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SENATE CS FOR CS FOR HOUSE BILL NO. 276(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES THOMPSON, DICK, MILLETT, TUCK, AND MILLER, Tammie Wilson, Kawasaki, Feige, Joule, Edgmon, Guttenberg, Johnson

SENATORS Thomas, Olson, Coghill, Dyson, Meyer, Menard, Paskvan, McGuire, Wagoner

A BILL

FOR AN ACT ENTITLED

"An Act relating to the oil and gas production tax; providing for a reduction in the production tax value in the amount of 30 percent of the gross value at the point of production for oil and gas produced from certain leases or properties north of 68 degrees North latitude that were not, as of January 1, 2008, in commercial production or within a unit; providing for a credit against the oil and gas production tax for costs incurred for conducting seismic exploration and drilling certain oil or natural gas exploration wells in certain basins; relating to the determination of the production tax value of oil and gas production; providing that the tax rate for new oil or gas production south of 68 degrees North latitude and outside of the Cook Inlet sedimentary basin may not exceed four percent of the gross value at the point of production; and providing for an effective date."

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

*** Section 1.** AS 43.55.011(e) is amended to read:

(e) There is levied on the producer of oil or gas a tax for all oil and gas produced each calendar year from each lease or property in the state, less any oil and gas the ownership or right to which is exempt from taxation or constitutes a landowner's royalty interest. Except as otherwise provided under (f), (j), (k), [AND] (o)<u>**, and (p)**</u> of this section, the tax is equal to the sum of

(1) the annual production tax value of the taxable oil and gas as calculated under AS 43.55.160(a)(1)<u>**, as adjusted by AS 43.55.162,**</u> multiplied by 25 percent; and

(2) the sum, over all months of the calendar year, of the tax amounts determined under (g) of this section.

*** Sec. 2.** AS 43.55.011(g) is amended to read:

(g) For each month of the calendar year for which the producer's average monthly production tax value under AS 43.55.160(a)(2) <u>**of a**</u> [PER] BTU equivalent barrel of the taxable oil and gas is more than $30, the amount of tax for purposes of (e)(2) of this section is determined by multiplying the monthly production tax value of the taxable oil and gas produced during the month<u>**, as adjusted by AS 43.55.162,**</u> by the tax rate calculated as follows:

(1) if the producer's average monthly production tax value <u>**of a**</u> [PER] BTU equivalent barrel of the taxable oil and gas for the month is not more than $92.50, the tax rate is 0.4 percent multiplied by the number that represents the difference between that average monthly production tax value <u>**of a**</u> [PER] BTU equivalent barrel and $30; or

(2) if the producer's average monthly production tax value <u>**of a**</u> [PER] BTU equivalent barrel of the taxable oil and gas for the month is more than $92.50, the tax rate is the sum of 25 percent and the product of 0.1 percent multiplied by the number that represents the difference between the average monthly production tax value <u>**of a**</u> [PER] BTU equivalent barrel and $92.50, except that the sum determined under this paragraph may not exceed 50 percent.

*** Sec. 3.** AS 43.55.011 is amended by adding a new subsection to read:

(p) For the seven years immediately following the commencement of commercial production of oil or gas produced from leases or properties in the state that are outside the Cook Inlet sedimentary basin and that do not include land located north of 68 degrees North latitude, where that commercial production began after December 31, 2012, and before January 1, 2022, the levy of tax under (e) of this section for oil and gas may not exceed four percent of the gross value at the point of production.

