

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

SB 401 cont. 121

1 this title in the time required by law or regulation, or makes an  
2 erroneous or fraudulent return, the department shall proceed to assess  
3 the license fees, tax, penalties, or interest and make a return from  
4 information which it obtains. A return made and subscribed by the  
5 department in accordance with this section is presumed sufficient for  
6 all legal purposes. However, nothing prevents a taxpayer from pre-  
7 senting evidence or other information on an appeal under AS 43.05.240  
8 or under procedures provided by AS 43.05.246 - 43.05.248 in order to  
9 rebut the presumed sufficiency of a return made and subscribed by the  
10 department, nor does the presumption of sufficiency alter the parties'  
11 respective burdens of proof once the taxpayer has presented evidence  
12 or other material information to rebut that presumption. The assess-  
13 ment of license fees, tax, penalties, or interest under this section  
14 occurs when the department issues a notice and demand for payment of  
15 the license fees, tax, penalties, or interest, when a notice and  
16 demand for payment becomes final under AS 43.05.246(a), or when the  
17 department issues a final notice and demand for payment under AS 43.-  
18 05.247(f). The notice and demand for payment is issued when the  
19 notice and demand is delivered to the taxpayer in person or placed in  
20 the United States mail, addressed to the last known address of the  
21 taxpayer. Penalties and interest assessed under this title shall be  
22 collected in the same manner as provided in this title for the collec-  
23 tion of tax or license fees.

24 \* Sec. 12. AS 43.05 is amended by adding new sections to read:

25 Sec. 43.05.246. CLOSING CONFERENCE AND PRELIMINARY ASSESSMENT.

26 (a) The procedures under this section apply to taxes under AS 43.20,  
27 AS 43.55, AS 43.57, and former AS 43.21.

28 (b) Before issuing a notice and demand for payment for a tax  
29 described in (a) of this section, the department shall give the

1 taxpayer a written draft of its preliminary conclusions. The draft of  
2 the preliminary conclusions must contain the following:

3 (1) a draft of any notice and demand for payment that the  
4 department preliminarily concludes may be in order;

5 (2) a draft narrative fully explaining how and why the  
6 preliminary assessment of tax or penalty has been determined; and

7 (3) schedules or worksheets in written or computer-readable  
8 format setting out the calculations for the preliminary assessment.

9 (c) The department shall schedule a closing conference with the  
10 taxpayer, to be held not less than 60 nor more than 90 days after the  
11 department delivers its preliminary audit conclusions under (b) of  
12 this section to the taxpayer in person or places those materials in  
13 the United States mail, addressed to the last known address of the  
14 taxpayer. The parties may extend the date for the closing conference  
15 by agreement.

16 (d) The purpose of the closing conference is to conclude the  
17 audit process and allow the parties to review and discuss the prelimi-  
18 nary results and conclusions of that process informally so that any  
19 mistaken assumptions, misunderstandings, and other errors or mistakes  
20 can be identified and eliminated as much as possible and so that  
21 incomplete information and unsubstantiated items can be supplemented  
22 and substantiated. Although the interests of the parties are diver-  
23 gent, the closing conference is not an adversarial proceeding. The  
24 taxpayer may submit written and oral evidence, materials, and state-  
25 ments, but may not be required to do so. The department's employee in  
26 immediate charge of the audit, investigation, or inspection may also  
27 submit written and oral evidence, materials, and statements at the  
28 closing conference. By agreement, written materials may be submitted  
29 at other times before or after the closing conference.

1 (e) The taxpayer may send one or more representatives to the  
2 closing conference. The auditor or other person in immediate charge  
3 of the audit, investigation, or inspection upon which the preliminary  
4 assessment has been made shall attend the closing conference, and the  
5 director of the division proposing the assessment or the director's  
6 immediate subordinate designated for this purpose other than the  
7 person in immediate charge of the audit, investigation, or inspection  
8 shall preside at the closing conference. The department may have  
9 additional representatives at the closing conference. The person in  
10 immediate charge of the audit, investigation, or inspection may be  
11 excused from attending the closing conference with the consent of the  
12 taxpayer or because of serious illness or injury, incapacitation,  
13 death, or termination of employment with the department.

14 (f) Not more than 60 days after the conclusion of the closing  
15 conference, the presiding officer shall issue a written decision. If  
16 the presiding officer determines that additional tax is owed or that a  
17 penalty should be assessed, or both, the closing conference decision  
18 shall include a proposed notice and demand for payment for the addi-  
19 tional tax and interest and any penalty. The proposed notice and  
20 demand for payment shall include a written narrative fully explaining  
21 how and why the assessment of tax or penalty has been determined,  
22 together with schedules or worksheets in written or computer-readable  
23 format setting out the calculations for the proposed assessment. If  
24 the presiding officer determines that no assessment is in order, the  
25 taxpayer shall be given written notice to that effect within this  
26 60-day period. By agreement, the parties may extend the date for  
27 issuing a notice of assessment and demand for payment or a notice of  
28 no assessment.

29 (g) Unless the taxpayer requests a policy review hearing under

1 AS 43.05.247, a proposed notice and demand for payment issued under  
2 (f) of this section is final 30 days after its issuance and may not  
3 thereafter be made the subject of judicial review.

4 Sec. 43.05.247. POLICY REVIEW HEARING. (a) A person aggrieved  
5 by the action of the department in issuing a closing conference dec'  
6 sion under AS 43.05.246(f) or in denying a request for refund of tax  
7 under AS 43.20, AS 43.55, AS 43.57, or former AS 43.21 may request a  
8 policy review hearing within 30 days after the date of mailing of the  
9 notice required to be given under AS 43.05.246(f) or the denial of the  
10 request for refund. For purposes of this section, a failure by the  
11 department to grant or deny a request for refund within 60 days from  
12 the time the request is made shall be considered a denial of that  
13 request, unless the parties have extended the period by agreement.

14 (b) The department shall schedule the policy review hearing to  
15 be held within 30 days after the aggrieved person's request for it.  
16 The parties may extend the date for the policy review hearing by  
17 agreement.

18 (c) The purpose of the policy review hearing is to allow the  
19 commissioner to determine whether the action causing the grievance  
20 under (a) of this section reflects and incorporates the correct pol-  
21 icies of the department, and if so, whether those policies are being  
22 applied correctly to the aggrieved person's circumstances.

23 (d) The commissioner or an authorized representative of the  
24 commissioner other than an employee in the division taking the action  
25 causing the grievance shall preside at the policy review hearing. The  
26 aggrieved person, acting in person or through one or more authorized  
27 representatives, shall have the opportunity to explain the nature of  
28 the grievance and the relief sought. If the person is aggrieved by a  
29 proposed assessment based on facts that the person believes are

1 incorrect or incomplete, the person shall present written and oral  
2 evidence and materials to correct or complete the facts. After the  
3 presentation of the aggrieved person's case, the director of the  
4 division taking the action causing the grievance or another authorized  
5 representative of the division shall have the opportunity to explain  
6 that action and the policies and reasons for it. The division shall  
7 have the opportunity to present written and oral evidence and mate-  
8 rials to prove facts that it has asserted and that the aggrieved  
9 person has challenged as incorrect and to rebut or disprove any sup-  
10 plemental facts that the aggrieved person has sought to establish.  
11 The formal rules of evidence do not apply to either party's presen-  
12 tations on factual issues, but the presiding officer may require  
13 witnesses for both parties to give their testimony under oath and  
14 shall allow each party's witnesses to be examined by the other party.  
15 The proceedings of the policy review hearing shall be recorded and  
16 made part of the administrative record, together with any materials  
17 that may be submitted for the policy review in advance of, or after,  
18 the hearing.

19 (e) Not more than 90 days after the conclusion of the policy  
20 review <sup>JF: hearing</sup> [conference] the commissioner shall issue a policy review deci-  
21 sion. The policy review decision must

22 (1) state what relief, if any, is being granted to the  
23 aggrieved person, and state which portions, if any, of the depart-  
24 ment's action giving rise to the grievance are being upheld;

25 (2) state which additional facts, if any, that the ag-  
26 grieved person sought to show at the hearing are being recognized and  
27 which additional facts are being disregarded;

28 (3) for each disputed fact when there is a dispute as to  
29 one or more facts, state what is being taken as being the actual fact;

1 and

2 (4) state, as specifically as possible, which statutory and  
3 regulatory provisions are being relied on in granting or denying  
4 relief to the aggrieved person, how those provisions are being inter-  
5 preted and applied, and the specific policy considerations for the  
6 particular interpretation and application of these provisions; broad,  
7 unspecific policies, such as maximizing the state's tax revenue, are  
8 not sufficient for justifying a particular interpretation or applica-  
9 tion of a statute or regulation.

10 (f) If the policy review decision concludes that a notice and  
11 demand for payment should be made for additional tax and interest, or  
12 penalties, if any, a final notice and demand assessing the tax and  
13 interest, or penalties, if any, shall be issued at the same time as,  
14 and as part of, the policy review decision. The final notice and  
15 demand shall include a narrative fully explaining how and why the  
16 final assessment of tax and any penalty has been determined, together  
17 with schedules or worksheets in written or computer-readable format  
18 setting out the calculations for the final assessment. For purposes  
19 of AS 43.05.260, a final notice and demand for payment is not con-  
20 sidered made until the narrative and the schedules or worksheets  
21 setting out the calculations for the final assessment have been served  
22 on the aggrieved person.

23 Sec. 43.05.248. APPEAL. Within 30 days after the issuance of  
24 the commissioner's policy review decision under AS 43.05.247, a person  
25 aggrieved by the decision may file an action in the superior court in  
26 the judicial district where the person resides or conducts business,  
27 for a trial de novo of those portions of the policy review decision  
28 giving rise to the grievance. Neither party may raise as a claim,  
29 counterclaim, or defense any portion or portions of the policy review

1 decision that are not contested and do not give rise to the grievance.  
2 The aggrieved person shall be given access to the files of the depart-  
3 ment in the matter for preparing the appeal. If the court determines  
4 that the assessment or the tax payment was correct, it shall confirm  
5 the tax. If the assessment or tax payment was incorrect, the court  
6 shall determine the amount of the tax and order the payment of the  
7 deficiency or the refund of the excess, as the case may be. The  
8 department shall immediately pay any refund due and attach a certified  
9 copy of the judgment to the payment.

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

11 (a) Except as provided in (c) and (d) of this section and  
12 AS 43.20.200(b), the amount of a tax imposed by this title must be  
13 assessed within three years after the return was filed, whether or not  
14 a return was filed on or after the date prescribed by law. If the tax  
15 is not assessed before the expiration of the three-year period, a  
16 proceeding [NO PROCEEDINGS] may not be instituted in court for the  
17 collection of the tax.

18 \* Sec. 14. AS 43.05.260(c) is amended to read:

19 (c) The following exceptions apply to the limitation periods  
20 [PERIOD] in (a) and (d) of this section:

21 (1) in the case of a false or fraudulent return with the  
22 intent to evade tax, the tax may be assessed, or a proceeding in court  
23 for collection of the tax may be begun without assessment, at any  
24 time;

25 (2) in the case of a failure to file a return, the tax may  
26 be assessed, or a proceeding in court for the collection of the tax  
27 may be begun without assessment, at any time;

28 (3) if, before the expiration of the time prescribed in  
29 this section for the assessment of a tax imposed by this title, both

1 the department and the taxpayer have consented in writing to the  
2 assessment after the expiration of the time, the tax may be assessed  
3 at any time before the expiration of the period agreed upon; however,  
4 the period agreed upon may be extended by a subsequent agreement in  
5 writing made before the expiration of the period previously agreed  
6 upon.

7 \* Sec. 15. AS 43.05.260 is amended by adding a new subsection to read:

8 (d) For a tax to which the procedures under AS 43.05.246 -  
9 43.05.248 are applicable, the limitation period is four years.

10 \* Sec. 16. COURT RULE CHANGE. AS 43.05.248, added by sec. 12 of this  
11 Act, amends Rule 609 of the Alaska Rules of Appellate Procedure by making  
12 trial de novo mandatory rather than discretionary in appeals relating to  
13 taxes to which AS 43.05.248 is applicable and restricting the claims,  
14 counterclaims, and defenses that may be raised.

15 \* Sec. 17. TRANSITIONAL PROVISIONS. (a) AS 43.05.231 - 43.05.239, as  
16 added by sec. 7 of this Act, apply to all tax returns and return informa-  
17 tion for critical taxes, as defined in AS 43.05.239, in the possession of  
18 the Department of Revenue on or after the effective date of this Act.

19 (b) The Department of Revenue shall adopt the regulations required by  
20 AS 43.05.238, enacted by sec. 7 of this Act, before the department trans-  
21 fers a tax return or return information to a legislative committee under  
22 AS 43.05.231 - 43.05.239. Initial regulations adopted as directed under  
23 this subsection to implement or interpret AS 43.05.231 - 43.05.239 may not  
24 be adopted as emergency regulations.

25 (c) The provisions of AS 43.05.248, added by sec. 12 of this Act,  
26 apply to any grievance with respect to a tax under AS 43.20, AS 43.55,  
27 AS 43.57, or former AS 43.21 that, on the effective date of this Act, has  
28 not been appealed to superior court under AS 43.05.240(d).

29 \* Sec. 18. This Act takes effect immediately under AS 01.10.070(c).

