

HOUSE BILL NO. 84

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

BY REPRESENTATIVE CRAWFORD

Introduced: 1/22/09

Referred: House Special Committee on Energy, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act levying a tax on certain gas reserves; providing for a conditional repeal of the**
2 **tax on certain gas reserves; relating to a credit against the oil and gas production tax**
3 **attributable to the production of gas; relating to expenses that are not lease expenditures**
4 **for the purposes of the oil and gas production tax; requiring payment of the amount of**
5 **disputed taxes into an escrow account; and providing for an effective date."**

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

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

9 **SHORT TITLE.** This Act may be known as the Alaska Gasline Now! Act.

10 * **Sec. 2.** AS 43.55 is amended by adding a new section to read:

11 **Sec. 43.55.027. Credit against tax attributable to gas production.** (a) In
12 addition to other credits authorized by this chapter, a person may take a credit for the
13 tax paid under AS 43.58.210 - 43.58.900 as provided in this section.

1 (b) A person producing gas taxable under AS 43.58.210 - 43.58.900 may
 2 apply for and receive a credit calculated under this section after the date the first flow
 3 of gas in a pipeline transporting North Slope gas to market with a minimum delivery
 4 capacity of 2,000,000,000 cubic feet a day generates revenue to its owners.

5 (c) The credit may be claimed and allowed under this section

6 (1) only against 20 percent of the net amount of tax due under this
 7 chapter; in this paragraph, the net amount of tax due under this chapter is determined
 8 after the application of all credits applicable under this chapter other than the credit
 9 authorized by this section; and

10 (2) in an amount that does not exceed the unused portion of the credit
 11 based on the taxpayer's total liability for taxes levied and collected under
 12 AS 43.58.210 - 43.58.900.

13 (d) A person taking the credit under this section shall file with the department
 14 an annual statement disclosing

15 (1) the total amount of taxes paid under AS 43.58.210 - 43.58.900;

16 (2) the amount of credits taken under this section as of the date of the
 17 report; and

18 (3) other information required by the department.

19 (e) An unused credit or portion of a credit not taken under this section may be
 20 applied against a tax liability for a subsequent tax year.

21 (f) The department shall adopt regulations necessary for the calculation and
 22 application of the credit authorized under this section.

23 * **Sec. 3.** AS 43.55.165(e) is amended to read:

24 (e) For purposes of this section, lease expenditures do not include

25 (1) depreciation, depletion, or amortization;

26 (2) oil or gas royalty payments, production payments, lease profit
 27 shares, or other payments or distributions of a share of oil or gas production, profit, or
 28 revenue, except that a producer's lease expenditures applicable to oil and gas produced
 29 from a lease issued under AS 38.05.180(f)(3)(B), (D), or (E) include the share of net
 30 profit paid to the state under that lease;

31 (3) taxes based on or measured by net income;

1 (4) interest or other financing charges or costs of raising equity or debt
2 capital;

3 (5) acquisition costs for a lease or property or exploration license;

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

7 (7) fines or penalties imposed by law;

8 (8) costs of arbitration, litigation, or other dispute resolution activities
9 that involve the state or concern the rights or obligations among owners of interests in,
10 or rights to production from, one or more leases or properties or a unit;

11 (9) costs incurred in organizing a partnership, joint venture, or other
12 business entity or arrangement;

13 (10) amounts paid to indemnify the state; the exclusion provided by
14 this paragraph does not apply to the costs of obtaining insurance or a surety bond from
15 a third-party insurer or surety;

16 (11) surcharges levied under AS 43.55.201 or 43.55.300;

17 (12) an expenditure otherwise deductible under (b) of this section that
18 is a result of an internal transfer, a transaction with an affiliate, or a transaction
19 between related parties, or is otherwise not an arm's length transaction, unless the
20 producer establishes to the satisfaction of the department that the amount of the
21 expenditure does not exceed the fair market value of the expenditure;

