

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11289 SENATE RESOURCES

1 environmental impact statement under 42 U.S.C. 4332.

2 (i) The requirements of AS 38.04.065 and 38.05.300, relating to classification
3 and reclassification of land, are inapplicable to actions taken by the Department of
4 Natural Resources under this section.

5 (j) The Department of Natural Resources shall retain the classifications and
6 reservations of land identified for use as a proposed utility corridor and railroad right-
7 of-way under former AS 19.05.122 until the corporation informs the department in
8 writing that the land is not needed by the corporation for a utility corridor. If, under
9 (a) of this section, the corporation includes land identified under former AS 19.05.122
10 as part of the proposed transportation corridor, the department shall manage that land
11 under provisions of this section.

12 (k) To complete the work authorized by this section, the corporation may enter
13 into agreements relating to the work with the federal government, an agency or
14 instrumentality of the state, a municipality, or a private organization.

15 **Sec. 42.40.465. Extension of the Alaska Railroad to connect with the**
16 **North American railroad system.** (a) The corporation may investigate extension of
17 the Alaska Railroad from the border of Alaska and Canada to connect with the North
18 American railroad system. The corporation may acquire land or interests in land in
19 Canada as the corporation considers appropriate for the development, construction,
20 and operation of an extension of the Alaska Railroad to connect with the North
21 American railroad system.

22 (b) In performing the work authorized by (a) of this section, the corporation
23 shall consider the following factors:

- 24 (1) safety;
- 25 (2) grade and alignment standards that are commensurate with rail and
26 utility construction standards and that minimize the prospect of at-grade railroad and
27 highway crossings;
- 28 (3) availability of construction materials;
- 29 (4) effects on and service to adjacent communities and potential
30 intermodal transportation connections;
- 31 (5) environmental concerns;


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- (6) use of public land to the maximum degree possible;
- (7) minimization of probable construction costs;
- (8) the location of and the opportunity to obtain access to identified natural resources that could contribute significantly to the economic development of the state and Canada;
- (9) avoidance of possibly unstable ground due to thawing of frozen soils; and
- (10) prior and established traditional uses.

* Sec. 2. AS 19.05.122 is repealed.

From the office of . . . Senator John J. Cowdery
State Capitol Building, Rm # 101
Juneau, AK 99801
907-465-3879 phone
907-465-2069 fax

MEMORANDUM

DATE: April 3, 2003
TO: Senator Scott Ogan, chair, Senate Resources Committee
FROM: Senator John J. Cowdery 
RE: REQUEST FOR HEARING, SB 31

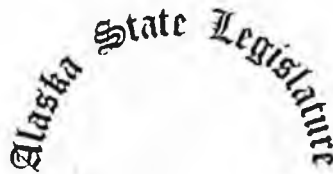
At your earliest possible convenience, please schedule SB 31 for a hearing in the Senate Resources Committee.

SB 31 authorizes the Alaska Railroad to delineate a transportation and utility corridor to the Alaska-Canada border.

Attached is a copy of the bill, previous version, a sponsor statement, sectional analysis and fiscal notes.

Thank your for your consideration to this matter.

SENATOR
JOHN J. COWDERY
Anchorage



Committees
Chair: Rules
Chair: Transportation
Chair: World Trade &
State/Federal Relations
Legislative Council

Senate

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Senator_John_Cowdery@legis.state.ak.us

SPONSOR STATEMENT FOR SB 31

"An Act relating to a railroad utility corridor for extension of the Alaska Railroad to Canada and for the extension of the Alaska Railroad to connect with the North American Railroad system."

Growing Alaska's economy and ending a history of boom-and-bust cycles depends on improving our state's transportation infrastructure. The purpose of SB 31 is to advance the inclusion of Alaska in the contiguous North American rail system.

Without appropriating funds, SB 31 authorizes the Alaska Railroad Corp. to delineate a transportation and utility corridor from its terminus at Eielson AFB to the Alaska-Canada border. After survey and full delineation is achieved, state land would be transferred to the railroad fee simple title.

SB 31 also authorizes and encourages the railroad to obtain ownership or a right of way through any other lands, whether federal or private. A separate section authorizes the railroad to investigate further extension in order to make a connection with the North American rail system, logically in British Columbia.

This legislation mandates a 500-foot wide corridor that could allow for other uses such as fiber optic cable or power transmission lines. In addition, the corridor allows for specific railroad-related uses such as sidings, depots and materials storage.

Completing this last transcontinental railroad will benefit the mining, agriculture, tourism, food processing and oil and gas sectors of Alaska's economy. For example, the corridor between Eielson AFB and the border with Canada bisects a proven range of rich mineral potential, including the Pogo Project near Delta Junction.

SB 31 allows the Alaska Railroad to use funds it can obtain – such as from federal appropriations or sale of bonds – to survey and obtain a right of way to the Canadian border.

As world trade grows, this rail connection can only increase Alaska's economic ties with the rest of the nation and North America as a whole.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 31
 (S) Publish Date: 3/31/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Railroad Utility Corridor to & in Canada BRU Alaska Railroad Corporation
 Sponsor Senator Cowdery Component _____
 Requester Senate Transportation Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Please see Analysis Continuation.

Prepared by: Wendy Lindscoog, Director of External Affairs Phone 907-265-2498
 Division Alaska Railroad Corporation Date/Time 2/7/03 10:20 AM
 Approved by: Edgar Blatchford, Commissioner Date 2/7/2003
 Agency Department of Community & Economic Development

FISCAL NOTE #1

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. SB 31

ANALYSIS CONTINUATION

The Alaska Railroad Corporation (ARRC) is a public corporation supported by revenues generated through freight, passenger and real estate services. ARRC does not receive state subsidies for operations or capital improvements, but does receive federal grants used primarily for capital projects. At this point, ARRC matches all federal grant appropriations with its internal funds. Should this be the case regarding federal funding appropriated for corridor delineation to the Canadian border and beyond, there will not be a fiscal impact to the State's general fund. There would be a fiscal impact if the State helps ARRC match federal dollars. There have been previous estimates that it would take approximately \$5 million to delineate and survey the corridor from the Alaska Railroad near Fairbanks to the Canadian border.

Additionally, this bill would allow ARRC to investigate extending from the Alaskan border to connect to the North American rail system. At this time, ARRC has not estimated the cost to determine the route and conduct surveys for this corridor section. This bill would also allow ARRC to acquire the right of way in this corridor. We assume that State land would be acquired at no cost to ARRC. Military land could be transferred through working with the state's congressional delegation. However, Native lands would require purchase or granting of easements; at this juncture, we do not have any estimates for such associated costs.

DRAFT Sectional Analysis for CSSB 31(TRA)

Section 1: Revises the Alaska Railroad Corporation Act, adding two new sections. The first one is AS 42.40.460, addressing the extension of the Alaska Railroad to Canada. The second is AS 42.40.465, which authorizes the ARRC to investigate a rail connection between the Canadian border and Northern American railroad system, including the acquisition of land in Canada for this purpose. The first section is organized into eleven subsections, beginning with Section 1(a).

Section 1(a): Broadly authorizes ARRC to designate a 500-foot-wide transportation corridor from its current northern terminus at Eielson AFB to the Canadian border and to identify rail land for associated uses. Directs ARRC to prepare a legal description of these lands.

Section 1(b): Lists the factors ARRC must consider when determining the route to be designated as this transportation corridor.

Section 1(c): Establishes the steps that will occur once ARRC designates the transportation corridor or rail land. It retains DNR as the interim manager with procedural safeguards to protect the future railroad use of the corridor. Specifically, the land will be reserved by DNR, subject to valid existing rights, and managed by DNR under consultation with ARRC so as to allow other uses but not obstruct the future railroad or other transportation uses. DNR and ARRC will begin to identify potential crossing locations. DNR will retain any revenues arising from use of the land.

Section 1(d): Establishes the steps that will occur once ARRC is ready to actually begin construction on a part of the designated corridor. DNR transfers management authority for that segment of the corridor to ARRC, again subject to valid existing rights, and ARRC will from that time forward receive any revenues associated with that land. DNR will retain the ability to identify and reserve the right to establish future crossings subject to section (g) of the bill.

Section 1(e): Establishes the steps that will occur once ARRC completes construction of a segment of the rail line. ARRC will provide a survey of a 200-foot corridor, 100 feet on each side of the as-built centerline of track. DNR will use that survey to convey the state's entire interest in that land to ARRC, subject again to valid existing rights and reserving the right to establish future crossings and the oil and gas and other mineral rights required to be reserved in all state land conveyances under AS 38.05.125. ARRC will pay DNR's administrative costs in making the conveyance. DNR will continue to manage the remaining 300 feet within the original 500-foot reserved corridor as a transportation corridor until no longer needed as such. DNR will continue to manage any remaining

500-foot corridor (in which ARRC has not begun construction) as a transportation corridor under this section.

Section 1(f): This section recognizes the possibility that a natural gas pipeline may be proposed for construction before the railroad extension reaches that level of certainty. The philosophy of the section is that a potential railroad should not be an impediment to a gasline proposed for construction. However, construction of a gasline, even if first, should try to accommodate the more limited topographic options of a railroad. Specifically, if a gasline is proposed for construction, ARRC will have an opportunity to establish its exact routing within the 500-foot transportation corridor by providing DNR a survey of the proposed centerline. DNR will not authorize a gas pipeline route within the 200-foot corridor defined by this survey unless there is no feasible and prudent alternative. In any event, DNR will consult with ARRC to minimize the effect of the gas pipeline on the potential rail route.

Section 1(g): This section balances the ARRC's needs for a safe, efficient, route unhampered by numerous crossings against the need for development of nearby resources and public access across the route. There are existing rights in this area that will be potential crossings, depending on the final rail alignment, and more are likely to be granted by DNR both before and after railroad construction. Both the state and ARRC are protected against liability arising from public uses except to the extent arising from the gross negligence of either of them. DNR, as the agency with a mission to protect public access to public resources, will reserve the right to authorize specific crossings, but only with the concurrence of ARRC that any particular crossing is consistent with safety standards and minimizes its impact on railroad operating efficiency. If DNR authorizes a crossing, it will indemnify ARRC for related liability on that crossing under AS 42.40.420(1)-(3), which applies to public uses of ARRC land in general, however excepting liability arising from ARRC's gross negligence

Section 1(h): Addresses the other related activities ARRC must or may undertake as part of the rail extension. Where any portion of the designated route crosses private land, the corporation can consider whether to exercise its statutory power of eminent domain. Where any portion of the designated route crosses federal land, the corporation must work with federal officials to reclassify and withdraw the land for this purpose. Finally, before federal land is acquired or federal funds are spent, the corporation has to comply with federal law requirements for an EIS.

Section 1(i): Relieves the process of delineating, reserving and conveying the lands affected by this section from the requirements of being classified and reclassified under DNR's governing statutes.

Section 1(j): Directs DNR to retain any land previously identified and classified for use as a utility corridor and railroad right-of-way under AS 19.05.122 and

manage them as if designated under this section until ARRC notifies DNR those lands are not needed for this transportation corridor.

Section 1(k): Allows ARRC to enter into contracts with all manner of entities to perform the work authorized under this section.

Section 42.40.465: Authorizes the Alaska Railroad to investigate extending its tracks from the border to complete a connection with the North American rail system, and to acquire a right of way or land for a corridor. Section (b) applies the same parameters for the railroad to consider as in Section 1 (b).

Section 2: Repeals former AS 19.05.122, which was originally enacted in 1977 and amended in 1981 and 1999 to authorize the Department of Transportation and Public Facilities to delineate a proposed utility corridor (including a railroad right-of-way) to Canada.

REFERENCE TO STATUTES:

Page 1, line 12:

**TITLE 48: PUBLIC LAND
RIGHT OF WAY LEASING ACT**

Sec. 38.35.020. Grant of right-of-way lease.

- (a) Rights-of-way on state land including rights-of-way over, under, along, across, or upon the right-of-way of a public road or highway or the right-of-way of a railroad or other public utility, or across, upon, over, or under a river or other body of water or land belonging to or administered by the state may be granted by noncompetitive lease by the commissioner for pipeline purposes for the transportation of oil, products, or natural gas under those conditions prescribed by law or by administrative regulation. Except to the extent authorized by an oil and gas lease or unit agreement approved by the state, no person may engage in any construction or operation of any part of an oil, products, or natural gas pipeline, which in whole or in part is or is proposed to be on state land unless that person has obtained from the commissioner a right-of-way lease of the land under this chapter.

**TITLE 42: PUBLIC UTILITIES AND CARRIERS
LAND**

Sec. 42.40.350.

- (b) Railroad utility corridors shall be of a width at least 100 feet on both sides of the centerline of the extended main or branch line, unless the corporation does not own or control sufficient land to allow a corridor of that width. Railroad utility corridors may be surveyed by the metes and bounds method. The corporation may not convey its entire interest in land within a utility corridor except as provided in AS 42.40.285, 42.40.370(d) and 42.40.400. However, the corporation may lease, subject to AS 42.40.285 and (d) of this section, grant easements in or permits for, or otherwise authorize use of portions of a utility corridor for transportation, communication, and transmission purposes and support functions associated with those purposes, and for commercial and other uses authorized under this chapter if the use does not restrict other parallel uses of the utility corridor.

CHANGES REFLECTED IN NEW CS for SB 31:

(Page and line references are to LS0336\Q)

CHANGE No. 1:

Page 1, Line 9: remove "at least"
Page 1, line 12: add reference to AS 38:35.020(a)

(Technical in nature)

The purpose of change No. 1 is to clarify language, and to add reference to an additional statute which addresses leasing of rights of way. The railroad can specify land within a transportation corridor for rail yards, hotels, and other facilities associated with the railroad.

