

HOUSE BILL NO. 331

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/7/18

Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing the Alaska Tax Credit Certificate Bond Corporation; relating to**
2 **purchases of tax credit certificates; relating to overriding royalty interest agreements;**
3 **and providing for an effective date."**

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

5 * **Section 1.** AS 36.30.850(b) is amended by adding new paragraphs to read:

6 (49) contracts of the Alaska Tax Credit Certificate Bond Corporation
7 under AS 37.18.010 - 37.18.900;

8 (50) overriding royalty interest agreements under AS 44.37.230.

9 * **Sec. 2.** AS 37 is amended by adding a new chapter to read:

10 **Chapter 18. Alaska Tax Credit Certificate Bond Corporation.**

11 **Sec. 37.18.010. Alaska Tax Credit Certificate Bond Corporation.** There is
12 established the Alaska Tax Credit Certificate Bond Corporation. The corporation is a
13 public corporation and government instrumentality in the Department of Revenue
14 managed by a board of directors. The purpose of the corporation is to finance

1 purchases and payments under AS 43.55.028 of transferable tax credit certificates
 2 issued under AS 43.55.023, production tax credit certificates issued under
 3 AS 43.55.025, and payments claimed under AS 43.20.046, 43.20.047, or 43.20.053.

4 **Sec. 37.18.020. Board of directors.** The directors of the corporation are the
 5 commissioner of commerce, community, and economic development, the
 6 commissioner of administration, and the commissioner of revenue. If a director is
 7 absent or otherwise unable to act, the director's designee in the department shall act as
 8 a director of the corporation in the director's place.

9 **Sec. 37.18.030. Bond authorization.** (a) The issuance and sale of bonds by the
 10 corporation is authorized as provided in this section for purposes of financing
 11 purchases and payments under AS 43.55.028, including the costs of issuance and
 12 administration. The net proceeds of the sale of the bonds remaining after payment of
 13 costs of issuance and administration shall be transferred to the commissioner of
 14 revenue for disbursement under AS 43.55.028 for purchases or payments. Accrued
 15 interest paid on the bonds shall be paid into the reserve fund. The authorization to
 16 issue bonds in this section expires on December 31, 2021.

17 (b) The total unpaid principal amount of bonds, including refunding bonds,
 18 but excluding refunded bonds, issued by the corporation for the purposes of financing
 19 purchases and payments under AS 43.55.028 may not exceed \$1,000,000,000. The
 20 bonds do not constitute a general obligation of the state and are not state debt within
 21 the meaning of art. IX, sec. 8, Constitution of the State of Alaska. Authorization by the
 22 voters of the state or the legislature is not required.

23 (c) The corporation may enter into agreements with other state agencies as
 24 necessary or convenient to implement this section and AS 37.18.

25 (d) The corporation may contract for the services of underwriters, paying
 26 agents, trustees, escrow agents, bond printers, rating agencies, bond insurance, credit
 27 enhancement providers, accountants, financial advisors, disclosure counsel, and bond
 28 counsel, and other services as are necessary or desirable to accomplish the bond
 29 issuance and sale.

30 **Sec. 37.18.040. Reserve fund.** (a) The corporation may establish and maintain
 31 a special fund called the Alaska Tax Credit Certificate Bond Corporation reserve fund

1 in which there shall be deposited or transferred

2 (1) all money appropriated by the legislature for the purpose of the
3 fund in accordance with the provisions of (g) of this section;

4 (2) all proceeds of bonds required to be deposited in the fund by terms
5 of a contract between the corporation and its bondholders or a resolution of the
6 corporation with respect to the proceeds of bonds;

7 (3) all other money appropriated by the legislature to the reserve fund;
8 and

9 (4) any other money or funds of the corporation that it decides to
10 deposit in the fund.

