Palmer resident Tommy Moe for winning a gold medal at 1994 Winter Olympic Gam."
Sponsor: Senator Kerttula, Halford, et al
Requestor: Senate State Affairs Committee

Dept. Affected: None
BRU: n/a
Component: n/a
COMPONENT SERIAL NO. ---

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( )	-0-	-0-	-0-	-0-	-0-	-0-

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of any current year (FY94) cost: $ ---

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Changes in CSSCR 17 (STA) reflect NO FISCAL CHANGE from the original fiscal note. This ~~fiscal note~~ is appropriate.

3/4/94 [signature]
date Comte Aide (initial)

Prepared by: Portia Babcock, Committee Aide
Phone: 465-4522
Division: Senate State Affairs Committee
Date: February 17, 1994
Approved by ~~Commissioner~~: Senator Loren Leman, Chair
Date: February 17, 1994
Agency: Senate State Affairs Committee

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SCR

20

City of Palmer

TO: MEMBERS OF THE LOCAL BOUNDARY COMMISSION

SUPPORTING BRIEF

ANNEXATION OF AN AREA TO THE CITY OF PALMER BY LEGISLATIVE REVIEW - APPROXIMATELY 7.5 ACRES

This brief, to the best of our ability, satisfies existing rules and regulations of 19 AAC 10.070-10.080 and the proposed regulations under 19 AAC 10.090-10.140, whereby the City of Palmer must exhibit reasonable need for annexing certain areas within Section 28, Township 18N, R2E of the Seward Meridian more specifically described as: Lot 22, Pribyl, Grasse and Grasse Subdivision; Lots 1 through 10 and Lots 20 through 27, Block 1 of Riverside Subdivision as well as a portion of the Alaska Railroad right-of-way.

The proposed area to be annexed abuts the current City of Palmer corporate limits on three sides. Further, this property fronts a major arterial street as designated in the 1985 City of Palmer Traffic Study prepared by Datum Engineering. In addition, sanitary sewer, storm sewer and water mains are adjacent to this property with more than ample capacity.

Presently, this property is located in the Matanuska-Susitna Borough which does not provide for areawide zoning, police protection, building code enforcement or health and sanitation enforcement. Since the Matanuska-Susitna Borough does not provide areawide zoning, the proposed area to be annexed is unzoned.

In 1990, the City received a petition signed by 61 area residents urging the City to annex this area because of the continued problems of loose dogs going onto adjoining property and getting into garbage cans, dogs harassing school children waiting for the school bus at a designated pick-up site, Matanuska winds depositing debris from this area into their yards, decreased property values by the continued accumulation of inoperable cars and trucks, and accumulation of used building materials, to name a few of the legitimate concerns. At that time, the City chose not to annex this property subject to the Legislative Review process with anticipation that the property owners would police themselves to alleviate the concerns of the City residents. A copy of the 1990 petition is attached and made a part of this exhibit.

However, since the property owners chose not to mitigate the problems and concerns, in 1991 the City chose to seek a

Legislative Review annexation of the aforementioned parcels.

The large number of unleashed and unrestrained dogs which the Matanuska-Susitna Borough allowed to be on the premises has taxed the City's police department for providing animal control to the City residents in this area. However, the number of animals has not decreased except when the Matanuska-Susitna Borough revoked the owner's kennel license which has subsequently been reissued.

On the aforementioned parcels, there are four houses and one garage, of which one is inhabited by the owner of record of the largest number of lots described above while three remaining houses are inhabited from time to time by various people. The City was informed by the resident that there is no water or sewer services to the property at this time. The City has no knowledge as to how the resident and other buildings on the aforementioned parcels of land dispose of the sewage.

The City of Palmer's sewer and water system have been designed and constructed to accommodate a population equivalent of 10,000 people. Presently the City's population is 3,008. Further, with the annexation of this property, the storm sewer which abuts this property is designed to carry any additional storm water runoff created.

