

CS FOR SENATE BILL NO. 377(FIN) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 4/22/94
Offered: 4/21/94

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state agency fiscal procedures, including procedures related
2 to the assessment and collection of certain taxes; and providing for an effective
3 date."

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

5 * Section 1. LEGISLATIVE FINDINGS AND PURPOSE RELATED TO SECTIONS 8
6 AND 9. (a) The legislature finds that

7 (1) with respect to income taxes imposed under former AS 43.21 and oil and
8 gas production taxes imposed by AS 43.55,

9 (A) the Department of Revenue has interpreted AS 43.05.260 to permit
10 it to issue an amended assessment at any time during the administrative consideration
11 of an appeal or of a claim for credit or refund;

12 (B) the department's interpretation of AS 43.05.260 and 43.05.270 are
13 correct; and

14 (C) it is in the public interest that AS 43.05.260 and 43.05.270 be

1 clarified by amendment, effective from the date of enactment of those sections, to
2 reflect these longstanding administrative interpretations;

3 (2) the legal and factual issues arising out of the separate accounting methods
4 used in the levy and collection of income taxes imposed under former AS 43.21 and oil and
5 gas production taxes imposed by AS 43.55 are complex and require lengthy audits by the
6 Department of Revenue to accurately determine the amount of the taxes that are due the state
7 from the respective levies;

8 (3) two other factors have contributed to the lengthy period required to issue
9 accurate tax assessments for the taxes imposed by former AS 43.21 and AS 43.55:

10 (A) throughout the 1970's and the 1980's, the Department of Revenue's
11 ability to audit these tax returns effectively was constrained by its audit resources; and

12 (B) subsequent to the enactment of former AS 43.21 in 1978, taxpayers
13 requested suspension of action on assessments pending the outcome of a challenge to
14 the constitutionality of the separate accounting method as applied to the levy and
15 collection of the income tax; litigation arising out of this challenge was filed in 1979
16 and concluded in 1986;

17 (4) the six-year limitation on the collection of taxes, as applicable to income
18 taxes imposed by former AS 43.21 and production taxes imposed by AS 43.55, should be
19 amended retroactively to clarify that the limitation on collections is tolled during any
20 administrative or judicial consideration of an assessment; the adoption of the amendment
21 embodies the interpretation by and practice of the Department of Revenue since the enactment
22 of AS 43.05.270 by sec. 1, ch. 94, SLA 1976;

23 (5) often a tax levy cannot be made or a proceeding in court cannot be initiated
24 for the collection of unpaid taxes within six years after the assessment of that tax because

25 (A) the protest of an assessment begins a process that often takes
26 several years to complete;

27 (B) after a final administrative decision on a protest has issued, judicial
28 resolution of the protest often lasts several more years; and

29 (C) commencement of a separate collection action while an
30 administrative or judicial appeal of a taxpayer's protest of an assessment is pending
31 is impractical and an inefficient use of the resources of the executive and judicial

1 branches of the state government;

2 (6) substantial taxes assessed under former AS 43.21 and under AS 43.55
3 remain uncollected;

4 (7) these uncollected taxes are in large part the result of disputes over value
5 at the point of production for oil and gas produced in the state;

6 (8) substantial public revenue is at risk in the litigation to which reference is
7 made in (b)(2) of this section, and it is contrary to the public interest to allow these revenues
8 to go uncollected;

9 (9) because the department has had difficulties in obtaining information and
10 completing audits within the three-year period set out in AS 43.05.260(a) and has had to
11 amend assessments based on information developed during taxpayer appeals to reflect the
12 correct amount of tax due, a longer statutory period for assessments should be provided for
13 tax periods beginning after December 31, 1993;

14 (10) taxpayers also have an interest in finality and certainty with respect to the
15 amount of taxes due the state, and that interest will be promoted by having a five-year statute
16 of limitations on assessments, except as otherwise authorized by AS 43.05.260(c), after which
17 time no increases in the amount due the state will be allowed; and

18 (11) it is in the public interest to amend AS 43.05.260(a) prospectively to
19 provide for the issuance and amendment of assessments within five years from the date the
20 taxpayer's return is filed, except as provided in AS 43.05.260(c).

