

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8923 SENATE JUDICIARY

1 (7) whether any of the following [A DOMESTIC VIOLENCE  
2 COMPLAINT] has been filed during the marriage by or regarding either spouse as  
3 defendant, participant, or respondent:

4 (A) a criminal charge of a crime involving domestic  
5 violence;

6 (B) a protective order under AS 18.66.100 - 18.66.180;

7 (C) injunctive relief under former AS 25.35.010 or  
8 25.35.020; or

9 (D) a protective order issued in another jurisdiction and  
10 filed with the court in this state under AS 18.66.140 [A MEMBER OF THE  
11 HOUSEHOLD];

12 (8) whether either petitioner has received the advice of legal counsel  
13 regarding a divorce or dissolution;

14 (9) other facts and circumstances that the petitioners believe should be  
15 considered;

16 (10) that the petition constitutes the entire agreement between the  
17 petitioners; and

18 (11) any other relief sought by the petitioners.

19 • Sec. 49. AS 25.24.220(h) is amended to read:

20 (h) In its examination of a petitioner under (d) of this section, the court shall  
21 use a heightened level of scrutiny of agreements if

22 (1) one party is represented by counsel and the other is not;

23 (2) there is evidence that a party committed a crime involving [A]  
24 domestic violence during the marriage or if any of the following [COMPLAINT]  
25 has been issued or filed during the marriage by or regarding either spouse as  
26 defendant, participant, or respondent:

27 (A) a criminal charge of a crime involving domestic  
28 violence;

29 (B) a protective order under AS 18.66.100 - 18.66.180;

30 (C) injunctive relief under former AS 25.35.010 or  
31 25.35.020; or

1 (D) a protective order issued in another jurisdiction and  
 2 filed with the court in this state under AS 18.66.140 [A MEMBER OF THE  
 3 FAMILY OR THERE IS EVIDENCE OF DOMESTIC VIOLENCE DURING  
 4 THE MARRIAGE];

5 (3) there is a minor child of the marriage; or

6 (4) there is a patently inequitable division of the marital estate.

7 \* Sec. 50. AS 25 is amended by adding a new chapter to read:

8 CHAPTER 90. GENERAL PROVISIONS.

9 Sec. 25.90.010. DEFINITIONS. In this title, "domestic violence" and "crime  
 10 involving domestic violence" have the meanings given in AS 18.66.990.

11 \* Sec. 51. AS 33.16.120 is amended by adding a new subsection to read:

12 (g) A victim of a crime involving domestic violence shall be informed by the  
 13 board at least 30 days in advance of a scheduled hearing to review or consider  
 14 discretionary parole for a prisoner. The board shall inform the victim of any decision  
 15 to grant or deny discretionary parole or to release the prisoner under AS 33.16.010(c)  
 16 If the prisoner is to be released, the victim shall be notified of the expected date of the  
 17 release, the geographic area in which the prisoner will reside, and any other  
 18 information concerning conditions of parole that may affect the victim. The victim  
 19 shall also be informed of any changes in the conditions of parole that may affect the  
 20 victim. The board shall send the notice required to the last known address of the  
 21 victim. A person may not bring a civil action for damages for a failure to comply  
 22 with the provisions of this subsection.

23 \* Sec. 52. AS 33.16.150 is amended by adding a new subsection to read:

24 (f) In addition to other conditions of parole imposed under this section, the  
 25 board may impose as a condition of special medical, discretionary, or mandatory parole  
 26 for a prisoner serving a term for a crime involving domestic violence (1) any of the  
 27 terms of protective orders under AS 18.66.100(c)(1) - (7); (2) a requirement that, at  
 28 the prisoner's expense, the prisoner participate in and complete, to the satisfaction of  
 29 the board, a program for the rehabilitation of perpetrators of domestic violence that  
 30 meets the standards set by the department under AS 44.28.020(b); and (3) any other  
 31 condition necessary to rehabilitate the prisoner. The board shall establish procedures

1 for the exchange of information concerning the parolee with the victim and for  
2 responding to reports of nonattendance or noncompliance by the parolee with  
3 conditions imposed under this subsection.

4 \* Sec. 53. AS 33.16.220(a) is amended to read:

5 (a) The board may revoke parole if the parolee

6 (1) engages in conduct in violation of AS 33.16.150(a), [OR] (b), or

7 (f); or

8 (2) has violated an order of the court to participate in or comply with

9 the treatment plan of a rehabilitation program under AS 12.55.015(a)(10).

10 \* Sec. 54. AS 33.16.220(c) is amended to read:

11 (c) In determining whether a parole violator should be released pending a final  
12 revocation hearing, the board or signee shall consider

13 (1) the likelihood of the parolee's appearance at a final revocation

14 hearing;

15 (2) the seriousness of the alleged violation;

16 (3) whether the parolee presents a danger to the community; [AND]

17 (4) whether the parolee is likely to further violate conditions of parole;

18 and

19 (5) whether the parolee is on parole for a crime involving domestic

20 violence; if the violation of the condition of parole involved an act of domestic

21 violence, the parolee may not be released pending the final revocation hearing.

22 \* Sec. 55. AS 33.16.900 is amended by adding a new paragraph to read:

23 (13) "crime involving domestic violence" and "domestic violence" have

24 the meanings given in AS 18.66.990.

25 \* Sec. 56. AS 33.20.080(b) is amended to read:

26 (b) If requested by the victim of a crime against a person, a crime involving  
27 domestic violence, or arson in the first degree, the board shall send notice of an  
28 application for executive clemency submitted by the state prisoner who was convicted  
29 of that crime. The victim may comment in writing to the board on the application for  
30 executive clemency.

31 \* Sec. 57. AS 33.20.080(d) is amended by adding a new paragraph to read:

1 (3) "crime involving domestic violence" has the meaning given in  
2 AS 18.66.990.

3 \* Sec. 58. AS 33.30.013(b) is amended to read:

4 (b) The commissioner is required to give notice of a change in the status of an  
5 offender under this section only if the victim has requested notice of the change,  
6 except that the commissioner is required to give notice, mailed to the last known  
7 address of the victim, in every case of a crime involving domestic violence.

8 \* Sec. 59. AS 33.30.101 is amended by adding a new subsection to read:

9 (c) The commissioner may release on furlough a prisoner convicted of a crime  
10 involving domestic violence only under conditions that would protect the victim of  
11 domestic violence or other household member.

12 \* Sec. 60. AS 33.30.111(f) is amended to read:

13 (f) Except as provided in (g) of this section, if [IF] the commissioner  
14 considers a prisoner convicted of a crime against a person or arson in the first degree  
15 for a prerelease furlough and the victim has requested notice under AS 33.30.013, the  
16 commissioner shall send notice of intent to consider the prisoner for a prerelease  
17 furlough to the victim. The victim may comment in writing on the commissioner's  
18 intent to release the prisoner on a prerelease furlough status. The commissioner shall  
19 consider the victim's comments before making a final decision to release a prisoner  
20 on a prerelease furlough status. The commissioner shall make a reasonable effort to  
21 notify the victim of an intent to release the prisoner on a prerelease furlough. The  
22 notice must contain the expected date of the prisoner's release, the geographic area in  
23 which the prisoner will reside, and other pertinent information concerning the  
24 prisoner's release that may affect the victim.

25 \* Sec. 61. AS 33.30.111 is amended by adding a new subsection to read:

26 (g) If the commissioner considers a prisoner convicted of a crime involving  
27 domestic violence for a prerelease furlough, the commissioner shall send notice of  
28 intent to consider the prisoner for prerelease furlough to the last known address of the  
29 victim. The victim may comment in writing on the commissioner's intention to release  
30 the prisoner on a prerelease furlough. The commissioner shall consider the victim's  
31 comments before making a final decision to release the prisoner on a prerelease

1 furlough. The commissioner shall make a reasonable effort to notify the victim of any  
2 decision to release the prisoner on the prerelease furlough. The notice must include  
3 the expected date of the furlough and any other information concerning the furlough  
4 that may affect the victim. A person may not bring a civil action for damages for a  
5 failure to comply with the provisions of this subsection.

6 \* Sec. 62. AS 33.30.901 is amended by adding a new paragraph to read:

7 (15) "crime involving domestic violence" has the meaning given in  
8 AS 18.66.990.

9 \* Sec. 63. AS 43.23.065(b) is amended to read:

10 (b) An exemption is not available under this section for permanent fund  
11 dividends taken to satisfy

12 (1) child support obligations required by court order or decision of the  
13 child support enforcement agency under AS 25.27.140 - 25.27.220;

14 (2) court ordered restitution under AS 12.55.045 - 12.55.051, 12.55.100,  
15 or AS 47.10.080(b)(4);

16 (3) claims on defaulted scholarship loans under AS 43.23.067;

17 (4) court ordered fines;

18 (5) writs of execution under AS 09.35 of a judgment that is entered

19 (A) against a minor in a civil action to recover damages;

20 (B) under AS 34.50.020 against the parent, parents, or legal  
21 guardian of an unemancipated minor;

22 (6) a debt owed by an eligible individual to an agency of the state,  
23 unless the debt is contested and an appeal is pending, or the time limit for filing an  
24 appeal has not expired;

25 (7) a debt owed to a person for a program for the rehabilitation of  
26 perpetrators of domestic violence required under AS 12.55.101,  
27 AS 18.66.100(c)(15), AS 25.20.061(3), or AS 33.16.150(f)(2).

28 \* Sec. 64. AS 44.21.410(a)(5) is amended to read:

29 (5) provide legal representation and guardian ad litem services under  
30 AS 25.24.310; in cases arising under AS 47.15 (Uniform Interstate Compact on  
31 Juveniles); in cases involving petitions to adopt a minor under AS 25.23.125(b) or

1 petitions for the termination of parental rights on grounds set out in  
2 AS 25.23.180(c)(3); in cases involving petitions to remove the disabilities of a minor  
3 under AS 09.55.590; in children's proceedings under AS 47.10.050(a); in cases  
4 involving appointments under AS 18.66.100(a) in petitions for protective orders  
5 on behalf of a minor; and in cases involving indigent persons who are entitled to  
6 representation under AS 18.85.100 and who cannot be represented by the public  
7 defender agency because of a conflict of interests;

8 \* Sec. 65. AS 44.28.020 is amended by adding a new subsection to read:

9 (b) The department shall, with the approval of the Council on Domestic  
10 Violence and Sexual Assault, adopt standards, by regulation, for rehabilitation  
11 programs for perpetrators of domestic violence as defined in AS 18.66.990. For  
12 purposes of AS 12.55.101, AS 18.66.100(c), and AS 33.16.150(f), the department shall  
13 determine whether a program meets the standards.

14 \* Sec. 66. AS 47.17.020(a) is amended to read:

15 (a) The following persons who, in the performance of their occupational duties,  
16 have reasonable cause to suspect that a child has suffered harm as a result of child  
17 abuse or neglect shall immediately report the harm to the nearest office of the  
18 department:

19 (1) practitioners of the healing arts;

20 (2) school teachers and school administrative staff members of public  
21 and private schools;

22 (3) social workers;

23 (4) peace officers, and officers of the Department of Corrections;

24 (5) administrative officers of institutions;

25 (6) child care providers;

26 (7) paid employees of domestic violence and sexual assault programs,  
27 and crisis intervention and prevention programs as defined in AS 18.66.990  
28 [AS 18.66.900];

29 (8) paid employees of an organization that provides counseling or  
30 treatment to individuals seeking to control their use of drugs or alcohol.

31 \* Sec. 67. AS 47.17 is amended by adding a new section to read:

1           Sec. 47.17.035. DUTIES OF DEPARTMENT IN DOMESTIC VIOLENCE  
2 CASES. (a) In consultation with the Council on Domestic Violence and Sexual  
3 Assault, the department shall develop written procedures for screening reports of harm  
4 for abuse and neglect of a child to assess whether there is domestic violence occurring  
5 within the family. The procedures must include the following factors:

6                   (1) inquiry concerning the criminal records of the parents or of the  
7 alleged abusive or neglectful person or the alleged perpetrator if not the parent of the  
8 child; and

9                   (2) inquiry concerning the existence of protective orders issued or filed  
10 under AS 18.66.100 - 18.66.180 involving either parent as a petitioner or respondent.

11           (b) If the department determines in an investigation of abuse or neglect of a  
12 child that

13                   (1) the child is in danger because of domestic violence or that the child  
14 needs protection as a result of the presence of domestic violence in the family, the  
15 department shall take appropriate steps for the protection of the child;

16                   (2) a person is the victim of domestic violence, the department shall  
17 provide the victim with a written notice of the rights of and services available to  
18 victims of domestic violence that is substantially similar to the notice provided to  
19 victims of domestic violence under AS 18.65.520.

20           (c) For purposes of obtaining access to information needed to conduct the  
21 inquiries required by (a)(1) and (2) of this section, the department is a criminal justice  
22 agency conducting a criminal justice activity.

23           (d) A person may not bring a civil action for damages for a failure to comply  
24 with the provisions of this section.

25           (e) In this section,

26                   (1) "criminal justice activity" has the meaning given in AS 12.62.900;

27                   (2) "criminal justice agency" has the meaning given in AS 12.62.900;

28                   (3) "domestic violence" has the meaning given in AS 18.66.990.

29           \* Sec. 68. Rule 3, Alaska Rules of Civil Procedure, is amended by adding a new  
30 subsection to read:

31                   (h) A petition or request for a protective order on domestic violence under

1 AS 18.66 may be filed in the judicial district

2 (1) where the petitioner currently or temporarily resides;

3 (2) where the respondent resides; or

4 (3) where the domestic violence occurred.

