

**HB**

**94**

HFIN

FILE

CS FOR HOUSE BILL NO. 94( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES GREEN, Kelly

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to confidentiality of certain municipal tax records."

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

3 \* Section 1. AS 29.45.103 is amended by adding new subsections to read:

4 (c) Information related to earnings, income, profits, losses, or expenditures of  
5 a person that is acquired by the assessor in the course of performing official duties is  
6 confidential if the person, in writing, directs that the information be treated as  
7 confidential and describes the specific information to be treated as confidential. The  
8 assessor shall inform each person who supplies information described in this subsection  
9 of the provisions of this section.

10 (d) The information made confidential under (c) of this section shall be treated  
11 as confidential by the board of equalization and all other municipal officials and  
12 employees who have access to it. If the information is inspected by the state assessor  
13 or a designee under (a) or (b) of this section, it retains its confidential status.

14 (e) Information made confidential under (c) of this section may be disclosed  
15 by the municipality to a court or to an agency or subdivision of this state, another

1 state, or the United States upon written application by the governmental entity that sets  
2 out sufficient reason for obtaining the information. Information that is disclosed by  
3 the municipality to another governmental entity retains its confidential status. Upon  
4 receipt of a written request for the confidential information of a person under this  
5 subsection, the municipality shall promptly provide to the person

- 6 (1) notice of the request;  
7 (2) an identification of the governmental entity making the request; and  
8 (3) a description of the information requested.

# Alaska State Legislature

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DEVELOPMENT  
ALASKA COURT SYSTEM

Representative Joe Green  
District 10

## Sponsor Statement

### **HB 94 - Confidentiality of Tax Information Submitted to a Municipality**

HB 94 allows local governments to classify certain financial information submitted to local governments as confidential, if requested to do so by the taxpayer.

Under state law, income information submitted to the state by a taxpayer as part of a tax return or report is held confidential. AS 43.05.230 prohibits officers or agents of the *state* from disclosing "the amount of income or the particulars" listed in a return. However, when the same, or similar information is submitted to a local government for the purposes of a tax assessment there is no such protection. HB 94 extends the protection for income information submitted to the state, to also protect information submitted to local governments.

HB 94 does not change, alter, amend, or in any way restrict any aspect of the authority a local government has to assess a tax. It simply says that once the financial information is provided to the local taxing authority, it must be held confidentially if the taxpayer makes such a request.

Several states, including Arizona, California, Indiana, Kentucky, Utah, West Virginia, and Wyoming currently have similar restrictions.

Under certain circumstances, general financial information about public companies is required to be made public by federal law. However, information on specific properties or projects is generally restricted as it could be used against a company by competitors. It is for this reason that Alaska should join the other "resource extraction" states in offering these same protections.

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## Sectional Description

### **HB 94 - Confidentiality of Tax Information Submitted to a Municipality**

#### **Section 1**

(c) Requires that proprietary financial information acquired by a municipal assessor be held confidentially by all employees and officers of the municipality upon the taxpayers written request. Further, if such information is inspected by the state assessor under the provisions of AS 29.45.103 the assessor or a designee is also prohibited from releasing the information.

(d) Requires that the information must be held confidentially by the Board of Equalization, and all other municipal officials that have access to it.

(e) Allows the information collected to be obtained by the courts, other agencies of state government, federal government, or other states, if the request is made in writing, and is for a sufficient reason. However, even after the information is transferred, it remains confidential. Also provides that the municipality will notify the taxpayer when a request is made for information contained in their return.



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

February 17, 1997

Honorable Joe Green  
Alaska State House  
Capitol Building  
Juneau, AK 99801

RE: House Bill 94

Dear Representative Green,

Thank you for the opportunity to comment on your House Bill 94. The Alaska Miners Association is in support of this bill. We agree that items related to income should be afforded the same confidentiality when provided to local governments as when submitted to the state as part of a tax return.

