

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8616 HOUSE JUDICIARY

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Chenoweth
1/17/96

CS FOR HOUSE BILL NO. 341()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to consideration and determination by the superior court of
2 disputes involving certain taxes and penalties due, and amending provisions relating
3 to the assessment, levy, and collection of taxes and penalties by the state and to
4 the tax liability of taxpayers; and amending Rule 609(b) of the Alaska Rules of
5 Appellate Procedure; and providing for an effective date."

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

7 * Section 1. AS 22.10.020(d) is amended to read:

8 (d) The superior court has jurisdiction in all matters appealed to it from a
9 subordinate court, or administrative agency when appeal is provided by law. The
10 hearings on appeal from a final order or judgment

11 (1) of a subordinate court [OR ADMINISTRATIVE AGENCY] shall
12 be on the record unless the superior court, in its discretion, grants a trial de novo, in
13 whole or in part;

1 (2) of the Department of Revenue in matters relating to fixing the
2 amount of, or imposing a penalty on, a tax levied and collected by the state when
3 appeal is taken under AS 43.05.242(c)(1) shall be heard as a trial de novo as a
4 matter of right;

5 (3) of the Department of Revenue in matters relating to fixing the
6 amount of, or imposing a penalty on, a tax levied and collected by the state when
7 appeal is taken under AS 43.05.242(c)(2) shall be on the record unless the
8 superior court, in its discretion, grants a trial de novo, in whole or in part;

9 (4) of an administrative agency, except for a matter described in
10 (2) or (3) of this subsection, shall be on the record unless the superior court, in
11 its discretion, grants a trial de novo, in whole or in part.

12 * Sec. 2. AS 37.10.410 is amended to read:

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

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

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

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

27 (1) taxes that are not due at the time the request for the proceeding was
28 made under AS 43.05.240(a) or (b)(1) or 43.05.242(b);

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

31 (3) taxes collected for a tax year for which the taxpayer did not give

1 notice of appeal of an assessment made by the Department of Revenue.

2 * Sec. 3. AS 43.05.240 is amended by adding a new subsection to read:

3 (e) The provisions of this section do not apply to the action of the department
4 in fixing the amount of a tax or in imposing a penalty related to a tax described in
5 AS 43.05.242(a).

6 * Sec. 4. AS 43.05 is amended by adding new subsections to read:

7 Sec. 43.05.242. APPEAL OF CERTAIN TAXES AND RELATED
8 PENALTIES. (a) The provisions of this section apply to a matter relating to fixing
9 the amount of, or imposing a penalty on, a tax levied and collected by the state under

10 (1) AS 43.19 and AS 43.20;

11 (2) former AS 43.21;

12 (3) AS 43.55;

13 (4) AS 43.65;

14 (5) AS 43.75.

15 (b) A person aggrieved by the action of the department in fixing the amount
16 of a tax or in imposing a penalty may apply to the department within 60 days from the
17 date of mailing the notice required to be given to the person by the department, giving
18 notice of the grievance, and requesting an informal hearing. At the informal hearing,
19 the person aggrieved may present arguments and evidence relevant to the amount of
20 tax or penalty due the state. If the department determines that a correction is
21 warranted, the department shall make the correction.

22 (c) A person aggrieved by the action of the department under (b) of this
23 section in fixing the amount of a tax or in imposing a penalty may

24 (1) within 30 days after decision resulting from the informal hearing,
25 appeal to the superior court in the judicial district in which the person resides; when
26 an appeal is taken under this paragraph,

27 (A) the taxpayer shall be given access to the file of the
28 department in the matter for preparation of the appeal;

29 (B) if, after the appeal is heard,

30 (i) it appears that the tax was correct, the court shall
31 confirm the tax;

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(ii) it appears that the tax was incorrect, the court shall determine the amount of the tax; if the person aggrieved is entitled to recover the tax or part of it, the court shall order the repayment, and the department shall immediately pay the amount due and attach a certified copy of the judgment to the payment; or

(2) within 30 days after decision resulting from an informal hearing, apply to the department and request a formal hearing; when a formal hearing is requested under this paragraph,

(A) the department may subpoena witnesses, administer oaths, and make inquiries necessary to determine the amount of the tax or penalty due the state;

(B) the person aggrieved may present arguments and evidence relevant to the amount of the tax or penalty due the state; and

(C) if the department determines that a correction is warranted, the department shall make the correction.

Sec. 43.05.244. TAX, PENALTY, AND INTEREST PAYABLE BEFORE APPEAL. (a) In an appeal from a decision of the department involving a deficiency of taxes levied and collected by the state under a tax described in AS 43.05.242(a), the taxpayer shall pay to the state the full amount of the tax, penalty, and interest in respect of the amount of tax assessed that is not in dispute. The taxpayer shall post a bond, obtain a letter of credit, or provide other evidence satisfactory to the tax court that it is able to pay the amount of tax, penalty, and interest in respect of the amount of tax assessed that is in dispute and that is the basis of the taxpayer's appeal.

(b) The tax and interest due under this section are the amounts stated in the final order of the department from which the appeal is taken, or if the final order appealed from is a summary judgment or partial summary judgment, the amount shall be as originally assessed on the issue or issues disposed of.

* Sec. 5. AS 43.05.245 is amended to read:

Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES, AND INTEREST. If a taxpayer fails to file a return or report required by this title in the time required by law or regulation, or makes an erroneous or fraudulent return, the

1 department shall proceed to assess the license fees, tax, penalties, or interest and make
2 a return from information that [WHICH] it obtains. A return made and subscribed by
3 the department in accordance with this section is presumed sufficient for all legal
4 purposes. However, nothing prevents a taxpayer from presenting evidence or other
5 information on an appeal under AS 43.05.240 or 43.05.242 in order to rebut the
6 presumed sufficiency of a return made and subscribed by the department, nor does the
7 presumption of sufficiency alter the parties' respective burdens of proof once the
8 taxpayer has presented evidence or other material information to rebut that
9 presumption. The assessment of license fees, tax, penalties, or interest under this
10 section occurs when the department issues a notice and demand for payment of the
11 license fees, tax, penalties, or interest. The notice and demand for payment is issued
12 when the notice and demand is delivered to the taxpayer in person or placed in the
13 United States mail, addressed to the last known address of the taxpayer. Penalties and
14 interest assessed under this title shall be collected in the same manner as provided in
15 this title for the collection of tax or license fees.

16 * Sec. 6. AS 43.05 is amended by adding a new section to read:

17 Sec. 43.05.254. OVERPAYMENT. If it has been finally determined that an
18 overpayment exists, either the taxpayer or the commissioner may elect within 60 days
19 to credit the overpayment, including any interest accruing on the overpayment, against
20 the tax liability of the taxpayer for the current tax year and subsequent tax years. The
21 amount of the refund not credited within three years of the date of the election shall
22 be paid to the taxpayer, with interest accrued at the rate established in AS 43.05.280.

23 * Sec. 7. AS 43.20.200(a) is amended to read:

24 (a) As soon as practicable after a return is filed, the department may examine
25 it and determine the correct amount of the tax. If an error is disclosed by the
26 examination, the department shall so notify the taxpayer by first-class mail. The
27 taxpayer may petition for redetermination of deficiency as provided in AS 43.05.240
28 or 43.05.242.

29 * Sec. 8. AS 43.20.270(a) is amended to read:

30 (a) The department may collect taxes, with interest, penalties, and other
31 additional amounts permitted by law, by distraint and sale, in the manner provided in

1 this section, of the property of a person liable to pay the taxes, interest, penalties, or
2 other additional amounts, who neglects or refuses to pay them within 10 days from the
3 mailing of notice and demand for payment of them, and who has not appealed from
4 the assessment of the taxes, interest, penalties, and other additional amounts under
5 AS 43.05.240 or 43.05.242.

6 * Sec. 9. AS 43.55.013(g) is amended to read:

7 (g) The monthly production at the economic limit for a lease or property is
8 presumed to be 3,000 Mcf times the number of well days for the lease or property
9 during that month for which the tax is to be paid. The taxpayer may rebut this
10 presumption at a formal hearing under AS 43.05.242(c)(2) [AS 43.05.240] by
11 providing clear and convincing evidence of a different monthly production rate at the
12 economic limit for the lease or property. The hearing shall be held before February 15
13 of the year or within six months after commencement of gas production for a lease or
14 property. The monthly production rate at the economic limit for the lease or property
15 based upon the clear and convincing evidence of the taxpayer shall be calculated by
16 dividing the value determined under (i) of this section into the average monthly direct
17 operating cost determined under (h) of this section.

18 * Sec. 10. COURT RULE CHANGE; RULES OF APPELLATE PROCEDURE. The
19 provisions of AS 22.10.020(d)(2), added by sec. 1 of this Act, have the effect of changing
20 Rule 609(b) of the Alaska Rules of Appellate Procedure relating to the superior court's
21 exercise of its discretion to grant a de novo review of certain appeals of decisions of the
22 Department of Revenue involving taxes and related penalties.

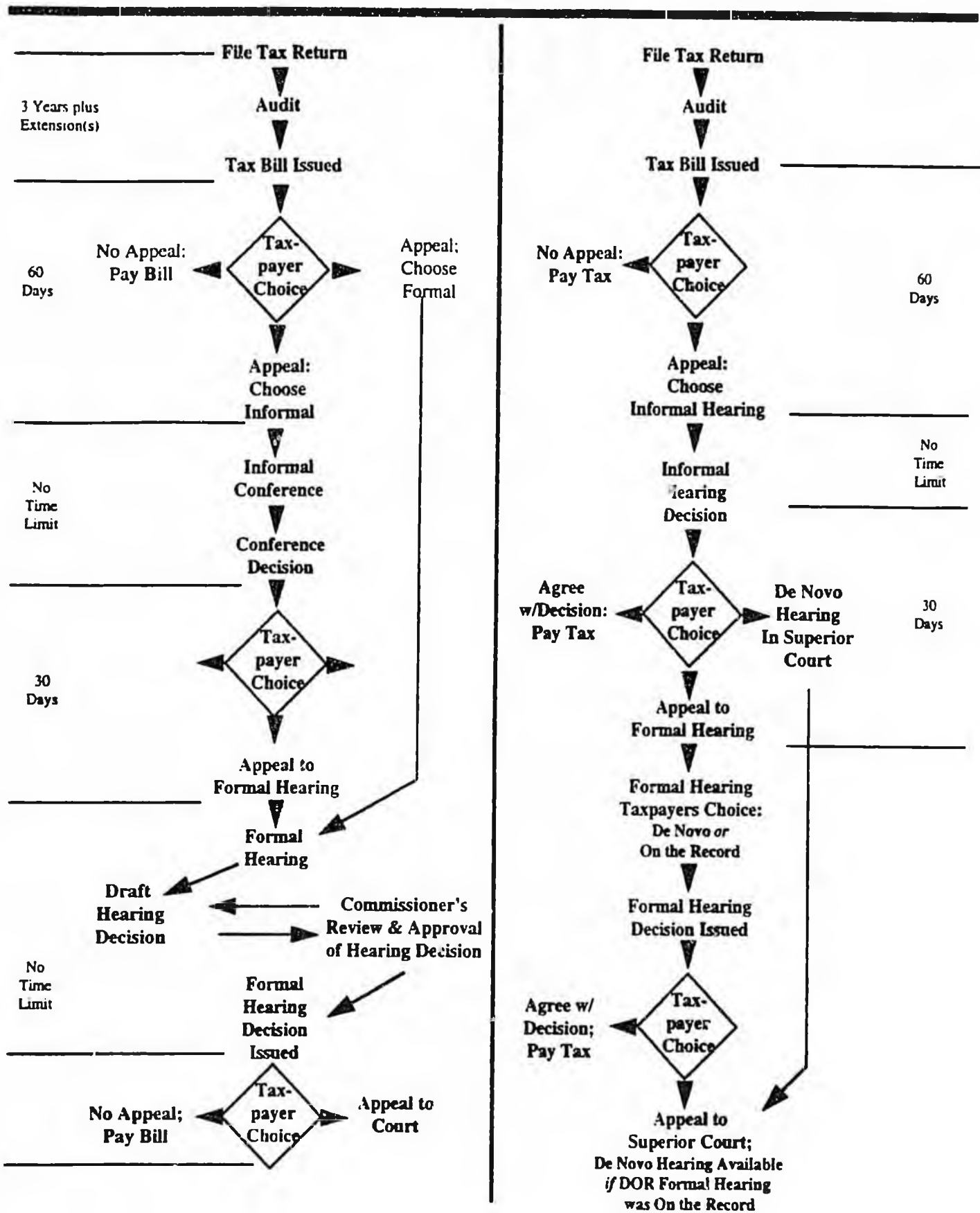
23 * Sec. 11. This Act takes effect July 1, 1996.

House Resources Committee

Alaska's Present Tax Audit & Appeals Process

Comparison of

RES CS HB341 (Version "K")



January 23, 1996

JAN 25 1996

Representative Joseph Green
House Resources Committee
State Capitol, Room 24
Juneau, AK 99801

Re: Ad Valorem Tax Issues

Dear Representative Green:

The purpose of this memorandum is to explain the need to modify the manner in which ad valorem tax disputes are resolved in Alaska. The position of this memorandum is that the current statutes need to be modified to ensure that taxpayers are afforded a fair process before an impartial forum. More specifically, there are three issues raised under current Alaska law: (1) whether a taxpayer should be entitled to a hearing before an impartial forum; (2) whether the traditional strength of a board of equalization--the informal resolution of tax disputes among fellow citizens--has been compromised, and (3) whether a taxpayer who appeals a board of equalization determination should be entitled to have the superior court consider additional evidence.

- 1. The Members on the Board of Equalization Should Not Also Sit on the Governing Body Since the Board of Equalization's Decisions Directly Impact the Tax Revenues and Budget of the Governing Body.**

Currently, the governing body or its appointed board sits as a board of equalization. AS 29.45.200(a). In those cases in which the governing body appoints a board of equalization, the statute allows members of the governing body to be appointed to the board of equalization. AS 29.45.200(a).

Under this statutory scheme, the impartiality of the board of equalization will necessarily be at issue so long as the governing body or its individual members sit on the board of equalization and hear tax disputes which directly impact the governing body's tax collections and fiscal budget. To preserve the impartiality of the board of equalization, the members of the governing body should not be allowed to sit as members of the board of equalization.

2. The 1985 Modifications to the Alaska Statutes Have Placed Too Great an Emphasis on the Evidentiary Record at the Board of Equalization Hearing and in Doing So Have Compromised the Traditional Strength of a Board of Equalization to Informally Resolve Taxpayer Disputes.