22 (13) an expenditure incurred to purchase an interest in any corporation,
23 partnership, limited liability company, business trust, or any other business entity,
24 whether or not the transaction is treated as an asset sale for federal income tax
25 purposes;

26 (14) a tax levied under AS 43.55.011 **or AS 43.58.210**;

27 (15) costs incurred for dismantlement, removal, surrender, or
28 abandonment of a facility, pipeline, well pad, platform, or other structure, or for the
29 restoration of a lease, field, unit, area, tract of land, body of water, or right-of-way in
30 conjunction with dismantlement, removal, surrender, or abandonment; a cost is not
31 excluded under this paragraph if the dismantlement, removal, surrender, or

1 abandonment for which the cost is incurred is undertaken for the purpose of replacing,
2 renovating, or improving the facility, pipeline, well pad, platform, or other structure;

3 (16) costs incurred for containment, control, cleanup, or removal in
4 connection with any unpermitted release of oil or a hazardous substance and any
5 liability for damages imposed on the producer or explorer for that unpermitted release;
6 this paragraph does not apply to the cost of developing and maintaining an oil
7 discharge prevention and contingency plan under AS 46.04.030;

8 (17) costs incurred to satisfy a work commitment under an exploration
9 license under AS 38.05.132;

10 (18) that portion of expenditures, that would otherwise be qualified
11 capital expenditures, as defined in AS 43.55.023, incurred during a calendar year that
12 are less than the product of \$0.30 multiplied by the total taxable production from each
13 lease or property, in BTU equivalent barrels, during that calendar year, except that,
14 when a portion of a calendar year is subject to this provision, the expenditures and
15 volumes shall be prorated within that calendar year;

16 (19) costs incurred for repair, replacement, or deferred maintenance of
17 a facility, a pipeline, a structure, or equipment, other than a well, that results in or is
18 undertaken in response to a failure, problem, or event that results in an unscheduled
19 interruption of, or reduction in the rate of, oil or gas production; or costs incurred for
20 repair, replacement, or deferred maintenance of a facility, a pipeline, a structure, or
21 equipment, other than a well, that is undertaken in response to, or is otherwise
22 associated with, an unpermitted release of a hazardous substance or of gas; however,
23 costs under this paragraph that would otherwise constitute lease expenditures under (a)
24 and (b) of this section may be treated as lease expenditures if the department
25 determines that the repair or replacement is solely necessitated by an act of war, by an
26 unanticipated grave natural disaster or other natural phenomenon of an exceptional,
27 inevitable, and irresistible character, the effects of which could not have been
28 prevented or avoided by the exercise of due care or foresight, or by an intentional or
29 negligent act or omission of a third party, other than a party or its agents in privity of
30 contract with, or employed by, the producer or an operator acting for the producer, but
31 only if the producer or operator, as applicable, exercised due care in operating and

1 maintaining the facility, pipeline, structure, or equipment, and took reasonable
 2 precautions against the act or omission of the third party and against the consequences
 3 of the act or omission; in this paragraph,

4 (A) "costs incurred for repair, replacement, or deferred
 5 maintenance of a facility, a pipeline, a structure, or equipment" includes costs
 6 to dismantle and remove the facility, pipeline, structure, or equipment that is
 7 being replaced;

8 (B) "hazardous substance" has the meaning given in
 9 AS 46.03.826;

10 (C) "replacement" includes renovation or improvement;

11 (20) costs incurred to construct, acquire, or operate a refinery or crude
 12 oil topping plant, regardless of whether the products of the refinery or topping plant
 13 are used in oil or gas exploration, development, or production operations; however, if
 14 a producer owns a refinery or crude oil topping plant that is located on or near the
 15 premises of the producer's lease or property in the state and that processes the
 16 producer's oil produced from that lease or property into a product that the producer
 17 uses in the operation of the lease or property in drilling for or producing oil or gas, the
 18 producer's lease expenditures include the amount calculated by subtracting from the
 19 fair market value of the product used the prevailing value, as determined under
 20 AS 43.55.020(f), of the oil that is processed;

21 (21) costs of lobbying, public relations, public relations advertising, or
 22 policy advocacy.