11 (b) Subject to the provisions of (h) of this section, money in the reserve fund
12 shall be held and applied solely to the payment of the interest on and principal of
13 bonds of the corporation as the interest and principal become due and payable to the
14 retirement of bonds, or for disbursement by the commissioner of revenue for
15 purchases or payments under AS 43.55.028. Money may not be withdrawn if a
16 withdrawal would reduce the amount in the reserve fund to an amount less than the
17 required debt service reserve except for payment of interest then due and payable on
18 bonds and the principal of bonds then maturing and payable and for the retirement of
19 bonds in accordance with the terms of a contract between the corporation and its
20 bondholders and for which payments of other money of the corporation is not then
21 available.

22 (c) Money in the reserve fund in excess of the required debt service reserve as
23 defined in (b) of this section, whether because of investment or otherwise, may be
24 withdrawn at any time by the corporation for disbursement by the commissioner of
25 revenue for purchases or payments under AS 43.55.028 or transferred to another fund
26 or account of the corporation subject to the provision of (h) of this section.

27 (d) Money in the reserve fund may be invested in the same manner and on the
28 same conditions as permitted for investment of funds belonging to the state or held in
29 the treasury under AS 37.10.070; however, the corporation may agree with the
30 bondholders to further limit these investments.

31 (e) For purposes of valuation, investments in the reserve fund shall be valued

1 at par or, if purchased at less than par, at cost unless otherwise provided by resolution
2 of the corporation. Valuation on a particular date shall include the amount of interest
3 then earned or accrued to that date on the money or investments in the reserve fund.

4 (f) Notwithstanding any other provision of this chapter, bonds may not be
5 issued by the corporation unless there is in the reserve fund the required debt service
6 reserve for all bonds then issued and outstanding and for the bonds to be issued;
7 however, the corporation may satisfy this requirement by depositing as much of the
8 proceeds of the bonds to be issued, on their issuance, as is needed to meet the required
9 debt service reserve or by funding the reserve fund with cash, a surety bond, letter of
10 credit, or other instrument in the face amount necessary to meet the required debt
11 service reserve. The corporation may at any time issue its bonds or notes for the
12 purpose of increasing the amount in the reserve fund to the required debt service
13 reserve, or to meet whatever higher or additional reserve that may be fixed by the
14 corporation with respect to the fund.

15 (g) To assure the maintenance of the required debt service reserve in the
16 reserve fund, the legislature may appropriate annually to the corporation for deposit in
17 the fund the sum, certified by the chair of the corporation to the governor and to the
18 legislature, that is necessary to restore the fund to an amount equal to the required debt
19 service reserve. The chair annually, before January 30, shall make and deliver to the
20 governor and to the legislature a certificate stating the sum required to restore the fund
21 to that amount, and the certified sum may be appropriated and paid to the corporation
22 during the then current state fiscal year. Nothing in this subsection creates a debt or
23 liability of the state.

24 (h) All amounts received because of money appropriated to the reserve fund
25 shall be held and applied in accordance with (b) of this section.

26 (i) All references to the reserve fund in this section include special accounts
27 within the reserve fund that may be created by the corporation to secure the payment
28 of particular bonds.

29 (j) The commissioner of revenue may, subject to appropriation, lend surplus
30 money in the general fund to the corporation for deposit to any account in the reserve
31 fund in an amount equal to the required debt service reserve. The loans shall be made

1 on the terms and conditions that may be agreed on by the commissioner of revenue
2 and the corporation, including, without limitation, terms and conditions providing that
3 the loans need not be repaid until the obligations of the corporation secured and to be
4 secured by the account in the reserve fund are no longer outstanding.

5 (k) In this section, "required debt service reserve" means, on the date of
6 computation, the amount required to be on deposit in the reserve fund as provided by
7 resolution of the corporation.

8 **Sec. 37.18.050. Bond terms.** (a) The bonds may be issued and sold at public
9 or negotiated sale in the manner, in the amounts or series, and at the time or times that
10 the corporation determines the bonds, or each series of them, shall be sold at the price
11 and on the terms, conditions, and covenants set by the corporation after considering
12 market conditions. Interest rates may be fixed or variable.

