

HB

341

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/22/96

DATE TURNED INTO OFFICE: 4/30/96

The Finance Committee considered CS FOR HOUSE BILL NO. 341(FIN)

Relating to administrative adjudication and judicial appeals; efd.

and recommends:

be replaced with S CS HB341 (FIN)

adopt previous CS ()

attached amendment(s)

adopt Letter of Intent by Committee

further referral to the Committee

Senate Bill:

- same title
- new title
- House Bill:**
- same title
- technical change
- new: SCR#

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Alvin King</i>	✓	<i>James E. [unclear]</i>	✓		
<i>Barry [unclear]</i>	✓	<i>Charles [unclear]</i>	✓		
Co-Chair: <i>[unclear]</i>	✓	Co-Chair: <u> </u>			
Co-Chair: <i>Rick Halford</i>	✓	Co-Chair: <u> </u>			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Alaska Judicial Council	4/17/96		13.9
Revenue / PFD	4/30/96		29.0
Revenue / Admin Support	4/30/96	∅	-
DOA	5/2/96		188.4

*Later
5/2*

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Alaska Court System	4/22/96		indeterminate

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SCS CSHB 341 (FIN)

Revision Date: _____ Dept Affected: Administration
 Title: "An Act relating to consideration and determination
by the Superior Court of..." BRU: Tax Appeals *
 Component: Tax Appeals *
 Sponsor: Rep. Green
 Requestor: House Judiciary COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITUR	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	113.6	113.6	113.6	113.6	113.6	113.6
TRAVEL	8.8	8.8	8.8	8.8	8.8	8.8
CONTRACTUAL	35.0	29.0	29.0	29.0	29.0	29.0
SUPPLIES	3.0	3.0	3.0	3.0	3.0	3.0
EQUIPMENT	28.0	2.5	2.5	2.5	5.0	2.5
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	188.4	156.9	156.9	156.9	159.4	156.9

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	188.4	156.9	156.9	156.9	159.4	156.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
Total	188.4	156.9	156.9	156.9	159.4	156.9

Estimate of current year (FY 96) cost: \$ 0.0 _____


POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

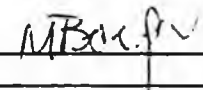
ANALYSIS: (Attach a separate page if necessary)

* New BRU and Component in the Department of Administration

(See Attached)

Prepared by: Sharon Barton, Director 
 Division: Administrative Services

Phone: 465-5655
 Date: _____

Approved by Commissioner: Mark Boyer 
 Agency: Department of Administration

Date: 5/2/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

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ANALYSIS: (continued)

This bill creates an Office of Tax Appeals in the Department of Administration.

Personal Services - The Office of Tax Appeals will include one Administrative Law Judge (equivalent to a Limited Entry Commissioner, range 26, annual cost \$96.4) who will hear all appeals involving tax matters from the Department of Revenue, including severance tax, corporate income tax, and all fisheries taxes. The ALJ will require the support of a half time Secretary I, annual cost \$17.2, for a total cost of \$113.6.

Travel - Cost based upon an estimated seven trips (air fare \$400) with 3 days (\$120 per day) of per diem for each trip for routine hearings and an additional \$3.5 to cover two or three major hearings (lasting in excess of 3 to 5 days) at the same rate.

Contractual - Funding is needed to provide office space, communications (telephone/computer), additional legal support for large cases, I/A for Commissioner's Office and Administrative Services support, other professional services, subscriptions, courier service and printing. The recurring incremental costs for these items is \$29.0.

Supplies - \$3.0 is needed for general office supplies, software, and data processing supplies.

Equipment - Equipment needs include two computers, printers, copier, FAX and office furniture. Estimated start-up costs are \$28.0. Recurring funding of \$2.5 is needed for maintenance or replacement parts. \$5.0 has been included in 2001 for equipment replacement or upgrade.

FISCAL NOTE

REPORTED OUT OF

SFC 4/28/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 341

Revision Date: 4/17/96

Dept. Affected: Alaska Judicial Council

Title: Tax Court

BRU: _____

Components: _____

Sponsor: _____

Requestor: _____

COMPONENT SERIAL NO. C/71

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL	3.5					
CONTRACTUAL	9.8					
SUPPLIES	0.8					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	13.9					

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	13.9					
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	13.9					

POSITIONS

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

Estimate of current year (FY 96) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)

See attached memo to House Finance Committee from William T. Cotton, dated March 19, 1996, re: CSHB 341.

Prepared by: William T. Cotton, Executive Director *William T. Cotton* Phone: 279-2526
Agency: Alaska Judicial Council *WTC* Date: 4/17/96

Approved by: William T. Cotton, Executive Director
Agency: Alaska Judicial Council Date: 4/17/96

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House Finance Committee
March 19, 1996
Page 2

Costs

Travel		
	Travel and per diem for one 2-day Anchorage Council Meeting	3.5
Contractual		
1.	Advertising	
	Three small display ads in Anchorage, Juneau, Fairbanks requesting public comment	1.7
2.	Temporary Secretary (30 hours/week for six weeks)	2.9
3.	Mailing	
a.	Announcement letter (to attorneys, including Bar labels)	1.2
b.	Survey (to attorneys, including Bar labels)	3.2
c.	Miscellaneous (references, targeted surveys)	.1
4.	Credit Checks	.5
Supplies		
	Paper, envelopes for survey	.8
		<hr/>
	Total	13.9

Please feel free to contact me with any further questions.

WTC:sl

FISCAL NOTE

SFC 4/28/96

Revision Date: _____ Dept. Affected: Revenue
 Title: Tax Appeals/Assessment/ Levy/Collection BRU: Permanent Fund Dividend
 Component: Permanent Fund Dividend
 Sponsor: Representative Green
 Requestor: Senate Finance COMPONENT SERIAL NO. 981

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	29.0	29.0	29.0	29.0	29.0	29.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	29.0	29.0	29.0	29.0	29.0	29.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1050 PFD Dividend Fund	29.0	29.0	29.0	29.0	29.0	29.0
1016 Federal Incentive Payments						
TOTAL	29.0	29.0	29.0	29.0	29.0	29.0

Estimate of any current year (FY96) cost \$ 0.0

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

The \$29.0 in contractual funding is needed to pay for increased hearing officer services provided by the formal Hearing Section in the Commissioner's office. PFD formal hearing caseload has increased significantly over the past several years and some staffing has been paid for with general funds. With the passage of HB 341 the general funds available in the Hearing Section are being reduced (which helps offset the Department of Administrations fiscal note on this bill) as the tax appeal function is being transferred to DOA. This request for increased funding is necessary to replace the general funds currently being expended on PFD appeals. There is not sufficient funding in PFD's current operating budget to absorb the Hearing Officer costs that are currently paid for with general funds.

Prepared by: Deborah Vogt, Deputy Commissioner Phone: (907) 465-2302
 Division: Commissioner's Office Date: April 30, 1996
 Approved by Commissioner: Wilson L. Condon Date: April 30, 1996
 Agency: Department of Revenue

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FISCAL NOTE

SFC 4/28/96

Revision Date: April 30, 1996 Dept. Affected: Revenue
 Title: Tax Appeals/Assessment/Levy/Collection BRU: Administration and Support
 Component: Commissioner's Office
 Sponsor: Representative Green
 Requestor: Senate Finance COMPONENT SERIAL NO. 123

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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 ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	29.0					
1003 GF Match						
1004 GF	-58.0					
1005 GF/Program Receipts						
1050 PFD Dividend Fund						
1007 Interagency Receipts	29.0					
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Upon the passage of HB 341 the Hearing sections caseload will consist primarily of Child Support Enforcement, Permanent Fund Dividend and Charitable Gaming appeals. The majority of general funds allocated to this section is being reduced as the tax appeal function is being transferred to Department of Administration. As detailed on the attached schedule, this proposed funding switch would allocate funding in accordance with this. Some PFD and CSED hearing services are now paid for with general funds. After the fund switch CSED services will be paid with a federal fund source and PFD will pay via interagency receipts.

Prepared by: Deborah Vogt, Deputy Commissioner Phone: (907) 465-2302
 Division: Commissioner's Office Date: April 30, 1996
 Approved by Commissioner: Wilson L. Condon Date: April 30, 1996
 Agency: Department of Revenue

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Alaska Department of Revenue
 Hearing Section Funding

Reduce General Fund to 10%

Position	PCN	Total Cost	GF Cost	CSED Cost	PFD Cost
Senior Hearing Officer	040014	\$ 93,415.00	\$ 9,341.50	\$ 42,036.75	\$ 42,036.75
Paralegal Ass't II	040015	\$ 53,516.00	\$ 5,351.60	\$ 24,082.20	\$ 24,082.20
Admin Clerk II	041033	\$ 34,912.00	\$ 3,491.20	\$ 15,710.40	\$ 15,710.40
Total		\$ 181,843.00	\$ 18,184.30	\$ 81,829.35	\$ 81,829.35
PFD Hearing Officer	040012	\$ 74,909.00			\$ 74,909.00
CSED Hearing Officer	040025	\$ 74,909.00		\$ 74,909.00	
Total		\$ 331,661.00	\$ 18,184.30	\$ 156,738.35	\$ 156,738.35

General Fund Savings:

Current General Fund	\$ 76,188.00
10% General Fund	\$ (18,184.30)
Difference	\$ 58,003.70

FISCAL NOTE

REPORTED OUT OF No. 5
4/28/96
Bim Version: SCSCT#34(JUD)
BIL (S) Publish Date: 4/22/96

STATE OF ALASKA 1996 LEGISLATIVE SESSION

Revision Date: 04/22/96 Dept. Affected: Alaska Court System
Title: An Act establishing a tax court... BRU: Trial Courts
Sponsor: Rep. Green Component: _____
Requestor: House Resources COMPONENT SERIAL NO. 768

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (

FUND SOURCE		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL						

Estimate of any current year (FY 96) cost: \$ None

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel
Agency: Alaska Court System

Phone: 264-8228
Date: 04/22/96

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Date: 04/22/96

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Alaska Court System
Fiscal Analysis
SCS CSHB 341 (JUD)

SCS CSHB 341 (JUD) amends the current method of administrative adjudication and judicial appeals relating to tax cases. It establishes the office of tax appeals as a quasi-judicial agency in the Department of Administration, and under certain conditions, gives taxpayers the right to go directly to court to challenge tax assessments in a trial de novo, rather than an on-the-record appeal.