# Senator Rick Halford

Senate District 1  
Chugik, Eagle River, East Anchorage, Fort Richardson



Senate Finance Committee  
Co-Chairman

March 14, 1988

## MEMORANDUM

TO: Commissioner Hugh Malone  
Department of Revenue

FROM: Senator Rick Halford, Co-Chairman  
Senate Finance Committee

SUBJECT: Senate Bill 401

Enclosed is a proposed Finance Committee Substitute for Senate Bill 401. This new version of SB 401 has been drafted in order to address the concerns which you have raised regarding this legislation and its potential fiscal impacts upon the Department.

I will be scheduling the bill for further committee work next week. Prior to the meeting, would you please provide me with your written comments following your review of the new draft. Should you have other suggested changes, please provide these as well.

The specific changes made are as follows:

1. Section 1 of SB 401, which related to appeals of the appropriateness of Departmental information requests, has been removed;
2. The statute of limitations has been raised from 3 to 4 years.
3. In order to address your concern that taxpayers might withhold information from the Department until the case reached the Superior Court level, the new version states that the taxpayer shall submit their evidence and supporting materials at the policy review hearing.

If you have any questions or if I can provide further information, please let me know.

cc: Senate Finance Committee members

5-1449P  
Chenoweth  
3/14/88

Original sponsor: Faiks

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 401 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to audits, investigations, and  
7 inspections for certain taxes; amending provisions  
8 relating to administrative and judicial review of de-  
9 cisions relating to taxes, penalties, tax refunds,  
10 and assessments in the administration of certain  
11 taxes; amending Rule 609 of the Alaska Rules of  
12 Appellate Procedure; and providing for an effective  
13 date."

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

15 \* Section 1. AS 43.05.240(a) is amended to read:

16 (a) Except as to a matter for which procedures are provided in  
17 AS 43.05.246 - 43.05.248, a [A] person aggrieved by the action of the  
18 department in fixing the amount of a tax, [OR] in imposing a penalty,  
19 or in denying a request for refund of tax may apply to the department  
20 within 60 days from the date of mailing the notice required to be  
21 given to the person by the department, giving notice of the grievance  
22 [,] and requesting an informal conference. At the conference the  
23 person aggrieved may present arguments and evidence relevant to the  
24 grievance [AMOUNT OF TAX OR PENALTY DUE THE STATE]. If the department  
25 determines that a correction is warranted, the department shall make  
26 the correction.

27 \* Sec. 2. AS 43.05.240(b) is amended to read:

28 (b) Except as to a matter for which procedures are provided in  
29 AS 43.05.246 - 43.05.248, a [A] person aggrieved by the action of the

1 department in fixing the amount of a tax, [OR] in imposing a penalty,  
2 or in denying a request for refund of tax may apply to the department  
3 and request a formal hearing . . .

4 (1) in place of the informal conference provided for in (a)  
5 of this section, within 60 days from the date of mailing the notice  
6 required to be given to the person by the department; or

7 (2) within 30 days after decision resulting from an in-  
8 formal conference.

9 \* Sec. 3. AS 43.05.240(c) is amended to read:

10 (c) At the formal hearing the department may subpoena witnesses  
11 and may administer oaths and make inquiries necessary to consider and  
12 decide the grievance [DETERMINE THE AMOUNT OF THE TAX OR PENALTY DUE  
13 THE STATE]. The person aggrieved may present arguments and evidence  
14 relevant to the amount of the tax or penalty due the state. If the  
15 department determines that a correction is warranted, the department  
16 shall make the correction.

17 \* Sec. 4. AS 43.05.245 is amended to read:

18 Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES, AND  
19 INTEREST. If a taxpayer fails to file a return or report required by  
20 this title in the time required by law or regulation, or makes an  
21 erroneous or fraudulent return, the department shall proceed to assess  
22 the license fees, tax, penalties, or interest and make a return from  
23 information which it obtains. A return made and subscribed by the  
24 department in accordance with this section is presumed sufficient for  
25 all legal purposes. However, nothing prevents a taxpayer from pre-  
26 senting evidence or other information on an appeal under AS 43.05.240  
27 or under procedures provided by AS 43.05.246 - 43.05.248 in order to  
28 rebut the presumed sufficiency of a return made and subscribed by the  
29 department, nor does the presumption of sufficiency alter the parties'

1        respective burdens of proof once the taxpayer has presented evidence  
2        or other material information to rebut that presumption. The assess-  
3        ment of license fees, tax, penalties, or interest under this section  
4        occurs when the department issues a notice and demand for payment of  
5        the license fees, tax, penalties, or interest, when a notice and  
6        demand for payment becomes final under AS 43.05.246(g), or when the  
7        department issues a final notice and demand for payment under AS 43.-  
8        05.247(f). The notice and demand for payment is issued when the  
9        notice and demand is delivered to the taxpayer in person or placed in  
10       the United States mail, postage-paid and addressed to the last known  
11       address of the taxpayer. Penalties and interest assessed under this  
12       title shall be collected in the same manner as provided in this title  
13       for the collection of tax or license fees.

14 \* Sec. 5. AS 43.05 is amended by adding new sections to read:

15        Sec. 43.05.246. CLOSING CONFERENCE AND PRELIMINARY ASSESSMENT.

16        (a) The procedures under this section apply to taxes under AS 43.20,  
17        AS 43.55, AS 43.57, and former AS 43.21.

18        (b) Before issuing a notice and demand for payment for a tax  
19        described in (a) of this section, the department shall give the tax-  
20        payer a written draft of its preliminary conclusions. The draft of  
21        the preliminary conclusions must contain the following:

22                (1) a draft of any notice and demand for payment that the  
23        department preliminarily concludes may be in order;

24                (2) a draft narrative fully explaining how and why the  
25        preliminary assessment of tax or penalty has been determined; and

26                (3) schedules or worksheets in written or computer-readable  
27        format setting out the calculations for the preliminary assessment.

28        (c) The department shall schedule a closing conference with the  
29        taxpayer, to be held not less than 60 nor more than 90 days after the

1 department delivers its preliminary audit conclusions under (b) of  
2 this section to the taxpayer in person or places those materials in  
3 the United States mail, postage-paid and addressed to the last known  
4 address of the taxpayer. The parties may extend the date for the  
5 closing conference by agreement.

6 (d) The purpose of the closing conference is to conclude the  
7 audit process and allow the parties to review and discuss the prelimi-  
8 nary results and conclusions of that process informally so that any  
9 mistaken assumptions, misunderstandings, and other errors or mistakes  
10 can be identified and eliminated as much as possible and so that  
11 incomplete information and unsubstantiated items can be supplemented  
12 and substantiated. Although the interests of the parties are diver-  
13 gent, the closing conference is not an adversarial proceeding. The  
14 taxpayer may submit written and oral evidence, materials, and state-  
15 ments, but may not be required to do so. The department's employee in  
16 immediate charge of the audit, investigation, or inspection may also  
17 submit written and oral evidence, materials, and statements at the  
18 closing conference. By agreement, written materials may be submitted  
19 at other times before or after the closing conference.

20 (e) The taxpayer may send one or more representatives to the  
21 closing conference. The auditor or other person in immediate charge  
22 of the audit, investigation, or inspection upon which the preliminary  
23 assessment has been made shall attend the closing conference, and the  
24 director of the division proposing the assessment or the director's  
25 immediate subordinate designated for this purpose other than the  
26 person in immediate charge of the audit, investigation, or inspection  
27 shall preside at the closing conference. The department may have  
28 additional representatives at the closing conference. The person in  
29 immediate charge of the audit, investigation, or inspection may be

1 excused from attending the closing conference with the consent of the  
2 taxpayer or because of serious illness or injury, incapacitation,  
3 death, or termination of employment with the department.

4 (f) Not more than 60 days after the conclusion of the closing  
5 conference, the presiding officer shall issue a written decision. If  
6 the presiding officer determines that additional tax is owed or that a  
7 penalty should be assessed, or both, the closing conference decision  
8 shall include a proposed notice and demand for payment for the addi-  
9 tional tax and interest and any penalty. The proposed notice and  
10 demand for payment shall include a written narrative fully explaining  
11 how and why the assessment of tax or penalty has been determined,  
12 together with schedules or worksheets in written or computer-readable  
13 format setting out the calculations for the proposed assessment. If  
14 the presiding officer determines that no assessment is in order, the  
15 taxpayer shall be given written notice to that effect within this  
16 60-day period. By agreement, the parties may extend the date for  
17 issuing a notice of assessment and demand for payment or a notice of  
18 no assessment.

19 (g) Unless the taxpayer requests a policy review hearing under  
20 AS 43.05.247, a proposed notice and demand for payment issued under  
21 (f) of this section is final 30 days after its issuance and may not  
22 thereafter be made the subject of judicial review.

23 Sec. 43.05.247. POLICY REVIEW HEARING. (a) A person aggrieved  
24 by the action of the department in issuing a closing conference deci-  
25 sion under AS 43.05.246(f) or in denying a request for refund of tax  
26 under AS 43.20, AS 43.55, AS 43.57, or former AS 43.21 may request a  
27 policy review hearing within 30 days after the date of mailing of the  
28 notice required to be given under AS 43.05.246(f) or the denial of the  
29 request for refund. For purposes of this section, a failure by the

1 department to grant or deny a request for refund within 60 days from  
2 the time the request is made shall be considered a denial of that  
3 request, unless the parties have extended the period by agreement.

4 (b) The department shall schedule the policy review hearing to  
5 be held within 30 days after the aggrieved person's request for it.  
6 The parties may extend the date for the policy review hearing by  
7 agreement.

8 (c) The purpose of the policy review hearing is to allow the  
9 commissioner to determine whether the action causing the grievance  
10 under (a) of this section reflects and incorporates the correct pol-  
11 icies of the department, and if so, whether those policies are being  
12 applied correctly to the aggrieved person's circumstances.

13 (d) The commissioner or an authorized representative of the  
14 commissioner other than an employee in the division taking the action  
15 causing the grievance shall preside at the policy review hearing. The  
16 aggrieved person, acting in person or through one or more authorized  
17 representatives, shall have the opportunity to explain the nature of  
18 the grievance and the relief sought. If the person is aggrieved by a  
19 proposed assessment based on facts that the person believes are incor-  
20 rect or incomplete, the person shall present written and oral evidence  
21 and materials to correct or complete the facts. After the presenta-  
22 tion of the aggrieved person's case, the director of the division  
23 taking the action causing the grievance or another authorized rep-  
24 resentative of the division shall have the opportunity to explain that  
25 action and the policies and reasons for it. The division shall have  
26 the opportunity to present written and oral evidence and materials to  
27 prove facts that it has asserted and that the aggrieved person has  
28 challenged as incorrect and to rebut or disprove any supplemental  
29 facts that the aggrieved person has sought to establish. The formal

1 rules of evidence do not apply to either party's presentations on  
2 factual issues, but the presiding officer may require witnesses for  
3 both parties to give their testimony under oath and shall allow each  
4 party's witnesses to be examined by the other party. The proceedings  
5 of the policy review hearing shall be recorded and made part of the  
6 administrative record, together with any materials that may be submit-  
7 ted for the policy review in advance of, or after, the hearing.

8 (e) Not more than 90 days after the conclusion of the policy  
9 review conference the commissioner shall issue a policy review deci-  
10 sion. The policy review decision must

11 (1) state what relief, if any, is being granted to the  
12 aggrieved person, and state which portions, if any, of the depart-  
13 ment's action giving rise to the grievance are being upheld;

14 (2) state which additional facts, if any, that the ag-  
15 grieved person sought to show at the hearing are being recognized and  
16 which additional facts are being disregarded;

17 (3) for each disputed fact when there is a dispute as to  
18 one or more facts, state what is being taken as being the actual fact;  
19 and

20 (4) state, as specifically as possible, which statutory and  
21 regulatory provisions are being relied on in granting or denying  
22 relief to the aggrieved person, how those provisions are being inter-  
23 preted and applied, and the specific policy considerations for the  
24 particular interpretation and application of these provisions; broad,  
25 unspecific policies, such as maximizing the state's tax revenue, are  
26 not sufficient for justifying a particular interpretation or applica-  
27 tion of a statute or regulation.

28 (f) If the policy review decision concludes that a notice and  
29 demand for payment should be made for additional tax and interest, or

1 penalties, if any, a final notice and demand assessing the tax and  
2 interest, or penalties, if any, shall be issued at the same time as,  
3 and as part of, the policy review decision. The final notice and  
4 demand shall include a narrative fully explaining how and why the  
5 final assessment of tax and any penalty has been determined, together  
6 with schedules or worksheets in written or computer-readable format  
7 setting out the calculations for the final assessment. For purposes  
8 of AS 43.05.260, a final notice and demand for payment is not con-  
9 sidered made until the narrative and the schedules or worksheets  
10 setting out the calculations for the final assessment have been served  
11 on the aggrieved person.

12 Sec. 43.05.248. APPEAL. Within 30 days after the issuance of  
13 the commissioner's policy review decision under AS 43.05.247, a person  
14 aggrieved by the decision may file an action in the superior court in  
15 the judicial district where the person resides or conducts business,  
16 for a trial de novo of those portions of the policy review decision  
17 giving rise to the grievance. Neither party may raise as a claim,  
18 counterclaim, or defense any portion or portions of the policy review  
19 decision that are not contested and do not give rise to the grievance.  
20 The aggrieved person shall be given access to the files of the depart-  
21 ment in the matter for preparing the appeal. If the court determines  
22 that the assessment or the tax payment was correct, it shall confirm  
23 the tax. If the assessment or tax payment was incorrect, the court  
24 shall determine the amount of the tax and order the payment of the  
25 deficiency or the refund of the excess, as the case may be. The  
26 department shall immediately pay any refund due and attach a certified  
27 copy of the judgment to the payment.

