HB

58

Senate Special Committee on Oil and Gas

Legislation Checklist

Bill number: CS HB 58 (Fin) am Sponsor: L Bra

Date referred to committee: Further referrals: SA Finance

Prior committee report:

Back up from sponsor:

Fiscal note(s): w/ house bill

Agency: (H) Fin Requested: Received:

Agency: Requested: Received:

Position paper(s):

Agency: Requested: Received:

Agency: Requested: Received:

Sectional Analysis:

Scheduled: Heard: Reported out:

Items for committee packet:

To Testify:

Other Contacts:

Offered: 3/6/87
Referred: Rules

5-0321L

Original sponsor: Rules/Legislative Budget and Audit

IN THE HOUSE

BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 58 (Finance) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to confidential tax information; relating to the filing of tax returns; and providing for an effective date."

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

* Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that

(1) the majority of the state's revenue is derived from taxation;

(2) tax revenue enables the state to provide essential services to the citizens of the state to ensure the public health and welfare;

(3) the elected representatives of the people of the state must be assured that the state is receiving all of the income to which it is entitled and that the tax laws are operating in the manner intended by the legislature;

(4) the legislature must exercise its oversight authority to ensure that tax revenue collection by the Department of Revenue is efficient, fair, prompt, and in the best interest of the state;

(5) there is a legitimate and compelling governmental interest in the legislature having adequate access to tax-related information to allow responsible oversight;

(6) without sufficient information, the legislature cannot adequately determine that the state's tax revenue collection functions are properly administered and that tax revenue due the state is promptly received;

(7) tax returns and return information contain confidential information, often regarding sensitive business information;

(8) taxpayers have protections against public disclosure of certain tax information;

(9) exchange agreements with the Internal Revenue Service require that certain tax information not be publicly disclosed;

(10) protection of confidentiality fosters full disclosure by taxpayers to taxing authorities and therefore promotes effective administration of tax programs; and

(11) legislators and legislative employees who improperly disclose confidential tax information should be subject to the same sanctions imposed against executive branch employees.

(b) The purpose of this Act is to ensure that

(1) the state is receiving all the tax revenue due the state;

(2) oversight of the tax revenue collection function is effectively provided;

(3) tax revenue due to the state is available to provide for the public health and welfare of the citizens of the state;

(4) taxpayers are protected from improper disclosure of tax information;

(5) the exchange agreements with the Internal Revenue Service regarding tax information are not jeopardized;

(6) tax programs are administered fairly; and

(7) the right of the people to privacy is recognized and may not be infringed.

* Sec. 2. AS 24.10 is amended by adding a new section to article 2 to read:

Sec. 24.10.070. CONFIDENTIALITY OF INFORMATION. A present or former employee or agent of the legislature may not disclose tax

information contained in a report or return filed under AS 43.05.230 and furnished to the person under AS 43.05.232.

* Sec. 3. AS 24.60.060 is amended by adding a new subsection to read:

(b) A person to whom this chapter applies may not disclose tax information contained in a report or a return filed under AS 43 and furnished to the person under AS 43.05.232.

* Sec. 4. AS 24.60 is amended by adding a new section to read:

Sec. 24.60.172. SPECIAL PROCEEDINGS BEFORE THE COMMITTEE. Notwithstanding AS 24.60.170, if a complaint before the committee involves an allegation that a person to whom this chapter applies has disclosed tax information contained in a report or return filed under AS 43 with the Department of Revenue and furnished to the person under AS 43.05.232, and if the taxpayer or a third party whose tax information is alleged to have been improperly disclosed does not agree to the public disclosure of the identity of the taxpayer, the third party, or the tax information,

(1) the hearing may not be held in open session;

(2) a transcript containing confidential tax information shall be edited to prevent the disclosure of the confidential information;

(3) a decision, if made public, shall be edited to prevent the disclosure of the tax information and to protect the identity of the taxpayer or the third party; and

(4) a public statement may not contain information identifying the taxpayer, a third party, or the tax information.

* Sec. 5. AS 43.05.230(a) is amended to read:

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

except

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

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

(3) as provided in AS 38.05.036 pertaining to audit functions; and

(4) as otherwise provided in this section <u>or in AS 43.05.232</u>.

* Sec. 6. AS 43.05.230(f) is repealed and reenacted to read:

(f) A person who knowingly violates a provision of this section is guilty of a class A misdemeanor. A person whose gross negligence results in a violation of this section is subject to a civil penalty of $5,000.

* Sec. 7. AS 43.05 is amended by adding a new section to read:

Sec. 43.05.232. DISCLOSURE OF CONFIDENTIAL TAX RETURNS AND RETURN INFORMATION TO THE LEGISLATURE. (a) Confidential tax returns and return information may not be requested by a legislative committee under (b) of this section or transferred to a legislative committee under (c) of this section,

(1) unless the purpose of the committee's request under (b) of this section or of the transfer under (c) of this section is

(A) to assist the committee in carrying out its responsibilities to consider tax legislation;

(B) to oversee the effective and efficient administration of the state's tax laws, including the review of audits, litigation, or settlements; or

(C) to estimate future state revenue;

(2) if the purpose of the request or transfer is to direct the executive branch in its audit, litigation, or settlement efforts, or to collect information to embarrass, harass, or discriminate against a taxpayer.

(b) After a legislative committee identifies the scope of an investigation or inquiry relating to matters of taxation, and after adoption by either house of the legislature of a simple resolution giving the committee authority to receive confidential tax information, the committee chair or co-chair may request confidential tax returns and return information and the commissioner of revenue shall provide the requested returns or return information. The request shall be in writing and may identify a particular taxpayer. During the interim between legislative sessions, the chair or co-chair of the Legislative Budget and Audit Committee may request confidential tax returns and return information under this subsection without a simple resolution, if a majority of the members of the Legislative Budget and Audit Committee vote to approve making the request.

(c) When consistent with the purposes set out in (a) of this section, the commissioner may transfer unrequested confidential taxpayer returns or return information to a legislative committee after making a written determination that the transfer of the return or return information is in the best interest of the state. Before the return or return information is transferred, the commissioner shall provide a copy of the commissioner's determination to the taxpayer whose return or return information is to be transferred. In determining whether the transfer of the return or return information is in the best interest of the state, the commissioner shall consider

(1) if the legislative committee is reviewing the administration of a tax imposed by this title, whether the return or return information would demonstrate the application of a tax;

(2) if the legislative committee is considering adding a new tax or amending an existing tax, whether the return or return information would demonstrate the effect on taxpayers of a change in tax law;

(3) whether the return or return information would assist the legislative committee in estimating future state revenue;

(4) whether the return or return information would clarify or rectify information provided by a taxpayer to a legislative committee;

(5) the potential harm the taxpayer may suffer by the possible subsequent disclosure of the return or return information illegally;

(6) any other interest of the taxpayer in avoiding the transfer of the return or return information.

(d) A legislative committee shall consider tax returns and return information transferred under (b) or (c) of this section in executive session only, unless the taxpayer and any third party whose tax return or return information is being considered in conjunction with the taxpayer's return or return information consent in writing to a disclosure in open session. The executive session must be open to all legislators. The committee chair or co-chair may designate legislative employees and agents to inspect the confidential tax returns and return information, but the chair or co-chair shall seek to minimize the number of employees and agents designated. The designated employees and agents may attend the executive session. The chair or co-chair may allow a taxpayer whose confidential tax return or return information is being considered to attend the portion of the executive session that considers that taxpayer's confidential tax return or return information.