CHANGE No. 2:

Page 2, line 5: adds "in consultation with other interested parties."

(Technical in nature)

Clarifies language to reflect that fact that the railroad must coordinate with potential gasline developers and others to ensure that the transportation is in the optimal location for those uses as well.

CHANGE No. 3:

Page 2, lines 22 and 23: adds new language as follows: "and the Department of Natural Resources, after consulting with the corporation and potentially affected parties, makes a finding that the location minimizes adverse impacts on existing and potential rights-of-way and land uses associated with the best location, construction and operation of a gas pipeline project in a manner that is in the best interests of the state,"

(more substantive in nature)

This language recognizes that DNR should consult with the railroad and other parties, such as a gas pipeline developer, and make a "finding" that the right of way is in the best interest of the state. It allows DNR to ensure that the railroad location minimizes adverse impacts on potential gasline routes. Without the language, there is no oversight to ensure that the route works for both economic development projects.

CHANGE No. 4:

Page 2, line 24: adds "and other provisions of this act."

(Technical in nature)

Because the funding source is the likely prompt for actual construction; it uses the identified funding source as the method of triggering conveyance of management authority.

CHANGE No. 5:

Page 3, line 11: adds: "and has identified a funding source for that construction."

(Technical in nature)

Strengthens language.

CHANGE No. 6:

Page 3, line 19: adds the word "and" in order to add a new section,
(d)(3)

Page 3, line 20: adds section (d)(3) which reads: "the authority of the department after consultation with the corporation to identify, reserve, authorize, and manage land within the transportation corridor for potential future rights-of-way leases and uses under 38.35."

(technical in nature)

This change ensure that the gasline developer must negotiate only with one government entity to build the gasline. It ensure that this bill does not unduly complicate gasline leasing.

CHANGE No. 7:

Page 3, line 29: adding section, substitutes ";" for "and"

Page 3, line 30: adds: "and (c) the authority of the department to identify, reserve, authorize, and manage lands within the transportation corridor for potential future rights of way leases and uses under 38.35"

(Technical in nature)

Strengthens existing language.

CHANGE No. 8:

Page 4. lines 15-26

Changes language to the following:

(f) Notwithstanding other provisions of this section, before the Department of Natural Resources grants a gas pipeline right of way lease under AS 38.35.020(a), it shall consult with the corporation; if a railroad has not yet been constructed on a segment of the transportation corridor, the department may change the boundaries of the transportation corridor if it determines that it is in the best interest of the state to make a change in the boundaries in order to accommodate the proposed gas pipeline.

(Technical in nature)

Clarifies existing language to express intent that a gasline may use the rail corridor if the railroad has not been constructed.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

FRANK H. MURKOWSKI
ALASKA

COMMITTEES:

CHAIRMAN
ENERGY AND NATURAL RESOURCES

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June 6, 2001

Dear State Legislator:

As a consequence of your being in session, even for such a short time, I did want to take the opportunity to communicate some preliminary thoughts on a project we are working on to expand the scope of the natural gas pipeline feasibility study.

I will be asking the producers to expand the scope of their study to consider the conjunctive building of a rail corridor to be part of the proposed pipeline route. In my view, such a corridor could offer an ideal route for complementary rail and telecommunications services. I hope you will consider what appropriate role the State might take regarding this proposal. Perhaps a Resolution encouraging the producers to evaluate the multiple use concept of a pipeline, rail and telecommunications corridor would be appropriate.

For the first time in many years, there is a concerted effort to construct a natural gas pipeline carrying Alaska North Slope natural gas to markets in the lower 48 states. Factors such as the current energy crisis and the worldwide concern over air quality and climate change have combined to change the landscape, making an Alaska gas pipeline a matter of "when," not "if."

The consortium of gas producers has put together an excellent team to analyze and assess the economic feasibility of constructing the pipeline. And the consortium has been willing to commit substantial resources to that assessment. As the consortium continues its analysis, we urge them to consider a cost/benefit assessment that is truly comprehensive and encompasses all potential uses of the projected pipeline corridor.

Pipeline construction would occur in a yet-to-be-designated corridor. It is my well-known view that the preferred route is from the North Slope to Fairbanks, thence southeastward along the Alaska Highway through Canada. Such a corridor could, if carefully chosen, offer an ideal route for complementary services such as rail and communications, in addition to serving Fairbanks, the Pogo mine and other markets in Alaska - Yukon Territory (Whitehorse to British Columbia.)

Just as conditions now warrant serious consideration of a pipeline, there is growing interest, both in the United States and Canada, in the construction of a rail connection to Alaska from the existing Canadian system. There is the possibility of a petro-chemical industry developing from the conditioned gas in Alaska. These and other products would require rail transportation to markets east and south. Further, the right-of-way could support fiber optic for both pipeline monitoring as well as commercial uses of the advanced land line technology.

In my view, there are enormous potential long term economic benefits to the State of multiple utilization of the corridor route containing pipelines, railroad and fiber optic communications.

The economics of the railroad, of course, are based on long term cost-benefit metrics that

deserve considerable evaluation. For the interim I ask that the gas owners only concern themselves with the multiple use right-of-way concept. As an example, it may be possible to use materials excavated for a pipeline to form part of the roadbed for a rail line, building both simultaneously. Conversely, if a rail platform were built with the pipeline, it might be significantly less costly to transport pipe, excavate materials and lay pipe. In fact, the Canadians have already developed a method to lay pipe directly from a railroad.

In the same way, it seems clear that fiber optic cable would provide an ideal basis for broad-band communications for pipeline monitoring and rail communication needs, and for continuous monitoring and control of both utilities' operations. There would also be significant benefits to communications within Alaska, Canada and the lower 48 from such a telecommunications network.

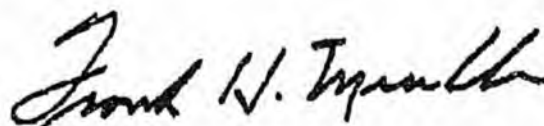
In addition, should a National Missile Defense (NMD) facility be sited in Alaska at Delta along the Alaska Highway route, it seems clear that such a facility would require secure broad-band communications with other defense command sites.

Both an NMD facility and a gas pipeline would require the movement of very significant quantities of construction materials, equipment and manpower -- and rail is far and away the most efficient and environmentally sound method of moving material overland. Unlike the road that parallels the TAPS pipeline, a railroad would eliminate any need for an access road.

All this presents a unique one-time opportunity to combine several efforts, each of which would be complementary to the others, and any of which might later either be incorporated or spun off as individual ventures with their own long-term potential.

I urge the State to evaluate this unique opportunity, and to take the appropriate steps to ensure that a route analysis is comprehensive. This is a once in a lifetime opportunity to combine all these projects into an undertaking that is truly greater than the sum of its parts.

Sincerely,



Frank H. Murkowski
United States Senator

cc: The Honorable Tony Knowles



Office of the Premier
Box 2703, Whitehorse, Yukon Y1A 2C6

4254-01
4126-02

April 2, 2003

The Right Honourable Jean Chrétien, P.C., M.P.
Prime Minister of Canada
House of Commons
Ottawa, Ontario K1A 0A6

Dear Prime Minister:

On behalf of all Yukoners, I would like to express my government's strong support for the establishment of a US-Canada Joint Commission on the Canada-Alaska Rail Link.

The Yukon has more than 80 identified mineral deposits with defined reserves, many of which are of world-class size, that could be developed if a rail link provided efficient transportation of supplies and minerals. In addition, there are eight virtually unexplored oil and gas basins and vast forestry resources that could also benefit from a railroad.

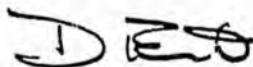
The large mining, forestry and oil and gas development opportunities that a rail link might make feasible need to be further explored and detailed, as do the potential benefits of identifying new transportation corridors in Canada's northwest.

I believe the proposed Commission should be established as soon as possible in order to fully consider the enormous opportunities a rail link could create for Alaska, Yukon, British Columbia and western Canada. Given that the Commission will offer so many excellent opportunities for collaboration and cooperation among policy makers, First Nation leaders, industry and high level technical professionals, both in Canada and the United States, I can't imagine a better time for Canada to announce its decision to participate.

I understand that Alaska Governor Murkowski recently wrote you to express his government's support for the Commission and to suggest locating the offices of the Commission in Whitehorse and Juneau. I fully support the governor's suggestions and look forward to working with our Alaska neighbours and various Canadian and American partners in the months to come.

As you make your formal decision regarding the Bilateral Commission, I want to assure you that my government, and all Yukoners, are ready and eager to participate.

Yours sincerely,



Dennis Fentie
Premier

cc Honourable Bill Graham, Minister of Foreign Affairs
Honourable David Collenette, Minister of Transport
Honourable Pierre Pettigrew, Minister, International Trade
Honourable Herb Dhaliwal, Minister of Natural Resources
Honourable Ione Christensen, Senator, Yukon
Mr. Larry Bagnell, MP, Yukon
Honourable Stephen Kakfwi, Premier, Northwest Territories
Honourable Ralph Klein, Premier, Alberta
Honourable Gordon Campbell, Premier, British Columbia
Honourable Roger Simmons, P.C
Honourable Frank Murkowski, Governor
Honourable Ted Stevens, United States Senate
Honourable Doug Young, United States House of Representatives
Honourable Lisa Murkowski, United States Senate
Honourable Fred Dyson, United States Senate
Honourable John Cowdery, United States Senate

Subject: SB 31 consultation with Assistant AG

Date: Tue, 15 Apr 2003 15:16:41 -0800

From: Bob Loeffler <bob_loeffler@dnr.state.ak.us>

Organization: Department of Natural Resources

To: Richard F Schmitz <richard_schmitz@legis.state.ak.us>,

Kim S Elton <senator_kim_elton@legis.state.ak.us>,

Scott Ogan <senator_scott_ogan@legis.state.ak.us>,

Linda J Hay <linda_hay@legis.state.ak.us>

CC: johnsonp@akrr.com, lindskoogw@akrr.com

Richard,

At yesterday's Sen. Resource Hearing, Senator Elton asked me to have an Assistant AG to review section (f) of SB 31 -- it's effect with respect to the gas line. Our AG took a quick look at it and gave us an informal opinion. He gave it to us verbally. Our summary is below:

His read is that section (f) does appear to give a small bias or preference with regard to the spatial location of the ARR Transportation corridor but on careful reading did not give an overall preference or priority to the RR. The bill, however, also gives DNR the authority to make the decision (on balance for the greater good) as to where to locate the RR and the gas line.

I hope this information is useful, and please let me know if you need additional information.

-- Bob Loeffler

Bob Loeffler <bobl@dnr.state.ak.us>

Director

Division of Mining, Land and Water

Department of Natural Resources

S B

4 4

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 44
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
Title Oil Spill Response Cost Recovery BRU Spill Prevention and Response
Component Response Fund Administration
Sponsor Sen. Olson
Requester Senate Resources Component No. 2259

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1052 Oil & Haz. Substance Response Fund)	(223.0)	(223.0)	(223.0)	(223.0)	(223.0)	(223.0)

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
DEC is required by statute to seek reimbursement for its expenses in cleaning up or containing a discharge of oil or hazardous substance. This bill would establish blanket exemptions for certain types of discharges and set a threshold below which the Department could not recover costs. Currently the Department may take into account the ability to pay, the nature or cause of the discharge, the potential costs to the State of pursuing reimbursement, or any other mitigating factor in determining whether to pursue cost recovery. By removing the flexibility of the Department to make such determinations, and establishing in law responsible parties who are categorically exempt from liability for the costs of a discharge and a threshold below which no recovery is authorized, the costs incurred by the State in responding to spills is expected to increase.

Prepared by: Larry Dietrick, Director Phone 465-5255
Division Spill Prevention and Response Date/Time 3/11/03 2:57 PM
Approved by: Kurt Fredriksson Date 3/11/2003
Agency Dept. of Environmental Conservation

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. SB 44

ANALYSIS CONTINUATION

The bill proposes using the federal Oil Spill Liability Trust Fund to obtain reimbursement for those situations proposed for exemption. Since the federal criteria for judging claims includes such factors as impacts to navigable waters, significant threats to the environment, and other site-specific considerations, it is assumed that in the overwhelming majority of cases such federal reimbursement would not be possible. Moreover, the federal government may pursue cost recovery itself if a claim for reimbursement is accepted. Therefore, regardless of their exemption from State liability proposed by this bill, responsible parties would still be subject to federal cost recovery actions.

The Department estimates that an average of at least \$223,042 per year has been incurred by the State since fiscal year 1999 in responding to oil or hazardous substance discharges from responsible parties that would receive a blanket exemption under this bill. Because of the way data is collected, this number includes only spills from single residential tanks, villages, and spills for which costs incurred were less than \$3,000. Since there are other categories proposed for exemption, this is a conservative estimate of revenues that would be lost to the State under this bill.

Alaska State Legislature

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In Session:
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Juneau, Alaska 99801-1182
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(907) 465-4821 Fax

SENATOR DONALD C. OLSON

DISTRICT T

SPONSOR STATEMENT

Alakanuk
Ambler
Anaktuvuk Pass
Atkasuk
Barrow
Brevig Mission
Browerville
Buckland
Chevak
Deering
Diomedea
Elim
Emmonak
Gambell
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyuk
Mountain Village
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pilot Station
Pitka's Point
Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktolik
Shishmaref
Shungnak
St. Mary's
St. Michael
Stebbins
Teller
Unalakleet
Wainwright
Wales
White Mountain

SB 44, Oil Spill Response Costs

I introduced SB 44 in response to concerns that in certain circumstances the Department of Environmental Conservation (DEC) needed to have more flexibility in the recovery of the state's actual costs in oil spill containment and cleanup activities.