28 \* Sec. 6. AS 43.05.260(a) is amended to read:

29 (a) Except as provided in (c) and (d) of this section and

1 AS 43.20.200(b), the amount of a tax imposed by this title must be  
2 assessed within three years after the return was filed, whether or not  
3 a return was filed on or after the date prescribed by law. If the tax  
4 is not assessed before the expiration of the three-year period, a  
5 proceeding [NO PROCEEDINGS] may not be instituted in court for the  
6 collection of the tax.

7 \* Sec. 7. AS 43.05.260(c) is amended to read:

8 (c) The following exceptions apply to the limitation periods  
9 [PERIOD] in (a) and (d) of this section:

10 (1) in the case of a false or fraudulent return with the  
11 intent to evade tax, the tax may be assessed, or a proceeding in court  
12 for collection of the tax may be begun without assessment, at any  
13 time;

14 (2) in the case of a failure to file a return, the tax may  
15 be assessed, or a proceeding in court for the collection of the tax  
16 may be begun without assessment, at any time;

17 (3) if, before the expiration of the time prescribed in  
18 this section for the assessment of a tax imposed by this title, both  
19 the department and the taxpayer have consented in writing to the  
20 assessment after the expiration of the time, the tax may be assessed  
21 at any time before the expiration of the period agreed upon; however,  
22 the period agreed upon may be extended by a subsequent agreement in  
23 writing made before the expiration of the period previously agreed  
24 upon.

25 \* Sec. 8. AS 43.05.260 is amended by adding a new subsection to read:

26 (d) For a tax to which the procedures under AS 43.05.246 -  
27 43.05.248 are applicable, the limitation period is four years.

28 \* Sec. 9. COURT RULE CHANGE. AS 43.05.248, added by sec. 5 of this  
29 Act, amends Rule 609 of the Alaska Rules of Appellate Procedure by making

1 trial de novo mandatory rather than discretionary in appeals relating to  
2 taxes to which AS 43.05.248 is applicable.

3 \* Sec. 10. TRANSITIONAL PROVISIONS. The provisions of AS 43.05.248,  
4 added by sec. 5 of this Act, apply to any grievance with respect to a tax  
5 under AS 43.20, AS 43.55, AS 43.57, or former AS 43.21 that, on the effec-  
6 tive date of this Act, has not been appealed to superior court under  
7 AS 43.05.240(d).

8 \* Sec. 11. This Act takes effect immediately under AS 01.10.070(c).  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to appeals of information requests...state tax laws"  
Sponsor: Senator Faiks  
Requestor: Senate Finance

Agency Affected: Revenue  
BRU: Department combined  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
<b>OPERATING</b>						
PERSONAL SERVICES	-	1684.8	3152.8	5014.8	5451.8	5451.8
TRAVEL	-	358.2	544.5	790.9	856.4	856.4
CONTRACTUAL	-	555.7	263.1	291.9	170.7	170.7
SUPPLIES	-	31.9	31.9	41.9	41.9	41.9
EQUIPMENT	-	108.0	171.5	30.3	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	2738.6	4163.8	6169.8	6520.8	6520.8
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	2738.6	4163.8	6169.8	6520.8	6520.8
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	32	59	92	97	97
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steve Kettel, Director Phone: (907) 465-2300  
Division: Income and Excise Audit Division Date: April 21, 1988

Approved by Commissioner: Hugh Malone Date: April 21, 1988  
Agency: Department of Revenue

Distribution (by preparer):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: CS SB 401 (Finance)  
PUBLISH DATE: 04/21/88

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to disclosure  
to the legislature of tax returns...."  
Sponsor: Senator Faiks  
Requestor: Senate Finance

Agency Affected: Revenue  
BRU: Income and Excise Audit Division  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	259.9	259.9	259.9	259.9	259.9
TRAVEL	-	177.4	177.4	177.4	177.4	177.4
CONTRACTUAL	-	24.7	4.1	4.1	4.1	4.1
SUPPLIES	-	5.9	5.9	5.9	5.9	5.9
EQUIPMENT	-	23.5	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	491.4	447.3	447.3	447.3	447.3
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

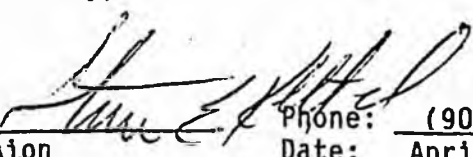
GENERAL FUND	-	491.4	447.3	447.3	447.3	447.3
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	491.4	447.3	447.3	447.3	447.3

POSITIONS:

FULL-TIME	-	5.0	5.0	5.0	5.0	5.0
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared By: Steven E. Kettel, Director  Phone: (907) 465-2320  
Division: Income and Excise Audit Division Date: April 21 1988

Approved by Commissioner: Hugh Malone Date: April 21, 1988  
Agency: Department of Revenue

Distribution (by preparer):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Prepared By: Steven E. Kettel  
 Income and Excise Audit Division  
 April 21, 1988

SB 401 ANALYSIS

Appeals Section

Field Audit

PERSONAL SERVICES

Revenue Auditor V	\$65.1			
Revenue Auditor IV	\$57.8			
Revenue Auditor III	\$51.0			
Clerk Typist III	<u>\$28.2</u>	Revenue Auditor V	<u>\$57.8</u>	
TOTAL:	\$202.1	TOTAL:	\$57.8	TOTAL: <u>\$259.9</u>

TRAVEL

Information Requests	\$84.8			
Closing Conferences	\$33.6			
Policy Review	\$25.2			
Court Travel	<u>\$ 7.0</u>	Field Audit Travel	<u>\$26.8</u>	
TOTAL:	\$150.6	TOTAL:	\$26.8	TOTAL: <u>\$177.4</u>

CONTRACTUAL

Telephone	\$1.8			
Printing	\$1.4			
Office Chairs	\$4.9			
Modular Offices	\$8.8			
5 Drawer Legal Files	\$2.9	Telephone	\$ .9	
Wang Printer Maintenance	<u>\$.5</u>	Wang PC	<u>\$3.5</u>	
TOTAL:	\$20.3	TOTAL:	\$4.4	TOTAL: <u>\$ 24.7</u>

SUPPLIES

Office Supplies	\$4.9	Office Supplies	\$1.0	TOTAL: <u>\$ 5.9</u>
-----------------	-------	-----------------	-------	----------------------

EQUIPMENT

Wang Printer	\$7.0			
Wang Computers	<u>\$16.5</u>			
TOTAL:	\$23.5			TOTAL: <u>\$ 23.5</u>

Should this bill be amended to provide for mandatory extensions to the statute of limitation when the taxpayer is appealing a records request or policy decision, the size of this fiscal note would be reduced.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to appeals of  
information requests...state tax laws"  
Sponsor: Senator Faiks  
Requestor: Senate Finance

Agency Affected: Revenue  
BRU: Department combined  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	2,953.0	5,472.2	7,554.4	7,554.4	7,554.4
TRAVEL	-	592.8	943.0	1,229.0	1,229.0	1,229.0
CONTRACTUAL	-	837.2	865.4	892.0	658.7	658.7
SUPPLIES	-	53.0	58.0	58.0	58.0	58.0
EQUIPMENT	-	166.8	155.2	150.0	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	4,622.8	7,493.8	9,883.4	9,500.1	9,500.1
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	4,622.8	7,493.8	9,883.4	9,500.1	9,500.1
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	53.0	97.0	136	136	136
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steve Kettel, Director  
Division: Income and Excise Audit Division

Phone: (907) 465-2300  
Date: March 1, 1988

Approved by Commissioner: Hugh Malone  
Agency: Department of Revenue

Date: March 1, 1988

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to appeals of information requests...state tax laws"  
Sponsor: Faiks  
Requestor: Finance

Agency Affected: Revenue  
BRU: Income and Excise Audit Division  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
<b>OPERATING</b>						
PERSONAL SERVICES	-	433.8	433.8	433.8	433.8	433.8
TRAVEL	-	242.0	242.0	242.0	242.0	242.0
CONTRACTUAL	-	33.4	6.1	6.1	6.1	6.1
SUPPLIES	-	8.0	8.0	8.0	8.0	8.0
EQUIPMENT	-	31.5	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	748.7	689.9	689.9	689.9	689.9
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	748.7	689.9	689.9	689.9	689.9
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	-	748.7	689.9	689.9	689.9	689.9

POSITIONS:

FULL-TIME	-	8.0	8.0	8.0	8.0	8.0
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared By: Steven E. Kettel, Director  
Division: Income and Excise Audit Division

Phone: (907) 465-2320  
Date: March 1, 1988

Approved by Commissioner: \_\_\_\_\_  
Agency: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Prepared By: Steven E. Kettel  
 Income and Excise Audit Division  
 March 1, 1988

SB 401 Analysis

Appeals Section

Field Audit

Personal Services

Revenue Auditor V	\$65.1
Revenue Auditor V	\$65.1
Revenue Auditor IV	\$57.8
Revenue Auditor IV	\$57.8
Revenue Auditor III	\$51.0
Revenue Auditor III	\$51.0
Clerk Typist III	<u>\$28.2</u>
TOTAL:	<u>\$376.0</u>

Revenue Auditor V	<u>\$57.8</u>	
TOTAL:	<u>\$57.8</u>	<u>TOTAL: \$433.8</u>

Travel

Information Requests	\$121.2
Closing Conferences	\$48.0
Policy Review	\$36.0
Court Travel	<u>\$10.0</u>
TOTAL:	<u>\$215.2</u>

Field Audit Travel	<u>\$26.8</u>	
TOTAL:	<u>\$26.8</u>	<u>TOTAL: \$242.0</u>

Contractual

Telephone	\$2.5
Printing	\$2.0
Office Chairs	\$7.0
Modular Offices	\$12.6
5 Drawer Legal Files	\$4.2
Wang Printer Maintenance	<u>\$.7</u>
TOTAL:	<u>\$29.0</u>

Telephone	\$.9	
Wang PC	<u>\$3.5</u>	
TOTAL:	<u>\$4.4</u>	<u>TOTAL: \$ 33.4</u>

Supplies

Office Supplies	\$7.0	Office Supplies	\$1.0	<u>TOTAL: \$ 8.0</u>
-----------------	-------	-----------------	-------	----------------------

Equipment

Wang Printer	\$7.0
Wang Computers	<u>\$24.5</u>
TOTAL:	<u>\$31.5</u>

TOTAL: \$ 31.5

Should this bill be amended to provide for mandatory extensions to the statute of limitation when the taxpayer is appealing a records request or policy decision, the size of this fiscal note would be reduced.

FISCAL NOTE

REQUEST:

Revision Date:  
Title: "An Act relating to appeals of  
information requests...state tax laws  
Sponsor: Senator Faiks  
Requestor: Senate Finance

Agency Affected: Revenue  
BRU: Oil and Gas Audit Division  
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 85	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	2,082.2	4,164.4	6,246.6	6,246.6	6,246.6
TRAVEL	-	285.3	570.0	856.0	856.0	856.0
CONTRACTUAL	-	775.0	801.7	828.3	595.0	595.0
SUPPLIES	-	40.0	40.0	40.0	40.0	40.0
EQUIPMENT	-	125.0	125.0	150.0	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	3,307.5	5,701.1	8,120.9	7,737.6	7,737.6

CAPITAL	-	-	-	-	-	-
---------	---	---	---	---	---	---

REVENUE	-	-	-	-	-	-
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	3,307.5	5,701.1	8,120.9	7,737.6	7,737.6
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	39	76	117	117	117
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: William Floerchinger, Director  
Division: Oil and Gas Audit Division

Phone: (907) 277-5627  
Date: March 1, 1986

Approved by Commissioner: Hugh Malone  
Agency: Department of Revenue

Date: March 1, 1986

Distribution (by preparer):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Prepared By: William Floerchinger  
Oil and Gas Audit Division  
March 1, 1988

SB 401 ANALYSIS

<u>PERSONAL SERVICES (1)</u>	<u>No</u>	<u>Cost</u>	<u>Total</u>
Revenue Auditor Supervisor I	10	\$66.0	\$ 660.0
Revenue Auditor V	10	\$65.1	\$ 650.0
Revenue Auditor IV	32	\$57.8	\$ 1849.6
Revenue Auditor III	55	\$51.0	\$2,805.0
Clerk Typist III	10	\$28.2	\$ 282.0
TOTAL:	<u>117</u>		<u>TOTAL: \$6,246.6</u>

TRAVEL

Information Requests	\$ 636.0
Closing Conferences	\$ 75.0
Policy Review	\$ 55.0
Court Travel	\$ 90.0
TOTAL:	<u>\$ 856.0</u>

CONTRACTUAL

Telephone	\$ 50.0
Printing	\$ 40.0
Furniture (2)	\$ 700.0
Space (3)	\$ 425.0
Computer Maintenance	\$ 80.0
TOTAL:	<u>\$1,295.0</u>

SUPPLIES

Office Supplies	<u>TOTAL: \$ 40.0</u>
-----------------	-----------------------

EQUIPMENT

Computers (4)	<u>TOTAL: \$ 400.0</u>
---------------	------------------------

(1) Should this bill pass the large increase no number of additional staff would cause training and implementation problems requiring a phase in over three years.

(2) The furniture would be purchased as needed over three year period.

(3) The space costs would be picked up in the revenue budget the first year after that the Department of Administration would bear the cost.