(e) When confidential tax returns or return information concerning a specific taxpayer are provided to a legislative committee under this section, the commissioner shall notify the taxpayer of the content and delivery of the return and return information to the committee.

(f) Before providing confidential tax return or return information under (b) or (c) of this section, the commissioner shall review the purpose of the proposed transfer of the return or return information to determine what types of confidential tax return or return information will provide the needed information. If more than one type of confidential tax return or return information will provide the needed information, the commissioner shall choose the return or return information that, in the commissioner's discretion, is the least commercially sensitive.

(g) Disclosure contrary to the provisions of this section by a member or former member of the legislature or by a present or former employee or agent of the legislature of a return or return information that is confidential under AS 43.05.230 and transferred to the legislature under this section is a violation of AS 43.05.230. A member of the legislature or an employee or agent of the legislature, before receiving or reviewing a return or return information provided by the commissioner under (b) or (c) of this section, shall, on a form prepared by the commissioner,

(1) acknowledge that the return or return information is confidential and that a disclosure of the return or return information contrary to the provisions of this section is prohibited by law; and

(2) execute an agreement with the department to keep the return or return information confidential, to abide by regulations adopted by the department under (h) of this section, and to return the documents to the department.

(h) The commissioner shall adopt regulations governing the transmittal, receipt, safekeeping, duplication, accounting for, and return of the confidential tax return and return information transferred under (b) and (c) of this section.

(i) This section does not permit the transfer to the legislature of confidential tax returns and return information provided by the Internal Revenue Service under exchange agreements with the department.

(j) In this section

(1) "return" has the meaning given in 26 U.S.C. 6103(b)(1), except that "secretary" is read as "department" and "this title" means AS 43;

(2) "return information" has the meaning given in 26 U.S.C. 6103(b)(2)(A), except that "secretary" is read as "department" and "this title" means AS 43.

* Sec. 8. AS 43.20.030 is amended by adding a new subsection to read:

(h) The department may grant an extension for filing a return required under this section. The extension may not exceed 30 days beyond the filing date or the extension granted to the taxpayer by the Internal Revenue Service for filing the taxpayer's federal income tax return, whichever is later. Granting the extension does not affect the due dates for payment of the tax.

* Sec. 9. AS 43.05.232, as enacted by sec. 7 of this Act, applies to all confidential tax returns and return information in the possession of the department on or after the effective date of this Act.

* Sec. 10. This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE

SENATE SPECIAL COMMITTEE ON OIL AND GAS

Senator Bettye Fahrenkamp
Chairman
Senator Jack Coghill
Senator Paul Fischer

P.O. Box V, State Capitol
Juneau, Alaska 99811
(907) 465-3834

March 23, 1987

SCS CSHB 58am (Oil and Gas), RELATING TO CONFIDENTIAL TAX INFORMATION; RELATING TO THE FILING OF TAX RETURNS.

COMPARISON OF CSHB 58 (Finance)am, PROPOSED SENATE CS AND PROPOSED INDUSTRY DRAFT

Section 1: A finding and purpose section is included to assist the courts in interpreting the bill. A taxpayer's right to privacy under Alaska Constitution Article 1, Section 22 must be balanced with the legislature's need for information on how the state's tax laws are working.

All three versions contain this identical section.

Section 2: Adds a new section to Title 24, Article 2, on legislative employees. It would prohibit a present or former employee or agent of the legislature from disclosing confidential tax information.

All three versions contain this identical section.

Section 3: Adds a new section to the Legislative Standards of Conduct Code. Disclosure of confidential tax information by persons covered by the Code would be prohibited.

All three versions contain this identical section.

Section 4: Also adds to the Legislative Standards of Conduct Code a section to protect confidential information that may have been a source of a complaint before the Legislative Ethics Committee.

All three versions contain this identical section.

Section 5: Amends existing statute that prohibits disclosure of confidential tax information by state employees to allow the transfer of information to the legislature.

All three versions contain this identical section.

Section 6: Establishes penalties for violation of the confidentiality provisions. Current statute provides penalties only for an "intentional" violation.

House version: A "knowing" violation is a class A misdemeanor (Maximum penalties: 1 year imprisonment and $5,000); a "grossly negligent" violation is subject to a civil penalty of $5,000.

Senate version: A "knowing" violation is a class A misdemeanor (Maximum penalties: 1 year imprisonment and $5,000); a "grossly negligent" violation is subject to a civil penalty of $5,000. Clarifies that the Department of Revenue will enforce and collect the civil penalties.

Industry version: Reduces standard for civil penalty from "gross negligence" to simple "negligence". A "knowing" violation is a class A misdemeanor (Maximum penalties: 1 year imprisonment and $5,000); a "negligent" violation is subject to a civil penalty of $5,000.

Section 7: Creates a new section of statute to deal specifically with the transfer of confidential tax information to the legislature.

(a) Establishes purposes for which tax information may be transferred to the legislature (to assist in consideration of tax legislation, oversight of the administration of tax laws, including the review of settlements, litigation, and audits, or estimation of future state revenues), and purposes for which information may not be transferred (to direct the executive branch in its audit, litigation, or settlement efforts, or to embarrass, harass, or discriminate against a taxpayer).

All three versions contain this identical subsection.

(b) Establishes a procedure for requesting tax information.

House version: After adoption of a simple resolution that identifies the scope of the inquiry and allows a committee to receive information, a committee chair or co-chair may make a written request. During the interim, the chairman of the Legislative Budget and Audit Committee may request information if a majority of the committee agree.

Senate version: Does not include provision for interim requests. Requires adoption of simple resolution.

Industry version: Does not include provision for interim requests. Requires adoption of simple resolution.

(c) Allows the commissioner to transfer unrequested information under certain conditions.

House version: Only if a written finding is filed showing that the transfer is in the best interest of the state. Lists points the commissioner must consider (whether the information would demonstrate the application of a tax or the effect of a change in tax law, assist in estimating revenues, or clarify information provided by a taxpayer, and the potential harm a taxpayer may suffer by the possible subsequent illegal disclosure of the information). Requires the commissioner to provide affected taxpayers with a copy of the written finding before the information is transferred.

Senate version: Identical to House.

Industry version: Only if a taxpayer has testified before a committee and the department has information that is inconsistent with that testimony.

(d) Requires that confidential information be considered only in executive session.

House version: Specifies that all legislators may attend the session. Authorizes the chair or co-chair to designate employees and agents allowed to attend and review the tax information, but to minimize the number of such employees. Authorizes the chair to allow the taxpayer whose returns are being considered to attend the executive session.

Senate version: Identical to House.

Industry version: Specifies that all legislators may attend the session. Requires the chair or co-chair to limit the number of employees and agents allowed to attend. There is no provision for allowing employees or agents to review the tax information. Authorizes the chair to allow the taxpayer whose returns are being considered to attend the executive session.

(e) Requires that the commissioner notify the taxpayer of the contents of the information transferred to the committee.

All versions contain this identical subsection.

(f) This section restricts the commissioner's ability to transfer commercially sensitive tax information.

House version: Requires that, when more than one type of information will satisfy the legislature's request, the commissioner must choose the least commercially sensitive information.

Senate version: Identical to House.

Industry version: Requires written determination that commercially sensitive information is in the least intrusive form. Requires contracts or transactional documents to be edited or summarized.

(g) Specifies that anyone authorized to receive confidential information must sign a form acknowledging that disclosure of the information is prohibited by law, and agreeing to abide by procedures adopted by the department.

All versions contain this identical subsection.

(h) Establishes procedures for handling confidential tax information.

