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Tax Credit Bond Legislation
CS HB 331 (FIN) \ O
SECTIONAL ANALYSIS

FOR SENATE FINANCE

Section 1:

Exempts the bond corporation created in Sec. 2, and any overriding royalty interests negotiated under Sec. 12, from the procurement code.

Section 2:

Establishes the Alaska Tax Credit Certificate Bond Corporation within DOR. *[Largely patterned after Alaska Pension Obligation Bond Corporation, AS 37.16]*

37.18.010 Creates the corporation for the purpose of purchasing tax credits issued under AS 43.55.023, AS 43.55.025, AS 43.20.046, AS 43.20.047, and AS 43.20.053.

37.18.020 Establishes the board of directors, all of whom are state department commissioners.

37.18.030 Authorizes the corporation to issue bonds up to $1 billion and contract for associated services. The bonds are not general obligations of the state. The authority to issue bonds expires on December 31, 2021.

37.18.040 Authorizes the corporation to have a reserve fund which will hold funds to be used for repurchase, as well as funds appropriated for the purpose of interest and principal payments to bond holders.

37.18.050 Authorizes the corporation to set the terms of bonds to be issued.

37.18.060 Corporation must adopt a resolution and publish notice of it to approve the issuance of bonds.

37.18.070 Gives certain enforcement rights to certain bond holders.

37.18.080 Bonds may not be issued unless the discount rate by which tax credits are purchased is at least 1.5% greater than the total interest cost of the bonds.

37.18.090 Corporation may refund bonds prior to the maturity date.

37.18.100 Bonds are legal investments.

37.18.110 Lawsuits to challenge the constitutionality or validity of bonds must be commenced within 45 days of the resolution in AS 37.18.060.

37.18.170 This chapter shall be liberally construed to carry out its purposes.

37.18.180 The corporation may adopt regulations necessary to implement this chapter.

37.18.190 Definitions.

Sections 3-5 amend various tax credits offered in the corporate income tax statutes, AS 43.20, so that these credits can also be purchased with bond proceeds.

Section 3:

Amends the Gas Storage Credit to enable repurchase of any credits via the bond program.

Section 4:

Amends the LNG Storage Credit to enable repurchase of any credits via the bond program.

Section 5:

Amends the Refinery Infrastructure Credit to enable repurchase of any credits via the bond program.

Sections 6-10 amend various subsections of AS 43.55.028, the tax credit fund, to make conforming changes and ensure the traditional cash repurchase program exists in parallel with the bond repurchase program.

Section 6:

Amends AS 43.55.028(b), the statutory appropriation formula. Makes a conforming change to the amount the legislature may appropriate to the oil and gas tax credit fund. The amount is reduced by the debt service appropriation as described in new subsection .028(r) in Sec. 11.

Section 7:

Amends .028(e), the use of the fund to purchase tax credit certificates. The department may either use the tax credit fund money, or money disbursed from the bond program, to purchase tax credits. This was written to maximize flexibility and retain the existing program and procedures. Also adds new language ensuring that non-participants in the bond program cannot receive more funds in a year than that company would have received had the program not existed.

Section 8:

Amends .028(g), concerning allocations and limitations on tax credit purchases. Clarifies that the current $70 million per company per year cap, with the associated "haircut" for the amount over $35 million, does not apply to repurchases via the bond program.

Section 9:

Amends .028(i), definitions. Adds definitions for "money disbursed to the commissioner," and "total interest cost." "Money disbursed to the commissioner" is the term used in HB331 to describe bond proceeds used to purchase tax credits at a discount.

Section 10:

Amends .028(j), concerning liabilities to the state. Clarifies that if a company has an outstanding liability to the state, this can be offset against a payment via the bond program as well as via traditional repurchase.

Section 11 adds various new subsections to AS 43.55.028, to create the process by which credits are offered, valued, discounted, and purchased.

.028(k) New section authorizing the department to negotiate a repurchase of all credits held by a company, and describing how the holder of credits indicates their desire to participate in the program. This section ensures that if a holder of credits wants to participate in the program, they must offer all of their credits. If a holder of credits at the time of a bond issuance declines to participate in the program, they are precluded from submitting those credits for purchase in connection with future bond issuances. This provision does not preclude such holder from submitting newer credits, if any, for purchase in connection with a future bond issuance.

In offering credits to the bond purchase program, a holder of credits must indicate if they intend to seek the reduced discount rate as described in .028(m).

.028(l) New section describes the mechanism by which the department estimates the expected cash flow to a company via the current repurchase process and expected schedule. To do this, the department calculates the assumed annual appropriation, and the assumed proration each company would receive each year from that appropriation. From this estimate, a purchase offer can be calculated based on the discount rate determined in (m).

.028(m) New section establishing a base discount rate of 10%, with four methods to reduce this to a number equal to total interest cost + 1.5%.

1. For a seismic credit, the company has waived the 10-year confidentiality period for the data and allowed it to become public;
2. The company has agreed to an overriding royalty interest (ORRI) accepted by the Department of Natural Resources;
3. The company has committed reinvest within the entire amount received on an Alaska oil and gas project ("qualified capital expenditure") within 24 months. To qualify for this provision, the company must indicate how the spending will lead to increased production and maximize Alaska resident hire. If the investment target is not met, a portion of the payment shall be refunded to the state; or
4. The credit is against the corporate income tax, primarily impacting refinery infrastructure credits.

.028(n) New section authorizing interest at the rate of delinquent tax under AS 43.05.225 on the portion of credit payments that are refunded due to failing to meet the capital expenditure target in .028(m)(3). The repayment and the interest can be waived in event of natural disaster, court order, or other forces majeure.

.028(o) New section clarifying that the amount of a credit in excess of the discounted amount purchased retains no value and cannot be used against taxes or sold.

.028(p) New section requiring DOR to provide DNR information necessary to evaluate an overriding royalty offer.

.028(q) New section providing that after bonds are issued, the appropriation calculation under .028(b) and (c) should be based on net tax revenue received from AS 43.55.011, after application of any credits against tax liability.

.028(r) New section describing a reduction in appropriation to the oil and gas tax credit fund by the amount of debt service for bonds issued under the bill.

.028(s) New section that legislature may appropriate to the commissioner of revenue an amount equal to the bond proceeds for disbursement under the bill.

Section 12:

Creates new AS 44.37.230, authorizing the Department of Natural Resources to negotiate Overriding Royalty Interests (ORRI). These are then valued, and a determination is made whether the incremental value received by the state warrants the approval of the lower discount rate for purposes of credit repurchase.

Section 13:

Repeals various sections of ch.3, SSSLA 2017 (HB111). This was the bill eliminating the program of cashable tax credits. A portion of this bill repealed the tax credit fund, AS 43.55.028, after the last credits are paid, and made various conforming changes. These sections, including the section describing the condition when they take effect, are repealed. Although these sections therefore remain in statute, the key provisions of HB111 preventing the issuance of new tax credits remain.

Section 14:

Requires the Commissioner or Revenue to notify the Revisor of Statutes when the principal of any bonds issued under this bill are fully repaid, along with any interest and other obligations. Additionally, the Commissioner shall notify the Revisor when the last tax credits have been paid, and there has been at least one year since a person applied for a new tax credit purchase.

Section 15:

Authorizes retroactive application of DNR and DOR regulations.

Section 16:

Repeals Sec. 46 of ch. 3, SSSLA 2017 (HB 111). This section is the effective date clause for sections being repealed in Sec. 13. These are the various repealers and conforming changes that take effect after the last credits are paid.

Section 17:

Immediate effective date for the bill, except for section 16.