A board of equalization hearing has traditionally been an opportunity for a taxpayer to informally resolve his tax dispute. The board of equalization is comprised of his fellow citizens in the community and not attorneys or judges. The strength of this forum is the ability to have fellow citizens informally resolve tax disputes.

The 1985 modifications to the statutes provide that the taxpayer's only opportunity to establish an evidentiary record is before the board of equalization. AS 29.45.210(d). This is unique and unfair. In any other appeal from an administrative agency, the superior court may, under certain circumstances, consider additional evidence on appeal, AS 44.62.570(d). Moreover, this new requirement works to convert an informal forum into a more formal forum in which the evidentiary record is of critical importance to the taxpayer's rights. A board of equalization works best in an informal setting and is not well suited to making detailed evidentiary rulings. Shifting the focus of the board of equalization from a less to a more formal setting works to the disadvantage of both the board of equalization and the taxpayer.

The 1985 modifications to the statutes also provide that the superior court may not conduct a de novo review of the board of equalization's determinations. AS 29.45.210(d). This means that the superior court may not take a fresh look at the evidence or consider new evidence. It also means that the evidentiary rulings made by the board of equalization shape a taxpayer's ability to appeal.

There is little justification to convert an informal forum and hearing which is well suited to resolving informal tax disputes among fellow citizens into a more formal adjudicatory setting in which the board of equalization's determinations on detailed evidentiary matters may substantially compromise a taxpayer's future rights. These adjudicatory burdens only work to compromise the board of equalization's and the taxpayer's ability to sit down and talk in an attempt to informally resolve the dispute.

3. The Superior Court Should Have the Opportunity to Take a Fresh Look at the Evidence and Consider New Evidence in Considering an Appeal by Either a Taxpayer or an Assessor.

As noted above, the 1985 modifications to the statutes also provide that the superior court may not conduct a de novo review of the board of equalization's determinations. AS 29.45.210(d). A de novo review by the superior court gives both the taxpayer and the

Representative Joseph Green
January 23, 1996
Page 3

assessor an opportunity to present their dispute to a more formal forum. This would allow the board of equalization to do what it does best--informally resolve tax disputes--while also allowing the superior court to do what it does best--formally resolve tax disputes.

4. The Typical Taxpayer's Rights Are Severely Prejudiced by the 1985 Modifications.

A typical taxpayer views a board of equalization hearing as an opportunity to informally resolve a tax dispute. He is typically not represented by counsel, not aware it is his only opportunity to present evidence, and not aware of the type or manner of evidence which must be presented to support his position on appeal. Instead, he is aware of a similar property which was sold or assessed at a value which is less than his own property. At hearing, the taxpayer may bring one or two examples of such inconsistencies to the board of equalization's attention and request an adjustment to his assessed value.


In this situation, the typical taxpayer will severely prejudice his ability to appeal a determination by the board of equalization because his evidentiary presentation at the hearing is inadequate to support an appeal. Moreover, because the superior court may not take a fresh look at the dispute, in practical terms, the taxpayer will never have the opportunity to advance evidence which could support an appeal. The creation of such a statutory trip wire for the typical taxpayer is not sound public or tax policy.

5. These Issues May Be Easily Resolved.

The legislature should consider two simple modifications to the current statutes: (1) amend AS 29.45.200(a) to provide that members of the board of equalization must be residents who are not also members of the governing body; and (2) amend AS 29.45.210(d) to provide that a taxpayer or an assessor may appeal a determination of the board of equalization to the superior court which shall consider the appeal on the record unless a trial de novo is requested by the parties on some or all of the issues.

Very truly yours,

TESORO ALASKA PETROLEUM COMPANY

By 
John C. Moore
Bernie Smith
Robin O. Brena

ROB:mks

(9)

Date Referred: May 9, 1995

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 1-24-96

The RESOURCES Committee considered:

HB 341

HOUSE BILL NO. 341

ALASKA TAX COURT

"An Act establishing a tax court to consider and determine certain taxes and penalties due and collateral matters, and amending provisions relating to taxpayer challenges to the assessment, levy, and collection of taxes by the state; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 341 (RES) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
[2] fiscal note(s) Rev, Courts [] fiscal note(s) _____

[] zero fiscal note(s) _____ [] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Vernie Nichol</i>				✓
<i>Col David</i>				✓
<i>Paul L...</i>				x
<i>Scott...</i>			✓	
<i>Wendy...</i>			✓	
<i>Kate...</i>			✓	
<i>Joseph...</i>	✓			
<i>W.K. Williams</i>			✓	

CHAIR'S SIGNATURE *[Signature]*

AMERADA HESS CORPORATION

JOHN Y. SCHREYER
Executive Vice President

1185 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036-2677
(212) 536-8550

October 20, 1995

Representative Joe Green
Chairman, House Resources Committee
716 W. 4th Ave, Suite 200
Anchorage, AK 99501-2133

Via Facsimile (907) 258-8171

Dear Representative Green:

Amerada Hess Corporation ("AHC") would like to state its strong support of the bill introduced by you which would establish a tax court in Alaska. This court would have *de novo* jurisdiction over taxes levied under AS 43.19, AS 43.20 (the Multistate tax Compact and the Alaska Net Income Tax Act respectively) and AS 43.55 (the Oil and Gas Properties Production Tax), both of which are significant to AHC, as well as over other taxes which are less significant to this company. In addition, the newly created court would have the jurisdiction to rule on the validity of regulations promulgated to "implement, interpret, or make specific" those taxes.

First of all, we support your bill because we believe that, due to the complexity of state tax laws (and the federal laws upon which they are based), specialized state courts having sole jurisdiction over tax cases should be established.

In 1924, the Congress of the United States recognized that, due to the complexities of the federal tax laws, a specialized forum was necessary to hear federal tax cases. Responding to this need, Congress established the Board of Tax Appeals, the predecessor of the United States Tax Court. The basic jurisdiction of this court is the redetermination of deficiencies in federal income, estate and gift taxes. *Burns, Six Friedman & Company, Inc. v. Commissioner of Internal Revenue*, 57 T.C. 392, 396 (1971). Dealing only with tax cases, this court, in the 70+ years of its existence, has developed a renowned expertise in federal tax matters and a reputation for impartiality second to none. This expertise and reputation for impartiality are essential elements to the retention of the support of taxpayers and the IRS that this court enjoys.

We believe that your proposed legislation, by creating a state court similar to the United States Tax Court, will create a court of similar expertise and impartiality. It seems particularly helpful to develop this expertise and impartiality in a forum assigned to rule on the validity of regulations promulgated by the DOR.

Secondly, we favor your bill because the forum it creates will hear cases *de novo*. For the proper administration of the Alaska's tax laws and the just settlement of disputes arising between the State and its taxpayers, we believe such a court is essential. The current system of holding

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the *de novo* hearing before a Hearing Officer employed by the DOR creates a perception of partiality. No matter how well intentioned the Hearing Officer is, the lack of an independent forum will always perpetuate this perception of partiality. This perception is strengthened by the Commissioner's ability to direct the Hearing Officer in drafting final decisions. It does not seem fair that the advocate for the DOR should have such power over the decision-making process. Your bill would insure impartiality in decision making.

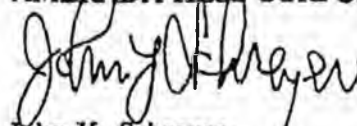
Finally, we favor your bill because, based on our own experience in New Jersey, we are convinced that an independent forum to hear tax cases will work. As you know, New Jersey has a separate tax court which has *de novo* jurisdiction over all tax cases originating in this state. As a corporation with significant operations in New Jersey, we are well acquainted with this court. It is our belief (a belief shared by other taxpayers and the New Jersey Division of Taxation) that this court provides a fair and just tribunal for the settling of disputes between New Jersey and its taxpayers. Furthermore, since New Jersey Tax Court judges hear each case *de novo*, taxpayers are able to present all the facts and law that they deem relevant. In contrast, under the current system in Alaska, a taxpayer does not have the right to present its case to a court *de novo* but instead must rely on the record as presented by the Hearing Officer.

That is not to say that we always agree with the New Jersey Tax Court (*See Amerada Hess et. al. v. Director, Division of Taxation* (1984), where the court held for the Division of Taxation and against AHC). But we certainly felt, in that case as in others, that we had been afforded fair hearings before impartial judges.

We appreciate the opportunity to be heard on this issue and wish you success in your endeavors to enact this bill. If we can be of further assistance, please do not hesitate to call.

Very truly yours,

AMERADA HESS CORPORATION



John Y. Schreyer

TESTIMONY OF
BP EXPLORATION (ALASKA) INC.
TO THE
HOUSE RESOURCES COMMITTEE
REGARDING
HOUSE BILL NO. 341

January 24, 1996

Good morning, Mr. Chairman and Members of the Committee. My name is Tom Williams, and I am Alaska Tax Counsel for BP Exploration (Alaska) Inc. Thank you for this opportunity today to testify on behalf of BP regarding House Bill No. 341 and, in particular, on work draft "K" of a Committee Substitute for the Bill, which is dated January 17, 1996.

Alaska's present system of tax appeals needs reform. Present law makes the Commissioner of Revenue responsible for acting as prosecutor, judge and jury in tax appeals. In other states these functions may also be combined within one agency. But in those states the potential problems from combining all three functions is avoided in practice by delegating and dividing them up among several different people or divisions within the agency. In Alaska, with fewer than a dozen taxpayers paying some 80% of the State's total unrestricted General Fund revenues, the stakes in the tax appeals have often been so material to the State that the delegations of authority here have failed to maintain a necessary division of these three functions.

The dangerous overlapping, in practice, of prosecutorial, judicial and juror roles within the Department has been worsened by the considerable deference given by the courts to formal hearing decisions issued by the Department. On issues where the facts are in dispute, the factual findings by the hearing officer are upheld unless they are "not supported by ... substantial evidence in light of the whole record" in the appeal. This does not mean that *most* of the evidence has to support the hearing officer's findings, only that there be *some* credible evidence — some evidence of *substance* — which supports them. This puts an all but impossible burden of proof on the taxpayer, despite the fact that the hearing officer's findings cannot become final without the signature of the person who is statutorily responsible for taking "all steps necessary and proper to enforce full and complete compliance with the tax ... laws of the state[.]" And the fact that hearing officers serve at the pleasure of the Commissioner further undercuts their independence as fact-finders. Moreover, even on questions of legal interpretation, which the judiciary normally views as its

own particular province, the courts defer to the Department's interpretation if they decide it involves the special expertise of the agency, and few other areas of the law are so technical and subject to agency expertise as tax.

Reform of the present system can proceed along two avenues. One is to increase the actual independence of the people hearing tax appeals from influence by the Commissioner of Revenue. The other is to make the standard for reviewing the Department's decisions in court less deferential to the agency's positions.

There are now no less than three different proposals before the Legislature to reform the present tax appeals system, each of which goes varying distances down the two avenues for reform. The first is HB 341 as originally introduced. In that version, the Bill would create a new tax court in the Judicial Branch to hear tax cases. This clearly goes as far as possible toward making the tax tribunal independent of the Department's influence, and minimizes the need and opportunity for judicial deference to agency interpretations of the law.

The second proposal is the draft CS that is before the Committee today. The key feature of the CS is the opportunity for taxpayers to opt for a trial *de novo* in Superior Court after an informal conference with the Department, instead of the present process of having a formal hearing before a departmental hearing officer with a subsequent appeal to the courts to review the hearing decision. Trial *de novo* is a legal term that means having a trial of the facts as if there had been no earlier fact-finding by the agency. The CS would ensure that the "jury" role will be played by an impartial judge, instead of a departmental employee. But trial *de novo* would still allow the courts to defer to the agency's expertise in interpreting the law whenever they felt the matter was one involving agency expertise, so in this sense the draft CS does not go as far as the original Bill in providing for independence in the adjudication of tax cases.

The third proposal on the table is the legislation recently introduced by the Governor, HB 427 and SB 224. That legislation would create a panel of administrative law judges within the Department of Administration to hold the formal hearings in tax cases, and those hearings would be on a *de novo* basis. Being in a separate department, these ALJs would be considerably more independent of the Commissioner of Revenue than the hearing officers are under the present system, although they would appear to be less absolutely independent of Executive Branch influences than actual judges in the Judicial Branch would be. Offsetting this, however, is the fact that the ALJs would have tax expertise to match that of the Department of Revenue itself, so there should be less occasion to defer to the Department's interpretations of the law on the grounds of agency expertise than there would be with trial *de novo* in Superior Court.

Let me make BP's position as clear as possible. All three proposals as currently drafted have some technical issues that should be addressed before being enacted. But assuming those technical matters can be taken care of, any one of the three proposals would significantly reform and improve the tax appeals system from what Alaska has now. This means that the most important

thing, from BP's perspective, is to pass one of these reforms. Which one it is is less important than the fact that it pass. The worst possible outcome this Session would be to fail to pass anything, or to pass one and have it vetoed.

We in BP are confident in your ability to find a reasonable accommodation that will provide true reform in tax appeal procedures. We look forward to helping you in that effort in whatever way we can.

Thank you again for this opportunity to testify.

**Testimony of ARCO Alaska, Inc. before the
House Resources Committee
January 24, 1996**

ARCO Alaska, Inc. appreciates the opportunity to present its views regarding legislation to change the procedures for hearing tax disputes and looking for ways to improve that process. This has been an area of great concern to ARCO for more than twenty years and we applaud the efforts of Representative Green and the efforts of the Knowles Administration to deal with this complex issue in a thoughtful and fair-minded manner.

ARCO believes that the present system for tax hearings is broken. It is so broken that it is rarely used because taxpayers go to great lengths to avoid it. ARCO has used the existing formal hearing process only once in the past ten years. There is a widely held perception among taxpayers that the existing system does not provide taxpayers with the opportunity for a fair and independent hearing.

In the past few weeks, we have looked at three different proposals for changing the tax hearing process: House Bill No. 341 introduced by Representative Green would establish a separate Tax Court; a newly adopted CS for House Bill No. 341 also presented by Representative Green would provide for tax hearings before the Superior Court; and House Bill No. 427 introduced by the Governor would establish an Administrative Law Court outside of the Department of Revenue.

While these bills each take different approaches, each of these proposals would be much fairer than the present system and we urge the legislature to give each of these bills a full hearing.