23 * **Sec. 4.** AS 43.55.165(e), as amended by sec. 3 of this Act, is amended to read:

24 (e) For purposes of this section, lease expenditures do not include

25 (1) depreciation, depletion, or amortization;

26 (2) oil or gas royalty payments, production payments, lease profit
 27 shares, or other payments or distributions of a share of oil or gas production, profit, or
 28 revenue, except that a producer's lease expenditures applicable to oil and gas produced
 29 from a lease issued under AS 38.05.180(f)(3)(B), (D), or (E) include the share of net
 30 profit paid to the state under that lease;

31 (3) taxes based on or measured by net income;

1 (4) interest or other financing charges or costs of raising equity or debt
2 capital;

3 (5) acquisition costs for a lease or property or exploration license;

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

7 (7) fines or penalties imposed by law;

8 (8) costs of arbitration, litigation, or other dispute resolution activities
9 that involve the state or concern the rights or obligations among owners of interests in,
10 or rights to production from, one or more leases or properties or a unit;

11 (9) costs incurred in organizing a partnership, joint venture, or other
12 business entity or arrangement;

13 (10) amounts paid to indemnify the state; the exclusion provided by
14 this paragraph does not apply to the costs of obtaining insurance or a surety bond from
15 a third-party insurer or surety;

16 (11) surcharges levied under AS 43.55.201 or 43.55.300;

17 (12) an expenditure otherwise deductible under (b) of this section that
18 is a result of an internal transfer, a transaction with an affiliate, or a transaction
19 between related parties, or is otherwise not an arm's length transaction, unless the
20 producer establishes to the satisfaction of the department that the amount of the
21 expenditure does not exceed the fair market value of the expenditure;

22 (13) an expenditure incurred to purchase an interest in any corporation,
23 partnership, limited liability company, business trust, or any other business entity,
24 whether or not the transaction is treated as an asset sale for federal income tax
25 purposes;

26 (14) a tax levied under AS 43.55.011 [OR AS 43.58.210];

27 (15) costs incurred for dismantlement, removal, surrender, or
28 abandonment of a facility, pipeline, well pad, platform, or other structure, or for the
29 restoration of a lease, field, unit, area, tract of land, body of water, or right-of-way in
30 conjunction with dismantlement, removal, surrender, or abandonment; a cost is not
31 excluded under this paragraph if the dismantlement, removal, surrender, or

1 abandonment for which the cost is incurred is undertaken for the purpose of replacing,
2 renovating, or improving the facility, pipeline, well pad, platform, or other structure;

3 (16) costs incurred for containment, control, cleanup, or removal in
4 connection with any unpermitted release of oil or a hazardous substance and any
5 liability for damages imposed on the producer or explorer for that unpermitted release;
6 this paragraph does not apply to the cost of developing and maintaining an oil
7 discharge prevention and contingency plan under AS 46.04.030;

8 (17) costs incurred to satisfy a work commitment under an exploration
9 license under AS 38.05.132;

10 (18) that portion of expenditures, that would otherwise be qualified
11 capital expenditures, as defined in AS 43.55.023, incurred during a calendar year that
12 are less than the product of \$0.30 multiplied by the total taxable production from each
13 lease or property, in BTU equivalent barrels, during that calendar year, except that,
14 when a portion of a calendar year is subject to this provision, the expenditures and
15 volumes shall be prorated within that calendar year;