13 (b) The bonds mature at the time or times fixed by the corporation. The bonds
14 may be subject to redemption before their fixed maturities, as determined by the
15 corporation, with or without a premium or premiums. The bonds may be in
16 denominations determined by the corporation; may be issued in fully or partially
17 registered form; must be payable as to principal and interest at the place or places
18 determined by the corporation; must be signed in the manner provided by the
19 corporation; and must be issued under and subject to the terms, conditions, covenants,
20 and protective features safeguarding payment of the bonds as found necessary by the
21 corporation. The corporation may obtain credit enhancement to provide liquidity or
22 security for the bonds, including, without limitation, bond insurance, letters of credit,
23 surety bonds, or standby bond purchase agreements, and may enter into agreements
24 with providers of such credit enhancement as may be necessary or desirable.

25 (c) If the corporation finds it reasonably necessary, the corporation may select
26 a trustee or trustees for the holders of the bonds, or any series of them, for the
27 safeguarding and disbursement of any of the money in the bond reserve fund or for
28 duties with respect to the enforcement, authentication, delivery, payment, and
29 registration of the bonds as the corporation may determine. The corporation shall fix
30 the rights, duties, powers, and obligations of the trustee or trustees.

31 (d) In its determination of all matters and questions relating to the issuance

1 and sale of the bonds and the fixing of their maturities, terms, conditions, and
 2 covenants as provided in (a) of this section, the decisions of the corporation shall be
 3 those that are reasonably necessary for the best interests of the state and its inhabitants
 4 and that will accomplish the most advantageous sale of the bonds. Decisions of the
 5 corporation, as expressed in a bond resolution, are final and are conclusively
 6 considered to comply with the requirements of this chapter.

7 **Sec. 37.18.060. Bond resolution.** The corporation shall authorize the issuance
 8 of bonds by adopting a resolution and shall prepare all other documents and
 9 proceedings necessary for the issuance, sale, and delivery of the bonds or any part or
 10 series of them. The bond resolution must fix the principal amount, denominations,
 11 date, maturities, manner of sale, place or places of payment, rights of redemption, if
 12 any, terms, form, conditions, and covenants of the bonds or each series of them.

13 **Sec. 37.18.070. Enforcement by bond owner.** (a) The owner or owners of not
 14 less than 10 percent, or a higher percentage as specified in the bond resolution, of the
 15 aggregate principal amount of any series or issue of bonds or the trustee for the owners
 16 of the bonds or any series of them may, by appropriate proceedings in state court,
 17 require and compel the transfer, setting aside, and payment of money and the
 18 enforcement of all of the terms, conditions, and covenants as required and provided in
 19 this chapter, as appropriate, and the bond resolution.

20 (b) A proceeding under (a) of this section may be commenced and conducted
 21 only in the Superior Court for the State of Alaska, First Judicial District at Juneau.

22 **Sec. 37.18.080. Purposes and sufficiency of revenue.** The proceeds of bonds
 23 may be used for the purposes described in AS 37.18.030 as appropriate. Bonds may
 24 not be issued unless the corporation first finds that the discount rate under
 25 AS 43.55.028(m) exceeds the true interest cost to be paid on the bonds by at least 1.5
 26 percent annually.

27 **Sec. 37.18.090. Refunding.** (a) The corporation may refund the bonds or any
 28 part of them at or before their maturities or redemption dates by the issuance of
 29 refunding bonds of the corporation if, in the opinion of the corporation, refunding is
 30 advantageous to and in the best interest of the corporation, the state, and its
 31 inhabitants.

(b) The issuance of refunding bonds need not be authorized by the voters of the state or by an act of the legislature. The corporation shall adopt the resolution or resolutions and prepare all other documents and proceedings necessary for the issuance, exchange or sale, and delivery of the refunding bonds. All provisions of this chapter are applicable to the refunding bonds and to the issuance, sale, or exchange of them, except as otherwise provided in this section.