*** Sec. 4.** AS 43.55.020(a) is amended to read:

(a) For a calendar year, a producer subject to tax under AS 43.55.011(e) - (i) **or (p)** shall pay the tax as follows:

(1) an installment payment of the estimated tax levied by AS 43.55.011(e), net of any tax credits applied as allowed by law, is due for each month of the calendar year on the last day of the following month; except as otherwise provided under (2) of this subsection, the amount of the installment payment is the sum of the following amounts, less 1/12 of the tax credits that are allowed by law to be applied against the tax levied by AS 43.55.011(e) for the calendar year, but the amount of the installment payment may not be less than zero:

(A) for oil and gas produced from leases or properties in the state outside the Cook Inlet sedimentary basin but not subject to AS 43.55.011(o) **or (p)**, other than leases or properties subject to AS 43.55.011(f), the greater of

(i) zero; or

(ii) the sum of 25 percent and the tax rate calculated for the month under AS 43.55.011(g) multiplied by the remainder obtained by subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible for the leases or properties under AS 43.55.160 **and 1/12 of the adjustment to production tax value for the calendar year under AS 43.55.162** from the gross value at the point of production of the oil and gas produced from the leases or properties during the month for which the installment payment is calculated;

(B) for oil and gas produced from leases or properties subject to AS 43.55.011(f), the greatest of

(i) zero;

(ii) zero percent, one percent, two percent, three percent, or four percent, as applicable, of the gross value at the point of production of the oil and gas produced from all leases or properties during the month for which the installment payment is calculated; or

(iii) the sum of 25 percent and the tax rate calculated for the month under AS 43.55.011(g) multiplied by the remainder obtained by subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible for those leases or properties under AS 43.55.160 **and 1/12 of the adjustment to production tax value for the calendar year under AS 43.55.162** from the gross value at the point of production of the oil and gas produced from those leases or properties during the month for which the installment payment is calculated;

(C) for oil and gas produced from each lease or property subject to AS 43.55.011(j), (k), [OR] (o), **or (p),** the greater of

(i) zero; or

(ii) the sum of 25 percent and the tax rate calculated for the month under AS 43.55.011(g) multiplied by the remainder obtained by subtracting 1/12 of the producer's adjusted lease expenditures for the calendar year of production under AS 43.55.165 and 43.55.170 that are deductible under AS 43.55.160 **and 1/12 of the adjustment to production tax value for the calendar year under AS 43.55.162** for oil or gas, **as applicable** [RESPECTIVELY], produced from the lease or property from the gross value at the point of production of the oil or gas, **as applicable** [RESPECTIVELY], produced from the lease or property during the month for which the installment payment is calculated;

(2) an amount calculated under (1)(C) of this subsection for oil or gas produced from a lease or property

__(A)__ subject to AS 43.55.011(j), (k), or (o) may not exceed the product obtained by carrying out the calculation set out in AS 43.55.011(j)(1) or (2) or 43.55.011(o), as applicable, for gas or set out in AS 43.55.011(k)(1) or (2), as applicable, for oil, but substituting in AS 43.55.011(j)(1)(A) or (2)(A) or 43.55.011(o), as applicable, the amount of taxable gas produced during the month for the amount of taxable gas produced during the calendar year and substituting in AS 43.55.011(k)(1)(A) or (2)(A), as applicable, the amount of taxable oil produced during the month for the amount of taxable oil produced during the calendar year;

__(B) subject to AS 43.55.011(p) may not exceed four percent of the gross value at the point of production of the oil or gas;__

(3) an installment payment of the estimated tax levied by AS 43.55.011(i) for each lease or property is due for each month of the calendar year on the last day of the following month; the amount of the installment payment is the sum of

(A) the applicable tax rate for oil provided under AS 43.55.011(i), multiplied by the gross value at the point of production of the oil taxable under AS 43.55.011(i) and produced from the lease or property during the month; and

(B) the applicable tax rate for gas provided under AS 43.55.011(i), multiplied by the gross value at the point of production of the gas taxable under AS 43.55.011(i) and produced from the lease or property during the month;

(4) any amount of tax levied by AS 43.55.011(e) or (i), net of any credits applied as allowed by law, that exceeds the total of the amounts due as installment payments of estimated tax is due on March 31 of the year following the calendar year of production.