5 \* Sec. 69. Rule 100(a), Alaska Rules of Civil Procedure, is amended to read:

6 (a) Application. At any time after a complaint is filed, a party may file a  
7 motion with the court requesting mediation for the purpose of achieving a mutually  
8 agreeable settlement. The motion must address how the mediation should be  
9 conducted as specified in paragraph (b), including the names of any acceptable  
10 mediators. If domestic violence has occurred between the parties and mediation  
11 is requested in a matter covered by AS 25, mediation may only be ordered when  
12 permitted under AS 25.20.080, AS 25.24.060, or 25.24.140. In matters not covered  
13 by AS 25, the [THE] court may order mediation in response to such a motion, or on  
14 its own motion, whenever it determines that mediation may result in an equitable  
15 settlement. In making this determination, the court shall [MAY] consider whether  
16 there is a history of domestic violence between the parties which could be expected  
17 to affect the fairness of the mediation process or the physical safety of the domestic  
18 violence victim. Mediation may not be ordered between the parties to, or in, a case  
19 filed under AS 18.66.100 - 18.66.180 [AS 25.35.010 OR .020 AND CONDUCT  
20 WHICH CONSTITUTES DOMESTIC VIOLENCE UNDER THESE STATUTES  
21 MAY NOT BE THE SUBJECT OF MEDIATION UNDER THIS RULE].

22 \* Sec. 70. Rule 505(a)(2), Alaska Rules of Evidence, is amended to read:

23 (2) Exceptions. There is no privilege under this subdivision :

24 (A) In a civil proceeding brought by or on behalf of one spouse  
25 against the other spouse; or

26 (B) In a proceeding to commit or otherwise place his spouse,  
27 the property of his spouse, or both the spouse and the property of the spouse  
28 under the control of another because of the alleged mental or physical condition  
29 of the spouse; or

30 (C) In a proceeding brought by or on behalf of a spouse to  
31 establish his competence; or

- 1 (D) In a proceeding in which one spouse is charged with:  
2 (i) A crime against the person or the property of the  
3 other spouse or of a child of either, whether such crime was committed  
4 before or during marriage.  
5 (ii) Bigamy, incest, adultery, pimping, or prostitution.  
6 (iii) A crime related to abandonment of a child or  
7 nonsupport of a spouse or child.  
8 (iv) A crime prior to the marriage.  
9 (v) A crime involving domestic violence as defined in  
10 AS 18.66.990.

11 (E) In a proceeding involving custody of a child.

12 (F) Evidence derived from or related to a business relationship  
13 involving the spouses.

14 \* Sec. 71. AS 11.56.740(a)(2) is repealed.

15 \* Sec. 72. AS 12.25.030(d); AS 12.61.900(1); AS 18.65.520(c); AS 18.66.900;  
16 AS 25.35.010, 25.35.020, 25.35.030, 25.35.040, 25.35.050, and 25.35.200 are repealed.

17 \* Sec. 73. REVISOR'S CHANGES. The revisor of statutes is requested to remove  
18 AS 25.35.100 - 25.35.150 from AS 25 and place these provisions in AS 18, renumbered as  
19 AS 18.66.200 - 18.66.250, and as a whole described as "Article 3. Confidential  
20 Communications." The revisor is also requested to revise all statutory cross-references to  
21 these statutes.

22 \* Sec. 74. TRANSITION: EXISTING DOMESTIC VIOLENCE PROTECTIVE ORDERS.  
23 A domestic violence order issued under former AS 25.35.010 or 25.35.020 and in effect on  
24 the effective date of sec. 72 of this Act remains in effect until it expires under the terms of  
25 the order and former AS 25.35.010 or 25.35.020 or is dissolved by the court, whichever occurs  
26 earlier.

27 \* Sec. 75. TRANSITION: REGULATIONS. Notwithstanding secs. 81, 83, and 84 of this  
28 Act, the state agencies affected by this Act may proceed to adopt regulations necessary to  
29 implement changes affecting the state agency that are enacted by this Act. The regulations  
30 take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date  
31 of the changes in law in this Act.

1 \* Sec. 76. AS 18.66.150(d) and 18.66.160(c), added by sec. 33 of this Act, have the effect  
2 of amending Rules 9(b)(11), 9(c)(3), and 9(e)(6), Alaska Rules of Administration, by  
3 eliminating filing fees and service of process fees in domestic violence actions for protective  
4 orders.

5 \* Sec. 77. AS 18.66.160, added by sec. 33 of this Act, has the effect of amending Rule 4,  
6 Alaska Rules of Civil Procedure, relating to service of process in domestic violence actions  
7 for protective orders.

8 \* Sec. 78. AS 18.66.110 - 18.66.130, added by sec. 33 of this Act, have the effect of  
9 amending Rule 65(b) - (d), Alaska Rules of Civil Procedure, relating to temporary restraining  
10 orders, the method of obtaining those orders, and the timing of those orders.

11 \* Sec. 79. AS 12.61.127, added by sec. 29 of this Act, has the effect of amending Rule  
12 613, Alaska Rules of Evidence, relating to impeachment of witnesses.

13 \* Sec. 80. Sections 68 - 70 and 76 - 79 of this Act take effect only if secs. 68 - 70 and 76  
14 - 79 of this Act receive the two-thirds majority vote of each house required by art. IV, sec. 15,  
15 Constitution of the State of Alaska.

16 \* Sec. 81. If secs. 68 - 70 and 76 - 79 of this Act take effect under sec. 80 of this Act,  
17 they take effect July 1, 1996.

18 \* Sec. 82. Section 75 of this Act takes effect immediately under AS 01.10.070(c).

19 \* Sec. 83. Except as provided in secs. 81, 82, and 84 of this Act, this Act takes effect  
20 July 1, 1996.

21 \* Sec. 84. Section 71 of this Act takes effect 90 days after the effective date of sec. 72 of  
22 this Act.

## *Alaska Network on Domestic Violence and Sexual Assault*

### April 1996 Summary

#### **DOMESTIC VIOLENCE PREVENTION ACT 1996**

1. The Act is primarily based on the Model Code on Domestic and Family Violence developed by the National Council of Juvenile and Family Court Judges, and aligns current Alaska law with the code.

#### **Definitions**

2. The Act defines a crime involving domestic violence as one of the following offenses that is directed to a household member:

- crimes against a person under AS 11.41
- burglary under AS 11.46.300-11.46.310
- criminal trespass under AS 11.46.320-11.46.330
- arson or criminally negligent burning under AS 11.46.400-11.46.430
- criminal mischief under AS 11.46.480-11.46.486
- terroristic threatening under AS 11.56.810
- violating a protective order under AS 11.56.740
- harassment under AS 11.61.120(a)(2-4)
- or similar ordinances in other jurisdictions

3. The Act defines "household member" as including adults or minors who currently or formerly were married, lived together, dated, or have engaged in a sexual relationship, adults or minors related by blood or adoption, current or former marriage, who have a child in common, and minor children of persons described above

#### **Protective Orders**

4. The Act provides the opportunity for victims to gain increased protection by expanding protective order provisions to include

- prohibiting the abuser from threatening to commit domestic violence
- prohibiting the abuser from harassing, telephoning, or contacting the victim
- directing the abuser to stay away from the residence, school, or place of employment of the victim or any specified place frequented by the victim or any designated family member
- prohibiting the abuser from using or possessing a deadly weapon
- directing the abuser to surrender firearms owned or possessed by the abuser
- requesting a peace officer to accompany the victim to her residence to ensure the victim safely obtains possession of the residence, vehicle, or personal items
- prohibiting the abuser from consuming alcohol or controlled substances
- when considering arrangements for visitation of any minor child, the safety of the child and the victim must be ensured

5. The Act provides for three types of protective orders that may be issued

- a protective order issued after notice to the respondent and a hearing
- an *ex parte* protective order
- an emergency protective order

A court may grant a protective order after notice and hearing if it finds by a preponderance of evidence that the abuser committed a crime involving domestic violence. A protective order issued after notice and hearing is effective until further order of the court for items 1,2,4,&5; and, for up to one year for the other provisions.

If the petition establishes probable cause that a crime involving domestic violence has occurred, and the court finds it necessary to protect the petitioner it shall, without notice or hearing, issue the order *ex parte*. An *ex parte* order may not order all protections available in a protective order; rather, the protections available focus on the immediate safety of the victim. An *ex parte* order expires 20 days after it is issued unless extended or dissolved by the court.

An emergency protective order may be obtained by a peace officer with the victim's consent. It may be obtained by a telephone call to a judicial officer, if there is probable cause to believe that a person is in imminent danger of domestic violence, based on the allegation of the recent commission of domestic violence toward the petitioner. The protections available in the order concern the immediate safety of the victim. It expires 72 hours after issuance.

6. The Act rewrites the crime of violating a protective order. In the Act it is a class A misdemeanor to knowingly violate a condition of a protective order which

- prohibits the abuser from committing further domestic violence
- prohibits the abuser from communicating with the victim
- removes the abuser from the home of the victim
- orders the abuser to stay away from the home, school, job, or other place where the victim may be found
- prohibits the abuser from entering a vehicle with the victim
- prohibits the abuser from possessing a deadly weapon
- requires the respondent to surrender a firearm

7. The Act creates a central protective order registry. The registry will assist both law enforcement and the court system in responding more effectively to violations of protective orders issued in the United States.

#### **Mandatory Arrest**

8. The Act provides for mandatory arrest if the violence has occurred within 12 hours of the call to law enforcement. AST and APD, as well as other law enforcement agencies in the state, have mandatory arrest protocols already in place. Placing mandatory arrest in statute provides for statewide consistency in responding to domestic violence.

9. The Act prohibits a peace officer from threatening to arrest all the persons present in an incident of domestic violence. The Act also clarifies who is to be arrested--the primary aggressor, not a victim trying to defend herself. A peace officer who does not make an arrest after a domestic violence incident, or who arrests more than one person from a single incident, must put in writing the reasons for the action.

#### **Courts and Victim Safety**

10. The Act adds domestic violence to the offenses where the court may decide that the threat to the victim prohibits the defendant, when representing himself, from obtaining the address and telephone number of the victim.

11. The Act requires the court to consider the safety of the victim and the victim's family in addition to the safety of the public before releasing the defendant either before trial, pending sentencing, and/or pending appeal.

12. The Act requires prosecutors to make a reasonable effort to confer with all victims of domestic violence before entering into a plea agreement in a case.

13. The Act requires the court to consider the safety of the victim before ordering probation for a domestic violence offender.

### **Corrections and Parole Board Responsibilities**

14. The Act allows the Commissioner of Corrections to release a domestic violence offender on prerelease and short-duration furloughs only under conditions which protect the victim and the victim's family.

15. The Act requires the Commissioner of Corrections to notify the victim and to accept and consider comments by a victim of domestic violence before deciding to release the prisoner on prerelease furlough. The victim must be notified of the decision to release the prisoner.

16. The Act requires the Department of Corrections to adopt standards for rehabilitation programs for perpetrators of domestic violence. The department must determine if a program meets the standards before a court may order a person to participate in the program.

17. The Act requires the Parole Board to inform a victim of domestic violence 30 days in advance of a hearing to consider discretionary parole for a prisoner. It also requires the board to inform the victim of its decision to grant or deny discretionary parole and to release the prisoner on mandatory parole. The victim must be informed of the area a parolee will reside and conditions on the parole of a prisoner, and of any changes in these conditions.

18. The Act addresses the factors which the Parole Board must consider in releasing the parolee from custody pending a decision on whether to revoke parole. It provides that if the person is on parole for a domestic violence crime, and the alleged violation is based on an act of domestic violence, the parolee may not be released pending the final revocation hearing.

19. The Act amends the definition of serious offense in the Criminal Justice Information Systems Security and Privacy Act by adding crimes involving domestic violence. This has the effect of allowing information about past convictions of domestic violence to be released to an interested person, if the information is requested to help decide if a person should be given supervisory or disciplinary power over a child or dependent adult.

### **Continuing Education**

20. The Act requires public employees who are required reporters of suspected child abuse or neglect to obtain continuing education in the dynamics of domestic violence which will include

- lethality assessments
- nature, extent, and causes of domestic violence
- procedures designed to promote the safety of victims of family members
- resources available to victims and perpetrators of domestic violence

21. The Act amends the Alaska Police Standards Council statute on minimum standards for permanent appointment as a police officer to include at least 12 hours instruction in domestic violence issues.
22. The Act requires correctional, probation, and parole officers to be trained in domestic violence issues in order to be certified.
23. The Act requires the court system and the Department of Law to provide continuing education to their employees who come into contact with domestic violence victims and perpetrators.
24. The Act requires the Department of Health and Social Services to adopt standards and procedures for health care to victims.

#### **Divorce, Child Custody, and Visitation**

25. Conditions which may be imposed on visitation where domestic violence occurred are provided, including supervised visitation.
26. The Act prohibits mediation in child custody cases where a domestic violence protective order is in effect.
27. The Act prohibits mediation in divorce actions if a protective order is in effect.
28. The Act allows mediation of child custody and divorce cases where domestic violence has occurred only when certain safeguards are met--the victim requests mediation, the mediator is trained in domestic violence cases, and the victim is allowed a supporting person to attend the mediation sessions.
29. The Act provides that a finding that domestic violence has occurred since the last child custody or visitation decision constitutes a change in circumstances. This allows for the modification of custody and visitation orders.