The Department of Revenue has advised that the circumstances under which a taxpayer would be entitled to go directly to court are very limited, and that even under existing law, it would normally use its discretion to allow a taxpayer to go directly to court on those issues. Accordingly, this note does not attempt to estimate the amount of judicial and clerical time which might be spent on direct appeals authorized by this legislation.

According to the Department of Revenue, there are approximately 24 tax cases per year to which SCS CSHB 341 (JUD) would apply: 20 in the Income and Excise Audit Division, and 4 in the Oil and Tax Audit Division. These cases vary in size and complexity, with the largest cases requiring a substantial commitment of judicial and clerical time, if they come directly to court for a trial de novo.

A FAX

Alaska State Legislature

Date: 4-28-96

To: Legal Services - Karen

Fax #: 2029 Phone #: 2450

From: Kathy - Senate Finance Committee

Phone #: 2618

Re: Please incorporate attached amendments A, C, D, and E within JCS CS HB 341 (Jud) (9-LS1129\H) to produce a final JCS CS HB 341 (Fin) and return final to Room 520, Capitol Bldg.

Following this page, please find 6 pages(s). If this does not reach you in full, please inform us ASAP.



THANK YOU

Fried
1:00pm

H-27-96 PM
BS offered
No Obj
Adopted
REV.A
4/27/96

A M E N D M E N T A

OFFERED IN THE SENATE

BY SENATOR _____

TO: SCS CSHB 341(JUD), dated April 22, 1996

1 Page 3, line 1:

2 Delete "120"

3 Insert "150"

4 Page 3, line 8:

5 Delete "30"

6 Insert "60"

7 Page 3, line 12:

8 Delete ", but"

9 Insert "; however,"

10 Page 3, line 15:

11 Insert:

12 (d) Upon notice of an opening and request by the governor for
13 nominations under this section, including a vacancy caused by the decision of a
14 sitting administrative law judge to not seek reappointment, a vacancy caused by
15 the removal or resignation of an administrative law judge, or an opening
16 resulting from the decision to add an additional administrative law judge position
17 to the office, the judicial council shall advertise and invite applications for the

1 position. The judicial council shall meet and make nominations under this
2 section for the position within 120 days of the governor's notice and request for
3 nominations, unless the 120-day period is extended by the council with the
4 concurrence of the governor."

5 Renumber remaining subsections accordingly.

6 Page 3, line 15:

7 Delete "(a) of"

8 Page 3, line 21:

9 Delete "(c) and (d) of"

10 Page 4, line 2:

11 Insert "copies of" after "recommendations"

4-27-96
BS
moved
No. Obj
Adopted

REV.C
4/27/96

AMENDMENT

C

OFFERED IN THE SENATE BY SENATOR _____
TO: SCS CSHB 341(JUD), dated April 22, 1996

1 Page 17, line 20

2 Delete all material.

3 Insert:

4 "decision only with respect to an issue in the assessment for tax, interest and
5 penalties that the taxpayer raises upon the ground that a tax statute or tax
6 regulation is"

7 Page 17, line 24

8 Following "appeal" insert "of an issue"

9 Page 17, line 30

10 Following "tax" insert "related to the issue"

11 Page 18, line 10

12 Following "exclusive" insert "as to the issue raised"

13 Page 18, line 10

14 Following "pursue an appeal" insert "of the issue"

15 Page 18, line 11

16 Following "statute" insert "on the issue"

17 Page 18, lines 21-22

18 Delete "or if the superior court rules against the taxpayer,"

1

2 Page 18, lines 23-25

3 Delete "without prejudice to any claims or defenses of the taxpayer that were
4 barred from being raised in court by (c)(4) of this section"

5

4-27-96

SF
moved
No O.H.J.

REV.D
4/27/96

Adopted

AMENDMENT D

OFFERED IN THE SENATE BY SENATOR _____
TO: SCS CSHB 341(JUD), dated April 22, 1996

- 1 Page 17, line 13:
- 2 Delete "60" and insert "30"
- 3 Page 17, line 16:
- 4 Delete "60" and insert "30"
- 5 Page 18, line 14:
- 6 Delete "60" and insert "30"

Sen. Sharp
moved
no objection
adopted

~~SENATE~~
~~CLERK~~

AMENDMENT E

OFFERED IN THE SENATE
TO: SCS CSHB 341(JUD), dated April 22, 1996

BY SENATOR Sharp

1 Page 22, line 2:

2 Insert:

3 " (d) Notwithstanding sec. 20 of this Act, upon receipt of a notice and
4 request for nominations by the governor, the Alaska Judicial Council shall
5 immediately proceed to advertise the position, invite applications, give public
6 notice of applications received, invite public comment on the applications,
7 evaluate the applicants, and make nominations as provided in AS 43.05.410 in
8 sec. 1 of this Act."

9 Renumber remaining subsection accordingly.

10 Page 22, line 7:

11 Delete all material and insert:

12 "**Sec. 19. Section 18(d) of this Act takes effect immediately under
13 AS 01.10.070(c).

14 *Sec. 20. Except as provided in sec. 19, this Act takes effect July 1, 1996."

Page 2, Line 25 after the word "is"
Delete two
Insert three

Post-it® Fax Note	7671	Date	4/29	# of pages ▶	1
To	Robert Briggs	From	Jerry L. Soltani		
Co. Dept.	Dept. of Law	Co.	Sen. Fin. Committee		
Phone #	6220	Phone #	4435		
Fax #	2417	Fax #	2187		

7/28/96
Efd. motion
p. 23, line 7
withdrawn
9-LS1129(H)

~~FIN~~
SENATE CS FOR CS FOR HOUSE BILL NO. 341(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/22/96
Referred: Finance

Sponsor(s): REPRESENTATIVES GREEN, James

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative adjudication and judicial appeals and to the
2 informal resolution of certain factual disputes between taxpayers and the
3 Department of Revenue; establishing the office of tax appeals as a quasi-judicial
4 agency in the Department of Administration; revising the procedures for hearing
5 certain tax appeals, including appeals regarding seafood marketing assessments;
6 relating to consideration and determination by the superior court of disputes
7 involving certain taxes and penalties due, and amending provisions relating to
8 the assessment, levy, and collection of taxes and penalties by the state and to
9 the tax liability of taxpayers; providing for the release of agency records
10 relating to formal administrative tax appeals; relating to litigation disclosure of
11 public records; clarifying administrative subpoena power in certain tax matters;
12 and providing for an effective date."

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

2 * Section 1. AS 43.05 is amended by adding new sections to read:

3 ARTICLE 4. OFFICE OF TAX APPEALS.

4 Sec. 43.05.400. OFFICE OF TAX APPEALS ESTABLISHED. The office of
5 tax appeals is established within the department.

6 Sec. 43.05.405. JURISDICTION. The office of tax appeals has original
7 jurisdiction to hear formal appeals from informal conference decisions of the
8 Department of Revenue under AS 43.05.240. Appeal to the office may be taken only
9 from an informal conference decision under AS 43.05.240. Jurisdiction of the office
10 is limited to, and AS 43.05.400 - 43.05.499 applies to and governs, an administrative
11 appeal regarding

12 (1) electric and telephone cooperative taxes under AS 10.25;

13 (2) a seafood marketing assessment under AS 16.51;

14 (3) all taxes levied under AS 43, except the property tax assessed under
15 AS 43.56; and

16 (4) any other taxes administered by the Department of Revenue.

17 Sec. 43.05.410. APPOINTMENT; TERM; REAPPOINTMENT. (a) The
18 governor shall appoint a chief administrative law judge of the office of tax appeals
19 from among two or more persons nominated as most qualified for that position by the
20 Alaska Judicial Council. If one or more additional administrative law judges are
21 established in the office of tax appeals, the governor shall appoint additional
22 administrative law judges from among two or more persons nominated as most
23 qualified for each position by the judicial council.

24 (b) The initial term for an administrative law judge, including the chief
25 administrative law judge, is two years. The governor may reappoint a person appointed
26 to serve as an administrative law judge, including the chief administrative law judge,
27 to subsequent terms of four years each.

28 (c) A reappointment of a person appointed to serve as an administrative law
29 judge, including the chief administrative law judge, shall be made as follows:

30 (1) if an administrative law judge seeks reappointment, the governor
31 shall notify the judicial council of the impending end of the administrative law judge's

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term at least 120 days before the end of the term;

(2) in reviewing the performance of the administrative law judge, the judicial council shall collect and review sufficient information to thoroughly evaluate the administrative law judge; the review by the judicial council must include a published notice requesting written comments on the administrative law judge whose performance is being evaluated;

(3) the judicial council shall review the performance of the administrative law judge and submit by at least 30 days before the vacancy a recommendation to the governor on whether the administrative law judge should be reappointed;

(4) the governor has discretion to reappoint or not reappoint an administrative law judge whom the judicial council recommends for reappointment, but the governor may not reappoint a person as administrative law judge if the judicial council recommends against that reappointment.