*** Sec. 5.** AS 43.55.025(a) is amended to read:

(a) Subject to the terms and conditions of this section, a credit against the production tax levied by AS 43.55.011(e) is allowed for exploration expenditures that qualify under (b) of this section in an amount equal to one of the following:

(1) 30 percent of the total exploration expenditures that qualify only under (b) and (c) of this section;

(2) 30 percent of the total exploration expenditures that qualify only under (b) and (d) of this section;

(3) 40 percent of the total exploration expenditures that qualify under (b), (c), and (d) of this section;

(4) 40 percent of the total exploration expenditures that qualify only under (b) and (e) of this section; [OR]

(5) 80, 90, or 100 percent, or a lesser amount described in (*l*) of this section, of the total exploration expenditures described in (b)(1) and (2) of this section and not excluded by (b)(3) and (4) of this section that qualify only under (*l*) of this section**;**

(6) the lesser of $25,000,000 or 80 percent of the total exploration drilling expenditures described in (n) of this section and that qualify under (b) and (c) of this section; or

(7) the lesser of $7,500,000 or 75 percent of the total seismic exploration expenditures described in (o) of this section and that qualify under (b) of this section.

*** Sec. 6.** AS 43.55.025(c) is amended to read:

(c) To be eligible for **a** [THE 30 PERCENT] production tax credit authorized by (a)(1)**, (3), or (6)** of this section [OR THE 40 PERCENT PRODUCTION TAX CREDIT AUTHORIZED BY (a)(3) OF THIS SECTION], exploration expenditures must

(1) qualify under (b) of this section; and

(2) be for an exploration well, subject to the following:

(A) before the well is spudded,

(i) the explorer shall submit to the commissioner of natural resources the information necessary to determine whether the geological objective of the well is a potential oil or gas trap that is distinctly separate from any trap that has been tested by a preexisting well;

(ii) at the time of the submittal of information under (i) of this subparagraph, the commissioner of natural resources may request from the explorer that specific data sets, ancillary data, and reports including all results, and copies of well data collected and data analyses for the well be provided to the Department of Natural Resources upon completion of the drilling; in this sub-subparagraph, well data include all analyses conducted on physical material, and well logs collected from the well and sample analyses; testing geophysical and velocity data including vertical seismic profiles and check shot surveys; testing data and analyses; age data; geochemical analyses; and access to tangible material; and

(iii) the commissioner of natural resources must make an affirmative determination as to whether the geological objective of the well is a potential oil or gas trap that is distinctly separate from any trap that has been tested by a preexisting well and what information under (ii) of this subparagraph must be submitted by the explorer after completion, abandonment, or suspension under AS 31.05.030; the commissioner of natural resources shall make that determination within 60 days after receiving all the necessary information from the explorer based on the information received and on other information the commissioner of natural resources considers relevant;

(B) for an exploration well other than a well to explore a Cook Inlet prospect, the well must be located and drilled in such a manner that the bottom hole is located not less than three miles away from the bottom hole of a preexisting well drilled for oil or gas, irrespective of whether the preexisting well has been completed, suspended, or abandoned;

(C) after completion, suspension, or abandonment under AS 31.05.030 of the exploration well, the commissioner of natural resources must determine that the well was consistent with achieving the explorer's stated geological objective.

*** Sec. 7.** AS 43.55.025 is amended by adding new subsections to read:

(n) The persons that drill the first four exploration wells in the state and within the areas described in (p) of this section on state lands, private lands, or federal onshore lands for the purpose of discovering oil or gas that penetrate and evaluate a prospect in a basin described in (p) of this section are eligible for a credit under (a)(6) of this section. A credit under this subsection may not be taken for more than two exploration wells in a single area described in (p)(1) - (6) of this section. Exploration expenditures eligible for the credit in this subsection must be incurred for work performed after June 1, 2012, and before July 1, 2016. A person planning to drill an exploration well on private land and to apply for a credit under this subsection shall obtain written consent from the owner of the oil and gas interest for the full public release of all well data after the expiration of the confidentiality period applicable to information collected under (f) of this section. The written consent of the owner of the oil and gas interest must be submitted to the commissioner of natural resources before approval of the proposed exploration well. In addition to the requirements in (c) of this section and submission of the written consent of the owner of the oil and gas interest, a person planning to drill an exploration well shall obtain approval from the commissioner of natural resources before the well is spudded. The commissioner of natural resources shall make a written determination approving or rejecting an exploration well within 60 days after receiving the request for approval or as soon as is practicable thereafter. Before approving the exploration well, the commissioner of natural resources shall consider the following: the location of the well; the proximity to a community in need of a local energy source; the proximity of existing infrastructure; the experience and safety record of the explorer in conducting operations in remote or roadless areas; the projected cost schedule; whether seismic mapping and seismic data sufficiently identify a particular trap for exploration; whether the targeted and planned depth and range are designed to penetrate and fully evaluate the hydrocarbon potential of the proposed prospect and reach the level below which economic hydrocarbon reservoirs are likely to be found, or reach 12,000 feet or more true vertical depth; and whether the exploration plan provides for a full evaluation of the wellbore below surface casing to the depth of the well. Whether the exploration well for which a credit is requested under this subsection is located within an area and a basin described under (p) of this section shall be determined by the commissioner of natural resources and reported to the commissioner. A taxpayer that obtains a credit under this subsection may not claim a tax credit under AS 43.55.023 or another provision in this section for the same exploration expenditure.

