

HOUSE BILL NO. 391

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE CRAWFORD

Introduced: 2/23/10

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act providing a tax credit for an investment in a large industrial development that**
2 **may be taken against a liability for the tax on corporation income or the tax on oil and**
3 **gas production; and providing for an effective date."**

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

5 *** Section 1.** AS 43.20 is amended by adding a new section to article 1 to read:

6 **Sec. 43.20.046. Special industrial development tax credit.** (a) Subject to the
7 conditions and requirements of this section, an owner of an approved project may
8 apply for the following tax credits that may be taken against a tax due under this
9 chapter or AS 43.55.011(e):

10 (1) 25 percent of the qualified capital investment in a project after
11 approval of the project and for the five years immediately following the
12 commencement of operation of the project;

13 (2) in addition to the credit for a qualified capital investment in (1) of
14 this subsection,

1 (A) five percent of the qualified capital investment in the state
2 after approval of a project and before the five-year period immediately
3 following the commencement of operation of the project, the principal
4 facilities of which are outside of the boundaries of a municipality with a
5 population of more than 10,000 as determined by the most recent decennial
6 census taken by the United States Bureau of the Census;

7 (B) five percent of the qualified capital investment in the state
8 for a project that commits to purchase a minimum of 50,000,000 cubic feet a
9 day of natural gas produced in the state to be delivered during the first five
10 years of operation of the project;

11 (3) in addition to the credits for a qualified capital expenditure in (1)
12 and (2) of this subsection,

13 (A) 10 percent of the direct payroll expenses paid to resident
14 workers employed by the project during the five years immediately following
15 the commencement of operation of the project; in this subparagraph, "resident
16 worker" has the meaning given in AS 43.40.092(b);

17 (B) 20 percent of the direct expenditures for job training or
18 contributions to a job training program in the state, incurred or made after the
19 approval of the project under (b) of this section and for the five years
20 immediately following the commencement of operation of the project.

21 (b) The commissioner of commerce, community, and economic development
22 shall approve a project eligible for an investment that is the basis for a credit under
23 this section after making a written determination that the development and planned
24 operation is in the best interest of the state. To be eligible for consideration, the
25 proposed project must be classified to within manufacturing Sectors 32 or 33 in the
26 2007 North American Industry Classification System manual developed under the
27 auspices of the United States Office of Management and Budget. In making the
28 determination, the commissioner of commerce, community, and economic
29 development shall take into consideration the

30 (1) number of new jobs to be created during development and
31 construction of the project after approval and the number of permanent jobs after the

1 commencement of operation of the project;

2 (2) economic benefit of the project to persons in the state capable of
3 providing necessary goods and services during the development of the project and
4 during the first five years of operation of the project;

5 (3) use of a natural resource of the state as the raw material for value-
6 added manufacturing by the project;

7 (4) contribution by the project to the tax base of the state, including a
8 municipality or municipalities in the state;

9 (5) burden on existing infrastructure and the cost of improving the
10 infrastructure to meet the requirements of the project;

11 (6) economic life of the project; and

12 (7) other factors identified in a regulation adopted by the Department
13 of Commerce, Community, and Economic Development to implement this section.

14 (c) After approving a project under (b) of this section, the commissioner of
15 commerce, community, and economic development shall issue a certificate of
16 approval to each owner of the project. At the same time a certificate of approval is
17 issued to each owner, a copy of each certificate must be submitted to the
18 commissioner along with the written determination that the project is eligible for a
19 credit under this section.

20 (d) Before a credit may be applied as a credit against a tax under this chapter
21 or AS 43.55.011(e), the expenditure on which the credit is based must be approved by
22 the commissioner of commerce, community, and economic development. The
23 application for approval must be filed before April 1 of the year following the year in
24 which expenditures described in (e) of this section equal an amount that is greater than
25 \$1,000,000. The application for approval must list all expenditures that constitute the
26 basis for applying for a credit and include

27 (1) a certification by an independent certified public accountant that
28 the amounts claimed have been verified and that each expenditure was incurred for a
29 purpose eligible for a credit under this section; and

30 (2) a statement that no other person is claiming a credit for the same
31 expenditure.

1 (e) For an expenditure to qualify as the basis for a credit under (a)(1) and (2)
2 of this section, the expenditure must be a capital expense directly related to the
3 construction of the project before the commencement of operation of the project.
4 Expenditures that are capital expenditures that do not qualify as the basis for the credit
5 are as follows:

6 (1) interest or other financing charges or costs of raising equity or debt
7 capital;

8 (2) acquisition costs for a lease or property, except that an expenditure
9 for the acquisition of land before commencement of operation of the project is eligible
10 for the credit in this section to the extent that the amount of land acquisition
11 expenditures that are the basis for the credit do not exceed 20 percent of the total
12 amount of expenditures that qualify for a credit under this section;

13 (3) costs arising from fraud, wilful misconduct, gross negligence,
14 violation of law, or failure to comply with an obligation under a lease, permit, or
15 license issued by the state or federal government;

16 (4) an expenditure that is a result of an internal transfer, a transaction
17 with an affiliate, or a transaction between related parties, or is otherwise not an arm's
18 length transaction, unless the person applying for the credit establishes to the
19 satisfaction of the department that the amount of the expenditure does not exceed the
20 fair market value of the expenditure;

21 (5) costs of lobbying, public relations, public relations advertising, or
22 policy advocacy; and

23 (6) other expenditures described in a regulation adopted by the
24 commissioner of commerce, community, and economic development.

25 (f) After approving the application for the credit, the commissioner of
26 commerce, community, and economic development shall issue a credit certificate for
27 the approved expenditures. The credit certificate may be used for claiming a credit
28 against the tax due under this chapter or AS 43.55.011(e), or the unused portion may
29 be transferred to another person. A credit applied against a tax liability under this
30 chapter may not be applied against a tax liability under AS 43.55.011(e), and a credit
31 applied against a tax liability under AS 43.55.011(e) may not be taken against a tax

1 liability under this chapter. An expenditure that is the basis for a credit under this
2 section may not be the basis for another credit authorized in this title. An unused
3 portion of a credit may be carried forward and applied during the 10-year period after
4 the issuance of the certificate.

5 (g) Subject to appropriation, the department may purchase the unused portion
6 of a credit certificate issued under (c) of this section; the total amount paid by the
7 department during a calendar year for a single project under this subsection may not
8 exceed \$10,000,000.

9 (h) After a credit is claimed against a tax under this chapter or
10 AS 43.55.011(e), the commissioner may request the commissioner of commerce,
11 community, and economic development to verify the eligibility for the credit. The
12 verification shall be done within the period for making an assessment of a tax imposed
13 under this title in AS 43.05.260.

14 (i) The commissioner and the commissioner of commerce, community, and
15 economic development shall adopt regulations necessary to administer this section.

16 * **Sec. 2.** This Act takes effect January 1, 2011.