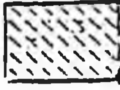
The annexation of this property will not increase the Palmer police department's workload but in all probability will lessen particularly the dog call responses. At the same time, no additional burden will be placed on the public works department since it presently maintains East Eagle Street due to it being a direct access route to the Swanson and Sherrod Elementary Schools. The City of Palmer will not be increasing its labor force as a result of this annexation. Further, this property is presently receiving road maintenance benefit without paying for the service.

The continued health and safety concerns of the City of Palmer's residents can be mitigated upon annexation through the enforcement of city zoning ordinances and health ordinances which will require the removal of inoperable vehicles, mandatory garbage collection for all city residents, compliance with the Uniform Building Code, and compliance with the city's animal control ordinance, which limits the number of dogs and cats allowed in a single family resident as well as prohibits the harboring of livestock within the corporate limits. Further, the City of Palmer's nuisance ordinance requires that the property owner maintain his/her property free of debris as well as prohibits the animals from becoming an annoyance to the neighbors.

It is the City of Palmer's policy not to provide services to any area outside the corporate limits unless they are annexed. There has not been an exception to this policy since 1980, when the City undertook a multi-million dollar sewer and water system expansion.

The City of Palmer as late as February 20, 1992, has attempted to conduct an informal door-to-door census of the residents residing in the buildings, however we have received no responses. During the door-to-door survey attempt, the City asked the one resident if water and sewer service was provided to all the buildings in the area. The City of Palmer did contact the State Elections Office to determine there is one registered voter in the proposed area to be annexed.

PROPOSED PALMER ANNEXATION

AREA PROPOSED FOR ANNEXATION 

GLENN HIGHWAY

DENALI ST.

N

SWANSON ELEMENTARY SCHOOL

SCALE

APPROX. 200 FEET

These standards for annexation of territory to a city are briefly summarized as follows:

1. Willingness and Ability to Serve the Area (19 AAC 10.080)

It must be shown to the satisfaction of the Local Boundary Commission that the city is both willing and able to extend "full municipal services" to the area proposed for annexation. These services are defined as "all of the services that a municipality is providing to its residents with revenues raised from the municipality's general mill levy or sales or use taxes" (19 AAC 10.840(9)). It does not include services funded by user fees (e.g. utilities). Nor does it require the city to build roads, sidewalks, water and sewer utility extensions, or other capital [illegible]cts to the area proposed for annexation.

If the area will not receive "full municipal services", the Commission may still approve the annexation if the city is willing to establish differential tax zones to compensate for the lower level of services.

In addition to standard number 1, a proposal to annex territory contiguous to the existing boundaries of a city must meet at least one of nine other standards. These nine standards are summarized below.

A. Provision of Uncompensated Services 19 AAC 10.070(a)(8) This standard is met if residents or property owners in the area proposed for annexation receive or may be expected to receive city services without paying property taxes to the city. This standard may be satisfied even if the services are provided inside the current boundaries of the city.

B. Need for Services & Ability to Serve 19 AAC 10.070(a)(4) If the area proposed for annexation needs municipal services and the city can provide those services more efficiently than another municipality, this criteria is satisfied.

C. Urban Character 19 AAC 10.070(a)(3) and 19 AAC 10.070(d) This standard is met if the area proposed for annexation is similar in character to the area already within the city limits. In evaluating this standard, the Commission may consider whether:

- the property in the area proposed for annexation is platted;
- the property is used for residential or commercial purposes;
- the property is suitable for urban purposes;
- the population density of the area proposed for annexation is similar to the area within the existing city limits;
- the population of the area proposed for annexation stems from growth beyond the boundaries of the city.

D. Growth and Development 19 AAC 10.070(a)(5) If the area proposed for annexation is likely to grow and develop, this standard may be met. However, the Commission must also conclude that the city will plan for and control that development.

E. Health, Welfare and Safety (19 AAC 10.070(a)(6) This standard may be met if the residents of the city are endangered by conditions existing or developing in the area proposed for annexation. To satisfy this standard, the Commission must also determine that annexation will enable the

city to relieve those conditions.