(o) The persons that conduct the first four seismic exploration projects in the state and within the areas described in (p) of this section for the purpose of discovering oil or gas in a basin are eligible for the credit under (a)(7) of this section. A credit under this subsection may not be taken for more than one seismic exploration project in a single area described in (p)(1) - (6) of this section. Exploration expenditures eligible for the credit in this subsection must be incurred for work performed after June 1, 2012, and before July 1, 2016. A person planning to conduct a seismic exploration project on private land and to apply for a credit under this subsection shall obtain written consent from the owner of the oil and gas interest for the full public release of all geophysical data and compliance with the data submission requirements in (f)(2) of this section. Notwithstanding (f)(2)(C)(ii) of this section, to qualify for a credit under this subsection, a person shall submit the written consent of the owner of the oil and gas interest for the release of data if applicable, and all data required under (f)(2) of this section to the Department of Natural Resources and shall agree in writing that all seismic data requirements submitted under the requirements of (f)(2) of this section may be made public two years after receiving a credit under this subsection. A person intending to qualify for the tax credit under this subsection shall obtain approval from the commissioner of natural resources before the commencement of the seismic exploration activities. The commissioner of natural resources shall make a written determination approving or rejecting a seismic project within 60 days after receiving the request for approval or as soon as is practicable thereafter. Before approving a seismic exploration project, the commissioner shall consider the following: the location of the project; the projected cost schedule; the data acquisition and data processing plan; the reasons for choosing the particular area for seismic exploration; and the experience and safety record of the person in conducting seismic exploration operations in remote or roadless areas. Whether the seismic exploration project for which a credit is requested under this subsection is located in a basin described in (p) of this section shall be determined by the commissioner of natural resources and reported to the commissioner. A taxpayer that obtains a credit under this subsection may not claim a tax credit under AS 43.55.023 or another provision in this section for the same exploration expenditure.

(p) The activity that is the basis for a credit claimed under (a)(6) and (n) of this section or (a)(7) and (o) of this section must be for the exploration of a basin and within the following areas whose central points are determined using the World Geographic System of 1984 datum,

(1) 100 miles from 66.896128 degrees North, -162.598187 degrees West;

(2) 150 miles from 64.839474 degrees North, -147.72094 degrees West;

(3) 50 miles from 62.776428 degrees North, -164.495201 degrees West;

(4) 50 miles from 62.110357 degrees North, -145.530551 degrees West;

(5) 100 miles from 58.189868 degrees North, -157.371104 degrees West;

(6) 100 miles from 56.005988 degrees North, -160.56083 degrees West.

