

Original sponsor(s): REP. COTTEN, Navarre, Davidson

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 541 (Finance)  
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 those departments and the release of a report of  
10 the audits, that may include or refer to confidential  
11 information, to the legislature and public; and to  
12 collection and payments of royalties from state  
13 resources, the interest rate on unpaid taxes and  
14 royalties from state resources, and the interest  
15 rate on overpaid taxes."

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

17 \* Section 1. AS 05.15.095(c) is amended to read:

18 (c) A delinquent fee bears interest at the rate set by  
19 AS 43.05.225(1) [AS 43.05.225].

20 \* Sec. 2. AS 24.20.271 is amended to read:

21 Sec. 24.20.271. POWERS AND DUTIES. The legislative audit divi-  
22 sion shall

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

1 subject to termination as prescribed in AS 44.66;

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

5 (3) at the direction of the Legislative Budget and Audit  
6 Committee, conduct performance post-audits on any agency of state  
7 government;

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

11 (5) require the assistance and cooperation of all state  
12 officials and other state employees in the inspection, examination,  
13 and audit of state agency books and accounts;

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

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

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

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

28 (10) periodically

29 (A) conduct a performance audit of the tax functions

1           of the Department of Revenue; and  
2                   (B) submit the audit to the legislature not later than  
3           the first day of the regular legislative session;  
4                   (11) annually  
5                   (A) conduct an audit of the resolution of disputed  
6           royalties by the Department of Natural Resources and disputed  
7           taxes by the Department of Revenue;  
8                   (B) prepare a report summarizing the results of the  
9           audits that may contain information made confidential by AS 43.-  
10           05.230 and a version of the report edited for the public; and  
11                   (C) submit the audit and the unedited report prepared  
12           under (B) of this paragraph to the legislature not later than the  
13           first day of the regular legislative session.

14 \* Sec. 3. AS 34.45.470(a) is amended to read:

15           (a) A person who fails to pay or deliver property within the  
16           time prescribed by this chapter may be required to pay to the depart-  
17           ment interest at the [ANNUAL] rate calculated under AS 43.05.225(1)  
18           [AS 43.05.225] on the property or the value of it from the date the  
19           property should have been paid or delivered.

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

21           (g) If the department enters into negotiations to compromise or  
22           settle a dispute between the department and a person as to a royalty  
23           or net profit payment involving a claim that totals, with applicable  
24           penalty and interest, \$10,000,000 or more and that relates to a calen-  
25           dar year that is five or more years before the current year, the com-  
26           missioner shall, not later than 14 days after commencement of nego-  
27           tiations, advise the governor that negotiations have commenced, and  
28           shall provide notice to the governor at least once during each  
29           subsequent 30-day period that the negotiations continue.

1 (h) If the department proposes to compromise or settle a dispute  
2 between the department and a person as to a royalty or net profit  
3 payment involving a claim that totals, with applicable penalty and  
4 interest, \$10,000,000 or more and that relates to a calendar year that  
5 is five or more years before the current year, the commissioner may  
6 not enter into an agreement to compromise or settle the dispute

7 (1) without first securing and reviewing an independent ap-  
8 praisal of the effects of the proposed compromise or settlement; the  
9 independent appraisal

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

14 (B) must specify the objectives of the department's  
15 negotiations; and

16 (C) must review the proposed compromise or settlement

17 (i) to ensure that it meets the objectives speci-  
18 fied; and

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

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

24 (i) The commissioner may not enter into a settlement or compro-  
25 mise of a dispute between the department and a person as to a royalty  
26 or net profit payment if the settlement or compromise provides that  
27 information relevant to the settlement or compromise, or the terms of  
28 the settlement or compromise, are confidential beyond the confiden-  
29 tiality otherwise provided for by law.

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

4 \* Sec. 5. AS 38.05.145 is amended by adding new subsections to read:

5 (c) Payment of the royalty to the state under the provisions of  
6 AS 38.05.145 - 38.05.181 becomes due on the date and in the manner  
7 specified in the lease or in a regulation adopted by the commissioner.

8 (d) If royalty to which the state is entitled under AS 38.05.180  
9 is not paid when it becomes due under (c) of this section and the  
10 total amount of royalty due exceeds \$1,000,000, notwithstanding  
11 AS 09.30.070, the royalty bears interest at the rate of five percent-  
12 age points above the annual rate charged member banks for advances by  
13 the 12th Federal Reserve District, as established on the first day of  
14 each calendar quarter, compounded quarterly.

15 \* Sec. 6. AS 43.05.060 is amended by adding new subsections to read:

16 (b) If the department enters into negotiations to resolve a tax  
17 dispute between the department and a taxpayer involving a claim that  
18 totals, with applicable penalty and interest, \$10,000,000 or more and  
19 that relates to a calendar year that is five or more years before the  
20 current year, the commissioner shall, not later than 14 days after  
21 commencement of negotiations, advise the governor that negotiations  
22 have commenced, and shall provide notice to the governor at least once  
23 during each subsequent 30-day period that the negotiations continue.

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

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

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

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

10 (C) must review the proposed resolution

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

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

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

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

24 \* Sec. 7. AS 43.05.070 is amended by adding new subsections to read:

25 (c) If the department enters into negotiations to compromise or  
26 settle a tax dispute between the department and a taxpayer involving a  
27 claim that totals, with applicable penalty and interest, \$10,000,000  
28 or more and that relates to a calendar year that is five or more years  
29 before the current year, the commissioner shall, not later than 14

1 days after commencement of negotiations, advise the governor that  
2 negotiations have commenced, and shall provide notice to the governor  
3 at least once during each subsequent 30-day period that the  
4 negotiations continue.

5 (d) If the department proposes to compromise or settle a tax  
6 dispute between the department and a taxpayer involving a claim that  
7 totals, with applicable penalty and interest, \$10,000,000 or more and  
8 that relates to a calendar year that is five or more years before the  
9 current year, the 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. 8. AS 43.05.225 is amended to read:

5 Sec. 43.05.225. INTEREST ON TAXES. Unless otherwise provided,  
6 when a tax levied in this title is not paid on or before the date  
7 prescribed for its payment, [BECOMES DELINQUENT] it bears interest at  
8 the rate of

9 (1) 12 percent a year if the total amount of the tax owed  
10 by the taxpayer does not exceed \$1,000,000; or

11 (2) five percentage points above the annual rate charged  
12 member banks for advances by the 12th Federal Reserve District, as  
13 established on the first day of each calendar quarter, compounded  
14 quarterly, if the total amount of the tax owed by the taxpayer exceeds  
15 \$1,000,000.

16 \* Sec. 9. AS 43.05.280(a) is amended to read:

17 (a) Interest shall be allowed and paid on any overpayment of a  
18 tax under this title at the rates [RATE] prescribed in AS 43.05.225.

19 \* Sec. 10. AS 47.23.025 is amended to read:

20 Sec. 47.23.025. RATES OF INTEREST. The rate of interest imposed  
21 under AS 47.23.020(a)(2)(C) shall equal the rate imposed under AS 43.-  
22 05.225(1) [AS 43.05.225] or a lesser rate that is the maximum rate of  
23 interest permitted to be imposed under federal law.