F. Need for Service Extension (19 AAC 10.070(a)(7) If the city needs to include any of the territory proposed for annexation in order to extend services to an area currently within its boundaries, this standard is satisfied. Examples of such instances might include the need to develop a new site for a sanitary landfill, water source or sewage disposal facility, or the need to regulate the community's watershed.

G. City-owned Property (19 AAC 10.070(a)(2) If the city owns property within the territory proposed for annexation, this standard is met.

H. Enclave within City Limits (19 AAC 10.070(a)(1) If the territory proposed for annexation is surrounded by property already within the corporate limits of the city, this standard is satisfied.

I. Other Valid Public Purposes (19 AAC 10.070(a)(9) This standard is satisfied if the Commission determines that the annexation proposal serves some legitimate public purpose other than those covered by the eight previously noted standards. An example might be the inclusion of adjacent industrial or commercial developments which are a natural part of the community in order to enhance the revenues of the city. Another example might be extending voting rights to residents who are served by a municipal government, but have no right to vote in municipal elections.

3. Interlying Property (19 AAC 10.070(c)

The law provides that territory which does not meet any of the nine general standards discussed in the preceding section, may still be annexed if it lies between the current city boundaries and other territory which does meet one or more of those standards. This reflects a strong preference for avoiding "holes" in the jurisdiction of a municipal government.

CHAPTER 5 - SUMMARY AND RECOMMENDATION

SUMMARY

The proposal for annexation of 7.5 acres to the City of Palmer is justifiable. Based upon its analysis, the Department has concluded that:

- [X] The City of Palmer is willing and able to serve the territory proposed for annexation.

- [X] Road maintenance services are currently provided by the City of Palmer. There is a need for municipal planning services within and extending beyond the territory proposed for annexation. There is also a need for enhanced public safety, specifically animal control, in the territory proposed for annexation. The City of Palmer can provide the needed services most efficiently.

- [X] The area proposed for annexation is urban in character as defined in the Local Boundary Commission's regulations.

- [X] The City of Palmer has the willingness and ability to extend "full municipal services" to the area proposed for annexation.

- [X] Annexation of the subject area would facilitate improvements to the area and would likely lead to an increase in property values for neighboring areas within the existing Palmer municipal boundaries.

Voter approval of the boundary change proposal is impractical in this instance, due to the absence of sufficient registered voters in the area proposed for annexation, the Department has concluded that the balanced interests of the parties involved in this annexation support the use of the legislative review process. This conclusion was reached on the basis of guidelines recently adopted by the Commission.

RECOMMENDATION

On the basis of the analysis presented in this report, the Department recommends that the Commission approve the annexation of the 7.5 acres requested by the City of Palmer.

Article 3. Standards for Annexation to Cities

Section
65. Applicability
70. Annexable territory

Section
80. Application of standards
90. Annexation of incorporated territory

19 AAC 10.065. APPLICABILITY. The provisions of 19 AAC 10.070 — 19 AAC 10.090 apply to a proposal for annexation by local action (19 AAC 10.630 — 19 AAC 10.730), by legislative review (19 AAC 10.450 — 19 AAC 10.620) or by the step process (19 AAC 10.735 — 19 AAC 10.790). (Eff. 2/21/82, Register 81)

Authority: Art. X. Sec. 12. Ak. Const.
AS 44.47.567

19 AAC 10.070. ANNEXABLE TERRITORY. (a) Territory which is contiguous to a city may be annexed to that city if one or more of the following standards are met:

(1) the contiguous territory is totally surrounded by the city's boundaries;
(2) the land in the territory is wholly owned by the city;
(3) the territory is urban in character;
(4) the territory is in need of municipal services which the city can provide more efficiently than another municipality;
(5) there is a reasonable likelihood that future growth and development will occur within the territory and that annexation of the territory will enable the city to plan for and control that development;
(6) the health, welfare, or safety of city residents is endangered by conditions existing or developing in the territory and annexation will enable the city to remove or relieve those conditions;
(7) the extension into the territory of city services or facilities is necessary to enable the city to provide adequate service to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the city's boundaries;
(8) residents or property owners within the territory receive or may be reasonably expected to receive, directly or indirectly, the benefit of city government without commensurate property tax contributions, whether city services are rendered or received inside or outside the territory;
(9) the annexation is otherwise necessary to accomplish a valid public purpose.