(4) The computers would be phased in along with the additional staff.

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: SB 401  
PUBLISH DATE: 2/9/88

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to appeals of  
information requests...state tax laws"  
Sponsor: Senator Faiks  
Requestor: Senate Finance

Agency Affected: Revenue  
BkU: Commissioner's Office  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 85	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	457.0	874.0	874.0	874.0	874.0
TRAVEL	-	65.5	131.0	131.0	131.0	131.0
CONTRACTUAL	-	28.8	57.6	57.6	57.6	57.6
SUPPLIES	-	5.0	10.0	10.0	10.0	10.0
EQUIPMENT	-	30.3	30.2	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	566.6	1,102.8	1,072.6	1,072.6	1,072.6
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	566.6	1,102.8	1,072.6	1,072.6	1,072.6
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	6	11	11	11	11
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Deborah Vogt, Senior Hearing Officer  
Division: Commissioner's Office

Phone: (907) 465-2300  
Date: March 1, 1988

Approved by Commissioner: Hugh Malone  
Agency: Department of Revenue

Date: March 1, 1988

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

SB 401 Analysis

Hearing Officer Section

Personal Services

Revenue Hearing Officer (Anch)	86.9	
Revenue Hearing Officer (Anch)	86.9	
Revenue Hearing Officer (Anch)	86.9	
Revenue Hearing Officer (Juneau)	86.9	
Clerk IV (Juneau)	34.9	
Accounting Clerk III (Juneau)	34.9	
Law Clerk (Juneau)	80.0	
Law Clerk (Anch)	84.9	
Law Clerk (Anch)	84.9	
Law Clerk (Anch)	84.9	
Accounting Clerk III (Anch)	34.9	
Clerk Typist III (Juneau)	29.0	
Clerk Typist III (Anch)	29.0	
Clerk Typist III (Anch)	<u>29.0</u>	
		Total <u>\$874.0</u>

Travel

Income & Excise Hearings	\$36.0	
Oil & Gas Hearings	55.0	
Court/Income & Excise	10.0	
Court/Oil & Gas	<u>30.0</u>	
		Total <u>\$131.0</u>

Contractual

Research	\$18.0	
Space Costs	35.6	
Telephone	10.0	
Printing	5.0	
Maintenance	<u>7.0</u>	
		Total <u>\$75.6</u>

Supplies

Total \$10.0

Equipment

Office Chairs/Equipment	\$22.0	
Computer Terminals/Printers	<u>38.5</u>	
		Total <u>\$60.5</u>

STATE OF ALASKA 1988 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: Bill Version: CS SB 401 (Finance)  
Publish Date:

Revision Date: 04/25/88 Agency Affected: Alaska Court System  
Title: An act relating to ... the ad- BRU: Trial Courts  
ministration of state tax laws  
Sponsor: Faiks Components:  
Requestor: Senate Finance

EXPENDITURES/REVENUES:	(Thousands of Dollars)					
OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services	. . . .	581.2	798.5	798.5	581.2	581.2
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	20.0	30.0	30.0	20.0	20.0
Supplies	. . . .	3.0	5.0	5.0	3.0	3.0
Equipment	. . . .	29.5	10.0	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	633.7	843.5	833.5	604.2	604.2

CAPITAL	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
---------	---------	---------	---------	---------	---------	---------

REVENUE	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
---------	---------	---------	---------	---------	---------	---------

FUNDING:	(Thousands of Dollars)					
General Funds	0.0	633.7	843.5	833.5	604.2	604.2
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	633.7	843.5	833.5	604.2	604.2

POSITIONS:						
Full-time	. . . .	10.0	16.0	16.0	10.0	10.0
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: *Jan Handley* General Counsel Phone: 264-8228  
Division: Alaska Court System Date: 04/25/88

Approved by: *Stephanie Cole, Sec.* Arthur H. Snowden, III, Administrative Director Date: 04/25/88  
Agency: Alaska Court System

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management & Budget  
Impacted Agency(ies)  
Senate Secretary

*Reduce FY 89  
by 1/2*

## ALASKA COURT SYSTEM

Fiscal Impact CS SB 401 (Finance)

Page 2 of 3

	FY 89	FY 90	FY 91	FY 92	FY 93
<b>Personal Services:</b>					
2 Superior Court Judge, PFT, Anchorage	300,834	300,834	300,834	300,834	300,834
2 In-Court Clerk, Range 12B, PFT, Anchorage	71,332	71,332	71,332	71,332	71,332
2 Secretary, Range 12B, PFT, Anchorage	71,332	71,332	71,332	71,332	71,332
2 Law Clerk, Range 13A, PFT, Anchorage	73,438	73,438	73,438	73,438	73,438
2 Court Clerk II, Range 10B, PFT, Anchorage	64,254	64,254	64,254	64,254	64,254
2 Pro Tem Superior Court Judge, PFT, Anchorage		81,682	81,682		
2 In-Court Clerk, Range 12B, PFT, Anchorage		71,332	71,332		
2 Court Clerk II, Range 10B, PFT, Anchorage		64,254	64,254		
<b>Subtotal Personal Services</b>	<b>581,190</b>	<b>798,458</b>	<b>798,458</b>	<b>581,190</b>	<b>581,190</b>
<b>Contractual:</b>					
Telephones, postage, copier rental, legal reference materials	20,000	30,000	30,000	20,000	20,000
<b>Supplies:</b>					
Forms, file folders, copier paper, desk supplies, etc.	3,000	5,000	5,000	3,000	3,000
<b>Equipment: (one-time costs)</b>					
Desk, chair, filing cabinets, typewriter, statutes, courtroom recording equipment, etc.	29,500	10,000	0	0	0
<b>Total Costs</b>	<b>633,690</b>	<b>843,458</b>	<b>833,458</b>	<b>604,190</b>	<b>604,190</b>

ALASKA COURT SYSTEM  
FISCAL ANALYSIS FOR CS SENATE BILL 401

This bill would provide for trials de novo in superior court of assessments for corporate income taxes (AS 43.20), production taxes (AS 43.55), the former separate accounting income taxes (AS 43.21), and conservation taxes (AS 43.57). Assuming that one-half of the Department of Revenue's present informal and formal hearing caseload for these tax assessments would enter the court system for court-tried trials de novo, the court system would expect to receive approximately 107 cases, the majority of which would be expected in FY's 90 and 91. The caseload would be expected to continue at approximately 25 cases per year thereafter. These estimates are based on statistics provided by the Department of Revenue. See attached correspondence from Department of Revenue.

According to former Attorney General Wilson Condon, major oil and gas cases can be expected to take between four and eight weeks of trial time. Given an estimated five weeks of trial per case, each superior court judge assigned to these cases would be able to hear approximately 7-1/2 cases per year. Thus, four judges could be expected to try an average of 30 of these cases each year. The court system expects to handle this workload with a combination of permanent judicial staff and temporary pro tem judges.

The court system would need two permanent full-time judicial units composed of two superior court judges, two in-court deputies, two secretaries, four court clerks and two law clerks. Also, a complement of two pro tem judges and two in-court deputies would be hired for a two-year period in FY's 90 and 91, during which time the caseload would be monitored to determine whether there would be a continued need for this complement. If the cases are resolved more swiftly than anticipated, the pro tem complement could be reduced or terminated within the two-year period.

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: \_\_\_\_\_  
PUBLISH DATE: 2/9/88

FISCAL NOTE

REQUEST:

Revision Date: 3/1/88  
Title: An Act relating to ... the admin-  
istration of state tax laws  
Sponsor: Faiks  
Requestor: Senate Finance  
Agency Affected: Alaska Court System  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		798.5	798.5	645.5	645.5	645.5
TRAVEL						
CONTRACTUAL		30.0	30.0	30.0	30.0	30.0
SUPPLIES		5.0	5.0	5.0	5.0	5.0
EQUIPMENT		39.5	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		873.0	833.5	680.5	680.5	680.5

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		873.0	833.5	680.5	680.5	680.5
FEDERAL FUNDS						
OTHER						
TOTAL		873.0	833.5	680.5	680.5	680.5

POSITIONS:

FULL-TIME		16	16	12	12	12
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

*Revised & reduced by SFC 4/26/88*

Prepared by: Jan Strandberg, Staff Counsel Phone: 264-8228  
Division: Alaska Court System Date: 3/2/88

Administrative Director:  
Approved by: [Signature] Date: 3-2-88  
Agency: Alaska Court System

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

ALASKA COURT SYSTEM

Fiscal Impact - SB 401

Personal Services:

2 Superior Court Judge, PFT, Anchorage	\$300,834
2 In-Court Clerk, Range 12B, PFT, Anchorage	71,332
2 Secretary, Range 12B, PFT, Anchorage	71,332
2 Law Clerk I, Range 13A, PFT, Anchorage	73,438
2 Court Clerk II, Range 10B, PFT, Anchorage	64,254
2 Pro Tem Superior Court Judge, PFT, Anchorage	81,682
2 In-Court Clerk, Range 12B, PFT, Anchorage	71,332
2 Court Clerk II, Range 10B, PFT, Anchorage	64,254
	-----
Total Personal Services	798,458

Contractual:

Telephones, postage, copier, legal reference materials, equipment rental, etc.	30,000
--	--------

Supplies:

Forms, file folders, copier paper, desk supplies, etc.	5,000
--	-------

Equipment: (one-time costs)

Desk, chair, filing cabinets, typewriter, statutes, courtroom recording equipment, etc.	39,500
	-----

Total First Year Cost	\$872,958
	=====

ALASKA COURT SYSTEM

FISCAL ANALYSIS FOR SENATE BILL 401

This bill would provide for trials de novo in superior court of assessments for corporate income taxes (AS 43.20), production taxes (AS 43.55), the former separate accounting income taxes (AS 43.21), and conservation taxes (AS 43.57). Assuming that one-half of the Department of Revenue's present informal and formal hearing caseload for these tax assessments would enter the court system for trial de novo, the court system would expect to receive approximately 107 cases and would expect the caseload to continue at approximately 25 cases per year thereafter. These estimates are based on statistics provided by the Department of Revenue. See attached correspondence from Department of Revenue.

According to former Attorney General Wilson Condon, major oil and gas cases can be expected to take between four and eight weeks of trial time. Given an estimated five weeks of trial per case, each superior court judge assigned to these cases would be able to hear approximately 7-1/2 cases per year. Thus, four judges could be expected to try an average of 30 of these cases each year. The court system expects to handle this workload with a combination of permanent judicial staff and temporary pro tem judges. The court system would need two permanent full-time judicial units composed of two superior court judges, two in-court deputies, two secretaries, four court clerks and two law clerks. Also, a complement of two pro tem judges and two in-court deputies would be hired for a two-year period during which time the caseload would be monitored to determine whether there would be a continued need for this complement. If the cases are resolved more swiftly than anticipated, the pro tem complement could be reduced or terminated within the two-year period.

This bill also provides for the taxpayers' right to appeal information requests. The court system expects to handle these appeals with existing resources.

## STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF REVENUE

## OIL AND GAS AUDIT DIVISION

850 WEST 7TH AVENUE  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-1383

February 8, 1988

Jan Strandberg  
Staff Counsel  
Alaska Court System  
303 K Street  
Anchorage, Alaska 99501Re: Administrative Appeal Statistics-  
Sen. Faiks Proposal for Tax Appeals

Dear Ms. Strandberg:

You have asked that I provide to you the number of cases that we would anticipate being appealed to the Tax Division.

In reviewing Mr. Meyer's letter to you, I noticed that he has listed each tax period as an individual case. The income tax return under AS 43.21 is filed for each year while the production tax return for oil or gas under AS 43.55 is filed monthly.

The Oil and Gas Audit Division currently has the following cases pending:

<u>AS 43.21</u>	<u>Cases</u>	<u>Tax Periods</u>
Formal Hearing Level	10	14
Informal Conference Level	13	23
 <u>AS 43.55</u>		
Formal Hearing Level	19	406
Informal Conference Level	<u>15</u>	<u>572</u>
Total	<u>57</u>	<u>1,015</u>

It is anticipated that the following cases will have completed the audit process with the assessment being issued, and be ready to start the appeal process by June, 1988:

<u>AS 43.21</u>	<u>Cases</u>	<u>Tax Periods</u>
	8	12
AS 43.55	<u>16</u>	<u>468</u>
Total	<u>24</u>	<u>480</u>

Jan Strandberg  
Page Two

The current inventory of the Department in non-oil and gas cases is as follows:

	<u>INFORMAL CONFERENCE</u>		<u>FORMAL HEARING</u>		<u>TOTAL</u>	
	<u>Cases</u>	<u>Tax Periods</u>	<u>Cases</u>	<u>Tax Periods</u>	<u>Cases</u>	<u>Tax Periods</u>
Corporation Tax (Chapter 20)	90	234	43	89	133	323
All Other Tax	<u>139</u>	<u>325</u>	<u>18</u>	<u>33</u>	<u>157</u>	<u>358</u>
Totals	229	559	61	122	290	681

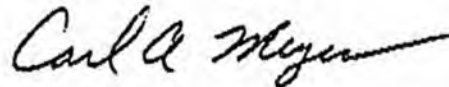
I have not made any attempt to quantify the Chapter 21 and 55 Oil and Gas cases. Generally, there are as many cases as there are producers and tax periods. The statistics really begin to add up since oil and gas production is on a monthly tax period. In summary form for the oil and gas cases, we have 1615 tax periods at informal conference and 95 at formal hearing.