(d) Nominations made by the Alaska Judicial Council under (a) of this section shall be made after the judicial council has reviewed the qualifications of applicants for administrative law judges. The judicial council shall collect and review sufficient information to thoroughly evaluate each applicant. The review by the judicial council must include a published notice requesting written comments on the list of applicants for an administrative law judge opening.

(e) In reviews by the Alaska Judicial Council under (c) and (d) of this section,

(1) comments, references, or survey responses that request confidentiality, or for which the judicial council promises confidentiality, shall be kept confidential, but the judicial council shall provide the applicant for administrative law judge or administrative law judges seeking reappointment a summary of the concerns raised in the comments, references, and survey responses that are kept confidential;

(2) the judicial council has authority to review confidential Alaska Bar Association files, including bar complaint files, on applicants for administrative law judge and on administrative law judges seeking reappointment whose applications or reappointment evaluations are under review; the judicial council shall maintain the confidentiality of these files; and

1 (3) the judicial council shall send to the governor with its nominees or
2 reappointment recommendations all nonconfidential materials that it gathers on
3 applicants for administrative law judge and administrative law judges seeking
4 reappointment whose applications or reappointment evaluations are under review, and
5 shall provide the governor with summaries of concerns raised in the comments,
6 references, and survey responses that are kept confidential.

7 Sec. 43.05.415. REMOVAL. (a) The chief administrative law judge may be
8 disciplined or removed from office by the commissioner only for good cause.

9 (b) An administrative law judge other than the chief administrative law judge
10 may be disciplined or removed from office by the chief administrative law judge only
11 for good cause.

12 (c) In this section, "good cause" includes

13 (1) violation of the Alaska code of judicial conduct adopted by the
14 Alaska Supreme Court;

15 (2) conviction of a crime of moral turpitude;

16 (3) unjustified failure to handle the caseload assigned or similar
17 nonfeasance of office;

18 (4) failure to meet the requirements of AS 43.05.425 relating to
19 qualification for office; and

20 (5) unreasonable failure to comply with the statutes or regulations
21 regarding the confidentiality of taxpayer information.

22 Sec. 43.05.420. ADMINISTRATION. (a) The chief administrative law judge

23 (1) shall exercise general supervision of the office; and

24 (2) may select and hire staff for the office.

25 (b) An administrative law judge, including the chief administrative law judge,
26 may preside over a proceeding and carry out any procedures authorized under
27 AS 43.05.400 - 43.05.499.

28 (c) The chief administrative law judge may adopt regulations implementing or
29 interpreting AS 43.05.400 - 43.05.499, including rules of procedure and evidence for
30 proceedings before the office.

31 Sec. 43.05.425. QUALIFICATIONS; CODE OF CONDUCT. (a) An

1 administrative law judge, including the chief administrative law judge, at the time of
2 appointment, must

3 (1) be licensed to practice law in this state or another state; and

4 (2) have experience in the field of tax law or tax administration.

5 (b) A person appointed as an administrative law judge under AS 43.05.410
6 who is not licensed to practice law in this state at the time of appointment must
7 become licensed to practice law in this state within 12 months after appointment or
8 shall cease to hold office.

9 (c) An administrative law judge, including the chief administrative law judge,
10 shall comply with the Alaska code of judicial conduct and, except as provided in (b)
11 of this section, shall be and remain licensed to practice law in this state.

12 Sec. 43.05.430. NOTICE OF APPEAL FROM INFORMAL CONFERENCE
13 DECISION. An appeal under the jurisdiction of the office is initiated by filing with
14 the office, and serving upon the commissioner of revenue, a notice of appeal from an
15 informal conference decision of the Department of Revenue under AS 43.05.240. A
16 notice of appeal from the informal conference decision may be filed or amended after
17 the time for filing has expired only if good cause is shown.

18 Sec. 43.05.435. SCOPE AND STANDARDS FOR DECISION. The
19 administrative law judge shall hear all questions de novo under AS 43.05.400 -
20 43.05.499. The administrative law judge shall

21 (1) resolve a question of fact by a preponderance of the evidence or,
22 if a different standard of proof has been set by law for a particular question, by that
23 standard of proof;

24 (2) resolve a question of law in the exercise of the independent
25 judgment of the administrative law judge;

26 (3) defer to the Department of Revenue as to a matter for which
27 discretion is legally vested in the Department of Revenue, unless not supported by a
28 reasonable basis.

29 Sec. 43.05.440. SERVICE OF DOCUMENTS. Service of documents required
30 under AS 43.05.400 - 43.05.499 may be accomplished in any manner authorized under
31 the Alaska Rules of Civil Procedure. If service is done only by mail, the date of

1 service is determined by the date of mailing. If service is done by both mail and hand
2 delivery, the date of service is determined by the earlier of the date of mailing or
3 actual receipt of the documents.

4 Sec. 43.05.445. DISCOVERY. (a) In an appeal under AS 43.05.405,
5 discovery may take place only under a plan for discovery approved by the
6 administrative law judge. The administrative law judge shall approve a plan for
7 discovery to the extent consistent with the efficient, just, and speedy conduct of the
8 appeal. The plan may limit or set conditions on discovery and must include provisions
9 for stipulations of fact by the Department of Revenue and the taxpayer. Discovery
10 shall be limited to information that is relevant to the determination of the correct tax
11 or penalty, unless the Department of Revenue or the taxpayer makes a showing that
12 the discovery is reasonably calculated to lead to admissible information.

13 (b) Requests by the taxpayer for disclosure of public records relating to the
14 appeal are governed by, and the records are disclosed only in accordance with, the plan
15 approved under this section.

16 (c) Legislative history, reported court decisions, statutes, regulations, or similar
17 documents available for public inspection at a library or the office of the lieutenant
18 governor or through a publicly accessible database must be obtained through those
19 means and may not be sought through discovery.

20 Sec. 43.05.450. SUBPOENAS. An administrative law judge may issue a
21 subpoena to compel attendance of a witness or the production of a document or thing.
22 A subpoena may compel attendance of a witness or production of a document or thing,
23 located either inside or outside the state, to the maximum extent permitted by law. A
24 subpoena may be used for the purpose of discovery or for the purpose of presenting
25 evidence at a formal hearing. A subpoena shall issue upon request of a party, subject
26 to reasonable limitation or conditions set in the subpoena. A subpoena may be
27 enforced by petition to or other appropriate legal proceeding brought in a court of this
28 state or another jurisdiction.

29 Sec. 43.05.455. FORMAL HEARING. (a) At or before the formal hearing,
30 a party may present argument and evidence relevant to the amount of the tax or
31 penalty. The administrative law judge shall administer oaths and permit inquiry

1 necessary to determine the proper amount of the tax or penalty.

2 (b) Each party and witness shall be present during the formal hearing, except
3 that

4 (1) with the consent of the taxpayer, the administrative law judge may
5 conduct all or part of the hearing by telephone, audio or video teleconference, or other
6 electronic medium; and

7 (2) with the consent of the parties and the administrative law judge, all
8 or part of the hearing may be conducted through correspondence.

9 (c) The taxpayer bears the burden of proof on questions of fact by a
10 preponderance of the evidence unless a different standard of proof has been set by law
11 for a particular question.

12 (d) The formal hearing before the administrative law judge is not required to
13 be conducted with strict adherence to the Alaska Rules of Evidence. Relevant
14 evidence must be admitted if it is probative of a material fact in controversy.
15 Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence is
16 admissible if it is the kind of evidence on which responsible persons are accustomed
17 to rely in the conduct of serious affairs, regardless of the existence of a common law
18 or statutory rule that makes improper the admission of the evidence over objection in
19 a civil action. Oral evidence may be taken only on oath or affirmation. The rules of
20 privilege are effective to the same extent that they are recognized in a civil action in
21 the courts of this state, except that relevant documents and other material items that
22 are public records under AS 09.25.100 - 09.25.220 shall be admissible.

23 (e) The administrative law judge shall make a record of the proceedings of the
24 appeal, including recordation of the proceedings of a formal hearing by electronic or
25 stenographic means.

26 (f) The administrative law judge may grant exceptions to the requirements of
27 this section in the interest of justice.

28 Sec. 43.05.460. ENFORCEMENT. (a) The administrative law judge and each
29 party is responsible for the efficient, just, and speedy conduct of the formal hearing.
30 The administrative law judge may impose sanctions on the parties for failure to comply
31 with a subpoena, an order respecting discovery, and any other matter regarding conduct

1 of the appeal. In imposing sanctions, the administrative law judge shall be guided by
2 the practices of the courts of this state in imposing sanctions for similar offenses in
3 civil proceedings.

4 (b) The administrative law judge may

5 (1) remand the matter for consideration of material new information or
6 material information withheld by a party;

7 (2) prohibit a party from introducing information previously withheld
8 without good cause, and any other evidence dependent upon the information;

9 (3) enter an order, upon a showing of good cause,

10 (A) barring a designated claim or defense;

11 (B) striking part or all of a pleading of a party; or

12 (C) dismissing part or all of the appeal; or

13 (4) grant any other relief that the administrative law judge considers
14 appropriate.

15 (c) In addition to the remedies of (a) and (b) of this section, a party may seek
16 enforcement of a subpoena or other order of an administrative law judge by the
17 superior court under AS 44.62.590.