House version: Requires the commissioner to adopt regulations governing the transmittal, receipt, safekeeping, duplication, accounting for, and return of the information.

Senate version: Identical to House.

Industry version: Requires the commissioner to adopt regulations. Specifies centralized safekeeping and limitations on duplication and removal of documents.

(i) Ensures that the exchange of information agreement with the Internal Revenue Service will not be violated.

All three versions contain this identical subsection.

(j) Defines "return" and "return information".

House version: References definition used in federal law.

Senate version: Identical to House.

Industry version: Limits to six items:

1) taxpayer's identity,

2) tax returns required by law,

3) annual amount of collections for each tax,

4) the amouunt of an assessment for each issue and each taxpayer,

5) a description of the issues involved in the assessment,

6) the amount, nature and basis of settlements.

Section 8: Amends existing law to allow the department to grant taxpayers an extension for filing their returns.

House version: Allows only a 30 day extension beyond filing date or IRS extension.

Senate version: Identical to House.

Industry version: Allows a reasonable extension not more than one month beyond IRS maximum.

Section 9: Specifies that the act applies to all returns and return information in the possession of the department on the effective date of the act.

House and Senate versions contain this section.

Industry version does not contain this section.

Section 10: The bill has an immediate effective date.

House and Senate versions contain this section.

Industry version does not contain this section.

NOTE 1. SECT. 6: THIS CHANGE WOULD LOWER THE STANDARD OF REPROACHABLE CONDUCT TO "ORDINARY NEGLIGENCE". "GROSS NEGLIGENCE" IS AN INAPPROPRIATELY LOW STANDARD OF BEHAVIOR IN THE CONTEXT OF HANDLING CONFIDENTIAL TAXPAYER INFORMATION.

NOTE 2. SECT. 7(c): THIS CHANGE LIMITS THE COMMISSIONER OF REVENUE'S AUTHORITY TO PROVIDE TAXPAYER INFORMATION TO THE SITUATION IN WHICH A TAXPAYER HAS PROVIDED FALSE OR MISLEADING INFORMATION TO THE LEGISLATURE REGARDING ITS TAX MATTERS.

NOTE 3. SECT. 7(d): THIS CHANGE ESTABLISHES FIXED NUMBERS OF LEGISLATIVE EMPLOYEES AND AGENTS WHO WOULD HAVE ACCESS TO THE TAXPAYER INFORMATION SO AS TO MINIMIZE THE RISK OF UNAUTHORIZED DISCLOSURE.

NOTE 4. SECT. 7(f): THIS CHANGE WOULD PROVIDE FURTHER ASSURANCE TO THE TAXPAYERS OF THE STATE THAT HIGHLY SENSITIVE OR PROPRIETARY INFORMATION WAS TRANSFERRED TO THE LEGISLATURE ONLY IN THOSE INSTANCES IN WHICH THERE WAS NO LESS INTRUSIVE OR SENSITIVE FORM FOR PROVIDING THE INFORMATION.

NOTE 5. SECT. 7(h): THIS CHANGE WOULD PROVIDE FURTHER ASSURANCE THAT THE TAXPAYER INFORMATION WAS HANDLED IN THE SAFEST MANNER AND THAT RISKS OF UNAUTHORIZED OR INADVERTENT DISCLOSURE WERE MINIMIZED.

NOTE 6. SECT. 7(j): THIS CHANGE WOULD PERMIT THE TRANSFER OF THE VAST MAJORITY OF THE INFORMATION THAT THE DEPARTMENT OF REVENUE HAS. HOWEVER, THE DEPARTMENT OF REVENUE COULD NOT TRANSFER THE TRANSACTIONAL DOCUMENTS GOVERNING THE PURCHASE AND SALE OF OIL AND GAS PRODUCTION OR OTHER ASSETS. AS A RESULT, THIS HIGHLY SENSITIVE AND PROPRIETARY INFORMATION WOULD NOT BE EXPOSED TO THE RISKS OF UNAUTHORIZED OR INADVERTENT DISCLOSURE, WHILE AT THE SAME TIME THE LEGISLATURE WOULD HAVE ACCESS TO VAST AMOUNTS OF TAXPAYER INFORMATION NECESSARY TO CARRY OUT ITS RELATED RESPONSIBILITIES.

NOTE 7. SECT. 8: THIS SECTION GIVES THE COMMISSIONER THE ABILITY TO GRANT AN EXTENSION FOR FILING AN ALASKAN TAX RETURN. AOGA HAS REQUESTED THIS LANGUAGE TO GIVE GREATER FLEXIBILITY TO THE COMMISSIONER IN HIS ABILITY TO GRANT EXTENSION. THIS SECTION DOES NOT AFFECT THE DATE WHEN TAXES ARE DUE OR THE AMOUNT OWED.

Proposed industry amendments

For an Act entitled: "An Act relating to confidential tax information; relating to the filing of tax returns; and providing for an effective date."

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(3) the elected representatives of the people of the state must be assured that the state is receiving all of the income to which it is entitled and that the tax laws are operating in the manner intended by the legislature;

(4) the legislature must exercise its oversight authority to ensure that tax revenue collection by the Department of Revenue is efficient, fair, prompt, and in the best interest of the state;

(5) there is legitimate and compelling governmental interest in the legislature having adequate access to tax-related information to allow responsible oversight;

(6) without sufficient information, the legislature cannot adequately determine that the state's tax revenue collection functions are properly administered and that tax revenue due the state is promptly received;

(7) tax returns and return information contain confidential information, often regarding sensitive business information;

(8) taxpayers have protections against public disclosure of certain tax information;

(9) exchange agreements with the Internal Revenue Service require that certain tax information not be publicly disclosed;

(10) protection of confidentiality fosters full disclosure by taxpayers to taxing authorities and therefore promotes effective administration of tax programs; and

(11) legislators and legislative employees who improperly disclose confidential tax information should be subject to the same sanctions imposed against executive branch employees.

(b) The purpose of this Act is to ensure that

(1) the state is receiving all the tax revenue due the state;

(2) oversight of the tax revenue collection function is effectively provided;

(3) tax revenue due to the state is available to provide for the public health and welfare of the citizens of the state;

(4) taxpayers are protected from improper disclosure of tax information;

(5) the exchange agreements with the Internal Revenue Service regarding tax information are not jeopardized;

(6) tax programs are administered fairly; and

(7) the right of the people to privacy is recognized and may not be infringed.

* Sec. 2. AS 24.10 is amended by adding a new section to article 2 to read:

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(b) A person to whom this chapter applies may not disclose tax information contained in a report or a return filed under AS 43.05.230 and furnished to the person under AS 43.05.232.

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Sec. 24.60.172. SPECIAL PROCEEDINGS BEFORE THE COMMITTEE. Notwithstanding AS 24.60.170, if a complaint before the committee involves an allegation that a person to whom this chapter applies has disclosed tax information contained in a report or return filed under AS 43 with the Department of Revenue and furnished to the person under AS 43.05.232, and if the taxpayer or third party whose tax information is alleged to have been improperly disclosed does not agree to the public disclosure of the identity of the taxpayer, the third party, or the tax information,

(1) the hearing may not be held in open session;

(2) a transcript containing confidential tax information shall be edited to prevent the disclosure of the confidential information;

(3) a decision, if made public, shall be edited to prevent the disclosure of the tax information and to protect the identity of the taxpayer or the third party; and

(4) a public statement may not contain information identifying the taxpayer, a third party, or the tax information.