16 (19) costs incurred for repair, replacement, or deferred maintenance of
17 a facility, a pipeline, a structure, or equipment, other than a well, that results in or is
18 undertaken in response to a failure, problem, or event that results in an unscheduled
19 interruption of, or reduction in the rate of, oil or gas production; or costs incurred for
20 repair, replacement, or deferred maintenance of a facility, a pipeline, a structure, or
21 equipment, other than a well, that is undertaken in response to, or is otherwise
22 associated with, an unpermitted release of a hazardous substance or of gas; however,
23 costs under this paragraph that would otherwise constitute lease expenditures under (a)
24 and (b) of this section may be treated as lease expenditures if the department
25 determines that the repair or replacement is solely necessitated by an act of war, by an
26 unanticipated grave natural disaster or other natural phenomenon of an exceptional,
27 inevitable, and irresistible character, the effects of which could not have been
28 prevented or avoided by the exercise of due care or foresight, or by an intentional or
29 negligent act or omission of a third party, other than a party or its agents in privity of
30 contract with, or employed by, the producer or an operator acting for the producer, but
31 only if the producer or operator, as applicable, exercised due care in operating and

1 maintaining the facility, pipeline, structure, or equipment, and took reasonable
 2 precautions against the act or omission of the third party and against the consequences
 3 of the act or omission; in this paragraph,

4 (A) "costs incurred for repair, replacement, or deferred
 5 maintenance of a facility, a pipeline, a structure, or equipment" includes costs
 6 to dismantle and remove the facility, pipeline, structure, or equipment that is
 7 being replaced;

8 (B) "hazardous substance" has the meaning given in
 9 AS 46.03.826;

10 (C) "replacement" includes renovation or improvement;

11 (20) costs incurred to construct, acquire, or operate a refinery or crude
 12 oil topping plant, regardless of whether the products of the refinery or topping plant
 13 are used in oil or gas exploration, development, or production operations; however, if
 14 a producer owns a refinery or crude oil topping plant that is located on or near the
 15 premises of the producer's lease or property in the state and that processes the
 16 producer's oil produced from that lease or property into a product that the producer
 17 uses in the operation of the lease or property in drilling for or producing oil or gas, the
 18 producer's lease expenditures include the amount calculated by subtracting from the
 19 fair market value of the product used the prevailing value, as determined under
 20 AS 43.55.020(f), of the oil that is processed;

21 (21) costs of lobbying, public relations, public relations advertising, or
 22 policy advocacy.

23 * **Sec. 5.** AS 43.58 is amended by adding new sections to read:

24 **Sec. 43.58.210. Levy of tax on certain gas reserves.** An annual tax of three
 25 cents for each 1,000 cubic feet of natural gas is levied each year on taxable gas.

26 **Sec. 43.58.220. Taxable gas.** (a) Except as provided in (b) of this section, gas
 27 that is subject to the tax under this chapter is gas that, on January 1 of the tax year, is
 28 within a lease or property that is within a unit if the unit contains 1,000,000,000,000
 29 cubic feet of gas or more and the lease or property has been in existence continually
 30 since January 1, 1990.

31 (b) Gas is not subject to the tax under this chapter if the gas

- 1 (1) is nonconventional gas;
- 2 (2) does not contain hydrocarbons;
- 3 (3) within seven years after January 1 of the tax year,
- 4 (A) will be consumed as fuel in the unit in which it is located;
- 5 or
- 6 (B) is gas liquids to be blended with oil and transported by oil
- 7 pipeline to market for sale;
- 8 (4) is the state's royalty share of gas;
- 9 (5) was first discovered after December 31, 2005; or
- 10 (6) is within a lease or property on the North Slope and the person
- 11 holding the right to produce gas from the lease or property has demonstrated to the
- 12 satisfaction of the commissioner that the person holding the right to produce gas from
- 13 or a person who has purchased gas to be produced from the lease or property has
- 14 committed to acquiring firm transportation capacity for transporting gas from that
- 15 lease or property in a binding open season of
- 16 (A) the project authorized under a license issued under
- 17 AS 43.90;
- 18 (B) a gas pipeline project for transporting gas from the North
- 19 Slope to market other than the project in (A) of this paragraph that is
- 20 developed by a person that has made the commitments to the state that are
- 21 required by a licensee under AS 43.90.130(5) - (8), (10) - (15), and (17); or
- 22 (C) a gas pipeline project for transporting gas from the lease or
- 23 property to market designed to accommodate throughput of not more than
- 24 500,000,000 cubic feet a day.
- 25 (c) The volume of gas exempted by the firm transportation commitments
- 26 described in (b)(6) of this section shall be equal to the volume of the daily
- 27 commitment multiplied by the number of days in the commitment up to a maximum of
- 28 25 years.
- 29 (d) In this section,
- 30 (1) "nonconventional gas" has the meaning given in AS 38.05.965;
- 31 (2) "North Slope" has the meaning given in AS 43.90.900;