In judging these three proposals and any other proposals which might emerge, ARCO urges the legislature to critically examine the proposals against nine criteria which ARCO believes should be present in any tax hearing process:

- The hearing should be outside the control of the Department of Revenue.
- The hearing officer or judge should serve for a term of years rather than be subject to termination at will.
- The hearing officer or judge should be specifically required to have experience in the area of tax law.
- The hearing should be a de novo proceeding where the hearing officer or judge has original jurisdiction and hears evidence without regard to the proceedings below.
- The burden of proof on questions of fact should be preponderance of the evidence.
- The standard of review of questions of law should be substitution of judgment.
- Where authority has been legally vested in the Commissioner of Revenue to interpret a revenue provision, a reasonable basis standard should apply.
- A taxpayer should have the opportunity to conduct legitimate discovery but neither the taxpayer nor the Department of Revenue should be permitted to abuse the discovery process.
- The hearing process structure should, to the extent possible, take into account the uniqueness of Alaska's situation of very few taxpayers and tax appeals. The

hearing system should be tailored to Alaska's needs and be as efficient as possible.

ARCO urges this committee to apply these criteria to all three proposals as well as to the existing law. We believe a proposal might emerge which meets all of these criteria and is acceptable to the stakeholders — the legislature, the administration, the court system and the Alaska taxpayers.

In closing, ARCO would like to stress two points. The first is that from our perspective this is a very important issue which has long term implications for how taxpayers will view the business climate in the state and the fairness of the playing field. The second is that this is a major opportunity where all of the stakeholders are making a bona fide attempt to establish a fair tax hearing system and every bill that has been proposed is a significant improvement over the existing system.

Once again, we applaud your efforts and the efforts of the administration. We stand ready to do whatever we can to facilitate the enactment of fair tax hearing legislation.

ALASKA HOUSE RESOURCES COMMITTEE

CSHB 341

January 24, 1996

Good morning Chairman Green and members of the House Resources Committee. My name is Norma Calvert and I am here today representing Marathon Oil Company. Chairman Green, before I share with you Marathon's comments on the committee substitute to House Bill 341 (the Tax Court Bill), I would like to thank you and your staff, along with the committee members, for your dedicated efforts to improve the tax appeals process in Alaska. We believe the system can be modified for the benefit of the taxpayers and the State of Alaska.

As stated in Marathon's testimony given at the October hearing, we strongly support the modification of the appeals process. Although we believe a tax court as proposed in H.B. 341, as originally introduced, would provide the most impartial process of resolving tax disputes, we also understand the concerns raised at the October hearing by the Supreme Court system with respect to establishing a specialty court in Alaska due to the small number of taxpayers and cases to be resolved.

Our testimony in October gave a detailed synopsis of our concerns of the current system. To review, our number one concern is the empowerment within the Department of Revenue to audit, issue assessments and govern the hearings for dispute resolution. If the taxpayer does feel it necessary to appeal the DOR's decision, a de novo review is not given at the Superior Court level and great deference is given to the DOR's decision, making it nearly impossible to obtain an impartial review of the case.

Recognizing the complications in forming a tax court in Alaska, we support the Committee's substitute bill to allow for a de novo hearing outside the Department of Revenue at the Superior Court level. In continuing your efforts to improve the tax appeals process, we would like for you to consider the essential characteristics of an unbiased system: the appeals process should be independent of the audit and assessment process, outside the Department of Revenue; taxpayers should be

CSHB 341: page 2
Marathon Oil Company

allowed a de novo hearing before an impartial tribunal; and the burden of proof on questions of fact should be a preponderance of evidence standard. We believe a de novo review at the Superior Court level provides resolution to the concerns we have expressed and is a great step in moving toward an impartial tax appeals process.

There are a number of ways the current system could be improved and we support the committee substitute as an alternative to the Tax Court bill as originally introduced. We encourage this committee, the Alaska legislature and the administration to work toward a resolution that truly provides an impartial appeal process in Alaska. Such changes will lead to expedited resolution of tax issues, with benefit to all parties involved. Most importantly, it sends a message of tax fairness that is critical in encouraging future investments in Alaska.

Thank you for this opportunity to share our comments with you this morning.

Testimony of Daniel M. Seckers
Before the House Resources Committee
On CS for HB 341 and the Tax Dispute Resolution Process in Alaska
January 24, 1996

Mr. Chairman, members of the Committee, my name is Dan Seckers. I am Exxon's tax counsel here in Alaska. I want to thank you and the Committee for allowing me the opportunity to testify before you today.

At the onset, I would like to say that Exxon appreciates the willingness of this Committee to address at today's hearing the important issue of how the current tax dispute resolution process in Alaska can be improved. We believe that with certain changes a fairer and more efficient tax appeal process can be achieved that would benefit all parties to the process. We also believe that any substantive reform to the current tax dispute resolution process would be a step towards improving the business and investment climate in the state. A fair and impartial tax appeal process would enhance the working relationship between the state and the oil and gas industry and would send a clear signal to potential investors that Alaska wants to be viewed as a state willing to resolve tax disputes in a straightforward and impartial way.

Given that there have been two proposals introduced this session which address the tax dispute resolution process in Alaska, I plan to address general principles rather than comment on a specific bill. I would like to share with you some key elements that we will use to evaluate any proposal designed to improve the tax dispute resolution process in the state of Alaska.

First, Exxon believes that an appeal from the Department of Revenue's informal conference decision on a tax dispute must be heard, and the facts and law must be

developed, outside the control of the Department of Revenue. Having the collection of taxes and resolving tax disputes within the same agency can fuel the perception of unfairness. Moving the tax appeal process outside the Department of Revenue would go a long way towards persuading Alaska taxpayers that the tax appeal process contains the essential element of fairness.

Second, the person presiding over the appeal must be independent. Currently, the person assigned to hear an appeal works for the Commissioner and can be dismissed for any reason by the Commissioner. If the person presiding over the appeal believes that his or her decision may impact his or her future job security, then that person's judgment has been compromised because such person is not free to decide the appeal based solely on the weight of the evidence presented and the applicable law. To maintain his or her independence, the person presiding over the appeal should be appointed for a fixed term of years and be subject to termination during that term only for cause.

Third, the person presiding over the appeal must be required to resolve all questions of fact based on the majority of the weight of the evidence presented during the appeal. This preponderance of the evidence standard should be used to resolve all questions of fact unless another standard has been established by law for a particular question.

Fourth, we believe the standards by which questions of law will be resolved should be clearly stated. To be truly impartial, the person presiding over the appeal must be required to resolve all questions of law under the person's own independent interpretation of what the law means after hearing all the evidence submitted by the parties. The only exception to this should be for those areas of law legislatively delegated to the Commissioner by you, the members of the Legislature. With regard to these areas, deference should be given to the position taken by the Department of Revenue but only if the position has a reasonable basis in law. Any areas where judicial deference is to be

given to the Department of Revenue should be codified by you so that both the taxpayer and the Department of Revenue know such areas of deference.

Fifth, the appeal process should allow all parties to the appeal to gather relevant evidence through a fair and reasonable discovery process.

Sixth, the appeal process should allow the introduction of fair and reasonable evidence. The admissibility of any evidence should rest with the discretion of the person presiding over the appeal. No evidence should be statutorily determined to be irrelevant or inadmissible for all purposes.

Finally, it is possible to argue that it may be helpful if the person presiding over the appeal is experienced in the field of tax law. While such experience may not be essential to providing taxpayers with an impartial tax appeal process in Alaska, it could be helpful towards the efficient and speedy conduct of the appeal. Such experience, however, is not of sufficient importance to override impartiality in any appeals process.

Mr. Chairman and members of the Committee, Exxon stands ready to work with you, the Legislature, the Governor and his Administration in achieving meaningful reform to the current appeal process through incorporation of the key elements I have discussed here today. Working together we can further our objective of obtaining a fair, impartial and efficient tax dispute resolution process, one that sends a positive signal about the business climate in Alaska.

Mr. Chairman, thank you again for allowing me this time to address you and your Committee.

CS FOR HOUSE BILL NO. 341(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

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

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

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

3 ARTICLE 4. OFFICE OF TAX APPEALS.

4 Sec. 43.05.400. OFFICE OF TAX APPEALS ESTABLISHED. (a) The office
5 of tax appeals is established within the department. The office of tax appeals is a
6 quasi-judicial agency, headed by a Board of Tax Appeals.

7 (b) The Board of Tax Appeals consists of the chief administrative law judge,
8 who is the chair of the board, and additional administrative law judges as may be
9 appointed; however, the Board of Tax Appeals shall have at least two members.

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

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

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

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

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

21 Sec. 43.05.410. APPOINTMENT. (a) The governor shall appoint a chief
22 administrative law judge of the office of tax appeals, and may appoint additional
23 administrative law judges in the office of tax appeals.

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

27 (c) The initial appointment and any reappointment of an administrative law
28 judge, including the chief administrative law judge, is subject to confirmation by the
29 legislature in joint session.

30 Sec. 43.05.415. REMOVAL. (a) The chief administrative law judge may be

1 disciplined or removed from office by the commissioner only for good cause.

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

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

6 (1) violation of the Alaska code of judicial conduct adopted by the
7 Alaska Supreme Court;

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

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

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

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

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

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

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

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

21 (c) The board may adopt regulations implementing or interpreting
22 AS 43.05.400 - 43.05.499, including rules of procedure and evidence for proceedings
23 before the office.

24 Sec. 43.05.425. QUALIFICATIONS; CODE OF CONDUCT. (a) An
25 administrative law judge, including the chief administrative law judge, at the time of
26 appointment, must

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

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

29 (b) A person appointed as an administrative law judge under AS 43.05.410
30 who is not licensed to practice law in this state at the time of appointment must
31 become licensed to practice law in this state within 12 months after appointment or

1 shall cease to hold office.

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

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

11 Sec. 43.05.435. SCOPE AND STANDARDS FOR DECISION. The
12 administrative law judge shall hear all questions de novo under AS 43.05.400 -
13 43.05.499. The administrative law judge shall

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

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

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

22 Sec. 43.05.440. SERVICE OF DOCUMENTS. Service of documents required
23 under AS 43.05.400 - 43.05.499 may be accomplished in any manner authorized under
24 the Alaska Rules of Civil Procedure. If service is done only by mail, the date of
25 service is determined by the date of mailing. If service is done by both mail and hand
26 delivery, the date of service is determined by the earlier of the date of mailing or
27 actual receipt of the documents.

28 Sec. 43.05.445. DISCOVERY. (a) In an appeal under AS 43.05.405,
29 discovery may take place only under a plan for discovery approved by the
30 administrative law judge. The administrative law judge shall approve a plan for
31 discovery to the extent consistent with the efficient, just, and speedy conduct of the

1 appeal. The plan may limit or set conditions on discovery and must include provisions
2 for stipulations of fact by the Department of Revenue and the taxpayer. Discovery
3 shall be limited to information that is relevant to the determination of the correct tax
4 or penalty, unless the Department of Revenue or the taxpayer makes a showing that
5 the discovery is reasonably calculated to lead to admissible information.

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

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

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

22 Sec. 43.05.455. FORMAL HEARING. (a) At or before the formal hearing,
23 a party may present argument and evidence relevant to the amount of the tax or
24 penalty. The administrative law judge shall administer oaths and permit inquiry
25 necessary to determine the proper amount of the tax or penalty.

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

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

31 (2) with the consent of the parties and the administrative law judge, all

1 or part of the hearing may be conducted through correspondence.

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

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

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

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

21 Sec. 43.05.460. ENFORCEMENT. (a) The administrative law judge and each
22 party is responsible for the efficient, just, and speedy conduct of the formal hearing.
23 The administrative law judge may impose sanctions on the parties for failure to comply
24 with a subpoena, an order respecting discovery, and any other matter regarding conduct
25 of the appeal. In imposing sanctions, the administrative law judge shall be guided by
26 the practices of the courts of this state in imposing sanctions for similar offenses in
27 civil proceedings.

28 (b) The administrative law judge may

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

31 (2) prohibit a party from introducing information previously withheld

1 without good cause, and any other evidence dependent upon the information;

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

3 (A) barring a designated claim or defense;

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

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

6 (4) grant any other relief that the administrative law judge considers
7 appropriate.

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

11 Sec. 43.05.465. DECISION; RECONSIDERATION; FINALITY. (a) Within
12 180 days after the record on the appeal is closed, the administrative law judge shall
13 issue a decision in writing. The decision must contain a concise statement of reasons
14 for the decision, including findings of fact and conclusions of law. In the decision, the
15 administrative law judge may grant relief, provide remedies, and issue any order that
16 is appropriate. The administrative law judge shall serve each party in the case with
17 a copy of the decision. Unless reconsideration by the full board is ordered under (c)
18 of this section, the decision under this subsection is the final administrative decision.

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

24 (1) overlooked, misapplied, or failed to consider a statute, regulation,
25 court or administrative decision, or legal principle directly controlling;

26 (2) overlooked or misconceived some material fact or proposition of
27 law;

28 (3) misconceived a material question in the case; or

29 (4) applied law in the ruling that has subsequently changed.

30 (c) The board may issue an order for reconsideration of all or part of the
31 decision upon request of a party. Reconsideration is based on the record, unless the

1 board allows additional evidence and argument. A hearing on reconsideration at which
2 additional evidence or argument is offered or received is subject to the procedures
3 applicable to a hearing under AS 43.05.455.

4 (d) The power to order reconsideration expires 60 days after the date of
5 service, as shown on the certificate of service, of a decision issued under (a) of this
6 section. If the board does not issue an order for reconsideration within the time
7 allowed for ordering reconsideration, a motion for reconsideration is considered denied.

8 (e) Within 60 days after the close of the record on reconsideration, the board
9 shall issue a written decision upon reconsideration. The board shall serve each party
10 in the case with a copy of the decision upon reconsideration. The decision upon
11 reconsideration is the final administrative decision.

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

13 (1) 60 days after the date of service of a decision issued under (a) of
14 this section if an order for reconsideration is not issued; or

15 (2) the decision upon reconsideration is served, as shown by the
16 certificate of service executed by the board under (e) of this section.

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

21 (b) Upon a showing of good cause, an administrative law judge shall issue a
22 protective order requiring that specified parts of the records, proceeding, or decision
23 shall be kept confidential in a particular appeal. If a protective order is issued, the
24 final administrative decision shall be made public after redacting by deletion or
25 substitution of information as required by the protective order.

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

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

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

7 Sec. 43.05.480. JUDICIAL REVIEW. (a) Judicial review by the superior
8 court of a final administrative decision may be had by a party to the appeal under this
9 chapter by filing a notice of appeal in accordance with the applicable rules of court
10 governing appeals to that court in civil matters. The notice of appeal shall be filed
11 within 30 days after an administrative decision becomes final under AS 43.05.465.
12 The right to judicial review under this subsection is not affected by the failure to seek
13 reconsideration before the administrative law judge.