* Sec. 5 AS 43.05.230(a) is amended to read:

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

except

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

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

(3) as provided in AS 38.05.036 pertaining to audit functions; and

(4) as otherwise provided in this section <u>or in AS 43.05.232.</u>

* Sec. 6. AS 43.05.230 (f) is repealed and reenacted to read:

(f) A person who knowingly violates a provision of this section is guilty of a class A misdemeanor. A person whose negligence results in a violation of this section is subject to a civil penalty of $5,000.

* Sec. 7. AS 43.05 is amended by adding a new section to read:

Sec. 43.05.232. DISCLOSURE OF CONFIDENTIAL TAX RETURNS AND RETURN INFORMATION TO THE LEGISLATURE. (a) Confidential tax returns and return information may not be requested by a legislative committee under (b) of this section or transferred to a legislative committee under (c) of this section,

(1) unless the purpose of the committee's request under (b) of this section or of the transfer under (c) of this section is

(A) to assist the committee in carrying out its responsibilities to consider tax legislation;

(B) to oversee the effective and efficient administration of the state's tax laws, including the review of audits, litigation, or settlements; or

(C) to estimate future state revenue;

(2) if the purpose of the request or transfer is to direct the executive branch in its audit, litigation, or settlement efforts, or to collect information to embarrass, harass, or discriminate against a taxpayer.

(b) After a legislative committee identified the scope of an investigation or inquiry relating to matters of taxation and after adoption by either house of the legislature of a simple resolution giving the committee authority to receive confidential tax information, the committee chair or co-chair may request confidential tax returns and return information and the commissioner of revenue shall provide the requested returns or return information. The request shall be in writing and may identify a particular taxpayer.

(c) When consistent with the purposes set out in (a) of this section, the commissioner may transfer unrequested confidential taxpayer returns or return information to a legislative committee. If the taxpayer has testified before a legislative committee, either orally or in writing concerning a tax matter under this title and the Department of Revenue has taxpayer returns or return information that is inconsistent with the testimony or information offered by the taxpayer. [See NOTE 2]

(d) A legislative committee shall consider tax returns and return information transferred under (b) or (c) of this section in executive session only, unless the taxpayer and any third party whose tax return or return information is being considered in conjunction with the taxpayer's return or return information consent in writing to a disclosure in open session. The executive session must be open to all legislators. The committee chair or co-chair shall limit the number of employees and agents designated. [See NOTE 3]. The designated employees and agents may attend the executive session. The chair or co-chair may allow a taxpayer whose confidential tax return or return information is being considered to attend the portion of the executive session that considers that taxpayer's confidential tax return or return information.

(e) When confidential tax returns or return information concerning a specific taxpayer are provided to a legislative committee under this section, the commissioner shall notify the taxpayer of the content and delivery of the return and return information to the committee.

(f) Before providing confidential tax return or return information under (b) or (c) of this section, the commissioner shall make a written determination that the information to be provided is in the least intrusive form with regard to the taxpayer's commercially sensitive material. Contracts or other transactional documents shall not be transferred if they can be summarized or edited in a manner that does not disclose the details of the transaction or the identity of the taxpayer or the trading partner of the taxpayer. [See NOTE 4]

(g) Disclosure contrary to the provisions of this section by a member or former member of the legislature or by a present or former employee or agent of the legislature of a return or return information that is confidential under AS 43.05.230 and transferred to the legislature under this section is a violation of AS 43.05.230. A member of the legislature or an employee or agent of the legislature, before receiving or reviewing a return or return information provided by the commissioner under (b) or (c) of this section, shall, on a form prepared by the commissioner,

(1) acknowledge that the return or return information is confidential and that a disclosure of the return or return information contrary to the provisions of this section is prohibited by law; and

(2) execute an agreement with the department to keep the return or return information confidential, to abide by regulations adopted by the department under (h) of this section and to return the

documents to the department.

(h) The commissioner shall adopt regulations governing the transmittal, receipt, centralized safekeeping, limitations on duplication and removal, accounting for possession, and return of the confidential tax return and return information transferred under (b) and (c) of this section. [See NOTE 5]

(i) This section does not permit the transfer to the legislature of confidential tax returns and return information provided by the Internal Revenue Service under exchange agreements with the department.

(j) In this section "return" and "return information" shall include only the following items:

(1) the taxpayer's identity;

(2) the taxpayer's tax returns required by law;

(3) The annual amount of collections from a taxpayer for each tax;

(4) the amount of an assessment made by the Department of Revenue for each issue and each tax period;

(5) the issues involved in the assessment along with a complete description of the issue;

(6) the amount, nature, and basis of any executed settlement between the Department of Revenue and the taxpayer. [See NOTE 6]

* Sec. 8. AS 43.20.030 is amended by adding a new subsection to read:

(k) The department may grant a reasonable extension of time for filing a return by this section. Such extension shall not be for more than one month beyond the maximum period allowable under the Internal Revenue Code for extensions of time to file federal income tax returns. An extension of time to file the return shall not affect the date when payment is due. [See NOTE 7]

P. 4, ℓ 17

5-0321L
Bannister
3/4/87

Original sponsor: Rules/Legislative Budget and Audit

SENATE OIL + GAS

IN THE ~~HOUSE~~ BY THE ~~FINANCE~~ COMMITTEE

SENATE 70 (Oil+Gas)

CS FOR ~~HOUSE~~ BILL NO. ~~58 (Finance)~~

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to confidential tax information; relating to the filing of tax returns; and providing for an effective date."

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(1) the majority of the state's revenue is derived from taxation;

(2) tax revenue enables the state to provide essential services to the citizens of the state to ensure the public health and welfare;

(3) the elected representatives of the people of the state must be assured that the state is receiving all of the income to which it is entitled and that the tax laws are operating in the manner intended by the legislature;

(4) the legislature must exercise its oversight authority to ensure that tax revenue collection by the Department of Revenue is efficient, fair, prompt, and in the best interest of the state;

(5) there is a legitimate and compelling governmental interest in the legislature having adequate access to tax-related information to allow responsible oversight;

(6) without sufficient information, the legislature cannot adequately determine that the state's tax revenue collection functions are properly administered and that tax revenue due the state is promptly received;

(7) tax returns and return information contain confidential information, often regarding sensitive business information;

(8) taxpayers have protections against public disclosure of certain tax information;

(9) exchange agreements with the Internal Revenue Service require that certain tax information not be publicly disclosed;

(10) protection of confidentiality fosters full disclosure by taxpayers to taxing authorities and therefore promotes effective administration of tax programs; and

(11) legislators and legislative employees who improperly disclose confidential tax information should be subject to the same sanctions imposed against executive branch employees.

(b) The purpose of this Act is to ensure that

(1) the state is receiving all the tax revenue due the state;

(2) oversight of the tax revenue collection function is effectively provided;

(3) tax revenue due to the state is available to provide for the public health and welfare of the citizens of the state;

(4) taxpayers are protected from improper disclosure of tax information;

(5) the exchange agreements with the Internal Revenue Service regarding tax information are not jeopardized;

(6) tax programs are administered fairly; and

(7) the right of the people to privacy is recognized and may not be infringed.

* Sec. 2. AS 24.10 is amended by adding a new section to article 2 to read:

Sec. 24.10.070. CONFIDENTIALITY OF INFORMATION. A present or former employee or agent of the legislature may not disclose tax

information contained in a report or return filed under AS 43.05.230 and furnished to the person under AS 43.05.232.

* Sec. 3. AS 24.60.060 is amended by adding a new subsection to read:

(b) A person to whom this chapter applies may not disclose tax information contained in a report or a return filed under AS 43.05.230 and furnished to the person under AS 43.05.232.