#### **Dissolutions**

30. The Act requires a petition for dissolution of marriage to state whether a criminal charge of domestic violence has been filed or whether a petition for a domestic violence protective order has been filed by a member of the household during the marriage. In such cases, the court must give heightened scrutiny to the dissolution agreement to ensure it is fair to both parties. The court must also give heightened scrutiny to a dissolution agreement if there is any evidence of domestic violence during the marriage.

#### **DFYS**

31. The Act requires the Department of Health and Social Services to develop procedures for screening reports of child abuse and neglect for the presence of domestic violence. The procedures must include criminal record checks of the alleged abusive or neglectful person and inquiry into whether a domestic violence protective order has been issued to either parent. The department must take action to protect the child if it determines that the violence is endangering the child whether directly or by exposure to domestic violence of another family member.
32. If the department determines a person is a victim of domestic violence, the department is required to provide written notice of the rights of domestic violence victims and the services available to them to the person.

### Prohibiting Surreptitious Taping

33. The Act requires a defendant or a person acting on his behalf to obtain consent prior to recording statements of a victim or witness of an offense for which the defendant is or could be charged.
34. The Act requires the defendant or his representative to clearly inform the victim or witness of 1) the person's identity and specific association with the defendant; 2) the victim does not have to talk to the person unless the victim wishes, 3) the victim may have a prosecuting attorney or other person present during an interview; 4) the statement will be recorded if consent is given, and, 5) the victim or witness may obtain a transcript or other copy of the recorded statement upon request.
35. The Act requires the person making the recording to indicate in the recording that the victim or witness has been clearly informed of their rights regarding the recording, and further requires that the victim or witness state in the recording that their consent has been given to the recording.
36. The Act prohibits the defendant accused of a sexual offense or anyone acting on his behalf to contact the victim or witness to the offense if the victim or witness has informed the defendant or his counsel in writing or in person that the victim or witness does not wish to be contacted by the defense.
37. If a defendant or anyone acting on his behalf can contact the victim or witness of a sexual offense to obtain a statement, the Act requires written authorization for obtaining statements other than recorded statements which must have consent stated in the recording.
38. The Act provides for referring violators of this section of the bill to the Disciplinary Board of the Alaska Bar Association as a grievance.
39. The Act provides for a presumption of inadmissibility of statements obtained from a victim or witness in violation of this section.

### Court Rules and Rules of Administration

40. The Act amends Court Rules 3, 4, 65(b)-(d), 100(a), 505(a)(2), Rules of Administration 3(b)(11), 9(c)(3), and 9(e)(6), and Alaska Rules of Evidence 613.

LAW OFFICES OF  
FRIEDMAN, RUBIN & WHITE

Richard H. Friedman  
Jeffrey K. Rubin  
Jeffrey A. Friedman  
Michael N. White  
Las Gera  
James H. McComas, Of Counsel  
H. Dee Taylor, Investigator

1227 West 9th Avenue, Second Floor  
Anchorage, Alaska 99501  
(907) 258-0704  
Telefax: (907) 278-6449

Date: April 12, 1996  
To: Senator Robin Taylor  
From: Rick Friedman  
Re: HB 314

Robin, I understand this bill has a provision requiring defense investigators, when interviewing witnesses, to identify who they are, and indicate if the conversation is being recorded. The investigator must also tell the witness that he may obtain a copy of the tape. None of these requirements apply to the police/prosecutors. In essence, this provision forbids an investigator from secretly recording an interview with a witness.

Were you aware this issue was the subject of heated debate before the Bar Association Board of Governors? Numerous witnesses testified: prosecutors, defense attorneys, investigators. The Board concluded that defense investigators should be allowed to secretly record conversations, as long as they are accurately identifying who they are and why they are interviewing a witness. I fear the Department of Law, having lost the debate before the Board of Governors, is trying to slip this issue through, attached to a domestic violence bill, and thereby avoid an open debate on the policy reasons against this provision.

Time does not permit me to go into those reasons now. I just heard about this provision today. Is there any chance of getting a hearing on this issue?

*Rick*

**HB**

**333**

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

NO. 1  
Bill Version: Hb 333  
,H) Publish Date: 1/24/96

Revision Date: \_\_\_\_\_ Department Affected: Administration  
Title: "An Act relating to licensure requirements for employees of the office of public advocacy and the Public Defender Agency"  
BRU: Public Defender Agency  
Sponsor: Rep. Pamell Component: Public Defender Agency  
Requestor: Rep. Pamell COMPONENT SERIAL NO. 1631

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	***	***	***	***	***	***

CAPITAL EXPENDITURES	***	***	***	***	***	***
----------------------	-----	-----	-----	-----	-----	-----

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	***	***	***	***	***	***
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY 96) cost: \$ 0.

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This bill will result in some savings for the PD in its personal services line. Currently the PD is only able to recruit staff attorneys from among those individuals who are members of the Alaska Bar. Because of this state's relatively small population, and the fact that there is no law school, the number of eligible applicants for a given position is sometimes quite small. Passage of this bill will expand the pool of applicants, making recruitment much more competitive. It is anticipated that with increased competition PD will be able to subfill positions on a regular basis while at the same time attracting experienced lawyers for its staff.

Prepared by John B. Salerni, Director Phone (907) 261-4412  
Division Public Defender Agency Date \_\_\_\_\_

Approved by Commissioner Mark Boyer *M. Boyer*  
Agency Department of Administration Date 1/22/96

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# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 2/15/96

FURTHER:

DATE TURNED INTO OFFICE: 4-3-96

The Judiciary Committee considered HOUSE BILL NO. 333

Relating to licensure requirements for employees of the office of public advocacy and the Public Defender Agency.

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

Senate Bill:  
 same title  
 new title  
 House Bill:  
 same title  
 technical title  
 new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>John D. ...</i>	✓				
<i>John D. ...</i>	✓				
<i>John D. ...</i>	✓				
<i>John D. ...</i>	✓				
<i>John D. ...</i>	✓				
<b>CHAIR:</b> <i>John D. ...</i>	✓	<b>CHAIR:</b>			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
<i>Public Defender</i>	<i>1/2</i>	✓	

APPROPRIATION -- no fiscal note

\*Include fiscal notes accompanying Governor's bill

# Alaska State Legislature

REPRESENTATIVE  
SEAN R. PARNELL



216 WEST 4TH AVENUE, SUITE 100  
ANCHORAGE, ALASKA 99501  
(907) 258-8194

While in Office of  
STATE ATTORNEY  
JUNEAU, ALASKA 99901-1115  
(907) 463-2900 FAX (907) 463-2905

HOUSE OF REPRESENTATIVES

## SPONSOR STATEMENT House Bill 333

"An act relating to licensure requirements for employees of the office of public advocacy and the Public Defender Agency."

HB 333 would afford the office of public advocacy and the Public Defender Agency the same hiring privilege currently enjoyed by the Attorney General's office. HB 333 would allow each of these agencies to hire attorneys before passing the Alaska Bar and allow them a ten month period to pass the Bar in Alaska.

Since the state of Alaska has no law schools and the cost moving to Alaska without a job can be prohibitive, a ten month window will help in recruiting competent attorneys and help reduce some of the initial hiring cost of the respective agencies.

I respectfully request your support.

## ALASKA PUBLIC DEFENDER AGENCY

900 West Fifth Avenue, Suite 200 • Anchorage, AK 99501 • (907) 264-4400 • fax (907) 269-5476

March 7, 1996

Senator Robin Taylor  
State Capitol  
Room 30  
Juneau, Alaska 99801-1182

RE: HB 333

Dear Senator Taylor:

Representative Parnell and I have been working on passage of the above-referenced bill, a copy of which is attached for your review. If passed into law the bill would permit the Public Defender Agency and the Office of Public Advocacy to draw from a larger pool of attorney applicants. Currently we are limited to individuals who are already members of the Alaska Bar. (Compare the Department of Law, which is permitted to hire an attorney and send him/her to court so long as that individual obtains a license to practice law within 10 months of commencement of employment).

As you are probably aware, not every lawyer is interested in criminal defense work. Without a law school in Alaska there are times when recruitment for Public Defender staff positions is problematic. If this bill passes the Public Defender will be able to recruit and offer positions to individuals who are not yet members of the Alaska Bar. This would put us in a favorable position both with respect to hiring qualified individuals and negotiating favorable (to the agency) starting salaries.

Because this bill has no fiscal impact it is my understanding it can be fast tracked in terms of the committee process. I would ask that you consider calendaring this bill before your Senate Judiciary Committee to facilitate movement of the bill.


Please contact me if you have questions regarding this matter.

Very truly yours,



John B. Salemi  
Public Defender

JBS:sh

P.S. Dept. of Law supports this bill. 

# MEMORANDUM

STATE OF ALASKA

DATE: January 18, 1996

TO: Representative Sean Parnell/Rich Vitale

FROM: John B. Salemi *JBS / SH*  
Public Defender

SUBJECT: HB 333/Potential Civil Liability

It is my understanding that you have questions about the effect of HB 333 in terms of potential increase of malpractice claims against PD staff lawyers.

It is highly unlikely the passage of HB 333 will increase the PD Agency's exposure to such claims. Being a member of the Alaska Bar does not insulate lawyers from a malpractice suit. Conversely, lack of membership will not be a determinative factor in such claims. Furthermore, individuals who become members of the PD staff as a result of HB 333 will be subject to strict supervision until they become full members of the Alaska Bar Association.

JBS:sh

**HB**

**341**

**AMENDMENT NO. \_\_\_\_\_**

**TO: CSHB 341, Version Z**

Amend by replacing Section 17. Transitional Provisions, with the following:

**Sec. 17. TRANSITIONAL PROVISIONS.** The remedies and procedures provided by this act apply to all revenue tax appeals in which a request for formal hearing has been filed with the Department of Revenue on or before the effective date of this Act. A taxpayer who has filed a request for formal hearing on or before the effective date of this act may elect within 45 days from the enactment of this act to use the remedies and procedures existing prior to the enactment of this act.

**FISCAL NOTE**STATE OF ALASKA  
1996 LEGISLATIVE SESSIONBILL NO. CSHB 341Revision Date: 4/17/96Dept. Affected: Alaska Judicial CouncilTitle: Tax Court

BRU: \_\_\_\_\_

Component: \_\_\_\_\_

Sponsor: \_\_\_\_\_

Requestor: \_\_\_\_\_

COMPONENT SERIAL NO. 0771**EXPENDITURES/REVENUES**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL	3.5					
CONTRACTUAL	9.6					
SUPPLIES	0.8					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>13.9</b>					

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

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

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	13.9					
1005 GF/Program Receipts						
1006 GF/MHTA						
Other						
<b>TOTAL</b>	<b>13.9</b>					

**POSITIONS**

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

Estimate of current year (FY 98) cost: \$ None**ANALYSIS:** (Attach a separate page if necessary)

See attached memo to House Finance Committee from William T. Cotton, dated March 19, 1996, re: CSHB 341.

Prepared by:

William T. Cotton, Executive Director

*William T. Cotton*

Phone: 279-2526

Agency:

Alaska Judicial Council

Date: 4/17/96

Approved by:

William T. Cotton, Executive Director

Agency:

Alaska Judicial Council

Date: 4/17/96

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# alaska judicial council

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CHAIRMAN, EX OFFICIO  
Allen T. Compton  
Chief Justice  
Supreme Court

## MEMORANDUM

TO: House Finance Committee

FROM: William T. Cotton, Executive Director *w/c*

DATE: March 19, 1996

RE: CSHB 341

---

I have set out below the costs of having the Judicial Council screen applicants for Administrative Tax Judges much as it does for judicial applicants. I will submit a fiscal note when appropriate. As I previously testified, the Council has not taken any position on this legislation.

The costs outlined below assume one selection (or later, one evaluation) per year. They further assume that existing Council staff will perform the professional work gathering and analyzing information on applicants. Council members are not paid for their time (other than per diem).

After much thought, I believe a Bar Survey with comments would be highly advisable. While the response rate would be low, the information received would be important.<sup>1</sup> I have kept costs low by having existing Council staff do the analysis at no charge.

---

<sup>1</sup>For example, some judicial applicants are rated by well over 500 respondents. However, even a response of less than 100 respondents is very useful. A recent applicant with a narrow bankruptcy practice was rated by 230 respondents.

*House Finance Committee**March 19, 1996**Page 2*Costs**Travel**

Travel and per diem for one 2-day Anchorage Council Meeting 3.5

**Contractual**

## 1. Advertising

Three small display ads in Anchorage, Juneau, Fairbanks  
requesting public comment 1.7

2. Temporary Secretary (30 hours/week for six weeks) 2.9

## 3. Mailing

a. Announcement letter (to attorneys, including Bar labels) 1.2

b. Survey (to attorneys, including Bar labels) 3.2

c. Miscellaneous (references, targeted surveys) .1

4. Credit Checks .5

**Supplies**

Paper, envelopes for survey .8

---

Total 13.9

Please feel free to contact me with any further questions.

WTC:sl



# alaska judicial council

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http://www.state.ak.us/local/nkpages/COURTS/AJC/home.htm E-Mail: 72302.1261@COMPUSERVE.COM

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Chief Justice  
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## Facsimile Transmittal

To: Senate Judiciary Committee  
(See below)

Fax #: 465-3922 PLEASE DISTRIBUTE TO COMMITTEE Date: 4/18/96

Time: \_\_\_\_\_

From: Teri Carns for William T. Cotton

Number of pages (including this cover sheet) 4

If you have any problems or questions, please contact Josefa  
at (907) 279-2526.

### Comments:

Fiscal Note for Administrative Judges legislation.