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

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

20 (d) If, after the appeal is heard, it appears that the final administrative decision
21 was correct, the court shall affirm the decision. If the final administrative decision is
22 incorrect, the court shall determine the amount due. If the taxpayer is entitled to a
23 refund, the court shall order the repayment and the Department of Revenue shall pay
24 the amount due and attach a certified copy of the judgment to the payment. If the
25 court determines that the taxpayer owes an additional amount, the court shall order the
26 payment and the taxpayer shall pay the amount due and attach a certified copy of the
27 judgment to the payment. Any payment required under this subsection shall be paid
28 by the 30th day following the expiration of the time within which an appeal from the
29 superior court decision may be filed, unless the party appealing files a bond or
30 otherwise obtains relief from payment in accordance with the Alaska Rules of
31 Appellate Procedure.

1 Sec. 43.05.499. DEFINITIONS. In AS 43.05.400 - 43.05.499, unless the
2 context otherwise requires,

3 (1) "administrative law judge" means an administrative law judge
4 appointed under AS 43.05.410;

5 (2) "board" means the Board of Tax Appeals established under
6 AS 43.05.410;

7 (3) "commissioner" means the commissioner of administration;

8 (4) "department" means the Department of Administration;

9 (5) "discovery" means the use of subpoenas, subpoenas duces tecum,
10 interrogatories, requests for production, requests for admission, depositions, and other
11 methods of civil procedure by which one party to an action may discover information
12 within the knowledge and control of another person;

13 (6) "legislative history" means the documents of the legislature
14 recording the background and events, including draft bills, correspondence and
15 memoranda, committee reports, tapes and transcripts of hearings, and tapes and
16 transcripts of floor debate concerning consideration of a bill;

17 (7) "office" means office of tax appeals in the department;

18 (8) "party" means the Department of Revenue or the taxpayer;

19 (9) "proceeding" means only a proceeding under the jurisdiction of the
20 office;

21 (10) "subpoena" means a command to appear at a certain time and
22 place to testify, or to appear at a certain time and place to produce books, papers, and
23 other things, and testify;

24 (11) "tax" means a tax described in AS 43.05.405, including a seafood
25 marketing assessment under AS 16.51;

26 (12) "taxpayer" means a person required to pay a tax, including a
27 person required to pay a seafood marketing assessment under AS 16.51.

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

29 Sec. 09.25.100. DISPOSITION OF TAX INFORMATION. Information in the
30 possession of the Department of Revenue that discloses the particulars of the business
31 or affairs of a taxpayer or other person is not a matter of public record, except for

1 purposes of investigation and law enforcement. The information shall be kept
2 confidential except when its production is required in an official investigation,
3 administrative adjudication under AS 43.05.400 - 43.05.499, or court proceeding.
4 These restrictions do not prohibit the publication of statistics presented in a manner
5 that prevents the identification of particular reports and items, [OR] prohibit the
6 publication of tax lists showing the names of taxpayers who are delinquent and
7 relevant information that may assist in the collection of delinquent taxes, or prohibit
8 the publication of records, proceedings, and decisions under AS 43.05.400 -
9 43.05.499.

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

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

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

21 (d) The superior court has jurisdiction in all matters appealed to it from a
22 subordinate court, or administrative agency when appeal is provided by law. The
23 hearings on appeal from a final order or judgment

24 (1) of a subordinate court [OR ADMINISTRATIVE AGENCY] shall
25 be on the record unless the superior court, in its discretion, grants a trial de novo, in
26 whole or in part;

27 (2) of the Department of Revenue in matters relating to fixing the
28 amount of, or imposing a penalty on, a tax levied and collected by the state when
29 appeal is taken under AS 43.05.242 shall be heard as a trial de novo as a matter
30 of right;

31 (3) of an administrative agency, except for a matter described in

1 (2) of this subsection, shall be on the record unless the superior court, in its
2 discretion, grants a trial de novo, in whole or in part.

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

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

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

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

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

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

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

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

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

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

28 * Sec. 7. 43.05.010 is amended to read:

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

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

- 1 (2) supervise the fiscal affairs and responsibilities of the department;
- 2 (3) prescribe uniform rules for investigations and hearings;
- 3 (4) keep a record of all departmental proceedings, record and file all
- 4 bonds, and assume custody of returns, reports, papers, and documents of the department;
- 5 (5) [REPEALED
- 6 (6)] adopt a seal and affix it to each order, process, or certificate issued
- 7 by the commissioner;
- 8 (6) [(7)] keep a record of each order, process, and certificate issued by
- 9 the commissioner, and keep the record open to public inspection at all reasonable times;
- 10 (7) [(8)] hold hearings and investigations necessary for the administration
- 11 of state tax and revenue laws;
- 12 (8) except as provided in AS 43.05.400 - 43.05.499. [(9)] hear and
- 13 determine appeals of a matter within the jurisdiction of the Department of Revenue
- 14 [INVOLVING INCOME, EXCISE, LICENSE, OR OTHER TAXES LEVIED UNDER
- 15 STATE LAWS] and enter orders on the appeals that are final unless reversed or
- 16 modified by the courts;
- 17 (9) issue subpoenas to [(10)] require the attendance of witnesses and the
- 18 production of necessary books, papers, documents, correspondence, and other things
- 19 [EVIDENCE AT HEARINGS];
- 20 (10) [(11)] order the taking of depositions before a person competent to
- 21 administer oaths;
- 22 (11) [(12)] administer oaths and take acknowledgments;
- 23 (12) [(13)] request the attorney general for rulings on the interpretation
- 24 of the tax and revenue laws administered by the department;
- 25 (13) [(14)] call upon the attorney general to institute actions for recovery
- 26 of unpaid taxes, fees, excises, additions to tax, penalties, and interest;
- 27 (14) [(15)] issue warrants for the collection of unpaid tax penalties and
- 28 interest and take all steps necessary and proper to enforce full and complete compliance
- 29 with the tax, license, excise, and other revenue laws of the state;
- 30 (15) [(16)] audit reports, payments, and payments due relating to royalty
- 31 and net profits under oil and gas contracts, agreements, or leases under AS 38.05 [;
- 32 (17) REPEALED].

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

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

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

25 (c) If a person who is subpoenaed neglects or refuses to obey the subpoena
26 issued as provided in this section, the department may report the fact to the superior
27 court or the appropriate court of another jurisdiction, and may seek an order from
28 the court compelling obedience to the subpoena. The [AND THE] court, to the
29 maximum extent permitted by law, may compel obedience to the subpoena to the same
30 extent as witnesses may be compelled to obey the subpoenas of the court.

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

32 (a) It is unlawful for a current or former officer, employee, or agent of the state

1 to divulge the amount of income or the particulars set out or disclosed in a report or
2 return made under this title, except

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

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

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

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

10 (5) as otherwise provided in this section.

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

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

22 (b) A party who believes that the appeals officer is unduly delaying a hearing
23 process may notify the commissioner in writing. Within 30 days after being notified by
24 a party, the commissioner may issue an order prescribing a schedule for the appeals
25 officer to complete the informal conference or setting a meeting at which that schedule
26 will be discussed and prescribed. The schedule may be subsequently modified by
27 consent of the parties. If the commissioner fails to issue an order within 30 days after
28 receiving notice of a party's belief of undue delay, the department's action in fixing the
29 amount of tax or penalty shall be considered to have been summarily affirmed by the
30 appeals officer the same as if an informal conference decision to that effect were issued
31 on the last day of that 30-day period.

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

1 Sec. 43.05.241. FORMAL APPEAL. For a matter within the jurisdiction of the
2 office of tax appeals under AS 43.05.405, the taxpayer aggrieved by an informal
3 conference decision entered under AS 43.05.240 may file with the office of tax appeals
4 a notice of appeal for formal hearing, as provided in AS 43.05.430, no later than 60 days
5 after service of the decision resulting from an informal conference.

6 Sec. 43.05.242. JUDICIAL APPEAL. (a) Within 60 days after decision
7 resulting from the informal conference, a person aggrieved by the action of the
8 department under AS 43.05.240 in fixing the amount of a tax or in imposing a penalty
9 may appeal to the superior court.

10 (b) The superior court, sitting without a jury, shall hear all questions de novo.
11 As used in this section, "de novo" has the same meaning as in AS 43.05.400 - 43.05.499.
12 The court shall

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

16 (2) resolve a question of law in the exercise of the independent judgment
17 of the superior court judge;

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

21 (c) When an appeal is taken under this section,

22 (1) the taxpayer shall be given access to the file of the department in the
23 matter for preparation of the appeal;

24 (2) if, after the appeal is heard,

25 (A) it appears that the tax was correct, the court shall confirm the
26 tax;

27 (B) it appears that the tax was incorrect, the court shall determine
28 the amount of the tax; if the person aggrieved is entitled to recover the tax or
29 part of it, the court shall order the repayment, and the department shall
30 immediately pay the amount due and attach a certified copy of the judgment to
31 the payment.

32 Sec. 43.05.244. TAX, PENALTY, AND INTEREST PAYABLE BEFORE

1 APPEAL. (a) In an appeal from a decision of the department involving a deficiency of
2 taxes levied and collected by the state, whether in a formal hearing under AS 43.05.241
3 and 43.05.400 - 43.05.499 or under a judicial appeal authorized by AS 43.05.242, the
4 taxpayer shall pay to the state the full amount of the tax, penalty, and interest in respect
5 of the amount of tax assessed that is not in dispute. The taxpayer shall post a bond,
6 obtain a letter of credit, or provide other evidence satisfactory to the department that it
7 is able to pay the amount of tax, penalty, and interest in respect of the amount of tax
8 assessed that is in dispute and that is the basis of the taxpayer's appeal.

9 (b) The tax and interest due under this section are the amounts stated in the final
10 order of the department from which the appeal is taken, or if the final order appealed
11 from is a summary judgment or partial summary judgment, the amount shall be as
12 originally assessed on the issue or issues disposed of.

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

14 Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES,
15 AND INTEREST. If a taxpayer fails to file a return or report required by this title in
16 the time required by law or regulation, or makes an erroneous or fraudulent return, the
17 department shall proceed to assess the license fees, tax, penalties, or interest and make
18 a return from information that [WHICH] it obtains. A return made and subscribed by
19 the department in accordance with this section is presumed sufficient for all legal
20 purposes. However, nothing prevents a taxpayer from presenting evidence or other
21 information on an informal conference [APPEAL] under AS 43.05.240 or in an appeal
22 under AS 43.05.241 or 43.05.242 in order to rebut the presumed sufficiency of a return
23 made and subscribed by the department, nor does the presumption of sufficiency alter
24 the parties' respective burdens of proof once the taxpayer has presented evidence or other
25 material information to rebut that presumption. The assessment of license fees, tax,
26 penalties, or interest under this section occurs when the department issues a notice and
27 demand for payment of the license fees, tax, penalties, or interest. The notice and
28 demand for payment is issued when the notice and demand is delivered to the taxpayer
29 in person or placed in the United States mail, addressed to the last known address of the
30 taxpayer. Penalties and interest assessed under this title shall be collected in the same
31 manner as provided in this title for the collection of tax or license fees.

32 * Sec. 13. AS 43.20.270(a) is amended to read:

1 (a) The department may collect taxes, with interest, penalties, and other
2 additional amounts permitted by law, by distraint and sale, in the manner provided in this
3 section, of the property of a person liable to pay the taxes, interest, penalties, or other
4 additional amounts, who neglects or refuses to pay them within 10 days from the mailing
5 of notice and demand for payment of them, and who has not appealed from the
6 assessment of the taxes, interest, penalties, and other additional amounts determined
7 under AS 43.05.240 or following appeal taken under AS 43.05.241 or 43.05.242.

8 * Sec. 14. AS 43.55.013(g) is amended to read:

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

20 * Sec. 15. AS 43.55.040 is amended to read:

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

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

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

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

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

32 (A) the amount of production from any oil or gas location, or of

1 a company or other producer of oil or gas; [,] and

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

3 * Sec. 16. EFFECT ON EXISTING REMEDIES AND PROCEDURES. This Act does not
4 affect the remedies and procedures

5 (1) specified in AS 04.11, including AS 04.11.560; AS 05.15, including
6 AS 05.15.610; AS 42.05, including AS 42.05.551; or AS 43.56, including AS 43.56.120 and
7 43.56.130; or

8 (2) adopted by regulation by the Department of Revenue governing appeal of a
9 decision of the Department of Revenue regarding

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

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

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

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

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

20 (1) there has been an informal conference, but there has not been material
21 discovery by either party and substantive motions have not been filed;

22 (2) there has not been an informal conference, nor has there been material
23 discovery by either party and substantive motions have not been filed, but the taxpayer stipulates
24 to proceed to an informal conference under the remedies and procedures established by
25 AS 43.05.240, as amended by sec. 10 of this Act; or

26 (3) the parties stipulate to use the remedies and procedures established by this
27 Act; consent to that stipulation may not be unreasonably withheld by either party.

28 (b) Until regulations authorized under this Act take effect, 15 AAC 05.001 -
29 15 AAC 05.320 govern appeals within the jurisdiction of the office of tax appeals filed after the
30 effective date of this Act, except to the extent the regulations are inconsistent with this Act.

31 (c) Notwithstanding AS 43.05.405, enacted by sec. 1 of this Act, until the office of tax
32 appeals has a full caseload, and with the approval of the chief administrative law judge, the chief

1 administrative law judge or any other administrative law judge of the office of tax appeals may
2 be appointed by the governor, by the commissioner of administration, or by the commissioner
3 of another department to serve as a special hearing officer or special administrative law judge
4 on another matter outside the scope of this Act and arising from another department of the
5 executive branch. Appointment under this subsection may not interfere with the primary mission
6 of the office of tax appeals under this Act of the expeditious resolution of administrative tax
7 appeals under its jurisdiction.

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

- 12 (1) game of chance or skill under AS 05.15;
13 (2) permanent fund dividend under AS 43.23; and
14 (3) coin-operated device or punchboard under AS 43.35.

15 (e) In this section,

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

18 (2) "office of tax appeals" means the office established in AS 43.05.400, enacted
19 by sec. 1 of this Act.

20 * Sec. 18. This Act takes effect July 1, 1996.

