

SB

70

Senate Special Committee on Oil and Gas

Legislation Checklist

Bill number: SB 70

Sponsor: L B + A

Date referred to committee: 1/26

Further referrals: SA, Resources

Prior committee report:

Finance

Back up from sponsor:

Fiscal note(s):

Agency: Revenue

Requested:

Received: 2/16

Agency:

Requested:

Received:

Position paper(s):

Agency:

Requested:

Received:

Agency:

Requested:

Received:

Sectional Analysis: (H) 702 - (HB 58)

Scheduled: 2/17

Heard: 2/17

Reported out:

Items for committee packet:

To Testify:

Revenue - Commissioner Malone
Lam - Deborah Vogt

Other Contacts:

Barbara Herman - 277-8661

Jim Palmer

Bob Nelson

Mary Jensen

House Version HB 58

STATE OF ALASKA



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

SENATE SPECIAL COMMITTEE ON OIL AND GAS

MEMORANDUM

TO: Members, Senate Special Committee on Oil and Gas
FROM: Committee Staff
RE: Committee Meeting, February 17, 1987
DATE: February 16, 1987

On Tuesday, February 17, at 3:30 pm in the Beltz Room, the Senate Special Committee on Oil and Gas will hear SB 70, Relating to the disclosure of certain tax assessment information by the Department of Revenue.

Current law prohibits the Department of Revenue from providing the Legislature with certain confidential tax information. Some of this information may be necessary to ensure proper legislative oversight over the department's tax collection function. In addition, the information may be useful in considering changes to the current tax structure.

A committee substitute has been prepared that adopts changes made this session to the house version of the bill, HB 58. The bill would allow only legislators and designated staff to review confidential information in executive session. Criminal penalties for disclosure would be a class A misdemeanor.

Offered: 2/2/87
 Referred: Finance

Original sponsor: Rules/Legislative
 Budget and Audit

P. 4
 P. 5

~~IN THE HOUSE~~
 SENATE

~~CS FOR HOUSE BILL NO. 38 (Judiciary)~~
 BY THE JUDICIARY COMMITTEE
 OIL + GAS
 SENATE BILL 70 (Oil and Gas)

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 of
 the Department of Revenue; 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;

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

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

5 (9) exchange agreements with the Internal Revenue Service re-
6 quire that certain tax information not be publicly disclosed;

7 (10) protection of confidentiality fosters full disclosure by
8 taxpayers to taxing authorities and therefore promotes effective adminis-
9 tration of tax programs; and

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

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

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

15 (2) oversight of the tax revenue collection function is effec-
16 tively provided;

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

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

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

23 (6) tax programs are administered fairly; and

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

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

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

1 information contained in a report or return filed under AS 43 with the
2 Department of Revenue and furnished to the person under AS 43.05.-
3 230(h) or (i).

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

5 (b) A person to whom this chapter applies may not disclose tax
6 information contained within a report or a return filed under AS 43
7 with the Department of Revenue and furnished to the person under
8 AS 43.05.230(h) or (i).

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

10 Sec. 24.60.172. SPECIAL PROCEEDINGS BEFORE THE COMMITTEE.
11 Notwithstanding AS 24.60.170, if a complaint before the committee
12 involves an allegation that a person to whom this chapter applies has
13 disclosed tax information contained within a report or return filed
14 under AS 43 with the Department of Revenue and furnished to the person
15 under AS 43.05.230(h) or (i) and the taxpayer or a third party whose
16 tax information is alleged to have been improperly disclosed does not
17 agree to the public disclosure of the identity of the taxpayer, the
18 third party, or the tax information,

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

20 (2) a transcript containing confidential tax information
21 shall be edited to prevent the disclosure of the confidential informa-
22 tion;

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

26 (4) a public statement may not contain information identi-
27 fying the taxpayer, a third party, or the tax information.

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

29 (f) An intentional [A WILFUL] violation of the provisions of

1 this section is a class A misdemeanor [PUNISHABLE BY A FINE OF NOT
2 MORE THAN \$5,000, OR BY IMPRISONMENT FOR NOT MORE THAN TWO YEARS, OR
3 BY BOTH].

4 * Sec. 6. AS 43.05.230 is amended by adding new subsections to read:

5 (h) A legislative committee, after identifying the scope of an
6 investigation or inquiry relating to matters of taxation [and the
7 adoption by either house of a simple resolution giving the committee
8 authority to receive confidential tax information,] may request the
9 commissioner of revenue to provide confidential taxpayer returns or
10 return information; the request by the committee shall be in writing
11 and may identify, directly or indirectly, a particular taxpayer. On
12 ~~adoption of the resolution~~ ^{receipt of written request}, the commissioner of revenue shall provide
13 the committee with the requested returns or return information. If
14 specific returns or return information concerning a particular taxpay-
15 er are provided to a legislative committee under this subsection, the
16 commissioner of revenue shall notify the particular taxpayer of the
17 request and of the delivery to the committee of the information. The
18 committee may designate legislative employees or agents to inspect
19 returns and return information. The committee may consider informa-
20 tion made available under this subsection only in executive session
21 unless the taxpayer and any third party whose tax information is being
22 considered consent in writing to a disclosure in open session.

23 (i) Notwithstanding (h) of this section, the commissioner may
24 transfer information made confidential under this section to a legis-
25 lative committee after a written finding by the commissioner that the
26 transfer is in the best interest of the public. The transfer of the
27 confidential information is in the best interest of the public if

28 (1) a taxpayer has testified before a legislative commit-
29 tee, either orally or in writing, or has otherwise provided

1 information to a committee concerning the administration of a tax
2 under this title and the department has confidential information of
3 the taxpayer that directly conflicts with the testimony or information
4 offered by the taxpayer;

5 (2) a legislative committee is reviewing the administration
6 of a tax imposed by this title and confidential information is needed
7 to demonstrate the application of the tax to taxpayers;

8 (3) the legislature has under consideration a bill propos-
9 ing to add an additional tax or to amend a tax administered by the
10 department and confidential information is needed to demonstrate the
11 fiscal effect of the proposed new tax or amendment; or

12 (4) after giving the taxpayer a hearing, the commissioner
13 makes a written determination that the interest of the public in
14 transferring the information to the legislative committee outweighs
15 the interest of the taxpayer in avoiding the transfer of the informa-
16 tion.

17 ~~(j) If a return or information that is provided to a committee~~
18 ~~under (h) or (i) of this section identifies the taxpayer, the taxpayer~~
19 ~~may attend the portion of the committee meeting that considers the~~
20 ~~return or information.~~

21 (k) The disclosure of information made confidential by this
22 section by a member or former member of the legislature or by a pre-
23 sent or former employee or agent of the legislature is a violation of
24 this section. A member of the legislature and an employee or agent of
25 the legislature, before receiving or reviewing information provided by
26 the commissioner under (h) or (i) of this section, shall acknowledge,
27 on a form prepared by the commissioner, that the information is confi-
28 dential, and that a disclosure of the information is prohibited by
29 law.