18 Sec. 43.05.465. DECISION; RECONSIDERATION; FINALITY. (a) Within
19 180 days after the record on the appeal is closed, the administrative law judge shall
20 issue a decision in writing. The decision must contain a concise statement of reasons
21 for the decision, including findings of fact and conclusions of law. In the decision, the
22 administrative law judge may grant relief, provide remedies, and issue any order that
23 is appropriate. The administrative law judge shall serve each party in the case with
24 a copy of the decision. Unless reconsideration is ordered under (c) of this section, the
25 decision under this subsection is the final administrative decision.

26 (b) A party may request reconsideration of a decision issued under (a) of this
27 section within 30 days after the date of service shown in the certificate of service of
28 the decision. The request must state specific grounds for reconsideration.
29 Reconsideration may be granted if, in reaching the decision, the administrative law
30 judge has

31 (1) overlooked, misapplied, or failed to consider a statute, regulation,

- 1 court or administrative decision, or legal principle directly controlling;
2 (2) overlooked or misconceived some material fact or proposition of
3 law;
4 (3) misconceived a material question in the case; or
5 (4) applied law in the ruling that has subsequently changed.

6 (c) The administrative law judge may issue an order for reconsideration of all
7 or part of the decision upon request of a party. Reconsideration is based on the record,
8 unless the administrative law judge allows additional evidence and argument. A
9 hearing on reconsideration at which additional evidence or argument is offered or
10 received is subject to the procedures applicable to a hearing under AS 43.05.455.

11 (d) The power to order reconsideration expires 60 days after the date of
12 service, as shown on the certificate of service, of a decision issued under (a) of this
13 section. If the administrative law judge does not issue an order for reconsideration
14 within the time allowed for ordering reconsideration, a motion for reconsideration is
15 considered denied.

16 (e) Within 60 days after the close of the record on reconsideration, the
17 administrative law judge shall issue a written decision upon reconsideration. The
18 administrative law judge shall serve each party in the case with a copy of the decision
19 upon reconsideration. The decision upon reconsideration is the final administrative
20 decision.

21 (f) A final administrative decision becomes final either on the date

22 (1) 60 days after the date of service of a decision issued under (a) of
23 this section if an order for reconsideration is not issued; or

24 (2) the decision upon reconsideration is served, as shown by the
25 certificate of service executed by the administrative law judge under (e) of this section.

26 Sec. 43.05.470. PUBLIC PROCEEDINGS AND RECORDS. (a) Records,
27 proceedings, and decisions under AS 43.05.400 - 43.05.499 are confidential, except
28 that the records, proceedings, and decisions become public records and open to the
29 public when the final administrative decision is issued and becomes final.

30 (b) Upon a showing of good cause, an administrative law judge shall issue a
31 protective order requiring that specified parts of the records, proceeding, or decision

1 shall be kept confidential in a particular appeal. If a protective order is issued, the
2 final administrative decision shall be made public after redacting by deletion or
3 substitution of information as required by the protective order.

4 (c) The department, in consultation with the chief administrative law judge,
5 shall maintain, index, and make available for public inspection the final administrative
6 decisions, proceedings, and records of the office made public under this section.

7 Sec. 43.05.475. CONSISTENCY OF DECISIONS. (a) As to questions of
8 law, a final administrative decision issued under AS 43.05.400 - 43.05.499, unless
9 reversed or overruled, has the force of legal precedent.

10 (b) To promote consistency among legal determinations issued under
11 AS 43.05.400 - 43.05.499, the chief administrative law judge may review and circulate
12 among the other administrative law judges the drafts of formal decisions, decisions
13 upon reconsideration, and other legal opinions of the other administrative law judges
14 in the office. The drafts are confidential documents and are not subject to disclosure
15 under AS 09.25.100 - 09.25.220 or this chapter.

16 Sec. 43.05.480. JUDICIAL REVIEW. (a) Judicial review by the superior
17 court of a final administrative decision may be had by a party to the appeal under
18 AS 43.05.400 - 43.05.499 by filing a notice of appeal in accordance with the
19 applicable rules of court governing appeals to that court in civil matters. The notice
20 of appeal shall be filed within 30 days after an administrative decision becomes final
21 under AS 43.05.465. The right to judicial review under this subsection is not affected
22 by the failure to seek reconsideration before the administrative law judge.

23 (b) The amount due must be paid or refunded within 30 days after the date
24 that the final administrative decision becomes final under AS 43.05.465. In place of
25 payment of the amount due, a taxpayer who has appealed a final administrative
26 decision may file a bond with the court or otherwise obtain relief from payment in
27 accordance with the Alaska Rules of Appellate Procedure.

28 (c) Appeals under this section are reviewed under AS 44.62.560 and 44.62.570.

29 (d) If, after the appeal is heard, it appears that the final administrative decision
30 was correct, the court shall affirm the decision. If the final administrative decision is
31 incorrect, the court shall determine the amount due. If the taxpayer is entitled to a

1 refund, the court shall order the repayment and the Department of Revenue shall pay
2 the amount due and attach a certified copy of the judgment to the payment. If the
3 court determines that the taxpayer owes an additional amount, the court shall order the
4 payment and the taxpayer shall pay the amount due and attach a certified copy of the
5 judgment to the payment. Any payment required under this subsection shall be paid
6 by the 30th day following the expiration of the time within which an appeal from the
7 superior court decision may be filed, unless the party appealing files a bond or
8 otherwise obtains relief from payment in accordance with the Alaska Rules of
9 Appellate Procedure.

10 Sec. 43.05.499. DEFINITIONS. In AS 43.05.400 - 43.05.499, unless the
11 context otherwise requires,

12 (1) "administrative law judge" means an administrative law judge
13 appointed under AS 43.05.410;

14 (2) "commissioner" means the commissioner of administration;

15 (3) "department" means the Department of Administration;

16 (4) "discovery" means the use of subpoenas, subpoenas duces tecum,
17 interrogatories, requests for production, requests for admission, depositions, and other
18 methods of civil procedure by which one party to an action may discover information
19 within the knowledge and control of another person;

20 (5) "legislative history" means the documents of the legislature
21 recording the background and events, including draft bills, correspondence and
22 memoranda, committee reports, tapes and transcripts of hearings, and tapes and
23 transcripts of floor debate concerning consideration of a bill;

24 (6) "office" means office of tax appeals in the department;

25 (7) "party" means the Department of Revenue or the taxpayer;

26 (8) "proceeding" means only a proceeding under the jurisdiction of the
27 office;

28 (9) "subpoena" means a command to appear at a certain time and place
29 to testify, or to appear at a certain time and place to produce books, papers, and other
30 things, and testify;

31 (10) "tax" means a tax described in AS 43.05.405, including a seafood

1 marketing assessment under AS 16.51;

2 (11) "taxpayer" means a person required to pay a tax, including a
3 person required to pay a seafood marketing assessment under AS 16.51.

4 * Sec. 2. AS 09.25.100 is amended to read:

5 Sec. 09.25.100. DISPOSITION OF TAX INFORMATION. Information in the
6 possession of the Department of Revenue that discloses the particulars of the business
7 or affairs of a taxpayer or other person is not a matter of public record, except for
8 purposes of investigation and law enforcement. The information shall be kept
9 confidential except when its production is required in an official investigation,
10 administrative adjudication under AS 43.05.400 - 43.05.499, or court proceeding.
11 These restrictions do not prohibit the publication of statistics presented in a manner
12 that prevents the identification of particular reports and items, [OR] prohibit the
13 publication of tax lists showing the names of taxpayers who are delinquent and
14 relevant information that may assist in the collection of delinquent taxes, or prohibit
15 the publication of records, proceedings, and decisions under AS 43.05.400 -
16 43.05.499.

17 * Sec. 3. AS 09.25.122 is amended to read:

18 Sec. 09.25.122. LITIGATION DISCLOSURE. A public record that is subject
19 to disclosure and copying under AS 09.25.110 - 09.25.120 remains a public record
20 subject to disclosure and copying even if the record is used for, included in, or relevant
21 to litigation, including law enforcement proceedings, involving a public agency, except
22 that with respect to a person involved in litigation, the records sought shall be
23 disclosed in accordance with the rules of procedure applicable in a court or an
24 administrative adjudication [RULES]. In this section, "involved in litigation" means
25 a party to litigation or representing a party to litigation, including obtaining public
26 records for the party.

27 * Sec. 4. AS 22.10.020(d) is amended to read:

28 (d) The superior court has jurisdiction in all matters appealed to it from a
29 subordinate court, or administrative agency when appeal is provided by law. The
30 hearings on appeal from a final order or judgment of a subordinate court or
31 administrative agency, except an appeal under AS 43.05.242, shall be on the record

1 unless the superior court, in its discretion, grants a trial de novo, in whole or in part.
2 The hearings on appeal from a final order or judgment under AS 43.05.242 shall
3 be on the record.

4 * Sec. 5. AS 37.10.410 is amended to read:

5 Sec. 37.10.410. "ADMINISTRATIVE PROCEEDINGS INVOLVING TAXES"
6 DEFINED. (a) The following money received by the state is considered to be
7 received as a result of the termination of an administrative proceeding for purposes of
8 applying art. IX, sec. 17(a), Constitution of the State of Alaska:

9 (1) past due taxes that are received by the state for each tax year for
10 which a request for an informal conference under AS 43.05.240 [AS 43.05.240(a)] is
11 made to the Department of Revenue, together with penalties and interest on the taxes;

12 (2) past due taxes that are received by the state after a request for a
13 formal hearing under AS 43.05.241 [AS 43.05.240(b)(1)] is made to the Department
14 of Revenue, together with penalties and interest on the taxes.