1 (3) "open season" has the meaning given in AS 43.90.900;

2 (4) "right to produce gas" means the right to a working interest in a
3 mineral interest in gas.

4 **Sec. 43.58.230. Determination of volume of taxable gas.** (a) The department,
5 after consultation with the Department of Natural Resources and the Alaska Oil and
6 Gas Conservation Commission, shall determine the volume of taxable gas within each
7 lease or property. Unless a different volume of taxable gas is proven by clear and
8 convincing evidence, the volume of taxable gas within a lease or property shall be the
9 estimated volume of gas reserves stated in the 2006 Annual Report of the Department
10 of Natural Resources, division of oil and gas.

11 (b) For a unit where each person having an interest in a lease or property in
12 that unit has agreed to a formula or formulas for the allocation of hydrocarbons, the
13 department shall use that formula or those formulas in allocating taxable gas among
14 the persons holding an interest in the taxable gas of the unit for purposes of assessing
15 and collecting the tax due under this chapter.

16 (c) For a unit in which all persons having an interest in a lease or property
17 have not agreed to a formula for the allocation of hydrocarbons, the department may
18 allocate taxable gas among the persons holding an interest in each lease or property in
19 any manner it considers reasonable, including a means of allocation that takes into
20 consideration one or more of the following:

21 (1) an agreement between the department and all persons holding an
22 interest in leases or properties in the unit regarding the allocation of taxable gas;

23 (2) the amount of gas initially determined within a lease or property
24 and the amount of gas remaining;

25 (3) the amount of recoverable gas reserves or resources within the
26 lease or property; or

27 (4) the surface acreage of the lease or property.

28 (d) To facilitate the use of confidential information held by the Department of
29 Natural Resources and the Alaska Oil and Gas Conservation Commission, the
30 department may delegate the authority to determine the allocation of taxable gas under
31 (c) of this section to the Department of Natural Resources or the Alaska Oil and Gas

1 Conservation Commission. In a protest of an allocation determined under this
2 subsection, the Department of Natural Resources or the Alaska Oil and Gas
3 Conservation Commission, as appropriate, shall participate as necessary to assist the
4 department in determining the proper allocation for tax purposes.

5 **Sec. 43.58.240. Returns and payment of tax.** (a) A person having an interest
6 in a lease or property that includes gas taxable under this chapter shall submit a return
7 setting out the location and volume of taxable gas existing on January 1 of the tax
8 year. The return must be filed before February 1 of the tax year on a form prescribed
9 by the department.

10 (b) An operator of a unit having taxable gas may, with the written approval of
11 the department, submit returns or pay the tax levied under this chapter on behalf of
12 each person having an interest in a lease or property in the unit.

13 (c) The annual tax levied under this chapter is payable to the department on or
14 before June 30 of each tax year or in installments at the times and under the conditions
15 that the department may establish by regulation.

16 (d) If directed or approved by the department, a person submitting a return
17 under this section or making a payment required under this chapter may file a single
18 return for all of the person's leases or properties within a unit and may pay the tax due
19 for all of the person's leases or properties within a unit in a single payment.

20 (e) The department may, by written notice, require a person filing a return
21 under this section to submit to the department additional information relating to the
22 assessment of the tax within 30 days after providing notice to the person.