1 (1) The legislative committee and the commissioner of revenue
2 shall adopt procedures governing the transmittal, receipt, safekeep-
3 ing, and use of the confidential information provided by the commis-
4 sioner under (h) or (i) of this section.

5 (m) This section does not permit the disclosure to the legisla-
6 ture of confidential information provided by the Internal Revenue
7 Service under exchange agreements with the department.

8 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).
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STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 28, 1987

SUBJECT: Constitutional speech and debate issue in
CSHB 58(Jud)

TO: Representative John Sund
Chair, House Judiciary Committee

FROM: Theresa L. Bannister
Legislative Counsel

This memorandum accompanies the draft of the committee substitute that you requested for HB 58. Please be aware that sec. 6 of the draft raises a constitutional question. Proposed subsection (i) added by sec. 6 could be challenged as violating the speech and debate immunity clause appearing in art. II, sec. 6 of the Alaska Constitution. Subsection (i) would subject legislators to liability enforceable by other branches of the government for acts occurring during the exercise of their legislative duties during the session or while going to or returning from the session.

It is not clear whether sec. 6 would be held to be constitutional. There does not appear to be any Alaska case law on this specific issue. In United States v. Helstoski, 442 U.S. 477, 490 (1979), the U.S. Supreme court suggested with regard to the speech and debate immunity provision of the U.S. Constitution that Congress could "enlist the aid of the Executive Branch and the courts" in disciplining its members by a "narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members". Id. at 492. Although the issue apparently has never arisen in court, the Internal Revenue Service appears to have taken the position that Congress has done just that in an Internal Revenue law, so that members of Congress are not immune from penalties for disclosure. However, since the Alaska Supreme Court has not addressed this specific issue, the outcome of a challenge to sec. 6 of the draft is unknown.

If I may be of further assistance, please advise.

TLD:mkr
m8/055

Enclosure

CHART 1

Summary of Outstanding Tax Liabilities

Through 1982

<u>Tax Type</u>	<u>Statute</u>	<u>Tax Assessed</u>	<u>Tax Amount Under Appeal</u>
Oil and Gas Corporate Income	AS 43.21	\$489,158,736	\$489,158,736
Oil and Gas Production	AS 43.55	375,053,351	94,738,302
Corporation	AS 43.20	30,440,487	28,856,618
Individual	AS 43.20	6,090,639	1,669,340
Other		<u>10,624,196</u>	<u>3,894,962</u>
Total		\$911,367,409	\$618,317,958

Source: Department of Revenue Accounts Receivable Reports

MEMORANDUM

State of Alaska

TO: Royce Weller
Special Assistant
Department of Revenue

DATE: February 9, 1987

FILE NO:

FROM: Thomas C. Williams
Director
Enforcement Division

TELEPHONE NO: 465-2366

SUBJECT: Accounts Receivable
Balances

Per your request, following is the breakdown of the tax, penalty, and interest balances due on the accounts receivable system as of February 2, 1987:

	<u>Total</u>	<u>Tax</u>	<u>PFD</u>
Principal	\$ 939,097,727	\$ 937,978,491	\$1,119,236
Penalty	41,627,809	41,627,809	-0-
Interest	578,084,650	578,084,650	-0-
Total	<u>\$1,558,810,186</u>	<u>\$1,557,690,950</u>	<u>\$1,119,236</u>

If you have any questions or need any further information, please call.

TCW:DLR:dlr

RECEIVED
ALASKA DEPARTMENT OF REVENUE

FEB 09 1987

OFFICE OF THE COMMISSIONER

3:45
2/17/86

BF
Fischer.

SB 70

Halford —

ARCO settlement —
good example.

→ spell out procedures for committees.

suggest Threshold value
in excess of 10 mil?

p. 4 l 13 → "returns or return
info"

Fischer

Penalties —

→ what do other confidential statutes
provide?

→ what do Texas + Louisiana do?

Malone

Oversight function — can't carry out
w/o info. —
understand problems —

laws are adequate
administered fairly.
exec carry out law.

~~Reg~~

Let them not the right from a committee
would need.

Stung

strengthen confidentiality.

Vogt

1) leg minority —

never been prosecution —

U.S. Supreme never has ruled

2) Separation of powers —
doesn't affect

removes bar of free flow of information -

3) exchange agreements w/ IRS -

see (m)

→ check w/ IRS

4) "return on the info" comes from statute. — set that info to be disclosed

→ Define "return on the info" from U.S. law

Hal

could also submit kept this secret even w/ this bill?

Harmon:

yes, couldn't take that kept away. Does legislation supersede Attorney-client privilege

would it be retroactive?

Harman

- 1) "with + with info" — not broad enough.
favor broader definition.
- 2) Threshold value of 10 million —
often critical info under the limit.
use 3rd party

Palmer

- 1) discourage honest reporting
- 2) separation of powers.
- 3) what point in audit process.
- 4) retroactivity — back taxes —
- 5) define tax info.

A) need for resolution — serious matter.
control which committee.
limit to specified committee.

B) prevent taxpayer from being there.
to get all information.

Hal provide that info to taxpayer.

Parker 1) yes

Hal allow taxpayer at another time. —

Cog use leg B + A

Hal evidence The California law has produced leaks?

Parker no

Hal current audit process is —
couldn't be worse!

Stusser Exxon.

increase risk of disclosure —

1) CP+A is has authority

2) Review as report to Reg.

3) increase list of disclosure -

4) key minority

No problems in Calif.
At has 3 major taxpayers.

29.22.71

Sec. 6

every

after states cannot?

Calif. is correct.
Revenue audit go back 30 years
At has unique valuation problems.

after states require proposal?

no

Thurs, Success, legally.

properly for

Fed - require payee
other states also require.

Look at LBA

2422.71 (6)

does LBA have access to confidential tax info.?

Vogt

Leg Audit Division or
LBONA

adjourned 5:22

~~Income tax has~~
~~withholding!~~

- make more difficult to audit. -
violation of executive function -

run final bill pass IRS.

ck fed legislation as to return information
unintentional disclosure ???

At what point does the legislation become
involved -

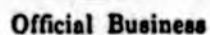
retroactivity -

what is Tax payer information

which committees - (single resolution) specify
committees -

legislatures only.

AS 22.71



DATE: 2/17/87

SIGN-IN

Subject of meeting:

SB 70 - RELATING TO THE DISCLOSURE OF
CERTAIN STATE TAX ASSESSMENT
INFORMATION BY THE DEPT. OF
REVENUE.