15 (b) Money received by the state under the following conditions is not
16 considered to be received as the result of the termination of an administrative
17 proceeding for purposes of applying art. IX, sec. 17(a), Constitution of the State of
18 Alaska:

19 (1) taxes that are not due at the time the request for the proceeding was
20 made under AS 43.05.240, 43.05.241, or 43.05.242 [AS 43.05.240(a) or (b)(1)];

21 (2) taxes set out in a return not audited by the Department of Revenue
22 at the date of collection; or

23 (3) taxes collected for a tax year for which the taxpayer did not give
24 notice of appeal of an assessment made by the Department of Revenue.

25 * Sec. 6. AS 39.25.110 is amended by adding a new paragraph to read:

26 (31) the chief administrative law judge and any other administrative law
27 judges appointed to the office of tax appeals of the Department of Administration
28 under AS 43.05.400 - 43.05.499.

29 * Sec. 7. AS 43.05.010 is amended to read:

30 Sec. 43.05.010. DUTIES OF COMMISSIONER. The commissioner of
31 revenue shall

1 (1) exercise general supervision and direct the activities of the
2 Department of Revenue;

3 (2) supervise the fiscal affairs and responsibilities of the department;

4 (3) prescribe uniform rules for investigations and hearings;

5 (4) keep a record of all departmental proceedings, record and file all
6 bonds, and assume custody of returns, reports, papers, and documents of the
7 department;

8 (5) [REPEALED

9 (6)] adopt a seal and affix it to each order, process, or certificate issued
10 by the commissioner;

11 ~~(6)~~ [(7)] keep a record of each order, process, and certificate issued by
12 the commissioner, and keep the record open to public inspection at all reasonable
13 times;

14 ~~(7)~~ [(8)] hold hearings and investigations necessary for the
15 administration of state tax and revenue laws;

16 ~~(8)~~ except as provided in AS 43.05.400 - 43.05.499, [(9)] hear and
17 determine appeals of a matter within the jurisdiction of the Department of Revenue
18 [INVOLVING INCOME, EXCISE, LICENSE, OR OTHER TAXES LEVIED UNDER
19 STATE LAWS] and enter orders on the appeals that are final unless reversed or
20 modified by the courts;

21 ~~(9)~~ issue subpoenas to [(10)] require the attendance of witnesses and
22 the production of necessary books, papers, documents, correspondence, and other
23 things [EVIDENCE AT HEARINGS];

24 ~~(10)~~ [(11)] order the taking of depositions before a person competent
25 to administer oaths;

26 ~~(11)~~ [(12)] administer oaths and take acknowledgments;

27 ~~(12)~~ [(13)] request the attorney general for rulings on the interpretation
28 of the tax and revenue laws administered by the department;

29 ~~(13)~~ [(14)] call upon the attorney general to institute actions for
30 recovery of unpaid taxes, fees, excises, additions to tax, penalties, and interest;

31 ~~(14)~~ [(15)] issue warrants for the collection of unpaid tax penalties and

1 interest and take all steps necessary and proper to enforce full and complete
2 compliance with the tax, license, excise, and other revenue laws of the state;

3 ~~(15)~~ [(16)] audit reports, payments, and payments due relating to
4 royalty and net profits under oil and gas contracts, agreements, or leases under
5 AS 38.05 [;

6 (17) REPEALED].

7 * Sec. 8. AS 43.05.040 is amended to read:

8 Sec. 43.05.040. INSPECTION OF RECORDS OR PREMISES AND
9 ISSUANCE OF SUBPOENAS. (a) The department may examine the books, papers,
10 records, or memoranda of any person to ascertain the correctness of a return filed or
11 to determine whether a tax or a payment for oil or gas royalty or net profits shares
12 under a contract, agreement, or lease under AS 38.05 is due, or in an investigation or
13 inspection in connection with tax matters or matters relating to oil and gas royalty or
14 net profits under contracts, agreements, or leases under AS 38.05. The records and the
15 premises where a business is conducted shall be open at all reasonable times for
16 official inspection, and the department may subpoena any person to appear and
17 produce books, records, papers, or memoranda bearing upon tax matters or matters
18 relating to oil and gas royalty or net profits under contracts, agreements, or leases
19 under AS 38.05, and to give testimony or answer interrogatories under oath respecting
20 tax matters or matters related to oil and gas royalty or net profits under contracts,
21 agreements, or leases under AS 38.05, and the department may administer oaths to
22 persons who are so subpoenaed. A subpoena issued under this section may compel
23 attendance of a witness or production of a document or thing, located either
24 inside or outside the state, to the maximum extent permitted by law.

25 (b) A subpoena may be served by the commissioner of public safety or a peace
26 officer designated by the commissioner of public safety, [OR] by a person designated
27 by the Department of Revenue, or as otherwise provided by law. A subpoena may
28 also be served by registered or certified mail for delivery restricted only to the
29 person subpoenaed. The return delivery receipt must be addressed so that the
30 receipt is returned to the department.

31 (c) If a person who is subpoenaed neglects or refuses to obey the subpoena

1 issued as provided in this section, the department may report the fact to the superior
2 court or the appropriate court of another jurisdiction, and may seek an order
3 from the court compelling obedience to the subpoena. The [AND THE] court, to
4 the maximum extent permitted by law, may compel obedience to the subpoena to
5 the same extent as witnesses may be compelled to obey the subpoenas of the court.

6 * Sec. 9. AS 43.05.230(a) is amended to read:

7 (a) It is unlawful for a current or former officer, employee, or agent of the
8 state to divulge the amount of income or the particulars set out or disclosed in a report
9 or return made under this title, except

10 (1) in connection with official investigations or proceedings of the
11 department, whether judicial or administrative, involving taxes due under this title;

12 (2) in connection with official investigations or proceedings of the child
13 support enforcement agency, whether judicial or administrative, involving child support
14 obligations imposed or imposable under AS 25 or AS 47;

15 (3) as provided in AS 38.05.036 pertaining to audit functions; [AND]

16 (4) as provided in AS 43.05.400 - 43.05.499; and

17 (5) as otherwise provided in this section.

18 * Sec. 10. AS 43.05.240 is repealed and reenacted to read:

19 Sec. 43.05.240. TAXPAYER REMEDIES. (a) A taxpayer aggrieved by the
20 action of the department in fixing the amount of a tax or penalty may apply to the
21 department within 60 days after the date of mailing of the notice required to be given
22 to the taxpayer by the department, giving notice of the grievance, and requesting an
23 informal conference to be scheduled with an appeals officer. The taxpayer shall be
24 given access to the taxpayer's file in the department in the matter for preparation for
25 the informal conference. At the informal conference, the taxpayer may present to the
26 appeals officer arguments and evidence relevant to the amount of tax or penalty due
27 the state. If the department determines that a correction is warranted, the department
28 shall make the correction.

29 (b) A party who believes that the appeals officer is unduly delaying a hearing
30 process may notify the commissioner in writing. Within 30 days after being notified
31 by a party, the commissioner may issue an order prescribing a schedule for the appeals

1 officer to complete the informal conference or setting a meeting at which that schedule
2 will be discussed and prescribed. The schedule may be subsequently modified by
3 consent of the parties. If the commissioner fails to issue an order within 30 days after
4 receiving notice of a party's belief of undue delay, the department's action in fixing
5 the amount of tax or penalty shall be considered to have been summarily affirmed by
6 the appeals officer the same as if an informal conference decision to that effect were
7 issued on the last day of that 30-day period.

8 * Sec. 11. AS 43.05 is amended by adding new sections to read:

9 Sec. 43.05.241. ADMINISTRATIVE APPEAL. For a matter within the
10 jurisdiction of the office of tax appeals under AS 43.05.405, the taxpayer aggrieved
11 by an informal conference decision entered under AS 43.05.240 may file with the
12 office of tax appeals a notice of appeal for formal hearing, as provided in
13 AS 43.05.430, no later than 60 days after service of the decision resulting from an
14 informal conference.

15 Sec. 43.05.242. JUDICIAL APPEAL CHALLENGING VALIDITY OF TAX.

16 (a) Within 60 days after a decision resulting from the informal conference, a person
17 aggrieved by the action of the department under AS 43.05.240 on a ground specified
18 in this section may appeal to the superior court.

19 (b) An appeal under this section may be taken from an informal conference
20 decision only upon the ground that a tax statute or tax regulation is

- 21 (1) violative of the United States Constitution;
22 (2) violative of the state constitution; or
23 (3) preempted by federal statute, regulation, or treaty.

24 (c) An appeal under this section may not be taken from an informal conference
25 decision if

- 26 (1) there is a dispute of material fact;
27 (2) a factual record is necessary to decide the question of law raised;
28 (3) development of a factual record will render it unnecessary to reach
29 the question of law raised; or
30 (4) the taxpayer challenges the assessment of the tax on a ground other
31 than one listed in (b) of this section.

1 (d) An issue may not be presented to the superior court unless the issue first
2 has been presented in writing to the department at or before the informal conference.
3 The department shall prepare a record of that portion of the informal conference
4 relevant to the issue on appeal. The superior court shall

5 (1) resolve a question of law in the exercise of the independent
6 judgment of the superior court judge;

7 (2) defer to the department on a question of law for which discretion
8 is legally vested in the department unless not supported by a reasonable basis.

9 (e) An appeal of the informal conference decision under this section is
10 exclusive. The taxpayer electing to appeal under this section may not pursue an appeal
11 under AS 43.05.241 or pursue any other action under another statute.