To: Senate Judiciary Committee

Senator Robin Taylor

Senator Lyda Green

Senator Mike Miller

Senator Johnny Ellis

Senator Al Adams

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. SC3 CSHB 341 (JUD)

Revision Date: 04/22/96 Dept. Affected: Alaska Court System  
 Title: An Act establishing a tax court... BRU: Trial Courts  
 Sponsor: Rep. Green Component: \_\_\_\_\_  
 Requestor: House Resources COMPONENT SERIAL NO. 768

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	.	.	.	.	.	.
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	.	.	.	.	.	.
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	.	.	.	.	.	.

Estimate of any current year (FY 96) cost: \$ None

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel  
 Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director  
 Agency: Alaska Court System

Phone: 264-8228  
 Date: 04/22/96  
 Date: 04/22/96

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Alaska Court System  
Fiscal Analysis  
SCS CSHB 341 (JUD)

SCS CSHB 341 (JUD) amends the current method of administrative adjudication and judicial appeals relating to tax cases. It establishes the office of tax appeals as a quasi-judicial agency in the Department of Administration, and under certain conditions, gives taxpayers the right to go directly to court to challenge tax assessments in a trial de novo, rather than an on-the-record appeal.

The Department of Revenue has advised that the circumstances under which a taxpayer would be entitled to go directly to court are very limited, and that even under existing law, it would normally use its discretion to allow a taxpayer to go directly to court on those issues. Accordingly, this note does not attempt to estimate the amount of judicial and clerical time which might be spent on direct appeals authorized by this legislation.

According to the Department of Revenue, there are approximately 24 tax cases per year to which SCS CSHB 341 (JUD) would apply: 20 in the Income and Excise Audit Division, and 4 in the Oil and Tax Audit Division. These cases vary in size and complexity, with the largest cases requiring a substantial commitment of judicial and clerical time, if they come directly to court for a trial de novo.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 341(FIN)

1 Page 16, line 31, to page 17, line 4:

2 Delete all material and insert:

3 "Sec. 43.05.244. PAYMENT ON DIRECT JUDICIAL APPEAL. (a) In a  
4 judicial appeal directly from an informal conference decision under AS 43.05.242, the  
5 amount, if any, of additional tax, interest, and penalty determined to be owed by the  
6 taxpayer in the informal conference decision shall be deposited into the registry of the  
7 court no later than the day when the taxpayer files the appeal in the superior court.  
8 The taxpayer's failure to deposit this amount into the court registry when it is due is  
9 grounds for dismissal of the taxpayer's appeal.

10 (b) A deposit into the court registry under (a) of this section tolls the accrual  
11 of further interest at the rate prescribed in AS 43.05.225 during the period when the  
12 money is in the court registry, and only the actual earnings on that deposit while it  
13 is in the court registry, less the administration fee under (c) of this section, shall  
14 accrue during that period and be payable to whoever is ultimately determined to be  
15 entitled to the money deposited into the court registry. If part of the deposit into the  
16 court registry is ultimately refunded to the taxpayer and part is transferred to the state,  
17 the earnings earned while the money was in the court registry shall be divided  
18 between the taxpayer and the state in proportion to the amount of the deposit that  
19 each receives.

20 (c) Money deposited into the court registry under (a) of this section and the  
21 earnings on that money are held in trust for the benefit of whoever is ultimately  
22 determined to be entitled to it, and no expenditure or appropriation may be made from  
23 the funds held in the court registry, except that the court may annually deduct and  
24 withhold from the earnings on money on deposit in the court registry an  
25 administration fee equal to the lesser of

1                   (1) one-half of one percent per year of the amount originally deposited  
2 into the court registry under (a) of this section; or

3                   (2) one-half of the earnings actually earned on the money, including  
4 the earnings from prior years, held in the court registry during the year.

5                   (d) Upon the final adjudication or settlement of the judicial appeal, the  
6 amount deposited into the registry of the court, and all earnings on that deposit after  
7 deducting the administration fee under (c) of this section, shall be paid from the  
8 registry of the court to whoever is entitled to receive them. Payment under this  
9 subsection must be made no later than 30 days after the final judgment or settlement  
10 is entered. A judgment or settlement is final when a further appeal may not be taken  
11 from it."

9-LS1129AD  
Chenoweth  
4/16/96

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

BY THE SENATE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES GREEN, James

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  
8 the assessment, levy, and collection of taxes and penalties by the state and to  
9 the tax liability of taxpayers; providing for the release of agency records  
10 relating to formal administrative tax appeals; relating to litigation disclosure of  
11 public records; clarifying administrative subpoena power in certain tax matters;  
12 and providing for 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. The office of  
5 tax appeals is established within the department.

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

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

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

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

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

17             Sec. 43.05.410 APPOINTMENT; TERM; REAPPOINTMENT. (a) The  
18 governor shall appoint a chief administrative law judge of the office of tax appeals  
19 from among two or more persons nominated as most qualified for that position by the  
20 Alaska Judicial Council. If one or more additional administrative law judges are  
21 established in the office of tax appeals, the governor shall appoint additional  
22 administrative law judges from among two or more persons nominated as most  
23 qualified for each position by the judicial council.

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

28                     (c) A reappointment of a person appointed to serve as an administrative law  
29 judge, including the chief administrative law judge, shall be made as follows:

30                     (1) if an administrative law judge seeks reappointment, the governor

1 shall notify the judicial council of the impending end of the administrative law judge's  
2 term at least 120 days before the end of the term;

3 (2) in reviewing the performance of the administrative law judge, the  
4 judicial council shall collect and review sufficient information to thoroughly evaluate  
5 the administrative law judge; the review by the judicial council must include a  
6 published notice requesting written comments on the administrative law judge whose  
7 performance is being evaluated;

8 (3) the judicial council shall review the performance of the  
9 administrative law judge and submit by at least 30 days before the vacancy a  
10 recommendation to the governor on whether the administrative law judge should be  
11 reappointed;

12 (4) the governor has discretion to reappoint or not reappoint an  
13 administrative law judge whom the judicial council recommends for reappointment, but  
14 the governor may not reappoint a person as administrative law judge if the judicial  
15 council recommends against that reappointment.

16 (d) Nominations made by the Alaska Judicial Council under (a) of this section  
17 shall be made after the judicial council has reviewed the qualifications of applicants  
18 for administrative law judges. The judicial council shall collect and review sufficient  
19 information to thoroughly evaluate each applicant. The review by the judicial council  
20 must include a published notice requesting written comments on the list of applicants  
21 for an administrative law judge opening.

22 (e) In reviews by the Alaska Judicial Council under (c) and (d) of this section,

23 (1) comments, references, or survey responses that request  
24 confidentiality, or for which the judicial council promises confidentiality, shall be kept  
25 confidential, but the judicial council shall provide the applicant for administrative law  
26 judge or administrative law judges seeking reappointment a summary of the concerns  
27 raised in the comments, references, and survey responses that are kept confidential;

28 (2) the judicial council has authority to review confidential Alaska Bar  
29 Association files, including bar complaint files, on applicants for administrative law  
30 judge and on administrative law judges seeking reappointment whose applications or  
31 reappointment evaluations are under review; the judicial council shall maintain the

1 confidentiality of these files; and

2 (3) the judicial council shall send to the governor with its nominees or  
3 reappointment recommendations all nonconfidential materials that it gathers on  
4 applicants for administrative law judge and administrative law judges seeking  
5 reappointment whose applications or reappointment evaluations are under review, and  
6 shall provide the governor with summaries of concerns raised in the comments,  
7 references, and survey responses that are kept confidential.

8 Sec. 43.05.415. REMOVAL. (a) The chief administrative law judge may be  
9 disciplined or removed from office by the commissioner only for good cause.

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

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

14 (1) violation of the Alaska code of judicial conduct adopted by the  
15 Alaska Supreme Court;

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

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

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

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

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

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

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

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

29 (c) The chief administrative law judge may adopt regulations implementing or  
30 interpreting AS 43.05.400 - 43.05.499, including rules of procedure and evidence for  
31 proceedings before the office

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

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

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

6           (b) A person appointed as an administrative law judge under AS 43.05.410  
7 who is not licensed to practice law in this state at the time of appointment must  
8 become licensed to practice law in this state within 12 months after appointment or  
9 shall cease to hold office.

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

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

19           Sec. 43.05.435. SCOPE AND STANDARDS FOR DECISION. The  
20 administrative law judge shall hear all questions de novo under AS 43.05.400 -  
21 43.05.499. The administrative law judge shall

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

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

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

30           Sec. 43.05.440. SERVICE OF DOCUMENTS. Service of documents required  
31 under AS 43.05.400 - 43.05.499 may be accomplished in any manner authorized under

1 the Alaska Rules of Civil Procedure. If service is done only by mail, the date of  
2 service is determined by the date of mailing. If service is done by both mail and hand  
3 delivery, the date of service is determined by the earlier of the date of mailing or  
4 actual receipt of the documents.

5 Sec. 43.05.445. DISCOVERY. (a) In an appeal under AS 43.05.405,  
6 discovery may take place only under a plan for discovery approved by the  
7 administrative law judge. The administrative law judge shall approve a plan for  
8 discovery to the extent consistent with the efficient, just, and speedy conduct of the  
9 appeal. The plan may limit or set conditions on discovery and must include provisions  
10 for stipulations of fact by the Department of Revenue and the taxpayer. Discovery  
11 shall be limited to information that is relevant to the determination of the correct tax  
12 or penalty, unless the Department of Revenue or the taxpayer makes a showing that  
13 the discovery is reasonably calculated to lead to admissible information.

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

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

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

30 Sec. 43.05.455. FORMAL HEARING. (a) At or before the formal hearing,  
31 a party may present argument and evidence relevant to the amount of the tax or

1 penalty. The administrative law judge shall administer oaths and permit inquiry  
2 necessary to determine the proper amount of the tax or penalty.

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

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

8 (2) with the consent of the parties and the administrative law judge, all  
9 or part of the hearing may be conducted through correspondence.

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

13 (d) The formal hearing before the administrative law judge is not required to  
14 be conducted with strict adherence to the Alaska Rules of Evidence. Relevant  
15 evidence must be admitted if it is probative of a material fact in controversy.  
16 Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence is  
17 admissible if it is the kind of evidence on which responsible persons are accustomed  
18 to rely in the conduct of serious affairs, regardless of the existence of a common law  
19 or statutory rule that makes improper the admission of the evidence over objection in  
20 a civil action. Oral evidence may be taken only on oath or affirmation. The rules of  
21 privilege are effective to the same extent that they are recognized in a civil action in  
22 the courts of this state, except that relevant documents and other material items that  
23 are public records under AS 09.25.100 - 09 25.220 shall be admissible.

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

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

29 Sec 43.05.460. ENFORCEMENT. (a) The administrative law judge and each  
30 party is responsible for the efficient, just, and speedy conduct of the formal hearing.  
31 The administrative law judge may impose sanctions on the parties for failure to comply

1 with a subpoena, an order respecting discovery, and any other matter regarding conduct  
2 of the appeal. In imposing sanctions, the administrative law judge shall be guided by  
3 the practices of the courts of this state in imposing sanctions for similar offenses in  
4 civil proceedings.

5 (b) The administrative law judge may

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

8 (2) prohibit a party from introducing information previously withheld  
9 without good cause, and any other evidence dependent upon the information;

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

11 (A) barring a designated claim or defense;

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

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

14 (4) grant any other relief that the administrative law judge considers  
15 appropriate.

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

19 Sec. 43.05.465. DECISION; RECONSIDERATION; FINALITY. (a) Within  
20 180 days after the record on the appeal is closed, the administrative law judge shall  
21 issue a decision in writing. The decision must contain a concise statement of reasons  
22 for the decision, including findings of fact and conclusions of law. In the decision, the  
23 administrative law judge may grant relief, provide remedies, and issue any order that  
24 is appropriate. The administrative law judge shall serve each party in the case with  
25 a copy of the decision. Unless reconsideration is ordered under (c) of this section, the  
26 decision under this subsection is the final administrative decision.

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

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

3 (2) overlooked or misconceived some material fact or proposition of  
4 law;

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

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

7 (c) The administrative law judge may issue an order for reconsideration of all  
8 or part of the decision upon request of a party. Reconsideration is based on the record,  
9 unless the administrative law judge allows additional evidence and argument. A  
10 hearing on reconsideration at which additional evidence or argument is offered or  
11 received is subject to the procedures applicable to a hearing under AS 43.05.455.

12 (d) The power to order reconsideration expires 60 days after the date of  
13 service, as shown on the certificate of service, of a decision issued under (a) of this  
14 section. If the administrative law judge does not issue an order for reconsideration  
15 within the time allowed for ordering reconsideration, a motion for reconsideration is  
16 considered denied.

17 (e) Within 60 days after the close of the record on reconsideration, the  
18 administrative law judge shall issue a written decision upon reconsideration. The  
19 administrative law judge shall serve each party in the case with a copy of the decision  
20 upon reconsideration. The decision upon reconsideration is the final administrative  
21 decision.

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

23 (1) 60 days after the date of service of a decision issued under (a) of  
24 this section if an order for reconsideration is not issued; or

25 (2) the decision upon reconsideration is served, as shown by the  
26 certificate of service executed by the administrative law judge under (e) of this section.

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

31 (b) Upon a showing of good cause, an administrative law judge shall issue a

1 protective order requiring that specified parts of the records, proceeding, or decision  
2 shall be kept confidential in a particular appeal. If a protective order is issued, the  
3 final administrative decision shall be made public after redacting by deletion or  
4 substitution of information as required by the protective order.