*** Sec. 8.** AS 43.55.160(a) is amended to read:

(a) Except as provided in (b) of this section, **<u>and subject to adjustment under AS 43.55.162,</u>** for the purposes of

(1) AS 43.55.011(e), the annual production tax value of the taxable **<u>oil, gas, or</u>** [(A)] oil and gas **<u>subject to this paragraph</u>** produced during a calendar year [FROM LEASES OR PROPERTIES IN THE STATE THAT INCLUDE LAND NORTH OF 68 DEGREES NORTH LATITUDE] is the gross value at the point of production of the **<u>oil, gas, or</u>** oil and gas taxable under AS 43.55.011(e) [AND PRODUCED BY THE PRODUCER FROM THOSE LEASES OR PROPERTIES], less the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the **<u>oil, gas, or</u>** oil and gas**<u>, as applicable,</u>** produced by the producer from

[THOSE] leases or properties, as adjusted under AS 43.55.170; **<u>this paragraph applies to</u>**

<u>(A) oil and gas produced from leases or properties in the state that include land north of 68 degrees North latitude, other than gas produced before 2022 and used in the state;</u> [THIS SUBPARAGRAPH DOES NOT APPLY TO GAS SUBJECT TO AS 43.55.011(o);]

(B) oil and gas produced [DURING A CALENDAR YEAR] from leases or properties in the state outside the Cook Inlet sedimentary basin, no part of which is north of 68 degrees North latitude [, IS THE GROSS VALUE AT THE POINT OF PRODUCTION OF THE OIL AND GAS TAXABLE UNDER AS 43.55.011(e) AND PRODUCED BY THE PRODUCER FROM THOSE LEASES OR PROPERTIES, LESS THE PRODUCER'S LEASE EXPENDITURES UNDER AS 43.55.165 FOR THE CALENDAR YEAR APPLICABLE TO THE OIL AND GAS PRODUCED BY THE PRODUCER FROM THOSE LEASES OR PROPERTIES, AS ADJUSTED UNDER AS 43.55.170]; this subparagraph does not apply to gas

<u>(i) produced before 2022 and used in the state; or</u>

<u>(ii) oil and gas subject to AS 43.55.011(p)</u> [SUBJECT TO AS 43.55.011(o)];

(C) oil produced **<u>before 2022</u>** [DURING A CALENDAR YEAR] from a lease or property in the Cook Inlet sedimentary basin [IS THE GROSS VALUE AT THE POINT OF PRODUCTION OF THE OIL TAXABLE UNDER AS 43.55.011(e) AND PRODUCED BY THE PRODUCER FROM THAT LEASE OR PROPERTY, LESS THE PRODUCER'S LEASE EXPENDITURES UNDER AS 43.55.165 FOR THE CALENDAR YEAR APPLICABLE TO THE OIL PRODUCED BY THE PRODUCER FROM THAT LEASE OR PROPERTY, AS ADJUSTED UNDER AS 43.55.170];

(D) gas produced **<u>before 2022</u>** [DURING A CALENDAR YEAR] from a lease or property in the Cook Inlet sedimentary basin [IS THE GROSS VALUE AT THE POINT OF PRODUCTION OF THE GAS

TAXABLE UNDER AS 43.55.011(e) AND PRODUCED BY THE PRODUCER FROM THAT LEASE OR PROPERTY, LESS THE PRODUCER'S LEASE EXPENDITURES UNDER AS 43.55.165 FOR THE CALENDAR YEAR APPLICABLE TO THE GAS PRODUCED BY THE PRODUCER FROM THAT LEASE OR PROPERTY, AS ADJUSTED UNDER AS 43.55.170];

(E) gas produced **before 2022** [DURING A CALENDAR YEAR] from a lease or property **in the state** outside the Cook Inlet sedimentary basin and used in the state [IS THE GROSS VALUE AT THE POINT OF PRODUCTION OF THAT GAS TAXABLE UNDER AS 43.55.011(e) AND PRODUCED BY THE PRODUCER FROM THAT LEASE OR PROPERTY, LESS THE PRODUCER'S LEASE EXPENDITURES UNDER AS 43.55.165 FOR THE CALENDAR YEAR APPLICABLE TO THAT GAS PRODUCED BY THE PRODUCER FROM THAT LEASE OR PROPERTY, AS ADJUSTED UNDER AS 43.55.170];

(F) oil and gas subject to AS 43.55.011(p) produced from leases or properties in the state;

