

HOUSE BILL NO. 231

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GARA, Petersen

Introduced: 4/7/11

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to tax credits applicable to the oil and gas production tax based on**
2 **capital expenditures, including capital expenditures incurred for a production facility**
3 **for new oil and gas production; relating to the alternative tax credit for oil and gas**
4 **exploration; and providing for an effective date."**

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

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 SHORT TITLE. This Act may be known as The Alaska Oil Production Enhancement
9 Act.

10 * **Sec. 2.** AS 43.20.043(g) is amended to read:

11 (g) A taxpayer that obtains a credit for a qualified capital investment or cost
12 incurred for qualified services under this section may not also claim a tax credit or
13 royalty modification for the same qualified capital investment or cost incurred for
14 qualified services under AS 38.05.180(i), AS 41.09.010, AS 43.55.023, [OR]

1 43.55.025, or 43.55.026. However, a taxpayer may elect not to obtain a credit under
 2 this section in order to qualify for a credit provided under AS 38.05.180(i),
 3 AS 41.09.010, AS 43.55.023, [OR] 43.55.025, or 43.55.026.

4 * **Sec. 3.** AS 43.55.023(a) is amended to read:

5 (a) A producer or explorer may take a tax credit for a qualified capital
 6 expenditure as follows:

7 (1) except as limited by (p) of this section, notwithstanding that a
 8 qualified capital expenditure may be a deductible lease expenditure for purposes of
 9 calculating the production tax value of oil and gas under AS 43.55.160(a), unless a
 10 credit for that expenditure is taken under AS 38.05.180(i), AS 41.09.010,
 11 AS 43.20.043, [OR] AS 43.55.025, or 43.55.026, a producer or explorer that incurs a
 12 qualified capital expenditure may also elect to apply a tax credit against a tax levied by
 13 AS 43.55.011(e) in the amount of 20 percent of that expenditure; however, not more
 14 than half of the tax credit may be applied for a single calendar year;

15 (2) a producer or explorer may take a credit for a qualified capital
 16 expenditure incurred in connection with geological or geophysical exploration or in
 17 connection with an exploration well only if the producer or explorer

18 (A) agrees, in writing, to the applicable provisions of
 19 AS 43.55.025(f)(2);

20 (B) submits to the Department of Natural Resources all data
 21 that would be required to be submitted under AS 43.55.025(f)(2).

22 * **Sec. 4.** AS 43.55.023(d) is amended to read:

23 (d) Except as limited by (i) and (p) of this section, a person that is entitled to
 24 take a tax credit under this section that wishes to transfer the unused credit to another
 25 person or obtain a cash payment under AS 43.55.028 may apply to the department for
 26 transferable tax credit certificates. An application under this subsection must be in a
 27 form prescribed by the department and must include supporting information and
 28 documentation that the department reasonably requires. The department shall grant or
 29 deny an application, or grant an application as to a lesser amount than that claimed and
 30 deny it as to the excess, not later than 120 days after the latest of (1) March 31 of the
 31 year following the calendar year in which the qualified capital expenditure or carried-

1 forward annual loss for which the credit is claimed was incurred; (2) the date the
 2 statement required under AS 43.55.030(a) or (e) was filed for the calendar year in
 3 which the qualified capital expenditure or carried-forward annual loss for which the
 4 credit is claimed was incurred; or (3) the date the application was received by the
 5 department. If, based on the information then available to it, the department is
 6 reasonably satisfied that the applicant is entitled to a credit, the department shall issue
 7 the applicant two transferable tax credit certificates, each for half of the amount of the
 8 credit. The credit shown on one of the two certificates is available for immediate use.
 9 The credit shown on the second of the two certificates may not be applied against a tax
 10 for a calendar year earlier than the calendar year following the calendar year in which
 11 the certificate is issued, and the certificate must contain a conspicuous statement to
 12 that effect. A certificate issued under this subsection does not expire.

13 * **Sec. 5.** AS 43.55.023(g) is amended to read:

14 (g) The issuance of a transferable tax credit certificate under (d) **of this**
 15 **section** or **former** (m) of this section or the purchase of a certificate under
 16 AS 43.55.028 does not limit the department's ability to later audit a tax credit claim to
 17 which the certificate relates or to adjust the claim if the department determines, as a
 18 result of the audit, that the applicant was not entitled to the amount of the credit for
 19 which the certificate was issued. The tax liability of the applicant under
 20 AS 43.55.011(e) and 43.55.017 - 43.55.180 is increased by the amount of the credit
 21 that exceeds that to which the applicant was entitled, or the applicant's available valid
 22 outstanding credits applicable against the tax levied by AS 43.55.011(e) are reduced
 23 by that amount. If the applicant's tax liability is increased under this subsection, the
 24 increase bears interest under AS 43.05.225 from the date the transferable tax credit
 25 certificate was issued. For purposes of this subsection, an applicant that is an explorer
 26 is considered a producer subject to the tax levied by AS 43.55.011(e).