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: January 26, 1996

FURTHER REFERRALS:

1104-6
Finance

Date of Committee Action: 3/11/96

The JUDICIARY Committee considered:

HB 341

HOUSE BILL NO. 341

ALASKA TAX COURT

"An Act establishing a tax court to consider and determine certain taxes and penalties due and collateral matters, and amending provisions relating to taxpayer challenges to the assessment, levy, and collection of taxes by the state; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 341 (JLD) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
(2) fiscal note(s) Courts, Admin fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) Revenue (1-26-96)

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Brian D. Porter</i>	Porter	<input checked="" type="checkbox"/>			
<i>John Green</i>	Green	<input checked="" type="checkbox"/>			
<i>Don Bunde</i>	Bunde	<input checked="" type="checkbox"/>			
<i>Tom Toohay</i>	Toohay	<input checked="" type="checkbox"/>			
<i>Wesley</i>	Wesley	<input checked="" type="checkbox"/>			
<i>David Fink</i>	Fink				<input checked="" type="checkbox"/>

CHAIR'S SIGNATURE Brian D. Porter
Orln

HB

348

Alaska State Legislature

REPRESENTATIVE
ANNETTE JAMES
P.O. Box 56622
11th Pole, Alaska 99705
(907) 486-1546
FAX (907) 488-4271



While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House Of Representatives
House District 34

SPONSOR STATEMENT HOUSE BILL 348

3/09/96

"An act establishing the interagency work group on agency accountability and child interview methods"

Three years of discussion with state agencies, concerned parents and families state- and nation-wide, and numerous committee hearings, have resulted in the final State Affairs Committee Substitute (Version G) for House Bill 348.

Though the title and content of CSHB348(STA) may seem to be a departure from the original bill, which required mandatory videotaping of all interviews with allegedly abused minors, I firmly believe the original intent will be achieved:

AGENCY ACCOUNTABILITY and MORE RESPECT FOR FAMILY UNITY.

The bill now mandates the formation of an interagency work group with representatives from the Department of Health and Social Services, Department of Public Safety, Department of Education, and Department of Law. Their job is to identify the most effective ways to use videotaping, audiotaping, team interviews, note taking, documentation and enforced file content standards, with the goals of:

1. Establishing respect for family members during the interview process,
2. Minimizing negative effects on families,
3. Focusing on agency and interviewer accountability,
4. Reviewing the statutory definition of "abuse or neglect" to determine if it leads to uniform and fair results.

The group's initial memorandum of agreement must be available for public and legislative review by January 1, 1997, and is to be updated by each new administration.

Creating more effective inter-agency interviewing techniques and accountability will greatly lessen the strain on families, and it will help achieve a balance between ***protecting Alaska's children from abuse while maintaining the sanctity of family unity.***

CS FOR HOUSE BILL NO. 348(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JAMES, Therriault, Kelly, Toohey

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the interagency work group on agency accountability and
2 child interview methods."

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

4 * Section 1. AS 47.17 is amended by adding a new section to read:

5 Sec. 47.17.100. INTERAGENCY WORK GROUP AND MEMORANDUM OF
6 AGREEMENT ON AGENCY ACCOUNTABILITY AND CHILD INTERVIEW
7 METHODS. (a) The interagency work group to increase agency accountability for and
8 to improve methods of interviewing minors who are alleged to have been abused or
9 neglected is established in the department. The work group consists of five
10 representatives, whose job description includes participation in the work group, from the
11 following departments:

12 (1) two persons from the department; one person shall be an employee
13 of the division dealing with family and youth services and the other person shall have
14 expertise in the area of children's mental health;

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- (2) one person from the Department of Public Safety;
- (3) one person from the Department of Education; and
- (4) one person from the Department of Law.

(b) The interagency work group shall prepare a memorandum of agreement that will guide all participating agencies in their involvement with interviews of minors who are alleged to have been abused or neglected. At a minimum, the memorandum of agreement must

(1) identify the best and most effective methods to establish accountability for those who interview minors who are alleged or suspected to have been abused or neglected;

(2) identify the best and most effective methods for

- (A) videotaping;
- (B) audiotaping;
- (C) team interviews;
- (D) note taking;
- (E) documentation; and
- (F) enforcing file content standards;

(3) provide for interagency cooperation in

- (A) initial and continuing training or education for interviewers, including education regarding new and updated methods of interviewing minors and regarding new equipment useful for interviewing minors;
- (B) establishing respect for family members during the interview process;
- (C) maintaining family unity during the interview process unless the nature of the investigation clearly indicates otherwise; and
- (D) sensitivity to public response and public input;

(4) focus on increasing agency and interviewer accountability and minimizing negative effects on families; and

(5) review the statutory definition of "abuse or neglect" to determine if the definition leads to uniform and fair results.

(c) The interagency work group shall meet at the times the members of the work group consider necessary. At a minimum, the memorandum of agreement must be

1 reviewed and updated in the year following each gubernatorial election year as
2 determined under AS 15.35.010, and must be completed in those years before the
3 beginning of the next regular session of the legislature the following year. Each revised
4 and updated memorandum of agreement shall be made available to the legislature and
5 the public for review. The work group shall notify the legislature that the memorandum
6 of agreement is available for review.

7 * Sec. 2. The initial memorandum of agreement required to be prepared under AS 47.17.100,
8 added by sec. 1 of this Act, shall be completed by January 1, 1997. Unless an earlier revision
9 and update to the memorandum of agreement is determined to be necessary by the interagency
10 work group created in sec. 1 of this Act, the first revision and update shall be conducted in 1999
11 and completed before the beginning of the regular legislative session in 2000.

STATE OF ALASKA
1996 LEGISLATIVE SESSION

No. 1
Bill Version: CSHB 348 (STA)
(H) Publish Date: 3/13/96

Revision Date: 03/08/96
Title: Interagency Work Group on Agency Accountability and Child Interview Methods.
Sponsor: Representative James
Requestor: House (STA)

Dept. Affected: Health and Social Services
BRU: Family and Youth Services
Component: DFYS Central Office
COMPONENT SERIAL NO. 259
See also (SN#): 4

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1008 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

ANALYSIS: (Attach a separate page if necessary)

Based on the assumption that training will not necessarily occur in FY97, SB348 is a zero fiscal note. The Division of Family & Youth Services will develop a Memorandum of Agreement using staff from the Dept. of Health & Social Services, Public Safety, Dept. of Education and the Dept. of Law that will guide all participating agencies in their involvement with interviews of minors alleged to have been abused or neglected. The Division of Family & Youth Services will work on curriculum development for the methodology for those who interview minors who are alleged or suspected to have been abused or neglected.

Prepared by: L. Diane Worley, Director Phone: 465-3191
 Division: Family & Youth Services/1 Date: 03/08/96
 Approved by Commissioner: Karen Ferdue, Commissioner Date: 2/8/96
 Agency: Department of Health & Social Services

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1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety
 Title: Video/audiotape Interview of Abused Minor BRU CDVSA
 Component: CDVSA
 Sponsor: Representative James
 Requestor: H. State Affairs COMPONENT SERIAL NO. 0521

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Code Revenue						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)
 No fiscal impact is anticipated to the Council at this time.

Prepared By: Jayne E. Andreen Phone: 907-465-4356
 Division: Council on Domestic Violence and Sexual Assault Date: 3/6/96
 Approved by Commissioner: Ronald L. Otte Date: 3-6-96
 Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CS HB 348 (STA)

Revision Date: March 9, 1996

Department Affected: Education

Title: Video/Audiotape Interview of Abused Minors

BRU: Executive Administration

Sponsor: Representative James

Component: Commissioner's Office

Requester: House State Affairs Committee

COMPONENT SERIAL NO. 185

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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FUND SOURCE

(Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY96) impact: \$ 0.0

ANALYSIS:

CS HB 348 (STA) establishes an interagency working group and a memorandum of agreement on agency accountability. One representative from the Department of Education will participate in the interagency working group to improve child interviewing methods with abused and/or neglected minors. The participating staff person will absorb the task into their existing work schedule.

Prepared by: Kimberly Homme, Special Assistant

Phone: 465-2803

Division: Commissioner's Office

Date: March 12, 1996

Approved by Commissioner: *Richard S. Cross*

Richard S. Cross, Deputy Commissioner

Agency: Education

Date: March 12, 1996

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 348 (STA)

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act establishing the interagency work group on agency accountability and child interview methods." BRU: Criminal Division/Civil Division
 Sponsor: Representative James Component: Criminal Division/General Legal Services
 Requester: House State Affairs Committee COMPONENT SERIAL NO. 2085/2087

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The House State Affairs Committee Substitute for HB 348 drops the bill's original mandate for videotaping or audiotaping interviews of the victims of child abuse or neglect and, instead, establishes an interagency work group to identify the best and most effective methods to establish accountability for those who interview minors who are alleged or suspected to have been abused or neglected. The work group, consisting of four representatives from the Departments of Health and Social Services, Public Safety, Education and Law, would be required to prepare a memorandum of agreement to guide participating agencies in their involvement with minors in child abuse and neglect cases.

The work group would also be required to provide for interagency cooperation: in the initial and continuing training or education for interviewers; in establishing respect for family members during the interview process; in maintaining family unity during the interview process, unless the nature of the investigation clearly indicates otherwise; and in sensitivity to public response and public input. The bill would also require the work group

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 3/11/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 3/11/96
 Agency: Department of Law

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FISCAL NOTE

BILL NO. CSHB 348 (STA)

STATE OF ALASKA
1996 LEGISLATIVE SESSION

ANALYSIS CONTINUATION:

to focus on increasing agency and interviewer accountability and minimizing negative effects on families. Finally, the work group would be required to review the statutory definition of "abuse or neglect" to determine if the definition leads to uniform and fair results.

The Department of Law's participation in the work group and future memoranda of agreements can be accomplished using existing staff and resources and, consequently, there will not be a fiscal impact for the department.

HB

349

Alaska State Legislature



2 pages

House of Representatives House Judiciary Committee

April 3, 1996

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

TO: Leg Legal

FROM: Tom Meyer 

RE: Amendments for HCR 30/HB 349

Please make the following amendments to

HCR 30:

1. P. 1, line 1 after "rights",
insert: "and responsibilities"
2. P. 1, line 13 delete all to and including page 2,
insert: attached page with its insertions and
deletions as noted.

HB 349:

1. P. 7, line 7 delete after "begin" to line 8 and
including "election". Insert after "begin": "as soon as practicable after
the election is completed"
2. P. 4, line 4 after "in" delete "the last two general
elections. Reinsert on line 4-5 "a local, regional school board,
primary, special, or general election". Delete at line 6 "at least once
in two consecutive calendar years" and insert "during the last four
calendar years".
3. Reinsert section 20 from original version of bill.
(It was deleted for STA CS.) and renumber.

P 1 Bill 13 ^{Amendment} #2

BE IT RESOLVED that the Alaska State Legislature encourages all school districts in Alaska to develop and adopt operating guidelines and procedures relating to student rights and responsibilities, ~~with~~ ^{including} ~~specific attention to standards~~ of student behavior, treatment, and discipline. In developing these operating guidelines and procedures, the school district should consider:

- (1) ways to maintain schools that are safe, orderly and drug free;
- (2) ways to develop clear discipline codes with fair and consistently enforced consequences for misbehavior;
- (3) ways to make resources available to encourage and maintain a physically and mentally healthy lifestyle;
- (4) ways to create and maintain a learning environment that is free of violent and chronically disruptive behavior;
- (5) ways to develop and encourage courtesy and mutual respect among students, teachers and staff;
- (6) ways to create and maintain classrooms with clearly stated and rigorous academic standards;
- (7) ways to equip and maintain classrooms with all instructional materials needed to carry out a rigorous academic program;
- (8) ways to employ, nurture, and keep teachers who know their subject matter and how to teach it;
- (9) ways to create a learning environment in schools and classrooms where high grades stand for high achievement and promotion is earned;
- (10) ways to create and maintain schools where the award of a high school diploma communicates ~~the perception~~ that the student has the knowledge and skills essential for college or a good job; and
- (11) ways to generate and maintain the support of parents, the community, public officials, and business in a mutual effort to uphold high standards of conduct and achievement.

#2

HOUSE COMMITTEE REPORT

Date Referred to Committee: March 29, 1996

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/3/96

The JUDICIARY Committee considered:

HB 349

HOUSE BILL NO. 349

ELECTIONS ADMINISTRATION & VOTER REG'N

"An Act relating to elections; relating to the division of elections; relating to voter registration procedures; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 349 (JUD) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) Slack's

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Brian D. Porter</u>	<input checked="" type="checkbox"/>			
<u>[Signature]</u>	<input checked="" type="checkbox"/>			
<u>[Signature]</u>	<input checked="" type="checkbox"/>			
<u>[Signature]</u>	<input checked="" type="checkbox"/>			
<u>[Signature]</u>				<input checked="" type="checkbox"/>
<u>[Signature]</u>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE Brian D. Porter

CS FOR HOUSE BILL NO. 349(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to elections, to the division of elections, and to voter
2 registration procedures; and providing for an effective date."

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

4 * Section 1. AS 15.07.050 is amended to read:

5 Sec. 15.07.050. MANNER OF REGISTRATION [IN PERSON OR BY
6 MAIL]. Registration may be made

7 (1) in person before a registration official or through a voter registration
8 agency;

9 (2) [, OR MAY BE MADE] by mail; or

10 (3) by facsimile transmission or another method of electronic
11 transmission that the director approves.

12 * Sec. 2. AS 15.07.060(a) is amended to read:

13 (a) Each applicant who requests registration or reregistration shall supply the
14 following information [UNDER OATH]:

- 1 (1) name and sex;
- 2 (2) address and other necessary information establishing residence,
3 including the term of residence in the state and in the district, if requested;
- 4 (3) whether the applicant has previously been registered to vote in
5 another jurisdiction, and, if so, the jurisdiction and the address of the previous
6 registration;
- 7 (4) a declaration that the registrant will be 18 years of age or older
8 within 90 days of the date of registration;
- 9 (5) a declaration that the registrant is a citizen of the United States;
- 10 (6) date of application;
- 11 (7) signature or mark;
- 12 (8) any former name under which the applicant was registered to
13 vote in the state;
- 14 (9) an attestation that the information provided by the applicant
15 in (1) - (8) of this subsection is true; and
- 16 (10) a certification that the applicant understands that a false
17 statement on the application may make the applicant subject to prosecution for
18 a misdemeanor under this title or AS 11.

19 * Sec. 3. AS 15.07.070(b) is amended to read:

20 (b) To register by mail or by facsimile or other electronic transmission
21 approved by the director under AS 15.07.050, the director, the area election
22 supervisor, or a voter registration agency shall furnish, at no cost to the voter, forms
23 prepared by the director on which the registration information required under
24 AS 15.07.060 shall be inserted by the voter, or by a person on behalf of the voter if
25 the voter is physically incapacitated. The director may require proof of identification
26 of the applicant as required by regulations adopted by the director under AS 44.62 (
27 [THE] Administrative Procedure Act) [(AS 44.62)]. Upon receipt and approval of the
28 completed registration forms the director or the election supervisor shall forward to the
29 voter an acknowledgment in the form of a registration card, and the voter's name shall
30 immediately be placed on the master register located in the office of the director and
31 on the district register located in the office of the election supervisor. If the

1 registration is denied, the voter shall immediately be informed in writing that
2 registration was denied and the reason for denial.