* Sec. 4. AS 24.60 is amended by adding a new section to read:

Sec. 24.60.172. SPECIAL PROCEEDINGS BEFORE THE COMMITTEE. Notwithstanding AS 24.60.170, if a complaint before the committee involves an allegation that a person to whom this chapter applies has disclosed tax information contained in a report or return filed under AS 43 with the Department of Revenue and furnished to the person under AS 43.05.232, and if the taxpayer or a third party whose tax information is alleged to have been improperly disclosed does not agree to the public disclosure of the identity of the taxpayer, the third party, or the tax information,

(1) the hearing may not be held in open session;

(2) a transcript containing confidential tax information shall be edited to prevent the disclosure of the confidential information;

(3) a decision, if made public, shall be edited to prevent the disclosure of the tax information and to protect the identity of the taxpayer or the third party; and

(4) a public statement may not contain information identifying the taxpayer, a third party, or the tax information.

* Sec. 5. AS 43.05.230(a) is amended to read:

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

except

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

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

(3) as provided in AS 38.05.036 pertaining to audit functions; and

(4) as otherwise provided in this section <u>or in AS 43.05.232</u>.

* Sec. 6. AS 43.05.230(f) is repealed and reenacted to read:

(f) A person who knowingly violates a provision of this section is guilty of a class A misdemeanor. A person whose gross negligence results in a violation of this section is subject to a civil penalty of $5,000. THE Department shall enforce + collect a civil penalty under this section.

* Sec. 7. AS 43.05 is amended by adding a new section to read:

Sec. 43.05.232. DISCLOSURE OF CONFIDENTIAL TAX RETURNS AND RETURN INFORMATION TO THE LEGISLATURE. (a) Confidential tax returns and return information may not be requested by a legislative committee under (b) of this section or transferred to a legislative committee under (c) of this section,

(1) unless the purpose of the committee's request under (b) of this section or of the transfer under (c) of this section is

(A) to assist the committee in carrying out its responsibilities to consider tax legislation;

(B) to oversee the effective and efficient administration of the state's tax laws, including the review of audits, litigation, or settlements; or

(C) to estimate future state revenue;

(2) if the purpose of the request or transfer is to direct the executive branch in its audit, litigation, or settlement efforts, or to collect information to embarrass, harass, or discriminate against a taxpayer.

(b) After a legislative committee identifies the scope of an investigation or inquiry relating to matters of taxation, and after adoption by either house of the legislature of a simple resolution giving the committee authority to receive confidential tax information, the committee chair or co-chair may request confidential tax returns and return information and the commissioner of revenue shall provide the requested returns or return information. The request shall be in writing and may identify a particular taxpayer.

(c) When consistent with the purposes set out in (a) of this section, the commissioner may transfer unrequested confidential taxpayer returns or return information to a legislative committee after making a written determination that the transfer of the return or return information is in the best interest of the state. Before the return or return information is transferred, the commissioner shall provide a copy of the commissioner's determination to the taxpayer whose return or return information is to be transferred. In determining whether the transfer of the return or return information is in the best interest of the state, the commissioner shall consider

(1) if the legislative committee is reviewing the administration of a tax imposed by this title, whether the return or return information would demonstrate the application of a tax;

(2) if the legislative committee is considering adding a new tax or amending an existing tax, whether the return or return

information would demonstrate the effect on taxpayers of a change in tax law;

(3) whether the return or return information would assist the legislative committee in estimating future state revenue;

(4) whether the return or return information would clarify or rectify information provided by a taxpayer to a legislative committee;

(5) the potential harm the taxpayer may suffer by the possible subsequent disclosure of the return or return information illegally;

(6) any other interest of the taxpayer in avoiding the transfer of the return or return information.

(d) A legislative committee shall consider tax returns and return information transferred under (b) or (c) of this section in executive session only, unless the taxpayer and any third party whose tax return or return information is being considered in conjunction with the taxpayer's return or return information consent in writing to a disclosure in open session. The executive session must be open to all legislators. The committee chair or co-chair may designate legislative employees and agents to inspect the confidential tax returns and return information, but the chair or co-chair shall seek to minimize the number of employees and agents designated. The designated employees and agents may attend the executive session. The chair or co-chair may allow a taxpayer whose confidential tax return or return information is being considered to attend the portion of the executive session that considers that taxpayer's confidential tax return or return information.

(e) When confidential tax returns or return information concerning a specific taxpayer are provided to a legislative committee under this section, the commissioner shall notify the taxpayer of the content and delivery of the return and return information to the committee.

(f) Before providing confidential tax return or return information under (b) or (c) of this section, the commissioner shall review the purpose of the proposed transfer of the return or return information to determine what types of confidential tax return or return information will provide the needed information. If more than one type of confidential tax return or return information will provide the needed information, the commissioner shall choose the return or return information that, in the commissioner's discretion, is the least commercially sensitive.

(g) Disclosure contrary to the provisions of this section by a member or former member of the legislature or by a present or former employee or agent of the legislature of a return or return information that is confidential under AS 43.05.230 and transferred to the legislature under this section is a violation of AS 43.05.230. A member of the legislature and an employee or agent of the legislature, before receiving or reviewing a return or return information provided by the commissioner under (b) or (c) of this section, shall, on a form prepared by the commissioner,

(1) acknowledge that the return or return information is confidential and that a disclosure of the return or return information contrary to the provisions of this section is prohibited by law; and

(2) execute an agreement with the department to keep the return or return information confidential, to abide by regulations adopted by the department, and to return the documents to the department.

(h) The commissioner shall adopt regulations governing the transmittal, receipt, safekeeping, duplication, accounting for, and return of the confidential tax return and return information transferred under (b) and (c) of this section.

(i) This section does not permit the transfer to the legislature of confidential tax returns and return information provided by the Internal Revenue Service under exchange agreements with the department.

(j) In this section

(1) "return" has the meaning given in 26 U.S.C. 6103(b)(1), except that "secretary" is read as "department" and "this title" means AS 43;

(2) "return information" has the meaning given in 26 U.S.C. 6103(b)(2)(A), except that "secretary" is read as "department" and "this title" means AS 43.

* Sec. 8. AS 43.20.030 is amended by adding a new subsection to read:

(h) The department may grant an extension for filing a return required under this section. The extension may not exceed 30 days beyond the filing date or the extension granted to the taxpayer by the Internal Revenue Service for filing the taxpayer's federal income tax return, whichever is later. Granting the extension does not affect the due dates for payment of the tax.

* Sec. 9. AS 43.05.232, as enacted by sec. 7 of this Act, applies to all confidential tax returns and return information in the possession of the department on or after the effective date of this Act.

* Sec. 10. This Act takes effect immediately under AS 01.10.070(c).

Testimony of

Exxon Company, U.S.A.

Senate CS for CSHB-58 (O&G)

Senate Special Committee on Oil & Gas

April 30, 1987

Exxon appreciates the opportunity we have had to express our concerns about CSHB-58 to the Special Oil and Gas Committee members and other participants. We especially appreciate your efforts both in improving the security procedures which govern the transmittal of taxpayer information to the legislature and in affording the taxpayer the opportunity of notification and comment to a proposed transfer of information.

However, we continue to believe that this bill is unnecessary. Under AS 43.05.010, the Commissioner already has the responsibility to inform the legislature about the efficiency and effectiveness of the Department of Revenue and may communicate in general terms concerning the operations of his department and the tax laws. Since we believe the current law is sufficient to keep the legislature informed, we urge you to reconsider the need for this bill.