27 * **Sec. 6.** AS 43.55.023(l) is amended to read:

28 (l) **Except as limited by (p) of this section, a** [A] producer or explorer may
 29 apply for a tax credit for a well lease expenditure incurred [IN THE STATE SOUTH
 30 OF 68 DEGREES NORTH LATITUDE] after **June 30, 2011, for a lease or property**
 31 **with commercial production before January 1, 2012** [JUNE 30, 2010], as follows:

1 (1) notwithstanding that a well lease expenditure [INCURRED IN
 2 THE STATE SOUTH OF 68 DEGREES NORTH LATITUDE] may be a deductible
 3 lease expenditure for purposes of calculating the production tax value of oil and gas
 4 under AS 43.55.160(a), unless a credit for that expenditure is taken under (a) of this
 5 section, AS 38.05.180(i), AS 41.09.010, AS 43.20.043, or AS 43.55.025, a producer
 6 or explorer that incurs a well lease expenditure **before January 1, 2020,** [IN THE
 7 STATE SOUTH OF 68 DEGREES NORTH LATITUDE] may elect to apply a tax
 8 credit against a tax levied by AS 43.55.011(e) in the amount of 40 percent of **the**
 9 **expenditures during a calendar year that exceed the average annual well-related**
 10 **expenditures for calendar years 2008, 2009, and 2010; the producer or explorer**
 11 **shall submit the amount of well-related expenditures for each of calendar years**
 12 **2008, 2009, and 2010 at the time an election is made to apply the credit**
 13 **authorized by this subsection** [THAT EXPENDITURE; A TAX CREDIT UNDER
 14 THIS PARAGRAPH MAY BE APPLIED FOR A SINGLE CALENDAR YEAR];

15 (2) a producer or explorer may take a credit for a well lease
 16 expenditure incurred [IN THE STATE SOUTH OF 68 DEGREES NORTH
 17 LATITUDE] in connection with geological or geophysical exploration or in
 18 connection with an exploration well only if the producer or explorer

19 (A) agrees, in writing, to the applicable provisions of
 20 AS 43.55.025(f)(2); and

21 (B) submits to the Department of Natural Resources all data
 22 that would be required to be submitted under AS 43.55.025(f)(2).

23 * **Sec. 7.** AS 43.55.023(n) is amended to read:

24 (n) For the purposes of (l) [AND (m)] of this section, a well lease expenditure
 25 [INCURRED IN THE STATE SOUTH OF 68 DEGREES NORTH LATITUDE] is a
 26 lease expenditure that is

27 (1) directly related to an exploration well, a stratigraphic test well, a
 28 producing well, or an injection well other than a disposal well, [LOCATED IN THE
 29 STATE SOUTH OF 68 DEGREES NORTH LATITUDE,] if the expenditure is a
 30 qualified capital expenditure and an intangible drilling and development cost
 31 authorized under 26 U.S.C. (Internal Revenue Code), as amended, and 26 C.F.R.

1 1.612-4, regardless of the elections made under 26 U.S.C. 263(c); in this paragraph, an
 2 expenditure directly related to a well includes an expenditure for well sidetracking,
 3 well deepening, well completion or recompletion, or well workover, regardless of
 4 whether the well is or has been a producing well; or

5 (2) an expense for seismic work conducted within the boundaries of a
 6 production or exploration unit.

7 * **Sec. 8.** AS 43.55.023 is amended by adding a new subsection to read:

8 (p) The amount of credit for a capital expenditure under (a) or (l) of this
 9 section for an expenditure that is also a lease expenditure under AS 43.55.165 is
 10 reduced by the amount necessary so that the tax benefit percentage is not more than 85
 11 percent of the capital expenditure. The amount of credit for a capital expenditure
 12 under (a) or (l) of this section that may not be taken because of the limitation in this
 13 subsection may not be applied in a later calendar year under (c) of this section and
 14 may not be included in an application for a tax credit certificate under (d) of this
 15 section. In this subsection, "tax benefit percentage" means the sum of the average
 16 monthly tax rate under AS 43.55.011(e) and (g) for the calendar year in which the
 17 credit is taken and the percentage of the capital expenditure that may be taken as a
 18 credit under (a) or (l) of this section.