(b) Territory which is not contiguous to a city may be annexed to the city if

(1) the land in the territory is wholly owned or leased by the city or used primarily for the performance of city functions; and
(2) annexation is necessary to enable the city to achieve adequate control, protection, or management of the property.

(c) Territory which does not meet the standards of (a) of this section may be annexed to a city if the territory lies between the city boundary and other noncontiguous territory which meets the requirements of (a) of this section.

(d) In determining whether territory is urban in character for the purposes of (a)(3) of this section, the commission will, in its discretion and without limitation, consider whether the property is platted or held for sale for residential or commercial purposes, whether the population density of the territory approximates that of the annexing city, whether the population of the territory stems primarily from actual growth of the city beyond its legal boundaries, and whether the property is valuable primarily by reason of its suitability for prospective urban purposes.

(e) In determining whether the standard established in (a)(8) of this section is met, the commission will consider alternative methods available to the city for offsetting the cost of providing services to individuals or property beyond its property taxation powers. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.070 is based on a former version of 19 AAC 05.010.

19 AAC 10.080. APPLICATION OF STANDARDS. (a) The commission will not approve an annexation unless the annexing city demonstrates to the satisfaction of the commission that it is capable of extending, and is willing to extend, services to the annexed area as follows:

(1) full municipal services shall be extended to the annexed area immediately unless

(A) the annexation is pursuant to 19 AAC 10.735 — 19 AAC 10.790; or

(B) the immediate extension of full municipal services to the annexed area is impossible because of a lack of necessary facilities, in which case the annexing city shall satisfy the commission that it will provide the services within a reasonable time;

(2) if the annexation is under 19 AAC 10.735 — 19 AAC 10.790, the commission must be satisfied that the city's plan for gradual extension of services reasonably compares with a plan for gradual extension of taxation and provides for extension of full municipal services to the annexed area within the time period established under 19 AAC 10.740.

(b) The commission will, in its discretion, conduct public hearings or investigations after a detachment to determine if the service requirements of residents are being met. If the commission determines that the service requirements of the residents of the territory are not being met, it will, in its discretion, begin annexation proceedings under this chapter.

(c) Notwithstanding the provisions of (a) of this section, the commission will, in its discretion, approve an annexation by a city which has authority to establish and operate differential taxation zones if the commission is satisfied that the city is willing and able to use that authority to

(1) provide the territory with such services as may be desired by residents of the territory; and

(2) insure that the annexed area is not subjected to unfair taxation for services not available in the annexed area. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.080 is based on a former version of 19 AAC 05.020.

19 AAC 10.090. ANNEXATION OF INCORPORATED TERRITORY. (a) For the annexation by a city of territory of another municipality, the commission will determine the method by which assets and liabilities are to be distributed between the city and the municipality formerly providing services. In determining the distribution of liabilities and assets, the commission will, in its discretion, approve an equitable agreement between the municipalities affected but will independently review the proposed agreement.

(b) Territory which is part of a city may not be annexed to another city unless the commission determines the annexation to be in the best interests of the annexing city, the city from which the annexed territory is taken, and the annexed area.

(c) Separate or additional proceedings are not required for detachment from a city or borough of territory which becomes annexed to another city; the detachment is effected by and at the same time as the annexation. (Eff. 2/21/82, Register 81)

Authority: Art. X, Sec. 12, Ak. Const.
AS 44.47.567

Editor's notes. — 19 AAC 10.090 is based on former versions of 19 AAC 05.030 and 19 AAC 15.040.