(c) Refunding bonds may be issued in a principal amount sufficient to provide money for the advance or current refunding of all bonds to be refunded and interest on the refunded bonds and, in addition, for the payment of all costs of issuance and administration of the refunding bonds. These expenses also include the difference in amount between the par value of the refunding bonds and any amount less than par for which the refunding bonds are sold; the premium, if any, necessary to be paid to call or retire the outstanding bonds and the interest accruing on them to the date of the call or retirement; and other of these costs. The corporation is authorized to incur expenses to carry out this section.

(d) The corporation may contract with a refunding trustee to hold the proceeds of refunding bonds in trust until the proceeds, together with earnings on the proceeds, are applied to pay the principal of premium, if any, and interest on the bonds to be refunded. Until the refunding bond proceeds are applied, the proceeds may be invested in direct obligations of, or obligations guaranteed by, the United States or an agency or corporation of the United States whose obligations constitute direct obligations of, or obligations guaranteed by, the United States or other obligations as may be specified in the bond resolution.

Sec. 37.18.100. Bonds as legal investments. The bonds are legal investments for all banks, trust companies, savings banks, savings and loan associations, and other persons carrying on a banking business, all insurance companies and other persons carrying on an insurance business, and all executors, administrators, trustees, and other fiduciaries. The bonds may be accepted as security for deposits of all money of the state and its political subdivisions.

Sec. 37.18.800. Statutory construction. This chapter shall be liberally construed to carry out the purposes for which it was enacted.

1 **Sec. 37.18.810. Regulations.** The corporation may adopt regulations necessary
2 to implement the provisions of this chapter.

3 **Sec. 37.18.900. Definitions.** In this chapter,

4 (1) "bond resolution" means the resolution or resolutions adopted by
5 the corporation under AS 37.18.060 authorizing the issuance of bonds;

6 (2) "bonds" means the bonds authorized in this chapter;

7 (3) "corporation" means the Alaska Tax Credit Certificate Bond
8 Corporation created in AS 37.18.010;

9 (4) "costs of issuance and administration" means all costs associated
10 with issuance and administration of bonds and refunding bonds, including costs of
11 bond printing, official statements, financial advisors, travel costs, rating agencies,
12 bond insurance, letters and lines of credit for credit enhancement, underwriters,
13 remarketing agents, legal services, paying agents, bonds registrars, bond and escrow
14 trustees, arbitrage rebate, and all other costs, including administrative costs, both
15 direct and indirect;

16 (5) "department" means the Department of Revenue;

17 (6) "reserve fund" means the Alaska Tax Credit Certificate Bond
18 Corporation reserve fund established in AS 37.18.040.

19 * **Sec. 3.** AS 43.20.046(e) is amended to read:

20 (e) Subject to the requirements in AS 43.55.028 [AS 43.55.028(j)], the
21 department may use available money either in the oil and gas tax credit fund
22 established in AS 43.55.028 or disbursed to the commissioner from the Alaska Tax
23 Credit Certificate Bond Corporation reserve fund established in AS 37.18.040 for
24 purchases under AS 43.55.028 to make the refund applied for under (d) of this
25 section in whole or in part if the department finds that, after application of all available
26 tax credits, the claimant's total tax liability under this chapter for the calendar year in
27 which the claim is made is zero.

28 * **Sec. 4.** AS 43.20.047(e) is amended to read:

29 (e) Subject to the requirements in AS 43.55.028 [AS 43.55.028(j)], the
30 department may use money available either in the oil and gas tax credit fund
31 established in AS 43.55.028 or disbursed to the commissioner from the Alaska Tax

Credit Certificate Bond Corporation reserve fund established in AS 37.18.040 for purchases under AS 43.55.028 to make a refund or payment under (d) of this section in whole or in part if the department finds that, after application of all available tax credits, the claimant's total tax liability under this chapter for the calendar year in which the claim is made is zero.