12 (f) When an appeal is taken under this section, the taxpayer shall be given
13 access to the file of the department in the matter for preparation of the appeal.

14 (g) In an appeal under this section, the amount due shall be paid within 60
15 days after the date of the service of the informal conference decision. In place of
16 payment of the amount due, the taxpayer may file a bond with the court or otherwise
17 obtain relief from payment in accordance with the Alaska Rules of Appellate
18 Procedure.

19 (h) Venue for an appeal filed under this section shall be set under rules
20 adopted by the supreme court.

21 (i) If it is determined that appeal was improperly filed under this section, or
22 if the superior court rules against the taxpayer, the appeal shall be transferred to the
23 office of tax appeals for further proceedings under AS 43.05.400 - 43.05.499 without
24 prejudice to any claims or defenses of the taxpayer that were barred from being raised
25 in court by (c)(4) of this section.

26 * Sec. 12. AS 43.05.245 is amended to read:

27 Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES,
28 AND INTEREST. If a taxpayer fails to file a return or report required by this title in
29 the time required by law or regulation, or makes an erroneous or fraudulent return, the
30 department shall proceed to assess the license fees, tax, penalties, or interest and make
31 a return from information that [WHICH] it obtains. An assessment or a [A] return
32 [MADE AND] subscribed by the department in accordance with this section is presumed

1 sufficient for all legal purposes. However, nothing prevents a taxpayer from presenting
2 evidence or other information in [ON] an informal conference [APPEAL] under
3 AS 43.05.240 or in an appeal under AS 43.05.241 in order to rebut the presumed
4 sufficiency of an assessment or [A] return [MADE AND] subscribed by the department,
5 nor does the presumption of sufficiency alter the parties' respective burdens of proof
6 once the taxpayer has presented evidence or other material information to rebut that
7 presumption. The assessment of license fees, tax, penalties, or interest under this section
8 occurs when the department issues a notice and demand for payment of the license fees,
9 tax, penalties, or interest. The notice and demand for payment is issued when the notice
10 and demand is delivered to the taxpayer in person or placed in the United States mail,
11 addressed to the last known address of the taxpayer. Penalties and interest assessed
12 under this title shall be collected in the same manner as provided in this title for the
13 collection of tax or license fees.

14 * Sec. 13. AS 43.05.275 is amended by adding new subsections to read:

15 (c) A taxpayer who has filed a return, paid the full amount due on the return,
16 and made a claim under this section may, without exhausting administrative remedies,
17 file an action in superior court to recover on the claim if the sole ground for appeal is
18 that a tax statute is

- 19 (1) violative of the United States Constitution;
20 (2) violative of the state constitution; or
21 (3) preempted by federal statute, regulation, or treaty.

22 (d) An action may not be brought under (c) of this section if

- 23 (1) there is a dispute of material fact;
24 (2) a factual record is necessary to decide the appeal;
25 (3) development of a factual record will render it unnecessary to reach
26 a question of constitutional law or federal preemption; or
27 (4) the taxpayer challenges the assessment of the tax on a ground other
28 than one listed in (c) of this section.

29 * Sec. 14. AS 43.20.270(a) is amended to read:

30 (a) The department may collect taxes, with interest, penalties, and other
31 additional amounts permitted by law, by distraint and sale, in the manner provided in this
32 section, of the property of a person liable to pay the taxes, interest, penalties, or other

1 additional amounts, who neglects or refuses to pay them within 10 days from the mailing
2 of notice and demand for payment of them, and who has not appealed from the
3 assessment of the taxes, interest, penalties, and other additional amounts determined
4 under AS 43.05.240 or following appeal taken under AS 43.05.241 or 43.05.242.

5 * Sec. 15. AS 43.55.013(g) is amended to read:

6 (g) The monthly production at the economic limit for a lease or property is
7 presumed to be 3,000 Mcf times the number of well days for the lease or property during
8 that month for which the tax is to be paid. The taxpayer may rebut this presumption
9 [AT A FORMAL HEARING UNDER AS 43.05.240] by providing clear and convincing
10 evidence of a different monthly production rate at the economic limit for the lease or
11 property. The hearing shall be held before February 15 of the year or within six months
12 after commencement of gas production for a lease or property. The monthly production
13 rate at the economic limit for the lease or property based upon the clear and convincing
14 evidence of the taxpayer shall be calculated by dividing the value determined under (i)
15 of this section into the average monthly direct operating cost determined under (h) of this
16 section.

17 * Sec. 16. AS 43.55.040 is amended to read:

18 Sec. 43.55.040. POWERS OF DEPARTMENT OF REVENUE. Except as
19 provided in AS 43.05.400 - 43.05.499, the [THE] department may

20 (1) require a person engaged in production and the agent or employee of
21 the person, and the purchaser of oil or gas, or the owner of a royalty interest in oil or
22 gas to furnish additional information that is considered by the department as necessary
23 to compute the amount of the tax;

24 (2) examine the books, records, and files of such a person;

25 (3) conduct hearings and compel the attendance of witnesses and the
26 production of books, records, and papers of any person; and

27 (4) make an investigation or hold an inquiry that is considered necessary
28 to a disclosure of the facts as to

29 (A) the amount of production from any oil or gas location, or of
30 a company or other producer of oil or gas; [,] and

31 (B) the rendition of the oil and gas for taxing purposes.

32 * Sec. 17. EFFECT ON EXISTING REMEDIES AND PROCEDURES. This Act does not

1 affect the remedies and procedures

2 (1) specified in AS 04.11, including AS 04.11.560; AS 05.15, including
3 AS 05.15.610; AS 42.05, including AS 42.05.551; or AS 43.56, including AS 43.56.120 and
4 43.56.130; or

5 (2) adopted by regulation by the Department of Revenue governing appeal of a
6 decision of the Department of Revenue regarding

7 (A) a game of chance or skill made under AS 05.15;

8 (B) a permanent fund dividend under AS 43.23;

9 (C) a coin-operated device or punchboard under AS 43.35; or

10 (D) a child support obligation under AS 25.27.

11 * Sec. 18. TRANSITIONAL PROVISIONS. (a) The remedies and procedures provided
12 by this Act apply to all revenue tax appeals in which a request for formal hearing is filed with
13 the Department of Revenue on or after the effective date of this Act. The remedies and
14 procedures existing before the effective date of this Act apply to all revenue tax appeals in
15 which a request for formal hearing was filed with the Department of Revenue before the
16 effective date of this Act, unless all of the parties to an appeal agree in writing to the remedies
17 and procedures established by this Act.

18 (b) Notwithstanding AS 43.05.405, enacted by sec. 1 of this Act, unless the office of
19 tax appeals has a full caseload, and with the approval of the chief administrative law judge, the
20 chief administrative law judge or any other administrative law judge of the office of tax appeals
21 may be appointed by the governor, by the commissioner of administration, or by the
22 commissioner of another department to serve as a special hearing officer or special
23 administrative law judge on another matter outside the scope of this Act and arising from another
24 department of the executive branch. Appointment under this subsection may not interfere with
25 the primary mission of the office of tax appeals under this Act of the expeditious resolution of
26 administrative tax appeals under its jurisdiction.

27 (c) Until 15 AAC 05.001 - 15 AAC 05.320 and other Department of Revenue
28 regulations in effect on the effective date of this Act are revised as necessary, those regulations
29 continue to govern an administrative appeal of a Department of Revenue decision not within the
30 jurisdiction of the office of tax appeals, including a decision regarding a

31 (1) game of chance or skill under AS 05.15;

32 (2) permanent fund dividend under AS 43.23; and

1 (3) coin-operated device or punchboard under AS 43.35.

2 (d) In this section,

3 (1) "chief administrative law judge" means the chief administrative law judge
4 of the office of tax appeals appointed under AS 43.05.410, enacted by sec. 1 of this Act;

5 (2) "office of tax appeals" means the office established in AS 43.05.400, enacted 4-27-96
6 by sec. 1 of this Act.

7 * Sec. 19. This Act takes effect July 1, 1996.

*SF moved to change
effective date
from July 1, 1996
to Jan. 1, 1997
withdrawn Sen. Frank
4/28/96*

4-27-96 pm
SR
offered
RH
Obj.
REV.B
4/27/96
Adopted
4-3
SR
RP
DD
2

AMENDMENT

OFFERED IN THE SENATE
TO: SCS CSHB 341(JUD), dated April 22, 1996

BY SENATOR BS
motion to rescind action adopting Amend B.
Carried
4-3 SR DD 2

1 Page 22, line 2:
2 Insert:
3 "(d) Notwithstanding sec. 20 of this Act, upon receipt of a notice and
4 request for nominations by the governor, the Alaska Judicial Council shall
5 immediately proceed to advertise the position, invite applications, give public
6 notice of applications received, invite public comment on the applications,
7 evaluate the applicants, and make nominations as provided in AS 43.05.410 in
8 sec. 1 of this Act."
9 Renumber remaining subsection accordingly.

Revote Amend B
Failed
3-4
SR DD 2

10 Page 22, line 7:
11 Delete all material and insert:
12 "*Sec. 19. Section 18(d) of this Act takes effect immediately under
13 AS 01.10.070(c).
14 *Sec. 20. Except as provided in sec. 19, this Act takes effect July 1, 1996."

4-27-96
pm

STATEMENT OF
THE ALASKA OIL AND GAS ASSOCIATION
TO THE SENATE FINANCE COMMITTEE
REGARDING HB 341

April 27, 1996

Mr. Chairman and Members of the Finance Committee:

The Alaska Oil and Gas Association ("AOGA") would like to take this opportunity to offer you our comments in support of House Bill 341. AOGA is a trade association whose 19 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska. These comments reflect the unanimous consensus of the AOGA Tax Committee.