NAME _____

ADDRESS**PHONE**

REPRESENTING

**DO YOU WANT
TO TESTIFY?**

[illegible]

Halfo L

EXHIBIT A
CLOSING AGREEMENT

JOINT STATEMENT

Juneau, Alaska:

The Alaska Department of Revenue and ARCO Alaska, Inc. announced today that they have entered into an agreement which will substantially resolve a long standing dispute over tax liabilities owed under the Alaska Oil Production Tax for oil produced on Alaska's North Slope and from Cook Inlet. ARCO has agreed to pay a lump sum payment of \$243 million on or before January 15, 1986. ARCO Alaska, Inc. is a subsidiary of Atlantic Richfield Company. An Atlantic Richfield spokesman stated that Atlantic Richfield's 1986 profits will not be affected by the payment because previously established financial reserves are sufficient to cover the cost of the settlement.

The agreement, which is the result of extensive negotiations between ARCO and the State, was executed this week by Commissioner of Revenue, Mary A. Nordale and Harold M. Brown, Attorney General for the State of Alaska. Harold C. Heinze, President of ARCO Alaska, Inc. and Senior Vice President of Atlantic Richfield Company, has signed it for ARCO.

Commissioner Nordale observed: "This Settlement Agreement marks the end of a long dispute and culminates years of intensive audit work done by several people in the Department of Revenue in close cooperation with the Department of Law. I believe it has resulted in a fair and equitable resolution of several very complex legal and audit problems."

Mr. Heinze of ARCO stated: "The agreement reached with the State of Alaska is a reasonable resolution of complex and difficult issues. The settlement ends continuing uncertainty and avoids costly and protracted litigation."

Attorney General Harold Brown commented: "Although the State was prepared to litigate this matter to its ultimate conclusion, I am convinced that this is an excellent settlement which in fact, serves the best interests of the people of the State of Alaska."

The Oil and Gas Properties Production tax is responsible for approximately 43% of the State's annual general fund revenues. In Fiscal Year 1985, the total production tax collected from the Alaska producers was \$1,389,400,000. The payment of \$243,000,000 relates primarily to tax periods 1980 through most of 1985 and is in addition to those taxes already paid by ARCO.

Under the terms and provisions of Alaska tax statutes, the terms and conditions of the agreement may not be disclosed.

TESTIMONY OF
MARY L. JENSEN
EXXON COMPANY, U.S.A.

BEFORE
SENATE SPECIAL OIL & GAS COMMITTEE
ON
COMMITTEE SUBSTITUTE SENATE BILL 70

JUNEAU, ALASKA
FEBRUARY 17, 1987

MY NAME IS MARY JENSEN. I AM THE ALASKA TAX ATTORNEY FOR EXXON COMPANY, U.S.A. WE APPRECIATE THE OPPORTUNITY TO PRESENT TESTIMONY IN OPPOSITION OF CSSB 70.

CSSB 70 WOULD PERMIT THE DEPARTMENT OF REVENUE TO PROVIDE CONFIDENTIAL TAXPAYER INFORMATION TO LEGISLATIVE COMMITTEES, THEIR EMPLOYEES AND AGENTS. WE OPPOSE THIS BILL FOR THE FOLLOWING REASONS:

- WE BELIEVE THIS BILL IS UNNECESSARY;**
- IT WOULD INCREASE THE RISK OF UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL TAXPAYER INFORMATION TO THE PUBLIC AND TO INDIVIDUALS;**
- IT WOULD IMPEDE THE EFFECTIVE ADMINISTRATION OF THE STATE'S TAX LAWS.**

WE WOULD LIKE TO DISCUSS EACH OF THESE POINTS IN MORE DETAIL.

CSSB 70 IS UNNECESSARY

THE LEGISLATURE CURRENTLY HAS SUFFICIENT STATUTORY AUTHORITY TO MONITOR THE OPERATIONS OF THE DEPARTMENT OF REVENUE. AS 24.20.271 PROVIDES THE LEGISLATURE OVERSIGHT AUTHORITY OVER THE TAX REVENUE COLLECTION FUNCTION OF THE DEPARTMENT OF REVENUE. IN ADDITION, AS 43.05.010 REQUIRES THE COMMISSIONER OF REVENUE ANNUALLY TO REPORT AND MAKE RECOMMENDATIONS TO THE GOVERNOR AND LEGISLATURE CONCERNING THE EFFICIENCY AND EFFECTIVENESS OF THE DEPARTMENT AND THE ADMINISTRATION OF THE TAX LAWS. THEREFORE, CSSB 70 IS UNNECESSARY AND, AS WRITTEN, WOULD BLUR THE CONSTITUTIONAL BOUNDARIES BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES OF GOVERNMENT.

UNWARRANTED RISK OF DISCLOSURE OF HIGHLY SENSITIVE TAXPAYER INFORMATION

DURING THE AUDIT PROCESS, THE DEPARTMENT OF REVENUE REVIEWS HIGHLY PROPRIETARY BUSINESS INFORMATION TO

DETERMINE THE ACCURACY OF A TAXPAYER'S REPORTED TAX LIABILITY. CSSB 70 WOULD PERMIT DISCLOSURE OF ALL THIS INFORMATION TO A LEGISLATIVE COMMITTEE, ITS EMPLOYEES AND AGENTS, INCLUDING TEMPORARY, CONTRACT EMPLOYEES. THIS GREATLY EXPANDED DISTRIBUTION OF HIGHLY PROPRIETARY INFORMATION INCREASES THE RISK OF UNAUTHORIZED DISCLOSURE TO THE PUBLIC AND TO COMPETITORS.

IN ADDITION, NO BILL CAN PROVIDE TAXPAYERS WITH COMPLETE PROTECTION FROM DISCLOSURE OF PROPRIETARY TAXPAYER INFORMATION. THE ALASKA CONSTITUTION PROVIDES TO LEGISLATORS IMMUNITY FROM CRIMINAL AND CIVIL SANCTIONS FOR UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION IF MADE IN THE EXERCISE OF THEIR LEGISLATIVE DUTIES. ALSO, DISCLOSURE MAY OCCUR IN A MANNER THAT PRECLUDES IDENTIFICATION OF THE RESPONSIBLE PARTY. THE TAXPAYER'S ONLY REAL PROTECTION IS TO LIMIT THE INFORMATION PROVIDED.

IMPEDE EFFECTIVE ADMINISTRATION OF TAX LAWS

THE DEPARTMENT OF REVENUE RECEIVES FROM TAXPAYERS A BROAD RANGE OF INFORMATION, SOME OF WHICH IS EXTREMELY CONFIDENTIAL. DISCLOSURE TO THE PUBLIC AND, POTENTIALLY, TO COMPETITORS COULD BE DAMAGING. CSSB 70 WOULD MAKE THE TAXPAYER MORE RELUCTANT TO PROVIDE SUCH CONFIDENTIAL INFORMATION.