Current statutes (AS 46.04.010 and AS 46.08.070) require DEC to promptly seek reimbursement for the state's oil spill response costs from the persons or entities that caused or are liable for the spill. The statutes do not allow for the department to adjust or waive the reimbursement requirement in those situations where the costs far exceed the financial resources of the individual or entity responsible. As a result, financial constraints could be imposed on a small community or individual which could cause severe social impacts that counteract essential local government programs.

Currently the department utilizes the broad scope of the Attorney General's Authority to waive or reduce oil spill recovery costs. An Attorney General has to determine

these actions without specific regulatory guidelines or standards that are known and available to the public with inconsistency being the result. For example, the village of Little Diomedes has been placed on a payment plan for \$200 a month for the next 34 years; whereas the villages of Tetlin and Steven's village received waivers. In both waivers, the Attorney General decided not pursue further since the villages were complaining bitterly and felt his efforts would be more beneficial elsewhere. There are many cases where individuals and small communities could not afford the recovery costs of an oil spill; however, they did not receive this same treatment.

SB 44 provides a process for DEC to consider reducing or waiving the reimbursement requirement in special circumstances in a consistent manner. The process relies on an explicit, "public interest" finding by the department that the reduction or waiver is warranted.

The provisions outlined in SB 44 allows the department to consider waiving costs in the following situations: the expenses are not recoverable from a federal source of funds; the responsible party is an individual with a tank system containing residential heating oil for fewer than five families; an unincorporated community, a village, or a municipality with a population under 5,000 or the expenses incurred by the department were less than \$3000.

Alaska State Legislature

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SECTIONAL ANALYSIS

SB 44, Oil Spill Response Costs

Section 1 is a conforming amendment to AS 46.04.010 for the exceptions stated in Section 2.

Section 2 of this bill amends AS 46.04.010 by adding two new subsections (b) and (c).

Subsection (b) states that the department can reduce or waive reimbursement for expenses incurred in cleaning up or containing a discharge of oil under the following situations:

If the expenses are not recoverable from a federal source fund and;

- 1) If the person responsible for the oil spill is an individual and the discharge occurred from a tank system for fewer than five families. A tank system for fewer than five families would include four complexes.
- 2) If the party who would be responsible for the reimbursement is an unincorporated community, a village or a municipality with a population under 5,000.

In both circumstances, the discharge must be from a tank system containing residential heating oil and the discharge cannot be a result of overfilling a tank. This requirement eliminates waivers for fuel and oil providers who cause the spillage.

OR

- 3) The expenses incurred by the department were less than \$3000.

Subsection (c) states that the department should continue to seek reimbursement of expenses unless the department finds that it is in the public interest to waive costs under subsection (b).

Section 3 of this bill amends AS 46.08.070 by referencing the two added subsections (e) and (f) under Section 5.

Section 4 is a conforming amendment to AS 46.08.070 for the exceptions stated in Section 5.

Section 5 of this bill amends AS 46.08.070 by adding two new subsections (e) and (f).

Subsections (e) and (f) state the same requirements as in Section 2.

Since both sections require cost recovery by the department, they must both be amended if the legislature wishes to make exceptions.

Section 6 & 7 amends the uncodified law of the State of Alaska by adding applicability and transition that are intended to apply this legislation to existing payment plans and pending recovery actions as well as to future spill situations.

Senate Resources

Senate Bill 44

"An Act relating to the recovery of the expenses of the Department of Environmental conservation that are incurred when containing or cleaning up a discharge, release, or threatened release of oil; and providing for an effective date"

Testimony of Larry Dietrick

Alaska Department of Environmental Conservation
Division of Spill Prevention and Response

March 12, 2003

Thank you for the opportunity to comment on Senate Bill 44.

DEC is required by statute to seek reimbursement for its expenses in cleaning up or containing a discharge of oil or hazardous substance. Alaska statutes, like the federal laws and laws of other states are based on the principle that the "spiller pays" for the costs of cleanup. It is a self sustaining mechanism by which costs incurred by the state are recovered from the spiller and returned to the state's response fund to ultimately avoid the use of public funds for cleanups.

The Department appreciates being able to work with the sponsors of this legislation to examine ways to provide exceptions to the "spiller pays" self sustaining principle established in existing statutes.

This bill would establish blanket exemptions for certain types of discharges and set a threshold below which the Department could not recover costs.

Currently the Department may take into account the ability to pay, the potential costs to the State of pursuing reimbursement, or other mitigating factors in determining whether to pursue cost recovery. The Department currently exercises this discretionary authority on a case-by-case basis.

After careful consideration the Department has concluded that establishing exemptions for certain classes of "spillers" and a threshold below which no cost recovery is authorized will shift the costs for cleanup to the State along with the corresponding fiscal impacts.

Categorical exemptions or thresholds will increase the costs to the state and remove the flexibility of the Department to seek recovery of costs based on the circumstances of each case.

While we appreciate the scrutiny and good faith efforts to improve the system we have concluded that the legislation as currently drafted will increase costs to the state and eliminate existing flexibility to consider extenuating circumstances on a case by case basis.

MEMORANDUM

State of Alaska
Department of Law

TO: Michele Brown
Commissioner
Department of Environmental Conservation

DATE: October 6, 1999

FILE NO.: 661-00-0116

TEL. NO.: 269-5274

SUBJECT: Foregone Earnings on
Money Expended to
Contain and Cleanup an
Oil or Hazardous
Substance Release As a
Component of Cost
Recovery

FROM: Craig Tillery
Assistant Attorney General

The State of Alaska has long considered the lost or foregone earnings on amounts expended by the State to contain or clean up a release of oil or a hazardous substance to be a recoverable cost. Recently several responsible parties have questioned the legal basis for recovering lost earnings in addition to the actual amount of state expenditures. You requested our opinion as to whether, and at what rate, lost earnings are a recoverable cost.

Cost Recovery Statutes

AS 46.03.822 provides that the owner and person having control over a hazardous substance, as well as the owner and operator of a vessel or facility from which a hazardous substance is released, are strictly liable for the damages resulting from the release of the hazardous substance, including the costs of response, containment, removal, or remedial action incurred by the state. Damages are defined broadly to include "injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit." *Compare AS 46.03.822 with AS 46.03.824.*

The discharge of oil and hazardous substances is prohibited by AS 46.03.740 and AS 46.03.745, respectively. Under AS 46.03.760 a person who violates those provisions is liable to the state for a sum, not to exceed \$100,000 for the initial violation and \$5,000 per day. The amount is to reflect a number of factors including "reasonable costs incurred by the

state in detection, investigation, and attempted correction of the violation” AS 46.03.760(a)(2). Further, AS 46.03.760 provides that a person who violates AS 46.03.740 or .745 is liable to the state under AS 46.03.822 for “the full amount of actual damages caused to the State by the violation, including (1) direct and indirect costs associated with the abatement, containment, or removal of the pollutant . . . and (4) all incidental administrative costs.” AS 46.03.760(d).

Under AS 46.08.070(a) the Commissioner of the Department of Environmental Conservation (hereinafter “DEC” or “the Department”) is required to seek reimbursements for the costs incurred in the cleanup or containment of oil or a hazardous substance that has been released. In addition AS 46.08.070(b) requires the Attorney General to seek to recover money expended from the Oil and Hazardous Substance Release Prevention and Response Fund for purposes of containment and cleanup of oil or a hazardous substance.

Lost Earnings Are a Recoverable Cost

The cost recovery and damage statutes described above consistently require that the State fully recover its damages and costs arising out of the unpermitted release of oil or a hazardous substance. One of the economic losses that the State incurs as the result of an oil or hazardous substance release is the lost opportunity cost related to the money it is required to expend for containment and cleanup of the release. All public monies and revenue that come into the state treasury constitute the general fund of the State. *See* 1969 Op. Att’y Gen. No. 5 (April 15, 1969). Money held by the State in the general fund which is excess to that needed for immediate expenditure is invested by the State. AS 37.10.070; *see* 1987 Inf. Op. Att’y Gen. (Jan. 5, 1987) citing to Alaska Const., art. IX, sec. 16 (“The governor shall cause any unexpended and unappropriated balance [presumably of the general fund] to be invested so as to yield competitive market rates to the treasury.”). Earnings which accrue on general fund investments are available for appropriation for state expenditures. With respect to money expended from the State’s general fund in response to a release, potential earnings are no longer available to the State and thus constitute a direct loss to the general fund of the State.

The expenditure of money from accounts within the Oil and Hazardous Substance Release Prevention and Response Fund (“Response Fund”) to respond to a release directly adversely impacts the money available to the Response Fund for prevention and response activities. The Response Fund is composed of two accounts, the prevention account and the response account, which are available to contain, clean up, and take other necessary action related to a release. AS 46.08.040(a)(1)(A) and 46.08.040(a)(2)(A). The prevention

and response accounts are funded through various mechanisms, such as a surcharge on oil produced within the state (AS 43.55.201 and 45.55.300) and monies recovered by the State for fines, penalties, or damages for costs incurred by the State as the result of a release of oil or a hazardous substance. AS 46.08.020. Significantly, earnings on accounts within the Response Fund are credited to the prevention account and, upon appropriation, are available for expenditure from that account. AS 46.08.020(c). As a result of this statutory scheme, the lost earnings attributable to money expended from the Response Fund as the result of a release constitute not only a cost to the state treasury, but a direct loss of monies available to the Prevention Account within the Response Fund.

Recovery for the lost potential earnings on money owed is based on the notion that, to make a party whole, the party must be compensated for the earnings it could have made on the money for which it had a rightful claim during the period when the money was not available to it. See *McConkey v. Hart*, 930 P.2d 402, 405 (Alaska 1996). The economic rationale for compensating a party for losses attributable to that party's inability to use money is grounded on "the economic fact that money awarded for any reason is worth less the later it is received." *State v. Phillips*, 470 P.2d 266, 273 (Alaska 1970); accord *Ebasco Constructors, Inc. v. Ahtna, Inc.*, 932 P.2d 1312, 1317 (Alaska 1997); *Farnsworth v. Steiner*, 638 P.2d 181, 184 (Alaska 1981). "All damages then, whether liquidated or unliquidated, pecuniary or nonpecuniary, should carry interest from the time the cause of action accrues, unless for some reason peculiar to an individual case such an award of interest would do an injustice." *Bevins v. Peoples Bank & Trust Co.*, 671 P.2d 875, 881 (Alaska 1983).

Alaska courts often analyze the legal nature of a claim for the lost use of money in the context of prejudgment interest, finding that the concepts rest on the same economic rationale. Thus, courts hold that a party may recover the lost use of money either as a damage or as prejudgment interest, but not both. See, e.g., *Power Constructors v. Taylor & Hintze*, 960 P.2d 20, 37 (Alaska 1998); *Tookalook Sales and Service v. McGahan*, 846 P.2d 127 (Alaska 1993); *Pratt & Whitney Canada, Inc. v. Sheehan*, 852 P.2d 1173 (Alaska 1993); *Stevens v. F/V Bonnie Doon*, 713 F.2d 1433, 1438 (9th Cir. 1984).

In Alaska "prejudgment interest is a substantive right of an injured party, to allow that party to recover for economic loss occasioned by his inability to use the award of damages between the injury and judgment." *City and Borough of Juneau v. Commercial Union Ins. Co.*, 598 P.2d 957, 958 (Alaska 1979). For that reason, awarding interest for the lost use of money due is properly classified as "an item of damage." *Guin v. Ha*, 591 P.2d 1281 (Alaska 1979); *Farnsworth v. Steiner*, 638 P.2d 181, 184 (Alaska 1981). In *Davis v. Chism*, 513 P.2d 475, 481 (Alaska 1973) the court noted that a plaintiff was entitled to "the

amount to which he has been damaged by the defendant from the date his cause of action accrued." The court went on to state that "it may be argued that plaintiff was entitled to the use of that amount from the same date and the use of that money has real economic value, of which the plaintiff has been deprived." *Id.* The court concluded by saying that "pre-judgment interest is necessary to compensate the plaintiff, not only by the amount by which he has suffered damages in the usual sense but also for the loss of the use of the money to which he has been entitled." *Id.*

As described above, Alaska statutes confer an explicit right, and obligation, on the State to recover its damages, including costs, resulting from a release of oil or a hazardous substance. *See, e.g.,* AS 46.03.824 (damages include "the loss of an economic benefit"). Alaska law explicitly recognizes that the potential earnings on money due are a compensable item of damages. Thus it is clear that the State has the authority, and indeed the duty,¹ to seek to recover the foregone earnings on monies it is required to expend in order to respond to a release of oil or a hazardous substance.

Measurement of Lost Earnings

As discussed above, there are several ways in which the lost earnings due the State can be measured. First, they can be measured by a fixed "legal" rate of interest, such as that found in AS 45.45.010² and former AS 09.30.070. Although this method has the benefit of simplicity and ease of application, it is less likely to accurately reflect the actual cost to the State of the lost potential earnings. *See* Dan Dobbs, *Law of Remedies* Sec. 3.6(4) (2d ed. 1993); *accord, Report of the Governor's Advisory Task Force on Civil Justice Reform* p. 28 (December 1996) ("The task force concluded that a fixed rate can create inappropriate incentives to delay or accelerate payment of a judgment or settlement, depending on the current interest rate environment."). A more accurate measurement is derived from a market

¹ AS 46.08.070(a) provides that the Commissioner of the Department of Environmental Conservation "shall seek reimbursement promptly" for costs incurred in the cleanup or containment of a release. Subsection (b) of that section provides that the Attorney General shall "immediately seek to recover money expended by the department" from the Response Fund. This language is mandatory and does not allow discretion by the State to simply ignore reimbursement opportunities. However, by requiring the State to "seek" recoveries the law recognizes that in some instances other factors, such as the inability of a responsible party to pay for costs or legitimate issues concerning the strength of the State's legal position, may cause the State to accept less than a full recovery.