Mineral exploration is a high risk endeavor and stock prices, especially those of junior mining companies, are in some instances subject to manipulation by outside interests or by minority shareholders seeking control of the corporation. If not kept confidential, there are ways that a group of shareholders or outside investors could use this information to the detriment of the company. Such maneuverings are not in the best interest of removing investment uncertainty and stabilizing operations. HB-94 will help alleviate the possibility of such situations.

Thank you for introducing this bill.

Sincerely,

Steven C. Borell, P.E.  
Executive Director

**Sec. 11.56.850. Official misconduct.** (a) A public servant commits the crime of official misconduct if, with intent to obtain a benefit or to injure or deprive another person of a benefit, the public servant

(1) performs an act relating to the public servant's office but constituting an unauthorized exercise of the public servant's official functions, knowing that that act is unauthorized; or

(2) knowingly refrains from performing a duty which is imposed upon the public servant by law or is clearly inherent in the nature of the public servant's office.

(b) Official misconduct is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

NOTES TO DECISIONS

Cited in *Feichtinger v. State*, 779 P2d 344 (Alaska Ct. App. 1989).

**Sec. 11.56.860. Misuse of confidential information.** (a) A person who is or has been a public servant commits the crime of misuse of confidential information if the person

(1) learns confidential information through employment as a public servant; and

(2) while in office or after leaving office, uses the confidential information for personal gain or in a manner not connected with the performance of official duties other than by giving sworn testimony or evidence in a legal proceeding in conformity with a court order.

(b) As used in this section, "confidential information" means information which has been classified confidential by law.

(c) Misuse of confidential information is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Article 7. General Provisions.

Section  
900. Definitions

**Sec. 11.56.900. Definitions.** In this chapter, unless the context requires otherwise,

(1) "improperly influence a witness" means to cause or induce a witness to

(A) testify falsely, offer misleading testimony, or unlawfully withhold testimony in an official proceeding;

(B) avoid or attempt to avoid legal process summoning the witness to testify in an official proceeding, regardless of whether legal process has issued;

(C) be absent from an official proceeding to which the witness has been summoned; or

(D) engage in conduct described in AS 11.56.610;

(2) "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district court judge, or a magistrate;

(3) "juror" means a person who is a member of an impanelled jury or a person who has been drawn or summoned to attend as a prospective juror;

(4) "physical evidence" means an article, object, document, record, or other thing of physical substance;

(5) "testimony" means oral or written statements, documents, or other material that may be offered by a witness in an official proceeding;

(6) "witness" means

(A) a witness summoned or appearing in an official proceeding; or

(B) a person who the defendant believes may be called as a witness in an official proceeding, present or future. (§ 6 ch 166 SLA 1978; am § 20 ch 12 SLA 1980)

Cross referenc  
in this title, see A-  
of judicial officer.

Applied in Stat:  
Ct. App. 1982).  
Quoted in Stat:  
App. 1988).

Ch:

Secs. 11.60.0  
animals at lar  
gambling offen  
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Sec. 11.60.2:

Secs. 11.60.2:  
[Repealed, § 8

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Secs. 11.60.2:

Secs. 11.60.3:  
color of law. [Rej  
rights, see AS 11

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Article  
1. Riot, Disorderly  
2. Weapons and Ex

Cross references.  
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criminal street gang.

Article 1.

Section  
100. Riot  
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123. Indecent viewin  
125. Distribution of c:  
127. Possession of chi

Sec. 11.61.100.  
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property or physio

# FISCAL NOTE

Revision Date: \_\_\_\_\_ Dept. Affected: Community & Regional Affairs  
 Title: An Act relating to confidentiality of BRU: none  
certain municipal tax records Component: none  
 Sponsor: Rep. Green  
 Requestor: House CRA Committee COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current (FY97) impact \$ none

**ANALYSIS:** (Attach a separate page if necessary)  
 This legislation provides for confidentiality for certain municipal financial information. This legislation would have no fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708  
 Division: Division of Administrative Services Date: 2/5/97  
 Approved by Commissioner: *Mark Dur* Date: 2/5/97  
 Agency: Community & Regional Affairs

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# Fairbanks North Star Borough