3 * Sec. 4. AS 15.07.070(c) is amended to read:

4 (c) The names of persons submitting completed registration forms by mail that
5 are postmarked at least 30 days before the next election, or submitting completed
6 registration forms by facsimile or other electronic transmission approved by the
7 director under AS 15.07.050 that are received at least 30 days before the next
8 election, shall be placed on the official registration list for that election. If a
9 registration form received by mail less than 30 days before an election does not have
10 a legible and dated postmark, the name of the person submitting the form shall be
11 placed on the official registration list for that election if the form was signed and dated
12 by the person at least 30 days before the election and if the form is received by the
13 director or election supervisor at least 25 days before the election. The name of a
14 person submitting a completed registration form by mail or by facsimile or other
15 electronic transmission that does not meet the applicable requirements of this
16 subsection may not be placed on the official registration list for that election but shall
17 be placed on the master register after that election.

18 * Sec. 5. AS 15.07.070(f) is amended to read:

19 (f) Incomplete or inaccurate registration forms may not be accepted. A person
20 who submitted an incomplete or inaccurate registration form may register by
21 reexecuting and resubmitting a registration form in person, [OR] by mail, or by
22 facsimile or other electronic transmission approved by the director under
23 AS 15.07.050. The requirements of (c) or (d) of this section apply to a registration
24 form resubmitted under this subsection.

25 * Sec. 6. AS 15.07.070(h) is amended to read:

26 (h) The director shall design the form of the voter's certificate appearing on
27 the [LARGE] envelope that is used for voting a questioned ballot so that all
28 information required for registration by AS 15.07.060(a) may be obtained from a voter
29 who votes a questioned ballot. If the voter voting a questioned ballot has completed
30 all information on the voter registration portion of the questioned ballot voter's
31 certificate, the director shall place the name of the voter on the official registration list.

1 * Sec. 7. AS 15.07.130(b) is amended to read:

2 (b) When a registered voter has not indicated in writing a desire to remain
3 registered within the preceding four [TWO] calendar years and has neither [NOT]
4 voted nor appeared to vote in a local, regional school board, primary, special, or
5 general election during the last four [AT LEAST ONCE IN TWO CONSECUTIVE]
6 calendar years, the voter shall be advised by a notice sent by forwardable mail to the
7 voter's last known address that registration will be inactivated unless the voter responds
8 to the notice at least 30 days before the date of the next primary election on a form
9 furnished by the director. The director shall maintain on the master register the name
10 of a voter whose registration is inactivated. The director shall cancel a voter's inactive
11 registration after the second general election that occurs after the registration becomes
12 inactive if the voter does not vote or appear to vote [EITHER A QUESTIONED
13 BALLOT OR AN ABSENTEE BALLOT THAT IS COUNTED UNDER
14 AS 15.15.198(b) AT OR BEFORE THAT ELECTION].

15 * Sec. 8. AS 15.07.130(d) is amended to read:

16 (d) The notice described in (b) of this section must include a postage prepaid
17 and pre-addressed return card on which the voter may state the voter's current address.
18 The notice must indicate

19 (1) that the voter should return the card not later than 30 days before
20 the next primary election if the voter did not change residence;

21 (2) that the voter may vote only a questioned or absentee ballot if the
22 voter does not return the card at least 30 days before the next primary election;

23 (3) that the voter's registration will be cancelled if the voter does not
24 vote or appear to vote in an election held during the period beginning on the date of
25 the notice and ending on the day after the date of the fourth [SECOND] general
26 election that occurs after the date of notice; and

27 (4) how the voter can continue to be eligible to vote if the voter has
28 changed residence.

29 * Sec. 9. AS 15.07.190 is amended to read:

30 Sec. 15.07.190. VIOLATIONS. A person who violates AS 15.07.180
31 [AS 15.07.170 OR 15.07.180] is guilty of a misdemeanor and upon conviction is

1 punishable by imprisonment for not more than one year, or by a fine of not more than
2 \$1,000, or by both.

3 * Sec. 10. AS 15.10.110 is amended to read:

4 Sec. 15.10.110. APPOINTMENT OF ELECTION SUPERVISORS. The
5 director shall appoint election supervisors, including one in each of the municipalities
6 of Juneau, Anchorage, Fairbanks, and Nome, to assist in the administration of elections
7 in the election districts designated by the director. The director may appoint as an
8 election supervisor a person who is a qualified voter in the area over which the person
9 has jurisdiction and who meets the applicable requirements of AS 15.10.105(b)
10 [DOES NOT HOLD AN OFFICE IN A POLITICAL PARTY]. An election supervisor
11 is entitled to receive compensation in an amount that is comparable to that received
12 for similar state employment as determined by the director.

13 * Sec. 11. AS 15.15.030(5) is amended to read:

14 (5) The state general election ballot shall be printed on white paper
15 with the names of the candidates and their party designations placed in separate
16 sections under the office designation to which they were nominated. The party
17 affiliation, if any, shall be designated after the name of the candidate. The lieutenant
18 governor and the governor shall be included under the same section. Provision shall
19 be made for voting for write-in and no-party candidates within each section. [THE
20 SQUARES APPEARING ON THE BALLOTS SHALL MEASURE 1/4 INCH ON
21 EACH SIDE.]

22 * Sec. 12. AS 15.15.140(a) is amended to read:

23 (a) If the election board receives an insufficient number of official [PAPER
24 BALLOTS, OFFICIAL PUNCH-CARD] ballots [,] or official election materials, it
25 shall provide and the voters may use unmarked substitute ballots or other election
26 materials to indicate the intent of the voter.

27 * Sec. 13. AS 15.15.198(b) is amended to read:

28 (b) A person whose registration is inactive under AS 15.07.130(b) and who
29 votes a questioned or absentee ballot shall have the ballot counted if

30 (1) the person was registered to vote for either of the two most recent
31 general elections;

1 (2) the person signs [UNDER OATH] a statement to that effect; and

2 (3) the earlier registration is verified by the director.

3 * Sec. 14. AS 15.15.210 is amended to read:

4 Sec. 15.15.210. QUESTIONING OF VOTERS OF SUSPECT
5 QUALIFICATION. Every election judge and election clerk shall question, and every
6 watcher and any other person qualified to vote in the precinct may question a person
7 attempting to vote if the questioner has good reason to suspect that the questioned
8 person is not qualified to vote. All questions regarding a person's qualifications to
9 vote shall be made in writing setting out the reason the person has been questioned.
10 A questioned person before voting shall subscribe to a declaration [AN OATH OR
11 AFFIRMATION] in a form provided by the director attesting to the fact that in each
12 particular the person meets all the qualifications of a voter, is not disqualified, and has
13 not voted at the same election, and certifying that the person understands that a
14 false statement on the declaration may subject the person to prosecution for a
15 misdemeanor under this title or AS 11. The questioned person shall also state the
16 place from which that person came immediately before living in the precinct where
17 offering to vote and the length of time of residence in the former place. After the
18 questioned person has executed the declaration [OATH OR AFFIRMATION], the
19 person may vote. If the questioned person refuses to execute the declaration [OATH
20 OR AFFIRMATION], the person may not vote.

21 * Sec. 15. AS 15.15.215(a) is amended to read:

22 (a) A voter who casts a questioned ballot shall vote the ballot in the same
23 manner as prescribed for other voters. The [AFTER THE ELECTION JUDGE
24 REMOVES THE NUMBERED STUB FROM THE BALLOT, THE] voter shall insert
25 the ballot into a secrecy sleeve, the election judge shall remove the numbered stub
26 from the ballot, and the voter shall [SMALL ENVELOPE AND] put the secrecy
27 sleeve [SMALL ENVELOPE] into an [A LARGER] envelope on which the statement
28 the voter previously signed is located. The envelope [THESE LARGER
29 ENVELOPES] shall be sealed and deposited in the ballot box. When the ballot box
30 is opened, the [THESE] envelopes shall be segregated, counted, compared to the
31 voting list, and delivered to the official or body supervising the election. The merits

1 of the question shall be determined by this official or body in accordance with the
2 procedure prescribed for questioned votes in AS 15.20.207.

3 * Sec. 16. AS 15.15.440 is amended to read:

4 Sec. 15.15.440. DATES FOR OPENING AND CLOSING STATE BALLOT
5 COUNTING REVIEW. The state ballot counting review shall begin as soon as
6 practicable after the election is completed and no later than 16 days after an [NO
7 LATER THAN 11 DAYS AFTER THE] election and shall be continued [DAILY]
8 until completed. The director may designate the hours each day during which the state
9 ballot counting review board is to conduct its ballot counting review. The director
10 shall close the review when the director is satisfied that no missing precinct certificate
11 of election would, if received, change the result of the election. If no election
12 certificate has been received from a precinct, the director may secure from the election
13 supervisors and may count a certified copy of the duplicate election certificate of the
14 precinct. If no election materials have been received, but election results have been
15 received by telephone, telegram or radio, the director shall count the election results
16 so received. If the director has reason to believe that a missing precinct certificate, if
17 received, would affect the result of the election, the director shall await the receipt of
18 the certificate until the close of business on the 15th day after the date of election. A
19 certificate not actually delivered to the director by the close of business on the 15th
20 day after the election may not be counted at the state ballot counting review.

21 * Sec. 17. AS 15.20.010 is repealed and reenacted to read:

22 Sec. 15.20.010. PERSONS WHO MAY VOTE ABSENTEE. At any election
23 a qualified voter may vote an absentee ballot for any reason.

24 * Sec. 18. AS 15.20.030 is amended to read:

25 Sec. 15.20.030. PREPARATION OF BALLOTS, ENVELOPES, AND OTHER
26 MATERIAL. The director shall provide ballots for use as absentee ballots in all
27 districts. The director shall provide a secrecy sleeve [SMALL ENVELOPE] in which
28 the voter shall initially place the marked ballot, and shall provide an [A LARGER]
29 envelope [,] with the prescribed voter's certificate on it [THE BACK], in which the
30 secrecy sleeve [SMALL ENVELOPE] with ballot enclosed shall be placed. The
31 director shall prescribe the form of and prepare the voter's certificate, envelopes, and

1 other material used in absentee voting. The voter's certificate shall include an oath,
2 for use when required, that the voter is a qualified voter in all respects, a blank for the
3 voter's signature, a certification that the affiant properly executed the marking of the
4 ballot and gave the voter's identity, blanks for the attesting official or witnesses, and
5 a place for recording the date the envelope was sealed and witnessed.

6 * Sec. 19. AS 15.20.061(c) is amended to read:

7 (c) On receipt of an absentee ballot in person, the voter shall proceed to mark
8 the ballot in secret, to place the ballot in the secrecy sleeve [SMALL ENVELOPE],
9 to place the secrecy sleeve [SMALL ENVELOPE] in the [LARGER] envelope
10 provided, and to sign the voter's certificate on the [BACK OF THE LARGER]
11 envelope in the presence of the election official who shall sign as attesting official and
12 date that signature. The election official shall then accept the ballot.

13 * Sec. 20. AS 15.20.071 is repealed and reenacted to read:

14 Sec. 15.20.071. ABSENTEE VOTING BY PERSONAL REPRESENTATIVE.

15 (a) A qualified voter with a disability who, because of that disability, is unable to go
16 to a polling place to vote may vote an absentee ballot through a personal
17 representative.

18 (b) A personal representative may apply in writing to the following election
19 officials, at the times specified, for an absentee ballot on behalf of a voter who is
20 eligible under (a) of this section:

21 (1) to an absentee voting official on or after the 15th day before an
22 election up to and including the day of the election;

23 (2) to an election supervisor

24 (A) after a date announced by the director under
25 AS 15.20.048(b); and

26 (B) on or after the 15th day before an election up to and
27 including the day of the election;

28 (3) to an absentee voting official at an absentee voting station
29 designated under AS 15.20.045(b) at a time when the absentee voting station is in
30 operation;

31 (4) to a member of a precinct election board on election day.

1 (c) The application by the personal representative shall be signed by the
2 personal representative and must include the following:

3 (1) the full name and full residence address of the personal
4 representative;

5 (2) the name and full residence address of the voter on whose behalf
6 the personal representative is applying for an absentee ballot;

7 (3) a form of identification for the personal representative that meets
8 the requirements for identification established by the director under AS 15.20.081(f)
9 for absentee voting by mail; and

10 (4) a statement signed by the personal representative that the voter for
11 whom the personal representative is applying for an absentee ballot will be unable to
12 go to the polling place because of a disability.

13 (d) Upon receipt of a written application from a personal representative that
14 meets the requirements of (c) of this section, the election official shall issue the
15 absentee ballot and other absentee voting material to the personal representative.

16 (e) The personal representative shall deliver the absentee ballot and other
17 absentee voting materials to the voter as soon as practicable. The voter shall proceed
18 to mark the ballot in secret, to place the ballot in the secrecy sleeve, and to place the
19 secrecy sleeve in the envelope provided. On the voter's certificate portion of the
20 envelope, the voter shall state the name of the personal representative who applied for
21 the absentee ballot, shall state that because of a disability the voter is unable to go to
22 a polling place to vote, and shall sign the voter's certificate in the presence of the
23 personal representative and provide a form of identification for the voter that meets the
24 requirements for identification established by the director under AS 15.20.081(f) for
25 absentee voting by mail. The personal representative shall witness and date the
26 signature of the voter. The voter shall mark the ballot, and complete and sign the
27 voter's certificate, not later than election day. The voter shall return the absentee ballot
28 to the personal representative who shall deliver the ballot to the election official who
29 provided the ballot. The absentee ballot must be returned to the election official not
30 later than 8:00 p.m. on election day.

31 (f) Notwithstanding (e) of this section, if a qualified voter's disability precludes

1 the voter from performing any of the requirements of (e) of this section, the personal
2 representative may perform those requirements on the voter's behalf.

3 (g) An election official shall keep a record of the name and signature of each
4 personal representative requesting an absentee ballot and the name of the voter on
5 whose behalf the ballot is requested. The election official shall record the date that
6 the absentee ballot is provided and the date that the ballot is returned to the election
7 official.

8 (h) The voter's employer, an agent of the voter's employer, or an officer or
9 agent of the voter's union may not act as a personal representative for that voter.