19 * **Sec. 9.** AS 43.55.025(a) is amended to read:

20 (a) Subject to the terms and conditions of this section **and except as limited**
 21 **by (n) of this section**, a credit against the production tax levied by AS 43.55.011(e) is
 22 allowed for exploration expenditures that qualify under (b) of this section in an
 23 amount equal to **50** [ONE OF THE FOLLOWING:

24 (1) 30] percent of the total exploration expenditures **except that the**
 25 **amount of the credit is** [THAT QUALIFY ONLY UNDER (b) AND (c) OF THIS
 26 SECTION;

27 (2) 30 PERCENT OF THE TOTAL EXPLORATION
 28 EXPENDITURES THAT QUALIFY ONLY UNDER (b) AND (d) OF THIS
 29 SECTION;

30 (3) 40 PERCENT OF THE TOTAL EXPLORATION
 31 EXPENDITURES THAT QUALIFY UNDER (b), (c), AND (d) OF THIS SECTION;

1 (4) 40 PERCENT OF THE TOTAL EXPLORATION
2 EXPENDITURES THAT QUALIFY ONLY UNDER (b) AND (e) OF THIS
3 SECTION; OR

4 (5)] 80, 90, or 100 percent, or a lesser amount described in (l) of this
5 section, of the total exploration expenditures described in (b)(1) and (2) of this section
6 and not excluded by (b)(3) and (4) of this section that qualify only under (l) of this
7 section.

8 * **Sec. 10.** AS 43.55.025(b) is amended to read:

9 (b) To qualify for the production tax credit under (a) of this section, an
10 exploration expenditure must be incurred for work performed after June 30, 2008, and
11 before July 1, 2021 [2016], and

12 (1) may be for seismic or other geophysical exploration costs not
13 connected with a specific well;

14 (2) if for an exploration well,

15 (A) must be incurred by an explorer that holds an interest in the
16 exploration well for which the production tax credit is claimed;

17 (B) may be for either a well that encounters an oil or gas
18 deposit or a dry hole;

19 (C) must be for a well that has been completed, suspended, or
20 abandoned at the time the explorer claims the tax credit under (f) of this
21 section; and

22 (D) must be for goods, services, or rentals of personal property
23 reasonably required for the surface preparation, drilling, casing, cementing,
24 and logging of an exploration well, and, in the case of a dry hole, for the
25 expenses required for abandonment if the well is abandoned within 18 months
26 after the date the well was spudded;

27 (3) may not be for administration, supervision, engineering, or lease
28 operating costs; geological or management costs; community relations or
29 environmental costs; bonuses, taxes, or other payments to governments related to the
30 well; costs, including repairs and replacements, arising from or associated with fraud,
31 wilful misconduct, gross negligence, criminal negligence, or violation of law,

1 including a violation of 33 U.S.C. 1319(c)(1) or 1321(b)(3) (Clean Water Act); or
 2 other costs that are generally recognized as indirect costs or financing costs; and

3 (4) may not be incurred for an exploration well or seismic exploration
 4 that is included in a plan of exploration or a plan of development for any unit before
 5 May 14, 2003.

6 * **Sec. 11.** AS 43.55.025(k) is amended to read:

7 (k) Subject to the terms and conditions of this section, if a claim is filed under
 8 (f)(1) of this section before January 1, 2021 [2016], a credit against the production tax
 9 levied by AS 43.55.011(e) is allowed in an amount equal to five percent of an eligible
 10 expenditure under this subsection incurred for seismic exploration performed before
 11 July 1, 2003. To be eligible under this subsection, an expenditure must

12 (1) have been for seismic exploration that

13 (A) obtained data that the commissioner of natural resources
 14 considers to be in the best interest of the state to acquire for public distribution;
 15 and

16 (B) was conducted outside the boundaries of a production unit;
 17 however, the amount of the expenditure that is otherwise eligible under this
 18 section is reduced proportionately by the portion of the seismic exploration
 19 activity that crossed into a production unit; and

20 (2) qualify under (b)(3) of this section.