* **Sec. 5.** AS 43.20.053(e) is amended to read:

(e) Subject to the requirements in **AS 43.55.028** [AS 43.55.028(j)], the department may use money available **either** in the oil and gas tax credit fund established in AS 43.55.028 **or disbursed to the commissioner from the Alaska Tax Credit Certificate Bond Corporation reserve fund established in AS 37.18.040 for purchases under AS 43.55.028** to make a refund or payment under (d) of this section in whole or in part if the department finds that, after application of all available tax credits, the claimant's total tax liability under this chapter for the calendar year in which the claim is made is zero.

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

(e) The department, on the written application of a person to whom a transferable tax credit certificate has been issued under AS 43.55.023(d) or former AS 43.55.023(m) for an expenditure incurred before July 1, 2017, or to whom a production tax credit certificate has been issued under AS 43.55.025(f) for an expenditure incurred before July 1, 2017, may use **either** available money in the oil and gas tax credit fund **or money disbursed to the commissioner** to purchase, in whole or in part, the certificate. The department may not purchase **with money from the oil and gas tax credit fund** a total of more than \$70,000,000 in tax credit certificates from a person in a calendar year. Before purchasing a certificate or part of a certificate, the department shall find that

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

(2) the application is not the result of the division of a single entity into multiple entities that would reasonably be expected to apply as a single entity if the \$70,000,000 limitation in this subsection did not exist;

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

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

(5) the purchase is consistent with this section and regulations adopted under this section.

* **Sec. 7.** AS 43.55.028(g) is amended to read:

(g) The department shall adopt regulations to carry out the purposes of this section, including standards and procedures to allocate available money among applications for purchases under this chapter and claims for refunds and payments under AS 43.20.046, 43.20.047, or 43.20.053 when the total amount of the applications for purchase and claims for refund exceed the amount of available money in the fund. The regulations adopted by the department

(1) may not, when allocating available money in the fund under this section, distinguish an application for the purchase of a credit certificate issued under former AS 43.55.023(m) or a claim for a refund or payment under AS 43.20.046, 43.20.047, or 43.20.053;

(2) must, when allocating available money in the fund under this section, grant a preference, between two applicants, to the applicant with a higher percentage of resident workers in the applicant's workforce, including workers employed by the applicant's direct contractors, in the state in the previous calendar year; in this paragraph, "resident worker" has the meaning given in AS 43.40.092(b);

(3) must, for a purchase from money in the fund, provide for the purchase of the amount equal to the first 50 percent of the credit repurchase limit for each person under (e) of this section at a rate of 100 percent of the value of the certificate or portion of the certificate requested to be purchased and the amount equal to the next 50 percent of the credit repurchase limit for each person under (e) of this section at a rate of 75 percent of the value of the certificate or portion of the certificate requested to be purchased.

1 * **Sec. 8.** AS 43.55.028(i) is amended to read:

2 (i) In this section,

3 **(1) "money disbursed to the commissioner" means money**
 4 **disbursed to the commissioner from the Alaska Tax Credit Certificate Bond**
 5 **Corporation reserve fund established in AS 37.18.040;**

6 **(2) "true interest cost" means the true interest cost of the bonds**
 7 **anticipated to be issued under AS 37.18 for the purchase in this section;**

8 **(3) "qualified capital expenditure" has the meaning given in**
 9 **AS 43.55.023.**

10 * **Sec. 9.** AS 43.55.028(j) is amended to read:

11 (j) If an applicant or claimant has an outstanding liability to the state directly
 12 related to the applicant's or claimant's oil or gas exploration, development, or
 13 production and the department has not previously reduced the amount paid to that
 14 applicant or claimant for a certificate or refund because of that outstanding liability,
 15 the department may purchase only that portion of a certificate or pay only that portion
 16 of a refund that exceeds the outstanding liability **regardless of whether the purchase**
 17 **is made with money from the fund or money disbursed to the commissioner.** After
 18 notifying the applicant or claimant, the department may apply the amount by which
 19 the department reduced its purchase of a certificate or payment for a refund because of
 20 an outstanding liability to satisfy the outstanding liability. Satisfaction of an
 21 outstanding liability under this subsection does not affect the applicant's ability to
 22 contest that liability. The department may enter into contracts or agreements with
 23 another department to which the outstanding liability is owed. In this subsection,
 24 "outstanding liability" means an amount of tax, interest, penalty, fee, rental, royalty, or
 25 other charge for which the state has issued a demand for payment that has not been
 26 paid when due and, if contested, has not been finally resolved against the state.

27 * **Sec. 10.** AS 43.55.028 is amended by adding new subsections to read:

28 (k) The department may negotiate a purchase under this section to be made
 29 from money disbursed to the commissioner. The department shall calculate the
 30 maximum amount for a purchase from money disbursed to the commissioner based on
 31 the calculations in (l) of this section. An applicant or claimant that has requested a

1 purchase by the department from the fund shall provide a notice of interest to the
 2 department by the date determined by the commissioner if the applicant or claimant is
 3 interested in an offer of purchase by the department from money disbursed to the
 4 commissioner. An applicant or claimant that requests a purchase from the fund on or
 5 after July 1, 2018, shall include any notice of interest in an offer of purchase by the
 6 department from money disbursed to the commissioner at the same time that the
 7 applicant or claimant requests a purchase by the department from the fund. The
 8 department may not use money disbursed to the commissioner for a purchase in this
 9 section if the applicant or claimant failed to provide the department with a notice of
 10 interest in an offer of purchase from money disbursed to the commissioner in the time
 11 provided in this subsection for that notice. A notice of interest in an offer of purchase
 12 from money disbursed to the commissioner must include all of the requests for
 13 purchase by the department under the fund made by the applicant or claimant and a
 14 statement of intent if the applicant intends to offer to meet any of the conditions in (m)
 15 of this section. An applicant or claimant may not include in a notice of interest any
 16 request for purchase by the department from the fund that could have been included in
 17 a previous notice of interest under this subsection. The department shall make an offer
 18 of purchase from money disbursed to the commissioner to any applicant or claimant
 19 that provided the department with a timely notice of interest in an offer of purchase
 20 from money disbursed to the commissioner. The time for the department to make an
 21 offer of purchase from money disbursed to the commissioner shall depend on the
 22 anticipated schedule for disbursement of money to the commissioner. An offer of
 23 purchase is conditioned on the disbursement of money to the commissioner. The
 24 applicant or claimant shall notify the department of acceptance of the offer of purchase
 25 not later than ten days after the date of the offer. A transferable tax credit certificate
 26 issued under AS 43.55.023, a production tax credit certificate issued under
 27 AS 43.55.025, and a refund or claim for payment under AS 43.20.046, 43.20.047, or
 28 43.20.053, is not eligible for purchase by the department with money disbursed to the
 29 commissioner if the applicant or claimant
 30 (1) failed to provide the department with a notice of interest in an offer
 31 of purchase from money disbursed to the commissioner in the time provided in this

1 subsection for that notice; or

2 (2) declined an offer of purchase by the department with money
3 disbursed to the commissioner for that transferable tax credit certificate issued under
4 AS 43.55.023, a production tax credit certificate issued under AS 43.55.025, or a
5 refund or claim for payment under AS 43.20.046, 43.20.047, or 43.20.053.