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

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

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

17 Sec. 43.05.480. JUDICIAL REVIEW. (a) Judicial review by the superior  
18 court of a final administrative decision may be had by a party to the appeal under  
19 AS 43.05.400 - 43.05.499 by filing a notice of appeal in accordance with the  
20 applicable rules of court governing appeals to that court in civil matters. The notice  
21 of appeal shall be filed within 30 days after an administrative decision becomes final  
22 under AS 43.05.465. The right to judicial review under this subsection is not affected  
23 by the failure to seek reconsideration before the administrative law judge.

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

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

30 (d) If, after the appeal is heard, it appears that the final administrative decision  
31 was correct, the court shall affirm the decision. If the final administrative decision is

1 incorrect, the court shall determine the amount due. If the taxpayer is entitled to a  
2 refund, the court shall order the repayment and the Department of Revenue shall pay  
3 the amount due and attach a certified copy of the judgment to the payment. If the  
4 court determines that the taxpayer owes an additional amount, the court shall order the  
5 payment and the taxpayer shall pay the amount due and attach a certified copy of the  
6 judgment to the payment. Any payment required under this subsection shall be paid  
7 by the 30th day following the expiration of the time within which an appeal from the  
8 superior court decision may be filed, unless the party appealing files a bond or  
9 otherwise obtains relief from payment in accordance with the Alaska Rules of  
10 Appellate Procedure.

11 Sec. 43.05.499. DEFINITIONS. In AS 43.05.400 - 43.05.499, unless the  
12 context otherwise requires,

13 (1) "administrative law judge" means an administrative law judge  
14 appointed under AS 43.05.410;

15 (2) "commissioner" means the commissioner of administration;

16 (3) "department" means the Department of Administration;

17 (4) "discovery" means the use of subpoenas, subpoenas duces tecum,  
18 interrogatories, requests for production, requests for admission, depositions, and other  
19 methods of civil procedure by which one party to an action may discover information  
20 within the knowledge and control of another person;

21 (5) "legislative history" means the documents of the legislature  
22 recording the background and events, including draft bills, correspondence and  
23 memoranda, committee reports, tapes and transcripts of hearings, and tapes and  
24 transcripts of floor debate concerning consideration of a bill;

25 (6) "office" means office of tax appeals in the department;

26 (7) "party" means the Department of Revenue or the taxpayer;

27 (8) "proceeding" means only a proceeding under the jurisdiction of the  
28 office;

29 (9) "subpoena" means a command to appear at a certain time and place  
30 to testify, or to appear at a certain time and place to produce books, papers, and other  
31 things, and testify;

1 (10) "tax" means a tax described in AS 43.05.405, including a seafood  
2 marketing assessment under AS 16.51;

3 (11) "taxpayer" means a person required to pay a tax, including a  
4 person required to pay a seafood marketing assessment under AS 16.51.

5 \* Sec. 2. AS 09.25.100 is amended to read:

6 Sec. 09.25.100. DISPOSITION OF TAX INFORMATION. Information in the  
7 possession of the Department of Revenue that discloses the particulars of the business  
8 or affairs of a taxpayer or other person is not a matter of public record, except for  
9 purposes of investigation and law enforcement. The information shall be kept  
10 confidential except when its production is required in an official investigation,  
11 administrative adjudication under AS 43.05.400 - 43.05.499, or court proceeding.  
12 These restrictions do not prohibit the publication of statistics presented in a manner  
13 that prevents the identification of particular reports and items, [OR] prohibit the  
14 publication of tax lists showing the names of taxpayers who are delinquent and  
15 relevant information that may assist in the collection of delinquent taxes, or prohibit  
16 the publication of records, proceedings, and decisions under AS 43.05.400 -  
17 43.05.499.

18 \* Sec. 3. AS 09.25.122 is amended to read:

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

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

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

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

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

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

11 \* Sec. 5. AS 37.10.410 is amended to read:

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

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

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

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

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

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

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

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

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

5 \* Sec. 7. AS 43.05.010 is amended to read:

6 Sec. 43.05.010. DUTIES OF COMMISSIONER. The commissioner of revenue  
7 shall

8 (1) exercise general supervision and direct the activities of the  
9 Department of Revenue;

10 (2) supervise the fiscal affairs and responsibilities of the department;

11 (3) prescribe uniform rules for investigations and hearings;

12 (4) keep a record of all departmental proceedings, record and file all  
13 bonds, and assume custody of returns, reports, papers, and documents of the department;

14 (5) [REPEALED

15 (6)] adopt a seal and affix it to each order, process, or certificate issued  
16 by the commissioner;

17 (6) [(7)] keep a record of each order, process, and certificate issued by  
18 the commissioner, and keep the record open to public inspection at all reasonable times;

19 (7) [(8)] hold hearings and investigations necessary for the administration  
20 of state tax and revenue laws;

21 (8) except as provided in AS 43.05.400 - 43.05.499, [(9)] hear and  
22 determine appeals of a matter within the jurisdiction of the Department of Revenue  
23 [INVOLVING INCOME, EXCISE, LICENSE, OR OTHER TAXES LEVIED UNDER  
24 STATE LAWS] and enter orders on the appeals that are final unless reversed or  
25 modified by the courts;

26 (9) issue subpoenas to [(10)] require the attendance of witnesses and the  
27 production of necessary books, papers, documents, correspondence, and other things  
28 [EVIDENCE AT HEARINGS];

29 (10) [(11)] order the taking of depositions before a person competent to  
30 administer oaths;

31 (11) [(12)] administer oaths and take acknowledgments;

32 (12) [(13)] request the attorney general for rulings on the interpretation

1 of the tax and revenue laws administered by the department;

2 ~~(13)~~ [(14)] call upon the attorney general to institute actions for recovery  
3 of unpaid taxes, fees, excises, additions to tax, penalties, and interest;

4 ~~(14)~~ [(15)] issue warrants for the collection of unpaid tax penalties and  
5 interest and take all steps necessary and proper to enforce full and complete compliance  
6 with the tax, license, excise, and other revenue laws of the state;

7 ~~(15)~~ [(16)] audit reports, payments, and payments due relating to royalty  
8 and net profits under oil and gas contracts, agreements, or leases under AS 38.05 [;

9 (17) REPEALED].

10 \* Sec. 8. AS 43.05.040 is amended to read:

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

28 (b) A subpoena may be served by the commissioner of public safety or a peace  
29 officer designated by the commissioner of public safety, [OR] by a person designated by  
30 the Department of Revenue, or as otherwise provided by law. A subpoena may also  
31 be served by registered or certified mail for delivery restricted only to the person  
32 subpoenaed. The return delivery receipt must be addressed so that the receipt is

1 returned to the department.

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

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

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

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

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

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

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

19 (5) as otherwise provided in this section.

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

21 Sec. 43.05.240. TAXPAYER REMEDIES. (a) A taxpayer aggrieved by the  
22 action of the department in fixing the amount of a tax or penalty may apply to the  
23 department within 60 days after the date of mailing of the notice required to be given  
24 to the taxpayer by the department, giving notice of the grievance, and requesting an  
25 informal conference to be scheduled with an appeals officer. The taxpayer shall be given  
26 access to the taxpayer's file in the department in the matter for preparation for the  
27 informal conference. At the informal conference, the taxpayer may present to the  
28 appeals officer arguments and evidence relevant to the amount of tax or penalty due the  
29 state. If the department determines that a correction is warranted, the department shall  
30 make the correction.

31 (b) A party who believes that the appeals officer is unduly delaying a hearing  
32 process may notify the commissioner in writing. Within 30 days after being notified by

1 a party, the commissioner may issue an order prescribing a schedule for the appeals  
2 officer to complete the informal conference or setting a meeting at which that schedule  
3 will be discussed and prescribed. The schedule may be subsequently modified by  
4 consent of the parties. If the commissioner fails to issue an order within 30 days after  
5 receiving notice of a party's belief of undue delay, the department's action in fixing the  
6 amount of tax or penalty shall be considered to have been summarily affirmed by the  
7 appeals officer the same as if an informal conference decision to that effect were issued  
8 on the last day of that 30-day period.

9 • Sec. 11. AS 43.05 is amended by adding new sections to read:

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

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

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

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

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

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

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

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

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

2 (A) it appears that the tax was correct, the court shall confirm the  
3 tax;

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

9 Sec. 43.05.244. PAYMENT ON DIRECT JUDICIAL APPEAL. (a) In a  
10 judicial appeal directly from an informal conference decision under AS 43.05.242, the  
11 amount, if any, of additional tax, interest, and penalty determined to be owed by the  
12 taxpayer in the informal conference decision shall be deposited into the registry of the  
13 court no later than the day when the taxpayer files the appeal in the superior court.  
14 The taxpayer's failure to deposit this amount into the court registry when it is due is  
15 grounds for dismissal of the taxpayer's appeal.

16 (b) A deposit into the court registry under (a) of this section tolls the accrual  
17 of further interest at the rate prescribed in AS 43.05.225 during the period when the  
18 money is in the court registry, and only the actual earnings on that deposit while it is  
19 in the court registry, less the administration fee under (c) of this section, shall accrue  
20 during that period and be payable to whoever is ultimately determined to be entitled  
21 to the money deposited into the court registry. If part of the deposit into the court  
22 registry is ultimately refunded to the taxpayer and part is transferred to the state, the  
23 earnings earned while the money was in the court registry shall be divided between the  
24 taxpayer and the state in proportion to the amount of the deposit that each receives.

25 (c) Money deposited into the court registry under (a) of this section and the  
26 earnings on that money are held in trust for the benefit of whoever is ultimately  
27 determined to be entitled to it, and no expenditure or appropriation may be made from  
28 the funds held in the court registry, except that the court may annually deduct and  
29 withhold from the earnings on money on deposit in the court registry an administration  
30 fee equal to the lesser of

31 (1) one-half of one percent per year of the amount originally deposited  
32 into the court registry under (a) of this section; or

1 (2) one-half of the earnings actually earned on the money, including  
2 the earnings from prior years, held in the court registry during the year.

3 (d) Upon the final adjudication or settlement of the judicial appeal, the amount  
4 deposited into the registry of the court, and all earnings on that deposit after deducting  
5 the administration fee under (c) of this section, shall be paid from the registry of the  
6 court to whoever is entitled to receive them. Payment under this subsection must be  
7 made no later than 30 days after the final judgment or settlement is entered. A  
8 judgment or settlement is final when a further appeal may not be taken from it.

9 • Sec. 12. AS 43.05.245 is amended to read:

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

28 • Sec. 13. AS 43.20.270(a) is amended to read:

29 (a) The department may collect taxes, with interest, penalties, and other  
30 additional amounts permitted by law, by distraint and sale, in the manner provided in this  
31 section, of the property of a person liable to pay the taxes, interest, penalties, or other  
32 additional amounts, who neglects or refuses to pay them within 10 days from the mailing

1 of notice and demand for payment of them, and who has not appealed from the  
 2 assessment of the taxes, interest, penalties, and other additional amounts determined  
 3 under AS 43.05.240 or following appeal taken under AS 43.05.241 or 43.05.242.

4 • Sec. 14. AS 43.55.013(g) is amended to read:

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

16 • Sec. 15. AS 43.55.040 is amended to read:

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

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

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

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

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

28 (A) the amount of production from any oil or gas location, or of  
 29 a company or other producer of oil or gas; [.] and

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

31 • Sec. 16. EFFECT ON EXISTING REMEDIES AND PROCEDURES This Act does not  
 32 affect the remedies and procedures

1 (1) specified in AS 04.11, including AS 04.11.560; AS 05.15, including  
2 AS 05.15.610; AS 42.05, including AS 42.05.551; or AS 43.56, including AS 43.56.120 and  
3 43.56.130; or

4 (2) adopted by regulation by the Department of Revenue governing appeal of a  
5 decision of the Department of Revenue regarding

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

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

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

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

10 \* Sec. 17. TRANSITIONAL PROVISIONS. (a) The remedies and procedures provided  
11 by this Act apply to all revenue tax appeals in which, under AS 43.05.240(b), a person has  
12 applied to the Department of Revenue and requested a formal hearing before the effective date  
13 of this Act. However, a person who has applied to the Department of Revenue and requested  
14 a formal hearing before the effective date of this Act may elect by giving written notice to the  
15 commissioner within 45 days from the enactment of this Act to use the remedies and  
16 procedures existing immediately before the enactment of this Act.

17 (b) Notwithstanding AS 43.05.405, enacted by sec. 1 of this Act, unless the office of  
18 tax appeals has a full caseload, and with the approval of the chief administrative law judge, the  
19 chief administrative law judge or any other administrative law judge of the office of tax appeals  
20 may be appointed by the governor, by the commissioner of administration, or by the  
21 commissioner of another department to serve as a special hearing officer or special  
22 administrative law judge on another matter outside the scope of this Act and arising from another  
23 department of the executive branch. Appointment under this subsection may not interfere with  
24 the primary mission of the office of tax appeals under this Act of the expeditious resolution of  
25 administrative tax appeals under its jurisdiction.

26 (c) Until 15 AAC 05.301 - 15 AAC 05.320 and other Department of Revenue  
27 regulations in effect on the effective date of this Act are revised as necessary, those regulations  
28 continue to govern an administrative appeal of a Department of Revenue decision not within the  
29 jurisdiction of the office of tax appeals, including a decision regarding a

30 (1) game of chance or skill under AS 05.15;

31 (2) permanent fund dividend under AS 43.23; and

32 (3) coin-operated device or punchboard under AS 43.35.