FURTHERMORE, SINCE CSSB 70 DOES NOT LIMIT THE SCOPE AND PURPOSE OF THE LEGISLATIVE REVIEW OF TAX MATTERS, THE LEGISLATURE COULD INTRUDE IN THE AUDIT AND SETTLEMENT PROCESS WHICH IS THE RESPONSIBILITY OF THE DEPARTMENT OF REVENUE. SUCH AN INTRUSION WOULD INCREASE THE STATE'S ADMINISTRATIVE COSTS AND FURTHER DELAY THE RESOLUTION OF TAX DISPUTES.

CSSB 70 IS NOT IN THE BEST INTERESTS OF THE STATE OR THE TAXPAYER, AND WE URGE THE SENATE SPECIAL OIL AND GAS COMMITTEE TO REJECT THIS PROPOSAL.

TESTIMONY OF
STANDARD ALASKA PRODUCTION COMPANY
CONFIDENTIALITY OF CERTAIN TAX INFORMATION

The Standard Alaska Production Company recognizes Alaska's right to administer the audit, assessment and collection of tax revenues. However, we believe that the requirement of confidentiality imposed upon the State in matters relating to the audit and collection of taxes is essential in order to protect the sensitive and propriety business information of taxpayers.

THE BILL WOULD INHIBIT THE AUDIT PROCESS

ORIGINALLY, S.B. 70 would have simply allowed the disclosure of a taxpayer's name and the amount of an assessment. An objection could have been made to that proposal on the grounds that the only practical result would be to embarrass the taxpayer and that would serve no useful purpose. The proposed Committee Substitute however, is not designed to embarrass the taxpayer but is far more sweeping in scope. We believe it poses a very real economic threat to the taxpayer and does serious damage to the relationship between the taxpayer and the Department of Revenue during the audit process. There is a very real concern that the hearing process may be besieged by motions, discovery requests, delay tactics, objections and jurisdictional challenges, if information supplied by the taxpayer is subject to disclosure outside the Department of Revenue.

The duties of the Department of Revenue will be made more difficult by permitting a legislative panel to intervene, at any point in the audit process, and to question and challenge assumptions, calculations and compromises.

The audit procedure will be come far more formal and adversarial at a much earlier stage. Books and records that are now routinely submitted to the State to settle minor valuation or accounting problems will probably be produced only as a result of lengthy discovery motions. Audits will consume even more time delay even further the time when the State receives its tax revenues.

THE BILL RISKS DISCLOSURE OF PROPRIETARY INFORMATION

There is a significant risk inherent in the proposed legislation that a taxpayer's highly confidential information may be disclosed. Proprietary information would be available to legislators, legislative employees and their agents. Any number of copies of taxpayer information will inevitably be made and circulated. Certain pieces of this information, in the hands of an experienced analyst, would allow a competitor to anticipate our marketing and pricing strategies and thereby gain an unfair competitive advantage. Some of this information is so sensitive that it is currently subject to a protective court order. S.B. 70 would make it very difficult for SAPC to continue to protect this type of highly confidential information.

PENALTIES FOR DISCLOSURE ARE INADEQUATE

The penalties for disclosure are inadequate. For example, the penalties apply only to intentional disclosure of confidential information and not disclosure that is occasioned through inadvertence or carelessness.

Moreover, the penalties for disclosure apply only to those persons who would be specifically entitled to receive the tax information pursuant to the legislation. The sanctions do not apply to anyone who is not authorized to receive the information but simply sees a copy in the House or Senate chamber or in a Representative's office. Those persons may disclose any of this information with impunity. A newspaperman, for example, who publishes the information but refuses to reveal his sources, is effectively beyond any sanctions.

Obviously, a company always has the risk that a disgruntled employee may disclose some proprietary information. However, in the case of an employee, the Company has the recourse of terminating employment or possibly bringing a civil action for damages because of the breach of a fiduciary duty. The Company has no such remedies if its most confidential marketing information suddenly appears in the daily newspaper.

These fears are real. As noted in the January 17, 1986 letter from the Attorney General's office to the Legislative Budget and Audit Committee:

"The Department of Revenue has expressed concern that simple disclosure of the amount of an assessment might reveal sensitive information about taxpayers....

In the oil industry, it is possible that disclosure of assessments could allow one taxpayer to learn valuable information about the transportation costs or valuation practices of its competitors."

If the simple disclosure of an assessment can be that harmful, then the risk of damage occasioned by the distribution of entire tax returns and supporting information is obviously far, far greater.

SEPARATION OF POWERS

Under the Alaskan Constitution and general Separation of Power doctrine, we believe that tax law enforcement is a function of the Executive Branch -- through the Department of Revenue. Under the broad powers conferred by S.B. 70, a chosen legislative panel would appear capable of participating actively and perhaps controlling the tax audit process, including the negotiation of tax disputes. There is no limitation in S.B. 70 as to when, in the audit process, the tax returns and tax information may be requested by the designated legislative committee. The power could be invoked immediately at the onset of an audit with the taxpayer required to supply every record, invoice and strategy that is in its files, to the Legislative panel.

Additionally, S.B. 70 is conspicuously silent on what constitutes the exercise of legislative oversight. The Legislature has certain oversight functions. For example, the collection of information necessary for tax writing purposes or the review of charges of negligence or conflict of interest within the Department of Revenue. However, we believe that S.B. 70 is so broad, so all encompassing, that it could be used to raise new issues on audit and essentially perform a secondary review of proposed audit settlements. In so doing, S.B. 70 would allow a legislative panel to perform executive functions and second guess the tax professionals in the Department of Revenue.

S.B. 70 ignores the fact that the Department of Revenue has spent years familiarizing itself with the facts and law associated with the disputed issues. Tax settlements should be reached in an environment free from the pressures of the political arena and with professionals whose backgrounds and training have prepared them to deal with unbelievably complicated tax issues. Under S.B. 70, Standard would view negotiations with the Department of Revenue as merely preliminary, and not final. While the ultimate tax payment would probably be the same, the time period would be extended, manpower and costs unnecessarily increased, and the likelihood of litigation heightened.

CONCLUSION

In summary, we object to S.B. 70, because:

1. S.B. 70 empowers a legislative panel to perform functions

properly reserved to the Executive Branch and delegated to the Department of Revenue.

2. Despite sanctions against disclosure of confidential information, unauthorized disclosure of confidential material may result and such disclosure could cause Standard Alaska material competitive harm.

MEMORANDUM

TO: Louann Cutler, Committee Aide,
House Finance Committee

FROM: J. Hartle, Committee Aide,
House Judiciary committee

RE: Sectional Analysis, CSHB 58(Judiciary)

CSHB 58(Jud) is very similar to CSHB 502(Jud)am which passed the House last year. Amendments were added at the request of the Department of Revenue, and the oil industry.

