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House Resources Committee

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SECTIONAL ANALYSIS

CSHB 111(RES): OIL AND GAS PRODUCTION TAX; PAYMENT; CREDITS

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Section 1. It is the intent of the legislature that, contingent on passage of a fiscal plan, a substantial portion of outstanding credits eligible for purchase will be purchased.

Section 2. Amends AS 43.05.225 regarding interest on delinquent oil and gas production tax payments to remove a three year limit on accrual of interest. Since 2014, the interest rate for delinquent taxes was set three points above the Federal discount rate. HB 247 added a new section increasing the rate for oil and gas to seven points above the Federal discount rate compounded. The higher rate applies only for the first three years after the tax becomes delinquent after which there is no interest. The amendment repeals the three year limit because zero interest discourages companies from settling tax disputes with the state.

Section 3. Amends AS 43.05.230(a) in accordance with the addition of information requirements related to tax credits (see sections 20 to 22).

Section 4. Amends AS 43.05.230(l) to allow the Department of Revenue (DOR) to make public (1) the aggregate amount of oil and gas production tax credits issued to a person in the preceding calendar year and (2) expenditure descriptions added by sections 20 and 21 of the bill.

Section 5. Adds a new subsection (m) to AS 43.05.230 allowing DOR to disclose confidential tax information relating to oil and gas tax credits to legislators, an agent of a legislator or legislative committee, or a legislative contractor in executive session in conformance with a signed confidentiality agreement.

Section 6. Amends AS 43.55.011(f) to change the North Slope minimum tax to 5 percent of the gross value at the point of production when the average West Cost price per barrel for Alaska

North Slope crude oil is $50 or more; and 4 percent when the average price is less than $50; removes the variable minimum tax that would occur at sustained oil prices below $25 per barrel.

Applies the minimum tax to gas produced on and after January 1, 2018 and before 2022; and to oil produced on and after January 1, 2018. In 2022, the net production on gas will change to a gross value tax system and the minimum tax for gas will end.

Section 7. Adds a new subsection (q) to AS 43.55.011 to provide that the application of any tax credit issued under the oil and gas production tax may not be used to reduce the minimum tax with the exception of oil subject to the gross value reduction. For oil subject to the reduction, subsections (q) and (s) provide that the minimum tax will be calculated on 70 or 80 percent of the gross value at the point of production in order to ensure companies receive benefit from the gross value reduction.

New subsection (r) prevents a taxpayer from applying per barrel credits that cannot be used in one month due to the minimum tax floor to offset a tax liability from a different month in that calendar year (the "migrating" credit issue). This issue only occurs in a year where the tax rate is below the minimum tax in some months and above the minimum tax in other months in a year.

Section 8. Amends AS 43.55.020, related to monthly installment payments in accordance with the changes to the minimum tax in sections 6 and 7.

Section 9. Eliminates the North Slope carried-forward annual loss (net operating loss) credit.

Section 10. Amends AS 43.55.023(c) in accordance with the hardening of the minimum floor in section 7.

Section 11. Amends AS 43.55.023(d) to remove the ability for taxpayers to apply for a cash payment for net operating loss credits issued under AS 43.55.023(b).

Section 12. Amends AS 43.55.024(g) in accordance with the hardening of the minimum floor in section 7.

Section 13. Amends AS 43.55.024(g) in accordance with the hardening of the minimum floor in section 7.

Section 14. Amends AS 43.55.024(j), the sliding scale per barrel tax credit, to $8 at oil prices less than $60; $7 at $60 to less than $70; $6 at $70 to less than $80; $5 at $80 to less than $90; $4 at $90 to less than $100; $3 at $100 to less than $100; and zero when oil prices are $110 and above.

Section 15. Amends AS 43.55.025(g) in accordance with the addition of a dry hole credit in section 17 of the bill.

Section 16. Amends AS 43.55025(i) in accordance with the hardening of the minimum floor in section 7.