(G) oil and gas produced from a lease or property no part of which is north of 68 degrees North latitude, other than oil or gas described in (B), (C), (D), (E), or (F) of this paragraph;

(2) AS 43.55.011(g), the monthly production tax value of the taxable

(A) oil and gas produced during a month from leases or properties in the state that include land north of 68 degrees North latitude is the gross value at the point of production of the oil and gas taxable under AS 43.55.011(e) and produced by the producer from those leases or properties, less 1/12 of the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the oil and gas produced by the producer from those leases or properties, as adjusted under AS 43.55.170; this subparagraph does not apply to gas subject to AS 43.55.011(o);

(B) oil and gas produced during a month from leases or properties in the state outside the Cook Inlet sedimentary basin, no part of which is north of 68 degrees North latitude, is the gross value at the point of production of the oil and gas taxable under AS 43.55.011(e) and produced by the producer from those leases or properties, less 1/12 of the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the oil and gas produced by the producer from those leases or properties, as adjusted under AS 43.55.170; this subparagraph does not apply to gas subject to AS 43.55.011(o);

(C) oil produced during a month from a lease or property in the Cook Inlet sedimentary basin is the gross value at the point of production of the oil taxable under AS 43.55.011(e) and produced by the producer from that lease or property, less 1/12 of the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the oil produced by the producer from that lease or property, as adjusted under AS 43.55.170;

(D) gas produced during a month from a lease or property in the Cook Inlet sedimentary basin is the gross value at the point of production of the gas taxable under AS 43.55.011(e) and produced by the producer from that lease or property, less 1/12 of the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to the gas produced by the producer from that lease or property, as adjusted under AS 43.55.170;

(E) gas produced during a month from a lease or property outside the Cook Inlet sedimentary basin and used in the state is the gross value at the point of production of that gas taxable under AS 43.55.011(e) and produced by the producer from that lease or property, less 1/12 of the producer's lease expenditures under AS 43.55.165 for the calendar year applicable to that gas produced by the producer from that lease or property, as adjusted under AS 43.55.170.

*** Sec. 9.** AS 43.55.160(e) is amended to read:

(e) Any adjusted lease expenditures under AS 43.55.165 and 43.55.170 that would otherwise be deductible by a producer in a calendar year but whose deduction would cause an annual production tax value calculated under (a)(1) of this section of taxable oil or gas produced during the calendar year to be less than zero may be used to establish a carried-forward annual loss under AS 43.55.023(b). However, the department shall provide by regulation a method to ensure that, for a period for which a producer's tax liability is limited by AS 43.55.011(j), (k), [OR] (o), **<u>or (p),</u>** any adjusted lease expenditures under AS 43.55.165 and 43.55.170 that would otherwise be deductible by a producer for that period but whose deduction would cause a production tax value calculated under (a)(1)(C), (D), [OR] (E)**<u>, or (F)</u>** of this section to be less than zero are accounted for as though the adjusted lease expenditures had first been used as deductions in calculating the production tax values of oil or gas subject to any of the limitations under AS 43.55.011(j), (k), [OR] (o)**<u>, or (p)</u>** that have positive production tax values so as to reduce the tax liability calculated without regard to the limitation to the maximum amount provided for under the applicable provision of AS 43.55.011(j), (k), [OR] (o)**<u>, or (p)</u>**. Only the amount of those adjusted lease expenditures remaining after the accounting provided for under this subsection may be used to establish a carried-forward annual loss under AS 43.55.023(b). In this subsection, "producer" includes "explorer."

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

Sec. 43.55.162. Adjustment to production tax value for increasing oil and gas production. The production tax value of oil and gas produced during the first 10 consecutive years after the start of sustained production or produced during the first 10 consecutive years after the effective date of this bill section, whichever is later, from a lease or property north of 68 degrees North latitude that was not, as of January 1, 2008, within a unit or in commercial production, is reduced by, for the calendar year, 30 percent of the gross value at the point of production of that oil and gas. The rate of tax under AS 43.55.011(g) shall be determined before the application of the adjustment provided by this section.

*** Sec. 11.** This Act takes effect January 1, 2013.