Sectional analysis:

Section 1: A findings and purpose section is included to assist the courts in interpreting the bill in balancing a taxpayer's right to privacy under Alaska Constitution Article 1, Section 22 with the legislature's need for information on how the state's tax laws are operating. Subsection (b) states the purpose of the Act. Page 2, line 24, item (7) was added at DOR's request.

Section 2: Adds a new section to Title 24, Article 2, on legislative employees, stating that a present or former employee or agent of the legislature may not disclose confidential tax information.

Section 3: Adds a new section to the Legislative Standards of Conduct Code, stating that no person covered by the Code may disclose confidential tax information.

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.

Section 5: Changes the penalties for disclosing confidential tax information to a class A misdemeanor. (Maximum penalties: 1 year imprisonment and \$5,000.) This is the criminal code classification that most closely approximates current law. Last year, CSHB 502 (Jud)am specified a Class C felony, The change was made at the request of the Department of Revenue.

Section 6: Subsection (h) lays out the procedures for the legislature to deal with confidential tax information. It requires: a simple resolution to be passed authorizing a committee to request the tax information, requests must be in writing, the taxpayer must be notified, and all consideration must be in executive session unless the taxpayer consents in writing to a public meeting.

Subsection (i) was added at the request of the Department of Revenue. The purpose of this section is to allow, under prescribed circumstances, the Commissioner of Revenue to initiate the process

of disclosing confidential tax information to the legislature.

Subsection (j) was added at the request of the oil industry (Jim Palmer, Standard Alaska). It provides that if tax records to be examined by a legislative committee identify a specific taxpayer, that taxpayer may attend the portion of the meeting that considers their particular return.

Subsection (k) makes it a violation of the law for a legislative member, former member, or employee to disclose confidential tax information (see Section 5 for the penalties). This section raises constitutional questions under Alaska Constitution Article II, Section 6 (See memo from Theresa L. Bannister, Legislative Council.) The section is written under the constitutional theory enunciated in the U.S. Supreme Court decision in U.S. v. Helstoski 442 US 477 490. The theory is that the legislature has plenary powers to discipline itself and may enlist the aid of the administrative branch and courts to do so.

Section 6 also requires legislators or employees, before viewing confidential tax information, to sign a form acknowledging that they are aware that the information is confidential and disclosure is prohibited.

Subsection (k) ensures that the exchange of information agreement with the Internal Revenue Service will not be violated.

Section 7: The bill has an immediate effective date.

Items in the referral file include:

Proposed CSHB 58 (JUD)

Memo from Theresa Bannister

Sectional analysis

February 21, 1986 memo from Deborah Vogt to Louann Cutler

Exerpt from U.S. v. Helstoski 442 US 477 490

January 16, 1986 Memo from Deborah Vogt to Mike Greany

Statutes from other states on disclosure of tax information

Zero fiscal note

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST

Bill Version: SB 70

Publish Date:

Revision Date: 2/13/87

Title: An Act relating to the disclosure of certain state tax assessment info.

Sponsor: Rules Committee

Requestor: Legislative Budget & Audit

Agency Affected: Revenue

BRU: Audit

Comments:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: Steven E. Kettel *RW for*

Division: Audit

Phone: 465-2320

Date: 2/13/87

Approved by Commissioner: Hugh Malone *Royce with FOR*

Agency: Department of Revenue

Date: 2/13/87

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

Senate Secretary

Louann Cutler
House Finance Committee

February 21, 1986

465-3600

Harold M. Brown
Attorney General

Disclosure of
confidential tax
information

By: Deborah Vogt
Assistant Attorney General
Oil, Gas and Mining-Juneau

HB 502, as currently drafted, would permit the Department of Revenue to disclose to the legislature the name of a taxpayer and the amount of an assessment levied against that taxpayer by the Department. You have asked me to look into what the United States and other states permit in the way of legislative oversight of tax matters, and to consider whether Alaska might follow those examples. You have further asked me to draft a proposed committee substitute for HB 502 permitting disclosure to the legislature, but prohibiting disclosure to the public.

26 U.S.C. 6103 is the Internal Revenue statute dealing with the confidentiality of tax information on the federal level. Like AS 43.05.230, it generally requires that information on a federal tax return be kept confidential. Section (f) of that statute permits the IRS to disclose otherwise confidential material to designated committees of Congress. Those committees are the "tax writing" committees -- House Ways and Means, Senate Finance and the Joint Committee on Taxation. Like Alaska's law, if the information does not identify particular taxpayers, it may simply be given to Congress. If, however, the information would disclose or identify a particular taxpayer, it may only be provided to those committees in executive session. Taxpayer-specific information may also be provided to the chief of staff of the joint committee, to other committees under more limited circumstances, and to the "agents" of the tax-writing committees (staff) that are designated by the chairman.

I have made a cursory survey of the laws of other states, and have located one (California) which permits disclosure to the legislature. Corporate income tax information is disclosable under California Statute § 26453, and personal income tax information under § 19285. I have attached copies of those statutes for your review. California provides that it is a misdemeanor for a member of

a committee or its staff to disclose the particulars of tax information.

Considerations.

1. Accountability. The present confidentiality statute imposes criminal penalties for unauthorized disclosure of tax information. That criminal penalty is probably an effective deterrent to unintentional disclosure: I know it makes me take very seriously the confidentiality of taxpayer information. It may be that here in Alaska it is especially important to consider accountability since our major taxpayers are few in number, and as a result the contents of their tax returns may be more memorable than would be any particular return in a state like California or at the federal level. Although neither California nor the United States appear to have dealt with the question of legislative immunity, I believe it is appropriate to consider whether a criminal penalty would have any effect should a legislator disclose confidential tax information in the course of legislative debate. (I do not believe that any question of immunity arises in the event that a legislator were to disclose information in another context -- for example, to a friend or relative in a social context.)

The speech and debate immunity appearing in the Alaska Constitution, like that in the United States Constitution, was designed to "preserve the constitutional structure of separate, coequal, and independent branches of government. The English and American history of the privilege suggests that any lesser standard would risk intrusion by the Executive and the Judiciary into the sphere of protected legislative activities." United States v. Helstoski, 442 U.S. 477, 490. Thus, the immunity is more than an individual privilege protecting legislators; its purpose is to protect, as well, the constituents of those legislators, who have an interest in ensuring free debate by their legislature. As a result, since it is not a personal privilege, it is not clear whether the immunity may be waived by a legislative body.

In Helstoski, the Court suggested (but did not decide) that Congress could "enlist the aid of the Executive Branch and the courts" in disciplining its members by a "narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its

members." Id. at 492. Although the issue apparently has never arisen, the Internal Revenue Service takes the position that Congress has done just that in section 6103, so that members of Congress are not immune from penalties for disclosure. The attached draft bill, then, specifically provides that a legislator would not be immune from penalties for unauthorized disclosure of tax information.