1 (d) In this section,

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

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

6 \* Sec. 18. RETROSPECTIVE EFFECT. (a) The provisions of sec. 17(a) of this Act apply  
7 to persons who, under AS 43.05.240(b), have applied before the effective date of this Act to  
8 the Department of Revenue and requested a formal hearing to resolve a challenge to the action  
9 of the Department of Revenue in fixing the amount of a tax or in imposing a penalty.

10 (b) This section is set out to meet the requirements of AS 01.10.090.

11 \* Sec. 19. This Act takes effect July 1, 1996.

# LEGAL SERVICES

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Juneau, Alaska 99801-2105

## MEMORANDUM

April 21, 1996

**SUBJECT:** SCS CSHB 341(JUD); Office of Tax Appeals

**TO:** Senator Robin Taylor, Chair  
Senate Judiciary Committee  
Attn: Chuck Achberger

**FROM:** Pamela Finley *PF*  
Revisor of Statutes

In revising the referenced bill, I noticed the following, which I wanted to bring to your attention to make sure these were deliberate choices:

1. AS 43.05.242 (bill sec. 11) refers to tax statutes and tax regulations, while AS 43.05.275(c) (bill sec. 13) refers to tax statutes only.

2. AS 43.05.242(b) (bill sec. 11) does not include a claim that a tax regulation is inconsistent with a tax statute. Because this is a question of law, I expected to see it listed in (b) and want to make sure the omission was intentional. ( If AS 43.05.275(c) should also include regulations, see #1 above, then the same comment applies to AS 43.05.275(c).)

3. Under AS 43.05.242(e) (bill sec. 11) the direct appeal to the Superior Court is "exclusive." However, under AS 43.05.242(i), if the taxpayer loses in the direct appeal, the case is sent back to the office of tax appeals. I can understand why the case would be sent back to the office if it were improperly filed in the superior court, or if the superior court's decision on the law (no matter who prevails on the legal question) makes additional factual findings necessary before the case can be finally decided. However, I do not understand why a taxpayer who loses on a purely legal question, where there are no remaining factual issues, should have the case returned to the office for further proceedings.

4. Also, I gather from the "without prejudice" language in AS 43.05.242(i) that you want a taxpayer to be able to go directly to court if the taxpayer is challenging the assessment on grounds listed in AS 43.05.242(b) and other grounds, although the court would not be allowed to consider the other grounds. However, AS 43.05.242(c)(4) says that the direct appeal may not be used if the taxpayer challenges the assessment on other grounds. It would be clearer if (c)(4) were deleted and the rules were stated in a separate subsection for cases where the taxpayer challenges an assessment on both the grounds listed in AS 43.05.242(b)

Senator Robin Taylor, Chair

April 21, 1996

Page 2

and other grounds. Also, if the "other" grounds involve a dispute of material fact, would the direct appeal be precluded under AS 43.05.242(c)(1)?

I will be out of the office Monday April 22 with knee surgery, but you can discuss any of the above with Jack Chenoweth, the drafter assigned to this bill.

PF:glc

96-239.glc

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR \_\_\_\_\_

TO: CSHB 341(FIN), Work draft D (Apr. 16, 1996)

1 Page 19, lines 10 - 16:

2 Delete all material and insert:

3 "•Sec. 17. TRANSITIONAL PROVISIONS. (a) The remedies and procedures provided  
 4 by this Act apply to all revenue tax appeals in which a request for formal hearing is filed  
 5 with the Department of Revenue on or after the effective date of this Act. The remedies and  
 6 procedures existing before the effective date of this Act apply to all revenue tax appeals in  
 7 which a request for formal hearing was filed with the Department of Revenue before the  
 8 effective date of this Act, unless all of the parties to an appeal agree in writing to the  
 9 remedies and procedures established by this Act."

10 Page 22, lines 6-10:

11 Delete all material and renumber remaining section accordingly.

1 (d) An appeal of the informal conference decision under this section is  
 2 exclusive, and the taxpayer electing to appeal under this section may not pursue an  
 3 appeal under AS 43.05.241 or pursue any other action under another statute.

4 (e) When an appeal is taken under this section, the taxpayer shall be given  
 5 access to the file of the department in the matter for preparation of the appeal.

6 (f) In an appeal under this section, the amount due shall be paid within ~~30~~<sup>60</sup> days  
 7 after the date of the service of the informal conference decision. In place of payment  
 8 of the amount due, the taxpayer may file a bond with the court or otherwise obtain  
 9 relief from payment in accordance with the Alaska Rules of Appellate Procedure.

10 (g) Venue for an appeal filed under this section shall be set under rules  
 11 adopted by the supreme court.

12 (h) If it is determined that appeal was improperly filed under this section, or if  
 13 the court rules against the taxpayer, the appeal shall be transferred to the office of tax  
 14 appeals for further proceedings under AS 43.05.400 - 43.05.499 without prejudice to  
 15 any claims or defenses of the taxpayer that were barred from being raised in court by  
 16 (b)(4) of this section."

17 Page 19, lines 14-21:

18 Delete:

19 "A return made and subscribed by the department in accordance with this  
 20 section is presumed sufficient for all legal purposes. However, nothing  
 21 prevents a taxpayer from presenting evidence or other information on informal  
 22 conference [APPEAL] under AS 43.05.240 or in an appeal under AS

1           43.05.241 or 43.05.242 in order to rebut the presumed sufficiency of a return  
2           made and subscribed by the department, nor does the presumption of  
3           sufficiency alter the parties' respective burdens of proof once the taxpayer has  
4           presented evidence or other material information to rebut that presumption."

5           Insert:

6           "An assessment or [A] return [MADE AND] subscribed by the department in  
7           accordance with this section is presumed sufficient for all legal purposes.  
8           However, nothing prevents a taxpayer from presenting evidence or other  
9           information in [ON] an informal conference [APPEAL] under AS 43.05.240  
10          or in an appeal under AS 43.05.241 in order to rebut the presumed  
11          sufficiency of a return or assessment [MADE AND] subscribed by the  
12          department, nor does the presumption of sufficiency alter the parties'  
13          respective burdens of proof once the taxpayer has presented evidence or other  
14          material information to rebut that presumption."

15 Page 19, line 28:

16          Insert:

17                \*\*Sec. 13. AS 43.05.275 is amended by adding new subsections:  
18                (c) A taxpayer who has filed a return, paid the full amount due on the  
19                return, and made a claim under this section may, without exhausting  
20                administrative remedies, file an action in superior court to recover on the  
21                claim if the sole ground for appeal is that a tax statute is:  
22                        (1) violative of the United States Constitution;

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- (2) violative of the Alaska Constitution;
  - (3) preempted by federal statute, regulation or treaty.
- (d) An action under (c) may not be brought if
- (1) there is a dispute of material fact;
  - (2) a factual record is necessary to decide the appeal;
  - (3) development of a factual record will render it unnecessary to reach a question of constitutional law or federal preemption; or
  - (4) the taxpayer challenges the assessment of the tax on a ground other than one listed in (c)."

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 341(FIN)

1 Page 19, lines 6 - 22:

2 Delete all material and insert:

3 **\*\* Sec. 17. TRANSITIONAL PROVISIONS.** (a) The remedies and procedures provided  
4 by this Act apply to all revenue tax appeals in which, under AS 43.05.240(b), a person has  
5 applied to the Department of Revenue and requested a formal hearing before the effective  
6 date of this Act. However, a person who has applied to the Department of Revenue and  
7 requested a formal hearing before the effective date of this Act may elect by giving written  
8 notice to the commissioner within 45 days from the enactment of this Act to use the remedies  
9 and procedures existing immediately before the enactment of this Act."

10 Reletter the following subsections accordingly.

11 Page 20, following line 11:

12 Insert a new bill section to read:

13 **\*\* Sec. 18. RETROSPECTIVE EFFECT.** (a) The provisions of sec. 17(a) of this Act  
14 apply to persons who, under AS 43.05.240(b), have applied before the effective date of this  
15 Act to the Department of Revenue and requested a formal hearing to resolve a challenge to  
16 the action of the Department of Revenue in fixing the amount of a tax or in imposing a  
17 penalty.

18 (b) This section is set out to meet the requirements of AS 01.10.090(c)."

19 Renumber the following bill section accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSHB 341(FIN)

1 Page 2, lines 4 - 9:

2 Delete all material and insert:

3 "Sec. 43.05.400. OFFICE OF TAX APPEALS ESTABLISHED. The office  
4 of tax appeals is established within the department."

5 Page 2, lines 21 - 29:

6 Delete all material and insert:

7 "Sec. 43.05.410. APPOINTMENT; TERM; REAPPOINTMENT. (a) The  
8 governor shall appoint a chief administrative law judge of the office of tax appeals  
9 from among two or more persons nominated as most qualified for that position by the  
10 Alaska Judicial Council. If one or more additional administrative law judges are  
11 established in the office of tax appeals, the governor shall appoint additional  
12 administrative law judges from among two or more persons nominated as most  
13 qualified for each position by the judicial council.

14 (b) The initial term for an administrative law judge, including the chief  
15 administrative law judge, is two years. The governor may reappoint a person  
16 appointed to serve as an administrative law judge, including the chief administrative  
17 law judge, to subsequent terms of four years each.

18 (c) A reappointment of a person appointed to serve as an administrative law  
19 judge, including the chief administrative law judge, shall be made as follows:

20 (1) if an administrative law judge seeks reappointment, the governor  
21 shall notify the judicial council of the impending end of the administrative law judge's  
22 term at least 120 days before the end of the term;

23 (2) in reviewing the performance of the administrative law judge, the  
24 judicial council shall collect and review sufficient information to thoroughly evaluate

1 the administrative law judge; the review by the judicial council must include a  
2 published notice requesting written comments on the administrative law judge whose  
3 performance is being evaluated;

4 (3) the judicial council shall review the performance of the  
5 administrative law judge and submit by at least 30 days before the vacancy a  
6 recommendation to the governor on whether the administrative law judge should be  
7 reappointed;

8 (4) the governor has discretion to reappoint or not reappoint an  
9 administrative law judge whom the judicial council recommends for reappointment,  
10 but the governor may not reappoint a person as administrative law judge if the judicial  
11 council recommends against that reappointment.

12 (d) Nominations made by the Alaska Judicial Council under (a) of this section  
13 shall be made after the judicial council has reviewed the qualifications of applicants  
14 for administrative law judges. The judicial council shall collect and review sufficient  
15 information to thoroughly evaluate each applicant. The review by the judicial council  
16 must include a published notice requesting written comments on the list of applicants  
17 for an administrative law judge opening.

18 (e) In reviews by the Alaska Judicial Council under (c) and (d) of this section,

19 (1) comments, references, or survey responses that request  
20 confidentiality, or for which the judicial council promises confidentiality, shall be kept  
21 confidential, but the judicial council shall provide the applicant for administrative law  
22 judge or administrative law judges seeking reappointment a summary of the concerns  
23 raised in the comments, references, and survey responses that are kept confidential;

24 (2) the judicial council has authority to review confidential Alaska Bar  
25 Association files, including bar complaint files, on applicants for administrative law  
26 judge and on administrative law judges seeking reappointment whose applications or  
27 reappointment evaluations are under review; the judicial council shall maintain the  
28 confidentiality of these files; and

29 (3) the judicial council shall send to the governor with its nominees  
30 or reappointment recommendations all nonconfidential materials that it gathers on  
31 applicants for administrative law judge and administrative law judges seeking  
32 reappointment whose applications or reappointment evaluations are under review, and

1 shall provide the governor with summaries of concerns raised in the comments,  
2 references, and survey responses that are kept confidential."

3 Page 3, line 20:

4 Delete "board"

5 Insert "chief administrative law judge"

6 Page 7, line 16:

7 Delete "by the full board"

8 Page 7, line 29:

9 Delete "board"

10 Insert "administrative law judge"

11 Page 7, line 31:

12 Delete "board"

13 Insert "administrative law judge"

14 Page 8, line 5:

15 Delete "board"

16 Insert "administrative law judge"

17 Page 8, line 7:

18 Delete "board"

19 Insert "administrative law judge"

20 Page 8, line 8:

21 Delete "board"

22 Insert "administrative law judge"

23 Page 8, line 15:

24 Delete "board"

- 1           Insert "administrative law judge"
  
- 2   Page 10, lines 4 and 5:
- 3           Delete all material.
  
- 4   Renumber the following paragraphs accordingly.



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12:19am

March 28, 1996

Telecopy Cover Sheet

Please notify us immediately if any pages are not received.

To: RICK HUNDRUP, KENT DAWSON

Company: UCM, DE

Telecopier Number: 1-907-683-2253; 1-907-463-3922

From: *Donna S. Romano*

Office Code: Charge Code:

Number of Pages Including this Cover Page:

Transmitted by: \_\_\_\_\_

Message:

Rick and Kent:

I tried to reach you guys a couple of times in Juneau this afternoon, but you were obviously busy influencing legislation!

I've read HB 341 and it appears that the Legislature is trying to further formalize the Formal Hearing process - perhaps in light of Knowles laying off all the hearing officers immediately upon taking office??? The process probably works as well as can be expected with hearing officers being "appointed" by one of the parties to the dispute. It would be nice if we could get some of the more egregious problems with the current system addressed in this legislation. There are two that I can think of:

1. There should be a provision to have the Administrative Law Judge, who is appointed by the governor, also approved by the people at a general election after his/her first two-year term and each subsequent four-year term - similar to what's done with Superior Court Judges.