² *See* 18 AAC 60.720

rate then current. *Dobbs, supra*, at 256. The market rate approach more closely approximates the actual costs to the State and is preferable.³ However, once one determines to adopt a market rate, the question remains as to how closely that rate is figured taking into account the differences in times of accrual of costs and the daily changes in interest rates.

In order to measure the exact losses attributable to the expenditure of State monies for response, one would establish the date of expenditure from a State interest-bearing account for each cost and, using the precise daily return rate for that account up until the date of repayment, calculate the earnings to which the State would have been entitled less any incremental costs of obtaining those earnings. This method would result in a calculation of the earnings equivalent to what would have been earned had the State not been required to expend the money. The primary problem with this methodology is the administrative time and expense required to track each cost from the particular date of expenditure through the date of repayment and to correlate that information with historical earnings of the account from which the money was expended. In most instances such costs will be incurred on a daily basis, creating a complex background for cost tracking and additional expense for both the State and the responsible party.

In the alternative, DEC may simply require payment of costs at a rate prescribed in a formula that approximates the potential lost earnings. This approach has been used in state statutes and approved by courts in Alaska for determining prejudgment interest rates. While the DEC is free to create a formula for this purpose it may want to consider those already in use in Alaska. The most familiar formula, AS 09.30.070(a), provides for prejudgment interest at a rate three percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the judgment is entered. As a trade-off for the ease of application of this formula, a certain precision is lost. For example, the rate in effect at the beginning of the year may be substantially higher, or lower, than the average rate for the year. In addition, the rate at the beginning of the year in which judgment

³ Some courts approach this problem through a restitution analysis. That is, they look to the gains of the person who retained the money and attempt to capture that benefit. *See Dobbs, supra*, at 255. Alaska courts recognize this element of prejudgment interest. *See Farnsworth v. Steiner*, 638 P.2d 181, 184 (Alaska 1981); *Anchorage Asphalt Paving Co. v. Lewis*, 629 P.2d 65, 69 (Alaska 1981). Although in many cases this analysis would yield a higher number, based on the internal rate of return of responsible businesses, the complexity and cost of administering this approach militates against its use. Moreover, its focus on the gain to the responsible party is inconsistent with the statutory emphasis on recovery of costs to the State.

is entered may not accurately reflect the average rate in effect for the period between when the loss occurred and when the judgment is entered. Nevertheless, the Alaska courts routinely apply this method as an acceptable approximation of the damages suffered through the lost use of money. *Cf., Power Constructors, Inc. v. Taylor & Hintze*, 960 P.2d 20 (Alaska 1998)(court approved statutory prejudgment interest rate of 10.5 percent under former AS 09.30.070 even though it varied from the actual rate of 11.5 percent incurred by the plaintiff).

Similarly, the formula in AS 09.30.070 provides an adequate approximation of the lost potential earnings to the Response Fund. For example, in calendar year 1998 the prejudgment interest rate under the formula in AS 09.30.070 was 8 percent. The overall rate of return for the State's General Investment Fund for the year was 6.96 percent. Assuming that the lost-earnings calculation for State costs begins to run at the time of billing, rather than at the time the expense is incurred, the prejudgment interest rate would come very close to the State's actual cost.⁴

In implementing the approach established for prejudgment interest, questions also arise as to what date to use in determining the applicable interest rate and on what date the interest begins to accrue. Since there is no judgment on which to base the date of the prescribed rate, we recommend that the interest rate for monies due for each calendar or fiscal year be determined based on the 12th Federal Reserve District discount rate on January 2 of each calendar year or July 1 of each fiscal year in which the cost is due. By adjusting the rate each year, a closer approximation of the actual costs will be achieved. We believe that interest should begin to accrue on the date on which notice is provided to the responsible party that money is due or owing. In most circumstances this date will be the date on which a bill or other notice is sent to the responsible party that identifies the expenditure and requests payment. To advance the State's interests in obtaining prompt repayment of costs, it is acceptable, but not required, for the DEC to agree to forego interest for the first 30 days

⁴ The statutory prejudgment interest rate is a simple interest calculation. *See Alyeska Pipeline Service Co. v. Anderson*, 669 P.2d 956 (Alaska 1983). As noted in *Dobbs, supra*, at 257, "if compounding of interest is the practice in the relevant market for borrowing or lending money, a rule against compound interest will insure that the interest awarded will fall short of compensation or restitution. In that case, compounding should be permitted." However, while it would be permissible to compound the interest calculation, as demonstrated by comparison of the statutory prejudgment interest rate with the General Investment Fund rate of return, the statutory formula allows for a sufficient return to account for the effect of compounding.

Michele Brown, Commissioner
Department of Environmental Conservation
A.G. file no: 661-00-0116

October 6, 1999
Page 7

if payment is made promptly.

Conclusion

Alaska statutes permit and require the Department to recover the lost potential earnings on monies expended to contain and cleanup a release of oil or a hazardous substance. To establish the recoverable cost DEC may use the prejudgment interest formula in AS 09.30.070. DEC may base the formula rate on the appropriate discount rate on either January 2 of each calendar year or July 1 of each fiscal year for which the cost is owed. The date on which interest begins to accrue should be the date on which DEC provides notice to the responsible party that identifies the expenditure and requests payment.

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Stevens Village Tribal Council
P.O. Box 16
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Ph. (907)478-7228, Fax (907)4787229

October 3, 2001

Kay J. Rawlings
Litigation Assistant
Dept. of Law

Re: Stevens Village Spill-Cost Recovery

Thank you for your letter of September 19, 2001. Whereby you informed us of a continuing financial obligation to the State of Alaska in the amount of \$12,329.74. It is our understanding based on the support documents that you are charging us for State employee wages, travel, and contractual assistance. You are also charging 8% interest annually.

As you know from our previous correspondence the svv council has very limited discretionary funding. We are depended almost exclusively on Federal and State grants that are for specific contracted work-related responsibilities. We find it extremely difficult if not impossible to raise independent funds to pay for State activities. Should any of your State agencies have access to funding that would cover these expenses we would appreciate having such information so that we may solicit their assistance in paying this bill. You should also know that the Tribal Council it-self has had to pay an excess of \$20,000 from existing program dollars to provide clean power and materials to the clean-up effort. Unfortunately we don't have anybody to send bill to, so therefore we have had to cut back on some tribal members services as a result from this disaster.

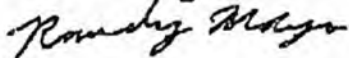
We don't appreciate receiving threatening notices that indicate that collection agencies will be employed to squeeze blood out of the proverbial turnip. We are in direct consultation with the governor's office and are active participants in the Gov't to Gov't recognition and respect process and plan to bring this issue before the joint taskforce. We fully agree with you that these types of situations must be addressed and resolved to the state and Tribal

Councils satisfaction. We just don't believe that an arbitrary and capricious exchange of documents is the way to resolve this issues.

Thank-you for your continued bookkeeping and oversight in this matter and we will keep you informed of our process in successfully completing this process.

Thanks

Randy Mayo, Tribal Administrator
Stevens Village Council



Cc. Governor Knowles
Bruce Bothello

Alaska State Legislature



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SENATOR DONALD C. OLSON

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Selawik
Shaktoolik
Shishmaref
Shungnak
St. Mary's
St. Michael
Stebbins
Teller
Unalakleet
Wainwright
Wales
White Mountain

February 10, 2003

MEMORANDUM

To: Senator Scott Ogan
Senate Resource Committee

A handwritten signature in black ink, appearing to read "D. Olson".

From: Senator Donald Olson

Re: Schedule hearing for SB 44, Oil Spill Response Costs

I respectfully request a Senate Resource Committee hearing of SB 44 at your earliest convenience. My sponsor statement and support documentation is forthcoming. Please contact me if you need additional information.

Thank you for your attention to this request

SB

50

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 1/31/03

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4-17-03

Resources Committee considered SENATE BILL NO. 50

SB 50 ROYALTY GAS CONTRACTS

"An Act amending the manner of determining the royalty received by the state on gas production as it relates to the manufacture of certain value-added products."

and recommends:

be replaced with _____ CS SB 50 (RES)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DNR	4/17/03	<input checked="" type="checkbox"/>		

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
<i>Geoff Deekin</i>	<input checked="" type="checkbox"/>			
<i>Ben Glavin</i>	<input checked="" type="checkbox"/>			
<i>Thomas A. Wagoner</i>	<input checked="" type="checkbox"/>			
<i>John Ham</i>	<input checked="" type="checkbox"/>			
<i>David [unclear]</i>			<input checked="" type="checkbox"/>	
<i>[unclear]</i>			<input checked="" type="checkbox"/>	
CHAIR: <i>Scott [unclear]</i>			<input checked="" type="checkbox"/>	

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2 CORRECTED
 Bill Version: CSHB 57(FIN)
 (H) Publish Date: 4/7/03

Revision Date/Time (Note if correction): 4/4/2003 Dept. Affected: Natural Resources
 Title: Royalty Gas Contracts BRU: Resource Development
 Component: Oil and Gas Development
 Sponsor: Chenault
 Requester: House Finance Component No. 439

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (GF 1004)	*(98.0)	*(130.3)	*(938.8)	*(2,438.9)	*(3,476.4)	*(4,462.7)
-------------------------------------	----------------	-----------------	-----------------	-------------------	-------------------	-------------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 38.05.180(aa) requiring DNR to enter into agreements with lessees to use the price for gas established in contract(s) entered into on or after the effective date between the lessee and a manufacturer of agricultural chemicals as the value of the state's royalty share. HB 57 will result in a loss of state revenues. Should lessees supplying gas to only one agricultural manufacturer apply under AS 38.05.180(aa), the state could lose an estimated \$11.5 million in cumulative royalties over the period FY 2004-09; an average of about \$1.9 million per year (see Table 1, below).

*If a contract does not meet any one of the four criteria under AS 38.05.180(aa)(2)((B)(i)-(iv), the Commissioner would deny the (aa) treatment. Under this scenario, the fiscal impact to the state would be less although the amount is impossible to predict.

Prepared by: Mark D. Myers Phone 269-8800
 Division: Oil and Gas Date/Time 4/4/2003
 Approved by: Tom Irwin, Commissioner Date 4/4/2003
 Agency: Natural Resources

ANALYSIS CONTINUATION

Table 1. Impact of HB 57 on State Royalty Revenue: FY 2003 - 2009

New Gas Produced from Other 3rd-Party Producers - State Lands								
FY	Total (1000 Cubic Feet per Year)	State Leases	Non-State	State Royalty Share	Contract Value	Royalty Value	Diff	Royalty Foregone (\$ per Year)
2004	1,728,506	1,728,506	-	230,583	2.00	2.43	0.43	(98,033)
2005	1,728,506	1,728,506	-	230,583	2.00	2.57	0.57	(130,287)
2006	14,900,000	9,983,000	4,917,000	1,331,732	2.00	2.70	0.70	(938,763)
2007	32,300,001	21,641,001	10,659,000	2,886,909	2.00	2.84	0.84	(2,438,869)
2008	39,500,000	26,465,000	13,035,000	3,530,431	2.00	2.98	0.98	(3,476,367)
2009	44,400,000	29,748,000	14,652,000	3,968,383	2.00	3.12	1.12	(4,462,725)

Estimated Total Royalty Losses Under New gas Supply 3rd-Party Contracts (FY 2004-09) = (11,545,044)
Total Royalty Losses (Discounted) = (7,619,642)

The analysis in Table 1 illustrates the yearly potential royalty revenue impacts taking into account the decline in gas to be supplied by Unocal to Agrium under a pre-existing contract after FY 2005. The implied yearly gas shortfall during FY 2006-09 is, by assumption, supplemented with new gas from 3rd-party producers. Royalty production from new gas would post date the Act and be eligible for (aa) treatment under HB 57. It is further assumed that Agrium would realize 100 percent of the benefits. Table 1 indicates that the state would forego a total of about \$11.5 million in royalty revenue or about \$1.9 million per year (undiscounted) over the period FY 2004-09. Detailed assumptions used for the estimates in Table 1, plus several sensitivity scenarios, are described below.

Assumptions

1. Annual gas consumption at the fertilizer plant is equal to about 53 billion cubic feet per year (Bcf), based on historic rates of gas usage over the past five years.
2. The analysis in Table 1 draws from the "Annual Contract Quantity" (ACQ) commitments contained in the existing Unocal-Agrrium gas supply contract. During the later years of the contract, the ACQ falls from the approximate plant capacity of about 53 Bcf per year in FY 2005 to 9.1 Bcf per year in FY 2009.
3. Based on representations made to the Division of Oil and Gas by Agrium, the analysis in Table 1 assumes that the state's royalty share on ACQ volumes deliverable from state leases under the current contract between Unocal and Agrium will not be subject to the bill. Agrium and Unocal are currently in litigation regarding that contract. If Agrium and Unocal negotiate a new, low-price contract to replace the current contract in connection with the ongoing litigation, the royalties foregone could nearly triple, from \$11.5 to \$29.5 million. Agrium has assured the Division of Oil and Gas that it does not intend to renegotiate its contract with Unocal in a manner that would subject volumes deliverable under the current contract to the provisions of this bill.
4. State leases would account for approximately two-thirds of the total gas usage at the plant from new, 3rd-party gas supply contracts after 2005; the remaining one-third is new gas production from private and federal lands.