21 (b) The purposes of the amendment of AS 43.05.260(a), made by sec. 8 of this Act,
22 and of AS 43.05.270(a), made by sec. 9 of this Act, are

23 (1) to validate and affirm the longstanding administrative interpretation and
24 practices of the Department of Revenue in assessing and collecting taxes;

25 (2) to make clear specific existing law that resulted in the inconsistent
26 decisions of the state Superior Court reached in Tesoro Petroleum Corporation, et al., v. State
27 of Alaska, Department of Revenue, Superior Court No. 3AN-89-7130 Civ., and State of
28 Alaska, Department of Revenue v. Exxon Corporation, et al., Superior Court No. 3AN-89-
29 5215 Civ.

30 (3) to make prospective changes to the statute of limitations for assessments
31 in AS 43.05.260 to allow the Department of Revenue five years from the date the taxpayer's

1 return is filed to complete its audit and issue or amend an assessment, for tax periods
2 beginning after December 31, 1993.

3 * Sec. 2. AS 37.05.180 is amended to read:

4 Sec. 37.05.180. TIME [TWO-YEAR] LIMITATION ON PAYMENT OF
5 WARRANTS. A warrant upon the state treasury may not be paid unless presented at
6 the office of the commissioner of revenue within one year [TWO YEARS] of the date
7 of its issuance. A warrant not presented within that time is considered paid and money
8 held at the expiration of that time in a special fund or account for the payment of the
9 warrant shall be transferred to the general fund, except where the warrant is for the
10 payment of a permanent fund dividend or where transfer is prohibited by the federal
11 government for state participation in a federal program.

12 * Sec. 3. AS 37.05.510(b) is amended to read:

13 (b) The Department of Administration shall allocate to the working reserve
14 account amounts appropriated to all state agencies for the benefits set out in (a) of this
15 section after the appropriation Act implementing the state operating budget is enacted.
16 The department shall charge the reserve account with all payments for the benefits set
17 out in (a) of this section. [IF PAYMENTS FOR A FISCAL YEAR EXCEED THE
18 UNEXPENDED BALANCE OF APPROPRIATIONS ALLOCATED TO THE
19 ACCOUNT, THE DEPARTMENT MAY, EXCEPT FOR PAYMENTS UNDER (a)(4)
20 OF THIS SECTION, PAY THOSE BENEFITS BY CHARGING THE
21 UNENCUMBERED BALANCE OF ANY APPROPRIATION ENACTED TO
22 FINANCE THE PAYMENT OF EMPLOYEE SALARIES AND BENEFITS THAT
23 IS DETERMINED TO BE AVAILABLE FOR LAPSE AT THE END OF THE
24 FISCAL YEAR.]

25 * Sec. 4. AS 37.07.060(b)(2) is amended to read:

26 (2) the governor's operating program and budget recommendations for
27 the succeeding fiscal year organized by agency as required by AS 37.07.020(a); if an
28 appropriation has been made from the constitutional budget reserve fund (art. IX,
29 sec. 17, Constitution of the State of Alaska), and until the amount appropriated
30 is repaid, the governor shall propose the amount of money in the general fund
31 available for appropriation at the end of the preceding fiscal year that shall be

1 appropriated to the constitutional budget reserve fund:

2 * Sec. 5. AS 37.07 is amended by adding a new section to read:

3 Sec. 37.07.085. PRORATION OF PAYMENTS. (a) At the beginning of each
4 fiscal year, an agency that administers grants, reimbursement, revenue sharing, public
5 assistance, or other programs to distribute state money under a statute shall determine
6 whether appropriations for the fiscal year are sufficient to pay all anticipated claims
7 and entitlements under the statute. Except as provided in (d) of this section or as
8 otherwise provided by law prescribing agency action in response to insufficient
9 appropriations, if appropriations are not sufficient, the agency shall reduce the amount
10 to be paid to eligible recipients by prorating the shortfall among the eligible recipients.