Thank you.

MLJ/570:dag
4/28/87

ALASKA STATE LEGISLATURE

SENATE SPECIAL COMMITTEE ON OIL AND GAS

Senator Bettye Fahrenkamp
Chairman
Senator Jack Coghill
Senator Paul Fischer

P.O. Box V, State Capitol
Juneau, Alaska 99811
(907) 465-3834

April 27, 1987

SCS CSHB 58am (Oil and Gas), RELATING TO CONFIDENTIAL TAX INFORMATION; RELATING TO THE FILING OF TAX RETURNS.

COMPARISON OF HOUSE PASSED AND PROPOSED SENATE BILLS.

INCLUDES APRIL 24 OIL AND GAS COMMITTEE SUBSTITUTE.

Section 1: A finding and purpose section is included to assist the courts in interpreting the bill. A taxpayer's right to privacy under Alaska Constitution Article 1, Section 22 must be balanced with the legislature's need for information on how the state's tax laws are working.

Both versions contain this identical section.

Section 2: Adds a new section to Title 24, Article 2, on legislative employees. It would prohibit a present or former employee or agent of the legislature from disclosing confidential tax information.

Both versions contain this identical section.

Section 3: Adds a new section to the Legislative Standards of Conduct Code. Disclosure of confidential tax information by persons covered by the Code would be prohibited.

Both versions contain this identical section.

Section 4: Also adds to the Legislative Standards of Conduct Code a section to protect confidential information that may have been a source of a complaint before the Legislative Ethics Committee.

Both versions contain this identical section.

Section 5: Amends existing statute that prohibits disclosure of confidential tax information by state employees to allow the transfer of information to the legislature.

Both versions contain this identical section.

Section 6: Establishes penalties for violation of the confidentiality provisions. Current statute provides penalties only for an "intentional" violation.

House version: A "knowing" violation is a class A misdemeanor (Maximum penalties: 1 year imprisonment and $5,000); a "grossly negligent" violation is subject to a civil penalty of $5,000.

April 24 Oil and Gas CS: A "knowing" violation is a class A misdemeanor (Maximum penalties: 1 year imprisonment and $5,000). Reduces standard for civil penalty from "gross negligence" to simple "negligence". Clarifies that penalties for negligence apply to only members or former members of the legislature and present or former employees or agents of the legislature. Directs the Department of Revenue to enforce and collect the civil penalties.

Section 7: Creates a new section of statute to deal specifically with the transfer of confidential tax information to the legislature.

(a) Establishes purposes for which tax information may be transferred to the legislature (to assist in consideration of tax legislation, oversight of the administration of tax laws, including the review of settlements, litigation, and audits, or estimation of future state revenues), and purposes for which information may not be transferred (to direct the executive branch in its audit, litigation, or settlement efforts, or to embarrass, harass, or discriminate against a taxpayer).

Both versions contain this identical subsection.

(b) Establishes a procedure for requesting tax information.

House version: After adoption of a simple resolution that identifies the scope of the inquiry and allows a committee to receive information, a committee chair or co-chair may make a written request. During the interim, the chairman of the Legislative Budget and Audit Committee may request information if a majority of the committee agree.

April 24 Oil and Gas CS: Removes mechanism for interim requests. Requires adoption of simple resolution.

(c) Allows the commissioner to transfer unrequested information under certain conditions.

House version: Only if a written finding is filed showing that the transfer is in the best interest of the state. Lists points the commissioner must consider (whether the information would demonstrate the application of a tax or the effect of a change in tax law, assist in estimating revenues, or clarify information provided by a taxpayer, and the potential harm a taxpayer may suffer by the possible subsequent illegal disclosure of the information). Requires the commissioner to provide affected taxpayers with a copy of the written finding before the information is transferred.

April 24 Oil and Gas CS: Requires written finding as in House version. Notification requirement moved to subsection (e).

(d) This section restricts the commissioner's ability to transfer commercially sensitive tax information.

House version: Requires that, when more than one type of information will satisfy the legislature's request, the commissioner must choose the least commercially sensitive information.

April 24 Oil and Gas CS: Adds a requirement that the commissioner shall transfer summary documents instead of transactional documents whenever possible.

(e) Requires the commissioner to provide the taxpayer with a comment period before transferring information to the Legislature. Under a transfer initiated by the commissioner, the finding and a notification of the contents of the information must be provided to the taxpayer ten days before information is transferred to the legislature. If the transfer is the result of a legislative request, the comment period is five days. Within the last 36 days of session, or during special sessions, the comment period is reduced to three days.

April 24 Oil and Gas CS: This is a new subsection.

(f) To ensure that any additional taxpayer comments will also be kept confidential, this subsection requires all written comments to be submitted to the department and then transferred to the committee within 24 hours.

April 24 Oil and Gas CS: This is a new subsection.

(g) Requires that confidential information be considered only in executive session.

House version: Specifies that all legislators may attend the session. Authorizes the chair or co-chair to designate employees and agents allowed to attend and review the tax information, but to minimize the number of such employees. Authorizes the chair to allow the taxpayer whose returns are being considered to attend the executive session.

April 21 Oil and Gas CS: Replaces the phrase "seek to minimize" with "limit".

(h) Specifies that anyone authorized to receive confidential information must sign a form acknowledging that disclosure of the information is prohibited by law, and agreeing to abide by procedures adopted by the department.

Both versions contain this identical subsection.

(i) Establishes procedures for handling confidential tax information.

House version: Requires the commissioner to adopt regulations governing the transmittal, receipt, safekeeping, duplication, accounting for, and return of the information.

April 24 Oil and Gas CS: Specifies that the department of revenue will be responsible for the duplication and numbering of documents transferred to the legislature. Also adds "removal from storage or filing location" and "accounting for possession" to the list of regulations that the department will adopt.

(j) Ensures that the exchange of information agreement with the Internal Revenue Service will not be violated.

Both versions contain this identical subsection.

(k) Defines "return" and "return information".

House version: References definition used in federal law.

April 24 Oil and Gas CS: Also references definition used in federal law. Specifies that "return and return information" does not include "transactional documents" prepared during a tax period within two years of the transfer. It also defines "transactional documents".

<u>Section 8:</u> Amends existing law to allow the department to grant taxpayers an extension for filing their returns.

House version: Allows only a 30 day extension beyond filing date or IRS extension.

April 24 Oil and Gas CS: Allows a reasonable extension not more than one month beyond IRS maximum.

<u>Section 9:</u> Specifies that the act applies to all returns and return information in the possession of the department on the effective date of the act.

Both versions contain this section.

Section 10: Clarifies that regulations will be adopted before confidential information is transferred.

April 24 Oil and Gas CS: This is a new section.

Section 11: The bill has an immediate effective date.

Both versions contain this section.

Standard Alaska
Production Company
900 East Benson Boulevard
P.O. Box 196612
Anchorage, Alaska 99519-6612
(907) 561-5111

STANDARD
ALASKA PRODUCTION

MY NAME IS JIM PALMER. I AM THE MANAGER OF GOVERNMENTAL AFFAIRS FOR STANDARD ALASKA PRODUCTION COMPANY.