21 * **Sec. 12.** AS 43.55.025 is amended by adding a new subsection to read:

22 (n) Except for a credit for an exploration expenditure described in (l) of this
 23 section, the amount of credit for an exploration expenditure under (a) of this section
 24 for an expenditure that is also a lease expenditure under AS 43.55.165 is reduced by
 25 the amount necessary so that the tax benefit percentage is not more than 85 percent of
 26 the exploration expenditure. Except for a credit, other than a credit for an exploration
 27 expenditure described in (l) of this section, the amount of credit for an exploration
 28 expenditure under (a) of this section that may not be taken because of the limitation in
 29 this subsection may not be transferred, conveyed, or sold under (g) of this section. In
 30 this subsection, "tax benefit percentage" means the sum of the average monthly tax
 31 rate under AS 43.55.011(e) and (g) for the calendar year in which the credit is taken

1 and the percentage of the exploration expenditure, other than an exploration
 2 expenditure described in (l) of this section, that may be taken as a credit under (a) of
 3 this section.

4 * **Sec. 13.** AS 43.55 is amended by adding a new section to read:

5 **Sec. 43.55.026. Production facility cost credit.** (a) This section applies to a
 6 credit for a qualified production facility expenditure

7 (1) incurred before the date of production of oil or gas in paying
 8 quantities that is taxable under AS 43.55.011(e);

9 (2) for a lease or property that, as of December 31, 2010, is not or
 10 previously had not been within a unit or produced oil or gas in paying quantities; and

11 (3) is not within the Point Thomson unit as that unit existed on the
 12 effective date of this section.

13 (b) Except as limited by (g) of this section, the amount of the credit under this
 14 section is equal to 50 percent of the qualified production facility expenditures that are
 15 incurred after the completion of the first well drilled that discovers a pool capable of
 16 commercial production from the lease or property and before the commencement of
 17 production in paying quantities. The department, in consultation with the

18 (1) Alaska Oil and Gas Conservation Commission, shall determine the
 19 date on which the first well drilled discovered a pool capable of production from a
 20 lease or property for which the credit is taken; and

21 (2) Department of Natural Resources, shall determine the date of the
 22 commencement of production in paying quantities from the lease or property for
 23 which the credit is taken.

24 (c) The credit under this section may be applied against the tax due under
 25 AS 43.55.011(e) during the two-year period immediately following the date of the
 26 commencement of production in paying quantities.

27 (d) A qualified production facility expenditure that is taken as a credit under
 28 this section may not be used as an expenditure for which a credit may be taken under
 29 AS 43.20.043 or AS 43.55.023. A credit under AS 43.55.023 for a qualified
 30 production facility expenditure may not be taken against the tax due under
 31 AS 43.55.011(e) during the same month in which a credit is taken or purchased by the

1 department under this section.

2 (e) A credit or portion of a credit under this section may not be used to reduce
3 a taxpayer's tax liability under AS 43.55.011(e) below zero for any calendar month. A
4 person eligible for the credit under this section that does not take the credit within the
5 two-year period immediately following the date of the commencement of production
6 in paying quantities may apply to the department for a cash payment under
7 AS 43.55.028. An application under this subsection must be in a form prescribed by
8 the department and must include supporting information and documentation that the
9 department reasonably requires. The department shall grant or deny an application, or
10 grant an application as to a lesser amount than that claimed and deny it as to the
11 excess, not later than 120 days after the date the department receives the application.
12 If, based on the information then available to it, the department is reasonably satisfied
13 that the applicant is entitled to a payment, the department shall issue the cash payment
14 or a lesser amount after applying all or a portion of the credit to any outstanding
15 unpaid balance of a tax owed by the applicant under this title.

16 (f) The department shall adopt regulations describing the procedures for
17 determining the amount of the credit, record keeping, verification of the accuracy of
18 the credit claimed, and other regulations necessary to administer this section.

19 (g) The amount of credit for a qualified production facility expenditure under
20 this section for an expenditure that is also a lease expenditure under AS 43.55.165 is
21 reduced by the amount necessary so that the tax benefit percentage is not more than 85
22 percent of the qualified production facility expenditure. The amount of credit for a
23 qualified production facility expenditure under this section that may not be taken
24 because of the limitation in this subsection may not be included in an application for a
25 cash payment under (e) of this section. In this subsection, "tax benefit percentage"
26 means the sum of the average monthly tax rate under AS 43.55.011(e) and (g) for the
27 calendar year in which the credit is taken and the percentage of the qualified
28 production facility expenditure that may be taken as a credit under this section.

29 (h) In this section,

30 (1) "production facility" means a facility that is upstream from the
31 point of production and is a flow station, a gathering center, a pump station, a storage

1 tank, and a related appurtenance, or other facility that gathers, cleans, dehydrates,
 2 conditions, or stores crude oil, natural gas, or associated hydrocarbons and that is
 3 located on a lease or property leased from the state;

4 (2) "production in paying quantities" means production of oil and gas
 5 in quantities sufficient to recover the cost of operating, although the quantity may be
 6 insufficient to recover the cost of drilling;

7 (3) "qualified production facility expenditure" means an expenditure
 8 for a production facility that may be recognized as a qualified capital expenditure as
 9 defined in AS 43.55.023.