11 (b) An agency that is paying reduced payments under (a) of this section shall
12 determine, on December 30 of the fiscal year, whether money available is sufficient
13 to fund the reduced payment level for the remainder of the fiscal year.

14 (c) An agency that has determined that appropriations are insufficient under
15 (a) or (b) of this section shall report to the governor, and the governor shall report to
16 the legislature by the 10th day of the next regular legislative session, the amount of
17 additional money needed for the remainder of that fiscal year to fund payments at the
18 reduced level and the amount of additional money needed to make full payments to
19 eligible recipients.

20 (d) An agency that has determined that appropriations are insufficient under
21 (a) of this section may not reduce payments if the reduction would violate the terms
22 of an agreement between the state and the federal government or would violate a
23 requirement for participation in a federal program in which the state is participating.
24 As required by (c) of this section, the agency and the governor shall report regarding
25 the amount of money needed to make full payments to eligible recipients.

26 (e) The commissioner of administration may adopt regulations necessary to
27 implement this section.

28 * Sec. 6. AS 37.25.010(b) is amended to read:

29 (b) An indebtedness arising from a prior year for which the appropriation has
30 lapsed shall be paid from the current year's appropriations, if

31 (1) this expenditure does not exceed the balance lapsed; and

1 (2) the original obligation date is not more than four [TWO] years
2 from the requested date of disbursement.

3 * Sec. 7. AS 39.20.250(a) is amended to read:

4 (a) Terminal leave for unused personal leave shall be allowed upon separation
5 from service. The payment equals the personal leave balance at the date of
6 separation multiplied by the officer's or employee's rate of pay at the date of
7 separation expressed on an hourly basis [COMPENSATION THAT THE OFFICER
8 OR EMPLOYEE WOULD HAVE RECEIVED IF THE OFFICER OR EMPLOYEE
9 HAD REMAINED IN THE SERVICE UNTIL THE EXPIRATION OF THE PERIOD
10 OF UNUSED PERSONAL LEAVE]. A payment of terminal leave to an employee
11 shall be made as a lump sum payment [OR IN INSTALLMENTS OVER A PERIOD
12 OF TIME, AS THE EMPLOYEE ELECTS].

13 * Sec. 8. AS 43.05.260(a) is amended to read:

14 (a) Except as provided in (c) of this section and AS 43.20.200(b), the amount
15 of a tax imposed by this title must be assessed

16 (1) for tax periods ending before January 1, 1994, within three years
17 after the return was filed, whether or not a return was filed on or after the date
18 prescribed by law; however, at any time during the administrative consideration
19 of a taxpayer grievance or of a claim for credit or refund, based upon a tax
20 imposed by former AS 43.21 or by AS 43.55, the department may increase or
21 decrease the amount of tax due by issuing or amending an assessment;

22 (2) for tax periods beginning after December 31, 1993, within five
23 years after the return was filed, whether or not a return was filed on or after the
24 date prescribed by law; the department may increase or decrease the amount of
25 tax due by issuing or amending an assessment within the five-year period; after
26 that five-year period, the department may not increase an assessment under this
27 subsection. [IF THE TAX IS NOT ASSESSED BEFORE THE EXPIRATION OF
28 THE THREE-YEAR PERIOD, PROCEEDINGS MAY NOT BE INSTITUTED IN
29 COURT FOR THE COLLECTION OF THE TAX.]