10 * Sec. 21. AS 15.20.081(d) is amended to read:

11 (d) Upon receipt of an absentee ballot by mail, the voter, in the presence of
12 a notary public, commissioned officer of the armed forces including the National
13 Guard, district judge or magistrate, United States postal official, registration official,
14 or other person qualified to administer oaths, may proceed to mark the ballot in secret,
15 to place the ballot in the secrecy sleeve [SMALL ENVELOPE], to place the secrecy
16 sleeve [SMALL ENVELOPE] in the [LARGER] envelope provided, and to sign the
17 voter's certificate on the [BACK OF THE LARGER] envelope in the presence of an
18 official listed in this subsection who shall sign as attesting official and shall date the
19 signature. If none of the officials listed in this subsection is reasonably accessible, an
20 absentee voter shall sign the voter's certificate in the presence of two persons over the
21 age of 18 years, who shall sign as witnesses and attest to the date on which the voter
22 signed the certificate in their presence, and, in addition the voter shall provide the
23 certification prescribed in AS 09.63.020.

24 * Sec. 22. AS 15.20.190(a) is amended to read:

25 (a) Thirty days before [PRIOR TO] the date of an election, the election
26 supervisors shall appoint, in the same manner provided for the appointment of election
27 judges prescribed in AS 15.10.150, district absentee ballot counting boards and district
28 questioned ballot counting boards, each composed of at least four members. At least
29 one member of each board must be a member of the same political party of which
30 the governor is a member, and at least one member of each board must be a
31 member of the political party whose candidate for governor received the second

1 largest number of votes in the preceding gubernatorial election [, TWO FROM
2 EACH POLITICAL PARTY]. The district boards shall assist the election supervisors
3 in counting the absentee and questioned ballots and shall receive the same
4 compensation paid election judges under AS 15.15.380.

5 * Sec. 23. AS 15.20.201(b) is amended to read:

6 (b) Counting of absentee ballots that [WHICH] have been reviewed shall
7 begin at 8:00 p.m., local time, on the day of the election at places designated by each
8 election supervisor and shall continue until all absentee ballots reviewed and eligible
9 for counting have been counted. The counting teams shall report the count of absentee
10 ballots to the district absentee ballot counting board. An election supervisor or an
11 election official may not count [REMOVE] absentee ballots [FROM THE SMALL,
12 INNER ENVELOPES] before 8:00 p.m., local time, on the day of the election.
13 Counting of the absentee ballots shall continue at times designated by the election
14 supervisor until all absentee ballots are counted.

15 * Sec. 24. AS 15.20.203(c) is amended to read:

16 (c) Any person present at the district absentee ballot counting review may
17 challenge the name of an absentee voter when read from the voter's certificate on the
18 [BACK OF THE LARGE] envelope if the person has good reason to suspect that the
19 challenged voter is not qualified to vote, is disqualified, or has voted at the same
20 election. The person making the challenge shall specify the basis of the challenge in
21 writing. The district absentee ballot counting board by majority vote may refuse to
22 accept and count the absentee ballot of a person properly challenged on grounds listed
23 in (b) of this section.

24 * Sec. 25. AS 15.20.203(e) is amended to read:

25 (e) If an absentee ballot is not rejected, the [LARGE] envelope shall be opened
26 and the secrecy sleeve [SMALL ENVELOPE] containing the absentee ballot shall be
27 placed in a container and mixed with other secrecy sleeves [SMALL ENVELOPES].

28 * Sec. 26. AS 15.20.203(f) is amended to read:

29 (f) The secrecy sleeves [SMALL ENVELOPES] shall be drawn from the
30 container, the absentee ballots shall be removed from the secrecy sleeves
31 [OPENED], and the absentee ballots counted at the times specified in AS 15.20.201

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and according to the rules for determining properly marked ballots in AS 15.15.360.

* Sec. 27. AS 15.20.207(c) is amended to read:

(c) Any person present at the district questioned ballot review may challenge the name of a questioned voter when read from the voter's certificate on the [BACK OF THE LARGE] envelope if the person has good reason to suspect that the questioned voter is not qualified to vote, is disqualified, or has voted at the same election. The person making the challenge shall specify the basis of the challenge in writing. The district questioned ballot counting board by majority vote may refuse to accept and count the questioned ballot of a person properly challenged under grounds listed in (b) of this section.

* Sec. 28. AS 15.20.207(e) is amended to read:

(e) If a questioned ballot is not rejected, the [LARGE] envelope shall be opened and the secrecy sleeve [SMALL ENVELOPE] containing the questioned ballot shall be placed in a container and mixed with other secrecy sleeves [SMALL ENVELOPES] containing questioned ballots.

* Sec. 29. AS 15.20.207(f) is amended to read:

(f) The secrecy sleeves [SMALL ENVELOPES] shall be drawn from the container, the questioned ballots shall be removed from the secrecy sleeves [OPENED], and the questioned ballots counted at the times specified in AS 15.20.205 and according to the rules for determining properly marked ballots in AS 15.15.360.

* Sec. 30. AS 15.20.207(g) is amended to read:

(g) Upon completion of the questioned ballot review, the election supervisor shall prepare an election certificate for execution by the district questioned ballot counting board, and shall forward the original certificate and returns to the director as soon as the count is completed but no later than the 11th [NINTH] day following the election.

* Sec. 31. AS 15.20.620(c) is amended to read:

(c) As a security precaution, after the computer has been tested as prescribed in (b)(2) and (4) of this section,

(1) the vote-counting task shall remain isolated from nonrelated processing tasks;

1 (2) [PROCESSING NOT CONCERNED WITH VOTE COUNTING
2 SHALL BE LIMITED TO TASKS WHICH ARE CRITICAL TO THE COMPUTER
3 CENTER AND SHALL BE AGREED UPON IN ADVANCE BY THE MANAGER
4 OF THE COMPUTER CENTER AND THE DIRECTOR;

5 (3)] reasonable computer security controls shall be in effect to assure
6 the integrity of the vote-counting process; and

7 (3) [(4)] access to the computer counting area shall be controlled by the
8 data processing review board until the vote-counting process is terminated.

9 * Sec. 32. AS 15.20.620(f) is amended to read:

10 (f) At any time during the count, party representatives or members of the data
11 processing review board may request a listing of the parameter coding that
12 [PROGRAM SOURCE CODE WHICH] comprises the instructions to be executed by
13 the computer.

14 * Sec. 33. AS 15.20.640(a) is amended to read:

15 (a) Immediately after the polls have closed, the ballot box shall be opened by
16 election board members in full view of all persons present, and all ballots shall be
17 removed [FROM THE BALLOT ENVELOPES].

18 * Sec. 34. AS 15.20.700(c) is amended to read:

19 (c) The backup documentation for each counting session [BALLOT IMAGE
20 MAGNETIC TAPE WHICH CONTAINS AN EXACT IMAGE OF EACH COUNTED
21 BALLOT] shall be retained in a secure manner by the election supervisor until the
22 director determines that it is no longer needed.

23 * Sec. 35. AS 15.20.740 is amended to read:

24 Sec. 15.20.740. QUESTIONED PUNCH-CARD BALLOTS. The procedure
25 for reviewing and counting questioned punch-card ballots is the same procedure
26 established in AS 15.20.205 and 15.20.207 for hand-marked ballots except that
27 questioned punch-card ballots may be processed by the computer from the third
28 through the 10th [EIGHTH] day following the election. The data processing review
29 board shall supervise the count and shall follow the procedure established in
30 AS 15.20.680 and 15.20.685.

31 * Sec. 36. AS 15.20.800(d) is amended to read:

1 (d) The voter may cast the ballot under AS 15.20.081(d) - (f)
2 [AS 15.20.081(d) - (e)].

3 * Sec. 37. AS 15.58.060(a) is amended to read:

4 (a) Each general election candidate shall pay to the lieutenant governor at the
5 time of filing material under this chapter the following:

6 (1) President or Vice-President of the United States, United States
7 senator, United States representative, governor, lieutenant governor, supreme court
8 justice and court of appeals judge, \$300 [\$150] each;

9 (2) superior court judge and district court judge, \$150 [\$75] each;

10 (3) state senator and state representative, \$100 [\$50] each.

11 * Sec. 38. AS 15.58.060(b) is amended to read:

12 (b) The state chair [CHAIRMAN] or executive committee of a political party
13 shall pay to the lieutenant governor at the time of filing material under this chapter
14 \$600 [\$300] for each page purchased.

15 * Sec. 39. AS 15.05.040 and AS 15.07.170 are repealed.

16 * Sec. 40. This Act takes effect immediately under AS 01.10.070(c).

CS FOR HOUSE BILL NO. 349(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 3/29/96

Referred: Judiciary, Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to elections, to the division of elections, and to voter
2 registration procedures; and providing for an effective date."

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

4 * Section 1. AS 15.07.050 is amended to read:

5 Sec. 15.07.050. MANNER OF REGISTRATION [IN PERSON OR BY
6 MAIL]. Registration may be made

7 (1) in person before a registration official or through a voter registration
8 agency;

9 (2) [, OR MAY BE MADE] by mail; or

10 (3) by facsimile transmission or another method of electronic
11 transmission that the director approves.

12 * Sec. 2. AS 15.07.060(a) is amended to read:

13 (a) Each applicant who requests registration or reregistration shall supply the
14 following information [UNDER OATH]:

- 1 (1) name and sex;
- 2 (2) address and other necessary information establishing residence,
3 including the term of residence in the state and in the district, if requested;
- 4 (3) whether the applicant has previously been registered to vote in
5 another jurisdiction, and, if so, the jurisdiction and the address of the previous
6 registration;
- 7 (4) a declaration that the registrant will be 18 years of age or older
8 within 90 days of the date of registration;
- 9 (5) a declaration that the registrant is a citizen of the United States;
- 10 (6) date of application;
- 11 (7) signature or mark;
- 12 (8) any former name under which the applicant was registered to
13 vote in the state;
- 14 (9) an attestation that the information provided by the applicant
15 in (1) - (8) of this subsection is true; and
- 16 (10) a certification that the applicant understands that a false
17 statement on the application may make the applicant subject to prosecution for
18 a misdemeanor under this title or AS 11.

19 * Sec. 3. AS 15.07.070(b) is amended to read:

20 (b) To register by mail or by facsimile or other electronic transmission
21 approved by the director under AS 15.07.050, the director, the area election
22 supervisor, or a voter registration agency shall furnish, at no cost to the voter, forms
23 prepared by the director on which the registration information required under
24 AS 15.07.060 shall be inserted by the voter, or by a person on behalf of the voter if
25 the voter is physically incapacitated. The director may require proof of identification
26 of the applicant as required by regulations adopted by the director under AS 44.62 (
27 [THE] Administrative Procedure Act) [(AS 44.62)]. Upon receipt and approval of the
28 completed registration forms the director or the election supervisor shall forward to the
29 voter an acknowledgment in the form of a registration card, and the voter's name shall
30 immediately be placed on the master register located in the office of the director and
31 on the district register located in the office of the election supervisor. If the

1 registration is denied, the voter shall immediately be informed in writing that
2 registration was denied and the reason for denial.

3 * Sec. 4. AS 15.07.070(c) is amended to read:

4 (c) The names of persons submitting completed registration forms by mail that
5 are postmarked at least 30 days before the next election, or submitting completed
6 registration forms by facsimile or other electronic transmission approved by the
7 director under AS 15.07.050 that are received at least 30 days before the next
8 election, shall be placed on the official registration list for that election. If a
9 registration form received by mail less than 30 days before an election does not have
10 a legible and dated postmark, the name of the person submitting the form shall be
11 placed on the official registration list for that election if the form was signed and dated
12 by the person at least 30 days before the election and if the form is received by the
13 director or election supervisor at least 25 days before the election. The name of a
14 person submitting a completed registration form by mail or by facsimile or other
15 electronic transmission that does not meet the applicable requirements of this
16 subsection may not be placed on the official registration list for that election but shall
17 be placed on the master register after that election.

18 * Sec. 5. AS 15.07.070(f) is amended to read:

19 (f) Incomplete or inaccurate registration forms may not be accepted. A person
20 who submitted an incomplete or inaccurate registration form may register by
21 reexecuting and resubmitting a registration form in person, [OR] by mail, or by
22 facsimile or other electronic transmission approved by the director unde
23 AS 15.07.050. The requirements of (c) or (d) of this section apply to a registration
24 form resubmitted under this subsection.

25 * Sec. 6. AS 15.07.070(h) is amended to read:

26 (h) The director shall design the form of the voter's certificate appearing on
27 the [LARGE] envelope that is used for voting a questioned ballot so that all
28 information required for registration by AS 15.07.060(a) may be obtained from a voter
29 who votes a questioned ballot. If the voter voting a questioned ballot has completed
30 all information on the voter registration portion of the questioned ballot voter's
31 certificate, the director shall place the name of the voter on the official registration list.

1 * Sec. 7. AS 15.07.130(b) is amended to read:

2 (b) When a registered voter has not indicated in writing a desire to remain
3 registered within the preceding four [TWO] calendar years and has neither [NOT]
4 voted nor appeared to vote in [the last two general elections] [A LOCAL,
5 REGIONAL SCHOOL BOARD, PRIMARY, SPECIAL, OR GENERAL ELECTION

6 [AT LEAST ONCE IN TWO CONSECUTIVE CALENDAR YEARS] *during the last four calendar years* the voter shall
7 be advised by a notice sent by forwardable mail to the voter's last known address that
8 registration will be inactivated unless the voter responds to the notice at least 30 days
9 before the date of the next primary election on a form furnished by the director. The
10 director shall maintain on the master register the name of a voter whose registration
11 is inactivated. The director shall cancel a voter's inactive registration after the second
12 general election that occurs after the registration becomes inactive if the voter does not
13 vote or appear to vote [EITHER A QUESTIONED BALLOT OR AN ABSENTEE
14 BALLOT THAT IS COUNTED UNDER AS 15.15.198(b) AT OR BEFORE THAT
15 ELECTION].

16 * Sec. 8. AS 15.07.130(d) is amended to read:

17 (d) The notice described in (b) of this section must include a postage prepaid
18 and pre-addressed return card on which the voter may state the voter's current address.
19 The notice must indicate

20 (1) that the voter should return the card not later than 30 days before
21 the next primary election if the voter did not change residence;

22 (2) that the voter may vote only a questioned or absentee ballot if the
23 voter does not return the card at least 30 days before the next primary election;

24 (3) that the voter's registration will be cancelled if the voter does not
25 vote or appear to vote in an election held during the period beginning on the date of
26 the notice and ending on the day after the date of the second general election that
27 occurs after the date of notice; and

28 (4) how the voter can continue to be eligible to vote if the voter has
29 changed residence.