10 * **Sec. 14.** AS 43.55.028(a) is amended to read:

11 (a) The oil and gas tax credit fund is established as a separate fund of the state.
 12 The purpose of the fund is to purchase transferable tax credit certificates issued under
 13 AS 43.55.023 and production tax credit certificates issued under AS 43.55.025 and to
 14 pay **for unused credits under AS 43.55.026 that qualify for a cash payment and**
 15 refunds claimed under AS 43.20.046.

16 * **Sec. 15.** AS 43.55.028(e) is amended to read:

17 (e) The department, on the written application of a person to whom a
 18 transferable tax credit certificate has been issued under AS 43.55.023(d) or **former**
 19 **AS 43.55.023(m)** [(m)] or to whom a production tax credit certificate has been issued
 20 under AS 43.55.025(f), may use available money in the oil and gas tax credit fund to
 21 purchase, in whole or in part, the certificate if the department finds that

22 (1) the calendar year of the purchase is not earlier than the first
 23 calendar year for which the credit shown on the certificate would otherwise be allowed
 24 to be applied against a tax;

25 (2) [REPEALED

26 (3) REPEALED

27 (4)] the applicant does not have an outstanding liability to the state for
 28 unpaid delinquent taxes under this title;

29 **(3)** [(5)] the applicant's total tax liability under AS 43.55.011(e), after
 30 application of all available tax credits, for the calendar year in which the application is
 31 made is zero;

1 **(4)** [(6)] the applicant's average daily production of oil and gas taxable
 2 under AS 43.55.011(e) during the calendar year preceding the calendar year in which
 3 the application is made was not more than 50,000 BTU equivalent barrels; and

4 **(5)** [(7)] the purchase is consistent with this section and regulations
 5 adopted under this section.

6 * **Sec. 16.** AS 43.55.028(g) is amended to read:

7 (g) The department may adopt regulations to carry out the purposes of this
 8 section, including standards and procedures to allocate available money among
 9 applications for purchases **and payments for unused credits** under this chapter and
 10 claims for refunds under AS 43.20.046 when the total amount of the applications for
 11 purchase and claims for refund exceed the amount of available money in the fund. The
 12 regulations adopted by the department may not, when allocating available money in
 13 the fund under this section, distinguish an application for the purchase of a credit
 14 certificate issued under **former** AS 43.55.023(m), **a payment for an unused credit**
 15 **that qualifies for a cash payment under AS 43.55.026**, or a claim for refund under
 16 AS 43.20.046.

17 * **Sec. 17.** AS 43.55.028 is amended by adding a new subsection to read:

18 (j) The department, on the written application of a person for the payment of
 19 an unused credit that qualifies for a cash payment under AS 43.55.026 after the end of
 20 the two-year period immediately following the date of the commencement of
 21 production in paying quantities, may use available money in the oil and gas tax credit
 22 fund to purchase, in whole or in part, the certificate if the department finds that

23 (1) the applicant does not have an outstanding liability to the state for
 24 unpaid delinquent taxes under this title;

25 (2) the applicant's total tax liability under AS 43.55.011(e) for the
 26 calendar year in which the application is made, after application of all available tax
 27 credits, is zero; and

28 (3) the purchase is consistent with this section and regulations adopted
 29 under this section.

30 * **Sec. 18.** AS 43.55.180(a) is amended to read:

31 (a) The department shall study

1 (1) the effects of the provisions of this chapter on oil and gas
2 exploration, development, and production in the state, on investment expenditures for
3 oil and gas exploration, development, and production in the state, on the entry of new
4 producers into the oil and gas industry in the state, on state revenue, and on tax
5 administration and compliance, giving particular attention to the tax rates provided
6 under AS 43.55.011, the tax credits provided under AS 43.55.023 - 43.55.026
7 [AS 43.55.023 - 43.55.025], and the deductions for and adjustments to lease
8 expenditures provided under AS 43.55.160 - 43.55.170; and

9 (2) the effects of the tax rates under AS 43.55.011(i) on state revenue
10 and on oil and gas exploration, development, and production on private land, and the
11 fairness of those tax rates for private landowners.

12 * **Sec. 19.** AS 43.55.023(m), 43.55.025(d), 43.55.025(e), and 43.55.025(m) are repealed.

13 * **Sec. 20.** This Act takes effect January 1, 2012.