The present tax appeals process is, we believe, seriously flawed in practice and denies taxpayers the opportunity to have their tax appeals heard and decided by a truly independent and impartial tribunal. House Bill 341 would significantly reform this process by establishing a forum outside the Department of Revenue, and independent of it, where taxpayers' appeals would be heard, tried and decided. The Bill would also clarify the standards to be used in reviewing the claims and positions asserted by the Department against taxpayers, while ensuring that the Department's judgment will not be overturned in matters where discretion has been legally vested in it, so long as it has acted reasonably in the exercise of that discretion. The Bill would promote greater efficiency and speed in tax appeals by providing for greater control over the "discovery" process, which has been an area of abuse in the past.

*Read
McManus*

The majority of the provisions in SCS CSHB 341 (Judiciary) reflect consensus not only within the industry, but also between industry and the Administration. However, there are also many compromises between industry and the Administration which are in the Bill as well. Indeed, the last remaining issues of disagreement between ourselves and the Administration were resolved in compromise amendments presented to the Senate Judiciary Committee April 19th, which that Committee adopted.

AOGA endorses the Senate Judiciary CS for HB 341 and requests you to approve it without substantive changes.

Alaska Department of Revenue
Hearing Section Funding

Current Funding

Position	PCN	Total Cost	GF Cost	CSED Cost	PFD Cost
Senior Hearing Officer	040014	\$ 93,415.00	\$ 46,707.00	\$ 23,354.00	\$ 23,354.00
Paralegal Ass't II	040015	\$ 53,516.00	\$ 17,842.00	\$ 17,837.00	\$ 17,837.00
Admin Clerk II	041033	\$ 34,912.00	\$ 11,639.00	\$ 11,636.50	\$ 11,636.50
Total		\$ 181,843.00	\$ 76,188.00	\$ 52,827.50	\$ 52,827.50
PFD Hearing Officer	040012	\$ 74,909.00			\$ 74,909.00
CSED Hearing Officer	040025	\$ 74,909.00		\$ 74,909.00	
Total		\$ 331,661.00	\$ 76,188.00	\$ 127,736.50	\$ 127,736.50

4-27-96
D. Vogt
Handout

Alaska Department of Revenue
Hearing Section Funding

Reduce General Fund to 10%

Position	PCN	Total Cost	GF Cost	CSED Cost	PFD Cost
Senior Hearing Officer	040014	\$ 93,415.00	\$ 9,341.50	\$ 42,036.75	\$ 42,036.75
Paralegal Ass't II	040015	\$ 53,516.00	\$ 5,351.60	\$ 24,082.20	\$ 24,082.20
Admin Clerk II	041033	\$ 34,912.00	\$ 3,491.20	\$ 15,710.40	\$ 15,710.40
Total		\$ 181,843.00	\$ 18,184.30	\$ 81,829.35	\$ 81,829.35
PFD Hearing Officer	040012	\$ 74,909.00			\$ 74,909.00
CSED Hearing Officer	040025	\$ 74,909.00		\$ 74,909.00	
Total		\$ 331,661.00	\$ 18,184.30	\$ 156,738.35	\$ 156,738.35

General Fund Savings:

Current General Fund	\$ 76,188.00
10% General Fund	\$ (18,184.30)
Difference	\$ 58,003.70

4/27/96 Discussion of changing
the fiscal note to reflect
reduced GF. Sen. Frank
said he would later ask
Dept. to come back with
such a note.

Dept. will provide note!

Alaska Department of Revenue
Hearing Section Funding

Reduce General Fund to Zero

Position	PCN	Total Cost	GF Cost	CSED Cost	PFD Cost
Senior Hearing Officer	040014	\$ 93,415.00	\$ -	\$ 46,707.50	\$ 46,707.50
Paralegal Ass't II	040015	\$ 53,516.00	\$ -	\$ 26,758.00	\$ 26,758.00
Admin Clerk II	041033	\$ 34,912.00	\$ -	\$ 17,456.00	\$ 17,456.00
Total		\$ 181,843.00	\$ -	\$ 90,921.50	\$ 90,921.50
PFD Hearing Officer	040012	\$ 74,909.00			\$ 74,909.00
CSED Hearing Officer	040025	\$ 74,909.00		\$ 74,909.00	
Total		\$ 331,661.00	\$ -	\$ 165,830.50	\$ 165,830.50

General Fund Savings:

Current General Fund	\$ 76,188.00
General Fund at Zero	\$ -
Difference	\$ 76,188.00

4/22/96



alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1981 (907) 279-2526 FAX (907) 276-5046

EXECUTIVE DIRECTOR
William T. Cotton

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Janice Lienhart
Vicki A. Otte

ATTORNEY MEMBERS
Mark E. Ashburn
Thomas G. Nave
Christopher E. Zimmerman

CHAIRMAN, EX OFFICIO
Allen T. Compton
Chief Justice
Supreme Court

MEMORANDUM

TO: House Finance Committee

FROM: William T. Cotton, Executive Director *w/c*

DATE: March 19, 1996

RE: CSHB 341

I have set out below the costs of having the Judicial Council screen applicants for Administrative Tax Judges much as it does for judicial applicants. I will submit a fiscal note when appropriate. As I previously testified, the Council has not taken any position on this legislation.

The costs outlined below assume one selection (or later, one evaluation) per year. They further assume that existing Council staff will perform the professional work gathering and analyzing information on applicants. Council members are not paid for their time (other than per diem).

After much thought, I believe a Bar Survey with comments would be highly advisable. While the response rate would be low, the information received would be important.¹ I have kept costs low by having existing Council staff do the analysis at no charge.

¹For example, some judicial applicants are rated by well over 500 respondents. However, even a response of less than 100 respondents is very useful. A recent applicant with a narrow bankruptcy practice was rated by 230 respondents.

No. 5

FISCAL NOTE

Bill Version: SC5CST#34(JUD)

BII (S) Publish Date: 4/22/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 04/22/96 Dept. Affected: Alaska Court System
 Title: An Act establishing a tax court.. BRU: Trial Courts
 Sponsor: Rep. Green Component: _____
 Requestor: House Resources COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL						

Estimate of any current year (FY 96) cost: \$ None

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel *(Signature)* Phone: 264-8228
 Agency: Alaska Court System Date: 04/22/96

Approved by: Arthur H. Snowden, II, Administrative Director *(Signature)* Date: 04/22/96
 Agency: Alaska Court System

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Alaska Court System
Fiscal Analysis
SCS CSHB 341 (JUD)

SCS CSHB 341 (JUD) amends the current method of administrative adjudication and judicial appeals relating to tax cases. It establishes the office of tax appeals as a quasi-judicial agency in the Department of Administration, and under certain conditions, gives taxpayers the right to go directly to court to challenge tax assessments in a trial de novo, rather than an on-the-record appeal.

The Department of Revenue has advised that the circumstances under which a taxpayer would be entitled to go directly to court are very limited, and that even under existing law, it would normally use its discretion to allow a taxpayer to go directly to court on those issues. Accordingly, this note does not attempt to estimate the amount of judicial and clerical time which might be spent on direct appeals authorized by this legislation.

According to the Department of Revenue, there are approximately 24 tax cases per year to which SCS CSHB 341 (JUD) would apply: 20 in the Income and Excise Audit Division, and 4 in the Oil and Tax Audit Division. These cases vary in size and complexity, with the largest cases requiring a substantial commitment of judicial and clerical time, if they come directly to court for a trial de novo.

FISCAL NOTE

No. 4

Bill Version: CSHB 341 (JUD)

(H) Publish Date: 3/12/96

**STATE OF ALASKA
1996 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to consideration and determination
by the Superior Court of..." BRU: Tax Appeals *
 Sponsor: Rep. Green Component: Tax Appeals *
 Requestor: House Resources COMPONENT SERIAL NO. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITUR	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	225.6	225.6	225.6	225.6	225.6	225.6
TRAVEL	8.8	8.8	8.8	8.8	8.8	8.8
CONTRACTUAL	43.0	43.0	43.0	43.0	43.0	43.0
SUPPLIES	4.5	4.5	4.5	4.5	4.5	4.5
EQUIPMENT	55.5	2.5	2.5	2.5	35.0	2.5
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	337.4	284.4	284.4	284.4	316.9	284.4

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	337.4	284.4	284.4	284.4	316.9	284.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
Total	337.4	284.4	284.4	284.4	316.9	284.4

Estimate of current year (FY 96) cost: \$ 0.0 _____

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

- * New BRU and Component in the Department of Administration

(See Attached)

Prepared by: Sharon Barton, Director
 Division: Administrative Services

Phone: 465-5655
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 3/12/96

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ANALYSIS: (continued)

This bill creates an Office of Tax Appeals as a quasi-judicial board to be housed in the Department of Administration.

Personal Services - The Office of Tax Appeals will include two Administrative Law Judges (equivalent to a Limited Entry Commissioner, range 26, annual cost \$96.4) who will hear all appeals involving tax matters from the Department of Revenue, including severance tax, corporate income tax, and all fisheries taxes. The ALJs will require the support of a full-time Administrative Clerk II range 8, annual cost \$32.8, for a total cost of \$225.6.

Travel - Cost based upon an estimated seven trips (air fare \$400) with 3 days (\$120 per day) of per diem for each trip for routine hearings and an additional \$3.5 to cover two or three major hearings (lasting in excess of 3 to 5 days) at the same rate.