30 * Sec. 9. AS 15.07.190 is amended to read:

1 Sec. 15.07.190. VIOLATIONS. A person who violates AS 15.07.180
2 [AS 15.07.170 OR 15.07.180] is guilty of a misdemeanor and upon conviction is
3 punishable by imprisonment for not more than one year, or by a fine of not more than
4 \$1,000, or by both.

5 * Sec. 10. AS 15.10.110 is amended to read:

6 Sec. 15.10.110. APPOINTMENT OF ELECTION SUPERVISORS. The
7 director shall appoint election supervisors, including one in each of the municipalities
8 of Juneau, Anchorage, Fairbanks, and Nome, to assist in the administration of elections
9 in the election districts designated by the director. The director may appoint as an
10 election supervisor a person who is a qualified voter in the area over which the person
11 has jurisdiction and who meets the applicable requirements of AS 15.10.105(b)
12 [DOES NOT HOLD AN OFFICE IN A POLITICAL PARTY]. An election supervisor
13 is entitled to receive compensation in an amount that is comparable to that received
14 for similar state employment as determined by the director.

15 * Sec. 11. AS 15.15.030(5) is amended to read:

16 (5) The state general election ballot shall be printed on white paper
17 with the names of the candidates and their party designations placed in separate
18 sections under the office designation to which they were nominated. The party
19 affiliation, if any, shall be designated after the name of the candidate. The lieutenant
20 governor and the governor shall be included under the same section. Provision shall
21 be made for voting for write-in and no-party candidates within each section. [THE
22 SQUARES APPEARING ON THE BALLOTS SHALL MEASURE 1/4 INCH ON
23 EACH SIDE.]

24 * Sec. 12. AS 15.15.140(a) is amended to read:

25 (a) If the election board receives an insufficient number of official [PAPER
26 BALLOTS, OFFICIAL PUNCH-CARD] ballots [,] or official election materials, it
27 shall provide and the voters may use unmarked substitute ballots or other election
28 materials to indicate the intent of the voter.

29 * Sec. 13. AS 15.15.198(b) is amended to read:

30 (b) A person whose registration is inactive under AS 15.07.130(b) and who
31 votes a questioned or absentee ballot shall have the ballot counted if

1 (1) the person was registered to vote for either of the two most recent
2 general elections;

3 (2) the person signs [UNDER OATH] a statement to that effect; and

4 (3) the earlier registration is verified by the director.

5 * Sec. 14. AS 15.15.210 is amended to read:

6 Sec. 15.15.210. QUESTIONING OF VOTERS OF SUSPECT
7 QUALIFICATION. Every election judge and election clerk shall question, and every
8 watcher and any other person qualified to vote in the precinct may question a person
9 attempting to vote if the questioner has good reason to suspect that the questioned
10 person is not qualified to vote. All questions regarding a person's qualifications to
11 vote shall be made in writing setting out the reason the person has been questioned.
12 A questioned person before voting shall subscribe to a declaration [AN OATH OR
13 AFFIRMATION] in a form provided by the director attesting to the fact that in each
14 particular the person meets all the qualifications of a voter, is not disqualified, and has
15 not voted at the same election, and certifying that the person understands that a
16 false statement on the declaration may subject the person to prosecution for a
17 misdemeanor under this title or AS 11. The questioned person shall also state the
18 place from which that person came immediately before living in the precinct where
19 offering to vote and the length of time of residence in the former place. After the
20 questioned person has executed the declaration [OATH OR AFFIRMATION], the
21 person may vote. If the questioned person refuses to execute the declaration [OATH
22 OR AFFIRMATION], the person may not vote.

23 * Sec. 15. AS 15.15.215(a) is amended to read:

24 (a) A voter who casts a questioned ballot shall vote the ballot in the same
25 manner as prescribed for other voters. The [AFTER THE ELECTION JUDGE
26 REMOVES THE NUMBERED STUB FROM THE BALLOT, THE] voter shall insert
27 the ballot into a secrecy sleeve, the election judge shall remove the numbered stub
28 from the ballot, and the voter shall [SMALL ENVELOPE AND] put the secrecy
29 sleeve [SMALL ENVELOPE] into an [A LARGER] envelope on which the statement
30 the voter previously signed is located. The envelope [THESE LARGER
31 ENVELOPES] shall be sealed and deposited in the ballot box. When the ballot box

1 is opened, the [THESE] envelopes shall be segregated, counted, compared to the
2 voting list, and delivered to the official or body supervising the election. The merits
3 of the question shall be determined by this official or body in accordance with the
4 procedure prescribed for questioned votes in AS 15.20.207.

5 * Sec. 16. AS 15.15.440 is amended to read:

6 Sec. 15.15.440. DATES FOR OPENING AND CLOSING STATE BALLOT
7 COUNTING REVIEW. The state ballot counting review shall begin no earlier
8 [LATER] than 11 days after an [THE] election and no later than 16 days after an
9 election, and shall be continued [DAILY] until completed. The director may designate
10 the hours each day during which the state ballot counting review board is to conduct
11 its ballot counting review. The director shall close the review when the director is
12 satisfied that no missing precinct certificate of election would, if received, change the
13 result of the election. If no election certificate has been received from a precinct, the
14 director may secure from the election supervisors and may count a certified copy of
15 the duplicate election certificate of the precinct. If no election materials have been
16 received, but election results have been received by telephone, telegram or radio, the
17 director shall count the election results so received. If the director has reason to
18 believe that a missing precinct certificate, if received, would affect the result of the
19 election, the director shall await the receipt of the certificate until the close of business
20 on the 15th day after the date of election. A certificate not actually delivered to the
21 director by the close of business on the 15th day after the election may not be counted
22 at the state ballot counting review.

23 * Sec. 17. AS 15.20.010 is repealed and reenacted to read:

24 Sec. 15.20.010. PERSONS WHO MAY VOTE ABSENTEE. At any election
25 a qualified voter may vote an absentee ballot for any reason.

26 * Sec. 18. AS 15.20.030 is amended to read:

27 Sec. 15.20.030. PREPARATION OF BALLOTS, ENVELOPES, AND OTHER
28 MATERIAL. The director shall provide ballots for use as absentee ballots in all
29 districts. The director shall provide a secrecy sleeve [SMALL ENVELOPE] in which
30 the voter shall initially place the marked ballot, and shall provide an [A LARGER]
31 envelope [,] with the prescribed voter's certificate on it [THE BACK], in which the

1 secrecy sleeve [SMALL ENVELOPE] with ballot enclosed shall be placed. The
2 director shall prescribe the form of and prepare the voter's certificate, envelopes, and
3 other material used in absentee voting. The voter's certificate shall include an oath,
4 for use when required, that the voter is a qualified voter in all respects, a blank for the
5 voter's signature, a certification that the affiant properly executed the marking of the
6 ballot and gave the voter's identity, blanks for the attesting official or witnesses, and
7 a place for recording the date the envelope was sealed and witnessed.

8 * **Sec. 19.** AS 15.20.061(c) is amended to read:

9 (c) On receipt of an absentee ballot in person, the voter shall proceed to mark
10 the ballot in secret, to place the ballot in the secrecy sleeve [SMALL ENVELOPE],
11 to place the secrecy sleeve [SMALL ENVELOPE] in the [LARGER] envelope
12 provided, and to sign the voter's certificate on the [BACK OF THE LARGER]
13 envelope in the presence of the election official who shall sign as attesting official and
14 date that signature. The election official shall then accept the ballot.

15 * **Sec. 20.** AS 15.20.081(d) is amended to read:

16 (d) Upon receipt of an absentee ballot by mail, the voter, in the presence of
17 a notary public, commissioned officer of the armed forces including the National
18 Guard, district judge or magistrate, United States postal official, registration official,
19 or other person qualified to administer oaths, may proceed to mark the ballot in secret,
20 to place the ballot in the secrecy sleeve [SMALL ENVELOPE], to place the secrecy
21 sleeve [SMALL ENVELOPE] in the [LARGER] envelope provided, and to sign the
22 voter's certificate on the [BACK OF THE LARGER] envelope in the presence of an
23 official listed in this subsection who shall sign as attesting official and shall date the
24 signature. If none of the officials listed in this subsection is reasonably accessible, an
25 absentee voter shall sign the voter's certificate in the presence of two persons over the
26 age of 18 years, who shall sign as witnesses and attest to the date on which the voter
27 signed the certificate in their presence, and, in addition, the voter shall provide the
28 certification prescribed in AS 09.63.020.

29 * **Sec. 21.** AS 15.20.190(a) is amended to read:

30 (a) Thirty days before [PRIOR TO] the date of an election, the election
31 supervisors shall appoint, in the same manner provided for the appointment of election

1 judges prescribed in AS 15.10.150, district absentee ballot counting boards and district
2 questioned ballot counting boards, each composed of at least four members. At least
3 one member of each board must be a member of the same political party of which
4 the governor is a member, and at least one member of each board must be a
5 member of the political party whose candidate for governor received the second
6 largest number of votes in the preceding gubernatorial election [, TWO FROM
7 EACH POLITICAL PARTY]. The district boards shall assist the election supervisors
8 in counting the absentee and questioned ballots and shall receive the same
9 compensation paid election judges under AS 15.15.380.

10 * Sec. 22. AS 15.20.201(b) is amended to read:

11 (b) Counting of absentee ballots that [WHICH] have been reviewed shall
12 begin at 8:00 p.m., local time, on the day of the election at places designated by each
13 election supervisor and shall continue until all absentee ballots reviewed and eligible
14 for counting have been counted. The counting teams shall report the count of absentee
15 ballots to the district absentee ballot counting board. An election supervisor or an
16 election official may not count [REMOVE] absentee ballots [FROM THE SMALL,
17 INNER ENVELOPES] before 8:00 p.m., local time, on the day of the election.
18 Counting of the absentee ballots shall continue at times designated by the election
19 supervisor until all absentee ballots are counted.

20 * Sec. 23. AS 15.20.203(c) is amended to read:

21 (c) Any person present at the district absentee ballot counting review may
22 challenge the name of an absentee voter when read from the voter's certificate on the
23 [BACK OF THE LARGE] envelope if the person has good reason to suspect that the
24 challenged voter is not qualified to vote, is disqualified, or has voted at the same
25 election. The person making the challenge shall specify the basis of the challenge in
26 writing. The district absentee ballot counting board by majority vote may refuse to
27 accept and count the absentee ballot of a person properly challenged on grounds listed
28 in (b) of this section.

29 * Sec. 24. AS 15.20.203(e) is amended to read:

30 (e) If an absentee ballot is not rejected, the [LARGE] envelope shall be opened
31 and the secrecy sleeve [SMALL ENVELOPE] containing the absentee ballot shall be

1 placed in a container and mixed with other secrecy sleeves [SMALL ENVELOPES].

2 * Sec. 25. AS 15.20.203(f) is amended to read:

3 (f) The secrecy sleeves [SMALL ENVELOPES] shall be drawn from the
4 container, the absentee ballots shall be removed from the secrecy sleeves
5 [OPENED], and the absentee ballots counted at the times specified in AS 15.20.201
6 and according to the rules for determining properly marked ballots in AS 15.15.360.

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23 container, the questioned ballots shall be removed from the secrecy sleeves
24 [OPENED], and the questioned ballots counted at the times specified in AS 15.20.205
25 and according to the rules for determining properly marked ballots in AS 15.15.360.

26 * Sec. 29. AS 15.20.207(g) is amended to read:

27 (g) Upon completion of the questioned ballot review, the election supervisor
28 shall prepare an election certificate for execution by the district questioned ballot
29 counting board, and shall forward the original certificate and returns to the director as
30 soon as the count is completed but no later than the 11th [NINTH] day following the
31 election.

1 * Sec. 30. AS 15.20.620(c) is amended to read:

2 (c) As a security precaution, after the computer has been tested as prescribed
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5 processing tasks;

6 (2) [PROCESSING NOT CONCERNED WITH VOTE COUNTING
7 SHALL BE LIMITED TO TASKS WHICH ARE CRITICAL TO THE COMPUTER
8 CENTER AND SHALL BE AGREED UPON IN ADVANCE BY THE MANAGER
9 OF THE COMPUTER CENTER AND THE DIRECTOR;

10 (3)] reasonable computer security controls shall be in effect to assure
11 the integrity of the vote-counting process; and

12 (3) [(4)] access to the computer counting area shall be controlled by the
13 data processing review board until the vote-counting process is terminated.

14 * Sec. 31. AS 15.20.620(f) is amended to read:

15 (f) At any time during the count, party representatives or members of the data
16 processing review board may request a listing of the parameter coding that
17 [PROGRAM SOURCE CODE WHICH] comprises the instructions to be executed by
18 the computer.

19 * Sec. 32. AS 15.20.640(a) is amended to read:

20 (a) Immediately after the polls have closed, the ballot box shall be opened by
21 election board members in full view of all persons present, and all ballots shall be
22 removed [FROM THE BALLOT ENVELOPES].

23 * Sec. 33. AS 15.20.700(c) is amended to read:

24 (c) The backup documentation for each counting session [BALLOT IMAGE
25 MAGNETIC TAPE WHICH CONTAINS AN EXACT IMAGE OF EACH COUNTED
26 BALLOT] shall be retained in a secure manner by the election supervisor until the
27 director determines that it is no longer needed.

28 * Sec. 34. AS 15.20.740 is amended to read:

29 Sec. 15.20.740. QUESTIONED PUNCH-CARD BALLOTS. The procedure
30 for reviewing and counting questioned punch-card ballots is the same procedure
31 established in AS 15.20.205 and 15.20.207 for hand-marked ballots except that

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4 AS 15.20.680 and 15.20.685.

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6 (d) The voter may cast the ballot under AS 15.20.081(d) - (f)
7 [AS 15.20.081(d) - (e)].

8 * Sec. 36. AS 15.58.060(a) is amended to read:

9 (a) Each general election candidate shall pay to the lieutenant governor at the
10 time of filing material under this chapter the following:

11 (1) President or Vice-President of the United States, United States
12 senator, United States representative, governor, lieutenant governor, supreme court
13 justice and court of appeals judge, \$300 [\$150] each;

14 (2) superior court judge and district court judge, \$150 [\$75] each;

15 (3) state senator and state representative, \$100 [\$50] each.

16 * Sec. 37. AS 15.58.060(b) is amended to read:

17 (b) The state chair [CHAIRMAN] or executive committee of a political party
18 shall pay to the lieutenant governor at the time of filing material under this chapter
19 \$600 [\$300] for each page purchased.

20 * Sec. 38. AS 15.05.040 and AS 15.07.170 are repealed.

21 * Sec. 39. This Act takes effect immediately under AS 01.10.070(c).