It would also be nice if the private sector, could have some influence over who gets appointed

Page 2.

as Administrative Law Judges

2. I strongly feel that a provision **MUST** be included to allow waiver of interest against the taxpayers when the State or the Administrative Law Judge are shown to be at fault for unnecessarily or negligently prolonging the Informal and Formal hearing process. As you both know, UCM currently has two issues at the Formal Hearing level that are seriously beyond the statutory limitation for rendering decisions and have been, in our opinion, completely bungled by the State. Still, the State continues to only adopt the portions of the IRC that it finds useful and refuses to consider abatement of interest assessed against the taxpayer in such circumstances. This is ludicrous and seriously needs addressing.

I also called Mike Stone at KPMG to get his input, but he hadn't even heard about this legislation until I called him.

Rick, I'll give you a call on Thursday morning to discuss this further.

Regards,  
Donna

# LEGAL SERVICES

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Juneau, Alaska 99801-2105


## MEMORANDUM

April 13, 1996

**SUBJECT:** Amendment Z.3 to CSIB 341 (Finance)  
(Work Order No. 9-LS1129/Z.3)

**TO:** Senator Robin Taylor, Chair  
Senate Judiciary Committee

**FROM:** Jack Chenoweth  
Legislative Counsel



To the enclosed amendment:

I've redrafted what was provided from your office to make use of the terms that appear in AS 43.05.240(b), the source of the current authority to seek and obtain a formal hearing.

It seems to me that this revision of the transitional provision may have retroactive effect in that it certainly changes the procedures that are to be followed by, and may affect rights of, an aggrieved taxpayer, especially one who fails to opt to protect those rights under current law by doing something within 45 days. Against that possibility, the committee may wish to add something along the lines of:

\* **Sec. 18. RETROSPECTIVE EFFECT.** (a) The provisions of sec. 17 of this Act apply to persons who, under AS 43.05.240(b), have applied before the effective date of this Act to the Department of Revenue and requested a formal hearing to resolve a challenge to the action of the Department of Revenue in fixing the amount of a tax or in imposing a penalty.

(b) This section is set out to meet the requirements of AS 01.10.090(c).

In addition, I have these questions:

1. How may a person elect within 45 days to use the old remedies and procedures? The amendment doesn't indicate what the person is to do.
2. On the amendment's second line, what is a "revenue tax appeal"? I am aware that the term comes down to you from the House-passed bill, but I don't know whether it is intended

Senator Robin Taylor

April 13, 1996

Page 2

to differentiate among kinds of appeals for some reason. It seems to me that it would be clearer to draft this having reference to the language of the comparable statute, "to all challenges to the action by the Department of Revenue in fixing the amount of a tax or in imposing a penalty" so that the transitional provision more closely parallels current law and leaves no question as to whether it is or is not applicable to a particular matter.

3. Do you understand that, as this amendment is presented, the provisions of current sec. 17(c), explicitly authorizing the interim use of administrative law judges appointed for revenue appeals to consider other kinds of administrative adjudications, will be removed from the bill? You may want to do that, but I don't want the committee to reach that end by oversight.

JBC:lmb

96-079.lmb

Enclosure

2

**Table 1**  
**STATE APPEAL PROCEDURES**

**STATES WHERE TAX AUTHORITIES**  
**CONDUCT TAX APPEALS<sup>1</sup>**

<b>State or Tax Jurisdiction</b>	<b>Taxpayer Must Use Tax Forum<sup>2</sup></b>	<b>Taxpayer May Skip Tax Forum- Taxpayer Must Prepay All Taxes<sup>3</sup></b>	<b>Taxpayer May Skip Tax Forum- No Prepayment; May Require Bond</b>
California (Sales and Use)		X	
Idaho (Larger cases) <sup>4</sup>	X		
Mississippi	X		
Nevada		X	
Oklahoma	X		
South Carolina	X		
Utah	X		
Alabama			X
Alaska	X		
Arkansas		X	
Colorado		X	
Florida			X
Georgia			X
Illinois		X	
Maine		X	
Nebraska		X	
New Mexico		X	
North Dakota	X		

Table 1 (Continued)

State or Tax Jurisdiction	Taxpayer Must Use Tax Forum <sup>1</sup>	Taxpayer May Skip Tax Forum- Taxpayer Must Prepay All Taxes <sup>3</sup>	Taxpayer May Skip Tax Forum- No Prepayment; May Require Bond
Rhode Island	X		
South Dakota		X	
Tennessee			X
Texas	X		
Vermont		X	
Virginia		X	
West Virginia	X		
<b>Total 25 Jurisdictions</b>	<b>10</b>	<b>11</b>	<b>4</b>

1. Includes states in which review is conducted in Tax Commissions and in Tax Departments.

2. Taxpayer must try the case first before the designated forum before appealing. Some states provide for a second *de novo* trial at another level of appeal.

3. Many states that permit direct *de novo* review in court do so only when the taxpayer pays its tax and then, within the applicable statute of limitations, sues for a refund. Additionally, the avenue is often not permitted when the tax authority has issued an assessment against the taxpayer.

4. In Idaho, all cases first are heard before the Idaho Tax Commission, within the state tax department. Cases involving \$25,000 or less may appeal to the Idaho Board of Tax Appeals (see other chart). Larger cases must appeal directly to court.

**Table 2**  
**STATE APPEAL PROCEDURES**  
**STATES WITH INDEPENDENT FORUMS<sup>1</sup>**

State or Tax Jurisdiction	Taxpayer Must Use Tax Forum <sup>2</sup>	Taxpayer May Skip Tax Forum- Taxpayer Must Prepay All Taxes <sup>3</sup>	Taxpayer May Skip Tax Forum- No Prepayment; May Require Bond
Arizona	X		
Hawaii	X		
Indiana	X		
New Jersey	X		
Oregon	X		
Connecticut	X		
District of Columbia	X		
Maryland	X		
Minnesota		X	
Michigan	X		
New York State	X		
New York City	X		
California (Income and Excise)		X	
Delaware	X		
Idaho (Less than \$25,000)			X
Iowa	X		
Kansas		X	
Kentucky	X		
Louisiana <sup>4</sup>	X		

Table 2 (Continued)

State or Tax Jurisdiction	Taxpayer Must Use Tax Forum <sup>2</sup>	Taxpayer May Skip Tax Forum- Taxpayer Must Prepay All Taxes <sup>3</sup>	Taxpayer May Skip Tax Forum- No Prepayment; May Require Bond
Massachusetts		X	
Missouri (Income)		X	
Missouri (Sales and Use)	X		
Montana	X		
New Hampshire			X
North Carolina		X	
Ohio	X		
Pennsylvania	X		
Washington		X	
Wisconsin	X		
Wyoming	X		
<b>Total 30 Jurisdictions</b>	<b>21</b>	<b>7</b>	<b>2</b>
<b>Alaska: CSHB 341 (Without Amendment)</b>			<b>X</b>

1. "Independent forums" include Tax Courts and Tax Tribunals within the Judicial Branch, as well as Executive Branch Courts, Tribunals and Boards, so long as they are outside the tax collective agency.

2. Taxpayer must try the case first before the designated forum before appealing. Some states provide for a second *de novo* trial at another level of appeal.

3. Many states that permit *direct de novo* review in court only when the taxpayer pays its tax and then, within the applicable statute of limitations, sues for a refund. Additionally, *direct de novo* is often not permitted when the tax authority has issued an assessment against the taxpayer.

4. In Louisiana, the taxpayer can go directly to the District Court, but the review is on the record, not *de novo*. Further, the tax agency can file suit directly in District Court.

**TESTIMONY OF THE  
ALASKA OIL AND GAS ASSOCIATION  
TO THE SENATE JUDICIARY COMMITTEE  
REGARDING HOUSE BILL NO. 341**

April 12, 1996

Good afternoon, Mr. Chairman and Members of the Judiciary Committee. My name is Dan Seckers, and I am the chairman of the Tax Committee of the Alaska Oil and Gas Association ("AOGA"). AOGA is a trade association whose 19 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska. We are grateful for this opportunity to offer our comments, which reflect the unanimous consensus of the Tax Committee.

The present tax appeals process is, we believe, seriously flawed in practice and denies taxpayers the opportunity to have their tax appeals heard and decided by a truly independent and impartial tribunal. House Bill 341 as passed by the House would significantly reform this process by establishing a forum outside the Department of Revenue, and independent of it, where taxpayers' appeals would be heard, tried and decided. The Bill would also clarify the standards to be used in reviewing the claims and positions asserted by the Department against taxpayers, while ensuring that the Department's judgment will not be overturned in matters where discretion has been legally vested in it, so long as it has acted reasonably in the exercise of that discretion. The Bill would promote greater efficiency and speed in tax appeals by providing for greater control over the "discovery" process, which has been an area of abuse in the past.

The great majority of the provisions in CSHB 341 (Finance) reflects consensus not only within the industry, but also between the industry and the Department of Revenue. However, there are two significant areas in the Bill which the Department is still opposing and which we support — namely, legislative confirmation of the administrative law judges who would hear tax appeals, and the option for taxpayers to proceed directly to Superior Court instead of the administrative law judges. Let me address both these areas.

1. Legislative confirmation of the administrative law judges.

AOGA supports legislative confirmation of the administrative law judges. These people may decide cases involving tens or even hundreds of millions of dollars in tax claims, and their decisions could affect all Alaskan taxpayers. So it is essential that they be qualified, capable and fair.

To achieve this, AOGA believes there are three essential elements in the process by which these administrative law judges will be appointed. First, there must be an opportunity for taxpayers and others to comment on the qualifications of a potential appointee before his or her appointment becomes final. Without this, someone could be named by the governor without knowing that the person is biased or otherwise ill-suited for the position, until the appointment has already been made. Second, the process of appointing the administrative law judges must be a public and open process. And third, there must be some independent body or entity in the process to act as a check on the Executive Branch's otherwise unlimit-

ed discretion in making these appointments. Having such a check prevents an improper influence that the Executive Branch might otherwise have over an administrative law judge if it could hold out the lure of appointment or reappointment to that person. We are not saying that this has ever happened, nor that we believe it is likely to happen. But the point is, it could happen. By having an independent body involved, even the possibility of this happening is removed, since the Executive Branch would no longer be able to "deliver" on such a deal on its own.

Legislative confirmation provides all three of these essential elements in the appointment process, and therefore AOGA supports it.

When the Bill was before the House Finance Committee, the Department of Revenue proposed an alternative to legislative confirmation, which would run the appointments through the Alaska Judicial Council in a manner similar to that used in appointing judges to the state courts. A revised, more explicit proposal was presented as an amendment to the Bill on behalf of the Department by Representative Kay Brown during the Finance Committee's last hearing on HB 341.

At the time the Judicial Council approach was considered in the House, the individual members of the AOGA Tax Committee had not had sufficient time to review and consider it. However, we do have an AOGA position on it now.

AOGA believes that, properly framed, the Judicial Council approach can be a reasonable alternative to legislative confirmation. We have developed an amendment to HB 341 embodying this alternative approach, and a copy of it is attached to the written copies of this testimony. We offer this amendment to you as a possible compromise of the issue, should you find a compromise to be desirable.

Our amendment follows very closely the one that Representative Brown offered on behalf of the Department of Revenue in the House Finance Committee. In fact, there are only two differences between them. The first — in lines 9-12 on page 1 of the attachment — is really only a technical amendment in the second sentence in proposed AS 43.05.410(a), clarifying that there is no requirement to create additional administrative law judge positions besides the chief, but if additional positions are created, then the governor must choose each of them from a slate of nominees presented by the Judicial Council, the same as he must do in choosing the chief administrative law judge under the first sentence of that subsection.

The second difference is also technical in nature. Proposed AS 43.05.410(c)(4) in Representative Brown's version said, "the governor has the discretion to accept or reject the judicial council's recommendation on the administrative law judge's reappointment." Our concern over this particular language relates to the situation where the Judicial Council recommends against the reappointment of an incumbent administrative law judge. On the face of it, Representative Brown's language allows for the possibility that a governor might reject the Council's negative recommendation and reappoint the administrative law judge anyway. We do not believe this was intended, and our language (p. 2, lines 11-14 of the attachment) makes it clear that a person cannot be reappointed if the Judicial Council recommends against it.

We endorse this alternative approach because it, too, would provide for 1) an opportunity to comment before the appointment becomes final, 2) an open and public process, and 3) an independent body to act as a check on the Executive Branch — which are the three elements of the appointment process that we believe are essential if it is to work properly.

Let me make clear what our current endorsement of the Judicial Council approach means. For one thing, it does not mean we are withdrawing our endorsement of the legislative confirmation approach. Rather, it means that the legislative confirmation language currently in the Bill is just as acceptable to us as the alternative language we are offering this Committee in the attached amendment. Either one will satisfy our concerns, and we have no preference which one you choose, so long as this legislation is not jeopardized as a result. Although Governor Knowles himself has not said he would veto this Bill over the issue of legislative confirmation, you know the Department of Revenue is opposed to it, which means the possibility of a veto over this issue cannot be totally ignored. Yet on the other hand, it is very understandable to us that the Legislature might want to keep legislative confirmation in this Bill, instead of using the Judicial Council. Since we want tax-appeal reform this year and can accept either alternative as currently drafted, we defer to the judgment of you in the Legislature as to which approach should be in this Bill.

## 2. Option of going directly to court.

The second provision opposed by the Department of Revenue in the Bill as passed by the House is the one providing for the option of proceeding directly to Superior Court instead of to the new administrative law judges.

This option was not something that AOGA proposed; however, we have found merit in this proposal and accordingly endorse it.

Although we agree with the Administration that most taxpayers will prefer the tax expertise and procedural rules of the new system of administrative law judges, there may be times when it would be more efficient and expedient to proceed directly to court. For example, when it is clear that a particular issue will likely be appealed to the Superior Court and beyond, the taxpayer may prefer to proceed directly to court to avoid the time and expense of going first to an administrative law judge and then to court.