ANALYSIS CONTINUATION

5. The average state royalty share for gas dispositions to the plant is 13.34 percent.
6. Royalty value is indexed to the Alaska Department of Revenue prevailing value for Cook Inlet Gas (DOR PV). The Division of Oil and Gas forecasts DOR PV to increase from about \$2.50 per Mcf today, to \$3.12 per Mcf in FY 2009, based on the historic trend observed during 1995-02.
7. The implied gas shortfall in ACQ commitments is made up of new gas from 3rd-party producers but at a cost of \$2.00 per Mcf. This is considerably higher than the current \$1.20 benchmark input gas price in the existing Unocal-Agrium contract.

Sensitivity Analysis

Three alternative gas-supply scenarios are considered. **Case A:** Assume that the average formula-driven, gas-supply contract value is \$2.25 per Mcf instead of \$2.00 (see assumption #7). All else equal, this would lower estimated royalties foregone from \$11.5 million to \$8.5 million. **Case B:** By comparison, if the average formula-driven, gas-supply contract value is \$1.20 per – equal to the current Unocal benchmark – the royalties foregone would nearly double from \$11.5 to 21.3 million.) **Case C:** If the fertilizer plant operates at 75% capacity due to input gas supply shortages from both existing and 3rd-party producers then, assuming \$2.00 per Mcf input gas cost, estimated royalties foregone would fall from \$11.5 million to \$8.7 million. **Cases A and C combined** would reduce cumulative royalties foregone from \$11.5 million to about \$6.4 million.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: DRAFT
Bill Version: CSSB50(RES) wk draft
() Publish Date: _____

Revision Date/Time (Note if correction): 3/26/2003 Dept. Affected: Natural Resources
Title: Royalty Gas Contracts BRU: Resource Development
Component: Oil and Gas Development
Sponsor: Wagoner
Requester: Senate Resources Component No. 439

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (GF 1004)	(98.0)	(130.3)	(938.8)	(2,438.9)	(3,476.4)	(4,462.7)
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

** Fiscal Note prepared for Senate Resources Committee Work Draft

This bill amends AS 38.05.180(aa) requiring DNR to enter into agreements with lessees to use the price for gas established in contract(s) entered into on or after the effective date between the lessee and a manufacturer of agricultural chemicals as the value of the state's royalty share. SB 50 will result in a loss of state revenues. Should lessees supplying gas to only one agricultural manufacturer apply under AS 38.05.180(aa), the state could lose an estimated \$11.5 million in cumulative royalties over the period FY 2004-09; an average of about \$1.9 million per year (see Table 1, below).

Prepared by: Mark D. Myers Phone 269-8800
Division: Oil and Gas Date/Time 3/26/2003
Approved by: Tom Irwin, Commissioner Date 3/26/2003
Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. CSSB 50(RES) wk dr

ANALYSIS CONTINUATION

Table 1. Impact of SB 50 on State Royalty Revenue: FY 2003 - 2009

New Gas Produced from Other 3rd-Party Producers - State Lands								
FY	Total	State Leases	Non-State	State Royalty Share	Contract	Royalty	Diff	Royalty Foregone
					Value	Value		
(1000 Cubic Feet per Year)				(\$ per Mcf)			(\$ per Year)	
2004	1,728,506	1,728,506	-	230,583	2.00	2.43	0.43	(98,033)
2005	1,728,506	1,728,506	-	230,583	2.00	2.57	0.57	(130,287)
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2008	39,500,000	26,465,000	13,035,000	3,530,431	2.00	2.98	0.98	(3,476,367)
2009	44,400,000	29,748,000	14,652,000	3,968,383	2.00	3.12	1.12	(4,462,725)

Estimated Total Royalty Losses Under New gas Supply 3rd-Party Contracts (FY 2004-09) = (11,545,044)
Total Royalty Losses (Discounted) = (7,619,642)

The analysis in Table 1 illustrates the yearly potential royalty revenue impacts taking into account the decline in gas to be supplied by Unocal to Agrium under a pre-existing contract after FY 2005. The implied yearly gas shortfall during FY 2006-09 is, by assumption, supplemented with new gas from 3rd-party producers. Royalty production from new gas would post date the Act and be eligible for (aa) treatment under SB 50. It is further assumed that Agrium would realize 100 percent of the benefits. Table 1 indicates that the state would forego a total of about \$11.5 million in royalty revenue or about \$1.9 million per year (undiscounted) over the period FY 2004-09. Detailed assumptions used for the estimates in Table 1, plus several sensitivity scenarios, are described below.

Assumptions

1. Annual gas consumption at the fertilizer plant is equal to about 53 billion cubic feet per year (Bcf), based on historic rates of gas usage over the past five years.
2. The analysis in Table 1 draws from the "Annual Contract Quantity" (ACQ) commitments contained in the existing Unocal-Agrrium gas supply contract. During the later years of the contract, the ACQ falls from the approximate plant capacity of about 53 Bcf per year in FY 2005 to 9.1 Bcf per year in FY 2009.
3. Based on representations made to the Division of Oil and Gas by Agrium, the analysis in Table 1 assumes that the state's royalty share on ACQ volumes deliverable from state leases under the current contract between Unocal and Agrium will not be subject to the bill. Agrium and Unocal are currently in litigation regarding that contract. If Agrium and Unocal negotiate a new, low-price contract to replace the current contract in connection with the ongoing litigation, the royalties foregone could nearly triple, from \$11.5 to \$29.5 million. Agrium has assured the Division of Oil and Gas that it does not intend to renegotiate its contract with Unocal in a manner that would subject volumes deliverable under the current contract to the provisions of this bill.
4. State leases would account for approximately two-thirds of the total gas usage at the plant from new, 3rd-party gas supply contracts after 2005; the remaining one-third is new gas production from private and federal lands.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. CSSB 50(RES) wk dr

ANALYSIS CONTINUATION

5. The average state royalty share for gas dispositions to the plant is 13.34 percent.
6. Royalty value is indexed to the Alaska Department of Revenue prevailing value for Cook Inlet Gas (DOR PV). The Division of Oil and Gas forecasts DOR PV to increase from about \$2.50 per Mcf today, to \$3.12 per Mcf in FY 2009, based on the historic trend observed during 1995-02.
7. The implied gas shortfall in ACQ commitments is made up of new gas from 3rd-party producers but at a cost of \$2.00 per Mcf. This is considerably higher than the current \$1.20 benchmark input gas price in the existing Unocal-Agrium contract.

Sensitivity Analysis

Three alternative gas-supply scenarios are considered. **Case A:** Assume that the average formula-driven, gas-supply contract value is \$2.25 per Mcf instead of \$2.00 (see assumption #7). All else equal, this would lower estimated royalties foregone from \$11.5 million to \$8.5 million. **Case B:** By comparison, if the average formula-driven, gas-supply contract value is \$1.20 per – equal to the current Unocal benchmark – the royalties foregone would nearly double from \$11.5 to 21.3 million.) **Case C:** If the fertilizer plant operates at 75% capacity due to input gas supply shortages from both existing and 3rd-party producers then, assuming \$2.00 per Mcf input gas cost, estimated royalties foregone would fall from \$11.5 million to \$8.7 million. **Cases A and C combined** would reduce cumulative royalties foregone from \$11.5 million to about \$6.4 million.

Alaska State Legislature

Senate Resources Committee

Senator Scott Ogan, Chair

Senator Fred Dyson
Senator Kim Elton
Senator Georgianna Lincoln
Senator Ralph Seekins
Senator Ben Stevens
Senator Tom Wagoner



State Capitol, Room 103
Juneau, AK. 99801-1182
Phone: (907) 465-4907
Fax: (907) 465-3265

Memorandum

DATE: April 10, 2003
TO: All Resources Committee Members
FROM: Senator Scott Ogan
Chairman, Senate Resources Committee
RE: SB 50

Attached is a copy of the work draft CS for SB 50 Royalty Gas Contracts. This version matches HB 57 which is currently in the House Rules Committee. A copy of the revised fiscal note for the house bill is also included. Once the CS for SB 50 is adopted, I will be able to get a revised fiscal note for the senate version.

If you have any questions, please contact my committee aide, Linda Hay at extension 4907.

Senator Scott Ogan



SENATOR SCOTT OGAN Alaska State Legislature

Senate District H Lazy Mountain * Butte * Chugiak * Peters Creek

Knik-Goose Bay * Big Lake * Houston * Willow * Talkeetna * Trapper Creek

State Capitol, Room 103, Juneau Alaska 99801 * (907) 465-3878 * 1 (800) 862-3878 * Fax (907) 465-3265

Senator_Scott_Ogan@legis.state.ak.us

Http://www.akrepublicans.org/ogan

FACSIMILE TRANSMITTAL SHEET

TO: <u>Jack Chenoweth</u>	FROM: <u>Linda Hay</u>
COMPANY:	DATE: <u>4-17-03</u>
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER: <u>1</u>
PHONE NUMBER:	RE:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

please prepare a final on
CSSB 50 (Res) 23-LS0429\Q as
amended by 23-LS04~~28~~29\Q.1

Passed out of Senate Resources
yesterday.

Thomas Jack

*Motion
to adopt
by UIC
Dyson 4/16/03*

23-LS0429\Q.1
Chenoweth
4/15/03

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR WAGONER

TO: CSSB 50(), Draft Version "Q"

- 1 Page 2, line 23, following "acceptance of":
- 2 Delete "the use of the contract price"
- 3 Insert "an amount that is different than the amount due under the lease [THE
- 4 USE OF THE CONTRACT PRICE]"
- 5
- 6 Page 2, line 31, following "commissioner":
- 7 Delete "shall"
- 8 Insert "may"
- 9
- 10 Page 3, line 4, following "agreement":
- 11 Insert "if it is in the best interest of the state"
- 12
- 13 Page 3, line 17:
- 14 Delete "and"
- 15 Insert "or"
- 16
- 17 Page 3, line 19, following "state":
- 18 Delete ";
- 19 Insert ".
- 20
- 21 Page 3, lines 20 - 22:
- 22 Delete all material.

*allows
discretion
in royalty
relief
granted*

*adopted
amend adopted*

23-LS0429\Q
Chenoweth
4/14/03

CS FOR SENATE BILL NO. 50()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR WAGONER

A BILL

FOR AN ACT ENTITLED

1 "An Act amending the manner of determining the royalty received by the state on gas
2 production as it relates to the manufacture of certain value-added products."

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

4 * Section 1. AS 38.05.180(bb) is amended to read:

5 (bb) In (aa) and (ee) of this section,

6 (1) "gas or electric utility" includes an electric cooperative organized
7 under AS 10.25, a municipal utility, and a gas or electric utility regulated under
8 AS 42.05; provided that, if the contract gas is transmitted to consumers through a
9 pipeline and the gas utility either owns the pipeline or is related in ownership to the
10 owner of the pipeline, then the gas utility qualifies as a "gas or electric utility" within
11 the meaning of this paragraph only if it is bound or agrees to be bound by the
12 covenants set out in AS 38.35.120;

13 (2) "price for the gas established in the contract" includes tax
14 reimbursement amounts, deliverability and other charges, and other forms of

1 consideration paid by the gas or electric utility or by the manufacturer of
2 agricultural chemicals, as appropriate, under the contract;

3 (3) "state's royalty share of gas production"

4 (A) includes payments on federal leases made to the state under
5 30 U.S.C. 191;

6 (B) does not include the state's royalty share of gas production
7 from land patented to the state under

8 (i) P.L. 84-830, 70 Stat. 709 (Alaska Mental Health
9 Enabling Act);

10 (ii) 38 Stat. 1214 (Act of March 4, 1915); or

11 (iii) 43 U.S.C. 1635 in settlement of the claims of the
12 state under 38 Stat. 1214.

13 * Sec. 2. AS 38.05.180(bb) is amended by adding a new paragraph to read:

14 (4) "manufacturer of agricultural chemicals" means a person that is a
15 business entity primarily engaging in the manufacturing of nitrogenous and phosphatic
16 based fertilizers, mixed fertilizers, pesticides, and similar chemicals for agricultural
17 purposes.

18 * Sec. 3. AS 38.05.180(cc) is amended to read:

19 (cc) The provisions of (aa) and (ee) of this section do not prohibit the
20 commissioner from accepting any payment on a federal lease tendered by the federal
21 agency responsible for determination and transmittal of the payment to the state under
22 30 U.S.C. 191 or otherwise due the state as the state's royalty share of gas production
23 irrespective of the state's acceptance of the use of the contract price for purposes of
24 determining royalty share on gas production under that subsection.

25 * Sec. 4. AS 38.05.180 is amended by adding a new subsection to read:

26 (ee) For a contract that is entered into on or after the effective date of this Act,
27 within 90 days after the written request of a lessee of a lease issued under this section
28 or of a lessee of federal land from which the state is entitled under applicable federal
29 law to receive a share of the royalty on gas production, in order to establish the value
30 of the state's royalty share of gas production sold by the lessee under the contract, the
31 commissioner shall enter into an agreement with the lessee to use or accept as a price

1 for the gas an amount that is not less than the price established in the contract between
2 the lessee and a manufacturer of agricultural chemicals, not to exceed the amount that
3 would otherwise be due under the lease. The commissioner may enter into the
4 agreement

5 (1) only if the primary function of the manufacturer is to engage in the
6 production of a value-added product, and the manufacturer with which the lessee has
7 entered into the contract is not affiliated with the lessee or with a subsequent purchaser
8 of more than 10 percent of the manufacturer's value-added product; for purposes of
9 this paragraph, the parties to a contract or purchase are affiliated if, in the judgment of
10 the commissioner, one of the parties to the contract or purchase exercises substantial
11 influence over the policies and actions of the other as evidenced by relationship based
12 on common ownership or family interest or by action taken in concert without regard
13 to whether that influence is based upon stockholdings, stockholders, officers, or
14 directors;

15 (2) unless the commissioner makes a written finding, based on clear
16 and convincing evidence, that

17 (A) the contract price is unreasonably low; and ^{OR}

18 (B) the prospective reduction in royalty receipts would not be
19 balanced by employment opportunities or other tangible benefits to the state;
20 and ^{OR}

21 (3) the commissioner determines that use of the agreement setting the
22 price is in the best interest of the state.