STANDARD APPRECIATES THE ATTENTION WHICH THIS COMMITTEE HAS PAID TO OUR CONCERNS ABOUT HOUSE BILL 58. CHANGES SUCH AS ALLOWING THE TAXPAYER AN OPPORTUNITY TO REVIEW THE CONTENTS OF THE INFORMATION TO BE TRANSFERRED AND TO COMMENT THEREON IS A VALUABLE PROTECTION TO ALL TAXPAYERS. THIS OPPORTUNITY BY THE TAXPAYER TO REVIEW AND COMMENT IS ALSO VALUABLE TO THE LEGISLATURE IN THAT THE LEGISLATURE IS MORE LIKELY TO RECEIVE A BALANCED PACKAGE OF INFORMATION. COMPARED TO EARLIER VERSIONS, THE CURRENT BILL STRIKES A FAR BETTER BALANCE OF THE TAXPAYER'S PRIVACY RIGHTS WITH THE LEGISLATURE'S NEED TO KNOW CERTAIN INFORMATION.

STANDARD DOES STOP SHORT OF ENDORSING THE BILL, HOWEVER, BECAUSE WITH 60 LEGISLATORS AND THEIR AIDES AND AGENTS HAVING ACCESS TO HIGHLY CONFIDENTIAL INFORMATION, THERE IS AN UNAVOIDABLE CONCERN ABOUT UNAUTHORIZED DISCLOSURE. ADDITIONALLY, THE BILL COULD ALLOW A FUTURE LEGISLATIVE BODY TO PERFORM EXECUTIVE FUNCTIONS. THIS COULD OCCUR WHERE THE LEGISLATURE UNDULY INFLUENCES THE DEPARTMENT IN THE EXECUTION OF AUDITS.

WHILE WE HAVE BASIC PROBLEMS WITH THE THRUST OF THE BILL, WE BELIEVE THIS COMMITTEE HAS INCORPORATED MANY SAFEGUARDS IN HB 58 WHICH ARE BENEFICIAL. IF THE LEGISLATURE BELIEVES THAT A BILL OF THIS TYPE IS NECESSARY, WE THINK THE OIL AND GAS COMMITTEE SUBSTITUTE CLOSES MANY OF THE LOOPHOLES THAT PREVIOUS VERSIONS HAD. STANDARD AGAIN THANKS THIS COMMITTEE FOR THE GOOD FAITH MANNER IN WHICH THE COMMITTEE LISTENED TO OUR CONCERNS AND FOR THE INCORPORATION OF CHANGES INTO THE BILL.

ARCO Alaska, Inc.
Post Office Box 100360
Anchorage, Alaska 99510-0360
Telephone 907 276 1215

April 29, 1987

Senator Bettye Fahrenkamp
Chairman
Senate Oil & Gas Committee
Pouch V
Juneau, Alaska 99801

Dear Senator Fahrenkamp:

ARCO Alaska, Inc. greatly appreciated the opportunity to provide input during the shaping of what is now Senate CS for CS for HB 58. As a result of this process, the bill has, in our view, been substantially improved.

Unfortunately, we are still unable to endorse this bill because it permits unrequested information to be transferred out of the Department of Revenue and it subjects some of our most sensitive business documents to the risks of disclosure.

We do however, recognize the legislature's need for certain information and regret that we were unable to fully resolve our concerns during our extensive sessions.

Sincerely,

Hugh R Motley

Hugh R. Motley
Assistant Tax Officer

WORK DRAFT WORK DRAFT WORK DRAFT

5-0321N
Bannister
4/24/87

Original sponsor: Rules/Legislative Budget and Audit

IN THE HOUSE BY THE SENATE SPECIAL COMMITTEE ON OIL AND GAS

SENATE CS FOR CS FOR HOUSE BILL NO. 58 (O&G)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to confidential tax information; relating to the filing of tax returns; and providing for an effective date."

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

* Section 1. LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds that

(1) the majority of the state's revenue is derived from taxation;

(2) tax revenue enables the state to provide essential services to the citizens of the state to ensure the public health and welfare;

(3) the elected representatives of the people of the state must be assured that the state is receiving all of the income to which it is entitled and that the tax laws are operating in the manner intended by the legislature;

(4) the legislature must exercise its oversight authority to ensure that tax revenue collection by the Department of Revenue is efficient, fair, prompt, and in the best interest of the state;

(5) there is a legitimate and compelling governmental interest in the legislature having adequate access to tax-related information to allow responsible oversight;

(6) without sufficient information, the legislature cannot adequately determine that the state's tax revenue collection functions are properly administered and that tax revenue due the state is promptly re-

(7) tax returns and return information contain confidential information, often regarding sensitive business information;

(8) taxpayers have protections against public disclosure of certain tax information;

(9) exchange agreements with the Internal Revenue Service require that certain tax information not be publicly disclosed;

(10) protection of confidentiality fosters full disclosure by taxpayers to taxing authorities and therefore promotes effective administration of tax programs; and

(11) legislators and legislative employees who improperly disclose confidential tax information should be subject to the same sanctions imposed against executive branch employees.

(b) The purpose of this Act is to ensure that

(1) the state is receiving all the tax revenue due the state;

(2) oversight of the tax revenue collection function is effectively provided;

(3) tax revenue due to the state is available to provide for the public health and welfare of the citizens of the state;

(4) taxpayers are protected from improper disclosure of tax information;

(5) the exchange agreements with the Internal Revenue Service regarding tax information are not jeopardized;

(6) tax programs are administered fairly; and

(7) the right of the people to privacy is recognized and may not be infringed.

* Sec. 2. AS 24.10 is amended by adding a new section to article 2 to read:

Sec. 24.10.070. CONFIDENTIALITY OF INFORMATION. A present or information contained in a report or return filed under AS 43 and furnished to the person under AS 43.05.232.

* Sec. 3. AS 24.60.060 is amended by adding a new subsection to read:

(b) A person to whom this chapter applies may not disclose tax information contained in a report or a return filed under AS 43 and furnished to the person under AS 43.05.232.

* Sec. 4. AS 24.60 is amended by adding a new section to read:

Sec. 24.60.172. SPECIAL PROCEEDINGS BEFORE THE COMMITTEE. Notwithstanding AS 24.60.170, if a complaint before the committee involves an allegation that a person to whom this chapter applies has disclosed tax information contained in a report or return filed under AS 43 with the Department of Revenue and furnished to the person under AS 43.05.232, and if the taxpayer or a third party whose tax information is alleged to have been improperly disclosed does not agree to the public disclosure of the identity of the taxpayer, the third party, or the tax information,

(1) the hearing may not be held in open session;

(2) a transcript containing confidential tax information shall be edited to prevent the disclosure of the confidential information;

(3) a decision, if made public, shall be edited to prevent the disclosure of the tax information and to protect the identity of the taxpayer or the third party; and

(4) a public statement may not contain information identifying the taxpayer, a third party, or the tax information.

* Sec. 5. AS 43.05.230(a) is amended to read:

(a) It is unlawful for a current or former officer, employee, or agent of the state to divulge the amount of income or the particulars

except

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

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

(3) as provided in AS 38.05.036 pertaining to audit functions; and

(4) as otherwise provided in this section or in AS 43.05.232.

* Sec. 6. AS 43.05.230(f) is repealed and reenacted to read:

(f) A person who knowingly violates a provision of this section is guilty of a class A misdemeanor. If the negligence of a member or former member of the legislature, or a present or former employee or agent of the legislature results in a violation of this section, the member, employee, or agent is subject to a civil penalty of $5,000. The department shall enforce this section and collect the civil penalty established by this subsection.