Commissioner Malone's letter of December 31, 1987 to Art Snowden estimates what cases might be expected to go to the court system. Our statistics tend to prove the administrative appeal process has been efficient in resolving a great percentage of the cases. This corresponds with the finding of the United States General Accounting Office regarding resolution of federal tax disputes in their report of July 1986 to the Acting Commissioner of the Internal Revenue Service. I have enclosed a copy of the report for your review.

In addition to the number of cases the court system would receive from taxpayers who elect to bypass the administrative appeal process, the current version of the bill apparently would also allow a taxpayer to proceed first through the administrative appeal process and then to file a de novo action in the court system. This would give taxpayers more leverage, harden taxpayer positions at all phases, and generally result in fewer administrative resolutions of tax disputes. The result of that would be more cases entering the court system.

I hope you find the information useful for your purposes. Please let us know if we can be of any further assistance.

Sincerely,



Carl A. Meyer  
Chief of Appeals  
Division of Income & Excise Audit  
(307) 465-2342

Encl.

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

STEVE COWPER, GOVERNOR

STATE OFFICE BUILDING  
P.O. BOX 5A  
JUNEAU, ALASKA 99811-0400

**R E C E I V E D**

January 20, 1988

JAN 22 1988

Office of Administrative Director  
Alaska Court System

Jan Strandberg  
Staff Counsel  
Alaska Court System  
303 K Street  
Anchorage, Alaska 99501

Re: Administrative Appeal Statistics-  
Sen. Faiks Proposal for Tax Appeals

Dear Ms. Strandberg:

Statistics concerning the administrative appeal process are shown in the table below. The numbers do not include any oil and gas cases arising under AS 43.21 (former separate accounting) or AS 43.55 (production tax). The references to oil and gas cases concern those arising under AS 43.20.

### ADMINISTRATIVE APPEALS

#### INFORMAL CONFERENCE TAX DECISIONS

#### FORMAL HEARING DECISIONS\*

#### CASES APPEALED TO SUPERIOR COURT\*

FYTD 88**	106	2(0)	0(0)
FY 87	314***	8(2)	0(0)
FY 86	338	9(0)	5(1)
FY 85	183	20(0)	3(0)
FY 84	387	26(6)	6(3)
FY 83	573	43(5)	10(3)
FY 82	499	55(4)	14(1)
Totals	2294	161(17)	38(8)
Average	382.3 100%	26.8 7.01%	6.3 1.6%
Average	-	26.8 100%	6.3 23.5%

\*Calendar Year Statistics-Does not include Permanent Fund Dividend or Child Support Enforcement Agency Decisions issued by the Department.

\*\*Not Included In Averages.

\*\*\*628 Accounts Estimated As 314 Cases.

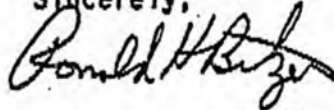
( ) Denotes Pre-1978 Oil and Gas Income Tax Cases Included In Total. Oil and Gas Informal Conference Cases Have Not Been Identified.

Jan Strandberg  
February 8, 1988  
Page 2

The length of time for a case to proceed through the appeal's process is hard to determine. As an example, one case which involves 4 years of income tax under AS 43.21 by the time the formal hearing is completed will have required 3 years of work with 20 plus attorneys working full time on it. It is estimated that it will take 8 weeks at a minimum for both parties to present the case at formal hearing. There are several cases like this one included in the above listing.

I hope you find the information useful for your purposes. Please let me know if I can be of any further assistance.

Sincerely,



Ronald H. Bitzer  
Appeals Officer  
Oil & Gas Audit Division

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to information requests ... state tax laws ..."  
Sponsor: Senator Faiks  
Requestor: Senate Finance

Agency Affected: Department of Law  
BRU: Oil & Gas Spl. Litigation Appropriation and Oil & Gas Spl. Proj. BRU  
Components: Oil & Gas Spl. Litigation Appropriation and Oil & Gas Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		274.2	282.4	290.9	151.3	155.8
TRAVEL		9.6	9.9	10.2	5.3	5.5
CONTRACTUAL		31.8	32.8	33.8	20.4	21.0
SUPPLIES		21.3	21.9	22.6	13.4	13.8
EQUIPMENT		35.6	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	372.5	347.0	357.5	190.4	196.1

<u>Oil &amp; Gas Special Litigation</u>	-0-	1,372.5	4,347.0	4,357.5	2,190.4	2,196.1
---	-----	---------	---------	---------	---------	---------

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	1,372.5	4,347.0	4,357.5	2,190.4	2,196.1
FEDERAL FUNDS						
OTHER	-0-	372.5	347.0	357.5	190.4	196.1
TOTAL						

POSITIONS:

FULL-TIME	-0-	5	5	5	3	3
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: March 1, 1988

Approved by Commissioner: Grace Berg/Schaible, Atty. Gen.

Date: March 1, 1988

Agency: Department of Law

Distribution (by preparer):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

*Revised by SFC 4/25/88*

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 401

It is difficult for the Department of Law to estimate with any exactitude the resources required to implement SB 401 as it is currently drafted. However, we can identify areas we expect will require substantial additional legal services.

Section 1 creates a two-step appeal process for any taxpayer who believes that a request for information or materials during the course of an audit, investigation, or inspection is unreasonable. This section dramatically expands the circumstances under which a taxpayer could refuse to provide access to documents (and thereby impede the audit, investigation, or inspection). Currently the Department of Revenue may issue an administrative summons. When a taxpayer fails to produce the necessary documents the department may go to court immediately for a judicial determination. The proposal in section one creates an unnecessary administrative step which will only delay the ultimate court decision.

Given this department's experience in other oil and gas litigation respecting production of documents, we believe that enactment of this section would require one full-time attorney and a paralegal.

Under Section 7, the new procedures in the bill would apply to audits, investigations, or inspections that are pending as well as grievances, that have "not been fully heard" as of the effective date of the bill. This section raises serious statute of limitation problems as well as practical ones for all current cases. Issues include whether the statute of limitations, which would have run in June 1988, for example, is tolled for a case that is (a) awaiting the commissioner's decision, (b) in hearing (c) in conference at the division level, or (d) recently assessed or whether a case that is at any given stage at the time of this bill's effective date must begin anew if the taxpayer so desires. We believe that litigation over this section will be particularly intense because its effect could be to eliminate or substantially reduce every taxpayer's ultimate tax exposure. The total at stake in the tax cases that are in some stage of administrative appeal exceeds \$2.5 billion.

We believe that enactment of this section would require two full-time attorneys over a period of three years. Combined with the impact of section one of the bill, we would also require one full-time secretary.

The timelines and appellate scheme in the remainder of the bill will also dramatically affect the Department of Law. Currently, the Department of Law handles only a very limited number of tax cases. The litigation model both the Department of Revenue and the Department of Law have been working toward is one in which oil and gas tax cases would not require significant attorney representation at the administrative level within the Department of Revenue. This bill, which places the trial in the court system, will require attorneys for all tax cases because only attorneys are allowed to represent the state in Alaska's superior courts.

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 401

We believe that these tax cases must be litigated in the same manner as our current oil and gas litigation, in which we use a combination of outside counsel and experts with state personnel. There are three reasons for this:

1. There are millions of dollars at stake in each of the cases -- the industry will continue to devote the best legal resources available to these cases;
2. Adverse precedent in one case could seriously harm the state in other cases; and
3. The Department of Revenue, rather than the court system has a corps of decision-makers with expertise in the field of oil and gas taxation. Such a radical change of forum, in the earliest cases at least, could place the state at greater risk in attempting to recover its properly due taxes.

The following table shows the level of expenditure for the two proceedings that are most analogous to the cases that would be generated under this bill; a current tax proceeding and the Amerada Hess royalty case which involves many of the same issues presented in the major tax cases.

Amerada Hess

	<u>Total Expended</u>	<u>Annual Expended</u>
6/30/84	1,722,340.51	1,722,340.51
6/30/85	3,598,666.50	1,876,375.91
6/30/86	6,909,832.82	3,401,166.32
6/30/87	11,478,296.44	4,478,463.57
6/30/88 (Est.)		5,620,000.00
	Total	17,098,346.41
	Avg All	3,419,669.28
	Avg last 3 yrs	4,499,876.66

Production, Oil Income Tax

	<u>Total Expended</u>	<u>Annual Expended</u>
6/30/84	191,041.75	191,041.75
6/30/85	695,356.71	504,314.96
6/30/86	1,568,254.63	872,897.92
6/30/87	2,922,618.52	1,354,363.92
6/30/88 (Est.)		3,975,000.00
	Total	6,847,618.55
	Avg All	1,369,523.71
	Avg last 3 yrs	2,050,753.95

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 401

The bill could effectively require the Department Law to litigate simultaneously several trial level cases, while appeals are being argued in the Alaska Supreme Court. Looking at our experience in the tax cases and in Amerada Hess we regard the current expenditure level of \$4 million annually as our base for revenue tax cases. There are several other cases that justify an effort paralleling the current tax case because of the amount at stake. There will also be numerous cases that each involve tens of millions of dollars. In FY 89 we have requested \$1 million above our base. This amount reflects our belief that cases under this bill will not be ready for Department of Law prosecution until mid-year. For FY 90 and FY 91 we believe that in order to effectively prosecute an additional four to six cases per year at the trial court level we would require an additional \$4 million. After that period the amount required should be reduced substantially because of court precedent established through the earlier cases, elimination of backlog, and new cases with substantially less at stake. Accordingly, we believe that in FY 92 and 93 our trial level expenditures could be reduced to \$2 million above base for each year and in FY 94 to our base. Additionally, we have requested \$372,500 in FY 89 for the five new staff positions described above. The impact of Section 1 and Section 7 will be felt on our staff as soon as the bill goes into effect. Two of the five positions will be deleted in FY 92 when work from the transitional period should be completed. We note that extensive litigation will be ongoing even after that fiscal year as audits and tax laws for the years after 1981 are challenged.

Appeals to the Supreme Court would occur under either the current or proposed framework. Accordingly we have not included costs for appeal.

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 401

## SB 401 Fiscal Analysis

### Department of Law Staff Costs

	<u>Section 1 Costs</u>		<u>Section 7 Costs</u>			<u>TOTAL</u>
	<u>Atty III</u>	<u>Paralegal Asst. II</u>	<u>Atty IV</u>	<u>Atty III</u>	<u>Leg Sec I</u>	
Fer. Svcs.	63.7	43.3	72.0	63.7	31.5	274.2
Travel	2.4	2.4	2.4	2.4	-0-	9.6
Contractual	6.6	6.6	6.6	6.6	5.4	31.8
Supplies	4.5	4.5	4.5	4.5	3.3	21.3
Equipment	6.8	6.8	6.8	6.8	8.4	35.6
	—	—	—	—	—	—
<b>Total</b>	<b>84.0</b>	<b>63.6</b>	<b>92.3</b>	<b>84.0</b>	<b>48.6</b>	<b>372.5</b>

Position and associated costs beyond FY 89 include a 3% annual inflation factor, less one-time items. The two attorneys required for Section 7 transitional litigation are deleted after FY 91. The costs for these new positions will occur in the Oil & Gas BRU as interagency funded. However, general funds must also be included in the annual separate appropriation for oil and gas special litigation to offset these costs.

Position Title <b>Attorney III</b>		No. of Positions <b>1</b>	Range/Step <b>22A</b>	Org. Unit <b>PX</b>	
Time Status <b>PFT</b>	Staff Months <b>12</b>	Location <b>Anchorage</b>		Election District <b>8</b>	
Type of Expenditure		Justification			
Amount		<p>This position is required to overcome challenges for reasonableness that are expected to arise during the course of oil and gas tax audits, if the provisions of Section 1 of SB 401 become law. There are literally hundreds of thousands of documents that are subject to inspection and examination during an audit of oil and gas production and income tax records. This section of the bill dramatically expands the circumstances under which a taxpayer could refuse to provide access to financial transaction documents, and without which an audit could not effectively proceed. Allocation of the position one grade lower than the full journey level of Attorney IV is appropriate for this work because it mainly addresses procedural issues rather than substantive legal issues.</p>			
1	2				3
Salary	49,140				
Benefits	14,597				
Premium Pay					
Other					
Total Personal Services					63,738
Travel					2,400
Contractual					6,600
Commodities					4,500
Equipment					6,800
Other					
Total Cost					84,038
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004				
GF Program Receipts	1005				
Other /Interagency Receipts	1007	84,038			

**Request For  
New Position**

Agency Department of Law  
 BRU Oil & Gas Special Projects  
 Component Operations

Page 1 of 5  
 Revised Date \_\_\_\_\_

**FY 89**

Position Title <b>Paralegal Assistant II</b>		No. of Positions <b>1</b>	Range/Step <b>16A</b>	Barg. Unit <b>GGU</b>	
Time Status <b>PFT</b>	Staff Months <b>12</b>	Location <b>Anchorage</b>		Election District <b>8</b>	
Type of Expenditure		Justification			
		<p>This position is needed to overcome challenges for reasonableness that are expected to arise during the course of oil and tax audits, if the provisions of Section 1 of SB 401 become law. There are literally hundreds of thousands of documents that are subject to inspection and examination during an audit of oil and gas production and income tax records. This section of the bill dramatically expands the circumstances under which a taxpayer could refuse to provide access to financial transaction documents, and without which a tax audit could not effectively proceed. This position would be responsible for tracking the multitude of responses and challenges to tax auditor requests for information. This work is ideally suited to the Paralegal Assistant II job class.</p>			
Amount					
1	2				3
Salary	32,424				
Benefits	10,901				
Premium Pay					
Other					
Total Personal Services					43,325
Travel					2,400
Contractual					6,600
Commodities		4,500			
Equipment		6,800			
Other					
Total Cost		63,625			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004				
GF Program Receipts	1005				
Other / Interagency Receipts	1007	63,625			