The legislature may, of course, take any action it deems appropriate to regulate the conduct of its own members. The draft bill, then, provides that disclosure of tax information is a violation of the standards of conduct set out in AS 24.60. Thus, even if a legislator who disclosed confidential information were to successfully argue that he or she was immune from the penalties of AS 43.05.230, that legislator would nonetheless have violated the legislature's standards of conduct, and would be subject to the provisions of that chapter.

2. Information exchange with the Internal Revenue Service. The state is currently entitled to information from the IRS, so long as the state has certain confidentiality protections. In amending the confidentiality provisions, it is appropriate to consider whether the exchange of information with the IRS would be affected. There are two relevant provisions of federal law.

The first is 26 U.S.C. § 6103 (d), which authorizes the IRS to disclose information generated by the IRS directly to the states so long as the information is protected by the state. An example of this type of information would be the results of a federal a Windfall Profit Tax audit. The information is available only to the agency charged with administering the tax laws; it may not even be disclosed to the governor. Thus, information received by Alaska under this section would not be available to the legislature under the draft bill. However, the draft bill would not effect the receipt of this information by the state.

The second relevant provision is more indirect, and deals with federal tax information that is provided to the state by the taxpayer. For example, a state may require that the federal return be attached to the state return, or that certain information from the federal return be entered on the state return. Since this information comes directly

from the taxpayer, the United States has no control over the use to which the information is put. However, § 6103(p)(8) provides that if the state does not protect the confidentiality of this information, the IRS will no longer provide the direct information under § 6103(d). I have checked with the IRS disclosure attorneys in Washington, and they tell me that disclosure to the legislature, but not to the public, should have no effect on the exchange of information. They have also said that the IRS will work with us to determine the potential effect of any legislation before it is passed. I also spoke with California, which discloses information to its legislature, and the attorney there told me that disclosure did not effect the exchange of information with the IRS.

3. Effect of proposed bill on legislative involvement in settlement of tax disputes. The confidential nature of the recent settlement of severance tax issues with Arco raises the question of what the the effect of the proposed bill would be on the settlement process. The bill would permit (subject to the restrictions against public disclosure) legislators to review settlements to the extent that they now may do so with respect to non-tax matters. In other words, the bill removes the bar of tax confidentiality, no more and no less. The bill would not expand the legislature's ability to participate in the settlement process beyond its present parameters in non-tax matters.

Summary of the Proposed Bill

The draft bill provides that confidential information will be provided to a committee designated by the speaker of the house or the senate president. For example, the speaker might request that information be provided to the house finance committee. The committee may review and consider confidential information only in a closed, executive session (unless the taxpayer consents to an open hearing). If the committee desires that legislative staff have access to materials, it must first define the scope of an inquiry or investigation and then designate specific staff members who are authorized to review otherwise confidential information. Legislative employees would include, for example, the house research agency, so long as the committee, acting as a whole, designated those employees. The proposed bill restates that disclosure of information received under the subsection is not permitted,

and specifically notes that this is true notwithstanding the statute setting out legislative immunity. 1/ It further would require that any individual, before receiving or reviewing information, must sign a statement acknowledging that he or she knows the information is confidential and that disclosure is prohibited.

The bill would add a new subsection in the legislative standards of conduct chapter, prohibiting disclosure of information received under the amendments proposed in the bill. Thus, even if a legislator successfully argued immunity under the speech and debate clause, he or she would still be subject to the provisions of that chapter.

DV:jf

1/ The intent, here, is to waive the speech and debate immunity, not the protections from being subjected to court proceedings during the legislative session. A court would probably find that the latter protection was not waived by the draft bill, but it may be that this should be clarified.

Other states permitting
disclosure to the legislature

LEGISLATURE

Alabama	\$ 40-1-33
California	\$ 19284
Idaho	\$ 63-3077
[Minnesota	\$ 290-61 - abstracted info only]
Oregon	\$ 314.840 - name + amount of tax of corporations only
Washington	\$ 8232.330
Wisconsin	\$ 71.11 (44)

from Deborah Vogt,
Assistant AG

EXXON COMPANY, U.S.A.

P.O. BOX 196601 • ANCHORAGE, ALASKA 99519-8601 • (907) 561-5331

DONALD E. CORNETT
ALASKA COORDINATOR

February 10, 1987

Representative Pat Pourchot
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Pourchot:

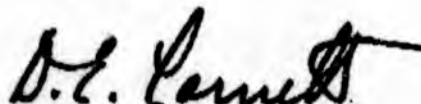
We understand the House Finance Committee is reviewing HB 58 and wish to offer our comments. We believe that HB 58 is unnecessary because AS 24.20.271 already gives the legislature performance audit authority over the tax revenue collection function of the Department of Revenue. This bill would needlessly increase the risk of highly sensitive taxpayer information being disclosed to competitors.

If your committee still believes this bill is needed, we would like the opportunity to work with you to develop a bill which will keep the legislature informed but still protect taxpayers from unnecessary disclosure. We believe the following are the more important areas in HB 58 that would need to be addressed.

- o Section 6(h) must provide limits on the scope and purpose of the legislative review. Otherwise, the legislature could interfere in the audit and settlement process which is the prerogative of the Department of Revenue.
- o Section 6(i) is particularly unnecessary since AS 43.05.010 already requires the commissioner to annually report and make recommendations to the governor and legislature concerning the efficiency and effectiveness of the department and the administration of the tax laws. This section would needlessly encourage the commissioner to intrude in the legislative process.
- o There must be a limit on the type of taxpayer information subject to legislative disclosure. This is particularly important given the legislative immunities clause in the Alaska Constitution which may not provide taxpayers with true protection from disclosure of proprietary taxpayer information.

We have other concerns with this bill, some of which were discussed in our testimony on HB 504 last year, and we would be pleased to discuss these with you.

Sincerely yours,



DEC/MLJ:jlp

A DIVISION OF EXXON CORPORATION

SENATE SPECIAL COMMITTEE ON OIL AND GAS

FEBRUARY 17, 1987

SB 70, RELATING TO THE DISCLOSURE OF CERTAIN STATE TAX ASSESSMENT INFORMATION BY THE DEPARTMENT OF REVENUE.

A COMMITTEE SUBSTITUTE HAS BEEN PREPARED.

IT ADOPTS MOST OF THE LANGUAGE FROM THE HOUSE JUDICIARY SUBSTITUTE FOR HB 58, THE HOUSE VERSION.

THE TELECONFERENCE IS TO CONNECT BARBARA HERMAN, DEPARTMENT OF LAW ATTORNEY FOR BACK TAXES FROM ANCHORAGE.