* Sec. 7. AS 43.05 is amended by adding a new section to read:

Sec. 43.05.232. DISCLOSURE OF CONFIDENTIAL TAX RETURNS AND RETURN INFORMATION TO THE LEGISLATURE. (a) Confidential tax returns and return information may not be requested by a legislative committee under (b) of this section or transferred to a legislative committee under (c) of this section,

(1) unless the purpose of the committee's request under (b) of this section or of the transfer under (c) of this section is

responsibilities to consider tax legislation;

(B) to oversee the effective and efficient administration of the state's tax laws, including the review of audits, litigation, or settlements; or

(C) to estimate future state revenue;

(2) if the purpose of the request or transfer is to direct the executive branch in its audit, litigation, or settlement efforts, or to collect information to embarrass, harass, or discriminate against a taxpayer.

(b) After a legislative committee identifies the scope of an investigation or inquiry relating to matters of taxation, and after adoption by either house of the legislature of a simple resolution giving the committee authority to receive confidential tax information, the committee chair or co-chair may request confidential tax returns and return information and the commissioner of revenue shall provide the requested returns or return information. The request shall be in writing and may identify a particular taxpayer.

(c) When consistent with the purposes set out in (a) of this section, the commissioner may transfer unrequested confidential taxpayer returns or return information to a legislative committee after making a written determination that the transfer of the return or return information is in the best interest of the state. In determining whether the transfer of the return or return information is in the best interest of the state, the commissioner shall consider

(1) if the legislative committee is reviewing the administration of a tax imposed by this title, whether the return or return information would demonstrate the application of a tax;

(2) if the legislative committee is considering adding a new tax or amending an existing tax, whether the

information would demonstrate the effect on taxpayers of a change in tax law;

(3) whether the return or return information would assist the legislative committee in estimating future state revenue;

(4) whether the return or return information would clarify or rectify information provided by a taxpayer to a legislative committee;

(5) the potential harm the taxpayer may suffer by the possible subsequent disclosure of the return or return information illegally;

(6) any other interest of the taxpayer in avoiding the transfer of the return or return information.

(d) Before providing confidential tax return or return information in response to a legislative request under (b) of this section or under a commissioner's determination made under (c) of this section, the commissioner shall review the purpose of the proposed transfer of the return or return information to determine what types of confidential tax return or return information will provide the needed information. If more than one type of confidential tax return or return information will provide the needed information, the commissioner shall choose the return or return information that, in the commissioner's discretion, is the least commercially sensitive. Whenever possible, instead of transactional documents, the commissioner shall transfer summary documents or analyses that have been prepared by the department. In this subsection, "summary documents or analyses" includes audit narratives, informal conference decisions, and formal hearing decisions.

(e) Before transferring the return or return information under (b) or (c) of this section, the commissioner shall notify the taxpayer whose return or return information is to be transferred of the proposed transfer and the content of the return or return information to be transferred, and, if the transfer is under (c) of this section, provide the taxpayer with a copy of the commissioner's determination. Within 10 days after receiving the determination and notification of a transfer proposed under (c) of this section, or within five days after receiving the notification of a transfer proposed under (b) of this section, the taxpayer may submit additional analysis, comment, or other information to the department, unless the legislative request or commissioner's determination is made after the 84th day of a regular session of the legislature or during a special session of the legislature, in which case the time period for the taxpayer to submit additional information is three days. When the period for submitting additional information has expired, the commissioner shall transfer to the committee the return or return information, including the additional information, if any, received by the commissioner from the taxpayer under this subsection. A taxpayer may waive the provisions of this subsection by providing the commissioner with a written waiver signed by the taxpayer.

(f) If, in addition to the additional analysis, comment, and other information filed by the taxpayer with the department under (e) of this section, a taxpayer wants to provide a legislative committee with analysis, comment, and other written information on the taxpayer's return or return information being considered by the committee under this section, the taxpayer shall file the information with the department and request that the department transfer the information to the legislative committee. The department shall transfer the information to the committee within 24 hours after receiving the information and the request.

(g) A legislative committee shall consider tax returns and return information transferred under (b), (c), (e), or (f) of this section in executive session only, unless the taxpayer and any third party whose tax return or return information is being considered in conjunction with the taxpayer's return or return information consent in writing to a disclosure in open session. The executive session must be open to all legislators. The committee chair or co-chair may designate legislative employees and agents to inspect the confidential tax returns and return information, but the chair or co-chair shall limit the number of employees and agents designated. The designated employees and agents may attend the executive session. The chair or co-chair may allow a taxpayer whose confidential tax return or return information is being considered to attend the portion of the executive session that considers that taxpayer's confidential tax return or return information.

(h) Disclosure contrary to the provisions of this section by a member or former member of the legislature or by a present or former employee or agent of the legislature of a return or return information that is confidential under AS 43.05.230 and transferred to the legislature under this section is a violation of AS 43.05.230. A member of the legislature or an employee or agent of the legislature, before receiving or reviewing a return or return information provided by the commissioner under (b), (c), or (e) of this section, shall, on a form prepared by the commissioner,

(1) acknowledge that the return or return information is confidential and that a disclosure of the return or return information contrary to the provisions of this section is prohibited by law; and

(2) execute an agreement with the department to keep the return or return information confidential, to abide by regulations

adopted by the department under (i) of this section, and to return the documents to the department.

(i) The commissioner shall adopt regulations governing the transmittal, receipt, safekeeping, removal from storage or filing location, accounting for possession, and return of the confidential tax return and return information transferred under (b), (c), and (e) of this section. The department shall have the exclusive responsibility for the duplication and numbering of the confidential tax return and return information provided to the legislature under this section.

(j) This section does not permit the transfer to the legislature of confidential tax returns and return information provided by the Internal Revenue Service under exchange agreements with the department.

(k) In this section

(1) "return" has the meaning given in 26 U.S.C. 6103(b)(1), except that "secretary" is read as "department" and "this title" means AS 43;

(2) "return information" has the meaning given in 26 U.S.C. 6103(b)(2)(A), except that "secretary" is read as "department" and "this title" means AS 43; "return information" does not include transactional documents prepared during a tax period that ended within two years of the date of the transfer of the "return information" under (b), (c), or (e) of this section;

(3) "transactional document" means a document that relates to the sale, exchange, or other transfer by a taxpayer of real property or tangible or intangible personal property and that

(A) constitutes all or part of a contract or agreement concerning the sale, exchange, or other transfer, including contract amendments, billings, and invoices; or

(B) summarizes one or more of the terms of the sale, exchange, or other transfer.

* Sec. 8. AS 43.20.030 is amended by adding a new subsection to read:

(h) The department may grant a reasonable extension of time for filing a return under this section. The extension may not be for more than 30 days beyond the maximum period allowable under 26 U.S.C. (Internal Revenue Code) for extensions of time to file federal income tax returns. An extension of time to file a return does not affect the date when the payment is due.

* Sec. 9. AS 43.05.232, as added by sec. 7 of this Act, applies to all confidential tax returns and return information in the possession of the department on or after the effective date of this Act.

* Sec. 10. The Department of Revenue shall adopt the regulations required by AS 43.05.232(i), enacted by sec. 7 of this Act, before the department transfers a return or return information to a legislative committee under AS 43.05.232.

* Sec. 11. This Act takes effect immediately under AS 01.10.070(c).

April 30, 1987

CSHB 58am (Finance), RELATING TO CONFIDENTIAL TAX INFORMATION; RELATING TO THE FILING OF TAX RETURNS.

A Committee Substitute has been prepared.

It is a result of a number of meetings with representatives of the state's major taxpayers.

TO TESTIFY:

DANNY CONSENSTEIN, Committee staff

Review section by section the provisions of the bill and the changes made in our proposed committee substitute.

JIM PALMER, Standard Alaska Production Company

The other companies will present written testimony only.

HUGH MALONE, Commissioner, Department of Revenue