**Request For  
New Position**

Agency Department of Law  
 BRU Oil & Gas Special Projects  
 Component Operations

Page 2 of 5  
 Revised Date

**FY 89**

Position Title <b>Attorney IV</b>		No. of Positions <b>1</b>	Range/Step <b>24A</b>	Barg. Unit <b>PX</b>	
Time Status <b>PFT</b>	Staff Months <b>12</b>	Location <b>Anchorage</b>		Election District <b>8</b>	
Type of Expenditure		Justification			
Amount		<p>This is one of three positions that will be needed to handle litigation that is expected to arise from the transitional provisions of SB 401, if Section 7 is adopted and becomes law. This section raises serious statute of limitation problems as well as practical ones for all current oil and gas cases. Litigation over this section will be particularly intense because its effect could be to entirely eliminate or substantially reduce every taxpayer's ultimate tax exposure. The total at stake in the oil and gas income and production tax cases that are in some state of administrative appeal, and which would be subject to the bill's transitional provisions, exceed \$2.5 billion. Allocation to the Attorney IV level is recommended because of the substantive legal issues involved in this aspect of the bill.</p>			
<b>1</b>	<b>2</b>				<b>3</b>
Salary	56,244				
Benefits	15,713				
Premium Pay					
Other					
<b>Total Personal Services</b>					<b>71,957</b>
Travel					2,400
Contractual					6,600
Commodities					4,500
Equipment		6,800			
Other					
<b>Total Cost</b>		<b>92,257</b>			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004				
GF Program Receipts	1005				
Other / Interagency Receipts	1007	92,257			

**Request For  
New Position**

Agency Department of Law  
 BRU Oil & Gas Special Projects  
 Component Operations

Page 3 of 5  
 Revised Date

**FY 89**

Position Title <b>Attorney III</b>		No. of Positions <b>1</b>	Range/Step <b>22A</b>	Barg. Unit <b>PX</b>	
Time Status <b>. PFT</b>	Staff Months <b>12</b>	Location <b>Anchorage</b>		Election District <b>8</b>	
Type of Expenditure		Justification			
		<p>This is the second of three positions that will be needed to handle litigation that is expected to arise from the transitional provisions of SB 401, if Section 7 is adopted and becomes law. This section raises serious statute of limitation problems as well as practical ones for all current oil and gas cases. Litigation over this section will be particularly intense because its effect could be to entirely eliminate or substantially reduce every taxpayer's ultimate tax exposure. The total at stake in the oil and gas income and production tax cases that are in some state of administrative appeal, and which would be subject to the bill's transitional provisions, exceed \$2.5 billion. This position will assist the Attorney IV responsible for statute of limitation problems in the conduct of extensive and complex litigation raised by the bill's transitional provisions.</p>			
Amount					
1	2				3
Salary	49,140				
Benefits	14,597				
Premium Pay					
Other					
Total Personal Services					63,738
Travel					2,400
Contractual					6,600
Commodities					4,500
Equipment					6,800
Other					
Total Cost		84,038			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004				
GF Program Receipts	1005				
Other / Interagency Receipts	1007	84,038			

**Request For  
New Position**

Agency Department of Law  
 BRU Oil & Gas Special Projects  
 Component Operations

Page 4 of 5  
 Revised Date

**FY 89**

Position Title <b>Legal Secretary I</b>		No. of Positions 1	Range/Step 10B	Barg. Unit GGU	
Time Status PFT	Staff Months 12	Location Anchorage		Election District 8	
Type of Expenditure		Justification			
Amount		<p>This is the third of three positions that will be needed to handle litigation that is expected to arise from the transitional provisions of SB 401, if Section 7 is adopted and becomes law. The position will provide law office support for the two attorneys required by Section 7, and the position will also provide office support for the attorney and the paralegal required by the two-step appeals provisions of Section 1. Consequently, the position will provide full-spectrum law office clerical services, and allocation to Legal Secretary I is therefore recommended.</p>			
1	2				3
Salary	22,716				
Benefits	8,749				
Premium Pay					
Other					
<b>Total Personal Services</b>					<b>31,465</b>
Travel					-0-
Contractual					5,400
Commodities					3,300
Equipment		8,400			
Other					
<b>Total Cost</b>		<b>48,565</b>			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004				
GF Program Receipts	1005				
Other /Interagency Receipts	1007	48,565			

**Request For  
New Position**

Agency Department of Law  
 BRU Oil & Gas Special Projects  
 Component Operations

Page 5 of 5  
 Revised Date

**FY 89**

FISCAL NOTE

REQUEST:

Revision Date: April 25, 1988  
Title: "An Act relating to information requests ... state tax laws ..."  
Sponsor: Senator Faiks  
Requestor: Senate Finance

Agency Affected: Department of Law  
BRU: Oil & Gas Spl. Litigation Appropriation and Oil & Gas Spl. Proj. BRU  
Components: Oil & Gas Spl. Litigation Appropriation and Oil & Gas Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		274.2	282.4	290.9	151.3	155.8
TRAVEL		9.6	9.9	10.2	5.3	5.5
CONTRACTUAL		31.8	32.8	33.8	20.4	21.0
SUPPLIES		21.3	21.9	22.6	13.4	13.8
EQUIPMENT		35.6	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	372.5	347.0	357.5	190.4	196.1

Oil & Gas Special Litigator	-0-	1,372.5	4,374.0	4,357.5	2,190.4	2,196.1
--------------------------------	-----	---------	---------	---------	---------	---------

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	1,372.5	4,347.0	4,357.5	2,190.4	2,196.1
FEDERAL FUNDS						
OTHER	-0-	372.5	347.0	375.5	190.4	196.1
TOTAL						

POSITIONS:

FULL-TIME	-0-	5	5	5	3	3
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services

Phone: 465-3672  
Date: April 25, 1988

Approved by Commissioner: Grace Berg Schauble, Atty. Gen.  
Agency: Department of Law

Date: April 25, 1988

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 401 (Jud.)

This fiscal note supercedes the note of March 1, 1988. Nevertheless, observations made in that note continue to be relevant.

The addition of HB 58 provisions in section 7, particularly with respect to transfer review (AS 43.05.234(a)), edited transcripts (AS 43.05.236), and drafting regulations (AS 43.05.238) creates a substantially increased legal workload. Of these, the editing of transcripts is the most highly speculative. If legislative committees undertake major tax policy review, this function will be especially critical. We note, however, that section 1 of the original SB 401 has been deleted, thus offsetting what we believe to be a reasonable estimate of resources required under new section 7.

Under section 12, the new procedures in the bill would apply to grievances, that have not been appealed to the superior court as of the effective date of the bill. This section raises serious statute of limitation problems as well as practical ones for all current cases. Issues include whether the statute of limitations, which would have run in June 1988, for example, is tolled for a case that is (a) awaiting the commissioner's decision, (b) in hearing, (c) in conference at the division level, or (d) recently assessed or whether a case that is at any given stage at the time of this bill's effective date must begin anew if the taxpayer so desires. We believe that litigation over this section will be particularly intense because its effect could be to eliminate or substantially reduce every taxpayer's ultimate tax exposure. The total at stake in the tax cases that are in some stage of administrative appeal exceeds \$2.5 billion.

We believe that enactment of this section would require two full-time attorneys over a period of three years. Combined with the impact of section seven of the bill, we would also require one full-time secretary.

The timelines and appellate scheme in proposed AS 43.05.248 will also dramatically affect the Department of Law. Currently, the Department of Law handles only a very limited number of tax cases. The litigation model both the Department of Revenue and the Department of Law have been working toward is one in which oil and gas tax cases would not require significant attorney representation at the administrative level within the Department of Revenue. This bill, which places the trial in the court system, will require attorneys for all tax cases because only attorneys are allowed to represent the state in Alaska's superior courts.

We believe that these tax cases must be litigated in the same manner as our current oil and gas litigation, in which we use a combination of outside counsel and experts with state personnel. There are three reasons for this:

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 401 (Jud.)

1. There are millions of dollars at stake in each of the cases -- the industry will continue to devote the best legal resources available to these cases;
2. Adverse precedent in one case could seriously harm the state in other cases; and
3. The Department of Revenue, rather than the court system has a corps of decision-makers with expertise in the field of oil and gas taxation. Such a radical change of forum, in the earliest cases at least, could place the state at greater risk in attempting to recover its properly due taxes..

The following table shows the level of expenditure for the two proceedings that are most analogous to the cases that would be generated under this bill; a current tax proceeding and the Amerada Hess royalty case which involves many of the same issues presented in the major tax cases.

### Amerada Hess

	<u>Total Expended</u>	<u>Annual Expended</u>
6/30/84	1,722,340.51	1,722,340.51
6/30/85	3,598,666.50	1,876,375.91
6/30/86	6,909,832.82	3,401,166.32
6/30/87	11,478,296.44	4,478,463.57
6/30/88 (Est.)		5,620,000.00
	Total	17,098,346.41
	Avg All	3,419,669.28
	Avg last 3 yrs	4,499,876.66

### Production, Oil Income Tax

	<u>Total Expended</u>	<u>Annual Expended</u>
6/30/84	191,041.75	191,041.75
6/30/85	695,356.71	504,314.96
6/30/86	1,568,254.63	872,897.92
6/30/87	2,922,618.52	1,354,363.92
6/30/88 (Est.)		3,975,000.00
	Total	6,847,618.55
	Avg All	1,369,523.71
	Avg last 3 yrs	2,050,753.95

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 401 (Jud.)

The bill could effectively require the Department Law to litigate simultaneously several trial level cases, while appeals are being argued in the Alaska Supreme Court. Looking at our experience in the tax cases and in Amerada Hess we regard the current expenditure level of \$4 million annually as our base for revenue tax cases. There are several other cases that justify an effort paralleling the current tax case because of the amount at stake. There will also be numerous cases that each involve tens of millions of dollars. In FY 89 we have requested \$1 million above our base. This amount reflects our belief that cases under this bill will not be ready for Department of Law prosecution until mid-year. For FY 90 and FY 91 we believe that in order to effectively prosecute an additional four to six cases per year at the trial court level we would require an additional \$4 million. After that period the amount required should be reduced substantially because of court precedent established through the earlier cases, elimination of backlog, and new cases with substantially less at stake. Accordingly, we believe that in FY 92 and 93 our trial level expenditures could be reduced to \$2 million above base for each year and in FY 94 to our base. Additionally, we have requested \$372,500 in FY 89 for the five new staff positions described above. The impact of Section 1 and Section 7 will be felt on our staff as soon as the bill goes into effect. Two of the five positions will be deleted in FY 92 when work from the transitional period should be completed. We note that extensive litigation will be ongoing even after that fiscal year as audits and tax laws for the years after 1981 are challenged.

Appeals to the Supreme Court would occur under either the current or proposed framework. Accordingly we have not included costs for appeal.

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 401 (Jud.)

## CSSB 401 Fiscal Analysis

### Department of Law Staff Costs

	<u>Section 7 Costs</u>		<u>Section 12 Costs</u>			<u>TOTAL</u>
	<u>Atty III</u>	<u>Paralegal Asst. II</u>	<u>Atty IV</u>	<u>Atty III</u>	<u>Leg Sec I</u>	
Per. Svcs.	63.7	43.3	72.0	63.7	31.5	274.2
Travel	2.4	2.4	2.4	2.4	-0-	9.6
Contractual	6.6	6.6	6.6	6.6	5.4	31.8
Supplies	4.5	4.5	4.5	4.5	3.3	21.3
Equipment	6.8	6.8	6.8	6.8	8.4	35.6
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Total	84.0	63.6	92.3	84.0	48.6	372.5

Position and associated costs beyond FY 89 include a 3% annual inflation factor, less one-time items. The two attorneys required for Section 7 transitional litigation are deleted after FY 91. The costs for these new positions will occur in the Oil & Gas BRU as interagency funded. However, general funds must also be included in the annual separate appropriation for oil and gas special litigation to offset these costs.