Please Copy And Distribute To The House & Senate

February 9, 1993

Dear Legislator,

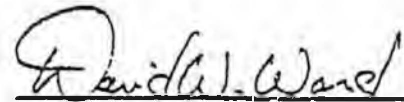
We urge you to inform yourselves of all the facts regarding the proposed City of Palmer's Annexation.

The Local Boundery Commisions Report and Recommendation was in favor of the annexation. We have read their facts and findings and feel they support our views regarding this issue.

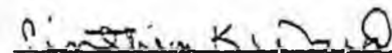
The above agency as well as others have voted in favor of annexation based on facts. .

Our family was born and raised in Palmer with roots dating back to the Colonist of 1935, and have lived across from said property 12 years. We believe in the Alaska lifestyle and all Citizens of the United States of America have the right to live their own lifestyle as long as you don't infringe on other peoples rights.

We are in favor of the proposed annexation and urge you to vote in favor of annexation. Please base this decision on facts, not newspaper articles or personal opinion. Thanks for your support.



David W. Ward



Cinthia K. Ward

February 9, 1993

Dear Alaska State Legislator(s):

We are writing to urge you to support the proposed annexation of the 7.5 acres in Riverside Revd. Sub. in Palmer, Alaska.

We live across the street from this property and Robert Edgar Bailey and have lived here since 1977. We have had to contend with a constantgrowing "junkyard" of old cars, old shopping carts, old lumber, etc; he and his tenants numerous animals consisting of horses, cows, goats and pigs coming in our yard doing damage and his ever-growing horde of dogs (over 50 by his own admission in court) that have barked dan and night, tore apart our garbage, attacked our chained dog(per Palmer ordinance) on more than one occasion and even coming into our garage and eating salmon we were thawing to can. We have filed repeated complaints with Animal Control and appeared in Court three different times to testify. Please see the attached letter which we and our neighbors submitted to the Mat-Su Borough regarding this situation. Although we were unable to attend the teleconference today, we understand Mr. Knight stated Mr. Bailey was in court once and that he won. this is totally untrue and the Court records can verify this! Should you wish to obtain these records you may request :

MSB 1637 thru 1641
1646
1649
1797
1799
2056

from the Courts in Palmer.

I, Mr. Vogt, have had by-pass surgery twice - in 1982 and again in 1992 - and could not even recuperate decently in my own home due to these animals constantly barking. I, Mrs. Vogt, had a heart attack in 1987 and the same applied in my case.

We have tried every possible means to find an end to this - keepinf a written log of times and events as instructed by Animal Control, going to Court to testify, personally gathering signatures on a petition, presenting this and attending numerous City Council meetings and meeting with the Local Boundary Commission.

We urge you to please consider us who have to live with this situation day in and day out, as well as numerous other Palmer residents who want to see this "mess resolved and ask that you stand behind the City of Palmer and the Local Boundary Commission in their recommendations.

Thank you.

Sincerely,

Richard E. & Eleanor L. Vogt
564 N. Denali
Palmer, Ak. 99645

TO: MATANUSKA-SUSITNA BOROUGH MAYOR AND ASSEMBLY MEMBERS

We, the undersigned, feel we must bring to your attention an issue where we feel we have been grossly unfairly dealt with by one of your Department Heads; namely Mr. Jerry Pineau as Animal Control Officer.

We all reside in North Palmer, on N. Denali and E. Eagle Streets, in the City of Palmer. Our specific problem is one Robert Edgar (Ed) Bailey who lives on E. Eagle, but not in the City limits. Mr. Bailey owns Lots 4-10 & 21-17 in Block 1 of Riverside Revd.Subd. On these 14 lots he has an accumulation of approximately 35 non-running vehicles; shabbby run-down shacks (which he, at times, rents out or at least allows people to reside there); old grocery carts; bicylce parts; stacks of old lumber; etc. etc -and DOGS!!!

