

HOUSE BILL NO. 397

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Introduced: 2/23/18

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a surcharge on oil produced in the state; establishing the Arctic**
2 **transportation and resource access fund; and providing for an effective date."**

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

4 * **Section 1.** AS 43.55.023(c) is amended to read:

5 (c) A credit or portion of a credit under this section

6 (1) may not be used to reduce a person's tax liability under
7 AS 43.55.011(e) for any calendar year below zero;

8 (2) may, if not used under this subsection, be applied in a later
9 calendar year;

10 (3) may, regardless of when the credit was earned, be used to satisfy a
11 tax, interest, penalty, fee, or other charge that

12 (A) is related to the tax due under this chapter for a prior year,
13 except for a surcharge under AS 43.55.201, [AS 43.55.201 - 43.55.299 OR]
14 43.55.300, or 43.55.350 or the tax levied by AS 43.55.011(i) or 43.55.014; and

(B) has not, for the purpose of art. IX, sec. 17(a), Constitution of the State of Alaska, been subject to an administrative proceeding or litigation.

* **Sec. 2.** AS 43.55.023(e) is amended to read:

(e) A person to which a transferable tax credit certificate is issued under (d) of this section may transfer the certificate to another person, and a transferee may further transfer the certificate. Subject to the limitations set out in (a) - (d) of this section, and notwithstanding any action the department may take with respect to the applicant under (g) of this section, the owner of a certificate may apply the credit or a portion of the credit shown on the certificate

(1) against a tax levied by AS 43.55.011(e); however, a credit shown on a transferable tax credit certificate may not be applied under this paragraph to reduce a transferee's total tax liability under AS 43.55.011(e) for oil and gas produced during a calendar year to less than 80 percent of the tax that would otherwise be due without applying that credit; any portion of a credit not used under this paragraph may be applied in a later period; or

(2) regardless of when the credit was earned, to satisfy a tax, interest, penalty, fee, or other charge that

(A) is related to the tax due under this chapter, except for a surcharge under AS 43.55.201, [AS 43.55.201 - 43.55.299 OR] 43.55.300, or 43.55.350 or the tax levied by AS 43.55.011(i) or 43.55.014;

(B) is for a calendar year before the year in which the certificate is applied; and

(C) has not, for the purpose of art. IX, sec. 17(a), Constitution of the State of Alaska, been subject to an administrative proceeding or litigation.

* **Sec. 3.** AS 43.55.025(h) is amended to read:

(h) A producer that purchases a production tax credit certificate may apply the credits against its production tax levied by AS 43.55.011(e). Regardless of the price the producer paid for the certificate, the producer may receive a credit against its production tax liability for the full amount of the credit, but for not more than the

amount for which the certificate is issued. A production tax credit or a portion of a production tax credit or a production tax credit certificate or a portion of a production tax credit certificate allowed under this section

(1) may not be applied more than once;

(2) may be applied in a later calendar year;

(3) may, regardless of when the credit was earned, be applied to satisfy a tax, interest, penalty, fee, or other charge that

(A) is related to the tax due under this chapter for a prior year, except for a surcharge under AS 43.55.201, [AS 43.55.201 - 43.55.299 OR] 43.55.300, or 43.55.350 or the tax levied by AS 43.55.011(i) or 43.55.014; and

(B) has not, for the purpose of art. IX, sec. 17(a), Constitution of the State of Alaska, been subject to an administrative proceeding or litigation.

* **Sec. 4.** AS 43.55.165(e) is amended to read:

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

(1) depreciation, depletion, or amortization;

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

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

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

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

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

(7) fines or penalties imposed by law;

(8) costs of arbitration, litigation, or other dispute resolution activities that involve the state or concern the rights or obligations among owners of interests in,

1 or rights to production from, one or more leases or properties or a unit;

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

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

7 (11) surcharges levied under AS 43.55.201, [OR] 43.55.300, or
8 43.55.350;

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

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

18 (14) a tax levied under AS 43.55.011 or 43.55.014;

19 (15) costs incurred for dismantlement, removal, surrender, or
20 abandonment of a facility, pipeline, well pad, platform, or other structure, or for the
21 restoration of a lease, field, unit, area, tract of land, body of water, or right-of-way in
22 conjunction with dismantlement, removal, surrender, or abandonment; a cost is not
23 excluded under this paragraph if the dismantlement, removal, surrender, or
24 abandonment for which the cost is incurred is undertaken for the purpose of replacing,
25 renovating, or improving the facility, pipeline, well pad, platform, or other structure;

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

31 (17) costs incurred to satisfy a work commitment under an exploration

1 license under AS 38.05.132;

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

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

27 (A) "costs incurred for repair, replacement, or deferred
28 maintenance of a facility, a pipeline, a structure, or equipment" includes costs
29 to dismantle and remove the facility, pipeline, structure, or equipment that is
30 being replaced;

31 (B) "hazardous substance" has the meaning given in

AS 46.03.826;

(C) "replacement" includes renovation or improvement;

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

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

* **Sec. 5.** AS 43.55.201(b) is amended to read:

(b) The surcharge imposed by (a) of this section is in addition to the tax imposed by AS 43.55.011 and is due on the last day of the month on oil produced from each lease or property during the preceding month. The surcharge is in addition to the surcharges [SURCHARGE] imposed by AS 43.55.300 and 43.55.350 [AS 43.55.300 - 43.55.310].

* **Sec. 6.** AS 43.55.300(b) is amended to read:

(b) The surcharge imposed by (a) of this section is in addition to the tax imposed by AS 43.55.011 and is due on the last day of the month on oil produced from each lease or property during the preceding month. The surcharge is in addition to the surcharges [SURCHARGE] imposed by AS 43.55.201 and 43.55.350 [AS 43.55.201 - 43.55.231].