6 (l) The department shall calculate the maximum amount for a purchase from
7 money disbursed to the commissioner as provided in this subsection. The maximum
8 amount for a purchase is the sum of the assumed payment amounts for each year
9 discounted each year as provided in (m) of this section. The assumed payment amount
10 for each year is determined based on the assumed appropriations to the fund and the
11 assumed proration methodology for the requests for payment from the fund. The
12 assumed appropriation to the fund each year is the percentage provided under (c) of
13 this section of the total of all taxes levied by AS 43.55.011 as forecast by the
14 department before the application of any tax credits. The assumed proration
15 methodology for the requests for payment from the fund is that the department
16 allocated payments from the fund based on the date of the request for purchase from
17 the fund with requests received in same year allocated together with a priority in
18 allocation for payments to the earliest year. For purposes of the assumed proration
19 methodology, it is assumed that no purchases were made with money disbursed to the
20 commissioner.

21 (m) For purposes of the calculation in (l) of this section, the department shall
22 discount the assumed payment amount each year by a discount rate determined under
23 this subsection. Unless another discount rate in this subsection applies, a discount rate
24 of 10 percent a year applies to the assumed payment amount for a request for purchase
25 of a transferable tax credit certificate issued under AS 43.55.023 or a production tax
26 credit certificate issued under AS 43.55.025. The agreement of an applicant for a
27 discount rate in (1) - (3) of this subsection shall be consideration exclusively for the
28 amount by which the purchase exceeds the amount of the purchase in the absence of
29 the agreement. A discount rate based on the true interest cost plus 1.5 percent and is
30 less than ten percent applies each year to the assumed payment amount for a refund or
31 claim for payment under AS 43.20.046, 43.20.047, or 43.20.053. For the assumed

1 payment amount for a request for purchase of a transferable tax credit certificate
 2 issued under AS 43.55.023 or a production tax credit certificate issued under
 3 AS 43.55.025, a discount rate based on the true interest cost plus 1.5 percent and is
 4 less than ten percent applies each year

5 (1) for either a transferable tax credit certificate issued under
 6 AS 43.55.023 for which the applicant was required to submit data required under
 7 AS 43.55.025(f)(2) or a production tax credit certificate issued under AS 43.55.025, if
 8 the applicant for the purchase agrees as a condition of the purchase that the 10-year
 9 confidentiality period under AS 43.55.025(f)(2)(C)(ii) that would otherwise apply to
 10 the seismic data or other geophysical data is explicitly waived by the applicant;

11 (2) if the applicant, or an entity related to the applicant on the
 12 applicant's consent, and the Department of Natural Resources have agreed to an
 13 overriding royalty interest agreement under AS 44.37.230; or

14 (3) if the applicant commits to incur not later than 24 months after the
 15 purchase of qualified capital expenditures in an amount greater than or equal to the
 16 purchase amount provided

17 (A) the applicant provides evidence of the commitment to the
 18 department; and

19 (B) the commissioner approves the lower discount rate for the
 20 purchase.

21 (n) A transferable tax credit certificate issued under AS 43.55.023, a
 22 production tax credit certificate issued under AS 43.55.025, or a refund or claim for
 23 payment under AS 43.20.046, 43.20.047, or 43.20.053 purchased by the department
 24 with money disbursed to the commissioner is inapplicable against tax liability
 25 regardless of whether the purchase amount was less than the total amount requested
 26 for purchase.

27 * **Sec. 11.** AS 44.37 is amended by adding a new section to read:

28 **Article 4. Miscellaneous Provisions.**

29 **Sec. 44.37.230. Duties of the department with respect to purchases of tax**
 30 **credit certificates and overriding royalty interest agreements.** (a) The department
 31 shall consult with the Department of Revenue regarding the discount rate applicable

1 under AS 43.55.028(m).

2 (b) The department may enter into an overriding royalty interest agreement in
3 favor of the state with an applicant requesting a purchase by the Department of
4 Revenue under AS 43.55.028 from money disbursed to the commissioner from the
5 Alaska Tax Credit Certificate Bond Corporation reserve fund established in
6 AS 37.18.040 of either a transferable tax credit certificate issued under AS 43.55.023
7 or a production tax credit certificate issued under AS 43.55.025. The department may
8 enter into an overriding royalty interest agreement only if the anticipated net present
9 value from the agreement to the state is equal to or greater than the remainder of the
10 value of the tax credit certificate requested for purchase at the proposed lower discount
11 rate under AS 43.55.028(m)(2), subtracted from the value of the tax credit certificate
12 requested for purchase calculated in the absence of the agreement.