TO TESTIFY:

COMMISSIONER MALONE, Department of Revenue.

SENATOR HALFORD, Vice Chairman, Legislative Budget and Audit Comm.

SENATOR STURGULEWSKI

DEBORAH VOGT, Assistant Attorney General

BARBARA HERMAN, Assistant Attorney General, Back Taxes (ANCHORAGE)

JIM PALMER, Standard Alaska Petroleum Company

MARY JENSEN, Exxon

QUESTIONS:

Ask Commissioner Malone what the effect would be of deleting Section 6(i).

This section allows the commissioner to transfer confidential information to the legislature without a legislative request.

More consideration needs to be taken on defining what kind of information a committee may receive.

Also the form in which a written request is made. How to insure that only needed information is requested?

Should the request require the agreement of the full committee?
What committees could receive information? Finance? Oil and Gas?



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

M E M O R A N D U M

TO: Members, Senate Special Committee on Oil and Gas

FROM: Committee Staff

RE: Committee Meeting, March 10, 1987

DATE: March 9, 1987

On Tuesday, March 10, at 3:30 pm in the Beltz Room, the Senate Special Committee on Oil and Gas will hear SB 70, Relating to the disclosure of certain tax assessment information by the Department of Revenue.

Current law prohibits the Department of Revenue from providing the Legislature with certain confidential tax information. Some of this information may be necessary to ensure proper legislative oversight over the department's tax collection function. In addition, the information may be useful in considering changes to the current tax structure.

Testimony was heard by this committee on February 17. A committee substitute has been prepared that reflects the changes that were made to the House version of the bill (HB 58) in a House Finance subcommittee. The subcommittee's work sessions with industry representatives resulted in consensus being reached on several points but disagreement remained on three major points. Attached is a discussion of those outstanding issues.

5-0321L
Lannister
3/4/87

Original sponsor: Rules/Legislative
Budget and Audit

SENATE
IN THE HOUSE

OIL + GAS
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."

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;

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

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

5 (9) exchange agreements with the Internal Revenue Service re-
6 quire that certain tax information not be publicly disclosed;

7 (10) protection of confidentiality fosters full disclosure by
8 taxpayers to taxing authorities and therefore promotes effective adminis-
9 tration of tax programs; and

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

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

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

15 (2) oversight of the tax revenue collection function is effec-
16 tively provided;

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

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

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

23 (6) tax programs are administered fairly; and

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

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

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

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

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

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

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

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

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

18 (2) a transcript containing confidential tax information
19 shall be edited to prevent the disclosure of the confidential informa-
20 tion;

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

24 (4) a public statement may not contain information identi-
25 fying the taxpayer, a third party, or the tax information.

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

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

1 except

2 (1) in connection with official investigations or proceed-
3 ings of the department, whether judicial or administrative, involving
4 taxes due under this title;

5 (2) in connection with official investigations or proceed-
6 ings of the child support enforcement agency, whether judicial or
7 administrative, involving child support obligations imposed or im-
8 posable under AS 25 or AS 47;

9 (3) as provided in AS 38.05.036 pertaining to audit func-
10 tions; and

11 (4) as otherwise provided in this section or in AS 43.-
12 05.232.

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

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

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

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

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

26 (A) to assist the committee in carrying out its re-
27 sponsibilities to consider tax legislation;

28 (B) to oversee the effective and efficient adminis-
29 tration of the state's tax laws, including the review of audits.

1 litigation, or settlements; or

2 (C) to estimate future state revenue;

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

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

15 (c) When consistent with the purposes set out in (a) of this
16 section, the commissioner may transfer unrequested confidential tax-
17 payer returns or return information to a legislative committee after
18 making a written determination that the transfer of the return or
19 return information is in the best interest of the state. Before the
20 return or return information is transferred, the commissioner shall
21 provide a copy of the commissioner's determination to the taxpayer
22 whose return or return information is to be transferred. In determin-
23 ing whether the transfer of the return or return information is in the
24 best interest of the state, the commissioner shall consider

25 (1) if the legislative committee is reviewing the adminis-
26 tration of a tax imposed by this title, whether the return or return
27 information would demonstrate the application of a tax;

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

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

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

5 (4) whether the return or return information would clarify
6 or rectify information provided by a taxpayer to a legislative commit-
7 tee;

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

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

13 (d) A legislative committee shall consider tax returns and
14 return information transferred under (b) or (c) of this section in
15 executive session only, unless the taxpayer and any third party whose
16 tax return or return information is being considered in conjunction
17 with the taxpayer's return or return information consent in writing to
18 a disclosure in open session. The executive session must be open to
19 all legislators. The committee chair or co-chair may designate legis-
20 lative employees and agents to inspect the confidential tax returns
21 and return information, but the chair or co-chair shall seek to mini-
22 mize the number of employees and agents designated. The designated
23 employees and agents may attend the executive session. The chair or
24 co-chair may allow a taxpayer whose confidential tax return or return
25 information is being considered to attend the portion of the executive
26 session that considers that taxpayer's confidential tax return or
27 return information.

28 (e) When confidential tax returns or return information concern-
29 ing a specific taxpayer are provided to a legislative committee under

1 this section, the commissioner shall notify the taxpayer of the con-
2 tent and delivery of the return and return information to the commit-
3 tee.

4 (f) Before providing confidential tax return or return informa-
5 tion under (b) or (c) of this section, the commissioner shall review
6 the purpose of the proposed transfer of the return or return informa-
7 tion to determine what types of confidential tax return or return
8 information will provide the needed information. If more than one
9 type of confidential tax return or return information will provide the
10 needed information, the commissioner shall choose the return or return
11 information that, in the commissioner's discretion, is the least
12 commercially sensitive.

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

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

25 (2) execute an agreement with the department to keep the
26 return or return information confidential, to abide by regulations
27 adopted by the department, and to return the documents to the depart-
28 ment.

29 (h) The commissioner shall adopt regulations governing the

1 transmittal, receipt, safekeeping, duplication, accounting for, and
2 return of the confidential tax return and return information
3 transferred under (b) and (c) of this section.

4 (i) This section does not permit the transfer to the legislature
5 of confidential tax returns and return information provided by the
6 Internal Revenue Service under exchange agreements with the depart-
7 ment.

8 (j) In this section

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

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

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

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

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

25 * Sec. 10. This Act takes effect immediately under AS 01.10.070(c).
26
27
28
29



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 10, 1987

SECTIONAL ANALYSIS OF PROPOSED CSSB 70 (Oil and Gas), RELATING TO CONFIDENTIAL TAX INFORMATION; RELATING TO THE FILING OF TAX RETURNS.

Title change: The original bill provided for public disclosure of certain tax information. The Oil and Gas Committee substitute allows only the transfer of information to the legislature under certain conditions. In addition, Section 8 codifies existing practice by allowing the commissioner to grant a 30 day extension on filing of corporate income tax returns.