23 **Sec. 43.58.250. Escrow.** Notwithstanding the alternative to file a bond under
24 AS 43.05.480(b), in an action or appeal brought on by one or more taxpayers subject
25 to this chapter to challenge the constitutionality of this chapter, to challenge the
26 amount of taxes owed, to challenge the applicability of the tax to that taxpayer, or any
27 other challenge to this chapter or regulations adopted under this chapter, an
28 administrative or regulatory agency or a court shall direct that the amount of taxes
29 levied under this chapter that are the subject of the dispute be placed immediately in
30 escrow in a financial institution approved by the Department of Revenue. Upon final
31 resolution of the dispute, the amount in escrow, if any, owing to the department,

1 together with accumulated interest, shall be paid to the department.

2 **Sec. 43.58.260. Regulations.** The department shall adopt regulations relating
3 to making and filing returns and paying the tax required by this chapter and that are
4 otherwise necessary for the enforcement of this chapter. The regulations must address
5 the

6 (1) annual preparation of the tax roll that includes each lease or
7 property with taxable gas;

8 (2) means for providing notice to operators and persons having an
9 interest in a lease or property having taxable gas of the volume of taxable gas for each
10 lease or property;

11 (3) procedure by which a person aggrieved by an action of the
12 department may appeal that action and obtain a hearing; and

13 (4) preparation of the final tax roll and a supplemental tax roll to be
14 certified and prepared using the procedures applicable to the preparation of the
15 original tax roll.

16 **Sec. 43.58.900. Definitions.** In this chapter,

17 (1) "gas" has the meaning given in AS 43.55.900;

18 (2) "lease or property" has the meaning given in AS 43.55.900;

19 (3) "tax year" means a calendar year;

20 (4) "unit" has the meaning given in AS 43.55.900.

21 * **Sec. 6.** AS 43.58.210, 43.58.220, 43.58.230, 43.58.240, 43.58.260, and 43.58.900 are
22 repealed on the date on which the first flow of gas in a pipeline transporting North Slope gas
23 to market with a minimum delivery capacity of 2,000,000,000 cubic feet a day generates
24 revenue to its owners.

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

27 **LESSEE AUTHORIZED TO SURRENDER LEASE.** To avoid liability under
28 AS 43.58.210 - 43.58.900, enacted in sec. 5 of this Act, a person subject to AS 43.58.210 -
29 43.58.900 may surrender the person's rights under the lease to the Department of Natural
30 Resources if the person

31 (1) surrenders the rights not later than December 31 of the year preceding the

1 tax year; and

2 (2) complies with all applicable requirements of

3 (A) the regulations of the Department of Natural Resources adopted
4 under the authority of AS 38.05.020 relating to surrenders of rights in land held under
5 lease; and

6 (B) the lease that relate to surrender of rights held under the lease.

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

9 SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application
10 of it to any person or circumstance, is held invalid, the remainder of this Act and the
11 application to other persons are not affected.

12 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 NOTICE OF DATE OF FIRST FLOW OF GAS; NOTICE OF CLOSE OF FIRST
15 BINDING OPEN SEASON. (a) The commissioner of natural resources shall, as soon as
16 practicable after the first flow of gas described in sec. 6 of this Act, certify to the
17 commissioner of revenue and to the revisor of statutes the date on which that first flow of gas
18 occurred.

19 (b) The commissioner of natural resources shall, as soon as practicable after the close
20 of the first binding open season, certify to the revisor of statutes the date on which the first
21 binding open season described in sec. 12 of this Act closed.

22 * **Sec. 10.** Section 4 of this Act takes effect on the date the contingency described in sec. 6
23 of this Act occurs.

24 * **Sec. 11.** Sections 7 and 9 of this Act take effect immediately under AS 01.10.070(c).

25 * **Sec. 12.** Except as provided in secs. 10 and 11 of this Act, this Act takes effect on
26 January 1 of the year immediately following the close of the first binding open season for the
27 project authorized under a license issued under AS 43.90 or for a project not authorized under
28 AS 43.90 that transports gas from the North Slope to market that is developed by a person that
29 has made the commitments to the state that are required by a licensee under AS 43.90.130(5) -
30 (8), (10) - (15), and (17).