30 * Sec. 9. AS 43.05.270(a) is amended to read:

31 (a) When the assessment of a tax imposed by this title has been made within

1 the period of limitation under AS 43.05.260, the tax may be collected by levy or by
2 a proceeding in court [, BUT ONLY] if the levy is made or the proceeding is begun:

3 (1) within six years after the latest of any of the following:

4 (A) the assessment of the tax;

5 (B) the final administrative determination of the grievance,

6 if the taxpayer files a grievance from an assessment; or

7 (C) the final judicial resolution of an appeal, if the taxpayer
8 appeals from a final adjudicative determination of a grievance; or

9 (2) before the expiration of a period for collection agreed upon in
10 writing by the department and the taxpayer before the expiration of the six-year period;
11 a period agreed upon may be extended by subsequent agreements in writing made
12 before the expiration of the period previously agreed upon [; THE PERIOD
13 PROVIDED BY THIS PARAGRAPH DURING WHICH A TAX MAY BE
14 COLLECTED BY LEVY MAY NOT BE EXTENDED OR CURTAILED BECAUSE
15 OF A JUDGMENT AGAINST THE TAXPAYER].

16 * Sec. 10. AS 43.23.055 is amended to read:

17 Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

18 (1) annually pay permanent fund dividends from the dividend fund;

19 (2) subject to AS 43.23.011 and [PARAGRAPH] (8) of this section,
20 adopt regulations under AS 44.62 (Administrative Procedure Act) that establish
21 procedures and time limits for claiming a permanent fund dividend; the department
22 shall determine the number of eligible applicants by October 1 of the year for which
23 the dividend is declared and pay the dividends by December 31 of that year;

24 (3) adopt regulations under AS 44.62 (Administrative Procedure Act)
25 that establish procedures and time limits for an individual upon emancipation or upon
26 reaching majority to apply for permanent fund dividends not received during minority
27 because the parent, guardian, or other authorized representative did not apply on behalf
28 of the individual;

29 (4) assist residents of the state, particularly in rural areas, who because
30 of language, disability, or inaccessibility to public transportation need assistance to
31 establish eligibility and to apply for permanent fund dividends;

1 (5) annually determine, in cooperation with the Department of
2 Corrections, the number and identity of individuals ineligible for a permanent fund
3 dividend under AS 43.23.005(d);

4 (6) adopt regulations that are necessary to implement AS 43.23.005(d);

5 (7) adopt regulations that establish procedures for the parent, guardian,
6 or other authorized representative of a disabled individual to apply for prior year
7 permanent fund dividends not received by the disabled individual because no
8 application was submitted on behalf of the individual;

9 (8) adopt regulations that establish procedures for an individual to apply
10 to have a dividend warrant reissued if it is returned to the department as undeliverable
11 or it is not paid within one year [TWO YEARS] of the date of its issuance; however,
12 the department may not establish a time limit within which an application to have a
13 warrant reissued must be filed;

14 (9) adopt regulations establishing an optional longevity bonus program
15 to provide for the direct payment by the department of an individual's permanent fund
16 dividend to an annuity program selected by the individual.

17 * Sec. 11. AS 47.20.070 is amended by adding a new subsection to read:

18 (d) The department may award grants necessary to the performance of its
19 duties under this chapter. If the department determines that it is appropriate to further
20 program objectives, the department may award grants for a period of two years, subject
21 to legislative appropriation.

22 * Sec. 12. AS 39.20.250(b) is repealed.

23 * Sec. 13. Under the provisions of AS 01.10.030, if any provisions of this Act, or the
24 application thereof to any person or circumstance is held invalid, the remainder of this Act and
25 the application to other persons or circumstances shall not be affected thereby.

26 * Sec. 14. Sections 8 and 9 of this Act are retroactive to January 1, 1976.

27 * Sec. 15. Sections 8, 9, 13, and 14 of this Act take effect immediately under
28 AS 01.10.070(c).

29 * Sec. 16. Except as provided in sec. 15 of this Act, this Act takes effect July 1, 1994.