Or, if a dispute involves issues that an administrative law judge cannot rule on, such as constitutional issues, it would make much more sense to allow a direct appeal to the forum where those issues can be dealt with. Otherwise, they could well end up having to be litigated twice — once before the administrative law judge anyway, in order to preserve the right to argue those issues later in the appeal, and then later a second time in court.

On February 29, Mr. Paul Frankel, a general recognized expert in the area of state tax dispute resolution procedures, appeared before a joint hearing of the House Judiciary and Finance Committees. As Mr. Frankel mentioned in his testimony during that joint hearing, the federal system offers taxpayers a choice of forums. In addition, more than one half of the states provide such an option.

Superior Court judges are competent professionals who have responsibility for hearing very complex cases, such as royalty and commercial litigation. In addition, under current law, Superior Court judges review the formal hearing decisions of the Department of Revenue and, under this Bill, would review the decisions of the administrative law judges.

The option would also not cost the state additional money and may in fact result in reduced expenditures in some instances since an election to go directly to Superior Court would eliminate review of an administrative law judge's decision by the Superior Court. This Bill also clarifies that the standards of review to be used by Superior Court judges under this option would be the same as under the administrative law judge system.

By making this option available in Alaska, the State is saying to taxpayers that it is committed to ensuring that the tax appeals process is fair. If any taxpayer has a residual concern about the independence of the administrative law judges, the taxpayer has the other option. This check and balance safeguards the fairness and independence of the process.

But I would repeat that we expect the option of going directly to court to be one that is used only on an exceptional basis. Having a choice to go either to an administrative law judge or to court will provide a balance between the two forums and will aid each other in arriving at fair, impartial decisions. One with technical expertise and the other with judicial wisdom.

While confirmation and the option to go directly to Superior Court are the only major unresolved issues in the Bill, we continue to have some concerns over the transition provisions in it. Both AOGA and the Department of Revenue agree in principle that taxpayers who are still in the preliminary stages of the old formal hearing process should be allowed to use the new procedures, provided that doing so would not entail an undue amount of wasted or duplicative time and effort. Although we have been unable to reach agreement with the Department on the precise wording of such a rule, we will continue to work on various options for an appropriate transition rule.

In conclusion, let me emphasize that this is an excellent Bill. Our focus in this testimony on the few remaining areas of disagreement must not detract from the fact that there is a great deal more consensus and compromise in the Bill than controversy. It embodies a fair and balanced approach toward the process of adjudicating tax appeals, and promises to be faster and more efficient than the present system. CSHB 341 (Finance) truly is reform legislation, and its enactment will lay the foundation for Alaska's competitive investment climate in the future for economic development.

On behalf of the members of AOGA, thank you again for this opportunity to testify.

AOGA DRAFT AMENDMENT TO CSHB 341(FIN)  
ALTERNATIVE TO LEGISLATIVE CONFIRMATION  
OF TAX-APPEAL ADMINISTRATIVE LAW JUDGES

AMENDMENT

OFFERED IN THE SENATE \_\_\_\_\_ COMMITTEE

BY SENATOR \_\_\_\_\_

TO: CSHB 341(FIN)

1 Page 2, lines 4 - 9

2 Delete all material and insert:

3 "Sec. 43.05.400. OFFICE OF TAX APPEALS ESTABLISHED. The office of tax  
4 appeals is established within the department."

5 Page 2, lines 21 - 29

6 Delete all material and insert:

7 "Sec. 43.05.410. APPOINTMENT; TERM; REAPPOINTMENT. (a) The governor  
8 shall appoint a chief administrative law judge of the office of tax appeals from among two or  
9 more persons nominated as most qualified for that position by the Alaska Judicial Council. In  
10 the event one or more additional administrative law judge positions are established in the office  
11 of tax appeals, the governor shall appoint additional administrative law judges from among two  
12 or more persons nominated as most qualified for each position by the judicial council.

13 "(b) The initial term for an administrative law judge, including the chief administrative  
14 law judge, is two years. The governor may reappoint a person appointed to serve as an  
15 administrative law judge, including the chief administrative law judge, to subsequent terms of  
16 four years each.

17 "(c) A reappointment of a person appointed to serve as an administrative law judge,  
18 including the chief administrative law judge, shall be made as follows:

**AOGA DRAFT AMENDMENT TO CSHB 341(FIN)  
ALTERNATIVE TO LEGISLATIVE CONFIRMATION  
OF TAX-APPEAL ADMINISTRATIVE LAW JUDGES**

1           “(1) if an administrative law judge seeks reappointment, the governor shall notify  
2 the judicial council of the impending end of the administrative law judge's term at least 120  
3 days before the end of the term;

4           “(2) in reviewing the performance of the administrative law judge, the judicial  
5 council shall collect and review sufficient information to thoroughly evaluate the administrative  
6 law judge; the review by the judicial council must include a published notice requesting written  
7 comments on the administrative law judge whose performance is being evaluated;

8           “(3) the judicial council shall review the performance of the administrative law  
9 judge and submit by at least 30 days before the vacancy a recommendation to the governor on  
10 whether the administrative law judge should be reappointed;

11           “(4) the governor has the discretion to reappoint or not reappoint an administrative  
12 law judge whom the judicial council recommends for reappointment, but if the judicial council  
13 recommends against the reappointment of an administrative law judge, that person shall not be  
14 reappointed.

15           “(d) Nominations made by the Alaska Judicial Council under (a) of this section shall be  
16 made after the judicial council has reviewed the qualifications of applicants for administrative  
17 law judges. The judicial council shall collect and review sufficient information to thoroughly  
18 evaluate each applicant. The review by the judicial council must include a published notice  
19 requesting written comments on the list of applicants for an administrative law judge opening.

20           “(e) In reviews by the Alaska Judicial Council under (c) and (d) of this section,

21           “(1) comments, references, or survey responses that request confidentiality, or for  
22 which the judicial council promises confidentiality, shall be kept confidential, but the judicial  
23 council shall provide the applicant for administrative law judge or administrative law judges

**AOGA DRAFT AMENDMENT TO CSHB 341(FIN)  
ALTERNATIVE TO LEGISLATIVE CONFIRMATION  
OF TAX-APPEAL ADMINISTRATIVE LAW JUDGES**

1 seeking reappointment a summary of the concerns raised in the comments, references, and  
2 survey responses that are kept confidential;

3           “(2) the judicial council has authority to review confidential Alaska Bar  
4 Association files, including bar complaint files, on applicants for administrative law judge and  
5 on administrative law judges seeking reappointment whose applications or reappointment  
6 evaluations are under review; the judicial council shall maintain the confidentiality of these files;  
7 and

8           “(3) the judicial council shall send to the governor with its nominees or  
9 reappointment recommendations all nonconfidential materials that it gathers on applicants for  
10 administrative law judge and administrative law judges seeking reappointment whose  
11 applications or reappointment evaluations are under review, and shall provide the governor  
12 with summaries of concerns raised in the comments, references, and survey responses that are  
13 kept confidential.”

14 Page 3, line 20

15 Delete "board" and insert "chief administrative law judge"

16 Page 7, line 16

17 Delete "board" and insert "administrative law judge"

18 Page 7, line 29

19 Delete "board" and insert "administrative law judge"

20 Page 7, line 31

21 Delete "board" and insert "administrative law judge"

22 Page 8, line 5

**AOGA DRAFT AMENDMENT TO CSHB 341(FIN)  
ALTERNATIVE TO LEGISLATIVE CONFIRMATION  
OF TAX-APPEAL ADMINISTRATIVE LAW JUDGES**

- 1 Delete "board" and insert "administrative law judge"
- 2 Page 8, line 7
- 3 Delete "board" and insert "administrative law judge"
- 4 Page 8, line 8
- 5 Delete "board" and insert "administrative law judge"
- 6 Page 8, line 15
- 7 Delete "board" and insert "administrative law judge"
- 8 Page 8, line 5
- 9 Delete "board" and insert "administrative law judge"
- 10 Page 8, line 5
- 11 Delete "board" and insert "administrative law judge"
- 12 Page 8, line 5
- 13 Delete "board" and insert "administrative law judge"
- 14 Page 8, line 5
- 15 Delete "board" and insert "administrative law judge"
- 16 Page 8, line 5
- 17 Delete "board" and insert "administrative law judge"
- 18 Page 8, line 5
- 19 Delete "board" and insert "administrative law judge"
- 20 Page 10, lines 4 - 5
- 21 Delete all material and renumber the remaining paragraphs in lines 6 - 26 accordingly

DEPARTMENT OF REVENUE  
EXPLANATION FOR PROPOSED MODIFICATIONS OF CSHB 341  
(April 11, 1996)

The Department of Revenue, working with the Department of Law, has provided two suggested amendments to CSHB 341 (Fin) (March 20, 1996).

1. Deletion of direct appeal to superior court

An essential feature for the resolution of tax disputes is that the person who hears the taxpayer's de novo appeal should have tax expertise. Tax laws can be complex and arcane; tax disputes can be extremely document-intensive and time-consuming to try. We know that tax decisions of this state will be vastly superior if cases are tried first by administrative law judges with tax expertise, and then appealed on an administrative record to a superior court judge. Superior court judges have many demands upon their time, not the least of which is a burgeoning criminal caseload. We cannot expect that superior court judges will be able in every case to provide the attention and expertise that can be achieved by requiring that de novo hearings of tax appeals take place before ALJs familiar with the law and issues.

2. Appointment of ALJs upon nomination by the Judicial Council

We believe it is better for ALJs to be appointed by the governor from a list of nominees provided by the Alaska Judicial Council, rather than the current proposal of a Board of Tax Appeals subject to confirmation. The Judicial Council is well-suited to this task, and can help ensure the expertise, independence and objectivity that both the taxpayers and the administration want to see in the new Office of Tax Appeals. The council consists of seven members: the chief justice of the Alaska Supreme Court, three non-attorneys confirmed by the Legislature, and three attorneys appointed by the Alaska Bar Association.

We think that legislative confirmation could inject unnecessary controversy into the selection of ALJs, and that the fiscal impact of creating a new board is both unnecessary and avoidable. Under the approach we recommend, taxpayers will have input in the appointment and reappointment process through comments submitted to the Judicial Council.

A M E N D M E N T

OFFERED IN THE SENATE  
TO: CSHB 341(FIN)

BY SENATOR \_\_\_\_\_

1 Page 11, line 19, through page 12, line 1:

2 Delete all material.

3 Renumber the following bill sections accordingly.

4 Page 12, line 18:

5 Delete "AS 43.05.240, 43.05.241, or 43.05.242"

6 Insert "AS 43.05.240 or AS 43.05.241"

7 Page 15, line 31:

8 Delete "new sections"

9 Insert "a new section"

10 Page 16, line 5, through page 17, line 4:

11 Delete all material.

12 Page 17, line 14:

13 Delete "or 43.05.242"

14 Page 17, line 31:

15 Delete "or 43.05.242"

16 Page 19, line 17:

17 Delete "sec. 10"

18 Insert "sec. 9"

A M E N D M E N T

OFFERED IN THE SENATE  
TO: CSHB 341(FIN)

BY SENATOR \_\_\_\_\_

1 Page 2, lines 4 - 9:

2 Delete all material and insert:

3 "Sec. 43.05.400. OFFICE OF TAX APPEALS ESTABLISHED. The  
4 office of tax appeals is established within the department."

5 Page 2, lines 21-29:

6 Delete all material and insert:

7 "Sec. 43.05.410. APPOINTMENT; TERM; REAPPOINTMENT. (a)  
8 The governor shall appoint a chief administrative law judge of the office of tax  
9 appeals from among two or more persons nominated as most qualified for that  
10 position by the Alaska Judicial Council. The governor may appoint additional  
11 administrative law judges from among two or more persons nominated as most  
12 qualified for each position by the judicial council.

13 (b) The initial term for an administrative law judge, including the chief  
14 administrative law judge, is two years. The governor may reappoint a person  
15 appointed to serve as an administrative law judge, including the chief  
16 administrative law judge, to subsequent terms of four years each.

17 (c) A reappointment of a person appointed to serve as an administrative  
18 law judge, including the chief administrative law judge, shall be made as follows:

19 (1) if an administrative law judge seeks reappointment, the

1 governor shall notify the judicial council of the impending end of the  
2 administrative law judge's term at least 120 days before the end of the term;

3 (2) in reviewing the performance of the administrative law judge,  
4 the judicial council shall collect and review sufficient information to thoroughly  
5 evaluate the administrative law judge; the review by the judicial council must  
6 include a published notice requesting written comments on the administrative law  
7 judge whose performance is being evaluated;

8 (3) the judicial council shall review the performance of the  
9 administrative law judge and submit by at least 30 days before the vacancy a  
10 recommendation to the governor on whether the administrative law judge should  
11 be reappointed;

12 (4) the governor has the discretion to accept or reject the judicial  
13 council's recommendation on the administrative law judge's reappointment.

14 (d) Nominations made by the Alaska Judicial Council under (a) of this  
15 section shall be made after the judicial council has reviewed the qualifications of  
16 applicants for administrative law judges. The judicial council shall collect and  
17 review sufficient information to thoroughly evaluate each applicant. The review  
18 of the judicial council must include a published notice requesting written  
19 comments on the list of applicants for an administrative law judge opening.

20 (e) In reviews by the Alaska Judicial Council under (c) and (d) of this  
21 section,

22 (1) comments, references, or survey responses that request