Position Title <b>Attorney III</b>			No. of Positions <b>1</b>	Range/Step <b>22A</b>	Barg. Unit <b>PX</b>
Time Status <b>PFT</b>	Staff Months <b>12</b>		Location <b>Anchorage</b>		Election District <b>8</b>
Type of Expenditure			Amount		
<b>1</b>	<b>2</b>	<b>3</b>			
Salary	49,140				
Benefits	14,597				
Premium Pay					
Other					
Total Personal Services		<b>63,738</b>			
Travel			<b>2,400</b>		
Contractual			<b>6,600</b>		
Commodities			<b>4,500</b>		
Equipment			<b>6,800</b>		
Other					
Total Cost		<b>84,038</b>			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004				
GF Program Receipts	1005				
Other / Interagency Receipts	1007	<b>84,038</b>			
Justification					
<p>This position is required to review legislative reports of critical tax information to insure confidentiality, if the provisions of Section 7 of CSSB 401 become law. There are literally thousands of documents that are subject to inspection and examination during a legislative oversight review of the tax assessments and taxpayer records of oil and gas production and income taxes. A review of any oversight reports issued by the legislature must be conducted carefully to insure taxpayer confidentiality as required by this section, as well as the U.S. Tax Code. Substantial coordination between the Departments of Law and Revenue, and the legislative oversight committee will be required. Allocation of the position one grade lower than the full journey level of Attorney IV is appropriate for this work because it mainly addresses procedural issues rather than substantive legal issues.</p>					

**Request For  
New Position**

Agency Department of Law  
 BRU Oil & Gas Special Projects  
 Component Operations

Page 1 of 5  
 Revised Date

**FY 89**

Position Title <b>Paralegal Assistant II</b>		No. of Positions <b>1</b>	Range/Step <b>16A</b>	Barg. Unit <b>GGU</b>	
Time Status <b>PFT</b>	Staff Months <b>12</b>	Location <b>Anchorage</b>		Election District <b>8</b>	
Type of Expenditure		Justification			
		<p>This position is needed to monitor and control tax documents transferred to the legislature, if the provisions of Section 7 of CSSB 401 become law. There are literally thousands of documents that are subject to inspection and examination during a legislative oversight review of tax assessments and taxpayer records of oil and gas production and income taxes. Careful review and scrutiny of any reports issued to insure taxpayer confidentiality are essential under the proposed statute as well as the U.S. Tax Code. This Paralegal Assistant II position is ideally suited to assist the attorney responsible for review of reports in monitoring and controlling tax report documents.</p>			
Amount					
1	2				3
Salary	32,424				
Benefits	10,901				
Premium Pay					
Other					
Total Personal Services					43,325
Travel					2,400
Contractual					6,600
Commodities					4,500
Equipment					6,800
Other					
Total Cost		63,625			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	63,625			
GF Program Receipts	1005				
Other					

**Request For  
New Position**

Agency Department of Law  
 BRU Oil & Gas Special Projects  
 Component Operations

Page 2 of 5  
 Revised Date

**FY 89**

Position Title <b>Attorney IV</b>		No. of Positions <b>1</b>	Range/Step <b>24A</b>	Barg. Unit <b>PX</b>
Time Status <b>PFT</b>	Staff Months <b>12</b>	Location <b>Anchorage</b>		Election District <b>8</b>
<b>Justification</b>				
This is one of three positions that will be needed to handle litigation that is expected to arise from the transitional provisions of CSSB 401, if Section 12 is adopted and becomes law. This section raises serious statute of limitation problems as well as practical ones for all current oil and gas cases. Litigation over this section will be particularly intense because its effect could be to entirely eliminate or substantially reduce every taxpayer's ultimate tax exposure. The total at stake in the oil and gas income and production tax cases that are in some state of administrative appeal, and which would be subject to the bill's transitional provisions, exceed \$2.5 billion. Allocation to the Attorney IV level is recommended because of the substantive legal issues involved in this aspect of the bill.				
<b>Type of Expenditure</b>		<b>Amount</b>		
<b>1</b>	<b>2</b>	<b>3</b>		
Salary	56,244			
Benefits	15,713			
Premium Pay				
Other				
<b>Total Personal Services</b>		<b>71,957</b>		
Travel		2,400		
Contractual		6,600		
Commodities		4,500		
Equipment		6,800		
Other				
<b>Total Cost</b>		<b>92,257</b>		
<b>Funding Source for Total Cost</b>				
Federal Receipts 1002				
G. F. Match 1003				
General Fund 1004				
GF Program Receipts 1005				
Other / Interagency Receipts 1007		92,257		

**Request For  
New Position**

Agency Department of Law  
 BRU Oil & Gas Special Projects  
 Component Operations

Page 3 of 5  
 Revised Date

**FY 89**

Position Title <b>Attorney III</b>		No. of Positions <b>1</b>	Range/Step <b>22A</b>	Barg. Unit <b>PX</b>	
Time Status <b>PFT</b>	Staff Months <b>12</b>	Location <b>Anchorage</b>		Election District <b>8</b>	
Type of Expenditure		Justification			
Amount		<p>This is the second of three positions that will be needed to handle litigation that is expected to arise from the transitional provisions of CSSB 401, if Section 12 is adopted and becomes law. This section raises serious statute of limitation problems as well as practical ones for all current oil and gas cases. Litigation over this section will be particularly intense because its effect could be to entirely eliminate or substantially reduce every taxpayer's ultimate tax exposure. The total at stake in the oil and gas income and production tax cases that are in some state of administrative appeal, and which would be subject to the bill's transitional provisions, exceed \$2.5 billion. This position will assist the Attorney IV responsible for statute of limitation problems in the conduct of extensive and complex litigation raised by the bill's transitional provisions.</p>			
1	2				3
Salary	49,140				
Benefits	14,597				
Premium Pay					
Other					
Total Personal Services					63,738
Travel					2,400
Contractual					6,600
Commodities					4,500
Equipment		6,800			
Other					
Total Cost		84,038			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004				
GF Program Receipts	1005				
Other / Interagency Receipts	1007	84,038			

**Request For  
New Position**

Agency Department of Law  
 BRU Oil & Gas Special Projects  
 Component Operations

Page 4 of 5  
 Revised Date

**FY 89**

Position Title <b>Legal Secretary I</b>		No. of Positions <b>1</b>	Range/Step <b>10B</b>	Barg. Unit <b>GGU</b>
Time Status <b>PFT</b>	Staff Months <b>12</b>	Location <b>Anchorage</b>		Election District <b>8</b>
Type of Expenditure		Justification		
<b>1</b>	<b>2</b>	<b>3</b>		
Salary	22,716	This is the third of three positions that will be needed to handle litigation that is expected to arise from the transitional provisions of CSSB 401, if Section 12 is adopted and becomes law. The position will provide law office support for the two attorneys required by Section 12, and the position will also provide office support for the attorney and the paralegal required by the two-step appeals provisions of Section 7. Consequently, the position will provide full-spectrum law office clerical services, and allocation to Legal Secretary I is therefore recommended.		
Benefits	8,749			
Premium Pay				
Other				
<b>Total Personal Services</b>		<b>31,465</b>		
Travel		-0-		
Contractual		5,400		
Commodities		3,300		
Equipment		8,400		
Other				
<b>Total Cost</b>		<b>48,565</b>		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004			
GF Program Receipts	1005			
Other /Interagency Receipts	1007	48,565		

**Request For  
New Position**

Agency Department of Law  
 BRU Oil & Gas Special Projects  
 Component Operations

Page 5 of 5  
 Revised Date

**FY 89**

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to disclosure to the legislature of tax returns...."  
Sponsor: Senator Faiks  
Requestor: Senate Finance

Agency Affected: Revenue  
BRU: Oil and Gas Audit Division  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
<b>OPERATING</b>						
PERSONAL SERVICES	-	1424.9	2892.9	4317.9	4317.9	4317.9
TRAVEL	-	180.8	367.1	548.0	548.0	548.0
CONTRACTUAL	-	531.0	259.0	259.0	109.0	109.0
SUPPLIES	-	26.0	26.0	26.0	26.0	26.0
EQUIPMENT	-	64.5	171.5	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	2247.2	3716.5	5150.9	5000.9	5000.9
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	2247.2	3716.5	5150.9	5000.9	5000.9
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	-	2247.2	3716.5	5150.9	5000.9	5000.9

POSITIONS:

FULL-TIME	-	27	54	81	81	81
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: William Floerchinger, Director Phone: (907) 277-5627  
Division: Oil and Gas Audit Division Date: April 21, 1988

Approved by Commissioner: Hugh Malone Date: April 21, 1988  
Agency: Department of Revenue

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

*Revised & reduced by SFC 4/25/88*

Prepared by: William Floerchinger  
Oil and Gas Audit Division  
April 21, 1988

CS SB 401 ANALYSIS (FINANCE)

<u>PERSONAL SERVICES</u> (1)	<u>No</u>	<u>Cost</u>	<u>Total</u>
Revenue Auditor Supervisor I	7	\$66.0	\$ 462.0
Revenue Auditor V	7	\$65.1	\$ 455.7
Revenue Auditor IV	21	\$57.8	\$1213.8
Revenue Auditor III	39	\$51.0	\$1989.0
Clerk Typist III	<u>7</u>	<u>\$28.2</u>	<u>\$ 197.4</u>
TOTAL	<u>81</u>	<u>TOTAL:</u>	<u>\$4317.9</u>

TRAVEL

Information Requests	\$ 407.0
Closing Conferences	\$ 48.0
Policy Review	\$ 35.0
Court Travel	\$ 58.0
<u>TOTAL:</u>	<u>\$ 548.0</u>

CONTRACTUAL

Telephone	\$ 32.0
Printing	\$ 26.0
Furniture (2)	\$ 448.0
Space (3)	\$ 272.0
Computer Maintenance	\$ 51.0
<u>TOTAL:</u>	<u>\$ 829.0</u>

SUPPLIES

Office Supplies	<u>TOTAL:</u>	<u>\$ 26.0</u>
-----------------	---------------	----------------

EQUIPMENT

Computers (4)	<u>TOTAL:</u>	<u>\$ 256.0</u>
---------------	---------------	-----------------

(1) Should this bill pass the large increase in number of additional staff would cause training and implementation problems requiring a phase in over three years.

(2) The furniture would be purchased as needed over three year period.

(3) The space costs would be picked up in the revenue budget the first year. After that the Department of Administration would bear the cost.

(4) The computers would be phased in along with the additional staff.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to appeals of information requests...state tax laws"  
Sponsor: Senator Faiks  
Requestor: Senate Finance

Agency Affected: Revenue  
BRU: Commissioner's Office  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	-	-	437.0	874.0	874.0
TRAVEL	-	-	-	65.5	131.0	131.0
CONTRACTUAL	-	-	-	28.8	57.6	57.6
SUPPLIES	-	-	-	5.0	10.0	10.0
EQUIPMENT	-	-	-	30.3	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	566.6	1,072.6	1,072.6
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	566.6	1,072.6	1,072.6
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	6	11	11
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Deborah Vogt, Senior Hearing Officer Phone: (907) 465-2300  
Division: Commissioner's Office Date: April 21, 1988

Approved by Commissioner: Hugh Malone Date: April 21, 1988  
Agency: Department of Revenue

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

SB 401 Analysis

Hearing Officer Section

Personal Services

Revenue Hearing Officer (Anch)	86.9	
Revenue Hearing Officer (Anch)	86.9	
Revenue Hearing Officer (Anch)	86.9	
Revenue Hearing Officer (Juneau)	86.9	
Clerk IV (Juneau)	34.9	
Accounting Clerk III (Juneau)	34.9	
Law Clerk (Juneau)	80.0	
Law Clerk (Anch)	84.9	
Law Clerk (Anch)	84.9	
Law Clerk (Anch)	84.9	
Accounting Clerk III (Anch)	34.9	
Clerk Typist III (Juneau)	29.0	
Clerk Typist III (Anch)	29.0	
Clerk Typist III (Anch)	<u>29.0</u>	
		Total <u>\$874.0</u>

Travel

Income & Excise Hearings	\$36.0	
Oil & Gas Hearings	55.0	
Court/Income & Excise	10.0	
Court/Oil & Gas	<u>30.0</u>	
		Total <u>\$131.0</u>

Contractual

Research	\$18.0	
Space Costs	35.6	
Telephone	10.0	
Printing	5.0	
Maintenance	<u>7.0</u>	
		Total <u>\$75.6</u>

Supplies

Total \$10.0

Equipment

Office Chairs/Equipment	\$22.0	
Computer Terminals/Printers	<u>38.5</u>	
		Total <u>\$60.5</u>

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to disclosure to the legislature of tax returns...."  
Sponsor: Senator Faiks  
Requestor: Senate Finance

Agency Affected: Revenue  
BRU: Income and Excise Audit Division

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
<b>OPERATING</b>						
PERSONAL SERVICES	-	259.9	259.9	259.9	259.9	259.9
TRAVEL	-	177.4	177.4	177.4	177.4	177.4
CONTRACTUAL	-	24.7	4.1	4.1	4.1	4.1
SUPPLIES	-	5.9	5.9	5.9	5.9	5.9
EQUIPMENT	-	23.5	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	491.4	447.3	447.3	447.3	447.3
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	491.4	447.3	447.3	447.3	447.3
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	-	491.4	447.3	447.3	447.3	447.3

POSITIONS:

FULL-TIME	-	5.0	5.0	5.0	5.0	5.0
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

See Attached

*Revised & reduced by SFC 4/25/88*

Prepared By: Steven E. Kettel, Director  
Division: Income and Excise Audit Division

Phone: (907) 465-2320  
Date: April 21 1988

Approved by Commissioner: Hugh Madison  
Agency: Department of Revenue

Date: April 21, 1988

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

**RECEIVED**  
APR 26 1988

LEGISLATIVE FINANCE

Prepared By: Steven E. Kettel  
 Income and Excise Audit Division  
 April 21, 1988

SB 401 ANALYSIS

Appeals Section

Field Audit

PERSONAL SERVICES

Revenue Auditor V	\$65.1			
Revenue Auditor IV	\$57.8			
Revenue Auditor III	\$51.0			
Clerk Typist III	<u>\$28.2</u>	Revenue Auditor V	<u>\$57.8</u>	
TOTAL:	\$202.1	TOTAL:	\$57.8	TOTAL: <u>\$259.9</u>

TRAVEL

Information Requests	\$84.8			
Closing Conferences	\$33.6			
Policy Review	\$25.2			
Court Travel	<u>\$ 7.0</u>	Field Audit Travel	<u>\$26.8</u>	
TOTAL:	\$150.6	TOTAL:	\$26.8	TOTAL: <u>\$177.4</u>

CONTRACTUAL

Telephone	\$1.8			
Printing	\$1.4			
Office Chairs	\$4.9			
Modular Offices	\$8.8			
5 Drawer Legal Files	\$2.9	Telephone	\$ .9	
Wang Printer Maintenance	<u>\$ .5</u>	Wang PC	<u>\$3.5</u>	
TOTAL:	\$20.3	TOTAL:	\$4.4	TOTAL: <u>\$ 24.7</u>

SUPPLIES

Office Supplies	\$4.9	Office Supplies	\$1.0	TOTAL: <u>\$ 5.9</u>
-----------------	-------	-----------------	-------	----------------------

EQUIPMENT

Wang Printer	\$7.0			
Wang Computers	<u>\$16.5</u>			
TOTAL:	\$23.5			TOTAL: <u>\$ 23.5</u>

Should this bill be amended to provide for mandatory extensions to the statute of limitation when the taxpayer is appealing a records request or policy decision, the size of this fiscal note would be reduced.