Contractual - Additional funding is needed to provide office space, communications (telephone/computer), legal support, other professional services, subscriptions, courier service and printing that will result from creating a new office, and devoting it entirely to tax appeals. The recurring incremental costs for these items is \$43.3.

Supplies - \$4.5 is needed for general office supplies and data processing supplies.

Equipment - In setting up the new office, equipment needs include three computers, printer, copier, FAX and office furniture. Estimated start-up costs are \$55.5. Recurring funding \$2.5 is needed for maintenance or replacement parts. We have also estimated \$35.0 in 2001 for equipment replacement or upgrade.

FISCAL NOTE

No. 3
 E. Version: CSHB 341 (JUD)
 (H) Publish. Date: 3/12/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: 01/26/96 Dept. Affected: Alaska Court System
 Title: An Act establishing a tax court... BRU: Trial Courts
 Spcnsor: Rep. Green Component: _____
 Requestor: _____ COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	134.7	134.7	134.7	134.7	134.7	134.7
TRAVEL						
CONTRACTUAL	2.5	2.5	2.5	2.5	2.5	2.5
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	9.8					
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	149.0	139.2	139.2	139.2	139.2	139.2
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	149.0	139.2	139.2	139.2	139.2	139.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	149.0	139.2	139.2	139.2	139.2	139.2

Estimate of any current year (FY 96) cost: \$ None

POSITIONS

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel *CS*
 Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director *AS*
 Agency: Alaska Court System

Phone: 264-8228
 Date: 01/26/96
 Date: 01/26/96

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Alaska Court System
Fiscal Analysis
CSHB 341 (RES)

At the present time, the superior court has jurisdiction over all tax cases appealed from the Department of Revenue's administrative hearing process. Such appeals are held on the record unless the court, in its discretion, hears a particular appeal de novo.

CSHB 341 (RES) amends the jurisdiction of the superior court with respect to certain types of tax cases. In cases relating to fixing the amount of, or imposing a penalty on, a tax levied and collected by the state under AS 43.19 and AS 43.20, former AS 43.21, AS 43.55, AS 43.65, and AS 43.75, the superior court would have the following appellate jurisdiction:

1. Final orders of the Department of Revenue in matters relating to fixing the amount of, or imposing a penalty on, a tax levied and collected by the state when appeal is taken under AS 43.05.242(c)(1) shall be heard as a trial de novo as a matter of right.
2. Final orders of the Department of Revenue in matters relating to fixing the amount of, or imposing a penalty on, a tax levied and collected by the state when appeal is taken under AS 43.05.242(c)(2) shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

Testimony indicates that many taxpayers would prefer to go directly to court rather than utilize the Department of Revenue's formal procedure followed by an on-the-record appeal. By granting taxpayers the right to a trial de novo after an informal hearing by the Department of Revenue, CSHB 341 (RES) will significantly increase the number of tax cases heard by the superior court, and will increase the length of time required for disposition of individual cases.

According to the Department of Revenue, there are approximately 24 tax cases per year to which CSHB 341 (RES) would apply: 20 in the Income and Excise Audit Division, and 4 in the Oil and Tax Audit Division. These cases vary in size and complexity, with the largest cases requiring a substantial commitment of judicial and clerical time.

As drafted, CSHB 341 (RES) arguably grants the right of jury trial. This note does not reflect jury costs, on the assumption that the bill will be amended to clarify that the de novo trial is before a judge, not a jury.

Alaska Court System

Fiscal Analysis

CSHB 341 (RES)

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Superior Court Judge, Anchorage, PPT, 6 months 50% vested	\$24,150	\$14,890	\$39,040
Records Clerk, 10A, Anchorage, PFT, 12 months	24,012	9,762	33,774
In Court Clerk, 12A, Anchorage, PPT, 6 months	13,554	5,181	18,735
Law Clerk, 13D, Anchorage, PFT, 12 months	31,824	11,278	43,102
			<hr/>
	Total Personal Services		134,651

Contractual

Postage, telephone, annual updates to legal reference materials, copier rental, etc. 2,500

Supplies

Office, courtroom and computer supplies. 2,000

Equipment (one time item)

Office furniture, computer or data terminal, software, dictation equipment, statutes, rules of court, facsimile machine, etc. 9,800

Total Estimated Cost \$148,951

Revision Date: January 17, 1996 Dept. Affected: Revenue
 Title: Alaska Tax Court BRU: Revenue Operations
 Component: Oil and Gas Audit
 Sponsor: Representative Green
 Requestor: _____ COMPONENT SERIAL NO. 115

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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 ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: John E. Pilkington, Director
 Division: Oil and Gas Audit
 Approved by Commissioner: _____
 Agency: Department of Revenue

Phone: (907) 276-1363 Ext. 225
 Date: January 23, 1996
 Date: January 23, 1996

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As drafted, CSHB 341 will at a minimum add to our audit workload and delay current audits by reforming the "informal" proceedings within the department. It is also possible that it could eventually add an additional layer to the appeals process by altering the likelihood of trial de novo in an appeal from formal hearing, thereby increasing future costs of case resolution. The reason for both results is that CSHB 341 changes the primary purpose of the reviewing court from an appellate function to a trial function.

The change in the Court's fundamental purpose, and the fact that under AS 43.05.242(b) informal hearings now become automatic in all cases, will change the nature of the informal proceeding. Today, informal proceedings serve as a second review of the audit results and provide an informal process within which the taxpayer can attempt to resolve the matter. Although taxpayers can now bypass informal conference and go directly to formal hearing, most of the Division's past cases have been resolved at the informal level. Under existing law, an informal conference is followed by a formal administrative proceeding where the bulk of the department's work in putting our official litigation position together now takes place. Under CSHB 341, uncertainty regarding whether the taxpayer will go to formal hearing or to a civil trial de novo, will require much more "formal" and detailed preparation at the informal level. This will involve considerable time and effort from the audit and appeals staff that would normally be spent on current audits and informal resolution. Additionally, the current informal/formal procedure allows the department the opportunity to develop issues and determine which should be resolved and which litigated. Automatic appeal to civil court will allow taxpayer decisions to drive the department's litigation costs.

The change in the reviewing court's primary function could also alter the likelihood of trial de novo being granted on appeal from any cases which do go to formal hearing. Under CSHB 341, the Superior Court's review will no longer be primarily an "appellate review". Instead, the Court's primary function in these cases will be to sit as a specialized trial court for tax matters. Different rules of procedure and evidence will apply in tax civil trials and sophisticated oil and gas taxpayers will likely have little trouble presenting "new" issues and "new" evidentiary questions to encourage the Court to exercise its independent judgment rather than defer to a Department hearing officer's decision which is portrayed as biased. Over time, the court will develop specialized tax expertise. Since these large, complex cases are almost unanimously appealed, a Judge is likely to prefer that the case go up on a record which he/she had some control in creating. Formal hearings might easily become little more than discovery and negotiation tools, with an almost automatic right to trial de novo.

Alaska State Legislature

APR 25 1996

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Representative Joe Green
District 10

TO: Senator Rick Halford, Co-Chairman
Senator Steve Frank, Co-Chairman
Senate Finance Committee

FR: Representative Joe Green *Joe*

RE: HB 341 - Tax Appeals Process

DATE: April 24, 1996

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Please schedule HB 341 at the earliest opportunity.

Thank you for your consideration.

LEGAL SERVICES

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MEMORANDUM

April 21, 1996

SUBJECT: SCS CSHB 341(JUD); Office of Tax Appeals

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee
Attn: Chuck Achberger

FROM: Pamela Finley 
Revisor of Statutes

In revising the referenced bill, I noticed the following, which I wanted to bring to your attention to make sure these were deliberate choices:

1. AS 43.05.242 (bill sec. 11) refers to tax statutes and tax regulations, while AS 43.05.275(c) (bill sec. 13) refers to tax statutes only.

2. AS 43.05.242(b) (bill sec. 11) does not include a claim that a tax regulation is inconsistent with a tax statute. Because this is a question of law, I expected to see it listed in (b) and want to make sure the omission was intentional. (If AS 43.05.275(c) should also include regulations, see #1 above, then the same comment applies to AS 43.05.275(c).)

3. Under AS 43.05.242(e) (bill sec. 11) the direct appeal to the Superior Court is "exclusive." However, under AS 43.05.242(i), if the taxpayer loses in the direct appeal, the case is sent back to the office of tax appeals. I can understand why the case would be sent back to the office if it were improperly filed in the superior court, or if the superior court's decision on the law (no matter who prevails on the legal question) makes additional factual findings necessary before the case can be finally decided. However, I do not understand why a taxpayer who loses on a purely legal question, where there are no remaining factual issues, should have the case returned to the office for further proceedings.

4. Also, I gather from the "without prejudice" language in AS 43.05.242(i) that you want a taxpayer to be able to go directly to court if the taxpayer is challenging the assessment on grounds listed in AS 43.05.242(b) and other grounds, although the court would not be allowed to consider the other grounds. However, AS 43.05.242(c)(4) says that the direct appeal may not be used if the taxpayer challenges the assessment on other grounds. It would be clearer if (c)(4) were deleted and the rules were stated in a separate subsection for cases where the taxpayer challenges an assessment on both the grounds listed in AS 43.05.242(b)

Senator Robin Taylor, Chair

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and other grounds. Also, if the "other" grounds involve a dispute of material fact, would the direct appeal be precluded under AS 43.05.242(c)(1)?

I will be out of the office Monday April 22 with knee surgery, but you can discuss any of the above with Jack Chenoweth, the drafter assigned to this bill.

PF:glc

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