

Original sponsor(s): REP. COTTEN, Navarre

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 CS FOR HOUSE BILL NO. 541 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to certain agreements, compromises,
7 and settlements entered into by the Departments of
8 Natural Resources and Revenue, to legislative audit
9 of the Department of Revenue and the release of a
10 report of that audit, that may include or refer to
11 confidential information, to the legislature and
12 public, and to the interest rate on unpaid taxes and
13 to overpaid taxes."

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

15 * Section 1. AS 24.20.271 is amended to read:

16 Sec. 24.20.271. POWERS AND DUTIES. The legislative audit divi-
17 sion shall

18 (1) conduct a performance post-audit of boards and com-
19 missions designated in AS 44.66.010 and of those programs and activ-
20 ities of agencies subject to termination as determined in the manner
21 set out in AS 44.66.020 and 44.66.030, and submit the audit, together
22 with a written report, not later than the first day of the regular
23 session of the legislature convening in each year set out with refer-
24 ence to boards, commissions, or agency programs whose activities are
25 subject to termination as prescribed in AS 44.66;

26 (2) audit at least once every three years the books and
27 accounts of all custodians of public funds and all disbursing officers
28 of the state;

29 (3) at the direction of the Legislative Budget and Audit

1 Committee, conduct performance post-audits on any agency of state
2 government;

3 (4) cooperate with state agencies by offering advice and
4 assistance as requested in establishing or improving the accounting
5 systems used by state agencies;

6 (5) require the assistance and cooperation of all state
7 officials and other state employees in the inspection, examination,
8 and audit of state agency books and accounts;

9 (6) have access at all times to the books, accounts, re-
10 ports, or other records, whether confidential or not, of every state
11 agency;

12 (7) ascertain, as necessary for audit verification, the
13 amount of agency funds on deposit in any bank as shown on the books of
14 the bank; a [NO] bank may not be held liable for making information
15 required under this paragraph available to the legislative audit
16 division;

17 (8) complete studies and prepare reports, memoranda, or
18 other materials as directed by the Legislative Budget and Audit Com-
19 mittee;

20 (9) have direct access to any information related to the
21 management of the University of Alaska and have the same right of
22 access as exists with respect to every other state agency;

23 (10) annually

24 (A) conduct a performance audit of the tax functions
25 of the Department of Revenue, including the department's resolu-
26 tion of disputed taxes;

27 (B) prepare a report summarizing the results of the
28 audit that may contain information made confidential by AS 43.-
29 05.230 and a version of the report edited for the public; and

1 (C) submit the audit and the unedited report prepared
2 under (B) of this paragraph to the legislature not later than the
3 first day of the regular legislative session.

4 * Sec. 2. AS 38.05.035 is amended by adding new subsections to read:

5 (g) If the department enters into negotiations to compromise or
6 settle a dispute between the department and a person as to a royalty
7 or net profit payment involving a claim that totals, with applicable
8 penalty and interest, \$10,000,000 or more, the commissioner shall, not
9 later than 14 days after commencement of negotiations, advise the
10 commissioner of revenue and the attorney general that negotiations
11 have commenced. The commissioner shall provide notice to the commis-
12 sioner of revenue and the attorney general at least once during each
13 subsequent 30-day period that the negotiations continue.

14 (h) If the department proposes to compromise or settle a dispute
15 between the department and a person as to a royalty or net profit
16 payment involving a claim that totals, with applicable penalty and
17 interest, \$10,000,000 or more, the commissioner may not enter into an
18 agreement to compromise or settle the dispute

19 (1) without first securing and reviewing an independent ap-
20 praisal of the effects of the proposed compromise or settlement; the
21 independent appraisal

22 (A) may be made by a person who is an employee of the
23 department or who is engaged by contract to complete the apprai-
24 sal, but may not be made by a person who has been involved in
25 preparing the proposed compromise or settlement;

26 (B) must specify the objectives of the department's
27 negotiations; and

28 (C) must review the proposed compromise or settlement
29 (i) to ensure that it meets the objectives

1 specified; and

2 (ii) to determine whether it adversely affects
3 other litigation to which the state is a party; and

4 (2) unless at least 14 days pass between the day the com-
5 missioner receives the proposed compromise or settlement agreement and
6 the day the commissioner executes that agreement.

7 (i) The commissioner may not enter into a settlement or compro-
8 mise of a dispute between the department and a person as to a royalty
9 or net profit payment if the settlement or compromise provides that
10 information relevant to the settlement or compromise, or the terms of
11 the settlement or compromise, are confidential beyond the confiden-
12 tiality otherwise provided for by law.

13 (j) The commissioner shall maintain for review full documenta-
14 tion of a settlement or compromise of a dispute between the department
15 and a person as to a royalty or net profit payment.