13 (c) An applicant requesting a lower discount rate under AS 43.55.028(m)(2)
14 shall submit a proposed overriding royalty interest agreement to the department. The
15 proposed agreement must include

16 (1) a description of the lease or leases subject to the proposed
17 agreement in which the applicant holds a working interest;

18 (2) the overriding royalty interest in oil produced from the lease or
19 leases offered to the state under the proposed agreement expressed as a percent of the
20 total oil produced from the lease or leases that does not exceed the working interest of
21 the applicant.

22 (d) The monthly payment to the state in an overriding royalty interest
23 agreement must be calculated by multiplying the prevailing value of the monthly oil
24 production by the product of the total monthly volume of oil production from the lease
25 or leases subject to the agreement multiplied by the percent of total oil production
26 offered to the state under the agreement. No deductions may be applied in this
27 payment calculation. The prevailing value of the oil shall be as determined and posted
28 by the Department of Revenue under AS 43.55 as provided in regulation.

29 (e) The amount of an underpayment or overpayment of a monthly payment for
30 a payment in an overriding royalty interest agreement bears interest in each calendar
31 quarter at the rate of 5.25 percentage points above the annual rate charged to member

1 banks for advances by the 12th Federal Reserve District as of the first day of that
2 calendar quarter, compounded quarterly as of the last day of that quarter.

3 (f) The department shall evaluate an offer for an overriding royalty interest
4 agreement by considering the following:

5 (1) the anticipated costs for issuance and administration for bonds
6 under AS 37.18 if the tax credit certificate was purchased with the proposed lower
7 discount rate under AS 43.55.028(m)(2);

8 (2) the production or projected production from the lease or leases
9 subject to the proposed agreement;

10 (3) the value or projected value of the oil produced from the lease or
11 leases subject to the proposed agreement;

12 (4) the timing for production from the lease or leases subject to the
13 proposed agreement;

14 (5) the likelihood of production from the lease or leases subject to the
15 proposed agreement;

16 (6) the existence and burdens of other interests on the lease or leases
17 subject to the proposed agreement;

18 (7) any cost data or financial information submitted with the offer or
19 requested by the department; and

20 (8) other information submitted with the offer or requested by the
21 department.

22 (g) The department may enter into agreements necessary to carry out the
23 purpose of this section including agreements to maintain the confidentiality of
24 information submitted to the department to evaluate an overriding royalty interest
25 agreement.

26 (h) The revenue from an overriding royalty interest agreement shall be
27 deposited into the general fund.

28 (i) In this section,

29 (1) "applicant" includes an entity related to the applicant on consent of
30 the applicant; and

31 (2) "department" means the Department of Natural Resources.

1 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 TRANSITION: REGULATIONS. The Department of Natural Resources and the
4 Department of Revenue may adopt regulations necessary to implement the changes made by
5 this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not
6 before the effective date of the law implemented by the regulation.

7 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 TRANSITION: RETROACTIVITY OF REGULATIONS. Notwithstanding any
10 contrary provision of AS 44.62.240, if the

11 (1) Department of Revenue expressly designates in a regulation that the
12 regulation applies retroactively, a regulation adopted by the Department of Revenue to
13 implement, interpret, make specific, or otherwise carry out this Act may apply retroactively to
14 the effective date of the law implemented by the regulation;

15 (2) Department of Natural Resources expressly designates in a regulation that
16 the regulation applies retroactively, a regulation adopted by the Department of Natural
17 Resources to implement, interpret, make specific, or otherwise carry out this Act may apply
18 retroactively to the effective date of the law implemented by the regulation.

19 * **Sec. 14.** This Act takes effect immediately under AS 01.10.070(c).