23 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 APPLICABILITY. The provisions of this Act apply to determine the price received
26 by the state on royalty gas production as it relates to the sale of the gas to a manufacturer of
27 agricultural chemicals based on contracts under AS 38.05.180(ee) that are entered into on or
28 after the effective date of this Act.

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR WAGONER

TO: CSSB 50(), Draft Version "Q"

1 Page 2, line 23, following "acceptance of":

2 Delete "the use of the contract price"

3 Insert "an amount that is different than the amount due under the lease [THE

4 USE OF THE CONTRACT PRICE]"

5

6 Page 2, line 31, following "commissioner":

7 Delete "shall"

8 Insert "may"

9

10 Page 3, line 4, following "agreement":

11 Insert "if it is in the best interest of the state"

12

13 Page 3, line 17:

14 Delete "and"

15 Insert "or"

16

17 Page 3, line 19, following "state":

18 Delete ";

19 Insert "."

20

21 Page 3, lines 20 - 22:

22 Delete all material.

adopted

23-LS0429V
Chenoweth
4/7/03

CS FOR SENATE BILL NO. 50()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR WAGONER

A BILL
FOR AN ACT ENTITLED

1 "An Act amending the manner of determining the royalty received by the state on gas
2 production as it relates to the manufacture of certain value-added products."

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

4 * Section 1. AS 38.05.180(aa) is amended to read:

5 (aa) Within 90 days after the written request of a lessee of a lease issued under
6 this section or of a lessee of federal land from which the state is entitled under
7 applicable federal law to receive a share of the royalty on gas production, the
8 commissioner shall enter into an agreement with the lessee to use or accept the price
9 for the gas established in the contract between the lessee and a gas or electric utility,
10 or, for a contract that is entered into on or after the effective date of this Act, to
11 use or accept a price for the gas established in the contract between the lessee and
12 a manufacturer of agricultural chemicals, as appropriate, as the value of the state's
13 royalty share of gas production sold by the lessee under the contract

14 (1) but only if

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(A) for a contract between the lessee and a gas or electric utility, the primary function of the utility with which the lessee has entered into the contract is to provide, either directly or by selling at wholesale to another utility, gas or electricity to the general public, including residential consumers, within the utilities' service areas, and the utility with which the lessee has entered into the contract is not an affiliated interest, as that term is defined in AS 42.05.990, with the lessee or with a subsequent purchaser of more than 10 percent of the utility's gas or electricity; or

(B) for a contract between the lessee and a manufacturer of agricultural chemicals, the primary function of the manufacturer is to engage in the production of a value-added product, and the manufacturer with which the lessee has entered into the contract is not affiliated with the lessee or with a subsequent purchaser of more than 10 percent of the manufacturer's value-added product; for purposes of this subparagraph, the parties to a contract or purchase are affiliated if, in the judgment of the commissioner, one of the parties to the contract or purchase exercises substantial influence over the policies and actions of the other as evidenced by relationship based on common ownership or family interest or by action taken in concert without regard to whether that influence is based upon stockholdings, stockholders, officers, or directors; and

(2) unless the commissioner makes a written finding, based on clear and convincing evidence, that

(A) for a contract entered into for a circumstance described in (1)(A) of this subsection

(i) the contract price is unreasonably low;

(ii) [(B)] the prospective reduction in royalty receipts would not be balanced by increased benefits to in-state gas and electric consumers;

(iii) [(C)] the lessee and the utility are related in management, ownership, or other aspect; and

(iv) [(D)] the contract price is not in the best interest of

all 4 must be present for a utility

Agrium

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the state;

(B) for a contract entered into under (1)(B) of this subsection between a lessee and a manufacturer of agricultural chemicals,

(i) the contract price is unreasonably low;

(ii) the prospective reduction in royalty receipts would not be balanced by employment opportunities or other tangible benefits to the state;

(iii) the lessee and the manufacturer are related in management, ownership, or other aspect; or

(iv) the contract price is not in the best interest of the state.

*mne
rest of the
manufacturer*

* Sec. 2. AS 38.05.180(bb)(2) is amended to read:

(2) "price for the gas established in the contract" includes tax reimbursement amounts, deliverability and other charges, and other forms of consideration paid by the gas or electric utility or by the manufacturer of agricultural chemicals, as appropriate, under the contract;

* Sec. 3. AS 38.05.180(bb) is amended by adding a new paragraph to read:

(4) "manufacturer of agricultural chemicals" means a person that is a business entity primarily engaging in the manufacturing of nitrogenous and phosphatic based fertilizers, mixed fertilizers, pesticides, and similar chemicals for agricultural purposes.

* Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. The provisions of this Act apply to determine the price received by the state on royalty gas production as it relates to the sale of the gas to a manufacturer of agricultural chemicals based on contracts under AS 38.05.180(aa) that are entered into on or after the effective date of this Act.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2 CORRECTED
 Bill Version: CSHB 57(FIN)
 (H) Publish Date: 4/7/03

Revision Date/Time (Note if correction): 4/4/2003 Dept. Affected: Natural Resources
 Title: Royalty Gas Contracts BRU: Resource Development
 Component: Oil and Gas Development
 Sponsor: Chenault
 Requester: House Finance Component No. 439

Expenditures/Revenues (Thousands of Dollars)
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES

CHANGE IN REVENUES (GF 1004)	*(98.0)	*(130.3)	*(938.8)	*(2,438.9)	*(3,476.4)	*(4,462.7)
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill amends AS 38.05.180(aa) requiring DNR to enter into agreements with lessees to use the price for gas established in contract(s) entered into on or after the effective date between the lessee and a manufacturer of agricultural chemicals as the value of the state's royalty share. HB 57 will result in a loss of state revenues. Should lessees supplying gas to only one agricultural manufacturer apply under AS 38.05.180(aa), the state could lose an estimated \$11.5 million in cumulative royalties over the period FY 2004-09; an average of about \$1.9 million per year (see Table 1, below).

 *If a contract does not meet any one of the four criteria under AS 38.05.180(aa)(2)((B)(i)-(iv), the Commissioner would deny the (aa) treatment. Under this scenario, the fiscal impact to the state would be less although the amount is impossible to predict.

Prepared by: Mark D. Myers Phone 269-8800
 Division: Oil and Gas Date/Time 4/4/2003
 Approved by: Tom Irwin, Commissioner Date 4/4/2003
 Agency: Natural Resources

ANALYSIS CONTINUATION**Table 1. Impact of HB 57 on State Royalty Revenue: FY 2003 - 2009**

New Gas Produced from Other 3rd-Party Producers - State Lands								
FY	Total	State Leases	Non-State	State Royalty Share	Contract Value	Royalty Value	Diff	Royalty Foregone
	(1000 Cubic Feet per Year)				(\$ per Mcf)			(\$ per Year)
2004	1,728,506	1,728,506	-	230,583	2.00	2.43	0.43	(98,033)
2005	1,728,506	1,728,506	-	230,583	2.00	2.57	0.57	(130,287)
2006	14,900,000	9,983,000	4,917,000	1,331,732	2.00	2.70	0.70	(938,763)
2007	32,300,001	21,641,001	10,659,000	2,886,909	2.00	2.84	0.84	(2,438,869)
2008	39,500,000	26,465,000	13,035,000	3,530,431	2.00	2.98	0.98	(3,476,367)
2009	44,400,000	29,748,000	14,652,000	3,968,383	2.00	3.12	1.12	(4,462,725)

Estimated Total Royalty Losses Under New gas Supply 3rd-Party Contracts (FY 2004-09) = (11,545,044)

Total Royalty Losses (Discounted) = (7,619,642)

The analysis in Table 1 illustrates the yearly potential royalty revenue impacts taking into account the decline in gas to be supplied by Unocal to Agrium under a pre-existing contract after FY 2005. The implied yearly gas shortfall during FY 2006-09 is, by assumption, supplemented with new gas from 3rd-party producers. Royalty production from new gas would post date the Act and be eligible for (aa) treatment under HB 57. It is further assumed that Agrium would realize 100 percent of the benefits. Table 1 indicates that the state would forego a total of about \$11.5 million in royalty revenue or about \$1.9 million per year (undiscounted) over the period FY 2004-09. Detailed assumptions used for the estimates in Table 1, plus several sensitivity scenarios, are described below.

Assumptions

1. Annual gas consumption at the fertilizer plant is equal to about 53 billion cubic feet per year (Bcf), based on historic rates of gas usage over the past five years.
2. The analysis in Table 1 draws from the "Annual Contract Quantity" (ACQ) commitments contained in the existing Unocal-Agrium gas supply contract. During the later years of the contract, the ACQ falls from the approximate plant capacity of about 53 Bcf per year in FY 2005 to 9.1 Bcf per year in FY 2009.
3. Based on representations made to the Division of Oil and Gas by Agrium, the analysis in Table 1 assumes that the state's royalty share on ACQ volumes deliverable from state leases under the current contract between Unocal and Agrium will not be subject to the bill. Agrium and Unocal are currently in litigation regarding that contract. If Agrium and Unocal negotiate a new, low-price contract to replace the current contract in connection with the ongoing litigation, the royalties foregone could nearly triple, from \$11.5 to \$29.5 million. Agrium has assured the Division of Oil and Gas that it does not intend to renegotiate its contract with Unocal in a manner that would subject volumes deliverable under the current contract to the provisions of this bill.
4. State leases would account for approximately two-thirds of the total gas usage at the plant from new, 3rd-party gas supply contracts after 2005; the remaining one-third is new gas production from private and federal lands.

ANALYSIS CONTINUATION

5. The average state royalty share for gas dispositions to the plant is 13.34 percent.
6. Royalty value is indexed to the Alaska Department of Revenue prevailing value for Cook Inlet Gas (DOR PV). The Division of Oil and Gas forecasts DOR PV to increase from about \$2.50 per Mcf today, to \$3.12 per Mcf in FY 2009, based on the historic trend observed during 1995-02.
7. The implied gas shortfall in ACQ commitments is made up of new gas from 3rd-party producers but at a cost of \$2.00 per Mcf. This is considerably higher than the current \$1.20 benchmark input gas price in the existing Unocal-Agrium contract.

Sensitivity Analysis

Three alternative gas-supply scenarios are considered. **Case A:** Assume that the average formula-driven, gas-supply contract value is \$2.25 per Mcf instead of \$2.00 (see assumption #7). All else equal, this would lower estimated royalties foregone from \$11.5 million to \$8.5 million. **Case B:** By comparison, if the average formula-driven, gas-supply contract value is \$1.20 per – equal to the current Unocal benchmark – the royalties foregone would nearly double from \$11.5 to 21.3 million.) **Case C:** If the fertilizer plant operates at 75% capacity due to input gas supply shortages from both existing and 3rd-party producers then, assuming \$2.00 per Mcf input gas cost, estimated royalties foregone would fall from \$11.5 million to \$8.7 million. **Cases A and C combined** would reduce cumulative royalties foregone from \$11.5 million to about \$6.4 million.

23-LS0429\H
Chenoweth
3/25/03

CS FOR SENATE BILL NO. 50()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR WAGONER

A BILL
FOR AN ACT ENTITLED

1 "An Act amending the manner of determining the royalty received by the state on gas
2 production as it relates to the manufacture of certain value-added products."

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

4 * Section 1. AS 38.05.180(aa) is amended to read:

5 (aa) Within 90 days after the written request of a lessee of a lease issued under
6 this section or of a lessee of federal land from which the state is entitled under
7 applicable federal law to receive a share of the royalty on gas production, the
8 commissioner shall enter into an agreement with the lessee to use or accept the price
9 for the gas established in the contract between the lessee and a gas or electric utility,
10 or, for a contract that is entered into on or after the effective date of this Act, to
11 use or accept a price for the gas established in the contract between the lessee and
12 a manufacturer of agricultural chemicals, as appropriate, as the value of the state's
13 royalty share of gas production sold by the lessee under the contract

14 (1) but only if

1 (A) for a contract between the lessee and a gas or electric
2 utility, the primary function of the utility with which the lessee has entered
3 into the contract is to provide, either directly or by selling at wholesale to
4 another utility, gas or electricity to the general public, including residential
5 consumers, within the utilities' service areas, and the utility with which the
6 lessee has entered into the contract is not an affiliated interest, as that term is
7 defined in AS 42.05.990, with the lessee or with a subsequent purchaser of
8 more than 10 percent of the utility's gas or electricity; or

9 (B) for a contract between the lessee and a manufacturer of
10 agricultural chemicals, the primary function of the manufacturer is to
11 engage in the production of a value-added product, and the manufacturer
12 with which the lessee has entered into the contract is not affiliated with the
13 lessee or with a subsequent purchaser of more than 10 percent of the
14 manufacturer's value-added product; for purposes of this subparagraph,
15 the parties to a contract or purchase are affiliated if, in the judgment of
16 the commissioner, one of the parties to the contract or purchase exercises
17 substantial influence over the policies and actions of the other as
18 evidenced by relationship based on common ownership or family interest
19 or by action taken in concert without regard to whether that influence is
20 based upon stockholdings, stockholders, officers, or directors; and

21 (2) unless the commissioner makes a written finding, based on clear
22 and convincing evidence, that

23 (A) the contract price is unreasonably low;

24 (B) the prospective reduction in royalty receipts would not be
25 balanced in a contract entered into for a circumstance described

26 (i) in (1)(A) of this subsection by increased benefits to
27 in-state gas and electric consumers; or

28 (ii) in (1)(B) of this subsection by employment
29 opportunities or other tangible benefits to the state;

30 (C) the lessee and the utility or manufacturer of agricultural
31 chemicals, as appropriate, are related in management, ownership, or other

1 aspect; and

2 (D) the contract price is not in the best interest of the state.