16 * Sec. 3. AS 43.05.060 is amended by adding new subsections to read:

17 (b) If the department enters into negotiations to resolve a tax
18 dispute between the department and a taxpayer involving a claim that
19 totals, with applicable penalty and interest, \$10,000,000 or more, the
20 commissioner shall, not later than 14 days after commencement of
21 negotiations, advise the commissioner of natural resources and the
22 attorney general that negotiations have commenced. The commissioner
23 shall provide notice to the commissioner of natural resources and the
24 attorney general at least once during each subsequent 30-day period
25 that the negotiations continue.

26 (c) If the department proposes to enter into an agreement under
27 (a) of this section to resolve a tax dispute between the department
28 and a taxpayer involving a claim that totals, with applicable penalty
29 and interest, \$10,000,000 or more, the commissioner may not enter into

1 the agreement

2 (1) without first securing and reviewing an independent ap-
3 praisal of the effects of the proposed agreement; the independent
4 appraisal

5 (A) may be made by a person who is an employee of the
6 department or who is engaged by contract to complete the ap-
7 praisal, but may not be made by a person who has been involved in
8 preparing the proposed agreement;

9 (B) must specify the objectives of the department's
10 negotiations; and

11 (C) must review the proposed resolution

12 (i) to ensure that it meets the objectives speci-
13 fied; and

14 (ii) to determine whether it adversely affects
15 other litigation to which the state is a party; and

16 (2) unless at least seven days pass between the day the
17 commissioner receives the proposed agreement and the day the commis-
18 sioner executes that agreement.

19 (d) In making an agreement under (a) of this section, neither
20 the department nor the attorney general may agree that information
21 relevant to the agreement, or the terms of the agreement, are confi-
22 dential beyond the confidentiality otherwise provided for by law. The
23 department must maintain for review full documentation of the agree-
24 ment.

25 * Sec. 4. AS 43.05.070 is amended by adding new subsections to read:

26 (c) If the department enters into negotiations to compromise or
27 settle a tax dispute between the department and a taxpayer involving a
28 claim that totals, with applicable penalty and interest, \$10,000,000
29 or more, the commissioner shall, not later than 14 days after

1 commencement of negotiations, advise the commissioner of natural re-
2 sources and the attorney general that negotiations have commenced.
3 The commissioner shall provide notice to the commissioner of natural
4 resources and the attorney general at least once during each subse-
5 quent 30-day period that the negotiations continue.

6 (d) If the department proposes to compromise or settle a tax
7 dispute between the department and a taxpayer involving a claim that
8 totals, with applicable penalty and interest, \$10,000,000 or more, the
9 commissioner may not enter into the agreement

10 (1) without first securing and reviewing an independent ap-
11 praisal of the effects of the proposed compromise or settlement agree-
12 ment; the independent appraisal

13 (A) may be made by a person who is an employee of the
14 department or who is engaged by contract to complete the ap-
15 praisal, but may not be made by a person who has been involved in
16 preparing the proposed compromise or settlement agreement;

17 (B) must specify the objectives of the department's
18 negotiations; and

19 (C) must review the proposed compromise or settlement

20 (i) to ensure that it meets the objectives speci-
21 fied; and

22 (ii) to determine whether it adversely affects
23 other litigation to which the state is a party; and

24 (2) unless at least seven days pass between the day the
25 commissioner receives the proposed compromise or settlement agreement
26 and the day the commissioner executes that agreement.

27 (e) In compromising a tax or penalty under this section, neither
28 the department nor the attorney general may agree that information
29 relevant to the compromise, or the terms of the compromise, are

1 confidential beyond the confidentiality otherwise provided for by law.
2 The department must maintain for review full documentation of the
3 compromise.

4 * Sec. 5. AS 43.05.225 is amended by adding a new subsection to read:

5 (b) If a tax imposed by AS 43.55, AS 43.56, AS 43.57, former
6 AS 43.21, or former AS 43.58 is not paid on or before the date pre-
7 scribed for payment, it bears interest at the rate of five percentage
8 points above the annual rate charged member banks for advances by the
9 12th Federal Reserve District, as established on the first day of each
10 calendar quarter, compounded quarterly.

11 * Sec. 6. AS 43.05.280(a) is amended to read:

12 (a) Except as provided in (d) of this section, interest [INTER-
13 EST] shall be allowed and paid on an [ANY] overpayment of a tax under
14 this title at the rate prescribed in AS 43.05.225(a) [AS 43.05.225].

15 * Sec. 7. AS 43.05.280 is amended by adding a new subsection to read:

16 (d) Interest shall be allowed and paid on an overpayment of a
17 tax imposed by AS 43.55, AS 43.56, AS 43.57, former AS 43.21, or
18 former AS 43.58, at the rate prescribed in AS 43.05.225(b) less two
19 percentage points.