Section 17. Adds a new subsection (q) to AS 43.55.025 to allow an explorer to take a purchasable tax credit of 15 percent of exploration expenditures incurred for drilling that results in a dry hole. The credit may be allowed only if (1) the explorer has no oil or gas production; (2) all service contracts are paid in full; (3) the lease is returned to the state; and (4) the expenditure is not the basis for another credit claimed under the production tax.

Section 18. Amends AS 43.55.028(a) in accordance with section 11 that removes the ability for taxpayers to apply for a cash payment for net operating loss credits.

Section 19. Amends AS 43.55.028(e) to limit the state's purchase of credits to $35 million per company. Only companies with production of not more than 15,000 barrels per day may apply for a cash payment. Current law sets the purchase limit at $70 million and applies to companies with not more than 50,000 barrels per day.

Section 20. Amends AS 43.55.030(a) to require an oil and gas producer to submit to DOR information required under regulation and, for each expenditure that is the basis of a credit under AS 43.55.023 or AS 43.55025, a description of (1) the expenditure, (2) the purpose of the expenditure, and (3) a description of the lease or property for which the expenditure was incurred.

Section 21. Amends AS 43.55.030(e) to require an explorer or producer without production to submit to DOR information required under regulation and, for each expenditure that is the basis of a credit under AS 43.55.023 or AS 43.55025, a description of (1) the expenditure, (2) the purpose of the expenditure, and (3) a description of the lease or property for which the expenditure was incurred.

Section 22. Requires the department to annually report to the legislature the information collected under new subsections AS 43.55.030(a)(10) and (e).

Section 23. Adds a new section to AS 43.55.150 to ensure that the gross value at the point of production does not go below zero. The gross value is determined by subtracting tariffs and transportation costs from the West Coast sale price per barrel. The gross value at the point of production is used in various calculations throughout the production tax statute.

Section 24. Amends AS 43.55.160(e) in accordance with section 25 that provides for the carry-forward of net operating losses.

Section 25. Amends AS 43.55.165(a) to add a new subsection (3) that allows 50 percent of net operating losses to carry forward to when a taxpayer has production. The carry forward and uplift proposed in section 26 allows producers to recover costs before paying production tax.

Section 26. Amends AS 43.55.165 to add new subsections (m) and (n). Subsection (m) provides an uplift for seven years of seven percentage points above the Federal Reserve rate for the 50 percent in net operating losses carried forward to production. Subsection (n) directs the

Department of Natural Resources to develop regulations to establish a review process for pre-approval of lease expenditures that will generate a carry-forward annual loss.

Section 27. Repeals AS 43.55.028(g)(3) that set the purchase of $70 million in tax credits at 100 percent of the first $35 million and 75 percent of the other $35 million in a year; repeals AS 43.55.029 that allowed for the assignment of production tax credits to a third-party assignee.

Section 28. Establishes a legislative working group to analyze the Cook Inlet oil and gas fiscal regime.

Section 29. Applicability. Provisions relating to the minimum tax, migrating credit, net operating loss credit, and repeal of third-party assignments apply on or after January 1, 2018.

Section 30. Transition: carried-forward losses and lease expenditures. The department may purchase purchasable tax credits earned before January 1, 2018. The net operating loss carry forward provisions added sections 25 and 26 apply to lease expenditures incurred on or after January 1, 2018.

Section 31. Transition: assignment of tax credit certificates**.** The department may continue to apply and enforce tax credit assignments to third-parties for credits applied for before January 1, 2018.

Section 32. Transition: payment of tax; filing. Taxpayers shall pay the tax as provided in current law for a tax or installment payment for production before January 1, 2018.

Section 33. The change to delinquent interest in section 2 is retroactive to January 1, 2017.

Sec. 34. The intent language, delinquent interest provision, Cook Inlet Working Group, and retroactivity of the delinquent interest provision are effective immediately.

Sec. 35. All other sections take effect January 1, 2018.