For years we have been forced to put up with, by Mr. Bailey's own admisssion in Court, over 50 dogs who bark all hours of the day and night; who roam freely and strew garbage everywhere; who frighten children waiting for school buses and adults walking or jogging. We finally had all we could take of this abuse and in the summer of 1989 we contacted Animal Control as to just what could be done about the situation. We were instructed we would need to keep specific logs of times, dates and descriptions of the offending animals. We did this for over six weeks, which was a full-time job in itself. After turning this over to Animal Control we were then summoned to Court to testify and were present in Court on 10-5-89 when Magistrate O'Connell revoked Mr. Bailey's kennel license and restricted him to no more than 3 dogs. Officers of Animal Control were present also. Please see enclosed letter from Animal Control to Mr. Bailey dated 10-10-89. We again appeared in Court on 11-28-89 because Mr. Bailey still had more than the allotted number of dogs and was not controlling them..By the summer of 1990 Mr. Bailey's dog population was steadily increasing in spite of the Court Order.

In February of 1991 the situation was again out of control. We phoned Mr. Pineau's Office and asked that he return our call. He did not return the call but instructed Animal Control to call us. We told them of our problems and they came and said we would need to fill out complaints again. We questioned why this was necessary since there was an existing Court Order prohibiting him having more than 3 dogs. They stated that Mr. Pineau said it was necessary and required. Animal Control officers went directly from our home (Vogts) to Mr. Bailey's on 2-20-91 and served complaints. They counted 14 dogs. Mr. Bailey was again to appear in Court on March 12,1991.

In between the time he was served and his Court appearance he again applied for another Kennel License. When he went to Court under Magistrate Swink, he told the Magistrate he had applied for a Kennel License and his case was suspended on the grounds that he was complying.

When we learned of this we (Vogts) ~~wne~~ WENT to see Mr. Pineau who stated he had had no recent complaints and that he intended to issue him the Kennel License!!

We then went to Animal Control who informed us that Mr. Pineau most certainly was aware of the complaint and that he had, in fact, instructed the officers to go canvass the neighborhood the next day - which they did and received more complaints. They were also instructed by Mr. Pineau to make an inspection of Mr. Bailey's facilites on 3-14-91. We, (Vogts and Mr. Matura) went and spoke with Barbara Lacher regarding this problem.

IN spite of all of this, Mr. Bailey received his Kennel License on March 24,1991!

It is obvious to us that Mr. Pineau's actions are certainly not in the best interest of the majority of the people concerned here - only Mr. Bailey's. Perhaps he has too many duties and cannot expend the necessary time needed to perform as Animal Control Officer. Perhaps this position should be delegated to the Supervisor of Animal Control as he and his staff are the ones who respond and view the problems in the field. They MOST certainly do their jobs and the Borough expends a considerable amount of revenue here. They (Animal Control) have a thick file on Mr. Bailey. Again we stress all of the below signed complaints(which are on file with Animal Control) BEFORE Mr. Bailey had his license re-issued.

We also understand the City of Palmer has recently contacted you (The Assembly) in regard to this on-going problem.

We, the undersigned, ask for some consideration of this problem and strongly recommend that Mr. Pineau be relieved of this particular duty.

If you need any of us to attend an Assembly Meeting for further discussion or clarification of the matter, PLEASE feel free to contact us!!

Encl (1)

Signed:

Mr. + Mrs. Richard E. Vogt PH: 745-3351

Mr. + Mrs. Carl T. Scheihl PH: 746-4546

Mr. + Mrs. David W. Ward PH: 745-2774

Mr. + Mrs. Robert Matura PH: 745-2296

Roger K Smith PH 745-4506

February 9, 1993

Members of House and Senate
Juneau, Alaska 99801

RE: Issue of ANNEXATION OF PROPERTIES BY THE CITY OF PALMER, namely those lots owned by ROBERT BAILEY.

As a supporter of this proposal for annexation, I urge the members of the Senate and House to please comply with the decision of the local Boundary Commission and follow thru with this annexation.

Sincerely,

Robert M. Henderson
555 N. Alaska St.
Palmer, Alaska 99645

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