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## MEMORANDUM

TO: Jim Sampson, Mayor  
 FROM: Ardith Lynch, Borough Attorney  
 DATE: April 11, 1997  
 SUBJECT: HB 94

*Ardith Lynch*

This memo is in response to your request for a written position paper on HB 94, relating to confidentiality of certain municipal tax records. Under current law (AS 29.45.120), a municipality may require property owners to submit property tax returns and additional information. There are good policy reasons to provide a degree of confidentiality to some records provided by taxpayers at the assessor's request. However, the scope of HB 94 is overly broad and this bill will severely impact the proceedings of Board of Equalization. There are better examples of confidentiality provisions in existing law, including AS 09.25.100 and AS 43.05.230, which limit disclosure of the Department of Revenue tax records.

- HB 94 prohibits disclosure of a wide range of information acquired from any source. The bill would add a new subsection (c) to AS 29.45.103, which states in part: "All information related to earnings, income, profits, losses or expenditures of a person acquired by the assessor in the course of performing official duties is confidential." This means that even if the source of the information is public, and even if the taxpayer provided the information voluntarily, the information becomes confidential when the assessor has it. For example, a recorded deed of trust relates to a person's expenditures, but is clearly a public record. Income information, such as apartment rental rates, may also be common knowledge. There is no reason to require the assessor to keep this information confidential; the only records that need to be protected are those that are usually considered confidential (income tax and accounting records, for example) and that have been requested by the assessor.
- HB 94 would severely impact appeals to the Board of Equalization and the courts. Subsection (c) would also have the following new sentence: "The information shall be treated as confidential by the board of equalization and all other municipal officials and employees who have access to it." This would require the BOE to hold executive sessions to consider whatever "information related to earnings, income, profits, losses or expenditures" is relevant to the assessed value of the property. For example, the assessor may use, and the BOE and the court may uphold, an income method to value commercial property. Obviously, the assessor must disclose the basis of the assessment in order to effectively present his case. How can the BOE make findings and decisions, or the court determine whether there is substantial evidence to support them, without referring to income or expenditures? Would the findings and decisions of the superior or supreme court also be confidential?

There are legitimate public policy reasons to waive confidentiality provisions in appeals. Property tax assessment procedures are generally public because property valuation for assessment purposes requires a just valuation of all property and the assessment must have a fair relation to a uniform and equal rate of taxation. If the procedures and records involved in property tax assessment are not public, taxpayers will not be able to determine whether a particular property is fairly valued in comparison to other properties.

Similar income information is produced as a matter of course in other litigation (personal injury, divorce, and other claims). If a person or entity files a lawsuit, or a property assessment appeal, the relevant records must be subject to disclosure.

- AS 09.25.100 and 43.05.230 in current law provide a more balanced approach to confidentiality. AS 43.05.230 prohibits disclosure of "the amount of income, or the particulars set out or disclosed in a [tax] report or return," which is a more focused restriction than the language proposed in HB 94<sup>1</sup> ("all information . . . acquired by the assessor"). Also, both AS 09.25.100 and AS 43.05.230 permit disclosure in connection with administrative or judicial proceedings. These exemptions recognize the potential problems with maintaining confidentiality of information during appeals. Similar exemptions need to be clearly spelled out in HB 94.
- There are also problems with the disclosure provisions in HB 94. The new subsection (d) would allow the information to be disclosed to a court or another agency "upon written application by the governmental entity that sets out sufficient reason for obtaining the information." However, the bill does not say who makes the determination as to whether or not the reason is "sufficient."
- Finally, the change in the Committee Substitute for HB 94(CRA) in subsection (e) increases the penalty for disclosure from the original \$500, to \$1000 or actual damages, whichever is greater. There should be a penalty only for willful violations, and only if the property owner can show damages. This is an onerous penalty in light of the questions and problems with this bill.

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<sup>1</sup> Similar language would be easy to draft if the confidentiality provisions were enacted as amendments to AS 29.45.120 relating to property tax returns, rather than AS 29.45.103, which relates to inspection of tax records by the state assessor.