* **Sec. 7.** AS 43.55 is amended by adding new sections to read:

Article 3A. Alaska Additional Conditional Surcharge on Oil.

Sec. 43.55.350. Alaska additional conditional surcharge on oil. (a) Every producer of oil shall pay a surcharge on oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation. The

1 surcharge is equal to \$.09 per barrel of oil less the tax amount per barrel, if any,
 2 imposed under 26 U.S.C. 4611(c)(2)(B). The surcharge under this section may not be
 3 less than zero.

4 (b) The surcharge imposed by (a) of this section is in addition to the tax
 5 imposed by AS 43.55.011 and is due on the last day of the month on oil produced
 6 from each lease or property during the preceding month. The surcharge is in addition
 7 to the surcharge imposed by AS 43.55.201 and 43.55.300.

8 (c) A producer of oil shall make a report of production on March 31 of the
 9 year following the calendar year of production and in the same manner and under the
 10 same penalties as required under AS 43.55.011 - 43.55.180.

11 (d) Oil not considered under AS 43.55.020(e) to be produced from a lease or
 12 property is not considered to be produced from a lease or property for purposes of this
 13 section.

14 (e) The surcharge levied under this section and interest and penalties collected
 15 with respect to the surcharge shall be deposited in the general fund.

16 (f) If the commissioner determines that the federal government is collecting a
 17 tax from refineries on crude oil under 26 U.S.C. 4611(c)(2)(B) at a rate of \$.09 per
 18 barrel or greater, the commissioner shall suspend imposition and collection of the
 19 surcharge levied and collected under this section. Suspension of the imposition and
 20 collection of the surcharge begins on the day the tax under 26 U.S.C. 4611(c)(2)(B) at
 21 a rate of \$.09 per barrel or greater is imposed or the day the section of the Act
 22 imposing the tax under 26 U.S.C. 4611(c)(2)(B) at a rate of \$.09 per barrel or greater
 23 is enacted, whichever occurs later. Before the first day of a suspension authorized by
 24 this subsection, the commissioner shall make a reasonable effort to notify all persons
 25 who are known to the department to be paying the surcharge under this section that the
 26 surcharge will be suspended. If the commissioner determines that the federal
 27 government is not collecting a tax from refineries on crude oil under 26 U.S.C.
 28 4611(c)(2)(B) at a rate of \$.09 per barrel or greater, and the state is not currently
 29 collecting the surcharge imposed under (a) of this section, the commissioner shall
 30 reimpose the surcharge levied under (a) of this section. Reimposition of the surcharge
 31 begins on the day the tax under 26 U.S.C. 4611(c)(2)(B) is repealed or imposed at a

rate of less than \$.09 per barrel or the day the Act repealing or imposing the tax is enacted, whichever occurs later. Before the first day of a reimposition authorized by this subsection, the commissioner shall make a reasonable effort to notify all persons who the department knows are required to pay the surcharge under this section that the surcharge will be reimposed.

(g) Failure of the commissioner to provide notice to persons under (f) of this section does not waive the imposition of the surcharge under this section.

(h) If the surcharge under this section and a tax under 26 U.S.C. 4611(c)(2)(B) are imposed simultaneously because of the retroactivity of the federal tax, the surcharge under this section will not be refunded.

(i) The proceeds of the surcharge levied under this section shall be accounted for separately and deposited into the Arctic transportation and resource access fund established under AS 43.55.360.

Sec. 43.55.360. Arctic transportation and resource access fund. (a) The Arctic transportation and resource access fund is established as a separate account in the general fund. The fund consists of proceeds from

(1) the surcharge on oil imposed under AS 43.55.350; and

(2) tolls collected on infrastructure constructed with funds from the Arctic transportation and resource access fund.

(b) The legislature may appropriate the actual balance of the Arctic transportation and resource access fund for the construction of regional transportation infrastructure north of 68 degrees North latitude.

(c) Nothing in this section creates a dedicated fund.

* **Sec. 8.** AS 43.55.900(24) is amended to read:

(24) "surcharge" means

(A) when used in AS 43.55.201 - 43.55.299, the surcharge levied by AS 43.55.201;

(B) when used in AS 43.55.300 - 43.55.310, the surcharge levied by AS 43.55.300;

(C) when used in AS 43.55.350 and 43.55.360, the surcharge levied by AS 43.55.350;

1 * **Sec. 9.** The uncoded law of the State of Alaska is amended by adding a new section to
2 read:

3 TRANSITION. Notwithstanding AS 43.55.350(a), enacted by sec. 7 of this Act,
4 which subtracts from the surcharge any tax amount imposed under 26 U.S.C. 4611(c)(2)(B),
5 and AS 43.55.350(f), enacted by sec. 7 of this Act, which requires the commissioner of
6 revenue to determine whether a tax of greater than \$.09 per barrel is imposed under 26 U.S.C.
7 4611(c)(2)(B) before imposing the surcharge under AS 43.55.350(a), enacted by sec. 7 of this
8 Act, the commissioner shall impose the surcharge under AS 43.55.350 retroactively under
9 sec. 10 of this Act for oil produced on and after January 1, 2018, except that the portion of the
10 tax imposed retroactively shall be imposed at a rate of \$.09 per barrel.

11 * **Sec. 10.** The uncoded law of the State of Alaska is amended by adding a new section to
12 read:

13 RETROACTIVITY. This Act is retroactive to January 1, 2018.

14 * **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).