STANDARDS FOR REVIEW AS TO BEHAVIOR ON SOURCE

4/22/88  
Hugh Maloch  
DOR

DRAFT  
4/22/88

The new SB 401 presents an irony. Half the bill is an admission that the legislature does not have the necessary information to review and oversee the administration and operation of these critical taxes, and the other half would drastically revise the tax assessment process for oil and gas taxes.

In view of the fact that the legislature has not reviewed this information, the findings that the department is <sup>ISSUING UNWARRANTED TAX ASSESSMENTS</sup> excessively delaying taxes appeals, or that the department hearing procedures are unfair, are merely unfounded assertions.

SB 401 is not designed to collect taxes. It is designed to cripple the state's ability to collect the revenues that the legislature intended. At best, it is founded in ignorance.

The department opposes SB 401. It is unfortunate if the Senate does not act separately on the disclosure provisions which are contained in HB 58. But the combined bill does not help, it hurts. It does not hurt the Department of Revenue. It hurts the people of Alaska.

~~SECRET CONFIDENTIAL~~

~~OS SB 401 (Finance) 4/19/88 work draft~~

The new draft combines the substance of HB 58 providing rules for disclosure of tax information to the legislature with the provisions of SB 401, that puts the superior court in the business of administering the oil and gas tax laws.

SB 401 does this by substituting a de novo court trial in place of a administrative hearing by the department. To require that judges (or jurors) substitute their judgment for that of tax experts in the department would mean there are as many revenue commissioners as their are judges (or juries) assigned to the cases. This will greatly weaken our revenue program.

One spurious argument made for the bill is that the department is "judge, jury, and executioner" and cannot make a fair determination. This view is contrary to the actual development of administrative law decisions in this state and this country, which has provided a reasonable, fair, and efficient alternative to having every disagreement taken to court.

Administrative hearings are required to be conducted by the rules of evidence and due process. Our present law provides for judicial review if a person does not agree with the departmental decision. That guarantees fairness.

The same fatal problems still exist with the audit and appeal procedures as in earlier drafts of SB 401.

STATUTE OF 6/104

- 1. There are still no provisions linking the time frames for the procedures adopted under SB 401 with the running of the statute of limitations. These provisions are stacked against the State, and revenue losses will be the result.

90/5

- 2. ~~The taxpayer has no~~ *The bail removed the* incentive to present all the information and arguments necessary to complete a determination of tax liability. Instead, the incentive is to play "keep-away" and wait until court to address the issues, ~~since the whole~~ *the whole the level of fiscal expenditure on tax matters is now focused.*

PROVISION THAT NO NEW STATUTE INFO MAY BE PRESENTED IN COURT

- 3. Retention of the trial de novo provisions virtually ensures that the case resolution process will take longer than under the current system.

STATUTE OF LIMITATION  
 1502 / 3 YRS NOW / 4 YRS  
 These are new procedures

The section of the bill taken from HB 58 would set out the rules under which the legislature would oversee the administrative of "critical taxes" (oil and gas taxes only). I note these provisions have become very cumbersome in the Senate committee substitutes for the bill.

While the department supports the concept of legislative oversight, the proposed oversight rules are now combined with the provisions of SB 401, which are not supported.

TO NEXT PAGE 4

The main disclosure provisions are:

1. How the transfer to the Legislature of confidential tax information on "critical taxes" (oil and gas tax type) will be handled. The transfer can be initiated by a legislative committee, the Commissioner or the taxpayer(s).
- 1 2. Amendments to the legislative ethics code and to title AS 43 were made to insure against inappropriate disclosure and the handling of violations - penalties have also been included.
3. A taxpayer, whose tax information is under review by the legislature, will have a right to be present at such a meeting, as well as the right to address the committee.
4. The Department of Revenue will have the responsibility of establishing, through regulations, the procedures for transferring, duplicating and safekeeping these materials.

( PAR 4 GRAPH FROM P. 3 )

As the current Chamber of Commerce advertisement says, lets get the revenue flowing into the State Treasury. This, I believe, is the objective all of us share. This can be accomplished by:

1. Abandoning SB 401.

SEPARATELY

2. Adopting HB 58 (legislative oversight of tax matters).

3. Fully funding the requested oil and gas tax budget.

4. Requiring "critical taxpayers" to pay taxes due after a formal administrative hearing and before extended litigation in the court (prepayment of taxes).

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

3. Fully funding the requested oil and gas tax budget.

4. Requiring "critical taxpayers" to pay taxes due after a formal administrative hearing and before extended litigation in the court (prepayment of taxes).

4/22/88

SENATE FINANCE COMMITTEE PRESENTATION  
Committee Substitute for Senate Bill 401

The Finance Committee Substitute for Senate Bill 401 which you have before you today is a very significant piece of legislation. The new version incorporates the "CONFIDENTIALITY" provisions from House Bill 58.

The result is a bill which establishes a new system for collecting these disputed tax assessments in a TIMELY AND EFFICIENT MANNER, and allows the Legislature to review the taxpayer returns in the future in order to oversee how this process is working.

The Committee has been provided with a sectional analysis of the C.S. In addition to the sectional analysis, there are two other documents which you have been provided with this morning relating to the bill.

CHENOWITH MEMO:

Corey -  
Copy of Fricks  
testimony on  
SB 401 4/22/88  
Pleg

The first document is a Memorandum dated April 8, from Jack Chenowith, Legislative Counsel with the Division of Legal Services.

I requested this memo in order to answer several questions which arose in the Department of Revenue's testimony and comments on the bill. The Department has repeatedly complained that when they request documents from the taxpayers it is like "peeling an onion".

They have also stated that under the provisions of this bill they will be unable to make taxpayers produce all of the relevant evidence and supporting documentation necessary for the Department to do their job. Now the Chenowith Memo lists for you all of the tools available to the Department. THIS BILL DOES NOT MAKE ANY CHANGES TO THESE TOOLS, and page 2 of the Memo lists the penalty provisions for violation.

Now refer to page 3 of the Memo. The first paragraph states:

"NOTHING IN SB 401 MAKES IT MORE DIFFICULT FOR THE DEPARTMENT TO GET THE NECESSARY INFORMATION FROM THE TAXPAYER.

With regard to the new requirement in the bill which adds the requirement that the taxpayer "shall present" Mr. Chenowith states that:

"The requirement that the taxpayer "shall present" DOES PUT THE BURDEN ON THE TAXPAYER TO BRING FORWARD THE EVIDENCE THE TAXPAYER BELIEVES NECESSARY TO CORRECT OR COMPLETE THE FACTS THAT FORM THE BASIS OF THE DEPARTMENT'S PROPOSED ASSESSMENT."

At the bottom of page 3 the Memo concludes:

"IF THE DEPARTMENT IS CONFRONTED WITH NEW EVIDENCE THAT IT HAS NOT HAD AN EARLIER OPPORTUNITY TO CONSIDER, ITS PERSONNEL WHO EXAMINE THE TAX RETURNS AND RELATED DOCUMENTS HAVE NOT DONE THEIR JOBS."

**CHANGES MADE TO ACCOMMODATE THE DEPARTMENT OF REVENUE:**

You have also been provided with a summary of the changes which have been made in the new bill in response to concerns raised by the Department of Revenue with regard to earlier versions of House Bill 58 and Senate Bill 401.

All 10 of them are listed right there for you. This new version of the bill has incorporated every reasonable concern they have raised.

**CONCLUSION:**

Mr. Chairman, the time has come when we need to ask whether the Department of Revenue can really act as AUDITOR, PROSECUTOR, JUDGE, AND JURY with regard to these cases.

Something is wrong when 5 to 10 years go by and the Department of Revenue still has not concluded the audit process for these crucial revenue sources.

Something is wrong when a taxpayer can request a hearing on its tax liability and the Department takes 2, 3, or even 4 years AND MORE before even holding a hearing.

Something is wrong when the Department of Revenue issues assessments for tens, or even hundreds, of millions of dollars without first making sure that taxpayers in similar situations are treated similarly, and without first making sure that the assessments reflect the Department's policies and its own regulations.

Something is wrong when the Department of Revenue can issue gigantic assessments for additional tax (with penalties and interest) and be unable to get those assessments through its own administrative review and into court.

Something is wrong when matters have remained in this uncertain state for so long that now the interest is nearly as great as the underlying claim for additional tax.

Something is wrong when the stakes get so high that a hearing officer cannot remain truly impartial.

The bill which you have before you attacks from two directions the ongoing problems regarding the huge amounts of claimed and unresolved oil and gas taxes. It corrects present lack of meaningful legislative review of the most important taxes for this state.

First, the earlier provisions from SB 401 will take some of the pressure off the Department of Revenue as it makes its administrative rulings. And more importantly, the provisions from SB 401 should go a long way toward preventing a recurrence of the present situation where some \$2.6 billion in tax, interest and penalties have been

assessed without thorough review within the department.

Second, legislative committees will be able to review actual tax information and documents as part of the Legislature's oversight of the administration of the most important tax laws. This oversight will allow the Legislature in the future to make appropriate changes in the tax laws, if necessary or advisable, in order to prevent matters from getting out of hand again in the future.

*CORRECT ERROR:*

*(E) PAGE (21) — LINE (16) —*

*POLICY REVIEW "CONF." SHOULD BE HEARING.*



# Alaska State Legislature

SENATE

*Office of the President*

P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3755

## SECTIONAL ANALYSIS

### SENATE BILL 401

Section 1: Enacts a new section, AS 43.05.055, providing for appeals of requests by the Department of Revenue (DOR) for information or materials requested with respect to an audit, investigation or inspection relating to the four major state taxes imposed on the oil and gas industry. Those taxes are the corporate income tax (AS 43.20), the production tax (AS 43.55), the conservation tax (AS 43.57) and the former separate accounting income tax (AS 43.21).

Because the DOR also conducts audits of oil and gas royalties and net profits for the Department of Natural Resources (DNR), DOR can seek and use information obtained in the course of a royalty or net profits audit to determine a person's liability under one or more of these four principal taxes. This section grants the right to appeal an audit request made in the course of a royalty or net profits audit under AS 38.05 in order to avoid any circumvention of a person's right to appeal an unreasonable audit request by characterizing the audit as a royalty or net profits audit instead of a tax audit.

Section 2: The current procedures for administrative appeals within DOR are set out in AS 43.05.240. This second section of the bill amends AS 43.05.240(a). The new language being added at the beginning of the statute reflects the fact that the new procedures are being enacted for the four principal taxes on the oil and gas industry (corporate income tax, production tax, conservation tax and the former separate accounting income tax). The ad valorem property tax, AS 43.56, is not included because the special procedures for it, which allow the the involvement of affected municipalities and boroughs, have not led to the problems which have resulted from the administration of the four principal taxes.

For all other taxes, the present procedures are not being materially changed. Section 2 also creates a new ground for appeal by a person aggrieved by an action of the DOR in

denying the person's request for a tax refund. Currently this right exists only through the Department's regulations and does not have an explicit statutory basis. Section 2 also amends AS 43.05.240(a) to reflect the new right of appeal of information requests that is being enacted as AS 43.05.055 under section 1 of this bill.

Section 3: This section makes the same changes to AS 43.05.240(b) as Section 2 makes to subsection (a) of that statute.

Section 4: This section amends AS 43.05.240(c) to reflect the fact that a formal hearing before the DOR will no longer be limited solely to questions involving the amount of tax or penalty due the state. The present language reflecting this narrow scope of appeal is replaced with more general language that speaks in terms of considering and deciding the appellant's grievance.

Section 5: This section amends the present law regarding tax assessments, AS 43.05.245. The first insertion of new language reflects the enactment of new procedures for the four principal taxes on the oil and gas industry by making it clear that nothing in AS 43.05.245 will prevent a person from presenting evidence or other information under those new procedures. The second insertion of new language reflects the fact that, under the new procedures for oil and gas taxes, tax assessments will become final under either of two specific rules set out in those new procedures.

Section 6: This section enacts new procedures for the issuance and administrative review of tax assessments for the four principal taxes. Under the present procedures, multimillion-dollar oil and gas tax assessments are issued by the audit staff without any prior discussion with the taxpayer and without any review by the Commissioner to see that they are consistent with other assessments and correctly apply the Department's policies. Under the new procedures, both the discussion with the taxpayer and the Commissioner's review will occur before an assessment becomes final (except in one situation, discussed below).

New section AS 43.05.246 provides for a closing conference to close out the audit process. 60 to 90 days before the conference, the Department is to give the taxpayer a draft of its preliminary audit conclusions. If the preliminary