3 * Sec. 2. AS 38.05.180(bb)(2) is amended to read:

4 (2) "price for the gas established in the contract" includes tax
5 reimbursement amounts, deliverability and other charges, and other forms of
6 consideration paid by the gas or electric utility or by the manufacturer of
7 agricultural chemicals, as appropriate. under the contract;

8 * Sec. 3. AS 38.05.180(bb) is amended by adding a new paragraph to read:

9 (4) "manufacturer of agricultural chemicals" means a person that is a
10 business entity primarily engaging in the manufacturing of nitrogenous and phosphatic
11 based fertilizers, mixed fertilizers, pesticides, and similar chemicals for agricultural
12 purposes.

13 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 APPLICABILITY. The provisions of this Act apply to determine the price received
16 by the state on royalty gas production as it relates to the sale of the gas to a manufacturer of
17 agricultural chemicals based on contracts under AS 38.05.180(aa) that are entered into on or
18 after the effective date of this Act.

moved by Sen Wagner
objected by Sen Stevers for discussion —

AMENDMENT #1

Page 3 after line 11 insert (C) in granting an application under this section, the commissioner may use or accept an amount in excess of the price for the gas established in the contract but less than would otherwise be due under the lease when it is in the best interest of the state.

if there is an upside
the state shares in it —

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

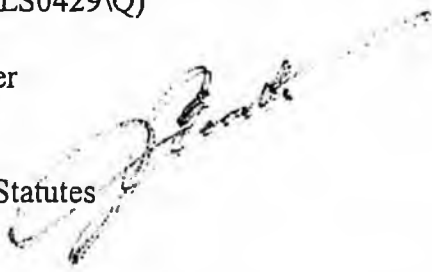
MEMORANDUM

April 14, 2003

SUBJECT: Draft CSSB 50 () -- notes to accompany the draft
(Work Order No. 23-LS0429\Q)

TO: Senator Tom Wagoner

FROM: Jack Chenoweth
Assistant Revisor of Statutes



This is a redraft of the above-captioned measure based on guidance provided in the copy of an April 11 e-mail from Department of Natural Resources officials.

The changes requested result in substantially dissimilar treatment of the existing royalty value determination for gas used for a gas or electrical utility (unchanged, with the gas price being set as the contract price) and the proposed handling of royalty determination for gas used for manufacturer of agricultural chemicals (floating between a "floor" and a "ceiling"). Because of that difference, I've opted to reformat the text. AS 38.05.180(aa), substantially amended in earlier versions of SB 50, is here left unchanged and does not appear in the text of the measure. The substantive changes now are set out in a new subsection, identified as (ee) [bill section 4], limited to the determination of royalty on gas production committed to use by a manufacturer of agricultural chemicals. The amendments set out in bill sections 1 - 3 are necessary conforming changes.

In subsection (ee), the key provision appears near the end of the introductory sentence: "an agreement . . . to use or accept as a price for the gas an amount that *is not less than* the price established in the contract between the lessee and [the] manufacturer not to exceed. . . ." That should serve to set the floor on the price, but allow the commissioner the discretion to use a price at the floor, at the amount calculated (to serve as the "ceiling"), or at some intervening amount. All of the conditions and factors that would bear on the commissioner's deliberations as set out in the immediately preceding "I" version are carried forward together with the addition--actually, a revision--of the statement that the authorization to use a price falling below the ceiling must meet the state's best interests.

As revised, I am of the view that subsection (ee) provides the commissioner little real guidance as to whether or not to enter into the agreement and, if so, at what price between the "ceiling" and the "floor" the price should be set. The commissioner is to consider the various factors that are set out, but is it altogether clear that the commissioner's eventual decision is to be based on some application of these factors?

JBC:med
03-395.med

Enclosure



ALASKA STATE LEGISLATURE

SENATOR THOMAS H. WAGONER
CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
VICE-CHAIR, SENATE RESOURCES COMMITTEE

Sponsor Statement **SB 50 – Royalty Gas Contracts**

Senate Bill 50 amends existing statutory language that establishes the manner of determining the royalty received by the state on gas production.

The amendments extend the ability to enter into agreements to the lessee **and a manufacturer**. A manufacturer is then defined as an entity, other than a gas or electric utility, engaged in a value-added product that uses state royalty natural gas.

The intent of this bill is to allow certainty to manufacturing entities regarding the costs of their royalty gas share so they have the ability to better predict their costs of operation and thus, be competitive in the world market.

In turn, that assures their continued presence in the State of Alaska and the continued benefits of employment opportunities for residents. It also assures continued use of the State's royalty gas share.

SS SB 50 S(RES) 2-27 mj



ALASKA STATE LEGISLATURE

SENATOR THOMAS H. WAGONER
CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
VICE-CHAIR, SENATE RESOURCES COMMITTEE

SB 50 SENATE RESOURCES

(4-11-03: mj)

CS work draft I

4/7/03

Changes from Work Draft \I and Work Draft \H

Page 1. No changes

Page 2: Lines 23 is the beginning of the changes.

“H” version references to the (aa) contracts essentially merged the exceptions for both the utility contracts and manufacturing contracts (page 2 lines 21 through page 3 line 2).

“I” version clearly sets out the provisions in separate sections for:

- (aa) contracts for utilities – in (2) (A) (begins on page 2 line 23); and
- (aa) contracts for a manufacturer of agricultural chemicals – in (2)(B) (begins on page 3, line 2)

There was previous committee discussion of changing “and” to “or” in old cs on page 3 line 1.

The new CS accomplishes that for the new language regarding manufacturer of agricultural chemicals, as was requested.

Page 3 – Sec. 2: Sec 3, and Sec. 4: no changes



ALASKA STATE LEGISLATURE

SENATOR THOMAS H. WAGONER

CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

VICE-CHAIR, SENATE RESOURCES COMMITTEE

SB 50 – CSH Explain

March 26, 2003

PAGE 1: LINES 10-12

SB 50 new language insert was

“or between the lessee and a manufacturer, as appropriate”

CS expanded to be specific to

- Contract to use or accept a price for gas
- on or after the effective date of the act
- a manufacturer of agricultural chemicals

PAGE 2: LINES 10-11

CS inserts new phrase “of agricultural chemicals” to further define the manufacturer

PAGE 2: LINES 30-31

CS inserts new phrase “of agricultural chemicals” to further define the manufacturer

PAGE 3: LINE 7 (SEC. 2)

CS inserts new phrase “of agricultural chemicals” to further define the manufacturer

PAGE 3: LINES 8-12 (SEC. 3)

CS definition expanded to reflect “manufacturer of agricultural chemicals” as more specific definition for manufacturer.

PAGE 3: LINES 13-18 (SEC. 4)

CS adds new section to restrict application of this new provision to contracts entered into on or after the effective date of this act.

SB 50 – Draft CS S(RES) 3-26-03 mj



ALASKA STATE LEGISLATURE

SENATOR THOMAS H. WAGONER
CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
VICE-CHAIR, SENATE RESOURCES COMMITTEE

Sectional Analysis **SB 50 – Royalty Gas Contracts**

Section 1. Amends AS 38.05.180(aa) to add a new entity, a lessee and a manufacturer, who would be able to establish an agreement with the State for royalty gas share prices.

Amends subsection (aa)(1), which lists restrictions imposed for such price agreements, by revising the existing section to reflect it as a subsection (A) specific only to a contract between the lessee and a gas or electric utility,

Amends subsection (aa)(1) by inserting a new subsection (B) that lists the specific restrictions for the new entity, a lessee and a manufacturer.

Amends subsection (aa)(2)(B), which sets out exemptions from the provisions of subsection (aa)(1), by inserting language regarding circumstances for the new entity, referencing new sections (B)(1) and inserting language specifying an exemption for employment or tangible benefits.

Amends subsection (aa)(2)(C) by including manufacturer, as appropriate.

Section 2. Amends AS 38.05.180(bb)(2) by including manufacturer, as appropriate.

Section 3. Amends AS 38.05.180(bb) by inserting new paragraph (4) which is the definition of a “manufacturer”.



ALASKA STATE LEGISLATURE


SENATOR THOMAS H. WAGONER

CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

VICE-CHAIR, SENATE RESOURCES COMMITTEE

DATE: February 27, 2003

TO: Senator Scott Ogan, Chair
Senate Resources Committee

FROM: Senator Tom Wagoner 

RE: Committee Hearing – SB 50

I would appreciate your hearing Senate Bill 50 in the Resources Committee at your earliest convenience.

I am attaching a Sponsor Statement, a Sectional Analysis, and other information pertaining to the bill.

Also, this bill is a companion to HB 57. That bill was revised in the House Oil and Gas Committee to better define “manufacturing”. I have requested a draft, blank committee substitute for SB 50 that reflects those revisions and will provide it to you when it is completed.

Thank you for your time and consideration.

PREPARED REMARKS OF
MICHAEL L. NUGENT
BEFORE VARIOUS LEGISLATIVE COMMITTEES
MARCH, 2003

Mr. Chairman, members of the committee, thank you for the opportunity to testify before you this afternoon. My name is Mike Nugent and I am the General Manager of Agrium's Kenai Nitrogen Operations based in Kenai, Alaska. With me today is Lisa Parker, Government & Community Relations Advisor for Agrium U.S. and Eric McDowell from the McDowell Group. I am here today to speak in favor of the bill before you – SB 50.

As I view this legislation, it is just one piece of the pie¹, which could provide producers in Cook Inlet with stability, and Agrium with certainty of what the costs are to manufacturer the products we sell. The major raw material we use to manufacture our products is natural gas.

Agrium's Kenai Nitrogen Operations is one of Alaska's few major value added manufacturing operations. The Kenai plant is the second largest producer of nitrogen products in the United States, with the largest facility being in Louisiana. From Kenai, we manufacture 6% of the total nitrogen products in North America.

¹ The whole pie consists of having long-term, reliable, reasonably priced gas.

While we are located in Kenai, the majority of our product is exported to Pacific Rim countries, including Korea, Taiwan, Mexico, Thailand, and Australia, to name a few. In total we exported product to fifteen different countries and in 2001 the gross sale value of our product was \$210 million (this is total sales). Kenai has been able to be competitive in world markets

- ✓ because of its location – close to Pacific Rim Markets,
- ✓ because there is a skilled workforce, and
- ✓ because there is a stable government.

Countries that compete with Kenai to sell fertilizer products – Russia, Indonesia, Saudi Arabia, and Venezuela – do not have these same attributes, particularly a stable government. However, what they do have are extremely low natural gas prices, which puts Kenai at a disadvantage in marketing our product. This disadvantage is in part due to current provisions in state contracts, which require the State of Alaska to receive the highest prevailing price for the State's royalty gas.

The bill before you, SB 50, could help in that it would allow the commissioner to accept, as the price being paid to the state for its gas, the price that has been negotiated between Agrium and the producer.

Over the past few weeks there has been some questions with respect to the fiscal impact of this bill. With respect to the fiscal implications I would like to offer the following comments:

1. The Department of Natural Resources has supplied you with a fiscal note. It does not consider the other economic impacts; such as wages, purchases of goods and services, taxes, and new developments, to the State of Alaska, it only considers the impact of natural gas value.
2. This analysis is based on forecasts and these forecasts involve several variables such as volume, price, ownership, etc. all of which are very difficult to accurately predict. This analysis also assumes we are operating at full capacity or in other words, consuming maximum volumes of natural gas.
3. As opposed to forecasting the future, the reality of today is, Agrium's Kenai operation is currently curtailed due to the inability of suppliers to deliver adequate natural gas supplies. Our plant is operating on average at 75% capacity so there is currently a real revenue reduction to the state, Agrium, and the local economies; regardless of which price forecast is used.
4. Unless we are able to find a producer who can provide us with a large quantity of natural gas, at a competitive price, and in the very near future, this curtailment will last for several years or could even result in our shutdown. We have had repeated discussions with the current and future producers in Cook Inlet and one of the primary areas of concern is the additional royalty the producer is currently subject to. To quote one of the producers in a letter sent recently to the City of Kenai

“ As a producer looking to market our natural gas, there is great hesitation to enter into a gas sales agreement with a purchaser

such as Agrium because it adds yet another layer of risk to the producer. A producer selling gas to Agrium runs the risk, in fact the probability, that several years after selling its gas to Agrium, the State will assert a claim that royalty needs to be paid on a value higher than the arms length negotiated contract price. This additional royalty, plus interest accrued at a higher-than-market rate would have to be born by the producer and/or by the purchaser. It is for this reason that Aurora Power and its natural gas marketing affiliate strongly endorse HB57 and the concept that royalty should be paid on the basis of arms length negotiated contract price."