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.

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.

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.

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.

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

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

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).

(b) Establishes a procedure for requesting tax information. 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.

(c) Allows the commissioner to transfer unrequested information 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.

(d) Requires that confidential information be considered only in executive session, and that all legislators may attend the session. Authorizes the chair or co-chair to designate employees and agents to review the tax information and attend the executive session, 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.

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

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

(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.

(h) Requires the commissioner to adopt regulations governing the transmittal, receipt, safekeeping, duplication, accounting for, and return of the information.

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

(j) Defines "return" and "return information" as it is defined in federal law.

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

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.

Section 10: The bill has an immediate effective date.

Alaska State Legislature

REPRESENTATIVE
PAT POURCHOT

HOUSE FINANCE COMMITTEE
COMMITTEE ON OIL AND GAS



House of Representatives

March 5, 1987

CSHB 58 (Fin) Relating to confidential tax information of the Department of Revenue

The subcommittee's work sessions resulted in consensus being reached on several points. The following are points on which the subcommittee members agree, but on which the industry representatives who attended the work session do not:

1) Definition of "tax return" and "return information."

The subcommittee agreed to use the federal definition, which is very inclusive and would allow legislative access to a wide range of information filed with the Department of Revenue. Industry representatives expressed concern that this would include proprietary information such as specific transactional agreements with third parties. They argued that possible subsequent illegal disclosure of such information would be very damaging to a company's competitive position. Additionally, industry argued that such sensitive information was not of the type the Legislature needs to investigate tax laws and policies.

In an attempt to address this concern, the subcommittee added language to HB 58 which: a) Increases the penalties for disclosure (page 4, lines 14-17); b) Requires the commissioner to transfer the least commercially sensitive information that meets the legislature's request (page 7, lines 9-12); c) Requires the implementation of regulations that govern the transmittal and safekeeping of confidential documents (page 7, line 29 through page 8, line 3); and d) Minimizes the number of legislative employees and agents who would have access to the information (page 6, lines 21-22).

2) The commissioner's ability to initiate the transfer of information.

The subcommittee agreed to authorize the commissioner, under certain conditions, to come forward with confidential information (i.e., passage by the legislature of a simple resolution would not be required). The subcommittee felt this would provide a needed avenue when the legislature may not be aware of specific problems, as in the case of the Administration advancing its own tax legislation.

Industry representatives felt that the scrutiny associated with passage of a simple resolution provides a needed "control" over the scope and purposes of a request for information. They argued that no such parallel control would be placed on the commissioner, possibly resulting in abuses at some future time.

In an attempt to address this concern, the subcommittee strengthened language in HB 58 to require that the commissioner: a) Consider a number of criteria in a written finding that precedes the transfer (page 5, line 25 through page 6, line 12); b) Notify the taxpayer of the content of the information being transferred (page 7, lines 1-2); and c) Transfer information only when consistent with the purposes outlined in the act (page 4, line 24 through page 5, line 6). In addition, the safeguards discussed in #1 (definition) apply here also.

- 3) Access to information currently covered under "protective orders."

Industry representatives expressed concern that existing protective agreements (which generally provide an additional layer of protection beyond that currently provided in statute) were entered into with "one set of rules in mind," and the agreements should not change even if the rules do.

The Attorney General has advised that protective agreements ordered by the court (for example, due to ongoing litigation) will probably not be changed by passage of HB 58, but that administrative protective orders (for example, issued by Department of Revenue hearing officers during administrative hearings) could be affected. Should the legislature seek access to information currently covered by an administrative protective order, and should the taxpayer sue to block access, the court might decide that the protective agreement is of a contractual nature and thus unaffected by HB 58.

The subcommittee did not wish to explicitly prevent information from being transferred simply because it was covered by some type of protective order. The subcommittee recognized that some court orders might take precedence over a legislative request for information, but did not want to comment on, or prejudice any "separation of powers" argument, at this time.

March 10, 1987

1) Exempt sales bill

WOULD LIKE TO INTRODUCE AS A COMMITTEE BILL.

EXEMPT OIL AND GAS SALES ARE SALES THAT ARE NOT PLANNED FOR IN THE 5 YEAR PLAN.

BILL WOULD STREAMLINE THE PROCESS.

ALLOW THE STATE TO HOLD EXEMPT SALES WITHOUT BEST INTEREST FINDINGS IF THE LEASES ARE IN OR NEXT TO AN AREA THAT HAS ALREADY HAD A FINDING PREPARED WITHIN THE PAST THREE YEARS.

2) MOVE SJR 8, Relating to a federal tax on imported oil

COPIES OF A HARVARD STUDY FOR COMMITTEE MEMBERS.

3) SB 70, Relating to the disclosure of certain state tax assessment information by the Department of Revenue.

A COMMITTEE SUBSTITUTE HAS BEEN PREPARED.

IT INCORPORATES THE LANGUAGE THAT WAS ADOPTED BY THE HOUSE FINANCE COMMITTEE LAST THURSDAY.

IS THE RESULT OF A SERIES OF WORK SESSIONS WITH INDUSTRY REPRESENTATIVES CONDUCTED BY A HOUSE FINANCE SUBCOMMITTEE.

CONSENSUS WAS REACHED ON MANY POINTS BUT THERE IS STILL DISAGREEMENT ON A FEW MAJOR POINTS.

TO TESTIFY: *Danny 1st analysis y bill*

last COMMISSIONER HUGH MALONE, Department of Revenue

JUDY ELLISON, Standard Alaska *Production* Petroleum Company

DEBRA VOGT

BARBARA HERMAN, Assistant Attorney General, Department of Law.

May propose amendment to clarify "negligent" violation.

3:40

BE ✓
Coghull

DC outlines —

→ executive session — and joint rules?
whose allowed in?

Debra Vogt

enforced by DOR.

Helford

one for damages?

Judy Ellison SAPCO

protect proprietary information.

ambit, delay

1) transactional documents —

2) protective orders

3) commissioners ability.

Malone

why aren't laws working?

failure of oversight function. of legislature
because of failure of law

essential

info that leg needs -

legislature is responsible.

need access to all information:

Bill wouldn't change protective
orders

→ no provision for interim requests?

dept. should be able to forward info to
the legislature -

Leg will act responsibly.

adjourned 4:22

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(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

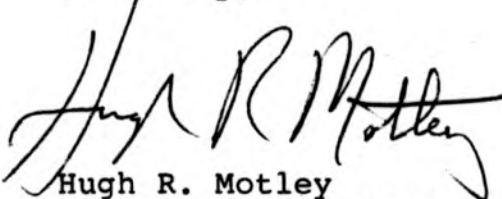
Dear Senator Fahrenkamp:

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
Assistant Tax Officer