5. As noted above, the development of new natural gas reserves is more difficult because of the risk of unknown state royalty gas values.
6. The risk is associated with the value or price being set by others in a process we have not participated in.
7. If we are not successful in developing additional competitive gas reserves, we will not survive as a business. As a result the revenues to the State from royalty gas sales and the added value our business brings to the local economies will be zero.
8. Natural gas will have a different value to different consumers. One price does and will not fit all.
9. The overall economic benefits that different natural gas consumers bring to the local economies will be different. So don't just focus on the value of the gas, look at the whole economic picture.

Prepared Remarks of Michael L. Nugent
Congressional Committees
March, 2003
Page 5 of 5

Eric McDowell from The McDowell Group is here to answer any questions you might have with respect to the economic benefits as well as the economic impacts this facility has in Alaska. In the study the McDowell Group undertook last year they concluded "By Alaskan economic standards, the Agrium operation is exceptional for its combination of high pay levels, amount and concentration of expenditures in the local area, and the degree of value added manufacturing that occurs in Alaska prior to export. The result is a high multiplier impact."

Mr. Chairman and members of the committee, again, thank you for the opportunity to speak before you. We would be happy to answer any questions.

North Peninsula Chamber of Commerce

P.O. Box 8053 • Nikiski, Alaska 99635

NIKISKI IS ON THE MOVE...



April 9, 2003

RESOLUTION 2003-001

A RESOLUTION IN SUPPORT OF "AN ACT AMENDING THE MANNER OF DETERMINING THE ROYALTY RECEIVED BY THE STATE ON GAS PRODUCTION AS IT RELATES TO THE MANUFACTURE OF CERTAIN VALUE ADDED PRODUCTS"

WHEREAS, the manufacturing of value added resources in the State of Alaska serve as a catalyst to economic development in Alaska; and

WHEREAS, one of the state's premier value added manufacturing industries is located on the Kenai Peninsula; and

WHEREAS, this industry, Agrium Kenai Nitrogen Operations, is exceptional for its combination of high pay levels, amount and concentration of expenditures in Alaska; and

WHEREAS, Agrium Kenai Nitrogen Operations is one of the few industries adding value to Alaska's natural resources using Cook Inlet natural gas to create anhydrous ammonia and two forms of urea; and

WHEREAS, Agrium Kenai Nitrogen Operations purchases natural gas from producers in Cook Inlet; and

WHEREAS, Agrium Kenai Nitrogen Operations markets its products around the world competing against major world competition which is primarily based upon the monetization of trapped gas resources; and

WHEREAS, Agrium Kenai Nitrogen Operations is the Kenai Peninsula's third largest private employer and accounts for an additional 700 jobs in Alaska and the Kenai Peninsula; and

WHEREAS, Agrium Kenai Nitrogen Operations expenditures in Alaska are spread to over 250 businesses statewide with 118 companies located on the Kenai Peninsula; and

WHEREAS, House Bill 57 and Senate Bill 50 have been introduced which will provide for the State of Alaska to enter into agreements with non-affiliated natural gas producers to accept as the price for the State's royalty share the price established in an arm's length contract negotiated between the natural gas producer and a manufacturer of value added products; and

North Peninsula Chamber of Commerce
Resolution 2003-001

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE NORTH PENINSULA CHAMBER OF COMMERCE:

SECTION 1: That the North Peninsula Chamber of Commerce urges the 23rd Alaska State Legislature to enact HB 57 and SB-50, "An Act Amending The Manner Of Determining The Royalty Received By The State On Gas Production As It Relates To The Manufacture Of Certain Value Added Products."

SECTION 2: That copies of this resolution shall be sent to all members of the 23rd Alaska State Legislature.

SECTION 3: That this resolution takes effect immediately upon its enactment.

ADOPTED BY THE BOARD OF DIRECTORS OF THE NORTH PENINSULA CHAMBER OF COMMERCE MARCH 2003.

Signed:

Fred A. Miller
President



Kenai Chamber of Commerce
402 Overland
Kenai, Alaska 99611

(907) 283-7989
(907) 283-7183 (Fax)

RESOLUTION 2003-01

A RESOLUTION IN SUPPORT OF "AN ACT AMENDING THE MANNER OF DETERMINING THE ROYALTY RECEIVED BY THE STATE ON GAS PRODUCTION AS IT RELATES TO THE MANUFACTURE OF CERTAIN VALUE ADDED PRODUCTS"

WHEREAS, the Kenai Chamber of Commerce has over 350 business members, and

WHEREAS, the manufacturing of value added resources in the State of Alaska serve as a catalyst to economic development in Alaska; and

WHEREAS, one of the state's premier value added manufacturing industries is located on the Kenai Peninsula; and

WHEREAS, this industry, Agrium Kenai Nitrogen Operations, is exceptional for its combination of high pay levels, amount and concentration of expenditures in Alaska; and

WHEREAS, Agrium Kenai Nitrogen Operations is one of the few industries adding value to Alaska's natural resources using Cook Inlet natural gas to create anhydrous ammonia and two forms of urea; and

WHEREAS, Agrium Kenai Nitrogen Operations purchases natural gas from producers in Cook Inlet; and

WHEREAS, Agrium Kenai Nitrogen Operations markets its products around the world competing against major world competition which is primarily based upon the monetization of trapped gas resources; and

WHEREAS, Agrium Kenai Nitrogen Operations is the Kenai Peninsula's third largest private employer and accounts for an additional 700 jobs in Alaska and the Kenai Peninsula; and

WHEREAS, Agrium Kenai Nitrogen Operations expenditures in Alaska are spread to over 250 businesses statewide with 118 companies located on the Kenai Peninsula; and

WHEREAS, House Bill 57 has been introduced which will provide for the State of Alaska to enter into agreements with non-affiliated natural gas producers to accept as the price for the State's royalty share the price established in an arm's length contract



Kenai Chamber of Commerce
402 Overland
Kenai, Alaska 99611

(907) 283-7989
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negotiated between the natural gas producer and a manufacturer of value added producers; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE KENAI CHAMBER OF COMMERCE:

SECTION 1: That the Kenai Chamber of Commerce urges the 23rd Alaska State Legislature to enact HB 57, "An Act Amending The Manner Of Determining The Royalty Received By The State On Gas Production As It Relates To The Manufacture Of Certain Value Added Products."

SECTION 2: That copies of this resolution shall be sent to all members of the 23rd Alaska State Legislature and Governor Frank Murkowski.

SECTION 3: That this resolution takes effect immediately upon its enactment.

UNANIMOUSLY PASSED BY THE KENAI CHAMBER OF COMMERCE OF THE CITY OF KENAI ALASKA, this 7th day of February, 2003.

Cherie L. Brewer

Cherie L. Brewer
Chamber Board President

Suggested by: City Council

CITY OF KENAI

RESOLUTION 2003-08

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, SUPPORTING HB57, "AN ACT AMENDING THE MANNER OF DETERMINING THE ROYALTY RECEIVED BY THE STATE ON GAS PRODUCTION AS IT RELATES TO THE MANUFACTURE OF CERTAIN VALUE ADDED PRODUCTS."

WHEREAS, Agrium Kenai Nitrogen Operations is exceptional for its combination of high pay levels, amount and concentration of expenditures in Alaska; and,

WHEREAS, Agrium Kenai Nitrogen Operations is one of the few industries adding value to Alaska's natural resources using Cook Inlet natural gas to create anhydrous ammonia and two forms of urea; and,

WHEREAS, Agrium Kenai Nitrogen Operations purchases natural gas from producers in Cook Inlet; and,

WHEREAS, Agrium Kenai Nitrogen Operations markets its products around the world competing against major world competition which is primarily based upon the monetization of trapped gas resources; and,

WHEREAS, Agrium Kenai Nitrogen Operations is the Kenai Peninsula's third largest private employer and accounts for an additional 700 jobs in Alaska and the Kenai Peninsula; and,

WHEREAS, Agrium Kenai Nitrogen Operations expenditures in Alaska are spread to over 250 businesses statewide with 118 companies located on the Kenai Peninsula; and,

WHEREAS, House Bill 57 has been introduced which will provide for the State of Alaska to enter into agreements with non-affiliated natural gas producers to accept as the price for the State's royalty share the price established in an arm's length contract negotiated between the natural gas producer and a manufacturer of value added products, like Agrium Kenai Nitrogen Operations.

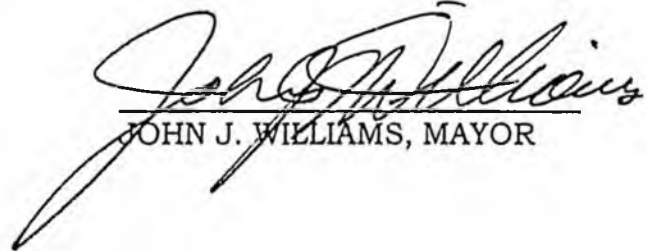
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, the following:

Section 1: The Kenai City Council urges the 23rd Alaska State Legislature to enact HB 57, "An Act Amending the Manner of Determining the Royalty Received by the State on Gas Production as it Relates to the Manufacture of Certain Value Added Products."

Section 2: Copies of this resolution shall be sent to all members of the 23rd Alaska State Legislature.

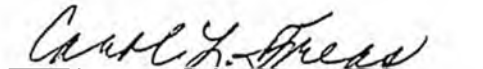
Section 3: This resolution takes effect immediately upon its enactment.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 19th day of February, 2003.



JOHN J. WILLIAMS, MAYOR

ATTEST:



Carol L. Freas, City Clerk

Introduced by:	Mayor, Superman
Date:	02/18/03
Action:	
Vote:	

KENAI PENINSULA BOROUGH

RESOLUTION 2003-024

A RESOLUTION SUPPORTING THE PASSAGE OF HOUSE BILL 57 AND SENATE BILL 50 AMENDING THE MANNER OF DETERMINING THE ROYALTY RECEIVED BY THE STATE ON GAS PRODUCTION AS IT RELATES TO THE MANUFACTURE OF CERTAIN VALUE-ADDED PRODUCTS

WHEREAS, Agrium Kenai Nitrogen Operations is exceptional for its combination of high pay levels, amount and concentration of expenditures in the Kenai Peninsula Borough and Alaska; and

WHEREAS, Agrium Kenai Nitrogen Operations is one of the few industries adding value to Alaska's natural resources by using Cook Inlet natural gas to create anhydrous ammonia and two forms of urea; and

WHEREAS, Agrium Kenai Nitrogen Operations purchases natural gas from producers in Cook Inlet; and

WHEREAS, Agrium Kenai Nitrogen Operations markets its products around the world competing against major world competition which is primarily based upon the monetization of trapped gas resources; and

WHEREAS, Agrium Kenai Nitrogen Operations is the Kenai Peninsula's third largest private employer and accounts for an additional 700 jobs in Alaska and the Kenai Peninsula Borough; and

WHEREAS, Agrium Kenai Nitrogen Operations expenditures in Alaska are spread to over 250 businesses statewide with 118 companies located within the Kenai Peninsula Borough; and

WHEREAS, House Bill 57 and Senate Bill 50 have been introduced which will provide for the State of Alaska to enter into agreements with non-affiliated natural gas producers to accept as the price for the State's royalty share the price established in an arm's length contract negotiated between the natural gas producer and Agrium Kenai Nitrogen Operations;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1: That the Kenai Peninsula Borough Assembly urges the 23rd Alaska State Legislature to enact House Bill 57 and Senate Bill 50, Acts amending the manner of determining the royalty received by the state on gas production as it relates to the manufacture of certain value added products.

SECTION 2: That copies of this resolution shall be sent to Senator Tom Wagoner, Senator Alan Austerman, Representative Mike Chenault, Representative Paul Seaton, Representative Kelly Wolf and Governor Frank Murkowski.

SECTION 3: That this resolution takes effect immediately upon its enactment.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 18TH DAY OF FEBRUARY 2003.

MAR 21 2003

SOLDOTNA CHAMBER OF COMMERCE

RESOLUTION 2003-02

A RESOLUTION IN SUPPORT OF "AN ACT AMENDING THE MANNER OF DETERMINING THE ROYALTY RECEIVED BY THE STATE ON GAS PRODUCTION AS IT RELATES TO THE MANUFACTURE OF CERTAIN VALUE ADDED PRODUCTS"

WHEREAS, the manufacturing of value added resources in the State of Alaska serve as a catalyst to economic development in Alaska; and

WHEREAS, one of the state's premier value added manufacturing industries is located on the Kenai Peninsula; and

WHEREAS, this industry, Agrium Kenai Nitrogen Operations, is exceptional for its combination of high pay levels, amount and concentration of expenditures in Alaska; and

WHEREAS, Agrium Kenai Nitrogen Operations is one of the few industries adding value to Alaska's natural resources using Cook Inlet natural gas to create anhydrous ammonia and two forms of urea; and

WHEREAS, Agrium Kenai Nitrogen Operations purchases natural gas from producers in Cook Inlet; and

WHEREAS, Agrium Kenai Nitrogen Operations markets its products around the world competing against major world competition which is primarily based upon the monetization of trapped gas resources; and

WHEREAS, Agrium Kenai Nitrogen Operations is the Kenai Peninsula's third largest private employer and accounts for an additional 700 jobs in Alaska and the Kenai Peninsula; and

WHEREAS, Agrium Kenai Nitrogen Operations expenditures in Alaska are spread to over 250 businesses statewide with 118 companies located on the Kenai Peninsula; and

WHEREAS, House Bill 57 has been introduced which will provide for the State of Alaska to enter into agreements with non-affiliated natural gas producers to accept as the price for the State's royalty share the price established in an arm's length contract negotiated between the natural gas producer and a manufacturer of value added products; and